



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 29TH DAY OF JANUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100330 OF 2020 (DEC/INJ-)

BETWEEN:

1. SMT. LAXMI W/O. KALLAPPA KOUJALAGI,
AGE: 26 YEARS,
OCC. HOUSEHOLD WORK AND AGRICULTURE,
R/O. HALLUR, TQ. GOKAK,
DIST. BELAGAVI, PIN: 590001.
2. KUMAR BASAVARAJ S/O. KALLAPPA KOUJALAGI,
AGE: 6 YEARS, OCC. NIL,
R/O. HALLUR, TQ. GOKAK,
DIST. BELAGAVI, PIN: 590001.
3. KUMAR SHIVARAJ S/O. KALLAPPA KOUJALAGI,
AGE: 7 YEARS, OCC. NIL,
R/O. HALLUR, TQ. GOKAK,
DIST. BELAGAVI, PIN: 590001.

APPELLANT NO.2 AND 3 ARE MINORS REPRESENTED BY
THEIR NATURAL MOTHER APPELLANT NO.1

...APPELLANTS

(BY SRI.SHIVARAJ P. MUDHOL, ADVOCATE)

AND:

1. SMT. CHANDRAVVA W/O. BASAPPA KOUJALAGI
AGE: 59 YEARS,
OCC. AGRICULTURE AND HOUSEHOLD WORK,
R/O. HALLUR, TQ. GOKAK,

VIJAYALAKSHMI
M KANKUPPI


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VIJAYALAKSHMI M
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DIST. BELAGAVI, PIN: 591312.

2. SMT. BASAVVA W/O. SHIVALING KUDARI,
AGE: 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. GOKAK,
DIST. BELAGAVI, PIN: 591312.
3. SMT. SUMITRA @ SUMAMAVVA W/O. SANGAPPA JIRALI,
AGE: 44 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. GOKAK,
DIST. BELAGAVI, PIN: 591312.
4. SMT. KALAWATI W/O. VIRUPAKSHI JAGANUR,
AGE: 42 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALLUR, TQ. GOKAK,
DIST. BELAGAVI, PIN: 591312.
5. SMT. SUREKHA W/O. RAMALINGA ALAGODI,
AGE: 40 YEARS, OCC. HOUSEHOLD WORK,
R/O. BEERANAGADDI, TQ. GOKAK,
DIST. BELAGAVI, PIN: 591218.

...RESPONDENTS

(BY SRI. SHARAT B. NYAMAGOUDAR, ADVOCATE FOR
SRI. C.S. SHETTAR, ADVOCATE FOR R1, R3 TO R5;
R2 SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., PRAYING TO
CALL FOR THE RECORDS AND TO SET ASIDE THE JUDGMENT AND
DECREE DATED 21.07.2020 IN O.S.NO.428/2016 PASSED BY THE I
ADDITIONAL SENIOR CIVIL JUDGE, GOKAK AND TO ALLOW THE SUIT
FILED BY THE APPELLANTS/ PLAINTIFFS BY ALLOWING THIS APPEAL
IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, 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.)

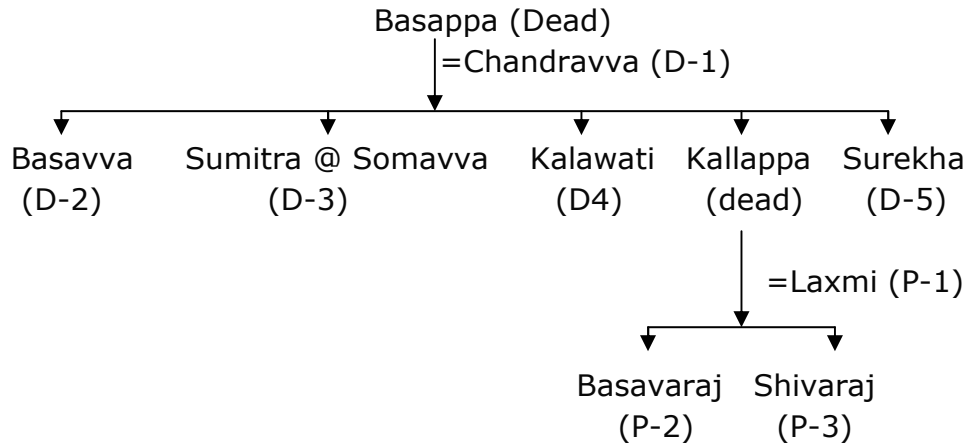
1. This is an appeal by the appellants/plaintiffs filed under Section 96 of the Code of Civil Procedure challenging the judgment and decree dated 21.07.2020 in O.S. No.428/2016 on the file of the learned I Additional Senior Civil Judge, Gokak, dismissing the suit of the plaintiffs.

2. The parties would be referred as per ranking as they were before the trial Court, for the sake of convenience and clarity.

