



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO.200247 OF 2014 (DEC)

BETWEEN:

DUNDAPPA S/O SADASHIVAPPA SARAWAD,
AGE: 57 YEARS, OCC: SERVICE,
R/O NAGATHAN, TQ. BIJAPUR,
DIST. BIJAPURA.

...APPELLANT

(BY SRI G.G. CHAGASHETTI, ADVOCATE)

AND:

1. SHRISAIL S/O SADASHIVAPPA SARAWAD,
AGE: 54 YEARS,
OCC: POLICE IN COMMANDANT OFFICE,
R/O 6TH BATTALION, K.S.R.P.,
SUPER MARKET, GULBARGA.
2. MALLIKARJUN S/O SADASHIVAPPA SARAWAD,
AGE: 52 YEARS,
OCC: SERVICE COMMANDANT OFFICE,
R/O 3RD BATTALION, K.S.R.P., KORAMANGAL,
BANGALORE.
3. CHANDRASHEKHAR S/O SADASHIVAPPA SARAWAD,
AGE: 50 YEARS, R/O F-660, B.S.C RPF,
R/O KOTABALWAL, JAMMU,
TQ. VISAB JAIL, JAMMU & KASHMIR, STATE-18112



4. ISWARAPPA S/O SADASHIVAPPA SARAWAD,
AGE: 47 YEARS, OCC: SERVICE IN KSRP,
COMMANDANT OFFICE, 9TH BATTALION,
RICHMOND ROAD, BANGALORE.
5. GURULINGAPPA S/O SADASHIVAPPA SARAWAD,
AGE: 45 YEARS, OCC: SERVICE
R/O KSRP, COMMANDANT OFFICE,
2ND BATTALION, MARKET YARD,
BELGAUM.
6. SMT. DUNDAVVA W/O SADASHIVAPPA SARAWAD,
AGE: 77 YEARS, OCC: H.H.WORK,
R/O NAGATHAN, TQ. BIJAPUR,
DIST. BIJAPURA.

...RESPONDENTS

(BY SRI P.G. YATNAL, ADVOCATE FOR R1 TO R5;
V/O. DT. 14.12.2016, NOTICE TO R6 IS HELD SUFFICIENT)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO ALLOW THE APPEAL, SET ASIDE THE IMPUGNED PORTION OF THE JUDGMENT AND DECREE DATED 11.03.2013 PASSED BY THE PRL. DISTRICT JUDGE, VIJAYAPUR, DISMISSING R.A.NO.26/2008 AND CONFIRMING THE JUDGMENT AND DECREE DATED 08.01.2008 PASSED BY THE 1ST ADDL. CIVIL JUDGE (SR.DN), BIJAPUR IN O.S.NO.336/2002 IN SO FAR AS THE NON GRANTING OF THE RELIEF OF DECLARATION AND INJUNCTION WITH RESPECT TO THE RELIEF OF DECLARATION AND INJUNCTION AND THE PARTITION WITH RESPECT TO ONE PROPERTY SOUGHT BY THE PLAINTIFF. DECREE THE SUIT OF THE PLAINTIFF AS PRAYED FOR IN THE PLAINT WITH COSTS AS PRAYED FOR.



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.12.2025 COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CAV JUDGMENT

The captioned second appeal is by the plaintiff assailing the concurrent judgments and decrees of the Court below, wherein two items which the plaintiff claimed to be self-acquired properties are now declared to be joint family ancestral properties and a share is granted in these two items also namely Sy.No.172/1A+B/2 and a vacant site bearing VPC No.764.

2. For the sake of convenience, the parties are referred to as per their rank before the Trial Court.

Facts leading to the case are as under:

The plaintiff, being the eldest brother of defendant Nos.1 to 5, instituted the suit contending that Schedule-A and Schedule-B properties are joint family ancestral



properties. It was asserted that the plaintiff, defendant Nos.1 to 5, and their mother- defendant No.6, constitute a joint Hindu family and that all the suit schedule properties are joint family ancestral properties. The plaintiff claimed entitlement to a 1/7th share in all the suit schedule properties.

3. The plaintiff further pleaded that out of his independent earnings, he had purchased an agricultural land bearing Sy.No.172/A+B/2 of Sarawad village for a sale consideration of Rs.28,000/-. He also claimed to have purchased a vacant site bearing VPC No.764 for a consideration of Rs 1,500/- under a registered sale deed dated 25.01.1988. According to the plaintiff, these two properties constitute his self-acquired properties, whereas Schedule-A and Schedule-B properties are joint family ancestral properties. Alleging that despite repeated attempts to amicably resolve the dispute, the defendants continued to assert a share in his self-acquired properties,



the plaintiff instituted the present suit in O.S.No.336/2002.

4. Upon service of summons, defendant Nos.1, 2, and 5 entered appearance and filed their written statement, while defendant Nos.3, 4, and 6 were placed ex parte. The contesting defendants denied the plaint averments in toto. On the contrary, they contended that defendant Nos.1 to 5 were employed and residing at their respective places of service, whereas the plaintiff, being the eldest brother, was residing at Nagathan village. Though the plaintiff was employed as a labourer in the Sericulture Department around 1980, the defendants alleged that they were regularly sending money to the plaintiff for maintenance of the family. It was further pleaded that the plaintiff was cultivating the ancestral lands, while the defendants, owing to their service, were unable to personally cultivate the lands.



5. The defendants specifically contended that the agricultural land bearing Sy.No.172/1A+B/2 measuring 4 acres 16 guntas and the vacant site bearing VPC No.764, though standing in the name of the plaintiff, were purchased from the joint family nucleus. It was alleged that the defendants used to remit money to the plaintiff by way of cash, demand drafts, and cheques and that the plaintiff had opened a savings bank account in State Bank of India, Vijayapur, into which the amounts sent by the defendants were directly credited. Therefore, it was asserted that notwithstanding the sale deeds standing in the name of the plaintiff, the said properties are also joint family ancestral properties. In the alternative, the defendants pleaded that there was already a partition in the year 1998, resulting in severance of status.

6. In view of the dispute with regard to two specific items, namely, Sy.No.172/1A+B/2 measuring 4 acres 16 guntas and the site bearing VPC No.764, the Trial Court framed Issue No.1, placing the burden on the



plaintiff to establish his exclusive title over the said properties. An additional issue was framed casting the burden on the defendants to prove the alleged partition of the year 1998 and their exclusive enjoyment of the properties allotted to their respective shares.

7. The parties adduced both oral and documentary evidence. Upon appreciation of the evidence on record, the Trial Court held that the plaintiff, who was working as a contractual labourer in the Sericulture Department and earning a meager income, lacked the financial capacity to independently purchase agricultural land for a consideration of Rs.28,000/-. On that premise, the Trial Court concluded that the agricultural land bearing Sy.No.172/1A+B/2 constituted joint family ancestral property. A similar finding was recorded in respect of the vacant site bearing VPC No.764. The Trial Court, however, negatived the plea of partition allegedly effected in the year 1998, holding that defendant No.1 had failed to



substantiate the same. Accordingly, the issue relating to partition was answered against the defendants.

8. The contention of defendant Nos.1, 2, and 5 that Sy.No.168/2 and VPC No.309/B were the self-acquired properties of defendant No.3 was also rejected, as defendant No.3 neither filed a written statement nor entered the witness box to support such a claim.

9. Aggrieved by the findings of the Trial Court insofar as Issue No.1 was concerned, whereby Sy.No.172/1A+B/2 measuring 4 acres 16 guntas and the site bearing VPC No.764 were held to be joint family ancestral properties, the plaintiff preferred an appeal. The First Appellate Court, upon re-appreciation of the entire evidence, concurred with the findings of the Trial Court. The Appellate Court held that, the plaintiff being a coparcener, the acquisition of properties in his name gives rise to a presumption of joint family property, and in the absence of cogent documentary evidence to establish



acquisition from his independent income without recourse to the joint family nucleus, the plaintiff failed to discharge the burden cast upon him.

