

SUPREME COURT OF INDIA

K.Pradeep

Vs.

Jayamma

C.A.No.5185 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

12.04.2017

JUDGMENT

R.Banumathi,J.,

SLP(Civil)No.847 of 2014

1. Leave granted.

2. This appeal arises out of the Judgment passed by the High Court of Karnataka at Bangalore in RFA No.488 of 2005 dated 03.12.2012, in and by which, the High Court has reversed the Judgment passed by the trial court and held that the plaintiff Jayamma and defendants 9 and 10 in the suit (Lakshamma and Sharadamma), being the daughters of Ram Shetty, are together entitled to one-third share in the Schedule ' A ' immovable property.

3. Priyadarshini, mother of the appellant, purchased the property by virtue of a Sale Deed dated 01.06.1989 from one Munivenkatamma and her two sons. Priyadarshini, out of love and affection, executed a Gift Deed dated 13.09.2004 in favour of her son, the appellant herein. One of the co-sharers namely, Jayamma, being the daughter of Ram Shetty, has filed Suit No. 4694 of 1986 claiming partition in the suit property. The trial court dismissed the suit by Judgment dated 18.10.2000, holding that the plaintiff Jayamma failed to prove the properties as the joint family properties.

4. Being aggrieved, Jayamma filed an appeal before the High Court, being RFA No. 488 of 2005, in which the High Court, being the first Appellate Court, on appreciation of evidence, has reversed the Judgment of the trial court and held that Jayamma and her two sisters Lakshamma and Sharadamma are together entitled to one-third share in the suit properties. Pursuant to the preliminary decree, final decree was also passed.

5. Being aggrieved by the Judgment of the High Court in RFA No. 488 of 2005, the appellant herein has filed this appeal, by way of special leave.

6. By earnest efforts of the learned counsel appearing for the parties, the appellant and the first respondent have arrived at a settlement and entered into a compromise. The memo of compromise dated 12.04.2017 along with a sketch attached thereto has been handed over to the Court as well.

7. The learned counsel appearing for Respondent Nos. 5 to 10 has raised objection and submitted that the sketch filed along with the memo of compromise is not in accordance with the final decree passed by the High Court. We are not inclined to go into that question in view of the fact that the appellant and the respondent have settled the matter amongst themselves as per the terms set forth in the memo of compromise, the terms of which, in our view, may not affect the shares of Respondent nos. 5 to 10. Though Respondent Nos. 5 to 10 are not in a position to substantiate their objection, we deem it appropriate to make observation that if the memo of compromise disturbs the shares of any other sharers (as per the final decree), it will be open to such persons to pursue their remedy before appropriate forum.

8. The appeal is disposed of in terms of the memo of compromise. The memo of compromise along with the sketch therein shall form part of the Judgment.

9. No costs.