



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 11TH DAY OF DECEMBER 2025

PRESENT

THE HON'BLE MR. JUSTICE R.DEVDAS

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR FIRST APPEAL NO. 100558 OF 2022 (DEC/PAR)

BETWEEN:

BASAVARAJ S/O. GURUSIDDAPPA BALEKAI,
AGE: 37 YEARS, OCC: BUSINESS, R/O. NO. 40/1,
JANGALIPETH, OLD HUBBALLI, HUBBALLI-580024.

- APPELLANT

(BY SRI. Y.R.JOGI AND
SRI. SANTOSH D.NARGUND, ADVOCATES)

AND:

1. SMT. CHAMBAVVA D/O. GURUSIDDAPPA BALEKAI,
AFTER MARRIAGE CALLED AS CHAMBAVVA,
W/O. NAGARAJ KOPPAL, AGE: 38 YEARS,
OCC: HOUSEHOLD, R/O. 1ST CROSS,
SHIVANAG BADAVANE, NEKAR NAGAR,
OLD HUBBALLI, HUBBALLI-580024.
2. SMT. MANJULA D/O. GURUSIDDAPPA BALEKAI,
AFTER MARRIAGE CALLED AS MANJULA,
W/O. NEELAPPA YALIGAR, AGE: 35 EYARS,
OCC: HOUSEHOLD, R/O. NAVALGUND ONI,
TQ: SHIGGOAN, DIST: HAVERI-581205.
3. SMT. GIRIJAVVA W/O. GURUSIDDAPPA BALEKAI,
AGE: 62 YEARS, OCC: HOUSEHOLD,
R/O. H.NO. 40/1, JANGALI PETH,
OLD HUBBALLI, HUBBALLI-580024.

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4. NAGARAJ S/O. GURUSIDDAPPA BALEKAI,
AGE: 34 YEARS, OCC: BUSIENSS,
R/O. H.NO. 40/1, JANGALI PETH,
OLD HUBBALLI, HUBBALLI-580024.
5. THE MANAGER,
KARNATAKA VIKAS GRAMEEN BANK,
OLD HUBBALLI BRANCH,
HUBBALLI-580024.

- RESPONDENTS

(BY SRI. SADASHIV S.PATIL, ADVOCATE FOR R1 TO R3;
NOTICE TO R4 AND R5 IS SERVED BUT UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF C.P.C. 1908 AGAINST THE JUDGMENT AND DECREE DATED 10.10.2022 PASSED IN O.S.NO.138/2020 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, HUBBALLI, DECREERING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION AND DECLARATION AND ETC.

THIS REGULAR FIRST APPEAL COMING ON FOR FINAL HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE R.DEVDAS)

This regular first appeal is filed at the hands of the defendant No.1 being aggrieved of the judgment and decree passed in O.S. No. 138/2020 on the file of the learned First Additional Senior Civil Judge & JMFC, Hubballi (for short, the 'trial Court').

2. For the sake of convenience the parties shall be referred to in terms of their ranking before the trial Court.

3. The propositus is Sri Gurusiddappa who had four children from his wife Smt.Girijawwa. Sri Gurusiddappa died on 21.12.2014. The suit is filed by two of the daughters along with their mother Smt.Girijawwa against the two sons Basavaraj and Nagaraj seeking partition and separate possession of the suit schedule properties while also seeking a declaration that the alleged registered document styled as "Hakku Bitta Patra" (relinquishment deed) dated 10.07.2017 as *void ab initio* and not binding on



the shares of the plaintiffs. Written statements were filed separately by defendants No.1 and 2. Having regard to the pleadings of the parties the trial Court framed the following issues.

