



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 13TH 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.100351 OF 2019 (PAR/INJ)

C/W WRIT PETITION NO.101506 OF 2022

IN RFA NO.100351/2019

BETWEEN:

1. SMT. LAXMIBAI W/O. GOUDAPPA SOMANNAVAR
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: BISANAL-587224, TAL: BILAGI, DIST: BAGALKOT.
2. SMT. LAKKAVVA @ SHANTA W/O. VENKAPPA RABAKAVI,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: MUDALAGI-591307, TAL: GOKAK,
DIST: BELAGAVI.

- APPELLANTS

(BY SRI RAVI S. BALIKAI, ADVOCATE)

AND:

1. KUM. BHAGYASHREE D/O. CHANNAPPA BELAGALI,
AGE: 24 YEARS, OCC: HOUSEHOLD AND AGRICULTURE,
R/O: TUNGAL-587 344, TAL: JAMKHANDI,
DIST: BAGALKOT.
2. SMT. KAVITA W/O. GOVIND BELAGALI,
AGE: 30 YEARS, OCC: HOUSEHOLD AND AGRICULTURE,
R/O: TUNGAL-587344, TAL: JAMKHANDI,
DIST: BAGALKOT.
3. SMT. KASHIBAI W/O. VENKATESH BELAGALI,
AGE: 33 YEARS, OCC: HOUSEHOLD AND AGRICULTURE,
R/O: NANDESHWAR-591304, TAL: ATHANI,
DIST: BELAGAVI.
4. CHANNAPPA S/O. BHIMARAYAPPA BELAGALI,

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Karnataka, Dharwad Bench
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AGE: 86 YEARS, OCC: AGRICULTURE,
R/O: TEGGI-587316, TAL: BILAGI, DIST: BAGALKOT.

5. SMT. BHOUREAWWA W/O. CHANNAPPA BELAGALI
AGE: 75 YEARS, OCC: AGRICULTURE,
R/O: TEGGI-587316, TAL: BILAGI, DIST: BAGALKOT.
6. BHIMAPPA S/O. CHANNAPPA BELAGALI,
AGE: 41 YEARS, OCC: AGRICULTURE,
R/O: TEGGI-587 316, TAL: BILAGI, DIST: BAGALKOT.
7. LAXMAPPA S/O. HANAMAPPA HANAMAR,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O: BISANAL, TAL: BILAGI,
NOW RESIDING AT: C/O. CHANNAPPA
VENKAPPA KODABAGI (TATA), NEAR NANDI SUGARS,
HOSUR-586216, TAL AND DIST: VIJAYAPUR.
8. HANAMAPPA S/O. LAXMAPPA HANAMAR,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O: BISANAL-587 224,
TAL: BILAGI, DIST: BAGALKOT.

- RESPONDENTS

(BY SRI MALLIKARJUNSWAMY B. HIEMATH,
ADVOCATE FOR R1 TO R3;
SRI MALLIKARJUN C. HUKKERI,
ADVOCATE FOR R4, R5 AND R6;
NOTICE TO R7 AND R8 IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
CPC., 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE
DATED 28.03.2019 PASSED IN O.S.NO.33/2011 ON THE FILE OF THE
SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS,
BILAGI & ETC.

IN WP NO.101506/2022:

BETWEEN:

SMT. LAXMIBAI W/O. GOUDAPPA SOMANNAVAR,
AGE: 54 YEARS, OCC: AGRICULTURE,
R/O: BISANAL-587116, TQ: BILAGI, DIST: BAGALKOTE.

- PETITIONER

(BY SRI. RAVI S. BALIKAI, ADVOCATE)

AND:



1. THE DEPUTY COMMISSIONER,
BAGALKOTE DISTRICT,
BAGALKOTE-587101, DIST: BAGALKOTE.
2. THE ASSISTANT COMMISSIONER,
JAMKHANDI -587101, DIST: BAGALKOTE.
3. THE TAHSHILDAR BILAGI,
BILAGI-587116, DIST BAGALKOTE.
4. THE REVENUE INSPECTOR BILAGI,
BILAGI-587116, DIST BAGALKOTE.
5. CHANNAPPA S/O. BHIMARAYAPPA BELAGALI,
AGE: 88 YEARS, OCC: AGRICULTURE,
R/O: BISANAL-587116, TQ: BILAGI, DIST: BAGALKOTE.
6. LAXMAPPA S/O. HANAMAPPA HANAMAR,
AGE: 72 YEARS, OCC: AGRICULTURE,
R/O: BISANAL-587116, TQ: BILAGI, DIST: BAGALKOTE.
7. HANAMAPPA S/O. LAXMAPPA HANAMAR,
AGE: 54 YEARS, OCC: AGRICULTURE, R/O: BISANAL-
587116, TQ: BILAGI, DIST: BAGALKOTE.

