



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH 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. 100002 OF 2022 (PA/DE/IN)

BETWEEN:

GANAPATHI LAXMAN KURBAR,
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O. H.NO.100, BASTI GALLI
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE. 590001.

...APPELLANT

(BY SRI RAGHAVENDRA A.PUROHIT, ADVOCATE)

AND:

VAIJU GOVIND KURBAR
SINCE DECEASED BY HIS LR'S

1. GANGUBAI W/O. VAIJU KURBAR,
AGE: 67 YEARS, OCC: HOUSE HOLD,
R/O: H.NO.100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.
2. KALLAPPA VAIJU KURBAR,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: H. NO. 100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.
3. SHANTA VAIJU KURBAR,
AGE: 49 YEARS, OCC: AGRICULTURE.
R/O: H. NO. 100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.



4. SUNITA VAIJU KURBAR,
AGE: 47 YEARS, OCC: HOUSE HOLD,
R/O: H. NO. 100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.

5. BANDU VAIJU KURBAR,
AGE: 45 YEARS, OCC: AGRICULTURE,
R/O: H. NO. 100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.

RAMA BHARMA KURBAR
SINCE DECEASED BY HIS LR'S

6. SUREKHA RAMA KURBAR,
AGE: 39 YEARS, OCC: HOUSE HOLD,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

7. UMASHRI RAMA KURBAR,
AGE: 23 YEARS, OCC: NIL,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

8. SHILA RAMA KURBAR,
AGE: 20 YEARS, OCC: STUDENT,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

9. POOJA RAMA KURBAR,
AGE: 19 YEARS, OCC: STUDENT,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

10. KALPANA RAMA KURBAR,
AGE: 17 YEARS, OCC: STUDENT,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.



11. AISHWARYA RAMA KURBAR,
AGE: 15 YEARS, OCC: STUDENT,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

(RESPONDENT NO.10 & 11 IS BEING MINORS, REP BY
THEIR NATURAL GUARDIAN RESPONDENT NO.6)

12. ANAND BHARMA KURBAR,
AGE: 36 YEARS, OCC: AGRICULTURE,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

13. NAGESH GOVIND KURBAR,
AGE: 63 YEARS, OCC: AGRICULTURE,
R/O: H. NO. 100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.

14. SATAPPA GOVIND KURBAR,
AGE: 61 YEARS, OCC: AGRICULTURE,
R/O: H. NO. 100, BASTI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE: 590001.

15. NARAYAN LAXMAN KURBAR,
AGE: 65 YEARS, OCC: AGRICULTURE,
R/O: H. NO. 143, LAXMI GALLI,
JUNE BELAGAVI, DIST: BELAGAVI,
PIN CODE -590001.

...RESPONDENTS

- (BY MISS. RANJITA REDDY ALAGAWADI, ADVOCATE FOR
SRI S.B.HEBBALLI, ADVOCATE FOR R1 TO R9, R12 TO R14;
R15 SERVED;
R10 AND R11 ARE MINORS REPRESENTED BY R6)

THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER 41
RULE 1 OF CPC, PRAYING TO, SET ASIDE THE JUDGMENT AND
DECREE DATED 04.10.2021 PASSED IN O.S.NO.141/2014 ON THE
FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND CHIEF
JUDICIAL MAGISTRATE, BELAGAVI AS NULL AND VOID AND DECREE
THE SUIT OF THE PLAINTIFF BY ALLOWING THE APPEAL.



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, the plaintiff has challenged the judgment dated 04.10.2021 passed in O.S.No.141/2014 by the III Addl.Senior Civil Judge and C.J.M., Belagavi (for short, 'Trial Court') dismissing the suit of the plaintiff for partition, declaratory relief and permanent injunction.

