

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

REGULAR FIRST APPEAL NO. 764 OF 2010 (PAR)

BETWEEN:

1. SMT ADHILAKSHMI
2. SRI. LAKSHMINARAYANA
3. KUM. PADMA
4. SRI. M SOMASHEKAR

...APPELLANTS

(BY SRI. A RAM MOHAN, ADVOCATE)

AND:

SRI. K. CHIDANAND

...RESPONDENT

(BY SRI. MURALI N, ADVOCATE)

THIS RFA IS FILED U/S.378(1) AND (3) OF CR.P.C PRAYING TO SET ASIDE JUDGMENT AND DECREE PASSED IN OS NO 612/2002 ON 25-01-2010 BY THE FIRST ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-2) BANGALORE AND ETC.,

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 08.02.2024, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

JUDGMENT

1. This appeal is filed by the appellants who are unsuccessful in the original suit filed by them. The Trial Court by the judgment and decree dated 25.01.2010 in O.S No.612/2002 dismissed the original suit filed for partition and separate possession of the property.
2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case:

3. The appellant No.1 is the wife of deceased K.Mahadev and other appellants are the children. The father of K.Mahadev was allotted suit schedule property under the dramatist quota by the BDA in the year 1976-1977. Before registration of the said property, Sri.K.Thippanna father of K.Mahadeva died. All the legal representatives of the deceased K.Thippanna consented to transfer the property in the name of Smt.Lakshamma, who is the wife of Thippanna. Accordingly, the BDA registered the property on 03.07.1998 in favour of Smt.Lakshamma. It is further stated that the said Smt.Lakshamma, after

registration of the property, bequeathed the property in favour of the defendant. By virtue of the 'Will', the defendant was enjoying the property by taking possession thereof without partition of the said property in favour of the plaintiffs though he knew that it is a joint family property. Hence, the appellants herein filed original suit for partition and separate possession of the suit schedule property.

4. Heard Sri A Ram Mohan, learned counsel for the appellants and Sri Murali N, learned counsel for the respondent.
5. It is the contention of the learned counsel for the appellants that the Trial Court failed to appreciate the evidence on record and passed the impugned judgment and decree which is against the evidence on record and therefore, the said judgment and decree is required to be set aside.
6. It is further contended that it is an admitted fact that the appellants are wife and children of K.Mahadev who is the son of the deceased K.Thippanna and Smt.Lakshamma. The appellants are co-parceners of the property of deceased Smt.Lakshamma and they are entitled to have a share in the said property. Merely because one of

the co-parceners relinquished his rights over the property, that may not be absolved the other co-parceners to have share over the other schedule property.

7. It is further submitted that plaintiff No.1 was working in the garment factory and contributed for the welfare and sustenance of the joint family. Plaintiff Nos.2 and 3 were also working in private sector and providing money to the joint family. Neither the defendant nor the allottee purchased the BDA property without the contribution of the plaintiffs. In fact, the defendant and her mother had no independent income to get the BDA property registered.
8. It is further submitted that the plaintiffs were requesting the defendant on several occasions for partition the property and put them in possession of the said property. However, the said requests were being postponed without making partition.
9. It is further submitted that since the property allotted in the name of the kartha of the family namely Sri.K.Thippanna, by consent of K.Mahadev and the defendant, the BDA registered the property in the name of wife of the original allottee. Therefore,

Smt.K.Lakshmamma being a co-sharer cannot make 'Will' the entire property. Therefore, the property has to be divided among the legal representatives of original allottee. Making such submission, the learned counsel for the appellants prays to allow the appeal.

10.Per contra, the learned counsel for the respondent submitted that the relationship of the plaintiffs is admitted and further submitted that Sri.K.Mahadeva being the brother of the defendant was staying away from the house in the year 1978-79. Therefore, the question of contributing for the welfare of the joint family property does not arise.

11.It is further submitted that in fact the brother of the defendant namely Sri.K.Mahadev executed declaration agreement by stating that he had no right over the property. The plaintiffs have not proved that the property is a joint family property, therefore, they are not entitled for partition of the property. The 'Will' executed by the deceased Lakshmamma in favour of the defendant has been duly registered before the Sub Registrar and therefore, it cannot be doubted. The registered relinquishment deed executed by the husband of plaintiff No.1 and father of other plaintiffs dated 15.03.2000 after

knowing that the 'Will' was executed by the deceased Lakshamma in favour of the defendant. Therefore, the plaintiffs/appellants are not entitled for any relief. Making such submission, the learned counsel for the respondent prays to dismiss the appeal.

12. Having heard the learned counsel for the respective parties and also perused the judgment and decree passed by the Trial Court, the points which arise for my consideration are:

- i) Whether the Trial Court appreciated the pleadings of the case properly in respect of joint family property or not?
- ii) Whether the plaintiffs / appellants proved that they have contributed for the sustenance of joint family property?
- iii) Whether the findings of the Trial Court in dismissing the suit is justified?
- iv) What order?

13. The suit is filed by the wife and children of K. Mahadev who is none other than the brother of the defendant. It is the claim of the plaintiffs that the suit property was allotted to Sri. K. Thippanna by the BDA under dramatist

quota. However, the said Sri.K.Thippanna died before registration of the property. Later, the said property was transferred to the wife of K.Thippanna who was none other than the mother-in-law of plaintiff No.1 and grandmother of other plaintiffs.

14. Even though the property has been allotted in favour of K.Thippanna, he died before its registration and subsequently after making necessary payment to the authority, the property has been transferred to the wife of original allottee. Therefore, the said property become absolute property of Smt.Lakshamma in terms of Section 8 of Hindu Succession Act. As such, it can be inferred that Smt.Lakshamma is the absolute owner of the property. Mere allotment of the property in favour of K.Thippanna without its registration does not confirm any title over the said property.

15. When the plaintiffs failed to prove the status of the joint family property, there is no occasion for this Court to interfere with the findings of the Trial Court in respect of dismissal of the suit. Moreover, the plaintiffs have no right over the property when the brother of the defendant was alive. If at all, if any partition is required to be sought, the brother of the defendant had to file suit for

partition against the defendant. In the present suit, the brother of the defendant has not been made as a necessary party and it is also seen from the record that the said elder brother of the defendant had executed relinquishment deed in favour of the defendant, that has not been challenged.

16. When the plaintiffs have failed to prove that the property is a joint family property and it has to be partitioned among the family members, remaining issues are not required to be answered. However, for the sake of satisfaction, it can be considered. Even though PW.1 stated in her evidence that she contributed amount to purchase the property, it cannot confer the right for partition as the allottee namely Smt.Lakshamma becomes absolute owner of the property. The plaintiffs are not entitled for any share even though the property to be partitioned as K.Mahadev being one of the sons of Lakshamma is alive. Moreover, the said K.Mahadev relinquished his right to the defendant. Therefore, the findings of the Trial Court in dismissing the suit is justified and therefore, I declined to interfere with the said findings.

17. In the light of the observations made above, the points which arose for my consideration are answered as under:-

Point No.(i) - "Affirmative"

Point No.(ii) - "Negative"

Point No.(iii) - "Affirmative"

Point No.(iv) - "As per the final order"

18. Hence, I proceed to pass the following:-

ORDER

The appeal is *dismissed* without any costs and the parties are hereby bear their respective costs.

**Sd/-
JUDGE**

Bss