



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.431 OF 2026

BETWEEN:

SRI B N NAGENDRA KUMAR @ NAGENDRA
S/O LATE NARAYANAPPA,
AGED ABOUT 55 YEARS,
R/AT BASAVAPATNA MAJARE,
BOORAGAMARADAPALYA, URDIGERE HOBLI,
TUMAKURU TALUK - 572104

...APPELLANT

(BY SRI. V.F.KUMBAR, ADVOCATE)

AND:

1. SMT. MANGALAGOWRAMMA,
W/O. REVANSIDDAIAH
MAJOR
R/O. KAREKALLU PALYA
URDIGERE HOBLI,
TUMAKURU TALUK - 572129

2. SMT. RATHNAMMA
W/O T.R. MANJUNATH
AGED ABOUT 47 YEARS
R/O KAREKALLU PALYA,
URDIGERE HOBLI,
TUMAKURU TALUK-572 129

MARIYAPPAGOWDA
SINCE DEAD BY LEGAL HEIRS

3. SRI M. RAKESH,
S/O. LATE MARIYAPPAGOWDA,
AGED ABOUT 31 YEARS

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



4. SMT. MANJULA,
D/O. LATE MARIYAPPAGOWDA,
AGED ABOUT 51 YEARS

RESPONDENT NO.3 AND 4 ARE
RESIDING AT KASABA HOBLI,
DODDABALLAPURA TALUK,
BENGALURU RURAL DISTRICT- 561 203

THIMMAPPA
SINCE DEAD BY LRS
OBJECTOR NO.1

5. SMT. THIMMAKKA
W/O THIMMAPPA
AGED ABOUT 99 YEARS
6. SRI MELAGIRIAH,
S/O. THIMMAPPA @THIMMAPPAIAH
AGED ABOUT 61 YEARS
7. SMT. NAGAMMA,
W/O. LATE GOPAL
AGED ABOUT 63 YEARS
8. SRI RAGHU
S/O LATE GOPAL
AGED ABOUT 44 YEARS

RESPONDENT NOS.5 TO 8 ARE
R/O LAKSHMITANDA
URDIGERE HOBLI,
TUMAKURU TALUK- 572140

9. SMT. MEGHA,
D/O. LATE GOPALA,
AGED ABOUT 40 YEARS,
R/O. AJJIBYRANAHALLI,
KEMPAHALLY, BYATHA POST,
URDIGERE HOBLI – 572 140



10. SRI GIRIGOWDA,
S/O. THIMMAPPA,
AGED ABOUT 69 YEARS,
R/AT BURUGADAMARDAPALYA,
URDIGERE HOBLI
TUMAKURU TALUK - 572104

SMT. CHIKKAMMA
SINCE DEAD BY HER L.R'S (OBJECTOR NO.2)

11. SRI NATARAJKUMAR,
S/O LATE CHIKKAMMA,
AGED ABOUT 50 YEARS,

12. SRI RAVIKUMAR,
S/O. LATE CHIKKAMMA
AGED ABOUT 50 YEARS

BOTH RESPONDENT NO.11 AND 12 ARE
R/AT BASAVAPATNA MAJURE
BOORAGAMARADAPALYA, URDIGERE HOBLI,
TUMAKURU TALUK- 572104

...RESPONDENTS

(BY SRI. NARASIMHA MURTHY K, ADVOCATE C/R1)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 12.01.2026 PASSED IN RA NO.82/2024 ON THE FILE OF I ADDITIONAL PRL. JUDGE, FAMILY COURT, TUMAKURU., DISMISSING THE APPEAL AND CONFIRMING THE ORDER AND DECREE DATED 12.12.2023 PASSED ON IA NO.15 IN EX NO.5/2006 ON THE FILE OF PRL. SENIOR CIVIL JUDGE AND CJM, TUMAKURU.

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 V.F.Kumbar, learned counsel for the appellant and Sri K.Narasimha Murthy, learned counsel for caveator No.1.