3. The plaintiffs have filed the suit seeking for the relief of declaration that they are the absolute owners in possession and enjoyment of the suit schedule properties based on the consent deed dated 05.06.2010 and relinquishment deed dated 21.01.2010; for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties; for court costs and for such other reliefs.



4. The case of plaintiffs in nutshell before the trial Court and the genealogy tree as stated by plaintiff are as follows:



5. The plaintiffs' contention is that suit schedule properties are the ancestral properties of original propositus Basappa and after his death, his wife and children have executed the consent deed dated 05.06.2010 and relinquishment deed dated 21.01.2010 and thereby they have given consent to mutate the suit schedule properties into the name of husband of plaintiff No.1 and father of plaintiff Nos.2 & 3-Kallappa by relinquishing their rights over the suit schedule properties. After such relinquishment, the defendants lost their right, if any, over suit schedule properties, however, they started interfering with peaceful possession of plaintiffs over suit schedule properties and hence the suit for appropriate relief.



6. After filing the suit, on issuance of suit summons, defendant No.3 appeared through her counsel and filed written statement denying the entire averments made in the plaint and contended that suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants Nos.1 and 3 to 5 and defendant No.2 is in no way related to the family of the plaintiffs and defendant Nos.1 and 3 to 5. Defendant Nos.3 to 5 are coparceners along with deceased Kallappa and her father-Basappa and after the death of Basappa and Kallappa, it is the plaintiffs and defendant Nos.3 to 5 continued the Hindu undivided joint family. All of them are in joint possession of suit schedule properties by metes and bounds. She has filed O.S. No.569/2016 for the relief of partition and separate possession of her share which is pending on the file of the learned I Additional Civil Judge, Gokak (in short 'trial court'). She has denied the execution of consent deed dated 05.06.2010 and relinquishment deed dated 21.01.2010 and hence prayed for dismissal of suit with costs.



7. Even after service of suit summons, defendant Nos.1, 2, 4 & 5, did not appear and contest the suit and thus remained absent and were placed *exparte* before trial court.

8. On behalf of plaintiffs, plaintiff No.1 was examined as PW1 apart from examining three witnesses as PW.2 to PW.4 and marking Exs.P.1 to P.22. On behalf of defendant No.3, defendant No.3 was examined as DW.1, defendant No.1 was examined as DW.2 and defendant No.4 was examined as DW.3 apart from examining one witness as DW.4 and marking Exs.D1 and D2 before trial court.

9. After recording evidence and hearing arguments of both sides, the learned trial Judge has dismissed the suit of plaintiffs on the grounds that Ex.P.8 & Ex.P.22 are not registered documents and are not proved and already a suit in O.S. No.569/2016 for partition is pending between the parties.

10. Aggrieved by said judgment and decree, the appellants/plaintiffs have preferred this appeal.

11. Heard arguments of both sides.



12. Learned counsel for the appellants Sri Shivaraj P. Mudhol would submit that during the lifetime of husband of the plaintiff No.1, defendant Nos.1 & 3 to 5 have executed consent deed on 05.06.2010 in his favour. After the death of their father and based on such deed, the mutation of suit schedule properties was effected in his name and after his death, it is the plaintiffs, who succeeded to his properties, as they are his class-I heirs. Hence, they are the absolute owners in possession and enjoyment of suit schedule properties. He further contended that without challenging Exhibits P.8 & P.22, the defendants cannot contend that they also have a share in suit schedule properties. However, learned trial Judge has not considered these aspects and dismissed the suit. Hence, prayed for allowing the appeal.

13. Learned counsel Sri. Sharath B. Nyamagoudar appearing for learned counsel Sri. C.S. Shettar for respondent Nos.1 and 3 to 5 would submit that the alleged consent deed and relinquishment deed are unregistered documents and they would not convey any right to the plaintiffs or to the husband of first plaintiff. Mere mutation entry will not convey any absolute right



to the husband of plaintiff No.1. Furthermore, defendant No.1 being the wife and defendant Nos.3 to 5 being the daughters of deceased Basappa have equal rights in suit schedule properties along with deceased Kallappa and their father Basappa and in view of amendment to Section 6 of the Hindu Succession (Amendment) Act, 2005 (for short, 'Act-2005') the daughters are considered as coparceners along with the sons. Hence, defendant Nos.3 to 5 being daughters of defendant No.1-Basappa, are coparceners and the suit schedule properties being the ancestral and joint family properties, they have got equal share in suit schedule properties. Their mother (defendant No.1) being the wife of Basappa is also having a share equal to that of her children. Hence, all of them have equal share in suit schedule properties. In this regard, defendant No.3 has filed a suit for partition in O.S. No.569/2016 and the same is still pending consideration. Hence, no absolute right is conveyed to the plaintiffs based on Exhibit P.8 and Exhibit P.22. He contended that, considering these aspects, the learned trial judge has rightly dismissed the suit. Hence, prayed for dismissal of appeal with costs.



