



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA
REGULAR SECOND APPEAL NO. 885 OF 2019

BETWEEN:

SRI MARIGOWDQA
DEAD BY LEGAL REPRESENTATIVES,

1. SRI. SHIVE GOWDA,
AGED ABOUT 66 YEARS,
S/O LATE MARIGOWDA,
 2. SRI. PUTTARAMU
AGED ABOUT 51 YEARS,
S/O LATE MARIGOWDA,
SINCE DECEASED BY LEGAL REPRESENTATIVES
 - 2(A). SMT. SHASHIKALA
W/O LATE PUTTARAMU
AGED ABOUT 50 YEARS
 - 2(B). SRI. SAGAR B.P
S/O LATE PUTTARAMU
AGED ABOUT 32 YEARS
 - 2(C). SMT. SAHANA B.P.
S/O LATE PUTTARAMU
AGED ABOUT 30 YEARS
- RESPONDENT NOS. 2(A) TO 2(C) ARE
RESIDING AT NO. 206/1,
BELVADI VILLAGE, YELAWALA HOBLI

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



MYSURU TALUK - 571 130.

3. SRI. KEMPAJOGEGOWDA
AGED ABOUT 80 YEARS,
S/O LATE BOREGOWDA,

4. SRI. RAMEGOWDA
AGED ABOUT 60 YEARS,

ALL ARE RESIDING AT BELVADI VILLAGE,
YELAWALA HOBLI,
MYSURU TALUK -571 130.

...APPELLANTS

(BY SRI. Y.K. NARAYANA SHARMA, ADVOCATE FOR
A2(A TO C))

AND:

SRI. SHIVANNA
DEAD BY LEGAL REPRESENTATIVES,

1. SMT. PUTTAMMANI,
AGED ABOUT 51 YEARS,
W/O LATE SHIVANNA,

2. SRI. UMESHA
AGED ABOUT 34 YEARS,
S/O LATE SHIVANNA,
RESIDING AT BELAWADI VILLAGE,
YELWALA HOBLI,
MYSURU TALUK - 571 130.

3. SMT. REKHA
AGED ABOUT 31 YEARS,
W/O SRI. KUMARA,



D/O LATE SHIVANNA,
RESIDING AT SAHUKARAHUNDI VILLAGE,
YELAWALA HOBLI, MYSURU TALUK - 571 130.

4. SRI. SIDDEGOWDA
AGEED ABOUT 43 YEARS,
S/O LATE MARIGOWDA
5. SRI. JOGI ALIAS MENANNA
AGED ABOUT 68 YEARS,
S/O LATE JOEGOWDA @ KAJJEGOWDA,
RESIDING AT SAHUKARAHUNDI VILLAGE,
YELWALA HOBLI,
MYSURU TALUK - 571 130.
6. SRI. SIDDEGOWDA
AGED ABOUT 48 YEARS,
S/O LATE JOEGOWDA @ KAJJEGOWDA,
7. SRI. YOGESHA
AGED ABOUT 68 YEARS,
S/O LATE JOEGOWDA @ KAJJEGOWDA,
RESPONDENT NO.1, 2, 4 AND 5 ARE
RESIDING AT BELAWADI VILLAGE,
YELWALA HOBLI,
MYSURU TALUK - 571 130.
8. THE TAHSILDAR
MYSURU TALUK,
MYSURU - 570 001.

...RESPONDENTS

(BY SRI. VINAYA KEERTHY M, ADVOCATE FOR R1, R3, R4, R6
AND R7;
MISS. AMARAVATHY H.R, AGA FOR R8; R2 SERVED;
VIDE ORDER DATED 15.06.2026, APPEAL STANDS
DISMISSED AS ABATED AS AGAINST R5)



THIS RSA IS FILED UNDER SEC. 100 R/W ORDER 41 RULE OF THE CPC PRAYING TO PASS NECESSARY ORDERS AND CALL FOR THE RECORDS IN R.A.NO.218/2018 IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE, MYSURU AND RECORDS IN O.S.NO.558/2010 IN THE COURT OF THE ADDITIONAL II CIVIL JUDGE AND JMFC, MYSURU AND SET ASIDE THE JUDGMENT AND DECREE DATED 29-01-2019 PASSED IN R.A.NO.218/2018 BY THE COURT OF THE II ADDITIONAL DISTRICT JUDGE, MYSURU AND JUDGMENT AND DECREE DATED 05-06-2017 PASSED IN O.S.NO.558/2010 BY THE COURT OF THE ADDITIONAL II CIVIL JUDGE AND JMFC, MYSURU AND DECREE THE SUIT AS PRAYED IN THE PLAINT BY ALLOWING THIS APPEAL WITH COSTS THROUGHOUT OR PASS OTHER SUITABLE ORDERS AS DEEMED FIT UNDER THE CIRCUMSTANCES IN THE CASE IN INTEREST OF JUSTICE.

