



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 342 OF 2024 (PAR)

BETWEEN:

(LAKSHMANA S/O THIMMEGOWDA @
KESHAVA THIMMAIAH
SINCE DIED BY HIS LRS)

1. SMT. YASHODAMMA
W/O LAKSHMANA
AGED ABOUT 69 YEARS,
2. SMT. PADMA
D/O LATE LAKSHMANA,
AGED ABOUT 47 YEARS,

BOTH ARE R/AT YEREHALLI
VILLAGE AND POST, KOOTAGAL HOBLI,
RAMANGARA TALUK AND DISTRICT.

...APPELLANTS

(BY SRI. RAVISHA M.G, ADVOCATE)

AND:

1. SMT. LAKSHMAMMA
W/O LATE MASTHIGOWDA,
AGED ABOUT 66 YEARS,
(SHE DIED ON 05.03.2025
RES. NO. 3 AND 4 ARE HIS LRS ON RECORD)
2. SMT. PUTTAMMA
W/O SIDDIAIAH,
AGED ABOUT 61 YEARS,
R/AT MINIKEREEDODDI VILLAGE,
KASABA HOBLI, CHANNAPATNA TALUK,
RAMANGARA DISTRICT.

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



SMT. NINGAMMA
DEAD BY HER LR'S
ARE ALREADY ON RECORD

3. SMT. NAGARAJU
S/O LATE MASTHIGOWDA,
AGED ABOUT 60 YEARS,
4. SRI. SHIVARAJU
S/O LATE MASTIGOWDA,
AGED ABOUT 56 YEARS,

RESPONDENTS NO.1, 3 AND 4 ARE
R/AT MATHIKEREDODDI VILLAGE,
MALUR HOBLI, CHANNAPATNA TALUK,
RAMANGARA DISTRICT.

5. THE SPECIAL LAND ACQUISITION
OFFICE AND COMPETENT AUTHORITY
OFFICER, NATIONAL HIGHWAY-275
BENGALURU-MYSURU DIVISION
BASAVANAPURA, RAMANAGARA.

...RESPONDENTS

(BY SRI. PRAKASH M.H, ADVOCATE FOR R2 TO R4;
R5 IS SERVED BUT UNREPRESENTED VIDE ORDER DATED
09.06.2026,
R3 AND R4 ARE THE LR'S OF DECEASED R1)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 19.12.2023 PASSED IN
RA NO.57/2015 ON THE FILE OF PRL. SENIOR CIVIL JUDGE
AND JMFC, CHANNAPATNA., DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 10.12.2014
PASSED IN OS NO.38/2008 ON THE FILE OF ADDITIONAL
CIVIL JUDGE AND JMFC, CHANNAPATNA.

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. Unsuccessful plaintiff is the appellant in this second appeal challenging the dismissal of the suit for partition in O.S.No.38/2008 dated 10.12.2014 confirmed in RA No.57/2013 dated 19.12.2023.

3. Facts of the case are as under:

3.1. A suit for partition came to be filed by the plaintiff contending that Nalli Honnegowda was the common prepositus in the family who had two sons namely Thimmegowda @ Keshava Thimmaiah and Chikkathimmegowda. Nalli Honnegowda and Thimmegowda @ Keshava Thimmaiah and Chikkathimmegowda are no more and Thimmegowda @ Keshava Thimmaiah had two wives namely Lakshmamma and Mayamma. Mayamma is the mother of the plaintiff. Defendants are the step sons and step daughters of the plaintiff.



3.2. It is further contended that defendants had another sister by name Lakshamamma and suit schedule property originally belonged to said Nalli Honnegowda and since Mayamma being the second wife of Thimmegowda @ Keshava Thimmaiah, plaintiff is having share in the suit properties which has been denied by the defendants and therefore, suit for partition came to be filed.

4. Initially, suit was filed against defendant Nos.1 and 2. Pursuant to the suit summons, defendants entered appearance and filed written statement. Thereafter, plaint got amended and other three defendants were impleaded as party-defendants as defendant Nos.3 to 5 in the suit.

5. Defendants denied the plaint averments by contending that there is a earlier partition and plaintiff has no share whatsoever and in the earlier partition, the properties are sold by Mayamma herself and there remains nothing for Mayamma or for that matter the son of Mayamma to claim share in the suit property and sought for dismissal of the suit.

