



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 30TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO. 100091 OF 2018 (PAR/POS)

BETWEEN:

1. BHIMAGOUDA
S/O RUDRAGOUDA PATIL
(SINCE DECEASED ON 20.06.2021
RESPONDENT NO.8 TO 14 ARE THE
LR'S OF APPELLANT NO.1)

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 01.12.2021)

2. CHAMPABAI
W/O BHIMAGOUDA PATIL
AGED 63 YEARS
OCC AGRICULTURE AND HOUSEHOLD
R/O MELAVANKI TALUK GOKAK
DIST. BELAGAVI - 591 218

...APPELLANTS

(BY SRI.SHRIHARSH A. NEELOPANT, ADV.
VIDE ORDER DATED 01.12.2021 R8 TO R14 ARE
LRS. OF DECEASED A1)

AND:

1. KUMARI PREETI
D/O RAMAGOUDA PATIL
AGED ABOUT 19 YEARS
OCC.STUDENT, R/O MELAVANKI
GOKAK TALUK, BELAGAVI DIST - 5912 218
2. KUMAR BASAVARAJ
S/O RAMAGOUDA PATIL
AGED 17 YEARS, OCC. STUDENT
R/O MELAVANKI
GOKAK TALUK, BELAGAVI DIST - 591 218

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signed by
MALA K N

Location:
High Court of
Karnataka



3. KUMARI LAXMI
D/O RAMAGOUDA PATIL
AGED ABOUT 15 YEARS
OCC.STUDENT, R/O MELAVANKI
GOKAK TALUK, BELAGAVI DIST - 5912 218
4. KUMARI KEERTI
D/O RAMAGOUDA PATIL
AGED ABOUT 13 YEARS
OCC.STUDENT, R/O MELAVANKI
GOKAK TALUK, BELAGAVI DIST - 5912 218
5. MAHADEVI
W/O RAMAGOUDA PATIL
AGED ABOUT 40 YEARS
OCC.HOUSEHOLD WORK, R/O MELAVANKI
GOKAK TALUK, BELAGAVI DIST - 5912 218
6. BASAVVA
W/O BABASAHEB PATIL
AGED ABOUT 70 YEARS
OCC.AGRICULTURE & HOUSEHOLD WORK
R/O MUGOLKODA TALUK RAIBAG
BELAGAVI DIST
7. VIJAYMALA @ JAYASHREE
W/O SIDDAGOUDA PATIL
AGED 51 YEARS OCC.AGRICULTURE
& HOUSEHOLD WORK
R/O MUGALI TALUK CHIKKUDI
BELAGAVI DIST - 591 226
8. RUDRAGOUDA
S/O BHIMAGOUDA PATIL
AGED 47 YEARS
OCC. AGRICULTURE R/O MELAVANKI
GOKAK TALUK, BELAGAVI DIST - 591 218
9. KASHIBAI
W/O ADHRUSHAGOUDA PATIL
AGED 43 YEARS OCC.AGRICULTURE &
HOUSEHOLD WORK, R/O NANDESHWARM
TALUK ATHANI, DIST BELAGAVI - 591 218
10. BASAVARAJ
S/O BHIMAGOUDA PATIL
AGED 40 YEARS



