



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 484 OF 2018 (PAR)

BETWEEN:

1. SYED HASHAM,
SON OF LATE SYED HAJI PEER SAB,
AGED ABOUT 39 YEARS,
RESIDING AT BEHIND DURGAMMA TEMPLE ,
OLD NITUVALLI, NEAR POST OFFICE,
DAVANAGERE - 577004.
2. SYED HIDAYATH,
SON OF LATE SYED HAJI PEER SAB,
AGED ABOUT 44 YEARS,
RESIDING AT BEHIND DURGAMMA TEMPLE ,
OLD NITUVALLI, NEAR POST OFFICE,
DAVANAGERE - 577004.
3. SMT SHAKEERA BI
WIFE OF SHRI ISMAIL SAB
RESIDING AT
BEHIND DURGAMMA TEMPLE , OLD
NITUVALLI, NEAR POST OFFICE,
DAVANAGERE 577004
4. SMT AZEEMA BI
WIFE OF SHRI NAZEER BAIG
RESIDING AT BEHIND DURGAMMA TEMPLE ,
OLD NITUVALLI, NEAR POST OFFICE,
DAVANAGERE 577004
(VIDE ORDER DATED 10.09.2025
3 AND 4 ARE TRANSPOSED)

...APPELLANTS

(BY SRI VIKHAR AHMED B, ADVOCATE)

Digitally
signed by
PRAMILA G V
Location:
HIGH COURT
OF
KARNATAKA



AND:

1. MRS ARIFA BANU,
WIFE OF H J ANWAR SAB,
AGED ABOUT 50 YEARS,
2. MS AFRIN TAJ,
DAUGHTER OF H J ASLAM PASHA,
AGED ABOUT 21 YEARS,
3. MASTER SHAHID AFRID PASHA H A,
SON H J ASLAM PASHA,
AGED ABOUT 17 YEARS,
(SINCE MINOR REPRESENTED BY HIS FATHER
AND NATURAL GUARDIAN MR H J ASLAM PASHA)
4. MS SHAHID AFTAB PASHA,
DAUGHTER OF H J ASLAM PASHA,
AGED ABOUT 15 YEARS,
(SINCE MINOR REPRESENTED BY HIS FATHER AND
NATURAL GUARDIAN MR H J ASLAM PASHA)
5. MS REKHA KHUSHI SULTANA,
DAUGHTER OF H J ASLAM PASHA,
AGED ABOUT 13 YEARS,
(SINCE MINOR REPRESENTED BY HIS FATHER AND
NATURAL GUARDIAN MR H J ASLAM PASHA)
RESPONDENT NO.1 TO 5 RESIDING AT
VIDYA NAGARA, BEHIND NEW COURT,
HOSADURGA.
6. SYED SANAULLA,
SON OF LATE SYED HAJI PEER SAB,
AGED ABOUT 58 YEARS,
RESIDING AT A BLOCK, 10TH CROSS
1ST FLOOR, DEVRAJ URS LAYOUT,
DAVANAGERE.
7. SYED HAKEEM,
SON OF LATE SYED HAJI PEER SAB,



AGED ABOUT 58 YEARS,
AT PAN BEEDA STALL, 5TH CROSS
BASHA NAGAR, DAVANAGERE.

8. SADDAM,
SON OF MAHABOOB,
AGED ABOUT 24 YEARS,
BEHIND DURGAMMA TEMPLE , OLD
NITUVALLI, NEAR POST OFFICE
DAVANAGERE 577004.
9. SMT SHAKEERA BI,
WIFE OF SHRI ISMAIL SAB,
AGED ABOUT 60 YEARS,
BEHIND DURGAMMA TEMPLE, OLD
NITUVALLI, NEAR POST OFFICE,
DAVANAGERE - 577004.
10. SMT AZEEMA BI,
WIFE OF SHRI NAZEER BAIG,
AGED ABOUT 54 YEARS,
BEHIND DURGAMMA TEMPLE, OLD
NITUVALLI, NEAR POST OFFICE,
DAVANAGERE - 577004.
(CAUSE TITLE AMENDED
AS PER COURT ORDER DATED 10.09.2025)

