

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF AUGUST 1998

B E F O R E

THE HON'BLE MR.JUSTICE T.N.VALLINAYAGAM

R.S.A. NO.712/1995

Between :

1. Smt.T.S.Sarojamma, W/o.
Mallappa, aged 42 years
2. Master Nijagunamurthy
S/o.Mallappa, 15 years
3. Kum. Pushpanjali, aged
11 years, D/o.Mallappa

No.2 and 3 being minors
rep. by their mother and
natural guardian No.1 and
all are residents of LIC
No.23, 3rd Floor,
Kuvempunagaram, Mysore

.. Appellants.

(By Sri.S.K.V. Chalapathy, Advocate)

And :

1. B.S.Shanthappa
S/o.Siddalingegowda
2. B.S.Yogesh,
S/o.Shanthappa
3. B.S.Karunakara
S/o.B.S.Shanthappa
4. B.S.Harish, S/o.
Shanthappa
5. B.S.Kumar, S/o.
Shanthappa
6. B.S.Suresh, S/o.
Shanthappa

All residents of Besur Village, Somwarpet Tq.,
Kodagu District

.. Respondents.

(By Sri.s.G.Bhagawan for Respdt.)

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..1a..

R.S.A. filed U/s.100 of CPC., against the Judgment and Decree dated 14.7.1994, passed in R.A.No.49/1991, on the file of the Civil Judge, Madikeri, partly allowing the appeal and ~~setting-aside~~/modifying the judgment and decree passed by the Munsiff, Somwarpet, in O.S.No.235/1989, dated 29.6.91.

This R.S.A. coming on for hearing this day, the Court delivered the following :

JUDGMENT

..2..

JUDGMENT

The dispute in the second appeal preferred by the aggrieved by the plaintiff for non-grant of shares in the certain properties is that items 2, 3 and 4 in 'A' schedule and items 1 to 13 in 'B' schedule, apart from B-14 which is the house in B schedule, were not made partible.

2. Admittedly, these properties are landed properties, wherein occupancy rights has been given to the defendant who claims it is exclusive, because it was given exclusively for his benefit. I have taken the view in the case reported in I.L.R. 1998 Kar. 2508 (Veerabhadrappa and others vs. Virupaxappa Totappa Bilegal) that whenever occupancy right is given to a member of the family it shall enure to the benefit of the entire family members. Following that I hold that the plaintiff is

entitled to partition of all the omitted items left by the first appellate court, except item 14, which stands in the name of the son-in-law of the defendant.

3. The appeal was admitted and no question of law was framed at the time of admission. However, the two questions of law raised by the appellants have to be considered as questions of law, which are:

a) That item Nos. 3, 4, 5 of A schedule and item Nos. 1 to 13 and 14 of B schedule properties constitute the self acquired properties of the first defendant without appreciation of material evidence?

b) That one of the members of the joint family obtaining occupancy certificate in his name under section 21 to Explanation 2 of the Karnataka Land Reforms Act would constitute the joint family properties or the self acquired properties?

Mr.

4. So far as question No (b) is concerned, in view of the dictum laid down by me following the Full Bench and the Division Bench of this Court, apart from the dictum of the Supreme Court, mentioned supra, I hold that the occupancy right mentioned in item No.A are all referred to the lands for which the occupancy rights have been granted in favour of the member of the family. Therefore, following the above decision and excluding item No.14 alone, which I find is the self acquired property of the first defendant, all the members are entitled to a share in the property. The view taken by the trial court that if the plaintiffs are entitled to half share in the suit items 1 to 18 and 21 and half share in items 19 and 20, after deducting 5 cents acquired by the Government, and the plaintiffs are entitled to half share out of 1/3rd portion in items 22 to 28, in A schedule properties, are concerned. The further decree that the plaintiffs are entitled to half share in items 1 to 13 in B schedule properties and that half a

share in the old country house which is in possession of the first defendant is confirmed. The suit in respect of the new house is dismissed, except item 14.

5. In the result, the judgment and decree of the first appellate court is set aside and the decree of the trial court is modified only in respect of item No. 14.

Sd/-
Judge

vge.