



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 26TH DAY OF NOVEMBER, 2024

PRESENT

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA**

REGULAR FIRST APPEAL NO.100174 OF 2016 (PAR/POS)

BETWEEN:

1. BASAVARAJ
S/O CHANNABASAPPA ALAGAWADI,
AGE: 66 YEARS, OCC: AGRICULTURE,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
2. CHANDRASHEKHAR
S/O CHANNABASAPPA ALAGAWADI,
AGE: 59 YEARS, OCC: AGRICULTURE,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
3. SOMAPPA
S/O CHANNABASAPPA ALAGAWADI,
AGE: 58 YEARS, OCC: AGRICULTURE,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
4. MALLAVVA
W/O CHANDRASHEKHAR ALAGAWADI,
AGE: 61 YEARS, OCC: HOUSEHOLD WORK,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD.
5. ANNAPURNA
W/O SOMAPPA ALAGAWADI,
AGE: 48 YEARS, OCC: HOUSEHOLD WORK,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
6. RAJSHEKHAR S/O KANTAPPA GUNJAL,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: BHANDIWAD, TQ: HUBBALLI,



DIST: DHARWAD-580020.

...APPELLANTS

(BY SRI MAHESH WODEYAR, ADVOCATE)

AND:

1. SMT. KENCHAVVA
W/O MALLANAGOUDA DODDALINGANAGAUDRA,
(SINCE R1 IS DEAD, R1A TO C ARE REPRESENTING
THE ESTATE OF DECEASED AND THEY
ARE ALREADY ON RECORD).
- 1(A) BASAVVA
D/O MALLANAGOUDA DODDALINGANAGAUDRA,
AGE: 50 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIRGUPPI, TQ: HUBBALLI,
DIST: DHARWAD-591242.
- 1(B) GURUNAGOUDA
S/O MALLANAGOUDA DODDALINGANAGAUDRA,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: SHIRGUPPI, TQ: HUBBALLI,
DIST: DHARWAD-591242.
- 1(C) SMT. AKKAMAHADEVI
W/O MAHADEVAPPA BUDIHAL,
AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
R/O: LAXMESHVAR,
TQ: SHIRAHATTI-582166.
- 1(D) SHANMUKHGOUDA
S/O MALLANAGOUDA DODDALINGANAGAUDRA,

(SINCE R1D IS DEAD, RDA IS REPRESENTING
THE ESTATE OF DECEASED AND
THEY ARE ALREADY ON RECORD)
- 1(DA) SMT. NEELAVVA
W/O SHANMUKHAGAUDRA DODDALINGANAGAUDRA,
AGE 34 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIRGUPPI, TQ: HUBBALLI-591242.
2. SRI. MARUTI S/O VEERANAGOUDA DORASHETTI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: BANNIKOPPA, TQ: SHIRAHATTI,
DIST: GADAG-582120.



3. SMT. SHANTAVVA
W/O DEVAPPA MULAGUND,
AGE: 59 YEARS, OCC: AGRICULTURE,
R/O: HIREGUNJAL, TQ: KUNDGOL-581113.
4. SRI. SIDDAPPA
S/O DEVAPPA ALAGAWADI,
AGE: 29 YEARS, OCC: AGRICULTURE,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
5. SMT. PARAVVA
W/O DEVEPPA ALAGAWADI,
AGE: 66 YEARS, OCC: HOUSEHOLD WORK,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
6. SMT. BASAVANNEVVA
W/O MAHADEVAPPA ALAGAWADI,
(SINCE R.6 IS DEAD, R7 TO R9 ARE
REPRESENTING THE ESTATE OF DECEASED
AND THEY ARE ALREADY ON RECORD)
7. SRI.HANUMANTAPPA
S/O MAHADEVAPPA ALAGAWADI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: BHANDIWAD, TQ: HUBBALLI,
DIST: DHARWAD-580020.
8. SMT.KASTUREVVA
W/O ISHWARAPPA MULAGUND,
AGE: 64 YEARS, OCC: HOUSE HOLD WORK,
R/O: HIREIGUNJAL, TQ: KUNDGOL-581113.
9. SMT. SHANTAVVA
W/O KALLAPPA INAMATI,
AGE: 61 YEARS, OCC: HOUSEHOLD WORK,
R/O: DATANAL, TQ: NAVALGUND-582208.
10. SMT. LAXMAVVA
W/O SHIVAPPA SANGATI,
AGE: 56 YEARS, OCC: HOUSEHOLD WORK,
R/O: LINGARAJ CIRCLE, NAVALAGUND,
DIST: DHARWAD-582208.
11. SMT. ANNAPURNA



