



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 910 OF 2018 (PAR)

BETWEEN:

1. KALEGOWDA
SINCE DECEASED BY HIS
LRS OF PROPOSED RESPONDENT NO.12

2. SURESHA
AGED ABOUT 40 YEARS
S/O LATE KALEGOWDA

APPELLANT NO.1 AND 2 ARE
R/AT INDUVALU VILLAGE
KOTHATHI HOBLI
MANDYA TALLUK - 571 401

3. SUNITHA
D/O LATE KALEGOWDA
W/O VENKATESH
R/AT K.G. KOPPALU
6TH CROSS
MYSORE CITY - 570 009

...APPELLANTS

(BY SRI. RAJESWARA P.N., ADVOCATE FOR A2 AND A3

VIDE ORDER DATED 15.06.2026,

LRS OF DECEASED A1 IS BROUGHT ON RECORD AS R12)



AND:

1. CHIKKANINGAMMA
AGED ABOUT 75 YEARS
W/O MARIYAPPA
R/A NARAHALLI VILLAGE
MELUGKOTE HOBLI
PANDAVAPURA TALUK
2. SANNAMMA
AGED ABOUT 70 YEARS
W/O PARIYAPPA
R/A AGATAHALLI
KASABA HOBLI
PANDAVAPURA TALUK
3. GOWRAMMA
AGED ABOUT 63 YEARS
W/O MAHADEVA
4. SUNDAR
AGED ABOUT 39 YEARS
S/O LATE MAHADEVA
5. SUKANYA
AGED ABOUT 37 YEARS
D/O LATE MAHADEVA
6. NINGAPPA
AGED ABOUT 59 YEARS
S/O LATE DEVAIAH
7. GOWRAMMA
AGED ABOUT 63 YEARS
D/O LATE DEVAIAH AND W/O NANJUNDA



- 8. KUMARI
AGED ABOUT 50 YEARS
D/O LATE DEVAIAH AND
W/O CHIKKANINGEGOWDA
- 9. SHANKAREGOWDA
SINCE DECEASED BY HIS LRS
- 9A. SMT. VISHALA
W/O. LATE SHANKAREGOWDA
MAJOR
- 9B. SRI. SANTHOSH
S/O. LATE SHANKAREGOWDA
MAJOR
- 9C. SRI. MAHADEVA
S/O. LATE SHANKAREGOWDA
MAJOR

RESPONDENTS NO.9A TO 9C ARE
RESIDING AT DEVARAJA BADAVANE
IDUVALU VILLAGE
KOTHATHI HOBLI
MANDYA TALUK - 571 401

- 10. DEVEGOWDA
S/O LATE DEVAIAH
AGED ABOUT 54 YEARS
- 11. LAKSHMI
D/O LATE DEVAIAH AND
W/O KEMPAIAH



RESPONDENTS NO.3 TO 11 ARE
R/AT IDUVALU VILLAGE
KOTHATHI HOBLI
MANDYA TALUK

12. SMT. SHRUTHI
W/O. SHWAMY
MAJOR
RESIDING AT DEVARAJ BADAVANE
IDUVALU VILLAGE
KOTHATHI HOBLI
MANDYA TALUK - 571 401

...RESPONDENTS

(BY SRI. SREENIVASAN M.Y., ADVOCATE FOR R1 TO R11

R12 - SERVED

VIDE ORDER DATED 30.04.2026,

NOTICE TO PROPOSED R9(A TO C) ARE H/S)

THIS RSA IS FILED UNDER SEC.100 OF CPC, 1908
AGAINST THE JUDGMENT AND DECREE DATED 27.01.2018
PASSED IN RA.NO.26/2016, ON THE FILE OF THE PRL.SENIOR
CIVIL JUDGE, MANDYA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 18.04.2016
PASSED IN OS.NO.764/2010 ON THE FILE OF THE ADDL.CIVIL
JUDGE AND JMFC., MANDYA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

1. Heard Sri. Rajeswara P.N., learned counsel for the appellants and Sri. Sreenivasan M.Y., learned counsel for the respondents.

