



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

REGULAR SECOND APPEAL NO.247 OF 2013 (PAR)

BETWEEN:

A.G. TOTAPPA
S/O BASAPPA,
AGED ABOUT 48 YEARS,
OCC: AGRICULTURIST,
R/O GADIKATTE VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 217.

...APPELLANT

(BY SRI. R.V. JAYAPRAKASH, ADVOCATE)

AND:

1. NEELAMMA
SINCE DECEASED, BY LRS.

1(a). GOVINDAPPA
S/O LATE NAGAPPA,
AGED ABOUT 75 YEARS,
GADEKATTE VILLAGE,
P.O. VADERAHATHUR,
NYAMATHI TALUK,
DAVANAGERE DISTRICT - 577 223.

1(b). HANUMATHAPPA,
S/O LATE GOVINDAPPA,
AGED ABOUT 49 YEARS,
GADEKATTE VILLAGE,
P.O. VADERAHATHUR,
NYAMATHI TALUK,
DAVANAGERE DISTRICT - 577 223.



- 1(c). ANNAPPA,
S/O LATE GOVINDAPPA,
AGED ABOUT 46 YEARS,
GADEKATTE VILLAGE,
P.O.VADERAHATHUR,
NYAMATHI TALUK,
DAVANAGERE DISTRICT - 577 223.
- 1(d). MANJAMMA,
W/O NAGAPPA,
D/O LATE GOVINDAPPA,
AGED ABOUT 44 YEARS,
R/O CHANNAPURA,
P.O: HANAGAWADI,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 223.
- 1(e). NETHRAMMA
W/O RUDRESHAPPA,
D/O LATE GOVINDAPPA,
AGED ABOUT 42 YEARS
KULAGATTE VILLAGE AND POST,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 223.
- 1(f). RANGAMMA
W/O GOVINDAPPA,
AGED ABOUT 39 YEARS
GADEKATTE VILLAGE,
P.O. VADERAHATHUR
NYAMATHI TALUK,
DAVANAGERE DISTRICT - 577 223.
2. GANGAMMA
W/O BHARAMAPPA,
AGED ABOUT 48 YEARS,
R/AT GADIKATTE VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 217.



3. HALAPPA
S/O KENCHAKKANAVARA HANUMAPPA,
AGED ABOUT 83 YEARS,
OCC: AGRICULTURIST,
R/O MARIGONDANAHALLI VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 217.
4. K.P. SHIVPPAA
S/O RUDRAPPA,
SINCE DEAD, BY LRS.
- 4(a). K.P. CHANDRASHEKARAPPA
S/O K.P. SHIVAPPA,
AGED ABOUT 61 YEARS.
- 4(b). K.P. JAYAAPPA
S/O K.P. SHIVAPPA,
AGED ABOUT 56 YEARS.
- 4(c). S. BHASKARA
S/O K.P. SHIVAPPA,
AGED ABOUT 51 YEARS.
- 4(d). K.P. RUDRESH,
S/O K.P. SHIVAPPA,
AGED ABOUT 45 YEARS.
- 4(e). PUTTAMMA,
SINCE DECEASED, BY LRS.
R4(a) TO R4(d) ARE TREATED
AS LRS OF R4(e).

APPELLANTS 4(a) TO 4(d) ARE
R/AT GADIKATTE VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 217.
- 4(f). K.P. SHARADAMMA,
W/O M.G. BASAVARAJAPPA,



AGED ABOUT 54 YEARS,
R/O KUSHAL HOUSE,
DOOR NO.195, 4TH FLOOR,
II CROSS, LALBAHADUR SHASTRI NAGAR,
SHIVAMOGGA CITY - 577 201.

...RESPONDENTS

(R1[a] TO R1[f]), R2, R3, R4[a] TO R4[d] AND
R4[f] ARE SERVED;
V/O DATED 08.06.2016, R4[a] TO R4[d] ARE TREATED AS
LRS OF R4[e])

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST
THE JUDGEMENT AND DECREE DATED 18TH SEPTEMBER, 2012
PASSED IN REGULAR APPEAL NO.41 OF 2007 ON THE FILE OF
THE SENIOR CIVIL JUDGE, HARIHAR, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGEMENT AND DECREE DATED 19TH
APRIL, 2007 PASSED IN ORIGINAL SUIT NO.169 OF 2000 ON
THE FILE OF THE CIVIL JUDGE (JR.DN.), HONNALI.

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

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL JUDGMENT

This appeal is preferred by the defendant No.3
challenging the judgment and decree dated 18th September,
2012 passed in Regular Appeal No.41 of 2007 on the file of the
Senior Civil Judge, Harihar (for short, hereinafter referred to as
'*First Appellate Court*'), dismissing the appeal and confirming
the judgment and decree dated 19th April, 2007 passed in



Original Suit No.169 of 2000 on the file of the Civil Judge (Jr.Dn.), Honnali (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of the plaintiffs filed for declaration and partition and separate possession came to be decreed.

