



H.G. PATTABIAPPELLANT(S)

VERSUS

K.R. SURAJ AND OTHERSRESPONDENT(S)

Mehta, J.

- ¹ Hereinafter, being referred to as “respondent Nos. 1-3/plaintiffs”.

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no further steps are required to be taken in that regard. In view of the aforesaid submission, the matter was heard on merits.

4. The appellant³ in this appeal seeks to assail the judgment and order dated 23rd April, 2010 passed by the High Court of Karnataka at Bengaluru⁴ in Regular First Appeal No. 671 of 2002, whereby the High Court allowed the First Appeal preferred by respondent Nos. 1-3/plaintiffs and set aside the judgment passed by Civil Judge (Senior Division), Chikmagalur⁵ dismissing the suit for partition preferred by respondent Nos. 1-3/plaintiffs.

Brief Facts

5. A brief narration of the facts necessary for the disposal of this appeal is set out hereinbelow for the sake of convenience.

6. Respondent Nos. 1 and 2 (plaintiff Nos. 1 and 2) are the sons and respondent/plaintiff No. 3 is the wife of one Shri Renukaiah. The said Renukaiah had settled in Bengaluru in 1971. In 1983, to be precise, on 4th May, 1983, Renukaiah got six items of lands,

³ Hereinafter, being referred to as “appellant/defendant No. 3”.

⁴ Hereinafter, being referred to as “High Court”.

⁵ Hereinafter, being referred to as “trial Court”.

viz., Survey Nos. 185/11, 185/8, 185/9, 185/4, 186/1 and 186/2A, situated at Village Doddamagaravalli, Aldur Hobli, Chikmagalur Taluk, Karnataka, in a family partition. During the year 1990-1991, Renukaiah constructed a house on a plot owned by his wife, respondent/plaintiff No. 3 at Bengaluru. Since Renukaiah was not in a position to take care of the ancestral lands situated at Doddamagaravalli, which he received in family partition, he decided to sell two items of land, *viz.*, Survey Nos. 186/1 (admeasuring 1.08 Acres) and 186/2A (admeasuring 2.23 Acres), being the suit schedule properties.

7. On 5th August, 1993, the aforesaid two plots of land were sold to one Ziauddin (defendant No. 1), by virtue of a registered sale deed executed by Renukaiah. Defendant No. 1, Ziauddin, thereafter sold these lands to one Uddegowda (defendant No. 2). Renukaiah met with a road accident and passed away on 22nd July, 1995. Respondent Nos. 1-3/plaintiffs, being the wife and children of Renukaiah, filed Original Suit No. 106 of 1995 for partition and separate possession in respect of the suit schedule properties, being Survey Nos. 186/1

and 186/2A, contending that Renukaiah had sold the lands without there being any legal necessity and without the consent of respondent Nos. 1-3/plaintiffs.

8. During the pendency of the suit, H.G. Pattabi, i.e., appellant/defendant No. 3, purchased the suit land from Uddegowda (defendant No. 2), and came to be impleaded in the suit as defendant No. 3. In the year 2001, i.e., after six years of the institution of the suit, respondent Nos. 1-3/plaintiffs filed a replication stating therein that the remaining four items of land had been sold to their uncle and, therefore, the same had not been included in the plaint as properties in respect of which partition was sought.

9. K.R. Suraj (plaintiff No. 1)⁶, son of Renukaiah, was examined as PW-1 and no further evidence was led on behalf of respondent Nos. 1-3/plaintiffs. The said witness, in his examination-in-chief, claimed that his father, Renukaiah, was addicted to bad vices, which allegation was beyond the averments made in the plaint.

⁶ Hereinafter, being referred to as “respondent/Plaintiff No.1”.

10. The defendants examined 3 witnesses in their respective evidence before the trial Court. Appellant/defendant No. 3 was examined as DW-3 and, in his evidence, he made a categorical statement that before purchasing the suit schedule properties, he had made enquiries regarding the property by speaking to the widow of Renukaiah, i.e., respondent/plaintiff No. 3.

11. *Vide* judgment and decree dated 14th March, 2002, the trial Court dismissed the suit, holding that the sale proceeds received by Renukaiah had been utilised towards discharge of the loan incurred for construction of the house at Bengaluru and, consequently, the alienation was supported by legal necessity.

