

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8427 OF 2009

KEMPAIAH

Appellant(s)

VERSUS

M. NANJUNDAPPA @ M. NANJUNDA REDDY (DEAD) & ORS.

Respondent(s)

O R D E R

Heard Mr. Girish Ananthamurty, learned counsel appearing for the appellant (defendant No. 1) in the OS No. 1442 of 1985.

2. Since the counsel representing the respondent No. 1 was designated as a senior counsel and the said respondent No. 1 (plaintiff) has since died, no substitution of the legal heirs of deceased plaintiff is made. Moreover, alternate counsel has not been authorised to represent the respondent No. 1.

3. With the assistance of Mr. Ananthamurty, learned counsel, we have perused the judgment of the High Court and also the respective stand of the parties. The written statement of the third defendant indicates that only an area measuring 18 feet x 70 feet was allotted to the share of his grandfather and on this basis, having regard to the partition deed dated 30.04.1958, the High Court observed that the third defendant cannot sell any area larger than what was allotted to him under the partition. On this basis, the Court opined that the third defendant has played fraud on the second defendant in executing the sale deed in excess of the area allotted to him. Therefore, it could possibly be an *inter se* dispute between the second defendant and the third defendant.

4. With the above observation, the plaintiff's appeal was allowed and the judgment of the learned XIV Additional City Civil Judge, Bangalore dismissing the OS No. 1442 of 1985, was set aside. The plaintiff's suit in consequence was decreed allowing him the relief of title and possession by granting mandatory injunction.

5. Having considered the basis on which the High Court granted relief to the plaintiff in his appeal, we see no infirmity with the said conclusion.

6. Accordingly, the appeal stands dismissed.

7. Pending application(s), if any, shall stand closed.

.....J.
(HRISHIKESH ROY)

.....J.
(SANJAY KAROL)

NEW DELHI;
OCTOBER 11, 2023.

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

Civil Appeal No(s). 8427/2009

KEMPAIAH

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VERSUS

M. NANJUNDAPPA @ M. NANJUNDA REDDY (DEAD) & ORS. Respondent(s)

Date : 11-10-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Mr. Girish Ananthamurty, Adv.
Mrs. Vaijyanthi Girish, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)