



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. 100146 OF 2016 (DEC/INJ)

BETWEEN:

1. SRI. TAMMANI
S/O BHIMA NIDAGUNDI,
AGE: 51 YEARS, OCC: AGRICULTURE.
2. SRI. AJEET
S/O LAXMAN NIDAGUNDI,
AGE: 48 YEARS, OCC: AGRICULTURE.
3. SRI. RAJENDRA
S/O LAXMAN NIDAGUNDI,
AGE: 46 YEARS, OCC: AGRICULTURE.
4. SRI. RAMACHANDRAPPA
S/O RAYAPPA NIDAGUNDI,
AGE: 78 YEARS, OCC: AGRICULTURE,
(NOT CLAIMING SENIOR CITIZENSHIP).
5. SRI. KENCHAPPA
S/O RAYAPPA NIDAGUNDI,
SINCE DECEASED BY HIS LR'S.
- 5(A) SRI. SIDALING KENCHAPPA NIDAGUNDI
AGE: 47 YEARS, OCC: AGRICULTURE.
- 5(B) SRI. AMMANNA KENCHAPPA NIDAGUNDI
AGE: 44 YEARS, OCC: AGRICULTURE.
- 5(C) SRI. MUTTAPPA KENCHAPPA NIDAGUNDI
AGE: 42 YEARS, OCC: AGRICULTURE.
- 5(D) SRI. RAYAPPA KENCHAPPA NIDAGUNDI
AGE: 40 YEARS, OCC: AGRICULTURE,
ALL ARE R/O: RAIBAG,
TQ: RAIBAG, DIST: BELAGAVI.

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Karnataka, Dharwad Bench
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6. SRI. MARUTI ANNAPPA NIDAGUNDI,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
7. SRI. KALLAPPA ANNAPPA NIDAGUNDI,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
8. SMT. GANGAWWA ANNAPPA NIDAGUNDI,
AGE: 61 YEARS, OCC: HOUSEHOLD WORK,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
9. SRI. RAYAPPA SIDALING NIDAGUNDI,
AGE: 68 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
10. SRI. PRAKASH MALLAPPA NIDAGUNDI,
AGE: 35 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
11. SRI. SHIVAPPA MALLAPPA NIDAGUNDI,
AGE: 58 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.

...APPELLANTS

(BY SRI RAMACHANDRA A MALI AND
SRI P.V. GUNJAL, ADVOCATES)

AND:

1. SRI. SIDDAPPA
S/O SOMALING NIDAGUNDI,
SINCE DECEASED BY HIS LR'S
- 1(A) SMT. LAXMIBAI SIDDAPPA NIDAGUNDI
AGE: 60 YEARS, OCC: HOUSEHOLD WORK,
- 1(B) SRI. SANJU SIDDAPPA NIDAGUNDI
AGE: 44 YEARS, OCC: AGRICULTURE,
BOTH R/O: RAIBAG,
TQ: RAIBAG, DIST: BELAGAVI.



2. SMT. REVAKKA
W/O APPASAB NIDAGUNDI,
AGE: 48 YEARS, OCC: HOUSEHOLD WORK,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
3. SMT. GIRIJA
W/O HALAPPA GHALI,
AGE: 23 YEARS, OCC: HOUSEHOLD WORK,
R/O: KAMATYANATTI, TQ: CHIKODI,
DIST: BELAGAVI.
4. SMT. GEETA
W/O MAHESH PASHI,
AGE: 21 YEARS, OCC: HOUSEHOLD WORK,
R/O: SUNADHOLI,
TQ: GOKAK, DIST: BELAGAVI.
5. SRI. KANTESH
W/O APPASAB NIDAGUNDI,
AGE: 18 YEARS, OCC: NIL,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.
6. SRI. SOMANATH
S/O APPASAB NIDAGUNDI,
AGE: 15 YEARS, OCC: NIL,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI,
SINCE MINOR REPRESENTED BY
M/G MOTHER RESPONDENT NO.2.
7. SRI. SHANKAR
S/O SOMALING NIDAGUNDI,
AGE: 42 YEARS, OCC: AGRICULTURE,
R/O: KUDACHI, TAL: RAIBAG,
DIST: BELAGAVI.
8. SMT. SHAKUNTALA
LAXMAN NIDAGUNDI,
SINCE DECEASED BY HER LR'S
(APPELLANT NO.2,3 & RESPONDENT NO.9 TO 11
ARE ALREADY ON RECORD)
9. SRI. RAVINDRA
LAXMAN NIDAGUNDI,



AGE: 43 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.

