



CNR: KAHC010049602020

NC: 2026:KHC:40777
RSA No. 705 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 705 OF 2020 (DEC)

BETWEEN:

1. RANGASWAMY
S/O. CHITTAIAH,
AGED ABOUT 50 YEARS
2. ONKARAPPA
S/O. KARIYAPPA,
AGED ABOUT 62 YEARS
3. D K MAHALINGAPPA
D/O. DODDAKARIYAPPA,
AGED ABOUT 36 YEARS
4. THIPPESWAMY
S/O. KARIYAPPA,
AGED ABOUT 59 YEARS,
5. MAHALINGAPPA
S/O. KARIYAPPA,
AGED ABOUT 60 YEARS,
6. KRISHNAPPA
S/O. CHIKKANNA,
AGED ABOUT 60 YEARS,
7. SHEKHARAPPA
S/O. CHIKKA DODDAIAH,
AGED ABOUT 46 YEARS

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



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8. CHANDRAPPA
S/O. P CHIKKANNA,
AGED ABOUT 59 YEARS,
9. RANGAPPA
S/O. CHIKKAPPA,
AGED ABOUT 32 YEARS

KARIYAPPA S/O. JADIYAPPA,
DEAD BY LRS,
10. MAHALINGAPPA,
S/O. LATE. KARIYAPPA,
AGED ABOUT 51 YEARS
11. LAXMANA
S/O. LATE. KARIYAPPA,
AGED ABOUT 49 YEARS
12. SHIVANNA
S/O. LATE. KARIYAPPA,
AGED ABOUT 46 YEARS
13. GEETHAMMA
D/O. LATE. KARIYAPPA,
W/O. MURTHAPPA,
AGED ABOUT 48 YEARS
R/O. KALLAHALLI VILLAGE
KASABA HOBLI,
HOSADURGA TALUK-577 527.
14. CHIKKAMMA
D/O. LATE. KARIYAPPA,
W/O. PUTTAPPA,
AGED ABOUT 48 YEARS
R/O. ARALAHALLY VILLAGE
KASABA HOBLI,
HOSADURGA TALUK-577 527.



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15. N PARAMESHWARAPPA
S/O. DODDA NINGAPPA,
AGED ABOUT 46 YEARS
OCC. AGRICULTURIST,
R/O. NEERAGUNDA GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.

...APPELLANTS

(BY SRI. KANTHARAJAPPA M.G., ADVOCATE)

AND:

1. GANGAMMA
D/O. LATE. N THIMMAIAH,
W/O. MENAPPA,
AGED ABOUT 72 YEARS
OCC. AGRICULTURIST,
R/O. HONNEKERE GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.
2. CHITTAMMA
D/O. LATE. N THIMMAIAH,
W/O. LALI LAKKAPPA,
AGED ABOUT 70 YEARS
OCC. RETIRED TEACHER AND
AGRICULTURIST,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT - 577 547.
3. DEVENDRAPPA
S/O. LATE. N THIMMAIAH,
AGED ABOUT 68 YEARS
R/O. NEERAGUNDA GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.
4. JAYAMMA
D/O. LATE. N THIMMAIAH,



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W/O. RANGAPPA,
AGED ABOUT 66 YEARS,
OCC. AGRICULTURIST,
R/O. HONNEKERE GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.

5. CHITTAIAH
S/O LATE. N THIMMAIAH,
AGED ABOUT 64 YEARS
R/O. NEERAGUNDA GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.
6. GOWRAMMA
D/O. LATE. N THIMMAIAH,
W/O. THIPPESWAMY,
AGED ABOUT 73 YEARS
OCC. AGRICULTURIST,
R/O. MYAKNUR HALLY,
HIRIYUR TALUK,
CHITRADURGA DIST - 577 501
7. PARAMESHWARAPPA
S/O. LATE. N THIMMAIAH,
AGED ABOUT 60 YEARS,
R/O. NEERAGUNDA GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.
8. RAJAMMA
D/O. LATE. N. THIMMAIAH,
W/O. VEERAPPA,
AGED ABOUT 58 YEARS
OCC. AGRICULTURIST,
R/O. MALIGEHAITY VILLAGE,
MADADAKERE HOBLI,
HOSADURGA TALUK - 577 527



