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O.S. No. 73/2021

IN THE COURT OF THE CIVIL JUDGE & JMFC., N.R.PURA

Present : Sri. Dasari Kranti Kiran, B.COM, LLB.,
Civil Judge & JMFC., N.R. Pura.

Dated : This the 20th day of April 2024.

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Plaintiff/s : Smt. Veronica Farooqui,
D/o Late Sri. Montho Castelino,
W/o Zaheer Yusuf Ali Farooqui,
Aged about 60 years,
R/o No. 16, 2nd Cross, Avani
Sringerinagar, Nyanappanahalli,
Begur Post, Bengaluru

(Represented by Sri. H.A. Saju, Adv.,)

V/S

Defendant/s : 1. Sri.Babli Castelino, S/o Monthu Castelino,
Aged about 79 years, R/o No.200/3, J.M.J.
Nilaya, 4th Cross, Near Webster School,
Sreeramanagara, Ittamadu, 3rd Stage,
Bengaluru.



Dead by LRs.

- 1(a) Smt. Leena Castalino, W/o Late. Sri. Babli
Castelino, Aged about 72 years, R/o No.200/3,
J.M.J. Nilaya, 4th Cross, Near Webster School,
Sreeramanagara, Ittamadu, 3rd Stage,
Bengaluru.
- 1(b) Smt. Seema Crasta, D/o Late. Sri Babli
Castelino, Aged about 43 years, R/o. 16/17,
9th Cross, Maruthi Nagar,
Opposite Venkateshwara College,
Madivala, Bangalore-560029.
- 1(c) Sri. Deepak Castelino, S/o Late. Sri. Babli
Castelino, Aged about 49 years,
R/o. 200/3, JMJ Nilaya, 4th Cross,
Near Webstar School, Sri Ramnagar,
Ittamadu, Banashankari 3rd Stage,
Bangalore-560085.
2. Sri. Anthony Demello, So Late Smt. Eliza
Demello, Aged about 54 years, R/o 2nd Floor,
5th Cross, Sheshadripuram, Shivamogga,
3. Smt. Jasintha Demello,
D/o Late Smt. Eliza Demello,
Aged about 53 years, R/o # 2409, 8th Main,
1st Cross, 1st Stage, Rajeev Nagara, N.R. Mohalla,
Near Nimrah Masjid, Mysore-570 019.

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4. Smt. Anitha Furtado, D/o Late Smt.Eliza Demello, Aged about 46 years, R/o # 2409, 8th Main, 1st Cross, 1st Stage, Rajeev Nagara, N.R.Mohalla, Near Nimrah Masjid, Mysore-570 019.
 5. Sri.R.Vinuth, S/o Late Smt. Lucy Castelino, Aged about 41 years, R/o J.E. Civil, RTPS Colony, Shakthinagara, Raichur District.
 6. Sri.Vikas R., S/o Late Lucy Castelino, Aged about 39 years, R/o Jai Prakash Bariatu Road, Ranchi -834009, Jharkand.
 7. Smt. Juliyana Demello, W/o Moris Demello, Aged about years, R/o # 1093/A Ashirvad, Opp:Nalanda School, K.H.B., Colony, Gopala, Shivamogga.
 8. Sri.Naveen Castelino, S/o Late Babli Castelino, Aged about 47 years, R/o No.200/3, J.M.J. Nilaya, 4th Cross, Near Webster School, Sreeramanagara, Ittamadu, 3rd Stage, Bengaluru.
- (D2 to 7 – Exparte, D1, D1(a) to (c), D8
Represented by Sri. K.S. Santhosh Kumar,
Adv.,)

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Date of institution of the suit : 8.12.2021

Nature of the suit : Declaration, Partition
& Possession

Date of commencement of recording : 12.2.2024
evidence

Date on which the judgment : 20.4.2024
pronounced

Total duration : Year/s Month/s Days
2 4 12

J U D G M E N T

This is the suit brought by the plaintiff as against the defendants seeking for the relief of partition and separate possession of the plaintiff's share over the suit schedule property by declaring that the gift deed dated 10.11.2021 is not binding on the plaintiff.

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2. The brief facts of the plaintiff's case are as under:

It is the case of the plaintiff that, plaintiff and the 1st defendant, deceased Eliza Demello, Deceased Lucy Castelino, defendant No.7 and deceased one Felix Castelino are the children of Late Montho Castelino and Smt. Teresa D'Souza couples. That out of which Smt. Eliza Demello died leaving behind her children namely Anthony Demello, Jasintha Demello and Anitha Fertado, who are the defendant No.2 to 4, and another daughter namely Lucy Castelino was died leaving behind her children namely R. Vinuth and Vikas R., who are the defendant No. 5 and 6, and another son by name Felix Castelino was died without marriage. Further contended that, during the life time of Sri. Monthu Castelino, he has acquired the house property, which is the suit schedule property and he has purchased the suit schedule property from one Sri. F.F. Gonsolvis under the sale deed dated 20.7.1968 and accordingly the khatha of the said property was mutated in the name of Monthu Castelino and after his death, since the another son by name Felix Castelino was died without marriage,

