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SLP(C)No. 20503-20504 OF 2000

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 20503-20504 of 2000@@  
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(Arising out of SLP(C) Nos. 20503-20504 of 2000)

Nandeешaiah ...Appellant (s)

Versus

Mallikarjunaiah ...Respondent(s)

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Leave granted.

The plaintiff is in appeal against the judgment of the High Court in the first appeal in a suit for partition. The suit was for partition and separate possession on the allegation that the original owner Rudraiah has left behind the plaintiff and defendant and the said properties of Rudraiah are liable to be partitioned. The defendant filed the written statement alleging that the plaintiff is not the son of Rudraiah and defendant is the only son and the properties are self-acquired properties except one of the items and, therefore, the suit for partition would not lie.

The learned Trial Judge came to the finding that the plaintiff is the son of Rudraiah. This finding has been affirmed by the appellate Court. The trial Court also found some of the properties to be the joint family properties. The lower appellate Court came to the conclusion that these properties were not the ancestral properties in the hands of Rudraiah, but acquired by him. The said Rudraiah is alleged

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to have executed a Will Exh.D-16 on 19.12.1983. The appellate Court found the aforesaid Will to be genuine, but notwithstanding the same the appellate Court dismissed the suit for which the plaintiff has come up in appeal.

The counsel for the appellant states that once Exh.D-16 is found to be genuine, the rights of the plaintiff under the Will cannot be denied and, therefore,, the suit could not have been dismissed. Mr. Sampath appearing for the defendant does not dispute this proposition.

In the aforesaid premises the impugned judgment of the High Court is modified to the effect that the suit for partition will be decreed in accordance with the properties allotted to different parties under the Will, namely, Exh.D-16, which has been found to be genuine.

The appeals stand disposed of accordingly.

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( G.B. PATTANAIAK )@@  
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New Delhi  
September 14, 2001

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( RUMA PAL )@@  
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ITEM No.28

Court No. 4

SECTION IVA  
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.20503-20504/2000

(From the judgement and order dated 10/03/2000 in RP 123/00  
,RFA 576/97  
of The HIGH COURT OF KARNATAKA AT BANGALORE)

NANDEESHAIAH

Petitioner (s)

VERSUS

MALLIKARJUNAIAH

Respondent (s)

(With prayer for interim relief)  
( With Appln(s). for c/delay in filing SLP )

Date : 14/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MRS. JUSTICE RUMA PAL

For Petitioner (s)

Sudhir Kulshreshtha,Adv.

For Respondent (s)

Mr. A.T.M. Sampath,Adv.

UPON hearing counsel the Court made the following  
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