

IN THE HIGH COURT OF KARNATAKA AT

DHARWAD BENCH

DATED THIS THE 27TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

RFA NO.100103 OF 2014

BETWEEN:

1. PRAFULLA M.BHAT,
AGED ABOUT 66 YEARS,
OCC: HOUSEHOLD WORK
R/O. MURUR, TQ: KUMTA,
DIST: UTTAR KANNADA,
2. SUSHEELA,
D/O. MAHADEV HEGDE,
AGED ABOUT 58 YEARS,
OCC: GOVERNMENT SERVICE
RESIDING AT MAGADI TOWN,
RAMESHWAR EXTENSION,
BANGALORE RURAL DISTRICT.
3. SUMAN HEGDE,
W/O. P M PRAKASH
AGED ABOUT 54 YEARS,
OCC: ADVOCATE
RESIDING AT (1) FLOOR
"SHREERANGA" 12TH CROSS,
MUTYALAMMA NAGAR,
MATTIKERE, BANGALORE 560054.
4. PREMA,
W/O. G G HALEMANE,
AGED ABOUT 51 YEARS,

OCC: GOVT. SERVICE,
R/O. 12TH MAIN, 11TH A CROSS,
IIND STAGE, WEST OF CHORD ROAD,
BANGALORE - 560086.

5. SHAILAJA,
W/O. P V HEGDE
AGED ABOUT 49 YEARS,
OCC: HOUSEHOLD WORK,
R/O. 306, IIIRD FLOOR,
FLAT NO. 11, IST CROSS,
KEMPEGOUDA NAGAR,
T DASARAHALLI,
BANGALORE - 560057.

APPELLANT NOS.1, 2, 4 AND 5 ARE
REPRESENTED BY THEIR POWER OF
ATTORNEY HOLDER
SMT SUMAN HEGDE - APPELLANT NO.3.

...APPELLANTS

(BY SRI SANGRAM S KULKARNI, ADVOCATE)

AND:

- 1 . SARASWATI SHASTRI,
AGED ABOUT 69 YEARS,
OCC: HOUSEHOLD WORK,
R/O. C/O. MAHADEV HEGDE'S HOUSE
AT: NADIKERI, SAIKOD,
TQ: HONNAVAR, DIST: UK.
- 2 . SHANKAR MAHADEV HEGDE,
AGED ABOUT 64 YEARS,
OCC: RETIRED PERSON
R/O. KARWAR, DIST: UK.
- 3 . GANAPATHI MAHADEV HEGDE
AGED ABOUT 64 YEARS,
SINCE DECEASED
REP. BY HIS LRS

3 (a) SMT VASUDHA,
W/O LATE GANAPATI HEGDE,
AGED ABOUT 72 YEARS,
OCC: HOUSEHOLD, R/O BADRAPPA LAYOUT,
BANGALORE.

3 (b) SMT ANURADHA JAMINDAR,
D/O LATE GANAPATHI HEGDE,
OCC: HOUSEHOLD, R/O BADRAPPA LAYOUT,
BANGALORE.

(CAUSE TITLE AMENDED AS PER
COURT ORDER DT: 17.01.2025)

- 4 . PRAKASH SHAMBU HEGDE,
AGED ABOUT 41 YEARS,
OCC: AGRICULTURE
R/O. SALKOD, AT: NADIKERI,
HONNAVAR, DIST: UK.
- 5 . SUBRAYA DEVARU HEGDE,
AGED ABOUT 68 YEARS,
OCC: AGRICULTURE,
R/O. SALKOD, AT: NADIKERI,
HONNAVAR, DIST: UK.
6. GANAPATHI SUBRAY NAIK,
AGED ABOUT 39 YEARS,
R/O JANASALE, VILLAGE: SALAKOD,
TQ:HONNAVAR, DISTRICT: UTTARA -KANNADA.