10. This Court, by order dated 18.10.2022, was pleased to admit the second appeal by formulating the following substantial questions of law:

- "1. *Whether the finding of the Courts below that the property bearing R.S.No.172/1A+B/2 and VPC No.764 are also joint family ancestral properties and not self acquired properties of plaintiff is perverse, palpably erroneous and contrary to the clinching evidence vide Ex.P20, which is the passbook pertaining to State of Bank of India standing in the name of the plaintiff and same indicates that plaintiff had withdrawn a sum of Rs.30,000/- on 20.11.1990 to purchase agricultural land bearing R.S.No.172/1A+B/2?*
2. *Whether both the Courts erred in holding that VPC No.764 is also a joint family ancestral property, when clinching evidence on record clearly establishes that, the said property was purchased during the lifetime of plaintiff's father*



and there is no evidence indicating that joint family corpus was utilised for purchase of VPC No.764?

Findings on substantial question of law Nos.1 and 2:

11. Before advertng to the evidence adduced by the plaintiff in discharge of the burden cast upon him under Issue No.1, it is necessary to recapitulate the well-settled principles governing the acquisition of property by a coparcener in the context of an alleged joint family nucleus. This Court, in a catena of decisions, has consistently held that while there exists a presumption as to the existence of a joint Hindu family, such presumption does not automatically extend to properties standing in the name of an individual member of the family. The law draws a clear distinction between the presumption of jointness of the family and the presumption of jointness of property.

12. It is trite that there is no presumption in law that every property held or acquired by a coparcener is



joint family property. In order to attract such a presumption, the party asserting joint family character of the property must first plead and establish the existence of a sufficient and tangible joint family nucleus, which was not only in existence at the relevant point of time but was also capable of contributing to the acquisition of the property in question. Mere proof of joint family or vague assertions regarding pooling of income do not, by themselves, discharge this burden.

13. In the case on hand, the defendants have specifically pleaded that the agricultural land bearing Sy.No.172/1A+B/2 and the vacant site bearing VPC No.764, though purchased in the name of the plaintiff, were acquired from the joint family corpus, or that the defendants had contributed funds for their acquisition. Once such a plea is taken in the written statement, the initial burden squarely rests upon the defendants to establish that above two properties were acquired by pooling money by all brothers from their savings.



14. It is only upon the defendants satisfactorily discharging this initial burden that the onus would shift to the plaintiff to establish that the properties were acquired from his independent and exclusive income without recourse to the joint family funds. This position is in consonance with the cardinal principle that "he who asserts must prove", as embodied under Sections 101, 102, and 103 of the Indian Evidence Act, 1872. A mere assertion in the pleadings, howsoever emphatic, cannot substitute legal proof. Unless the defendants first cross the threshold by establishing the foundational facts, no adverse inference can be drawn against the plaintiff.

15. Keeping the aforesaid legal principles in view, before examining whether the plaintiff has discharged the burden cast upon him, it becomes necessary to first scrutinize the pleadings of the defendants, in order to ascertain the nature, specificity, and substance of the claim set up by them regarding the alleged joint family acquisitions. The defendants have sought to attribute a



joint family character to the two properties standing in the name of the plaintiff primarily on the footing that funds were pooled and remitted by them during their service tenure.

