



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 6TH DAY OF FEBRUARY 2026
PRESENT
THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.
REGULAR FIRST APPEAL NO.100025 OF 2025 (PAR/POS)

BETWEEN:

1. SMT.MADHU
W/O. VISHWANATHARADDI JUMANAL,
AGE: 41 YEARS, OCC. HOUSEHOLD WORK,
R/O. H.NO.593, BATAGADDE,
NEAR HOSUR HOSPITAL, MUDHOL,
TQ. MUDHOL-583236.
2. SMT.ASHWINI D/O. RAMANAGOUDA PATIL,
AGE: 34 YEARS, OCC. HOUSEHOLD WORK,
R/O. C/O. SMT.MADHU
W/O. VISHWANATHARADDI JUMANAL,
H.NO.593, BATAGADDE,
NEAR HOSUR HOSPITAL, MUDHOL,
TQ.MUDHOL-583236.

...APPELLANTS

(BY SRI. HARISH S.MAIGUR, ADVOCATE)

AND:

SMT.AMRUTA W/O. VINAYARADDI JUMANAL,
AGE: 36 YEARS, OCC. HOUSEHOLD WORK,
R/O. H.NO.89, 7TH CROSS, VIDYAGIRI, BAGALKOTE,
TQ AND DIST. BAGALKOTE- 587102.

...RESPONDENT

(BY SRI.GIRISH YADAWAD, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO
SET ASIDE THE JUDGMENT AND DECREE PASSED IN O.S.NO.32/2022
ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, AT: MUDHOL, DATED 29.08.2024 IN THE
INTEREST OF JUSTICE AND EQUITY.

VIJAYALAKSHMI
M KANKUPPI



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

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE GEETHA K.B.)

Even though the appeal is at the stage of admission, at the request learned counsel of both sides, appeal is heard on merits.

2. The defendants have filed this appeal under Section 96 of the Code of Civil Procedure challenging the judgment and decree dated 29.08.2024 in O.S. No.32/2022 on the file of learned Senior Civil Judge and JMFC, Mudhol.

3. The parties would be referred with their ranks, as they were before trial Court, for sake of convenience and clarity.

4. The case of plaintiff before trial Court in nutshell is that one Ramanagouda and Sumangala are the parents of the plaintiff and the defendants and both of them died on



17.09.2017 and 02.05.2021 respectively, leaving behind the plaintiff and defendant Nos.1 and 2 as their legal heirs. The suit schedule properties are the ancestral and joint family properties of the plaintiff and the defendants. There is no cordial relationship between the plaintiff and the defendants. Hence, the plaintiff demanded her share in the suit 'A' schedule properties by metes and bounds. But the defendants refused to effect petition. Hence, the suit for appropriate relief.

5. On service of suit summons, the defendants appeared through their counsel. Defendant No.1 filed her written statement which is adopted by defendant No.2. In the said written statement, defendant No.1 has taken a contention that suit properties are not properly described with specific boundaries and some of the family properties are not included in the suit. She admitted the relationship between parties, however, denied all other averments made in the plaint and thus prayed for dismissal of suit with exemplary costs of ₹50,000/-.



6. Based on the above pleadings, the trial Court framed the following issues:

- 1. Whether the plaintiff proves that the suit schedule properties are the ancestral and undivided joint family properties of herself and defendants?*
- 2. Whether the plaintiff proves that herself and defendants are the members of undivided family?*
- 3. Whether the plaintiff is entitled to 1/3rd share in the suit schedule properties as prayed for?*
- 4. What order or decree?*

7. On behalf of plaintiff, plaintiff was examined as PW.1 apart from marking Exs.P.1 to P.7 before trial court. On behalf of the defendants, defendant No.1 was examined as DW.1 and a witness was examined as DW.2, apart from marking Ex.D1 before trial court.

8. The trial Court after appreciating the evidence and material on record, decreed the suit of the plaintiff declaring that the plaintiff and the defendants each are entitled to 1/3rd share in the suit schedule 'A' properties.



9. Aggrieved by the impugned judgment and decree, the defendants are before this Court.

10. Heard arguments of both sides.

11. The learned counsel for appellants/defendants Sri. Harsh S. Maigur would submit that already there is oral partition between parties; all joint family properties are not included in the suit and there is no proper description of properties in the schedule. Hence, the suit is not maintainable in law. However, learned trial judge has not considered these aspects and wrongly decreed the suit.

