NC: 2024:KHC-D:2663
RSA No. 100047 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE R.NATARAJ

REGULAR SECOND APPEAL NO.100047/2023(PAR/POS)

BETWEEN:

BHIMAPPA S/O. FAKIRAPPA GUBACHI,
AGE: 51 YARS, OCC: AGRICULTURE,
R/O: GAVI TOTA, MUDALAGI 591312,
TQ: GOKAK, DIST: BELAGAVI.

...APPELLANT

(BY SRI SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

1. RAMACHANDRA LAXMAN GUBACHI,
   AGE: 61 YEARS,
   OCC: AGRICULTURE,
   R/O: C/O: ANAND COMMUNICATION,
   HIREBAGEWADI, NEAR BHAJI,
   MARKET, MAIN ROAD,
   HIRE BAGEWADI – 591 109.
   TQ AND DIST: BELAGAVI.

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2. SMT. RUKAMAWWA
   W/O. HANUMANT GUBACHI,
   AGE: 56 YEARS, OCC: HOUSEHOLD,
   R/O: NEAR HANUMAN TEMPLE,
   KURABAGATTI – 591 129,
   TQ: SOUNDATTI, DIST: BELAGAVI.

3. SMT. RANGAWWA
   W/O. MAHANTESH PATIL,
   AGE: 41 YEARS, OCC: HOUSEHOLD,
   R/O: NEAR HANUMAN TEMPLE,
   KURABAGATTI 591129,
   TQ: SOUNDATTI, DIST: BELAGAVI.

4. ANAND RAMACHANDRA GUBACHI,
   AGE: 34 YEARS,

OCC: AGRICULTURE,
R/O: GAVI TOTA MUDALAGI – 591 312,
TQ: GOKAK.

5. SMT. LAXMIBAI
W/O. PRAKASH DANKINAVAR,
AGE: 44 YEARS, OCC: HOUSEHOLD,
R/O: OPPOSITE KAREMMA TEMPLE,
MUDALAGI – 591 312,
TQ: GOKAK.

6. FAKIRAPPA BHIMAPPA GUBACHI,
AGE: 25 YEARS,
OCC: AGRICULTURE,
R/O: GAVI TOTA MUDALAGI – 591 312,
TQ: GOKAK.

7. ARJUN FAKIRAPPA GUBACHI,
AGE: 46 YEARS,
OCC: AGRICULTURE,
R/O: GAVI TOTA MUDALAGI – 591 312,
TQ: GOKAK.

…RESPONDENTS

(BY SRI MAHANTESH S. HIREMATH, ADVOCATE FOR R2 AND R3;
NOTICE TO R1, R6, R4, R5 AND R7 IS SERVED)

THIS RSA IS FILED U/S 100 OF CPC., PRAYING TO MODIFY THE IMPUGNED JUDGMENT AND DECREE PASSED BY THE XII ADDITIONAL DISTRICT AND SESSIONS JUDGE BELAGAVI SITTING AT GOKAK IN R.A NO. 275/2016 DATED 17.08.2019 AND ALSO THE IMPUGNED JUDGMENT AND DECREE IN O.S NO. 67/2014 DATED 26.03.2016 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE GOKAK AND DECREE THE SUIT OF THE PLAINTIFF IN ITS ENTIRETY, IN THE INTEREST OF JUSTICE AND EQUITY.

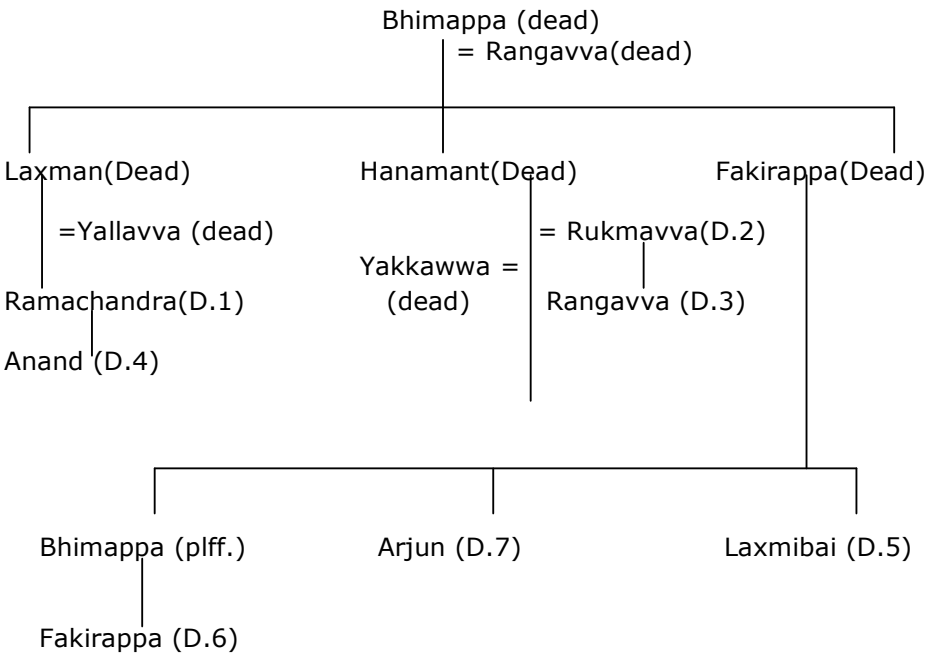
THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The plaintiff in O.S.No.67/2014 on the file of the Principal Senior Civil Judge, Gokak (hereinafter referred to as the 'trial Court' for short) has filed this regular second appeal challenging the judgment and decree dated 26.03.2016 passed by the trial Court and the judgment and decree dated 17.08.2019 passed in R.A.No.275/2016 by the XII Addl. District & Sessions Judge, Belagavi, sitting at Gokak (hereinafter referred to as the 'First Appellate Court' for short) by which the suit for partition was decreed but the share of deceased Smt. Yallawwa was not apportioned to him.

