

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 30TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

REGULAR FIRST APPEAL NO.100414 OF 2018



BETWEEN:

SRI. SRIDHAR
S/O LATE G. KRISHNAMURTHY
AGE: 30 YEARS, OCC: AGRIL.,
R/O: ANNUR GOURAMMA CAMP,
TQ: GANGAVATHI,
DIST: KOPPAL-582114.

...APPELLANT

(BY SRI. RAJASHEKAR GUNJALLI, ADVOCATE)

AND:

1. LALITHA
D/O LATE G. KRISHNAMURTHY
AGE: 30 YEARS, OCC: AGRIL.,
R/O: ANNUR GOURAMMA CAMP,
TQ: GANGAVATHI,
DIST: KOPPAL-582114.
NOW AT: C/O RADHA KRISHNAN
II 41 8TH "A" CROSS,
BHADRAPPA LAYOUT, MARUTI NAGAR,
NAGASHETTY BANGALORE NORTH-560094.
2. SMT. SRILAKSHMI
W/O LATE G. KRISHNAMURTHY
AGE: 58 YEARS, OCC: HOUSEHOLD,
R/O: HIREJANTHAKAL ROAD,
ANNUR GOURAMMA CAMP,
TQ: GANGAVATHI,
DIST: KOPPAL-582114.

3. SMT. VALARAMATI
W/O RADHAKRISHNA
AGE: 40 YEARS, OCC: HOUSEHOLD,
R/O: NO.38, 1ST MAIN ROAD,
5TH CROSS, MARUTHINAGAR,
NAGASHETTYHALLI, BENGALURU-94.
4. SMT. RENUKA
W/O VEERESH GONAL
AGE: 28 YEARS, OCC: HOUSEHOLD,
R/O: HEROOR VILLAGE,
TQ: GANGAVATHI,
DIST: KOPPAL-582114.

...RESPONDENTS

(R4-HELD SUFFICIENT;
R1 TO R3-APPEAL DISMISSED (VIDE ORDER DATED 19.02.2025))

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CODE OF CIVIL PROCEDURE, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE LEARNED SENIOR CIVIL JUDGE AT GANGAVATHI IN OS NO.58/2014 DATED 09.07.2018 IN RESPECT OF GRANTING SHARE IN SUIT ITEM NO 5 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.01.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

The present appeal is filed by defendant No.4 to set aside the judgment and decree dated 09.07.2018 passed in O.S.No.58/2014 on the file of the Senior Civil Judge at Gangavathi (hereinafter referred to as 'the trial Court' for short) in respect of granting share in suit item No.5.

2. The appellant herein is defendant No.4, respondent No.1 herein is the plaintiff and the respondents No.2 to 4 herein are the defendants No.1 to 3 before the trial Court.

3. For the sake of convenience, the parties herein are referred to as per their ranking before the trial Court.

4. Brief facts of the case are as follows:

The suit is filed for partition and separate possession wherein the plaintiff seeks her 1/5th share by metes and bounds in the suit schedule properties, contending that the same are ancestral joint family properties of herself and defendants. It is the specific case of the plaintiff that defendant No.1 is her mother, defendant Nos.2 and 3 are

her sisters, and defendant No.4 is her brother and that the suit schedule properties stand in the names of the defendants and late G. Krishnaswamy, the father of the plaintiff. According to the plaintiff, there is no prior partition in the family, and all of them are in joint possession and enjoyment of the suit schedule properties. It is further pleaded that upon demand for partition and allotment of her legitimate share, the same was denied by the defendants, therefore, cause of action arose for the plaintiff to file a suit for partition and separate possession.

5. After service of summons, defendants No.1 to 4 entered appearance through their counsel. Defendant No.1 filed her written statement, defendants No.2 and 3 did not file any written statement; and defendant No.4 adopted the written statement filed by defendant No.1.

6. Defendant No.1, while admitting the relationship between the parties, denied all other plaint averments and contended that the suit schedule properties are neither ancestral nor joint family properties. It is specifically

pleaded that suit schedule item No.2 was purchased by defendant No.1 from Narasappa under a registered sale deed dated 18.05.1987 and her name was mutated in the revenue records. From the income generated from item No.2, she purchased item No.9 from K. Nageshwararao under a registered sale deed dated 16.06.1989 and item No.10 from Smt. Kokilamma under a registered sale deed dated 13.04.2000 and her name was mutated in the revenue records. It is further contended that suit schedule item No.1 originally belonged to her father Sanniyappa S/o Alagiri, who relinquished the same in her favour and from its income, she purchased item No.7 under a registered sale deed dated 30.06.2012. Defendant No.1 thus asserts absolute ownership over item Nos.1, 2, 7, 9 and 10. It is further contended that defendant No.2 purchased item No.4 under a registered sale deed dated 15.10.2001 and she is the absolute owner.

7. Defendant No.4, having independent income as a contractor purchased item No.5 out of his self-earnings

under registered sale deed No.454/2004-05. According to defendant No.1, item Nos.1, 2, 4, 5, 7, 9 and 10 were not left by deceased G. Krishnaswamy, and that only item Nos.3, 6 and 8 were belonged to him. It is further pleaded that late G. Krishnaswamy suffering from kidney ailments in his last days, for which defendant Nos.1 and 4 incurred heavy medical expenses. To clear such dues, defendant No.4 availed a loan of Rs.14,00,000/- by mortgaging item Nos.6 and 8, apart from an additional loan of Rs.7,00,000/- obtained by defendants No.1 and 4 from Pragathi Krishna Gramin Bank, Sangapur and VSSNS, Mallapur.

