

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF JANUARY 2012

BEFORE

THE HON'BLE MR. JUSTICE DILIP B. BHOSALE

R.S.A. NO.2086/2005

BETWEEN :

MOODALAGIRIYAPPA
S/O HAKKI RANGANNA
AGED ABOUT 62 YEARS
R/A YELLAMBALASE VILLAGE
YAGATI HOBLI, KADUR TALUK
CHIKKAMAGALUR DIST-577 101

... APPELLANT

(BY SRI: M.R. RAJAGOPAL, ADV.)

AND :

1. PUTTAPPA S/O CHIKKANNA
AGED ABOUT 48 YERS
R/O YELLAMBALASE VILLAGE
YAGATI HOBLI, KADUR TALUK
CHIKKAMAGALUR DIST-577 101

SINCE DEAD BY LRS

1.a. SMT. SHARADAMMA
W/O PUTTAPPA

1.b. KUM. BHAGYA
D/O LATE PUTTAPPA

1.c. SRI CHANDRAPPA
S/O LATE PUTTAPPA

1.d. SRI JAGGAPPA
S/O LATE PUTTAPPA

ALL ARE R/O YELLAMBALASE VILLAGE
YAGATI HOBLI, KADUR TALUK
CHIKKAMAGALUR DIST-577 10 1

2. THIMMAMMA
W/O LATE HANUMANTHAPPA
AGED 70 YEARS
R/O YELLAMBALASE VILLAGE
YAGATI HOBLI, KADUR TALUK
CHIKKAMAGALUR DIST-577 10 1

... RESPONDENTS

(RESPONDENTS SERVED)

THIS RSA IS FILED UNDER SEC.100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 4.4.2005
PASSED IN R.A.NO.59/2002 ON THE FILE OF THE CIVIL
JUDGE (SR.DN.) & JMFC, KADUR ALLOWING THE APPEAL
AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 30.8.2002 PASSED IN OS.588/1997 ON THE FILE
OF THE ADD. CIVIL JUDGE (JR.DN.) KADUR.

THIS APPEAL COMING ON FOR FINAL HEARING THIS
DAY, THE COURT DELIVERED THE FOLLOWING:

ORAL JUDGMENT:

Heard learned counsel for the appellant. None
appears for the respondents though served.

2. This appeal is directed against the judgment and order dated 4.4.2005 rendered by Civil Judge (Sr.Dn.), Kadur in R.A.No.59 of 2002. By this judgment, the appeal filed by respondent No.1-plaintiff was allowed and the judgment and decree dated 30.8.2002 passed by the Trial Court in O.S.No.588 of 1997 was set aside.

3. Respondent No.1/plaintiff filed suit for partition and separate possession of his one-half share in the suit property and cancellation of the sale deed dated 6.8.1997 executed by respondent No.1 i.e., defendant No.1 in favour of appellant-defendant No.2.

4. Learned counsel for the appellant does not dispute that the plaintiff and defendant No.1 are the members of joint family and they both have one-half share each in the suit property.

5. It appears that Hanumanthappa, the husband of defendant No.1 and Chikkarina, the father of plaintiff were brothers and they were having one-half

share each in the suit property. Though in the written statement, the plaintiff claimed that the entire suit property was belonging to Hanumanthappa, learned counsel for the appellant fairly submitted that Hanumanthappa and Chikkanna each had one-half share as held by the Appellate Court and as claimed by the plaintiff.

6. The Trial Court had dismissed the suit. The Appellate Court allowed the appeal holding that defendant No.1 and plaintiff are the members of joint family and that the suit schedule properties are in their joint possession. The Appellate Court further held that defendant No.1 had no right to alienate the suit properties in favour of defendant No.2 by registered sale deed dated 6.8.1997. After having taken this view, the Appellate Court allowed the appeal, and set aside the judgment and decree of the Trial Court, and declared that the plaintiff is the owner of suit properties and cancelled the sale deed executed by defendant No.1 in favour of defendant No.2.

7. Plaintiff had filed suit for partition and separate possession of his one-half share in the suit properties and he also prayed for cancellation of the sale deed 6.8.1997 executed by defendant No 1 in favour of defendant No.2. From the very nature of prayers in the suit and the issues framed and answered by the Courts below, it is clear that plaintiff was claiming only one-half share in the suit properties and since the sale deed executed was in respect of the entire property, cancellation thereof was sought by the plaintiff. The suit was dismissed by the Trial Court as aforementioned. The declaration, as reflected in the operative portion of the order of the Appellate Court that plaintiff is the owner of the suit properties and cancelling the sale deed dated 6.8.1997 in its entirety, prima facie, seems to be an error committed by the Appellate Court while decreeing the suit.

8. In view thereof, learned counsel for the appellant fairly submitted that appellant would be

satisfied if the sale deed is cancelled only to the extent of the plaintiff's undivided one-half share in the suit property. Thus, there is no dispute that the plaintiff is entitled for only one-half share in the suit properties. Defendant No.1 though served did not appear either before the Trial Court or before the Appellate Court or even before this Court and contested the suit.

9. In view of the admitted facts, I am inclined to modify the order of the Appellate Court in the following terms:-

- a) The Plaintiff is held to be owner of one-half undivided portion of the suit properties.
- b) The Sale deed dated 6.8.1997 executed by defendant No.1 in favour of defendant No.2 is not binding on the share of the plaintiff.
- c) The suit for partition and separate possession of one-half share in the suit properties as prayed for is decreed.
- d) In the execution proceedings, it would be open to the appellant to request the Executing Authority to adjust the equities, if possible, by allotting the land sold by

defendant No.1 by registered sale deed dated 6.8.1997 to his share.

- e) If any such request is made by the appellant-defendant No.2, it is needless to mention that the Executing Authority shall pass an appropriate order after granting an opportunity of being heard to the plaintiff.
- f) With this modification of the judgment and order dated 4.4.2005 passed by the Appellate Court, the appeal is disposed of.
No costs.

Sd/-
JUDGE

DM