



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 699 OF 2018 (DEC/POS)

BETWEEN:

SRI.H.M.VIJAYA KUMAR,
SON OF LATE H M ESHWARADHYA,
AGED ABOUT 55 YEARS,
RESIDENT OF NO.16, 3RD CROSS,
PAPANNA BLOCK, GANGANAGAR,
BANGALORE - 32.

...APPELLANT

(BY SRI RAGHUNATH M D, ADVOCATE)

AND:

1. B.S.PRADEEP,
SON OF B SURESH,
AGED ABOUT 30 YEARS,
#3-1-1, MAHADEVAPET
MADIKERI KODAGU DISTRICT-571201,
& BASAVESHWARA TEMPLE ROAD,
KODLIPET SOMWARPET TALUK,
KODAGU DISTRICT-57.

2. SRI H M SHANTA KUMAR,
SON OF LATE H M ESHWARADHYA,
AGED ABOUT 54 YEARS,
R/O CHANAL AREA, 5TH CROSS,
VINOBBHANAGAR, SHIMOGA -

...RESPONDENTS

(BY SRI K CHANDRANATH ARIGE, ADVOCATE FOR R1,
V/O/DT 28.11.2025 SERVICE OF NOTICE TO R2 IS
HELD SUFFICIENT)

Digitally signed
by BELUR
RANGADHAMA
NANDINI

Location: HIGH
COURT OF
KARNATAKA



THIS RFA IS FILED UNDER ORDER XLI RULE 1 OF CPC., AGAINST THE JUDGEMENT AND DECREE DATED 23.01.2018 PASSED IN OS NO.80/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE, MADIKERI DISMISSING THE SUIT FOR DECLARATION AND POSSESSION.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is arising from the judgment and decree dated 23.01.2018 in O.S. No.80/2013 on the file of Senior Civil Judge, Madikeri.

2. The suit of the plaintiff for declaration of title and possession is dismissed. The plaintiff has also sought mesne profits at Rs.1,00,000/- per annum. Aggrieved by the decree of dismissal, the plaintiff is before this Court. There is only one defendant.

3. The pleadings would reveal that the property belonged to one Gejje Sangappa Shetty. Said Gejje Sangappa Shetty had a daughter by name Madamma.



Plaintiffs claim the right over the property as the heirs of husband of Madamma.

4. Eshwararadhya is the husband of Madamma. Said Eshwararadhya had one more wife by name Manikarinka Devi and she died in the year 1967. Thus, the second marriage of Eshwararadhya with Madamma is valid as the second marriage has taken place after the demise of the first wife.

5. Admittedly, Madamma had no issues. The plaintiffs claim right over the property on the premise that after the demise of Madamma, the property will be succeeded by Eshwararadhya as Madamma did not have any heirs to inherit the property from her paternal side. The plaintiffs claim right over the property under Section 15(1)b of the Hindu Succession Act, 1956 ('Act, 1956').

6. The defendant claimed right over the property on the premise that he is the grandson of Madamma, great grandson of Basamma and son of Siddhalingaiah.



The defendant claims that Siddhalingaiah is the son of Basamma and said Siddhalingaiah had a son by name Suresh and defendant is the son of Suresh. The evidence on record would reveal that the property belonged to Gejje Sangappa Shetty. Thus, the property is the ancestral property of Madamma, is the submission.

7. Though it is contented by the defendant that he is the successor to the property of Madamma as he represents the Madamma's ancestral branch, no specific issue is framed in this case. The issues framed by the Trial Court are as under:

- "1. Whether the plaintiffs prove that they are the absolute owners of the suit schedule properties?*
- 2. Whether the plaintiffs further prove that they are entitle for possession?*
- 3. Whether the plaintiff is entitled for the relief as sought for?*
- 4. What Order or Decree?"*



8. The following point would arise for consideration:-

"Whether appellant establishes that he is the heir to the property of deceased Madamma."

9. The Court has come to the conclusion that the plaintiff has failed to establish his claim over the property on the premise that the plaintiff does not acquire right over the property under Section 15(1)(b) Act, 1956 in view of the bar contained under Section 15(2) Act, 1956.

10. It is required to be noticed that plaintiff cannot claim right over the property under Section 15(2)(b) Act, 1956, if the defendant is able to establish that Section 15(2) applies to the case.

11. To succeed in his defence, the defendant is required to establish that Basamma, who is said to be the sister of Gejje Sangappa Shetty inherited the property or at least he should establish that



Siddhalingaiah, the defendant's grandfather, inherited the property after the demise of Madamma.

12. Though the defendant has claimed that he would inherit the property through Basamma, Siddhalingaiah and Suresh, there is no specific evidence relating to the year of death of Madamma and there is no specific evidence as to whether Madamma survived either Basamma or Sidhalingaiah. Probably, the absence of a specific issue in this behalf led to this situation.

13. Under these circumstances, the Court is of the view that specific issue has to be framed, casting burden on the defendant who claims to have inherited the property of Madamma under Section 15(2) of the Act of 1956. Thus, following issue is framed:

Whether the defendant establishes that after the demise of Madamma the property is inherited either by Basamma or Sidhalingaiah?



14. If the property is inherited either by Basamma or Siddhalingaiah after the demise of Madamma, then Section 15(2) of the Act of 1956 would apply. In that event, the plaintiff stands excluded from inheritance.

15. If defendant is unable to establish that after the demise of Madamma, either Basamma or Siddhalingaiah inherited the property, then by default, the plaintiff would be entitled to a decree. The reason is, the plaintiff's relationship with deceased Madamma is not in dispute and in that event Section 15(1)(b) of the Act, 1956 would come into operation.

16. Hence, the following.

ORDER

(i) Appeal is ***allowed in part.***

(ii) The judgment and decree dated 23.01.2018 in O.S. No.80/2013 on the file of Senior Civil Judge, Madikeri are set aside.



- (iii) The matter is remitted to the Trial Court for fresh consideration on the issue framed by this Court.
- (iv) Both parties are permitted to lead evidence on the additional issues.
- (v) The Court has not expressed anything on the merits of the matter.
- (vi) Except the observation made by this Court that in the event of defendant failing to establish his case, the property would go to the plaintiff.
- (vii) All contentions are kept open.
- (viii) The parties shall appear before the Trial Court on **02.06.2026** without any further notice from the Trial Court.
- (ix) The Registry to send back the Trial Court records.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE