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N a Ananth vs V Mohan Babu

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Court : Karnataka

Decided On : Nov-28-2025

Judge : R. Nataraj

Appeal No. : RFA/55/2010

Appellant : N a Ananth

Respondent : V Mohan Babu

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2025 BEFORE THE HON'BLE MR. JUSTICE R. NATARAJ REGULAR FIRST APPEAL NO. 55 OF 2010 (PAR-) BETWEEN: MR. N.A. ANANTH S/O LATE N.A.V.NAIDU AGED ABOUT 73 YEARS, RESIDING AT NO.80, SSI AREA, RAJAJINAGAR, BANGALORE-560010 APPELLANT (BY SRI. JAI PRAKASH RAO, ADVOCATE) AND:

1. MR. V. MOHAN BABU S/O LATE R. SAROJA AGED ABOUT 48 YEARS,

2. MR. V. BALAJI

S/O LATE R. SAROJA Digitally signed by AGED ABOUT 46 YEARS, MARKONAHALLI RAMU PRIYA Location: HIGH 3. MR. V. KUMAR COURT OF KARNATAKA S/O LATE R. SAROJA AGED ABOUT 38 YEARS,

4. MRS. VIJAYALAKSHMI D/O LATE R. SAROJA AGED ABOUT 51 YEARS,

5. MRS. SHANTHI D/O LATE R. SAROJA AGED ABOUT 42 YEARS, -2-

6. MRS. SRIDEVI D/O LATE R. SAROJA AGED ABOUT 40 YEARS, RESPONDENT NOS.1 TO 6, R/O 2ND CROSS, CHOLURPALYA, MAGADI ROAD, BANGALORE-560023

7. MR. R. PADMANABHAN S/O LATE V. RAGHAVALU AGED ABOUT 54 YEARS, RESIDING AT NO.594, SAJJAN RAO ROAD, V.V. PURAM, BANGALORE.

8. MRS. R. CHANDRA

D/O LATE V. RAGHAVALU AGED ABOUT 55 YEARS, RESIDING AT NO.343, 8TH CROSS, 4TH BLOCK, 150 FEET ROAD, BEHIND KANTIRAVA STUDIO, NANDINI LAYOUT, BANGALORE-560096 SINCE DECEASED BY LR'S 8(a) SMT. POORNIMA D/O LATE CHANDRAPRASAD AGED ABOUT 37 YEARS, 8(b) KUMARI THANUSHREE D/O LATE CHANDRAPRASAD AGED ABOUT 17 YEARS, SINCE MINOR REPRESENTED BY MOTHER AND NATURAL GUARDIAN MRS. POORNIMA RESIDING AT NO.12, KSCB QUARTERS, CAUVERINAGAR, NANDINI LAYOUT, BANGALORE-560096. -3- 8(c) MR. CHANDRAKUMAR S/O LATE NARAYANASWAMY AGED ABOUT 43 YEARS, RESIDING AT NO.107/40, 8TH CROSS, 4TH BLOCK, NEAR RAJKUMAR SAMADHI, NANDINI LAYOUT, BANGALORE-560096.

9. MRS. R. PADMAVATHI

D/O LATE V. RAGHAVALU C/O G. SRINIVAS AGED ABOUT 49 YEARS, RESIDING AT NO.1547, 2ND CROSS, NEAR AYYAPA TEMPLE, VIJINAPURA, DOORVANINAGAR POST, BANGALORE-560016.

10. M/S MODERN PROCESS PRINTERS NO.79/29, SSI AREA, 5TH CROSS, 5TH BLOCK, RAJAJINAGAR, BANGALORE-560010 REPRESENTED BY ITS PARTNER MR. K.V. NAIK RESPONDENTS

(BY SRI. ZULFIKIR KUMAR SHAFI, ADVOCATE FOR RESPONDENT NOS.1 TO 6; SRI. DAYANAND HIREMATH AND SRI. MAHESH D., ADVOCATES FOR RESPONDENT NO.9; SIR. K.S. MALLIKARJUNA REDDY, ADVOCATE FOR RESPONDENT NOS.8(A) TO 8(C); VIDE ORDER DATED 13.04.2015, NOTICE TO RESPONDENT NO.7 IS

HELD SUFFICIENT;

NOTICE SERVED ON RESPONDENT NO.10) THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE

JUDGMENT AND DECREE DATED 03.09.2009 PASSED IN

OS.NO.6596/2003 ON THE FILE OF THE IInd XXII ADDL. CITY CIVIL JUDGE, BANGALORE, PARTLY DECREEING THE SUIT FOR PARTITION AND SEPARATE POSSESSION. -4- THIS APPEAL, COMING ON FOR HEARING, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL JUDGMENT

The defendant No.6 in O.S.No.6596/2003 on the file of the XXII Additional City Civil Judge, Bengaluru (henceforth referred to as 'Trial Court') has filed this appeal challenging the

judgment and decree dated 03.09.2009 passed therein by

which, the suit filed by the plaintiffs was partly decreed and it was declared that the plaintiffs are entitled to undivided 1/4th share in the suit property.

