



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO. 599 OF 2023 (PAR)

BETWEEN:

1. SMT. RUKMAVATHI SHEREGAR,
AGED ABOUT 67 YEARS,
W/O. LATE SATYANARAYANA SHEREGAR,
2. SMT. SUGUNA SHEREGAR
AGED ABOUT 37 YEARS,
D/O. LATE SATYANARAYANA SHEREGAR,
3. SRI MANJUNATHA SHEREGAR
AGED ABOUT 37 YEARS,
S/O. LATE SATYANARAYANA SHEREGAR,
4. SRI VEERENDRA
AGED ABOUT 35 YEARS,
S/O. LATE SATYANARAYANA SHEREGAR,

ALL ARE R/AT KAVRADY VILLAGE,
KUNDAPURA TALUK-576 211.

APPELLANT NOS.1, 2 AND 4 ARE
REPRESENTED BY THEIR GPA HOLDER,
SRI MANJUNATHA SHEREGAR/APPELLANT NO.3.

...APPELLANTS

(BY SRI RAKSHITH KUMAR, ADVOCATE)

AND:

1. SRI K. RADHA DEVENDRA SHEREGAR,
D/O. LATE VEERAYYA SHEREGAR,
AGED ABOUT 66 YEARS,





R/AT KAVRADY VILLAGE AND POST,
KUNDAPURA TALUK-576 211.

2. SRI JALAJA GOVINDA SHEREGAR
D/O. LATE VEERAYYA SHEREGAR,
AGED ABOUT 76 YEARS
3. SMT. SUSHEELA S. RAO
D/O. LATE VEERAYYA SHEREGAR,
AGED ABOUT 72 YEARS
4. SRI SHANKAR SHEREGAR
S/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 58 YEARS
5. NAGARATHNA SHEREGAR
W/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 57 YEARS
6. SRI RAJEEVI SHEREGAR
S/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 54 YEARS
7. SRI KARUNAKARA SHEREGAR
S/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 53 YEARS
8. SRI DINAKARA SHEREGAR
S/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 52 YEARS
9. SMT. KALAVATHI SHEREGAR
D/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 47 YEARS
10. SRI CHANDRASHEKAR SHEREGAR
S/O. LATE PADMAVATI SHEREGAR,
AGED ABOUT 46 YEARS
11. SRI MANJUNATHA SHEREGAR
S/O. LATE PADMAVATI SHEREGAR,



12. SMT. TARA SHEREGAR
D/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 64 YEARS,
13. SMT. VARADHA SHEREGAR
D/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 64 YEARS,
14. SRI ASHOKA SHEREGAR
S/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 62 YEARS,
15. SRI GANGADHAR SHEREGAR
S/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 62 YEARS,
16. SMT. ASHA
W/O. LATE SADANANDA SHEREGAR,
AGED ABOUT 44 YEARS,
17. SMT. SUGANDI
D/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 55 YEARS,
18. SRI SANTHOSH
S/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 45 YEARS,
19. SRI SATISH
S/O. LATE RATHNAVATHI SHEREGAR,
AGED ABOUT 45 YEARS,

RESPONDENT NOS.12 TO 15 AND 17 TO 19
R/AT KAVRADY VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT - 576 201.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 06.12.2022
PASSED IN R.A.NO.43/2017 ON THE FILE OF THE SENIOR
CIVIL JUDGE, KUNDAPURA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 14.12.2015



PASSED IN O.S.NO.33/2009 ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC, KUNDAPURA.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This matter is listed for admission and I have heard the learned counsel for the appellants.

2. This appeal is filed by the defendant Nos.19 to 22, who are the legal representatives of Satyanarayana Sheregar, who is the son of Veerayya Sheregar challenging the judgment and decree dated 06.12.2022 passed in R.A.No.43/2017 on the file of the Senior Civil Judge, Kundapura, dismissing the appeal and confirming the judgment and decree dated 14.12.2015 passed in O.S.No.33/2009 on the file of the II Additional Civil Judge and JMFC, Kundapura. It is not in dispute that the property originally belongs to Veerayya Sheregar and he died intestate and not made any testamentary document in favour of either the son or his five daughters and suit is filed for the relief of partition by the first daughter for the relief of partition of 'A' schedule properties claiming 6 fair and equal shares and delivery of one such share to the plaintiff with her share of income from the said properties till delivery of her share and



there is no dispute with regard to the relationship between the parties and the fact that Veerayya Sheregar was having five daughters and a son.

