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**IN THE COURT OF THE III ADDL. DISTRICT AND
SESSIONS JUDGE, RAMANAGARA**

:Present:

Sri.Siddalinga Prabhu., B.Sc., LL.B.,
III Addl. District and Sessions Judge,
Ramanagara.

Dated this the 17th day of August 2021

RA No.136/2019
(Old RA No.16/2018)

Appellant :

V.Mahadevaiah,
S/o. Puttegowda,
Aged about 65 years,
Chakkere Village,
Malur Hobli,
Channapatna Taluk.

(Rept. By Sri.PS, Adv.)

- V/s. -

Respondents :

1) Smt.Sharadamma,
W/o. Late Nanjunda Bovi
Aged about 60 years,

2) Ramesh,
S/o. Late Nanjunda Bovi,
Aged about 34 years,

Both are residing at
Siddabovi Palya Village,
Bidadi Hobli,
Ramanagara Taluk.

3) Venkateshswamy,
S/o. Late Muniya Bovi,
Aged about 60 yeas,

4) Smt.Hanumakka,
W/o. Late Venkataswamy,
Since dead by her LRs.

4.a) Giryamma,
D/o. Late Venkataswamy and Hanumakka,
Aged about 53 years,

4.b) Lakkappa,
S/o. Late Venkataswamy and Hanumakka,
Aged about 58 years,

4.c) Gopal,
S/o. Late Venkataswamy and Hanumakka,
Aged about 53 years,

Both are residing at
Siddabovi Palya Village,
Bidadi Hobli,
Ramanagara Taluk.

(R1 & 2 – Sri.HBS, Adv.

R3 – Sri.LVS, Adv.

R4(a to c)-absent)

Date and Nature of decree of order appealed against	The impugned judgment and decree passed in OS No.370/2008 by the Addl. Civil Judge and JMFC, Ramanagara on 01.08.2018		
Date of filing	15.09.2018		
Date of Disposal	13.08.2021		
Duration	Years 02	Months 11	Days 02

* * *

JUDGMENT

The 3rd defendant Mahadevaiah of OS No.370/2008 which was decreed by judgment dated 01.08.2018 passed by the then Addl. Civil Judge and JMFC, Ramanagara, prefers this Regular Appeal u/s 96 of CPC.

2. That for the sake of convenience, the parties hereinafter referred to according to their respective ranks as assigned to them in the proceedings of OS No.370/2019 before the trial court.

3. The facts in brief leading to the present Regular Appeal are that:

Guruva Bovi S/o. Munagoda Bovi being the grantee of “Darkasth Land” measuring 2 acres 8 guntas in Sy.No.30/11 situated at Bannikuppe Village, Bidadi Hobli, Ramanagara Taluk (hereinafter referred to as **suit land**) was enjoying the said granted land during his life time. That said Guruva Bovi died intestate leaving behind his three sons by name Muniya Bovi, Venkataswamy Bovi and

Nanjunda Bovi. That subsequent to the death of said propositus, Muniya Bovi, the eldest son among the three siblings, got mutated the Revenue records pertaining to the suit land in his name by virtue of consent given by other two siblings. Thus Mutation and Revenue documents pertaining to the suit land stood in the name of said Muniya Bovi. That despite of the same, the three siblings have been enjoying the suit land as members of joint family. That there has been no partition among them even to the date of filing of suit. That being so, the said Muniya Bovi without any authority had sold the suit land in favour of 3rd defendant without the knowledge of and consent of other members of the Joint Family. The 3rd defendant having purchased the same, came near the suit land and started to interfere with the possession of the joint family. Therefore, the legal descendants i.e., the wife and son of Nanjunda Bovi, one of the three siblings, preferred the suit before the trial court as against the legal descendants of Muniya Bovi, defendant Nos.1 and 2, and the 3rd defendant seeking the relief of judgment and

decree for partition and for separate 1/3rd portion and possession in the suit land besides seeking the relief of declaration that the sale deed dated 11.07.1995 is null and void and for cost and other reliefs.

4. That the defendant Nos.1 and 2, the legal descendants of Muniya Bovi, did not file written statement.

5. The 3rd defendant Mahadevaiah, the purchaser of suit land, inter-alia pleads in his written statement to the effect that he was approached by Muniya Bovi with a narration that Muniya Bovi acquired the suit land through his ancestors. That Muniya Bovi was an absolute owner of suit land. That Revenue documents were handed over by Muniya Bovi to the 3rd defendant. That 3rd defendant had not only gone through such Revenue documents, but also made an enquiry with the villagers about the alleged possession of Muniya Bovi of suit land. That after having confirmed the said facts alleged to have been narrated by Muniya Bovi, he had purchased the suit

land by virtue of the registered sale deed dated 11.07.1995 for valid consideration amount of Rs.1,29,000/-.

