



IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 18TH 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. 100495 OF 2018 (PAR)

BETWEEN:

SMT.PARVATI W/O. PARASAPPA BYAKUD
AGE:32 YEARS, OCC:AGRIL,
R/O.GUJANATTI VILLAGE,
TQ:GOKAK, DIST:BELGAUM.

- APPELLANT

(BY SRI. DINESH M. KULKARNI, ADVOCATE)

AND:

- 1 . YALLAPPA S/O. AWWANNA BANDROLLI
(DEAD)
(RESPONDENTS NO. 2 TO 9 ARE LEGAL HEIRS,
THEY ARE ALREADY ON RECORD)
- 2 . SMT.RANGAWWA W/O. YALLAPPA BANDROLLI
AGE: 54 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 3 . SMT.MALLAWWA W/O. YALLAPPA BANDROLLI
AGE: 49 YEARS, OCC: HOUSEHOLD,
R/O. GUJANATTI VILLAGE,
TQ:GOKAK, DIST:BELGAUM-591307.
- 4 . GANAPATI S/O. YALLAPPA BANDROLLI
AGE: 33 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ:GOKAK, DIST:BELGAUM-591307.



- 5 . GURUNATH S/O. YALLAPPA BANDROLLI
AGE: 29 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 6 . SMT. YALLAWWA W/O. YALLAPPA BANDROLLI
AGE: 59 YEARS, OCC: HOUSEHOLD,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 7 . AWWANNA S/O. YALLAPPA BANDROLLI
AGE: 31 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 8 . SMT. INDIRA W/O. MARUTI KICHADI
AGE: 29 YEARS, OCC: CONSTABLE,
R/O. ARABHAVI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 9 . RAJU S/O. YALLAPPA BANDROLLI
AGE: 27 YEARS, OCC: AGRIL,
R/O. ARABHAVI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 10 . RAMAPPA S/O. AWWANNA BANDROLLI
AGE: 69 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 11 . NINGAPPA S/O. AWWANNA BANDROLLI
AGE: 54 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 12 . SMT. SIDDAWWA W/O. LAXMAN BANDROLLI
AGE: 52 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,
TQ: GOKAK, DIST: BELGAUM-591307.
- 13 . SHANTAPPA W/O. LAXMAN BANDROLLI
AGE: 34 YEARS, OCC: AGRIL,
R/O. GUJANATTI VILLAGE,



TQ: GOKAK, DIST:BELGAUM-591307.

14 . SMT. SHANTAWWA
W/O. GANAPATI NINGANNAVAR
AGE: 27 YEARS, OCC: AGRIL,
R/O. DURDUNDI VILLAGE,
TAL: GOKAK, DIST: BELGAUM-591307.

- RESPONDENTS

(BY SMT. P.G. NAIK, ADVOCATE FOR R3 TO R9;
NOTICE TO R2 SERVED;
NOTICE TO R10 TO R14 HELD SUFFICIENT
V/O. DATED 21.10.2020;
R1-DECEASED R2 TO R9 ARE THE LRS OF DECEASED R1
V/O. DATED 31.05.2024)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER 41
RULE 1 R/W. SECTION 96 OF CODE OF CIVIL PROCEDURE, PRAYING
TO, SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE II
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC GOKAK IN
O.S.NO.339/2014, DATED 07-09-2018, AS NULL AND VOID AND
DECREE THE SUIT AS PRAYED FOR, IN THE INTEREST OF JUSTICE
AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 05.12.2024 COMING ON FOR PRONOUNCEMENT OF
JUDGMENT, THIS DAY, **T.G.SHIVASHANKARE GOWDA J.**,
PRONOUNCED 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 T. G. SHIVASHANKARE GOWDA)

In this appeal, the plaintiff has challenged the judgment and decree dated 7.09.2018 passed in O.S.No.339/2014 by the II Additional Senior Civil Judge and JMFC Court, Gokak (for short, 'Trial Court').