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 plaintiff's case as pleaded is that, land in Sy.No.68/1 and 190/2 of Madhavapura village is the ancestral joint family properties of the plaintiff and the defendants. The said properties were kept in joint names at the time of family settlement in the year 1975, that took place between the father of the plaintiff and defendant No.6, and father of defendants No.1 to 5. As per the terms of the



family settlement, $\frac{1}{2}$ share was given to the plaintiff and defendant No.6, the other $\frac{1}{2}$ share was given to the defendants No.1 to 5. The plaintiff and defendant No.6 were given right to store the fodder and manure in the $\frac{1}{2}$ share given to defendants No.1 and 5. $\frac{1}{4}^{\text{th}}$ share in Sy.No.190/2 was given to plaintiff and defendant No.6. The said property being enjoyed by the plaintiff and the defendants in terms of the said family settlement up to these years and defendants No.1 to 5 have postponed the partition of the respective shares. All of a sudden the defendant No.4 started constructing the house on 20.06.2013 without the permission of the public authorities. When it was questioned by the plaintiff, the defendant No.4 did not stop the same and he has constructed the building in the fertile agricultural land which diminished the value of the property. Hence the plaintiff is constrained to file the suit seeking $\frac{1}{2}$ share of the suit property along with defendant No.6 in Sy.No.68/1 and $\frac{1}{4}^{\text{th}}$ share in Sy.No.190/2 and for removal of illegal construction made by the defendant No.4 and restraining the



defendants No.1 to 5 from interfering with the share of property of the plaintiff and defendant No.6.

4. The defendant No.1 has opposed the suit by filing written statement and same was adopted by the defendants No.2 to 5. The defendants have admitted the relationship between the parties and the family settlement in the year 1975. As per the said settlement, out of 1 acre 12 guntas of land in Sy.No.190/2, the father of the plaintiff and defendant No.6 acquired $\frac{1}{4}^{\text{th}}$ share and father of defendants No.1 to 5 got $\frac{1}{4}^{\text{th}}$ share. Out of 7 guntas of land in Sy.No.68/1, permission was granted in favour of the plaintiff and defendant No.6 to store the manure in a portion of the property without any right. Hence, the plaintiff has no right in land in Sy.No.68/1. As per the settlement dated 15.06.1975, the Village Accountant of Madhavapura entered the mutation No.1319 in respect of the said survey numbers and thereby the defendants are enjoying their share of property. The father of the plaintiff and defendant No.6 in the year 1985 has made an application for change of mutation in Sy.No.68/1 to an extent of $\frac{1}{2}$ share out of 7



guntas which was objected by these defendants and the application came to be dismissed by the Tahsildar, Belagavi as per the order dated 14.11.1986 and it was communicated to the father of the plaintiff and defendant No.6. The said order was not challenged either by the father of the plaintiff and defendant No.6 or by them, and it is binding on them. Suit is filed after five decades of partition is not maintainable and sought for dismissal of the suit.

5. On the basis of the pleadings, the Trial Court has framed the following issues:

- i. Whether the plaintiff proves that the suit schedule properties are the ancestral joint family properties?*
- ii. Whether the plaintiff proves that the partition was not effected amongst the family members with respect to the suit schedule properties?*
- iii. Whether the plaintiff is entitled to the relief of partition and separate possession?*
- iv. Whether the plaintiff is entitled to the relief of permanent injunction as sought in the suit?*
- v. What decree or order?*

6. On behalf of the plaintiff, the plaintiff himself got examined as PW1 and marked 13 documents as per Exs.P1



to P13. On behalf of defendants, the 5th defendant is examined as DW1 and as many as 17 documents came to be marked as Exs.D1 to D17.

7. The Trial Court after hearing both the parties answered Issue No.1 partly in affirmative, Issue Nos.2 to 4 in negative and while answering Issue No.5 dismissed the suit of the plaintiff with costs on the ground that the suit properties are ancestral joint family properties of plaintiff and defendants, but there was a partition, again relief of partition cannot be granted. Aggrieved by the same, plaintiff is before this Court on various grounds.

