



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 15TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100031 OF 2017 (DEC/INJ)

BETWEEN:

SRI. APPASAHEB RAMU BHOVI
AGE: 65 YEARS,
OCC. AGRICULTURE AND BUSINESS,
R/O. CTS NO.2732, P.B. ROAD,
SANKESHWAR-591313, TAL. HUKKERI,
DIST. BELAGAVI.

...APPELLANT

(BY SMT. P.G. NAIK, ADVOCATE)

AND:

1. SMT. KRISHNABAI D/O. DATTOBA BHOVI,
CALLING HERSELF AS W/O. RAMU BHOVI,
AGE: 76 YEARS, OCC. HOUSEHOLD WORK,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
2. SRI. CHANDRAKANT S/O. KRISHNABAI BHOVI,
CALLING HERSELF AS S/O. RAMU BHOVI,
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
3. SRI. RAJU S/O. KRISHNABAI BHOVI,
CALLING HERSELF AS S/O. RAMU BHOVI,
SINCE DECEASED BY HIS LRS.



- 3A. SMT. SHASHIKALA W/O. RAJU BHOVI,
AGE: 48 YEARS, OCC. HOUSEHOLD WORK,
R/O. 2734, BHOVI CHAAL,
OLD P.B. ROAD, SANKESHWAR-591313,
TQ. HUKKERI, DIST. BELAGAVI.
- 3B. SMT. PREETI D/O. RAJU BHOVI,
AGE: 26 YEARS, OCC. HOUSEHOLD WORK,
R/O. 2734, BHOVI CHAAL,
OLD P.B. ROAD, SANKESHWAR-591313,
TQ. HUKKERI, DIST. BELAGAVI.
- 3C. SMT. VINAYAK S/O. RAJU BHOVI,
AGE: 24 YEARS, OCC. STUDENT,
R/O. 2734, BHOVI CHAAL,
OLD P.B. ROAD, SANKESHWAR-591313,
TQ. HUKKERI, DIST. BELAGAVI.
4. SMT. PUSHPA W/O. SURYAKANT BHOVI,
AGE: 47 YEARS, OCC. HOUSEHOLD WORK,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
5. SRI. SACHIN S/O. SURYAKANT BHOVI,
AGE: 32 YEARS, OCC. AGRICULTURE,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
6. MISS KIRTI D/O. SURYAKANT BHOVI,
AGE: 30 YEARS, OCC. HOUSEHOLD WORK,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
7. SRI. PRABHAKAR S/O. KRISHNABAI BHOVI,
CALLING HERSELF AS S/O. RAMU BHOVI,
AGE: 53 YEARS, OCC. AGRICULTURE,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.



8. SRI. RAMACHANDRA S/O. SIDRAM BHOSALE,
AGE: 59 YEARS, OCC. BUSINESS,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
9. SRI. IMAMHUSSAIN ABBAS MULLA,
AGE: 54 YEARS, OCC. BUSINESS,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
10. SRI. GUNDURAO M. BEDAGE
AGE: 49 YEARS, OCC. BUSINESS,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
11. SRI. SURESHH MALLAPPA MERAGALI
AGE: 59 YEARS, OCC. BUSINESS,
R/O. P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
12. SRI. GANGAYYA BASAYYA JATTI
AGE: 34 YEARS, OCC. BUSINESS,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
13. SRI. ISHWAR IRAPPA UPPAR
AGE: 49 YEARS, OCC. SERVICE,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
14. SRI. PANDURANG S. KULKARNI,
AGE: 69 YEARS, OCC. CLERK,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
15. SRI. ISSAYYA B. BONNURMATH,
AGE: 46 YEARS, OCC. DRIVER,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.



16. SRI. KARIBASAPPA MEGHARAJA SINGE,
AGE: 49 YEARS, OCC. SERVICE,
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.
17. SRI. BASAYYA G. JATTI,
AGE: 64 YEARS,
OCC. SERVICE AND AGRICULTURE
R/O. OLD P.B. ROAD, SANKESHWAR-591313,
TAL. HUKKERI, DIST. BELAGAVI.

