



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 10TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 3084 OF 2007 (DEC/INJ-)

BETWEEN:

1. JAVALAVVA W/O. LATE SIDDAPPA CHATRI,
SINCE DECEASED BY HER LRS.
- 1A. BASAVARAJ S/O. SIDDAPPA CHATRI,
AGE: 51 YEARS, OCC. AGRICULTURE,
R/O. BALAGANUR, TQ. AND DIST. GADAG.

...APPELLANTS

(BY SMT. P.S. TADAPATRI, ADVOCATE FOR
SRI. K.L. PATIL, ADVOCATE)

AND:

1. SMT. BHEEMAVVA
W/O. BHIMAPPA CHATRI,
AGE: 55 YEARS, OCC. HOUSEHOLD WORK,

SINCE DECEASED RESPONDENT NO.2, 3, 4 AND 6
ARE TREATED AS LRS.
2. SHARANAPPA S/O. BHIMAPPA CHATRI,
AGE: 32 YEARS, OCC. AGRICULTURE,
3. BASAPPA S/O. BHIMAPPA CHATRI,
AGE: 29 YEARS, OCC. AGRICULTURE,
4. ANASAVVA W/O. BHIMAPPA,
AGE: 25 YEARS, OCC. HOUSEHOLD WORK,

YASHAVANT
NARAYANKAR

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YASHAVANT
NARAYANKAR
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ALL ARE RESIDING AT BALAGANUR,
TQ. AND DIST. GADAG.

5. SHANMUKAPA S/O. HANUMAPPA CHATRI,
SINCE DECEASED BY HIS LRS.
- 5A. BASAVANNEVVA
W/O. VEERRABHADRAPPA KATARAKI,
AGE: 54 YEARS, OCC. HOUSEHOLD WORK,
R/O. BHOPALAPUR, TQ. RON, DIST. GADAG.
- 5B. SHARANAPPA S/O. SHANMUGAPPA CHATRI,
AGE: 45 YEARS, OCC. GOVT. JOB,
R/O. BALAGANUR, TQ. AND DIST. GADAG.
- 5C. UMESH S/O. SHANMUGAPPA CHATRI,
AGE: 40 YEARS, OCC. GOVT. JOB,
R/O. BALAGANUR, TQ. AND DIST. GADAG.
6. KAREYAVVA (KARIYAVVA)
W/O. KALLANAGOUDA PATIL,
AGE: 38 YEARS, R/O. RAMAPUR,
TALUK: RON, DIST. GADAG.
7. PARVATEVVA (PARWATEVVA)
W/O. KARIYYAPPA MANNUR,
AGE: 65 YEARS, OCC. AGRICULTURE,
R/AT. SAVADI, TALUK: RON,
NOW AT BHOOSAGATTI,
POST: BUDIHAL, TALUK: RON.
8. SMT. BASVVA (BASAVVA)
W/O. BASAPPA CHALUVANNAVAR,
AGE: 50 YEARS, OCC. AGRICULTURE,
R/O. KURLAGERI, TALUK: NARAGUND,
DIST. DHARWAD.

...RESPONDENTS

(BY SRI. MADANMOHAN M. KHANNUR, ADVOCATE FOR C/R2;



R3, R4, R6, R8-NOTICE SERVED;
R1 AND R5-DECEASED, R7-ABATED;
SRI. MAQBOOLAHMED PATIL, ADVOCATE FOR R5 (A TO C))

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO CALL FOR THE ENTIRE RECORDS PERTAINING TO THE JUDGMENT AND DECREE IN R.A.NO.162/2000 DATED 31.08.2007 PASSED BY THE ADDITIONAL CIVIL JUDGE (SR.DN.) GADAG AND SET ASIDE THE SAME AND CONSEQUENTLY CONFIRM THE JUDGMENT AND DECREE DATED 09.11.2000 IN O.S.NO.147/1990 PASSED BY THE III ADDITIONAL CIVIL JUDGE (JR.DN.) GADAG AND ETC

