IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 2ND DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR SECOND APPEAL NO. 7058 OF 2012 (PAR/POS)
C/W
REGULAR SECOND APPEAL NO. 2678 OF 2007

IN R.S.A.NO.7058 OF 2012

BETWEEN:

1. RAVINDRA
   S/O. A. CHANDERSHEKAR
   AGE: 39 YEARS,
   OCC: AGRICULTURE & BUSINESS,
   R/O: SATPATNALLI,
   TQ: SEDAM, DIST: GULBARGA.

2. KAVITA
   W/O VISHWANATH BAGODI
   AEG: 39 YEARS,
   OCC: AGRICULTURE & HOUSEHOLD,
   R/O: SATPATNALLI,
   TQ: SEDAM,
   DIST: GULBARGA.
   NOW AT CHITTAPUR, DIST: GULBARGA

...APPELLANTS

(BY SRI. SHARANABASAPPA K. BABSHETTY, ADVOCATE)

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AND:

1. MAMTA
   W/O SUBHASCHANDRA
   (D/O LATE CHANDRASHEKHAR DIED BY LRS,)

a. GNAYANESHWAR
S/O SUBHASCHANDRA
AGED ABOUT 27 YEARS,
OCC: PVT. SERVICE,

b. OMKARESHWAR
S/O SUBHASCHANDRA
AGED ABOUT 27 YEARS,
OCC: PVT. SERVICE,

c. SUBHASHCHANDRA
S/O SHIVASHARANAPPA BASLINGKAR
AGED ABOUT 57 YEARS,
OCC: PVT. SERVICE,

ALL ARE R/O: KIRANA BAZAR LINE,
SEDAM TOWN,
DIST: KALABURAGI.

2. JAYAPRAKASH
S/O: A. CHANDERSHEKAR
AGE: 29 YEARS,
OCC: AGRICULTURE & PRIVATE SERVICE,
R/O: SATPATNALLI,
TQ: SEDAM,
DIST: GULBARGA.

3. LAXMI
W/O SHANTVEER
(D/O CHANDERSHWKAR)
AGE: 34 YEARS,
OCC: HOUSEHOLD,
R/O: MUDHOL,
TQ: SEDAM,
DIST: GULBARGA.

4. SAVITHA
W/O ANILKUMAR
(D/O CHANDERSHWKAR)
AGE: 34 YEARS,
OCC: HOUSEHOLD,
R/O: GULBARGA,

5. SMT. SHANTABAI
W/O SHARANASIDDAPPA TONASINAHALLI,
(D/O NAGAPPA AVARADI)
AGE: 78 YEARS,
OCC: HOUSEHOLD,
R/O: MALKHED,
TQ: SEDAM,
DIST: KALABURAGI – 585 317.

6. SMT. PARAMMA
W/O BHIMRAO
(D/O NAGAPPA AVARADI)
AGE: 75 YEARS,
OCC: HOUSEHOLD,
R/O: SHIROLLI,
TQ: CHINDHOLLI,
DIST: KALABURAGI – 585 320.

7. SIDDAMMA
W/O IRAPPA
(D/O NAGAPPA AVARADI)
AGE: 84 YEARS,
OCC: HOUSEHOLD,
R/O: MALLIKARJUN TEMPLE,
GRAM PANCHAYAT, DEGALMDI VILLAGE,
TQ: CHINDHOLLI,
DIST: KALABURAGI – 585 320.

…RESPONDENTS

(BY SMT. HEMA L.K., ADVOCATE FOR R1(A) TO R1(C);
SRI D.P.AMBEKAR, ADVOCATE FOR R5 TO R7;
V/O DATED 17.09.24, NOTICE TO R2 TO R4 IS HELD SUFFICIENT,

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE IN R.A.NO.19/2010 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT GULBARGA DATED 18.11.2011 AND THE JUDGMENT AND DECREE OF THE TRIAL COURT DATED 20.11.2009 IN O.S.NO.61/2005 BY THE CIVIL JUDGE (S.D) AT SEDAM, AFTER CALLING FOR THE LOWER COURT RECORDS, IN THE INTEREST OF JUSTICE AND EQUITY.

