IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE K NATARAJAN

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

RFA NO. 200072 OF 2024 (PAR/POS)

BETWEEN:

1. SHIVRAJ S/O VEERSHETTY PATIL,
   AGE: 70 YEARS, OCC: AGRICULTURE,
   R/O VILLAGE ATIWAL,
   NOW R/O NO.8-11-562, SHARN NAGAR,
   KPTCL ROAD, BIDAR,
   DIST: BIDAR – 585125.

2. RAJAMMA W/O SHIVRAJ PATIL,
   AGE: 65 YEARS, OCC: HOUSEHOLD,
   R/O VILLAGE ATIAWAL,
   NOW R/O NO.8-11-562, SHARN NAGAR,
   KPTCL ROAD, BIDAR,
   DIST: BIDAR – 585401.

3. VEERSHETTY S/O SHIVRAJ PATIL,
   AGE: 50 YEARS,
   OCC: HOMEO DOCTOR & AGRICULTURE,
   R/O VILLAGE ATIWAL,
   NOW R/O NO.8-11-562, SHARN NAGAR,
   KPTCL ROAD, BIDAR,
   DIST: BIDAR – 585401.

4. PRABHUSHETTY S/O SHIVRAJ PATIL,
   AGE: 48 YEARS, OCC: AGRICULTURE,
   R/O ATIWAL,
   TQ & DIST: BIDAR – 585401.

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Location: HIGH COURT OF KARNATAKA

5. OMKAR S/O SHIVRAJ PATIL,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O ATIWAL,
TQ & DIST: BIDAR – 585401.

…APPELLANTS

(BY SRI K.M. GHATE, ADVOCATE)

AND:

BASAVARAJ S/O VEERSHETTY PATIL,
AGE: 70 YEARS, OCC: AGRICULTURE,
R/O ATIWAL,
TQ & DIST: BIDAR – 585125.

…RESPONDENT

(BY SRI RAVI B. PATIL, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 97 AND ORDER 41 RULE 1 & 2 OF CODE OF CIVIL PROCEDURE 1908, PRAYING TO ALLOW THE APPEAL, AND SET ASIDE ORDER DATED 05.03.2024 DIRECTING TO DRAW THE FINAL DECREE, BASED UPON DEFECTIVE, INCOMPLETE COURT COMMISSIONERS REPORTS.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K NATARAJAN
AND
HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE K NATARAJAN)

This appeal is filed by the appellants-respondents under Section 97 R/w 41 Rule 1 and 2 of CPC, challenging the order dated 05.03.2024 passed in FDP No.17/2018 by the Principal Senior Civil Judge and CJM, Bidar.

2. The appellants are the defendants and respondent is the plaintiff before the trial Court. For the sake of convenience, the rank of the parties are referred to as per their ranking before the trial Court

3. The parties are present before the Court along with their respective counsel.

4. During the pendency of the appeal, both the parties along with the counsel filed a joint compromise petition under Order XXIII Rule 3 R/w 151 of CPC.

5. Learned counsel for the parties submits that the respondent/petitioner is the younger brother and appellant No.1 is said to be the elder brother of respondent/petitioner and they have settled their dispute amongst them amicably and they have filed joint compromise petition and they have settled their dispute as stated in the joint compromise petition. The terms of joint compromise petition reads as follows;

> "That, the appellant/Defendants and respondents/plaintiffs most respectfully submits as under:

I. That, the respondent/plaintiff has filed suit for partition and separate possession in respect of suit schedule A and B properties in O.S.No.20/2012, same is decreed by the trial court on dated 31.10.2017. The respondent /plaintiff has filed final decree proceedings in FDP No.17/2018, being aggrieved with the final decree proceedings the appellant/defendants have preferred the instant appeal before this Hon'ble Court.

II. That, the respondent/plaintiff on service of appeal notice has appeared and as per the mediation conducted by the order of this Hon'ble Court, the matter is settled and in view of the said settlement, the respondent / plaintiff is being allotted the following properties towards his share.

1) Agriculture land bearing Sy. No.89 measuring 5 acres 31 guntas, RA of Rs.10.95 paisa situated at village Atiwal, Tq & District: Bidar, now standing on the name of mother Smt.Saraswatibai, who is no more, the plaintiff /respondent is being allotted 5 acres of land in the said survey number towards south-east corner, the respondent/plaintiff is entitled to get his name entered in the ROR entries to the aforesaid extent of land.

2) That agriculture land bearing Sy.No.31 total measuring 33 acres 34 guntas of village Atiwal, Tq & District: Bidar RA of Rs.9.00, in view of settlement as per survey sketch map prepared by the ADLR on 08.07.2020, an area of 16 acres 37 guntas towards southern side of the said survey number is being allotted to the share of plaintiff and the name of plaintiff, his wife and son is already appearing in the ROR.

