



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 135 OF 2014 (PAR)

BETWEEN:

SMT PUTTAGANGAMMA
AGED ABOUT 61 YEARS,
W/O LATE RUDRAIAH,
R/O. GUNDIGERE VILLAGE, KUDUR HOBLI,
MAGADI TALUK 562120
RAMANAGARA DISTRICT

...APPELLANT

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

(BY SRI. NATARAJU T ADVOCATE FOR
SRI. V N MADHAVA REDDY &
SRI. B M KENCHEGOWDA, ADVOCATES)

AND:

1. SMT SHIVAMMA
AGED ABOUT 68 YEARS,
W/O LATE MOOLE MANE BASAPPA,
KUDUR HOBLI,
MAGADI TALUK 562120



2. SMT. GANGAMMA
D/O LATE BASANNA,
W/O. SIDDALINGAPPA,
HONNAPURA, THIPPASANDRA HOBLI,
MAGADI TALUK 562120
3. G.B. SHIVAKUMARAIHAH
S/O LATE MOOLE MANE BASAPPA @ BASANNA,
AGED ABOUT 50 YEARS,
GUNDIGERE VILLAGE,
KUDUR HOBLI,
MAGADI TALUK 562120
4. SMT. SHIVARAJAMMA
D/O LATE MOOLE MANE BASAPPA @ BASANNA,
W/O. MOHANTHAIHAH,
AGED ABOUT 38 YEARS,
DODDAHEJJAJI VILLAGE
DODDABELARANGALA HOBLI,
DODDABALLAPURA TALUK
5. SMT. GURUSIDDAMMA
D/O LATE MOOLE MANE BASAPPA @ BASANNA,
W/O. SHIVARUDRAIAH,
AGED ABOUT 44 YEARS,
BANDWADI POST, SOLUR HOBLI,
MAGADI TALUK 562120



6. SMT. LEELAVATHI
D/O LATE MOOLE MANE BASAPPA @ BASANNA,
AGED ABOUT 40 YEARS,
DEVEGERE VILLAGE,
KENGARI HOBLI- 560068
BANGALORE SOUTH TALUK

7. G.B. KANTHARAJU
S/O LATE MOOLE MANE BASAPPA @ BASANNA,
AGED ABOUT 38 YEARS,
GUNDIGERE VILLAGE,
KUDUR HOBLI,
MAGADI TALUK 562120

...RESPONDENTS

(BY SRI. H C SHIVARAMU FOR R1 TO R7, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DTD 30.6.2012 PASSED IN R.A.NO.27/2010 ON THE FILE OF PRESIDING OFFICER, FAST TRACK COURT, RAMANAGARA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD 15.2.2010 PASSED IN OS.NO.214/2005 ON THE FILE OF ADDITIONAL CIVIL JUDGE (SR.DN.), RAMANAGARA, I/c. OF ITINERARY COURT, MAGADI.

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



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

ORAL JUDGMENT

This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 30.06.2012 passed in R.A.No.27/2010 by the Presiding Officer, Fast Track Court at Ramanagara.

2. For convenience, the parties are referred to as per their ranking before the trial Court. The appellant was the plaintiff and respondents were the defendants.

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

The plaintiff filed a suit for partition, separate possession and permanent injunction. It is the case of the plaintiff that one Basanna of Gundigere Village was the original propositor. He had two sons by name Veerappa and Siddalingaiah. The said Veerappa had got a son by



name Renukaradya. Siddalingaiah had two sons by name Moolemane Basappa, and Rudraiah. It is the case of the plaintiff that she is the legally wedded wife of Rudraiah and the defendants are the wife and children of Moolemane Basappa. The original propositor Sri Basappa had possessed agricultural lands at Gundigere Village and there was a partition amongst the sons of Veerappa and Siddalingaiah. Siddalingaiah acquired the ancestral properties in Sy.No.77/1B, 74/2 and 32/1 of Gundigere Village, Moolemane Basappa and Rudraiah succeeded to the estate of Siddalingaiah. The suit schedule properties are the ancestral properties of the plaintiff and defendant Nos.1 to 7. During the life time of Rudraiah and Moolemane Basappa, they were living together and no partition is effected between the plaintiff and defendant Nos.1 to 7 and they are the members of Hindu Undivided family. The plaintiff demanded for a partition and separate possession. The defendants refused to effect a partition. Hence, a cause of action arose for the plaintiff to file a suit



for partition, separate possession and for permanent injunction. Accordingly, prays to decree the suit.

