R

IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH

DATED THIS THE 14TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE C.M.JOSHI

REGULAR SECOND APPEAL NO. 7094 OF 2010 (DEC/INJ)

BETWEEN:

BASANGOUDA S/O NAGANGOUDA,

...APPELLANT

(BY SRI. SHIVAKUMAR KALLOOR, ADVOCATE)

AND:

1. MUDDANGOUDA S/O RAMANGOUDA,

2. MURALI S/O BASWARAJ,

3. SMT. NARSAMMA W/O BASWARAJ,

...RESPONDENTS

(NOTICE TO R1 & R2 ARE SERVED;
V/O DTD.16.08.2017 R2 IS TREATED AS LR OF DECEASED R3)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO ALLOW THIS REGULAR SECOND APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 24.11.2009 PASSED BY THE PRL. DISTRICT JUDGE RAICHUR IN R.A.NO.28/2008, CONFIRMING THE JUDGMENT AND DECREE DATED 06.03.2008 PASSED BY THE ADDL. CIVIL JUDGE SENIOR DIVISION, RAICHUR

Digitally signed by SOMANATH PENTAPPA MITTE
Location: High Court of Karnataka

IN O.S.NO.20/2006, AND ALLOW THE SUIT O.S.NO.20/2006 ON THE FILE OF THE ADDL. CIVIL JUDGE SENIOR DIVISION RAICHUR, FILED BY THE PLAINTIFF/APPELLANT IN THE ENDS OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD THROUGH PHYSICAL HEARING/VIDEO CONFERENCE AND RESERVED FOR JUDGMENT ON 01.03.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed against the judgment and decree passed in RA No.28/2008 on the file of the Prl. District Judge, Raichur arising out of the judgment and decree passed in O.S.No.20/2006 by the Additional Civil Judge (Sr.Dn.), Raichur dated 06.03.2008.

2. The appellant is the plaintiff in O.S. No.20/2006. The parties are referred as per their ranking before the Trial Court for the sake of convenience.

3. The appellant filed a suit for declaration and injunction contending that he had married Smt. Eshwaramma D/o Ramangouda in the year 1960 and his wife Eshwaramma was owner in possession of suit land bearing Sy.No.287/A measuring 22 acres 18 guntas

situated at Athanur village in Manvi Taluk. It was contended that after the death of his wife Eshwaramma, the plaintiff became a exclusive legal heir and the said Eshwaramma died issueless in the year 1998. It was also contended that the said Eshwaramma had acquired ownership over the suit property on the strength of the oral partition between her father and her brothers namely Muddanagouda, Sharanappa, Siddanagouda and Shanker in the year 1968. The partition which was initially oral, came to be recorded in a memorandum of partition and the same came to be registered on 21.09.1974. Initially, the suit survey number which was fallen to the share of Eshwaramma was measuring 26 acres 28 guntas and later a portion of it had to be surrendered to the Government in view of the ceiling limitations under the Karnataka Land Reforms Act. Ultimately Sy.No.287/A measuring 22 acres 18 guntas which is the suit property came to be retained by the said Eshwaramma. It was also contended that the Eshwaramma continued in possession of the said property till her death. However, there were some discrepancy in

the mutation entries and as such the name of Muddangouda continued in the record of rights. It was also contended that earlier the name of Eshwaramma was introduced along with the name of one Muddangouda in the cultivators column and the name of one Basavaraj came to be deleted, who died about two years back leaving behind his son Murali and his wife Narsamma. Taking advantage of these hollow entry, the defendants started obstruction in peaceful possession and enjoyment of the suit land and therefore the plaintiff who is the husband of Eshwaramma was constrained to file suit for declaration of his title as well as consequential relief of injunction.

4. On issuance of summons, the defendants did appear through their counsel, but they did not choose to prefer any written statement. The plaintiff was examined before the Trial Court as PW1 and two witnesses were examined on his behalf as PW2 and PW3. Ex.P1 to Ex.P4

came to be marked and received in evidence. None of these witnesses were cross examined by the defendants.

5. The Trial Court framed the following points for consideration.

1. Whether plaintiff proves that he is the owner and possessor of the suit land?
2. Whether the plaintiff proves the interference of the defendants?
3. Whether plaintiff is entitled for rectification of the entries?
4. What order?

6. After hearing the submissions by the counsel for the plaintiff, the suit came to be dismissed.

7. Aggrieved by the said judgment of the dismissal, the plaintiff approached the first appellate Court in R.A.No.28/2008. There also the defendants did not appear and after hearing the submissions by the learned counsel for the plaintiff, the first appellate Court by the impugned judgment dismissed the appeal. It is the said

judgment of the first appellate Court which is challenged before this Court.

8. This Court by order dated 23.04.2010 admitted the appeal and the following substantial question of law was formulated.

> Whether the lower appellate Court was justified in holding that Section 15(2) of The Hindu Succession Act was attracted in respect of the suit property and the same was allotted to the share of the wife of the plaintiff under a partition deed?

9. The records of the Trial Court as well as the first appellate Court have been secured. Even before this Court, the defendants, who were arrayed as respondents did not appear despite service of notice.

10. I have heard the arguments by learned counsel appearing for the appellant.

11. The short point on the question of law that emanates in the present second appeal is regarding the nature of the acquisition of the property by deceased Eshwaramma. The Trial Court as well as the first appellate Court have come to the conclusion that though there was a partition among the father of Eshwaramma and her brothers thereby the suit property came to be allotted to the share of Eshwaramma, it amounts to inheritance and therefore in view of the exception carved out in Section 15(2) of Hindu Succession Act, after the demise of Eshwaramma the property would revert back to her siblings, but not on the plaintiff. It is relevant to note that the relationship between the plaintiff and deceased Eshwaramma and that Eshwaramma died intestate and issueless is not disputed by anybody.

12. The learned counsel appearing for the appellant submitted that only if a female Hindu has inherited the property by way of succession, the exception carved out in Section 15(2) of Hindu Succession Act would come in play

and it would not be applicable if the acquisition of the property by a female Hindu is by way of gift sale or such other modes. He submits that the deceased Eshwaramma had acquired the property on the basis of the registered memorandum of partition and by virtue of such partition, she had become absolute owner of the suit property. He submits that such acquisition property by Eshwaramma could not have been considered to be by way of inheritance and therefore both the Courts below have erred in holding that the suit property would revert back to this siblings of deceased Eshwaramma. In this regard, he relies on several decisions.

13. The provisions of Section 15(1) and 15(2) of Hindu Succession Act reproduced below for better understanding:

> **15(1)** The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

15(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

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14. The learned counsel appearing for the appellant has placed reliance on the decision in the case of ***S.Padamavathamma V/s S.R.Srinivasa and Others***[1], wherein it was held that the provisions of Section 15(2) applies only when the property is acquired by a female by way of intestate succession, otherwise, the property will devolve as directed under Section 15(1) of the Hindu Succession Act. It was held that the word "inherited" employed in Section 15(2) does not include in its fold acquisition of right by other modes and devices like *inter-vivos* transfer of the right or by Will. The learned counsel appearing for the appellant also relied on the decision in the case of ***Bhagat Ram (dead) V/s Teja Singh***[2], wherein it was held that the property of female Hindu can be classified under two heads and every property of female Hindu dying intestate is a general class by itself covering all the properties but sub- section (2) excludes out of the aforesaid properties the property inherited by

[1] ***2004(1) KCCR 508***

[2] ***AIR 1989 SC 1944***

her from her father or mother. On the basis of the above decisions, it is submitted that the suit schedule property was owned by Eshwaramma and she had acquired the said property in a partition among her siblings and her father and therefore he contends that it is not a acquisition of property by inheritance, but it is otherwise than inheritance and as such the exception of Section 15(2) is not applicable.

15. The decision in the case of ***Bobballapati Kameswararao V/s Kavuri Vasudevarao***[3], rendered by Andhra Pradesh High Court, gives an interpretation of Section 15 of the Hindu Succession Act. In para 10, 11 and 12 it was observed as below:

> "**10.** If these requirements are complied with then the property of such a female Hindu intestate shall devolve upon the heirs of her father and not upon the other heirs referred to in sub-section (1) and in the order specified therein. It is a common

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[3] ***AIR 1972 AP 189***

ground that K.Mahalakshmamma died intestate that she was not survived by any son or daughter of children by any predeceased son or daughter. The only question which was agitated before us was that though K.Mahalakshamma got by will from her mother Raghavamma the property is inherited by her from her mother within the meaning of section 15(2)(a) and as admittedly the 1st defendant is the heir of the father of K.Mahalakshmamma, he is entitled to the property and not the plaintiff. On the other hand it was contended by the plaintiff that K.Mahalakshmamma has not inherited the suit property from her mother but it was bequeathed to her. Therefore sub-section (2) is not applicable and since the plaintiff is the heir of the husband of Mahalakshmamma he comes within the purview of Section 15(b) and in the absence of persons referred to in clause (a) he would inherit the property under clause (b). The fate of the case therefore ultimately hangs upon the decision whether K.Mahalakshmamma had inherited the suit property from her mother.

11. The term 'inherited' employed in sub-section (2) is not defined in the Act. A reading of Section 14(1) of the Act would indicate that the words 'device' meaning 'bequest' under the will and 'inheritance' are used separately. They are distinct expressions and therefore must convey two separate meanings. The term 'inheritance' therefore would have to be given a meaning which would not include 'device' or a 'bequest under the will'. The term 'inheritance' therefore acquires a restricted meaning and not a wide one though in other Acts or Constitution the word 'inheritance' may have been given a broader meaning. It accords well with the principles enunciated above that as sub-section (2) is an exception to sub-section (1) it must be taken to have limited the generality of sub-section(1) and consequently the word 'inheritance' will have to be given a narrow meaning because it is in accord with the legislative intent. If that term is given the widest possible meaning so as to include within it a will, gift or any transfer inter vivos as is urged by the learned advocate for the appellant, then

sub-section (2) ceases to serve as an exception to sub-section (1) and would be so general as to make sub-section (1) ineffective and it would almost destroy it to that extent. It would mean that property acquired by a female from her mother, father, husband or father-in-law by whatever means, would devolve after the death of the female intestate dying issueless in all cases under Section 15(2) only, sub-section (1) being applicable to other kinds of acquisition by the female from other persons than the one mentioned in sub-section (2), thus there would be two distinct provisions for devolution of property according to the source from which the property is acquired by the female. And in such a case the transfer in whatever form may have been made by the persons mentioned in sub-section (2) in favour of the female would be meaningless and ineffective. Sub-section (2) then would be enlarged in its scope and would function as an independent provision and not strictly as an exception to sub-section (1).

12. It is manifest that Section 14 abolishes the various kinds of stridhana and

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property of every kind possessed by a female Hindu however acquired and whenever acquired now becomes her absolute property. She can effect any transfer inter vivos like anyone else and can also bequeath the property by will. She can thus prevent the property without allowing (sic) it to go back to the heirs of her father, mother, husband or father-in-law. If all such transfers are brought within the meaning of inheritance in Sec.15(2), then in spite of such transfers if she dies issueless and if the case is otherwise coming under sub-section (2) then the property will devolve upon her father's or husband's heirs although they may have transferred the property inter vivos or by a will. We do not think that the legislature intended to produce such a result We are clear in our view that sub-section (2) provides for an exception only with regard to one source of acquisition viz. the inheritance and then again the exception is confined to the property inherited by her either from her father or mother or husband or father-in-law and from none else. There is therefore, no justification to clothe the word 'inheritance' with wider meaning than what

it is capable of in the context in which it is used. It means only the acquisition of the property by succession and not be device under a will. The word 'inherit' thus can in the context only mean 'to receive property as heir' or 'succession by descent'."

16. I fully agree with the above interpretation made by the Andhra Pradesh High Court. Coming to the question whether the acquisition of the property by Eshwaramma falls within the interpretation made in respect of Section 15(2) of the Hindu Succession Act, it is necessary to look into the memorandum of partition which has been got registered in the year 1974. The certified copy of the memorandum of partition is produced at Ex.P1. On page No.2, it is stated as below:

"Whereas certain disputes and differences arise between the parties in the year 1968 and party No.3, began to demand his legal share in Schedule 'A' properties and in order to avoid unpleasant invidents, and to keep harmony and maintain cordial relationship between the parties, at the

intervention of elders and well-wishers of the parties the parties 1 to 5 divided and partitioned all the Schedule 'A' properties and divided them into five parts as per schedule 'B' 'C' 'D' 'E' 'F' and 'G' of this deed and allotted the lands shown in schedule 'B' to party No.I., Schedule 'C' to party No.2, and Schedule 'D' to Party No.3, Schedule 'E' to party No.4, Schedule 'F' to party No.5, and Schedule 'G' to party No.6, and this division of the property took place at Garaldinni village taluk Raichur in the month of April 1968."

Further on page No.3 it is stated as below:

"That, each of the parties to this deed had accepted the partition as final and binding on the following terms:-

1) Each of the parties to this deed has relinquished all his rights and interests whatsoever over the properties allotted and gone to the share of other parties and has recognised the other parties as the absolute and exclusive owner and possessors of the lands taken to their shares.

> That each of the parties to this deed had recognised the rights of each of other parties to get their names entered into relevant revenue and other records in respect of the lands got to their shares.
>
> That, each of the parties to this deed had agreed to do and execute all such lawful acts and deeds so as to constitute the lands fallen to the share of other party, his absolute property."

