



CNR: KAHC010069732014

NC: 2026:KHC:45265
RSA No. 249 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 249 OF 2014 (PAR)

BETWEEN:

1. SRI. JAYANTHA PRABHU
S/O THIMMAPPAYA PRABHU
AGED ABOUT 64 YEARS
R/O AJERU IN PUNACHA VILLAGE & POST
BANTWAL TALUK,
D.K. DISTRICT - 574219
2. SMT. VIJAYALAXMI
W/O PURUSHOTHAMA NAYAK
AGED ABOUT 37 YEARS
R/O NEERUKUKKU HOUSE
AGARTHABAIL ARYAPU VILLAGE
PUTTUR TALUK, POST: ULANTHADKA
D.K. DISTRICT - 574204
3. SMT. BHARATHI
D/O JAYANTHA PRABHU
AGED ABOUT 35 YEARS
R/O AJERU IN PUNACHA VILLAGE
BANTWALA TALUK, D.K. DISTRICT - 574219
4. SRI BHAVANI SHANKAR
S/O JAYANTHA PRABHU
AGED ABOUT 33 YEARS
R/O AJERU IN PUNACHA VILLAGE
BANTWALA TALUK, D.K. DISTRICT - 574219

Digitally
signed by
SHILPA BAI S
Location:
HIGH
COURT OF
KARNATAKA



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5. SMT. KALAVATHI
D/O JAYANTHA PRABHU
AGED ABOUT 31 YEARS
R/O AJERU IN PUNACHA VILLAGE
BANTWALA TALUK, D.K. DISTRICT-574219
6. SMT. YASHODA
W/O VITTAL NAYAK
AGED ABOUT 58 YEARS
R/O PANJIGARU HOUSE
KALANJA VILLAGE & POST
SULLIA TALUK,
D.K. DISTRICT - 574216
7. SRI DIVAKARA
S/O SHANKARANARAYANA NAYAK
AGED ABOUT 52 YEARS
R/O ERANTHAKAJE HOUSE
NELLOR KEMRAJE VILLAGE
SULLIA TALUK, POST: BOLLAJE
D.K. DISTRICT - 574216
8. SRI THIRUMALESHWARA NAYAK
S/O SHANKARANARAYANA NAYAK
C/O JAYANTHA PRABHU
AGED ABOUT 46 YEARS
R/O AJERU OF PUNACHA VILLAGE & POST
BANTWALA TALUK, D.K. DISTRICT - 574219

...APPELLANTS

(BY SRI. RAVISHANKAR SHASTRY G., ADVOCATE)

AND:

1. SRI. VASUDEVA PRABHU
S/O PANDURANGA PRABHU
AGED ABOUT 43 YEARS
R/O AJERU PUNACHA VILLAGE & POST
BANTWAL TALUK, D.K. DISTRICT
PIN: 574219



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2. SRI RAMACHANDRA PRABHU
S/O PANDURANGA PRABHU
AGED ABOUT 45 YEARS
R/O AJERU PUNACHA VILLAGE & POST
BANTWAL TALUK, D.K. DISTRICT PIN: 574219
3. SMT. JAYALAXMI
W/O PANDURANGA PRABHU
AGED ABOUT 37 YEARS
R/O SHRAMIC, C.H.S. D-1
PLOT NO.59, GORAI, BORIVILI WEST
MUMBAI : 400091
4. SRI PADMANABHA PRABHU
S/O THIMMAPPAYYA PRABHU
AGED ABOUT 70 YEARS
R/O PRESENT AT: PARAGA HOUSE
NEAR MARTIN WOOD INDUSTRIES
DARBE, PUTTUR, D.K. DISTRICT - 574202
5. SRI RAJESH PRABHU
S/O PADMANABHA PRABHU
C/O JAYANTHA PRABHU
AGED ABOUT 44 YEARS
AT PRESENT R/O AJERU OF PUNACHA
VILLAGE & POST, BANTWALA TALUK
D.K. DISTRICT - 574219
6. SRI ASHOK PRABHU
S/O PADMANABHA PRABHU
AGED ABOUT 44 YEARS
R/O PARAGA HOUSE
NEAR MARTIN WOOD INDUSTRIES
DARBE, PUTTUR, D.K. DISTRICT -574202
7. SRI GOWTHAM PRABHU
S/O PADMANABHA PRABHU
AGED ABOUT 33 YEARS
R/O PARAGA HOUSE
NEAR MARTIN WOOD INDUSTRIES