8. The trial Court based on the pleadings of the parties, framed the following issues for its consideration:

i. Whether plaintiff proves that the suit schedule properties are joint family ancestral properties of herself and defendants?

ii. Whether plaintiff proves that she has 1/5th share in suit properties?

iii. Whether defendant No.1 proves that item No.1, 2, 7, 9 & 10 of suit schedule properties are absolute properties of defendant No.1 as pleaded

in para No.9 of written statement of defendant No.1?

iv. Whether defendant No.4 proves that he is absolute owner of item No.4 and 5 of suit properties?

v. What order or decree?

9. In order to substantiate her case, plaintiff examined herself as PW-1 and got marked documents marked as Exs.P1 to P57. On the other hand, defendant No.4 examined himself as DW-1 and got marked documents marked as Exs.D1 to D22.

10. The trial Court based on the pleadings, oral and documentary evidence, decreed the suit in part with costs. It is held that the plaintiffs and defendants are entitled to a 1/5th share in the suit schedule item Nos.3, 5, 6 and 8 properties.

11. Learned counsel for the appellant-defendant No.4 submitted that the finding of the trial Court granting a share in item No.5 of the suit schedule property is perverse, against both oral and documentary evidence. The trial Court

failed to appreciate that the father of the appellant was suffering from a prolonged kidney ailment, for which substantial amounts were spent by raising loans from third parties. After the death of the father of the appellant, agricultural lands were mortgaged to banks and loans were availed and repaid. In view of these undisputed facts, there was no surplus income from joint family properties, and the conclusion that item No. 5 is joint family property is erroneous.

12. He further submitted that the appellant has been working independently as a contractor with S.P. Ramu and S.P. Nagaraju, the maternal uncles of the appellant and he has independent earnings. From such self-acquired income, the appellant purchased item No.5 of the suit schedule property. Respondent No.1-plaintiff, in her cross-examination, has admitted that the appellant has been working as a PWD contractor from the past 15 years and had independent income as early as the year 2004. Respondent No.1 is a well-educated B.E. graduate, residing

at Bengaluru, and was fully aware of the family affairs, including the loans raised for the treatment of the appellant's father and the subsequent bank loans approximately to the tune of Rs.14,00,000/- secured by mortgaging suit item Nos.3 and 6 after his death.

13. Heard learned counsel for the appellant and perused the materials placed on record.

14. Having considered the contentions advanced and upon re-appreciation of the pleadings and material placed on record, this Court finds no infirmity in the judgment and decree passed by the trial Court. The plaintiff failed to prove that all suit schedule properties are ancestral joint family properties. The plaint is conspicuously silent as to the existence of any ancestor prior to late G. Krishnaswamy, and no material is placed to show devolution of property through three male generations. In the absence of such pleadings and evidence, the trial Court rightly held that the suit properties cannot be treated as ancestral properties.

The claim could extend only to properties standing in the name of late G. Krishnaswamy during his lifetime.

15. It is not in dispute that suit schedule items No.3, 6 and 8 stood in the name of late G. Krishnaswamy. The RTC extracts placed on record disclose that these properties continued in his name and thereafter devolved upon his legal heirs. There is neither pleading nor evidence of severance of joint family status. The trial Court has correctly applied the settled principle that a Hindu family is presumed to be joint unless the contrary is established, and has rightly held that these properties constitute joint family properties which are liable for partition among the plaintiff and defendants.

16. The trial Court has also rightly held that the existence of joint family nucleus stood proved in respect of the aforesaid properties. The admissions of the defendants coupled with the revenue records establish that the family had income-yielding joint family properties. Therefore, the burden shifted on the defendants to establish that

subsequent acquisitions standing in their names were made from independent sources and not from joint family income.

17. Insofar as suit schedule item No.5 is concerned, defendant No.4 claimed that it is his self-acquired property. However, no documentary evidence was produced to prove his independent income or contracting business. On the contrary, the evidence shows that defendant No.4 had access to income from joint family properties, particularly suit schedule item No.6, which stood transferred to his name after the death of G. Krishnaswamy. In the absence of evidence of sufficient independent income, the trial Court rightly presumed that item No.5 was acquired from joint family nucleus.

18. In respect of the suit schedule item Nos. 1, 2, 7, 9 and 10 standing in the name of defendant No.1 and item No.4 standing in the name of defendant No.2 is concerned, the trial Court has correctly held that these are the absolute properties of defendants No.1 and 2 respectively. The sale deeds and mutation entries clearly establish individual

acquisitions and there is no document to show use of joint family funds. Even assuming that the said property is gifted to defendant No.2 by G. Krishnaswamy during his lifetime, such properties would vest absolutely in the female defendants under Section 14(1) of the Hindu Succession Act, 1956, and are not amenable to partition. Therefore, the decree granting the 1/5th share to the plaintiff only in suit schedule items No.3, 5, 6 and 8 therefore warrants no interference.

19. Section 14 of the Hindu Succession Act, 1956 reads as under:-

"14. Property of a female Hindu to be her absolute property.-

(1)Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such

property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property”.

20. For the foregoing discussions, this Court finds that the judgment and decree passed by the Trial Court is based on proper appreciation of pleadings, oral and documentary evidence. In view of the above, this Court proceeds to pass the following:-

ORDER

- (i) The appeal is devoid of merit stands dismissed.*
- (ii) The judgment and decree dated 09.07.2018, passed in O.S.No.58/2014 on the file of the Senior Civil Judge at Gangavathi is hereby confirmed.*

No order as to costs.

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

MBS
CT:VP