W/O ANDANAPPA HALEMANI,
AGE: 46 YEARS, OCC: HOUSEHOLD WORK,
R/O: EKALASPUR, TQ: MUNDARGI,
DIST: GADAG-582118.

12. SMT. MANJULA
W/O VIRUPAXAPPA VEERAPUR,
AGE: 43 YEARS,
OCC: HOUSEHOLD WORK,
R/O: HOLAGUNDI,
TQ: HOOVINAHADAGALI,
DIST: BALLARI-583219.
13. SMT. VIJAYALAXMI
W/O NINGAPPA VEERAPUR,
AGE: 35 YEARS,
OCC: HOUSEHOLD WORK,
R/O: HOLEGUNDI,
TQ: HOOVINAHADAGALI,
DIST: BALLARI-583219.
14. SMT. NEELAVVA
W/O GANGAPPA KOYAPPANAVAR,
AGE: MAJOR 66 YEARS,
OCC: HOUSEHOLD WORK,
R/O: YADWAD, TQ: DHARWAD-581206.
15. SRI. HANAMANTAGOUDA
BASANAGOUDA DODDALINGANAGOURA,
AGE: 64 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
16. SMT. PARVATEVVA
W/O SHANKRAPPA BACHAHANNAVAR,
AGE: 68 YEARS, OCC: HOUSEHOLD WORK,
R/O: BYAHATTI, TQ: HUBBALLI-580023.
17. SRI.DYANAGOUDA BASANAGOUDA
DODDALINGANAGOURA,
AGE: 61 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
18. GIRIJAVVA MAHADEVAPPA HATTI,
AGE: 63 YEARS, OCC: HOUSEHOLD WORK,
R/O: KARIKATTI, TQ: SAVADATTI,
DIST: BELAGAVI-591126.



19. SMT. SHANKARAVVA
W/O MALLAPPA KARANI,
AGE: 54 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIRAKOL, TQ: NAVALAGUND-582208.
20. SRI. RAMANAGOUDA NINGANGOUDA
DODDALINGANAGOURA,
AGE: 54 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
21. SMT. BASAVVA
W/O KAREYAPPA SHABAGON,
AGE: 56 YEARS, OCC: HOUSEHOLD WORK,
R/O: NIDAGUNDI, TQ: RON,
DIST: GADAG-583213.
22. SRI. NAGANAGOUDA NINGANAGOUDA
DODDALINGANAGOURA,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
23. SRI. YALLANAGOUDA NINGANAGOUDA
DODDALINGANAGOURA,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
24. SRI. RUDRAGOUDA NINGANGOUDA
DODDALINGANAGOURA,
AGE: 64 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
25. SMT. PARAVVA
W/O CHANDRASHEKHAR ANNIGERI,
AGE: 46 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIGLI, TQ: SHIRAHATTI,
DIST: GADAG-582210.
26. SRI. VENKANGOUDA RAMANAGOUDA
DODDALINGANAGOURA.

(SINCE R-26 IS DEAD, R27 TO R31 ARE
REPRESENTING THE ESTATE OF THE DECEASED
AND THEY ARE ALREADY ON RECORD)
27. SMT. MALLAVVA
W/O VENKANAGOUDA DODDALINGANAGOURA,



AGE: 71 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.