...RESPONDENTS

(BY SRI GOPALAKRISHNAMURTHY C,ADVOCATE FOR R1,
SRI MARUTHI G B, ADVOCATE FOR R6, R3, R4, R5, R7
AND R8 ARE SERVED BUT UNREPRESENTED,
V/O/DT 20.02.2026 NOTICE TO R9 AND R10 ARE
DISPENSED WITH)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 15.11.2017 PASSED IN
OS NO.84/2014 ON THE FILE OF THE I ADDL. SENIOR CIVIL
JUDGE, CHITRADURGA, PARTLY DECREERING THE SUIT FOR
PARTITION AND SEPARATE POSSESSION.

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



CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

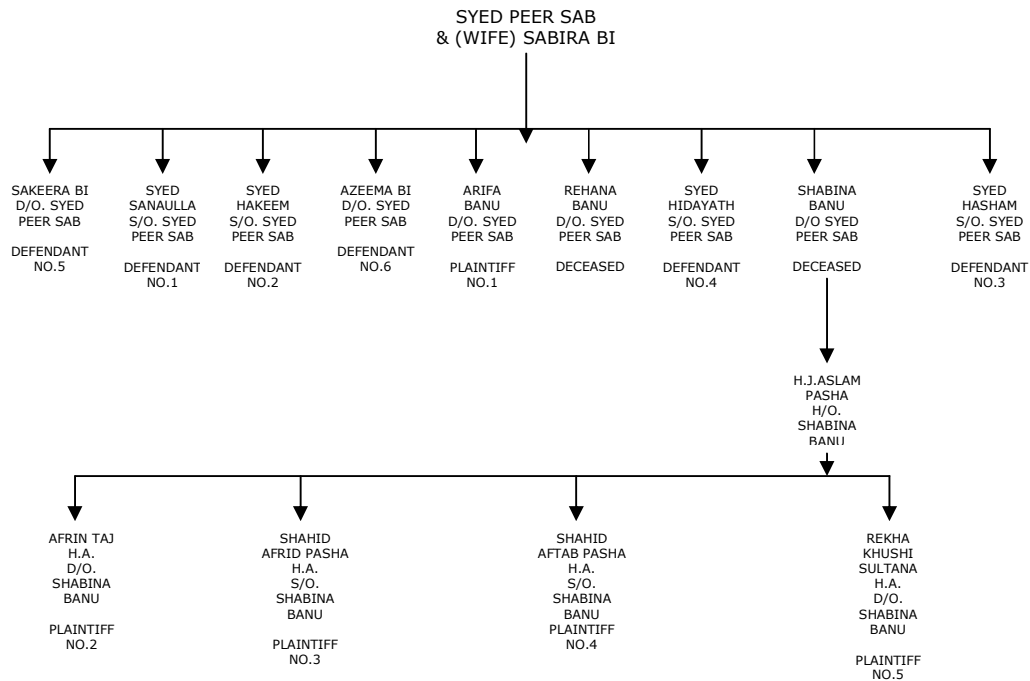
ORAL JUDGMENT

This appeal is filed against the judgment and decree dated 15.11.2017 in O.S.No.84/2014 in a suit for partition and separate possession. The suit is decreed holding that plaintiff No.1 is entitled to 1/11th share in the suit schedule properties.

2. The decree also holds that plaintiff No.1 is liable to discharge the outstanding loan that was availed by plaintiffs' father.

3. The suit filed by plaintiffs No.2 to 5 is dismissed. Plaintiffs No.2 to 5 who suffered a decree of dismissal are not before this Court. They have accepted the judgment and decree. The appeal is filed by defendants No.3 and 4.

4. The relationship of the parties is not in dispute and the genealogy is as under:



5. One Syed Peer Sab was the propositus and his wife was Sabira Bi. The couple had 9 children, four sons and five daughters. Two daughters pre-deceased Syed Peer Sab. One of the daughters died issueless, another daughter had 4 children who are plaintiffs No.2 to 5. Since, Shabina Banu through whom plaintiffs No.2 to 5 claim share over the property died before the propositus Syed Peer Sab, the suit filed by the plaintiffs No.2 to 5 is dismissed. As already noticed, the said plaintiffs No.2 to 5 have accepted the decree. The Court does not find any error in the judgment dismissing the said suit filed by plaintiffs No.2 to 5.



