

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 903 OF 2001

ABDUL KHADER (D) THR. LRS. . . . APPELLANT(S)

VERSUS

ABDUL GANI & OTHERS  
...RESPONDENT(S)

ORDER

1. The present appeal has been filed challenging the judgment dated 3.4.1998 passed by the High Court of Karnataka in Regular Second Appeal No. 1272 of 1995 whereby the High Court converted the decree of joint ownership into a preliminary decree for partition.

2. The brief facts of the present appeal are that respondents No. 1 & 2 who were plaintiffs in the trial court namely; Abdul Gani and Usmansab filed an original suit bearing No. 351 of 1987 in the court of Principal Munsif, Hubli alleging that the appellant-defendant (since deceased) purchased the suit property for Rs. 800/- from their joint family funds from one Sayed Peerbasher Khadri. It was also alleged that by playing a fraud on the respondent Nos. 1 & 2, the appellant (defendant in the suit) got the sale deed in his name. The appellant denied the allegation stating that he had

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purchased the suit property out of his own funds and consequently, the respondent Nos. 1 & 2 have no share in the suit property. The suit was filed with the following prayers:

"(a) That this court be pleased to declare that the plaintiffs as well as defendant No. 1 are the joint owners of the suit property;

(b) and a consequential relief of permanent injunction against defendant No. 1 not to obstruct the

peaceful possession and joint wahiwata of the suit property."

3. Learned Ist Additional Munsif, Hubli and learned Principal Civil Judge, Hubli held that respondent Nos. 1 & 2 and the appellant are the joint owners of the suit property and granted decree of joint ownership.

4. The High Court by impugned judgment in the Regular Second Appeal filed by the appellant converted the decree of joint ownership into a preliminary decree for partition which, in our view, was not permissible. When the suit was only for declaration, the High Court, in law, could not have converted the decree of declaration into a decree for partition.

5. In this view of the matter and in the facts and circumstances of the case, we set-aside the impugned

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judgment passed by the High Court and remit the matter to the High Court to decide it afresh in accordance with law after hearing the learned counsel for the parties. All contentions are left open. Since the suit for declaration was filed in the year 1987, we request the High Court to dispose of the second appeal as expeditiously as possible.

6. With these observations, the appeal stands disposed of.

.....J.  
[ DALVEER BHANDARI ]

.....J.  
[ HARJIT SINGH BEDI ]

NEW DELHI  
OCTOBER 15, 2008.

RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 903 OF 2001

ABDUL KHADER (D) THR. LRS.

Appellant (s)

VERSUS

ABDUL GANI & ORS.

Respondent(s)

(With office report )

Date: 15/10/2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI  
HON'BLE MR. JUSTICE HARJIT SINGH BEDI

For Appellant(s) Mr. R.S. Hegde, Adv.  
Mr.Chandra Prakash, Adv.  
Mr.Rahul Tygi, Adv.  
Mr. P.P. Singh,Adv.

For Respondent(s) Dr. Aaray Lingaiah, Adv.  
Dr. Kailash Chand,Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeal is disposed of in terms of signed order.

(Pardeep Kumar)  
Court Master

(Neeru Bala Vij)  
Court Master

[SIGNED ORDER IS PLACED ON THE FILE ]