



**IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH  
DATED THIS THE 6<sup>TH</sup> DAY OF DECEMBER, 2024  
PRESENT**

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR  
AND  
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA**  
REGULAR FIRST APPEAL NO.100236 OF 2016 (PAR/POS)

**BETWEEN:**

SHRI PUNDALIK MAHADEV HARIHAR,  
AGE: 67 YEARS, OCC. AGRICULTURE,  
R/O PRABHUWADI-CHIKODI,  
TQ. CHIKODI, DIST. BELAGAVI.

- APPELLANT

(BY MR. S. B. SHAIKH, ADVOCATE)

**AND:**

1. SMT. SUSHILA W/O NIVRUTHI PAYMALLE,  
AGE: 69 YEARS OCC. HOUSEHOLD WORK,  
R/O. NEJ, TQ. CHIKODI, DIST. BELAGAVI.

2. SMT. MANGAL W/O MAHADEV KHARADE  
SINCE DECEASED R/BY LEGAL HEIRS

2(A) SHRI MAHADEV AABA KHARADE,  
AGE: 72 YEARS, OCC. AGRICULTURE,  
R/O. KUMBOJ, TQ. HATKANAGALE,  
DIST. KOLHAPUR-416002, MAHARASHTRA.

2(B) SMT. SHILPA W/O DATTA HUJARE,  
AGE: 35 YEARS, OCC. TEACHER,  
R/O. MANGALWAR PETH, TQ. KARVEER,  
DIST. KOLHAPUR-416003, MAHARASHTRA.

2(C) SMT. PUSHPA W/O. NIKIN (NITIN) GONDHALE,  
AGE: 32 YEARS, OCC. HOUSEHOLD WORK,  
R/O. HARIPUR ROAD, TQ. SANGLI,  
MAHARASHTRA-416414.

2(D) SMT. LATA W/O SUDHAKAR BHOSALE,  
AGE: 28 YEARS, OCC. AGRICULTURE,



R/O. KUMBOJ, TQ. HATKANAGALE,  
DIST. KOLHAPUR-416002, MAHARASHTRA.

3. SMT. SHANTABAI W/O VILAS BHADAVALE,  
AGE: 63 YEARS, OCC. HOUSEHOLD WORK,  
R/O. KOLHAPUR, TQ AND DIST. KOLHAPUR.
4. SMT. HEMALATA W/O PUNDALIK CHOUGULE,  
AGE: 48 YEARS, OCC. HOUSEHOLD WORK,  
R/O. KOLHAPUR, TQ AND DIST. KOLHAPUR.
5. SHRI MAHADEV BALAPPA HARIHAR,  
AGE: 98 YEARS OCC. AGRICULTURE,  
R/O. PRABHUWADI-CHIKODI,  
TQ. CHIKODI, DIST. BELAGAVI.
6. SHARUBAI W/O MAHADEV HARIHAR,  
AGE: 84 YEARS, OCC. HOUSEHOLD WORK,  
R/O PRABHUWADI-CHIKODI,  
TQ. CHIKODI, DIST. BELAGAVI.

- RESPONDENTS

(BY MR. SHIVARAJ S. BALLOLI,  
ADVOCATE FOR R1, R3 AND R4,  
NOTICE TO R2(A), R2(C), R2(D), R5 AND R6 -SERVED;  
NOTICE TO R2(B) HELD SUFFICIENT)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF  
CODE OF CIVIL PROCEDURE, PRAYING TO, SET ASIDE THE  
JUDGMENT AND DECREE DATED 22.07.2016 PASSED IN OS  
NO.179/2014 BY PRINCIPAL SENIOR CIVIL JUDGE CHIKODI BY  
DECREEING THE SUIT AND AWARDING 1/7<sup>TH</sup> SHARE TO EACH PARTY  
IN THE SCHEDULE PROPERTIES, IN THE INTEREST OF JUSTICE AND  
EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION, 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 third defendant in O.S. No. 179/2014, before Prl. Sr. Civil Judge, Chikkodi has preferred this appeal assailing the judgment dated 22.07.2016.

2. The plaintiffs are the married daughters of the first and second defendant. Defendant no.3 is the son of defendants 1 and 2. The plaintiffs brought a suit for partition and separate possession in respect of two pieces of agricultural lands in Sy. No.185/1K and 185/2K of Chikkodi and a house property bearing CTS No. 3886 situate at Chikkodi town. Stating that these properties belong to the joint family and that they have become coparceners in view of amendment brought to Hindu Succession Act, they claimed 1/7<sup>th</sup> share each. The defendants 1 and 2 stated in the written statement that the plaintiffs had share in the properties. Defendant no.3 admitted that the properties belonged to the joint family but took a contention that the plaintiffs received money in



lieu of their shares and moreover, as he had spent a huge amount of money for their marriages they can not claim partition. He contended that the plaintiffs gave up their rights over the properties and hence denied the plaintiffs right to seek partition.

3. Answering issues 1 to 5 the trial court decreed the suit holding that there was no earlier partition of the joint family properties and thereby the each plaintiff was entitled to claim share which is equal to 1/7<sup>th</sup> share in the suit property.

4. The counsel for the appellant/ defendant no.3 argued that defendant no.3 could not lead evidence before the trial court. The trial court hurriedly disposed of the suit without affording him an opportunity and therefore the suit is to be remanded to the trial court.

5. But we do not find a ground to admit this appeal. The relationship between the plaintiffs and defendants is not disputed. It was defendant no.3 who specifically



contended that the plaintiffs gave up their share by receiving money and that a huge amount of money had been spent for the marriages of the plaintiffs. It is not his case that there was a previous partition before amendment was brought to Sec.6 of the Hindu Succession Act. The trial court has held that in case there were to be any relinquishment of shares by the plaintiffs that should be only through a registered relinquishment deed. The defendant no.3 failed to produce the same. This finding of the trial court cannot be held to be incorrect.

6. in regard to grievance of defendant no.3 that he was denied an opportunity to lead evidence from his side, it is to be stated that nothing prevented him from leading evidence. The trial court has clearly observed in the judgment that inspite of several opportunities being given defendant no.3 did not lead evidence. When we put a question to learned counsel for the appellant as to how the case of defendant no.3 had improved if he had adduced evidence, he was unable to answer. As has been observed



already, main contention of defendant no.3 in his written statement is that the plaintiffs were given money in lieu of their shares, about which there is no proof. He should have obtained a valid document to that effect. He has not pleaded previous partition. Therefore even if he had lead evidence, he could not have improved his case in any manner going beyond his written statement. No purpose would be served even if suit is remanded to the trial court. The properties belong to the joint family. The plaintiffs are the daughters of defendants 1 and 2 and they have now acquired the status of coparceners which enable them to claim partition. Each plaintiff is therefore entitled to 1/7<sup>th</sup> share. For all these reasons there is no ground to admit the appeal. Hence appeal dismissed. There is no order as to costs.

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

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

BVV/LIST NO.: 1 SL NO.: 18