28. SMT. PREMA
W/O SHIVANAGOUDA DODDALINGANAGOURA,
AGE: 54 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
29. SMT. JYOTI W/O MALLANAGOUDA PATIL,
AGE: 32 YEARS, OCC: HOUSEHOLD WORK,
R/O: POLICE HEADQUARTERS,
NEAR K.C. PARK, DHARWAD-580008.
30. KUMAR SHANKARGOUDA
S/O SHIVANAGOUDA DODDALINGANAGOURA,
AGE: 28 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
31. SRI. SHEKHARGOUDA
S/O VENKANAGOUDA DODDALINGANAGOURA,
AGE: 56 YEARS, OCC: AGRICULTURE,
R/O: SHIRAGUPPI, TQ: HUBBALLI-591242.
32. SMT. DEVANNEVVA
W/O MALLANAGOUDA RAMANGOUDRA,
AGE: 52 YEARS, OCC: HOUSEHOLD WORK,
AGRICULTURE, R/O: SHIRAGUPPI,
TQ: HUBBALLI-591242.
33. SRI. BASAVANTAPPA GANGAPPA NERTI,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: HIEMALLUR, TQ: SHIGGAON,
DIST: HAVERI-581205.
34. SMT. SHIVALINGAVVA
W/O SHANMUKHAPPA GUNJAL,
AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
C/O. BASAVANTAPPA NERTI,
R/O: POST: HIEMALLUR (OLD),
TQ: SHIGGAON, DIST: HAVERI-581205.
35. SRI. MADEVAPPA
NINGAPPA GUNJAL,
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O: MANTUR, TQ: HUBBALLI-580020.



36. SMT. YALLAMMA N. BIKKANNAVAR,
AGE: 48 YEARS, OCC: HOUSEHOLD WORK,
R/O: HOOVINA SHIGLI, TQ: SAVANUR,
DIST: HAVERI-581118.
37. SRI. DEVENDRAPPA NINGAPPA GUNJAL,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: MANTUR, TQ: HUBBALLI-580020.
38. SMT. TANGAVVA
W/O BASAVANTAPPA KOYAPPANAGAR,
AGE: 52 YEARS, OCC: HOUSEHOLD WORK,
R/O: YADAWAD, DIST: DHARWAD-580001.
39. DODDAPPA NINGAPPA GUNGAL,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: MANTUR, TQ: HUBBALLI-580020.
40. SRI. IRAPPA NINGAPPA GUNJAL,
AGE: 44 YEARS, OCC: AGRICULTURE,
R/O: MANTUR, TQ: HUBBALLI-580020.
41. SMT. SUSHEELA L. HALLAD,
(SINCE R41 IS DEAD, R41A TO 41E ARE
REPRESENTING THE ESTATE OF DECEASED
AND THEY ARE ALREADY ON RECORD)
- 41(A) SRI. LAXMAN
S/O NAGAPPA HALLAD,
AGE: 61 YEARS, OCC: AGRICULTURE,
R/O: NAVALAGUND, TQ: NAVALAGUND,
DIST: DHARWAD-582208.
- 41(B) SMT. BASAMMA
W/O SHIDDAPPA HANCHINAL,
AGE: 42 YEARS, OCC: HOUSEHOLD WORK,
R/O: NAVALAGUND, DIST: DHARWAD-582208.
- 41(C) SRI. SHIVANAND
S/O LAXMAN HALLAD,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: NAVALAGUND, TQ : NAVALAGUND,
DIST: DHARWAD-582208.
- 41(D) SMT. CHANNAMMA
W/O VIRUPAXAPPA HOSAMANI,



AGE: 34 YEARS, OCC: HOUSEHOLD WORK,
R/O: POST: NAVALAGUND,
DIST: DHARWAD-582208.

