



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5018 OF 2009 (DEC/INJ)

BETWEEN:

1. HANUMANTHREDDY S/O. YARAPPA
SINCE DEAD BY HIS LRS.,
- 1A. SRI. M. THIMMAREDDY
S/O. SRI. HANUMANTH REDDY,
AGE: 62 YEARS, OCC. AGRICULTURE,
- 1B. SRI. M. DIVAKAR REDDY
S/O. SRI. HANUMANTH REDDY,
AGE: 56 YEARS, OCC. AGRICULTURE,
- 1C. SRI. GOPALREDDY
S/O. SRI. HANUMANTH REDDY,
AGE: 52 YEARS, OCC. AGRICULTURE,

ALL ARE R/O. ALUR VILLAGE,
KHANA HOSALLI HOBLI,
TQ. KUDLIG, DIST. BALLARI.

(AMENDED AS PER ORDER DATED 24.06.2015 AND
04.06.2024)

...APPELLANTS

(BY SRI. DEEPAK MAGANUR, ADVOCATE FOR
SRI. CHANDRASHEKAR P. PATIL, ADVOCATE)

AND:

1. M. DHODDA ANJANEYA
S/O. THIMMANNA,
AGE: 65 YEARS, OCC. AGRICULTURIST,



R/O. ALURU VILLAGE, TQ. KUDLIG,
DIST. BELLARY.

2. SANNA THIMMANNA ALIAS CHINNTAPPA
S/O. LATE SANNA THIMMAPPA ALIAS YARRAPPA,
AGE: 77 YEARS, OCC. AGRICULTURIST,
R/O. ALURU IN KUDLIGI TALUK,
DIST. BELLARY.
SINCE DECEASED BY HIS LR.

- 2A. SMT. KISTAMMA
D/O. LATE SANNA THIMMANNA,
W/O. GOPALA REDDY, AGED ABOUT 60 YEARS,
HINDU, AGRICULTURIST, R/O. ALURU VILLAGE,
TQ. KUDLIGI, DIST. BELLARY.

(AMENDED AS PER ORDER DATED 06.02.2014)

...RESPONDENTS

(R1 AND R2A-NOTICE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO CALL FOR THE RECORDS FROM THE CIVIL JUDGE (JR.DN) COURT KUDLIGI IN O.S.NO.278/1997 AND TO SET ASIDE THE JUDGMENT AND DECREE OF THE HON'BLE COURT IN O.S.NO.278/1997 DATED 26.03.2005 AND SET ASIDE THE JUDGMENT AND DECREE IN R.A.NO.17/2005 AND R.A.NO. 25/2006 DATED 03.11.2008 ON THE FILE OF THE CIVIL JUDGE (SR.DN) COURT, KUDLIGI. AND PASS APPROPRIATE ORDERS BY DISMISSING THE SUIT OF THE PLAINTIFF IN O.S.NO.278/1997 BY CONFIRMING THE POSSESSION AND ENJOYMENT OF DEFENDANT NO.1'S PORTION OF SUIT RICK YARD IN SURVEY NUMBER 334-A AND AWARD COST OF THE SUIT AND ETC.,

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 24.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

This second appeal is filed by defendant No.1 who suffered the decree of the Trial Court as well as the First Appellate Court in O.S.No.278/1997 by the learned Civil Judge, Junior Division and Civil Judge, Senior Division, Kudligi respectively.

2. The factual matrix that is necessary for the purpose of this appeal is as below:

- a) The suit schedule property happens to be in the rickyard situated at Alur Village in Kudligi Taluk, in Sy.No.334/A, measuring 54 cents, bounded by road on the East and the properties of others on the remaining three sides.
- b) The plaintiff Dodda Anjaneya contended that he is the absolute owner of the plaint schedule property and he derived the title to the said property through a registered Will dated 13.01.1970 executed by one Gangamma wife of Giddappa. He contended that she was in possession and enjoyment of the rickyard and defendant No.1 has



no right, title or interest in the same in whatsoever manner.