16. In this regard, paragraph No.6 of the written statement assumes significance, wherein the defendants have articulated their claim that the agricultural land bearing Sy.No.172/1A+B/2 and the site bearing VPC No.764 were purchased by pooling money from their savings. The relevant portion of paragraph No.6 of the written statement is extracted hereinbelow for ready reference:

"6. The land bearing Sy.No. 172/1A+B/2 measuring 4A-160 assessed at Rs, 3-92ps situated at Sarawad village, the said land purchase the joint family funds in the name of the plaintiff. And also V.P.C. No 764 open site is also purchase joint family funds in the name of the plaintiff. The defendants No 1 to 5 are also send the amount to the plaintiff by way of cash and as well as demand draft and cheques infavour of the plaintiff. The plaintiff open the S.B.Account in the S.B.I. Bank Bijapur



*S.B.Account No:- 50/10703 i.e., D.S.sarawad. In
the said account the amount is deposited."*

(Emphasis supplied by me.)

17. On a careful and closer examination of the extracted pleadings in the written statement, it is evident that the defendants have merely asserted that the brothers were sending money to the plaintiff by way of cash, demand drafts, and cheques and that such amounts were credited to the plaintiff's savings bank account. However, beyond such bald assertions, the defendants have not placed on record any oral or documentary evidence to establish either the nature of income earned by them, the quantum of alleged remittances, or the dates and mode of such remittances. Significantly, the defendants have not pleaded, much less proved, their financial capacity to contribute, nor have they furnished particulars correlating the alleged remittances with the dates proximate to the acquisition of the agricultural land



bearing Sy.No.172/1A+B/2 and the vacant site bearing VPC No.764.

18. The pleadings themselves disclose that the alleged contributions were stated to have been made through banking channels, namely by way of demand drafts and cheques. Once such a plea was taken, it was incumbent upon the defendants to substantiate the same by producing bank statements, remittance records, counterfoils of demand drafts, cheque details, or any contemporaneous documentary evidence. In the absence of such evidence, the defendants have miserably failed to discharge the initial burden cast upon them under Sections 101, 102, and 103 of the Indian Evidence Act, 1872. Consequently, the legal presumption that a property standing in the name of an individual belongs to that individual remains unrebutted in the present case.

19. Even though the defendants failed to cross the threshold by discharging their initial burden, the plaintiff,



by way of abundant caution, has produced cogent documentary evidence in rebuttal. The plaintiff has entered the witness box and produced his bank passbook marked as Exhibit P20. A perusal of Exhibit P20 clearly demonstrates that the plaintiff had a balance of approximately Rs.30,000/-, and significantly, on the very date of execution of the sale deed pertaining to the agricultural land bearing Sy.No.172/1A+B/2, the said amount was withdrawn from his account. The withdrawal entry corresponds directly with the sale consideration of Rs.28,000/- reflected in the registered sale deed.

20. A bank passbook is a document maintained in the ordinary course of banking business and therefore carries substantial evidentiary value under Section 34 of the Indian Evidence Act. In the absence of any challenge to the authenticity of the entries or any allegation of fabrication or manipulation, this Court finds no legal basis to discard or disbelieve the entries contained therein.



21. It is of crucial significance that the defendants neither subjected the plaintiff to effective cross-examination to elicit any contrary admissions nor produced any independent material to demonstrate that they had contributed funds towards the purchase of the disputed properties. In the absence of rebuttal evidence from the defendants and there being clear, contemporaneous, and tangible documentary evidence produced by the plaintiff, the plaintiff's evidence relating to the acquisition of the properties stands unshaken and unrebutted.

22. It is true that during cross-examination, the plaintiff has given varying explanations with regard to the manner in which he mobilized funds, at one stage stating that he saved money from his employment and at another stage stating that he had taken financial assistance from friends and relatives. However, such discrepancies, in the opinion of this Court, are not material and do not strike at the root of the matter.



23. What is of determinative relevance is not the precise narrative of fund mobilization recalled by the plaintiff after several years, but whether the plaintiff had sufficient funds available in his hands at the time of purchase. In this context, Exhibit P20 assumes decisive importance, as it reflects contemporaneous banking transactions recorded in the regular course of business. Notably, two substantial credits of Rs.16,000/- and Rs.10,000/- at the relevant point of time are not seriously disputed by the defendants. There is not even a suggestion in cross-examination that these amounts were credited at the instance of the defendants. The complete absence of cross-examination with regard to these crucial credits is fatal to the defendants' case.