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the khatha of the schedule property has been mutated in the name of the 1st defendant under the inheritance and that, since the mother of the plaintiff by name Smt. Teresa D'Souza was also died much earlier to her husband Monthu Castelino, and since the plaintiff and other daughters of the deceased Monthu Castelino were married and resided in different places, by misusing the said advantage, the 1st defendant without consent or knowledge of the other children of Monthu Castelino, has got mutated the suit schedule property into his name. It is the further case of the plaintiff that, the father of the plaintiff Monthu Castelino during his life time has not settled the schedule property and after his death, there was no any partition took place between the legal heirs of the deceased Monthu Castelino. Hence, the plaintiff, defendant No. 1, children of late Smt. Eliza Demello and children of Smt. Lucy Castelino and the defendant No. 7 are got equal right over the schedule property. The plaintiff has got equal 1/5th share, the defendant No. 1 has got 1/5th share, the defendant No.2 to 4 have jointly got 1/5th share towards their mother deceased Eliza Demello, defendant No. 5 and 6 jointly got 1/5th share towards their

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deceased mother Smt. Lucy Castelino and the defendant No.7 has also got 1/5th share out of the schedule property. Hence, the plaintiff and defendants are got legitimate right over the schedule property.

It is further case of the plaintiff that in spite of repeated approach made by the plaintiff, the defendant No. 1 has not agreed for the partition. Hence, the plaintiff decided to approach the court and while she tried to obtain the necessary documents, she came to know that the 1st defendant has played an act of defraud and foul to create a gift deed in favour of his son Naveen Castelino i.e. the defendant No. 8 under the registered gift deed dated 10.1.2021 in order to deprive the right of the plaintiff and other defendants. That the 1st defendant without any consent or knowledge of the plaintiff and other defendants No.2 to 7, has fraudulently, without having independent right over the schedule property has executed the gift deed in favour of the 8th defendant pertaining to the suit schedule property, which is void and not binding on the plaintiff. Hence, the plaintiff was constrained to bring this suit.

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3. After service of suit summons, the defendant No. 2 to 7 remained exparte. The defendant No. 8 appeared through his counsel and filed the written statement. In the written statement the defendant No. 8 denied all the plaint averments including the relationship and contended that after filing of the suit, the 1st defendant demised, hence their legal heirs are brought on record and contended that the 1st defendant in the year 1964 has served as Indian Army and thereafter the father of the 1st defendant for the purpose of work came from Lakkavalli and settled at Agrahara, N.R. Pura by doing work in the provisional store and contended that the father of the defendant No. 1(a) to 1(c) and the defendant No. 8 had purchased the suit schedule property out of the income derived by him in the name of the father of the defendant No. 1 and in spite of the said fact, the plaintiff has brought the suit which is not maintainable and further contended the 1st defendant out of their income has purchased the property in the name of the father of the 1st defendant who is Montho Castelino and after the death of father of 1st defendant, the 1st defendant acquired the property in accordance with law and he has executed the gift deed in

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favour of the 8th defendant and hence the plaintiff and the defendant No. 2 to 7 have no right over the suit schedule property seeking for partition. Hence, prays to dismiss the suit. During the pendency of the suit the said defendant No. 1 demised. Hence his L.Rs. who are defendant No. 1(a) to (c) were brought on record and were represented by their counsel Sri. K.S.S.

4. On the basis of the above pleadings, this court has framed the following issues:

1. Whether the plaintiff proves that the suit schedule property is the self acquired property of Late. Sri.Monthu Castelino?
2. Whether the plaintiff proves that the said Late.Sri Monthu Castelino died intestate?
3. Whether the plaintiff proves that after the death of Late. Sri. Monthu Castelino 1st defendant without consent or knowledge of the other children of the Late. Sri. Monthu Castelino, has got mutated the schedule property into his name?

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4. Whether the plaintiff proves that gift deed executed by defendant No.1 in favour of defendant No.8 does not bind on her?

5. Whether the plaintiff is entitled to the relief of partition?

6. Whether the plaintiff is entitled to the relief of 1/5 share in the suit schedule property?

7. What order or decree?

5. In order to prove her case, the plaintiff examined herself and filed chief affidavit in lieu of examination in chief as PW 1 and got marked the documents at Ex.P1 to P3. In spite of given sufficient opportunity, the defendant No. 1(a) to (c) and the defendant No. 8 have not adduced any evidence. Hence, the evidence of the defendant No. 1(a) to (c) and the defendant No. 8 is taken as nil and posted the case for arguments.

6. Heard the arguments of both parties. Perused the documents on record.

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7. My findings to the above issues are as under:

Issue No. 1 : In the affirmative.

Issue No. 2 : In the affirmative.

Issue No. 3 : In the affirmative.

Issue No. 4 : In the affirmative.

Issue No. 5 : In the affirmative.

Issue No. 6 : In the affirmative.

Issue No. 7 : As per the final order.
for the following reasons.