2. For the sake of convenience, the parties in this appeal are referred to as per their ranking before the Trial Court.

3. It is the case of plaintiffs that, the plaintiffs and wife of defendant No.1 are children of one late K. Hanumanthappa and Rangamma. It is stated in the plaint that, the defendant No.1 is the son-in-law of late K. Hanumanthappa, who sold the suit 'A' Schedule property in favour of the defendant No.2 as per the registered Sale Deed dated 06th January, 1968 and thereafter, the portion of same, which is described as 'B' Schedule property, has been sold by the defendant No.2 in favour of the defendant No.3 as per registered Sale Deed dated 23rd May, 1985. Therefore, it is the case of plaintiffs that the aforesaid Sale Deeds are not binding on them. Hence, the plaintiffs filed the instant suit, seeking relief of declaration and



partition and separate possession in respect of the suit schedule property.

4. After service of summons, the defendant No.1 entered appearance and filed written statement denying the averments made in the plaint. The specific case of the defendant No.1 is that the mother of plaintiffs viz., Rangamma had transferred the suit schedule property in favour of his wife Gangamma and thereafter, the said Gangamma died. Therefore, the defendant No.1 sold the suit schedule property in favour of the defendant No.2. Accordingly, he sought for dismissal of the appeal.

5. Defendants 2 and 3 have filed separate written statement stating that the suit schedule property is the ancestral property of the plaintiffs and have inherited the same through their parents. However, it is the specific case of defendants 2 and 3 that the mother of plaintiffs viz., Rangamma executed 'Varga Rajiname' in favour of her elder daughter Gangamma, who is the wife of defendant No.1 on 24th October, 1958 and as such, the said Gangamma was cultivating



the suit schedule property. It is contended in the written statement that, after the demise of said Gangamma, the property was succeeded by her husband defendant No.1 and as such, the defendant No.1 sold the suit schedule property in favour of the defendant No.2 on 06th January, 1968. Accordingly, they sought for dismissal of the suit of plaintiffs.

6. On the basis of pleadings on record, the Trial Court framed issues for its consideration.

7. In order to establish their case, plaintiffs examined 3 witnesses as PW1 to PW3 and got marked 26 documents as Exhibits P1 to P26. On the other hand, defendants examined 5 witnesses as DW1 to DW5 and got marked 39 documents as Exhibits D1 to D39.

8. The Trial Court, after considering the martial on record, by its judgment and decree dated 19th April, 2007, decreed the suit of the plaintiffs and held that the Sale Deeds dated 06th January, 1968 and 23rd May, 1985 are not binding on the plaintiffs and accordingly, the plaintiffs are entitled for *one-half* share each in the suit schedule property. Being



aggrieved by the same, the defendant No.3 preferred Regular Appeal No.41 of 2007 before the First Appellate Court. The said appeal was contested by the plaintiffs. The First Appellate Court, after re-appreciating the material on record, by its judgment and decree dated 18th September, 2012, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Hence, the defendant No.3 filed the present appeal before this Court under Section 100 of the Code of Civil Procedure.

9. Heard Sri. R.V. Jayaprakash, learned counsel appearing for the appellant. Respondents are served and remained absent.

10. Sri. R.V. Jayaprakash, learned counsel appearing for the appellant contended that the defendant No.1 had executed the registered Sale Deed dated 06th January, 1968 in respect of the suit Schedule 'A' property in favour of the defendant No.2 and thereafter, the defendant No.2 executed the registered Sale Deed dated 23rd May, 1985 in favour of the defendant No.3 in respect of portion of property which has been