8. Heard arguments of Sri Raghavendra A. Purohit, learned counsel for the plaintiff and Miss Ranjita Reddy Alagawadi, learned counsel appearing for Sri S.B.Hebballi, learned counsel for LR's of defendants No.1 and 2 and also defendants No.3 to 5.

9. It is contended by the learned counsel for the plaintiff that the suit schedule properties are the ancestral joint family properties of the plaintiff and the defendants,



there was no partition of the properties mentioned in the suit. The plaintiff is entitled $\frac{1}{2}$ share in Sy.No.68/1, $\frac{1}{4}^{\text{th}}$ share in Sy.No.190/2. The defendants No.1 to 5 without there being any partition, house being constructed in the undivided interest and which forced the plaintiff to come before this Court. There is no evidence rebutting the claim of the plaintiff, the DW1 in the course of cross-examination had admitted that the suit schedule properties are the ancestral properties. The suit in O.S.No.1103/2013 was not decided on merits, in the suit O.S.No.139/2014, these properties were not subject matter of the suit. The Trial Court has erroneously come to the conclusion without any basis that there was a partition in rejecting the claim of the plaintiff.

10. Per contra, learned counsel for defendants No.1 to 5 has contended that though the suit schedule properties are ancestral joint family properties of the plaintiff and defendants, there was a settlement between the father of the plaintiff and defendants No.1 to 5 on 15.06.1975 wherein Sy.No.68/1, an extent of 7 gunta was allotted to the share of Govind alias Fakira Kurbar, $\frac{1}{4}^{\text{th}}$ share in Sy.No.190/2 was



allotted to the share of Laxman. The settlement is acted upon and the parties have been enjoying their respective properties. No share was allotted to the plaintiff in Sy.No.68/1 except permission to store the manure and haystack. Since there was already a partition between the parties, joint family does not exists. The plaintiff has filed earlier suit in O.S.No.1103/2013 for partition of the suit schedule properties which came to be dismissed and second suit for the same relief is not maintainable. Much apart from the plaintiff has also filed a suit against his own brother and his family members in O.S.No.139/2014 wherein the suit schedule properties are not the subject matter of the suit. For the reason of earlier partition in the year 1975, the suit properties were not included in the said suit. Trial Court on appreciation of the pleadings and the evidence has rightly held that there was a severance of the joint family, suit properties are already partitioned between the parties, rightly dismissed the suit and supported the impugned judgment.



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

12. The points that arise for our consideration are as follows:

- (i) Whether the suit properties are amenable for partition between the plaintiff and the defendants?
- (ii) Whether the order of dismissal of the suit by the Trial Court is erroneous and calls for interference?

Regarding Point No.(i):

13. The relationship between plaintiff and the defendants is admitted. The parties have also admitted that there was a settlement between the father of the plaintiff and the defendants by name Laxman Bharna Kurbar and Govind Bharna Kurbar. This aspect has been reiterated by the plaintiff in his affidavit evidence. The cross-examination on behalf of the defendants has demonstrated that in the settlement of the year 1975 in Sy.No.190/2 was divided into



four parts, 1/4th of the properties each were allotted to Siddappa, Govind, Laxman and children of Siddappa and in Sy.No.68/1, the father of the plaintiff was given right in 4 feet space for storing the manure as well as to store the haystack. Plaintiff admits the mutation under Ex.P1 was carried out as per the settlement of the year 1975 and specific admission is made by him that in Sy.No.68/1 is confirmed with the right of storage of manure and also haystack in an extent of 4 feet space and accordingly that 4 feet space is in his possession.

14. Insofar Sy.No.190/2 is concerned, out of total extent plaintiff is in possession and enjoyment of 1/4th share. Plaintiff also admits that he has filed a suit against his brother in O.S.No.139/2014 before the IV Additional Senior Civil Judge, Belagavi wherein the land in Sy.No.68/1 and 190/2 was not made as a subject matter of the suit. From the admission of the plaintiff, it is thus clear that the suit property originally belonging to the ancestors of the plaintiff and defendants, father of the plaintiff and father of the defendants No.1 to 5 have entitled to a family settlement in



the year 1975 wherein the father of the plaintiff was given 1/4th share in Sy.No.190/2 and father of the defendants No.1 to 5 was given 1/4th share in Sy.No.190/2 and 7 guntas of land in Sy.No.68/1 was allotted to the father of defendants No.1 to 5.

