



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 229 OF 2024 (PAR)

BETWEEN:

SRI. M. RAJAPPA
S/O LATE MALAPPA
AGED ABOUT 67 YEARS
AGRICULTURIST
R/O MADIHALLI, TIPTUR TALUK
PRESENTLY RESIDING AT
KALLUGUNDI VILLAGE
KANAKATTE HOBLI
ARASIKERE TALUK - 573 103.

...APPELLANT

(BY SRI. MADHVACHAR M, ADVOCATE)

AND:

1. M.N. NEELAPPA
S/O LATE MALAPPA
AGED ABOUT 54 YEARS
R/O MAIDHALLI VILLAGE
PRESENTLY WORKING AS PEON
B.D.O OFFICE,
CHIKKANAYKANAHALLI TALUK - 572 214.
2. M. SHIVANNA
S/O LATE MALAPPA
AGED ABOUT 53 YEARS
R/O MADIHALLI VILLAGE
TIPTUR TALUK - 572 201.

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3. M. PALAKSHAPPA
S/O LATE MALAPPA
AGED ABOUT 51 YEARS
R/O MADIHALLI VILLAGE
PRESENTLY WORKING AT
MANJUSHREE GARMENTS
PEENYA 2ND STAGE
TIGALARAPALYA MAIN ROAD
BENGALURU - 560 058.
4. JAYAMMA
D/O LATE MALAPPA
W/O VEERABHADRAPPA
AGED ABOUT 68 YEARS
R/O MAIDHALLI VILLAGE
TIPTUR TALUK - 572 201.
5. JAYALAKSHMAMMA
D/O LATE MALAPPA
W/O VENKATARAMANA
AGED ABOUT 65 YEARS
R/O BAR LANE ROAD
TUMKUR - 572 204.

...RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 25.10.2023 PASSED IN
RA NO.115/2007 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND JMFC, TIPTUR, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 03.09.2007



PASSED IN OS NO.42/2006 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE (JR.DN) AND JMFC, TIPTUR.

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 learned counsel for the appellant. This Court did not deem it fit to issue notice to the respondents having regard to the merits of the matter.

2. Facts which are utmost necessary for disposal of the appeal are as under:

2.1. Unsuccessful plaintiff is the appellant who has filed a suit in O.S.No.42/2006 for partition and separate possession by contending that himself, defendants are the joint family members.

2.2. It is further contended that Malappa is their father; after the death of Malappa, it is defendant Nos.1 to 3 who tried to alienate the suit property taking advantage



of defendant Nos.4 and 5 having been married and residing in their respective matrimonial home and at that juncture, plaintiff questioned defendant Nos.1 to 3 and when they denied his right to partition the property to the extent of 1/4th share, the suit was filed.

2.3. Pursuant to the suit summons, defendants entered appearance. Defendant No.1 filed written statement which was adopted by other defendants.

2.4. In the written statement, relationship of the plaintiff and defendants got admitted and so also Malappa being the father. It is further contended that when the plaintiff was aged about one year, he was given adoption to Siddegowda @ Siddashetty of Kalugundi village, Arasikere Taluk.

2.5. It is further contention of the defendants that the said adoption was much before the Hindu Adoption and Maintenance, 1956 came into force and therefore, there was no adoption deed necessary and adoption was



after completing necessary ceremony. Specific contention of the defendants was plaintiff is aged about 55 years and not 48 years as is shown in the plaint.

2.6. Further, defendants also contended that there was no property which was left behind by the ancestors of Malappa and therefore, suit properties are not the ancestral properties as is contended by the plaintiff and after the adoption and death of Malappa, it is the defendants who have been succeeded to the share of Malappa by inheritance and not by coparcenership and sought for dismissal of the suit.

3. Learned Trial Judge after heard the parties, raised following issues:

1. *"Whether the plaintiff proves that suit schedule properties are undivided joint family property of parties to the suit?"*
2. *Whether the defendants prove that plaintiff was given in adoption to Siddegowda S/o Dasa Shetty prior to coming into force of Hindu Adoptions Act?*



- 3. Whether the defendants prove that they have partitioned suit schedule properties as per oral partition?*
- 4. Whether the defendants prove suit is bad for partial partition?*
- 5. Whether the plaintiff is entitled for partition and separate possession in suit schedule properties?*
- 6. What order or decree?"*

4. In order to prove the case of the plaintiff, plaintiff got examined himself as P.W.1 and Ramaiah as P.W.2 and placed on record as many as 11 documents which were exhibited and marked as Exs.P.1 to P.11.

