

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4724 OF 2017
(Arising out of the SLP(C) NO. 15897 of 2014)

G B VENKATRAMANAPPA (D) THRU. LRS

APPELLANT(s)

VERSUS

NANJAPPA AND ANR

RESPONDENT(s)

O R D E R

Leave granted.

We have heard the learned counsel for the parties and perused the impugned order dated 26th March, 2014 passed by the High Court of Karnataka, Bangalore. From perusal of the impugned order we find that while admitting the Second Appeal under Section 100 of the Code of Civil Procedure, the following substantial question of law was framed.

" 1. Whether item no. 4 of the suit property which was granted to the first respondent herein, who was said to be in unauthorized cultivation of the same, would be held to be a joint family property only on the footing that there was no partition in the family as on the date of such grant.?"

2. Whether a partial partition in the family would negate his possession.?"

3. Whether Item no. 2 of the suit property which was purchased by the first respondent would also be held to be a joint family property only on the footing that the same was acquired during the subsistence of the joint status of the family except that there was a partial partition, when one of the brothers, had separated from the family and respondent has also left the family without receiving any share in the family property?"

Thereafter, without discussing anything as to why the aforesaid substantial question of law was required to be re-framed, the High Court at the time of the hearing of

appeal re-framed the substantial question of law as follows:-

"Whether the trial court was justified in framing issue no. 2 casting burden on the defendants to prove that the plaintiff had separated himself from the joint family 30 years ago, when such was not the pleadings of plaintiff and therefore the findings recorded by the trial court and the Lower Appellate Court are perverse?"

A Casual discussion on Issue no. 2 arising in the re-cast of the substantial question of law was mentioned by the learned Judge of the High Court and he remanded the matter back to the trial court for fresh consideration .

We are of the view that it was incumbent upon the High Court to decide second appeal on merits. With the aforesaid observations, we allow this appeal and restore the Second Appeal on the file. The order dated 26.03.2014 passed by the High Court of Karnataka is set aside.

We request the High Court to decide the said second appeal expeditiously.

The interim order which was operating during the pendency of the appeal shall stand vacated.

.....J.
[R.K. AGRAWAL]

.....J.
[MOHAN M. SHANTANAGODAR]

NEW DELHI;
MARCH 29, 2017

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 15897/2014

(Arising out of impugned final judgment and order dated 26/03/2014 in RSA No. 202/2009 passed by the High Court of Karnataka at Bangalore)

G B VENKATRAMANAPPA (D) THRU. LRS

Petitioner(s)

VERSUS

NANJAPPA AND ANR

Respondent(s)

(Interim Relief And Office Report)

Date : 29/03/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.K. AGRAWAL
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Nikhil Majithia, Adv.
Mr. Narender Singh Yadav, AOR

For Respondent(s) Mr. H.N. Nagamohan Das, Sr. Adv.
Mr. Vijay Kumar, Adv.
Mr. Naveen Nagarjun, Adv.
Dr. Sushil Balwada, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(LAYA RAWAT)
SR.P.A.

(CHANDER BALA)
COURT MASTER

(Signed order is placed on the file)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 15897/2014

(Arising out of impugned final judgment and order dated 26/03/2014 in RSA No. 202/2009 passed by the High Court of Karnataka at Bangalore)

G B VENKATRAMANAPPA (D) THRU. LRS

Petitioner(s)

VERSUS

NANJAPPA AND ANR
(Interim Relief And Office Report)

Respondent(s)

Date : 29/03/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.K. AGRAWAL
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Nikhil Majithia, Adv.
Mr. Narender Singh Yadav, AOR

For Respondent(s) Mr. H.N.N., Adv.
Mr. Vijay Kumar, Adv.
Mr. Naveen Nagarjun, Adv.
Dr. Sushil Balwada, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(LAYA RAWAT)
SR.P.A.

(CHANDER BALA)
COURT MASTER

(Signed order is placed on the file)