

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.805 of 2021
(@ SLP (C) No.2331 of 2016)**

MALLANAGUODA AND ORS. Appellant(s)

Versus

NINGANAGOUDA AND ORS. Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. Ranganagouda Patil, the deceased husband of Appellant No.2 and father of Appellant No.1 and 3 filed a suit for partition and separate possession. The Plaintiff and Defendant Nos.1 to 6 are brothers. Defendant Nos.7 and 8 are their sisters and Defendant No.9 is their mother. The father of the Plaintiff Veeranagouda Channappagouda Patil died intestate in the year

1981. According to the Plaintiff, due to a quarrel between him and his father, he shifted to Navalur and started working in Mysore Kirloskar at Sattur 15 years prior to the filing of the suit.

2. The Defendants refuted the claim of the Plaintiff and contended that there was a partition during the life time of their ancestor i.e. Veeranagouda. The Defendants pleaded that the Plaintiff was compensated monetarily in lieu of his share in the joint family properties and he started residing separately.

3. By a judgment dated 16.11.2002, the Third Additional Civil Judge, Dharwad partly decreed the suit. The Plaintiff was granted 1/8th share of the entire suit properties except Block No.163. A separate inquiry for mesne profits was directed to be conducted during final partition in respect of landed properties and the Tehsildar of the concerned District was directed to effect partition. In so far as house property is concerned, a Court Commissioner was directed to be appointed.

4. The Appellants filed Final Decree Petition No.11 of 2003 under Order 20 Rule 18 read with Section 151 CPC. Pursuant to an application filed under Order 26 Rule 9 CPC, a Commissioner was appointed for partitioning the suit

properties. The Commissioner submitted his report to which the Defendants filed their objections. The objections of the Defendants to the report of the Commissioner were rejected by the Trial Court. The final decree petition was allowed in part on 28.11.2012. The Plaintiff was granted 1/8th share in suit Schedule A properties in suit Block No.5, Harobelawadi village along with mesne profits of Rs. 4,89,350/-. The Defendants filed an appeal against the judgment and decree dated 28.11.2012. The Second Additional District Judge by a judgment dated 07.08.2015 upheld the judgment and decree passed in final decree proceedings except in respect of Schedule D property. Dissatisfied with the judgment of the First Appellate Court, the Defendants filed a Regular Second Appeal before the High Court. At the admission stage, the High Court set aside the judgment of the Trial Court as well as final decree proceedings and remanded the matter back to the Trial Court to reconsider allotment of shares to each one of the parties in Block No.5. Aggrieved by the said judgment of the High Court, the legal representatives of the Plaintiff are before this Court.

5. The contention of the Appellant is that the High Court committed a grave error in interfering with the well-

considered judgment of the First Appellate Court. Mr. Basava Prabhu Patil, learned Senior Counsel for the Appellants submitted that the High Court exceeded its jurisdiction under Section 100 CPC in setting aside the judgment of the First Appellate Court. He further submitted that the First Appellate Court is the final Court on facts and the High Court ought not to have interfered with the judgment. He also argued that the High Court reversed the judgment of the First Appellate Court on the basis of facts contrary to the evidence on record.

6. Mr. S.N. Bhat, learned Counsel appearing for the Respondents/Defendants argued that the High Court has rightly held that the land in Block No.5 has non-agricultural potentiality and allotment of the entire block No.5 in favour of the Appellants would cause serious prejudice to the Respondents. He emphasized that the land allotted to the Appellants in Block No.5 is situated adjacent to a busy road which is not in dispute. He submitted that every judgment of the High Court need not be interfered with by this Court, if justice has been done to the parties. Partition of properties should not be lop sided benefitting only one party was the

assertion made by Mr. Bhat to persuade this Court not to interfere with the judgment of the High Court.