6. The 3rd defendant further pleads to the effect that subsequent to the said purchase, the documents pertaining to the suit land were mutated in the name of 3rd defendant. That he had even applied for conversion of suit land for non-agricultural purposes and the conversion being obtained, the plaintiff should have paid more court fee on the plaint. That the plaint is hit by Law of Limitation. That by virtue of the sale deed aforementioned, the case on hand is hit by Sec.6A of Hindu Succession Act. By averring so inter-alia, the 3rd defendant had sought for dismissal of suit.

7. On account of the above said rival pleadings of the parties, the trial court had framed the following issues on 26.09.2013:

- 1) Whether the plaintiffs prove that themselves and defendant No.1 and 2 constitutes joint Hindu family?

- 2) Whether the plaintiffs prove that the suit schedule property is the ancestral and joint family property of themselves and defendant No.1 and 2?
- 3) Whether the defendant No.3 proves that, he is a bonafide purchaser of the suit schedule property?
- 4) Whether the defendant No.3 further proves that the suit is barred by limitation)
- 5) Whether the defendant No.3 further proves that the suit is hit by Sec.6A of Hindu Succession Act?
- 6) Whether the defendant No.3 further proves that the Court fee paid on the plaint is insufficient as contended in para 10 of the plaint?
- 7) Whether the plaintiffs are entitled for partition and separate possession of their 1/3rd share in the suit schedule property?
- 8) To what Decree or Order?

8. That in the course of trial before the trial court, the 1st plaintiff entered the witness box as PW.1 besides examining Venkatesh as PW.2. The documents of Genealogy, RTC documents, EC and sale deed executed in favour of 3rd defendant were adduced and got marked at Ex.P.1 to P.9.

9. The 3rd defendant entered the witness box as DW.1 and has adduced the documents of sale deed, endorsement, RTC documents, Mutation and another sale deed dated 17.03.1997 vide Ex.D.1 to D.15.

10. That the trial court having perused the materials placed before it was pleased to decree the suit with an observation that the court fee paid on the plaint by the plaintiff is sufficient, that the 3rd defendant is not a bonafide purchaser, that the sale deed dated 11.07.1995 executed in favour of 3rd defendant by Muniya Bovi is not binding on the plaintiffs.

11. That being not satisfied with the impugned judgment and decree of trial court, the 3rd defendant prefers the present appeal by urging the grounds to the following effect:

“That the impugned judgment is contrary to the law, facts of the case and the same is not liable to be sustained; that the trial court has utterly failed to discuss the oral as well as documentary evidence adduced by the parties to the suit; that the impugned judgment is arbitrary; that the object and spirit of Sec.3 of Indian Evidence Act has not been followed properly; that the plaintiff have utterly failed to establish the plaint averments in the course of trial; that since the year 1984-85, the suit land stood in the name of vendor of 3rd defendant and despite of the same, the trial court has decreed the suit by placing reliance on the documents adduced by the plaintiffs; that the fact that the suit was hit by the Law of Limitation is not considered by the trial court; that the fact that the plaintiffs were not in possession as on the date of plaint is

also ignored by the trial court while passing the impugned judgment; that while answering issue No.5, the trial court has assigned erroneous reasons vide para Nos.30 to 32 of its judgment; that the impugned judgment is based on surmises and conjunctures and therefore, the same is opposed to principles of law and those of procedural law; that viewed from any angle, the impugned judgment is liable to be interfered with.”

By averring so inter-alia, the 3rd defendant/appellant prays for allowing of the appeal under consideration.

12. The 3rd defendant files his written arguments by repeating the facts of the case, grounds of appeal. He further mentions in his written arguments to the effect that the three legal points viz., point in respect of insufficient court fee, point in respect of bar of suit under the provisions of Law of Limitation and point in respect of bar of suit by virtue of Sec.6A of Hindu Succession Act on account of sale deed executed by Muniya Bovi in favour of 3rd defendant were raised by him before the trial court and

that the trial court had passed erroneous reasons vide paras 30 to 32 of its impugned judgment. By averring so in written arguments, the 3rd defendant/appellant prays to set aside the impugned judgment and decree besides awarding cost and for such other reliefs.

13. The respondents despite of granting of sufficient time have not submitted their arguments. Therefore, the arguments on behalf of respondents were taken as not addressed.

14. Under the circumstances narrated hereinabove, the following points do arise for consideration:

1) Does the 3rd defendant/appellant, for the reasons urged in the grounds of Appeal, prove and establish that the impugned judgment dated 01.08.2018 passed by the trial court in OS No.370/2008 is liable to be set aside by this court of Appeal?

2) What order?

15. This court has perused the above said materials and this court assigns the following:

REASONS

16. POINT No.1: That in the case on hand, the 3rd defendant does not dispute the relationship among Muniya Bovi and his two siblings. Nor does he dispute that Muniya Bovi and two others are the children of afore-mentioned original propositus by name Guruva Bovi. Similarly, the 3rd defendant/appellant does not dispute the fact that suit land was originally granted in favour of Guruva Bovi. Therefore, this court of Appeal has no much discussions in respect of the afore-mentioned facts in this judgment.

