HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.1403 OF 2023 (PAR)

BETWEEN:

1. SRI. HUCHANAIKA
   S/O LATE THOLAMANCHANAIKA
   AGED ABOUT 69 YEARS

2. SRI KADANAIKA
   S/O LATE THOLAMANCHANAIKA
   AGED ABOUT 66 YEARS

   BOTH ARE R/AT UDBOOR VILLAGE
   2ND BLOCK, JAYAPURA HOBLI
   MYSURU TALUK
   MYSURU-570 008.

...APPELLANTS

(BY SRI. MANJUNATH PRASAD V., ADVOCATE)

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

AND:

1. SRI. MANCHANAIKA
   S/O LATE THOLAMANCHANAIKA
   AGED ABOUT 72 YEARS

2. SMT. MANCHAMMA
   W/O HUCHNAIKA
   AGED ABOUT 57 YEARS

3. SRI KARINAIKA
   S/O LATE THOLAMANCHANAIKA
   AGED ABOUT 58 YEARS

ALL ARE R/AT UDBOOR VILLAGE
2ND BLOCK, JAYAPURA HOBLI
MYSURU TALUK
MYSURU-570 008.

…RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 20.04.2023 PASSED IN R.A.NO.277/2021 ON THE FILE OF THE V ADDITIONAL SESSIONS JUDGE, MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 22.01.2021 PASSED IN O.S.NO.568/2011 ON THE FILE OF THE V ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MYSURU.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

1. Heard the learned counsel for the appellants. This matter is listed for admission. The second appeal is filed against the concurrent finding.

2. The plaintiff before the Trial Court claimed the relief of partition and separate possession claiming that the suit schedule property are ancestral and joint family properties of plaintiff and defendants. The appellant took the defense that there was a partition in respect of the suit

schedule properties and hence plaintiff is not entitled for the relief. The Trial Court having considered both oral and documentary evidence placed on record answered the issue No.1 as affirmative that properties belongs to the joint family property and also with regard to the earlier partition is concerned, when they have not placed any document before the Court that there was a partition, comes to a conclusion that there was no such partition and detailed discussion was made by the Trial Court and answered the issue No.2 as negative and granted the relief of partition granting 1/5th share in the suit schedule properties.

3. Being aggrieved by the said judgment, an appeal is filed in R.A.No.277/2021. The First Appellate Court having considered the grounds urged in the appeal formulated the point whether the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants and whether having share over the suit properties. The First Appellate Court having re-assessed

the material available on record, comes to the conclusion that the properties are joint family properties and also comes to the conclusion that Trial Court having considered the material available on record, particularly admitted the fact that suit schedule properties are being joint family properties of plaintiff and defendants, though set up plea of partition failed to prove the same and the same is answered that Trial Court has not committed an error and confirmed the judgment of the Trial Court.

4. Being aggrieved by the judgment and decree of the Trial Court as well as the First Appellate Court, present second appeal is filed before this court. The counsel mainly contend in the second appeal that both the Courts have erred in appreciating Ex.D.1 which discloses earlier partition and also the Trial Court was erred while allowing the partition to one of the share holder who has not been heard more than 25 years.

5. The counsel would vehemently contend that Ex.P.1 to Ex.P.7 RTCs' which clearly stands in the name of

the different persons can be considered as ancestral and joint family property and hence this court has to frame the substantive question of law. Having considered the material on record, the specific case of the plaintiff/respondent before the Trial Court that property is the joint family property and defendant not disputed the same, but only contention was taken that already there was a partition and in order to substantiate that partition, relying upon document Ex.D.1 and contend that there was a partition, but the same is not a registered document and same is also taken note of by the Trial Court in paragraph No.16 of the judgment comes to the conclusion that document is a unregistered one and also taken note of Section 6 of the Hindu Succession Act, 2005 and granted the relief of 1/5th share and when such discussion was made and First Appellate Court also re-appreciated the material available on record and not disputed the relationship between the parties and when the share was not given to the plaintiff and I do not find any error

committed by the Trial Court and First Appellate Court on both question of fact and question of law. Hence, no grounds to admit and frame substantive question of law.

6. In view of the discussions made above, I pass the following:

ORDER

Second Appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

RHS
List No.: 1 Sl No.: 55