

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5th DAY OF AUGUST, 2011

PRESENT

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE K.GOVINDARAJULU

R.F.A.NO.2130/2006 (PAR)

BETWEEN :

Rajamma
W/o Doreswamy
Aged about 55 years
R/o Alathuru Village
Chikkaiana Chatra Hobli
Mysore
Pin Code-570 005.

..Appellant

(By Sri M.V. Hiremath, Adv.,)

AND :

1. Savandaiah @ Rajanna
S/o late S. Puttaswamaiah
Aged about 53 years
R/o Vajamangala Village
Varuna Hobli, Mysore Taluk
Pin Code : 570 005.

2. Subbanna
S/o late S. Puttaswamaiah
Aged about 51 years
Stamp Vendor
R/o No.58, 2nd Cross
Buddha Marga
Siddartha Layout
Mysore Taluk
Pin Code : 570 005.
3. Somanna
S/o late S. Puttaswamaiah
Aged about 49 years
Stamp Vendor
R/o No.27A, Shanthi Marga
Siddartha Layout
Mysore Taluk
Pin Code : 570 005.
4. Doreswamy
S/o late S. Puttaswarnaiiah
Aged about 47 years
Stamp Vendor
R/o Vajamangala Village
Varuna Hobli
Mysore Taluk
Pin Code : 570 005.
5. Murthy
S/o late S. Puttaswamaiah
Aged about 45 years
Stamp Vendor
R/o No.48, 2nd Cross
Budha Marga, Siddartha Layout
Mysore Taluk
Pin Code : 570 005.

6. Nagamma
W/o Madappa
Aged about 43 years
R/o Thummanerale
Chatra Hobli
Nanjangud Taluk
Mysore - 571301.
7. Lokammanni
W/o Honnaiah
Aged about 41 years
R/o No.188, 5th Main
3rd Cross, Siddartha
Layout, Mysore
Pin Code : 570 005.
8. Smt. Prema
W/o Basavarajappa
Aged about 38 years
R/o Alathur Hundi
Chatra Hobli
Nanjangud Taluk
Pin Code : 570 005.
9. Pramila
W/o Mahadevappa
Aged about 34 years
R/o No.27A, Shanthi Marga
Siddartha Layout
Mysore Taluk
Pin Code : 570 005.
10. Smt. Akkamahadevamma
W/o P. Nagappa
Age Major
R/o Allatur Village
Chikkaiana Chatra Hobli
Nanjangud Taluk

Mysore District
Pin Code : 570 005.

11. Rajakumar
S/o Mariswamy
Age Major, R/o Alagaiana
Hundi, Varuna Hobli
Mysore Taluk
Pin Code : 570 005.

12. P. Nagappa
S/o late Puttaswamappa
Age Major, R/o Allatur
Village, Chikkaiana Chatra
Hobli, Nanjangud Taluk
Mysore Taluk
Pin Code : 570 005.

13. Jawarappa
S/o late Gopal
Age Major
R/o Vajmangala Village
Varuna Hobli
Mysore Taluk
Pin Code : 570 005.

14. Smt. Parwathamma
W/o Mallanna
Age Major
R/o Vajmangala Village
Varuna Hobli
Mysore Taluk
Pin Code : 570 005.

15. A.G. Rajanna
S/o Gurumallappa
Age Major
R/o Allatur Village

Chikkaiaha Chatra Hobli
Nanjangud Taluk
Mysore District.

16. R. Veeresh
S/o Rajashekar
Age Major
R/o No.4, K. Lingaiah Road
K. Lingaiah Colony
Nazarbad, Mysore
Pin Code : 570 005.

17. T.V. Dore
S/o T.T. Veerabhadra Shetty
Age Major
R/o Tattavalu & Basavapatna
Village, Arakalgud
Hassan District
Pin Code : 573 201.

..Respondents

(By Sri B.T. Indushekar, Adv., for R2 to R5 & R11;
Sri Basavaraj Kareddy, Adv., for R16;
Sri Mahantesh S. Hosmath, R6 and R10;
Sri R.S. Ravi, Adv., for R11;
Sri M. Manohar, Adv., for R6;
Sri P.K. Ponnappa, Adv., for R8 & R9)

This Appeal is filed under Section 96 R/w Section 19
of Karnataka Civil Court Act, against the Judgment and
Decree dated 17.7.2006 passed in O.S.No.160/2002 on
the file of the II Addl. Civil Judge (Sr.Dn.) and CJM.,
Mysore dismissing the suit for partition.