IN R.S.A.NO.2678 OF 2007

BETWEEN:

A. CHANDRASHEKHAR
SINCE DEAD BY HIS LRS

1. SUSHEELABAI
W/O LATE A. CHANDRASHEKHAR,
AGED ABOUT 53 YEARS,

2. RAVINDRA
S/O LATE A.CHANDRASHEKHAR,
AGED ABOUT 36 YEARS,

3. KAVITA
D/O LATE A.CHANDRASHEKHAR,
AGED ABOUT 31 YEARS,

ALL ARE
R/O: SATPATNAHALLI,
SEDAM, TQ: GULBARGA DIST: 572 106.

…APPELLANTS

(BY SRI. SHARANABASAPPA K.BABSHETTY, ADVOCATE)

AND:

MAMTA
W/O SUBHASCHANDRA
(D/O LATE A. CHANDRASHEKHAR)

AGED ABOUT 35 YEARS,
OCC: LEGAR PRACTIONER AND AGRIL,
R/O: SEDAM AT AND TALUK,
GULBARGA DIST – 572 106,
DIED BY HER LRS.

CAUSE TITLE AMENDED AS PER COURT ORDER DATED 12.11.2024

a. GNAYANESHWAR
S/O SUBHASCHANDRA

AGED ABOUT 27 YEARS,
OCC: PVT. SERVICE,

b. OMKARESHWAR
S/O SUBHASCHANDRA
AGED ABOUT 27 YEARS,
OCC: PVT. SERVICE,

c. SUBHASHCHANDRA
S/O SHIVASHARANAPPA BASLINGKAR,
AGED ABOUT 57 YEARS,
OCC:SERVICE,

ALL ARE R/O: KIRANA BAZAR LINE,
SEDAM TOWN,
DIST: KALABURAGI.

…RESPONDENTS

(BY SMT. HEMA L.K., ADVOCATE FOR R1(A) TO R1(C);

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 25.07.2007, PASSED IN R.A.NO.73/2004 BY CONFIRMING THE JUDGMENT AND DECREE DATED 11.10.2004, PASSED IN O.S.NO.98/1998, BY THE CIVIL JUDGE (N), SEDAM, BY ALLOWING THE ABOVE APPEAL AND ETC.

THESE REGULAR SECOND APPEALS, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

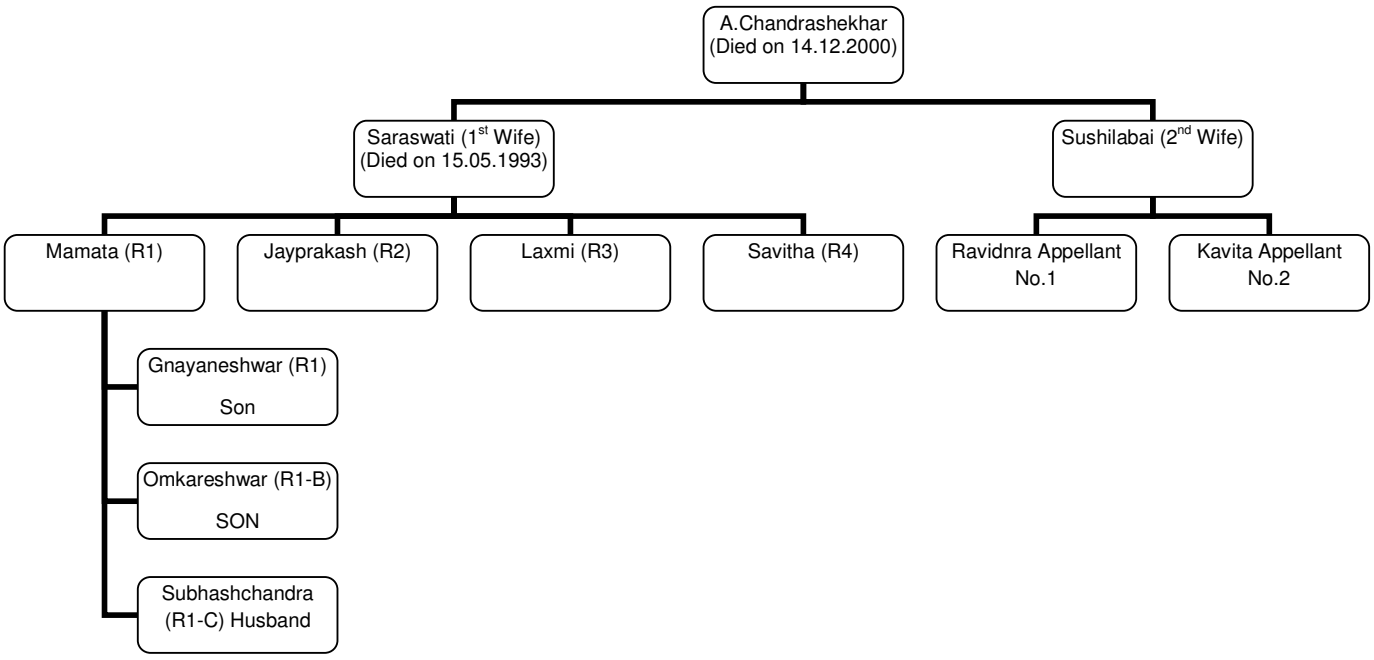
CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