2. The present appeal is the plaintiffs' second appeal challenging the dismissal of the suit in O.S. No.764/2010 confirmed in RA No.26/2016.

3. Facts of the case are as under:

3.1 A suit for partition came to be filed by plaintiffs, claiming that they are the wife and children of Kaalegowda son of Devaiah and they are entitled for share in the following properties (hereinafter referred as suit properties).

Property situated at Indavalu Village, Kothathi Hobli, Mandya Taluk.

1. Sy.No. 125/ measuring 0.11.04 gts. Sy. No. 125/P1 measuring 0.11.04 gts. Sy.No. 125/ P2 measuring 0.11.04 gts. Sy.No 125/ B-P2 measuring 0.03 gts. Sy.No.



*125/ P3 measuring 0.08.04 gts. Totally measuring 49 gts.
Bounded on East by the land of Chandru, West by road,
North by land of Siddaiah and South by the land of
Thammaiah*

*2. Redentiak Mangalore tiled house bearing janjar No. 198
and property no. 148 measuring 19 ½ ft x 23 ft. bounded
on East by road, West by the other house of the plaintiff
and defendants, North by road, south by the property of
Kalegowda.*

*3. House property bearing Sy. No. 560 and property No.
520/97 measuring 30ft x 45 ft. bounded on East by road
West by Galli, North by house of Puttaswamy and South
by Sy.No. land.*

*4. Residential house bearing No. Sl.No. 197 and property
No. 147 measuring 18 ft x 10½ bounded on East by
Beedhi, and west by the other house property of the
plaintiff and defendants, North by Beedhi and South by
the other house property of plaintiff and defendants.*

*5. Residential house property bearing Sl. No. 196 and
property No. 146 measuring 53 ft x 40 ½ ft bounded on
East by the other house property of plaintiff and
defendants west by Galli, North by Beedhi and South by
Galli.*

*6. Residential house bearing Sl. No. 518/95 measuring
30ft x 45 ft bounded on East by the other vacant site*



belonging to plaintiff and defendants west by road, North by R.V.Madhava Rao. South by Sy.No. land.

7. Vacant site bearing Sl. No. 558-A and property No. 518/95A measuring 15 ft x 45 ft bounded on East by Sy.No. land, West by house property of plaintiff and ONLY defendants, North by property of R.V.Madhava Rao and South by Sy.No. land.

3.2 Suit was resisted by filing written statement stating that the husband of the first plaintiff and father of plaintiffs No.2 to 4 executed a Relinquishment Deed dated 03.01.1975 as per Exhibit D1.

3.3 Learned trial Judge after raising necessary issues recorded the evidence of the parties and dismissed the suit of the plaintiffs.

3.4 Being aggrieved by the same, plaintiffs filed an appeal in R.A. No.26/2016.

3.5 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 evidence



on record, discussed in detail as to the nature of acquisition of each item of the suit properties and held that Plaintiffs have failed to make out a case that suit properties are joint family properties though admitted by the defendants in their written statement and has upheld the dismissal of the suit.

4. Being further aggrieved by the same, plaintiffs have preferred the present second appeal on the following grounds:

- *The judgment and decree passed by the courts below is illegal, arbitrary and unjust.*
- *The Courts below have erred in passing the impugned Judgment and Decree even though the appellants have proved their case by producing both documentary as well as oral evidence. As such the same is liable to be set aside.*
- *The Judgment and Decree passed by the learned trial judge is erroneous, unjudicious, unreasonable and not based on sound principles of law. There is no critical analysis of the case and the materials placed by the parties. Under wrong notion the learned trial judge has come to wrong conclusion and therefore the Judgment*



and Decree under appeal are faulty and liable to be set aside.

