

Smt.Harijana Nagavva W/O Late ... vs Harijana Durugappa S/O Mariyappa on 21 November, 2024

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NC: 2024:KHC-D:17011
RSA No. 100690 of 2018

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 21ST DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MRS JUSTICE K.S.HEMALEKHA

RSA NO. 100690 OF 2018 (DEC/INJ)

BETWEEN:

SMT. HARIJANA NAGAVVA W/O. LATE KRISHNAPPA,
AGE: 60 YEARS, OCC. AGRICULTURIST,
R/O. DR.B.R. AMBEDKAR COLONY,
OLD H.B. HALLI, H.B. HALLI TALUK,
BALLARI DISTRICT-583 212.

... APPELLANT

(BY SRI. M AMAREGOUDA, ADVOCATE)
AND:

1. HARIJANA DURUGAPPA S/O. MARIYAPPA,
AGE: 40 YEARS, OCC. COOLIE,
2. HARIJANA YAMUNAPPA S/O. MARIYAPPA,
AGE: 45 YEARS, OCC. COOLIE,

Digitally
signed by

BOTH ARE R/O. MALVI VILLAGE,

VISHAL
VISHAL NINGAPPA
NINGAPPA PATTIHAL

H.B. HALLI TALUK, BALLARI DISTRICT-583 212.

PATTIHAL Date:
2024.11.26
10:57:51
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3. HARIJANA BALAVVA W/O. MAYAPPA,
AGE: 67 YEARS, OCC. COOLIE,
R/O. HAMAPASAGARA VILLAGE,
H.B. HALLI TALUK, BALLARI DISTRICT-583 212.

... RESPONDENTS

(BY KUM. RANJITA ALAGAWADI, ADVOCATE FOR
SRI. GANGADHAR J.M, AND
SRI. PRAVEEN P TARIKAR, ADVOCATE FOR R1 TO R3)

THIS RSA IS FILED U/SEC.100 OF CPC, AGAINST THE
JUDGEMENT & DECREE DTD:26.03.2018 PASSED IN R.A.NO.32/2016
ON THE FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, HAGARIBOMMANAHALLI, DISMISSING

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THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE
DTD:03.01.2013, PASSED IN O.S. NO.76/2011 ON THE FILE OF THE
ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST
CLASS, HAGARIBOMMANAHALLI, DISMISSING THE SUIT FILED FOR
DECLARATION AND INJUNCTION.

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

CORAM: THE HON'BLE MRS JUSTICE K.S.HEMALEKHA

ORAL JUDGMENT

Plaintiff is before this Court in this Regular Second Appeal, assailing the concurrent findings of facts recorded by the Court below, wherein, the suit seeking for declaration and injunction came to be dismissed.

2. Sy.No.843/B/1 measuring 5.30 acres out of 7.30 acres (hereinafter referred to as "Suit Property" for short). The case of the plaintiff that she is the legal heir of one Mayavva w/o Madigara Kadappa, who was the absolute owner of the suit property, and the revenue records was standing in the name of Madigara Mayavva continuously, when the plaintiff sought for change of mutation in her name as legal heir of Mayavva, the defendants objected to the entry without any right, hence NC: 2024:KHC-D:17011 the suit for declaration to declare that the plaintiff is the absolute owner in possession of the suit property and for permanent injunction.

3. On notice the defendants appeared, defendant No.1 had filed his written statement, the same was adopted by defendant Nos.2 and 3 inter alia contending that the suit property is the ancestral property of the defendants, originally belonged to Madigara Mayavva w/o Madigara Kadappa, the grandmother of defendant Nos.1 and 2, that one Harijana Balamma was eldest member in the family and she had two sons by name Kadappa, who is the husband of Mayavva and another Bharmapa, Kadappa had no issues and Bharamapa had five children by name Balamma (defendant No.3), Hanumavva, Chareppa (dead), Hanumanthappa (dead) and Ningamma, she has no issues,

that defendant Nos.1 and 2 are the sons of Hanumavva. The suit property was totally measuring 9.30 acres out of 5.30 acres belonged to Kadappa, katha standing in the name of Kadappa from 1981, after his NC: 2024:KHC-D:17011 death Mayavva being the legal heir, her name was appearing, that Kadappa and Mayavva died issueless, the plaintiff is not the legal heir of Mayavva and has wrongly shown herself to the granddaughter of Mayavva.

