

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 14TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100116 OF 2019 (PAR/POS)

BETWEEN

1. SHRI MALLIKARJUN
S/O. REVANASIDDAPPA NAINEGALI,
AGE: 59 YEARS,
OCC: ASSISTANT EXECUTIVE ENGINEER,
BAGALKOT TOWN DEVELOPMENT AUTHORITY,
R/O. R.S.NO.128D, PLOT NO.2,
VEDANT NILAY, ROAD NO.16,
VIDYAGIRI, BAGALKOT-587 102.
2. SMT. SAVITA
W/O. MALLILARJUN NAINEGALI,
AGE: 55 YEARS,
OCC: HOUSEHOLD WORK,
C/O. MALLIKARJUN
S/O. REVANASIDDAPPA NAINEGALI,
R/O. PLOT NO.@-12,
SECTOR NO.55,
ROAD NO.16, VIDYAGIRI,
BAGALKOT-587 102.

...APPELLANTS

(BY SRI. SHIVARAJ S. BALLOLI, ADVOCATE)

AND

SHRI SOMALINGAPPA
S/O. REVANASIDDAPPA NAINEGALI,
AGE: 65 YEARS,
OCC: RETIRED PENSIONER,
R/O. PLOT NO.22/2, RS NO.128D,
ROAD NO.16, VIDYAGIRI,
BAGALKOT-587 102.

...RESPONDENT

(BY SRI. S.B. HEBBALLI, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER 41
RULE 1 READ WITH SECTION 96 OF CPC., PRAYING TO SET
ASIDE THE JUDGMENT AND DECREE DATED 12/02/2019 PASSED
IN O.S.NO.92/2014 ON THE FILE OF THE I ADDITIONAL SENIOR
CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS,
BAGALKOT BY ALLWOING THE TOP NOTED APPEAL TO MEET THE
ENDS OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 05.01.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE
FOLLOWING:

CAV JUDGMENT

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

Appellants-defendants have filed this appeal under Order XLI Rule 1 R/W Section 96 of CPC, praying for setting aside the judgment and decree dated 12.02.2019 passed in O.S.No.92/2014 on the file of I Additional Senior Civil Judge and JMFC., Bagalkot and to dismiss the suit.

2. Parties would be referred with their ranks, as they were before trial Court for the sake of convenience and clarity.

3. Plaintiff has filed the suit before trial Court, praying for partition and separate possession of his half share in suit schedule property situated at Vidyagiri, Bagalkot bearing R.S.No.128D of Murnal, old Plot No.22, new plot No.22/1 & 22/2 Measuring 12x19 meters by metes and bounds; for *mesne* profits; for Court costs and for such other reliefs.

4. The case of plaintiff before the trial Court in nutshell is that suit schedule property shown in two

different sub-divisions was formally described as Plot No.22. The suit schedule property belonged to one Jagannath Karabassaya Balulamath and Parvati Mallinath Balulamath; plaintiff and defendant No.1 have jointly purchased suit schedule property from them under registered sale deed dated 25.01.2001, for a sum of Rs.1,29,000/-. Both plaintiff and defendant No.1 have paid equally for purchase of this property jointly in their names. Plaintiff and defendant No.1 are brothers and by virtue of sale deed, they became owners of entire suit schedule property and their names are entered in the Record of Rights as joint owners by M.E.No.9288. Thereafter, they have given application to Municipal Counsel, Bagalkot for permission to construct buildings in the entire property and a map was prepared showing two tenements in the said plot. The said application was considered. Plaintiff and defendant No.1 with an intention that in future, they can divide the property and each would be allotted with half share, have constructed two tenements and the construction cost has been jointly contributed by both plaintiff and defendant. They have paid