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9. SEETHAMMA
D/O. LATE. N. THIMMAIAH,
W/O. RANGAPPA,
AGED ABOUT 56 YEARS,
OCC. AGRICULTURIST,
R/O. HONNEKERE GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.
10. MEENAKSHAMMA
S/O. LATE. N. THIMMAIAH,
W/O. VEERANAGAPPA,
AGED ABOUT 54 YEARS,
R/O. MADADAKERE,
MADADAKERE HOBLI,
HOSADURGA TALUK - 577 527
11. MAHANTESH
S/O. LATE. N THIMMAIAH,
AGED ABOUT 50 YEARS
R/O. NEERAGUNDA GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.
12. CHITRASHEKHARIAIAH
S/O. LATE. N THIMMAIAH,
AGED ABOUT 42 YEARS
OCC. AGRICULTURIST,
R/O. NEERGUNDA GOLLARAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK - 577 527.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
AGAINST THE JUDGMENT AND DECREE DATED 28.10.2019
PASSED IN RA.NO.81/2019 ON THE FILE OF THE I ADDITIONAL
DISTRICT AND SESSIONS JUDGE, CHITRADURGA, DISMISSING



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THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 12.03.2019 PASSED IN OS.NO.35/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., AT HOSADURGA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. Kantharajappa M.G., learned counsel for the appellants. This Court did not deem fit to issue notice to the respondents.

2. Unsuccessful plaintiffs are the appellants before this Court. Office objection raised with regard to arraigning plaintiff No.11 as a party is overruled as memo is filed giving up the plaintiff No.11.

3. Facts of the case are as under :

3.1 A suit in OS No.15/2013 (old number) renumbered as OS No.35/2016 is filed for declaration, partition and separate possession in respect of the



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following immovable properties (hereinafter referred to as the suit property).

SCHEDULE

A dry land situated at Neeragunda village, Kasaba Hobli, Hosadurga Taluk, bearing Sy. No. 82, measuring 24 Acres-21 Guntas, assessed at Rs. 15-70Ps; out of which a land measuring 19 Acres-21 Gs: and assessed at Rs. 15-70Ps: and bounded as follows:-

East: Lands of Patel Nagappa measuring 4-00 Acres; and land of Channapurada Rangappa, Kavalu Kariyappa and others,

West: Sy. No. 117 (Gollarahatty) and Lands of Krishnappa, Rajappa, Kavaladar Kumar sons of Doddachikkanna and land of defendants.

North: Lands of Hutchappala Mallappa and his brothers.

South: Primary School building given by the plaintiffs and defendants; and Land of defendants.

3.2. Plaintiffs contended that plaintiffs and defendants formed the joint family and the suit property is the joint family property and there is no share granted to the plaintiffs and therefore suit came to be filed.



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3.3. Pursuant to the suit summons, defendants entered appearance and disputed the very identity of the suit property as the suit property that was purchased by the ancestors of plaintiffs and defendants was only to the extent of 12 acres 12 guntas and not 19 acres 21 guntas as is claimed in the suit.

3.4. Defendants also contended that suit properties are sold to several people and therefore there is no existence of joint family nor joint family property and thus suit is to be dismissed.

3.5. Based on the rival contentions, learned trial Judge raised necessary issues and after recording the evidence of the parties discussed in detail with regard to the existence of the joint family property and dismissed the suit of the plaintiffs *inter alia* holding in paragraphs 18 to 21 as under:

18. The recitals would further reveal that said six persons had got equal right of 1/6 share each in 24 acres 25 guntas; i.e each one had right over 4 acre 4 guntas. It



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is clearly recited that the vendors had intended and sold 3 shares amounting to 12 acres 12 guntas for consideration of Rs.1,200/-. The share of Thopagaiah, who is none other than, as stated supra, is grand father of defendants i.e father of Thimmaiah, who happens to be one of the purchasers of land under said 2 sale deeds at Ex.P9 and P10. Further it could be seen from Ex.P10 that one share i.e 4 acres 4 guntas had already been sold infavour of Patel Nagappa on the same day. However, it is recited that the purchasers and Patel Nagappa should share the said property purchased by them along with share of vendor Srinivasaiah. Therefore, the case of the plaintiffs that the property purchased under Ex.P10 is 20 acres 21 guntas, but it is wrongly mentioned as 12 acres 12 guntas being not correct cannot be accepted. Ex.P10 explicitly makes it clear that the land purchased under Ex.P10 is 12 acres 12 guntas only.