15. DW1-Satappa is the 5th defendant whose testimony reiterates the suit schedule property was the joint family property and there was a family settlement on 15.06.1971. Same has been recorded in ME No.1319 that 1/4th share was allotted to the father of the plaintiff in Sy.No.190/2 and 68/1 measuring 7 guntas was allotted to his father and the plaintiff was given right of storing manure and haystack in an extent of 4 feet of space which has not been disturbed. The cross-examination on behalf of the plaintiff did not bring out anything which able to demonstrate that the defendants never encroached upon 4 feet space meant for the plaintiff in Sy.No.68/1. Only apprehension of the plaintiff that the defendants No.1 to 5 may encroach upon Sy.No.68/1 to an extent of 4 gunta on which the right



of enjoyment is confirmed to the plaintiff that has been clarified in the cross-examination of the plaintiff.

16. The admission made by the plaintiff clinches the issue that the suit scheduled properties though ancestral in nature, there was a settlement in the year 1975, it has been acted upon and parties have accepted such partition and enjoying their respective shares. Thus, being so the plaintiff having filed a suit against his own brother in O.S.No.139/2014 did not include these properties in the said suit for the reason of he is enjoying 4 feet space in Sy.No.68/1 and also 1/4th of the property out of 1 acre 12 guntas in Sy.No.190/2.

17. On perusal of the RTC extract pertains to the suit properties such as Ex.P9 is the RTC pertains to Sy.No.68/1 to an extent of 7 guntas refers the name of Govind alias Fakira Bharmha Kurbar to an entire extent. Ex.P12 is the RTC extract pertains to Sy.No.190/2 measuring 1 acre 12 guntas wherein the name of the plaintiff as well as Govinda Bharmha Kurbar to an extent of 1/4th share is entered. The mutation effected clearly refers to the family settlement of the year



1975 between the father of the plaintiff and father of the defendants No.1 to 5.

18. The evidence on behalf of the plaintiff himself goes to explain that the suit properties have been partitioned between the family members in the year 1975 and all the members are in possession of their respective shares. Though it has been argued by the learned counsel for the defendants that earlier suit filed by the plaintiff in respect of the suit schedule properties in O.S.No.1103/2013 came to be dismissed, no evidence is placed before the Court to explain that the said suit was decided on merits.

19. It is the plaintiff who has come before the Court that the suit schedule properties are undivided joint family properties. The cross-examination of the plaintiff has clearly demonstrated that there was a family settlement in the year 1975 wherein the suit properties have been divided. Therefore we are persuaded to hold that the suit properties are not amenable for partition between parties to the suit. Accordingly we answer Point No.(i).



Regarding Point No.(ii):

20. We have carefully perused the impugned judgment. The Trial Court has discussed the pleading and evidence of both the parties and particularly referred to the admission given by the plaintiff in the course of cross-examination that there was a partition effected in the year 1975 which has been acted upon wherein in Sy.No.68/1 where the dependent No.1 is constructing the house. The plaintiff was given right of enjoyment only 4 feet space in the backyard to store the manure and also the haystack though 7 gunta was allotted to the share of the father of defendants No.1 to 5. Trial Court also recorded the admission of defendants No.1 to 5, the right of the plaintiff and the defendant No.6, they are enjoying accordingly. The Trial Court has rightly held that when the parties have effected the partition in the year 1975, such partition is acted upon, existence of the joint family does not arise. Trial Court has rightly held that in view of previous partition, suit is not maintainable and rightly dismissed the suit. We do not find



any error in the well reasoned order of the Trial Court.

Accordingly we answer Point No.(ii).

21. In view of our answer to above points, 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