

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 24<sup>TH</sup> DAY OF MAY, 2012

BEFORE

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

REGULAR SECOND APPEAL No. 1503 OF 2011(PAR)

BETWEEN:

- 1 SMT. BHAGYAMMA  
D/O. N P KRISHNAPPA  
AGE 46 YEARS  
R/AT NADUPANAYAKANAHALLI  
VILLAGE, JANGAMAKOTE HOBLI  
SIDLAGHATTA TALUK  
CHICKBALLAPUR DISTRICT  
PIN 562105.
- 2 SMT. SHOBHAMMA  
D/O. N P KRISHNAPPA  
AGE 36 YEARS  
RESIDENT OF KALANAYAKANAHALLI  
VILLAGE, JANGAMAKOTE HOBLI  
SIDLAGHATTA TALUK  
CHICKBALLAPUR DISTRICT  
PIN 562105.

... APPELLANTS

(BY SRI. N SANNEGOWDA, ADVOCATE)

AND :

SMT. JAYAMMA  
SINCE DECEASED  
REP.BY HER L.Rs 1 TO 3

- 1 N P KRISHNAPPA  
S/O. LATE PAPANNA  
AGE 66 YEARS
- 2 N K EREGOWDA  
S/O. LATE KRISHNAPPA

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AGE 44 YEARS

- 3 N K SUBRAMANI  
S/O. N P KRISHNAPPA  
AGE 33 YEARS

R1 TO R3 ARE R/AT  
NALLUR VILLAGE  
CHANNARAYAPATNA HOBLI  
DEVANAHALLI TALUK  
BANGALORE RURAL DISTRICT  
PIN - 562129.

- 4 AVANEET BEDI  
AGE 50 YEARS  
R/AT No. 1-77  
DIAMOND DISTRICT  
AIRPORT ROAD  
KODIHALLI  
BANGALORE-560 008.

... RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 25/03/2011 PASSED IN R.A.NO.60/2010 ON THE FILE OF THE PRESIDING OFFICER, FTC-III, BANGALORE RURAL DISTRICT, BANGALORE, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED:20.8.2008 PASSED IN O.S.NO.2092/2006 ON THE FILE OF THE CIVIL JUDGE (SR.DN) & JMFC., DEVANAHALLI; AND ETC.

THIS RSA COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### JUDGMENT

Plaintiff's having suffered concurrent findings of the courts below dismissing O.S.2092/2006 for declaration, partition and separate possession of a certain immovable property said to be joint family asset, have presented this second appeal.

*Jet*

2. Plaintiffs claiming to be the daughters of defendants 1 and 2 (parents) and siblings of defendants 3 and 4, while defendant No.5 the purchaser of the suit schedule property, instituted O.S.2092/2006 before the Civil Judge (Sr.Dn) & JMFC, Devanahalli for declaration, partition and separate possession of the suit schedule immovable property on the assertion that pursuant to The Hindu Succession (Amendment) Act, 2005, being coparceners of the Hindu undivided joint family consisting of defendants 1 to 4, were entitled to a share in the suit schedule property. Defendants, on notice, were placed ex parte. The trial Court having regard to the amended Section 6 of the Hindu Succession Act, 1956, more appropriately the proviso to Subsection (1) of Section 6 that nothing contained in the said subsection would affect or invalidate any disposition or alienation including any partition or testamentary disposition of the property which had taken place prior to 20.12.2004, while, the suit schedule property was admittedly conveyed under a

by

registered sale deed dt. 5.8.2004 in favour of one A.Chandrashekhar, following the decision of this Court in **Sugalabai -vs- Gundappa A.Maradi & others**<sup>1</sup> dismissed the suit by Judgment and decree dt. 20.8.2008.

3. The Judgment and decree when carried in R.A.No.60/2010 before the Fast Track Court-III, Bangalore Rural District together with an application for amendment of the plaint calling in question the legality and validity of the sale deed dt. 5.8.2004 in favour of A.Chandrashekhar and the subsequent conveyance deeds, the Appellate Court on a reappraisal of the material on record and in the light of the legal position concurred with the opinion of the trial Court to reject the application for amendment and dismiss the appeal by Judgment and decree dt. 25.3.2011.

4. There being no dispute as to the relationship between the parties, nevertheless the execution and

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<sup>1</sup> ILR 2007 KAR 4790



registration of the sale deed dt. 5.8.2004 by the father, mother and brothers of the plaintiffs in favour of A.Chandrashekar conveying the suit schedule property, the proviso to Subsection (1) to Section 6 of the Hindu Succession Act, 1956 disentitles the plaintiffs to seek invalidation of the sale deed executed prior to 20.12.2004. In that view of the matter, the submission of the learned counsel for the appellants that the right to seek invalidation of the alienation made by their parents and siblings in the year 2004, though prior to 20.12.2004, is sustainable, is unacceptable.

5. The observations of the Apex Court in **GANDURI KOTESHWARAMMA & ANOTHER VS. CHAKIRI YANADI & ANR.**<sup>2</sup>, in the circumstances is apposite:

*(11) The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the*

<sup>2</sup> (2011) 9 SCC 788

*jud*

*coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from 9/9/2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.*

*(12) The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara Law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation including any partition has taken place before 20/12/2004; and (ii) where testamentary disposition of property has been made before 20/12/2004. Sub-section (5) of Section 6 leaves no room for doubt as it provides that this Section shall not apply to the partition which has been effected before 20/12/2004. For the purposes of new Section 6 it is explained that 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act 1908 or partition effected by a decree of a court. In light of a clear provision contained in the Explanation appended to sub-section (5) of Section 6, for determining the non-applicability of the Section, what is relevant is to find out whether the partition has been effected before 20/12/2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial court on 19/3/1999 and amended on 27/9/2003 deprives the appellants of the benefits of the 2005 Amendment Act although final decree for partition has not yet been passed."*

*del*

In the circumstances, no substantial question of law arises for decision making. The Appeal is accordingly dismissed.

Sd/-  
JUDGE

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