Regular Second Appeal No.7058/2012:

This appeal is arising from the judgment and decree in R.A. No.19/2020 on the file of Principal District Judge, Gulbarga which in turn, arose from a judgment and decree in O.S. No.61/2005 on the file of Civil Judge, (Senior Division), Sedam. The admitted genealogy of the parties is as under:-



2. A. Chandrashekar was the propositus and he died on 14.12.2000. Admittedly, he had two wives namely Saraswati, the first wife who died on 15.05.1993 and Sushila Bai, the second wife who admittedly married A. Chandrashekar during the subsistence of the first marriage, has two children from A. Chandrashekar.

3. Ravindra the son of A. Chandrashekar and Sushila Bai, is plaintiff No.1 and Kavita the daughter of A. Chandrashekar and Sushila Bai, is plaintiff No.2.

4. The suit for partition and separate possession is filed against children of A. Chandrashekar from his first wife Saraswati. By the time the suit was filed, Saraswati was no more. The suit is decreed in part. The trial Court held that plaintiffs are entitled to partition and separate possession of 2/30th share in the suit land bearing Sy.No.254/2, measuring 6 acres 10 guntas, situated at Sedam.

5. Aggrieved by the aforementioned judgment and decree, the plaintiffs filed appeal in R.A. No.19/2010. The said appeal is dismissed. Hence, the present second appeal by the original plaintiff in O.S. No.61/2005. This second appeal was admitted on 12.11.2024 to consider the following substantial questions of law:-

i) Whether the Trial Court and the First Appellate Court are justified in holding that Item Nos.1, 2, 3 and 5 of the suit schedule properties were the absolute properties of Smt.Saraswathi being the first wife and Mamta, Jaiprakash, Laxmi and Savitha (defendants) being the children of deceased A.Chandrashekar respectively, on the basis of decree passed in O.S.No.25/1988 in which the aforesaid properties had been given to them in lieu of their claim for maintenance?

ii) Whether the Trial Court and the First Appellate Court are justified in holding that the Mamta, Jaiprakash, Laxmi and Savitha (defendants) children of A.Chandrashekar from his first wife have become the absolute owners of the Item Nos.1, 2, 3 and 5 of the suit schedule properties, in view of the decree passed in OS No.25/1988 in the light of Section 20 of the Hindu Adoption and Maintenance Act, 1956?

6. In the facts and circumstances, whether the Trial Court and the First Appellate Court are justified in declining the relief of partition and separate possession allotting the share

with the plaintiffs (who are the children of late A.Chandrashekar from his second wife) in respect of Item Nos.1, 2, 3 and 5 of the suit schedule properties?

Regular Second Appeal No.2678/2007:

7. This appeal is arising from the judgment and decree in R.A. No.73/2004 on the file of Senior Civil Judge, Sedam which in turn, arose from the judgment and decree in O.S. No.98/1998 on the file of Civil Judge, (Junior Division), Sedam. The aforesaid suit is filed by the children of A. Chandrashekar and Saraswati seeking a relief of declaration of title and injunction.

8. The suit is filed against A. Chandrashekar the father and Sushila the second wife. The said suit is filed in respect of three agricultural lands bearing Sy. No.7/1, measuring 5 acres 12 guntas, Sy. No.7/2, measuring 4 acres 21 guntas, both situated at Survar village, Taluq: Sedam, Sy. No.26/3, measuring 3 acres 4 guntas, situated at Sattpatan Halli, and also House No.27 comprising of 4

rooms towards the north, situated at Sattpatan Halli. The aforesaid suit is dismissed.

9. The plaintiff in the said suit filed appeal in R.A. No.73/2004 and said appeal is allowed granting relief of declaration of title. However, injunction is refused. Aggrieved by the decree granting declaration of title, the defendants in O.S. No.98/1998 are before this Court.