- 41(E) KUMARI RENUKA
D/O LAXMAN HALLAD,
AGE: 28 YEARS, OCC: HOUSEHOLD WORK,
R/O: TQ: NAVALAGUND,
DIST: DHARWAD-582208.
42. SRI. BASAVARAJ MALLAPPA GUNGAL,
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O: MANTUR, TQ: HUBBALLI-580020.
43. SMT. KASTUREVVA
W/O CHANNAPA HALAMANI,
AGE: 49 YEARS, OCC: HOUSEHOLD WORK,
R/O: ADARAKATTI, TQ: SHIRAHATTI,
DIST: GADAG-582120.
44. SMT. ANASUYA W/O SHANKARAPPA GOJANUR,
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
R/O: DEVARANUR, TQ: KUNDGOL,
DIST: DHARWAD-581113.
45. SMT.LAXMI
W/O SHANKRAPPA MANAGULI,
AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIRAHATTI, TQ: ATHANI,
DIST: BELAGAVI-582120.
46. SMT. NEELAVVA
W/O NINGAPPA HARIWAL,
AGE: 64 YEARS, OCC: HOUSEHOLD WORK,
R/O: NAVALAGUND,
DIST: DHARWAD-582208.
47. SRI. NINGAPPA CHANNAPPA HARIWAL,
AGE: 71 YEARS, OCC: AGRICULTURE,
R/O: NAVALAGUND, TQ: NAVALAGUND,
DIST: DHARWAD-582208.
48. SMT. SIDDAVVA W/O BASAPPA HALLAD,
AGE: 61 YEARS, OCC: HOUSEHOLD WORK,
R/O: NAVALAGUND, DIST: DHARWAD-582208.



49. SMT. SHANKRAVVA
D/O BASAPPA HALLAD,
GOVT. PRIMARY SCHOOL TEACHER, UMARGA,
R/O. POST: UMARGA, TQ: NAVALAGUND,
DIST: DHARWAD-582208.
50. SRI. KALLAPPA BASSAPPA HALLAD,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: NAVALAGUND, TQ: NAVALAGUND,
DIST: DHARWAD-582208.
51. SRI. GULAPPA MAHADEVAPPA ANNIGERI,
AGE: 32 YEARS, OCC: AGRICULTURE,
R/O: SHIGLI, TQ: SHIRAHATTI,
TQ: GADAG-582210.
52. SRI.MANJUNATH MAHADEVAPPA ANNIGERI,
AGE: 32 YEARS, OCC: AGRICULTURE,
R/O: SHIGLI, TQ: SHIRAHATTI,
TQ: GADAG-582210.
53. SRI.BASAVARAJ FAKKIRAPPA HARIWAL,
AGE: 61 YEARS, OCC: AGRICULTURE,
R/O: NAVALAGUND, TQ: NAVALAGUND,
DIST: DHARWAD-582208.
54. SMT. SHIDLINGAVVA
W/O MAHADEVAPPA KANOJ,

(SINCE R54 US DEAD, R55 TO R58
ARE REPRESENTING THE ESTATE OF DECEASED
AND THEY ARE ALREADY ON RECORD)
55. LINGARAJ S/O MAHADEVAPPA KANOJ,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O: HOMBAL, TQ. DIST: GADAG-582204.
56. SMT. NEELAMMA W/O NAGAPPA HARIWAL,
AGE: 37 YEARS, OCC: HOUSEHOLD WORK,
R/O: NAVALAGUND, TQ: NAVALAGUND,
DIST: DHARWAD-582208.
57. BUDESH S/O MADEVAPPA KANOJ,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: HOMBAL, TQ. DIST: GADAG-582204.