12. Learned counsel for respondent/plaintiff Sri. Girish Yadawad would submit that admittedly, the suit schedule 'A' schedule properties are ancestral and joint family properties of plaintiff and defendants, who are daughters of deceased Ramanagouda and Sumangala. Plaintiff demanded her share in suit schedule 'A' schedule properties, but defendants refused to give share. Hence, she has filed the suit, which is decreed by the trial court by appreciating the oral and documentary evidence in proper manner.



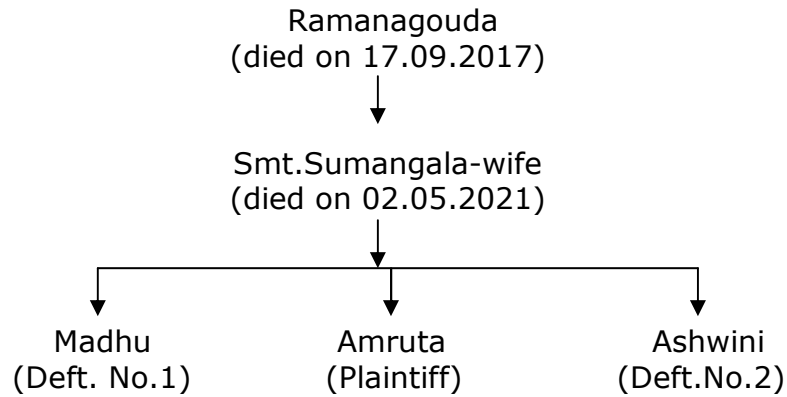
13. After hearing the arguments of both sides and verifying the appeal papers along with trial Court records, the points that arise for consideration are:

- i. Whether the appellants prove that the judgment and decree passed by trial Court is erroneous, as there was only partial partition and all the joint family properties were not included in the suit schedule and there was oral partition between parties prior to filing of the suit?
- ii. Whether interference of this Court to the impugned judgment in decree is required?

14. Our findings on the above points for consideration are in negative for the following:

REASONS

15. The admitted genealogy between parties is as follows:



16. The contention of plaintiff is that suit schedule properties are the joint family properties of the plaintiff and the defendants. To substantiate the same, plaintiff has produced two RTC extracts as per Exs.P.1 and P.2, Ruled cards as per Exs.P.3 and P.4, a survival certificate as per Ex.P-5, and Mutation Registers as per Exs.P-6 and P-7.

17. On perusal of Ex.P.5 and the admission of parties, there is no dispute that the plaintiff and the defendants are the only legal heirs of deceased Ramanagouda and Sumangala.

18. Exs.P.6 and P.7-Mutation Registers Extract establish that the suit schedule Item Nos.1 and 2 of 'A' schedule property i.e. Survey No.131 measuring 21 acres 36



guntas situate at Channal, Taluk Mudhol and Survey No.4/1+2/B measuring 5 acres 38 guntas situated at Vantagodi, Mudhol taluk are standing in the name of Sumangala Patil, the mother of the plaintiff and the defendants after the death of Ramanagouda and after death of Sumangala Patil, these properties are mutated into the joint names of the plaintiff and the defendants as per Order dated 22.07.2021.

19. Exhibits P.1 and P.2 are the RTC extracts for the year 2021-2022 in respect of the aforementioned properties standing in the joint names of the plaintiffs and the defendants. Exs.P.3 and P.4 are the Ruled cards in respect of two CTPS properties bearing Nos.54 and 3218, situate at Mudhol, were standing in the name of Ramanagouda Kalappa i.e. the father of the plaintiff and the defendants and after his death, mutated into the name of mother of the plaintiff and the defendants and after her death, they are mutated into the joint names of the plaintiff and the defendants as per Order dated 22.07.2021 and 06.08.2021 respectively. Thus, there is



no dispute between parties that suit 'A' schedule properties are the joint family and ancestral properties of both the plaintiff and the defendants, as they are the only daughters of Ramanagouda and Sumangala.

20. In the written statement, defendant No.1 has taken a contention that suit schedule properties are not properly described and boundaries are not furnished.

21. Order VII Rule 1(3) of CPC states that, where the subject matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

22. Thus, even if the numbers of the suit schedule properties are mentioned and if it is identifiable by both parties, then mentioning boundaries of those properties is not required.