- c) While the plaintiff was working in the rickyard on 08.10.1987, defendant No.1 came and obstructed the possession of the plaintiff and tried to take a foundation. The defendant also denied the title of plaintiff. Therefore, the plaintiff was constrained to file this suit for declaration of his title and for consequential relief of injunction.

3. On service of summons, defendant No.1 appeared through his learned counsel and filed a written statement.

- a) The defendant contended that the suit schedule property is not the exclusive property of the plaintiff. He contended that he happens to be the son of one Yerrappa. The said Yerrappa had a brother by name Dodda Thimmanna. He had only a son by name Giddappa and his wife is Gangamma. It is contended that the said Yerrappa and Dodda Thimmanna had divided their properties during their lifetime long back under a oral partition and



the plaint schedule property was divided into two equal shares and the Western portion measuring 29.5 cents had fallen to the share of Dodda Thimmanna and the remaining half on the Eastern side had fallen to the share of Yerrappa. It is contended that the said Gangamma, who allegedly executed a Will in favour of the plaintiff could only bequeath 29.5 cents under the Will.

- b) It was further contended that Yerrappa had three sons i.e. Defendant Nos.1, Dodda Thimmanna and Sanna Thimmanna. The rickyard measuring 29.5 cents which was allotted to Yerrappa was divided between defendant No.1 and Sanna Thimmanna, (who later is impleaded as defendant No.2 in the suit) and each of them got 14.75 cents. The Eastern half was belonging to defendant No.1 and the Western part, which adjoins the rickyard bequeathed by Gangamma to plaintiff was belonging to defendant No.2. Therefore, it was contended that the suit schedule property contains three portions measuring 14.75 cents, belonging to



the defendant No.1, 14.75 cents belonging to defendant No.2 and 29.5 cents belonging to the plaintiff.

- c) He further contended that the property fallen to the share of the defendant was mortgaged under a registered mortgage deed dated 26.04.1967 in favour of one Gopalareddy. At the time of the mortgage, the plaintiff had consented for the same by a consent agreement dated 05.08.1984. Therefore, it is contended that the plaintiff is not in exclusive possession of the entire 54 cents of the suit schedule property and therefore, the suit is not maintainable.
- d) It is contended that defendant No.1 has dug a pit for laying foundation with an intention to construct a cattle shed which was objected by the plaintiff. Hence, defendant No.1 contended that the suit is misconceived and the same is liable to be dismissed.



4. Defendant No.2 who was impleaded during pendency of the suit has filed his written statement. He admitted that the plaintiff is the absolute owner of the said rickyard and he had derived the title from Gangamma under the Will dated 13.01.1970. It is his contention that the plaint schedule property had fallen to the share of Dodda Thimmanna (who is brother of Yerrappa) and the entire property devolved upon Giddappa and then to Gangamma, who executed a Will in favour of the plaintiff. He contends that there was a partition between defendant No.1 and his uncle Dodda Thimmanna in the year 1955 and therefore, defendant No.1 does not have any right, title or interest in the suit schedule property.

5. On the basis of the above contentions, the following issues were framed by the Trial Court.

"ISSUES

1. *Whether the plaintiff proves that the deceased Gangamma W/o Giddappa had a valid title over the suit schedule property at the time of execution of will in favour of plaintiff on 13.1.1970 ?*
2. *If so, whether plaintiff proves that he is the absolute property by virtue of the registered will*



executed by deceased Gangamma dated 13.1.1970 as contended?

3. *If so, whether plaintiff proves that he is in lawful possession of suit schedule property as contended?*
4. *Whether plaintiff proves the illegal interference in peaceful possession and enjoyment of suit schedule property by defendant?*
5. *What order or decree?"*

6. The plaintiff was examined as PW.1, and PW.2 and PW.3 were examined on his behalf. Exs.P.1 to P.12 were marked in evidence. The defendant got examined himself as DW.1 and the seven witnesses were examined as DW.2 to DW.8 and Exs.D.1 to D.11 were marked on behalf of the defendants.

