ARHJ:
05.04.2023

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JUDGMENT

IN

REGULAR FIRST APPEAL NO.1659 OF 2007 (PAR-)
C/W
RFA CROSS OBJ NO.101 OF 2008

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List No.: 1 Sl No.: 53

FILE OF THE CIVIL JUDGE (SR.DN), DECREEING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION AND MESNE PROFITS.

THIS APPEAL AND CROSS OBJECTION, COMING ON FOR FURTHER DICTATION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

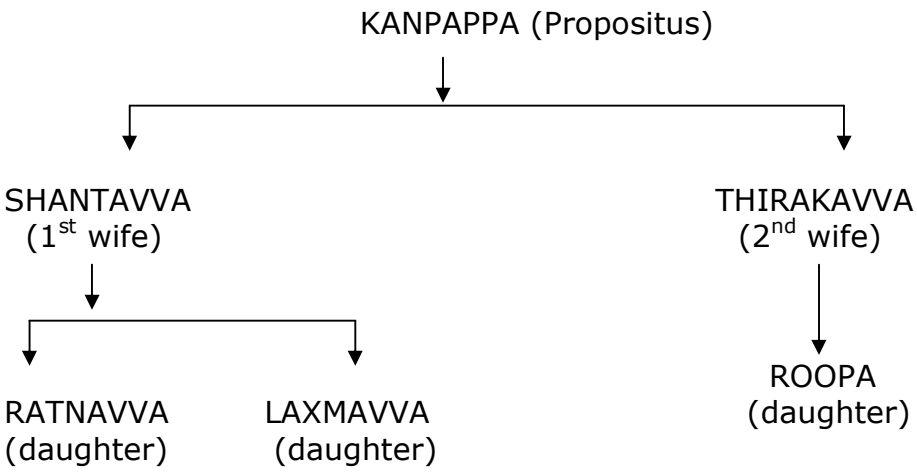
The respondents/plaintiffs in this appeal had to wait for 16 years for the final hearing and a verdict. The preliminary decree for partition in favour of the plaintiffs in O.S.No.12/1995 on the file of the Senior Civil Judge, Ranebennur, is contested by the defendants. 28 years have elapsed since the claim for partition is made by the daughter and the wife of Suresh Kalledevar.

2. From the factual and legal perspective, the case did not pose much difficulties. The questions of law, raised in the appeal are already well settled. However, the time taken for this case to be listed for a final hearing is indeed a matter of concern for all the stakeholders in the system. Sixteen years is an unreasonably long period to decide the appeal. Something needs to be done on priority. The problem on hand is not without a solution. This court felt it

necessary to discuss the situation in this judgment, after deciding the case on its merits.

- Facts in nutshell:

Genealogy



3. Kannappa, the propositus, had two wives. Shantavva is the first wife. Thirakavva is the second wife. The second marriage to Thirakavva is void as the first marriage was subsisting. Ratnavva and Laxmavva are the daughters of first marriage. Roopa is the daughter of second marriage.

4. First wife Shantavva and her daughter Ratnavva, claimed partition. Kannappa, Thirakavva the

second wife, and Roopa, the daughter of the second wife contested the suit.

5. During the pendency of the suit, Laxmavva, the daughter of the first wife is also impleaded after the death of defendant No.1, Kannappa.

6. Apart from the above-named persons Kannappa's brother's heirs were also impleaded as certain properties were jointly owned by Kannappa and his brother.

7. The suit is decreed in part. The trial court held two daughters from the first marriage, the daughter from the second marriage, and the first wife, all entitled to $1/4^{th}$ share each.

8. Among the defendants, the second wife and her daughter are in appeal in RFA No.1609/2007. The plaintiffs have filed RFA CROB No.101/2008 claiming more shares.

9. The suit was filed on 28.01.1995, before the commencement of the Act of 39 of 2005, amending Section 6 of the Hindu Succession Act, 1956 (for short, the 'Act').

10. Sri.Vivek Mehta learned counsel for the appellants submits the daughter/plaintiff no.1 had no right over the properties in the year 1995, held by Kannappa, and as the suit is filed when her father was alive, the suit is not maintainable.

11. Sri. Mehta also urged that during the pendency of the suit *i.e.* on 18.02.2003, defendant No.1, gifted suit properties in favour of his daughter Roopa from the second marriage. Hence the properties alienated before 20th December 2004, the cut-off date under the Act are not available for partition.

12. Sri. Mehta would further contend that the first defendant no1 had transferred certain properties in favour of the plaintiffs before filing the suit, as such, the suit without including those properties is not maintainable. In

the alternative, he would contend that those properties are to be treated as properties allotted to plaintiffs' share and consequently the suit ought to have been dismissed.

13. Sri. Sanjay Katageri, the learned counsel for respondent No.1 and the cross objectors would submit under Section 6 of Act, 2005, the daughter is given the status of a coparcener. Assuming that plaintiff No.1 had no cause of action to file suit in the year 1995, as the amendment of Section 6 of Act, 2005 is held to be retrospective in operation, it must be deemed that the daughter had a share in the properties when the suit was filed in 1995.

14. He would further submit that defendants 1 and 2 are not entitled to claim the benefit of alienation made on 18.2.2003, as the said alienations violate the interim prohibitory order passed by the Court which was in force as on the date of the execution of the alleged gift deeds. It is contended that the alienations are invalid and cannot be construed as a valid alienation of the properties before the

cutoff date under the Act. In respect of his contention, he would rely upon the following judgments of the Apex Court.

(1) *SATYABRATA BISWAS AND OTHERS vs KALYAN KUMAR KISKU AND OTHERS ((1994) 2 SCC 266)*

(2) *SURJIT SINGH AND OTHERS vs HARBANS SINGH AND OTHERS ((1995) 6 SCC 50)*

(3) *VIDR IMPEX AND TRADERS PRIVATE LIMITED AND OTHERS vs TOSH APARTMENTS PRIVATE LIMITED AND OTHERS ((2012) 8 SCC 384)*

15. In reply, Sri. N.P. Vivek Mehta submits that the order of the Court prohibiting defendant No.1 from alienating the properties is an order passed without noticing the legal position that defendant no.1, in the year 2003, was competent to alienate all his properties. Thus, it is urged that the alienation in violation of the interim order should not be construed to say that there is no valid transfer of properties by defendant No.1 in favour of his daughter. He contends that violation of the interim order, at the most would incur penal consequences and cannot

invalidate the transfer of title and possession. Sri. N.P. Vivek Mehta would rely upon the following judgments:

i. *OM PRAKASH SRIVASTAVA VS. UNION OF INDIA AND ANOTHER (2006) 6 SCC 207*

ii. *BHANWAR SINGH VS. PURAN AND OTHERS (2008) 3 SCC 87*

iii. *SUNIL KUMAR AND ANOTHER VS. RAM PARKASH AND OTHERS (1988) 2 SCC 77*

iv. *T.ARIVANDANDAM VS. T.V.SATYAPAL AND ANOTHER (1977) 4 SCC 467*

v. *CHINNAMMA VS. SRINIVAS AND OTHERS [MANU/KA/0047/1971]*

vi. *V.MALLIKARJUNAIAH VS. H.C.GOWRAMMA ILR 1997 KAR 964*

16. This Court has considered the contentions raised at the Bar.

17. Following points emerge for consideration.

(i) Whether the alienation of coparcenary property before 20th December 2004, in contravention of the Court order restraining alienation, is a valid alienation falling under proviso to

Section 6(1) of the Hindu Succession Act 1956?

(ii) Whether the property given to the daughter and the wife in lieu of arrears of maintenance is to be treated as allotment of share in the partition?

18. Section 6 of the Act, which was amended in the year 2005 conferring the status of a coparcener to a daughter of a male Hindu entertains few exceptions. Alienation of properties before 20th December 2004 is an exception to Section 6(1) of the Act. If the coparcenary properties are alienated before 20th December 2004, then the daughter who is given the status of a coparcener cannot claim a share in the alienated properties.

19. The alienation referred to in the proviso to Section 6(1) of the Act has to be necessarily the alienation that is lawful. Admittedly, as on the date of the execution of the gift deeds dated 18.2.2003, there was a prohibitory order restraining defendant no.1 from alienating the suit schedule properties. The properties are transferred in the

name of his daughter in violation of the prohibitory order. The daughter of the second wife is claiming exclusive ownership of the properties taking shelter under the proviso to Section 6(1) of the Act. Since the alienation is in the teeth of the prohibitory order of the Court, the wrongdoer (seller) cannot be granted the protection provided under the proviso to Section 6(1) of the Act. If the alienation is held to be valid, then it amounts to rewarding the wrongdoer/ the 1st defendant who was bound to obey the order passed by the Court. Moreover, in this case, the transferee is also a party to the proceeding where the interim order is passed and was very much aware of the interim prohibitory order. Thus alienations referred to above cannot defeat the rights conferred on the daughter.

20. The position of law relating to the validity of the alienations made in violation of the Court order is well settled in terms of Judgments of the Apex Court in the

case of **SATYABRATA BISWAS & ORS, SURJITH SINGH AND ORS.** referred supra.

21. The judgments relied upon by the counsel for the appellants are rendered in a different context. Based on those judgments it is not possible to hold that alienations are valid. Had the defendants obeyed the court order, there would not have been alienation at all till the commencement of Act 39 of 2005. In that event, plaintiffs would have acquired the right over the properties under amended Section 6 of the Act. Thus, in the facts of the case, it is not possible to validate the alienations and to save the transaction by applying proviso to Section 6(1) of the Act.

22. The person who has alienated the properties in violation of the court order, cannot be permitted to take advantage of the alienation, by taking shelter under the proviso to Section 6(1) of the Act. Proviso to Section 6(1) applies only to alienations that are legal and valid. This being the position, this Court is of the view that the

alienations made on 18.02.2003 are not valid in the eye of law. Thus, the Court has to take a view that the properties cannot be construed as alienated before 20th December 2004, and proviso to Section 6 (1) of the Act has no application to the case. This being the position, given the fact that the amendment to Section 6 of the Act is retrospective in operation, the plaintiffs are entitled to claim a share in the said properties.

23. The other contention of Mr.Mehta that plaintiffs had no right over the suit properties when the suit was filed in the year 1995, (before the commencement of amended Section 6 of the Act) is concerned, said contention is not available as amended Section 6 of the Act is held to be retrospective in operation. Since Section 6 is retrospective in operation, *ipso jure* it is to be held that even in the year 1995, the daughter had the right over the properties and had a cause of action to claim a share in the properties.

24. The contention of the appellants that the plaintiffs were given properties before filing the suit and the same should be treated as the share allotted to the plaintiffs, has no merit. The records would reveal that certain properties are allotted to the plaintiffs in lieu of their claim relating to *arrears of maintenance*. The properties given in lieu of arrears of maintenance cannot be equated with the share in the properties. The right to property as a coparcener/sharer is different from the right of maintenance. There can be a right to claim maintenance without there being a right in the property. In this case, the properties are transferred in favour of the plaintiffs towards discharge of the arrears of maintenance ordered in some other proceeding. If a property is transferred in lieu of *arrears maintenance,* said the transfer will only discharge the liability towards *arrears of maintenance* and nothing more. Said transfer property will not extinguish the right of the person to claim a share in the property if such person had a share in the property. In other words, the discharge of liability towards *arrears of maintenance*

cannot be allowed to be set off against the claim for partition. Thus, the contention that the properties transferred towards discharge of arrears of maintenance have to be treated as allotment of share in the property is not accepted.

25. Sri. Katageri the learned counsel for the cross objectors would submit that the cross objectors will not press the contentions raised challenging the quantification of share. Accordingly, the appeal and cross objection are dismissed. The impugned judgment and decree are confirmed.

26. As already noticed, at the beginning of the judgment, 28 years have elapsed since the claim for partition. 16 years have elapsed since the appeal is filed. Ideally, the final verdict in an appeal should not take more than 2 years after admission. An appeal from the stage of filing till the disposal does not involve elaborate time-consuming procedures like a suit. It is high time to explore

the possible solution to expedite the hearing of the appeals. Hence, the following discussion:

(i) Under Section 5 of the Karnataka High Court Act 1961 (for short, 'Act of 1961'), the Regular First Appeals would lie before the Single Judge, if the value of the subject matter of the suit is between Rs. 10,00,001 lakhs and Rs.15 lakhs. If it exceeds Rs. 15 lakhs, then the Regular First Appeal lies before the Division Bench of the High Court. This pecuniary limit is fixed in 2007, by amending the provision which earlier conferred the jurisdiction on the division bench if valuation exceeded Rs.3 lakhs.

(ii) Under Section 19 of the Karnataka Civil Courts Act, 1964 (for short, 'Act of 1964), the first Appeal under Section 96 of the Code of Civil Procedure,1908 (For short 'Code') lies to the District Court if the value of the suit is between

Rs.5,00,001 and Rs. 10 Lakhs. This pecuniary limit is fixed in 2007.

