



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 303 OF 2026 (PAR)

BETWEEN:

1. SMT. SOWBHAGYA
W/O LATE D.K. GANGASWAMY
AGED ABOUT 73 YEARS
R/AT NO 465, SHIVAPARVATHI NILIYA,
D GROUP EXTENSION, KUVEMPUNAGAR,
KRS AGRAHARA KUNIGAL TOWN,
TUMKUR DISTRICT
2. SRI. NAGARAJU
S/O LATE D.K. RAMANNA,
AGED ABOUT 60 YEARS
R/AT KALACHAR STREET,
K.R.S. AGRAHARA, KUNIGAL TOWN,
KUNIGAL - 572 130
TUMAKURU DISTRICT

...APPELLANTS

(BY SRI. UMESH B.N., ADVOCATE)

AND:

D. K NANJUNDAIAH
SINCE DEAD BY LRS

1. SMT. NANJAMMA
W/O LATE D.K. NANJUNDAIAH,
AGED ABOUT 67 YEARS,
2. SRI. GANGADHAR GOWDA,
S/O LATE D.K. NANJUNDAIAH,
AGED ABOUT 49 YEARS,



3. SMT. YASHODAMMA,
W/O LATE D.K. NANJUNDAIAH,
AGED ABOUT 47 YEARS.

4. SMT. SHARDA,
D/O LATE D.K. NANJUNDAIAH,
AGED ABOUT 46 YEARS

RESPONDENTS NO.1 TO 4 ARE
R/AT KALACHAR STREET,
K.R.S. AGRAHARA, KUNIGAL TOWN - 572 130
TUMKUR DISTRICT

5. SRI. MANJUNATH GOWDA,
S/O SRI. K. K. NANJUNDAIAH,
AGE NOT KNOWN
R/AT KALACHAR STREET,
ANIKETHANA ROAD,
K.R.S. AGRAHARA, KUNIGAL TOWN - 572 130
TUMAKURU DISTRICT

6. SMT. K.R. GAYATHRI,
D/O LATE D.K. RAMANNA,
W/O T. NARAYANAGOWDA,
AGED ABOUT 56 YEARS
R/AT KALACHAR STREET,
K.R.S. AGRAHARA, KUNIGAL TOWN,
KUNIGAL - 572 130
TUMAKURU DISTRICT

7. SMT. SAVITHRI,
D/O LATE D.K. RANANNA,
W/O SHIVANNA,
AGED ABOUT 54 YEARS,
R/AT KADDARAMANAHALLI VILLAGE,
HUTRIDURGA HOBLI,
KUNIGAL TALUK, TUMAKURU DISTRICT

8. SRI. LOKESHGOWDA,
S/O LATE D.K. RANANNA,



AGED ABOUT 50 YEARS.
R/AT KALACHAR STREET,
K.R.S. AGRAHARA,
KUNIGAL TOWN, KUNIGAL - 572 130
TUMAKURU DISTRICT

9. SMT. VARALAKSHMI,
W/O HANUMEGOWDA,
D/O LATE D.K. RANANNA,
AGED ABOUT 47 YEARS,
R/AT BELLIGERE VILLAGE,
HULIYURUDURGA HOBLI,
KUNIGAL TALUK, TUMAKURU DISTRICT

...RESPONDENTS

(BY SRI. YOGESH V. KOTEMATH, ADVOCATE FOR
SRI. P.H. VIRUPAKSHAIAH, ADVOCATE FOR C/R5)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 15.10.2025 PASSED IN
R.A.NO.46/2017 ON THE FILE OF ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, KUNIGAL, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 17.10.2017
PASSED IN OS NO.41/2012 ON THE FILE OF PRL. CIVIL JUDGE,
KUNIGAL.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri. Umesh B.N., learned counsel for
appellants and Sri. Yogesh V Kotemath learned counsel
representing Sri. V H Virupakshaiah learned advocate
appearing for Caveator/respondent No.5 on record.



2. Unsuccessful plaintiffs are the appellants challenging the dismissal of the suit in O.S.No.41/2012 confirmed in R.A.No.46/2017.

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

3.a A suit for partition came to be filed by the appellants herein in respect of the following properties (hereinafter referred as "*suit properties*"):

" Schedule

1) All the piece and parcel of land in Sy.No.59/6, measuring 0 acres 2 guntas situated Kallanayakanahalli Village, Huthridurga Hobli, Kunigal Taluk, Tumakuru District and bounded by:-

*East : Chikka Honniah's property
West: Eashwariah Property
North: Road
South: Defendant property*

2) All the piece and parcel of in old Sy.No.57/14 an new Sy.No.57/12 measuring 0 acres 22 guntas out of that 9 guntas situated Kallanayakanahalli Village, Huthridurga Hobli, Kunigal Taluk, Tumakuru District and bounded by:-

*East : Government Road
West: Sons of Hosalappa Revaiah Property
North: K.T.Krishnappa and Sons of Hosalappa Revaiah's Property*



South: Dr. B.K.Sarojamma & Sons"

3.b A suit claim is based on the contention that Sri Doddahonnaiah was the common prepositus. He had three children, namely, D. K. Gangaswamy, who is the husband of the first plaintiff Smt. Sowbhagya and D. K. Ramanna, who is the second plaintiff and Sri D.K.Nanjundaiah (first defendant).

3.c Sri. Doddahonnaiah during his lifetime acquired several properties and he was managing the same as joint family properties and as kartha of the family. After his death, husband of the plaintiff was managing the joint family affairs and first defendant and second plaintiff being the brothers, entered into a partition in respect of the joint family properties by a registered partition deed dated 24.12.1992.