taxes jointly. Even, the self-declaration assessment form is filed jointly by both plaintiff and defendant and taxes were also paid. For convenience, plaintiff and defendant began to reside in separate constructed buildings. But, they have not been separated and no partition has taken place between plaintiff and defendant No.1. About one year prior to filing of the suit, defendant No.1 with malafide intention to cause loss and harassment to plaintiff has filed O.S. No.246/2013 on the file of Civil Judge, Bagalkot for partition of property bearing No.47 situated at Gaddanakeri. It is defended by the plaintiff who is defendant No.1 in said suit. Said suit is still pending. When suit summons was issued to the present plaintiff, the present defendant No.1 started behaving differently with ill-will against plaintiff and then plaintiff doubted that some false entries in Record of Rights might have entered. 2-3 months prior to filing of the suit, defendant No.1 represented that already he got effected separate names for properties constructed in the suit plot and has succeeded in getting the said entries. Suspecting the conduct of defendant No.1, plaintiff has made enquiry

and obtained certified copies and then came to know that ME No.1462 is entered in Record of Rights, got entered the name of defendant No.1 to Plot No.22/1 and name of plaintiff to Plot No.22/2; defendant No.1 did so without the knowledge and consent of plaintiff and by forging the signature of plaintiff. The said alleged partition is not at all acted upon and no document of partition is executed. Hence, prays for appropriate reliefs.

5. After service of suit summons, defendant No.1 appeared through his counsel and filed his written statement wherein he admitted the relationship between plaintiff and defendant No.1; admitted about the joint purchase of suit schedule property under registered sale deed dated 25.01.2001; admitted about construction of two tenements in the building and also admitted about filing of O.S.No.246/2013. He further contended that said suit is not pertaining to suit schedule property but pertaining to some other property bearing Plot No.47 situated at Gaddanakere Village. He admitted about ME No.1462 and

two separate plot Nos.22/1 and No.22/2 given to suit schedule property. However, his contention is that said entry is agreed between both plaintiff and defendant No.1 and with the knowledge of plaintiff. He further contended that both plaintiff and defendant No.1 with an intention to divide, have constructed two separate tenements in a single plot and after such construction, they started residing separately and it is based on the partition between them. It was agreed between plaintiff and defendant No.1 that plaintiff should take eastern half portion and defendant should take western half portion. It was agreed that some portion in said property towards north side should be left vacant for the common enjoyment of plaintiff and defendant. Accordingly, plaintiff and defendant prepared plans for construction of houses in their respective areas. In order to save more open area, they have decided to construct two houses by putting common wall in between two houses. Since, the property is standing jointly in the names of plaintiff and defendant; they have jointly taken loan from the bank, but plaintiff and defendant utilized their

loan amount separately and credited installments of their share in said loan separately. Defendant has constructed house on western portion as per his desire and wish; likewise plaintiff constructed house on eastern portion as per his desire and wish. Defendant is a Civil Engineer. Hence, to help the plaintiff, who is his elder brother, defendant has supervised the entire construction work. Though, plaintiff and defendant have constructed their houses separately, the wall in between their house is a common wall. The defendant has opened two doors to his house, one is on western side and another is on northern side. Defendant has constructed steps to go to his house by using said two doors. He has put up steps within his area; likewise, plaintiff also put up steps in his area. About 8 - 9 years prior to filing of the written statement, defendant has constructed first floor by spending more than 5 - 6 lakhs of rupees. Defendant is absolute owner in possession of said portion and open space constructed within western portion of his property under oral partition. Defendant has no right, title or interest in or over the eastern portion fallen to the

share of plaintiff; likewise, plaintiff has no right, title or interest in or over the portion which is fallen to the share of defendant No.1. Of late, plaintiff is acting adverse to the interest of defendant. He was not cooperating in payment of taxes and other works. Hence, with an intention to get separation, defendant has filed an application before Deputy Tahsildar, Kaladagi for sub-division of the property as per the oral partition. On the basis of said application, ME No.1462 was prepared. Deputy Tahsildar issued notice to plaintiff prior to certificate of said mutation entry. Plaintiff objected for said certification. Hence, it was registered as dispute in RTS/Takarar/CR-7/10-11 and notice was issued to both plaintiff and defendant No.1. They have appeared before Deputy Tahsildar. Deputy Tahsildar, Kaladagi has visited the spot and made spot inspection and after holding full-fledged enquiry, has certified the ME No.1462 on 30.09.2010. Accordingly, the Plot No.22 was divided into two parts i.e. Plot No.22/1 and Plot No.22/2. Plaintiff is party to those proceedings and never challenged the said order. Partition between plaintiff and defendant No.1 is