58. MAHADEVAPPA G. KANOJ,
AGE: 70 YEARS, OCC: AGRICULTURE,
R/O: HOMBAL, TQ. DIST: GADAG-582204.
59. SMT. PARATEVVA
W/O MALLAPPA ANNIGERI,
AGE: 71 YEARS, OCC: HOUSEHOLD WORK,
R/O: SHIGLI, TQ: SHIRAHATTI,
DIST: GADAG-582210.
60. SRI. ISHWARAPPA FAKKIRAPPA MULAGUND,
AGE: 68 YEARS, OCC: AGRICULTURE,
R/O: HIREGUNJAL, TQ: KUNDGOL,
DIST: DHARWAD-581113.
61. SRI. DEVAPPA FAKKIRAPPA MULAGUND,
AGE: 66 YEARS, OCC: AGRICULTURE,
R/O: HIREGUNJAL, TQ: KUNDGOL,
DIST: DHARWAD-581113.
62. SRI. BASAVANNEPPA
FAKKIRAPPA MULAGUND,
AGE: 64 YEARS, OCC: AGRICULTURE,
R/O: HIREGUNJAL, TQ: KUNDGOL,
DIST: DHARWAD-581113.
63. SRI. GURUPAD SHIVABASAPPA HATTI,
AGE: 34 YEARS, OCC: AGRICULTURE,
R/O: KARIKATTI, TQ: SAVADATTI,
DIST: BELAGAVI-591126.
64. KU.RATNAVVA SHIVABASAPPA HATTI,
AGE: 32 YEARS, OCC: HOUSEHOLD WORK,
R/O: KARIKATTI, TQ: SAVADATTI,
DIST: BELAGAVI-581113.
65. SHAILA D/O SHIVABASAPPA HATTI,
AGE: 31 YEARS, OCC: HOUSEHOLD WORK,
R/O: KARIKATTI, TQ: SAVADATTI,
DIST: BELAGAVI-581113.
66. SHOBHA D/O SHIVABASAPPA HATTI,
AGE: 30 YEARS, OCC: HOUSEHOLD WORK,
R/O: KARIKATTI, TQ: SAVADATTI,
DIST: BELAGAVI-581113.



67. KASHAVVA D/O SHIVABASAPPA HATTI,
AGE: 28 YEARS, OCC: HOUSEHOLD WORK,
R/O: KARIKATTI, TQ: SAVADATTI,
DIST: BELAGAVI-581113.
68. SMT. GEETA W/O ANANDMOORTHY,
AGE: 36 YEARS, OCC: HOUSEHOLD WORK,
R/O. POST: MODINAHALLI, TQ: ARASIKERE,
DIST: HASAN-583125.
69. SMT. LEELA URF SAVITA
W/O RAYANAGOUDA PATIL,
AGE: 38 YEARS, OCC: PRIVATE JOB,
R/O: C/O: SMT.UMA DEVAPPA ALAGAWADI,
NAGALGUND CHAL, MUNESHWAR NAGAR,
UNKAL CROSS, HUBBALLI-580031.
70. SMT. GEETA W/O GANESH LADDI,
AGE: 36 YEARS, OCC: HOUSEHOLD WORK,
R/O: MOORAL, TQ: ALOOR, DIST: ANANTPUR,
STATE: ANDHRA PRADESH-515415.

...RESPONDENTS

(BY SRI H.R. GUNDAPPA, ADV. FOR R7 TO R10;
R1(A) TO R1(C) & R1(DA) ARE LRS OF DECEASED R1 & R1(D);
NOTICE TO R1(A), R1(B), R1(DA), R2 TO R5, R7 TO R20, R22
TO R25, R27, R29, R32 TO R35, R37 TO R40, R41(A) TO
R41(C), R41(E), R42 TO R48, R50 TO R58, R60 TO R63, R65
TO R67 & R69 ARE SERVED;
NOTICE TO R36, R49, R59, R68 & R70 : DISPENSED WITH;
APPEAL AGAINST R1(C) DISMISSED;
R6-DECEASED : R7 TO R9 ARE LRS OF DECEASED R6;
R26 DECEASED : R27 TO R31 ARE LRS OF DECEASED R26;
NOTICE TO R21, R28, R30 & R31-HELD SUFFICIENT;
NOTICE TO R41(D), R64 & R70-HELD SUFFICIENT)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CPC, AGAINST THE JUDGMENT AND DECREE DATED 24.02.2016
PASSED IN O.S.NO.269/2010 ON THE FILE OF THE II ADDITIONAL
SENIOR CIVIL JUDGE, HUBBALLI, PARTLY DECREERING THE SUIT
FILED FOR PARTITION AND SEPARATE POSSESSION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 21.11.2024 COMING ON FOR
PRONOUNCEMENT OF JUDGMENT, THIS DAY, **SREENIVAS HARISH
KUMAR J.,** DELIVERED THE FOLLOWING:



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CAV UDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is filed by defendant no.1 and defendants 4 to 8 in O.S. No. 269/2010 on the file of II Addl. Sr. Civil Judge, Hubballi (the 'trial court' for short). By judgment dated 24.02.2016 the trial court partly decreed the suit in the following terms:

"The suit of the plaintiffs relating to item No.10 and 11 of plaint-A schedule properties (R.S.No.530 and R.S.No.537 situate at Kusugal village) and plaint-B and 'C' schedule properties is hereby dismissed.