7. Preliminary decree was passed in favour of the Plaintiff on 16.11.2002 and final decree petition was disposed of by the Trial Court on 28.11.2012. As the main dispute relates to the allotment of 8 acres, 13 guntas of land in Block No.5, it is necessary to examine the findings recorded by the Courts below in respect of the said property. Schedule A has seven properties, totaling 69 acres, 16 guntas. Plaintiff was allotted 8 acres, 27 guntas being 1/8th share of 69 acres, 16 guntas. The partition documents prepared by the Commissioner appointed by the Court shows that the Plaintiff was given 8 acres, 13 guntas in Block No.5. As the Plaintiff was entitled to 8 acres, 24 guntas and he was given only 8 acres, 13 guntas, the Commissioner held that Defendants have to pay Rs.4853-33/- for the remaining 11 guntas. The report of the Commissioner was accepted by the Trial Court and the objections raised by the Defendants were rejected.

8. During the pendency of Regular Appeal filed by the Defendants/Respondents an application was moved under Order 41 Rule 27 CPC seeking permission to produce the village map to show that the land situated in Block No.5

which was allotted to the Plaintiffs is situated adjacent to Dharwad-Saudatti State Highway and is very near to Harobelawadi village whereas the rest of the lands are situated far away from the village. The application filed by the Respondents under Order 41 Rule 27 was dismissed by the Appellate Court on the ground that there was no satisfactory explanation for not producing the document in the Trial Court. The document was obtained by the Respondents on 28.08.2012, prior to the disposal of the final decree proceedings but was not produced before the Trial Court. While upholding the judgment of the Trial Court in the final decree petition, the Appellate Court approved the report of the Court Commissioner who visited the landed property shown in Schedule A and verified the quality and fertility of the land and found them to be similar. The Court Commissioner considered the convenience of the parties to cultivate the land while allotting Block No.5 in favour of the Plaintiff. The First Appellate Court on reexamining the matter was also of the opinion that the convenience of the parties to cultivate the land is of prime importance while partitioning landed properties. The First Appellate Court was of the opinion that if the land in Block No.5 has to be partitioned

equally to all the parties, that would cause inconvenience to them for conducting agricultural operation. The First Appellate Court discussed the evidence and held that the Defendants did not dispute the similarity of fertility of the land. The High Court rejected the submission on behalf of the Defendants regarding the non-potentiality of Block No.5 on the ground that the said question was never raised by them in the Trial Court. No ground to that effect was also taken in the first appeal. The First Appellate Court referred to the cross-examination of the Court Commissioner by the Defendants and found that no suggestion regarding the non-potentiality was put to the Court Commissioner. On the basis of the above findings, the First Appellate Court upheld the final decree proceedings in respect of allotment of 8 acres, 13 guntas of land in Block No.5 in favour of the Plaintiff.

9. The High Court reversed the conclusion of the First Appellate Court relating to non-agricultural potentiality of the land without giving any reasons. The High Court held that 8 acres 13 guntas have to be conveniently divided amongst all sharers so that each one of them will get a portion of the land in Block No.5 which has non-agricultural potentiality. Only on that ground, the High Court set aside the final decree

proceedings and remitted the matter back for fresh consideration.

10. The First Appellate Court is the final Court on facts. It has been repeatedly held by this Court that the judgment of the First Appellate Court should not be interfered with by the High Court in exercise of its jurisdiction under Section 100 CPC, unless there is a substantial question of law. The High Court committed an error in setting aside the judgment of the First Appellate Court and finding fault with the final decree by taking a different view on factual findings recorded by the First Appellate Court. That apart, the High Court did not give any reason to substantiate the finding that the land in Block No.5 has non-agricultural potentiality, especially when the First Appellate Court refused to accept the said contention by rejecting the application filed under Order 41 Rule 27 by the Respondents. In the normal course, we would have set aside the judgment of the High Court and remanded the matter back for fresh consideration. However, taking into account the fact that the preliminary decree was passed way back in 2002 and the Appellants have not been able to enjoy the fruits of the decree, we have examined the correctness of the judgment of the First Appellate Court.

11. The final decree passed by the Trial Court to the extent affirmed by the First Appellate Court is upheld. The judgment of the High Court is set aside. The Appeal is allowed accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[S. RAVINDRA BHAT]

**New Delhi,
March 12, 2021.**