



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 23RD DAY OF OCTOBER, 2024

PRESENT

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

**REGULAR FIRST APPEAL NO.100265 OF 2018(PAR/POS)
C/W
RFA CROSS OBJ NO.100006 OF 2022(PAR/POS)**

IN REGULAR FIRST APPEAL NO.100265 OF 2018 :

BETWEEN:

1. KEMPAWWA W/O LAGAMAPPA PUTHANI
AGE: 56 YEARS, OCC: AGRICULTURE,
R/O: DHUPDAL, TQ: GOKAK,
DIST: BELAGAVI-590001.
2. SMT. PARWATI W/O BASAGOUDA PATIL
AGE: 29 YEARS, OCC: AGRICULTURE AND H/W,
R/O: DHUPDAL, TQ: GOKAK,
DIST: BELAGAVI-590001.
3. PARUSHRAM S/O LAGMAPPA PUTHANI
AGE: 25 YEARS, OCC: AGRICULTURE AND H/W,
R/O: DHUPDAL, TQ: GOKAK,
DIST: BELAGAVI-590001.
4. NAGARAJ @ NAGESH S/O LAGAMAPPA PUTHANI,
AGE: 22 YEARS, OCC: STUDENT,
R/O: DHUPDAL, TQ: GOKAK,
DIST: BELAGAVI-590001.

...APPELLANTS

(BY SRI SHIVARAJ S.BALLOLI, ADV.)

AND:

1. BHARAMAPPA S/O IRAPPA PUTHANI
SINCE DECEASED REPRESENTED BY HIS
L.Rs, RESPONDENT NO.2 TO 6.

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Karnataka, Dharwad Bench
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2. LAGAMAWWA
W/O BHARMAPPA PUTHANI
AGE: 61 YEARS, OCC: AGRICULTURE,
R/O: DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TQ: GOKAK-591307,
DIST: BELAGAVI.
3. BASAVRAJ
S/O BHARMAPPA PUTHANI
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TQ: GOKAK-591307,
DIST: BELAGAVI.
4. SHOBHA
W/O APPU KOUNI
AGE: 33 YEARS, OCC: AGRICULTURE,
R/O: DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TQ: GOKAK-591307,
DIST: BELAGAVI.
5. SANJAY S/O BHARMAPPA PUTHANI
AGE: 31 YEARS, OCC: AGRICULTURE,
R/O: DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TQ: GOKAK-591307,
DIST: BELAGAVI.
6. SHRIKANT S/O BHARMAPPA PUTHANI
AGE: 29 YEARS, OCC: AGRICULTURE,
R/O: DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TQ: GOKAK-591307,
DIST: BELAGAVI.
7. SMT SHIVALEELA @ SHIVAKKA
W/O. LAGAMAPPA PUTHANI
AGE. 59 YEARS, OCC. HOUSEHOLD WORK
R/O. PATOLE ONI, HATTARGI, TQ. HUKKERI,
DIST. BELAGAVI-591307.

...RESPONDENTS

(BY SMT. SUNANDA P PATIL, ADVOCATE FOR R2 TO R6;
SRI SANGRAM S. KULKARNI, ADV. FOR R7;
R2 TO R6 ARE LRS. OF R1)

THIS RFA IS FILED UNDER ORDER 41 R(1) R/W SEC.96 OF
CPC., AGAINST THE JUDGMENT AND DECREE DTD:16.04.2018



PASSED IN O.S.NO.01/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE GOKAK, PARTLY DECREETING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION.

IN RFA CROSS OBJ. NO.100006 OF 2022

BETWEEN:

SMT. SHIVALEELA @ SAVAKKA
W/O LAGAMAPPA PUTHANI
AGE: 62 YEARS,
OCC. HOUSEHOLD WORK,
R/O. PATOLE ONI, HATTARGI,
TQ. HUKKERI, DIST. BELAGAVI 591307.

...CROSS OBJECTOR

(BY SRI SANGRAM S KULKARNI, ADV.)