This Appeal coming on for hearing this day, MOHAN SHANTANAGOUDAR, J., delivered the following :

J U D G M E N T

This appeal is filed by the original plaintiff in O.S.No.160/2002 against the judgment and decree of dismissal passed in the said suit by the II Additional Civil Judge (Senior Division), Mysore, dated 17.7.2006.

2. The parties are referred to as per their ranking in the Trial Court.

3. Plaintiff is one of the daughters, defendants 1 to 5 are the sons and defendants 6 to 9 are other four daughters of Puttaswamaiah and Gowramma. Puttaswamaiah expired on 4.9.1994 and Gowramma expired on 10.6.1995 leaving behind the plaintiff and defendants as the legal representatives. According to the plaintiff, the suit schedule item Nos.1 to 11 are self acquired properties of Puttaswamaiah and

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Gowramma and hence the plaintiff is entitled to 1/10th share in the suit properties.

4. The case of defendants 1 to 5 is that all the suit schedule properties, except item No.1 are in possession and enjoyment of defendants 1 to 5; item No.1 of suit schedule properties is in enjoyment of defendant No.1; said arrangement relating to possession have taken place 10 years prior to filing of suit, i.e., during the life time of parents of the parties; lot of money is spent at the time of marriage of defendants 6 to 9 and plaintiff and therefore they are not entitled to partition; Since the marriage of 9th defendant was performed moderately, item No.1-residential house is given by the parents in her favour; the suit is filed with *mala fide* intention of knocking away the properties with false averments. On these averments, defendants 1 to 5 sought for

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dismissal of the suit. Defendants 6 to 9 have practically supported the case of defendants 1 to 5 in their written statement by contending that defendants 1 to 5 are peaceful and enjoyment of all the items of properties, except item No.1. Item No.1 is being enjoyed by defendant No.9 since long time. Since they are happily living in respective matrimonial houses, they are not entitled to any share in the properties.

5. Defendant No.9 by filing separate written statement, has contended that as her marriage was performed moderately, her parents allowed her to live in item No.1 – residential house during their life time. She was assured that the said house would be continued in her possession and would be owned by her throughout. In other words, she contends that



her parents had assigned the said property in her favour.

6. Based on the aforesaid pleadings, the following issues were raised by the Trial Court:-

1. *Whether defendants prove that late Puttaswamaiah and his wife Gowamma had executed "Will" on 30.3.1994 in respect of schedule properties?*
2. *Whether defendants prove that item No.1 of plaint schedule was settled on 9th defendant and item Nos.2 to 11 to defendants 1 to 5?*
3. *Whether defendants prove that as per directions of parties, they divided the family properties on 2.12.1996 and it binds plaintiff and defendants?*
4. *Whether plaintiff proves that the suit property are joint properties*

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of plaintiff and defendants and she has got 1/10th share in the suit properties?

5. *Whether defendant No.1 proves that C.F. paid is not proper?*

6. *Whether plaintiff is entitled for decree of partition and separate possession?*

7. *To what order or decree?*

7. In support of their contentions, the plaintiff examined herself as PW.1 and got marked 9 exhibits. On behalf of the defendants, 9 witnesses were examined, including 4 defendants and got marked 20 exhibits.

8. The Court appointed the Commissioner-Handwriting Expert to give the opinion in respect of the signatures found in the alleged Will at Ex.D4, dated 30.3.1994. The Expert's opinion is at Ex.C2.

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The Expert is examined as CW.1 and 5 documents were marked on his behalf. On considering the material on record, the Trial Court dismissed the suit holding that the parents of the parties have executed the Will - Ex.D4 on 30.3.1994 bequeathing all the properties, except item No.1, in favour of defendants 1 to 5. However, the Court below has held that item No.1 is assigned in favour of defendant No.9.

9. Sri M.V.Hiremath, learned counsel appearing for the appellant submits that the Court below is not justified in brushing aside the evidence of Expert-CW.1, on the ground that expert's opinion is contradicted by the evidence of DWs.6 to 8. DWs.6 to 8 are the attesting witnesses to the alleged Will - Ex.D4; the partition deed Ex.D13, dated 2.12.1996 cannot be relied upon by defendants 1 to 5, inasmuch as the said deed *prima facie* reveals that the

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properties in question are properties of joint family; the said partition deed is subsequent to the alleged Will dated 30.3.1994; there is no reason as to why defendants 1 to 5 have entered into partition leaving aside the five sisters; if the Will was really executed; there should have been a mention of the Will either in the partition deed or in the written statement filed by defendants 1 to 5. Hence, the Trial Court has erred in relying on the said Will for coming to the conclusion.