Item No.1 to 9 of plaint-A schedule properties have to be divided among the original propositus and his three sons. They are entitle for 1/4th share each. The property which is fallen to the share of original propositus (1/4th share) has to be divided among his three sons and five daughters and they are entitle for 1/8th share each. The father of plaintiffs 1 and 3 is entitle for 1/4th share+1/8th share. The plaintiffs and defendants 14 to 16 are together entitle for the properties which are fallen to the share of father of plaintiffs 1 and 3.

Under the facts and circumstances of the case, parties to bear their own cost.

Draw preliminary decree accordingly."



2. The plaintiffs' suit is for partition and separate possession of the properties described in schedules 'A', 'B' and 'C' of the plaint. Schedule 'A' consists of three items, in first item there are seven landed properties situate at Bandiwad village, Hubballi taluk. In second item there are two agricultural lands situate at Ingalahalli village, Hubballi taluk and in third item there are two agricultural lands of Kusugal village. In schedule 'B' there are two house properties situate at Bandiwad village and schedule 'C' consists of movable items.

3. The propositus of the family was one Lingappa. He had three sons namely Shivappa, Channabasappa and Mahadevappa. The plaintiffs 1 to 3 and defendants 14 to 16 belong to the branch of Shivappa. During pendency of the suit the first plaintiff died and her legal representatives came on record. Defendants 1 to 8 belong to the branch of Channabasappa. Defendant no. 9 is the widow of Mahadevappa and defendants 10 to 13 are all children of Mahadevappa and Basavannevva (defendant no.9). The plaintiffs' case is that some of the properties in item no.1 of 'A' schedule were ancestral properties and the other properties in schedule 'A', and the properties in schedule 'B' and 'C' were



purchased from the income derived from ancestral properties. There was no partition of all these properties. The plaintiffs' request for partition was not considered by the defendants although they are legally entitled to claim share. They came to know that in the year 1996 there was a partition between Channabasappa and Mahadevappa and mutation being accepted in D. No. 4506. The plaintiffs were totally unaware of this partition. Therefore they brought the suit.

4. Defendant no.4 filed written statement and the same was adopted by defendants 1 to 3 and 5 to 8. They contended specifically that the lands in Sy. No. 227 and 228 of Bandiwad village mentioned at sl. Nos. 1 and 2 of item no.1 of plaint 'A' schedule are ancestral and the properties at sl. No. 3 to 7 of item no. 1 of plaint 'A' schedule consisting of lands in Sy. Nos. 59/1, 59/2, 472/1A, 472/2, 472/3 and, the properties at Sl. No. 1 and 2 of item no. 2 of plaint 'A' schedule were their self acquisitions in the sense they were all acquired by Channabasappa and therefore the plaintiffs cannot claim partition in these items. They also stated that the movables described in 'C' schedule are in the custody of plaintiffs.



5. Defendants 9 to 13 stated that only the properties at sl. No. 1 and 2 of item no. 1 of plaint 'A' schedule are ancestral and properties at sl. No. 1 and 2 of item no. 3 of schedule 'A' were the self acquisitions of Mahadevappa, because he had separated from joint family in the year 1960 itself and migrated to Chabbi village where he started doing business. There he purchased ten acres of land and thereafter he returned to Bandiwad village by selling the properties which he had earned at Chabbi village. From that income he purchased the lands in Sy. No. 530 and 537 of Kusugal village.

6. Defendants 14 to 16 supported the plaintiffs. Defendants 54, 38(a) to 38(e) also prayed for carving out their share in the properties.