AND:

1. KEMPAWWA
W/O LAGAMAPPA PUTHANI
AGE: 59 YEARS,
OCC. AGRICULTURE,
R/O. DHUPDAL, TAL. GOKAK,
DIST. BELAGAVI 590001.
2. PARWATI
W/O BASAGOUDA PATIL
AGE: 32 YEARS,
OCC. AGRICULTURE & H/W,
R/O. DHUPDAL, TAL. GOKAK,
DIST. BELAGAVI 590001.
3. PARUSHRAM
S/O LAGAMAPPA PUTHANI
AGE: 28 YEARS,
OCC. AGRICULTURE & H/W,
R/O. DHUPDAL, TAL. GOKAK,
DIST. BELAGAVI 590001.
4. NAGARAJ @ NAGESH
S/O LAGAMAPPA PUTHANI
AGE: 25 YEARS, OCC. STUDENT,
R/O. DHUPDAL, TAL. GOKAK,
DIST. BELAGAVI 590001.



BHARAMAPPA S/O IRAPPA PUTHANI,
SINCE DECEASED BY HIS LRS.,

5. LAGAMAWWA
W/O BHARAMAPPA PUTHANI
AGE: 64 YEARS, OCC. AGRICULTURE,
R/O. DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TAL. GOKAK,
DIST. BELAGAVI 591307.
6. BASAVARAJ S/O BHARMAPPA PUTHANI
AGE: 39 YEARS, OCC. AGRICULTURE,
R/O. DHUPDAL GARDEN LAND FALLS ROAD.
DUPDAL, TAL: GOKAK,
DIST: BELAGAVI 591307.
7. SHOBHA W/O APPU KOUNI
AGE. 36 YEARS, OCC. AGRICULTURE,
R/O. DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TAL. GOKAK,
DIST. BELAGAVI 591307.
8. SANJAY S/O BHARMAPPA PUTHANI
AGE. 34 YEARS, OCC. AGRICULTURE,
R/O. DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TAL. GOKAK,
DIST. BELAGAVI 591307.
9. SHRIKANT
S/O BHARMAPPA PUTHANI
AGE. 33 YEARS, OCC. AGRICULTURE,
R/O. DHUPDAL GARDEN LAND FALLS ROAD,
DUPDAL, TAL. GOKAK,
DIST. BELAGAVI 591307.

...RESPONDENTS

(BY SRI SHIVARAJ S BALLOLI, ADV. FOR R1 TO R4;
SMT. SUNANDA P PATIL, ADV. FOR R5 TO R9)

THIS CROSS OBJECTIONS IS FILED UNDER ORDER LXI RULE 22 OF THE CIVIL PROCEDURE CODE, 1908, AGAINST THE JUDGMENT AND DECREE DATED 16.04.2018 PASSED IN O.S.NO.01/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, GOKAK, PARTLY DECREERING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION.



THE APPEAL AND THE CROSS OBJECTION, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

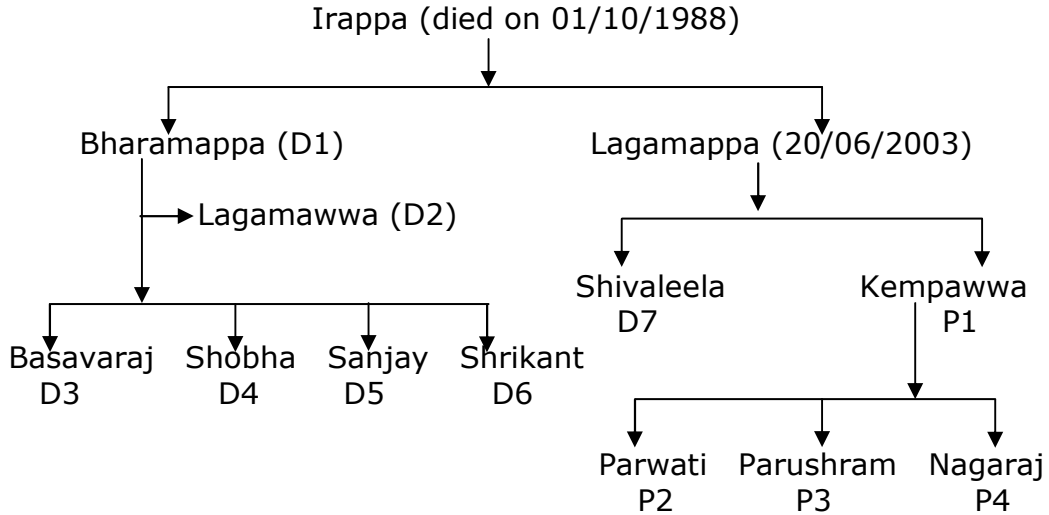
(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The appeal is directed against the judgment dated 16.04.2018 in O.S.No.1/2012 on the file of Principal Senior Civil Judge, Gokak. The appellants are the plaintiffs. Defendant no.7 in the suit has filed cross-objection.