12. In the appeal preferred by respondent Nos. 1-3/plaintiffs, the High Court, upon reappreciation of the evidence, principally relied upon the testimony of respondent/plaintiff No. 1 (PW-1) and concluded that Renukaiah was addicted to gambling and consumption of alcohol and, consequently, the alienation of the suit properties could not be regarded as having been effected for any *bona fide* legal necessity.

13. Aggrieved by the aforesaid judgment and decree of the High Court, the appellant/defendant No. 3 has approached this Court by way of the present appeal with special leave.

Submissions on behalf of the appellant (appellant/defendant No. 3)

14. Learned counsel appearing on behalf of appellant/defendant No. 3 assailed the impugned judgment passed by the High Court on the following counts: -

A. That the High Court erred in decreeing the suit in favour of respondent Nos. 1-3/plaintiffs without properly appreciating the pleadings, evidence and the material available on record. It was submitted that late Renukaiah had acquired six items of properties in a family partition, including the suit schedule properties, whereas respondent Nos. 1-3/plaintiffs selectively sought partition only in respect of two items, without seeking partition of the remaining four items received by Renukaiah. In their replication, respondent Nos. 1-3/plaintiffs themselves contended that the other four items had been sold by Renukaiah in favour of Chandrasekar, who was the elder paternal uncle

of plaintiff Nos. 1 and 2. It was, therefore, submitted that respondent Nos. 1-3/plaintiffs had failed to seek an appropriate and comprehensive relief in respect of the entire property allegedly available for partition and hence, they were disentitled to seek partition in respect of the two suit schedule properties without disclosing the details of share received by them in respect of the remaining four properties.

B. That respondent Nos. 1-3/plaintiffs had specifically contended that the sale deed dated 5th August, 1993 executed in favour of Ziauddin (Defendant No. 1) was not supported by any legal necessity. However, no relief had been sought for cancellation of the said sale deed. It was submitted that, in the absence of a prayer seeking appropriate relief against the sale deed, the suit, insofar as it sought to impeach the alienation, was not maintainable. It was further submitted that there was no evidence whatsoever that late Renukaiah was addicted to any bad vices or that the sale was effected for the discharge of any *Avyavaharika* debt. Respondent No. 1 (plaintiff No. 1), was a minor at the time of the first sale

transaction made in the year 1993 and admittedly had no personal knowledge of the circumstances under which the sale was effected. His mother, Smt. L. Sudha, (respondent/plaintiff No. 3), who could have spoken about the relevant circumstances, did not enter the witness box.

C. That despite noticing the absence of any evidence regarding bad vices, *Avyavaharika* debt or the circumstances rendering the alienation invalid, the High Court proceeded to make out a case for respondent Nos. 1-3/plaintiffs which was neither pleaded nor established by evidence. It was submitted that the burden lay upon respondent Nos. 1-3/plaintiffs to plead and prove the facts necessary to challenge the alienation made by the *karta*/father, and that the High Court, in the absence of such pleadings and evidence, erred in granting a decree for partition on a ground which had not been set up by respondent Nos. 1-3/plaintiffs themselves in the plaint.

D. That the evidence on record, on the contrary, demonstrated the existence of a legitimate and pressing financial necessity for the sale of the suit schedule properties. Late Renukaiah was a driver

by profession and, during the years 1991-1992, had constructed a residential house at Bengaluru on the plot owned by his wife, Smt. L. Sudha, (respondent/plaintiff No. 3), after raising loans for the said purpose. It was submitted that a residential site had been given to respondent/plaintiff No. 3, by her sister, upon which the said house was constructed, and that the sale of the suit schedule properties was made by Renukaiah for the purpose of discharging the loans and meeting the financial obligations towards the said construction. The recitals contained in the sale deed dated 5th August, 1993, specifically indicated that late Renukaiah was in financial difficulty at the relevant time.