6. Learned Trial Judge after necessary issues, recorded the evidence of the parties and while recording the



finding on issue No.1, in paragraph Nos.15 and 16 has held as under and dismissed the suit:

"15. Further in order to prove the case of the plaintiff and to prove the issue No.1, the plaintiff got his special power of attorney holder as P.W.1. In the evidence the P.W.1 has re-iterated the entire averments of the plaint and deposed that the suit schedule properties of the plaintiff and that he is having a definite share in the same. In order to further substantiate the case of the plaintiff the P.W.1 also got marked documents as Ex.P.1 to Ex.P.18. On perusal of Ex.P.1 to P.18, the same are Ex.P.1 is the Special power of Attorney, Ex.P.2 is the certified copy of the sale deed, Ex.P.3 is the G-Tree, Ex.P.4 to 9 are the R.T.C., pahanis, Ex.P.11 is the M.R.Extract, Ex.P.12 to 16 are photographs, Ex.P.17 is the Compact Disc and Ex.P.18 is the Panchayath Parikath.

16. Further though the P.W.1 has deposed very much in favour of the plaintiff, during the course of cross examination, the P.W.1 clearly admitted that she is not aware as to what are the transactions made by the plaintiff and the said Lakshamma and though she has produced Ex.P.2 she pleaded ignorance with regard to the contents of the said document. Hence it is clear that the P.W.1 is not aware of the facts of the case and hence the evidence of P.W.1 cannot be relied. Further on perusal of the documents produced by both the plaintiff and the defendants, it appears that the katha of the suit schedule properties stand in the name of the defendant No.1 and



thereafter the same have been made over in favour of the defendant No.4 and 5. On further perusal the plaintiff has not challenged the said katha before any authority and the plaintiff has not explained as to why the said katha have not been challenged. In the absence of the same, the recitals of the said documents have to be ordinarily be accepted unless and until the same are rebutted. Further as discussed above it is clear that the plaintiff and the said Lakshamma have sold certain properties of the joint family and hence it is clear that they have already obtained their share in the family properties. Further though the plaintiff has lead evidence of the witness P.W.2 he has also not clearly supported the case of the plaintiff and hence the evidence of P.W.2 cannot be relied upon. Thus though the plaintiff has lead evidence and produced documents, he is unable to establish his case and it appears that the plaintiff has failed to prove the Issue No.1. Accordingly I answer the ISSUE NO.1 IN THE NEGATIVE."

7. Being aggrieved by the same, legal representatives of the plaintiff filed an appeal before the First Appellate Court in RA No.57/2015.

8. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappraisal of the material on record, dismissed the appeal.



9. Being further aggrieved by the same, legal representatives of the original plaintiff have preferred the present appeal on following grounds:

- *It is submitted that, the Hon'ble Ist Appellate Court and Trial Court failed to evaluate the actual material facts in dispute and appreciate the case of Original Plaintiff. Hence the Impugned Judgments are liable to be set aside.*
- *It is submitted that admittedly the Original Plaintiff Sri. Lakshmana, and One M.H.Thimmaiah who is the father of 1st & 2nd Defendant are the Half Blood Brothers. They are the sons and coparceners with their father Late Thimmegowda @ Keshava Thimmaiah. The Suit Schedule Properties are the ancestral properties, accordingly the Original Plaintiff is entitled his legitimate share over the Suit Scheduled Properties, but the Hon'ble Ist Appellate Court and Trial Court failed to consider and appreciate the same.*
- *It is submitted that on face of the record the Plaintiff's father late Thimmegowda @ Keshava Thimmaiah after death of his first wife Smt.Lakshamma he got second marriage with one Smt.Mayamma, and in earlier to his second marriage he has conveyed his self acquired property measuring 17-Guntas in Sy.No.86/2 of Mattikere Village, Channapatna Taluk, along with small portion of house property in favour of said Smt.*



Mayamma, Settlement Deed under Ex.D-2 registered marriage dt:03/07/1929, accordingly those properties become absolute properties of said Mayamma, in the light of Sec 14 of Hindu Succession Act. Thereafter on demise of said Mayamma her children namely Sri.Lakshmana who is the original Plaintiff and her daughter Smt.Lakshamma succeeded the said properties exclusively under Sec 18 of Hindu Succession Act, and thereafter they have sold the said Item of Agricultural Property under Ex.D-3 registered Sale Deed dt:02/08/1964, accordingly these transaction never curtail the Plaintiff's right of Partition over the Suit Schedule Properties, those are Ancestral Properties. But the Hon'ble Ist Appellate Court and Trial Court without examining these aspects passed the Impugned Judgment which is liable to be set aside.