REASONS

8. **Issue No. 1 to 3:** As these issues are interconnected with each other, hence they are taken together for common discussion in order to avoid repetition of facts. The plaintiff in order to establish her case examined herself as PW 1 by filing chief affidavit which is nothing but replica of plaint averments and got marked 3 documents as per Ex.P1 to P3. Ex.P1 is the self declaration of family tree which reveals the relationship so as stated by the plaintiff in the plaint. Ex.P2 is the registered sale deed dated 27.5.1968 which reveals that the suit schedule property has been purchased by one Sri. Montho

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Castelino from one F.F. Gonsolvis. On perusal, the schedule therein do tally with the suit schedule and it also reveals that the father of the plaintiff during his life time purchased the same. Though the defendant No. 8 in the written statement denied the relationship, but at the same time the defendant has not come forward to challenge the Ex.P1, which is the self affidavit of genealogical tree. Hence, this court opined that the plaintiff has established the relationship of plaintiff and defendants. Further the plaintiff by producing the Ex.P2 clearly established that the suit schedule property has been purchased by the father of the plaintiff from one F.F. Gonsolvis on 27.5.1968 and the defendant No. 8 except contending in the written statement that out of the income derived from his father has purchased the property at Ex.P2 by him in the name of the father of the defendant No. 1 has not produced any piece of documents to establish the same. Hence, this court opined that the plaintiff has established that the plaintiff and the defendants are the legal heirs of deceased Montho Castelino and they are entitled for their share in the suit schedule property and the defendant No. 8 also not come forward to

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establish that the Montho Castelino has executed any such documents which preclude the plaintiff and defendants from claiming the share in the suit schedule property. Hence, this court answered issue No. 1 to 3 in the affirmative.

9. ***Issue No. 4:*** The plaintiff got marked document Ex.P3, which is the gift deed, dated 10.11.2021 and the recitals therein reveals that the 1st defendant has executed the gift deed in favour of the defendant No. 8. But it is the specific case of the plaintiff that the defendant No. 1 without consent and without the knowledge of the plaintiff and defendant No. 2 to 7, behind the back of plaintiff and defendant No. 2 to 7 has obtained the khatha in his name by providing false genealogical tree and has executed the gift deed in favour of the defendant No. 8 to curtail the rights of the other parties to the suit. On perusal, the schedule at Ex.P3 do tally with the suit schedule and the defendant No. 8 except taking the contention in the written statement that out of the income derived by his father has purchased the property in the name of father of the defendant No. 1, which was

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subsequently gifted by him to the defendant No. 8 as per Ex.P3, no piece of document has been produced by the defendant No. 8 to establish the same. Further the defendant No. 8 also not subjected the PW 1 for cross-examination neither has come forward to putforth any documents in this regard. Hence, this court opined that the plaintiff has established that the gift deed executed by the 1st defendant in favour of the 8th defendant is not binding on the plaintiff and other parties to the suit. Hence, this court answered issue No. 4 in the affirmative.

10. **Issue No. 5 and 6:** The plaintiff by ocular and documentary evidence clearly established that the plaintiff and defendants are the legal heirs of Montho Castelino and that during the life time of the father of the plaintiff, he has purchased the suit schedule properties from one F.F. Gonsolvis as per Ex.P2 and the plaintiff also established that the gift deed Ex.P3 executed by the defendant No. 1 in favour of the defendant No. 8 is not binding on her as the defendant No. 1 has no exclusive right over the suit schedule property. Hence, this court

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opined that the plaintiff is certainly entitled for the relief as sought for and she is entitled to her legitimate share in the suit schedule property. Hence, this court answered issue No. 5 and 6 in the affirmative.

11. **Issue No. 7:** In view of the above discussion on issue No. 1 to 6, proceed to pass the following order.

ORDER

The suit of the plaintiff is hereby decreed.

Accordingly, it is declared that the gift deed executed by the defendant No. 1 in favour of the defendant No. 8 dated 10.11.2021 is null and void and it is not binding on the rights of the plaintiff.

Consequently, the plaintiff is entitled to 1/5th share in the suit schedule property.

Similarly, the defendant No. 1(a) to (c) and the defendant No. 8 are jointly entitled to 1/5th share in the suit schedule property and the defendant No. 2 to 4 are jointly entitled to 1/5th share in the suit schedule property and the defendant No. 5 and 6 are jointly entitled to 1/5th share in the suit

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schedule property and the defendant No. 7 is entitled to 1/5th share in the suit schedule property.

As the parties to the suit are blood related, no order as to costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer directly on system, print out corrected and then pronounced by me in the open court on this the 20th day of April, 2024)

Sd/-xxx 20/4/2024
(Dasari Kranti Kiran)
Civil Judge & JMFC.,
N.R.Pura.

ANNEXURE

List of witnesses examined for the plaintiff:

PW 1 : Smt. Veronica Farooqui

List of witnesses examined for the defendants:

- NIL -

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List of documents marked for the plaintiff:

- Ex.P1 : Genealogical tree.
Ex.P2 : Certified copy of sale deed, dated 27.5.1968
Ex.P3 : Certified copy of gift deed, dated 10.11.2021.

List of documents marked for the defendants:

- NIL -

Sd/-xxx 20/4/2024
(Dasari Kranti Kiran)
Civil Judge & JMFC.,
N.R. Pura.