5. As against the evidence placed on record, three witnesses were examined on behalf of the defendants among them Neelappa being defendant No.1 got examined himself as D.W.1 and two witness namely Jayamma and Basavarajappa as D.W.2 and 3 to prove the adoption of the plaintiff to the family of Siddegowda @ Siddashetty.



6. On behalf of the defendants, 12 documents were placed on record which were exhibited and marked as Exs.D.1 to Exs.D.12.

7. Learned Trial Judge after hearing the parties, on cumulative consideration of the oral and documentary evidence placed on record, dismissed the suit of the plaintiff by holding that plaintiff has failed to make out that he is having share in the suit properties in view of the adoption of the plaintiff to the family of Siddegowda @ Siddashetty.

8. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.115/2007.

9. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappréciation of the material evidence placed on record, dismissed the appeal of the plaintiff *inter alia* holding in paragraph Nos.33 to 40 as under:



"33. The EX.P 3 to 6 documents are the RTC extracts which are in the name of deceased Malappa. The EX.D-9 and 10 are the sale deeds through which the deceased Malappa purchased the suit item No.1 & 3 properties. The documentary evidence shows that the suit properties are the self acquired properties of Malappa. The said Malappa died intestate. Though the defendants No.1 & 2 have taken a defence that there was an oral partition between the defendants and they got partitioned the suit properties as per the said oral partition but, there is no material before the court to come to the conclusion that there was such a partition. Moreover, the revenue documents are still in the name of the deceased Malappa and there is no material before the court to say that the said oral partition was acted upon. However, this aspect is not in issue in this suit. In the present case on hand, the plaintiff has approached the court by claiming that he is the joint family member of family of defendants and he has got equal share. However, he has failed to prove that he is the member of the joint family. However, it is no doubt that the plaintiff is the natural son of Malapa and natural brother of defendants. Though, the plaintiff is the natural son of the said Malappa but, he ceased to be the member of the joint family on the date of adoption itself. In other words, once the adoption is proved, the plaintiff loses all rights in the family of the deceased



Malappa except natural relationship. As such, the plaintiff cannot claim any share in the estate of his natural father.

34. After considering all these facts and circumstances of the case, I come to the conclusion that the plaintiff has failed to prove that the suit properties are joint family properties and the plaintiff is joint family member and however, the defendants have proved that the plaintiff was given in adoption to Siddegowda @ Siddashetty and the trial court has rightly decreed the suit and therefore, the interference of this court is not necessary and hence, the judgment and decree passed by the trial court in O.S.No.42/2006, dated 03.09.2007 is confirmed and accordingly, I answer the point No.1 in the Negative.

35. Point No.2: The Appellant/plaintiff has come up with an application U/o 41 Rule 27 r/w section 151 C.P.C., seeking permission to produce an additional document by stating that the said Sidhashetty executed a Will in his favour on 05.03.1973 and in the said will, it has been stated that the plaintiff is the foster son of the said Sidhashetty and Smt. Gowramma, which is the essential document and therefore, he requires to lead additional evidence. He has sworn to the affidavit by stating that he was unable to produce the said Will during the course of evidence, as he was under the impression that he



had handed over it to his counsel on record in the trial court. He and his counsel made their best efforts, but they could not trace it. Thereafter, he got searched it in his house after the disposal of the suit. He has filed the application earlier in this appeal and this court has rejected the application by dismissing the appeal on 03-08-2011 and against which, he preferred second appeal before the Hon'ble High Court of Karnataka in RSA No.2423/2011 and the Hon'ble High Court of Karnataka set aside the judgment and remanded the case to this court to consider all aspects in the appeal. The interim order merges with the final order and therefore, the additional evidence which now he has sought it to be considered.

36. The respondents No.1 & 2 objected the same by stating that the earlier application has been dismissed by this court and the appellant has not at all urged on this application before the Hon'ble High Court and no specific order has been passed regarding the dismissal of the said application. The other averments of affidavit are false and at this stage, when the arguments of both side concluded, the present application is not maintainable.

