



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE V SRISHANANDA**

**REGULAR SECOND APPEAL NO. 472 OF 2022 (PAR)**

**BETWEEN:**

H RUDRAMUNIYAPPA  
S/O LATE SRI CHIKKARUDRAIAH  
AGED ABOUT 62 YEARS  
R/AT JATTIPALYA VILLAGE  
TAVAREKERE HOBLI  
BENGALURU SOUTH TALUK  
BENGALURU-562130.

...APPELLANT

(BY SMT. N ROOPA, ADVOCATE FOR  
SRI. N SRIDHAR, ADVOCATE)

**AND:**

1. SMT DODDAMMA  
W/O LATE SRI CHIKKA UDDANDAIAH  
AGED ABOUT 82 YEARS.

2. SRI MUNIYAPPA  
S/O LATE SRI CHIKKA UDDANDAIAH  
AGED ABOUT 64 YEARS

R1 AND R2 ARE R/AT JATTIPALYA VILLAGE  
TAVAREKERE HOBLI  
BENGALURU SOUTH TALUK  
BENGALURU-562130.

3. SMT. ANITHA @ RADHA  
W/O SRI NAGARAJ  
AGED ABOUT 53 YEARS  
R/AT KARNATAKA AUTO GARAGE

Digitally signed by  
DHANALAKSHMI  
MURTHY

Location: HIGH  
COURT OF  
KARNATAKA



ITI AND KK LAYOUT MAIN ROAD  
OPPOSITE TO KANYAKUMARI SCHOOL  
MALLATHHALLI  
BENGALURU - 560 072.

4. SMT. BUDDAMMA  
W/O SRI CHANNAPPA  
AGED ABOUT 67 YEARS  
HAMPAPURA VILLAGE  
KENGARI HOBLI AND POST  
BENGALURU SOUTH TALUK  
BENGALURU-560060.
5. SMT. NAGAMMA  
W/O SRI SRINIVASA  
AGED ABOUT 52 YEARS  
R/AT NO. 267, 2<sup>ND</sup> MAIN ROAD  
KAMALANAGAR, BENGALURU - 560 079.
6. SMT. B S MALA  
W/O B S PUTTARAJU  
AGED ABOUT 48 YEARS  
KAVERIPURA  
PRIYADARSHINI EXTENSION  
MUDALAPALYA  
NAGARABHAVI ROAD  
BENGALURU - 560 072

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 22.12.2021 PASSED IN RA.NO.66/2018 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 30.10.2018 PASSED IN OS.NO.123/2014 (OLD NO.38/2008) ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, MAGADI.

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

**ORAL JUDGMENT**

Heard Smt.N.Roopa for Sri N.Sridhar for the  
appellant.

2. Unsuccessful plaintiff is the appellant, challenging  
the dismissal of the suit in O.S.No.123/2014, confirmed in  
R.A.No.66/2018.

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

A suit for partition and separate possession was filed  
in O.S.No.38/2008, which was re-numbered as  
O.S.No.123/2014, in respect of the following properties,  
hereinafter referred to as suit properties:

*"Item No. 1:*

*Land bearing Sy no. 39/4, measuring One Acre  
Five Guntas (1 Acre Guntas) situated at Channenahalli  
Village, Tavarekere Hobli, Bangalore South Taluk,  
bounded on:-*

*East by: Land of Hanumaiah,*

*West by: Land of Honnamma,*



*North by: Land of Chikkanna.*

*South by: Land of Channaiah.*

*Item No. 2:*

*Vacant site bearing no. 15, situated at Janatha Colony, Jattipalya Village, Tavarekere Hobli, Bangalore South Taluk measuring to extent of East to West 40 feet, and North to South 30 feet, bounded on:-*

*East by: Private Property,*

*West by: House belongs to Rangappa,*

*North by: Road,*

*South by: House belongs to Doddaiah.*

*Item No. 3:*

*House property bearing no. 26, situated at Janatha Colony, Jattipalya Village, Tavarekere Hobli, Bangalore South Taluk measuring to extent of East to West 70 feet, and North to South 14 feet, together with Mangalore Tiled roof House bounded on:-*

