SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ramesh and Ors vs Baswaraj and Ors

Ramesh and Ors vs Baswaraj and Ors

SooperKanoon Citation : sooperkanoon.com/1853462

Court : Karnataka Kalaburagi

Decided On : Dec-19-2024

Judge : Sachin Shankar Magadum

Appeal No. : MFA/204015/2024

Appellant : Ramesh and Ors

Respondent : Baswaraj and Ors

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE 19TH DAY OF DECEMBER, 2024 BEFORE THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM MISCL. FIRST APPEAL NO.204015 OF 2024 (CPC) BETWEEN:

1. RAMESH S/O BASWARAJ BETTAD, AGED ABOUT 35 YEARS, VIDAY NAGAR COLONY,

2. BALBHEEM S/O BASWARAJ BETTAD, AGED ABOUT 37 YEARS, Digitally

signed by 3. SIDRAM S/O BASWARAJ BETTAD,RENUKA A

APPELLANTS (BY SRI HANMANTHRAYA, ADVOCATE) AND:

1. BASWARAJ S/O KASHAPPA BETTAD AGED ABOUT 61 YEARS, -2-

2. BASAMMA W/O BASWARAJ BETTAD, AGED ABOUT 56 YEARS,

3. KASHINATH S/O BASWARAJ BETTAD, AGED ABOUT 41 YEARS, OCC: AGRIULTURE AND BUSINESS,

4. JAVEED GOLDEN S/O NOT KNOWN, AGE: 61 YEARS, OCC: BUSINESS, R/O CHONDI GALLI, BIDAR-585401.

5. JYOTI W/O UMAKANTH PATIL,

AGE: MAJOR, OCC: HOUSEHOLD, R/O CHALKAPUR-585414, TQ: BHALKI, DIST: BIDAR. RESPONDENTS (BY SRI RAVI B. PATIL, ADVOCATE FOR C/R1) THIS MFA IS FILED U/O 43 RULE 1 (R) OF CPC, PRAYING

TO ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER

DATED 25.11.2024 PASSED ON I.A.NO.I BY THE ADDL. SENIOR CIVIL JUDGE AND JMFC AT BIDAR, IN O.S.NO.286/2023 AND ALLOW THE I.A.NO.I U/O 39 RULE 1 AND 2 OF CPC FILED BY THE APPELLANTS. -3- THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM) The captioned appeal is by the plaintiffs assailing the impugned order passed by the Trial Court on I.A.No.I filed under Order 39 Rules 1 and 2 of Code of Civil Procedure. The said application is rejected. The said order is under challenge.

2. Heard the learned counsel on record. Perused the order under challenge and pleadings.

3. Plaintiffs, who are sons of defendant No.1 have

filed a partition suit seeking their legitimate share in the suit schedule properties. The plaintiffs contend that they have also contributed towards sale proceeds and therefore they contend that they are having their legitimate share -4- and injunction is sought restraining the defendants from alienating the properties. The learned Judge taking note of the dates of sale deeds found that the plaintiffs were not even born when these properties were acquired by defendant No.1. Item No.2 of schedule - B property is

held by the mother/defendant No.2.

4. Upon re-assessing the order under challenge,

this Court finds that the plaintiffs' claim regarding the suit schedule properties being joint family properties lacks sufficient merit at this stage. A significant factor in this determination is the absence of any ancestral property within the plaintiffs' and defendants' family, which gives rise to a strong presumption in favor of defendant No.1s assertion that he acquired the properties through his independent, hard-earned income. The agricultural lands, forming part of the disputed properties, were purchased by defendant No.1, the father, at a time when the plaintiffs were minors and, therefore plaintiffs claim that contributed financially to the acquisition needs to be

-5- Substantiate . Similarly, the residential house was purchased by defendant No.2, the mother is asserted that it was through her independent means.Sale deed is obtained by mother.

5. The claim by the plaintiffs that they contributed

to the purchase of these properties is, prima facie, not supported by any evidence, particularly in light of their age at the time of acquisition, which renders such claims implausible. Moreover, the defendants have demonstrated their reliance on

the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, by approaching the Tribunal for protection. This underscores their assertion of ownership and independent acquisition of the properties.

6. The Trial Court, in declining to grant an injunction in favor of the plaintiffs, exercised its judicial

discretion judiciously and in accordance with the prima facie evidence on record. This Court finds no illegality or error in the Trial Courts refusal to grant relief under -6-

Order 43 of the Code of Civil Procedure, 1908, which

would warrant interference. Accordingly, the appeal is devoid of merit and stands dismissed.

7. It is clarified that the order under challenge, as

well as the order passed by this Court, shall not operate as an impediment to the plaintiffs in proving the nature of the suit schedule properties during the course of a full- fledged trial. The observations made herein are confined to the adjudication of the present appeal and shall not prejudice the rights of the parties to lead evidence and

substantiate their respective claims regarding the character and ownership of the properties in question during the trial.

8. In view of disposal of appeal, I.A.No.1/2024 filed for temporary injunction does not survive for consideration. Sd/- (SACHIN SHANKAR MAGADUM) JUDGE RSP List No.: 1 Sl No.: 17 CT-SW

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com