



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

**DATED THIS THE 12TH DAY OF DECEMBER, 2025
PRESENT**

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

R.F.A. NO.100164 OF 2021 (PAR/POS)

BETWEEN:

1. SMT. MANJULA W/O. SHANKARAPPA MAJJIGI,
AGE: 43 YEARS, OCC: HOUSEHOLD WORK.
2. SMT. BHAGYA W/O. JAGADISH PATIL,
AGE: 35 YEARS, OCC: HOUSEHOLD WORK.
3. BASAVARAJ
S/O. ANANDAPPA BANKAR @ MAKANUR,
AGE: 41 YEARS, OCC: AGRICULTURE.
4. SATISH S/O. ANANDAPPA BANKAR @ MAKANUR,
AGE: 38 YEARS, OCC: AGRICULTURE.
5. SMT. GADIGEVVA
W/O. ANANDAPPA BANKAR @ MAKANUR,
AGE: 68 YEARS, OCC. HOUSEHOLD WORK,
ALL ARE RESIDENT OF HALGERI VILLAGE,
TQ: RANEBENNUR, DIST. HAVERI-581115.
(NOTE: DEFENDANT NO.1 ANANDAPPA DIED
ON 20.06.2021 AFTER PASSING OF JUDGMENT
OF SUIT, APPELLANTS AND RESPONDENTS
ARE HIS LEGAL HEIRS.

Digitally signed
by V N
BADIGER
Location: High
Court of
Karnataka,
Dharwad Bench.

...APPELLANTS

(BY SRI. N. P. VIVEKMEHTA, ADVOCATE)



AND

1. PRAMILA W/O. MAHESHAPPA HALABHAVI,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/O. HARIHARESHWARA NILAYA,
LENIN NAGAR, NITUVALLI,
DAVANAGERE-577001.
2. ASHOK S/O. ANANDAPPA BANKAR
@ MAKANUR, AGE: 55 YEARS,
OCC: AGRICULTURE & BUSINESS,
R/O. HALAGERI,
NOW AT: SHIVAKUMAR BADAVANE,
NEAR ST. JHAN SCHOOL,
DAVANAGERE-577001.

...RESPONDENTS

(BY SRI. DINESH M. KULKARNI, ADV. FOR R1;
SRI. RAGHAVENDRA A. PUROHIT, ADV. FOR R2)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC., PRAYING TO SET ASIDE THE JUDGMENT AND DECREE OF THE COURT OF III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, RANEBENNUR DATED 17.04.2021 PASSED IN O.S.NO.292/2018 AND DISMISS SUIT BY ALLOWING THIS APPEAL AND ETC.

THIS APPEAL, HAVING BEEN HEARD AND RESERVED ON 03.11.2025, 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 B. MURALIDHARA PAI)

1. Defendant Nos. 3 to 7 in O.S. No. 292/2018, on the file of the learned III Additional Senior Civil Judge and JMFC, Ranebennur, have preferred this Regular First Appeal challenging the judgment and decree dated 17.04.2021 passed therein, and have sought dismissal of the said suit by allowing this appeal.

2. The parties to this appeal are referred herein with their original ranking before the trial court.

3. The plaintiff namely Smt. Pramila, instituted the suit in O.S. No. 292/2018 seeking partition and separate possession of her 1/3rd share in the schedule properties comprising of total 16 items of properties situated at Halageri Village in Ranebennur Taluk. It was her contention that the schedule properties are the ancestral and undivided joint family properties and the properties acquired from the income of joint



family properties and that she is entitled to a 1/3rd share therein. She contended that Defendant No.7 was a woman maintained by Defendant No.1 outside wedlock and Defendants No.3 to 6 are their children. She alleged that Defendant No.1 has created certain revenue records in the names of Defendant Nos. 3 to 6 with an intention of depriving her legitimate share in the schedule properties. The plaintiff maintained the suit with a contention that when she demanded Defendant No.1 to give her share in the schedule properties, he refused her such request on the ground that there was already a partition in the family.

4. Upon service of summons, Defendant Nos. 1 to 7 entered appearance before the trial Court through their respective counsels. Defendant Nos. 1, 2, and 5 filed separate written statements, whereas Defendant Nos. 3, 4, 6, and 7 adopted the written statement filed by Defendant No. 5.

5. In his written statement, Defendant No.1 admitted that Item Nos. 7, 11, 15, and 16 of the schedule properties had devolved upon him from his ancestors, and contended that all the remaining properties are his self-acquired properties. He



further contended that neither the plaintiff nor the other defendants have any manner of right, title, or share in the schedule properties.

6. Defendant No.5 has put forth contentions similar to that of Defendant No.1. Whereas, Defendant No.2 has conceded the contentions urged by the Plaintiff and also sought for his 1/3rd share in the schedule properties.