10. SRI. CHANDRAKANT
LAXMAN NIDAGUNDI,
AGE: 41 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.

11. SRI. ASHOK LAXMAN NIDAGUNDI,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O: RAIBAG, TQ: RAIBAG,
DIST: BELAGAVI.

...RESPONDENTS

[BY SRI NAGARAJ REDDY, ADV. FOR
SRI VEERABHADRA R. SHIVANGOL, ADV.
FOR RESPONDENT NOS.1(A), 1(B), 2 TO 7;
SRI DINESH M. KULKARNI, ADV. FOR RESPONDENT NO.16 &
17 (RESPONDENT NOS.8 TO 13 ARE PERMITTED TO
TRANSPOSE AS APPELLANT NOS.6 TO 11)
RESPONDENT NO.14 DECEASED (APPELLANT NOS.2, 3 &
RESPONDENT NO.15 ARE LR'S OF DECEASED RESPONDENT
NO.14) NOTICE TO RESPONDENT NO.15 DISPENSED WITH]

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CODE OF CIVIL PROCEDURE PRAYING TO, SET ASIDE THE
JUDGMENT AND DECREE DATED 24.03.2016 MADE IN
O.S.NO.223/2013 PASSED BY SENIOR CIVIL JUDGE AND JMFC
RAIBAG AS THE SAME BEING ERRONEOUS AND NOT SUSTAINABLE
IN LAW AND CONSEQUENTLY DISMISS THE O.S.NO.223/2013 ON
THE FILE OF SENIOR CIVIL JUDGE AND JMFC RAIBAG IN THE
INTEREST OF THE JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 07.11.2024 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 JUDGMENT

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

Defendants 1 to 7, 9, 10, 14 and the legal representatives of defendant no. 15 are the appellants who have questioned the correctness of the judgment dated 24.03.2016 in O.S. No. 223/2013 on the file of Sr. Civil Judge, Raibag.

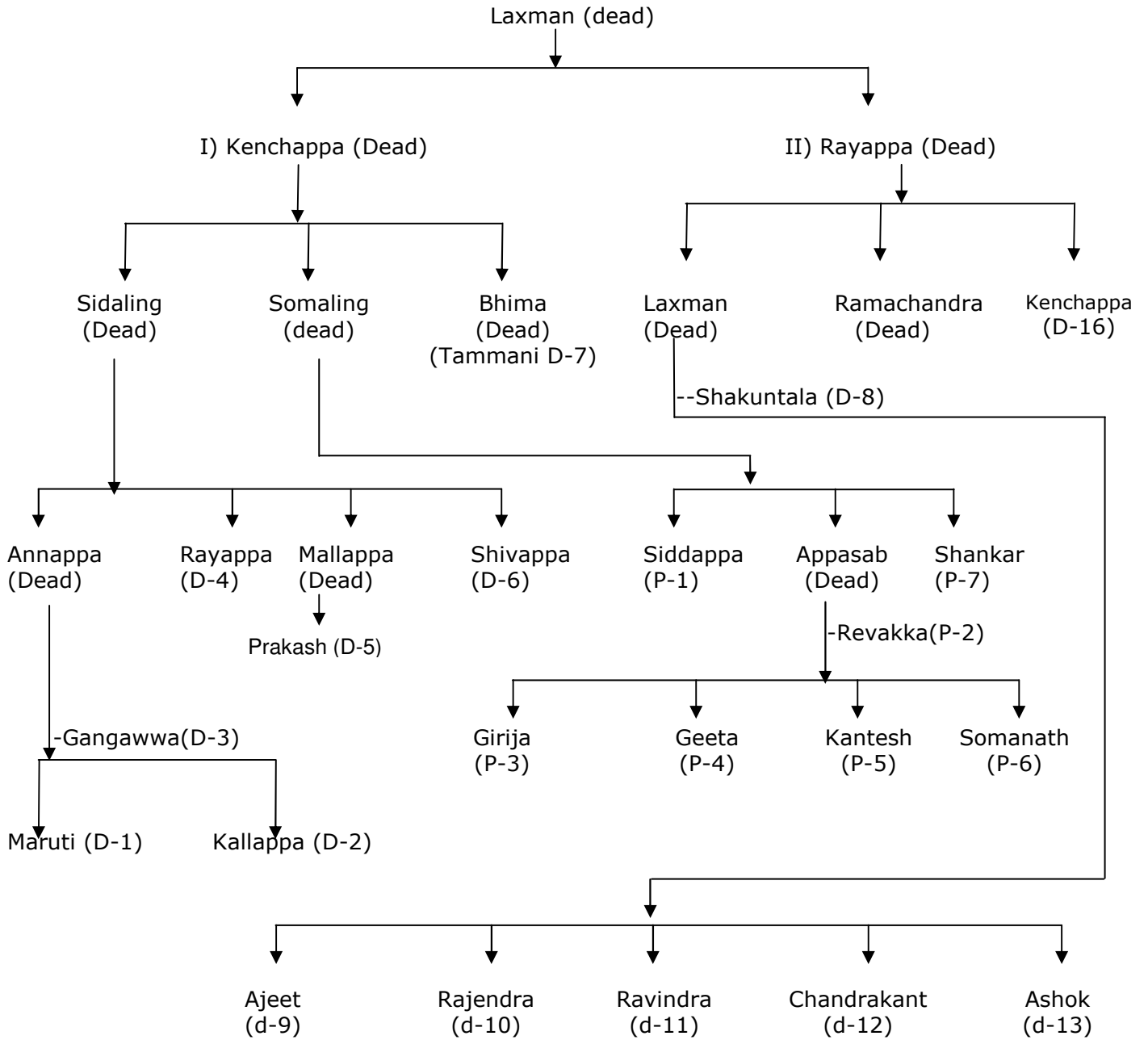
2. Respondents 1 (a) and 1(b) are the legal representatives of the original first plaintiff Siddappa. Suit was filed by Siddappa and respondents 2 to 7.