...RESPONDENTS

(BY SRI. NAVEEN R. MELINAMANI, ADVOCATE FOR R2;
R1, R3(A), R3(B), R3(C) AND R4 TO R11, R18 AND
R19-NOTICE SERVED;
R12 TO R17-DELETED)

THIS RSA IS FILED U/SEC.100 OF CPC, PRAYING TO
ALLOW BY MODIFYING THE JUDGMENT AND DECREE IN
R.A.NO.67/2008 DATED 21.11.2016 BY THE II ADDITIONAL
DISTRICT JUDGE, BELAGAVI, AND THE JUDGMENT AND DECREE
IN O.S.NO.36/1999 DATED 25.01.2008 PASSED BY THE CIVIL
JUDGE, SENIOR DIVISION, HUKKERI AND DECLARING THAT THE
APPELLANT (PLAINTIFF NO.2) IS THE ABSOLUTE OWNER OF THE
SUIT PROPERTY AND CONSEQUENTLY INJUNCTION MAY KINDLY
BE GRANTED, IN THE ENDS OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER.



ORAL JUDGMENT

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

Heard learned counsel appearing for the appellant and respondents.

2. The present appeal is filed by the plaintiff No.2 in O.S.No.36/1999. This case has a chequered history. The plaintiffs filed a suit for declaration and mandatory injunction and in the alternative, the relief of partition and separate possession of their legal shares. The Trial Court had decreed the suit by judgment dated 25.01.2008 and against that, the plaintiffs had filed an appeal in R.A.No.67/2008 and a cross appeal was also filed by the defendants. The appeal and the cross-appeal were disposed of on 06.08.2012 and it was challenged before this Court in RSA No.6081/2012. This Court by judgment dated 28.06.2016 allowed the appeal and remanded the matter back to the First Appellate Court to consider all the interlocutory applications filed by the appellants under Order XLI Rule 27 of CPC. The First Appellate Court, by the impugned judgment dated 14.11.2016, disposed of the appeal with the following order:



"Appeal and cross objection are partly allowed. Both the parties shall bear their own costs.

Judgment and decree passed by the learned Senior Civil Judge, Hukkeri in O.S.No.36/1999 dated 25.01.2008 is confirmed subject to modification of the shares in view of subsequent event. Plaintiff No.2 and defendants No .2 to 5 each entitled for 1/5th share in the suit schedule properties. They are entitled for partition and separate possession of their respective shares.

I.A.No.V and VI filed by the appellants U/o.41 Rule 27 of CPC are rejected.

Send back LCR to the trial Court along with copy of the judgment."

3. The case of the plaintiffs as made out is that, they are the children of Ramu Bovi. The defendants 1 to 5 are the fifth wife and children of Ramu Bovi. Obviously, during the lifetime of the first wife, all other marriages are illegal and *non-est* in the eye of law. However, in view of the judgment of the Apex Court in the case of **Revana Siddappa and another**



v. Mallikarjuna and others¹, the illegitimate children will also have a share in a share that may be allotted to the father by effecting a notional partition. It is relevant to note that the illegitimate children will get a share in the share that may be allotted to the father but not as coparceners. By impugned judgment, the First Appellate Court has held that the respondents are also legitimate children of Ramu Bovi. In other words, if the suit schedule properties are held to be the self-acquired properties of Ramu Bovi, then the share allotted by the First Appellate Court would prevail. If it is held that the suit schedule properties are the ancestral properties, as contented by the plaintiff in the plaint, then a notional partition has to be effected between the plaintiff and his father-Ramu Bovi, where the son would get a half share and the remaining half being allotted notionally to Ramu Bovi, would devolve upon the plaintiff and all other illegitimate children also. Therefore, the crucial question would be, whether the suit schedule properties are the ancestral properties or the self-acquired properties of Ramu Bovi.

¹ (2023) 10 SCC 1



4. The perusal of Ex.P.26 and the City Survey Extracts show that even prior to the entry of the name of Ramu Bovi, the name of Shettappa was recorded, but however, to show that Shettappa was holding the property and it had devolved upon Ramu Bovi, no conclusive material is available.