*East by: Raja Beedi,*

*West by: Land belongs to Hanumanthaiah,*

*North by: House belongs to Doddaiah,*

*South by: House belongs to Jinnaiah.*

*Item No. 4:*

*Property bearing Old Sy no. 63, Present New Sy No. 110, measuring to an extent of 4-39 guntas situated*



*at Yelachaguppe Village, Tavarekere Hobli Bangalore  
south bounded on:-*

*East by: Land belongs to Rangaswamaiah*

*West by: Halla*

*North by: Land belongs to Rangaswamaiah*

*South by: Land belongs to Smt. Doddakka*

4. In the plaint, it is contended that plaintiff and second defendant are the sons of Chikkauddandaiah and the first defendant is their mother. Plaintiff further contended that, plaintiff and defendant Nos.1 and 2 constitute a Hindu Joint Family. The suit properties are ancestral properties of the father of the plaintiff late Chikkauddandaiah, who had acquired the suit properties, which had fallen to his share. After his death in the year 2002, plaintiff and defendant Nos.1 and 2 continued to be in joint possession of the said properties and cultivating the same. Second defendant being the elder member of the family, was looking after the affairs of the joint family.

5. Plaintiff further contended that, in the first week of January 2008, third defendant attempted to trespass into



the suit property. Therefore, his illegal act was questioned by the plaintiff. At that juncture, it is proclaimed by the third defendant that, she is the purchaser of the suit property and therefore, she is entitled to enjoy the property.

6. On enquiry, the plaintiff came to know that, defendant No.3 got a sale deed in her favour dated 17.03.1992.

7. On further enquiry, it was noticed that, there was a sale transaction that has taken place behind the back of the plaintiff and he has not consented for the same and thus, sought for filing of the suit.

8. Suit was initially filed for partition of Item No.1 of the suit properties alone, but subsequent to the filing of the written statement, Item Nos. 2 to 4 were also included.

9. After amendment of the plaint in the suit, defendant Nos. 4 and 5 who are the sisters of the plaintiff,



and defendant No.6, being the purchaser, were also impleaded as parties.

10. Pursuant to the suit summons, defendants Nos.1 and 2 entered appearance and filed written statement, contending that husband of the first defendant Chikkauddandaiah had two sons and three daughters, first son is the second defendant and the second son is the plaintiff.

11. It is also contended that Chikkauddandaiah did not have adequate income to maintain the family and he, being the karta, had to perform the marriages of the female members of the joint family and all of them were working as coolies and eking out their livelihood, and in order to muster necessary funds, to maintain the family, and for the marriage expenses, Chikkauddandaiah had to sell the property. Therefore, he sold Item No.1 of the suit property to the third defendant. It is further contended that, a General Power of Attorney was executed in favour



of third defendant's husband and an affidavit was also executed in that regard.

12. After the statutory ban was removed about the fragmentation of the lands, a regular sale deed was also executed in favour of the third defendant. It is further contended that, plaintiff having consented for the sale, did not act in the interest of the family and she has filed a false suit and sought for dismissal of the suit.

13. Third defendant filed a separate written statement and additional written statement, denying the plaint averments in toto and maintained that the sale in her favour by Chikkauddandaiah is just and proper.

14. Defendant Nos. 4 and 5 filed their written statement denying the plaint averments. They maintained that, they are, no doubt, the sisters of the plaintiff and defendant No.2, but they stated that suit properties are the ancestral properties, which originally belonged to their grandfather. In a partition, those properties had fallen to



the share of the plaintiff, defendant Nos. 1, 2, 4 and 5, along with their father and they were in peaceful possession of the property, and therefore, suitable orders be passed based on the rival contentions of the parties.

15. The learned Trial Judge raised necessary issues and after recording the evidence of the parties, heard the arguments of the parties and noted that the sale in favour of the third defendant was for the family necessity and sale made in favour of the sixth defendant was after the partition of the properties, and therefore, no property is available for partition and dismissed the suit.