3. It is better to refer to the parties with respect to their ranks in the suit for the sake of convenience.

4. The plaintiffs claimed declaration of their title in respect of property measuring 10 acres 38 guntas 8 annas in Sy. No. 109 of Raibag, Belagavi District.



5. The pedigree is as below:





6. The plaintiffs belong to the branch of Somaling, the second son of Kenchappa who was the first son of the propositus Laxman. The plaintiffs state that Somaling purchased the suit property under a registered sale deed dated 24.12.1959 for a consideration of Rs.500/- after a partition took place during the lifetime of their father, Somaling and his two brothers, namely Siddaling and Bheema. Somaling was in possession of entire property being its exclusive owner, however he parted with 2.08 guntas of land (02 guntas 08 annas) each in favour of his two brothers and sons of his uncle, and retained 10 acres 38 guntas and 8 annas with himself. All the plaintiffs succeeded to 10 acres 38 guntas 8 annas of land after the demise of Somaling. To this effect mutation was accepted in M.E. No. 7758 in the year 1998. In the year 2009 the plaintiffs came to know about a wrong entry in the record of rights and therefore they gave a varadi to the Tahasildar, Raibag requesting him to effect corrections. According to plaintiffs, their share in Sy. No. 109 was shown as 2 guntas 08 annas instead of 10 acres 38 guntas 08 annas. The Assistant



Commissioner of Chikkodi directed the parties to approach the Civil Court for establishing their right. Taking advantage of the extent of land belonging to plaintiffs being wrongly shown in the revenue records, the defendants attempted to disturb their possession by denying their right and hence they brought the suit.

7. Defendant no.2 filed written statement contending that 11 acres 11 guntas in Sy. No. 109 of Raibag was jointly purchased by ancestors of the plaintiffs and the defendants in the year 1959. This land was equally divided into six shares, each share being to the extent of 1 acre 35 guntas, and in fact they are in possession of their respective $1/6^{\text{th}}$ shares. They stated that plaintiffs cannot claim to be in possession of 10.38 acres of land, and they never obtained possession of this much extent of land at any point of time.