On the aforesaid grounds, learned counsel urged that the impugned judgment of the High Court, having travelled beyond the pleadings and having failed to properly appreciate the evidence relating to the circumstances surrounding the sale deed dated 5th August, 1993, deserves to be set aside. It was further submitted that the decree passed in favour of respondent Nos. 1-3/plaintiffs could not be

sustained in the absence of a specific challenge to the sale deed and proof of the circumstances rendering the alienation legally invalid. Accordingly, it was prayed that this Court may be pleased to allow the appeal and restore the judgment and decree of the trial Court.

Submissions on behalf of the contesting respondents (respondent Nos. 1-3/plaintiffs)

15. Learned counsel appearing on behalf of respondent Nos. 1-3/plaintiffs supported the impugned judgment of the High Court and submitted that the same calls for no interference by this Court, *inter alia*, on the following grounds: -

A. That the suit properties had fallen to the share of late Renukaiah in a partition between himself and his brothers and, being ancestral/coparcenary properties, the respondent Nos. 1-3/plaintiffs, as his wife and sons, had a right therein. It was submitted that in absence of any financial necessity for the family's benefit, late Renukaiah could not have alienated the coparcenary property for his personal benefit. The non-inclusion of the other properties in the suit did not affect the

present claim, as the said properties were no longer available for partition, having been sold to the elder brother of Renukaiah.

- B.** That the evidence of respondent No. 1 (PW-1, son of late Renukaiah) established that late Renukaiah was addicted to drinking and gambling, had neglected his family and, on account of his habits, had incurred substantial loans. It was further submitted that the suit schedule properties had been alienated for an inadequate consideration of merely Rs. 1.45 lakhs, despite their market value at the relevant time being approximately Rs. 5 lakhs, which itself cast serious doubt on the *bona fides* and necessity of the transaction. The burden, therefore, lay upon appellant/defendant No. 3 to establish that the alienation was supported by legal necessity, benefit of the estate, benefit of the minors or discharge of antecedent debts, which burden had not been discharged in accordance with law.
- C.** That appellant/defendant No. 3 had failed to establish that the sale of suit schedule properties was supported by any legal necessity or antecedent debt, or that he had made the requisite

enquiry as prudence demands before purchasing the joint family property. It was submitted that mere recitals in the sale deed regarding financial difficulties did not establish either the existence of any antecedent debt or utilisation of the sale consideration for the benefit or welfare of the joint family. The contention that the sale was necessitated for construction of the Bengaluru house was also untenable, as the said house was the self-acquired property of Smt. L. Sudha (respondent/plaintiff No. 3, wife of late Renukaiah) and the construction thereon was undertaken long after the death of Renukaiah. Further, the sale deed dated 5th August, 1993 disclosed no particulars regarding the amount or nature of the alleged debt, the creditor or the date on which such debt was incurred, nor was any evidence led by the defendants demonstrating that the sale proceeds were utilised for discharging any antecedent debt or for the benefit of the joint family.

On these grounds, learned counsel submitted that the findings recorded by the High Court were based

upon a proper appreciation of the pleadings and evidence and do not warrant interference in the present proceedings. It was accordingly prayed that the appeal be dismissed.

Analysis and Discussion

16. We have heard learned counsel appearing for the appellant/defendant No. 3 and learned counsel appearing for the respondent Nos. 1-3/plaintiffs and have carefully perused the impugned judgment passed by the High Court as well as the judgment of the trial Court. We have also examined the pleadings, documents and evidence available on record.

17. Before proceeding further, it is pertinent to note that respondent Nos. 1-3/plaintiffs did not question the legality or validity of the registered sale deed executed by Renukaiah in favour of Ziauddin (defendant No. 1). In this backdrop, the recitals contained in the sale deed dated 5th August, 1993 assume significance for determining the controversy involved in the present appeal and are, for the sake of reference, reproduced hereinbelow: -

“This property is far away from the place of my residence. I am not able to look after the same and improve the same. Further I am in financial difficulty and hence it has become necessary to

sell the same. When I published that I intend to sell you have offered highest price of Rs. 1,45,000/- and hence I am executing this sale deed in your favour. Having got this in a partition I am legally entitled to sell it.”