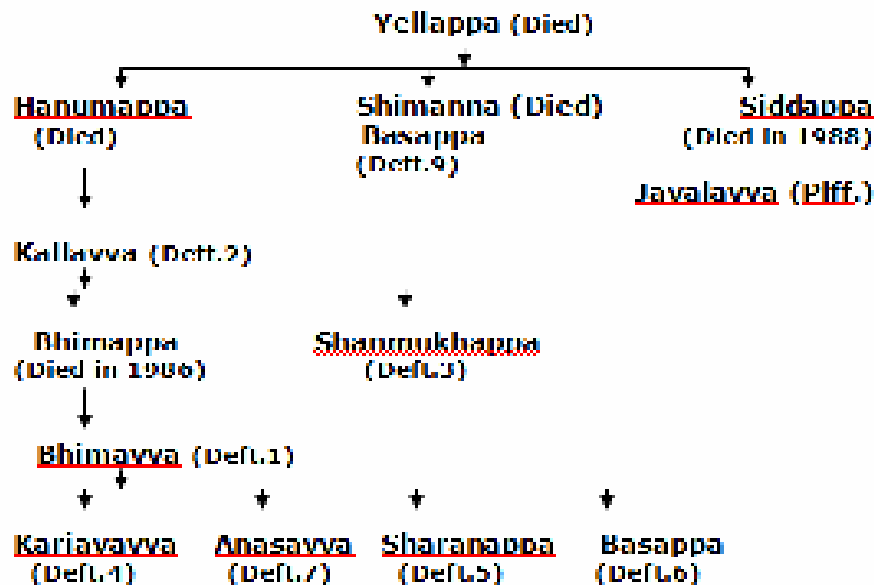
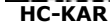
THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 10.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

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

Being aggrieved by the judgment of the First Appellate Court in R.A.No.162/2000 dated 31.08.2007, which allowed the appeal by setting aside the judgment of the Trial Court in O.S.No.147/1990 dated 09.11.2000, whereby, the suit came to be dismissed, plaintiff is before this Court in second appeal.

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



b. The propositus-Yellappa and his wife died leaving behind three sons i.e., Hanumappa, Basappa and Siddappa. The propositus- Yellappa was not having any ancestral property in his name. The second son of Yellappa i.e., Basappa (Defendant No. 9), had separated long back and he went to the house of his wife and started maintaining the property belonging to her. After death of Yellappa, his remaining two sons i.e. Hanumappa and



Siddappa started living together and cultivated the lands on tenancy basis. The suit properties are the tenancy lands held by them. On the basis of the income derived from the tenancy lands, the other properties were acquired by them.

c. Hanumappa was the elder among them and he was the Karta of the joint Hindu family and the name of Hanumappa has been entered in the cultivators column of revenue records in respect of the suit schedule properties.

d. In the year 1974, on the advent of the Karnataka Land Reforms Act, the Karta of the family filed Form No.7 before the Land Tribunal for grant of occupancy rights and accordingly, the lands were granted in his name. During the course of such proceedings, the said Hanumappa and his son Bhimappa and daughter-in-law Bhimavva could not pull on well, with Siddappa and the relationship was not cordial, which resulted in a mutual partition between Hanumappa and Siddappa on 19.06.1974 in the presence of the elders of the village. Such partition was reduced into writing and both of them have signed the said Yadi. The copy of the Yadi was handed over to Siddappa.



e. When the suit properties which were the tenancy lands, were declared by the tribunal to be in the occupation of Hanumappa, the name of said Hanumappa was entered in the records. When the son of Hanumappa i.e., Bhimappa died, the defendants No.1 and 2, who are wife of Bhimappa and wife of Hanumappa in collusion with the defendant No.3-Shanmukhappa succeeded in getting their names entered in respect of the tenancy lands under M.E.No.5022, leaving out Siddappa.

f. When this fact came to the knowledge of Siddappa, he gave a request on 26.06.1987 to enter his name along with the name of the defendant No.1 and her children and accordingly, the mutation entry No.5022, which entered the name of the defendants No.1, 2 and 3, came to be cancelled under M.E.No.5108 dated 18.08.1987.