2. The parties shall henceforth be referred to as they

were arrayed before the Trial Court. The appellant was the defendant No.6, while respondent Nos.1 to 6 were the plaintiffs and respondent Nos.7 to 9 were the defendant Nos.1 to 3, while respondent No.10 was the defendant No.5.

3. The suit in O.S.No.6596/2003 was filed for partition

and separate possession of the plaintiffs' 1/4th share in the suit property. The suit property is a residential building constructed over a BDA site No.79, Corporation No.79/29, 5th Cross, 5th -5-

Block, SSI Area, Rajajinagar, Bengaluru, measuring east to west 50 feet and north to south 118 feet. The plaintiffs claimed that their propositus was one Sri. V. Raghavalu and he had three daughters named, Smt. R. Saroja, Smt. R. Chandra, Smt. R. Padmavathi and a son named, Sri. R. Padmanabhan. Sri. V. Raghavalu was allotted the suit property by the Bangalore Development Authority (henceforth referred to as 'BDA') and after his demise on 29.08.1977, his wife and four children succeeded to the suit property. The plaintiffs claimed that they are the grandchildren of Sri. V. Raghavalu and the children of Smt. R. Saroja. The defendant No.4 is the husband of Smt. R. Saroja. The plaintiffs claimed that they and the defendants were in joint possession of the suit property and they and defendant No.4 were entitled to 1/4th share in the suit

property. They claimed that despite repeated requests, the defendants were not willing to partition the property and therefore, they were constrained to seek for a partition of their share. They claimed that defendant No.1 had alienated the suit

property in favour of the defendant No.6 on 11.08.2003. Thus, they contended that the sale by the defendant No.1 in favour of

-6- the defendant No.6, did not bind them and did not affect their interest in the suit property.

4. (i) The suit was contested by the defendant No.1, who did not dispute that the suit property was allotted to Sri. V. Raghavalu and that he died on 29.09.1977 leaving behind his son (the defendant No.1) and his wife,

Smt. Venkatalakshmi. He claimed that after the death of his mother, Smt. Venkatalakshmi, he being the only son continued in uninterrupted possession and enjoyment of the property. During the year 1983, he submitted an application to the BDA for transfer of the suit property to his name. Accordingly, the BDA by its order dated 24.10.1983, transferred the suit property to the name of defendant No.1 in terms of deed of transfer dated 04.12.1985. He claimed that the suit property thereafter was included within the limits of the erstwhile

Bangalore City Corporation, which assigned the khata No.79/29. The defendant No.1 claimed that he had paid the property tax and thereafter, developed the suit property and inducted various tenants into the tenements and was collecting the rents. He admitted that during August 2003, he had sold away the property to the defendant No.6.

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(ii) The defendant No.1 claimed that the mother of the

plaintiffs and their father were in good terms with him and after the death of mother of the plaintiffs, the plaintiffs started blackmailing him to extract money and when he did not heed to their unjust demand, they have come up with the suit. He also contended that similar suit was filed by one of his sisters, Smt. R. Chandra (defendant No.2 herein) in O.S.No.7873/2001 against him and thereafter, the said suit was withdrawn at the intervention of the well-wishers of the family members. He claimed that he was the only son and had succeeded to the suit property from his father and was in continuous possession of the suit property until he sold the

property in favour of the

defendant No.6. Thus, he prayed that the plaintiffs were not entitled to any share.

5. The defendant No.3 filed a written statement inter

alia admitting the averments of the plaint as contained in paragraph No.5 of the plaint. She also admitted the averments made in paragraph No.6 of the plaint and claimed that she is also entitled to a share in the suit property. She also admitted that the suit property was in the possession of the defendant -8- No.5 who was paying monthly rent of Rs.7,800/- to the defendant No.1.

6. The defendant No.2 adopted the written statement

filed by defendant No.3. She later filed an additional written statement contending that a suit in O.S.No.7873/2001 was filed and that behind her back, the suit was withdrawn without her notice and knowledge. She claimed that the memo filed in O.S.No.7873/2001 was not binding upon her as she did not affix her signature on the memo.