7. The trial court framed the following issues:

"1) Whether the plaintiffs prove that they and defendants are joint Hindu family members and suit properties are ancestral and joint family properties and they are in joint possession and enjoyment of the same?

(2) Whether the plaintiffs are entitled for the relief claimed in the suit?

(3) What order or decree?



ADDITIONAL ISSUES:

(1) Whether the defendant No.10 proves that his father is the absolute owner of properties bearing RS No.530 measuring 08 acres 98 guntas and RS No.537 measuring 04 acres 17 guntas having purchased the same under registered sale deeds dt.28-8-1972 and 08-4-1974 respectively?

(2) Whether the defendant No.4 proves that the suit is suffering from non joinder and mis-joinder of necessary parties?

(3) Whether defendant No.4 further proves that the deceased Channabasappa out of the income of lands of her wife's family had purchased the property bearing block No.339 measuring 20 acres 24 guntas under the registered sale deed dt.2-6-1965?

(4) Whether defendant No.4 further proves that first plaintiff has purchased the properties at Bhandiwad out of the income of properties bearing block No.227 and 228 as contended in para-14 of his written statement?

(5) Whether the defendant No.1 to 7 prove that late Channabasappa purchased the lands bearing Sy.No.59/1, Sy.No.59/2, Sy.No.472/1a, Sy.No.472/2a, Sy.No.472/3 Sy.No.426/2 and 427/5 out of the income from his wife's lands bearing RS No.220/1 and block No.339 of Shiraguppi village?"

8. Assessing the oral and documentary evidence, to partly decree the suit as aforesaid, the trial court recorded the reasons that, while there is no dispute that lands in Sy. Nos. 227 and 228 of Bandiwad village, i.e., at sl. No. 1 and 2 of item



no.1 of plaint 'A' schedule, the ancestral, defendants 1 to 8 failed to prove that the properties at sl. No. 3 to 7 of item no. 1 and properties at sl. No. 1 and 2 of item no. 2 of plaint 'A' schedule were the acquisitions of Channabasappa. Except that the revenue records stood in the name of Channabasappa, there is no evidence to establish that they were acquired by Channabasappa from his own income. As regards the lands in Sy. No. 530 and 537 of Kusugal village, i.e., sl. No. 1 and 2 of item no.3 of plaint 'A' schedule, it has been held that they were the acquisitions of Mahadevappa in which plaintiffs cannot claim any share. The trial court did not accept the contention of the defendants that the plaintiffs were given the movables described in schedule 'C' expressing an opinion that when there was no partition at all it is highly impossible to hold that the plaintiffs were given movable properties.

9. Assailing the above findings, the learned counsel for the appellants Sri Mahesh Wodeyar argued that only the properties at sl. No. 1 and 2 of item no. 1 of plaint 'A' schedule are the ancestral properties. The items at sl. No. 3 to 7 of item no. 1 and sl. No. 1 and 2 of item no. 2 were the self acquisitions of Channabasappa. There are revenue entries to this effect. For



some reasons the documents relating to these lands could not be produced before the trial court and therefore the appellants have now filed an application under Order 41 Rule 27 of CPC for production of two documents which establish the specific contention of defendants 1 to 8. He argued that if these documents are now considered, a clear inference can be drawn that those properties are the self acquisitions of Channabasappa and thereby the plaintiffs cannot claim any share. He submitted that this application needs to be allowed and the judgment of the trial court set aside in respect of properties at sl. No. 3 to 7 of item no. 1 and sl. No. 1 and 2 of item no. 2 of plaint 'A' schedule.

10. Sri H.R. Gundappa, learned counsel for respondents 7 to 10 argued for sustaining the judgment of the trial court.

11. The other respondents and legal representatives of some of the deceased respondents did not enter appearance inspite of service of notice.