23. In the instant case, except stating in the written statement, the defendants have not taken a contention that suit 'A' schedule properties are not identifiable. Under those circumstances, when numbers of these properties are furnished, the said contention of defendants is not tenable in law.

24. The second contention taken by the defendants in the written statement is that there are some more properties belonging to the joint family and they are not included in the suit. This is a vague contention, as specific survey number or CTS number of those properties is not mentioned in the written statement. Only at the time of cross-examining the plaintiff, some suggestions are put to her that, Sy.No.38/7, 38/1A/7, 38/1A/3 of Vantigodi village are the properties standing in the name of her father and they are not included in this suit. In this regard, according to the defendants, O.S. No.132/2022 is filed for partition in respect of those properties and the plaintiff admitted that she has filed her written statement in that suit and the said suit is still pending



consideration. Under those circumstances mere non-inclusion of those properties in this suit is not fatal to the case of the plaintiff.

25. There are two more suits pending between the parties in O.S. Nos.104/2021 and 1/2022 in respect of some other properties. Thus, pendency of those suits would in no way restrict the plaintiff to claim her share in the present suit.

26. In the written statement, defendants have not taken contention about the oral partition. However, at the time of cross-examination of plaintiff, it is suggested to her that already oral partition has taken place between the plaintiff and the defendants but only the properties are standing in the joint names in the records and the said suggestion is denied by her.

27. To substantiate this contradiction, defendant Nos.1 & 2 have examined D.W.2-the elder of the village, wherein D.W.2 has stated that there was already oral partition that had taken place in between plaintiff, defendant Nos.1 and 2 in the presence of himself, one Mallikarjuna Reddy, Viswanatha



Gangal, Anasuya Patil, Rekha Reddy, Sunita Gangal and in that partition, survey No.131, measuring 21 acre 36 guntas and house property bearing CTS No.3218 were fallen to the share of defendant Nos.1 & 2 and the remaining properties i.e., survey No.4/1+2B measuring 5 acre 38 guntas and CTS No.54 measuring 34.68 is fallen to the share of plaintiff.

28. On careful perusal of the aforesaid contention stated by D.W.2, in his affidavit evidence shows that there is unequal partition alleged to be taken place between the parties which is not at all admitted by the plaintiff. But, the date of such partition is also not stated by D.W.2 in his affidavit evidence. Without pleading, the contention of oral partition cannot be established by the defendants. Only at the time of arguments, learned counsel for defendants would submit that the said oral partition had taken place during December-2021. There is no averment about it either in the written statement or in the affidavit evidence of D.W.1. Hence, defendants failed to establish the oral partition as argued by the learned counsel for defendants. In this regard, even in



cross-examination, D.W.1 categorically admitted that plaintiff is entitled for 1/3rd share in suit schedule properties.

29. Even though there is an admission from the plaintiff that survey Nos.38/7, 38/1A/7, 38/1A/3 of Vantigodi village are the properties standing in the name of her father, defendants have not produced any iota of evidence to show that those properties still exist in their joint family.

30. In a suit for partition without producing any documents of the properties, suit cannot be decreed or defendants cannot take the plea of non-inclusion of those properties. Mere admission of plea in this point is insufficient.

31. Considering these aspects, rightly the learned trial judge has decreed the suit in respect of suit 'A' schedule property and granted 1/3rd share to the plaintiff, which needs no interference.

32. Under those circumstances, this inequitable partition granting only 5 acres 28 guntas and 34.68 sq. meters house property to plaintiff, defendant Nos.1 and 2



together by taking 21.36 acres and 360.40 sq.mtrs. is apparently an unequitable partition which cannot be accepted.

33. Hence, we are of the considered opinion that the appeal deserves to be dismissed. Accordingly we proceed to pass the following:

ORDER

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| i) | Appeal filed under Section 96 CPC is dismissed by confirming the judgment and decree dated 29.08.2024 in OS No.32/2022 on the file of Additional Senior Civil Judge, and J.M.F.C., Mudhol. |
| ii) | Under the facts and circumstances of the case, the parties are directed bear their own costs. |

**SD/-
(MOHAMMAD NAWAZ)
JUDGE**

**SD/-
(GEETHA K.B.)
JUDGE**