2. Objector No.3 in Execution Case No.5/2006 has filed the present Second Appeal challenging the dismissal of the application filed under Order XXI Rule 97 of the Code of Civil Procedure in Execution Case No.5/2006, confirmed in R.A No.82/2024 (old No.17/2024).

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

3.1 In order to execute the decree obtained in O.S No.221/1997 for specific performance of the agreement to sell, an execution petition came to be filed in Execution Case No.5/2006 on the file of the Prl. Senior Civil Judge and CJM, Tumakuru.

3.2 Present appellant filed objection to the execution of the decree contending that subject matter of the suit property is the ancestral property and there was no division among the



sharers. Therefore, defendants in the suit have suppressed the said aspect of the matter and clandestinely entered into agreement with the decree holder. Therefore, an enquiry needs to be held.

4. Learned Trial Judge after entertaining the objections of the decree holder on the said application, conducted a detailed enquiry, recorded the evidence of the parties and noted that the stand taken by the third objector(appellant) that there was no division in the property and suit property is the ancestral property is incorrect and dismissed the objections filed by the objectors and proceeded with the execution of the decree.

5. Being aggrieved by the same, third objector filed an appeal before the First Appellate Court in R.A.No.82/2024 (old No.17/2024).

6. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, noted that the contention taken by the third objector that there is no division in the family is incorrect and dismissed the appeal.



7. Being further aggrieved by the same, the third objector is before this Court in this Second Appeal.

8. Sri V.F.Kumbar, learned counsel for the appellant/objector No.3 reiterating the grounds urged in the appeal memorandum would contend that the suit in O.S No.656/2003 filed for partition and separate possession, seeking $\frac{1}{4}$ of the share was being contested. In the said proceedings, there is a clear admission that the suit properties are the joint family properties.

9. Therefore, defendant in the suit in O.S No.221/1997, ought not to have entered into agreement with the decree holder/plaintiff suppressing the said fact and thus sought for admitting the appeal on the following substantial questions of law:

(i) Whether the appellant is not competent person to challenge the compromise decree as an objector No.3 as he is having an independent right over the decree schedule properties?

(ii) Whether both the Courts are justified in dismissing the appellant claim as he is having an independent right over the land agreed to sell and compromise



entered between them will defeat the rights of the appellant?

10. *Per contra*, Sri Narasimha Murthy, learned counsel for the contesting respondent/decreed holder would contend that both the Trial Court as well as the First Appellate Court after holding a detailed enquiry noted that the contention taken by the objector that the suit properties are the ancestral properties is not proved by placing material evidence on record. Such an attempt is made only to avoid the specific enforcement of the agreement to sell and dismissed the suit which is just and proper. Therefore, sought for dismissal of the appeal.

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

12. On such perusal of the material on record, it is crystal clear that the factual finding recorded by both the Courts would go to show that the contention taken by the Objector No.3-appellant that the suit property is joint family property is negated by recording categorical finding by the Trial Court in its judgment at paragraph Nos.19 to 24 as under:



"19. The next point that arises for consideration is whether the petition schedule properties are the joint family properties of judgment debtors and objector No.3. So as to consider this fact, I have had a look at the documents available on record. Ex.D32 is the judgment passed in OS.288/2007. It was filed by the mother of objector No.3 herein for the relief of partition and separate possession. The petition schedule properties herein were the subject matters of that suit. In that suit, the judgment debtors herein, objector No.1 and the decree holder were also the parties. Of course, this suit was dismissed on merits. The finding given by the court in that suit clearly demonstrates that the petition schedule properties were the ancestral properties of judgment debtors and objector No.3 herein. Even the admissions given by PW1 to PW5 of this case make it clear that they are the ancestral and joint family properties of the judgment debtors and objector No.3.

20. The decree holder has contended the properties belonging to judgment debtors and objector No.3 were orally partitioned long back between the sons of late Ugrewowda. At this juncture, I have perused the other materials on record. Ex.D30 is the Release Deed dated 30.10.1929. The recital of this document goes to show that late Mariyappa executed this document by relinquishing his 1/3rd share in favour of his brother Kariyappa. Ex.P31 is the gift deed executed by Chikkagangamma on 22.06.1965 in favour of her daughter Chikkamma. By virtue of this document, she bequeathed 1/3rd share of her husband in favour of her



daughter who is mother of objector No.3. From these documents it is evident that prior to 1929 itself, the petition schedule properties were orally partitioned among Seebi Narasaiah, Kariyappa and Mariyappa, who got 1/3rd share each therein.