2. Ranks of the parties shall be referred to as per their status before the Trial Court.

3. Brief facts of the case pleaded by the plaintiff are, plaintiff is the daughter of the defendants No.1 and 2. Defendant No.2 is the legally wedded wife of defendant No.1. Plaintiff schedule properties are the joint family properties of the plaintiff and defendants No.1 and 2. Plaintiff being the coparcener of the family, entitled to claim share as per Section 6A of the Hindu Succession Act, 1956. Defendant No.3 is the second wife of defendant No.1 and defendants No.4 and 5 are the children born to defendants No.1 and 3. Defendant No.6 is the third wife of defendant No.1. Defendants No.7 to 9 are the children of



defendants No.1 and 6. Defendant No.1 was addicted to vices and he was acting as per the directions of the defendants No.3 and 6. The schedule properties though standing in the name of the defendant No.1, they were transferred to the name of defendant No.2 illegally without the knowledge and consent of the plaintiff. She came to know about the same on verifying record of rights. The defendants in order to deprive her right, transferred the properties among themselves and the same is not binding on her share. On 24.08.2014, the plaintiff requested defendant No.1 to effect partition and allot her 1/3rd legitimate share. As he declined to effect partition, she filed the present suit.

4. Defendant No.1 opposed the suit by filing written statement and defendants No.3 to 9 adopted it. It is the contention of the defendant No.1 that the plaintiff and defendant No.2 had filed a suit in O.S.No.138/1997 seeking partition and separate possession of the suit properties before the Senior Civil Judge, Gokak. The said



suit ended in compromise and therefore, present suit is hit by *res judicata* and also barred by limitation. The defendants No.4 to 6 also filed a suit in O.S.No.131/1997 for partition and in the said suit final decree was drawn. In view of previous two suits, the present suit is not maintainable and sought for dismissal.

4.1 The plaintiff by filing rejoinder denied the said allegation and stated that she is having legitimate right in the suit schedule properties as coparcener. She was not allotted any share in the suit properties and previous two suits were not decided on merits. Hence, neither plea of *res judicata* nor point of limitation is applicable.

5. The Trial Court has framed the following issues:

1. *Whether the plaintiff proves that suit properties are the joint family properties of the joint family consisting of herself and the defendant Nos.1 and 2?*
2. *Whether the plaintiff proves that the defendant No.2 is the legally wedded wife and she is the legitimate daughter of the defendant No.1?*
3. *Whether the defendant Nos.1 and 3 to 9 prove that the present suit for partition is*



not maintainable in view of compromise decree passed in OS No.138/1997?

- 4. Whether the suit is barred by limitation?*
- 5. Whether the plaintiff is entitled for the relief of partition as prayed?*
- 6. What order orders decree?*

Additional Issues:

- 1. Whether the defendant No.1 proves that suit is hit by principles of res-judicate?*
- 2. Whether the defendant No.1 proves that suit is barred by law of limitation?*

6. In order to establish her case, the plaintiff examined herself and two witnesses as PW-1 to PW-3 and marked 18 documents as Exs.P-1 to P-18. On behalf of the defendants, the defendants No.1 and 4 examined themselves and examined one witness as DW-1 to DW-3 and Exs.D-1 to D-9 came to be marked. After hearing both sides, the Trial Court recorded negative findings on issue Nos.1 and 5, affirmative findings on issue Nos.2 to 4 and additional issue Nos.1 and 2. Answering issue No.6, the Trial Court dismissed the suit of the plaintiff. Aggrieved by the same, the plaintiff is before this Court.



7. We have heard Sri Dinesh M Kulkarni, learned counsel for the plaintiff and Smt P.G. Naik, learned counsel for defendants No.3 to 9. The defendant No.1/respondent No.1 was reported to be dead during pendency of the appeal and respondents No.2 to 9 are his legal representatives.

8. It is contended by the learned counsel for the plaintiff that relevant evidence is placed in proof of the fact that plaintiff is the daughter of defendants No.1 and 2. The relationship between the plaintiff and defendants No.1 and 2 is admitted. In the compromise in O.S.No.138/1997 no share was allotted to the plaintiff. No reasons are assigned why share was not allotted to the plaintiff. Only 1 acre of land was given to defendant No.2 as life estate. The defendants effected partition among themselves in the absence of the plaintiff, they are holding the joint family properties as trustees on behalf of the plaintiff and she is entitled to 1/3rd share in the suit schedule properties being the daughter of the first wife of defendant No.1. Trial



Court has not considered the relationship of the parties, erroneously appreciated the evidence and came to a wrong conclusion that the suit is barred by time and dismissed the suit.