8. Defendants 7, 14 and 15 in their written statement denied the entire plaint averments and stated that the suit property belonged to the joint family although it was purchased in the name of Somaling on 24.12.1959. They stated that two sons of the propositus namely, Kenchappa



and Rayappa had equal share. Sometime in the year 1953, the name of Somaling was entered as a protected tenant and thereafter with the permission of Tahasildar, the suit property was purchased from joint family funds. In the year 1965, three sons of Kenchappa and three sons of Rayappa gave a varadi to the revenue authorities for entering their names in the revenue records in respect of lands in Sy. No. 109 and 102/C of Raibag. While entering the names of six persons, the individual share of each of them was indicated as '2 anna 8 pie'. The land in Sy. No. 102C was actually purchased in the name of Rayappa but that land was also divided among six persons. The division of lands in Sy. No. 102/C and 109 is reflected in M.E. No. 10036 certified in the year 1965. There are six stripes of lands corresponding to 2 anna 8 pie share of each one of them; and in each strip there is a house. They contended further that when the husband of plaintiff no.2 namely, Appasab died on 07.03.2006, she gave a varadi to Tahasildar to enter her name and the names of her children to the extent of 2 anna 8 pie in Sy. No. 109. This being the factual position,



plaintiffs 1 and 2 cannot take a contrary stand stating that they were in possession of 10 acres 38 guntas in Sy. No. 109.

9. Though the trial court framed six issues and four additional issues, issue no.1 and additional issues 1 and 2 were the main issues. Having answered issue no.1 in affirmative and both additional issues 1 and 2 in negative, the trial court granted decree declaring the plaintiffs to be the absolute owners in possession of 10 acres 38 guntas and 8 annas of Sy. No. 109 of Raibag. To decree the suit, following are the findings of the trial court.

10. There is no dispute that suit property was purchased by Somaling in the year 1959. According to varadi made in the year 1999 as evidenced by Ex.D.11, mutation under M.E. No. 8183 was accepted indicating that the sons of Somaling, namely, Siddappa, Appasab and Shankar were given 1.36 acres of land, Maruti and Kallappa, i.e., grandsons of Sidaling were given 1.35 acres of land. Bhima son of Kenchappa and, Laxman, Ramachandra and Kenchappa, sons of Rayappa were each allotted 1.35 acres



of land. The plaintiffs challenged this mutation before the Assistant Commissioner who set aside entry No. 8183. The defendants challenged the said order before the Deputy Commissioner, who disposed of the appeal directing the parties to approach the civil court. About these proceedings there is no dispute.

10.1 Ex.P.18 shows that M.R. No. 130 of the year 2009 was accepted indicating that Siddappa Somaling Nidagundi was in possession of 10.38.08 acres of land in Sy. No. 109 along with other plaintiffs. Ex.P.19 also shows the names of the first plaintiff and other members of the branch to which the plaintiff no.1 belongs to. This order was not challenged by the defendants. Exs.P.1 and P.2 are the old RTC extracts of the suit property for the year 1952-53 to 1964-65 where only the name of Somaling son of Kenchappa is forthcoming, the name of Rayappa or anybody else is not disclosed. The name of Somaling son of Kenchappa appears till the year 2001-02. In column no. 9 of RTC extracts extent of land held by Somaling is shown as 0-2-8, and against the names of others, i.e., Siddaling, Bhima, Laxman, Ramachandra and



Kenchappa, extent is shown as 0-2-8 each. These entries continued till 2001-02. Somaling Kenchappa Nidagundi @ Kamani was a tenant before the sale deed was executed in his name. But the defendants' contention is that though suit property was purchased in the name of Somaling, it was a joint family property and it was subject matter of division that took place in the year 1965.

10.2 Ex.D.28 is the partition deed dated 07.02.1965 which shows that Siddaling, Bhima, Ramachandra, Laxman, Kenchappa and Somaling divided the properties. It is mentioned that 11.11 acres of land in Sy. No. 109 was divided into two parts, i.e., 5 acres and 6.11 acres. But with regard to this division there is no pleading in the written statement. Ex.D.28 was introduced without pleadings. Ex.D.32 and D.33 evidence that one Revakka widow of Appasab gave an application to revenue authorities requesting to enter her name in respect of 0.2.08. According to Ex.D.4 another application was made by plaintiff no.1 and others to Tahasildar, Raibag requesting to enter their names by indicating their holdings to the extent of 10 acre 38



guntas 08 annas and the holding of others to the extent of 2 guntas and 08 annas each.