OCC.AGRICULTURE
R/O MELAVNKI TALUK GOKAK DIST
BELAGAVI - 591 218

11. MALLIKARJUN S/O. BHIMAGOUDA PATIL
AGE: 35 YEARS, OCC: AGRICULTURE
R/O. MELAVANKI, TQ: GOKAK
DIST: BELAGAVI - 591 218
12. SHANTABAI W/O. BHIMAGOUDA PATIL
AGE:52 YEARS, OCC: AGRICULTURE &
HOUSEHOLD WORK
R/O. MELAVANKI, TQ: GOKAK
DIST: BELAGAVI - 591 218
13. MAHADEVI W/O. CHANNABASAPPA
DHAWALESHWAR AGE: 52 YEARS
OCC: AGRICULTURE &
HOUSEHOLD WORK
R/O. MUDALAGI, TQ: GOKAK
DIST: BELAGAVI - 591 218
14. HANAMANTGOUDA S/O. BHIMAGOUDA PATIL
AGE: 45 YEARS, OCC: AGRICULTURE
R/O. MELAVANKI, TQ: GOKAK
DIST: BELAGAVI - 591 218
15. JAYASHREE W/O. BASAVARAJ B PATIL
AGE: 40 YEARS, OCC: AGRICULTURE &
HOUSEHOLD WORK
R/O. URABHINAHATTI, TQ: GOKAK
DIST: BELAGAVI - 591 307
16. APPUGOUDA W/O. BHIMAGOUDA PATIL
AGE: 37 YEARS, OCC: AGRICULTURE
R/O. MELAVANKI, TQ: GOKAK
DIST: BELAGAVI - 591 218

SINCE RESPONDENT NOS.2,3,4 ARE
MINORS HENCE, REP.BY THEIR
MOTHER/GUARDIAN RESPONDENT
NO.5 HEREIN

... RESPONDENTS

(BY SRI.S.BASAVARAJ, SR.COUNSEL FOR
SRI.HARSHAWARDHAN M. PATIL, ADV. FOR R6;
VIDE ORDER DATED 30.09.2020,
NOTICE TO R1 TO R5 AND R7 TO R16
IS DISPENSED WITH)



THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 07.03.2018 PASSED IN O.S. NO.258/2013 ON THE FILE OF THE II-ADDITIONAL SENIOR CIVIL JUDGE, GOKAK, DECREERING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL, PERTAINING TO DHARWAD BENCH, HAVING BEEN HEARD AND RESERVED ON 08.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY THROUGH VIDEO CONFERENCE AT BENGALURU BENCH, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SHIVASHANKARE GOWDA)

In this appeal, defendant Nos.1 and 2 have challenged the judgment and decree dated 07.03.2018 passed in O.S.No.258/2013 by the II Additional Senior Civil Judge and JMFC, Gokak, decreeing the suit of plaintiff No.6 by declaring that she is entitled to half share in the suit schedule properties.

2. Respondent Nos.1 to 6 were plaintiff Nos.1 to 6 and respondent Nos.7 to 16 were defendant Nos.3 to 13 before the Trial Court. For the sake of convenience,



the rank of the parties shall be referred to as they stood before the Trial Court.

3. Facts of the case in brief are that, originally plaintiff Nos.1 to 5 filed the suit claiming 1/12th share in the suit properties on the ground that the suit properties are the ancestral joint family properties of them and the defendants as there is no partition in the family and they are entitled to share.

3.1. Defendant Nos.1 and 2 contested the suit by filing the written statement. It is their case that the propositus Rudragouda died on 07.10.1955 leaving behind his first wife Akkavva and second wife Channavva. Defendant No.1 is the son of Akkavva. The second wife Channavva had no issues. Plaintiff No.6, who was initially arrayed as defendant No.8 in the suit, was not the daughter of Basavva. The propositus Rudragouda was working as a Police Patil (village head), during the said period, he traced an orphan



child at Melavanki village. In spite of his best efforts, he could not trace out the parents of the said child. Hence, he brought that child to his house and fostered her, who is none other than plaintiff No.6, the original defendant No.8. For the better future of plaintiff No.6, the propositus Rudragouda got entered his name as her father, wherein plaintiff No.6, taking undue advantage of the said entries, is claiming to be the biological daughter, but she is not entitled to any share in the suit schedule properties.

4. During the pendency of the suit, there was a *inter se* compromise between plaintiff Nos.1 to 5 and defendant No.1, they filed a memo seeking withdrawal of the suit. Plaintiff No.6 who was defendant No.8 filed an application seeking transposition of herself as plaintiff. The memo seeking withdrawal of the suit was rejected. As per the order dated 11.02.2014, defendant No.8 was permitted to transpose herself as



plaintiff No.6. Accordingly, the suit is now between plaintiff No.6 and the defendants.