4. The trial Court based on the pleadings framed the necessary issues. In order to substantiate their claim, the plaintiff examined herself as PW1, two witnesses as PW2 and PW3, marked documents at Ex.P1 to Ex.P14. On the other hand defendant No.1 examined himself as DW1 and defendant No.3 examined as DW2, marked document at Ex.D1 to Ex.D13.

5. The trial Court based on the pleadings, oral and documentary evidence arrived at a conclusion that the plaintiff has failed to prove that the suit property is the ancestral property and the Mayavva w/o Madigara Kadappa is her maternal grandmother. By the judgment and decree the trial Court dismissed the suit.

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6. Feeling aggrieved, the plaintiff preferred appeal before the First Appellate Court. The First Appellate Court while appreciating the entire oral and documentary evidence affirmed the judgment and decree of the trial Court. Feeling aggrieved, the plaintiff is before this Court in this Regular Second Appeal.

7. Heard the learned counsel for the appellant and learned counsel for the respondents and perused the material on record.

8. The case of the plaintiff is that she is the absolute owner of the suit property having succeeded her maternal grandmother Mayavva w/o Madigara Kadappa. In order to substantiate the claim that the suit property belonged to Mayavva and she had one daughter namely Ningavva, who is the mother of the plaintiff, she examined herself as PW1 and two witnesses as PW2 and PW3, who are elder persons of the village. Section 50 of the Evidence Act, 1872 (Section 44 of Bharatiya Sakshya Adhiniyam, 2023) (herein after referred to as "the Act" for NC: 2024:KHC-D:17011 short) contemplates that when Court has to form an opinion as to the relationship of one person to another, the conduct expressed by the party or the opinion of any person as a member of a family or otherwise, has special means of knowledge on the subject is relevant.

9. PW2 and PW3 are not the members of the family, moreover perusal of the evidence of PW2 and PW3 to establish that the said persons had any special means of knowledge with regard to relationship of the plaintiff with that of Mayavva, as contemplated under Sec 50 of the Act, under the said circumstance, the trial Court was justified in not considering of evidence of PW2 and PW3, to prove the factum of relationship between the plaintiff with that of Mayavva, mere production of genealogical tree at Ex.P1 at no stretch of imagination would prove the relationship of the plaintiff with that of Mayavva.

10. Learned counsel for the appellant submits that the defendants have not produced any iota of evidence to prove that they are the successors of Mayavva and in that NC: 2024:KHC-D:17011 circumstances, the trial Court was not justified in dismissing the suit of the plaintiff. It is settled law that the plaintiff cannot depend upon the weakness of the defendants and the burden of proof, which is casted upon the plaintiff has to be established by leading independent and cogent evidence, there being no corroborative and cogent evidence to establish the relationship of the plaintiff with that of Mayavva, the trial Court was justified in dismissing the suit.

11. The First Appellate Court being the last fact finding Court has appreciated the entire oral and documentary evidence independently and rightly arrived at a conclusion that the plaintiff has failed to prove her relationship with that of Mayavva and her interest over the suit property. The manner in which the Courts below have assessed the entire oral and documentary evidence, this Court is of the considered opinion that the same does not warrant any interference by this Court under Section 100 CPC and no substantial question of law arises for NC: 2024:KHC-D:17011 consideration in this appeal and this Court pass the following:

ORDER i. The Regular Second Appeal is hereby dismissed.

ii. The judgment and decree of the Courts below stands confirmed.

Sd/-

(JUSTICE K.S.HEMALEKHA) AT CT:PA