3.1. Defendant Nos.1 and 7 filed a written statement. Defendant No.4 adopted the written statement filed by defendant Nos.1 and 7. They have denied the relationship of the plaintiff with Rudraiah. It is contended that there exists no relationship as husband, and wife between Rudraiah and the plaintiff. The plaintiff is the stranger to the family of the defendants. Hence, the suit filed by the plaintiff is not maintainable. Hence, on these grounds, prays to dismiss the suit.

3.2. The trial Court, based on the pleadings of the parties, framed the following issues.

1. ವಾದಿ ದಾವಾ ಸ್ವತ್ತುಗಳು ತನ್ನ ಮತ್ತು ಪ್ರತಿವಾದಿಯರ ಒಟ್ಟು ಕುಟುಂಬದ ಸ್ವತ್ತಾಗಿದ್ದು, ಜಂಟಿ ಸ್ವಾಧೀನಾನುಭವ ಹೊಂದಿರುತ್ತೇವೆ ಎಂಬುದನ್ನು ಸಾಬೀತುಪಡಿಸಿರುತ್ತಾರೆಯೇ?
2. ವಾದಿ ದಾವೆಯಲ್ಲಿ ಕೇಳಿದಂತೆ 1/2 ಹಿಸ್ಸೆ ಮತ್ತು ಪ್ರತ್ಯೇಕ ಸ್ವಾಧೀನತೆ ಪಡೆದುಕೊಳ್ಳಲು ಅರ್ಹರೇ?
3. ವಾದಿ ದಾವೆಯಲ್ಲಿ ಕೇಳಿದಂತೆ ಖಾಯಂ ನಿರ್ಬಂಧಕಾಜ್ಞೆಯ ಪರಿಹಾರ ಪಡೆದುಕೊಳ್ಳಲು ಅರ್ಹರೇ?



4. ಯಾವ ಆದೇಶ ಅಥವಾ ಡಿಕ್ರಿ?

3.3. The plaintiff, to substantiate her case, examined her power of attorney holder as PW.1, examined six other witnesses as PW.2 to PW.7 and marked 9 documents as Exs.P1 to P9. In rebuttal, defendant No.7 was examined as DW.1, examined two other witnesses as DW.2 and DW.3 and marked 5 documents as Exs.D1 to D5. The trial court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence, answered issue Nos.1 and 2 in the affirmative, issues No.3 in the negative and issue No.4 as per the final order. The suit of the plaintiff was partly decreed. It is declared that the plaintiff is entitled to half share in the suit schedule property, and defendant Nos.1 to 7 are entitled to remaining half share in the suit schedule property.

3.4. The defendants, aggrieved by the judgment and preliminary decree passed in O.S.No.214/2005, preferred



an appeal in R.A.No.27/2010 on the file of the Presiding Officer, Fast Track Court, Ramanagara.

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

- 1. Whether the plaintiff has proved her relationship with Rudraiah as contended in the plaint?*
- 2. Whether the plaintiff is entitle for any share in the suit schedule properties?*
- 3. Whether the judgment and decree of the Court below is liable to be set aside?*
- 4. What order?*

3.6. The first appellate court, after re-appreciating the entire evidence on record, answered point Nos.1 and 2 in the negative, point No.3 in the affirmative and point No.4 as per the final order. The appeal was allowed vide judgment dated 30.06.2012, setting aside the judgment



and decree passed in O.S.No.214/2010, and consequently, the suit was dismissed.

3.7. The plaintiff, aggrieved by the judgment and decree in R.A.No.27/2010, preferred the Regular Second Appeal.

4. Heard the arguments of the learned counsel for the plaintiff and also the learned counsel for the defendants.

5. Learned counsel for the plaintiff submits that the plaintiff has examined seven witnesses to prove the relationship between the plaintiff and Rudraiah. He submits that the plaintiff has produced Ex.P7 genealogical tree, which clearly discloses that the plaintiff is the wife of Rudraiah. He submits that there is no cross-examination of Ex.P7 by the defendants. He also submits that the First Appellate Court has not recorded any findings on Ex.P7. He also submits that the admission of the defendants'



witness during the cross-examination has not been re-appreciated by the First Appellate Court. He further submits that the judgment and decree passed by the First Appellate Court is arbitrary and erroneous. He submits that the deceased Rudraiah had executed Ex.P2 and to prove the contents of Ex.P2, the plaintiff has examined the witnesses. He submits that the First Appellate Court has not adequately considered the evidence of the witnesses. Hence, on these grounds, he prays to allow the appeal.

6. *Per contra*, learned counsel for the defendants submits that the plaintiff has failed to establish the relationship of the plaintiff with Rudraiah. He submits that Exs.P1 and P2 are created for the purpose of filing the suit. He submits that the First Appellate Court has re-appreciated the entire evidence on record, and passed the impugned judgment. He submits that there no error in the impugned judgment. Hence, on these grounds, he prays to dismiss the appeal.