- RESPONDENTS

(BY SRI. T. HANAMAREDDY, AGA FOR R1 TO R4;
SRI. MALLIKARJUN C. HUKKERI, ADVOCATE FOR R5)
R6 AND R7 NOTICE DISPENSED WITH;

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 17.02.2022, PASSED IN CASE NO. RP.69/2021, PASSED BY THE RESPONDENT NO.1, PRODUCED AS ANNEXURE-A AND THE ORDER DATED 28.09.2021 PASSED IN NO.BHUMI/CR-48/2021-22, PASSED BY RESPONDENT NO.2, PRODUCED AS ANNEXURE-B AND M.R.NO.H.34/2021-2022 DATED 29.10.2021 PASSED BY THE RESPONDENT NO.4 PRODUCED AS ANNEXURE-C AND ETC.,

THIS APPEAL AND PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.12.2024 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 5 and 6 have preferred this appeal seeking to set aside the judgment and decree dated 28.03.2019 in O.S. No. 33/2011 on the file of Senior Civil Judge, Bilagi.

2. The suit was instituted by respondents 1 to 3. For better appreciation of facts and evidence, parties are referred with respect of their ranks in the trial court.

3. The gist of badly inarticulate pleadings is as follows: The plaintiffs suit is for partition and separate possession of their 1/6th share each in schedule 'A', 'B' and 'C' of the plaint. Schedule 'A' consists of landed property in Sy. Nos. 119/5A and 215/4 of Bisnal village. In schedule 'B' an open space and a house are described. Schedule 'C' consists of electric floor mill, electric 10 HP motor and their accessories.



4. The propositus was Bheemarayappa. He had one daughter by name Lakkavva and two sons by name Lakkappa and Channappa. Plaintiffs 1 to 3 are the daughters of Channappa. Defendant no.2 is the wife of Channappa and mother of plaintiffs 1 to 3 and defendant no.3. Defendant no.3 is the son of Channappa, i.e., plaintiff's brother. Defendant no.4 is the widow and defendants 5 and 6 are the daughters of Lakkappa. Defendant no.5 Laxmibai was given in marriage to one Gowdappa, the son of Lakkavva. Defendants 7 and 8 do not belong to the family.

5. The plaintiffs pleaded that in the year 1975 there was a partition between defendant no.1 and defendant no.4. Defendant no.1 was allotted Southern portions in Sy. No. 10/2 and 119/5 of Bisnal village, measuring 5 acres and 6 acres respectively. The Northern portions fell to the share of defendant no.4. The land in Sy. No. 215/4 of Teggi village was a family tenanted land and its occupancy right was granted to defendant no.1. Since the grant was made



exclusively to defendant no.1, it did not belong to the joint family and only the defendant no.1 and his children would get a right in it. The plaintiffs stated that since the request for partition was not considered by the defendants, they had to institute the suit.

6. Defendant no.1 did not file written statement, but defendants 2 and 3 filed written statement denying all the plaint averments and right of plaintiffs 2 and 3 to claim partition as they had been given entire money that was received after selling land in Sy. No. 10/2. They set up counter claim for 1/3rd share each in schedule 'A' and 'B' properties and 1/3rd share in half share of defendant no.1 in plaint schedule 'C'.

7. Defendant no.5 contended in her written statement that the plaintiffs had no right to claim partition in landed properties bearing sy. No. 119/5A of Bisnal village and Sy. No. 215/4 of Teggi village as those lands belong to her. She admitted the partition of the year 1975 and the allotment of shares made thereunder. She stated further



that in the said partition no share was allotted to Lakkavva, the daughter of Bheemarayappa. The grant of occupancy right in respect of land in Sy. No. 215/4 was not to defendant no.1 exclusively but it was a grant to the family. No share was given to Lakkavva in the partition of the year 1975. She stated that she was the daughter in law of Lakkavva. Recognizing right of Lakkavva, the land in Sy. No.215/4 was given to defendant no.5 in an arrangement made between her and defendant no.1. Therefore she stated to be in possession of the said land. This land was not included in the partition dated 05.05.1975 as the tenancy issue was still under consideration before the Land Tribunal. The plaintiffs have suppressed this fact and hence they cannot claim partition. She sought dismissal of the suit.

