

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 13TH DAY OF SEPTEMBER, 2011

PRESENT

THE HON'BLE MRS.JUSTICE MANJULA CHELLUR

AND

THE HON'BLE MR.JUSTICE V.SURI APPA RAO

RFA.No.1938/2007 (MV)

BETWEEN:

BASAPPA BYADGI
S/O LATE KURUVATTEPPA BYADGIR
AGE ABOUT. .YEARS, OCC:AGRICULTURE,
R/O.RAMANAGAR H.B.HALLI,
BELLARY TALUK & DISTRICT-583101. ... APPELLANT

(By Sri. : MAHESH WODEYAR, AGA.)

AND

THIRUKAPPA BYADGI
S/O LATE KURUVATTEPPA BYADGIR
AGED ABOUT...YEARS, OCC: BLOCK DEVELOPMENT
OFFICER, OFFICE OF THE TALUK PANCHAYATH
SAMTHI,R/O.HARAPANAHALLI,
DAVANAGERE DISTRICT-577002. ... RESPONDENT

(By Sri.: M.S.HARAVI, ADV.)

THIS RFA IS FILED U/S.96 OF CPC AGAINST THE
JUDGMENT AND DECREE DT.30.6.2007 PASSED IN

O.S.NO.166/99 ON THE FILE OF THE ADDL. CIVILJUDGE (SR.DN), HOSPET, DISMISSING THE SUIT FOR DECLARATION AND DIVISION OF PROPERTIES.

THIS APPEAL COMING ON FOR FINAL HEARING, THIS DAY, MANJULA CHELLUR,J., DELIVERED THE FOLLOWING:

JUDGMENT

Heard learned counsel for the appellant as well as the respondent.

2. It is not in dispute that the present appellant approached the trial Court for partition and separate possession of the suit schedule properties. According to the plaint averments the respondent herein is the younger brother of the appellant and his father one Kuruvantheppa not only inherited some properties from his father, but, added some more properties to the properties of the family, as he was earning good money out of civil contracts during his life time.

3. It is also the contention of the appellant that out of the income of the joint family properties some of the house properties described in the schedule came to be

constructed and the respondent herein also along with his family has some properties, though he was working in the Government as Block Development Officer. Therefore, according to the plaintiff all the properties of the joint family have to be equally divided between the appellant and the respondent.

4. The respondent defendant took up the contention that there was already partition in the family in the year 1985, therefore, question^{of S} any partition between them would not arise. Hence, the suit was bad for such relief.

5. According to the respondent-defendant certain properties were standing in the name of not only their mother Deveeramma, but also were standing in the name of husband of one of his sister by name Basavanemma and some other properties were standing in the name of another sister Sivakka. It is also the contention of the defendant- respondent that Survey No.364 situated at Katte Bennur village measuring 10.10 acres stands in the name of the present appellant and it forms part of the

joint family property. With these averments he sought for dismissal of the suit.

6. Learned Judge of the trial Court framed as many as 5 issues and the suit came to be dismissed by the reasoning at paras 13, 13 and 14.

7. Though the respondent was not able to establish by producing palupatti as the same was seized by Lokayukta during the raid conducted in the house of respondent herein, the learned Judge of the trial Court presumes that such partition ought to have been there because of other circumstances. Without even describing what were the circumstances compelling such conclusion learned Judge proceeds to say, that this must have been earlier partition in the year 1985. When the specific contention of the respondent was to the effect that in view of earlier partition in 1985 the suit for partition filed by the present appellant is not maintainable, the burden of establishing that there was earlier partition lies on the respondent and the trial Court totally ignored this basic

principle. That apart it was the defendant who brought on record properties standing in the name of the sister when they were unmarried which were acquired from the income of the joint family properties and also income of the father by the civil contract work. In a suit for partition each member of the family represents other members of the family. In that view of the matter learned Judge ought to have directed impleading of necessary parties suomoto as contemplated under Order 1 Rule 10 and he ought to have directed the parties to bring on record by way of amendment other properties of the joint family so as to have partition and separate possession of the properties by meets and bounds. Accepting that there was earlier partition proceeded to dismiss the suit for partition. As it is common in undivided families to acquire properties in the names of different family members of a joint family, the trial Court ought to have given attention to such practice but he totally ignored these aspects and proceeded to dismiss the suit. The only way justice could

be done in the matter is to remand back the matter to the trial Court by setting aside the judgment and decree so as to give opportunity to both the appellant and the respondent herein to bring on record all the properties belonging to the joint family and also all the parties who are entitled for a share in the joint family properties.

8. Accordingly, appeal is allowed, setting aside the Judgement and Decree in OS No.166/1999 on the file of the Addl. Civil Judge (Sr.Dn), Hospet, dated 30/6/2007. The learned Trial Judge is directed to dispose of the suit afresh within a period of one year from the date of receipt of records.

Registry is directed to send back the Trial Court records.

Sd/-
JUDGE

Sd/-
JUDGE