



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.100984 OF 2018 (PAR)

BETWEEN:

SRI. RAMESH S/O. NANDEPPA BIRADAR,
AGE: 58 YEARS, OCC. TREASURE IN BTDA OFFICE,
R/O. VIDYGIRI, TQ. AND DIST. BAGALKOTE-587101.

...APPELLANT

(BY SRI. M.C. HUKKERI, ADVOCATE)

AND:

1. SRI. PRAVEEN S/O. RAMESH BIRADAR,
AGE: 32 YEARS, OCC. WORKING IN JAMKHANDI SUGARS,
R/O. TEACHERS COLONY JAMKHANDI,
TQ. JAMKHANDI, DIST. BAGALKOTE-587301.

2. SMT. SHIVALEELA W/O. MALLAPPA BALAGAR,
AGE: 38 YEARS, OCC. HOUSEHOLD WORK,
R/O. KONNUR, TQ. JAMKHANDI, DIST. BAGALKOTE,
NOW RESIDING AT HUNNUR,
TQ. JAMKHANDI, DIST. BAGALKOTE-587301.

3. SMT. SULOCHANA W/O. RAMESH BIRADAR,
AGE: 50 YEARS, OCC. HOUSEHOLD WORK,
R/O. TEACHERS COLONY, JAMKHANDI,
TQ. JAMKHANDI, DIST. BAGALKOTE-587301.

...RESPONDENTS

(BY SRI. KOUJALAGI C.L., ADVOCATE FOR R1 AND R3;
SRI. S.C.BHUTI, ADVOCATE FOR R2)

THIS RSA IS FILED U/SEC.100 OF CPC, PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE JUDGMENT & DECREE PASSED IN R.A.NO.155/2017 BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, BAGALKOTE, SITTING AT JAMAKHANDI, DATED 23.11.2018 AND THE JUDGMENT AND DECREE PASSED IN O.S.NO.61/2010 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE, JAMKHANDI, DATED 31.10.2017 AND SUIT OF THE PLAINTIFF MAY BE DISMISS WITH COST AND ETC.

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THIS APPEAL, COMING ON FOR ORDERS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

ORAL JUDGMENT

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

The respondents have filed I.A.No.1/2025 seeking certain documents from the Chief Engineer, Bagalkot Town Development Authority, Vidyagiri Bagalkot. Learned counsel appearing for the respondents submits that the respondents are not pressing I.A.No.1/2025. Accordingly, I.A.No.1/2025 is disposed of as not pressed.

2. Heard the learned counsel appearing for the appellant and the respondents.

3. This appeal arises out of the concurrent findings in O.S.No.61/2010 dated 31.10.2017 and R.A.No.155/2017 dated 23.11.2018, whereby the plaintiffs were given 1/3rd share in the suit schedule properties.

4. The factual matrix that may be necessary for the purpose of this appeal is that the plaintiffs are the sons and daughter of defendant Nos.1 and 2. The plaintiffs contended that the suit schedule properties, which are the lands bearing



R.S.No.226/1+2 measuring 1 acre 30 guntas and the house bearing CTS No.3007/B/2 both situated at Jamakhandi are the ancestral properties of defendant No.1. It was contended that the plaintiffs and defendants constitute a Hindu joint family and the plaintiffs being co-parceners are having 1/3rd share in the suit schedule properties and therefore, a partition be effected in the ancestral properties.

5. They contended that an effort was made for the partition, but defendant No.1 refused the request of the plaintiffs, even though an agreement was reached between the parties on 03.08.2006. There were several other litigations which were initiated between the parties and after attainment of majority, the plaintiffs have filed the present suit.

6. The suit was resisted by the defendants contending that defendant No.1 is a government servant having handsome salary and he also had agricultural income from the suit schedule property. It was contended that the plaintiffs and defendant No.2 are living separately and there was a suit filed in O.S.No.37/2000 for partition and injunction, which came to be dismissed and the plaintiffs have not taken steps regarding the



said suit. Therefore, the defendants sought for dismissal of the suit.

7. *Inter alia*, they also contended that defendant No.2 had filed O.S.No.101/2010 for maintenance against defendant No.1 and a Crl.Misc.No.19/2008 was also filed seeking maintenance. On the basis of the above conditions, the Trial Court framed the following issues:

"ISSUES

- i) *Whether the plaintiffs prove that the suit schedule properties are the joint family properties of plaintiffs and defendants?*
- ii) *Whether the suit of the plaintiff is barred as res-judicate?*
- iii) *Whether the defendants prove that the court fee paid is insufficient?*
- iv) *Whether the plaintiffs are entitled for the relief sought for?*
- v) *What order or decree?"*

8. After adducing evidence, the Trial Court heard both sides and held issue Nos.1 and 4 in the ***affirmative*** and issue Nos.2 and 3 in the ***negative*** and proceeded to decree the suit granting 1/3rd share each to the plaintiffs.



9. The said judgment was questioned by defendant No.1 before the First Appellate Court in R.A.155/2017. The First Appellate Court after hearing both the parties dismissed the appeal.

10. Being aggrieved, defendant No.1 is before this Court in appeal. This court while admitting the appeal, framed the following substantial question of law:

"Whether the share granted to the plaintiffs of 1/3rd each by the Trial Court, which has been affirmed by the First Appellate Court, is erroneous having regard to admitted position that the defendant No.1 and the plaintiff No.2 are the parents of the plaintiff No.1 and the defendant No.2 and having regard to the same, the plaintiffs are entitled to 1/4th share each in the suit properties?"

11. The arguments by the learned counsels for the appellant and respondents were heard. The learned counsel for the appellant would submit that the suit schedule properties are the ancestral properties as contended by the plaintiffs and therefore, there should be a notional partition among the plaintiffs and defendant Nos.1 and 2 and as such the shares



allotted by the Trial Court and the First Appellate Court is erroneous.

12. *Per contra*, learned counsel appearing for the respondents submits that in view of the amending provisions of the Hindu Succession Act, plaintiff No.2 would get an equal share as a co-parcener and therefore, no fault can be found with the judgment of the Trial Court and the First Appellate Court.

13. It is pertinent to note that there is no dispute between the parties that the suit schedule properties are the ancestral properties of defendant No.1. Defendant No.1 was in possession and enjoyment of the properties inherited by him and therefore, plaintiff Nos.1 and 2 as well as defendant No.1 would constitute the co-parcenary. In the said co-parcenary, each of the co-parceners is entitled for equal share.

14. It is to be noted that in view of the amendment brought to the Hindu Succession Act in the year 2004, plaintiff No.2 is also entitled for an equal share as a co-parcener. It is not the case of defendant No.1 that there was any alienation or partition prior coming into force of the amending Act of the Hindu Succession Act. Therefore, the contention of the appellant that defendant No.2 would also get a share in the property as an



equal sharer cannot be accepted. In the partition among the co-parceners, defendant No.1 would get a share and in such share, the plaintiffs as well as defendant No.3 would be entitled for an equal share.

15. Now it is submitted that defendant No.2 is no more. In that view of the matter, the entire claim of defendant No.2 would merge with the plaintiffs and defendant No.1.

16. In that view of the matter, there is no need for interfering with the impugned judgment. Hence, the appeal is bereft of any merits and as such, the same deserves to be dismissed. Thus, answering the substantial question of law in the **negative**, the following:

ORDER

- i) The appeal is dismissed.
- ii) No order as to costs.

SD/-
(C M JOSHI)
JUDGE