



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF NOVEMBER, 2024

PRESENT

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA**

REGULAR FIRST APPEAL NO.100457 OF 2023 (PAR/POS)

BETWEEN:

VITTAL
S/O HANAMAPPA PUJARI,
AGE: 41 YEARS,
OCC. AGRICULTURE,
R/O. HOSAKOTI-591114,
TQ: RAMDURG,
DIST: BELAGAVI.

...APPELLANT

(BY SRI SABEEL AHMED AND SRI A.S. PATIL, ADVTS.)

AND:

1. SRI BASAPPA
S/O TIMMAPPA PUJARI,
AGE: 68 YEARS,
OCC: AGRICULTURE,
R/O. GUTTIGOLI-591130,
TQ: RAMDURG,
DIST: BELAGAVI.

2. SRI VITTAL
S/O TIMMAPPA PUJARI,
AGE: 66 YEARS,
OCC. AGRICULTURE,
R/O. GUTTIGOLI-591130,
TQ: RAMDURG,
DIST: BELAGAVI.

3. SRI PANDAPPA
S/O TIMMAPPA PUJARI,
AGE: 64 YEARS,
OCC. AGRICULTURE,
R/O. GUTTIGOLI-591130,



TQ: RAMDURG,
DIST: BELAGAVI.

4. SRI RAMAPPA
S/O TIMMAPPA PUJARI,
AGE. 64 YEARS,
OCC. AGRICULTURE,
R/O. GUTTIGOLI-591130,
TQ. RAMDURG, DIST. BELAGAVI.
5. SMT. LAKKAWWA
W/O SHIVAPPA LAKKANNAVAR
AGE: 76 YEARS,
OCC: HOUSEHOLD WORK,
R/O. DADANATTI 587122,
TQ: MUDHOL,
DIST: BAGALAKOTE.
6. SMT. BASAVVA @ YALLAWWA
W/O ARJUN PUJARI
AGE: 56 YEARS,
OCC: HOUSEHOLD WORK
AND AGRICULTURE,
R/O. GUTTIGOLI-591130,
TQ: RAMDURG,
DIST: BELAGAVI.

...RESPONDENTS

(BY SMT. DEEPA DODDATTI ADV. FOR
SRI PAVAN B. DODDATTI, ADV. FOR RESPONDENTS 1 TO 4;
SRI D.V. PATTAR, ADV. FOR RESPONDENT NO.5;
NOTICE TO RESPONDENT NO.6 IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF
THE CODE OF CIVIL PROCEDURE, 1908 AGAINST THE JUDGMENT
AND DECREE DATED 20.03.2020 PASSED IN O.S.NO.97/2017 ON
THE FILE OF THE SENIOR CIVIL JUDGE, RAMDURG, DECREETING THE
SUIT FILED FOR DECLARATION AND PARTITION.

THIS APPEAL, COMING ON FOR HEARING ON INTERLOCUTORY
APPLICATION, 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 arises out of judgment dated 20.03.2020 in O.S.No.97/2017 on the file of Senior Civil Judge, Ramdurg.

2. The appellant was defendant no.1 and respondents 1 to 4 are the plaintiffs. The suit is for partition and separate possession in respect of three items of the property described in the plaint. The Trial Court decided the suit granting 1/3rd share to plaintiffs 1 to 4. Aggrieved by this, the first defendant has preferred this appeal.

3. It is submitted by appellant's counsel that appellant was denied of an opportunity of leading evidence from his side. The judgment was rendered by the Trial Court during COVID time. This was the reason for defendant no.1 not being able to appear before the Trial Court and adduce evidence. He submits that the appellant has pleaded about previous partition and burden is on him to establish this aspect. Therefore he prays for allowing the appeal and remanding the case to the Trial Court.



4. Learned counsel for the respondents seriously opposes the appeal by submitting that it is not as though the Trial Court did not give any opportunity to the appellant to adduce evidence, he did not avail the opportunities and therefore there is no ground for remand. Relationship between the parties is not disputed. In this view, the Trial Court has rightly granted 1/3rd share to all the plaintiffs.

5. Whatever may be the contention of the parties, it appears that judgment of the Trial Court came during COVID time. The appearance of the parties before the Courts was very thin. Defendant appears to have been prevented from putting forth his contention for this reason. We are of the opinion that defendant should be given an opportunity to produce evidence on issue no.2. Therefore the appeal deserves to be allowed and the case to be remanded to the Trial Court.

6. For the reasons that the plaintiffs have to appear before the Trial Court once again, appellant needs to be subjected to cost. Hence the following:

ORDER

- i. Appeal is allowed.



- ii. Judgment dated 20.03.2020 in O.S.No.97/2017 on the file of Senior Civil Judge, Ramdurg, is set aside and the case is remanded to the Trial Court.
- iii. Appellant shall pay cost of Rs.5,000/- to the respondents 1 to 4/plaintiffs.
- iv. The parties shall appear before the Trial Court on 16.12.2024.
- v. Cost shall be paid on the date of appearance before the Trial Court.
- vi. Appellant is hereby directed to complete his evidence on or before 20.01.2025 without lapse of time.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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