acted upon and accepted by both plaintiff and defendant No.1. Plaintiff has allowed defendant to make improvement and to construct first floor over portion of the property fallen to his share in the oral partition. At this belated stage, plaintiff is estopped from contending that no partition has taken place. Plaintiff issued legal notice dated 12.07.2010 through his advocate to defendant No.1 in respect of common passage left for common use and enjoyment. Defendant has given proper reply to it. Plaintiff kept quiet for all these years knowing fully well that he is owner of the house constructed on eastern portion and defendant is owner of the house constructed on western side including first floor. Now, the difference of opinion is widened between them. Plaintiff, defendant No.1 and another brother Siddalingappa jointly purchased a plot at Gaddanakere village. Plaintiff is acting adverse to the interest of defendant No.1 in respect of said property. Hence, defendant No.1 has filed suit in O.S.No.246/2013 claiming 1/3rd share in said property. Afterwards, plaintiff appeared in said suit and filed his written statement.

Defendant No.1 has relinquished his rights over Plot No.22/1 in favour of his wife Smt.Savitha (defendant No.2) by executing a registered relinquishment deed dated 22.08.2013. Hence, presently his wife Smt. Savitha (defendant No.2) is the absolute owner in possession of the property bearing No. 22/1 and not defendant No.1. Hence, the suit is bad for non-joinder of necessary party and hence, prayed for dismissal of suit with compensatory costs of Rs.25,000/-.

6. After filing the written statement, plaintiff has impleaded the wife of defendant No.1 as defendant No.2 who has filed her written statement and took the similar contention which is taken by defendant No.1 and prayed for dismissal of the suit.

7. After completion of pleadings, the trial Court has framed the following issues and additional issues:-

ISSUES

1. *Whether the plaintiff proves that, suit schedule property is joint property of plaintiff and defendant and he had joint share in the suit schedule property?*
2. *Whether the plaintiff prove that, he had 1/2 share in suit schedule property?*
3. *Whether the defendant prove prior partition in between plaintiff and defendants?*
4. *Whether suit is bad for non joinder of necessary parties?*
5. *Whether the plaintiff is entitled for the relief sought for?*
6. *What order or decree?*

Additional issues

1. *Whether defendant No.2 proves that, she is the absolute owner and possessor of the suit property bearing Plot No.22/1 in R.S.No.128D of Muranal (Vidyagiri*

Bagalkot) as per registered relinquishment deed execute by defendant No.1 in her favour on 22-08-2013?

2. Whether defendant No.2 proves that, suit of the plaintiff is barred by law of limitation?

8. On behalf of plaintiff, plaintiff was examined as P.W.1 apart from marking Exs.P.1 to P.6 before trial court. On behalf of defendants, defendant No.1 was examined as D.W.1 and examined a witness as D.W.2 apart from marking Exs.D.1 to D.7 before trial Court.

9. After recording evidence of both sides and hearing arguments of both sides, the learned Trial Judge came to the conclusion that plaintiff has proved that both plaintiff and defendant No.1 have equal share in suit schedule property and there is no partition effected between them and thus decreed the suit by granting half share to plaintiff.