10.3 As pointed out by the counsel for plaintiffs during his arguments there is another land in Sy. No. 699 measuring 19.04 acres in respect of which Form No.7 was submitted on 26.12.1974 by Annappa, Rayappa, Mallappa and Shivappa, sons of Siddaling and thereafter Form No. 10 was also issued. That means, this land also belonged to the joint family, but in the partition of the year 1965 as evidenced by Ex.D.28 this land was not included. The plaintiffs do not claim any share in this land and their claim is only to the extent of 10.38.08 acres, i.e., the suit land. The father of plaintiff no.1 had parted 2 guntas 8 annas of land with his brothers and sons of his uncle out of love and affection so that they could construct houses in the land given to each one of them.

10.4 Though PW1 has admitted that there are six strips in the suit land, it appears that those strips were made by the parties themselves. A doubt arises whether these strips are in existence in Sy. No. 102/C or the suit property.



This does not become clear because Sy. No. 102/C was also divided into six strips. For all these reasons it appears that 0.2.08 is wrongly interpreted. Defendants are having separate land to the extent of 19.04 acres in Sy. No. 699. The land in Sy. No. 102/C was also divided between the parties. DW1 has stated in the cross examination that apart from the suit land and Sy. No. 102/C his family does not possess any other land, but this is a false answer.

10.5 Defendants have not produced any documents to show that they are in possession of 1.35 acres of land. If really their possession was to the extent of 1.35 acres each, they could have adduced supporting documents like tax paid receipts and documents for having supplied sugarcane to the sugar factory. Though the plaintiffs have not produced these types of documents, considering the fact that Sy. No. 699 was allotted to defendants and their branch, the suit land was given to Somaling and his branch out of 11.11 acres. Probably Somaling might have given 2 guntas 8 annas of land to his brothers and sons of his uncle out of love and



affection. Therefore for all these reasons, the plaintiffs can be declared as the absolute owners of the suit property.

11. Assailing the findings of trial court Sri Ramachandra A Mali and Sri P.V. Gunjal, learned counsel for the appellants argued that though the sale deed of the suit property stands in the name of Somaling, it was an acquisition to the joint family. Somaling did not question it. Along with the land in Sy. No. 109, land in Sy. No. 102/C was divided between two branches of the sons of the propositus Laxman. Six shares were carved out. 0.2.08 indicated the shares in 'Annas' and 'Pie', not in terms of 'acres' and 'guntas'. Each branch was allotted 2 annas 8 pie which when converted into acres and guntas comes to 1.35 acres. These entries were not at all disturbed for quite a long time. It was for the first time an application was given to Tahasildar disputing the M.E. No. 8183 stating that the branch of Somaling was given 10.38.08 acres of land and the others held 2.08 guntas.

11.1 Actually when the matter reached the Deputy Commissioner, there was a clear direction that the parties



should approach the civil court. Instead the plaintiffs again approached the Tahasildar and obtained an entry in the revenue records as if their holding was to the extent of 10.38.08 acres. There is no document to substantiate their claim to this extent. There is a reference to the partition of the year 1965 in the revenue records. Written statement of defendant no.7 shows it. The trial court has wrongly held that the defendants have not pleaded about the partition. In fact the plaintiffs have admitted the partition of the year 1965. Even now the six branches possess land to an extent of 1.35 acres each which is clearly reflected in the revenue records pertaining to the period when there was no dispute. PW1 has given several admissions in the cross examination which have been ignored by the trial court. Therefore, the judgment of the trial court is to be set aside and the suit dismissed.

12. The learned counsel for the respondents-plaintiffs Sri Nagaraj Reddy argued that there is no dispute that the suit property was purchased by Somaling with the permission of Tahasildar as he was a permanent tenant.



Actually it was his self acquisition, and out of love and affection he gave 2 guntas 8 annas of land to each of his brothers and the sons of his uncle-Rayappa. Even now defendants are in possession of 2 guntas 8 annas of land only. They have constructed their houses in these pieces of lands. The remaining extent in Sy. No. 109 belongs to the plaintiffs. Noticing wrong entry in the revenue records application was given to Tahasildar. The wrong entry was rectified after conducting spot inspection. PW1 has not given admissions as has been argued by the appellants counsel. In this view of the matter, there are no grounds to interfere with the well reasoned judgment of the trial court and hence the appeal is to be dismissed.

13. The point that arises for discussion is:

Should the extent of land indicated as '0.2.08' be understood in terms of 'guntas and annas', or 'anna and pie'?