21. Apart from that it is also relevant note that the oral partition is supported by the public documents such as the RTC extracts which are at Ex.D6 to Ex.D26. These documents reflect that the names of Chikkamma W/o Krishnappa and Chikkagangamma W/o Chikkaugraiah were entered the revenue records based on the mutation which is at Ex.D3. Simply because the revenue entries were made in their joint names, it does not mean that the suit properties continued to be joint family properties. It is relevant to note that in his cross examination, PW4 himself has admitted that the petition schedule properties were divided orally. Even in OS.No.288/2007, a clear finding has been given regarding partition of the petition schedule properties. Thus, the joint family status of the sons of late Ugregowda got severed long back.

22. It is pertinent to note that after the death of Kariyappa, his sons Ramaiah and Krishnappa succeeded to 2/3rd share in the petition schedule properties. After their death, the sons of Ramaiah namely B.R. Manjunath, Mariyappagowda and Chikkamma W/o Krishnappa entered into an agreement of sale (Ex.D2) on 16.09.1993, agreeing to sell their properties for Rs.75,000/ in favour of the decree holder herein and



received Rs.73,000/ as advance. Thereafter, a suit in O.S.No.221/1997 was filed for the relief of specific performance of contract. This suit was compromised. However the said Chikkamma, B.R. Manjunath and Mariyappagowda did not execute the sale deed. Hence the present petition came to be filed.

23. The evidence on record shows that on 01.02.2001, the said B.R. Manjunath alone executed the agreement of sale (Ex.P18) in favour of objector No.1 in respect of petition schedule properties. Thereafter, objector No.1 filed a suit in OS.No.169/2001 against him. The order sheet (Ex.P10) pertaining to that suit shows that it ended in compromise. Since the sale deed was not executed in pursuance of the compromise decree, execution petition No.143/2001 came to be filed by objector No.1. Ex.P15 is the sale deed which was executed by the court commissioner in favour of objector No.1. Based on this sale deed, his name came to be entered in the revenue documents. It is relevant to note that when objector No.1 got executed the sale deed (Ex.P15), the suit filed by decree holder herein in O.S.No.221/1997 was still pending. Therefore objector No.1 tried to get himself impleaded in that suit by filing application (Ex.P5) U/O 1 Rule 10 of CPC. But it was rejected.

24. As I said, Chikkamma W/o Krishnappa, B.R. Manjunatha and Mariyappagowda being the legal representatives of late Kariyappa had 2/3rd share in the petition schedule properties. In the year 1993 itself, they



executed sale agreement in favour of decree holder herein. However, suppressing this fact, B.R. Manjunath alone executed another sale agreement in favour of objector No.1. Strictly speaking, at that time he had no right at all. Therefore, the date of death of B.R. Manjunath has not significance. Under such circumstances, no need arises to look into his death certificate. Be that as it may, even though objector No.1 has got the sale deed executed through the process of the court in execution No.143/2001, it has no legal sanctity in the eye of law. Because the decree passed in O.S.No.221/1997 in respect of previous agreement of sale executed by the by the judgment debtors herein in favour of the decree holder prevails over it. Hence objector No.1 cannot be held to be the owner of the petition schedule properties."

13. It is to be noted that learned Judge in the First Appellate Court further supplemented the reasons in upholding the finding recorded by the Trial Court in referring to the various proceedings that took place earlier to the filing of the present suit right from the year 2007 and has recorded a categorical finding that the objector did not possess any independent right to oppose the execution of the decree passed by the Trial Court.



14. When two Courts with the aid of categorical material on record have recorded a clear finding that appellant/objector No.3 has no independent right, this Court having regard to scope of Section 100 of the Code of Civil Procedure cannot entertain the appeal by revisiting to the factual aspects.

15. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 37