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.

2. Plaintiffs' second appeal challenging the dismissal of the suit in O.S.No.558/2010 dated 05.06.2017 which was confirmed by the First Appellate Court in RA No.218/2018 dated 29.01.2019.

3. Facts of the case are as under:

3.1. A suit for declaration, possession, mandatory and permanent injunction in respect of the following immovable properties came to be filed in O.S.No.558/2010:

- A. *"Land bearing Sy.No.111, new No.111/3 measuring 4 acres 25 guntas and situated at Madhagalli village, Yelwala Hobli, Mysuru Taluk which is bounded on the:*
East by: Land of Kapari Boraiah
West by: Land of Government Canal
South by: Property of the defendants in Sy.No.111/4 (their ancestral property)
North by: Land bearing Sy.No.111/2 belongs to defendants.



B. Land bearing Sy.No.111, new No.111/3 measuring 39 guntas out of 4 acres 25 guntas and situated at Madhagalli village, Yelwala Hobli, Mysuru Taluk, which is bounded on the:

East by: Land of Kapari Boraiah

West by: Land of Government Canal

South by: Remaining property of the defendants in Sy.No.111/4

North by: Land bearing Sy.No.111/3 belongs to plaintiffs measuring 3 acres 26 guntas."

3.2. Prayer of the suit in O.S.No.558/2010 reads as under:

"This suit is filed for the reliefs of

- i. declaration to declare that the plaintiffs are the absolute owners of the suit schedule properties;*
- ii. for possession by directing the defendants, their family members, legal representatives & agents to hand over the vacant possession of the 'B' suit schedule property in favour of the plaintiffs;*
- iii. for mandatory injunction by directing the Tahsildar and other revenue authorities to change the khatha of the suit schedule property in favour of the plaintiffs to the extent of 4 acres 25 guntas;*
- iv. for consequential relief of permanent injunction in respect of 'A' suit schedule property; and*



- v. *for damages at the rate of Rs.10,000/- p.a. from the date of the suit till the date of the handing over the possession to the plaintiffs."*

3.3. It is contended by the plaintiff that Chikkajogegowda of Belavadi village, Yelwala Hobli, Mysuru had three sons namely Jogegowda, Boregowda and Doddesiddegowda. Boregowda being the second son of Chikkajogegowda, had three children by name Papegowda who is the father of plaintiff No.3, Marigowda who is plaintiff No.1 and Kempajogegowda who is plaintiff No.2. Jogegowda had two sons by name Jogegowda @ Kajjegowda and Marigowda. Among them, Jogegowda @ Kajjegowda had three more sons namely Jogi @ Menganna, Siddegowda and Yogesh who are the defendant Nos.3 to 5. Marigowda who is the second son of Boregowda who is plaintiff No.1, had two sons namely Shivanna and Siddegowda who are defendant Nos.1 and 2.

3.4. It is further contended that landed property bearing Sy.No.108, 110, 111 totally measuring 13 acres 35 guntas situated at Madagalli village, Yelwala Hobli, Mysore is the ancestral property of Chikkajogegowda. Later on succeeded to by Jogegowda, Boregowda and Doddasiddegowda.



3.5. It is their specific case that there was a oral partition long back. As per the said oral partition, each of the sons of Chikkajogegowda got 4 acres 25 guntas in the suit properties. Thereafter, two sons of Jogegowda @ Kajjegowda and Marigowda, purchased 4 acres 25 guntas from their junior uncle – Doddasiddegowda and thus they became the owners of 9 acres 10 guntas.

3.6. Father of the plaintiff Nos.1 and 2 and father of plaintiff No.3 thus possessed remaining 4 acres 25 guntas of the property. Father of plaintiff Nos.1 and 2 i.e., Boregowda died long back and thereafter, property was allotted to the share of Boregowda was inherited and succeeded by the plaintiffs. Therefore, plaintiffs are in joint possession and enjoyment of the suit properties.

3.7. It is further contention of the plaintiffs that since they are in joint possession and enjoyment of the property bearing Sy.No.111 new No.111/3 measuring 4 acres 25 guntas morefully described as 'A' schedule property, in the month of January, 2007, defendants came near the suit property and



started to plough the land by encroaching the property of the plaintiffs by removing the boundary stone.

3.8. When the said attempt of the plaintiffs was resisted, defendants started claiming that the said land belongs to them and they also contended that they have filed an application for the measurement of the land. When defendants did not heed to the request of the plaintiffs, suit was necessitated.