DISCUSSION :

14. There is no dispute that suit property was purchased in the year 1959 in the name of Somaling.



Ex.P.10 is the certified copy of the sale deed which is in Marathi language and Ex.P.11 is the Kannada translation of Ex.P.10. Though the sale deed stands in the name of Somaling, the defendants contend that it was a joint family property. The plaintiffs on the contrary state that the property was exclusively purchased by Somaling and PW.1 has given the evidence in the same manner. But the plea put forth by the plaintiffs cannot be accepted because their own document Ex.P.14 falsifies their stand. Ex.P.14 is certified copy of the order dated 07.10.2006 passed by the Assistant Commissioner in relation to mutation entry No.8183. The appellants before the Assistant Commissioner were 1) Ajeeth Laxman Nidagundi, 2) Raju Laxmana Nidagundi, 3) Ravi Laxman Nidagundi, 4) Chandu Laxman Nidagundi, 5) Ashok Laxman Nidagundi and 6) Shankara Somaling Nidagundi. Of them, Shankara Somaling Nidagundi is plaintiff No.7 in the suit. The Assistant Commissioner, in his order, extracted the facts pleaded by the applicants / appellants before him. The perusal of the same shows that all the applicants / appellants stated that land bearing R.S.No.109 measuring 11 acres 11



guntas of Raibagh was ancestral land of the appellants and the respondents, and that there was a partition between the appellants and their brothers in 1965 itself. Therefore Ex.P.14 falsifies plaintiff's stand that suit property in Sy.No.109 was purchased by Somaling in his individual capacity.

15. The plaintiffs stated that Somaling parted 2 guntas 8 annas of land with his two brothers and the sons of his uncle Rayappa so that they could construct houses, and retained 10.38.08 acres of land with himself. This is seriously disputed by the defendants and they stated that entire 11.11 acres of land was divided equally and each one took 1/6th share. Exs.P.18 and 19 are the computer printouts of mutation registers. In these two documents the extent of lands possessed by Somaling is shown as 10.38.08.00816 acres. These entries are disputed.

16. Digressing for a moment, the oral evidence of witnesses may be referred here. PW.1 is Shankar Somaling Nidagundi i.e., plaintiff no.7 whose name appears in Ex.P.14, as one of the applicants/ appellants before the Assistant



Commissioner. His affidavit is replica of the plaint. In the cross examination, he has given clear admissions that in the year 1965 there was a partition among six persons, that land in Sy.No.102/C was also a subject matter of partition along with land in Sy.No.109, that six persons shared the properties equally and in this regard mutation was accepted under entry no.10036. Having giving admission like this, very strangely he refuted the next suggestion that the same entries continued in the records of the subsequent years. When he was suggested that the share of each one was mentioned as 2 anna 8 pie, he did not accept it. His another prominent admission is that he made an application seeking rectification of the mistake in mentioning the extent of shares of each one as reflected in Exs.P.18 and 19. These answers of PW.1 are to be assessed in the light of documentary evidence. Before that it is necessary to refer to the oral evidence given on behalf of the defendants.

17. DW.1 is defendant no.15. Probably to establish that suit property was self acquisition of Somaling, he was cross examined in such a way that Somaling purchased it



after partition among the elders of Somaling had taken place. But DW.1 denied the suggestion and gave a clear answer that Somaling purchased the suit property on 24.12.1959 when he was a member of the joint family. He also denied the suggestion that Somaling retained 10.38 acres of land to himself and gave away 2 guntas 8 annas of land to each of his brothers and nephews. He asserted that six persons shared the land equally.

18. DW.2 is one Bhima Appanna Genani who was examined for the purpose of proving that the suit property was under the cultivation of joint family of plaintiffs and defendants and it was thereafter purchased with the aid of joint family funds. He also stated that about 40 years ago there had taken place a partition in which three sons of Kenchappa and three sons of Rayappa took equal shares. Cross examination was mainly concentrated to establishing that suit property was exclusively purchased by Somaling, which he did not accept.