19. It is pertinent to note that Ex.D7 being the certified copy of registered sale deed dated 20/10/1955 is evident to show that one Nagappa S/o Honnegowda, Rangappa S/o Huchappara Thimmanna, Hanumanthappa S/o Mahadevanna, Ramaiah S/o Gowdara Hanumanthaiah, Govindappa S/o Thimmanna, Thimmanna S/o Dootappara Thimmanna, Puttappa S/o Devattige Chennappa, Rangappa S/o Kenchappa, Byranna S/o Kenchappa, Hanumanthappa S/o Badagichikkanna, Siddanna S/o Errakki Lakkanna and Hanumanthappa S/o Savuru Kariyanna had purchased land measuring 4 acres 4



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guntas out of 24 acres 25 guntas for consideration of Rs.400/-. Said sale deed at Ex.D7 and the sale deed at E.P10 came to be executed by the same vendors on the same day. The recitals of Ex.D7 are crystal clear that the share of vendors namely Srinivasaiah and Thopagaiah i.e 2/6 share were not subjected to sale, but one share amounting to 4 acres 4 guntas came to be sold under said sale deed. It is clearly recited that out of the land 24 acres 25 guntas share of 5 persons out of 6 persons was 20 acre 21 guntas after the share of Thopagaiah being excluded; which clearly establishes that one share i.e land measuring 4 acre 4 guntas belonged to Thopagaiah-grand father of defendants. Further it could be seen that the share of Srinivasaiah was also excluded from sale transaction and the land available for sale was 16 acres 16 guntas belonging to 4 share holders, out of which 3 shares amounting to 12 acres 12 guntas was sold in favour of 20 members i.e the purchasers under Ex.P10 and remaining 4 acre 4 guntas was sold in favour of said Patel Nagappa.

20. If the recitals of sale deed - Ex.P10 and Ex.D7 are gone through meticulously and conjointly they would clearly establish that the share of three persons amounting to 12 acre 12 guntas had been sold in favour of ancestors of plaintiffs and defendants. There is no any ambiguity or mistake crept in sale deed Ex.P10. Therefore, there is no any substance in the submission of learned counsel for plaintiffs that 20 acres 21 guntas was sold under Ex.P10 and extent was wrongly mentioned in



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th sale deed. In fact, PW-1 has admitted, in para No.1 of cross examination, that ancestors of plaintiffs and defendants had purchased 12 acres 12 guntas. PW-1 has pleaded ignorance that grand-father of defendants namely Thopagaiah had purchased 4 acres 4 guntas family of Shanbog prior to 1955 and said land lies on the western side of suit land Sy.No. 82. Further PW-1 has admitted that one acre of land of southern side in the suit schedule property was given for construction of school building by both plaintiffs and defendants.

21. Defendants are not quite sure as to what was the land actually purchased by ancestors of plaintiffs and defendants. In written statement it is pleaded that plaintiffs, defendants and other purchasers have got right only to the extent of 15 acres 21 guntas out of suit schedule survey number property. Whereas PW-1 has been suggested to the effect that plaintiffs, defendants and villagers have been enjoying 15 acres 12 guntas; while DW-1 has stated that their ancestors had purchased 16 acres 16 guntas of land under the 2 registered sale deeds dated 20/10/1955 and 18/4/1957. In examination in chief of DW-2 and 3 it is stated that plaintiffs, defendants and villagers have been enjoying the land measuring 15 acres and odd. It is proved by the sale deed Ex.P10 that the ancestors of plaintiffs, defendants and others had purchased 12 acres 12 guntas out of 2 acres 25 guntas. Ex.D7 is evident to show that the ancestors of plaintiffs, defendants and others had purchased 4 acres 4 guntas out of 24 acre 25 guntas. On 20/10/1955



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including ancestors of plaintiffs and defendants 20 persons had purchased 12 acres 12 guntas under Ex.P10 and 12 persons had purchased 4 acres 4 guntas out of 24 acres 25 guntas under Ex.D7 from same vendors.

3.6. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.81/2019.

3.7. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed appeal of the plaintiffs.

3.8. Pertinently, plaintiff No.11 did not join the appellants before the First Appellate Court.

4. Being further aggrieved by the same, it is the plaintiff who approached this Court on following grounds and substantial questions of law.