- *The learned trial judge has further erred in answering issue Nos. 1 and 2 in the negative even though the appellants have established their case on issue no.1 and 2 by producing both documentary and oral evidence. The fact that the respondents have set Ex.D.1 the alleged Relinquishment Deed there is admission on the part of the respondent regarding the nature of the suit schedule properties and also the fact that there was undivided Hindu Joint Family consisting of the appellants and others. The learned Trial Judge has also erred in answering issue no.1 and 2 in the negative even though initial burden of proof has been discharged by the appellants not only on the basis of admissions on the part of the respondents in their pleadings and also on the basis of legal and cogent oral and documentary evidence placed by the appellants. In spite of it wrongly the learned Trial Judge has negated issue no.1.*
- *The learned Trial Judge has wrongly made reliance on Ex.D.1 which is Ab-initio void and has no legal force. It is again incorrect on the part of the learned Trial Judge to make reliance on Exs.D.2 to D.10 even though they are totally inadmissible and not proved in the manner known to law and those documents do not in any way extinguished the vested rights of the appellants and further even though they do not create any kind of right or interest in favor of the respondents. As such the*



observations made and the conclusion reached by the learned Trial Judge on issues no.1 and 2 is erroneous, unjudicious and therefore liable to be set aside.

- *The learned Trial Judge has not properly understood and considered the legal position about the claim made by the appellants. Legally the claim made by the appellants is a recognizable one and is holding the filed enabling the appellants to seek the relief sought for in the suit. In view of the admissions of the relationship and also nature of the suit properties, the learned trial judge ought to have answered issue no.1 and 2 in the affirmative.*
- *The learned Trial Judge has further erred in answering additional issue no.1 in the affirmative even though it is not proved by the respondents in accordance with law. The rulings cited on behalf of the appellants clearly establish that the suit is perfectly maintainable and is in time. Since the appellants are not parties to the alleged documents referred to by the respondents, the question of applying the law of limitation to the case does not arise at all. The observation made and the conclusion reached by the learned Trial Judge on Addl. Issue is erroneous and not based on sound principles of law.*
- *Though the appellants have challenged the judgment of the trial court urging many grounds, the first appellate court has not properly scrutinized the same. Though the first appellate court has raised points of consideration, but the same are not in proper. The points of*



consideration raised for re-appreciation of the judgment of the trial court in any way relates to the case of the parties. As such any amount of considering the matter by the first appellate court is unwarranted. As such the same is liable to be set aside.

- *It is submitted that the first appellate court though had appreciated that the suit of the plaintiffs is maintainable, yet confirms the judgment of the trial court. The first appellate court has totally ignored the basic rule while appreciating the order under challenged. When the appellate court has noticed that the trial court has committed error in considering the additional issue no.1 which relates to limitation, the first appellate court ought to have allowed the appeal. But without doing so it simply held the suit of the plaintiff is maintainable, but the plaintiffs have cause of the action to file the separate suit. This opinion of the first appellate court calls for interference of this Hon'ble Court.*

- *It is submitted that the appellate court had all right to modify the relief claimed by the parties, when it is found that the appellants are entitled for the relief. The first appellate court could have granted the relief which is provided under order 7 Rule 7 of CPC. No doubt order 7 Rule 7 cannot be used in all the cases but by looking into the circumstances of the case, the first appellate court ought to have appreciated the same for not having done so the first appellate court has failed to appreciate the facts in a proper way.*



- *It is submitted that if a party is entitled for relief which he has not claimed and if the courts come to the conclusion that parties entitled for another kind of a relief, courts are at liberty to grant the same. If the said principle is applied in the present case the first appellate court has erred by not granting the said relief. As such the finding of the first appellate court is liable to be set aside.*
- *Both the courts have placed much reliance on Ex.D1. At the outset it is not a document in the eye of law. When deceased Kalegowda had no authority under the law in transferring the vested right of member of Joint Hindu Family, the question of accepting Ex.D1 by the courts below is erroneous. In addition to this the courts below have looked into the other documents relied upon by the defendants to prove the ownership and believed the same and dismissed the suit.*
- *In fact when Ex.D1 is not at all proved/ disproved by the defendants, any amount of appreciating the subsequent documents holds no water. On the other hand the plaintiffs have made out a case that deceased Kalegowda had no right to executives Ex.D1. Ex.D1 is dated 03.01.1975. By the time appellant no.1 Kalegowda had born. The appellant no.2 and 3 not at all born. As per Section 20 of the Transfer of Property Act, an unborn persons acquires vested interest on transfer for his benefits. If the same is applied, the trial court ought to have considered all these materials before delivering the*



judgment. Non appreciating of materials is taking away the right of the appellants. As such the same is liable to be set aside.