8. The trial court framed eight issues. PW1 is plaintiff no.2 and she produced the documents as per Exs.P.1 to P.12. DW1 is defendant no.4 and DW2 is defendant no.5. Exs.D.1 to D.26 are the documents produced by them.



The main reasons recorded by the trial court are that Ex.P.12, the partition deed dated 03.05.1975 shows that Southern side measuring 5 acres in Sy. No. 10/2 and Southern side measuring 5 acres in Sy. No. 119/5 was allotted to defendant no.1 and likewise the Northern portion in the said two survey numbers are allotted to defendant no.4. In the same partition deed it is mentioned that the defendants 1 and 4 have equal right in schedule 'C' properties. In this view, the stand of defendant no.5 that the plaintiffs have no right to claim any share in schedule 'C' properties is not tenable. Since these items cannot be partitioned by metes and bounds, they can be valued and one sharer could retain the entire property by making payment of money to the others. In respect of 'B' schedule property it is held that the plaintiffs and defendants 2 and 3 are entitled to 1/6th share each.

9. So far as the land in Sy. No. 215/4 is concerned, it is held that the grant of that land was made to defendant no.1. The propositus Bheemarayappa might have died 70



years ago. His daughter Lakkavva appears to be not alive in the year 1975. The claim of defendant no.5 that she succeeded to the right of Lakkavva cannot be accepted as Lakkavva did not have pre-existing right. Since the death of Bheemarayappa was before Hindu Succession Act, 1956 came into force, daughter could not claim any share. In this view, Lakkavva could not have succeeded to property. And for this reason defendant no.5 being Lakkavva's daughter in law cannot state that the land in Sy. No. 215/4 was given to her under Ex.D.18. Moreover, Ex.D.18 is an unregistered document. It cannot be considered. Observing that the entire land in Sy. No.10/2 divided between defendant no.1 and 4 having been sold by them, in regard to the other land, i.e., the land in Sy. No. 119/5, it is the finding that in view of division of the said land in the year 1975, 119/5A belonged to defendant no.1 as per Ex.P.12. It was an ancestral property and therefore plaintiffs 1 to 3 and defendant no.2 and 3 could claim 1/6th share. With these findings the trial court partly decreed the suit holding that plaintiffs were entitled to 1/6th share



each in the land in Sy. No. 119/5A and 'B' and 'C' schedule properties. Counter claim of defendants 2 and 3 was partly allowed. The plaintiffs' right to claim partition and the counter claim of defendants 2 and 3 in respect of land in Sy. No. 215/4 was dismissed. Aggrieved by this judgment, defendants 5 and 6 are before this court.

10. We have heard the arguments of Sri Ravi S. Balikai, learned counsel for the appellants, Sri Mallikarjunswamy B. Hiremath, learned counsel for respondents 1 to 3 and Sri Mallikarjun C. Hukkeri, learned counsel for respondents 4 to 6.

11. Sri Ravi S. Balikai argued two points. The plaintiffs themselves have stated about the partition of the year 1975 which is evidenced by Ex.P.12. The said partition was between the first defendant and the fourth defendant as by that time the 4th defendant's husband Lakkappa was not alive. The subject matter of the said partition was lands in Sy. Nos. 10/2 and 119/5. Defendant no.1 was allotted Southern portion and it was given a separate



survey number 119/5A. The land that fell to the share of defendant no.4 was re-numbered as Sy. No. 119/5B. Subsequently there was re-numbering of survey numbers, Sy. No. 119/5A was assigned 119/5B, and 119/5B was assigned 119/5A, that means there was interchange of numbers. Defendant no.1 sold away the land in Sy. No. 119/5B which is evidenced by Ex.D.23. Now the effect of decree granted by the trial court is that plaintiffs can claim share in the property that fell to the share of defendant no.4. This seriously affects the interest of defendants 5 and 6 as they are the daughters of defendant no.4.