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DARBE, PUTTUR,
D.K. DISTRICT - 574202

8. CHANDRASHEKARA
S/O SHANKARANARAYANA NAYAK
AGED ABOUT 56 YEARS
R/O 7/1, JANAM APARTMENTS
SERVICE ROAD
NEAR W.E.H. JOGESHWARI EAST
MUMBAI - 400060
9. SMT. HARINAKSHI
W/O RAMAKRISHNA NAYAK
AGED ABOUT 50 YEARS
R/O ERANTHAKAJE HOUSE
NELLOR KEMRAJE VILLAGE
SULLIA TALUK, POST: BOLLAJE
D.K. DISTRICT PIN: 574216
10. SMT. RAVIKALA
D/O SHANKARANARAYANA NAYAK
AGED ABOUT 37 YEARS
R/O ERANTHAKAJE HOUSE
NELLOR KEMRAJE
SULLITA TALUK, BOLLAJE
D.K. DISTRICT PIN: 574216
11. MRS. PREMA
W/O LATE PANDURANGA PRABHU
AGED ABOUT 72 YEARS
R/O AJERU OF PUNACHA VILLAGE & POST
BANTWAL TALUK, D.K. DISTRICT
PIN: 574219
12. SMT. CHANDRAKALA
W/O BHASKARA NAYAK
D/O PANDURANGA PRABHU
AGED ABOUT 56 YEARS
R/O SHEDIGUNDI HOUSE
ARYAPU VILLAGE & POST



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PUTTUR TALUK, D.K. DISTRICT
PIN: 574202

13. SMT. SWATHI S. PRABHU
W/O LATE SADANANDA PRABHU
C/O UPENDRA NAYAK
AGED ABOUT 36 YEARS
R/O KALLOTTU HOUSE
SHIRVA VILLAGE & POST
UDUPI TALUK & DISTRICT
PIN: 576101

14. SRI VENKATRAMANA
S/O SHANKARANARAYANA NAYAK

SINCE DECEASED REP. BY LRS
APPELLANT Nos.6, 7 & 8 AND
RESPONDENT Nos.8, 9 AND 10 WHO ARE ALREADY
ON RECORD.

...RESPONDENTS

(BY SRI. RAJARAM S, ADVOCATE FOR R1, R2, R11 & R12;
R3 TO R5, R7 TO R10 AND R13 ARE SERVED
V/O DATED 15.02.2019 SERVICE OF NOTICE TO R6 IS H/S
V/O DATED 09.01.2014 A6, A7, A8, R8, R9 AND R10 ARE THE
LRS OF THE DECEASED R14)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 28.10.2013 PASSED IN
R.A.NO.131/2010 ON THE FILE OF THE IV ADDL. DISTRICT &
SESSIONS JUDGE, D.K, MANGALORE, DISMISSING THE APPEAL
FILED AGAINST THE JUDGEMENT AND DECREE DTD 31.7.2010
PASSED IN OS.NO.136/2006 (OLD NO.113/2002) ON THE FILE
OF THE CIVIL JUDGE (SR.DN) & JMFC., BANTWAL, D.K.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



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ORAL JUDGMENT

This regular second appeal is filed by the appellants challenging the judgment and decree dated 28.10.2013 passed in RA No.131/2010 by the Court of learned IV Addl. District and Sessions Judge, D.K., Mangalore (**'First Appellate Court'** for short) confirming the judgment and preliminary decree dated 31.07.2010 passed in OS No.136/2006 (Old OS No.113/2002) by the Court of learned Civil Judge (Sr.Dn.) & JMFC, Bantwal, D.K. (**'Trial Court'** for short).

2. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court. Appellants were defendant Nos.5 to 10, 12 and 15; and respondents were plaintiff Nos.1, 2, 4, defendant Nos.1 to 4, 11, 13, 14, 17(a), 17(b), 18 and 16 before the Trial Court.

3. Brief facts leading rise to the filing of this appeal are as follows:



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3.1. The plaintiffs filed a suit for partition and separate possession before the Trial Court. It was the case of the plaintiffs that, one Thimmappayya Prabhu was the original propositus. He had four children namely Sumithra, Panduranga Prabhu (defendant No.17), Padmanabha (defendant No.1) and Jayantha Prabhu(defendant No.5). Defendant Nos.10 to 16 are the children of Sumithra; defendant No.17(a) is the wife of Panduranga Prabhu, and plaintiff Nos.1, 2, 4 and defendant No.1(b) are the children of Panduranga Prabhu; defendant Nos.2 to 4 are the children of Padmanabha; defendant Nos.6 to 9 are the children of Jayantha Prabhu. It was contended that, the suit schedule properties are the ancestral properties of the plaintiffs and the defendants; the plaintiffs and the defendants are the members of Hindu undivided family, and no partition is effected. The plaintiff demanded for partition and separate possession, but the defendants refused to effect the partition. Hence, a cause of action arose for the plaintiff to file a suit for



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partition and separate possession. Accordingly, prayed to decree the suit.

3.2. Defendant No.5 filed a written statement contending that, the suit filed by the plaintiffs is not maintainable. It was contended that, the plaintiffs, defendant Nos.1 to 9, 17 and Late Thimmappayya belonged to a Hindu undivided family governed by *Mithakshara* law and Hindu Succession Act, 1956. It was denied that, the joint family was holding the family leasehold property much less than the one described in item No.1 of suit 'B' schedule property. Thimmappayya Prabhu passed away. It was contended that, during the lifetime of Thimmappayya Prabhu, he had filed a suit for declaration in respect of suit schedule item No.1 property. The annual income of the suit 'B' schedule property was denied. It was contended that, item No.1 of suit 'B' schedule properties was personal lease hold property of Late Thimmappayya Prabhu who himself had executed a *chalageni cheet* in favour of the landlord. It was



contended that, since defendant No.17 had raised some dispute in 1976, on 24.05.1976, an agreement for partition was entered into between Thimmappayya Prabhu and defendant No.17. As per the said agreement, the lease hold properties were divided into two shares as 'A' and 'B' schedule properties. Out of these, 'A' schedule was allotted to the joint shares of Thimmappayya Prabhu, Padmanabha Prabhu and Jayantha Prabhu; 'B' schedule was allotted to the share of defendant No.17. It was contended that, defendant No.17 had filed Form No.7 along with an application for condonation of delay under TNC No.1944/76-77 and in the said application, he had admitted regarding the partition agreement. As per the said agreement, the entire land granted was allotted to the share of defendant No.5. Defendant No.1 and Sumithra were given Rs.60,000/- each as the value of their shares. Accordingly, prayed to dismiss the suit.

3.3. Based on the rival pleadings of the parties, the Trial Court framed the following issues:



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- "1. *Whether the plaintiffs are entitled for the relief of partition and separate possession in suit schedule properties?*
2. *If so the what extent ?*
3. *Whether the plaintiffs are entitled to mesne profits, If so to what extent ?*
4. *Whether the defendant No.5 proves that item No.1 of 'B' schedule property is granted to him in his individual capacity ?*
5. *Whether the defendant No.5 proves that there is partition in the year 1976 and the same is acted upon ?*
6. *Whether the defendant No.5 proves that defendant No.1 and Sumithra have received Rs.60,000/- under the partition of 1976 and under agreement dated 14.1.1994 ?*
7. *Whether the defendant No.5 proves that land granted to 17th defendant is not included in suit schedule properties and as such suit is bad for partial partition ?*
8. *Whether the valuation of suit made is improper and Court fee paid is insufficient ?*



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9. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties ?*
10. *What Order or decree ?”*

3.4. To substantiate the case of the plaintiffs, plaintiff No.1 was examined as PW1 and marked nine documents as Exs.P1 to P9. In rebuttal, defendant No.5 was examined as DW1 and marked fifteen documents as Exs.D1 to D15.