5. After transposition of defendant No.8 as plaintiff No.6 by way of amendment, para-5(a) was inserted in the plaint contending that suit properties are ancestral joint family properties, that during the lifetime of her father, she was in joint possession and enjoyment of the suit properties. There was no partition by metes and bounds during the lifetime of her father or even after his death. Defendant Nos.1 and 2, in active collusion with others in order to defeat her claim got transferred some of the properties in their names by creating vardi without her consent and knowledge. It will not create any right in their favour, she is entitled to her legitimate share and in addition to the plaint schedule, she also added 6 items of the open space and house properties situated at Melavanki as 'B' schedule property.



6. In reply to this pleading, defendant No.1 pleaded that, he being the sole son of propositus Rudragouda, who died intestate, acquired all the properties of his father and became the absolute owner. He married defendant No.2/Champabai as first wife and also married defendant No.9/Shantabai as the second wife. Defendant Nos.3 to 7 are his children born to the first wife, defendant Nos.10 to 13 and one Ramagouda are the children born to the second wife, defendant No.9 and plaintiff Nos.1 to 4 are the children born to his son deceased Ramagouda. He admits that item Nos.1 to 7 of the plaint schedule are the joint family properties and as per the advice of the elders, plaintiff Nos.1 to 5 withdrew the suit. After withdrawal, defendant No.8 transposed herself as plaintiff No.6, but she being the fostered daughter of propositus Rudragouda, she has no legal right to seek partition and her claim is required to be rejected.



7. Defendant Nos.3 to 7 and 9 to 13 were placed *ex-parte* before the Trial Court.

8. The Trial Court framed the following issues:

"(i) Whether the transposed plaintiff No.6 (defendant No.8) proves that she is the daughter of propositus Rudragouda as alleged?

(ii) Whether the transposed plaintiff No.6 is entitled for 1/2 share in the suit properties as alleged?

(iii) Whether the transposed plaintiff No.6 is entitled for the relief of partition as prayed?

(iv) What order or decree?"

9. Before the Trial Court, plaintiff No.6 examined herself as PW.1 and exhibited 23 documents as Exs.P1 to 23 and defendant got examined himself as DW.1 and exhibited 3 documents as Exs.D1 to 3.

10. After hearing both sides, the Trial Court recorded positive findings in respect of issue Nos.1 to 3 and ultimately decreed the suit declaring that plaintiff No.6 is entitled to half share, defendant Nos.1, 3 to 7 together are entitled to half share in the suit



properties. Aggrieved by the same, defendant Nos.1 and 2 have filed this appeal on various grounds.

11. We have heard the arguments of Sri.Shriharsh A. Neelopant, learned counsel for defendant Nos.1 and 2 and Sri. Basavaraju, learned Senior Counsel for Sri. Ramesh I. Zirali, learned counsel for plaintiff No.6.

12. It is contended by the learned Counsel for defendant Nos.1 and 2 that plaintiff No.6 is not biological daughter of propositus Rudragouda and Channavva, she is only a fostered daughter and she has no right to seek partition. It is also contended that propositus Rudragouda died prior to 1955 and as per The Hindu Women's Rights To Property Act, 1937 (for short, 'Act 1937'), plaintiff No.6 is not entitled to any share. Plaintiff No.6 has not proved her biological relationship with the defendants and defendant No.1 being the sole legal heir, is entitled to the entire property as he can exercise right of reversion in



respect of property of Channavva, who had only a limited right.

13. Per contra, learned counsel for plaintiff No.6 contended that the plaintiff has placed evidence in proof of biological relationship. Even if Channavva is considered as the second wife, plaintiff No.6 was born on 24.08.1955, the two wives of Rudragouda acquire equal right in the suit schedule properties after demise of Rudragouda. Channavva died in the year 2010 and in view of the Hindu Succession Act, 1956 (for short, 'Act 1956'), her limited right enlarged into absolute right. Plaintiff No.6 being the daughter is entitled to succeed to the properties of her mother Channavva. Defendant No.1 and plaintiff No.6 being the son and the daughter of the propositus Rudragouda, are entitled to equal share in the suit properties. The Trial Court, accordingly decreed the suit and he supported the impugned judgment.