10. Aggrieved by the said judgment and decree, defendants/appellants have filed this appeal.

11. Heard arguments of both sides.

12. Learned counsel for the appellants Sri.Shivaraj S. Balloli would submit that at the time of purchase of property itself, there was an intention for plaintiff and defendant to put up two separate houses in the property and to get equal half share between them in this property. Accordingly, both of them have constructed two separate houses in suit schedule property and since 2002, both plaintiff and defendant No.1 is residing separately in two portions of suit schedule property. Plaintiff is residing in eastern portion and defendants are residing in western portion. Both houses of ground floor, on eastern and western portion were constructed simultaneously and sometime afterwards defendant No.1 has put up construction of first floor. After construction of first floor by defendant No.1, the differences arose between parties. Hence, plaintiff and defendant No.1 have divided their properties under oral partition.

Accordingly, the application was given to Deputy Tahsildar, who has visited the spot and has certified that this property consists of two tenements and has given plot No.22/1 and Plot No.22/2 to the property of defendants and plaintiff respectively by making mutation entry in ME No.1462. Even plaintiff has admitted these facts in his cross examination. These admitted facts clearly and categorically establish that there is partition between plaintiff and defendants. Hence, the suit ought not to have been decreed. By spending huge amount, defendants have constructed first floor building and plaintiff has not spent any amount for its construction. He would further submit that even though both plaintiff and defendants have constructed the houses on ground floor separately they spent the amount separately. Hence, prayed for dismissal of suit by allowing the appeal.

13. Learned counsel for respondent Sri S.B.Hebballi would submit that the defendants have not produced any iota of material or any document to show that there was partition between plaintiff and defendant No.1. At one

stretch, defendant No.1 says that the partition has taken place under a deed of partition and at another stretch, he contends that it was oral partition. But to prove the oral partition or to prove the written partition executed between the parties, defendants have not produced any material. Considering all these facts in a proper and right perspective, the learned trial judge has decreed the suit and it needs no interference. Learned counsel would further submit that this construction of first floor by defendants can be considered in final decree proceedings. Hence, prayed for dismissal of appeal with costs throughout.

14. Having heard the arguments of both sides and verifying the appeal memo and the trial Court records, the points that arise for consideration are:

- 1) Whether appellants/defendants establish that there was earlier partition between plaintiff and defendants and thus decree of suit by the trial Court is erroneous?

- 2) Whether interference of this court on the judgment and decree of trial Court is required?
- 3) What order or decree?

15. The admitted facts of the case are that plaintiff and defendant No.1 are brothers and they have jointly purchased suit schedule property bearing plot No.22 situated at Vidhyagiri, Bagalkot under registered sale deed dated 25.01.2001 for a sum of Rs.1,29,000/- from its erstwhile owners and after such purchase, said property is mutated into the joint names of plaintiff and defendant No.1 as per M.E.No.9288. Both plaintiff and defendant No.1 together were paying taxes jointly to this property and they were submitting self-declaration assessment form jointly. It is also an admitted fact that both plaintiff and defendant No.1 have constructed two tenements in suit schedule property and the tenement bearing No.22/1 situated on western side is in occupation of defendants and tenement bearing No.22/2 on eastern side is in occupation of plaintiff.

16. In the cross-examination, plaintiff admitted that both plaintiff and defendant No.1 have constructed two tenements separately in suit schedule property and at that time to avoid leaving set back, they have put up a common wall in between their houses and thus he has constructed house on eastern side and defendant has constructed house on western side and started residing separately. Plaintiff further admitted in his evidence that there are two separate staircases to go to upstairs for both tenements. He has deposed that he has left vacant space on eastern and western side of staircase of his house. He further admitted that he has put up house as per his will and wish within his house property and improved said property; likewise defendant No.1 has also put up construction inside of his house at his will and wish and there are two separate electricity meters to both houses and they have constructed two houses separately as per their oral agreement in the year 2001.

17. Plaintiff in his cross-examination further admitted that defendant No.1 being Civil Engineer has supervised the construction of his house as well as the house of defendants; defendant No.1 has put up two doors to his house, one on western side and another on northern side and the door on western side is main door; defendant No.1 has put up staircase on northern side of his house.

