

**Person Merely Handing Over Sale Consideration To Vendor Can't Claim Right On
Immovable Property Sans Evidence To Show His Contribution: Karnataka HC**

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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
SACHIN SHANKAR MAGADUM; J.**

R.S.A NO. 1092 OF 2018; 17 NOVEMBER, 2022

K.S. RAMA RAO versus SUBBALAKSHMI

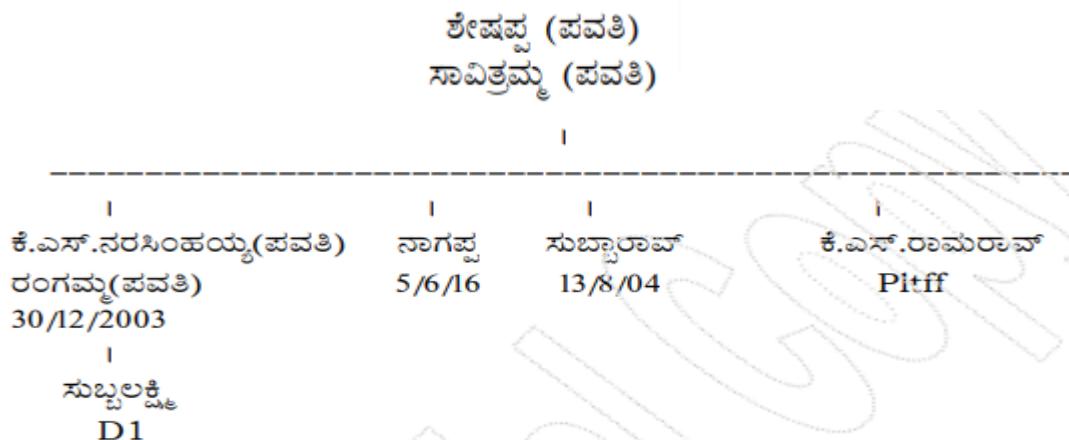
Appellant by T.N. Viswanatha, Advocate

Respondent by Sourabh R.K., Advocate

JUDGMENT

The captioned second appeal is filed by the unsuccessful plaintiff feeling aggrieved by the concurrent judgments of the Courts below wherein plaintiffs suit seeking relief of declaration that he has half share in the properties and for partition and separate possession is dismissed by both the Courts below.

2. For the sake of brevity, the parties are referred to as per their rank before the Trial Court.
3. The family tree of the parties is as under:



4. The plaintiff herein claims that he is the younger brother of one K.S.Narasimaiah. It is the specific case of the plaintiff that he along with his elder brother Narasimaiah migrated to Magadi and were working as a server and a washer in hotels and later both the brothers started their own hotel business. Plaintiff claims that out of the income generated from the hotel business, plaintiff along with his elder brother Narasimaiah got the suit property registered in the name of his elder brother's wife namely Rangamma. Plaintiff specifically contends that the property purchased in the name of his sister-in-law Rangamma is in fact joint property purchased by both the brothers. Plaintiff also claimed that he is in joint possession over the suit schedule property. In the alternate, the plaintiff also contended that his brother acknowledging his contribution towards sale consideration, has made a bequeath under Will dated 10.01.2003 and therefore, claimed that he is entitled to have half share in the suit schedule property and therefore, prayed to grant his legitimate half share in the suit schedule property by effecting partition by metes and bounds.

5. On receipt of summons, the defendant herein who is the daughter of K.S.Narasimaiah and Rangamma contested the proceedings and stoutly denied the entire averments made in the plaint. The defendant seriously disputed the averments made in the plaint in regard to joint acquisition of suit schedule property by plaintiff and her father K.S.Narasimaiah. On the contrary, defendant claimed that her father along with her mother shifted to Magadi and started his own hotel business. Therefore, defendant claimed that plaintiff had no connection with the hotel business which was started by her father K.S.Narasimaiah. She also contended that her mother pursuant to registered sale deed acquired absolute right over the property and after her death, she being the sole legal heir, is entitled to inherit the suit schedule property. Defendant also contended that

her mother has bequeathed the suit schedule property in her favour and therefore, claimed absolute title and sought for dismissal of the suit.

6. Plaintiff and defendant to substantiate their respective claim let in oral and documentary evidence.

7. Trial Court after having assessed oral and documentary evidence did not accept the contention that suit property was jointly acquired by plaintiff and his elder brother K.S.Narasimaiah. Trial Court while taking cognizance of title documents vide Exs.D-1 to D-4 coupled with other supporting documents, was of the view that the suit schedule property is self acquired property of Rangamma. Referring to the recitals, Trial Court found that there is no mention in regard to the joint earning of plaintiff and his elder brother K.S.Narasimaiah and there is no covenant indicating that the sale consideration was jointly pooled by plaintiff and his elder brother K.S.Narasimaiah.

8. While considering the Will set up by plaintiff, Trial Court was of the view that K.S.Narasimaiah had no title over the suit schedule property and he could not have bequeathed and therefore, Trial Court has recorded a categorical finding that he had no right to execute any Will and therefore, Trial Court held that Ex.P-5, alleged Will executed by K.S.Narasimaiah will not create any right in favour of plaintiff over the suit schedule property. Trial Court held that K.S.Narasimaiah had no semblance of right over the property in question as it was absolutely owned by Rangamma and therefore, proceeded to dismiss the suit. While examining the Will set up by defendant vide Ex.D-7, Trial Court held that the Will is proved by defendant and she would succeed to the property under testamentary succession.