11.1. So far as the land in Sy. No. 215/4 is concerned, there was an arrangement between the first defendant and fifth defendant as evidenced by Ex.P.9. It is true that this is an unregistered instrument, however its recitals are in the nature of a family arrangement which does not require registration. Defendant no.5 is also the daughter in law of Lakkavva and Ex.P.9 evidences land in Sy. No. 215/4 being given to her. This was in the light of



right that her mother in law Lakkavva had in the properties being the daughter of propositus Bheemarayappa. The plaintiffs having produced Ex.P.9 cannot go back upon that document.

11.2. On the basis of the impugned judgment, the plaintiffs approached the Assistant Commissioner who directed the concerned revenue authorities to give effect to the decree and re-write the revenue records. Defendant no.5 approached the Deputy Commissioner by filing a Revision Petition. The Deputy Commissioner ordered that the parties must abide by the judgment in the appeal pending in the High Court. Now if the appeal is allowed, the connected writ petition is to be allowed and the name of defendant no.5 must be restored in the revenue records. He argued that grant of occupancy rights in Sy. No. 215/4 was to the joint family though application was made by defendant no.1. He referred to Form No. 7 marked as Ex.D.15 where the names of defendants 5 and 6 are mentioned as daughters of Lakkappa. The finding of



the trial court that grant was made exclusively to first defendant cannot be sustained in this view. Therefore he argued for allowing the appeal and the writ petition.

12. Sri Mallikarjunswamy B. Hiremath, counsel for respondents 1 to 3 argued that the partition of the year 1975 is not in dispute. The land in Sy. No. 215/4 was not included in the partition because the matter pertaining to occupancy right was still under consideration by the Land Tribunal. Form No.7 was filed on 16.08.1974. The Land Tribunal passed an order granting occupancy right on 30.04.1975 as evidenced by Ex.D.14. Ex.P.12, i.e., the partition, took place on 03.05.1975. As on the date of partition, Form No.10 was not issued to the first defendant even though the Land Tribunal passed the order on 30.04.1975. This was the reason for not inclusion of land in Sy. No. 215/4 when the partition took place. Referring to these documents he argued that the occupancy right was exclusively granted to defendant no.1. Mere mention of the names of defendants 5 and 6 did not confer any



right on them. Reason for production of Ex.P.9 was to demonstrate that defendant no.5 cannot claim right over land in Sy. No. 215/4, this being the purpose the said document cannot be read against the plaintiffs. Therefore his argument was that the trial court has rightly come to conclusion to hold that plaintiffs are entitled to a share in Sy. No. 215/4. The judgment is well reasoned and it cannot be set aside.

13. Sri Mallikarjun C. Hukkeri, for respondents 4 to 6 supported the argument of Sri Mallikarjunswamy B. Hiremath.

14. Therefore from the above arguments, what requires to be examined are the following four points.

- (1) Whether the plaintiffs get a right to claim partition in the lands in Sy. No. 119/5A?*
- (2) Whether defendant no.5 can claim right under Ex.P.9 in respect of property in Sy. No. 215/4?*
- (3) What is the order to be passed in the writ petition?*
- (4) What order?*



15. Point No.1: Ex.P.12 is the registered partition deed dated 03.05.1975 between the first defendant and the fourth defendant. It can be made out from this document that lands in Sy. No.10/2 and 119/5 of Bisnal village were the subject matter of the partition. The Southern portions in these two survey numbers were allotted to the share of the first defendant and the Northern portion to the fourth defendant. Lakkavva, the daughter of the propositus was not a party to this partition. There is no evidence as to when the shares allotted to the first defendant and fourth defendant in sy. No. 119/5 were sub divided into 119/5A and 119/5B. But the plaintiffs have produced Ex.P.1, the RTC extract of the land in Sy. No. 119/5A which stands in the name of the first defendant. This RTC pertains to the year 2011-12. Though the plaintiffs state that they have claimed partition in this land as it was allotted to their father, Ex.P.D.23, certified copy of the registered sale deed dated 18.09.2015 discloses that the first defendant sold away 3 acres of land in Sy. No. 119/5B to one Laxmappa Hanamappa Hanamar, i.e., defendant no.7.