10. Sri Ponnappa, learned counsel appearing for defendants 8 and 9 submits that the Court below is not justified in ignoring the Expert's opinion in preference to the evidence of DWs.6 to 8, the attesting witnesses. Since the Will is stated to have been recovered by defendants 1 to 5 after execution of the partition deed and as there is no mention of Will in the written statement filed by defendants 1 to 5,

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the Will could not have been relied upon by the Court below, inasmuch as suspicious circumstances are surrounding the said Will.

11. Per contra, Sri B T Indushekar, learned counsel appearing for respondents No.1 to 5, contends that the Will - Ex.P4 is proved in accordance with law by adducing the evidence of four attestors, viz., DWs.5 to 8. Since the two deaths took place in the family in the year 1994-95 and defendants No.1 to 5 being the believers of superstition, did not venture to search for the records pertaining to the Will. As the marriages of all the sisters, except defendant No.9 were performed in grand scale, the four sisters, are not granted any share in the suit properties by the parents of the parties. Since the marriage of defendant No.9 was not performed in suitable way, she was allotted a house by the brothers in the

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partition deed at Ex.P13. So also the parents of the parties had bequeathed item No.1 property in favour of defendant No.9 for the very reason. According to him, the appreciation of evidence and the conclusion arrived at by the Court below is just and proper and therefore no interference is called for.

12. From the rival contentions made before this Court, the points which arise for our consideration are as under:-

- a) *Whether the Court below is justified in relying only upon Ex.D4 – Will dated 30.3.1994 to conclude that the plaintiff is not entitled to partition?*
- b) *Whether the Court below is justified in not relying upon the expert's opinion (Ex.C2) and the version of CW.1, the Handwriting Expert while*

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concluding that the Will at Ex.D4 is genuine?

c) What is the relief to be granted to the parties in case if the Will is disbelieved?

13. Respondent Nos.10 to 17 herein are the subsequent purchasers of the properties after dismissal of the suit and prior to filing of this appeal.

14. Out of five brothers of the plaintiff, defendants No.2 to 5 are the stamp vendors. The father of the parties to the suit was also a stamp vendor. The wife of defendant No.5 is also a stamp vendor. These facts are admitted.

15. The Will did not see the light of the day after the death of Puttaswamaiah and Smt.Gowramma, the executors of alleged Will. Defendants 1 to 5 are all educated persons. Four of them are stamp vendors

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and doing the business of stamp vending. According to DW.1, Smt.Gowramma, the mother of the parties was telling them that they have left some document for the purpose of sharing the properties. There is no whisper in the written statement initially filed by defendants 1 to 5 about the alleged Will - Ex.D4. If at all, the parents have executed the Will in favour of defendants 1 to 5 who are literate, that too stamp vendors, they would have definitely known about the Will. The very fact that the factum of the Will was not adverted to in the written statement itself would show that the Will did not exist at the time of filing of suit. Suit was filed mainly based on memorandum of partition (Ex.D13), dated 2.12.1996 said to have been entered into between five brothers, i.e., defendants 1 to 5. In the light of aforementioned facts, the submissions made on behalf of the plaintiff that the

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Will is surrounded with suspicious circumstances, assumes importance.

16. The Court below had appointed CW1, the Scientific Officer, F.S.L., Bangalore, as Commissioner to examine the disputed and admitted signatures of Puttaswamaiah and Gowramma. Accordingly, the disputed signatures found in Ex.D4 and the admitted signatures under Ex.D1 to D3 and D5 to D11 were examined scientifically by CW.1. After thorough examination, the Expert in the field has opined that the signatures found in Ex.D4 are produced by means of traced forgery, which means, the signatures found in Ex.D4 were made after tracing the admitted signatures of Puttaswamaiah and Gowramma from other documents. There cannot be any dispute that the traced signature usually shows hesitation in writing, abnormal changes, which are inconsistent

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with pen pressure and unnatural movements and more interruptions. It all depends upon the specific process of tracing employed and the skill of the operator. CW.1, the Expert has opined that the persons who are involved in forgery are experts in the field. Thus, CW.1 calls the forgery in question as "expert traced forgery". He has seen that there are suspicious circumstances in pen lifts, disconnections and careful joining in the signatures. Even after his detailed cross-examination, his evidence was not shaken. Unfortunately his evidence is not believed by the Court below.