9. *Per contra*, learned counsel for the respondents/defendants No.3 to 9 has contended that the suit O.S.No.131/1997, filed against the defendant No.1 in respect of suit schedule properties, was decreed. It has reached finality with the drawing up of final decree. Subsequently the plaintiff and defendant No.2 jointly filed O.S.No.138/1997, it was compromised on 28.06.2000 allotting 1 acre of land in favour of defendant No.2 for life estate. There was adjustment in the joint family amongst the respective members who are enjoying their shares allotted in the partition. The plaintiff and her mother are enjoying 1 acre of land allotted as life estate. She ought to have filed the suit, if any, within 3 years of attaining majority, instead after 14 years, she came before the



Court, it is barred by time and supported the impugned judgment.

10. We gave our anxious consideration to the arguments addressed on behalf of both the sides and perused the material on record.

11. The points that arise for our consideration are:

(i) Whether the suit is barred by time and res judicata?

(ii) Whether the plaintiff is entitled to 1/3rd share in the suit schedule properties?

(iii) Whether the impugned judgment of the Trial Court is erroneous and illegal?

Reg. point No.(i):

12. The main ground of attack on the suit is that the suit is barred by time. It is urged that in the year 2014 when the suit was filed, the plaintiff was aged 28 years, she attained majority in the year 2004. The compromise took place in the year 2000. The plaintiff could have challenged the compromise within 3 years on attaining the



majority i.e., within the year 2007. On careful perusal of the pleadings, the plaintiff did not challenge the previous partition, what she has contended is that in the compromise, no share was allotted to her. No reason was given for not allotting any share to her. Now she has sought for partition on the ground that the defendants are holding her share as trustees. The defendants did not take a defence of ouster against the plaintiff. The plaintiff, after attaining majority was having 12 years time which ended in the year 2016, but the suit is filed in the year 2014. The defendants are holding the share of the plaintiff as trustees. The Trial Court has recorded the finding that plaintiff ought to have challenged the compromise in O.S.No.138/1997 within 3 years and suit is hit by *res judicata*. The previous suits were not decided on merits rather it was compromised where no share was allotted to the plaintiff. Hence, there is no question of *res judicata* coming into picture. Since the suit is filed within 12 years, the Trial Court has committed an error in holding that the



suit is barred by time and hit by *res judicata*. Accordingly we answer the point No.(i).

Reg. point No.(ii) :

13. It is the specific case of the plaintiff that she is the daughter of the defendants No.1 and 2, her mother-defendant No.2 is the first wife. Apart from reiterating the same, she examined one Bangarappa Siddappa Gumachanmaradi as PW-2. Whose evidence points out that the plaintiff is the daughter of defendants No.1 and 2; they are the members of joint family and the suit properties are the joint family properties which are under joint cultivation. His cross-examination has brought out that there was a compromise in O.S.No.131/1997 between the defendant Nos.1, 4, 5, 7 to 9 wherein the lands in Sy.No.140/2, 60, 45/3A1, 48/3A, 30/5A+5B were allotted to the share of the defendant No.1. The lands in Sy.No.8/1, 8/2, 44/4A, 44/3B, 140/3A, 140/3B were allotted to the defendants No.4 and 5 but PW-2 denies the allotment of share in favour of defendants No.7 to 9 in



R.S.No.30/2, 31/3B, 140/4A, 140/5A. The cross-examination of PW-2 clearly goes to establish that the defendant No.1 had suffered a decree in the hands of defendants No.4, 5, 7 to 9 and there was partition of the properties.

14. PW-3 Sadashiva Siddappa Bardoli is another witness examined by the plaintiff. His testimony shows that plaintiff is the daughter of the defendants No.1 and 2 and they are joint family members. In the course of cross-examination he admitted that the suit filed by the plaintiff and her mother in O.S.No.138/1997 share was given to the defendants No.1, 4, 5, 7 to 9 only and no share was given to the plaintiff. As per the shares allotted in O.S.No.131/1997, sharers raised loan against their share. His cross-examination clearly demonstrates that either in O.S.No.131/1997 or in O.S.No.138/1997 the plaintiff was not allotted any share. The cross-examination also did not point out that the plaintiff is not the daughter of the defendant No.1.



15. The main question for consideration is who is the first wife to consider the status of plaintiff. Undisputed facts disclose that the defendants No.1-Yallappa had 3 wives by name Mallavva, Yallavva and Rangavva. Defendants No.4 and 5 are the children born to the defendants No.1 and 3. Defendants No.7, 8 and 9 are born to the defendant Nos.1 and 6. Plaintiff was born to the defendant Nos.1 and 2. The plaintiff claims that she is the daughter of the first wife but defendants claim that it is not so.

