

Y Anjinappa vs Sri Muniyallappa

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SooperKanoon Citation : sooperkanoon.com/1911708

Court : Karnataka

Decided On : Nov-04-2024

Judge : H.P.Sandesh

Appeal No. : MFA/2939/2024

Appellant : Y Anjinappa

Respondent : Sri Muniyallappa

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2024 BEFORE THE
HON'BLE MR JUSTICE H.P.SANDESH MISCELLANEOUS FIRST
APPEAL NO. 2939 OF 2024 (CPC) BETWEEN:

1. Y. ANJINAPPA S/O LATE YALLAPPA AGED ABOUT 50 YEARS.

2. PREETHAM A.,

S/O Y. ANJINAPPA AGED ABOUT 17 YEARS, SINCE MINOR REP. BY
NATURAL GUARDIAN AND MOTHER RENUKA B., W/O Y.

ANJINAPPA, AGED ABOUT 42 YEARS, RESIDING AT NO. 1880, 59TH CROSS RENUKA NAGARA, SARJAPURA VILLAGE AND HOBLI, Digitally signed by DEVIKA M ANEKAL TQ, BANGALORE-562 125 Location: HIGH APPELLANTS COURT OF KARNATAKA (BY SRI. KALYAN R., ADVOCATE) AND:

1. SRI. MUNIYALLAPPA, S/O LATE YALLAPPA AGED ABOUT 74 YEARS.

2. SMT. GOWRAMMA D/O LATE YALLAPPA W/O LATE KRISHNAPPA AGED ABOUT 70 YEARS. -2-

3. SRI. Y. SRIRAMALU S/O LATE YALLAPPA AGED ABOUT 64 YEARS.

4. SMT. AVALAMMA D/O LATE YALLAPPA W/O BALARAMAPPA AGED ABOUT 60 YEARS.

5. SMT. PADMAVATHI W/O LATE S.Y. SRINIVASAIAH, AGED ABOUT 50 YEARS.

6. SMT. CHANDINI D/O LATE S.Y. SRINIVASAIAH, AGED ABOUT 29 YEARS.

7. SRI. PRAJWAL A/O LATE S.Y. SRINIVASAIAH, AGED ABOUT 27 YEARS, ALL ARE RESIDING AT RENUKA VILLAGE AND HOBLI, ANEKAL TALUK, BANGALORE-562 125 RESPONDENTS (BY SRI. ASWATHANARAYAN S.N., SENIOR ADVOCATE FOR SRI. S.A. SUDHINDRA, ADVOCATE FOR R3; R1, R2 AND R4 TO R7 SERVICE OF NOTICE IS D/W, V/C/O DATED 02.09.2024) THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC,

AGAINST THE ORDER DATED 27.04.2024 PASSED ON I.A. NO. 2 IN O.S.NO. 1527/2023 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, ANEKAL, DISMISSING THE -3- I.A. NO.2 FILED UNDER ORDER 39 RULE 1 AND 2 READ WITH SECTION 151 OF

CPC. THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

ORAL JUDGMENT

This matter is listed for admission. Heard Shri R.Kalyan, learned Counsel for the appellants- plaintiffs and Shri Aswathnarayan S.N., learned Senior Counsel for respondent No.3.

2. This Miscellaneous First Appeal is filed challenging the

order dated 27.04.2024 passed on I.A.Nos.2 and 3 in

O.S.No.1527/2023 by the Principal Senior Civil Judge and JMFC, Anekal, dismissing I.A.No.2 and disposing I.A.No.3 and vacating the interim order granted earlier.

3. The factual matrix of the case of the plaintiffs before the trial Court are, the plaintiffs filed a suit in O.S.No.1527/2023 seeking the relief of partition claiming 1/6th share in the suit schedule properties. One Yallappa was married to one Gowramma and through the marriage, they had -4- six children namely Muniyallapa, Gowramma, Y.Sriramulu, Avalamma, S.Y.Srinivasaiah and Y.Anjinappa. The said

Anjinappa is the appellant before this Court. The brother of the plaintiff No.1 S.Y.Srinivasaiah is no more and his legal representatives are made as defendants No.6 and 7 to the suit. The properties bearing Sy.No.132/P3 measuring 3 acres, Sy.No.132/P4 measuring 3 acres, totally measuring 6 acres, presently the same are renumbered as Sy.No.132, situated at Alambadi Village, Lakkur Hobli, Malur taluk, Kolar District are the properties of the plaintiffs and defendants who are the joint

owners and in peaceful possession of the same. The property bearing Sy.No.123, measuring 2 acres 4 guntas, Sy.No.124

measuring 4 acres, both the survey numbers together measuring 6 acres 4 guntas situated at Gudigattahalli Village, Sarjapur Hobli, Anekal taluk, property bearing Sy.No.40, measuring 15 guntas situated at Chikkadunnasandra Village, Sarjapura Hobli, Anekal Taluk, property bearing Kaneshumari No.1313, property No.725/1B, measuring East to West 92 ft. and North to South 58 ft., property bearing Kaneshumari NO.1112, property No.647, measuring East to West 25 Ft. and North to South 40 Ft. both the properties situated at Sarjapura

-5- Village, Anekal Taluk are the ancestral and joint family properties of the plaintiffs and defendants.

4. Out of the joint family income and out of the sale

proceeds of the ancestral properties, the plaintiff No.1 and defendants No.1, 3 and Srinivasaiah had purchased item No.1 and 2 of the schedule properties under a registered sale deed dated 28.01.2006 and 06.03.2006 respectively. Ever since the date of purchase, the plaintiffs and defendants are in peaceful

possession and enjoyment of the same. The plaintiffs and defendants are having right and share over the suit schedule properties. Defendant No.3 who is having worldly knowledge and having political background was managing the joint family affairs and after the death of yallappa, plaintiffs and other defendants were having trust and faith in defendant No.3 but he has misused and mismanaged the joint family properties. Therefore, on 13.10.2023 the plaintiffs approached defendant No.3 demanding partition and allot their share in the suit schedule properties but defendant No.3 refused to effect partition. It is also contended that the plaintiff No.1 is suffering from mental illness and is on regular treatment in NIMHANS

Hospital, Bangalore. Thereafter, plaintiffs filed a suit for -6- partition before the Senior Civil Judge at Anekal. Along with the plaint, the plaintiffs filed an application under Order 39 Rule 1 and 2 of CPC seeking ex-parte order of temporary injunction. The trial Court passed ex-parte order of temporary injunction restraining

the defendants from alienating the suit schedule properties until further orders. Defendant No.3 filed the I.A.No.3 under Order 39 Rule 4 of CPC for vacating the order of temporary injunction. The trial Court by the impugned order, dismissed I.A.No.2 and disposed of I.A.No.3 and vacated the interim order of temporary injunction. Hence, this appeal.

5. The main contention of the learned counsel for the

appellants/plaintiffs is that defendant No.3 in the written statement has not disputed the relationship between the parties but has disputed the status of the suit schedule properties. Defendant No.3 has contended that he is the absolute owner of the property bearing survey No.123 and 124 totally measuring 6 acres 4 guntas and he has purchased the same out of sale proceeds received from the joint family properties. The other family members have also received their share of sale proceeds which they have invested in purchasing different properties which are not the subject matter of the

-7- suit. Learned Counsel contends that whether item No.2 was purchased out of his share or out of the joint family nucleus can

be decided only after holding full-fledged trial. The trial

learned Counsel would further contend that defendant No.3 in his written statement has contended that joint family status came to be severed on 25.03.2009 the date on which compromise petition was filed in O.S.No.1919/2006. It is also contended that suit schedule properties are not the subject matter of suit in O.S.No.226/2020 and the said suit is filed by

defendants No.2 & 4. The defendant No.3 was mismanaging the joint family and ancestral properties being the Kartha of the joint family and he has refused to effect partition and there is no iota of material before the trial court to prove that there was already a severance of joint family and the trial Court ought not to have rejected the application. Learned Counsel also brought

the attention of this Court to para 9 of the impugned order

wherein discussion was made for having shared the sale proceeds when the property was sold on 12.01.2006 but the trial Court erroneously came to the conclusion that plaintiffs -8- have not made out any prima-facie case and committed an error in dismissing the application.

6. Learned Senior Counsel for respondent No.3/defendant

No.3 vehemently contended that defendant No.3 had filed a detailed statement of objections and brought to the notice of this Court the sale deed dated 12.01.2006 wherein joint family property was sold and all family members have received their share. Out of sale proceeds, defendant No.3 has purchased the property in item No.2 and the same is an independent property and the trial Court also having considered the documents in detail, vacated the interim order granted earlier and it does not require any interference.

7. The learned Senior Counsel also brought to the notice

of this Court the joint development agreement which came into existence on 03.05.2024 in respect of item No.2 of suit schedule properties which was purchased out of sale proceeds of document No.2 and considering all these aspects, the trial Court has vacated the interim order.

8. Having heard the learned Counsel for the appellants and also the learned Senior Counsel for respondent No.3, both -9- the parties do not dispute the execution of sale deed dated 12.01.2006 i.e. document No.2 filed along with statement of

objections by respondent No.3/defendant No.3. It is also not in dispute that sale consideration was shared among the members of the family vide sale deed dated 12.01.2006. Learned Counsel for the appellant brought to the notice of this Court para 3 of the written statement wherein, there was an admission with regard to the Survey No.132/P3 measuring 3 acres and Survey No.132/P4 measuring 3 acres, totally measuring 6 acres, being the joint properties. When defendant No.3 admits that it is a joint property, the trial Court ought not have rejected the application. He further contends that other sisters have also filed a suit for partition in

O.S.No.1919/2006 and same was compromised on 28.03.2009 wherein plaintiffs and defendant No.3 are also parties to the said compromise and the properties which have been subject matter of the said suit are different and not the suit schedule properties.

9. The suit is filed for partition and separate possession

and it is the prima-facie contention of the respondent No.3 /defendant No.3 that whatever sale consideration he has received in terms of document No.2, he has purchased the - 10 - property and except items No.3 and 4, other properties are not

the joint family properties. No doubt, learned counsel for the appellants would contend that there is no severance of joint family and there was no partition and respondents have not placed any document to the effect that there was a partition in respect of other family properties. However, The trial Court having taken note of the fact that family members received

their respective share when the property was sold on 12.01.2006 and there was no earlier partition among the members of the family and the fact that on 28.01.2006, family members have jointly purchased the property and there was another sale deed dated 06.03.2006 in respect of the property purchased by defendant No.3 and the same stands in the name of defendant No.3 and in respect of the said property only, joint development agreement came into existence on 03.05.2024 and having taken note of the fact that item Nos.3 and 4 are the properties belonging to joint family and item No.1 belongs to

different persons who have purchased the property on 28.01.2006 and when such material is available before the court and also taking note of total sale consideration amount of Rs.28,87,500/- given to defendant No.3 and a sum of Rs.25,00,000/- given to defendant No.1 and a sum of - 11 -

Rs.25,00,000/- given to plaintiff No.1 and also when the defendant No.3 took the specific contention in the written statement that out of sale proceeds only, his brothers had made different properties as per their convenience and also the trial

Court having made an observation that plaintiffs leaving other properties purchased by other brothers, sought partition only in respect of property purchased by defendant No.3 and also taking note of the fact that defendants No.2 and 4 have already filed O.S.No.226/2020 seeking the relief of partition against their brothers, comes to the conclusion that plaintiffs have not made out a prima-facie case and rejected the application.

10. Having considered the reasoning given by the trial

Court and also considering the fact that all the family members have shared the sale proceeds in the light of the sale deed dated 12.01.2006 and specific defence is also taken by defendant No.3 that he has purchased the property out of his share on account of sale made on 12.01.2006, and also compromise having entered into in the earlier suit in O.S.No.1919/2006, I do not find any error committed by the trial court in dismissing the application in respect of item no.2 - 12 -

is concerned as the same is prima-facie standing in the name of defendant No.3. The other property in item No.1 is standing in the name of other family members and item Nos.2 and 4 belong to the joint family property and there was no document to prove the fact that there was a partition in respect of item Nos.3 and 4, and though defendant No.3 claims that there was a partition, nothing is placed on record, it is appropriate to modify the order of the trial Court not to alienate the properties in respect of item Nos.3 and 4 till the disposal of the suit. Further, it is appropriate to direct the trial court to club both the suits in O.S.No.1527/2023 and O.S.No.226/2020 filed for partition together and dispose of the same.

11. In view of the foregoing discussions, I proceed to pass the following:

ORDER

i) The appeal is allowed in part; ii) The order of the trial Court dated 27.04.2024 passed on I.A.No.2 in O.S.No.1527/2023 is modified and interim

order of temporary injunction is granted in respect of

item Nos.3 and 4 of the suit schedule properties are concerned. - 13 - iii) The observations made by this Court shall not influence the trial Court while adjudicating the matter on merits. iv) The trial Court is directed to list O.S.No.1527/2023 before the very same Court where O.S.No.226/2020 is pending and dispose of both the matters together. Sd/- (H.P.SANDESH) JUDGE YN List No.: 1 Sl No.: 44

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