7. The defendant No.4 adopted the written statement filed by the defendant No.3.

8. The defendant No.6 who was the contesting defendant in the suit filed a written statement contending that the plaintiffs were never, at any point of time, in possession of the suit property. He claimed that he purchased the suit property for valuable consideration and was in possession of

the property. He also claimed that the khata of the property was transferred to his name in the records of the Municipal Corporation and that he was paying the property tax from time to time. He claimed that he had exercised all rights of -9- ownership and hence, the suit filed by the plaintiffs was not maintainable against him as there was no property available for partition. He admitted the genealogy of the family of the plaintiffs and their predecessors. He further denied that the suit property devolved upon the mother of the plaintiffs and

also claimed that the plaintiffs are not legal heirs of Smt. R. Saroja. He contended that Smt. R. Saroja had severed all her relationship with her parental family after

her marriage and therefore, she did not have any subsisting right, title and interest in the suit property. He also denied that the plaintiffs were entitled to 1/4th share in the suit property and claimed that the suit property was never the joint family property of Sri. V. Raghavalu and defendant No.1. He contended that after the death of Sri. R. Raghavalu, his legal heirs had submitted an affidavit to the BDA disowning their rights in the suit property and accordingly, the BDA vide its order dated 24.10.1983 had transferred the suit property in favour of the defendant No.1 and thereafter, defendant No.1 obtained deed of absolute sale from the BDA. Thus, it is contended that the defendant No.1 is the full and absolute owner of the suit property and he was in

exclusive possession and enjoyment thereon. The defendant - 10 - No.6 claimed that he had purchased the suit property for valuable consideration and hence, the plaintiffs were not entitled for any share therein.

9. Based on the above contentions, the Trial Court framed the following issues:-

> i) Whether the plaintiffs prove that the suit schedule property is the joint family property of themselves and the defendants? ii) Whether the 1st defendant proves that the suit schedule property is his absolute property having inherited from his father? iii) Whether the suit as brought is barred by law of limitation as pleaded in para 3 of written statement of defendant No.3? iv) Whether the plaintiffs prove that the sale deed dated 11.8.2003 in favour of 6th defendant by the 1st defendant does not bind them? v) Whether the plaintiffs prove that they are entitled for share in the plaint schedule property? vi) Whether the plaintiffs entitled for past mesne profits from 1.8.81 till the date of suit? vii) What decree or order? - 11 -

Add. Issue Whether the 2nd defendant proves that the act of 2nd plaintiff here in getting the suit in OS 7873/01 withdrawn by filing memo does not bind her?

10. In support of the contention of the plaintiffs, the plaintiff No.1 was examined as PW.1 and he marked Exs.P1 to P9. The defendant No.2 was examined as DW.1, while defendant No.6 was examined as DW.2 and they marked Exs.D1 to D5.

11. Based on the oral and documentary evidence, the

Trial Court held that the plaintiffs had proved the fact that they were entitled to an undivided share in the suit schedule property by virtue of Section 8 of the Hindu Succession Act, 1956 and consequently, decreed the suit and declared that the plaintiffs are entitled to 1/4th share in the suit schedule property. It consequently held that the sale deed executed by the defendant No.1 in favour of the defendant No.6 is not binding upon the plaintiffs and dismissed the suit in so far as mesne profits are concerned and it held that the plaintiffs are

- 12 - entitled to future mesne profits from the date of the suit till delivery of possession.

12. Being aggrieved by the said judgment and decree, the defendant No.6 is before this Court in this appeal.

13. (i) The learned counsel for the defendant No.6

while relying upon Ex.P9, submitted that the children of Sri. V. Raghavalu including the mother of the plaintiffs had given solemn declaration before the BDA that the site in question may be allotted in favour of defendant No.1 and that they had no objection for the allotment being made in favour of the defendant No.1. He contends that the defendant No.1 had thereafter constructed a building over the suit property and he was in possession of the same ever since then. He therefore, contends that the plaintiffs' predecessor had unequivocally given up or relinquished her interest in the suit schedule

property and therefore, the suit for partition was not maintainable. In support of this contention, he relied upon the following judgments of the Hon'ble Supreme Court: i) Mst. Rukhmabai vs. Lala Laxminarayan [AIR 1960 SC 335] - 13 -

ii) Ramkishorelal and another vs. Kamalnarayan [AIR 1963 SC 890] iii) A. Raghavamma and another vs. A. Chenchamma and another [AIR 1964 SC 136] iv) Puttrangamma and others vs. M.S. Ranganna and others [AIR 1968 SC 1018] v) Mudigowda Gowdappa Sankh and another vs.

Ramchandra Revgowda Sankh (dead) by his legal representatives and another [AIR 1969 SC 1076]

(ii) The learned counsel contends that the mother of

the plaintiffs did not file any suit and did not stake her claim during her lifetime and therefore, the plaintiffs did not have any right. He contends that assuming that the plaintiffs have any interest in the suit property, the defendant Nos.1 and 6 had categorically mentioned in their written statements that the suit

property came into possession of the defendant No.1 consequent to execution of the sale deed by BDA and therefore, the plaintiffs are ousted out of the property in question and therefore, they were not entitled to stake any claim to the suit property. He therefore, submitted that the plaintiffs are not entitled to any share in the suit property. - 14 -

(iii) The learned counsel further contended that by

virtue of Article 109 of the Limitation Act, 1963, the plaintiffs were bound to question the alienation made by defendant No.1 in favour of defendant No.6 within twelve years from the date of they attaining the age of majority. He contends that the sale deed in favour of defendant No.6 was questioned by way of amendment on 04.02.2006 which was beyond the period prescribed under Article 109 of the Limitation Act, 1963.