2. The plaintiff's suit is for partition and separate possession of their share in three items of properties in Sy.No.192/3, Sy.No.193 and Sy.No.224 and house property bearing GPC.nos.521/1 and 521/2 situated at Dhupdal village, Gokak taluk, Belagavi District. The plaintiffs claiming to be the wife and children of Lagamappa Puthani (Lagamanna Putani). They sought for partition in the suit properties after the death of propositus namely Irappa on 01.10.1988. The 1st defendant is the first son and Lagamappa is the second son of propositus Irappa. The relationship is depicted in following genealogy.



GENEALOGY



3. Initially the suit was filed only against defendant nos.1 to 6 and that defendant no.7-Shivaleela got herself impleaded claiming to be the legitimate wife of Lagamappa. Defendant no.1 to 6 in the written statement contended that there was an oral partition and therefore the suit was liable to be dismissed. They also stated that defendant no.7-Shivaleela was the wife of Lagamappa, the marriage having taken place in the year 1979 and they disputed the relationship of plaintiffs with Lagamappa. Defendant no.7 in her written statement stated that she was the wife of Lagamappa as her marriage with him was solemnized on 04.06.1979. She also stated about the matrimonial dispute between her and her husband and petition for restitution of conjugal rights being filed under



Section 9 of the Hindu Marriage Act by Lagamappa in M.C.No.5/1984. She denied rights of the plaintiffs to claim partition in the suit properties.

4. The Trial Court raised the following issues.

1. *Whether plaintiffs prove that plaintiff no.1 is the legally wedded wife of Lagamappa, & plaintiff No.2 & 3 born out of the wedlock?*
2. *Whether defendants prove that suit properties were already partitioned between defendant No.1 & Lagamappa as contended in para No.8 of written statement of defendant No.1?*
3. *Whether suit is not maintainable without seeking declaration of material status of plaintiffs?*
4. *To what order or decree parties are entitled to?*

5. After appreciating the evidence the Trial Court decreed the suit in the following terms.

"ORDER

1. *Suit of the plaintiffs is decreed in part without costs.*
2. *Plaintiffs are entitled for share in the suit properties as follows:*
 - a. *Plaintiffs & defendant no.7 on the one side & defendants-1 to 6 on the other side are entitled for half share each in suit properties by metes & bounds.*



b. Out of half share allotted to plaintiffs-2 to 4, plaintiffs 2 to 4 & defendant shall take, half share to the plaintiffs-2 to 4 together on the one side & half share to the defendant no.7 on the other side.

3. Draw preliminary decree accordingly."

6. We have heard the argument of Sri Shivraj S.Balloli, learned counsel for the appellants, Sri Sangram S.Kulkarni, learned counsel for the cross-objector and Smt.Sunanda P.Patil, learned counsel for respondent nos.2 to 6 in RFA.No.100265/2018 and respondent nos.5 to 9 in the cross-objection.

