



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

DATED THIS THE 29TH 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.100196 OF 2017 (PAR)

BETWEEN:

1. SMT. GURUBAI
W/O MALLAPPA MALLAPUR @ MURANDAGI,
AGE: 43 YEARS, OCC: HOUSEHOLD WORK,
R/AT: ROLLI AND NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT.
PIN CODE: 587 101.
2. SANGAVVA @ SANGAMMA
W/O SUBHAS GADDI,
AGE: 23 YEARS, OCC: HOUSEHOLD WORKS,
R/AT: ROLLI AND NEERALAKERI VILLAGE AND POST,
BILAGI TALUK AND DISTRICT,
PIN CODE: 587101.

...APPELLANTS

(BY MISS. RANJITA RADDI ALAGAWADI ADV. FOR
SRI S.B. HEBBALLI, ADV.)

AND:

1. BASAPPA
S/O SOMAPPA MALLAPUR @ MURANDAGI,
AGE: 63 YEARS, OCC: AGRICULTURE,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
2. MALLAPPA
S/O BASAPPA MALLAPUR @ MURANDAGI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.



3. RENAVVA
W/O RANGAPPA MALLAPUR @ MURANDAGI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
4. KUMAR
S/O RANGAPPA MALLAPUR @ MURANDAGI,
AGE: 20 YEARS, OCC: STUDENT,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
5. AMBARISH
S/O RANGAPPA MALLAPUR @ MURANDAGI,
AGE: 18 YEARS, OCC: STUDENT,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
6. YALLAVVA
W/O MAHAGUNDAPPA GANIGER,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
7. KUMADWATI S. W/O RAGHAVENDRA RAO,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/AT: LAXMINAGAR,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
8. S.SATYANARAYAN
S/O RAGHAVENDRA RAO,
AGE: 33 YEARS, OCC: PRIVATE TRADE,
R/AT: LAXMINAGAR,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
9. S.ASHWINI
D/O RAGHAVENDRA RAO,
AGE: 25 YEARS, OCC: STUDENT,
R/AT: LAXMINAGAR,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.



10. DAYANAND BALAVANT WAGH
AGE: 53 YEARS,
OCC: AGRICULTURE AND TRADE,
R/AT: KALADAGI,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
11. TIPPANNA AYYAPPA MAJJAGI
AGE: 33 YEARS,
OCC: AGRICULTURE,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOT TALUK AND DISTRICT,
PIN CODE: 587101.
12. BALAPPA AYYAPPA MAJJAGI,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/AT: NEERALAKERI VILLAGE AND POST,
BAGALKOTE TALUK AND DISTRICT,
PIN CODE: 587101.

...RESPONDENTS

(BY SRI RAGHAVENDRA PUROHIT FOR
SRI ANAND R. KOLLI, ADVOCATE FOR R10;
NOTICE TO R6, R11, R12 DISPENSED WITH
(V/O. DATED 18.01.2021);
NOTICE TO R1 TO R5, R7, R8, R9 : SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CODE OF CIVIL
PROCEDURE, 1908, AGAISNT THE JUDGMENT AND DECREE DATED
06.03.2017 PASSED IN O.S.NO.9/2014 ON THE FILE OF PRINCIPAL
SENIOR CIVIL JUDGE AT BAGALKOT DECREERING THE SUIT FILED
FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL, 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

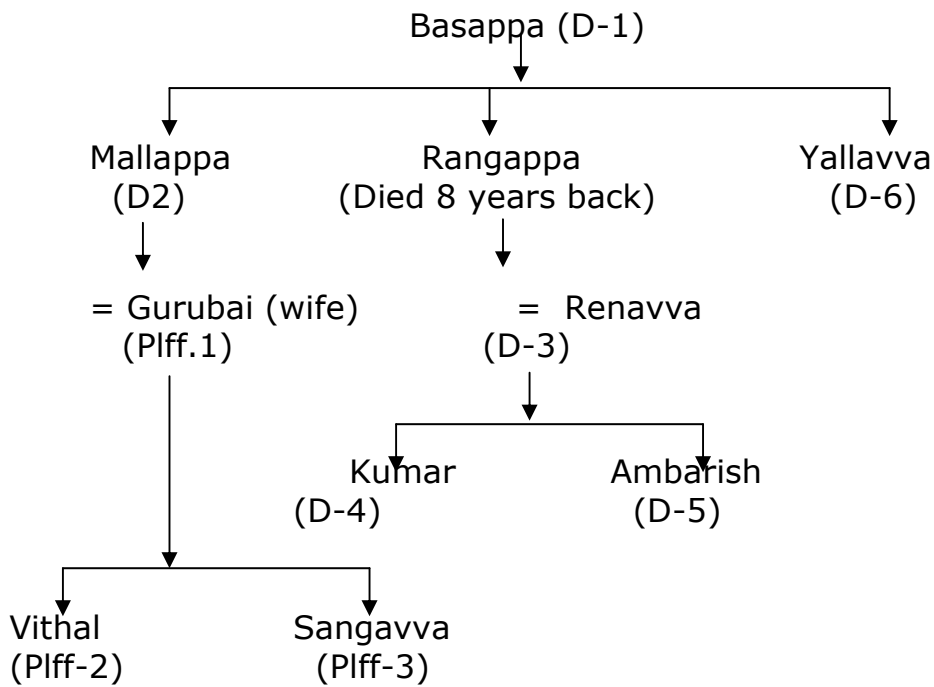


ORAL JUDGMENT

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

This appeal is directed against judgment and decree dated 06.03.2017 in O.S.No.9/2014 on the file of Principal Senior Civil Judge, Bagalakote. Plaintiff nos.1 and 3 are the appellants.

2. The relationship between the parties is represented in the following genealogical tree.



3. Plaintiff no.1 is the wife of defendant no.2 and plaintiff nos.2 and 3 are the children of plaintiff no.1 and defendant no.2. Defendant nos.3, 4 & 5 belong to the branch of



Rangappa the second son of the 1st defendant. Defendant no.6 is a married daughter of Basappa. The suit was filed in respect of immovable properties described in schedule 'B' and movables described in schedule 'C'. There is no dispute that all the properties are ancestral in nature. After recording evidence, the Trial Court decreed the suit partly holding that plaintiff no.3 and defendant nos.2 were each entitled to 1/8th share in schedule 'B' properties, out of the share of defendant no.2. It was also held that defendant nos.3 to 5 were together entitled to 1/4th share and defendant no.1 and defendant no.6 were entitled to 1/4th share each in schedule 'B' properties. No share was granted to plaintiff no.1 for the reason that she is the wife of defendant no.2 and in this regard it was held that during the lifetime of the husband, wife cannot claim partition. Plaintiff no.2 died during pendency of the suit. Aggrieved by allotment of shares plaintiff nos.1 and 3 are in appeal before this Court.

4. We have heard Miss.Ranjita Raddi Alagawadi, learned advocate for the appellants and Sri Raghavendra Purohit learned counsel for respondent no.10.



5. It is the argument of Miss.Ranjita Raddi that plaintiff no.1 would become entitled to share in the properties because according to Bombay School, wife can claim share whenever partition of the ancestral property takes place. She also submits that plaintiff no.2 died intestate during pendency of the suit. He died issueless. He was unmarried and therefore the share that plaintiff no.2 was entitled to, could have been allotted to plaintiff no.1 as she is class-I heir of deceased plaintiff no.2. In this view she argues for modification of the shares.

6. Sri Raghavendra Purohit submits that according to Bombay School wife cannot claim partition during the lifetime of husband. Rightly the Trial Court has denied share to plaintiff no.1. Defendant no.10 is the purchaser from the 1st defendant. The suit should have been dismissed however defendant no.10 has not preferred any appeal. Therefore appeal is to be dismissed.

7. We have perused the entire judgment of the Trial Court. Initially defendant no.2 takes 1/4th share and in this 1/4th share further divisions must be made. Plaintiff no.1 being



the wife of defendant no.2 is not entitled to claim share in the 'B' schedule properties as her husband is alive. But the Trial court could have allotted share of the deceased plaintiff no.2 to plaintiff no.1, as she alone is class-I heir of plaintiff no.2 in accordance with the Hindu Succession Act, 1956. Plaintiff no.2 was alive when suit was filed and his share was crystallized on the date of suit. He would have taken $\frac{1}{3}^{\text{rd}}$ share out of $\frac{1}{4}^{\text{th}}$ share (i.e., $\frac{1}{12}^{\text{th}}$) of defendant no.2. Therefore plaintiff no.1 would succeed to whole of $\frac{1}{12}^{\text{th}}$ share of her deceased son. This is where the Trial Court has gone wrong and therefore judgment of Trial Court requires modification.

8. So far as properties described in 'C' schedule of the plaint are concerned, the Trial Court has rightly held that their existence is not proved by the plaintiffs and even now the learned counsel for the appellants did not make it a ground of argument. Therefore we have not considered allotment of shares in 'C' schedule properties.

9. With the above discussion, the following order is passed.



ORDER

1. The appeal is partly allowed.
2. Allotment of shares made by the Trial Court is modified in such a way that in the $1/4^{\text{th}}$ share of defendant no.2-Mallappa, deceased plaintiff no.2-Vithal and plaintiff no.3 Sangavva would be entitled to $1/3^{\text{rd}}$ share each i.e., equal to $1/12^{\text{th}}$. Plaintiff no.1 would be entitled to succeed $1/12^{\text{th}}$ share of deceased plaintiff no.2. The shares allotted to defendant nos.3 to 5 and 6 remain intact.

There is no order as to costs.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

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