

a1 IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1211 OF 2001

B. Prabhakar Shetty ... Appellant/Defendant

Versus

Kamalakshi Shedthi & Ors. ... Respondents/Plaintiffs

ORDER

The respondent herein, her husband and children filed a suit before the Principal Munsif, Coondapur for partition, declaration and possession. The Trial Court passed the following order :

"The plaintiffs suit is decreed. The defendants 4 to 10 are entitled to 86/264 shares and defendants 1 to 3 are entitled to 62/264 and plaintiff and defendants nos. 11 to 20 and 24 are entitled to

116/264 shares. The plaintiffs are entitled to have the properties divided by metes and bounds. It is hereby ordered that issue nos.5,6,8,11 and 12 are left open for decision at the time of final decree proceedings. A preliminary decree for partition shall be drawn accordingly."

The case of the appellant (who was one of the defendants in the suit) is that the plaintiff and the defendants 1 to 24 are members of an undivided Aliyasanthana family. The family owns immovable properties mentioned in 'A' Schedule of the plaint. The Genealogy tree of the family is given in 'B' Schedule of the plaint. The same is set out hereunder. As per Genealogy

tree, there were three main groups in the family.

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The appeal was allowed and the First Appellate Court held that the plaintiff and defendants have 1/24th share each in the family properties and consequently, the plaintiff was entitled for possession of 1/24th share by partition by metes and bounds. The court directed that preliminary decree be drawn accordingly. The First Appellate Court is the final court of appeal and findings. According to the appellant, the members of the family entered into a Thakarar (Agreement) on 19.9.1934 for proper and better enjoyment of the family properties and for the purpose of maintenance of the members of the family. According to the First Appellate Court the said Thakarar (Agreement) does not amount to any partition under section 36 of the Aliyasanthana Act, 1949. Therefore, the said Thakarar (Agreement) is only an arrangement for better arrangement for the property by three kavarus in the family and the family continued to be joint. As a result, Schedule 'A' to the plaint properties are joint family properties.

The defendants 4 to 10 expressed their intention to

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separate from the joint family in the year 1955.

Consequently, the plaintiff and the defendants are entitled to claim share in the family properties half per stripes and half per capita. On the other hand, the contention of the plaintiff that unilateral intention to separate from the joint family was not communicated to the plaintiff and therefore there was no division in status of the family in 1959. It was submitted that according to the provisions of Aliyasanthana Act, as interpreted by this court in series of judgments that

communication of intention to separate must be communicated to all those persons who are going to be affected as in this case there is nothing on record that intention to communicate the plaintiff or the eldest members of the kavarus of Daemma Shedthi. The First Appellate Court which is the final court as far as determination of facts are concerned, came to a clear and categoric conclusion that both the parties (plaintiff and the defendants) are entitled to 1/24th share in the family properties. The findings of the learned First Appellate Court have been affirmed by the High Court.

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We have heard learned counsel for the parties at length and perused the documents and all the three judgments. In our considered opinion, the findings which have been arrived at by the Civil Judge and upheld by the High Court in the impugned judgments do not require any interference. The appeal being devoid of any merit is accordingly dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.

.....  
.....J

(Dalveer Bhandari)

.....J.  
(Harjit Singh Bedi)

New Delhi;  
November 27, 2008

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IT E M NO.1 0 1                      COUR T NO.8                      S E C T I O N IVA

S U P R E M E C O U R T O F I N D I A  
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C I V I L A P P E A L N O ( s ) . 1 2 1 1 O F 2 0 0 1

B. P R A B H A K A R S H E T T Y

Appellant (s)

VER SUS

KA MA L A K S H I SH E D T H I & ORS.  
(With office report )

Respondent(s)

Date: 27 / 11 / 2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI  
HON'BLE MR. JUSTICE HARJITSINGH BEDI

For Appellant(s) Mr. N.D. B . Raju, Adv. for  
Mr. Guntur Prabhakar , Adv.

For Respondent(s) Mr. G.V. Chandra shekhar , Adv. for  
Mr. P. P . Singh, Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeal is dismissed in terms of the signed  
order.

In the facts and circumstances of the case, we  
direct the parties to bear their own costs.

(K.K. Chawla)  
Court Master

(Neeru Bal a Vij)  
Court Master

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[Signed order is placed on the file]