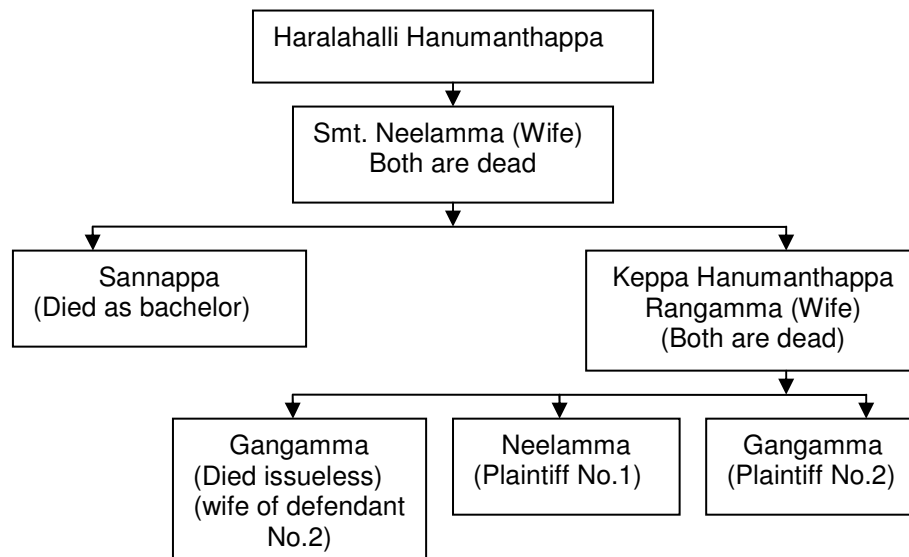


purchased by him from the defendant No.1. Therefore, learned counsel appearing for the appellant contended that, both the Courts below have erred in decreeing the suit of the plaintiffs without considering the law of limitation. In this regard, learned counsel appearing for the appellant referred to Articles 59 and 110 of the Limitation Act, 1963 and contended that there is an inordinate delay in challenging the aforesaid Sale Deeds by the plaintiffs and therefore, the finding recorded by both the Courts below requires interference in this appeal.

11. In order to buttress his arguments, learned counsel appearing for the appellant places reliance on the judgment of Hon'ble Supreme Court in the case of **UDHAV (DEAD) BY L.Rs. AND ANOTHER vs. PANDHARINATH KISHANRAO TAK AND ANOTHER** reported in *AIR 2000 SC 3576(1)* and contended that, the plaintiffs have challenged the Sale Deeds with an inordinate delay of more than two to three decades. Accordingly, he sought for interference of this Court in the present appeal.



12. In the light of submission made by learned counsel appearing for the appellant, I have carefully perused the finding recorded by both the Courts below. In order to understand the relationship between the parties, it is relevant to extract the genealogy of the parties, which is as follows:



13. It is not in dispute that the suit schedule property is the joint family and ancestral property of the plaintiffs and deceased Gangamma (wife of defendant No.1). It is also not in dispute that the said Hanumanthappa died leaving behind his wife Rangamma and three children i.e., plaintiffs and wife of defendant No.1. The defendant No.1 had executed the registered Sale Deed dated 06th January, 1968 in favour of the



defendant No.2 based on the Varga Rajiname said to have been executed by Rangamma, mother of plaintiffs in favour of her elder daughter Gangamma (wife of defendant No.1). In this regard, it is also pertinent to mention here that the said Varga Rajiname has not been produced before the Trial Court. It is also to be noted that the said Varga Rajiname cannot confer any title to Gangamma as the suit schedule property is the ancestral property of plaintiffs and the deceased Gangamma (wife of defendant No.1). In that view of the matter, I am of the view that, no valid transaction has been made in favour of Gangamma (wife of defendant No.1) by her mother Rangamma. Therefore, I am of the view that the finding recorded by both the Courts below in decreeing the suit of plaintiffs is just and proper. However, the share of the plaintiffs in the joint family and ancestral property would be one-third each, since, the mother of the plaintiffs Rangamma is no more. It is well settled principle in law that the revenue documents do not confer any title to the property unless there is a valid execution of registered instrument in favour of the prospective purchaser. Therefore, since the suit schedule



property is the ancestral property of plaintiffs and deceased Gangamma (wife of defendant No.1), I am of the view that the arguments advanced by learned counsel appearing for the appellant to invoke Articles 59 and 110 of the Limitation Act does not arise at all and the judgment referred to by the learned counsel is not applicable to the case on hand. Therefore, in view of law declared by Hon'ble Supreme Court in the case of **VINEETA SHARMA vs. RAKESH SHARMA** reported in (2020) 9 SCC 1, the plaintiffs are entitled for *one-third* share each in the suit schedule property and further, as the wife of the defendant No.1 Gangamma died, the share of the said deceased Gangamma shall devolved in favour of legal heirs of Gangamma to an extent of *one-third* share of the suit schedule property. Since, there is no perversity in the judgment and decree passed by the Courts below, except as to allotment of share in terms of law declared by Hon'ble Supreme Court in the case of **VINEETA SHARMA** (supra), I am of the opinion that, the appellant herein has not made out a case for formulation of substantial question of law as required under



Section 100 of the Code of Civil Procedure. Accordingly, I pass the following:

ORDER

- (i) Regular Second Appeal ***dismissed;***
- (ii) Judgment and decree dated 18th September, 2012 passed in Regular Appeal No.41 of 2007 on the file of the Senior Civil Judge, Harihar and judgment and decree dated 19th April, 2007 passed in Original Suit No.169 of 2000 on the file of the Civil Judge (Jr.Dn.), Honnali are hereby confirmed subject to the fact that the plaintiffs are entitled for *one-third* share each in the suit schedule property.

**SD/-
(E.S. INDIRESH)
JUDGE**

ARK
List No.: 2 Sl No.: 24