17. Thus, it is evident that by registering the memorandum of partition, they have given effect to the partition they entered into between them. They have declared that the property fallen to their respective shares would be absolute property belonging to them and the rights and interests have also been relinquished. Such kind of oral partition recorded in the form of memorandum of partition is permissible under the Hindu Law. Therefore, it is evident that by virtue of memorandum of partition, the parties agreed that the shares allotted to them will be enjoyed as an absolute property.

18. Now the question is whether the partition as per the Ex.P1 has to be construed to be inheritance. In a considered opinion of this Court, it is not possible to hold that the acquisition of the property by virtue of Ex.P1 by the deceased Eshwaramma cannot be construed to be a inheritance within the meaning of Section 15(2) of the Hindu Succession Act. Though the provisions of Section 15(2) do not use the word intestate succession, the word used being inheritance, it has to be construed in the narrow sense as discussed by Andhra Pradesh High Court in Bobballapati's case. Therefore, it is evident that deceased Eshwaramma had acquired the property on the basis of an instrument i.e. Ex.P1 by way of partition and such partition cannot be construed to be an acquisition by way of inheritance. It is also pertinent to note that the legislature has used the word inheritance in the light of the intestate succession and Section 15(2) carved out and exception to the general rule mentioned in Section 15(1) of the Act. Therefore, the acquisition of the property by a female Hindu either by Will, Gift will also include the

acquisition by way of a partition in the family. Once there is a partition and properties have been divided by metes and bounds, it becomes absolute property of such sharer. If the sharer had any surviving heirs at the time of partition, the property may become the joint family property of the acquirer and his family members. Therefore, the Ex.P1 cannot be construed to convey the property by way of inheritance at any stretch of imagination.

19. It is also to be noted that the provisions of Section 15(2) of the Hindu Succession Act deal with inheritance from the parental family of a female Hindu. Such inheritance cannot be by virtue of a instrument, but it is by way of intestate succession only. Under these circumstances combined reading of the interpretation of Section 15(2) of Hindu Succession Act coupled with the Ex.P1 memorandum of partition would go to show that the deceased Eshwaramma had become an absolute owner of the property and after her demise, the property would

devolve by way of general succession under Section 15(1), but not as provided under Section 15(2) of the Act.

20. For these reasons, the substantial question of law raised by this Court is answered in the negative.

21. Soon after the partition as per Ex.P1, the concerned registering authority should have entered the name of Eshwaramma in respect of the Sy.No.287 and if it has not been done, it is only an error on their part. It is not in dispute that 4 acres 20 guntas of the surplus land was surrendered to the Government and the remaining portion of the land was renumbered as a Sy.No.287/A. The said portion of a land in Sy.No.287/A was owned by the deceased Eshwaramma and after her death, it would devolve by way of succession and as such the plaintiff herein would acquire the rights held by Eshwaramma at the time of her death. Therefore it has to be declared that the plaintiff become owner of the property bearing Sy.No.287/A soon after the death of deceased Eshwaramma by way of intestate succession. If the

revenue records do not reflect the name of the plaintiff, it is for the revenue authority to make necessary rectifications in the revenue records based on the declaration of the ownership rights of the plaintiff by this Court. Therefore it is not necessary for this Court to give specific directions to the revenue authority as claimed by the plaintiff.

22. It is also necessary to note that either the Trial Court or the first appellate Court have not taken pains to look into the averments made in Ex.P1, memorandum of partition. The memorandum of partition at Ex.P1 clearly and categorically mentioned that the sharers thereof are the absolute owners of the property. Both the Courts below did not critically examine the provisions of Section 15(2) of the Hindu Succession Act vis-a-vis the Ex.P1. They went under the presumption that a partition deed do not create the rights, but it only recognizes that inheritance of the property. It is pertinent to note that the inheritance of the property need not be the metes and

bounds and only the rights are inherited. If it is testatory disposition in whatever mode it may be, it over rides the rule of intestate succession and therefore the impugned judgment is not sustainable under law. Hence, in the light of the discussions made above, the appeal deserves to be allowed. Hence, the following:

ORDER

The appeal is allowed.

The judgment and decree of both the Courts below passed in RA No.28/2008 dated 24.11.2009 and in O.S.No.20/2006 dated 06.03.2008 are hereby set aside.

The suit of the plaintiff is decreed. Plaintiff is declared to be the owner of the suit schedule property and consequently the defendants are restrained from interfering in the peaceful possession and enjoyment of the suit property by the plaintiff.

Sd/-
JUDGE

SMP
List No.: 1 Sl No.: 50

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