g. Siddappa died on 18.01.1988, leaving behind him the plaintiff alone. The plaintiff also gave application to delete the name of Siddappa and enter her name and accordingly, M.E.No.5169 came to be entered in respect of half share of the suit schedule properties.



h. The M.E.No.5108 entering the name of Siddappa for the suit schedule properties was questioned before the Assistant Commissioner and after hearing the appeal, the Assistant Commissioner restored M.E.No.5022, whereby, the name of the defendants No.1 to 3 was entered in the records. On basis of the same, the defendants started obstructing the peaceful possession and enjoyment of the half share in the suit schedule properties and when the defendants did not heed to the request of the plaintiff, she was constrained to file the suit. The plaintiff sought a declaration that she has half share in the suit schedule properties bearing R.S.No.104/2 measuring 8 acres 2 guntas and R.S.No.248/2 measuring 10 acres 9 guntas of Balaganur village. She also sought a permanent injunction against the defendants not to disturb her peaceful possession and enjoyment.

3. On service of summons, the defendants appeared and resisted the suit by filing written statement.

a. The defendant No.1 in her written statement contended that Hanumappa was cultivating the suit schedule properties as the sole tenant and in that capacity, he had applied



to the land tribunal for grant of occupancy rights. Therefore, the occupancy rights granted by the Tribunal would enure to his benefit alone and as such, he was the absolute owner in possession.

b. After his death, the defendants No.1 to 3 have the exclusive right, title and interest in the same. She further contended that the other joint family properties which were owned by the family were divided between Hanumappa and Siddappa and Siddappa is in possession of his share which was allotted to him. She contended that the suit schedule properties were never the subject matter of the partition or division between Hanumappa and Siddappa.

c. It was contended that the alleged partition dated 19.06.1974 relied by the plaintiff in the form of Yadi is forged and concocted document. She denied that the elders of the village had participated in the said partition and any document was reduced into writing regarding the said partition.

d. It is contended that the Siddappa had got his name entered in respect of the suit schedule properties by illegal



means and he was never the owner in possession of any of the share in the suit schedule properties. Therefore, the said entry of the name of the Siddappa was questioned by the defendants before the Assistant Commissioner and rightly the Assistant Commissioner had set-aside the said mutation entry No.5108. In view of setting aside the said mutation entry, it cannot be held that the plaintiff is entitled for any declaration of the suit schedule properties as per the boundaries shown by her. It is contented that the plaintiff ought to have filed a declaration of title in the specific extent of the acres in the suit schedule properties as mentioned in M.E.No.5108 and therefore, frame of the suit is not proper and correct.

e. *Inter-alia*, they also denied the genealogy as it is incorrect. They also denied that Hanumappa was the Karta of the family and in such capacity, he had filed the Form No.7 to the Tribunal. Thus, they sought for dismissal of the suit.

4. The defendants No.5, 6 and 7 also supported the contention of the defendants No.1 and 2 and sought dismissal of the suit. However, they admitted that Hanumappa and Siddappa had lived jointly and had cultivated the suit lands jointly on the



basis of lavani. They denied that Hanumappa was managing the affairs of the family as Karta. They also contended that the order of the Land Tribunal granting the occupancy rights in favour of Hanumappa was not challenged by Siddappa or anybody else and therefore, such grant of occupancy rights would enure to the benefit of Hanumappa only. In other respect, they supported the case of the defendant No.1 and sought for dismissal of the suit.

5. They further contented that the son of Hanumappa i.e., Bhimappa died leaving behind him the defendants No.1, 5, 6 and the daughters of the defendants No.4 and 7 as his legal heirs and they have succeeded to estate of half share of deceased Bhimappa and their names are entered in the records. The defendants No.5 to 7 being minors, they are under the care and custody of the defendant No.3 and interest of the minor defendants be protected. The said written statement was filed by the Court guardian who was appointed by the Trial Court.