4. Pursuant to the suit summons, defendants filed written statement by contending that Chikkajogeogwda had three sons namely Jogegowda, Boregowda and Doddasiddegowda is admitted but all other contents were denied by the defendants.

5. They also denied that total measurement of the land comprised in Sy.No.108, 110 and 111 measured about 13 acres 35 guntas. They brought to the notice of the Court about the revenue record transfer proceedings in RRT No.83/2007-2008 and they contended that the said proceedings ended in their favour and therefore, suit is to be dismissed.



6. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and after recording the material evidence on record, noted that plaintiffs failed to prove the oral partition and plaintiffs' father having got 4 acres 25 guntas of land in his favour in the said oral partition and dismissed the suit of the plaintiffs.

7. Being aggrieved by the same, plaintiffs filed an appeal before First Appellate Court in RA No.218/2018.

8. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and formulated the points for consideration on reappraisal of the material on record, dismissed the appeal on merits by considered judgment dated 29.01.2019.

9. Being further aggrieved by the same, plaintiffs are before this Court, in this appeal on following grounds:

- *The courts below have committed illegality by not considering the evidence on record and the documents produced by the parties.*
- *The courts below failed to note that there are three sharers in the family and the total extent belonging*



to them is 13 Acres 35 Guntas and each sharer got 4 Acres 25 Guntas each.

- *The courts below failed to note that the defendants have admitted the partition between the family members and they have also admitted that they have purchased the share of one of the sharers measuring 4 Acres 25 Guntas. The Courts below committed error of law in not considering the admissions made by the parties.*
- *The courts below failed to note that when the defendants have admitted that there is a partition between the family, then the burden is on them to prove that they have got more extent of property than the property allotted to the appellants. The courts below ought to have held that each of the three sharers got 4 Acres 25 Guntas.*
- *The courts below failed to consider the evidence and documents on record in proper perspective.*
- *The courts below have committed error of law by passing judgment and decree and the said judgments and decrees are capricious and opposed to law under the circumstances of the case,*
- *The first appellate court has committed error of law by rejecting the application I.A. No.4 seeking appointment of Commissioner to survey the land.*



- *The first appellate court ought to have appointed the Commissioner for measuring the suit property and the lands in question which would have helped the Hon'ble Court to decide the dispute and the encroachment made by the respondents.*
- *The Courts below have failed to note that the admissions made by the D.W.1 in the cross examination, wherein he has admitted that his grandfather was allotted with 4 acres 25 guntas in the partition."*

10. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts failed to appreciate the factum of the oral partition and there was division between the brothers and each of the brothers have got 4 acre 25 guntas.

11. He would further point out that one of the brother no doubt purchased portion of Doddasiddegowda and he became the owner of 9 acre 10 guntas but remaining 4 acre 25 guntas out of 13 acres 35 guntas, was owned and possessed by the father of the plaintiffs and after his death, it is the plaintiffs who succeeded to the properties and therefore, suit ought to



have been decreed and dismissal has resulted in miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

"a. Whether the courts below have committed error of law by not appreciating the evidence on record and the documents produced by the parties?

b. Whether the courts below have committed error of law by mis-reading the evidence on record and by not considering the admissions made by the D.W.1?

c. Whether the appellate courts have committed error of law by rejecting I.A.No.4 for appointment of a Commissioner to measure the lands in question?"

12. Per contra, learned counsel for the respondent supports the impugned judgment.

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

14. On such perusal of the material on record, except the relationship among the parties, no other plaint averments are admitted by the defendants in their written statement.



15. In fact, they brought to the notice of the Courts about the Revenue Records Transfer proceedings wherein the entries have been transferred in favour of the defendants and contention of the plaintiffs that there was an oral partition and their father got 4 acres 25 guntas of the land in the said oral partition is not established.

16. Thus, the dismissal of the suit by the Trial Court confirmed by the First Appellate Court needs no interference.

17. At this stage, learned counsel for the appellants would bring it to the notice of the Court that there is one more suit pending among the parties in O.S.No.1127/2019 before the Senior Civil Judge and CJM, Mysore after the present appeal is filed and whatever the rights that are available to the appellants may be permitted to be pleaded in accordance with law in the said suit.

18. It is always open for the appellants to plead their case before the competent Court in O.S.No.1127/2019 before the Senior Civil Judge and CJM, Mysore.



19. However, this Court cannot opine anything about the merits of the said case and it is always open for the parties to canvass all favourable points in accordance with law.

20. With that observation, following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.

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

KAV
List No.: 1 Sl No.: 64