3.d It is further contention of the plaintiffs that due to inadvertence, suit items were not included in the registered partition deed. Therefore, the present suit is



filed seeking share in respect of the suit properties as relationship among the parties is admitted and nature of properties is also admitted.

3.e Pursuant to the suit summons, first defendant appeared before the Court, filed written statement admitting the relationship but denying the other aspects of the matter except the earlier partition which was registered.

3.f It is further contented that as per the partition, it was recognized that the suit properties are the independent property as on the date of partition and therefore, land in Sy. Nos. 59/5C and 59/6 measuring two guntas in Sy.No.59/1C is allotted to first defendant as equitable partition.

3.g It is further contented that thereafter defendant No.1 developed the property and fenced his portion of the land and the boundaries mentioned in the registered partition deed tallies with the properties that has been



allotted to the first defendant. Therefore, the suit is not maintainable.

3.h The Second defendant filed a separate written statement contending that he would adopt the statement made by the first defendant and in addition to the same, he contended that there was a dispute *inter se* between first defendant and second defendant. There is a further partition that has taken place in respect of the properties that were allotted to defendant No. 1 in the aforesaid registered partition and thereafter revenue entries were mutated in the name of first defendant and second defendant as per their *inter se* partition and therefore sought for dismissal of the suit.

3.i Learned trial judge, based on the rival contentions of the parties, framed necessary issues, recorded the evidence of the parties and noted that the plaintiffs failed to establish that the suit properties were



left out in the registered petition deed dated 24.12.1992 and therefore they have a right in the suit property.

3.j Being aggrieved by the dismissal of the suit, plaintiffs filed an appeal before the First Appellate Court in R.A.No.46/2017.

3.k Learned judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-application of the material evidence on record, dismissed the appeal of the plaintiffs and also dismissed the application seeking permission to place additional evidence on record.

3.l. Being further aggrieved by the same, plaintiffs are before this Court.

4. Learned counsel for the appellants Sri. Umesh B.N. with vehemence contented that both the Courts have wrongly appreciated the material on record and dismissal of the suit has thus resulted in miscarriage of justice,



besides the findings are perverse in nature and sought for admitting the appeal on the following substantial questions of law:

"a. Whether Both Courts justified in law in holding that the distinct survey number i.e., Sy.No.59/6 stood included in 1992 partition deed, and is part of Sy.No:59/C, though there was express recital?

b. Whether both Courts justified in law in holding that boundaries prevail over measurement, to include an entirely separate survey number not described in the partition deed?

c. Whether the judgment and decree passed by the First Appellate Court justified in law, which has not at all dealt with the suit Item No; 2 property, and so also not evaluating the findings of the Trial Court, but having dealt the First Appeal as if Trial?

d. Whether the First Appellate Court justified in law in rejecting the application under Order 41 Rule 27 CPC which documents clearly discloses the conduct of the 1st Defendant creating fabricating the documents?"

5. Per contra, Yogesh Kotemath learned counsel representing Sri. P H Virupakshaiah, learned counsel would support the impugned judgments by contending that the explanation offered by the first defendant with regard to the suit properties being allotted to the exclusive share of the first defendant in the registered partition deed was not



questioned by the husband of the first plaintiff or the second plaintiff soon after the registered partition deed came to be filed and as an afterthought, out of avariciousness, the plaintiffs have filed the present suit with incorrect factual aspects which has been rightly appreciated by both the Courts and sought for dismissal of the appeal.

6. Having heard the arguments of both sides, this Court perused the material on record meticulously.

7. On such perusal of the material on record, it is to be noticed that properties were earlier acquired by the common prepositus, namely Sri.Doddahonnaiah.

8. Admittedly, he was the kartha of the family and after his demise, it is the husband of the plaintiff who became the kartha and he was managing the affairs of the joint family.

9. When the differences arose between him and his brothers, parties sat together and divided the



properties left behind by Doddahonnaiah by a registered partition deed dated 24.12.1992.

10. It is the case of the plaintiffs that the suit properties were left out in the said partition and therefore, they are entitled for sharing the suit properties.

11. As against the same, first defendant contented that at the time of partition itself, there was a discussion with regard to the suit properties and after clear understanding that those properties are the properties of the first defendant, partition took place in the registered partition deed dated 24.12.1992 and the properties which have fallen to the share of the first defendant is also mentioned in the said registered deed and therefore, the plaintiff cannot again re-agitate the issue of the previous partition dated 24.12.1992 by filing a suit in the year 2012.

12. Parties have placed necessary material evidence on record in that regard.



13. Learned trial judge while appreciating the rival contentions of the parties in the light of the material evidence placed on record, has recorded a categorical finding that first defendant was successful in establishing that suit properties had fallen to his share at the time of the registered partition deed itself which is in the year 1992.

14. Pertinently, till the lifetime of the husband of first plaintiff, there was no challenge to the registered partition. It is only after death of the husband of first plaintiff, the suit came to be filed challenging the registered partition deed dated 24.12.1992 as incorrect as suit properties were left out in the said registered partition. To substantiate said contentions, material evidence placed on record by the plaintiffs are not sufficient is the factual finding recorded by both the Courts.



15. Since on the factual aspects, there is a concurrent finding that the suit properties are not available for partition and it is not the subject matter of the joint family property, dismissal of the suit by both the Courts is just and proper, which requires no further consideration before this Court by admitting the appeal on the aforesaid substantial questions of law having regard to scope of Section 100 of CPC, 1908.

16. Resultantly, the following:-

ORDER

- i) Admission declined.
- ii) The Regular Second Appeal stands ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE