IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 27th day of August, 2018

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

Regular Second Appeal No.880/2015 (Par)

BETWEEN:

- 1. LAKKANNA AGED ABOUT 44 YEARS S/O LATE SRI. RANGASHAMAIAH
- 2. RANGADHAMAIAH AGED ABOUT 46 YEARS S/O LATE SRI. RANGASHAMAIAH
- 3. SMT. THIMMAKKA
 AGED ABOUT 40 YEARS
 W/O SRI. THIMMAPPA
 AND D/O LATE SRI. RANGASHAMAIAH
- 4. LAKKAHANUMAIAH AGED ABOUT 34 YEARS S/O LATE SRI. RANGASHAMAIAH
- 5. SMT. VEERAMALLAMMA AGED ABOUT 72 YEARS W/O LATE SRI. RANGASHAMAIAH

ALL ARE R/AT BOMMAHALLI DODDABELAVANGALA HOBLI DODDABALLAPUR TALUK DODDADABALLAPUR -561 203

... APPELLANTS

(BY SHRI. V.F. KUMBAR, ADVOCATE)

AND:

- 1. RAMAIAH AGED ABOUT 62 YEARS S/O LATE SRI. KEMPAIAH
- 2. CHIKKAHANUMAIAH AGED ABOUT 61 YEARS S/O LATE SRI. KEMPAIAH

RESPONDENTS NO.1 & 2 ARE R/AT APPEGOWDANAPALYA DODDABELAVANGALA HOBLI DODDABALLAPUR TALUK DODDABALLAPUR-561 203

- 3. SRI. HANUMAIAH
 AGED ABOUT 65 YEARS
 S/O LATE SRI. RANGABETTAIAH
 R/AT BOOCHENAHALLI VILLAGE
 KOLLALA HOBLI, KORATAGERE TALUK-572 129
- 4. SRI. MUTHURAYAPPA
 AGED ABOUT 65 YEARS
 S/O LATE SRI RANGABETTAIAH
 R/AT KAMANA AGRAHARA VILLAGE
 DODDABELAVANGALA HOBLI
 DODDABALLAPUR TALUK
 DODDABALLAPUR-561 203
- 5. SRI. RANGAPPA AGED ABOUT 61 YEARS S/O LATE SRI. RANGABETTAIAH
- 6. SRI. NAGAPPA AGED ABOUT 57 YEARS S/O LATE SRI. RANGABETTAIAH

RESPONDENTS NO.5 & 6 ARE R/AT BOMMAHANAHALLI VILLAGE DODDABELAVANGALA HOBLI DODDABALLAPUR TALUK DODDABALLAPUR-561 203

- 7. SMT. GANGAMMA
 AGED ABOUT 52 YEARS
 W/O SRI. AJJAPPA AND
 DAUGHTER OF LATE RANGABETTAIAH
 R/AT TANNAVEERANAHALLI VILLAGE
 DODDABELAVANGALA HOBLI
 DODDABALLAPUR TALUK
 DODDABALLAPUR-561 203
- 8. SMT. KADAMMA
 AGED ABOUT 49 YEARS
 W/O HANUMAIAH
 R/AT BOOSTANAHALLI
 KOLALA HOBLI
 KORATAGERE TALUK-562 129
 TUMKUR DISTRICT
- 9. SMT. NAGAMMA
 AGED ABOUT 70 YEARS
 S/O LATE SRI. HULKUDAPPA
 R/AT HUNASEPALYA VILLAGE
 TUBAKUNTE MAJRA
 DODDABELAVANGALA HOBLI
 DODDABALLAPUR TALUK
 DODDABALLAPUR-561 203

... RESPONDENTS

THIS RSA IS FILED U/S.100 OF CPC AGAINST THE ORDER DATED:17.03.2015 PASSED IN R.A.NO.10001/2014 ON THE FILE OF SENIOR CIVIL JUDGE, DODDABALLAPUR, BANGALORE RURAL DISTRICT, DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED:08.10.2012 PASSED IN OS.NO.84/2008 ON THE FILE OF SENIOR CIVIL JUDGE, DODDABALLAPUR.

THIS RSA COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

JUDGMENT

Though this appeal is listed for hearing – interlocutory applications, with consent of learned advocate for the appellants, it is heard on merits for final disposal.