3.5. The Trial Court after assessing the verbal and documentary evidence, answered issue Nos.1 and 5 in the affirmative, issue Nos.2 and 10 as per the final order, and issue Nos.3, 4, 6 to 9 in the negative. The suit of the plaintiffs was partly decreed vide judgment dated 31.07.2010. It was ordered that, the suit 'B' schedule property is to be divided into four equal shares; plaintiff Nos.1, 2, 4, defendant Nos.17(a), 17(b) and 18 together were entitled to 1/4th share; defendant Nos.1 to 4 together were entitled to 1/4th share; defendant Nos.5 to 9 together were entitled to 1/4th share and defendant



Nos.10 to 16 together were entitled to 1/4th share in the suit 'B' schedule property. The claim of the plaintiffs regarding mesne profits was dismissed.

3.6. Defendant Nos.5 to 10, 12 and 15, aggrieved by the judgment and preliminary decree passed in OS No.136/2006 by the Trial Court, preferred an appeal in RA No.131/2010 before the First Appellate Court.

3.7. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- "1) *Whether the suit of the plaintiffs was to be decreed in terms of compromise petition I.A.No. 13?*
- 2) *Whether the finding of the learned trial judge is erroneous and requires interference?*
- 3) *What Order?"*

3.8. The First Appellate Court, after re-appreciating the entire evidence on record, answered point Nos.1 and 2 in the negative and point No.3 as per the final order. The



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regular appeal was dismissed vide judgment dated 28.10.2013.

4. Defendant Nos.5 to 10, 12 and 15, aggrieved by the judgment and decree passed in RA No.131/2010 by the First Appellate Court, filed this regular second appeal.

5. Heard the arguments of learned counsel for defendant Nos.5 to 10, 12 and 15, and learned counsel for plaintiff Nos.1 and 2 and defendant Nos.17(a) and 17(b).

6. Learned counsel for defendant Nos.5 to 10, 12 and 15 submits that, the Courts below have committed an error in considering the compromise petition which was not signed by all the parties to the suit. He submits that, the said compromise petition was not accepted by the Trial Court. He further submits that, the First Appellate Court, without re-appreciating the entire evidence on record, had affirmed the judgment and preliminary decree passed by the Trial Court. He submits that, the impugned judgment passed by the First Appellate Court is not in compliance



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with Order XLI Rule 31 of the Code of Civil Procedure, 1908 ('**CPC**' for short). To buttress his argument, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of **H. Siddiqui (Dead) by LRs Vs. A. Ramalingam**¹. He further submits that, the First Appellate Court has not framed the points for determination properly. To buttress his argument, he has placed reliance on the judgment of the Co-ordinate Bench of this Court in the case of **Bangarappa Vs. Rudrappa and Another**². Hence, on these grounds, he prays to allow the appeal and set aside the impugned judgment passed by the First Appellate Court.

7. *Per contra*, learned counsel for plaintiff Nos.1 and 2 and defendant Nos.17(a) and 17(b) submits that, the Courts below, placing reliance on the compromise petition, have rightly passed the impugned judgments. Hence, on these grounds, he prays to dismiss the appeal.

¹ 2011 (4) SCC 240

² 2012 SCC OnLine Kar 1185



8. Perused the records and considered the submissions of the learned counsel for the parties.

9. This Court, vide order dated 01.10.2015, admitted the appeal to consider the following substantial questions of law:

- "i) *Whether the Courts below were right in placing reliance on the contents of the memorandum of compromise entered into between the parties, which was not accepted, for the purpose of granting relief to the plaintiffs?*
- ii) *Whether the Courts below could have disposed the suit in terms of the compromise petition filed under Order XXIII Rule 3 of the CPC and not on merits?"*

Reg. Substantial Questions of Law:

10. Substantial questions of law (i) and (ii) are inter-linked. Hence, they are taken together for a common discussion to avoid the repetition of facts.

