



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 720 OF 2024 (PAR/DEC)

BETWEEN:

1. INDRESH H A
S/O LATE H. B. APPAJI GOWDA,
AGED ABOUT 61 YEARS
2. MADHUSUDAN. H. A.
S/O LATE H. B. APPAJI GOWDA,
AGED ABOUT 59 YEARS
3. S. P. INDRAYANI @ S.P. ROOPA
D/O LATE H.B. APPAJI GOWDA,
AGED ABOUT 46 YEARS,
W/O H.A. MADHUSUDHAN

ALL ARE RESIDING AT YADEHALLY,
NANJAPURA VILLAGE,
K. HOSAKOTE HOBLI, RAYARA KOPALLU POST,
ALUR TALUK, HASSAN DISTRICT-570 001.

...APPELLANTS

(BY SRI. SANGAMESH R B, ADVOCATE)

AND:

1. SMT NALINI
D/O H. B. APPAJI GOWDA,
AGED ABOUT 57 YEARS,
R/AT YADEHALLY, NANJAPURA VILLAGE,

Digitally signed
by
HEMALATHA A
Location: HIGH
COURT OF
KARNATAKA



K. HOSKOTE HOBLI, RAYARA KOPALLU POST,
ALUR TALUK, HASSAN DISTRICT-570 001

PRESENTLY RESIDING AT NO. MIG-350,
6TH CROSS, NEW ASTC HUDCO,
HOSUR-635 109, KRISHNAGIRI DISTRICT,
TAMIL NADU.

2. PADMA
W/O. DHARMAPPA,
AGED ABOUT 57 YEARS,
R/AT KARAGODU VILLAGE,
K-KOTE HOBLI, ALUR TALUK,
HASSAN DISTRICT-570 001.

...RESPONDENTS

(NIL)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 13.02.2024 PASSED IN RA NO.49/2021 ON THE FILE OF PRINCIPAL DISTRICT AND SESSIONS JUDGE, HASSAN, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 23.09.2021 PASSED IN OS NO.41/2016 ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE, HASSAN.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

1. Heard the appellants' (defendant Nos.2 to 4) counsel.
2. This second appeal is filed against the concurrent findings.



3. The factual matrix of the case of the plaintiff before the Trial Court is that she is the daughter of Late H.B.Appajigowda. Defendant No.1 is the wife, defendant Nos.2 and 3 are the sons of Late H.B.Appajigowda. Defendant No.4 is the wife of defendant No.3 and defendant No.5 is the purchaser of suit item No.4. The suit schedule properties are the self-acquired properties of Late H.B.Appajigowda. It is the specific contention of the plaintiff that her father died intestate and had not executed any document, conveying or bequeathing the suit schedule properties in favour of any member of the family. The sale executed in favour of defendant No.5 does not bind her and she is entitled to a 1/4th share in the properties. It is not in dispute that during the pendency of the suit, the mother, i.e., defendant No.1 also passed away.

4. The Trial Court, having considered both the oral and documentary evidence available on record, though the



defence was taken that they had paid the money, came to the conclusion that there was no documentary evidence to show that the plaintiff had relinquished her right. The sale made in favour of defendant No.5 was without the consent of the plaintiff. Hence, the Trial Court granted relief of a 1/3rd share in respect of the properties left by Late Appajigowda. The same was challenged before the First Appellate Court in R.A.No.49/2021. The First Appellate Court, having reassessed both oral and documentary evidence, extracted admissions on the part of PW1 as well as DW1. While considering the material on record, nothing was placed on record to show that the plaintiff had relinquished her right or received any money nor is there any document of relinquishment. Hence, the case set out by the defendants cannot be accepted and the judgments of the Courts below were rightly confirmed with proper reasoning. The same is now questioned before this Court.



5. Learned counsel for the appellants vehemently contended that both the Courts have failed to consider Exs.D2 to D9 (Bank Challans) and Exs.D14 (Bank Account Statement) and therefore, this Court has to frame a substantial question of law.

6. Having heard the learned counsel for the appellants, in spite of documents Exs.D2 to D9 being placed on record before this Court, i.e., the Bank Challans, the same only indicates that a payment was made and even Ex.D14 has also been produced. However, no documentary proof has been placed before the Court to show that the plaintiff had relinquished her right after receiving the said money. The mere making of payment in favour of the plaintiff and her husband cannot take away the right of the plaintiff in respect of the properties left by her father. If any document had been placed before the Court showing that she had received money and relinquished her right in respect of the properties left by her father, then such evidence could have supported the contention of the



appellant's counsel. In the absence of any documentary proof regarding the relinquishment of her right, even the payment made in favour of the sister by the defendants, cannot be accepted as proof of relinquishment.

7. Without any documentary proof with regard to the relinquishment of right of the plaintiff, even if the payment had been made in favour of the plaintiff, they would have taken her signature, at least while executing the sale deed in favour of defendant No.5. However, no such signature was taken and moreover, the plaintiff is not a party to the sale deed. Hence, both the Courts have come to the conclusion that the sale made in favour of defendant No.5 is not binding on the plaintiff. When such reasons have been given by the Trial Court and in the absence of any documentary proof regarding the relinquishment of her right, the very contention of the counsel appearing for the appellants that the documents or Exs.D2 to D9 and Ex.D14 confirm that the payment was made to the plaintiff and her right was relinquished cannot be accepted.



8. Since, no such documents have been placed before this Court, the question of framing any substantial question of law does not arise so as to invoke Section 100 of the CPC.

9. In view of the submissions made above, I pass the following order:

- a) The second appeal is ***dismissed.***

Sd/-
(H.P.SANDESH)
JUDGE