10. The First Appellate Court granted relief of declaration and refused relief of injunction on the premise that sole defendant had died during the pendency of the suit and cause of action to prosecute the relief of injunction does not survive against the children of the sole defendant who died during the pendency of the suit.

11. After hearing both parties this Court is of the view that following two substantial questions of law are required to be framed as under:

i) Whether the property bearing Sy. No.254/2 is the self acquired property of A. Chandrashekar and

ii) If so, whether the computation of share is correct.

12. It is an admitted fact that first wife and her children had filed a suit in O.S. No.25/1988 on the file of Civil Judge, Junior Division, Sedam. The said suit was for maintenance. The said suit was decreed based on the consent given by defendant A. Chandrashekar who agreed to give three agricultural lands bearing survey No.7/1, 7/2 and 26/3 referred to above and also House property bearing No.27 referred to above towards the maintenance.

13. Admittedly, Saraswati first wife was entitled to maintenance under law and her son is also entitled to maintenance during his minority and the daughter is entitled to maintenance till the date of marriage.

14. In terms of the decree passed by the Court in O.S. No.25/1988, the defendant is directed to hand over aforementioned properties. The plaintiffs in the said suit filed an execution proceedings and the possession of the property was delivered pursuant to the decree passed in

O.S. No.25/1988. Thus, Saraswati first wife and her children came in lawful possession of the property.

15. In the suit for partition filed by the plaintiffs who are the children of second wife in O.S. No.61/2005, the Court declined to grant the relief of partition in respect of the properties covered in O.S. No.25/1988. The Court held that the properties given to Saraswati cannot be subject matter of partition as Saraswati acquired absolute right over the property under Section 14(1) of the Hindu Succession Act and consequently, dismissed the suit in respect of properties covered and the decree passed in O.S. No.25/1988. However, the suit is decreed in respect of property bearing Survey No.254/2, measuring 6 acres, 10 guntas which was admittedly the subject matter of suit in O.S. No.25/1988.

16. Learned counsel appearing for the appellants in RSA No.7058/2012 would submit that Section 14(1) cannot be applied in respect of entire extent of land covered in O.S. No.25/1988 on the premise that Section

14(1) would apply only in respect of Saraswati's property and not in respect of children's property. It is his contention that children have attained majority. Thus, the properties given to children of A. Chandrashekar towards maintenance are liable for partition and plaintiffs i.e. the children of second wife are entitled to claim share in it. It is his further contention that once the children attain the age of majority, the property given to children towards maintenance would go to the father A. Chandrashekar and after the death of A. Chandrashekar, the children are entitled to the share.

17. Learned counsel appearing for the respondents on the other hand would contend that the property given to first wife and children should belong to first wife as she was in possession of the property and Section 14(1) would apply and she would acquire absolute title over the property covered under decree suit in O.S. No.25/1988.

18. This Court has considered the contentions raised at the bar and perused the records.

19. Admittedly, when suit was filed in O.S. No.25/1988 children from the first wife i.e. children of Saraswati were minors and Saraswati and children were entitled to maintenance. Once the children attain the age of majority, they lose the right of maintenance. However, the decree does not say that after the children attain majority, the proportionate extent of the property should revert to the father A. Chandrashekar. The decree on its plain reading would suggest that Saraswati was entitled to retain the property without any restrictions. Under these circumstances, the requirement of Section 14(1) of Hindu Succession Act, 1956 is met as the property is given to Saraswati in recognition of her right to maintenance and she was put in possession of the property and her possession is lawful. This being the position, the contention that proportionate extent of property given to the children revert to the father cannot be accepted. It is not the tenor of the decree in O.S. No.25/1988.

20. For the aforesaid reasons, the Trial Court and the First Appellate Court were justified in dismissing the suit in respect of the properties covered in decree in O.S. No.25/1898.

21. As far as the property in bearing Sy. No.254/2 is concerned, the Trial Court has granted a decree for partition and the first appellate Court has confirmed the said judgment and decree. However, A. Chandrashekar died on 14.12.2000. A. Chandrashekar was also entitled to share in the said property. So far as Sy. No.254/2 is concerned, the decree for partition is granted in respect of entire 6 acres 10 guntas. The trial Court and First Appellate Court have also held that children through second wife i.e. plaintiff in O.S. No.98/1998 are also entitled to share in the property. Thus, this Court does not find any infirmity.