7. Based on the pleadings of the parties, the trial Court framed the following issues for its consideration:

1. Whether plaintiff proves that the suit schedule properties are the Hindu Undivided ancestral properties of plaintiff and defendants No.1 and 2?
2. Whether plaintiff proves that she is having 1/3rd share in the suit schedule properties?
3. Whether plaintiff further proves that, the sale transaction in respect of suit B schedule properties taken place between 1st defendant and defendants No.3 to 6 and the name of these defendants mutated in the revenue documents by way of giving wardi by the 1st defendant are illegal and not binding on the rights of plaintiff and 2nd defendant?
4. Whether 1st defendant proves that the plaintiff had already taken her share by way of money, gold and silver ornaments?



5. Whether 6th defendant proves that the suit is barred by limitation?
6. Whether plaintiffs are entitled to the relief as prayed for?
7. What decree or order?"

8. During trial of the case, the Plaintiff adduced her evidence as PW-1 and got marked documents at Ex.P1 to P41. Similarly, Defendant Nos.1 and 2 deposed before the trial court as DW-1 and DW-2 respectively, examined two more witnesses and got marked documents at Ex.D1 to D114.

9. On completion of evidence on both sides, the trial Court heard the arguments of the learned counsels appearing for the parties and proceeded to pass the impugned judgment and decree. The trial Court held that the plaintiff is entitled to a 1/3rd share in all the schedule properties and to separate possession thereof by metes and bounds. It further held that Item No. 7 of the schedule properties is an ancestral joint family property of the plaintiff, and the remaining properties have originated from the ancestral joint family nucleus. The said court also observed that Defendant Nos.3 to 6 are the children of Defendant Nos.1 and 7, who were living in an extra-



marital relationship. Accordingly, the trial court held that only the Plaintiff and Defendant Nos. 1 and 2 are entitled to equal shares in the undivided joint family properties. It was further observed that Defendant Nos.3 to 6 would be entitled to a share in the portion of Defendant No. 1 upon his death, if he were to die intestate.

10. The impugned judgment and decree was rendered on 17.04.2021. Defendant No.1 died on 20.06.2021. Defendant Nos.3 to 7 instituted the present appeal on 30.08.2021. Their principal contention is that Defendant No.1 had married Defendant No.7 after the death of his first wife and as such, Defendant Nos.3 to 6 are the legitimate children. They have further contended that all the schedule properties are not ancestral joint family properties of the plaintiff and some of the properties are the self-acquired properties of Defendant Nos.5 and 6. It is thus their case that the trial court committed a grave error in decreeing the suit in its entirety, without properly evaluating the oral and documentary evidence placed on record.



11. During the course of argument, Sri N.P. Vivek Mehta, learned Counsel for Defendant Nos.3 to 7, relied on the decision in *Tulsa and Others Vs Durghatiya and Others*, reported in (2008) 4 SCC 520, wherein Hon'ble Supreme Court of India has held that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case and where the partners lived together for long spell as husband and wife, there would be presumption in favour of wedlock and submitted that the trial court has failed to keep in mind such legal presumption while appreciating the evidence on record in the case and particularly when the Plaintiff and Defendant No.2 have failed to rebut the presumption available in favour of legitimate relationship between Defendant Nos.1 and 7

12. Learned Counsel for Defendant Nos.3 to 7 has also relied on *Hemalatha and Another Vs Lolakshi and Others*, reported in 2024(1) KCCR 214 and submitted that it is trite law that evidence let in absence of pleadings, the evidence cannot be looked into and in the present case, the trial Court ignored



lack of pleadings to lay foundation for the contentions put forth by the plaintiff.

13. Per contra, Sri Dinesh M. Kulkarni, learned Counsel for Plaintiff supported the findings recorded by trial Court and its conclusion on the ground that illegitimate children are entitled to rights of succession only in the properties held by their father and not in the joint family property. In support of this contention, learned Counsel for Plaintiff relied on the decision in Rasala Surya Prakasarao Vs Rasala Venkateswara Rao and Others, reported in Andhra Pradesh Law Journal - 1992 (1)(HC) 453.

14. We have given our anxious consideration to the submissions made on both sides and re-appreciated the materials available on record in light of the above contentions and thereby, the following points arise for our consideration:

i) Whether the trial court is right in holding that all the schedule properties are the ancestral and joint family properties of the Plaintiff?



ii) Whether the trial court is justified in holding that Defendant No.7 was not the legally wedded wife of defendant No.1 and that Defendant Nos.3 to 6 are the illegitimate children of Defendant No.1?

iii) What order?

15. **Point Nos. (i) and (ii):** Undisputedly, Defendant No.1 Sri Anandappa, had a first wife by name Smt. Puttavva, and a second wife i.e, Smt. Gadigevva, who is arraigned as Defendant No.7 in the suit. The Plaintiff and Defendant No.2 are the children of Defendant No.1 through his first wife - Smt. Puttavva, while Defendant Nos.3 to 6 are the children of Defendant No.1 through his second wife - Defendant No.7 namely Smt. Gadigevva.

