

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9984 OF 2011

ASHOKA & ANR.

Appellant(s)

VERSUS

M.C. SUJATA (DEAD) BY LRS. & ORS.

Respondent(s)

O R D E R

Heard learned counsel for the appellants.

This appeal emanates from the judgment and decree passed by the High Court of Karnataka at Bangalore dated 21.04.2006 in RFA No. 886 of 2002.

This appeal is filed by the original defendant Nos. 8 and 13. The suit for partition and separate possession of 1/5 share was filed by the respondent No.1 (plaintiff) in respect of suit properties. The present appeal, however, is filed by the purchaser of property at Item No.6 in schedule of properties. This appeal, therefore, is confined to the said property being Survey No. 768/1A - 0.20 gts. situated at Maddur Kassaba.

The appellant No.1 (defendant No. 8) had purchased the stated property from defendant Nos.1 and 4, brother and mother

respectively of the plaintiff. The sale deed records that the property was sold for legal necessity of the family. Admittedly, respondent No.1 became major in 1981 but the suit came to be filed only in the year 1994. The assertion made in the suit is that cause of action had arisen on 20.12.1993 for which the suit came to be filed in 1994. The Trial Court framed 9 issues on the basis of the pleadings filed by the parties. The Trial Court opined that the suit in reference to property at Item No. 6 in respect of which the present appeal has been filed, was bared by limitation. Additionally, the Trial Court opined that no relief had been claimed by the plaintiff to declare that the sale deed executed in favour of the appellants as illegal, void or not binding on the plaintiff. On that basis, the relief claimed by the respondent No. 1 (plaintiff) came to be rejected by the Trial Court.

The respondent No.1 carried the matter in appeal before the High Court. The High Court proceeded on the assumption that the property became available for partition by applying Section 14 of the Hindu Succession Act, 1956; and decreed the suit in favour of respondent No.1 by declaring that she was entitled to half share in all the scheduled properties.

As aforesaid, the challenge in the present appeal to the decree passed by the High Court is limited to the suit property at Item No. 6 mentioned hitherto. During the pendency of the present appeal, the respondent No.1 has died. The appellants moved an application for bringing her legal heirs on record, namely, the

respondent No.5 being her mother. That application was allowed on 14.03.2011. From the record, it appears that on 17.08.2011, some advocate by name Mr. N.K. Verma appeared before the court and undertook to file appearance on behalf of respondent No.5 who has been brought on record also as the legal heir of respondent No. 1 (plaintiff). However, no appearance has been filed so far. As a result, we have no option but to proceed against the contesting respondent ex parte.

After having perused the judgment of the Trial Court and also the High Court and the relevant material on record, we have no hesitation in taking the view that the High Court committed manifest error in reversing the decree passed by the Trial Court at least in respect of the suit property described as Item No.6 in the schedule of properties which was purchased by the appellants on 10.06.1981 by a registered sale deed and which sale deed has not been challenged. The suit came to be filed almost after a gap of 12 years therefrom and more so after 13 years from respondent No.1 (plaintiff) attaining majority in 1981. In such a situation, no relief can be granted to the plaintiff as the property already stood transferred and more so in light of the just finding recorded by the Trial Court that the transfer of the subject property in favour of the appellants was for legal necessity of the family, which fact has been mentioned in the registered sale deed itself and had remained unchallenged.

Taking any view of the matter, the impugned judgment and decree of the High Court qua property at Item No.6 of the suit schedule, cannot be sustained and the same is set aside. Instead, the judgment and decree passed by the Trial Court rejecting the suit for partition and possession in respect of the said property (at Item No.6) is affirmed. No order as to costs.

The Civil Appeal is allowed accordingly.

.....J
(A.M. KHANWILKAR)

.....J
(AJAY RASTOGI)

New Delhi
March 12, 2019

ITEM NO.102

COURT NO.9

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 12-03-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. K. V. Mohan, AOR
Mr. K.V. Balakrishnan, Adv.
Mr. Rahul Kumar Sharma, Adv.

For Respondent(s)

Ms. Anjana Chandrashekar, AOR

Mr. V. N. Raghupathy, AOR
Mr. Parikshit P. Angadi, Adv.
Md. Apzal Ansari, Adv.
Mr. Manendra Pal Gupta, Adv.UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)(VIDYA NEGI)
COURT MASTER (NSH)

{Signed order is placed on the file}