7. After hearing the arguments by both the sides, The Trial Court answered issue Nos.1 and 2 in the ***affirmative*** and issue No.3 in the ***negative*** and holding that the issue No.4 does not survive for consideration, it decreed the suit in part. The Trial Court held that the plaintiff is entitled for relief of declaration of title to the suit schedule property. But held that permanent



injunction against the defendant cannot be granted and such prayer was dismissed.

8. Being aggrieved, the plaintiff as well as the defendant approached the First Appellate Court in R.A.No.25/2006 and R.A.No.17/2005 respectively. The First Appellate Court after hearing both the sides dismissed the appeal (R.A.No.17/2005) filed by defendant No.1 and allowed the appeal (R.A.No.25/2006) filed by the plaintiff and granted the injunction also. In effect, the suit of the plaintiff was decreed in its entirety by the First Appellate Court.

9. Being aggrieved, defendant No.1 is before this Court in second appeal. While admitting the appeal, this Court has framed for following the substantial questions of law as below.

- i) Whether the trial Court as well as the Lower Appellate Court have committed an error in appreciating the evidence while considering the validity or otherwise of the WILL dated 13.10.1970 under which the plaintiff had set up right to the suit schedule property.*
- ii) Whether the Lower Appellate Court has committed an error in appreciating the evidence while reversing the finding rendered by the trial Court on Issue No.3."*



10. The learned counsel appearing for the appellants submits that the Trial Court as well as the First Appellate Court have decreed the suit in its entirety though the evidence on record showed that the plaintiff was entitled for only 29.5 cents in the suit schedule property. He submits that the defendants had set up the contention that the suit schedule property which totally measures about 54 cents, is a rickyard and it was owned by one Yerrappa alias Sanna Thimmappa and his brother Dodda Thimmappa and there was a partition between them resulting in the suit schedule property being divided into two halves. He submits that Dodda Thimmappa had a son by name Giddappa and he had no issues and as such after his death, his wife Gangamma became the absolute owner of the property. She executed a Will in favour of the plaintiff, he being the adopted son of Gangamma. Therefore, the plaintiff was in possession of 29.5 cents in the suit schedule property. The remaining 29.5 cents in the suit schedule property had fallen to the share of Yerrappa, which was divided among defendant No.1 and his brother Sanna Thimmanna equally. The defendant No.1 had mortgaged the rickyard measuring 14.75 cents to one Gopal Reddy on 26.04.1967 under a registered mortgage deed and as



such, the possession of defendant No.1 in respect of 14.75 cents is borne out of the records. Therefore, he contends that the validity of the Will was only in respect of 29.5 cents and not more. He also submits that the Trial Court as well as the First Appellate Court failed to appreciate the evidence let in by the defendants in this regard and have decreed the suit in its entirety covering 59 cents which comprises the suit schedule property. Therefore, he submits that the execution of the Will having not been questioned by the defendants, its validity applies only in respect of the portion held by Giddappa and his wife Gangamma. He points out that there is a document in the form of an agreement produced by the defendants at Ex.D.2 and this document has not been properly appreciated by the Trial Court as well as the First Appellate Court. By virtue of this agreement, the husband of Gangamma i.e., Giddappa had consented for the partition of 29.5 cents among defendant No.1 and his brother Sanna Thimmanna i.e., defendant No.2. This aspect was not properly appreciated by the Trial Court and the First Appellate Court.

11. *Per contra*, the learned counsel appearing for the plaintiffs contends that there is no material on record to show



that the father of defendant No.1 and 2/Yerrappa also had any share in the suit schedule property. Learned counsel appearing for the plaintiffs submits that the partition between Yerrappa and Dodda Thimmanna has not been established by the defendants conclusively. It is submitted that the finding of the facts by the Trial Court as well as the First Appellate Court having been finally decided in favour of the plaintiffs, there is no need for interference in the same. He also submits that the division of 29.5 cents among defendant No.1 and his brother Sanna Thimmanna has not been established and therefore, there is nothing on record to show that the defendants own 29.5 cents in the suit schedule property. Therefore, he has sought for dismissal of the appeal.