16. Being aggrieved by the same, plaintiff filed an appeal before the I Appellate Court in R.A.No.66/2018.

17. The learned Judge in the I Appellate Court, after securing the records, heard the arguments of the parties, and on re-appreciation of the material on record, dismissed the appeal of the plaintiff, inter alia, holding in para Nos. 31 to 43 as under:



- 31. *As per pleadings case of the plaintiff is that there was no partition in the family and defendants 1 and 2 in collusion with his deceased father have sold item No.1 of plaint schedule property to defendant No.3 without giving any share to him and behind his back. However as discussed above plaintiff during trial has admitted before the Court that house property went to the share of his elder brother and his elder brother got 01 acre of land in partition. Even as per Ex.D.11 registered sale deed executed by plaintiff in favour of one Yashoda recites that there was partition dated 11.11.2010 through panchayath palu parikathu and the property bearing assessment No. 54/3 measuring 60 x 40 feet of Channenahalli has fell to his share which he and his sons have sold the same in favour of one Yashodamma.*
  
- 32. *The plaintiff during trial though has denied that himself and his brother and sisters having partitioned properties on 11.11.2019 and he got 17 1/2 guntas of land in Sy.No. 54/3, he has admitted he having sold 2 sites formed in Sy.No. 54/3 measuring 17 1/2 guntas conceding partition and said property having fell to his share in the said partition. Categorical admission of Ex.D.11 by P.W.1 disprove the contention of plaintiff that there was no partition in the family and plaint schedule property is still a joint family property. Even Ex.D.11 which is admitted by P.W.1 discloses that there was partition in the family by way of panchayath parikath and same is acted upon.*



- 33. *Learned counsel for the appellant has relied upon principles laid down in 2014(2) AKR 483, Hanmanth V/s. Adivappa and Others, wherein it is held that if coparcener gets property at partition and at that time he has son, property will be coparcenary property at the hands of his son. It is also held in the above decision that the burden is on the purchaser to prove that sale of undivided share of minor is for legal necessity of the joint family.*
- 34. *In the case on hand as plaintiff was not minor as on the date of execution of sale deed in respect of item No.1 of plaint schedule property during 1992 and as held in the said decision sale is by the father of the plaintiff as Kartha of the family which aspect is not disputed by the plaintiff/appellant, principles laid down in the above decision do not help the appellant plaintiff in any manner.*
- 35. *Learned counsel for the appellant has relied upon principles laid down in 2015(2) KCCR 1437 (DB), Smt. Nanjamma V/s. Smt. Akkayamma since dead by her LRs and Others, wherein it is held that Limitation Act prescribes no time limit for filing a suit for partition by a co-sharer or co-owner. In view of principles laid down in the above decision point No.2 framed could be answered in 'Negative'.*



- 36. *Learned counsel for the appellant has relied upon principles laid down in ILR 2017 KAR 1319, The Bangalore Development Authority V/s. Sri Bhagavandas Patel. By relying upon principles laid down in the above decision it is argued that evidence let in without pleading is not admissible.*
- 37. *It is argued on behalf of the appellant that the conclusion of Trial Court that suit suffers from Doctorine of partial partition in the absence of special pleading and issues is erroneous. However it is pertinent to note that there need not be any pleading to consider a principle of law.*
- 38. *Learned counsel for the appellant has relied upon principles laid down in ILR 2012 KAR 4129, S.K.Lakshminarasappa, since deceased byhis L.Rs., V/s. Sri.B.Rudraiah and Others. It is held in the above decision that when property continues to be joint, the co- sharers right to seek partition of the property held jointly, continues and it is a recurring cause of action. In the case on hand as discussed above in view of admission of plaintiff himself certain joint family properties have been partitioned and hence joint family properties continuing to be joint and right to seek partition being recurring cause of action does not arise at all.*
- 39. *Learned counsel for the appellant has relied upon principles laid down in AIR 1983 Supreme Court 409,*



*Apoorva Shantilal Shah V/s. Commissioner of Income tax, Gujarat I, Ahmedabad, wherein it is held that partial partition of joint family properties between father and minor son is permissible. However in the case on hand as plaintiff is not minor son, principles laid down in the above decision are not applicable to the facts and circumstances of the case.*