16. According to defendant No.1, defendant No.2 Rangavva i.e., the mother of the plaintiff is third wife. In this regard, he has entered into witness box and asserted the same. His evidence points out that the plaintiff and defendant No.2 had filed O.S.No.138/1997 which came to be compromised on 28.6.2000 wherein 1 acre of land was given to the defendant No.2. He has also asserted that a decree was passed in O.S.No.131/1997 and it was the final decree. His cross-examination demonstrates that he



had 3 wives and 6 children. According to him, Mallavva is the first wife, Yallavva is the second wife and Rangavva is the third wife. He withstood the test of cross-examination denying defendant No.2 is the first wife. From his testimony it is demonstrated that he had married Mallavva 57 years ago, Yallavva 55 years ago and Rangavva 40 years ago. He admits no share was given to the plaintiff in O.S.No.138/1997 and defendant No.2 and plaintiff together cultivating 1 acre of land given towards life interest.

17. DW-2-Ganapati is defendant No.4. His evidence refers to final decree passed in O.S.No.131/1997 and also compromise dated 16.08.2000 in O.S.No.138/1997. In his cross-examination it is demonstrated that he is the son of Mallavva, Yallavva is his first aunt and Rangavva is his second aunt. In O.S.No.138/1997 no share was given to the plaintiff.

18. DW-3-Siddarudha is the relative of the defendants. His testimony goes to show that the suit



properties belong to the family of the plaintiff and defendants. Yallavva is the second wife and Mallavva is the first wife. He did not refer to Rangavva as the wife of defendant No.1. In the course of cross-examination, he has admitted that 38 years ago there was a marriage between the defendants No.1 and 2, at Gujanahatti. This clearly goes to demonstrate that the marriage of the defendants No.1 and 2 was performed 38 years ago which stand corroborated with the assertion made by the defendant No.1 in the cross-examination that he has married the defendant No.2, 40 years ago.

19. Adverting to the documentary evidence, the plaintiff has produced Exs.P-1 to P-11 RTC extracts particularly in respect of RS No.31/3B wherein the defendant No.1 was having 1 acre 23 guntas. Ex.P-12/school certificate points out that date of birth of plaintiff is 01.07.1982 and defendant No.1 is her father. If her date of birth is taken into consideration, the probable marriage between defendants No.1 and 2 could have



taken place around 32 years ago. Ex.P-13 is wedding card of the plaintiff where Yallappa is shown as the father of the plaintiff. If the plaintiff is born in the year 1982 and if the marriage of the defendants No.1 and 2 took place in and around that year, then the evidence of the defendant No.1 that he married defendant No.2 around 40 years ago cannot be ruled out.

20. The important document that the parties are relying is the compromise in O.S.No.138/1997. The same is produced as Ex.P-16. On perusal of the same, it is pertinent to note that the present plaintiff in the said suit is shown as plaintiff No.2 and defendant No.2 is shown as plaintiff No.1. The defendant No.2 represented the plaintiff as minor guardian. In the year 1997, the plaintiff was minor, aged 13 years. The parties to the suit are one Ganapathi, Gurunath, Mallavva, Yallappa, Yallavva, Avvanna, Indira, Raju as defendants No.1 to 8. The description of the cause title clearly points out and stand in support of the plaintiff that the defendant No.1-Yallappa



had 3 wives and defendants No.1 and 2 are the children born to Yallappa and Mallavva, defendants No.6 to 8 are the children born to Yallavva and Yallappa and plaintiff was born to Yallappa and Rangavva. On perusal of the allegations made in O.S.No.138/1997, it is pertinent to note that defendant No.1 claims that he married Yallavva and she had children namely Avvanna, Indira and Raju but their marriage is not legal and they are not legitimate children. The said suit came to be compromised wherein 1 acre of land in Sy.No.31/3B was given to the Rangavva, mother of the plaintiff. Thus O.S.No.138/1997 though compromised between the plaintiff and defendants No.1 to 8, the relationship of the parties that Yallappa had 3 wives and plaintiff No.2, defendants No.1, 2 and 6 to 8 are his children is thereby established.

21. Now coming to the point of who is the first wife, second wife and third wife among Mallavva, Yallavva and Rangavva. Ex.P-15 is the application filed by Yallavva under Order 23 Rule 3 (1) of CPC seeking permission to



compromise the suit on behalf of her minor children/defendants No.6 to 8. In support of the application, she has sworn to the affidavit admitting Rangavva as first wife of her husband. But same is contrary to the evidence on record. Between them, Rangavva may be treated as the first wife and Yallavva as the second wife. In the affidavit there is no reference to status of marriage with Mallavva. Hence the argument of the learned counsel for the plaintiff that Rangavva is established as first wife of Yallappa cannot be supported with.

