



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

**DATED THIS THE 15<sup>TH</sup> 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. 100344 OF 2019 (PAR)**

**BETWEEN:**

1. SRI. HUSSAIN,  
S/O. IMAMASAB ALAS,  
AGED ABOUT: 63 YEARS,  
OCC: AGRICULTURE,  
R/AT: HALINGALI,  
TQ: JAMKHANDI,  
DIST: BAGALKOTE.
2. SRI. SAMANSAB,  
S/O. IMAMSAB ALAS,  
AGED ABOUT: 55 YEARS,  
OCC: AGRICULTURE/SERVICE,  
R/AT: HALINGALI,  
TQ: JAMKHANDI,  
DIST: BAGALKOTE.

...APPELLANTS

(BY SRI MRUTYUNJAY TATA BANGI AND  
SRI S.S.YALIGAR, ADVOCATES)

**AND:**

1. SRI. ISMAIL S/O. SAMANSAB ALAS,  
AGE: 67 YEARS, OCC: AGRICULTURE.
2. SRI. ALLABAX S/O. RAJESAB ALAS  
AGE: 49 YEARS, OCC: AGRICULTURE.



3. SRI. VAJEERA,  
S/O. RAJESAB ALAS  
AGED ABOUT 45 YEARS,  
OCC: AGRICULTURE.
4. SRI. PAIGAMBAR,  
S/O. RAJESAB ALAS  
AGE: ABOUT 43 YEARS,  
OCC: AGRICULTURE.

ALL ARE R/AT: HALINGALI,  
TQ: JAMKHANDI, DIST: BAGALKOTE.

5. SRI. BADASHASAB,  
S/O. SAMANSAB ALAS,  
AGED ABOUT: 71 YEARS,  
OCC: AGRICULTURE/MEDICAL PRACTITIONER,  
R/AT: 107, RANKA NAGAR,  
KHB ROAD, R.T. NAGAR,  
BENGALURU.

...RESPONDENTS

(BY SRI VIJAYKUMAR BALAGERIMATH, ADVOCATE FOR  
SRI B.S.KAMATE, ADVOCATE FOR R1, R3 AND R4;  
R2-DECEASED; R5-SERVED)

THIS RFA IS FILED UNDER SEC.96 OF CPC, AGAINST THE  
JUDGMENT AND DECREE DATED 29.03.2019 PASSED IN  
O.S.NO.74/2016 (OLD NO.90/2012) ON THE FILE OF THE SENIOR  
CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BANAHATTI,  
DECREEING 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 T. G. SHIVASHANKARE GOWDA)

In this appeal, defendants No.1 and 2 have challenged the judgment dated 29.03.2019 in O.S.No.74/2016 (Old No.90/2012) on the file of the Senior Civil Judge and J.M.F.C., Banahatti (for short, 'Trial Court').

2. The parties will be referred to as per their status before the Trial Court for the sake of convenience.

3. The brief facts of the case are, one Appalal had three sons by name Samansab, Imamsab and Rajesab. Plaintiff No.1 and defendant No.3 are the sons Samansab, defendants No.1 and 2 are the children of Imamsab and plaintiffs No.2 to 4 are the children of Rajesab. Suit schedule property consists of 5 acre 31 guntas of land in R.S.No.23/6A of Tamadaddi village, Jamakhandi taluk. The said land was cultivated during the lifetime of Appalal. After his death, his children were enjoying the property as common tenants. Samansab and Rajesab died leaving behind their children. Imamsab become the elder member of



the family. After commencement of the Karnataka Land Reforms Act, Imamsab, as an elder member of the family filed Form No.7 for grant of occupancy rights. Accordingly, the Land Tribunal granted the suit property and confirming the occupancy on behalf of the family in common. The grant was for the benefit of the entire family consisting of plaintiffs and the defendants. Hence, the plaintiffs have requested the branch of Imamsab to effect the partition and separate possession of their share of the properties. As they denied, they come up with this suit.

4. The defendants opposed the suit on the ground that the suit for partition by the Mohammedans is not maintainable as the right of inheritance arises only after the death of Imamsab. Imamsab filed the Form No.7 in his individual capacity, occupancy right was confirmed in his name and the defendant No.1 on 18.07.1994 paid the premium for the granted land. After the death of Imamsab on 09.12.1992, the defendants No.1 and 2 are the absolute owners of the suit schedule property and after the death of their father, they have succeeded the same. Samansab died



leaving behind wife and two daughters, Imamsab died leaving behind two daughters and Rajesab died leaving behind three daughters. In the absence of their representation, the suit is bad for non-joinder of parties and they sought for dismissal of the suit.

5. Trial Court framed the following issues and recast

Issue No.1 as follows:

- i. Whether the plaintiffs prove the description of the suit property?*
- ii. Whether the plaintiffs prove that, form No.7 was filed by the eldest member of the family in respect land bearing R.S.No.101/2? (As per order dated 23.03.2019 this issue deleted and recasted the issue No.2)*
- iii. Whether suit is bad for non joinder of necessary parties?*
- iv. Whether plaintiffs are entitled for relief as claimed?*
- v. What order or decree?*

*Recast Issue No.2 dated 23.03.2019*

- i. Whether plaintiffs prove that form No.7 was filed by the eldest member of the family in respect of land bearing R.S.No.101/2 and suit land R.S.No.23/6A?*



6. On behalf of the plaintiffs, plaintiff No.2 and two witnesses were examined as PWs1 to 3 and got marked 16 documents as Exs.P1 to P16. On behalf of defendants, defendant No.1 and two witnesses were examined as DWs1 to 3 and got marked 46 documents Exs.D1 to D46.

