

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 17TH 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.100563/2023 (PAR/POS)

BETWEEN:

1. SHRI. SANGANAGOUDA
S/O. VEERANAGOUDA PATIL,
AGE: 62 YEARS, OCC: AGRICULTURE
/RETIRED BANK EMPLOYEE,
R/O. VEERABHADRASESHWAR NILAYA,
POLICEGOUDAR ONI, KELAGERI,
DHARWAD-580007.
2. SHRI. VEERABHADRAGOUDA
S/O. VEERANAGOUDA PATIL,
AGE: 59 YEARS, OCC: AGRICULTURE/SERVICE,
R/O. VEERABHADRASESHWAR NILAYA,
POLICEGOUDAR ONI, KELAGERI,
DHARWAD-580007.
3. SHRI. RUDRAGOUDA
S/O. VEERANAGOUDA PATIL,
AGE: 57 YEARS, OCC: AGRICULTURE
/POSTAL DEPARTMENT,
R/O. VEERABHADRASESHWAR NILAYA,
POLICEGOUDAR ONI, KELAGERI,
DHARWAD-580007.

- APPELLANTS

(BY SRI. C.V.ANGADI, ADVOCATE)

AND:

1. SMT. PARVATI
W/O. SHIVAYOGI BUDAYYANAVARMATH,
AGE: 51 YEARS, OCC: HOUSEHOLD WORK,
R/O. K.C. NAGAR, 3RD CROSS ROAD,
BAILHONGAL, DIST: BELAGAVI-591102.
2. SMT. SAVITRI
W/O. MADIWALAYYA SHIRAHATTIMATH,
AGE: 65 YEARS, OCC: HOUSEHOLD WORK,
R/O. POLICEGOUDAR ONI, KELAGERI,
DHARWAD-580007.

- RESPONDENTS

(BY SRI. HANAMANT R.LATUR, ADVOCATE FOR R1;
NOTICE TO R2 IS SERVED BUT UNREPRESENTED)

THIS REGULAR FIRST APPEAL FILED UNDER SECTION 96
READ WITH ORDER 41 RULE 1 OF CPC AGAINST THE JUDGMENT
AND DECREE DATED 26.09.2023 PASSED IN O.S.NO.62/2022 ON
THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF
JUDICIAL MAGISTRATE, DHARWAD, DECREED THE SUIT FILED
FOR PARTITION AND SEPARATE POSSESSION AND ETC.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED ON 10.12.2025, COMING ON FOR 'PRONOUNCEMENT
OF JUDGMENT' THIS DAY, THE COURT PRONOUNCED THE
FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

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

This Regular First Appeal is filed at the hands of the defendants in O.S.No.62/2022 being aggrieved of the impugned judgment and decree on the file of the Principal Senior Civil Judge and CJM, Dharwad.

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.Veerabhadragouda who died on 19.10.1986 leaving behind his widow Smt.Neelamma and five children. The last of the children, Smt.Parvati filed the suit against her mother, her sister and the three brothers seeking $1/5^{\text{th}}$ share in the suit schedule properties and for partition and separate possession of the suit schedule properties. In the suit schedule, six items of immovable properties are shown. Written statement was filed by defendant No.1, the eldest brother, and the same was adopted by defendant Nos.2 and 3, the two brothers of defendant No.1. It was

contended in the written statement that during the wedding of the plaintiff, 20 tolas of gold, approximately valued at Rs.10,00,000/- were given; an amount of Rs.25,00,000/- were given to the plaintiff during construction of her house and various other financial assistance were rendered to the plaintiff by the brothers. It was contended that in all, a sum of Rs.53,50,000/- have been paid to the plaintiff and the plaintiff had waived her rights in the suit schedule properties, consequent to which the mutation entries were effected in the revenue records. It was contended that during the course of the suit, defendant No.4, the other daughter came forward to amicably settle the matter by accepting 5 guntas of land out of 3 acres 4 guntas in Block No.562/2, i.e., item No.6 of the suit schedule property. It was contended that in R.S.No.570/3, item No.1 of the suit schedule measuring 1 acre 27 guntas, various lessees were in occupation under lease deeds executed by late Sri.Veeranagouda. It was further contended that item No.6 of the suit schedule, i.e., Block No.562/2 measuring 3 acres 4 guntas were

purchased by defendant Nos.1 to 3 under registered sale deed dated 14.10.1996 for a sum of Rs.75,000/- and therefore, the said property is the self-acquired property of defendant Nos.1 to 3 and therefore, the same is not available for partition. The trial court decreed the suit while granting 1/5th share to each of the parties to the suit in all the suit schedule properties. Consequently, this appeal is filed by the three brothers.