6. The suit filed by plaintiff No.1, Arifa Banu, one of the daughters of Syed Peer Sab, is decreed holding that she is having 1/11th share in addition to holding that she is also liable to share the liability to the extent of 1/11th share.

7. The suit was contested by all the 4 sons and 2 daughters. The two daughters supported the case of the sons and they urged that Syed Peer Sab during his lifetime has executed Gift Deed (Hiba) in favour of all the daughters giving two guntas each, as such, the plaintiff No.1 is not entitled to any share. Issues were framed based on the pleadings and the issues read as under:

- (i) *Whether the plaintiffs are entitled for 2/13th share in suit properties by metes and bounds?*
- (ii) *What Order or Decree?*

Additional issues

- (i) *Whether the defendants prove that, the wife and two daughters of late Syed Peer Sab were suffering from serious illness, as such to meet out their treatment expenses, he had availed bank loan of Rs.20,00,000/- by mortgaging suit*



item No.2 property and there is an outstanding loan amount of Rs.20,00,000/-?

- (ii) Whether the defendants prove that, their father declared by way of Hiba to give two guntas each in suit item No.2 property to his living daughters i.e plaintiff No.1 and defendant No.5 and 6?*
- (iii) Whether the defendants prove that, Peer Sab was/is not the absolute owner of suit item No.3?*
- (iv) Whether the defendants prove that, suit is not maintainable for non joinder of necessary parties?*
- (v) Are the plaintiffs entitle for reliefs as prayed for?*

8. The Trial Court has come to the conclusion that the Hiba which is urged as a defence by the defendants including defendants No.4 and 5 is not established and accordingly granted the decree as aforesaid.

9. The defendants No.3 to 6 filed an appeal against the aforementioned judgment and decree before the Court. Defendants No.5 and 6, the daughters of Syed Peer Sab transposed themselves as respondents before this Court and supported the case of plaintiff No.1 and made a claim



contrary to the claim made during the pendency of the suit, where they urged that they are only entitled to 2 guntas of land which is already gifted to them and the plaintiff is not entitled to any share other than two guntas.

10. Sri.Vikhar Ahmed B., the learned counsel appearing for defendants No.3 and 4 raised the following contentions:

- (a) Defendants No.5 and 6 specifically raised a plea of Hiba before the Trial Court. They led evidence to substantiate their contention that they are only entitled to two guntas of land gifted by their father and after the decree in favour of the plaintiff No.1, have filed an appeal before this Court and later got themselves transposed and now are supporting the case of the plaintiff No.1 and also claiming share in the entire properties and same is impermissible.
- (b) It is the contention of the defendants/appellants that defendants No.5 and 6 are estopped from raising a plea that they are having share in the property, as they had



urged that they are only entitled to the property covered under the Hiba in favour of defendants No.5 and 6.

11. In addition, the learned counsel would also urge that during the pendency of the suit, defendants No.5 and 6 have executed, release deed on 27.12.2014 in favour of defendants No.1 to 4. And that being the position, they are also precluded from claiming any share in the properties.

12. Further, it is also urged that Trial Court decree does not quantify the share of defendants No.5 and 6 and share is declared only in favour of plaintiff No.1, as such, defendants No.5 and 6 cannot claim that they are also allotted share in the suit schedule properties.

13. Learned counsel for plaintiff No.1 would urge that, Hiba is not admitted by the plaintiff No.1 though the plea relating to Hiba was raised by defendants No.5 and 6, same is not established and the Trial Court has come to the conclusion that Hiba is not proved. Defendants No.5 and 6 now having realised that, the finding is correct have



transposed themselves as respondents No.9 and 10 and they are entitled to share.

14. As far as the release deed dated 27.12.2014, it is submitted that, though it is said to have been executed during the pendency of the suit, same is not brought to the notice of the Court and same is not produced in evidence. The document is not duly stamped and registered, as such, it is inadmissible in evidence and the document does not extinguish the share of defendants No.5 and 6/respondents No.9 and 10.