7. This Court, vide order dated 08.09.2022, admitted the appeal to consider the following substantial questions of law:

- 1. Whether the First Appellate Court is justified in ignoring the documents at Ex.P1 and Ex.P2 and also in not considering the document at Ex.P7?*
- 2. Whether the judgment and decree of first Appellate Court suffers from improper appreciation of evidence on record?*

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

9. **Regarding substantial question of law of law Nso.1 and 2:** Substantial questions of law Nos.1 and 2 are inter-linked with each other; hence, they are taken together for a common discussion to avoid the repetition of facts.



10. The plaintiff filed a suit for partition, separate possession and for permanent injunction on the ground that the plaintiff is the legally wedded wife of Rudraiah, and the suit schedule properties are the ancestral properties of Rudraiah. He died living behind the plaintiff as his legal heir. The plaintiff has succeeded to the estate of the deceased Rudraiah. The plaintiff and defendant Nos.1 to 7 are the members of the Hindu undivided joint family and no partition is effected. The plaintiff got examined through power of attorney holder as PW.1. He reiterated the plaint averments in the examination-in-chief, and marked 9 documents as Exs.P1 to P9. To prove the relationship between the plaintiff and Rudraiah, examined 6 witnesses as PW.2 to PW.7. They have deposed that the plaintiff is the legally wedded wife of the deceased Ruraiah. In rebuttal, defendant No.7 examined himself as DW.1. and reiterated the written statement averments in the examination-in-chief. He denied that the plaintiff is the wife of deceased Rudraiahn and deposed



that the plaintiff has no right to claim a share in the estate of the deceased Rudraiah. There is no relationship as husband and wife between the plaintiff and the deceased Rudraiah. The trial Court, considering the evidence on record, decreed the suit of the plaintiff. The First Appellate Court reversed the judgment and decree passed by the trial Court.

11. A perusal of the judgment of the First Appellate Court discloses that the First Appellate Court, while reversing the judgment and decree passed by the trial Court, has not considered Ex.P7 i.e., genealogical tree, which clearly discloses that the plaintiff is the wife of the deceased Rudraiah. Further, the First Appellate Court has not referred in the impugned judgment regarding Ex.P7. The First Appellate Court judgment is not in accordance with the provisions of Order XLI Rule 31 of CPC. The impugned judgment passed by the First Appellate Court is contrary to the judgment of the Hon'ble Apex Court in the



case of **H.SIDDIQUI (D) BY LRS. VS. A RAMALINGAM** reported in **(2011) 4 SCC 240**. The judgment and decree passed by the First Appellate Court is not in compliance with Order XLI Rule 31 of CPC and also the mandate laid down by the Hon'ble Apex Court in the case of ***H. Siddiqui*** (supra). Paragraph No.21 of the said judgment is reproduced as follows:

"Order 41 Rule 31 CPC

21. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance with the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspects of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise



for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide Sukhpal Singh v. Kalyan Singh [AIR 1963 SC 146] , Girijanandini Devi v. Bijendra Narain Choudhary [AIR 1967 SC 1124] , G. Amalorpavam v. R.C. Diocese of Madurai [(2006) 3 SCC 224] , Shiv Kumar Sharma v. Santosh Kumari [(2007) 8 SCC 600] and Gannmani Anasuya v. Parvatini Amarendra Chowdhary [(2007) 10 SCC 296 : AIR 2007 SC 2380].)"

12. Hence, the impugned judgment passed by the First Appellate Court lacks re-appreciation of evidence on record. Hence, the matter requires reconsideration by the First Appellate Court.



In view of the above discussion, I answer substantial question of law No.1 in the negative and substantial question of law No.2 in the affirmative.

13. Accordingly, the proceed to pass the following:

ORDER

- i. The Regular Second Appeal is ***allowed.***
- ii. The judgment and decree passed by the First Appellate Court is hereby set aside.
- iii. R.A.No.27/2010 is restored to its original file.
- iv. The First Appellate Court is directed to frame the proper points for consideration and thereafter re-appreciate the entire evidence on record, and to pass an appropriate judgment in accordance with Order XLI Rule 31 of CPC.
- v. The parties are directed to appear before the First Appellate Court on **10.08.2026** without awaiting further notice.



- vi. The Registry is directed to transmit the records to the First Appellate Court forthwith.
- vii. All the contentions of the parties are kept open.
- viii. Pending interlocutory application/s, if any, shall stand disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SSB