5. The appellant had filed an application under Order XLI Rule 27 of CPC seeking to produce certain documents, which would show that the suit schedule properties were earlier bearing Survey No.2216 and 2217 and later, they were renumbered as 2680 and 2681. These VPC numbers pertain to the suit schedule properties as may be seen from Ex.P26. If the additional evidence was considered by the First Appellate Court, then definitely it would have a bearing on the question whether it is ancestral property or the self-acquired property of Ramu Bovi. Under these circumstances, it was incumbent upon the First Appellate Court to consider the application filed under Order XLI Rule 27 of CPC. The First Appellate Court in paragraph 27 and 28 has observed as below:

"27. Appellants contended that, suit properties were ancestral joint family property and U/Sec. 16



of Hindu Marriage Act illegitimate children are not entitled for share in the ancestral property and they have share in the property of father. On this count also respondents No.2 to 5 are not entitled for share. The pleadings of plaintiffs in this regard is very vague. In the plaint there is a stray sentence, stating that Ramu Bovi inherited the property from his father and it was an ancestral property. There is no pleading of much facts in the plaint. In the evidence of plaintiffs, no explanation were stated as to how father of late Ramu Bovi acquired the suit properties and inherited by late Ramu Bovi. How Shetteppa, father of the Ramu Bovi became owner of the suit property is not at all stated in the plaint. It appears after giving the benefit of Sec. 16 of Hindu Marriage Act, plaintiffs became alert and contending that it was ancestral joint family property, without sufficient pleadings and proof.

28. Learned Advocate for appellants produced the documents under I.A No.V and VI, which are the assessment register of the suit properties, wherein name of Shetteppa was shown as occupier of the said property and there after his name was bracketed and name of late Ramu Bovi was shown. In the said documents, there is no reference about title of the late Shetteppa Bovi. However, the true copy of enquiry assessment register Book No.8, which is mentioned that, Sri. Jagadguru



Shankaracharya Math "Ramu Shetteppa Bovi permanent lessee paying annual rent of Rs.1.37 to the holder". It indicates that, late Ramu Bovi became permanent lessee by paying the rent. Defendants No.1 to 5 produced Ex.D.88 and 89 i.e. CTS Extract, wherein Ramu Bovi was shown as permanent lessee. The said documents were already on record. Therefore there was no need of additional evidence in this respect. Recital of the Ex.D.88 and 89 clearly indicates that, Ramu Bovi acquired right of permanent lease and hence the contentions of the appellants that, it was ancestral joint family property of Shetteppa Bovi is not supported by any of the material documents including the proposed evidence of the appellants."

6. It is pertinent to note that the finding of the First Appellate Court that in none of the documents there is any reference about the title of Shettappa Bovi is patently incorrect. If it had considered the documents, which were produced along with the application filed under Order XLI Rule 27 of CPC, definitely it would have noticed the name of Shettappa Bovi appearing in the Panchayat records.

7. It is also necessary to note that, earlier the VPC numbers were given to the suit schedule properties and



thereafter there was introduction of city survey. When city survey was introduced, the Government held an enquiry and the enquiry officer recorded the manner in which the holders of the property have acquired it and it stands in their names. The nature of the holding was also recorded and it was entered in the City Survey records. Thus, the City Survey records reflect as to whether a person holding the property is a lessee or a holder or a mortgagee etc., Obviously, the City Survey records depict that the said Ramu Bovi was the lessee and Shankaracharya Mutt was the holder. It is evident that, by that time in the year 1962-63, Shettappa was no more. Therefore, it is necessary to ascertain whether Shettappa had acquired the property prior to the introduction of the City Survey and if some of the documents produced under Order XLI Rule 27 throw some light on it, then those documents become relevant under Order XLI Rule 27(b) of the CPC. Obviously, the First Appellate Court has lost sight of this aspect. That is how the second substantial question of law raised by this court on 27.04.2017 becomes relevant for the purpose of this order.



8. This Court has come to the conclusion that the observations of the First Appellate Court insofar as the IA's filed under Order XLI Rule 27 of CPC are incorrect. Therefore, the matter has to be remanded back to the First Appellate Court with a direction to consider the additional evidence let in by the appellant and then render its finding. Hence the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment of the First Appellate Court is set aside.
- (iii) The applications filed under Order XLI Rule 27 of CPC stand allowed.
- (iv) The parties are at liberty to adduce any additional oral evidence, if necessary, keeping in view the documents, which are sought to be produced are public documents or extracts of the public documents.



- (v) The First Appellate Court shall render its finding as to whether the suit schedule properties are ancestral properties or self-acquired properties of Ramu Bovi and then calculate the shares keeping in view the judgment of the Apex Court in the case of ***Revanasiddappa (referred supra)***.
- (vi) The all other interlocutory applications stand disposed of.
- (vii) The First Appellate Court is expected to render the judgment within three months from the date of appearance of the parties before the First Appellate Court.
- (viii) Both the parties are directed to appear before the First Appellate Court on 12.01.2026 without waiting for notice by that court.

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