17. As against the expert's evidence of CW.1, defendants 1 to 5 have relied upon the evidence of DWs.5 to 8 who are the attestors of the Will - Ex.D4. Their evidence reveals that all these four witnesses were requested by Puttaswamaiah and Gowamma to

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come to a designated place to be the witnesses for execution of the Will and accordingly all the four persons went to such a place and signed the attested the Will - Ex.D4 in the presence of executors and the executors in turn, put their signatures in their presence. Thus, there cannot be any dispute that the legal requirements to prove the Will are fully satisfied by defendants 5 to 9. But the same itself will not convert the forged Will into genuine one. The question as to whether the Will was forged or genuine is to be decided based on various attending circumstances. As aforementioned, there was not even an averment regarding execution or existence of the Will in the written statement filed by the defendants 1 to 5; the suit was opposed mainly on the ground that the partition has been taken place between five brothers (Defendants 1 to 5) as per Ex.D13. Only during the pendency of the suit,



averment is made by defendants 1 to 5 with regard to the Will by amending the written statement; if the Will existed prior to filing of the suit, there was no reason as to why defendants 1 to 5 should not mention about the Will in the written statement; the Will seen the light of the day only during the pendency of the suit. In addition to the aforementioned suspicious circumstance, the evidence of the Expert fully supports the case of the plaintiff to the effect that the signatures found in Ex.D4 are not of the executors, viz., Puttaswamaiah and Smt.Gowramma. Since the case of defendants 1 to 5 mainly depends on the alleged Will at Ex.D4 to claim the exclusive ownership over the suit properties excluding other four sisters and as this Court finds that the Will has arisen under suspicious circumstances, the case of defendants 1 to 5 based on the Will cannot survive. The only reason assigned in the Will for exclusion of all the four sisters



of defendants 1 to 5 on the ground that the marriages of four sisters were performed in grand scale and that the marriage of defendant No.9 was not performed in a grand scale. Performance of marriage in a grand scale cannot be a ground to exclude a share in favour of the four sisters of defendants 1 to 5. It is no doubt true that a house is allotted under Ex.D4 in favour of defendant No.9. The same also cannot be ground to hold that the Will is natural or genuine. This we say so because of the material found in the alleged partition deed Ex.D13. The original of Ex.D13 is perused by us. The typed lines found in Ex.D13 are having a particular spacing in between. However, in the last portion of Ex.D13, two lines are inserted with a different spacing. Those two lines are relating to allotment of item No.1 in favour of defendant No.9. It appears, to make the Will more natural, defendants 1 to 5 must have made a plan to assign a house in

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favour of defendant No.9 also. Otherwise, there was no reason as to why those two lines should be subsequently inserted in Ex.D13, which contains the matter relating to allotment of house in favour of defendant No.9.

18. It is also curious to note that Ex.D13 is only signed by defendants 1 to 5 and not signed by any of the sisters of defendants 1 to 5. Though a house is stated to have been allotted in favour of defendant No.9, under the said partition deed, even the said lady (Defendant No.9) has not signed the partition deed, which means none of the sisters is agreeable for such partition.

19. All the aforementioned factors would clearly reveal that defendants 1 to 5 have tried to improve their case for knocking away the properties for their benefit and to exclude the share for their sisters.

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Since the Will is surrounded by suspicious circumstances, the same cannot be believed and hence the same is not believed. As the properties are self acquired properties of Puttaswamaiah and Gowamma, defendants 1 to 5 cannot divide the said properties among themselves excluding their sisters. As the properties are self acquired properties of the parents, all the 10 children of Puttaswamaiah and Gowamma are entitled to equal share, i.e., 1/10th share.

20. The Court below has not considered any of the aforesaid aspects, which has resulted in miscarriage of justice. The appreciation of evidence by the Court below is improper and incorrect and consequently the conclusion arrived at by the Court below is also improper. In view of the above, the judgment and decree passed by the Court below

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needs to be set aside. Accordingly, the following order is made:-

The impugned judgment and decree dated 17.7.2006 passed in O.S.No.160/2002, is set aside. O.S.No.160/2002 for partition and separate possession is decreed. It is declared that the plaintiff as well as the defendants are entitled to 1/10th share in the suit properties. It is needless to observe that the subsequent purchasers are having right to claim the properties purchased by them in final decree proceedings.

Appeal is **allowed** accordingly.

Sd/-
JUDGE

*ck/nk-

Sd/-
JUDGE