24. The evidence on record clearly establishes that the plaintiff had a balance of approximately Rs.30,000/-, which was withdrawn on the very date of purchase of the agricultural land. The sale consideration of Rs.28,000/- mentioned in the sale deed corresponds precisely with the



withdrawal reflected in Exhibit P20. This contemporaneous documentary evidence unequivocally establishes the plaintiff's financial capacity to independently acquire the property, thereby rebutting any presumption of joint family acquisition.

25. In the backdrop of the substantial questions of law framed by this Court, it becomes necessary to examine the manner in which both the Courts below have misdirected themselves in appreciating the evidence. The Trial Court has committed a fundamental error in concluding that the plaintiff lacked financial capacity solely on the ground that he was drawing a modest salary. The Trial Court has failed to appreciate that low salary, by itself, does not ipso facto establish incapacity, particularly when documentary evidence demonstrates availability of funds at the relevant time. The Trial Court has completely overlooked Exhibit P20, thereby rendering its finding palpably erroneous and contrary to Sections 101 to 103 of the Indian Evidence Act.



26. The undue emphasis placed by the Trial Court on the fact that the credits of Rs.16,000/- and Rs.10,000/- do not align with the plaintiff's monthly salary of Rs.780/- is wholly misconceived. It is neither the pleaded case of the defendants nor the suggestion put in cross-examination that these specific amounts were remitted by them. In the absence of such a plea or suggestion, the defendants are precluded from contending that the said amounts constituted joint family contributions. The failure to cross-examine the plaintiff on these crucial credits amounts to an implied admission. Once the plaintiff has demonstrated an independent source and withdrawal of sufficient funds, and the defendants have failed to adduce any documentary evidence of contribution, the Trial Court gravely erred in branding the properties as joint family ancestral properties.

27. The First Appellate Court, despite being the final fact-finding authority, has failed to discharge its



statutory duty. By a cryptic judgment, it has doubted the plaintiff's capacity based solely on oral inconsistencies, while completely ignoring the clinching documentary evidence on record. When documentary evidence conclusively establishes the availability of funds, minor inconsistencies in oral testimony pale into insignificance. The Appellate Court's approach is therefore fundamentally flawed, and its conclusions suffer from perversity.

28. Insofar as the vacant site bearing VPC No.764 is concerned, the same was purchased for a modest consideration of Rs.1,500/- under a registered sale deed dated 25.01.1998. The plaintiff's ability to mobilize funds and avail loans from co-operative societies is evidenced by Exhibits P21 to P35. Even otherwise, considering the meager sale consideration and the absence of any evidence or plea from the defendants that they had contributed towards this purchase, the conclusion arrived at by the Courts below is wholly unsustainable.



29. The concurrent findings of the Courts below clearly suffer from legal perversity. Both Courts have misapplied the settled principles governing acquisition of property by a coparcener and have erroneously shifted the burden onto the plaintiff without first insisting upon the defendants to discharge their initial burden. Such an approach is contrary to the mandate of Sections 101 to 103 of the Indian Evidence Act and the settled law relating to joint family property. The erroneous appreciation of evidence has given rise to the substantial questions of law framed by this Court, and accordingly, both the substantial questions of law are answered in the affirmative.

Conclusions And Reasons For Reversal

30. The Courts below have committed a fundamental error in law by placing the burden on the plaintiff to establish that the agricultural land bearing Sy.No.172/1A+B/2 and the vacant site bearing VPC No.764 were his self-acquired properties, without first



insisting upon the defendants to discharge their initial burden under Sections 101 to 103 of the Indian Evidence Act, 1872. Once the defendants pleaded that these properties were acquired by their contribution, the burden squarely lay on them to establish that they had sent money to plaintiff by way Demand Draft and cheques and its nexus with the acquisitions in question.