14. Per contra, the learned counsel for the plaintiffs

submitted that the suit property was allotted to Sri. V. Raghavalu, who is the grandfather of the plaintiffs and after the death of Sri. V. Raghavalu, the mother of the plaintiffs and defendant No.1 along with his sisters had succeeded to the

property. He contends that Ex.P9 was only to enable the defendant No.1 to obtain sale deed in his name from the BDA and mother of the plaintiffs did not have any intention to relinquish or give up or surrender her right in respect of the suit property. He therefore, contends that there can be no implied relinquishment of the share of the mother of plaintiffs in the suit property. He contends that soon after

the death of Sri. V. Raghavalu, his wife, the mother of the plaintiffs,

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defendant No.1 and other sisters of the defendant No.1 were entitled to an undivided share by virtue of Section 8 of the Hindu Succession Act, 1956. Therefore, he contends that the Trial Court was justified in decreeing the suit of the plaintiffs and declared that the plaintiffs are entitled to 1/4th share in the suit property.

15. After hearing the learned counsel for the defendant No.6 and the learned counsel for the plaintiffs and after

perusing the records of the Trial Court as well as its judgment

and decree, the only point that arises for consideration in this appeal is, "Whether there was sufficient evidence before the Trial Court to grant a decree for partition and separate possession?"

16. A perusal of the pleadings makes it more than apparent that the suit property was allotted by the BDA in

favour of Sri. V. Raghavalu. It is not in dispute that Sri. V. Raghavalu died intestate leaving behind his wife, three daughters and a son. Therefore, by virtue of operation of Section 8 of the Hindu Succession Act, 1956, wife of Sri. V. Raghavalu and his four children were entitled to equal - 16 -

share in the suit property. However, by that time the BDA had not executed the sale deed in favour of Sri. V. Raghavalu and upon his death, all the children of Sri. V. Raghavalu executed a joint affidavit in favour of defendant No.1 authorizing him to obtain sale deed in his name. Consequent thereto, a sale deed was executed by BDA in favour of defendant No.1. At any rate, this cannot amount to relinquishing the right of mother of plaintiff in favour of defendant No.1. It is not in dispute that the defendant No.1, had put to use the suit property by developing

it and letting out to tenants. The defendant No.1 had unilaterally sold the suit property without the consent of his sisters as well as the plaintiffs. Therefore, the Trial Court was thoroughly justified in decreeing the suit for partition as the suit property was not a joint family property as claimed by the plaintiffs as well as defendant Nos.1 and 6 but was the self acquisition of Sri. V. Raghavalu and after his death, it trickled down to his wife and children by virtue of Section 8 of the Hindu Succession Act, 1956.

17. It is not the contention of the defendant No.1 or defendant No.6 that the plaintiffs were ousted of the suit schedule property. The defendant No.1 had developed the suit - 17 -

property and rented it out to various tenants and this did not per se amount to depriving the plaintiffs of their share in the suit schedule property as defendant No.1 never proclaimed that he had divested the plaintiffs and other sisters of their share in

the suit property. On the contrary, in the written statement filed by defendant No.1, he claimed that he is the only son of Sri. V. Raghavalu and had inherited the suit property by construing the suit property as an ancestral property of Sri. V. Raghavalu. As stated earlier, the suit property was self acquisition of Sri. V. Raghavalu as there were no other properties in the hands of Sri. V. Raghavalu that belonged to

the family. Thus, it can safely be held that defendant No.1 being the son of Sri. V. Raghavalu was in possession of the property of his father and his sisters were also entitled to a share in the suit property. It is not in dispute that when Sri. V.

Raghavalu died, mother of the plaintiffs was alive and therefore, the plaintiffs were entitled to succeed to the undivided share of their mother in the suit schedule property. In that view of the matter, it can unhesitatingly be held that there was sufficient material on record to demonstrate that the plaintiffs were entitled to undivided share in the suit property

- 18 - and the Trial Court was justified in decreeing the suit for partition and declaring that the plaintiffs are entitled to 1/4th share in the suit property.

18. In that view of the matter, the point for consideration framed by this Court is answered in favour of the plaintiffs and against the defendant No.6.

19. Accordingly, the appeal is dismissed. The parties to bear their own costs.

20. In view of dismissal of the appeal, pending I.As., if any, do not survive for consideration and the same stand dismissed. Sd/- (R. NATARAJ) JUDGE PMR List No.: 2 Sl No.: 2

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