16. Ex.D.24 shows that defendant no.1 sold 5 acres of land in Sy. No. 10/2A to one Gururaja Mahalingappa Nevani. The Northern boundary of the land given in Ex.D.23 is very important. Northern boundary for the land sold to Laxmappa Hanamappa Hanamar is shown as land belonging to Laxmibai Somanannavar, i.e., defendant no.5. This Northern boundary tallies with a recital in Ex.P.9 to the effect that Southern portion was allotted to first defendant and the Northern portion to defendant no.4 who is the mother of defendant no.5. Looked in this view, there is force in the argument of Sri Ravi Balikai that the survey numbers were interchanged, the land in sy. No. 119/5B which stood in the name of defendant no.4 became 119/5A.

17. The first defendant's land in Sy. No. 119/5A was re-numbered as Sy. No. 119/5B which land he sold away. The plaintiffs have claimed share in Sy. No. 119/5A which land now belongs to defendant no.4 and her two daughters, defendants 5 and 6. The very fact that



defendant no.1 did not contest the suit and a strange counter claim set up by defendants 2 and 3 in their written statement indicate collusion between the plaintiffs and defendants 1 to 3 to knock away the property in Sy. No. 119/5A. Actually the written statement of defendant no.5 should have disclosed these aspects, but the inarticulate drafting should not result in injustice being caused to defendants 4, 5 and 6. It is very pertinent to mention here an admission given by PW1 in his cross examination that her father, i.e., defendant no.1 was allotted six acres in Southern portion in Sy. No. 119/5 when the partition took place in the year 1975. She also admitted that defendant no.4 was allotted 6 acres 8 guntas of land in Sy. No. 119/5B. Since in Ex.D.23, the sale deed executed by the first defendant shows that he sold 3 acres of land in Sy. No. 119/5B, subsequently the survey numbers might have been re-numbered in the way Sri Ravi Balikai argued. For this reason the finding of the trial court that the plaintiffs can claim $1/6^{\text{th}}$ share each in Sy. No. 119/5A,



i.e., first item of plaint 'A' schedule cannot be accepted and hence point no.1 is answered in the negative.

18. Point No.2: Undoubtedly the land in Sy. No. 215/4 was a tenanted land and as evidenced by Ex.D.15 it was defendant no.1 who filed Form No. 7 before the Land Tribunal claiming occupancy right. Ex.D.14 shows occupancy right being granted on 30.04.1975 to the first defendant. It is for this reason defendants 1 to 3 and all the plaintiffs state that defendants 4 to 6 have no right on that land. But this contention cannot be accepted. In Ex.P.15 there is a clear mention of the names of other members of the joint family. The names mentioned are; Tayavva, defendant no.4 and Lakkavva, defendant no.6. Name of defendant no.5 is not mentioned. This was probably for the reason that defendant no.5 was given in marriage to Gowdappa, the son of Lakkavva, i.e., daughter of propositus Bheemarayappa. If Ex.P.12 is perused again, there is a clear recital that on the day when the said partition was effected, except the movable



and immovable properties mentioned therein, there remained no other property to be partitioned and if for any reason existence of any property would come to the notice of the parties, such properties would be equally partitioned.

19. It is not in dispute that before the partition as per Ex.P.12 took place, matter relating to grant of occupancy right was pending before the Land Tribunal. In Ex.D.15, it is clearly mentioned that the said land was a tenanted land for the last 20 years. If the joint family did not exist on the day when the first defendant filed Form No.7, there was no need for him to mention the names of defendant no.4 and 6. Moreover the lands in Sy. No. 10/2 and 119/5 are also shown in Form No.7, not for the purpose of claiming rights but to disclose before the Land Tribunal that the applicants' family owned those two lands which were joint family properties. Ex.P.9 is to be interpreted in the background of these facts and circumstances.



20. Perusal of Ex.P.9 shows that defendant no.1 had promised defendant no.5 that he would give the land to the latter at the time of her marriage and therefore he voluntarily gave the entire land in Sy. No. 215/4 to defendant no.5. PW1 admitted that Ex.P.9 contains the signature of her father. If defendant no.1 wanted to dispute this document, he should have contested the suit. The very fact that he did not contest and that PW1 admitted her father's signature, show that Ex.P.9 did come into existence. Defendant no.1 would not have agreed for giving away the land in Sy. No. 215/4 to defendant no.5 if the grant was made to him exclusively. Above all defendant no.5 is none other than the daughter of defendant no.4 and later on she became the daughter in law of Lakkavva (daughter of propositus). The trial court has given very much importance to date of death of the propositus.