(iii) It is required to be noticed that under Section 16 of the Act of 1964, the pecuniary limit for the suit before the Senior Civil Judge court commences from Rs.5,00,001 and there is no upper limit. In other words, the Senior Civil Judge court in the State of Karnataka has the jurisdiction to try all original suits where the value of the suit properties or the value of the relief sought in the suit exceeds Rs.5 lakhs, except the suits under Section 92 of the Code and the Commercial Courts Act, 2015. The Senior Civil Judge having unlimited upper pecuniary jurisdiction while deciding the suit, on being promoted as the District Judge, who sits in appeal under Section 96 of the Code, to decide the appeal from the Decree of the Senior Civil Judge, cannot entertain an appeal if the value of the subject matter of the suit exceeds Rs.10 lakhs.

(iv) The current sanctioned strength of the District Judges in Karnataka is 311. Excluding the 35 judges working on the administrative side, 283 District and Sessions Judges are currently working on the judicial side. The statistics in this regard are provided as under:

SANCTIONED STRENGTH, WORKING STRENGTH, AND VACANCY POSITION OF DISTRICT JUDGES (AS OF 01.04.2023)

Cadre	Sanctioned		Working		Vacancy	
	Regular Court	OOD Post	Regular Court	OOD Post	Regular Court	OOD Post
District Judge	311	64	283	35	34	23

(v) Last two decades have witnessed skyrocketing property values. Consequently, the number of appeals filed before the High Court under Section 96 of the Code has gone up by many folds.

(vi) When the Senior Civil Courts are conferred with jurisdiction to decide the civil suits without any upper pecuniary limit, logically District Courts who decide the first Appeals arising from the judgment and decree from the Senior Civil Judge

Court should also have no restrictions on the upper pecuniary limit. Thus, the upper pecuniary limit of Rs.10 lakhs on the First appeals under Section 96 of the Code in District Courts defies logic.

(vii) The escalation in the value of the properties has led to more Regular First Appeals being filed under Section 96 of the Code before the High courts. For this reason, Section 5 of the High Court Act providing for appeal under Section 96 of the Code to the High Court has proved counterproductive.

(viii) Apart from the escalation in property value, there are many compelling reasons to have a re-look at the provisions of the Act of 1961 and the Act of 1964 governing the jurisdiction of the courts relating to First Appeals. The State in implementing the policy "Justice to the doorstep" has established a good number of additional District courts in various district headquarters and

the taluks and a good number of itinerary courts in various taluks. The policy is indeed laudable. However, if the concept of "Justice to doorstep" is to be realized in its letter and spirit, it is high time to amend the provisions of the law relating to the jurisdiction of the High Court and the District Court to hear the first appeal under Section 96 of the Code governed by Section 5 of the Act of 1961 and Section 19 of the Act of 1964.

(ix) Various factors have contributed to the delay in hearing the First Appeals. The prominent one is probably the High Court functioning far below the sanctioned strength. At present Karnataka High Court has the sanctioned strength of 62 High Court Judges. The current strength of High Court judges is 53. This assignment is in addition to other subjects. The number of pending Regular First Appeals in the High Courts as of 24th March 2023 is under:

Nature of Case	Bengaluru Bench		Dharwad Bench		Kalaburagi Bench	
	Single	Division	Single	Division	Single	Division
RFA	11946	4199	1538	1220	328	494

(x) To hear 19,275 Regular First Appeals, taking into consideration various other cases pending before this Court, on average 6 to 8 Courts will be assigned with the Regular First Appeals. This may be in addition to other subjects as well. If the jurisdiction to deal with First appeal under Section 96 arising from the judgment and decree in suits from Senior Civil Judges is conferred on the District Judges, it will serve the following objectives:

a) The First Appeals will be decided by the courts nearer to the parties to the *lis*, which is the primary goal of the concept of 'Justice to doorstep'.

b) More courts (nearly 200 courts, excluding Judges officiating in City Civil Courts and OOD) will be available to decide Regular Appeals and

those courts comparatively have less number of cases to deal with, compared to the pendency in High courts.

c) The workload on the High Court gets reduced and the High Court can focus its attention on the matters which exclusively fall within the jurisdiction of the High Court.