6. The defendant No.3 however filed a memo supporting the case of the plaintiff.



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

"ISSUES

- 1) *Whether plaintiff proves that suit schedule properties were joint family properties?*
- 2) *Whether the plaintiff further proves that there was an mutual partition in between Hanamappa and Siddappa on 19-6-74 which were reduced into writing?*
- 3) *Whether alleged interference is true?*
- 4) *Whether plaintiff is entitle for 1/2 share in suit property?*
- 5) *What order or decree?"*

8. The plaintiff was examined as PW1 and the two witnesses were examined as PW2 and PW3. Exs.P1 to P20 were marked. Defendants examined three witnesses as DW1 to DW3 and Exs.D1 to D10 were marked.

9. After hearing the arguments, the Trial Court held issue Nos.1 to 4 in the 'affirmative' and proceeded to decree the suit as prayed by the plaintiff.

10. Being aggrieved, the defendants approached the First Appellate Court in appeal in R.A.No.162/2000 and after hearing the appeal came to be allowed and the suit came to be



dismissed. Being aggrieved, the plaintiff has approached this Court in second appeal.

11. This Court while admitting the appeal, has framed the following substantial questions of law:

"i) Whether the 1st appellate court was right in reversing the well founded judgment of the trial court only on the basis of the suit schedule properties being granted in the name of deceased Hanumappa under the Karnataka Land Reforms Act?

ii) Whether the 1st appellate court is correct in misreading exhibit P14 (partition deed) to hold that the suit properties were not cultivated jointly by deceased Hanumappa and Siddappa by giving a clear go-bye to the intention of the parties?

iii) Whether the 1st appellate court has wrongly applied the principles laid down in AIR 1987 SC 2179, AIR 1975 Patna 168 and 1967(1) MLJ Page 71 in the facts and circumstances of the case?

iv) Whether the 1st appellate court was right in discarding the principles laid down in the case of Narayana and others V/s Sadashivappa and others reported in ILR 2002 Kar 487?

v) Any other question of law which may arise for consideration at the time of hearing the appeal."



ARGUMENTS

12. Learned counsel appearing for the appellant would submit that the plaintiff contend that no property was owned by Yallappa, who was the father of Hanamappa and Siddappa and therefore, all the properties including the ownership lands and the tenancy lands were the lands acquired by Hanamappa and Siddappa. She submit that in Ex.P7, there is a mention that the tenancy lands are also to be divided into each of the said Siddappa and Hanmappa. She submits that Ex.P14 also mention that the other properties have been amicably partitioned and Hanamappa is in possession of 10 acres 20 guntas. It is further submitted that the clause in the partition document at Ex.P14 that tenancy lands are also to be divided between Siddappa and Hanamappa should invariably apply to the suit schedule properties, which were the only tenanted properties, for which the occupancy rights were to be granted by the Tribunal.

13. It is further submitted that as per the clause in the partition document at Ex.P14, the tenancy lands are also to be divided between Siddappa and Hanumappa, which invariably is to be applied to the suit schedule property, as they were the only



tenanted properties, for which the occupancy rights were granted by the Tribunal. She further submits that two months later to execution of Ex.P14-partition, Hanumappa files an application to the Tribunal in Form No.7 for grant of occupancy rights. As per the application, the Land Tribunal granted occupancy rights under order Ex.D10. Therefore, it is her contention that except Ex.P9 i.e. Form No.7 having shown that the tenancy was for more than 30 years, would also enure to the benefit of the Siddappa i.e., the plaintiffs. Therefore, it is her contention that when there was no property owned by Yallappa and this fact having been admitted by the defendants and except Survey No.454 and 456/2E, no other properties were owned by the brothers, the suit properties are also partible. Hence, she prays for partition in the suit schedule properties.