3. It is also not the case of the appellants that property not belongs to Veerayya Sheregar. But, the claim is that, in order to perform the marriage of the plaintiff, the property was mortgaged by the son, Satyanarayana Sheregar and the said Satyanarayana Sheregar could not repay the amount. Hence, the property was auctioned and the same was purchased by the father of the appellants. Therefore, prays the Court that while granting the relief of partition, those properties which have been purchased by the father of the appellants cannot be included in the partition.

4. The Trial Court, having considered both oral and documentary evidence placed on record, comes to the conclusion that, in the cross-examination of D.W.1, though she contends that plaintiff and her sisters are not entitled to claim equal partition, since they are not co-parceners of the family, the Trial Court comes to the conclusion that the very contention cannot be accepted. However, the other contention is that the property was purchased by the father of the appellants and in



order to substantiate that he made the payment when the auction was conducted, no material is placed before the Court. Hence, the Trial Court comes to the conclusion that it was only a purchase by the father of the appellants for the benefit of the family when the property was brought for sale and the said Satyanarayana Sheregar was not having exclusive right to mortgage the property and the property is left by the father leaving behind his son and five daughters. The other contention that the daughters are not entitled for share is not accepted since, the father died intestate and property devolves upon the son as well as the daughters.

5. The same is questioned before the First Appellate Court in R.A.No.43/2017. The First Appellate Court also re-appreciated both oral and documentary evidence placed on record and formulated the points whether the defendant Nos.19 proves that item Nos.7, 8, 10, 12, 14 to 16 and 20 become self acquired properties of Shankar Sheregar in view of the sale confirmation in E.P.No.63/1978 and whether the impugned judgment of the Trial Court is required to be set aside and call for interference.



6. The First Appellate Court also, having re-appreciated both oral and documentary evidence placed on record, comes to the conclusion that merely because joint family members or any person, who as mortgagor redeemed back the properties mortgaged to anybody in respect of the family properties does not mean that unless it is shown on record that those properties have become an independent property. In this case, there is no evidence to show that Satyanarayana Sheregar being mortgagor of the said item Nos.10, 12, 14 and 15 had absolute right to mortgage those lands. The First Appellate Court also taken note of the admission given by D.W.1 in her cross-examination at page No.4 in Para No.2 dated 25.03.2014 to the extent that till date, all the schedule properties are in the possession of Veerayya Sheregar. D.W.1 also admits that there was partition in the family of her father Shankar Sheregar and item Nos.7, 8, 10, 12, 14 to 16 and 20 are not included in the partition deed and the same is discussed in detail in Para No.17 and 18 of the judgment and comes to the conclusion that the Trial Court incidentally discussed the right having purchased the same and Shankar Sheregar had acquired his right when all six daughters



of Veerayya had right of share in those properties and therefore, he cannot contend that he became the absolute owner of the said items since, the very mortgagor was not having any absolute right to mortgage the property excluding the daughters.

7. Hence, both the Trial Court as well as the First Appellate Court considered the material on record and the First Appellate Court also re-appreciated both oral and documentary evidence placed on record and comes to the conclusion that the property belongs to the daughters as well as the son and only the son cannot mortgage the property, excluding others when they are the daughters of the family propositus Veerayya Sheregar and the same will not convey any right and taken note of the fact that there is no testamentary document in favour of the son and son was not having absolute right to mortgage the property. Therefore, the First Appellate Court comes to the conclusion that the parties are entitled for share in the property equally. Hence, I do not find any error committed by the Trial Court and the Trial Court also taken note of entitlement of the daughters along with the son of Veerayya Sheregar and the First Appellate Court also



reassessed the same considering both oral and documentary evidence placed on record and not committed any error. Therefore, I do not find any ground to invoke Section 100 of C.P.C. to admit the appeal and frame substantial question of law as contended by the learned counsel for the appellants.

Accordingly, the appeal is dismissed.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 85