- *It is submitted that the Original Plaintiff along with the Defendants, is in possession and enjoyment of the Suit Schedule Properties on his birth right of Coparcenary. The Original Plaintiff and his sister never sold any portion of their Ancestral properties or any partition thereof under registered sale deed dt:02/08/1964 as contended by the Defendants. But the Hon'ble Is Appellate Court and Trial Court without taking into consideration of documentary Evidence on record passed the Impugned Judgments, hence those are liable to be set aside.*



- *It is submitted that the Original Plaintiff made all the necessary parties to the proceedings on the date of the Suit. However the Sister of Original Plaintiff Smt. Lakshmamma died long back about in the year 1992. Further the Wife of Yadachappa i.e., Ningamma is also no more, under these circumstances the Original Plaintiff made all the necessary parties to the Suit. But the Hon'ble Ist Appellate Court and Trial Court failed to notice these aspects and efforted to defaulted the Plaintiff that he has not made necessary parties to the suit is not correct.*
- *It is submitted that the Ex.P-1 registered Sale Deed dt:16/06/1969 has established the joint possession and undivided joint family status, but the Hon'ble Ist Appellate Court and Trial Court just taking into consideration of reference of Sale Deed dt:02/08/1964, executed by the Original Plaintiff in respect of his self acquired property as urged above wrongly held that there was a severance of Joint family status which is not correct, on this score also the Impugned Judgments of the Hon'ble Ist Appellate Court and Trial Court is liable to be set aside.*
- *It is submitted that Ex.P-4 to P-11 revenue documents speaks that the Suit Schedule Properties standing in the name of Defendant No.1 Smt. Lakshmamma and her children, they are the Defendants No.4 & 5 on their own created partition without giving the share to the Plaintiff, But the Hon'ble Ist Appellate Court and*



Trial Court without considering these aspects passed the Impugned Judgments which are liable to be set aside.

10. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that the original plaintiff - Lakshmana being the son of Mayamma, had right in the suit properties because of the fact that defendants are half brothers and sisters and they cannot deny the right of the plaintiff. Therefore, sought for admitting the appeal on following substantial questions of law:

"a) Whether the Judgment and Decree passed by Hon'ble Trial Court & Ist Appellate Court are justifiable without considering the Coparcenary right of the Plaintiff with his father Thimmegowda @ Keshava Thimmaiah?

b) Whether the Judgment and Decree passed by the Hon'ble Trial Court and Ist Appellant Court are justifiable without considering the documentary and Oral Evidence in the light of Sec 2(e), 14, 15, 16 & 18 of the Hindu Succession Act, and Sec 59 & 61 of the Indian Evidence Act?

c) Whether, the Judgments of Hon'ble Trial Court and Ist Appellant court are justifiable under law and fact?"



11. He would further contend that Trial Court as well as the First Appellate Court has misread the fact that the property that has been sold by the plaintiff is not the property that has been derived from Mayamma, but it is from their father. Therefore, suit ought not to have been dismissed and sought for admitting the appeal on aforesaid substantial questions of law.

12. Per contra, learned counsel for the respondents opposes the appeal grounds.

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, there is no dispute with regard to the relationship among the parties. However, in the cross-examination of P.W.1 who is the daughter of the original plaintiff, she specifically admitted that all the sharer's have not been impleaded as parties to the suit. Thus, suit for partition, *per se* was not maintainable.

15. Nevertheless, since the plaintiff wanted to claim right, title over the suit properties seeking partition, based on



the ground that Mayamma being the second wife of Thimmegowda @ Keshava Thimmaiah and plaintiff being born to said Mayamma is entitled for the share is concerned, it has been clearly mentioned that in Ex.P.2, there is a settlement that has been arrived. P.W.1 pleaded ignorance about the contents of Ex.P.2.

16. Further, the contents of Ex.P.2 cuts the case of the plaintiff inasmuch as there is a clear mention as to the properties that has gone to the share of Mayamma which has been negotiated and sold by Mayamma during her lifetime. Therefore, plaintiff cannot lay any claim over the suit properties.

17. Further, P.W.2 has been examined on behalf of the plaintiff. In his oral testimony, it is elicited that he but does not even know the bare minimum facts of the case. In his cross-examination he has admitted about the same.

18. Therefore, in the absence of any material evidence placed on record, to establish that Lakshmana had right in the suit properties, dismissal of the suit by the Trial Court upheld by the First Appellate Court needs no interference, that too



having regard to the scope of Section 100 of Code of Civil Procedure.

19. Hence, following:

ORDER

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

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

KAV
List No.: 1 Sl No.: 57