1. *Whether the plaintiffs prove that the relinquishment deed, dated 10.07.2017 is void, ab initio and not binding on them or on their shares?*
2. *Whether the plaintiffs prove that suit schedule 'A' and 'B' properties are joint Hindu Family properties?*
3. *Whether the plaintiffs prove that they are entitled for 1/5th share each in the suit property?*
4. *Whether the plaintiff No.3 is entitled for 1/3rd share in the FD i.e. Schedule 'C' property?*
5. *What order or decree?*

4. The trial Court proceeded to allow the suit while declaring that the relinquishment deed dated 10.07.2017 is vitiated by fraud and misrepresentation and therefore it was adjudged as void document.



5. Learned counsel for the appellant/ defendant No.1 submitted that although no specific contentions were raised in the written statement filed at the hands of the defendant regarding the question of limitation, nevertheless having regard to the express provision contained in Sec. 3 of the Limitation Act, it was incumbent upon the trial Court to have framed an issue regarding limitation.

6. It is submitted that the relinquishment deed was executed on 10.07.2017 and the suit is filed on 22.09.2020, there being a delay of nearly three months in filing the suit, the suit should have been dismissed only on the ground of limitation.

7. In this regard learned counsel for the appellant seeks to place reliance on the judgment of Hon'ble Supreme Court in the case of ***V.M.Salgaocar & Bros. Vs. Board of Trustees of Port of Mormugao & Anr.*** reported in ***(2005) 4 SCC 613***, where it was held that the mandate of Section 3 of the Limitation Act is that it is the duty of the



Court to dismiss any suit instituted after prescribed period of limitation irrespective of the fact that the limitation has not been set up as a defence. If a suit is ex-facie barred by law of limitation the Court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

8. Learned counsel would therefore submit that the impugned judgment and decree is required to be set aside to frame an issue to enable the parties to lead evidence and re-decide the case on the question of limitation.

9. Per contra, learned counsel for the respondents/ plaintiffs would seek to place reliance on a decision of the Apex Court in the case of ***Ningawwa Vs. Byrappa & Ors.*** reported in ***AIR 1968 SC 956***. Learned counsel submits that having regard to Sec.17 of the Limitation Act, the question of fraud or mistake is required to be taken into consideration while deciding the question of limitation.



10. Having regard to the contentions raised before this Court and the narrow compass within which the appeal is required to be decided, we proceed to consider the submissions made by the learned counsels at the Bar.

11. Having regard to the law laid down by the Hon'ble Supreme Court, as pointed out by the learned counsel for the appellant, there being an express provision in Sec. 3 of the Limitation Act that the Court is required to consider the question of limitation, irrespective of the fact that question of limitation is raised by the parties or not, we are of the considered opinion that the trial Court should have considered the issue of limitation having regard to the prayer made in the suit, namely, seeking a declaration regarding the relinquishment deed dated 10.07.2017 as null and void and the suit having filed on 22.09.2020, there was a clear case of the trial Court missing out on considering the issue of limitation.



12. The other aspect of the matter sought to be canvassed by the learned counsel for the plaintiffs that while considering the question of delay the Court should also consider the question of fraud and misrepresentation as found in Sec. 17 of the Limitation Act is also required to be considered by the trial Court.

In that view of the matter, the appeal is allowed in part. The impugned judgment and decree dated 10.10.2022 in O.S. No. 138/2020 on the file of the learned First Additional Senior Civil Judge & JMFC, Hubballi, is hereby quashed and set aside.

Matter stands remanded back to the trial Court with a direction to consider the question of delay and limitation having regard to the prayer No.(1) in the suit and the express provision contained in Sec. 3 of the Limitation Act.

Needless to observe that the parties should be permitted to lead additional evidence in this regard.



**NC: 2025:KHC-D:17926-DB
RFA No. 100558 of 2022**

The parties are directed to appear before the learned First Additional Senior Civil Judge & JMFC, Hubballi on 21.01.2026 without waiting for further notice.

The trial Court shall endeavour to dispose of the suit as expeditiously as possible.

**Sd/-
(R.DEVDAS)
JUDGE**

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

BVV
Ct:vh
List No.: 1 Sl No.: 13