14. Per contra, learned counsel appearing for the respondents would contend that though PW1 states that Siddappa had also filed Form No.7 to the Tribunal, and that it was allowed, no such documentary evidence is being produced by the plaintiffs. He further argued that the defendants have never admitted Ex.P14 and therefore, Ex.P14 has to be



discarded. He also submitted that the testimony of the PW2, who is the scribe of Ex.P14, is not convincing and therefore, it has to be discarded. Further he submits that there is absolutely no material produced on record that there was a joint tenancy of Siddappa and Hanamappa. Ex.P9 i.e., Form No.7 is an application filed by Hanamappa exclusively and it would not enure to the benefit of the branch of Siddappa. When Ex.P14 partition document is not proved and not admitted by the defendants, it is only Form No.7, that would enure to the benefit and does not establish that it was the joint family property. He also submits that the Records of Rights prior to 1974 would show the name of Hanamappa alone and therefore, he alone would be the holder of the property and would be entitled for the rights as ordered by the Land Tribunal.

15. Learned counsel for the appellant draws the attention of this Court to Ex.P15 to 17 which would show that the loan raised on the suit schedule properties from the PLD Bank was paid by Siddappa. It is submitted that the name of the person who paid the installments and the custody of those documents, would invariably establish that the said Siddappa and



Hanamappa were in joint possession of the property. It is submitted that Ex.P18 would show this aspect. So also, she relies on Ex.P19 to show that Siddappa had paid the land revenue.

ANALYSIS AND CONCLUSION:

16. A perusal of the records produced by the plaintiff depict that there was a partition between Hanamappa and Siddappa during the year 1974. Though this partition is subject matter of dispute between the parties, the defendants admit this partition and contend that it was in respect of the property which existed at that time and they did not include the suit schedule properties. Therefore, it is necessary to look into the document of partition produced at Ex.P14 and Ex.D1. It is pertinent to note that both these documents are one and the same. The Ex.D1 happens to be a copy of Ex.P14.

17. Ex.P14 and Ex.D1 disclose that there was partition among Hanamappa and Siddappa. Both of them have signed this document on 19.06.1974. As per this document, the agricultural implements, bullocks, bullock cart, house property and utensils were divided between them and a provision was made for



Fakiravva (mother) also and she was given 1 Kurige (approximately 4 acres) of land and a she-buffalo. The said 4 acres of land was to be given equally by the said Hanumappa and Siddappa. It is pertinent to note that though the document is titled as partition deed, it is an unregistered one and the records reveal that it was acted upon and mutation entry came to be effected pursuant to it. It was not objected for marking either by the plaintiff or by the defendant. Therefore, the Ex.P14 and Ex.D1 are to be accepted.

18. The averments of Ex.P14 would show that Hanamappa was given the house bearing VPC No.358, the southern portion of the land totally measuring 17 acres, which is described as 'Parayana Jameenu', another land measuring 4 acres known as 'Navalli land', another open space known as 'Chavadi Hittal', and at Sl.No.9 of the properties allotted to Hanamappa. It is also stated as half portion in tenancy lands.

19. Similarly, Siddappa was allotted the VPC No.439 and 439/A along with open space. The remaining portion i.e., northern portion of Parayana Jameenu, which totally measures 16 Acres 25 Guntas, the land known as 'Basappa Gaddappanavar



in Sy.No.22 measuring 4 Acres 16 Guntas and half portion in the tenancy lands. The document also states that the movable properties and the harvested crop was also divided between them. The document was also signed by five Panchas, one of whom is examined as PW3.

20. It is pertinent to note that the application filed by Hanamappa dated 19.08.1974 under Section 45 of the Land Reforms Act, is produced at Ex.P9. In this document, it is stated by him that the suit survey number i.e., Sy.No.104/2B and Survey No.248/2 measuring 8 acres 39 guntas, 10 acres 9 guntas, respectively, were being cultivated as tenant since last 30 years. He states that apart from the above two survey numbers, he also owns Sy.No.454 measuring 17 acres and Sy.No.456/2B measuring 4 acres. The said lands have been amicably partitioned between him and his brother Siddappa, and Hanamappa is in possession of 10 acres 20 guntas. Obviously, Ex.P9 does not mention that tenancy lands have also been partitioned.

