



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100852 OF 2014 (PAR)

BETWEEN:

SMT. JAYARABI
W/O. MAHABUBASAB NAVALUR,
AGE: 69 YEARS,
OCC. HOUSEHOLD WORK,
R/O. 14, AMARGAOL PLOT, AMARGOL,
TQ. HUBBALLI,
DIST. DHARWAD-580002.

...APPELLANT

(BY SRI. SANTOSH B. RAWOOT, ADVOCATE)

AND:

1. SHRI MAKTUMSAB
S/O. MOULASAB KONNUR @ KARNACHI,
AGE: 44 YEARS,
OCC. AGRICULTURE,
2. SHRI HAJARATSAB
S/O. MOULASAB KONNUR @ KARNACHI,
AGE: 46 YEARS,
OCC. AGRICULTURE,
3. SHRI GUDUSAB
S/O. IMAMSAB KONNUR @ KARNACHI,
AGE: 66 YEARS,
OCC. AGRICULTURE,
4. SMT. PHATOBHI
W/O. KASHIMSAB KONNUR @ KARNACHI,
AGE: 61 YEARS,
OCC. AGRICULTURE,



5. SHRI HAZARATSAB
S/O. GUDUSAB KONNUR @ KARNACHI,
AGE: 42 YEARS,
OCC. AGRICULTURE,
6. SMT. PHATOBHI
W/O. HAZRATSAB KONNUR @ KARNACHI,
AGE: 40 YEARS,
OCC. AGRICULTURE,

ALL RESPONDENTS ARE RESIDING AT
JALAGAR ONI, HEBBALLI,
TALUK AND DIST: DHARWAD-580002.

...RESPONDENTS

(BY MISS BINDU GANACHARI, ADVOCATE FOR
SRI. V.M. SHEELAVANTH, ADVOCATE FOR R1;
SRI. M.G. MALAWADE, ADVOCATE AND
SMT. NANDA M. MALAWADE, ADVOCATE FOR R2;
R3 TO R6-NOTICE DISPENSED WITH)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO
ALLOW THE APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE
PASSED BY THE FAST TRACK ADDL. M.A.C.T., DHARWAD IN
R.A.NO.104/2012, DATED 20.08.2014 REVERSING THE JUDGMENT
AND DECREE PASSED BY THE III ADDL. SENIOR CIVIL JUDGE AND
CJM, DHARWAD IN O.S.NO.172/2008 DATED 10.04.2012 AND
CONFIRM THE JUDGMENT AND DECREE PASSED BY THE III ADDL.
SENIOR CIVIL JUDGE AND CJM, DHARWAD IN O.S.NO.172/2008
DATED 10.04.2012, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION 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 short point that emerges in this appeal is, "whether the calculation of shares by the First Appellate Court is proper or not?"

3. This appeal is filed by the plaintiff in O.S.No.172/2008, who succeeded in getting a decree from the Trial Court and later in R.A.No.104/2012, the same came to be modified reducing the share of the plaintiff.

4. The facts, as may be seen from the records, is that Imamsab was the propositus and he had three sons and a daughter. The plaintiff is the daughter and the defendant No.1 to 3 represent the branch of Moulasab, defendant No.6 and 7 are the sons of another son Gudusab, and the defendant No.5 represents the branch of the third son Kashimsab. The case of the plaintiff is that after demise of the propositus, the plaintiff



and her three brothers have acquired rights in the suit schedule properties held by him and the properties at Item No.1 and 2 are standing in the name of the plaintiff and defendants, and the properties at Item No.3 and 4 are still standing in the name of Imamsab. It was contented that the plaintiff has got 1/4th share in the suit properties and the other three sons are having the remaining share. When the plaintiff requested for partition, it was refused and therefore, she filed the suit.

5. The defendants appeared before the Trial Court and resisted the suit contending that the said Imamsab had bequeathed his 1/3rd share in favour of defendant No.2 under a Will and therefore, only the remaining portion has to be partitioned.

6. The Trial Court framed appropriate issues and after the evidence was led, the Trial Court held that the plaintiff is entitled for 1/7th share in all the suit schedule properties and that the Will executed by Imamsab was not binding on the share of the plaintiff. Being aggrieved, the defendants No.2 approached the First Appellate Court in R.A.No.104/2012.



7. After re-appreciating the evidence on record, the First Appellate Court noticed that the Will would only bind the deceased-Imamsab to the extent of his $1/3^{\text{rd}}$ share in the properties, which he was entitled to and therefore, he could not have executed the Will exceeding his $1/3^{\text{rd}}$ share. After calculating the extent of the lands involved, it held that the plaintiff is entitled to $1/7^{\text{th}}$ share in Item No.1 and 2 of the suit schedule properties, but not in the remaining properties. It held that $1/3^{\text{rd}}$ share of Imamsab is covered in respect of Item No.3 and 4 properties. It also held that the Will dated 24.03.2004 by Imamsab was not binding upon the share of the plaintiff. Being aggrieved, the plaintiff is before this Court in appeal.

8. The learned counsel for the appellant submits that the plaintiff is entitled for $1/7^{\text{th}}$ share in all the suit schedule properties and the Will without the consent of the sharers is not valid. Therefore, he submits that the First Appellate Court could not have upheld the Will to be binding on the share of the plaintiff. In other words, it is his contention that the plaintiff is also entitled for a share in Item No.3 and 4 of the suit schedule properties.



9. A careful perusal of the records would reveal that the plaintiff, being the daughter of Imamsab, takes half of the sons share as a residuary but not as a share. It is also settled proposition of law under the principles of Mohammedan Law that a testator cannot bequeath any share beyond his share in the property i.e., $\frac{1}{3}^{\text{rd}}$. If at all he wants to bequeath the property to any of the sharers, then he has to take the consent of other sharers for such bequeath. Considering this aspect, the First Appellate Court held that bequeath by the deceased-Imamsab was only to the extent of $\frac{1}{3}^{\text{rd}}$ share in favour of defendant No.2. Therefore, the First Appellate Court excluded the said $\frac{1}{3}^{\text{rd}}$ portion from the suit schedule properties, which forms the Item No.3 and 4. The First Appellate Court has calculated the total extent of the lands under Schedule 1 to 4 and held that it binds only in respect of the Item No.3 and 4 and ordered partition in respect of the remaining properties i.e., Item No. 1 and 2.

10. It is also pertinent to note that the grandchildren will not take as sharers and they will take as residuary, provided their father is not alive. Under these circumstances, this Court does not find any reason to interfere with the calculations and



the bifurcation of shares made by the First Appellate Court. It has rightly considered the extent of the land available and the land which may be permissible to be bequeathed under a Will of a Mohammedan. It has also considered the share that is entitled by the residuary in the light of the provisions of the Mohammedan Law and held that the plaintiff cannot seek partition in respect of the 1/3rd share of Imamsab, which is under bequeath. Hence, this Court finds no reason to interfere with the finding of the First Appellate Court. In the result, no substantial question of law arises and therefore, the appeal being bereft of any merits stands dismissed.

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

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

RKM, YAN
CT:PA
LIST NO.: 1 SL NO.: 12