

Karnataka High Court C Jagadeesh vs N J Vidhya on 7 January, 2014 Author:
H.Billappa 1

IN THE HIGH COURT OF KARNATAKA, AT BANGALORE

DATED THIS THE 07TH DAY OF JANUARY 2014

BEFORE

THE HON'BLE MR.JUSTICE H.BILLAPPA

W.P.No.17301/2013 (GM-CPC)

BETWEEN:

1. C.Jagadeesh, S/o.Late Chikkahonnaiah, Aged about 59 years.
2. K.B.Rudramma, W/o.C.Jagadessh, Aged about 53 years.
3. N.J.Nayanraj, S/o.C.Jagadeesh, Aged about 24 years, All are
R/a.Ranganathapura, Nagavalli Post, Hebbur Hobli, Tumkur Taluk
& District. ...PETITIONERS

(By Sri.S.C.Vijayakumar, Adv.,)

AND:

1. N.J.Vidhya, D/o.C.Jagadeesh, Aged about 29 years, C/o.Doreswamy, 2
No.290/A, Puttappa Layout, New Thippasandra, Bangalore - 79.
2. T.R.Jayanna, S/o.Late Ramaiah, Aged about 68 years, Amarjyothinagar,
Behind Ramakrishna Ashrama, Tumkur. ...RESPONDENTS

(By Sri.N.Kumaraswamy, Adv., for R1; Sri.H.N.Basavaraju, Adv., for
M.R.Rajagopal, Adv., for R2)

This W.P. is filed under Article 227 of the Constitution

of India praying to quash the impugned order passed by the Learned Principal
Civil Judge and JMFC-1, Tumkur on IA No.4 in O.S.730/2008 dated 19.3.2013
vide Ann-F.

This petition coming on for Order this day, the Court

made the following:- ORDER In this writ petition under Article 227 of the Constitution of India, the petitioners have called in question, the order dated 19.3.2013, passed by the Trial Court in O.S.No.730/2008 on I.A.No.4 vide Annexure-‘F’. 2. By the impugned order at Annexure-‘F’, the Trial Court has rejected I.A.No.4 filed by the petitioners for recasting of issue No.1. 3. Aggrieved by that, the petitioners have filed this writ petition. 4. Briefly stated the facts are: The first respondent has filed suit in O.S.No.730/2008 for partition and separate possession of the suit schedule properties. In the said suit, the petitioners have contended that they have alienated item Nos.3 to 6 of the suit schedule properties for family necessity and the suit is barred by limitation. The Trial Court has framed the following issues: 1. Whether the defendants 1 to 3 prove that they alienated the suit item No.3 to 6 in favour of defendant No.4 for family and legal necessity? 2. Whether the defendants 1 to 3 prove that suit is barred by law of limitation? 3. Whether the plaintiff is entitled to the relief sought for? 4. What Order or Decree? 5. Thereafter, the petitioners have filed application for recasting issue No.1 as follows; Whether the plaintiff proves that the defendants 1 to 3 alienated the suit item No.3 to 6 in favour of defendant No.4 behind her back? The Trial Court has rejected the application. Therefore, this writ petition. 6. The learned counsel for the petitioners contended that the impugned order cannot be sustained in law. He also submitted that the first respondent has contended that suit item Nos.3 to 6 have been alienated behind her back and therefore, the burden is on the 1st respondent to prove that suit item Nos.3 to 6 have been alienated behind her back. Therefore, the Trial Court was not justified in rejecting the application. He, therefore, submitted that the impugned order cannot be sustained in law. 7. As against this, the learned counsel for the second respondent submitted that the impugned order does not call for interference. He also submitted that the petitioners have contended that the alienation is for family necessity and therefore, the burden is on the petitioners i.e., defendants 1 to 3 to prove that alienation was for family necessity. Therefore, the Trial Court has rightly framed issue No.1 placing burden on the defendants 1 to 3 to prove legal necessity. Therefore, the impugned order does not call for interference. 8. I have carefully considered the submissions made by the learned counsel for the parties. 9. I do not find any merit in the submission of the learned counsel for the petitioners. The suit is for partition and separate possession of the suit schedule properties. The defendants 1 to 3 i.e., the petitioners have contended that they have alienated suit item Nos.3 to 6 for family necessity. Therefore, the burden is on the petitioners to prove that the alienation was for family and legal necessity. The Trial Court has framed issue No.1 Placing burden on the petitioners to prove issue No.1. Rightly so. Therefore, the impugned order does not call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed. Accordingly, the writ petition is dismissed. Sd/- JUDGE. Bss.