21. The statement of Hanamappa before the Land Tribunal, produced at Ex.P10, shows that he was cultivating



Sy.No.104/2B and 248/2 since last 20 years and he was paying rent of ₹830/- per annum. He states that his family has about 20 acres of land and the total extent is within the ceiling limits and as such, occupancy rights be granted to him. Obviously, the statement at Ex.P10 is in consonance with the averments made by him in Ex.P9. The total extent held by the family was 21 acres, and 10 acres 20 guntas was in his possession after the amicable partition. Therefore, it is evident that Hanamappa had made a categorical statement before the land tribunal as per Ex.P9 and Ex.P10 that he individually is in possession of 10 acres 20 guntas owned by him and he is cultivating a total extent of 8 acres 39 guntas, and 10 acres and 9 guntas as a tenant.

22. When we examine these two documents in the light of the Ex.P14 and Ex.D1, it is evident that the tenancy lands were not divided among the said Hanamappa and Siddappa. Therefore, what can be deciphered from Ex.P9, Ex.P10 and Ex.P14 is that the properties, which were held by Hanamappa and Siddappa along with the immovable properties, were partitioned and the tenanted properties, which are described as 'Lavani Jameenu' are to be divided half each. Obviously, the



tenanted lands were only Sy.No.104/2B and 248/2 and no other tenanted lands were available. Therefore, what was intended by the parties to Ex.P14 is that the tenancy lands have to be divided equally between them. This inevitably leads to the conclusion that the understanding between them was to divide the tenancy lands, i.e., suit schedule properties bearing Sy.No.104/2B and 248/2 equally among them. Evidently, the remaining two properties i.e., Survey No. 454 and 456/2B and two other lands were divided among them under Ex.P14.

23. With this documentary evidence available on record, let us examine the judgment of the Trial Court.

24. After analyzing the ocular evidence, in paragraph 50, it opines that the partition is effected in the joint family properties and Ex.P14 cannot be said to be prepared in collusion with the defendant No.3. It observes that Ex.P14, being unregistered document, is inadmissible in evidence. However, it is to be noted that Ex.P14 and Ex.D1 can be relied for collateral purpose to ascertain whether there was any understanding between the parties or not. It can only be said that it was a document, which was prepared for their remembrance and



records. Obviously, Ex.P14 and Ex.D1 do not specifically mention the survey numbers and it was a rough understanding between the parties to the document.

25. After considering this, the Trial Court rightly observes in paragraph 60 that it can be used for collateral purpose. It ultimately holds that the plaintiff-Javalavva being the wife of Siddappa is entitled for half share. It also holds that the version of DW3 is believable because he has not supported the defendant's case, though he is the relative of defendants.

26. So far issue No.3 is concerned, it holds that there was obstruction by the defendants and as such, the injunction has to be granted. Therefore, it holds that the plaintiff is entitled for a declaration that she is the owner of half share in R.S.No.104/2A towards west and R.S.No.248/2 on the northern side. This conclusion was reached, based on the dispute between the parties in respect of the mutation entries. As noted supra, the mutation entry No.5108 was made by the revenue authorities and thereafter it was cancelled by M.E.No.5022.



27. Coming to the judgment of the First Appellate Court, it holds that though there is material as discussed by the Trial Court, the PW1 in her cross-examination admits that Siddappa had also filed Form No.7 to the Land Tribunal claiming the suit schedule properties and that the Tribunal has granted occupancy rights to him. She had stated in the cross-examination that Siddappa had paid the rent towards tenancy lands and she has receipts but she did not produce it. On that ground, the First Appellate Court disbelieves the testimony of the PW1. The PW1 had also clearly stated in her testimony that in 8 acres of land, she was given 4 acres on the eastern side and in 10 acres of land she was given 5 acres on the northern side. This is in consonance with her claim made in the plaint. This 8 acres and 10 acres relate to the suit schedule properties. Her testimony was supported by DW3-Shanmukhappa. Under these circumstances, the First Appellate Court disbelieving the testimony of PW1 solely on the ground that she has not produced the rent receipts showing Siddappa had paid the rent, cannot be a circumstance, which would overcome the remaining evidence on record. Obviously, the First Appellate Court did not consider the testimony of the DW3 and the effect of Ex.P14 and



Ex.D1. The testimony of DW3 though is discussed, it holds that that it is not relevant. It holds that the testimony of PW1 and DW3 is without pleadings. It is relevant to note that such a testimony of PW1 and DW3 was in pursuance to the contentions taken up by the defendants in the written statement. The plaint simply mentions that the plaintiff is entitled for half share in Survey No.104/2 and 248/2. Therefore, when there is elicitation in the cross-examination of PW1 and DW3, that cannot be used to say that the plaintiff is not entitled for the relief claimed by her.