37. It is the claim of the plaintiff that the said Siddashetty specifically stated in the Will, dated 5.07.1973 that the plaintiff was his foster son and



therefore, the question of adoption by him does not arise at all. However, there is no concept of foster son in the Hindu Law. Even if the application is allowed and additional evidence is recorded by admitting the said Will, it will not affect the case, as there is no concept of foster son among Hindus. The available documentary evidence and oral evidence shows that the plaintiff was taken into adoption while he was one year old and giving and taking ceremony was also taken place in the house of the natural father of plaintiff. As such, the production of the said Will holds no water.

38. The learned counsel for the plaintiff/Appellant has canvassed the judgment of Hon'ble Supreme Court in Civil Appeal No.1760/2022 dated 10.03.2022 between Sanjay Kumar Sing Vs. The State of Jharkand. In which, the Hon'ble Supreme court has made a proposition of law that the appellate court can take additional evidence sought to be adduced to remove the cloud of doubt over the case.

39. It is true that the appellate court in exceptional circumstances, can take additional evidence that can remove the cloud of doubt over the case but, in the present case on hand, the defendants have proved that the plaintiff is the adopted son of said Siddashetty and moreover, there is no concept of



foster son in Hindu Law and such being the case, the question of removing the cloud of doubt does not arise at all. As such, the plaintiff cannot take shelter of the proposition of law of the above judgment.

40. The learned counsel for the plaintiff/Appellant has canvassed the judgment of Hon'ble Supreme Court reported in (2016) 13 Supreme Court Cases 124 between Union of India Vs. K.V.Lakshman and others. In which it is held that:-

B. Civil Procedure Code, 1908 – Or. 41 R. 27(1) (aa) and (b) and S. 79 – Additional evidence – When to be permitted – Considerations involved when additional evidence is public document, and partly seeking to adduce additional evidence is Government – Need to permit opposite party to additional evidence by way of rebuttal.

The Hon'ble Supreme court has made a proposition of law that in case of public document, and party seeking to adduce additional evidence is Government and in such a case the appellate court can permit to adduce additional evidence. However, in the present case on hand, the alleged Will is not a public document and moreover, the party who is seeking permission is not Government. As such, the plaintiff



cannot take shelter of the proposition of law of the above judgment"

10. Being further aggrieved by the same, plaintiff filed the present appeal on following grounds:

- *The impugned judgment and decree of both the courts below are not maintainable either in law or on facts and both the judgment and decree are liable to be set aside.*
- *The 1st Appellate Court has failed to appreciate evidence on record and miscarried itself while considering Exhibit-D1 the marriage invitation card and Exhibit-D4 the Mutation Entry.*
- *It is submitted that the Exhibit-D1 the marriage invitation card which is a private document, the Respondents have failed to confront the appellant PW.1 with Exhibit-D1. The appellant has specifically denied in his cross-examination that he was not given adoption while he was childhood and also he specifically stated that he did not know read and write Kannada. The Respondents have only suggested the Exhibit-E, existence the same was not read over to witness. This was not appreciated by the both the Courts below. The Respondents have*



failed to discharge burden of proof of Section 114 of Evidence Act.

- *It is submitted that both the courts below failed to appreciate the Exhibit-P4 mutation extract which was not properly confronted to appellant. It is just marked in a casual manner that too in the cross-examination of PW.1 though it being a defendants document. The Respondents ought to have explained the contents of the document to the appellant during the course of cross-examination. Therefore both the courts below have failed to consider this aspect.*
- *It is submitted that the 1st Appellate Court has failed to appreciate the very purpose of I.A. filed under Order 41 Rule 27 of CPC for production of additional evidence. The appellant has produced a registered will dated 05.03.1073 to show that he was not adopted son and it is 30 years old registered document since the appellant was not allowed to lead evidence on additional documents therefore there is violation of principles of natural justice.*
- *It is submitted that Exhibiti-P7 which is a school certificate issued by Government School wherein the appellant's father's name was clearly shown as Myalappa/Malappa, the contents of the said document shows the appellant was about 7 or 8*



years old child. When such being the case there must have been name of adopted father but it shown the name of natural father. The said document was produced by the Respondents themselves but the Lower Appellate Court has miscarried itself and wrongly interpreted the document.