11. It is an undisputed fact that Thimmappayya Prabhu was the original propositus. He had four children namely Sumithra, Panduranga Prabhu (defendant No.17),



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Padmanabha (defendant No.1) and Jayantha Prabhu(defendant No.5). Defendant Nos.10 to 16 are the children of Sumithra; defendant No.17(a) is the wife of Panduranga Prabhu, and plaintiff Nos.1, 2, 4 and defendant No.1(b) are the children of Panduranga Prabhu; defendant Nos.2 to 4 are the children of Padmanabha; defendant Nos.6 to 9 are the children of Jayantha Prabhu. The suit schedule properties are the ancestral properties of the plaintiffs and the defendants; the plaintiffs and the defendants are the members of Hindu undivided family. An agreement for partition was entered into between Thimmappayya Prabhu and defendant No.17. During the lifetime of Thimmappayya Prabhu, he had filed a suit for declaration in respect of suit schedule item No.1 property. To substantiate the case of the plaintiffs, plaintiff No.1 was examined as PW1. He reiterated the plaint averments in the examination-in-chief and produced the documents marked as Exs.P1 to P9. In rebuttal, defendant No.5 was



examined as DW1 and marked the documents as Exs.D1 to D15.

12. During the pendency of the suit, some of the parties to the suit had filed a compromise petition in IA No.13 under Order XXIII Rule 3 of CPC in OS No.136/2006 before the Trial Court. Some of the parties have affixed their signature and some of the parties did not affix their signature on the compromise application. The Trial Court, only looking into the contents of the compromise application, has decreed the suit. The Trial Court committed an error in placing reliance on the contents of the memorandum of compromise application, because some of the parties to the suit did not affix their signatures and did not compromise the matter with the other parties to the suit. No order has been passed for acceptance of the compromise application. The Trial Court, without considering the said aspect, has decreed the suit. The First Appellate Court, without considering the said aspect and without re-appreciating the entire



evidence on record, confirmed the judgment and decree passed by the Trial Court.

13. From the perusal of the judgment passed by the First Appellate Court, it discloses that, the First Appellate Court has not properly framed the points for consideration and the points for consideration framed by the First Appellate Court are not in compliance with Order XLI Rule 31 of CPC. The First Appellate Court, being the final fact-finding Court, is required to frame the proper points for consideration, re-appreciate the entire evidence on record and answer each issue framed by the Trial Court. Thus, the First Appellate Court did not comply with the provisions of Order XLI Rule 31 of CPC. Hence, on this ground, the impugned judgment passed by the First Appellate Court is in contrary to the judgment passed by the Hon'ble Apex Court in the case of ***H. Siddiqui*** (supra) and the judgment passed by the Co-ordinate Bench of this Court in the case of ***Bangarappa*** (supra). The First Appellate Court committed an error in confirming the



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judgment and preliminary decree passed by the Trial Court without properly re-appreciating the entire evidence on record and also in placing reliance on the contents of the memorandum of compromise application which was not signed by the other parties to the suit. The said compromise application does not bind on the persons who did not affix their signatures on the compromise application. Without examining the said aspect, the First Appellate Court proceeded to pass the impugned judgment. Hence, on this ground alone, the impugned judgment passed by the First Appellate Court is liable to be set aside and the matter requires fresh consideration by the First Appellate Court.

14. In view of the above discussion, I answer substantially question of law (i) in the negative. In view of answering substantial question of law (i) in the negative, substantial question of law (ii) does not arise for consideration.



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15. Accordingly I proceed to pass the following:

ORDER

- i. The regular second appeal is ***allowed***;
- ii. The impugned judgment and decree dated 28.10.2013 passed by the First Appellate Court in RA No.131/2010 is hereby ***set aside***;
- iii. RA No.131/2010 is ***restored*** to its original file;
- iv. The First Appellate Court is directed to frame the proper points for consideration and dispose of the regular appeal in accordance with law;
- v. This Court has not made any adjudication on the merits of the case;
- vi. All the contentions of the parties are kept open;
- vii. Registry is directed to transmit the records to the First Appellate Court;
- viii. Pending IA(s) in this appeal, if any, shall stand disposed of accordingly.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**