12. The first aspect that is to be considered by this Court is in respect of the validity or otherwise of the Will. It is pertinent to note that the plaintiffs have produced the said Will executed by Gangamma at Ex.P.1. This document is a registered Will. The Ex.P.1 shows that it was executed on 13.01.1970 and the Will describes the said Gangamma to be the wife of Moolemane Thimayya alias Giddappa. It also avers that she had executed another Will earlier in the year 1961 and by virtue of Ex.P.1, the



earlier Will is cancelled by her. It mentions that she is bequeathing her properties in favour of the plaintiff Anjineya Reddy. It also mentions that he is her adopted son. The Will mentions that she has various properties and the suit schedule property is described as a Sy.No.334A measuring 59 cents with the specified boundaries. The said Will does not mention anything about the manner in which the said property was acquired by her.

13. Defendant No.1 in his written statement contends that he and his brother defendant No.2 were the sons of one Yerappa alias Sanna Thimmappa and the said Sanna Thimmappa had a brother by name Dodda Thimmappa. There was partition between Yerappa and Dodda Thimmappa whereby Dodda Thimmappa was allotted 29.5 cents in the suit schedule property. It was the contention of defendant No.1 that son of Dodda Thimmappa is Giddappa and his wife is Gangamma. Therefore, the defendants contend that Giddappa and Gangamma were never the owners in possession of the entire 59 cents in Sy.No.334A. Insofar as execution of the Will by Gangamma is concerned, there is no much resistance by defendant No.1. It is his contention that Gangamma had no



absolute right, title or interest in the suit schedule property, but her rights were limited to 29.5 cents only. The written statement though denying the Will, the contention set up by defendant No.1 is that Gangamma was owning to the extent of 29.5 cents only.

14. Therefore, the execution of the Will by Gangamma is not in dispute, as has been rightly considered by the Trial Court as well as the First Appellate Court.

15. The validity of the Will insofar as it relates to the 29.5 cents owned by defendant Nos.1 and 2 is denied by them contending that such portion of the suit schedule property was in the possession of defendant Nos.1 and 2 since long time. Therefore, it is only the said 29.5 cents of the rickyard which is the subject matter of the present suit.

16. It may be noted that the Will executed by Gangamma in favour of the plaintiff showed that she had to bequeath the entire rickyard measuring 59 cents. There cannot be any doubt that the Will executed by Gangamma in favour of the plaintiff at Ex.P.1, categorically mentioned that the rickyard measuring 59 cents has been bequeathed to the plaintiff. So also, the other records produced by the plaintiff establish that it



was Gangamma in whose name the rickyard measuring 59 cents was standing for long time. It is the contention of defendant No.1 that there was a partition between Yerrappa and Dodda Thimmappa equally and therefore, Giddappa continued to possess only 29.5 cents, which descended upon Gangamma.

17. The Trial Court in the impugned judgment notices that though there is some discrepancy in regard to the relationship between the Dodda Thimmappa and his brother Yerrappa and that defendant Nos.1 and 2 are the children of Yerrappa, the documentary evidence show that Yerrappa and Dodda Thimmappa are the brothers and defendant No.1 and 2 represent the branch of Yerrappa. This concurrent finding by the Trial Court and the First Appellate Court is based on the documents which are available on record. It may be noted that the fact which has been decided by the Trial Court and the First Appellate Court concurrently and which is not in dispute need not be again entered into by this Court.

18. This leads us to the question whether plaintiff's claim over 59 cents is sustainable or it would sustain only in respect of 29.5 cents. The plaintiff heavily relies upon the revenue records pertaining to the rickyard measuring to 59 cents. None of the



documents show that there was any partition between Yerrappa and Dodda Thimmappa concerning the suit rickyard. All along, it is the name of Giddappa and Gangamma which is reflected in the records. The document which is relied upon by the defendants is a questioned document i.e., Ex.I.1. During deposition of defendant No.2 (DW.8) it was marked, subject to objection as Ex.I.1. In paragraph No.15 of the judgment of the Trial Court, it observes that it was not produced as required under law and therefore, it could not have been marked during the cross-examination of defendant No.2 as a witness for defendant No.1. It also observes in paragraph No.17 that even if Ex.I.1 is looked into for its intrinsic value, it mentions that the rickyard has to be divided among the plaintiff, defendant Nos.1 and 2 equally, which is against the pleadings of the defendants and as such, it is of no help to the defendants.