2. The suit in O.S.No.67/2014 was filed for partition and separate possession of his 1/9th share in the suit schedule property.

3. For the sake of brevity and easy understanding, the genealogy of the plaintiff and defendants are extracted below;



4. The plaintiff claimed that the suit property was a joint family ancestral property where he along with other defendants were entitled to an undivided share. He claimed that his request for partition in the suit property was not considered and therefore, he filed the present suit which was in respect of the land bearing Sy.No.352/1B measuring 6 acres 16 guntas.

5. Defendants No.1 and 2 though entered appearance did not file any written statement, while,

defendants No.3, 5 and 7 were placed *exparte*. Likewise, defendant No.6 did not file written statement though he entered appearance.

6. The plaintiff was examined as PW1 and he examined a witness as PW2 and marked Exs.P1 to P3.

7. Based on the oral and documentary evidence, the trial Court held that the plaintiff and the defendant No.6 were entitled to 1/9th share in the suit schedule property while the defendants No.5 and 7 were entitled to 1/9th each and defendants No.1 and 4 were together entitled to 1/3rd share and defendants No.2 and 3 together were entitled to 1/3rd share.

8. The plaintiff being aggrieved by the said judgment and decree, filed R.A.No.275/2016. In the course of the appeal, the plaintiff filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and enclosed therewith a mutation extract in ME.No.1101 and a copy of the unregistered relinquishment deed allegedly

executed by Smt. Yellawwa. It was contended that the plaintiff was entitled to the share of Yellawwa who was the first wife of Hanumant. This application was rejected by the trial Court on two grounds namely;

(i) that Tahsildar could not have certified the mutation proceedings when the right to relinquish her right was in issue.

(ii) that the document was not duly registered.

Consequently, it dismissed the appeal in terms of the impugned judgment.

9. Being aggrieved by the same, the plaintiff has filed this regular second appeal.

10. Learned counsel for the plaintiff submits that Smt. Yellawwa being the first wife of Hanumant, was also entitled to a share in the suit property and that she executed deed of relinquishment on 29.12.1995 and therefore, the trial Court and the First Appellate Court while disposing off the suit must have allotted the share of Smt. Yellawwa to the plaintiff.

11. Learned counsel for the defendants however contend that when the suit was filed, the plaintiff did not mention about the relinquishment of share of Smt. Yellawwa in his favour but claimed that the relinquishment was in favour of defendant No.6 and mutation entries were made to that effect. However, such relinquishment deed was not duly registered and was not even produced before the trial Court. Therefore, the plaintiff cannot now claim that he was entitled for a larger share including the share of Smt. Yellawwa.

12. I have considered the submissions made by the learned counsel for the plaintiff and the defendants.

13. This appeal is liable to be rejected on two grounds, namely;

(i) that the relinquishment deed dated 29.12.1995 propounded by the plaintiff was not duly registered and therefore, was inadmissible in evidence and the plaintiff was not entitled to claim the share of Smt. Yellawwa.

(ii) the plaintiff claimed in the suit that the relinquishment deed was in favour of the defendant No.6. However, the defendant No.6 did not file any written statement and did not point out to relinquishment deed allegedly executed by Smt. Yellawwa.

14. The defendant No.6 did not file the appeal before the First Appellate Court or before this Court claiming the share of Smt. Yellawwa. Therefore, the claim of the plaintiff that the share of Smt. Yellawwa ought to have been allotted to him has no basis.

15. As no substantial question of law arises for consideration in this appeal, the same is ***dismissed***.

SD/-
JUDGE

RH
List No.: 1 Sl No.: 41
CT-ASC