

**SUPREME COURT OF INDIA**

Saheb Reddy

Vs.

Sharanappa & Ors.

C.A.No.901 of 2014

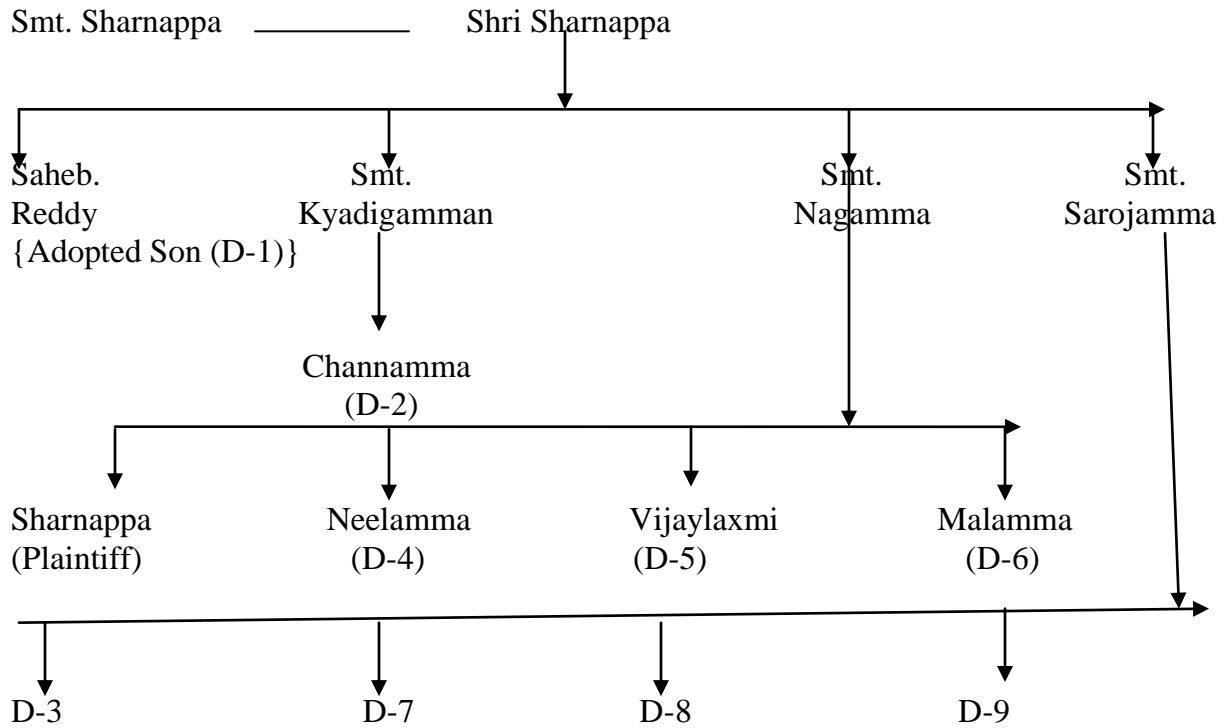
(Anil R.Dave and L.Nageswara Rao,JJ.,)

16.11.2016

**JUDGMENT**

**Anil R.Dave,J.,**

1. The appellant - original defendant no.1 is aggrieved by the judgment dated 15th December, 2011 of the High Court of Karnataka, Circuit Bench at Gulbarga, rendered in Regular Second Appeal No. 7310 of 2009, whereby the High Court has allowed the appeal of Bheemanna Gaded



the appellant herein by setting aside the judgment and decree of the first appellate Court dated 31st August, 2009 and restored the judgment and decree dated 9th February, 2007 rendered by the trial Court.

2. For the purpose of convenience, the parties to the litigation have been referred to as they were before the trial Court. As the matter pertains to partition of the family property, the following chart would give a better idea of the relationships among the parties:

3. The brief facts, which are necessary for proper appreciation of the dispute among the parties, in a nutshell, are as follows:-

“The plaintiff-Respondent No. 1 herein, son of Smt. Nagamma and grandson of late Shri Sharnappa Gaded, filed Civil Suit OS No. 22 of 2005 in the Court of Civil Judge (Senior Division), Yadgir for partition and separate possession of his share by metes and bounds and with a prayer to put him in possession of the suit property and for a declaration that registered adoption deed dated 9.2.1971 is null and void and for other consequential reliefs.”

4. The case of the plaintiff was that Shri Sharnappa Gaded, son of Late Bheemanna Gaded, was the last holder of the suit properties, who died intestate in 1957 and had left behind him his wife Smt. Sharnappa and three daughters namely Smt. Kyadigamma (defendant No. 4), Smt. Nagamma (defendant No. 5) and Smt. Sarojamma (defendant No. 6).