19. The Trial Court further observes that, the only document which refers to 29.5 cents belonging to the plaintiff is Ex.D.2. The Ex.D.2 is a consent agreement alleged to have been executed by the plaintiff in favour of defendant Nos.1 and 2. The Ex.D.2 is an unregistered document, which was marked during cross-examination of PW.1. It is pertinent to note that PW.1



though did not categorically admit Ex.D.2, he had stated that the signature on Ex.D.2 looks like his signature. Even the plaint was also marked for a reference as Ex.D.3. The denial of the signature on Ex.D.2 by the plaintiff has not been taken to a logical end. The admission of PW.1 regarding Ex.D.2 may be found in paragraph Nos.8 and 9 of his deposition. It is pertinent to note that Ex.D.2 states that father of Giddappa i.e., Dodda Thimmappa and Yerrappa had partitioned the property and the records reveal that the entire 59 cents stands in the name of Giddappa and it has devolved upon the plaintiff. But however, 29.5 cents was enjoyed by defendant Nos.1 and 2. Defendant Nos.1 and 2 had divided it among themselves each enjoying 14.75 cents. The plaintiff had admitted such possession of the defendants to the extent of 29.5 cents. It is worth to note that apart from defendant Nos.1 and 2, two other witnesses had also signed the said document. It is pertinent to note that DW.7 is T. K. Krishna Reddy and he claims himself to be the power of attorney holder of defendant No.2. The signatory to Ex.D.2 is one M. Krishna Reddy and he has not been examined. Therefore, the testimony of DW.7 was not at all pertaining to the Ex.D.2, which aspect the Trial Court did not observe. The Trial Court has



rejected this document on the ground that DW.7 has not offered himself for cross-examination.

20. It is pertinent to note when DW.1 had admitted his signature on Ex.D.2, it was unnecessary for a witness to Ex.D.2 to be examined. Therefore, the testimony of DW.7 was not necessary.

21. Apart from Ex.D.2, the defendants rely on the mortgage deed of about 15 cents in favour of one Gopal Reddy, which is at the Ex.D.8. Ex.D.8 is the certified copy of the mortgage deed executed by defendant No.1 in favour of Gopal Reddy. Though the redemption deed pertaining to this mortgage is not available, the fact remains that 15 cents in Sy.No.334A was mortgage in favour of Gopal Reddy. There is no reason as to why this mortgage deed should not be believed.

22. The above documentary evidence shows that Exs.D.2 and D.8 were not properly appreciated by Trial Court as well as the First Appellate Court. These two documents were discarded on the ground that Ex.D.2 is not proved by examining a witness even though PW.1 has admitted his signature on Ex.D.2; redemption deed was not produced in respect of the mortgage under Ex.D.8. Therefore, when these two documents



categorically stated that defendant No.1 is in possession and enjoyment of 14.75 cents of the suit schedule property, it cannot be held that the plaintiff was in possession of the entire 59 cents. There is no doubt that the property has been standing in the name of Giddappa and then in the name of Gangamma for quite long time. But Exs.D2 and D.8 show that the possession was not with the plaintiff. Though it is a settled principle of law that the possession follows the title. In the case on hand, Exs.D.2 and D.8 interrupt such flow of possession with the title. This aspect was not properly considered by the Trial Court and the First Appellate Court. It is to be noted that except the Ex.D.2, there is nothing on record to show that there was a partition between Yerrappa and Dodda Thimmappa.