17. It is the specific say of 3rd defendant that he was approached by Muniya Bovi with the Revenue documents pertaining to suit land. It is also his say that he had gone through those documents particularly the document of Mutation.

18. The said undisputed document of Mutation is marked at Ex.P.6. A careful reading of Ex.P.6, the same indicates that earlier to Mutation of RTC documents, the Revenue Authorities having been approached by the surviving heirs of Guruva Bovi had conducted an enquiry. In the said enquiry, the siblings Muniya Bovi, Venkataswamy and Nanjundaiah were present. That by virtue of consent given by Venkataswamy and Nanjundaiah, the Revenue documents pertaining to suit land were ordered to be mutated in the name of Muniya Bovi with a description as “Pouthy Katha” and that the said Mutation was done in respect of land bearing Sy.No.30/11. These observations in Ex.P.6 in all preponderance of probability as observed by the trial court in the impugned judgment indicates that the suit land is that of a joint family consisting of Muniya Bovi and his siblings Venkataswamy and Nanjundaiah and that there has been no interse partition among themselves. The document at Ex.P.6 does also say that Muniya Bovi does possess the suit land for himself along with his two

siblings as joint owners. Ex.P.6 does not say that Muniya Bovi was in absolute possession and owner of the suit land.

19. It is not the case of 3rd defendant/appellant that he had approached the other siblings viz., Venkataswamy and Nanjundaiah while purchasing the suit land. On the other hand, it is his specific say that he had made an enquiry with the villagers and had confirmed the alleged absolute possession of Muniya Bovi and therefore, he was constrained to purchase the suit land. This version by virtue of the observation made by the Revenue Authorities in Ex.P.6 cannot be accepted in the eye of law.

20. It is also pertinent to discuss in respect of the sale deed which is adduced in its original form and marked at Ex.D.15. A perusal of Ex.D.15 the sale deed dated 17.03.1997 indicates that the same was executed in respect of land measuring 1 acre 28 guntas bearing Sy.No.31/11 by Chikkamarakka W/o. Guruva Bovi, aged 75 years, Venkataswamy S/o. Muniya Bovi, aged 25 years,

Venkataswamy aged 60 years, Maddura Bovi and Nanjunda Bovi for himself and on behalf of his minor son Ramesh. This document at Ex.D.15 further indicates that the 3rd defendant herein done sale transaction in respect of another land measuring 1 acre 28 guntas in Sy.No.31/11 with all the members of joint family of late Guruva Bovi. But he has not transacted so while purchasing the plaint schedule property. Even the document at Ex.D.15 says that the sale deed schedule property was the ancestral property of family of Guruva Bovi. As the said sale deed was signed by heads of all the three branches including wife of Guruva Bovi, the said property has not been included in the plaint. As the sale deed dated 11.07.1995 exhibited at Ex.P.9 and Ex.D.1 was solely executed by Muniya Bovi, the plaintiffs have approached the trial court by exercising their legitimate right to seek partition.

21. Thus having done two different transactions within a span of 3 years in respect of properties of joint family as per Ex.D.1 and D.15, it is not good on the part of the 3rd defendant/appellant to say that the suit before the trial

court is hit by (a) Provisions of Sec.6A of Hindu Succession Act, (b) Law of Limitation and (c) Insufficient Court Fee on the plaint.

22. Ex.D.1 and D.15 do establish that the 3rd defendant did not take much care as that of an ordinary prudent purchaser while purchasing the suit land as per Ex.D.1. But he took sufficient care while purchasing the other property of joint family as per Ex.D.15. Therefore, the 3rd defendant cannot be treated as a bonafide purchaser vis-a-vis the suit property. As the members of joint family other than Muniya Bovi being not signatories to the documents at Ex.D.1, in view of the observations made by the Revenue Authorities as per Ex.P.6 and as it is not the case of 3rd defendant that the plaintiffs were aware of sale transactions as on the date of Ex.D.1 itself, this court is of the view that the reasons assigned by trial court vide paras 30 to 32 of impugned judgment are correct and that there is no scope to interfere with those reasons. Hence, while answering point No.1 in the **Negative**, this court proceeds to pass the following:

ORDER

The Regular Appeal filed by the 3rd defendant/appellant is hereby dismissed. Thus the impugned judgment and decree passed by the learned Addl. Civil Judge and JMFC, Ramanagara in OS No.370/2008 dated 01.08.2018 is hereby confirmed.

No order is passed in respect of costs.

Office shall draw Decree accordingly.

Send a copy of this judgment to the trial court along with the trial court records forthwith.

(Dictated to the Stenographer, thereof transcribed and computerized by her, then corrected, signed and pronounced by me in the open court on this the 17th day of August 2021)

(Siddalinga Prabhu)

III Addl. District and Sessions Judge,
Ramanagara.