14. We have given our anxious consideration to the arguments addressed on behalf of both parties and perused the material on record.

15. The points that arise for our consideration are:

- (i) Whether the finding of Trial Court that plaintiff No.6 / defendant No.8 is the biological daughter of propositus Rudragouda, is correct?
- (ii) Has the Trial Court correctly held that plaintiff No.6/defendant No.8 is entitled to half share?
- (iii) What Order?

Reg.Point No.(i):

16. The claim of plaintiff No.6 / defendant No.8 is that she is the biological daughter of the propositus Rudragouda to his second wife Channavva, but defendant Nos.1 and 2 have denied that she is the biological daughter and assert that she is only a fostered daughter. In order to establish the biological relationship, the plaintiff in the witness box has asserted that she is the daughter of propositus



Rudragouda. To prove the same, she produced the school records and Birth Certificate issued by the Government Primary School, Melavanki as per Ex.P13, her birth certificate as per Ex.P14 and the order of the Assistant Commissioner, Bylahongala in No.RTA.AP-260/14-15 dated 16.09.2016 as per Ex.P23. The plaintiff has been cross-examined on the said documents, wherein the name of plaintiff No.6 is referred to as Basavva Rudragouda Patil. In the school records and also in the Birth Certificate, the name of her father is referred as Rudragouda @ Appugouda Bheemagouda Patil, much has been argued on the genuineness of this document referring to the date of issuance in the year 2018 and also non-examination of its author. These documents have evidentiary value as the 1st defendant himself admitted that his father has left his name to plaintiff No.6 in the school records. Now the burden is on him to rebut it. No evidence was made available on his behalf to support his contention.



17. In ***Thirnmakku and others -vs- Bandlu Rangappa and others***¹, Co-ordinate Bench of this Court held that when the recitals of a document with reference to relationship is entered into, such recitals cannot be treated as substantive evidence unless evidence is placed about source of such information. As we notice from the pleadings and evidence of defendant No.1, who admits that his father has lent his name to plaintiff No.6 as natural father, reverse burden is on him to explain such source. In the absence of such reverse evidence, plaintiff cannot be asked to prove her biological relationship. Hence, law laid down in the above case is not applicable to the facts of this case.

18. We have given our anxious consideration to the cross-examination of plaintiff No.6. We do not find any substance which dislodges her from claiming that she is the biological daughter of propositus Rudragouda. Undisputedly, propositus was a Police

¹ (1977) 1 KarLJ 206



Patil of the Melavanki Taluk, till his death. It has been suggested to plaintiff No.6 that she was not the biological daughter and she was only the fostered daughter. Neither she denies nor admits it. Such suggestion did not bring it as admission that she is a fostered daughter. We have to consider the evidence in its entirety with reference to pleadings.

19. There is no dispute that the propositus Rudragouda had two wives. One is Akkawwa, the first wife and Channavva, the second wife. In the argument it has been addressed that both are natural sisters. During the pendency of the appeal, an application was filed on behalf of plaintiff No.6 that she is ready to subject herself for DNA examination and the said application was allowed, the DNA Centre, Dharwad was requested to give DNA profile of the plaintiff and the defendants and the blood samples were also drawn. The DNA report is also received indicating that Rudragouda, defendant No.4 and defendant No.7 are



the biological brothers. But the relationship of plaintiff No.6 with these persons was not established for want of 'X' chromosomal STR profile, none of the female members of the family came forward to give blood samples for DNA profile. The DNA examination technically failed and it will have no assistance for plaintiff No.6 to establish the same. But DNA report is not against plaintiff No.6. In a civil suit, the proof of documents and the evidence has to be appreciated within the ambit of the available evidence on the test of preponderance of probability. As we have noticed from the evidence of the plaintiff, we do not find any material to discard her evidence that she is the biological daughter of Channavva and original propositus Rudragouda.