31. The defendants, despite asserting that they had contributed funds by way of cash, demand drafts, and cheques, failed to produce any documentary or oral evidence such as bank statements, remittance records, cheque details, or proof of financial capacity. In the absence of such evidence, the foundational facts necessary to raise a presumption of joint family acquisition were never established.

32. In law, there is no presumption that a property standing in the name of a coparcener is joint family property. In the present case, the defendants failed to



rebut the presumption that a property standing in the name of the plaintiff belongs to him individually. Mere assertions in pleadings, without proof, are insufficient to displace this presumption.

33. The plaintiff produced his bank passbook marked as Exhibit P20, which clearly demonstrates availability of funds to the tune of Rs.30,000/- and withdrawal of the said amount on the very date of purchase of the agricultural land. The sale consideration of Rs.28,000/- directly corresponds with the withdrawal entry. This contemporaneous documentary evidence is admissible and relevant under Section 34 of the Indian Evidence Act, conclusively establishes the plaintiff's financial capacity and independent acquisition.

34. The defendants did not subject the plaintiff to any meaningful cross-examination regarding the crucial credits of Rs.16,000/- and Rs.10,000/- in his bank account, nor was any suggestion put that these amounts



were remitted by the defendants. Such failure amounts to an implied acceptance of the plaintiff's version and forecloses the defendants from raising a contrary plea at the appellate stage.

35. The Trial Court erred in law by concluding that the plaintiff lacked financial capacity solely on the ground that he was drawing a modest salary. Financial capacity is to be assessed on the basis of availability of funds at the time of purchase, and not merely on monthly salary. The Trial Court's approach is contrary to settled principles of evidence and suffers from perversity.

36. Minor inconsistencies in the plaintiff's oral testimony regarding the manner of mobilization of funds were accorded undue significance by both Courts below. When documentary evidence conclusively establishes availability of funds, such oral inconsistencies are immaterial and cannot form the basis to negate a claim of self-acquisition.



37. The First Appellate Court, despite being the final fact-finding authority, failed to independently and critically reappreciate the evidence on record. By a cryptic judgment, it mechanically affirmed the Trial Court's findings without examining the documentary evidence, thereby abdicating its appellate duty.

38. It is not the pleaded case of the defendants that surplus income from ancestral lands was utilized for the acquisition of the disputed properties. In the absence of such pleadings and proof, the Courts below erred in assuming utilization of joint family funds.

39. Both Courts below have misapplied the settled legal principles relating to presumption in joint family matters. While jointness of family may be presumed, jointness of property cannot be presumed unless the initial burden is discharged by the party asserting such jointness.

40. The findings recorded by both Courts below are based on misreading of evidence, incorrect application of



law, and ignoring material documentary evidence, thereby rendering the concurrent findings perverse and amenable to interference in second appeal.

41. For the foregoing reasons, the substantial questions of law framed by this Court stand answered in the affirmative, warranting interference under Section 100 of the Code of Civil Procedure.

42. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

- (i) The Regular Second Appeal is hereby ***allowed.***
- (ii) The judgment and decree dated 08.01.2008 passed in O.S. No.336/2002 by the I Additional Civil Judge (Senior Division), Vijayapur, and the judgment and decree dated 11.03.2013 passed in R.A. No.26/2008 by the Principal District Judge, Vijayapur, are set aside insofar as they relate to the grant of share in Sy.



No.172/1A+B/2 and the vacant site bearing
VPC No.764.

- (iii) The preliminary decree drawn by the Trial
Court granting share in Schedule 'A' and
Schedule 'B' properties is affirmed.
- (iv) A decree shall be drawn accordingly.

SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE

RSP
List No.: 3 SI No.: 7
CT: SI