5. On the demise of Shri Sharnappa Gaded in the year 1957, suit properties had devolved upon his wife Smt. Sharnappa and the aforesaid three daughters in equal shares and the female heirs became absolute owners of their respective shares. No partition was effected among the four sharers and in the course of time, three daughters died during the life of their mother Smt. Sharnappa, leaving behind their respective undivided share in the suit properties, which devolved upon their respective heirs.

6. Upon death of Smt. Nagamma, her undivided share devolved upon the plaintiff along with his three sisters, being defendant nos.4, 5 and 6. Likewise, it was contended that undivided 1/4th share of Smt. Kyadigamma in suit properties devolved upon her only daughter named Smt. Channama- defendant no. 2, who is the wife of the present appellant and undivided share of 1/4th of Smt. Sarojamma devolved upon defendant no. 3 and defendant nos. 7 to 9. The plaintiff had further pleaded that he was a member of the undivided family and after death of his grandmother Smt. Sharnappa, difference arose among the family members and therefore, he demanded his legitimate share on 9.12.2004 from the defendants but defendant No.1 refused to give any share to him. It was further contended that defendant No.1, the present Appellant, claimed to have been adopted by late Smt. Sharnappa, but, in fact, there was no execution of any adoption deed and requisite ceremony for adoption of defendant no.1 had also not been performed and therefore, defendant no.1 had no right in the property. It was further submitted that defendant no.1 married defendant no.2, daughter of Smt.

Sharnappa and therefore, defendant no.1, the present Appellant, was trying to usurp the entire suit property by denying the share of the plaintiff.

7. On the other hand, it had been submitted on behalf of defendant no.1 that the plaintiff was not in possession of the suit properties along with other defendants as a member of an undivided family. It had been submitted that as late Smt. Sharnappa had no male issue, she had adopted defendant no.1, who had married defendant no.2. It had been further submitted that as defendant no.1 was an adopted son of Smt. Sharnappa, defendant no.1 had performed all religious ceremonies including the rituals of making payment to other defendants and other female members upon death of Smt. Sharnappa. It had been submitted that Smt. Sharnappa had adopted defendant no.1 by virtue of adoption deed dated 9th February, 1971, which had been duly registered and from the date of adoption, defendant no.1 had started living with his adoptive mother and had also enjoyed the suit property as an owner thereof. The property had also been mutated in the name of defendant no.1 and the said mutation had also been challenged. Alternatively, it was submitted that as defendant no.1 was in possession of the suit property for more than 34 years, he had also become the owner by adverse possession of the suit property.

8. The trial Court by a judgment and decree dated 9th February, 2007, in view of the registered adoption deed and upon considering other evidence, came to the conclusion that defendant no.1 was an adopted son of Smt. Sharnappa and held that the adoption of defendant no.1 would not take away right and interest of other members of the family, which they had received prior to the date of adoption by virtue of the provisions of Section 12(c) of the Adoption Act. Thus, the trial Court decreed the suit and ordered that the plaintiff was entitled to 1/16th share in the suit property as the property of late Shri Sharnappa Gaded had been divided into four parts. One part was inherited by his widow - Smt. Sharnappa and three parts had been inherited by his three daughters, named hereinabove. Smt. Nagamma, being one of the daughters had received 1/4th share and the plaintiff being one of the four children of late Smt. Nagamma, had received 1/4th share of Smt. Nagamma and thus the plaintiff was entitled to 1/16th share in the suit property.

9. Being aggrieved by the judgment and decree of the trial Court, defendant no.1 preferred First Appeal No 30/2007 before the Fast Track Court, Yadgir (hereinafter referred to as the "first appellate Court"). The plaintiff also preferred an appeal contending that in addition to 1/16th share, he was also entitled to a further share in 1/4th share of his deceased grandmother, Smt. Sharnappa.

10. The first appellate Court, vide judgment and decree dated 31st August, 2008 dismissed the appeal filed by defendant no.1 and partly allowed the appeal filed by the plaintiff by giving the plaintiff and his sisters 1/4th share in their mother's 1/4th share in all the suit properties as granted by the trial Court and in addition thereto their mother's 1/4th share in the share of Smt. Sharnappa in all the suit properties and came to the conclusion that the trial Court did not consider the fact that Smt. Sharnappa had died intestate and by virtue of the provisions of Section 15 of the Hindu Succession Act, 1956 (herein after referred to as "the

Succession Act” ) all the family members had got share in the properties of late Smt. Sharnappa. The first appellate Court had held that defendant no.1, who had been adopted on 9th February, 1971 would get 1/4th share of his adoptive mother’ s property, whereas the plaintiff would get not only 1/16th share of the property, but also 1/64th share of the property of Smt. Sharnappa for the reason that Smt. Sharnappa had one adopted son and three daughters and therefore, the plaintiff would, at the first instance, get 1/4th share of Smt. Nagamma, the property which she had inherited from her mother Smt. Sharnappa and further 1/64th share from the property of Smt. Sharnappa (grandmother) as Smt. Sharnappa had died intestate. Thus, the plaintiff was entitled to 5/64th share in the suit property.