(AMENDMENT CARRIED OUT
VIDE AS PER ORDER DT: 11.06.2024
PURCHASER RESPONDENT NO.6 IMPEADED)

...RESPONDENTS

(BY SRI R.G.HEGDE, ADV. FOR R1,
SRI H L HAVARAGI, ADV. FOR R3 (A&B)
SRI DATTATRAYA T HEBBAR, ADV. FOR R4 & R5,
SRI SADIQ N GOODWALA, ADV. FOR IMPEADING R6)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DT:11.03.2014 PASSED IN O.S.NO.7/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, HONNAVAR, DISMISSING THE SUIT FILED FOR DECLARATION, PARTITION, MANDATORY INJUNCTION AND FOR MESNE PROFITS.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17TH JANUARY, 2025 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CAV JUDGMENT

1. Whether the coparcenary property allotted to the share of a father, before 20th December 2004, in a partition among the father and sons, which becomes his separate property after the partition, regains the status of a coparcenary property by virtue of amended Section 6 of the Hindu Succession Act of 1956, enabling the daughters who were born and alive when the partition took place (before 20th December, 2004) to claim a share in the property allotted to the father?

Or to put it simply,

Whether Section 6 of Hindu Succession Act of 1956, elevates the daughter who was already born at the time of a partition that took place before 20th December 2004, between the father and his sons, to the status of the daughter born after the partition, to claim the share in the property allotted to the father ?

2. Whether the appellants establish that the registered gift deed dated 21.07.2007 allegedly executed by Mahadev (appellants' father) is outcome of fraud and misrepresentation?

1. The questions referred to above, arise in this appeal against a decree dismissing the suit for partition filed by the daughters of Mahadev.

2. Five daughters of Mahadev filed the suit claiming a share in the suit properties. The plaintiffs' two brothers are arrayed as defendants No.2 and 3. Defendants No.4 and 5 are the purchasers of the property from Defendants No.2 and 3.

3. Mahadev's first wife died in 1992. Defendant No.1 claims to be Mahadev's second wife and marriage is said to have taken place in 1999. Plaintiffs' dispute the marriage and contend that she was only a domestic help.

4. Admittedly, the suit properties were ancestral in the hands of Mahadev. On 10.01.1994, a registered partition took place between Mahadev and his two sons. In the said partition, Mahadev was allotted certain properties. Two sons namely defendants No.2 and 3 were also allotted separate properties.

5. All the plaintiffs were married before 10.01.1994. As per the law prevailing then, the plaintiffs had no share in the coparcenary properties in the hands of Mahadev when the partition took place on 10.01.1994 as Mahadev was alive.

6. Mahadev died in 2010. Defendant No.1 who claimed to be Mahadev's second wife, claimed to be the donee under the registered gift deed 21.07.2007 executed by

Mahadev, in respect of the properties allotted to his share in the partition of 1994.

7. The suit is primarily filed on the premise that all the daughters have equal share in the suit properties and the partition dated 10.01.1994 is not binding on the plaintiffs. The plaintiffs also challenged the gift deed alleging fraud and forgery.

8. The Defendants contested the suit. The Trial Court held that the suit is not maintainable as the plaintiffs/daughters cannot challenge the registered partition deed dated 10.01.1994 as they had no right over the properties in 1994. The Trial Court also held that after the partition of 1994, father Mahadev became the absolute owner of the properties allotted to his share, and he was competent to execute a gift deed in favour of defendant No.1. The Court also held that plea of fraud and forgery is not established.

9. Hence the plaintiffs are in appeal.

10. Learned counsel appearing for the plaintiffs/appellants would urge that Section 6 of the Hindu Succession Act of 1956 (Act of 1956) is held to be a retroactive. The plaintiffs/daughters should be deemed to have been the coparceners from 1956 or the date of their birth. Thus, the partition of 1994 is invalid as the plaintiffs are not allotted shares in the said partition.

11. Alternatively, it is urged that, though the property allotted to Mahadev had acquired the characteristic of separate property, after the partition dated 10.01.1994, by operation of amended Section 6 of the Act of 1956, said separate property (coparcenary property is allotted in a partition) in the hands of the father would be the coparcenary property as the daughters are coparceners. Thus the daughters acquire rights in the properties from the date of amendment. Learned counsel appearing for the appellants rely on the judgment of the Division Bench of this Court in **Jayashree Jayanth vs. N. Krishnaswamy**¹

¹ RFA No.1226/2016

12. Learned Counsel for the appellants also urged that gift deed is outcome of fraud and forgery. Mahadev was unwell and incapable of executing the gift deed and 1st defendant is not his wife, she was only a domestic help and evidence on record is not good enough to uphold execution of the gift deed.