18. Plaintiff in his cross-examination further categorically admitted that after sometime, defendant No.1 has put up construction of first floor house and at that time he has raised objection that said first floor house causes obstruction to plaintiff to reach upstairs through his staircase. In this regard he has issued legal notice dated 12.07.2010 to defendant No.1 and defendant No.1 has given reply to it. He categorically admitted that only after putting up of construction of first floor by defendant, the dispute commenced between him and defendant No.1.

19. This admission of plaintiff in his cross-examination clearly establish that plaintiff has not

challenged the construction of first floor by defendant No.1, but challenged only that it obstructs his way to reach upstairs. If really, there was no partition; plaintiff would not have raised such objection.

20. After sometime, defendant No.1 has given application to the Municipal office, Bagalkot to give two separate numbers to the two tenements and in that regard notice was served upon plaintiff and plaintiff has raised objection for it and in that regard a case was initiated before Deputy Tahsildar and in that case Deputy Tahsildar has made spot inspection and recorded the statements of plaintiff and defendant No.1 separately. In that statement, plaintiff categorically stated that first defendant has put up construction towards northern side of his property and it causes obstruction to plaintiff to use his portion of the property. Plaintiff categorically admitted that he has given statement as per Ex.D.1 before the Deputy Tahsildar.

21. In the said statement, the plaintiff has stated that there is a common wall in between the house of

plaintiff and defendant and they have put up separate staircases. Staircase of defendant No.1 measures 3.5 feet width and 8 feet length and half of it comes in his property and half of it comes in the property of defendant No.1 and thus it is causing hindrance for plaintiff to take his vehicles and hence requested to shift the staircase of defendant No. 1 from front side towards back side. He also admitted that they are having two separate electricity meters and they are paying electricity bills separately.

22. Since 2001, this arrangement is being done and at the time of construction of ground floor house only both plaintiff and defendant No.1 have put up separate staircases and there was no objection by the plaintiff.

23. It is to be noted here that there is another plot of property bearing No.47 which was purchased by plaintiff defendant No.1 and another brother Siddhalingappa jointly. In respect of the said property, defendant No.1 has filed suit for partition in O.S.No.246/2013 and only after service

of suit summons of said suit, the plaintiff has issued legal notice to defendant No.1 and has filed the present suit.

24. Only after defendant No.1 put up construction on first floor in the property allotted to him, in the western side of the property and after defendant No.1 filed suit in respect of other joint property of plaintiff, himself and their another brother, the dispute commences between parties.

25. It is the specific contention of defendant No.1 that there was partition between him and plaintiff in respect of these two tenements and he has put up construction of first floor by spending about Rs.5 - 6 lakhs. This point that defendant No.1 had spent Rupees 5 - 6 lakhs and put up construction of first floor is not disputed by plaintiff while cross-examining defendant No.1.

26. The plaintiff denied the partition between him and defendant No.1 in respect of suit schedule property. However, defendant No.1 has taken specific contention of partition. Hence, it is the initial burden of defendants to establish that there is partition between them in respect of

the present suit schedule property before filing of the suit. This partition between parties can be established by producing, deed of partition or if it is oral partition then by implication or by the act of both parties, it could be inferred.

27. Only when defendant No.1 has given application to give two separate numbers to two tenements of suit schedule property, the plaintiff has raised objection and after hearing both sides, the Deputy Tahsildar has passed an order and has given two separate numbers i.e., Plot No.22/1 and Plot No.22/2 to the properties of defendant and plaintiff respectively. Afterwards, the defendant No.1 has alienated this property in favour of his wife i.e., Defendant No.2 by way of gift.

28. The Deputy Tahsildar has passed an Order dated 30.09.2010 and changed the plot numbers as 22/1 and 22/2 in respect of two portions of suit schedule property by making M.E.No.1462. A certified copy of said order is produced as per Ex.P.4. Before passing the said order, the Deputy Tahsildar has issued notices to both parties and has

made spot inspection. Plaintiff himself has produced documents in respect of this revenue transaction. These revenue entries will not create any ownership over the property unless and until there is a registered document. However, in case of partition between brothers, only by taking their statements and by making spot inspection, the Deputy Tahsildar can mutate the properties which were allotted to brothers separately and it is permissible and it does not require any registered document.

