

Sri Basavanni vs Sri Babu

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Court : Karnataka Dharwad

Decided On : Jun-11-2025

Judge : M.G.S. Kamal

Appeal No. : RSA/149/2007

Appellant : Sri Basavanni

Respondent : Sri Babu

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 11TH DAY OF JUNE 2025 BEFORE THE HON'BLE MR. JUSTICE M.G.S. KAMAL REGULAR SECOND APPEAL NO.149 OF 2007 (INJ) BETWEEN:

1. SRI. BASAVANNI S/O. CHANNAPPA MALAKAYI, AGED 64 YEARS, OCC: RETIRED PENSIONER, R/O: BAZAAR ROAD, TALUK: HUKKERI, DIST: BELAGAVI.

2. SRI. CHANDRASHEKAR

S/O. CHANNAPPA MALAKAYI, AGED 54 YEARS, OCC: RETIRED PENSIONER, R/O: BAZAAR ROAD, TAL: HUKKERI, NOW R/O:

DAVANGERI, TAL: DAVANGERI, DIST: DAVANGERE. APPELLANTS Digitally signed (BY SRI. SHIVRAJ S. BALLOLI, ADVOCATE) by SAROJA HANGARAKI Location: High Court of AND: Karnataka, Dharwad Bench, Dharwad

1. SHRI BABU S/O. CHANNAPPA MALAKAYI, SINCE DECEASED REPRESENTED BY HIS LRS, RESPONDENT NO.2 AND RESPONDENT NOS. 3(A) TO 3(D).

2. SHRI MALLAPPA S/O. BABU MALAKAYI, AGE: 34 YEARS, OCC: AGRICULTURE, R/O: HUKKERI, TAL: HUKKERI, DIST: BELAGAVI.

3. SRI. VIRUPAXI S/O. BABU MALAKAYI,

SINCE DECEASED REPRESENTED BY HIS LRS. -2- 3A. SMT. LAXMI W/O. VIRUPAXI MALAKAYI, AGE: 35 YEARS, OCC: STUDENT, R/O: KOTAGI GALLI, HUKKERI, TAL: HUKKERI, DIST: BELAGAVI. 3B. SHRI. RAHUL S/O. VIRUPAXI MALAKAYI, AGE: 13 YEARS, OCC: STUDENT, R/O: KOTAGI GALLI, HUKKERI, TAL: HUKKERI, DIST: BELAGAVI. 3C. SHRI. VINAYAK S/O. VIRUPAXI MALAKAYI, AGE: 9 YEARS, OCC: STUDENT, R/O: KOTAGI GALLI, HUKKERI, TAL: HUKKERI, DIST: BELAGAVI. 3D. SMT. MAHADEVI W/O. BABU MALAKAYI,

AGE:62 YEARS, OCC: HOUSEHOLD WORK, R/O: BAZAR ROAD, NANDI KOLI GALLI, HUKKERI, TAL: HUKKERI, DIST: BELAGAVI. SINCE DECEASED HER LRS RESPD. 3(A) TO 3(C) ARE ALREADY ON RECORD. RESPONDENTS (BY SRI. B.S.KAMATE, ADVOCATE FOR R2 AND R3 (A - C); R3 (A) TO R3(D) ARE SERVED; V/O DATED: 11.07.2017 R2 IS LRS OF DECEASED R1) THIS RSA IS FILED UNDER SECTION 100 CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 20.09.2006 PASSED IN R.A.63/2004 ON THE FILE OF CIVIL JUDGE (SR.DN) HUKKERI REVERSING THE JUDGMENT AND DECREE DATED 11.10.2004 PASSED IN O.S.23/2003 ON THE FILE OF CIVIL JUDGE (JR.DN) HUKKERI BY ALLOWING THE

APPEAL TO MEET THE ENDS OF JUSTICE AND EQUITY. THIS
APPEAL, COMING ON FOR ORDERS THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE M.G.S. KAMAL)

1. The plaintiffs, being aggrieved by the judgment

and decree dated 20.09.2006, passed in R.A. No.63/2004 on the file of the Civil Judge (Sr. Dn.), Hukkeri (for short the First Appellate Court), are before this Court.

2. By the aforesaid judgment and order, the First

Appellate Court, while allowing the appeal filed by the defendants, set aside the judgment and decree, dated 11.10.2004 passed in O.S. No.23/2003 on the file of the Civil Judge (Jr. Dn.), Hukkeri (for short the trial Court), which had granted the relief of permanent injunction in favour of the plaintiffs, restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties.