13. Learned counsel appearing for contesting respondents would contend that the questions raised in this appeal is squarely covered by the judgment of the Division Bench of this Court in the case of ***Vijayanand Vs. Parikashith And others***², and also the judgment in ***Koshy Abraham Vs. B.K. Jayalakshmi and others***³. In addition he would urge that all the properties covered under the partition, which took place before 20th December 2004 are immune from the application of Section 6 (1) of the Act of 1956, because of proviso to Section 6(1), and sub-section (5) of Section 6 of the Act of 1956.

² MANU/KA/50855/2022

³ MANU/KA/6264/2021

14. This Court has considered the contentions raised at the Bar and perused the records.

15. Section 6 of the Act of 1956 as amended by Act of 39/2005 conferred the status of a coparcener to the daughter of a coparcener. Thus, a daughter of a coparcener is entitled to claim an equal share in the coparcenary property on par with a son. Said provision is interpreted to say that it has a retrospective effect and the daughter would acquire the right over the property by birth in the family from 1956 i.e., the year in which the Hindu Succession Act, 1956 came into force.

16. Though learned Counsel for the appellants would urge that in view of the retroactive effect given to Section 6, the daughters are deemed to be coparceners from 1956 itself, the proviso to Section 6 (1), and also sub-section (5) of Section 6 of Act of 1956 save the earlier partition. Suffice it to say that judicial interpretation in this regard is well-settled. The only departure from the text of the sub-section (5) of Section 6 is, that sub-section (5) of Section 6 recognizes only a registered partition and a decree for

partition granted by the Court. However, in ***Vineeta Sharma Vs. Rakesh Sharma and others***⁴, the Hon'ble Apex Court also saved certain types of oral partition. Admittedly, the partition in question is registered on 10.01.1994, the daughters cannot question the same taking shelter under amended Section 6 of the Act of 1956.

DISCUSSION ON QUESTION No.1:

17. The concept of "coparcenary" is not defined in a Statute. It is a Shastric law concept peculiar to Hindus. Shastric law did not recognise a woman as a coparcener. Now the anomaly is removed to an extent by giving the status of a "coparcener" to a daughter. This recognition is given through a Statute namely Section 6 of the Act of 1956.

18. Under Shastric law, if a coparcenary property is partitioned among the father and sons, the share allotted to the father would be his separate property, till a son is born to him. However, if a son is born to the father, the

⁴MANU/SC/0582/2020

property allotted to the father, which acquired the status of a separate property because of the partition, would regain the status of a coparcenary property and the son born after the partition will acquire the right in the property by birth. Applying the said principle, the daughters, who were alive at the time of partition of 1994, are seeking share in the property allotted to their father, challenging gift deed of the year 2007, executed by the father. And to support their contention the appellants rely on Section 6(1) (b) of the Act of 1956.

19. In the context of the case, the precise question to be answered is, whether the daughters, who were alive when the coparcenary properties were partitioned among the father and his sons, (before 20.12.2004) should be equated with daughters born to a coparcener, qua the properties allotted to the father because of amended Section 6 of Act of 1956.

20. Since the status of a coparcener given to a daughter is under a statute, whether such status is absolute or qualified is to be gathered from the statute itself.

21. Relevant portion of Section 6 of the Act of 1956 reads as under :-

Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, (39 of 2005) in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December 2004.

(2) xxxxx (Being not relevant not extracted)

(3) xxxxx (Being not relevant not extracted)

(4) xxxxx (Being not relevant not extracted)

(5) *Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December 2004.*

Explanation. —For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

(Emphasis supplied)

22. On a reading of sub-section (1) of 6 of the Act of 1956, one can readily notice two parts.

(a) Section 6 (1) confers a status of a coparcener to a daughter. It also provides for the consequences both in terms of rights and

liabilities, arising from the status as a coparcener.