14. Having heard 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 unregistered consent deed dated 05.06.2010 and the unregistered relinquishment deed dated 21.01.2010 convey any absolute right, title or interest in or over suit schedule properties in favour of the husband of the first plaintiff?
- ii. Whether the judgment and decree passed by the trial Court is erroneous?
- iii. Whether interference by this Court to the impugned judgment and decree is required?

15. Our answer to the aforesaid Points 1 to 3 is in the 'negative' for the following:

REASONS

16. **Points 1 to 3:** These points are considered together since they are interconnected with each other and to avoid repetition.

17. The admitted facts of the case are that Basappa was the original propositus and he left behind his wife-defendant



No.1, his son Kallappa and 3 daughters-defendant Nos.3 to 5. Even though it is alleged in the plaint that he also left behind defendant No.2, defendants No.3 disputes her relationship with defendant No.2. No material document is produced to show the relationship of defendant No.2 with other parties.

18. The plaintiffs have filed the suit praying for the relief of declaration of their absolute title over the suit schedule properties and for the relief of permanent injunction, contending that they are in absolute possession and enjoyment of suit schedule properties by virtue of mutation entry made in favour of the husband of first plaintiff based on consent deed dated 05.06.2010 and the relinquishment deed dated 21.01.2010 executed by the defendants.

19. The plaintiffs have produced said consent deed and relinquishment deed as per Exhibits P.8 and P.22 respectively. Exhibit P.8 is only a consent given to change the khata and pahani of suit schedule properties into the name of husband of plaintiff No.1-Sri Kallappa after death of Basappa-the original propositus. It does not confer any absolute right to any party



because it is only consent to change the mutation entries. Mutation entries and revenue records will not confer absolute ownership over suit schedule properties to plaintiffs. They are relevant only for collection of taxes and to some extent to prove the possession.

20. Relinquishment deed-Exhibit P.22 is dated 21.01.2010, wherein it is alleged that defendant Nos.1 & 3 to 5 have relinquished their rights in respect of suit schedule properties in favour of husband of first plaintiff. It is executed on a stamp paper of ₹2/- and ₹50/- is paid as stamp duty.

21. As per Section 6 of the Act-2005, the daughters are considered equivalent to that of the son/s of a coparcener. Hence, by enactment of the Act, 2005, daughters of Basappa would be considered as coparceners along with his son Kallappa. Hence, all the daughters would get equal share as that of Kallappa in ancestral properties of the joint family. Under those circumstances, even if it is presumed that defendant Nos.1 & 3 to 5 have executed consent deed and relinquished their right over the suit schedule properties, that by itself will not confer



any rights on Kallappa or the plaintiffs, as the said documents are unregistered. Admittedly, the value of suit schedule properties is more than ₹100/-. Under the circumstance, any relinquishment made shall be only through a registered document. In this regard, the trial judge in his judgment at paragraph 36 has relied upon the judgment of the Co-ordinate Bench of this Court in the case of ***Binni Mill Labour Welfare House Building Co-operative Society Ltd., v. B.R. Murthunjaya Aaradya*** reported in ***2008 (3) KCCR 1692***, which reads as under:

" 36. as per Section 47 to 49 of Indian Registration Act, 1908, an instrument which purports to transfer title requires Registration and title does not pass until Registration has been effected."

22. Furthermore, the plaintiffs have not established the due execution of Exhibit P.8 & Exhibit P.22 by defendant Nos.1 and 3 to 5. Even though plaintiff No.1 examined three witnesses to substantiate her contention, the evidence of none of those witnesses inspire confidence about execution of these two documents by defendant Nos.1 and 3 to 5. Furthermore, defendant No.3 in her cross-examination has categorically denied



the due execution of aforesaid documents. Under these circumstances, only based on Exhibit P.8 & Exhibit P.22, the plaintiffs cannot be declared as absolute owners of suit schedule properties when defendant Nos.1 & 3 to 5 are having right and title over the suit schedule properties as joint owners. Thus, a decree of declaration cannot be granted against the joint owners and coparceners.

23. Considering these aspects, the learned trial Judge has rightly dismissed the suit of plaintiffs. Hence, interference by this Court to the impugned judgment and decree is not required.

24. Accordingly, we answer the points for consideration and proceed to pass the following:

ORDER

The appeal filed under Section 96 of CPC is dismissed by confirming the judgment and decree dated 21.07.2020 passed in O.S. No.428/2016 on the file of the learned I Additional Senior Civil Judge, Gokak.



Under facts and circumstances of the case, the parties shall bear their own costs.

Any observation made in this appeal shall not affect the rights of parties in O.S. No.569/2016.

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

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

kmv
CT:PA