d) The statistics would also reveal a good number of additional district courts have been established at the district level and taluka level, and the number of pending Regular Appeals under Section 96 of the Code is also quite low or moderate and they will be better equipped to absorb more appeals under Section 96 of the Code.

e) All parties to the original suits will have an opportunity to file a regular second appeal on a question of law which is now denied to the parties to the suit whose value of the suit is

more than 10 lakhs. The unintended anomaly gets obliterated.

f) More Courts/judges at the district level adjudicating the appeals will ensure speedy and cost-effective justice for the parties. The existing Section 5 of the Act of 1961 and Section 19 of the Act of 1964 stand as a big obstacle to the concept of justice at the doorstep. The concept of 'justice at the doorstep' flows from Articles 14 and 21 of the Constitution of India and the same is not an empty formality. The amendment to Section 5 of the Act of 1964 and Section 19 of Act of 1961 conferring jurisdiction on the District courts to decide all appeals under Section 96 of the Code, from the decree passed in Senior Civil Judges' court, likely to be a significant step forward in achieving the noble object of speedy and cost-effective justice at the doorstep.

27. Though the above-suggested measures are likely to increase the number of Regular Second Appeals, one cannot be oblivious to the possibility that quite a few cases may get settled or attain finality at the District Courts level. Excluding those cases if all other contested matters come to the High Court in the form of Regular Second Appeals, given the scope of the Regular Second Appeals, quite a few of them may not get admitted and are likely to be decided in a comparatively less period.

28. Since the Court has discussed the matter relating to the huge pendency of old Regular First Appeals in the High Court, for almost similar reasons, it is not out of place to discuss the possibility of the amendment concerning the jurisdiction of the Court in deciding the appeals from the awards passed by the Motor Accident Claims Tribunal. Under the earlier law, the jurisdiction to decide the cases falling under Sections 166 and 163A of the Motor Vehicles Act, 1988 (For short 'Act, 1988') was with District Courts designated as Motor Accidents Claims

Tribunals. The law is amended in 1996, conferring jurisdiction on the Senior Civil Judges, designated as Additional Motor Accident Claims Tribunals. The law relating to the adjudication of claims arising under the Act,1988 is well settled in terms of various pronouncements of the Apex Court, which have virtually codified the law relating to the compensation payable under the Act, 1988. Under the existing regime of law, the appeals from the awards passed by Motor Accident Claims Tribunals (District Judges) and awards from Additional Motter Accident Claim Tribunals (Senior Civil Judge) would lie to High Courts. The statistics would also reveal that appeals under Section 173(1) of Act 1988, form a major portion of appeals in the High Court. The law relating to claims arising under Sections 166 and 163A of the Act,1988 is by and large well settled. The time is ripe to suitably amend the provisions of the Act, 1988 to confer the jurisdiction on the District Courts to decide the appeal from the awards of the Additional Motor Accidents Claims Tribunal and the jurisdiction relating to the claim petitions

exclusively to the Senior Civil Courts or to bifurcate the same between the Civil Judges and the Senior Civil Judges depending upon the pecuniary value of the claim.

29. The person seeking justice cannot afford to wait for decades. It certainly does not augur well for society at large. After all, life is too short to be spent litigating for decades in courts. The amendments indicated appear to be long overdue. Ours is a fast-developing nation that has sent two missions to Moon and one to Mars. When it comes to law reforms, we cannot afford to lag behind. We have no option but to initiate '*Law Reforms'*, particularly in procedural law, to meet the challenges emerging in the modern era.

30. Before parting, here is a caveat. The discussion in this judgment relating to the delay in the disposal of cases is not be construed as a criticism of the judiciary or any of the stakeholders. By and large, given the heavy workload, judges and the Court staff have been working beyond scheduled working hours and adjudicating a huge

number of cases. Advocates are assisting the Courts. Still, there is pendency for various reasons and some of them have been referred to in the foregoing paragraphs. The discussion in this judgment is an endeavor to invite the attention of all the stakeholders on the issue and let there be a productive deliberation at an appropriate level resulting in a workable solution for the issue flagged.

31. Registry to place the copy of this judgment before the Chief Justice for His Lordship's kind consideration and copy of the judgment be also circulated to the Chief Secretary of the State Government and the Principal Secretary to the Department of Law and Parliamentary Affairs.

(ANANT RAMANATH HEGDE)
JUDGE

Sh/brn
List No.: 1 Sl No.: 53