29. Under these circumstances, from implication, one can gather that there was partition between plaintiff and defendant No.1 in respect of suit schedule property and eastern portion was allotted to plaintiff and western portion is allotted to defendant No.1 and both of them have put up two separate houses in those two portions separately and residing separately since 2001. Furthermore, defendant No.1 has relinquished his rights in favour of his wife in respect of this property by executing registered relinquishment deed and these facts are not in dispute.

30. According to defendant No.1, there was partition between plaintiff and defendant No.1 before Nadakacheri, Kaladagi Tahsildar and both houses are having same value. Some suggestions are given to defendant No.1 at the time of his cross-examination that as both houses are having same value and same facilities, whether he is ready to exchange the house property in his possession with the house property of plaintiff and he has not accepted said suggestion.

31. Some suggestions were given to defendant No.1 that he has misused the amount given by plaintiff at the time of construction of house and he has used good quality materials for construction of his house and used bad quality materials to the house of plaintiff which is denied by him.

32. There is no such pleading either in the plaint or in the affidavit evidence of plaintiff. Only for the first time such suggestion was made to defendant No.1 which is denied by him. Without the pleadings, any amount of evidence will not establish the case. Even defendant No.1

has not admitted this suggestion. Hence, it is not useful for plaintiff.

33. In the cross-examination defendant No.1 admitted that he has stated in his written statement that there is oral partition between him and plaintiff in respect of suit schedule property. There is no written document to prove the same. Only plaintiff and defendant No.1 have partitioned it.

34. As discussed above, by implication and by the act and attitude of both parties, it could be inferred that by spending the amount separately both plaintiff and defendant No.1 have put up construction of two tenements in the same property and they started residing separately in those two tenements without any obstacle from 2001-2002 till 2014 and only after defendant No.1 put up the construction of first floor in his property and only after he filed a suit for partition in respect of another plot of property against the plaintiff and his another brother in OS No.248/2013, the plaintiff has raised objection and filed

present suit for partition. These things establish that there is already oral partition between plaintiff and defendant No.1 in respect of suit schedule property.

35. Learned trial judge has not examined these aspects but has come to a wrong conclusion only based on some stray evidence that both plaintiff and defendant No.1 have given joint application to Municipal Council for license and they have given joint self-assessment form and were paying taxes jointly. The learned trial judge held that there was no partition between parties and thus partition of suit schedule property in two equal half in favour of both plaintiff and defendant No.1. As discussed above, already both plaintiff and defendant No.1 started utilizing the portion of properties which were fallen to their shares separately as per their will and wish; then again granting decree of partition will lead to multiplicity of problems, as first defendant has already constructed first floor in his property by spending huge amount separately and there was no contribution by plaintiff for construction of first floor.

36. Learned counsel for plaintiff would submit that this fact can be agitated in final decree proceedings. In final decree proceedings, both parties would get equal share not only in the land of property but also on the structures put up on it. Hence, said argument of learned counsel for plaintiff is not tenable. Hence, granting decree of partition by learned trial judge is erroneous and it requires interference. Accordingly, point numbers 1 & 2 are answered in **affirmative**.

37. In view of findings on point Nos.1 and 2, we proceed to pass the following:

ORDER

Appeal filed by appellants under Order XLI, Rule (1) R/w Section 96 CPC is **allowed** by setting aside the judgment and decree passed in O.S. No.92/2014 dated 12.02.2019 on the file of I Additional Senior Civil Judge and JMFC., Bagalkot.

Consequently, the suit filed by plaintiff is dismissed.

Under the facts and circumstances of the case, parties are directed to bear their own costs.

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

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

HMB
CT-MCK