16. It is the definite case of the Plaintiff that her mother passed away in 1980 and that Defendant No.1 was in a relationship with Defendant No.7 even during the lifetime of her mother. Consequently, she contends that Defendant Nos.3 to 6 are the illegitimate children of Defendant No.1. On the other hand, Defendant Nos.1 and 3 to 7 have contended that the first



wife of Defendant No.1 died in 1971, and thereafter, in 1974 Defendant No.1 legally married Defendant No.7. Therefore, they assert that Defendant Nos.3 to 6 are their legitimate children.

17. The Plaintiff has produced a document at Ex. P41, claiming it to be the death certificate of her mother. According to this document, the mother of the plaintiff namely Smt. Puttamma died on 19.04.1978. In contrast, the defendants have not produced any document before the trial court to substantiate their contention that the first wife of Defendant No.1 had died in 1971.

18. It is the specific case of the defendants that Defendant No.1 married Defendant No.7 in 1974. However, if the document marked at Ex.P41 is accepted as authentic, it would mean that Defendant No.1 married Defendant No.7 during the subsistence of his first marriage with Smt. Puttamma, the mother of the plaintiff. Such a marriage, entered into during the lifetime of the first wife, would be void in law.



19. Sri N. P. Vivek Mehta, learned Counsel for Defendants No.3 to 7, has drawn the attention of this Court to the document marked as Ex.P41. He contends that Ex.P41 is not the death certificate of the mother of the plaintiff, basing his argument on the discrepancy in the name of the husband of Smt. Puttamma as recorded in the document. Admittedly, the name of Defendant No.1 is Anandappa Nagappa Banakar @ Makanur, whereas in Ex.P41, the name of the husband of Smt. Puttamma is shown as “ಅನೆಪ್ಪ ಮಾಕನೂರ”. This discrepancy clearly indicates that the name of the husband shown in Ex.P41 does not match the name of Defendant No.1.

20. In this connection, learned Counsel for Defendant Nos. 3 to 7 relied on a decision in **Mukhtar Ahmad Khan and another Vs Board of Revenue, U.P. at Allahabad and another**, reported in **1962 SCC Online ALL 42**, wherein it is observed that -

“... The entry in a birth register is no doubt admissible in evidence under the provisions of Sec. 35 of the Indian Evidence Act, but what is further required to be proved is that the entry relates only to the relevant person and none other. The possibility of there being more persons than one of



the same village to whom a son might have been born and his birth recorded must be ruled out. Mere filing of a birth certificate, by the opposite party may be sufficient to prove that a son was born in the village to the person named therein but that will not per se prove that the birth entry relates to a particular person.”

and submitted that the Plaintiff has failed to clarify or explain the above noted discrepancy in Ex.P41 and to demonstrate that in fact it is the death certificate of her mother.

21. Firstly, it is to be noted that the name of the husband mentioned in Ex.P41 is unintelligible and does not appear to be the name of any person. This suggests that an error was committed in recording the name of the concerned individual. Furthermore, it is pertinent to observe that during the trial of the case, the defendants did not raise any such contention before the trial court. The case records indicate that the Plaintiff got marked Ex.P41 during her evidence, claiming it to be the death certificate of her mother. During her cross-examination, the defendants did not dispute this categorical statement. Thus, the defendants have impliedly admitted the plaintiff’s statement regarding Ex.P41. As such, it is not open to



the defendants to raise any dispute regarding Ex.P41 at this stage of the proceeding.

22. The documents produced by the defendants at Ex.D111 to Ex.D114 reveal that the dates of birth of Defendant Nos.3 to 6 are 01.06.1973, 10.03.1976, 15.06.1977, and 05.07.1981 respectively. When these dates are considered together with the contents of the document marked as Ex.P41, it is evident that Defendant Nos.3 to 5 were born during the lifetime of the plaintiff's mother. In these circumstances, it is held that the trial court was correct in concluding that Defendant No.1 had married Defendant No.7 during the subsistence of his first marriage to Smt. Puttamma, rendering his second marriage with Defendant No.7 void. Consequently, Defendant Nos.3 to 6 are held to be the illegitimate children of Defendant No.1.

23. Coming to the nature of the properties, the case of the Plaintiff is that the schedule properties are either her ancestral properties or have been acquired from the income generated by such ancestral properties. In contrast, the defendants contend that only item Nos. 7, 11, 15, and 16 are



properties that devolved upon Defendant No.1 from his ancestors, while all the remaining properties are the self-acquired properties of either Defendant No.1 or Defendant No.7.