[Emphasis supplied]

18. Respondent Nos. 1-3/plaintiffs asserted in the plaint that the suit schedule properties had been sold for a paltry consideration of Rs.1,45,000/-, despite their alleged market value being more than Rs.5 lakhs at the relevant time. However, the said assertion was not supported by either documentary or cogent oral evidence. The burden of establishing the alleged market value of the properties, particularly when the said assertion was made by respondent Nos. 1-3/plaintiffs themselves, was upon them, which they miserably failed to discharge. In paragraph 6 of his deposition, respondent/plaintiff No. 1 (PW-1) stated that his father had died on 22nd July, 1995 and that, thereafter, he and his mother made enquiries regarding the suit schedule properties from their uncle, who informed them that Renukaiah had sold the same in 1993 for Rs.1,45,000/-, whereas the value of the suit schedule properties at the relevant time was Rs.5 lakhs.

19. However, the testimony of respondent/plaintiff No. 1 (PW-1) itself demonstrates that he had no personal knowledge of the prevailing market value of the suit schedule properties at the time of the sale. In his cross-examination, he stated that Rs.1,45,000/- was not the correct price of the property as on the date of sale and that he had heard from others that the property was worth Rs.5 lakhs, but was unable to recollect their names. Neither any official witness was examined nor was any Government record produced to establish the prevailing market or circle rate of the suit schedule properties. The assertion regarding their alleged value of Rs.5 lakhs, therefore, remained wholly unsubstantiated and based on hearsay evidence.

20. As regards the allegation that Renukaiah was addicted to gambling and drinking, respondent/plaintiff No. 1 (PW-1), in his cross-examination, stated that it was not correct to say that his father had no bad habits such as gambling and drinking. He further added that his mother was aware of such habits. A pertinent admission made by respondent/plaintiff No. 1 (PW-1) in his cross-examination was that his senior uncle had got the

suit filed. He further admitted that he was unaware of the other lands which had been allotted to his father and that he had not read the partition deed, which was in the possession of his senior uncle.

21. In the course of his re-examination, respondent/plaintiff No. 1 (PW-1) admitted that, apart from the suit schedule properties, other items of property had also fallen to the share of his father. During re-examination of the witness, the partition deed was produced as Exhibit P-13 and, upon being confronted with the same, respondent/plaintiff No. 1 (PW-1) admitted that the other lands had been sold to his senior uncle. He did not produce the sale deeds relating thereto, taking a stand that it was a family matter. These admissions assume significance in the context of respondent Nos. 1-3/plaintiffs having instituted the suit for partition only in respect of the two suit schedule properties, out of the six properties which fell into the share of Renukaiah in family partition.

22. Respondent/plaintiff No. 1 (PW-1) further admitted that defendant No. 3, i.e., the appellant herein, had come to Bengaluru to speak to his mother. He also stated that the house at Bengaluru

was a partially constructed house and that one floor thereof had been constructed during 1991-1992. The witness, however, was unable to state the amount spent on such construction. A specific suggestion was put to him that a loan had been raised for construction of the house and that the suit schedule properties had thereafter been sold for repayment of the said loan, which suggestion he denied. At the same time, respondent/plaintiff No. 1 (PW-1) admitted that it was not possible for his father to look after the lands situated at Doddamagaravalli while residing at Bengaluru.

23. Uddegowda (defendant No. 2; DW-1), in his examination-in-chief, stated that the suit lands were sold by Renukaiah as there was no income from the same. He further stated that Renukaiah had been residing in Bengaluru for more than 20 years and, having faced difficulty in maintaining the lands and in constructing a house at Bengaluru, had sold the suit schedule properties to repay the house loan. It was also stated that the site upon which the house was constructed stood in the name of Renukaiah's wife.

24. We may also take note of the fact that the wife of Renukaiah, i.e., respondent/plaintiff No. 3, was not examined on behalf of the plaintiffs. The plaintiffs' specific case was that the suit properties had been sold without any family necessity. At the time of the sale, respondent/plaintiff No. 1 (PW-1) was admittedly a minor and had no personal knowledge regarding the manner in which the family finances were being managed. The precise knowledge in this regard would naturally have been with respondent/plaintiff No. 3, wife of Renukaiah and would be expected to be aware of the family affairs. Her non-examination assumes significance, particularly when the sale deed itself contains a clear recital that Renukaiah was in financial difficulty and was unable to look after and improve the properties.