22. Ex.P-16 is the compromise decree and the terms of the compromise point out that the plaintiff and the defendants are joint owners of the suit properties. Due to differences in the family, plaintiff had filed a suit against Yallappa. It is also stated therein that the plaintiff is born to Yallappa and Rangavva, when the suit was filed Rangavva was aged 40 years and plaintiff was aged 13 years. It is also stated that RS No.5 which is renumbered



as RS No.131/3B consists of 6 acres out of which Yallappa had 1 acre 23 guntas which was given to Yallavva and her children. When compromise took place, the age of Yallavva was 35 years, Avvanna was 15 years, Indira was 12 years and Raju was aged 10 years. This clearly goes to show that Yallavva was the third wife of Yallappa. Interesting to note that there is a clear recital that at the time of compromise, Yallappa was residing with third wife and her children. It is clearly stated that Yallavva was taking care of the minor children as well as Yallappa. It is also noticed in the recitals that since Yallappa had given other lands and cash to Yallavva and her children, they agreed to give 1 acre of land out of 1 acre 23 guntas allotted to them in favour Rangavva towards her life estate. The recital at an undisputed point of time goes to show that plaintiff is the family member of Yallappa.

23. Now from the pleadings and the evidence, as discussed above, one can easily cull out that Mallavva is the first wife, Rangavva is the second wife and Yallavva is



the third wife. In the earlier suits in O.S.No.131/1997 or in O.S.No.138/1997 no share was allotted to the plaintiff. When the minor interest is put into compromise, the person who gets the share in the properties will act as a trustee to the share of the minor. Soon after attaining the age of 18 within 12 years, the plaintiff has filed the suit for partition. The plaintiff being the daughter of the second wife will not be a legitimate daughter and she cannot claim partition during the lifetime of her father.

24. Things have changed after the dismissal of suit. During the pendency of this appeal, defendant No.1 died and plaintiff and defendants No.2 to 9 are his legal representatives. The previous partition was prior to 2005. Hence, Section 6 of Hindu Succession Act is applicable to the facts of the case. Partition has to be effected adopting the principle of notional partition. If Mallavva and defendants No.4 and 5 are considered as first wife and children of Yallappa, they are entitled to 1/4th share in the suit properties. The plaintiff and defendants No.7 to 9 are the illegitimate children of Yallappa. Therefore, his second



and third wives are not entitled in the share allotted to the defendant No.1-Yallappa. The extent of $1/4^{\text{th}}$ has to be again divided between his first wife, her children, plaintiff and defendants No.7, 8 and 9. Then the share that the plaintiff is entitled to $1/28$ ($1/4^{\text{th}}$ divided by 7). Accordingly, the plaintiff is entitled to $1/28^{\text{th}}$ share as illegitimate daughter of Yallappa through Rangavva. Accordingly, the point No.(ii) is answered.

Reg. point No.(iii) :

25. We have carefully perused the judgment of the Trial Court. The Trial Court under the wrong impression that in the compromise in O.S.No.138/1997 plaintiff's right has not been protected. Contrary in both suits right of the plaintiff is not protected. The defendants have taken share acting as trustees to the extent of share that plaintiff. As the suit is filed in time, the plea of *res judicata* does not come into picture. Plaintiff being the illegitimate daughter of Yallappa is entitled to $1/28^{\text{th}}$ share. The Trial Court did not consider this aspect and erroneously carried away that in view of earlier partition, the suit is hit by *res judicata*



and findings in earlier suits is not challenged within three years. Said finding of the Trial Court is perverse and calls for interference. Accordingly, point No.(iii) is answered.

26. In view of our findings on points No.(i) to (iii), appeal merits consideration, in the result, the following:

ORDER

- (i) Appeal is allowed in part;
- (ii) The impugned judgment dismissing the suit in O.S.No.339/2014 as per the judgment dated 07.09.2018 passed by II Addl. Senior Civil Judge and JMFC, Gokak, is hereby set aside;
- (iii) The suit of the plaintiff is decreed in part declaring that she is entitled to 1/28th share in the suit schedule properties by metes and bounds;
- (iv) Draw the decree accordingly.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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