- *Both the courts have further erred in not properly appreciating the evidence of PWs 1 and 2 which evidence is cogent and legal and there is nothing to discard the testimony of the PWs 1 and 2 and It is also incorrect on the part of both the courts to make reliance on evidence DWs 1 and 2. Their evidence is discrepant, interested and also contradictory.*
- *Both the courts have further erred in framing wrong issues in the case. Proper, legal and relevant issues that arise for determination according to the pleadings of both the parties have not been raised. Non framing of relevant proper issues and wrong framing of issues has caused much prejudice to the case of the appellants and therefore the ultimate decision in the suit has become wrong and liable to be interfered with..*
- *Viewed from any angle, the observations made and conclusion reached by the first appellate court in dismissing the suit of the appellant/plaintiff is not proper and also liable to be interfered with.*

5. Sri P. N. Rajeshwara, learned counsel for the appellants reiterating the grounds urged in the appeal



memorandum would contend that both the Courts have not properly appreciated the case of the parties and wrongly dismissed the suit of the plaintiffs resulting in miscarriage of justice.

6. He would further point out that when there is a clear admission in the written statement that the nature of the properties are ancestral properties. As such, dismissal of the suit denying the share only on the ground that Exhibit D1 came to be executed by husband of the first plaintiff and father of remaining plaintiffs has resulted in grave miscarriage of justice and sought for admitting the appeal on the following substantial questions of law:

a) Whether the courts below are correct in holding that right was transferred under Ex.D1 which is relinquishment deed executed by Kalegowda, even though the said document has no legal sanctity?

b) Whether the courts below are correct in dismissing the suit of the appellants in the presence of there being an admission by the defendants admitting the relationship and the nature of the suit properties which are the joint family properties?



c) Whether the trial court is correct in holding issue no.3 and 4 in affirmative in the absence of any cogent evidence which supports the defence of the defendants especially on Ex.D1 to D21?

d) Whether the courts below are correct in holding that the claim of the plaintiffs is belated one even though the plaintiffs were able to prove the recurring cause of action for filing the suit?

e) Whether the judgment of the lower appellate court is correct in dismissing the appeal even though had opined and affirmed that the judgment of the trial court in holding the suit of the plaintiffs is barred by limitation?

f) Whether the lower appellate court while answering the points for consideration i.e., point no.2 had opined that limitation is not barred and further opined at point no.4 that the plaintiffs are at liberty to avail the remedy to file another suit for partition is proper and acceptable one, since the suit has brought by the plaintiffs is for partition only?

g) When the provision of order VII Rule 7 of CPC is clear on the point that the courts have the power to mould the reliefs, whether the lower appellate court is right in directing the plaintiffs to file one more case for partition?



h) Whether the judgment and decree of the first appellate court could be acceptable when the same is against to the provisions of the order XLI Rule 31 of CPC?

7. Sri. P.N. Rajeshwara would also contend that assuming that the other items of the suit properties are not ancestral properties, when Devaiah died intestate, in respect of Item No.1 of the suit property, husband of the plaintiff No.1 and father of plaintiff No.2 Kalegowda being one of the sons of said Devaiah, is entitled for 1/10th share in the Item No.1 of the suit properties.

8. As such, dismissal of the suit as a whole has resulted in miscarriage of justice and sought for admission of the appeal.