24. The properties under dispute are situated in Halageri village of Ranebennur taluka and its details are as under :

Sl. No.	Property No.	Extent
1.	R.S.No.219/A/1K	1 gunta comprising a building.
2.	R.S.No.359/1	5 acre 6 guntas
3.	R.S.No.112/1A	0.27 guntas
4.	R.S.No.111/1	3 acre 13 guntas
5.	R.S.No.282/3	1 acre 28 guntas
6.	R.S.No.177/3	3 acre 23 guntas
7.	R.S.No.177*	3 acre 23 guntas
8.	R.S.No.45/2	6 acres
9.	R.S.No.230/5	2 acre 30 guntas
10.	R.S.No.117/1A/1	2 acre 30 guntas
11.	VPC No.863A	House and open space.
12.	VPC No.171	House
13.	VPC No.171/1A/1	Padajanti mane
14.	VPC No.752	Khana
15.	R.S.no.157A/2	Khana
16.	R.S.No.863A/1	House



25. The defendants have specifically contended that Item Nos. 1 to 6, 8 to 10, 12, and 13 are their self-acquired properties and that these properties have no connection whatsoever with the Plaintiff. It is their case that Item Nos. 2, 3, 6, and 8 are the self-acquired properties of Defendants No.5 and 6, purchased by Defendant No.7 out of her own earnings, while the remaining properties are the self-acquired properties of Defendant No.1.

26. Admittedly, Defendant Nos. 5 and 6 were minors at the time of acquisition of the properties in their names under the sale deeds dated 23.09.1985, 01.08.1988, 10.07.1995, and 18.05.1987. These sale deeds were executed in the names of Defendant Nos. 5 and 6, represented by Defendant No.7 as their natural guardian. Although it was contended that Defendant No.7 had independent income from selling vegetables and engaging in animal husbandry, she has not entered the witness box to substantiate the said contention. Likewise, though Defendant No.1 claimed that all other properties are his self-acquired properties purchased out of his



own income, he has failed to produce sufficient evidence on record to support this assertion.

27. Admittedly, the family of the Plaintiff possessed certain ancestral properties. Furthermore, the defendants have not adduced any evidence before the trial court to establish that they had any independent source of income. In the absence of such evidence, it can be presumed that all other properties were acquired out of the income derived from the ancestral properties belonging to the family. Hence, the materials on record clearly indicate that the plaintiff has successfully proved her contention that all the schedule properties constitute the joint family properties of her family, comprising herself and Defendant Nos. 1 and 2.

28. It is evident from the record that Defendant Nos. 3 and 6 are the children of Defendant No.1 through his void marriage with Defendant No.7. Accordingly, the trial court held that they are entitled only to a share in the portion of Defendant No.1 in the schedule properties. In *Rasala Surya Prakasarao and Others* (referred supra), it has been held that an illegitimate son can be equated with a natural son and



treated as a coparcener in respect of properties held by the father, whether such property is originally joint family property or not. The only limitation is that during the lifetime of the father, an illegitimate son cannot seek partition. In the landmark judgment of the Hon'ble Supreme Court in **Revansiddappa Vs Mallikarjun and Others [2023 INSC 783]**, it was clarified that children born out of void or invalid marriages are entitled to inherit their parents' share through notional partition, though they cannot be treated as coparceners by birth in the undivided family. This settled legal position, therefore, makes it clear that no interference is called for with the above finding of the trial court.

29. The defendants have also contended that Defendant No.1 had given the plaintiff's share in the form of gold, silver, and money. However, as rightly observed by the trial court, the defendants have not adduced any evidence on record to substantiate this contention.

30. As already noted, Defendant No.1 was alive on the date of the impugned judgment and decree. In the said circumstances, the trial court held that Defendant Nos. 3 to 6



would be entitled to a share in the portion of Defendant No.1 only if he were to die intestate. Admittedly, Defendant No.1 passed away on 20.06.2021 and as such, now Defendant Nos. 3 to 6 are entitled to seek their legitimate share in the property/share of Defendant No.1 in the schedule properties. The declaration of the shares of the legal heirs of Defendant No.1 in his share in the schedule properties would depend upon whether he died intestate or not. The trial court is competent to take note of the subsequent developments and to pass suitable order in final decree proceeding, in this regard. Hence, this Court does not find any necessity of interfering with the impugned judgment and decree at this stage. Accordingly, Point Nos.(i) and (ii) are answered in the affirmative.

31. In the result, this Court proceeds to pass the following :

ORDER

(i) The appeal is dismissed.

(ii) Consequently, the judgment and decree dated 17.04.2021 passed in OS.No.292/2018 on the



file of learned III Addl. Senior civil Judge and
JMFC, Ranebennur is confirmed.

(iii) Office is directed to transmit the trial court
record to the concerned court forthwith.

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

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

VB,CKK
List No.: 1 Sl No.: 1