(b) The proviso to Section 6(1) provides that any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December 2004 is not invalidated by Section 6(1).

23. Sub-section (5) of Section 6 of Act of 1956 makes the entire Section 6 inapplicable in a situation contemplated in it, namely a registered partition, or a partition granted by a decree of a Court, prior to 20th December 2004.

24. As already noticed, the status of a "coparcener" conferred on a daughter, for the first time, through a Statute vide Section 6 of the Act of 1956. Section 6 of the Act of 1956 also places limitations on the daughter to claim a share in the coparcenary property noticed in the proviso to Sub-Section (1) of Section 6, and sub-section (5) of Section 6 of the Act of 1956.

25. Though the proviso Section 6(1) merely intends to save the alienation, testamentary disposition and partition effected before the 20th day of December 2004, the language in sub-section (5) Section 6 is more emphatic. It states that,

"Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December 2004."

26. Thus, the Parliament intended to save the partitions made before 20.12.2004. Said protection given to the partition effected before 20th December 2004 is to all the properties covered by the said partition (*Registered/Partition decree/ and certain categories of oral partition as held in **Vineeta Sharma supra***) and it would disentitle the daughter, who was alive at the time of partition among coparceners that took place before 20th December 2004, to make a claim for partition in the property allotted to the share of the father claiming the status on par with the daughter born to a coparcener after the partition.

27. Thus, sub-section (5) of Section 6 of the Act of 1956 comes in the way of the daughters, who were born and alive when the coparceners effected the partition, to claim a share in the property allotted to the share of the father, or to challenge the alienation made by the father, after 2005 amendment, by taking shelter under substituted Section 6 of the Act of 1956, on par with the daughters born after the partition.

28. It is relevant to note that under the Shastric Hindu Law, a daughter of coparcener did not get any share in the property in the event of partition among the coparceners. The daughter of a coparcener living at the time of partition will not get any share in the property allotted to the share of the coparcener even after the partition. She will acquire right in the property after the demise of the father, after the commencement of Act the of 1956. Before the commencement of the said Act she was not given share when father was alive. This being the position, the daughter, who was alive when the partition took place in 1994, will not acquire the right in the

property in respect of the property allotted to the share of the father, as a coparcener, immediately after amendment to Section 6 of Act of 1956, as if she is a daughter born after the partition.

29. Since, the Act of 1956 intended to save the partition/alienation/testamentary disposition, which have taken place before 20th December, 2004, which in turn aimed at not disturbing such valid transactions, this Court is of the view, that the daughters alive when the partition took place before 20th December 2004, between the father and the son, cannot claim the status of a daughter born after the partition to claim the birth right in the property allotted to the share of the father. Thus it appears that parliament intended to avoid the status of a separate property being changed to the status of a coparcenary property, insofar as the daughter born and living at the time of partition before 20th December 2004. This appears to be the purpose of sub-section (5) of Section 6 of the Act of 1956.

30. The fact remains that she is a daughter born before the partition and is denied share in the said property by operation of proviso to Section 6(1), and sub-section (5) of Section 6 of the Act of 1956.

31. When that is the position, the right to claim partition in respect of the properties, which are the subject matter of saved partition under sub-section (5) of Section 6 of the Act of 1956 is not available to the daughters.

32. However, there is indeed an anomaly or dichotomy in Section 6 of the Act of 1956.

32.1 Section 6(1) (b) of the Act of 1956 provides that *the daughter of a coparcener shall have the same rights in the coparcenary property as she would have had if she had been a son*; Section 6 of the Act of 1956 has not altered the right of a son born after the partition, to acquire an interest in the share in the coparcenary property allotted to the father. Thus, if a son born after the partition in respect of coparcenary property, said son acquires right in the property allotted to the share of the father.

32.2 Likewise by virtue of Section 6(1)(b), the daughter born after the partition and amendment to Section 6 of the Act of 1956, will also acquire a share by birth in the family, in the coparcenary property allotted to father's share, before the birth of the daughter.