11. Being aggrieved by the judgment of the first appellate Court, defendant no.1 filed Regular Second Appeal no.7310 of 2009 before the High Court. The High Court by the impugned judgment accepted the said second appeal by setting aside the judgment of the first appellate Court and restored the judgment and decree of the trial Court.

12. We have heard the learned counsel at length, on facts as well as on legal issues. The issues involved in the instant case also pertain to facts. The core question which, in our opinion, arises for our consideration in this appeal is whether the High Court has rightly allocated share of the properties among the family members in accordance with the Hindu Succession Act, 1956.

13. It is undisputed that late Shri Sharnappa died intestate in the year 1957 leaving behind him his wife Smt. Sharnappa and three daughters namely Smt. Kydigamma, Smt. Nagamma and Smt. Sarojamma. In the instant case, there was no coparcenary, as Late Shri Sharnappa was the sole male member in the family. In the circumstances, upon his death his properties were inherited by his widow and three daughters.

14. At the time when Shri Sharnappa died in 1957, defendant no.1 was not in the picture as he was adopted by Smt. Sharnappa on 9th February, 1971. By virtue of proviso to Section 12 of the Adoption Act, an adopted child cannot divest any person of any estate which vested in him or her before the adoption. Thus, the property of late Shri Sharnappa which, upon his death in 1957, had vested in his widow and three daughters, would not be disturbed by virtue of subsequent adoption of defendant no. 1.

15. So far as inheritance of the suit property in favour of the plaintiff is concerned, in our opinion, the first appellate Court was correct to the effect that the plaintiff would inherit not only property of his mother, Smt. Nagamma along with his three sisters, but he would also have share in the properties of his grandmother, late Smt. Sharnappa. Smt. Sharnappa had also not prepared any Will and as she had died intestate, her property would be divided among her adopted son i.e. defendant no.1 and heirs of her three daughters, who had predeceased Smt. Sharnappa. Smt. Sharnappa was having 1/4th share in the entire property, which she had inherited from her husband late Shri Sharnappa. One of the daughters being Nagamma, heirs of Nagamma would inherit 1/4th share of property of Smt. Sharnappa and

the plaintiff being one of the four heirs of late Smt. Nagamma, would get 1/64th share from the property of his grandmother Smt. Sharnappa.

16. As originally Smt. Sharnappa was to get 1/4th share from the property of Shri Sharnappa, from her 1/4th share, the properties would be inherited by her adopted son and heirs of her predeceased daughters. As stated hereinabove, the plaintiff would be getting 1/16th share in the property of Smt. Nagamma and 1/64th share upon death of Smt. Sharnappa and thus, the plaintiff would be getting 5/64th share in the suit property, whereas defendant no.1 would get 1/16th share of the suit property.

17. Upon appreciation of the evidence, it was found by the trial Court that the adoption was valid because that was by virtue of a registered adoption deed and the said deed had been duly proved. In the circumstances, we do not think it necessary to discuss the said evidence again. We confirm the view of the first appellate Court that the adopted son viz. defendant no.1 would not divest any person in whom the property had been vested prior to adoption. Section 12 of the Hindu Adoptions and Maintenance Act, 1956 reads as under :-

“12 Effects of adoption. - An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.”

18. Looking at the aforesaid provisions of Section 12 of the Adoption Act, it is crystal clear that the property which had been vested in the widow and three daughters of late Shri Sharnappa Gaded in 1957 would not be disturbed because of adoption of defendant no.1, which had taken place on 9 th February, 1971. Thus, Smt. Sharnappa had become absolute owner of 1/4th share and Smt. Nagamma, the mother of the plaintiff had also become an owner of 1/4th share of the property belonging to late Shri Sharnappa Gaded.

19. In view of the aforesaid legal position, upon hearing the learned counsel, we are of the view that the High Court had committed an error by setting aside the judgment and decree of

the first appellate Court and therefore, we set aside the impugned judgment and restore the judgment and decree of the first appellate Court.

20. The appeal is, accordingly, allowed with no order as to costs.