7. It is the argument of Sri Shivaraj S.Balloli that the 1st plaintiff is the legally wedded wife of Lagamappa and plaintiff nos.2 to 4 are her children. Defendant no.7-Shivaleela claimed herself to be the wife of Lagamappa but according to plaintiff Shivaleela was not the wife of Lagamappa. The marriage of the 1st plaintiff with Lagamappa has been proved. On the other hand defendant no.7 did not enter the witness box instead she examined her power of attorney holder whose evidence cannot be considered for the purpose of holding that defendant no.7 is the legally wedded wife of Lagamappa. He



submits that power of attorney holder cannot give evidence in the place of a party to the suit unless he has personal knowledge. Therefore, the plaintiffs should have been granted half share in the suit properties. The Trial Court has instead granted share to defendant no.7, which cannot be sustained in the eye of law and therefore the appeal deserves to be allowed.

8. Sri Sangram S.Kulkarni submits that it was defendant no.7 who married Lagamappa on 04.06.1979. This is evidenced by the fact that Lagamappa initiated proceedings for restitution of conjugal rights under Section 9 of the Hindu Marriage Act and this is evidenced by Ex.D.16. The petition for restitution of conjugal rights was allowed and Shivaleela was directed to join her matrimonial home. This is a conclusive proof. On the other hand the 1st plaintiff claims to be the only wife but there is no proof for marriage. For this reason she cannot be called legitimate wife, therefore she cannot claim share in the suit properties. He submits that the Trial Court has committed an error in granting more share to the plaintiffs instead of calculating it by applying Section 16 of the Hindu Marriage Act. Sri Sangram Kulkarni argued that cross objection



is filed challenging the allotment of shares, as it is not in accordance with law.

9. Smt.Sunanda P.Patil submits that inspite of specific contention by defendant nos.1 to 6 about oral partition, the Trial Court has granted half share in the suit properties to them and they are not aggrieved.

10. After hearing arguments the question to be answered boils down to the validity of marriage of the 1st plaintiff with Lagamappa. DW.1 is the power of attorney holder of defendant no.7, but he is her brother. About the marriage defendant no.7 with Lagamappa, he should be having personal knowledge, for this reason it cannot be said that he is incompetent witness. Argument of Sri Shivaraj S.Balloli in this regard can not be accepted. It is to be stated that though the 1st plaintiff claims to be the wife of Lagamappa, she has not produced any proof for her marriage with him. On the other hand, defendant no.7 has proved her marriage with Lagamappa. Ex.D.16 (Ex.P.16) is the proof. It evidences petition under Section 9 of the Hindu Marriage Act having been instituted by Lagamappa against Shivaleela and the said



petition being allowed and her being directed to join matrimonial home. It appears that Shivaleela did not join her matrimonial home inspite of decree in M.C.No.5/1984. Even if Lagamappa might have married plaintiff no.1 for the reason that defendant no.7 did not join him, that marriage was not a valid marriage in the eye of law. Even though she became second wife, she cannot claim any share in the ancestral properties. In regard to allotment of shares it has to be stated that after the death of Irappa, his two sons Bharmappa and Lagamappa would take equal share in the suit properties and rightly the Trial Court has granted 50% share to defendant nos.1 to 6. Lagamappa died on 20.06.2003. Therefore in the share to be allotted to Lagamappa, partition has to be effected. Since defendant no.7 is the legitimate wife of Lagamappa, when the partition takes place in the branch of Lagamappa, she takes half share and Lagamappa is to be notionally allotted half share. In the half share to be allotted to Lagamappa, again there has to take place division. Plaintiff nos.2 to 4 are the illegitimate children of Lagamappa and therefore they become entitled to share in the notional share to be allotted to Lagamappa in view of Section 16 of the Hindu Marriage Act. In



this view, the total share that defendant no.7 takes is $5/16$ ($1/4 + 1/16$) and each of plaintiff nos.2 to 4 takes $1/16$ share. The Trial Court should have granted decree in this manner instead it has committed mistake as extracted above. To this effect, the judgment and decree of the Trial Court is to be modified.

11. Therefore the appeal is dismissed and cross objection is allowed modifying the judgment of the Trial Court in the following manner.

- (i) The plaintiff nos.2 to 4 are entitled to $1/16$ share each.
- (ii) Defendant no.7 is entitled to $5/16$ share.
- (iii) There is no order as to costs.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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