19. Now the documents are to be considered. Exs.P.3 to P.8 are the RTC extracts of the suit property. In column



no.9 of these RTC extracts names of six persons are mentioned and the extent of the share of each one of them is mentioned as 0.2.08. Whether this extent should be read as acres, guntas and anna, or anna and pie is the question. Anna and pie as the defendants contend is not with reference to measurement, but according to them it represents the percentage of shares of six members. Ex.P.15 is the certified extract of mutation register where under the mutation entry no.8183, extent of the shares is mentioned as below:

Sl. No.	R.S. No.	Extent	Name of Occupants
1	109/1	1.36	Siddappa, Appasab, Shankar, all sons of Somling Nidagundi.
2	109/1	1.35	Maruti, Kallppa sons of Annappa. Rayappa, Mallappa and Shivappa sons of Sidaling.
3	109/1	1.35	Bhima son of Kenchappa Nidagundi.
4	109/1	1.35	Laxman son of Rayappa Nidagundi.
5	109/1	1.35	Ramachandra S/o Rayappa Nidagundi.
6	109/1	1.35	Kenchappa S/o Rayappa Nidagundi



20. Siddappa, Appasab and Shankar are all sons of Somaling Nidagundi, the second son of Kenchappa who was the first son of the propositus Laxman. Maruti and Kallappa are the grandsons of Sidling. Rayappa Mallappa and Shivappa are all the sons of Sidling. Sidling is none other than the first son of Kenchappa i.e., who was the first son of the propositus Laxman. Bhima is the last son of the very same Kenchappa. In the suit defendant no.7 Thammani is the son of Bhima. That means all these persons belonged to the branch of Kenchappa.

21. Laxman, Ramachandra and Kenchappa are the sons of Rayappa who was the second son of propositus Laxman.

22. Ex.D.4 is very important document because this was the document which led to controversy. This was an application given by plaintiffs 1, 5, 6, 7 and, Revakka i.e., plaintiff no.2 representing her two sons namely Kantesh and Somanath, to the Tahasildar of Raibag taluk requesting to effect changes in the revenue records indicating that they were all in possession of 10.38.08 acres of land and the rest



were in possession of 0.2.08 acres each. They stated that, all the six persons were not in possession of extent of lands as shown under M.E.No.10036. Based on this application the revenue inspector of Raibagh made a report that the members of Somaling branch were in possession of 10.38.08 acres in Sy.No.109 and the rest were in possession of 0.2.08 acres each.

23. It appears that based on this application mutation was accepted and necessary entries were carried out which is reflected in Exs.P.18 and P.19. If Ex.P.14 is perused, what appears is that six persons namely Ajeeth Laxman Nidagundi (defendant no.9), Raju Laxman Nidagundi (defendant no.10), Ravi Laxman Nidagundi (defendant no.11), Chandu Laxman Nidagundi (defendant no.12), Ashok Laxman Nidagundi (defendant No.13) and Shankar Somaling Nidagundi (plaintiff no.7) appealed to the Assistant Commissioner.

24. The preamble portion of Ex.P.14 shows that they were all aggrieved by the order in RTS/SR-49/00-01 dated 06.12.2004 in regard to M.E.No.8183, i.e., Ex.P.15. The



Assistant Commissioner allowed the appeal and passed an order on 07.10.2006 setting aside M.E.No.8183. It does not become clear whether this order of Assistant Commissioner was further challenged or not, however, Ex.D.18 shows that a proceeding had been initiated before the Deputy Commissioner, Belagavi in relation to RTC proceeding and on 13.07.2009 the Deputy Commissioner passed an order for restoring the earlier entries indicating the share of each one to be 02 anna 08 pie. It is stated that diary no.130 was incorrect. Reference to diary no.130 is found in Ex.P.18.

25. Ex.D.17 shows that the Assistant Commissioner passed an order on 07.01.2010 observing that rectification in the revenue records of lands in Sy.No.109 was ordered in view of false information provided by the applicants and since the Deputy Commissioner by his order dated 13.07.2009 ordered to restore the earlier entries and directed the parties to approach civil court, the rectification order was recalled and earlier position was restored. So all these revenue proceedings only indicate that the applicants in Ex.D.4 gave false information to the Tahasildar to obtain



rectification of the revenue records to the effect that they were in possession of 10.38.08 acres. On what basis they gave such kind of application to Tahasildar does not become clear. If at all they had right over 10.38.08 acres, they should have substantiated their claim by producing cogent evidence. The falsehood in their statement in Ex.D.4 can be demonstrated by referring to undisputed documents.