9. Feeling aggrieved by the judgment and decree of the Trial Court, the plaintiff preferred an appeal before the Appellate Court.

10. The Appellate Court has independently assessed the entire evidence on record. Appellate Court has meticulously dealt with the claim made by plaintiff in regard to jointly pooling sale consideration to acquire the suit schedule property along with his elder brother K.S.Narasimaiah. It is his case that plaintiff has banked heavily on the endorsement indicated in the sale deeds. Placing reliance on the endorsement on the sale deeds, he would contend that it is the plaintiff who handed over sale consideration. Therefore, plaintiff's contention was that this relevant piece of evidence which is part of registered sale deed would clearly indicate that the plaintiff along with his elder brother have invested money and therefore, he is entitled to claim a share in the suit schedule property and defendant cannot assert absolute title over the property in question.

11. Appellate Court to examine this controversy has given its anxious consideration to the endorsement made in the sale deed which is marked at Exs.D-1(a) and (b), 2(a) and (b) and 3(a) and (b). On examination of these endorsements, all that Appellate Court found was plaintiff has paid the sale consideration on behalf of Rangamma. If the endorsement reads as above, then it has to be inferred that the sale consideration was in fact paid by Rangamma through plaintiff who had only handed over the sale consideration. Mere handing over of sale consideration by the plaintiff at the time of execution of sale deed will not in itself create a right and therefore, Appellate Court was also not inclined to interfere with the judgment and decree of the Trial Court. Appellate Court was of the view that the findings and conclusions arrived at by the Trial Court is based on clinching rebuttal evidence let in by defendant and in absence of legal evidence let in by the plaintiff. It is in this background, Appellate Court was not inclined to interfere with the judgment and decree of the Trial Court.

12. These concurrent findings of the Courts below are under challenge.

13. Learned counsel appearing for plaintiff reiterating the grounds would vehemently argue and contend that there is sufficient evidence on record to indicate that plaintiff being younger brother has also equally contributed to acquire the suit schedule property and therefore, he would contend that the concurrent findings of the courts below in dismissing the suit suffers from perversity and would warrant interference at the hands of this Court. Learned counsel would also emphasize on the fact that sale consideration was paid by the plaintiff herein and therefore, this

aspect is not dealt by both the Courts and therefore, a substantial question of law would arise for consideration and the appeal deserves to be admitted on the said aspect. He would further contend that the evidence on record is sufficient enough to arrive at a conclusion that both the brothers out of their joint exertion have purchased the suit schedule property and therefore, he would contend that both the Courts erred in not granting relief of partition in favour of plaintiff and therefore, the same has resulted in miscarriage of justice and a substantial question of law would arise in that regard also.

14. Heard the learned counsel appearing for the plaintiff. Perused the concurrent findings of the Courts below.

15. It is the specific case of the plaintiff that he along with his elder brother K.S.Narasimaiah migrated to Magadi to seek employment and there they started hotel business jointly and out of the income generated from the hotel business, he along with his elder brother purchased the suit schedule property. To substantiate this fact, there is absolutely no evidence let in by plaintiff. Except bald averments, plaintiff has not been able to establish the said fact that he along with his elder brother K.S.Narasimaiah was doing hotel business and they were able to save money and out of the said savings, they have purchased this property in the name of his elder brother's wife i.e., Rangamma. If there is no nucleus and in absence of some tangible evidence to indicate that he shifted along with his elder brother and started a hotel business jointly, this Court is of the view that both the Courts were justified in not accepting the contention raised by the plaintiff in the present suit. Plaintiff has in fact placed heavy reliance on the endorsement found in all the registered sale deeds vide Exs.D-1 to D-4. By placing reliance on the endorsements in the sale deeds, plaintiff claims that he has equally contributed to the sale consideration. But on reading the endorsements, this Court would also find that the endorsement only indicates that the money that was paid by Rangamma was handed over by plaintiff to the vendor. The endorsement nowhere indicates that sale consideration was equally contributed by plaintiff. The properties are purchased at different point of time. The sale deeds are dated 17.10.1961, 30.01.1963, 22.04.1963 and 28.05.1971.

16. During the lifetime of K.S.Narasimaiah, plaintiff never asserted right over the property. Therefore, this Court is of the view that after the death of his elder brother K.S.Narasimaiah as well as after death of Rangamma, a feeble attempt is made by plaintiff to lay a false claim over the suit schedule property under the garb that he has equally contributed while acquiring his properties.

17. If really all the suit schedule properties were purchased through joint labour, then it was quite unnatural for an elder brother to purchase the property in the name of his wife. Obviously, if there was equal contribution, plaintiff would have never agreed to purchase the property in the name of his sister-in-law. Therefore, the theory that plaintiff has equally contributed by parting sale consideration appears to be unnatural and both the Courts have not accepted this contention. Both the Courts have concurrently held that sale consideration was paid by Rangamma and all the suit schedule properties are self acquired properties of Rangamma. These concurrent findings recorded by the Courts below is in absence of legal evidence let in by plaintiff. The title documents which are produced by defendant clearly indicates that it is Rangamma who has paid sale consideration while acquiring the suit schedule properties vide Exs.D-1 to D-4. Therefore, I do not find any error in appreciation of evidence on record by both the Courts below. The findings and the ultimate conclusions arrived at by both the Courts does not suffer from any infirmities or illegalities.

18. No substantial question of law arises for consideration. Accordingly, the appeal is dismissed.