28. In view of the above, the conclusions of the First Appellate Court are not sustainable in law. The First Appellate Court did not look into the effect of Ex.P14 and Ex.D1 and the testimony of DW3 in coming to the conclusions. The judgment of the Hon'ble Apex Court in the case of ***Santosh Hazari v. Purushottam Tiwari***¹ lays down principle that the First Appellate Court has to traversed the line of appreciation of evidence by the Trial Court and find out whether such

¹ 2001 (3) SCC 179



conclusions of the Trial Court are flawed. In the case on hand, the First Appellate Court traverse the evidence as done by the Trial Court but on one aspect i.e., the admission of the PW1 that Siddappa was also paying the rent and he had filed Form No.7 to the Tribunal, holds that Siddappa was not shown to be the tenant and as such, it concludes that Hanamappa was a tenant in his individual capacity. In coming to such conclusion, the Ex.P9 and Ex.P10 were not appreciated by the First Appellate Court. It also failed to look into the fact that except the suit schedule properties, there were no other tenanted properties to Hanamappa and Siddappa. Hence, the first substantial question of law framed by this Court is answered in the negative.

29. Obviously, Ex.P14 was not properly considered by the First Appellate Court. The averments made in Ex.P14 that the tenanted properties are divided half between Siddappa and Hanamappa was ignored by it. Accordingly, the second substantial question of law has to be answered in the affirmative.

30. So far as the remaining substantial questions of law are concerned, the principles laid down in **AIR 1987 SC 2179**, **AIR 1975 Patna 168** and **1967(1) MLJ Page 71** the said



substantial questions of law were not dealt by the First Appellate Court in detail. In paragraph 35, the First Appellate Court refers to these judgments and it does not mention what are the principles laid down in the said judgments. A perusal of the judgments would show that the evidence has to be led on the pleadings and if there is no pleading, no load of evidence would be of any relevance. The plaint clearly seeks the relief in respect of half share in suit survey numbers and therefore, a further elucidation of the details in oral testimony cannot be termed as lacuna.

31. Similarly, the judgment in the case of ***Narayana and others v. Sadashivappa and others***² is discussed by the First Appellate Court in paragraph 36. It is evident that the said judgment could not have been applied to the case on hand since, the partition between Hanamappa and Siddappa which had taken place much earlier in the year 1974 as per Ex.P14, mentions that half of the tenanted land has to be given to Hanamappa and remaining half has to be given to Siddappa. Therefore, when there was an understanding between the two sharers of the joint

² ILR 2002 KAR 487



family, obviously, the above judgment could not have been made applicable. Under these circumstances, the First Appellate Court has erred in reversing the judgment of the Trial Court. In the result, the judgment of the First Appellate Court deserves to be set aside and the judgment of the Trial Court deserves to be upheld. Hence, the following:

ORDER

- (i) The appeal is allowed.
- (ii) The judgment in R.A.No.162/2000 dated 31.08.2007 passed by the Additional Civil Judge (Sr.Dn), Gadag is hereby set aside and the judgment in O.S.No.147/1990 dated 09.11.2000 of the III-Additional Civil Judge (Jr.Dn), Gadag hereby confirmed.
- (iii) The Trial Court is directed to discharge the receiver appointed by it pursuant to its order dated 27.01.2012 by passing appropriate orders.



NC: 2025:KHC-D:17840
RSA No. 3084 of 2007

(iv) In view of disposal of the appeal, pending
interlocutory applications, if any, do not survive
for consideration and are disposed of.

SD/-
(C M JOSHI)
JUDGE

RKM-para 1 to 18
YAN-para 19 to end
List No.: 1 SI No.: 64