9. Per contra, Mr. M.Y. Srinivasan, learned counsel for the contesting respondents, supports the impugned judgment.

10. He would further emphasize that mere mention of the properties as ancestral properties in Exhibit D1



would not be sufficient enough to hold that all the suit properties are ancestral properties.

11. He would further contend that the husband of first plaintiff and father of remaining plaintiffs executed a registered Relinquishment deed on 03.01.1975 marked at Exhibit D1 clearly shows that he had nothing to do with the joint family and there was a severance of joint family status and thus, dismissal of the suit is just and proper.

12. In reply Sri. P.N. Rajeshwara would contend that though Exhibit D1 is to be accepted as it is a registered document dated 03.01.1975, having regard to the recitals in Exhibit D1 that the suit properties are ancestral properties, husband of the first plaintiff and father of the remaining plaintiffs Kalegowda could not have bound the shares of and Plaintiff No.2, Kalegowda (son).

13. Therefore, to that extent, 2nd plaintiff is entitled for his half share in the what the share that father



Kalegowda would have possessed in the suit properties and thus sought for decreeing the suit by allowing the appeal.

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

15. On such perusal of the material law on record, learned Judge in the Trial Court after considering the material evidence on record dismissed the suit of the plaintiff holding that the suit properties are not joint family properties.

16. Learned Judge in the First Appellate Court while re-appreciating the material evidence on record carried out a detailed discussion item wise and recorded a categorical finding that none of the suit items are ancestral properties though defendants have admitted in their written statement about the nature of the properties by supplying cogent and convincing reasons including the proper



analysis of the material documents placed by the plaintiffs themselves.

17. While so recording the finding, the learned Judge in the First Appellate Court held that Item No.1 of the suit property is the self acquired property of Devaiah. Insofar as Items No.2 to 7 are concerned, the Learned Judge in the First Appellate Court recorded a categorical finding that none of those properties are joint family properties nor it is acquired from the joint family nucleus. Thus, upheld the dismissal of the suit.

18. Insofar as the item No.1 of the suit properties is concerned, no doubt the father of Kaleagowda who is the husband of first plaintiff and father of remaining plaintiffs namely Devaiah died intestate. It is submitted at the bar that said Devaiah had five sons and five daughters.

19. Therefore, since the Devaiah died a intestate, insofar as Item No.1 of the suit properties is concerned, husband of first plaintiff and father of remaining plaintiffs



Kalegowda may have 1/10th share and if his mother was alive, When Kalegowda died, 1/11th share.

20. Therefore, he might have been entitled to 1/10th or 1/11th share. It is in this regard, Exhibit D1 assumes significance. In Exhibit D1, it has been mentioned that all the suit properties are ancestral properties and towards his share, Kalegowda has taken Rs.1,500/- and relinquished all his shares.

21. Sri. P.N. Rajeshwara however contended that since the second plaintiff namely Kalewoda (son) was alive as on the date Kalegowda (father) executed Exhibit D1, Father Kalegowda could not have bound the share of the minor son Kalegowda.

22. Such an argument would have been acceptable if there is a finding recorded by both the Courts to the effect that suit items are ancestral properties.

23. But a categorical finding has been recorded with due analysis as to the documents by the First Appellate



Curt holding that Item No.1 of the suit properties is the individual property which was acquired by self-earnings by Devaiah. As such by operation of Section 8 of the Hindu Succession Act, it is the Kalegowda (father) alone gets the share and not his son Kalegowda during lifetime of his father.

24. Therefore, the argument canvassed on behalf of the appellant that son Kalegowda being the second plaintiff is entitled to half share what the father Kalegowda got in the Item No.1 of the suit properties cannot be countenanced in law.

25. Having said thus, in respect of the remaining properties, since there is a categorical factual findings recorded by both the Courts to the effect that plaintiffs have failed to establish that those properties are the joint family properties, there cannot be any other inference other than dismissal of the suit.



26. Thus, this Court does not find merits in any one of the substantial questions of law to admit the appeal for further consideration.

27. Hence, following order:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

SNC
List No.: 1 SI No.: 50