- *40. Learned counsel for the appellant has relied upon principles laid down in (2008)8 Supreme Court Cases 564, K.B. Saha and Sons Private Limited V/s. Development Consultant Limited, wherein it is held that if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.*
- *41. By relying upon above principles laid down it is argued by the learned counsel for the appellant that Trial Court erred in admitting Ex.D.10 without noticing that it not registered and hence not admissible as per Sec.49 of Registration Act. It is pertinent to note that Ex.D.10 is a statement said to have been given by the plaintiff herein before the police in a criminal proceedings. As the question of registering a statement of the person before police officer does not arise, the said contention taken by the appellant is not acceptable. However it is argued on behalf of appellant that admitting Exs.D.12 to 15 in evidence by the Trial Court*



*which are unregistered though they are compulsorily registrable is not proper.*

- *42. It is pertinent to note that Ex.D.12 is an agreement to sell of item No.1 of plaint schedule property by the father and uncles of the plaintiff. Ex.D.13 is the General Power of Attorney, Ex.D.15 is Oppige Pathra or a consent deed said to have been executed by the plaintiff in respect of sale of item No.1 of plaint schedule property.*
- *43. Even if the argument canvassed by learned counsel for the appellant regarding inadmissibility of these documents is taken into consideration, materials placed on record including plaintiff's own admissions before Court disclose that there was partition in the family of plaintiff and his brother and having sold properties fell to their share. Hence contention of plaintiff that there was no partition in the family is not acceptable. Partition was through panchayath palu parikath as it is acted upon and parties have sold their share, hence contention of plaintiff that there was no partition of the family cannot be accepted.*

18. Being further aggrieved by the same, plaintiff has filed the present appeal on the following grounds:

- *The impugned Judgment and Decree of the Trial court and First modifications from the hands of this Hon'ble court in all probabilities and circumstances of the case.*



➤ *Both the courts erred in dismissing the Appeal as well as the suit though the suit schedule properties are the ancestral and joint family properties. Appellant and Respondents No. 1 & 2 and 4 & 5 are jointly enjoying the same. There was no partition with respect to the suit schedule properties among the Appellant and Respondents No. 1 & 2 & 4 & 5. Respondents No. 4 & 5 have supported the case of the plaintiff and they are the members of the joint family and they are entitled for equal share in the suit schedule properties. When the Trial court having answered Issue No.1 in favour of the Appellant, erred in not decreeing the suit for partition. Both the courts further failed to notice that the Appellant and Respondents No. 4 & 5 are not parties to any of the documents executed by their father in favour of Respondent No. 3 (Ex-D3, D11 to D15). Admittedly, Appellant and Respondents No. 2 & 4 & 5 and deceased Sri. Chikka Uddandiah are the co-owner of the suit schedule properties. Suit schedule properties are the ancestral and joint family properties without consent and knowledge and without having any family and legal necessities Sri. Chikka Uddandaiah and Respondents No. 2 and 3 and her husband colluded together without having any right, title and interest over the same created the registered sale deed. When there is no registered document executed by the Appellant, both the courts ought to have decreed the suit for partition by declaring that the Appellant is entitled for ½ share in the suit properties.*



- *Both the courts erred in dismissing the Appeal as well as the suit though the defendant No. 3 in her additional written statement admitted that the Item No. 1 of the suit schedule property was allotted to the share of the plaintiff's father Sri. Uddandaiah under the family partition. So, the Item No. 1 of the suit schedule property is the ancestral property of the plaintiff and his father and brother have alienated the said land in favour of Defendant No. 3 and plaintiff was not party to the said sale deed.*
- *Both the courts erred in dismissing the Appeal as well as the suit on the ground that, the suit is barred by limitation though the appellant was not party to the sale deed and no knowledge about the alienation. After came to know about the said alienation, he filed the suit well within the time.*
- *Both the courts erred in dismissing the Appeal as well as the suit on the ground that, Sri. Uddandaiah alienated the schedule property for the legal and family necessities though the Sri. Uddandaiah and his children are well settle and there was no legal and family necessities to alienate the same. At the time of alienation, the Appellant and Respondents No. 4 & 5 were major.*
- *Both the courts erred in dismissing the Appeal as well as the suit on the ground that, on 18.03.1992 appellant has executed the Confirmation Deed with respect to the*