23. The resettlement register extract which is at Ex.P.12, pertains to the entire 59 cents of the suit schedule property and it is in the name of Giddappa. This document also does not come to the aid of the defendants to show that they were holding title and that there was a partition. However, the admission contained in Ex.D.2 and its acting upon by way of a mortgage by defendant No.1 cannot be brushed aside to hold that the entire property has flown to the plaintiff. Therefore, the validity of Will dated



13.10.1970 by Gangamma in favour of the plaintiff would only restrict itself to 29.5 cents. Evidently, Ex.D.2 is dated 05.08.1984 and Ex.D.8 is dated 26.04.1967. It is relevant to note that if there was no such a share in favour of defendant No.1 in the year 1967, Ex.D.8 could not have been executed by him to mortgage about 15 cents of the rickyard. Therefore, the evidence contained in Exs.D.2 and D.8 clearly shows that the effect of Ex.D.8 was reiterated by the plaintiff in Ex.D.2. This aspect was not considered by both the Trial Court and the First Appellate Court.

24. It may be noted that the Trial Court had not granted any injunction to the plaintiff. In paragraph No.29 of the Judgment, it observes as below:

"29. The defendant No.2 who got himself examined as DW.8 has also admitted that there are three rickyards in the suit property. He has denied that the middle rickyard in the suit property is in his possession. He has admitted that the bigger rickyard is in the possession of the plaintiff. Further, PW.3 Obappa in para-4 of his cross-examination has stated that the plaintiff and Sanna Thimmanna and also first defendant own bullocks and they are agriculturists and they store



crops in the rickyards. As already pointed out he has admitted that the rickyard on the east of the rickyard of the first defendant, is in the possession of Sanna Thimmanna and Sanna Thimmanna has haystack and manure pit in the said rickyard and the first defendant has the rickyard on the eastern side of the road. He has further admitted that except these rickyards the defendant and Sanna Thimmanna have no other rickyard in their village. Therefore, the evidence of PW.3 also establishes that the two smaller rickyards are in the possession of defendant No.1 and 2 respectively. Considering the above evidence on record and the physical features of the property it cannot be held that the plaintiff is in exclusive possession of the suit property. Therefore, the plaintiff has failed to prove that he is in exclusive possession of the suit rickyard. Hence, I hold that the plaintiff has failed to prove that he is in exclusive possession of the suit rickyard. Therefore, Issue No.3 is answered in the negative."

25. This conclusion by the Trial Court is based on the available evidence.

26. The First Appellate Court in the impugned judgment holds that the possession of the plaintiff is also established and therefore, the refusal by the Trial Court to grant the injunction is not sustainable. In other words, it decrees the suit of the plaintiff



in entirety. Obviously, the First Appellate Court has failed to draw the inferences from Exs.D.2 and D.8.

27. From the above discussion, concerning the documents produced by the plaintiff and the documents produced by the defendants, particularly Exs.D.2 and D.8, it is evident that the plaintiff is in possession and enjoyment of 29.5 cents in the suit schedule property on the Western side and the remaining property is enjoyed by defendant Nos.1 and 2 with an amicable partition among them. Thus, the appreciation of the evidence by the First Appellate Court was also not proper and it was not justified in reversing the finding rendered by the Trial Court on issue No.3. In the result, the first substantial question of law is answered to the effect that the validity of the Will pertains to only 29.5 cents in suit schedule property and the second substantial question of law is answered in the ***affirmative*** holding that the First Appellate Court erred in appreciating the evidence concerning issue No.3.

28. The outcome of the above discussion would be that the plaintiff is entitled for the relief only in respect of 29.5 cents. Hence, the following:



ORDER

- i) *The appeal is **allowed**.*
- ii) *The impugned judgment of the First Appellate Court is set aside.*
- iii) *The judgment of the Trial Court is modified.*
- iv) *It is declared that the plaintiff is the absolute owner of 29.5 cents of the suit schedule property situated on the Western side.*
- v) *The Defendants are restrained from interfering with the possession of the plaintiff to the extent of 29.5 cents in any manner.*
- vi) *In particular circumstances, the costs made easy.*

**SD/-
(C M JOSHI)
JUDGE**