25. The selective institution of the suit for partition in respect of only the suit schedule properties, while leaving out the remaining four properties which, according to the admission made by respondent/plaintiff No. 1 (PW-1), had been sold to their uncle, is another circumstance which is of utmost relevance and creates doubts on the *bona fides* of the claim made by respondent Nos. 1-

3/plaintiffs. The admission of respondent/plaintiff No. 1 (PW-1) that the suit had been filed at the instance of his senior uncle further assumes significance in this very context. Respondent Nos. 1-3/plaintiffs have offered no satisfactory explanation as to the circumstances in which the remaining four properties came to be sold to their uncle, while the alienation of only the two suit schedule properties was sought to be challenged in the present proceedings. The sale deed/deeds, if any, for alienation of these four properties were never brought on record.

26. The allegation that Renukaiah was addicted to vices such as gambling and drinking also appears to be an improvement made by respondent/plaintiff No. 1 (PW-1) beyond the pleadings and, in any event, remained a bald assertion unsupported by independent evidence. Significantly, respondent/plaintiff No. 1 (PW-1) himself admitted that his mother (respondent/plaintiff No. 3) was aware of his father's alleged bad habits. The plaintiffs, therefore, should have examined respondent/plaintiff No. 3 if they were intending to establish the said allegation and the circumstances

in which the sale was effected, but consciously chose not to do so.

27. Respondent/plaintiff No. 1 (PW-1) also admitted that one floor of the house standing on the plot gifted to his mother by her sister had been constructed in 1991-1992. The specific case of the defendants including appellant/defendant No. 3 was that the said construction had been undertaken by Renukaiah by raising a loan and that the suit properties were subsequently sold for repayment thereof. If respondent Nos. 1-3/plaintiffs intended to controvert this specific assertion, respondent/plaintiff No. 3, being the wife of Renukaiah and the person presumably having knowledge of the family affairs/finances, was the most material witness to establish to the contrary. Her non-examination, in the facts and circumstances of the present case, justified the drawing of an adverse inference against respondent Nos. 1-3/plaintiffs.

28. It is also significant that respondent Nos. 1-3/plaintiffs did not seek cancellation or setting aside of the registered sale deed executed by Renukaiah in favour of Ziauddin (defendant No. 1). Though the

absence of such a prayer, by itself, may not be determinative of respondent Nos. 1-3/plaintiffs' claim, the same assumes significance when considered cumulatively with the selective manner in which the suit for partition was instituted, excluding the other properties which had admittedly been dealt with by the senior uncle of respondent/plaintiff No. 1 (PW-1). These circumstances, taken together, materially affect the basis upon which respondent Nos. 1-3/plaintiffs sought relief of partition in respect of the suit schedule properties.

29. The High Court, while reversing the well-reasoned judgment of the trial Court, failed to adequately consider these material circumstances emerging from the evidence on record, particularly the absence of reliable evidence regarding the alleged undervaluation of the properties, the non-examination of respondent/plaintiff No. 3, the admissions made by respondent/plaintiff No. 1 regarding the other properties and the circumstances surrounding the construction of the Bengaluru house. Instead, the High Court principally relied upon the assertion of respondent/plaintiff No. 3 regarding the alleged vices of Renukaiah to conclude

that the alienation was not supported by *bona fide* necessity.

30. Having regard to the facts and circumstances noticed hereinabove, we are of the considered view that the impugned judgment of the High Court does not withstand judicial scrutiny. The judgment of the trial Court, dismissing the suit for partition upon appreciation of the evidence and holding that the sale proceeds had been utilised towards discharge of the loan incurred for construction of the Bengaluru house, was based on a plausible and reasoned appreciation of the material on record. The High Court, in our view, was not justified in interfering with the same merely on the basis of the unsubstantiated allegation regarding the alleged vices of Renukaiah.

31. Resultantly, the appeal succeeds and is accordingly allowed. The impugned judgment and order dated 23rd April, 2010 passed by the High Court is set aside and the judgment and decree dated 14th March, 2002 passed by the trial Court are restored. Decree be drawn accordingly.

32. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AUGUSTINE GEORGE MASIH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
SEPTEMBER 16, 2026.