4. Learned counsel for the defendants contended that the defendants are seriously contesting the appeal insofar as suit item No.6 is concerned. Learned counsel submitted that Sri.Veeranagouda, the propositus died on 19.10.1986 and defendant No.1 joined a bank in the year 1986. Defendant No.2 was appointed as Lecturer/Professor in the year 1992 and defendant No.3 was also appointed in the postal department. No evidence is placed on record by the plaintiff to show that there was any income derived from the other five items of the properties, to claim that item No.6 was purchased from the nucleus of the other joint family properties. On the other hand, by pointing out

to the cross-examination of defendant No.1, who was examined as D.W.1 that there was admission regarding the sale of two immovable properties in Block Nos.88 and 473, the plaintiff cannot contend to have proved that suit item No.6 was purchased from the sale consideration of the two immovable properties. Learned counsel would therefore submit that the impugned judgment and decree is required to be modified while dismissing the suit as against item No.6 of the suit schedule property.

5. Per contra, learned counsel for the plaintiff submitted that in the written statement filed at the hands of the defendants, it is clearly stated that defendant No.4 agreed to receive 5 guntas, out of 3 acres and 4 guntas in suit item No.6, which clearly shows that the defendants were prepared to share item No.6 of the suit schedule property. If such is the contention as put-forth in the written statement, then the defendants cannot be permitted to contend that item No.6 of the suit schedule is the self-acquired property of defendant Nos.1 to 3. Moreover, during the course of this appeal defendant No.5

claims to have executed a relinquishment deed, relinquishing her 1/5th share granted by the trial court, in favour of defendant Nos.1 to 3. This again shows that the defendants have accepted the judgment and decree passed by the trial court and thereafter defendant No.4 has relinquished her rights in the suit schedule properties in favour of defendant Nos.1 to 3. Therefore, defendant Nos.1 to 3 should not be permitted to approbate and reprobate at the same time.

6. However, to a pointed question put to the learned counsel for the plaintiff as to when the two items of the properties in Block No.88 and 473 were sold and what material is available on record to show that the sale proceeds received from the said sale was the basis for the purchase of item No.6 of the suit schedule property, the learned counsel submitted that if opportunity is given, relevant material will be placed before the court.

7. Having regard to the above, this court is required to consider the issue whether the plaintiff has

proved that item No.6 of the suit schedule was purchased by defendant Nos.1 to 3 from the income derived from the other joint family properties, more particularly, the sale of Block Nos.88 and 473, which earlier belonged to the joint family.

8. It would be profitable to notice the decision of the Apex Court in ***BHAGWAT SHARAN (DEAD THROUGH LEGAL REPRESENTATIVES) VS PURUSHOTTAM AND OTHERS*** reported in ***(2020) 6 SCC 387***, where a decision of a Privy Counsel in the case of ***RANDHI APPALASWAMI VS RANDHI SURYANARAYANAMURTHI*** reported in ***1947 SCC ONLINE PC 42*** was noticed. The relevant portion is extracted, which read as follows:

".....the Hindu Law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint family property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively

that the property was acquired without the aid of the joint family property."

9. While applying the said principles, the Apex Court held that an admission made by a party is only a piece of evidence and not conclusive proof of what is stated therein. Having applied the principles to the facts of the case, it was held that it is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family unless there is material on record to show that the property is a nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. It was further held that having regard to the evidence on record, it was clear that the plaintiff failed to prove the same.

10. Having regard to the principles enunciated in the case of **RIDDI APPALASWAMI** and **BHAGWAT SHARAN** (*supra*), this court is of the considered opinion that a mere admission of D.W.1 that Block Nos.88 and 473 were sold by them, will not be sufficient to prove that the sale

consideration paid by defendant Nos.1 to 3 during the purchase of item No.6 of the suit schedule, came from the sale proceeds of Block Nos.88 and 473. Such admission is only a piece of evidence and not conclusive proof that item No.6 of the suit schedule was purchased from the nucleus of the joint family properties. The court cannot loose sight of the fact that defendant No.1 was working in a bank from the year 1986, defendant No.2 was working as a Lecturer/Professor from 1992 and at the same time, defendant No.3 was working in the postal department. The contention of the defendants, that they had sufficient independent income to purchase item No.6 of the suit schedule, could not have been brushed aside by the court. In that view of the matter, this court is of the considered opinion that this appeal filed at the hands of defendant Nos.1 to 3 should succeed partly, insofar as item No.6 of the suit schedule property is concerned. Item No.6 of the suit schedule property, since purchased by defendant Nos.1 to 3 in the year 1996, should be held as self-acquired property of defendant Nos.1 to 3.

11. Consequently, this court proceeds to pass the following:

ORDER

- i) The Regular First Appeal is allowed in part.
- ii) 1/5th share granted to the plaintiff and defendants is restricted to item Nos.1 to 5 of the suit schedule properties.
- iii) The suit filed by the plaintiff in O.S.No.62/2022 stands dismissed as against item No.6 of the suit schedule properties.
- iv) The decree is accordingly modified.

Ordered accordingly.

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

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

MBS
CT: VH