3. Brief facts of the case are that, the plaintiffs and

defendant No.1 are full brothers. That in terms of a registered deed of partition, dated 06.04.1979 plaintiffs and defendant No.1 divided joint family properties, -4-

consisting of both landed as well as residential properties. That the land bearing R.S. Nos.272/1, 272/2 & 272/3, totally measuring 8 acres and 22 guntas, was jointly allotted to the share of plaintiffs, while the land bearing R.S. No.212/2, totally measuring 10 acres 30 guntas, was allotted to the share of defendant No.1. Similarly, the house property bearing CTS No.1353, measuring East-West - 40 feet, North-South - 12.6 feet was jointly allotted to the share of plaintiffs. In addition, the plaintiffs were also allotted the property bearing CTS No.1336, which

is an open site measuring East-West - 10 feet and North-South - 20 feet. The subject matter of the suit comprise portions of property in CTS No.1353 and CTS No.1336, which is the open site jointly allotted to the plaintiffs. That plaintiff Nos.1 and 2 were employees of Karnataka Police Department, plaintiff No.1 has retired, and plaintiff No.2 is serving at Davanagere Town. That, plaintiffs are residing in the property bearing CTS No.1353 and are also using the open site bearing CTS No.1336 for storing manure. That they have been in possession and enjoyment of their respective

-5- shares, exercising absolute ownership over the same in terms of the aforesaid deed of partition. That defendant Nos.2 and 3 are the sons of defendant No.1, who at the instigation of defendant No.1, were interfering with the plaintiffs peaceful possession and enjoyment of the suit properties. Hence, the plaintiffs filed a suit for permanent injunction.

4. The defendants appeared and filed their written

statement, denying the averments made in the plaint contended, inter alia, that the description of the suit properties as provided by the plaintiffs was incorrect. They alleged that the partition deed was fraudulent and created by the plaintiffs by taking advantage of the illiteracy of defendant No.1. No varadhi was given to the concerned authorities regarding the alleged partition deed. The names of the parties were not entered in respect of the properties as per the deed of partition. The name of defendant No.1 continues to be reflected in the records relating to the suit properties. The partition deed has not been acted upon till

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date. Defendant No.1 has been in exclusive possession and enjoyment of the suit properties. Defendant No.1 has constructed a house in the open site and has been using it for storing agricultural implements and produce, and for rearing cattles. The plaintiffs are not in possession of the suit properties. That defendant No.1 has installed the idol of Goddess Laxmidevi and performs pooja during fairs and festivals. The plaintiffs have no right to offer pooja to the said Goddess Laxmidevi. As the plaintiffs are not in possession and enjoyment of the suit properties, they

are not entitled to the relief of injunction as sought for. Hence, sought dismissal of the suit.

5. Based on the pleadings, the trial Court framed the following issues for its consideration:

1. Whether the plaintiffs prove that they are in exclusive and lawful possession and enjoyment of the suit properties?

2. If so, is there any interference by the defendants with the plaintiffs peaceful possession enjoyment of the suit properties?

3. What order or decree? -7-

6. Plaintiff No.1 examined himself as PW1 and marked 10 documents as Exs.P1 to P10. Defendant No.1 examined himself as DW1 and marked 5 documents as Exs.D1 to D5.

7. Upon appreciation of the evidence, the trial Court answered issue Nos.1 and 2 in the affirmative and consequently decreed the suit as prayed for.

8. Being aggrieved, the defendants preferred an appeal in R.A. No.63/2004. The First Appellate Court framed the following points for its consideration:

1. Whether the impugned judgment and decree is not sustainable for the wrong and erroneous approach therefore calls for interference?

2. What order?

9. On re-appreciation of the evidence, the First Appellate Court answered point No.1 in the affirmative and consequently allowed the appeal by setting aside the

judgment and decree passed by the trial Court.

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10. Being aggrieved, the plaintiffs have approached this Court by filing the present Regular Second Appeal.

11. This Court, by order dated 04.04.2007 admitted the above appeal to consider the following substantial question of law:

Whether the lower appellate Court was justified in reversing the judgment of the trial Court on the ground that the registered partition deed is not acted upon insofar as the house property is concerned?

12. Learned counsel appearing for the appellants,

while reiterating the grounds urged in the memorandum of appeal, submitted that the First Appellate Court grossly erred in allowing the appeal filed by the defendants and in setting aside the judgment and decree passed by the trial Court, without appreciating the fact that defendant No.1 had, during the trial, admitted the due execution of the deed of partition. It was further submitted that there was a severance of joint status and the suit properties were exclusively allotted to the plaintiffs pursuant to the deed of

partition. That since the factum of partition has been -9-

proved, the First Appellate Court could not have held that the partition effected in respect of the house properties was not acted upon. He submits that there cannot be an option of election to the parties to the partition deed. Merely because mutation entire were not effected in respect of the suit properties and revenue entries reflected in the joint names of plaintiff and defendant No.1 same could not be a ground to draw inference that the partition that was effected was not acted upon. Hence, he submits that the First Appellate Court was not justified in reversing the

judgment and decree passed by the trial Court and seeks

substantial question of law to be answered in the negative in favour of the appellants.