15. As far as the contention relating to no quantification of share in favour of defendants No.5 and 6 is concerned, it is urged that once the share of the plaintiff No.1 who is the sister of defendants No.5 and 6 is quantified by logical corollary, it would also mean that share of defendants No.5 and 6 who are the sisters of the plaintiff No.1 is also quantified. Thus, he would urge to dismiss the appeal.



16. The Court has considered the contentions raised at the Bar and perused the records.

17. The following points arise for consideration:

- (i) *Whether the appellants are able to establish that defendants No.5 and 6 who had raised a plea of Hiba are precluded from claiming share in suit schedule properties*
- (ii) *Whether appellants are able to establish that the decree is in favour of the plaintiff No.1 and there is no decree in favour of the sisters- defendants No.5 and 6?*
- (iii) *Whether the appellants are able to establish the Release Deed dated 27.12.2014 in favour of appellants?*

18. As far as the first question relating to the conduct of defendants No.5 and 6, who took a defence based on the Hiba, it is noticed that defendants No.5 and 6 raised a defence based on Hiba and there was an issue framed in this behalf. The evidence was led. The Court has given a finding that Hiba is not established. Defendants No.5 and 6 initially filed an appeal against the said judgment and decree



challenging the finding on the said Hiba and later during the pendency of this appeal, they transposed themselves as the respondents No.9 and 10.

19. Once the Court records the finding based on the issues and once it is challenged before the appropriate Forum, the parties who have challenged the same are not bound to prosecute the proceeding challenging the finding. They can withdraw their challenge and they can make a statement that they are going to accept the finding.

20. That being the position, the Court is of the view that there is no Bar for defendants No.5 and 6 to come as respondents No.9 and 10 and to make a claim for sharing the properties. Nevertheless, it is open to the remaining appellants to establish based on evidence that, Hiba is established and thereafter, defendants No.5 and 6 are not entitled to have any share in the properties.

21. On perusal of the evidence, it is noticed that there is no evidence to uphold the plea relating to Hiba. Assuming that the property is gifted to defendants No.5 and



6, that does not preclude defendants No.5 and 6 from claiming inheritance after the demise of the father. That being the position, whether there was a Gift Deed (Hiba) or not makes no difference as far as the inheritance by defendants No.5 and 6 is concerned.

22. As far as the contention that there is "no quantification" of share in favour of defendants No.5 and 6 is concerned, the Court is of the view that there is no need for any such specific quantification. The reason is there is no dispute that plaintiff No.1 and defendants No.5 and 6 are sisters and daughters of propositus Syed Peer Sab. The quantification of share of the plaintiff No.1 is permissible only if the share of other parties to the proceedings are taken into account. That being the position, the Court has to hold that defendants No.5 and 6 being the sisters of plaintiff No.1 will have same share as plaintiff No.1.

23. Learned counsel for the respondents at the juncture would point out to the observations made by the Trial Court, wherein in paragraph No.32, it has quantified the



share. Merely because the share is not quantified in the operative portion, that does not mean that defendants No.5 and 6 do not have share in the properties.

24. As far as the contention based on the subsequent document dated 27.02.2014, which is said to be the release deed by defendants No.5 and 6 in favour of plaintiff No.1 is concerned, admittedly, said document is not placed before the Trial Court, though the document is said to have been executed during the pendency of the suit. If the plaintiff No.1 is to contend that there is a release deed in favour of plaintiff No.1, the same is to be established in appropriate proceeding. In case, any such claim is made, such Court shall decide the claim based on the document dated 27.12.2014. However, such suit if any filed, shall not come in the way of the Final Decree Court proceeding with the pending final decree proceeding.

25. The share that is to be allotted to defendants No.5 and 6 will be subject to the final outcome of any suit if filed based on the released deed dated 27.12.2014.



26. It is made clear that parties to the suit are entitled to share as applicable under the law.

27. Accordingly, the Regular First Appeal is ***dismissed.***

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP
List No.: 1 Sl No.: 38