32.3 However sub-section (5) of Section 6 of the Act of 1956 seems to make Section 6(1) inapplicable in a situation covered under sub-section (5) of Section 6 which reads as "**Nothing contained in this Section shall apply to a partition, which has been effected before the 20th day of December 2004.**" The literal interpretation seems to suggest that daughter born to a coparcener (after the partition which takes place before 20th December 2004, will not have a status of a 'deemed' coparcener in respect of the coparcenary property allotted to the share of the father. However, Shastric Hindu law provides that son born to a coparcener after the partition will acquire share in the coparcenary property allotted to the father. To achieve the object of the enactment, there

is a need to harmonise Section 6(1)(b) and Section 6(5) of the Act of 1956.

33. In any case, the discussions made in paragraph 32 to 32.3 are not the questions raised in this appeal, but are offshoot of the questions raised in this appeal. This Court does not pre-empt any answer to the said question in an appropriate proceeding. Hence the observations in paragraphs 32 to 32.3 should not be treated as a finding on the said issue.

34. The ratio in the judgments in ***Vijayanand V/s Parikashit And others***, and also the judgment in ***Koshy Abraham V/s B.K. Jayalakshmi*** and others relied on by the learned counsel for the respondents, are the judgments rendered interpreting Section 8 of Act of 1956 and do not apply to the present appeal.

35. The ratio in the judgment ***Jayashree Jayanth vs. N. Krishnaswamy*** referred to by the learned counsel for the appellants also does not apply to the present appeal as the implication of sub-section (5) of Section 6 of Act of

1956 on the daughters born and alive at the time of partition before 20th December 2004 vis-à-vis the share allotted to the father never came up for consideration in the said judgment.

DISCUSSION ON QUESTION No.2:

36. The appellants have questioned the validity of the registered gift deed alleged to have been executed by Mahadev in favour of 1st defendant. The gift deed is dated 21.07.2007. Mahadev died on 10.04.2010, during his lifetime he has not questioned the gift deed.

37. Admittedly 1st defendant was residing with Mahadev since 1999. First wife of Mahadev died in 1992. Though the appellants contend that 1st defendant was only a domestic help, the admitted position is 1st defendant was living with Mahadev till his death.

38. To prove the execution of the gift deed, 1st defendant examined one attesting witness as well as the scribe. The appellants contend that Mahadev used to sign. However,

the gift deed does not bear the signature, but bears the thumb impression. It is alleged that thumb impression is not identified, to be that of Mahadev.

39. The attesting witness and the scribe have deposed stating that Mahadev's hand used to shake, thus he put the thumb impression, instead of signature. Looking into the age of Mahadev, who was aged around 80 years, the explanation appears to be satisfactory. There is no reason to disbelieve the evidence of the attesting witness as well as the scribe, who is a practicing Advocate.

40. Though appellants contend that Mahadev did not possess sound state of mind on account of neurological disorders and though an attempt is made to establish the alleged mental condition by examining the Doctor, the Trial Court has noticed that the Doctor has not produced any medical records for having treated Mahadev. Trial Court has also noticed that the Doctor, who has given the evidence is not a specialist for the ailment alleged.

41. The Trial Court has also noted that error in mentioning the correct number of Mahadev's daughter in the gift deed does not go to the root of the matter to hold that the gift deed is invalid and it said error is only a typographical error. No fault can be found in the said observation.

42. This Court on over all appreciation of the materials on record is of the view that finding recorded by the Trial Court upholding the execution of gift deed in favour of 1st defendant is based on well established principles governing appreciation of evidence.

43. The fact situation that two sons of Mahadev separated in 1994 and five daughters were married and living in their respective husband's house and Mahadev was looked after by 1st defendant, who claim to be his second wife also suggests that Mahadev intended to gift the properties in favour of 1st defendant to ensure that proper arrangement is made for her livelihood.

44. For the aforementioned reasons, this Court is of the view that contention that the gift deed executed by Mahadev is outcome of fraud and misrepresentation is not established.

Hence the appeal is ***dismissed***.

No order as to costs.

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**

NG

CT:VN