22. It is relevant to note that the defendants in O.S. No.61/2005 have taken a stand that the property bearing No.254/2, measuring 6 acres 10 guntas is the self

acquired property of Saraswati. This contention was negatived by the Trial Court holding that the said property is the property purchased by A. Chandrashekar in the name of his wife Saraswati.

23. Learned counsel appearing for the appellants challenging the said finding would contend that Saraswati did not have any means and i.e. borne out from the decree in O.S. No.25/1988 where she was given property. It is also his further contention that record of rights stood in the name of A. Chandrashekar despite the sale deed being in the name of Saraswati. Normally, the Court would not attach much importance to the entries in the records of rights unless it is supported by the valid mutation or title deeds. In the case on hand, the situation is different. It is borne out from the records that Saraswati did not possess means to purchase the property. Whereas, A. Chandrashekar her husband did possess means to purchase the property as he was holding

other four properties which he has transferred pursuant to decree in O.S. No.25/1988.

24. Under these circumstances, the entry in the record of right would suggest that the property was indeed purchased by A. Chandrashekar and he possessed the property and his wife Saraswati was only a name lender. This being the position, the finding of the trial Court that the property is the self acquired property of the Saraswati has to be rejected and it is to be construed as the self acquired property of A. Chandrashekar. When that is the position, after the demise of A. Chandrashekar all his children from first wife and all his children from second wife are entitled to equal share.

25. Hence, each of the plaintiff in O.S. No.61/2005 is entitled to 1/6th share in the property bearing Sy. No.254/2, measuring 6 acres, 10 guntas and each of his children from the first wife is entitled to 1/6th share. To that extent the Trial Court and First Appellate Court have committed an error.

26. As far as RSA No.2678/2007, wherein, the plaintiffs sought declaration that they are the owners of the property covered in O.S. No.25/1988 is concerned, the properties are held to be the properties of Saraswati and Saraswati is no more and her children are prosecuting the suit and they are declared to be the owners of the property. This Court does not find any error in the said judgment as children from the second wife of A. Chandrashekar do not inherit any share or any right in the properties held by Saraswati.

27. As far as relief of injunction is concerned, the First Appellate Court has rightly rejected the relief of injunction on the premise that the original defendant is no more and the cause of action abates against the defendant who died during the pendency of the suit.

28. Hence, there is no merit in the appeal in RSA No.2678/2007 and the same has to be dismissed.

29. Hence, the following:-

ORDER:

i) R.S.A. No.7058/2012 is ***allowed-in-part.***

ii) The impugned judgment and decree dated 20.11.2009 passed in O.S. No.61/2005 on the file of Civil Judge (Senior Division) at Sedam are modified.

iii) The impugned judgment and decree dated 18.11.2011 passed in R.A. No.19/2010 are modified. Each of the plaintiffs in O.S. No.61/2005 is entitled to 1/6th share in property bearing Sy. No.254/2, measuring 6 acres, 10 guntas, situated in Sedam .

iv) Each of the children of Saraswati Bai is entitled to 1/6th share in the property bearing Sy No.254/2 measuing 6 acres 10 guntas situated in Sedam.

v) The suit in O.S No.61/2005 in respect of remaining properties is ***dismissed.***

vi) Regular Second Appeal No.2678/2007 is ***dismissed.***

vii) Three persons who claimed to be the sisters of Chandrashekar have filed an application before this Court to come on record on the premise that the properties involved in these two appeals are the ancestral properties of A. Chandrashekar, as such, they are also necessary party to these proceedings.

viii) Whether the applicants who have come on record who claimed to be the sisters of A. Chandrashekar are entitled to share in the properties or not is dependent on various factors namely *i) whether the properties are ancestral properties or not and ii) whether the properties belonged to A. Chandrashekar and his parents* and those questions cannot be decided in these appeals.

Hence, liberty is reserved to the persons who claimed to be the sisters of A. Chandrashekar to claim share if available and as advised in law.

ix) It is further made clear that any observations made in these appeals shall not be used against the persons who claimed to be the sisters of A. Chandrashekar. If any suit is filed, by persons claiming to be the sisters of A. Chandrashekar same has to be adjudicated without reference to the observations made in these appeals.

x) Substantial questions of law answered accordingly.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

CHS
List No.: 1 Sl No.: 48