13. Per contra, learned counsel appearing for the

respondents-defendants submitted that though there was partition of the family properties, as regards the suit schedule properties, it was an understanding between the parties that the same would be retained and held jointly. It is in furtherance to such an understanding that defendant - 10 -

No.1 had installed idol of Goddess of Laxmidevi and he has been performing annual fair and festival. It is for this reason though partition was effected, revenue entries were not mutated and parties continue to enjoy the suit properties jointly. In that view of the matter, if an order of injunction is granted in favour of the plaintiffs, same would not only be contrary to the factual aspect of the matter, but also to the law. He submits even for the purpose of consideration of grant of permanent injunction, the plaintiffs required to prove their lawful possession and the lawful possession can be ascertained only by the entries in the revenue records which admittedly not having been effected, an inference is required to be drawn with regard to the

plaintiffs not being in lawful possession of the suit properties. He submits no error can be found in the

judgment and order passed by the First Appellate Court. No

substantial question of law would arise for consideration. Hence, seeks for dismissal of the appeal.

14. Heard. Perused the records. - 11 -

15. Though in the written statement, defendant No.1

sought to contend that there was no partition of the properties and document Ex.P1-partition deed was obtained fraudulently by plaintiff Nos.1 and 2, in later course of the proceedings, he has admitted to the factum of execution of said deed of partition. However, a specific stand is taken to the effect that except the suit schedule properties, parties had effected and acted upon the terms of partition as per Ex.P1. The aforesaid aspect of the matter is consistently pleaded, argued and emphasized by the defendants both before the trial Court as well as the First

Appellate Court. The trial Court on appreciation of evidence has come to the

conclusion that the plaintiffs and defendant No.1 have been

residing separately and cultivating their shares of landed properties separately for the last 25 years. That there was severance of the joint family status of the plaintiffs and defendant No.1 which is evident from the records made available by the parties. The trial Court has also found that merely because the names of the plaintiffs and the defendant No.1 are reflected jointly in the property card,

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the same cannot be a conclusive proof of joint ownership of the plaintiffs and defendants over the suit properties. Revenue entries carrying presumptive value is always rebuttable. That the factum of execution of the registered deed of partition as per Ex.P1 would be sufficient to rebut the presumption of the revenue entries of the joint possession. Consequently, decreed the suit as sought for.

16. The First Appellate Court however, though

accepted the execution and registration of deed of partition - Ex.P1, however, went on to hold that mere execution of deed of partition would not be sufficient to prove the severance of the joint family status unless the same is acted upon and evidence in this regard is produced by way of revenue records. Accordingly allowed the regular appeal.

17. Admittedly there is registered deed of partition

entered into between the parties as per Ex.P1. In the light of admission of execution and registration of deed of partition as per Ex.P1, the conclusion that needs to be drawn is that there was severance of the joint family status - 13 -

and joint family properties, in terms of the said deed of partition. Once that is established in the absence of any pleas of there being any re-union of respective shares, there cannot be any presumption of jointness and treating it as joint family properties. Interestingly, as noted above, defendant No.1 has taken a plea that

except the suit schedule properties, the deed of partition has been acted upon. As rightly contended by the learned counsel for the appellants, document at Ex.P1 has to be read as a whole and effect of it should be given and in the absence of any express clause in the said registered instrument, oral evidence to the contrary cannot be countenance.

18. In term of Section 133 of the Land Revenue Act,

the revenue entries would carry rebuttable presumption until contrary is proved. The presumption attached to the revenue entries with regard to existence of joint names of the plaintiffs and defendant No.1 stood rebutted in view of admitted position of execution of deed of partition at Ex.P1, - 14 - which aspect of the matter has been lost sight of by the First Appellate Court.

19. In view of the above fact and circumstance and

reasons, this Court is of the considered view that in the absence of any acceptable legal evidence in the matter, the First Appellate Court was not justified in reversing the

judgment and decree passed by the trial Court on the

premise that the registered deed of partition - Ex.P1 was not acted upon insofar as the suit properties concerned. The substantial questions of law is answered accordingly.

20. Accordingly, the following:

ORDER

(i) The appeal is allowed.

(ii) The impugned judgment and order dated

judgment and decree dated 20.09.2006,

passed in R.A. No.63/2004 on the file of the Civil Judge (Sr. Dn.), Hukkeri at Hukkeri, is set aside. - 15 -

(iii) The judgment and decree in dated 11.10.2004 passed in O.S. No.23/2003 on the file of the Civil Judge (Jr. Dn.), Hukkeri, is confirmed. Sd/- (M.G.S. KAMAL)
JUDGE VNP - PARA 1 to 15 VMB - PARA 16 to end CT-ASC List No.: 1 SI No.:
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