*Item No. 1 of the schedule property. The said document was not registered document which was created by the defendant No. 3 in order to grab the land of the plaintiff and his father. The Trial court without properly examining the said document blindly came to the conclusion that, the Appellant has executed the said document.*

- *Both the courts wrongly dismissed the suit and appeal of the appellant without appreciate the pleadings, documents produced by the Respondents No. 4 & 5.*
- *The impugned order of both the courts is opposed to law, principles of natural justice.*
- *Both the courts have failed to take to consideration the binding precedents of this Hon'ble court and Hon'ble Apex Court while passing the impugned the order. Hence, the same calls for interference by this Hon'ble Court.*

19. Smt.Roopa, learned counsel for the appellant, reiterating the grounds urged in the appeal memorandum, would contend that, both the courts have failed to note that, there was no partition of the property. Therefore, plaintiff being the son of Chikkauddandaiah and the first defendant, was entitled for share in the property. She would further contend that, the alienation made by



Chikkauddandaiah, who is the grandfather of the plaintiff, did not bind on the share of the plaintiff and the sale in favour of third defendant was not for the family necessity. Therefore, the sale in favour of the sixth defendant, in respect of Item No. 1 of the suit property, is not binding on the plaintiff, which aspect of the matter is not properly appreciated by both the courts and thus, sought for admitting the appeal on the following substantial questions of law:

- *1) Whether the first Appellate Court is justified in dismissing the appeal contrary to the pleadings, evidence and documents?*
- *2) Whether the first Appellate Court is justified in confirming the decree of trial court in favour of Respondents in respect of the suit properties?*
- *3) Whether the first appellate Court's judgment is justified in dismissing the appeal, without appreciating oral and documentary evidence placed by the Appellants?*

20. This Court did not deem it fit to issue notice to the respondents.



21. Having heard the arguments of learned counsel for the appellant and on perusal of the material on record, it is noticed that the sale in favour of the third defendant was pursuant to the earlier agreement, in view of the ban imposed by the State Government for fragmentation of the agricultural lands.

22. Therefore, a General Power of Attorney was executed and an affidavit was also executed by Chikkauddandaiah in favour of the third defendant. This is in respect of Item No. 1 of the suit property. After the statutory ban was removed, as per the agreement between Chikkauddandaiah and the third defendant, a regular sale deed was also executed.

23. Recitals of Ex.P1 is extracted by the learned Trial Judge in paragraph No.32, wherein, it has been specifically mentioned that, for the family necessity, Chikkauddandaiah had to sell Item No. 1 of the suit properties in favour of the third defendant. It is not in dispute that Chikkauddandaiah performed the marriage of



the female members. Likewise, Chikkauddandaiah had to eke out the livelihood by doing coolie work. It is Chikkauddandaiah who acted as karta. Therefore, it was within the permissible competence, had to alienate the suit property in favour of the third defendant, insofar as Item No. 1 of the suit property is concerned.

24. In so far as the remaining items of the suit property, pleadings are insufficient to show that these properties were still available for partition, especially, when there is a specific stand taken by the defendants that there is a partition and as per the share that has been granted in such partition, the properties were enjoyed by the remaining members of the joint family and alienations have taken place.

25. Plaintiff being the person, who sought for the share in the property, was required to place on record the material evidence that the properties are still available for partition.



26. Pertinently, when the suit was filed, it was filed only with regard to Item No.1 of the suit property, and, later on, based on the written statement, amendment has taken place impleading the daughters as well as Item Nos. 2 to 4 of the suit properties.

27. Thus, material on record is held to be not sufficient to prove that all the Item Nos. 1 to 4 are still available for partition and rightly the suit was dismissed by the Trial Court, which was re-appreciated by the learned Judge in the I Appellate Court on factual aspects.

28. When two courts have concurrently recorded a factual aspect that the properties are not available for the partition and dismissed the suit, having regard to the scope of Section 100 of Code of Civil Procedure, 1908, this Court does not find any merit in any one of the substantial questions of law.

29. Consequently, the following:



**ORDER**

- (i) Admission declined.
- (ii) Appeal dismissed.

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

CM  
LIST NO.: 1 SL NO.: 70