21. While DW2 was cross examined she was questioned with regard to date of death of Bheemarayappa and she stated that he died on 29.04.1959. The trial court did not



accept this date giving the reason that it was not supported by any documentary evidence. This conclusion could not have been drawn because any answer extracted in the course of cross examination need not always be supported by a document. If the trial court did not believe this date of death, it does not become clear as to on what basis the answer of PW1 that the propositus died about 70 years ago was believed. Whatever may be the date of death, Tayavva, the daughter of Bheemarayappa was not entitled to equal share in the joint family even after the coming into force of Hindu Succession Act, 1956. But Ex.P.9 indicates a different transaction.

22. Just because it is not registered, it cannot be brushed aside because it is in the nature of a family arrangement which is always permitted. Defendant no.5 is not a stranger to the family. After Ex.P.9 was executed by the first defendant, it was acted upon and as evidenced by Ex.D.1, defendant no.5 obtained mutation of revenue records to her name. The main reason for ignoring Ex.P.9



by the trial court is its non registration. But the fact remains that defendant no.1 cannot avoid that document as his signature is admitted. He should have questioned the said document in case he had not executed it. The plaintiffs do not state that their father did not execute it. The very fact that they produced the document before the court, it cannot be disowned by them and are bound by it. The said document binds even defendants 1 to 3 also. There is no pleading by the plaintiffs that Ex.P.9 was obtained by defendant no.5 by playing fraud on their father. Therefore in these circumstances there is preponderance of probability in the case of defendant no.5 that she became the owner of land in Sy. No. 215/4. Thus viewed, the plaintiffs cannot claim any share in this land. Therefore point no.2 is answered in the affirmative.

23. Point no.3 : The writ petitioner is Laxmibai, i.e., defendant no.5 in the suit. She has sought to quash the order dated 17.02.2022 passed in R.P. No.69/2021 as per Annexure-A by the Deputy Commissioner, the order dated



28.09.2021 in BHUMI/CR-48/2021-22 passed by the Assistant Commissioner as per Annexure-B and the order dated 29.10.2021 passed by Revenue Inspector, Bilagi in MRH No. 34/2021-22 as per Annexure-C.

24. The facts indicate that after the judgment and decree in O.S. No. 33/2021, the Assistant Commissioner directed the Tahasildar, Bilagi as per Annexure-B to give into effect the decree and make necessary entries in the revenue records. This order was given into effect by the Revenue Inspector as per Annexure-C by deleting the name of Laxmibai, i.e., defendant no.5 and entering the name of Channappa Belagali, i.e., defendant no.1. Laxmibai challenged this order of Assistant Commissioner before the Deputy Commissioner who passed order as per Annexure-A directing the parties to abide by judgment in R.F.A. No 100351/2019. The order of the Deputy Commissioner actually does not affect the interest of the writ petitioner. The discussion on points 1 and 2 in the R.F.A. indicates that writ petitioner can claim right over the land in Sy. No.



215/4. The judgment and decree of the trial court in respect of this land cannot be sustained. Therefore her name is to be restored in the revenue records. For this reason, Annexures C and D are to be quashed. Accordingly we answer point no.3.

25. Point No.4: In view of the above discussion we come to the conclusion that the judgment of the trial court in O.S. No. 33/2011 cannot be sustained in respect of the properties in Schedule 'A'. The suit is liable to be dismissed to this extent. So far as the findings on plaint 'B' and 'C' schedule properties are concerned, the learned counsel for the appellants did not argue touching the findings of the trial court. Moreover in Ex.P.12 there is a clear recital that the properties mentioned therein are to be equally divided. In view of this, the decree can be sustained in respect of plaint schedule 'B' and 'C' properties. The writ petition is to be allowed because of finding on point no.3 and consequently the following order:



ORDER

Appeal is partly allowed.

The judgment of the trial court in O.S. No. 33/2011 is modified.

The suit stands dismissed in respect of plaint 'A' schedule property.

The judgment and decree in respect of plaint 'B' and 'C' schedule properties is confirmed.

Writ Petition is allowed.

Annexures 'B' and 'C' are quashed.

The name of Laxmibai is ordered to be restored in the revenue records in respect of land in Sy. No. 215/4 measuring 5 acres of Teggi village, Bilagi Taluk, Bagalkot District.

There is no order as to costs.

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

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