26. There is already reference to Exs.P.3 to P.8 in which the individual share of six persons is shown as 0.2.08. Ex.D.15 shows the individual shares of Somaling Kenchappa Nidagundi, Sidaling Kenchappa Nidagundi, Bhima Kenchappa Nidagundi, Laxman Rayappa Nidagundi, Ramachandra Rayappa Nidagundi, and Kenchappa Rayappa Nidagundi as 0.2.08 in the lands in Sy.Nos.109 and 102/C. This is with reference to ME.No.10036. Whether 0.2.08 refers to extent in acres, guntas and anna, or anna and pie is altogether different, but the clear indication is that all the six persons took equal shares. M.E.No.10036 cannot be disputed by anybody because during that time Somaling was alive. He died on 12.07.1997. PW.1 has given the date of death of his



father. M.E.No.10036 was accepted during the lifetime of Somaling and he did not dispute it at all. That means, according to him, he himself, his brothers and nephews took equal share. It is very pertinent to mention here that all the six persons shared another land in Sy.No.102 equally and the extent of land each one got was depicted in annewar i.e., 0.2.08. This sharing is not disputed by the plaintiffs and it is quite strange that they dispute the sharing of land in Sy.No.109.

27. Now, if simple arithmetical calculation is made, it can be demonstrated that there is force in the contention of the defendants that division of land in Sy.No.109 was made on annewar basis. They say that each took 2 annas 08 pie in Sy.No.109. 2 annas 08 pie must first be converted into percentage and then extent of land is to be calculated. Calculation is made as below:

$$\begin{array}{rcl} 1 \text{ anna} & = & 6 \text{ pie} \\ 2 \text{ annas} & = & 2 \times 6 = 12 \text{ pie} \end{array}$$

That means, '2 annas 08 pie = 12.08 pie'. If '12.08 pie' is the percentage of holding of six sharers, it comes to '1.35



acres' ($12.08 \times 11.11/100 = 1.342088$). Ex.P.15 shows that Siddappa, Appasab and Shankar were shown to be in possession of 1.36 acres and the rest 1.35 each, the total of which comes to 11.11 acres.

28. According to plaintiffs, 0.2.08 as depicted in RTCs Exs.P.3 to 8, indicate the extent of land as 2 guntas 8 annas which is nothing but $2 \frac{1}{2}$ guntas. Going by Ex.D.15, if the total extent of land in terms of guntas is calculated, it comes to 15 guntas ($2 \frac{1}{2} \times 6 = 15$). This calculation does not tally with total extent of 11.11 acres.

29. Therefore the inference to be drawn is, there is much force in the contention of the defendants that when the properties were earlier divided, the share of each was indicated in annewar instead of acre and guntas. To repeat as to on what basis the plaintiffs state that Somaling retained 10.38 acres with himself and gave 2 guntas 8 annas of land to others, is not understandable. It is only after the death of Somaling, the plaintiffs raised the controversy. It is very pertinent to mention here that PW.1 has admitted in the cross examination that he was party to the application as per



Exs.P.18 and 19 seeking rectification of the incorrect entry made in the revenue records. Ex.P.18 and 19 must be read along with Ex.P.14. Cause title of Ex.P.14 shows that plaintiff no.7 was a co-applicant with defendants 9, 10, 11, 12 and 13. These defendants were actually dissatisfied with revenue entry indicating the extent of land held by Somaling's branch as 10.3.08 acres. They were not dissatisfied with mutation entry no.8183 which indicated equal shares in acres and guntas. That means the answer of PW.1 as referred to above only shows that even according to him extent of land shown as 10.03.08 in the name of Somaling was incorrect.

30. If these being the inferences that can be drawn, the learned trial judge appears to have misled himself in drawing inferences by referring to land in Sy.No.699 which is said to be in the possession of defendants. In fact, the plaintiffs do not dispute the possession of the defendants in respect of land in Sy.No.699 and it is not their case also. Another conclusion of the trial court that the defendants have not stated in the written statement about the partition of the year 1965, is fallacious in as much as the documents



produced by the plaintiffs themselves contain a reference to this partition. Therefore the final conclusion to be drawn is that the extent shown as 0.2.08 is indicated in annewar which is almost equal to 1.35 acres. The plaintiffs have failed to prove their possession and title to the extent 10.38 acres in Sy.No.109 of Raibag.

31. From the above discussion we come to the conclusion that the appeal deserves to be allowed and now the following order:

ORDER

- i. Appeal is allowed with costs.
- ii. The judgment dated 24.03.2016 in O.S.No.223/2013 on the file of Senior Civil Judge, Raibag, is set aside and the suit is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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