- *It is submitted that both the Courts below have mislead by themselves by reading that Exhibit-D6 Ration Card and Exhibit -D11 and D12 Voters List will not support any proof of adoption. The respondents have not produced any documentary evidence to prove that the appellant was given in adoption. The said Exhibits are proof of only address where the appellant is living. Therefore the appreciation of Lower Appellate Court on the said documents that the appellant was given in adoption is illegal, perverse and unsustainable.*
- *It is submitted that evidence of DW.2 cannot be relied upon as she is a interested witness. The DW.2 had financial transaction with defendants but this was not appreciated by the both the courts below.*
- *It is submitted that evidence of DW.3 also not relied upon. The DW.3 himself admitted in his evidence affidavit and cross-examination that he had financial*



transaction with the defendants. But both the courts below have not properly appreciated this aspect."

11. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not properly taken into consideration that adoption of the plaintiff to the family of Siddegowda @ Siddashetty having not been established being the heir of Malappa, plaintiff was entitled for 1/4th share in the suit property and sought for admitting the appeal on following substantial questions of law:

"i) Whether the judgment and decree of both the courts below are valid in the absence of any documentary evidence for adoption of appellant?

ii) Whether Lower Appellate Court judgment and decree is valid without considering additional evidence produced under order 41 Rule 27 of CPC?

iii) Whether the Lower Appellate Court is right in holding that the evidence of DW.2 and DW.3 is valid despite they are interested witnesses?



iv) Whether the Lower appellate Court is right in holding the Exhibit-D1 and D4 are admissible without confronting the same to the Appellant PW.1 as per Evidence Act?

v) Whether the Lower Appellate Court is right holding that Exhibit-D6, D11 and D12 (which are only address proof) are valid document to consider adoption of PW.1?"

12. Having heard the arguments of learned counsel for the appellant, this Court perused the material on record meticulously.

13. On such perusal of the material on record, admittedly, plaintiff is the resident of Kalagundi village. Ex.D.1 is the wedding invitation of the plaintiff. He admits the validity of Ex.D.1. As per the date mentioned in Ex.D.1, plaintiff was aged about 22 years.

14. Therefore, he must have portion in the year 1952 and therefore, plaintiff deliberately given wrong age in the plaint so as to avoid the fact of his adoption to Siddegowda @ Siddashetty family in view of the Hindu



Adoption and Maintenance Act, having come into force from the year 1956.

15. Plaintiff has exercised his voting rights in Kalagundi village. What made the plaintiff to live in the house of Siddegowda @ Siddashetty if he is not adopted to the house of Siddegowda @ Siddashetty is a question that has to be answered by the plaintiff especially having suppressed his correct age and his residence being shown as Kalagundi village.

16. If the plaintiff is reared in the house of Siddegowda @ Siddashetty from his age of one year, what is the explanation from going away from the natural father is a question that has to be again answered by the plaintiff. Plaintiff conveniently did not answer these questions in his cross-examination.

17. Further, when the plaintiff has suppressed the fact of adoption and did not file any reply or rejoinder to the written statement, it must be presumed that plaintiff



has accepted the contentions urged in the written statement.

18. Nevertheless, it was on the defendants to prove the fact of adoption. With the available evidence on record, defendants have established that there is a valid adoption. It is to be noted that the at the time of filing the suit, natural father – Malappa was no more so also adoptive father - Siddegowda @ Siddashetty was no more.

19. Under such circumstances, the evidence of D.W.2 and 3 though in the nature of oral testimony and D.W.3 to be termed as a hearsay evidence, their evidence cannot be totally brushed aside in establishing the fact that the plaintiff was given in adoption to Siddegowda @ Siddashetty's family.

20. These aspects of the matter have been rightly appreciated by both the Courts in the light of the principles of law enunciated in the decisions cited at the Bar and which requires no interference in this appeal.



21. As such, this Court is of the considered opinion that there is no merit in any one of the substantial questions of law raised in the appeal memorandum.

22. Accordingly, following:

ORDER

- i. Admission is ***declined***.
- ii. Appeal is ***dismissed***.
- iii. In view of the dismissal of the appeal, pending I.A.'s are consigned to records.

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

KAV
List No.: 1 Sl No.: 83