3) That, the residential house bearing Gram Panchayat No.1-25 situated at village Atiwal, Tq & District: Bidar is exclusively allotted to the share of plaintiff/respondent.

4) That, an open plot bearing Gram Panchayat No.1/1, which measures 124 feet north-south and 18 feet east-west situated at village Atiwal, Tq & Dist: Bidar is also exclusively allotted to the share of plaintiff/respondent.

III. That the plaintiff admits, that the defendant No.1 is the elder brother and he has maintained the respondent /plaintiff who is handicapped from his childhood, provided education, performed marriage and gave life protection in all respect. So, considering the said services rendered by the defendant No.1/appellant No.1, the plaintiff has agreed upon to accept the aforesaid allotment of the properties with his free will and consent, and there is no any undue influence or coercion whatsoever from the defendant/appellants.

IV. That, as per the settlement arrived between the parties, the defendant appellants are jointly allotted the following properties towards their share.

1) An area of 0.31 guntas in Sy.No.89 of village Atiwal, TQ & District: Bidar, towards north-west corner is being allotted to the defendant/appellants, in which there are samadhees (graveyard) of the ancestors are in existence, the request of the plaintiff is considered only to perform the yearly religious activities in offering pooja to the samadhees. However, the plaintiff and his family members are not entitled to burry any dead bodies in the said portion of land.

2) Agriculture land bearing Sy.No.31 total measuring 33 acres 34 guntas RA of Rs.9.00 of village Atiwal, Tq & District: Bidar, an area of 16 acres 37 guntas towards northern side of the said survey number is being allotted to the defendant/appellants, the said extent of land is already appearing on the name of appellant/defendant in the ROR of the said survey number.

3) Agriculture land bearing Sy.No.32 total measuring 2 acres 2 guntas RA of Rs.01.04 paisa of village Atiwal, Tq & District: Bidar is being exclusively allotted to the share of defendant/appellants.

4) That, agriculture land bearing Sy.No.33 total measuring 0.12 guntas RA of Rs.0.74 paisa of village Atiwal, Tq & District: Bidar is being exclusively allotted to the share of defendant/appellants.

5) That, agriculture land bearing Sy.No.47 total measuring 4 acres 24 guntas RA of Rs.4.03 paisa of village Kolar-B, Tq & District: Bidar is being exclusively allotted to the share of defendant/appellants.

6) That, agriculture land bearing Sy.No.22 total measuring 3 acres 34 guntas RA of Rs.5.05 paisa of village Kolar-B, Tq & District: Bidar is being exclusively allotted to the share of defendant/appellants.

7) That, agriculture land bearing Sy.No.30 total measuring 1 acre 20 guntas RA of Rs.1.92 paisa of village Kolar-B, Tq & District: Bidar is being exclusively allotted to the share defendant/appellants.

AND

1) Residential houses bearing CMC No.1-24 situated at village Atiwal, Tq & District: Bidar is being exclusively allotted to the defendants /appellants.

2) Residential houses bearing Gram panchayat No.8-11-562, 8-11-563, 8-11-565, 8-11-565/1, 8-11-565/2, 8-11-565/3 are the constructed portions in plot No.19 Gullarhaveli, Bidar now called as Sharana Nagar Colony, Bidar is being exclusively allotted to the defendants /appellants, in addition to the aforesaid residential houses on plot No.19 itself house bearing CMC No.8-11-564 and shop bearing CMC No.8-11-565 have been already transferred n the name of Mahananda W/o Shivanand (Daughter of Shivaraj Patil). To the said settlement and allotment of the respective properties, the plaintiff/respondent had no any objections nor there remains any future claim over the aforesaid properties.

V. That, in view of the above settlement, terms of compromise the decree passed by the Hon'ble Trial Court needs to be modified and decree in favour of respondent /plaintiff and appellants/defendants may kindly be passed in terms of the above compromise arrived which shall be binding on both the parties.

VI. That, the above said terms of compromise are being read over to both the parties in Kannada language and after understanding the contents, both the parties have set and subscribed their hands in token of their free will and consent and accordingly signed and identified by their respective counsels.

6. The submission of the learned counsel for the parties is placed on record.

7. As per their settlement, item Nos.1 to 4 stated in paragraph No.II shall be entitled to the respondent/plaintiff whereas item Nos.1 to 7 mentioned in paragraph IV and also item Nos.1 and 2 are fallen to the share of defendants (appellants herein).

8. In view of the joint compromise application, the Compromise application filed by the parties is allowed. Consequently, the appeal is disposed off in terms of compromise.

Draw decree accordingly.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

MSR
List No.: 1 Sl No.: 31
CT: PS