- 2. Plaintiffs have presented this appeal challenging order dated 17.3.2015 in R.A.No.10001/2014 on the file of Senior Civil Judge, Doddaballapura, Bangalore Rural District, dismissing their appeal and confirming dismissal of their suit in O.S.No.84/2008 for partition by the Senior Civil Judge, Doddaballapur.
- 3. Heard Shri V.F.Kumbar, learned Advocate for appellants.
- 4. For the sake of convenience, parties shall be referred to as per their status before Trial Court.

- 5. Plaintiffs brought the instant suit for partition and separate possession of their share in the joint family properties.
- 6. Defendants No.4 to 8 have remained ex-parte before the Trial Court. Defendants No.1 to 3 have appeared through their Advocate and filed their written statement. Defendant No.9 was impleaded during the pendency of the suit. In their written statement, defendants No.1 to 3, contended *inter alia* that plaintiffs had suppressed material facts:
 - that plaintiffs had earlier filed a suit for declaration and injunction in O.S.No.472/2009 and the same was dismissed on merits;
 - that an appeal challenging the said Judgment and Decree in R.A.No.8/2004, was also dismissed on merits;
 - that plaintiffs are not joint owners in possession of the suit schedule properties; and

- that there was an earlier partition and the properties were divided several decades back.
- 7. Based on the pleadings, Trial Court framed following issues:
 - "1. Whether plaintiffs prove that they are the joint family members along with defendants and suit schedule property is their joint family ancestral property?
 - 2. Whether suit is hit by Section 11 of C.P.C. as per the principles of resjudicata?
 - 3. Whether plaintiffs are entitled for the relief sought by them?
 - 4. What order or decree?"
- 8. With the above pleadings and issues, parties went to trial.
- 9. On appreciation of evidence, Trial Court has recorded its finding as follows:-

"On perusal of the above evidence, it is quite clear that PW 1 has categorically admitted that forefathers of the plaintiffs and defendants got partitioned their joint family properties in the year 1940 itself. So also, the grandfathers and legal representatives have dealt the properties fallen to their share independently. Further, witness has categorically admitted that some of the members have executed Registered Sale Deed with respect to the properties fallen to their share."

- 10. It has further recorded that PW.1 was admitted unequivocally that, the properties allotted to one Rangabettaiah were also partitioned in the year 1973. On an query by this Court, learned advocate for the appellants submits that the said Rangabettaiah is grand father's brother of first plaintiff-PW.1.
- 11. Answering issues No.1 to 3 in the negative, the Trial Court dismissed the suit with cost. The plaintiffs, feeling aggrieved by the Judgment and Decree of the Trial Court, challenged the same in an appeal before the First Appellate Court belatedly. The First Appellate Court directed plaintiffs to lead evidence with regard to delay in filing the

appeal. However, no evidence was let-in on the application for condonation of delay. Consequently, First Appellate Court dismissed the said application as also the appeal.

- 12. Shri V.F.Kumbar, learned advocate for the appellants urged that First Appellate Court erred in dismissing the appeal only on the aspect of delay. He argued that plaintiffs had challenged First Appellate Court's order, directing them to lead evidence in a writ petition before this Court. Therefore, the impugned order is unsustainable.
- 13. The learned Trial Judge has extracted the deposition of PW.1 in paragraph No.12 of the Judgment, which is in vernacular language (Kannada). He has also extracted the relevant portion of the cross-examination, which is in Kannada.

- 14. A careful perusal of the same shows that PW.1 has admitted that there was a prior partition of properties and there was subsequent partition among the different branches. In the light of specific admission by the first plaintiff, no exception can be taken to the findings recorded by the Trial Courts.
- 15. Plaintiffs filed appeal before the First Appellate Court on 23.12.2013. Evidence on I.A.No.1, for condonation of delay was not let-in till 17.3.2015 resulting in dismissal of appeal.
- 16. Having heard this appeal on merits, in view of specific admission by the first plaintiff that the suit properties who already partitioned, no substantial question of law arises for consideration in this second appeal.
- 17. In the circumstances, this appeal being devoid of merits is *dismissed*.

18. In view of dismissal of the appeal, all pending applications stand disposed of.

No costs.

Sd/-JUDGE

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