GROUND

- *The judgment and decree passed by the courts below are highly illegal besides being erroneous.*



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- *Both the Courts below grossly erred in not noticing the fact that the appellants/plaintiffs had produced the 3 sale deed in Ex.P8 to P10 are clearly schedule show that the suit schedule property was measuring 20 acres 21 guntas purchased by the appellants and respondents ancestors and the appellants and father of respondents gave 1 acre of land for construction of school building in the suit schedule property. The appellants and respondents are enjoying only 19 acres 21 guntas in Sy.No.82 and got 1/12 share in the said property. Therefore, the finding recorded by the Trial Court and as well as Appellate Court is not at all supported by any materials. Under these circumstances the Judgment and Decree passed by the courts below are bad in law.*
- *It is submitted that the respondents are admitted the relationship and property also admitted and are jointly enjoying the suit schedule property but only measurement is disputed and produced Ex.D3 & D4 are same sale deed. But both the courts not are considered. Under these circumstances both the courts have erred in dismissing the suit.*
- *It is submitted that the reasons assigned by the both the courts on assumption and presumption and also against the documents produced by the appellant in Ex.P1 to P10, and is not considered,*



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the judgment and decree passed by courts below are bad in law.

- *Both the courts below having noticed the fact that the appellants and respondents are stated that other purchaser are not made parties to the suit and the appellants stated that the other purchasers are no more and they had no issue. But both the courts are conclusion that the other purchaser legal heirs are not made party to the proceedings, hence dismissed the suit are bad in law.*
- *Viewing from any angle the judgment and decree passed by courts below are bad in law.*

SUBSTANTIAL QUESTION OF LAW :

- 1. Whether the both the Courts are right in law in not taking into the consideration the plaintiffs plaint averments and evidence of the PW1 to PW3 and Ex.P8 to P10 and dismissing the suit?*
- 2. Whether the both the Courts are right in law in disbelieving the evidence of Plaintiffs though their evidence is being supported by Ex.P1 to P10. ?*
- 3. Whether the both the Courts are right in law in recording the finding that the Ex.D3 to D4 has been proved though there is sale deed to the said property basis for the entries found in the above said documents ?*



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4. Whether the both the Courts are right in law after holding that the plaintiffs are proved the above case for declaration and partition and separate possession that the Plaintiffs are entitled for decree of suit of 1/12 share?

5. Sri. M.G. Kantharajappa, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum vehemently contented that both the Courts have failed to note that there is a presumption as to the existence of joint family and joint family properties and initial burden has been discharged by the plaintiffs by placing the necessary oral and documentary evidence on record and in this regard, both the Courts have not properly appreciated the probative value of Exhibit P9 and Exhibit P10 and thus, sought for admitting the appeal on the aforesaid substantial questions of law.



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6. In the light of the arguments put forward on behalf of the appellants this Court perused the material on record meticulously.

7. On such perusal of the material on record, the ancestors of plaintiffs and defendants have purchased only 12 acres 12 guntas of land that is the three shares from the six persons who jointly held the suit property.

8. Before the sale made to the ancestors of the plaintiffs and defendants, there was already alienation of one of the shares to the extent of 4 acres 4 guntas to Sri Patel Nagappa.

9. Likewise, Thopagaiah who was yet again a sharer among the six persons did not sell the property in favour of the ancestors of plaintiffs and defendants.

10. Thus, there could not have been a sale in favour of the ancestors of the plaintiffs and defendants to



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the extent of 20 acres 12 guntas as is claimed by the plaintiffs and suit being filed for 19 acres 21 guntas.

11. Further, material on record especially the recitals of the sale deed of the plaintiffs and defendants would make it clear that what has been purchased by them is only 12 acres 12 guntas and as such, the learned trial Judge dismissing the suit that the plaintiffs failed to prove the existence of the suit property for partition by supplying the cogent and convincing reasons.

12. It is also to be noted that the Trial Court as well as the First Appellate Court did bestow their attention with regard to the alienation made to several persons and including them as parties to the suit for partition in respect of non-existing joint family property was not maintainable.

13. Having regard to the factual finding recorded by both the Courts, this Court does not find any merit in any one of the substantial questions of law raised in the appeal



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memorandum having regard to the scope of Section 100 of the Code of Civil Procedure.

14. Hence, following order is passed:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

SNC
List No.: 1 Sl No.: 50