7. The Trial Court after hearing the parties and on appreciating the pleadings and evidence recorded affirmative findings on Issue Nos.1, 4 and recast Issue No.2, negative finding in respect of Issue No.3 and decreed the suit granting 1/3<sup>rd</sup> share to the each of the branches of Samansab, Rajesab and Imamsab. Aggrieved by the same, defendants No.1 and 2 are before this Court.

8. Heard arguments of Sri Mrutyunjay Tata Bangi, learned counsel for the appellants/defendants No.1 and 2 and Sri Vijaykumar Balagerimath appearing for Sri B.S.Kamate, learned counsel for plaintiffs No.1 to 4, defendant No.3/respondents.

9. It is contended by the learned counsel for defendants No.1 and 2 that under the Mohammedan law,



there is no concept of inheritance or the joint family. Imamsab-the father of defendants No.1 and 2 was the tenant in occupation of the suit schedule property and he filed the Form No.7 after advent of the Karnataka Land Reforms Act, occupancy right was confirmed in his favour and he died in the year 1992. Defendant No.1 paid the premium in the year 1994 and obtained Form No.10. After the death of Imamsab, defendants No.1 and 2 succeeded to the property belonging to their father. The plaintiffs No.1 to 4, defendant No.3 have no right in the suit properties. The Trial Court without considering these aspects, decreed the suit and call for its interference.

10. *Per contra*, learned counsel for plaintiffs No.1, 3 and 4 has contended that the suit schedule property was under the cultivation of their grandfather Appalal. After the death of Appalal, the tenanted land came to the hands of his three sons i.e. Samansab, Rajesab and Imamsab. Samansab and Rajesab have died. After advent of Karnataka Land Reforms Act, Imamsab filed Form No.7 as the elder member of the joint tenaments. Before the Land Tribunal, he has



specifically stated that the application filed was on behalf of all the three branches and confirmation of occupancy is sought for the benefit of all the three branches, thereby grant was made. After the death of Imamsab, the property has to be divided equally on the three branches. The grant in favour of Imamsab was not an exclusive grant. A suit for partition is nothing but a suit for declaration of shares and suit is maintainable. The Trial Court has rightly accepted the evidence placed by the plaintiffs and ordered for partition of 1/3<sup>rd</sup> share for the three branches and he supported the impugned judgment.

11. We gave our anxious consideration to the arguments addressed by the learned counsel on both the sides and perused the material available on record.

12. There is no dispute as to the relationship between the parties. Appalal had three sons by name Samansab, Rajesab and Imamsab. Plaintiff No.1 and defendant No.3 are the sons Samansab, defendants No.1 and 2 are the children of Imamsab and plaintiffs No.2 to 4 are the children of Rajesab. Apart from them, there are



female members also, but since members of each branch have been effectively represented, the contention of the defendants No.1 and 2 that suit is bad for non-joinder of parties is not acceptable. Though the suit is in the form of a partition suit, it is nothing but a declaration of share in the suit property.

13. The evidence on record clearly points out that Appalal died prior to 1960 leaving behind his three sons. The evidence on record goes to show that by the time Imamsab files Form No.7, Appalal, Samansab and Rajesab were no more. Because of this Imamsab was the elder member of the family. Evidence on record also points out that the land in question was under the cultivation of family of Appalal since 70 years. From Appalal, the property came to the hands of his sons who are jointly cultivating the land as common tenants. The evidence also suggests that before the Land Tribunal, Jamakhandi, Imamsab had submitted Form No.7 with a clear definition of the family consisting of branch of Samansab as well as Rajesab also and the suit lands are tenanted lands of the family. In view of the said



submission of Imamsab being an eldest member, the Land Tribunal has effected the grant. Premium was not paid during the lifetime of Imamsab. Imamsab died in the year 1992 and for this reason the 1<sup>st</sup> defendant as his son paid the premium to the Land Tribunal and obtained Form No.10.

14. By virtue of death of Imamsab, the record of rights got changed in the name of his sons. There is no evidence on record that at the time of effecting change of RTC, defendants No.1 and 2 had represented before the revenue authorities. The defendant No.1 in the witness box admitted that the granted land was cultivated by Appalal and thereafter it was by his children. This clearly goes to show that the land was cultivated by the three children of Appalal. After his death, the plaintiffs as well as the defendants are cultivating and growing the sugarcane. Thus, plaintiffs have successfully explained that the suit property was granted in the name of Imamsab for and on behalf of the entire family consists of three sons of Appalal. Then the contention of the defendants No.1 and 2 that it was exclusively granted in the name of their father stand answered. When the grant enured



to the benefit of the family, the three branches of Appalal are entitled equal right in the granted land.

15. We have carefully perused the impugned judgment. The Trial Court has considered the pleadings of both the parties, appreciated the evidence that the suit property was cultivated by Appalal since 70 years before his death, after his death, his two sons Samansab and Rajesab died leaving behind their branches. Imamsab has applied Form No.7 to the Land Tribunal, Jamakhandi for himself and on behalf of the other two branches of his brothers. Accordingly grant was allowed ensuing the benefit of the three joint tenements and therefore the three branches of Appalal are entitled to claim share equally. One of the members of one branch paying premium subsequently will not create exclusive right in his favour or to his branch. We do not find any illegality or error committed by the Trial Court in granting 1/3<sup>rd</sup> share each to the three branches consists of Samansab, Imamsab and Rajesab.

16. Plaintiffs No.1 and 3 representing the branch of Samansab, defendants No.1 and 2 representing branch of



Imamsab, plaintiffs No.2 and 4 representing the branch of Rajesab are rightly granted  $1/3^{\text{rd}}$  share each. Hence, the appeal is devoid of merits, in the result, the following:

ORDER

Appeal is dismissed.

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

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

CLK  
LIST NO.: 1 SL NO.: 37