12. The appellants are defendant no.1 and 4 to 8 in the trial court. They have preferred this appeal questioning the correctness of granting decree of partition in respect of the



properties at sl. No. 3 to 7 of item no. 1 and at sl. No. 1 and 2 of item no. 2 of the plaint 'A' schedule. The plaintiffs have not questioned the dismissal of the suit in respect of properties in item no. 3 of plaint 'A' schedule and the properties in schedules 'B' and 'C'. Therefore in the light of this situation, the only point that needs to be examined is, *"whether the trial court has properly drawn conclusion that the properties at sl. No. 3 to 7 of item no. 1 and the properties at sl. No. 1 and 2 of item no. 2 of plaint 'A' schedule are not self acquisitions of Channabasappa?"*

13. Relevantly it may be stated here that even in respect of 'B' schedule properties, it was the specific contention of defendants 1 to 8 that as per Ex.D.1, one Basavva relinquished her right in favour of her only daughter Adivevva in respect of property in Sy. No. 220/1 measuring 13.12 acres of Shiraguppi village. This Adivevva is none other than the wife of Channabasappa. Adivevva and Channabasappa were living at Shiraguppi village and cultivating the land given to Adivevva. Thus they had sufficient means out of which Channabasappa purchased 2.24 acres of land in block no. 339 of Shiraguppi village and also purchased schedule 'B' properties. It appears



that at that time the plaintiffs were in possession of the properties at sl. No. 1 and 2 of item no. 1 of plaint 'A' schedule and the others were not cultivating these two lands. Therefore it was found that plaint 'B' schedule properties were the self acquisitions of Channabasappa. However the trial court held that the defendants 1 to 8 failed to prove that Channabasappa acquired the properties at sl. No. 3 to 7 of item no. 1 and properties at sl. No. 1 and 2 of item no.2 of plaint 'A' schedule because they did not produce any document, much less the sale deeds. They only relied on revenue documents. Even if we reappreciate the evidence, all that we find is that defendants 1 to 8 only rely upon revenue documents which the trial court has referred to.

14. The appellants have filed an application under Order 41 Rule 27 of CPC as per I.A. No. 2/2016 for production of two documents namely copy of the exchange deed dated 05.08.1977 and copy of the sale deed dated 24.05.1947. The observation of the trial court that defendants 1 to 8 did not produce any document has not been disputed by the appellants. In fact in the affidavit filed along with the application it is stated that these documents were not available



when the trial was being held and therefore they could not be produced. That means it becomes clear that no document was produced by the appellants. This application cannot be allowed for two reasons that they are just photostat copies of the documents and even if they are perused, one document does not appear to be in relation to the properties which defendants 1 to 8 claim to be the self acquisitions of Channabasappa.

15. The first document is an exchange deed. There was exchange of properties between one Gowdappa Gowda Mallana Gowda Hiregowdra and Channabasappa. This document shows that Channabasappa exchanged the property in Sy. No. 339 with Gowdappa Gowda Mallana Gowda Hiregowdra for the latter's property in Sy. No. 426/2 and 427 of Ingalahalli, that are mentioned at sl. No. 1 and 2 of item no. 2 of plaint 'A' schedule. Thus defendants 1 to 8 tried to assert that Channabasappa got these properties under an exchange deed. The appellants have not produced the original exchange deed. In the affidavit filed along with the application nothing is stated about the original. Therefore even if the exchange deed is taken on record, the photostat copy cannot be looked into as it



is inadmissible in evidence. The appellants should have stated reasons for non availability of the original.

16. So far as the next document is concerned, it is also a photostat copy of the sale deed dated 24.05.1947 relating to sale of 6.36 acres of land out of 10.36 acres in Sy. No. 294 of Bandiwad village. Of course the sale deed stands in the name of Channabasappa and Madevappa, but the land in Sy. No. 294 is not one of the items of the suit schedule. It is not forthcoming in what way this document is helpful to the appellants. For these reasons application under Order 41 Rule 27 of CPC cannot be granted.

17. As we find that the trial court has not committed any error in drawing conclusions, we have to concur with those findings without resorting to lengthy discussion. For these reasons appeal is dismissed without any order as to costs.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE

BVV
LIST NO.: 1 SL NO.: 2