20. We have also carefully evaluated the evidence of defendant No.1. Though he reiterates his written statement, during the course of his cross-examination, it is brought out that he has no record to show that plaintiff No.6 was an Orphan, fostered by his



father. He admits in the cross-examination that in the school records, the father's name of plaintiff No.6 is entered as Rudragouda. When such being the case, the argument with regard to Exs.P13 and 14 is to be answered in such a way that at an undisputed point of time, father of plaintiff No.6 was recognized as Rudragouda, who is the propositus. Therefore, we do not find any reason to accept that plaintiff No.6 is the fostered daughter. In the absence of any evidence to show that plaintiff No.6 is the fostered daughter and she is not the natural daughter of Rudragouda, on the basis of evidence on record we are constrained to hold that plaintiff No.6 is the biological daughter of propositus Rudragouda and Channavva. Hence, we answer point No.(i) accordingly.

Reg.Point No.(ii):

21. In view of our findings on point No.(i), plaintiff No.6 is to be treated as the biological daughter of Channavva and Rudragouda. There is no dispute that Channavva is the second wife of Rudragouda.



Rudragouda died on 07.10.1955. Plaintiff No.6 was born on 24.08.1955, thereby she is the daughter of second wife. Partition was opened for her in the year 1955. As the suit properties belong to joint family, as rightly argued by Sri.Shriharsh Neelopant, 'Act 1937' is not applicable. 'Act 1937' is applicable only to the separate property of the propositus Rudragouda. Prior to 1956, wives were entitled to limited right which is called 'life estate'. By virtue of Act 1956, their limited right becomes absolute right, thereby the limited right of Channavva became her absolute right post 1956 as she died subsequent to 1956.

22. The defendants want to rely upon the mutation as per Ex.D1 and Form No.7 filed by Channavva to the Land Tribunal, Gokak as per Ex.D2 and Form No.10 issued as per Ex.D3. Referring to the recitals made in the said documents, it is argued that defendant No.1 is the only son of the propositus Rudragouda and when Channavva filed Form No.7 to



the Land Tribunal, she mentioned the details of family members as herself and there was no reference to plaintiff No.6. Even in the Form No.10, the name of Channavva has been entered to an extent of 1/4th share in the suit properties. These documents will not come to the aid of the defendants to dislodge plaintiff No.6. Suit properties being the joint family properties enjoyed by the first wife Akkawwa and second wife Channavva, thereby they became the joint family properties and their right has to be determined according to Section 8 of the Act 1956.

23. The argument of the learned counsel for the defendants that upon the death of Channavva, the properties of Channavva reverted back to the family of Rudragouda cannot be accepted as Basavva being the natural daughter of Channavva succeeded to the share of Channavva.

24. Since the parties belong to Bombay-Karnataka area, succession opened on 17.09.1955.



Right of the plaintiff No.6 was crystallized only after death of her mother, which was subsequent to 1956. The two wives of Rudragouda take one share each and Bhimagouda/defendant No.1 would get one share. Plaintiff No.6 being the female member was not a member of coparcenery. The two wives took half share jointly. Out of said half share, the share of Channavva was $\frac{1}{4}^{\text{th}}$, and that of Akkavva was also $\frac{1}{4}^{\text{th}}$. $\frac{1}{4}^{\text{th}}$ share of Akkavva is succeeded by her children, thereby defendant No.1 gets $\frac{1}{2} + \frac{1}{4}^{\text{th}}$ i.e. $\frac{3}{4}^{\text{th}}$ share and Basavva/plaintiff No.6 takes $\frac{1}{4}^{\text{th}}$ share of her mother. We are not persuaded to accept argument of learned counsel for defendant No.1 that plaintiff No.6 is not entitled to share under the Act 1956. Accordingly, we answer point No.(ii).

Reg.Point No.(iii):

25. From the foregoing discussion, the judgment of the trial Court is required to be modified and hence the following:



ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned judgment and decree passed by the Trial Court is modified declaring that plaintiff No.6 is entitled to 1/4th share in the suit schedule properties by metes and bounds.

Decree shall be drawn accordingly.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

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