



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 136 OF 2017 (PAR)

BETWEEN:

1. SMT. JAYALAKSHMI
W/O LATE KARIYAPPA,
AGED ABOUT 46 YEARS,
R/AT SINGRABHOVIDODDI,
KASABA HOBLI - 571 511
RAMANAGARA TALUK
2. SMT SHIVAMMA
D/O LATE HANUMANTHAIAH
AGED ABOUT 36 YEARS,
3. SMT BHGYAMMA
D/O LATE HANUMANTHAIAH
AGED ABOUT 30 YEARS,
4. SMT SARASAWATHI
D/O LATE HANUMANTHAIAH
AGED ABOUT 28 YEARS,
5. SMT MANGALAMMA
D/O LATE HANUMANTHAIAH
AGED ABOUT 26 YEARS,

APPELLANTS NO.2 TO 5 ARE
R/AT KAKARAMANA HALLI
BIDADI HOBLI - 582 109
RAMANAGARA TALUK AND DISTRICT

...APPELLANTS

(BY SRI. RAJASHEKHARAPPA D.R., ADVOCATE)



AND:

SMT. GOWRAMMA
W/O LATE HANUMA BOVI
AGED ABOUT 60 YEARS,
KAKARAMANA HALLI
BIDADI HOBLI - 562 109
RAMANAGARA TALUK AND DISTRICT

...RESPONDENT

(BY SRI. V.V. GUNJAL, ADVOCATE FOR C/R)

THIS RSA IS FILED U/S. 100 OF CPC., 1908 AGAINST THE JUDGEMENT & DECREE DTD 04.10.2016 PASSED IN R.A.NO.3/2009 ON THE FILE OF THE III ADDL. DISTRICT AND SESSIONS JUDGE, RAMANAGAR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD 06.12.2008 PASSED IN OS.NO.301/2006 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN.) AT RAMANAGARA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. D.R. Rajashekharappa, learned counsel for the appellants and Ms. Shriya, learned counsel for the respondent.



2. Plaintiffs' second appeal came to be admitted on the following substantial questions of law by Order dated on 02.03.2017:

i) Whether the First Appellate Court was justified in law, in recording a finding of fact that, the suit schedule properties of are the self acquired properties of the husband of the defendant and not the joint family properties solely on the ground that Ex.D-1 the grant certificate stands in the name of the husband of the defendant?

ii) Whether the First Appellate Judge was justified in ignoring the evidence placed by the plaintiffs showing that the husband of the defendant being the eldest male member of the family was the head of the family and kartha of the joint family and in that capacity, the land at item No.1 of the schedule was granted in his name for the benefit of the joint family?

iii) Whether the First Appellate Court was justified in imputing admissions to PW-1 and on the basis of such alleged admissions granting reliefs to the defendant and was the 1st appellate court justified in dismissing the suit of the plaintiffs on the basis of the said alleged admissions of PW1?



3. Facts of the case are as under :

3.1 Plaintiffs being the wife and daughters of Sri. Hanumanthaya, who claims to be the brother of Hanuma Bhovi, has filed the suit for partition in respect of the following properties (hereinafter referred to as 'suit properties'.)

1. ರಾಮನಗರ ತಾಲ್ಲೂಕು, ಬಿಡದಿ ಹೋಬಳಿ, ಮುದ್ದಾಪುರ ಕರೇನಹಳ್ಳಿ ಸರ್ವೆ ನಂ. 75 -
ಪಿ5 ರಲ್ಲಿ 2-05 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಿಕ್ಕು ಬಂದಿ-

ಪೂರ್ವಕ್ಕೆ : ಅಬ್ಬಯ್ಯನವರ ಜಮೀನು

ಪಶ್ಚಿಮಕ್ಕೆ : ಸರ್ಕಾರಿ ಫಾರೆಸ್ಟ್

ಉತ್ತರಕ್ಕೆ : ರಾಮೂರ್ತಿರವರ ಜಮೀನು

ದಕ್ಷಿಣಕ್ಕೆ : ಇದೇ ಸರ್ವೆ ನಂಬರ್ ಉಳಿಕೆ ಜಮೀನು

2. ರಾಮನಗರ ತಾಲ್ಲೂಕು, ಬಿಡದಿ ಹೋಬಳಿ, ಕಾಕರಾಮನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.
62,359,439 ರಲ್ಲಿ 60 X 60 ಅಡಿ ಮನೆ ಮತ್ತು ಖಾಲಿ ಜಾಗ ಇದಕ್ಕೆ ಚಿಕ್ಕು ಬಂದಿ:-

ಪೂರ್ವಕ್ಕೆ : ವರದಯ್ಯ, ವೆಂಕಟಗಿರಿ ಮನ

ಪಶ್ಚಿಮಕ್ಕೆ : ರಸ್ತೆ

ಉತ್ತರಕ್ಕೆ : ಕರಗಪ್ಪನವರ ಮನೆ

ದಕ್ಷಿಣಕ್ಕೆ : ನಿಂಗಮ್ಮನವರ ಖಾಲಿ ನಿವೇಶನ



3.2 First plaintiff is shown as dead in the judgment of the Trial Court. But according to Sri. D.R. Rajashekharappa, first plaintiff is still alive but she did not join in filing the present appeal.

3.3 It is the contention of the plaintiffs that Hanumanthaiah is the husband of first plaintiff and father of remaining plaintiffs and the brother of Hanuma Bhovi. Their common prepositus was Sri Chowdaiah.

3.4 It is contented that Sri. Hanuma Bhovi was granted land which is the Item No.1 of the suit properties, on 19.03.1991. The said the grant certificate/ Saguvali Chit is marked as Exhibit D1.

3.5 In respect of the second item of the property, which is situated in Kakaramanahalli, the same was purchased by Hanuma Bhovi from its' erstwhile owner through a registered sale deed dated 15.11.1971.

3.6 The contentions of the plaintiffs were that though the suit Item No.1 was granted in the name of



Hanuma Bhovi, it is for and on behalf of the joint family inasmuch, as it is Chowdaiah who was cultivating the land and Hanumanthaiah who is the husband of first plaintiff and father of remaining plaintiffs, abandoned the family and went away from the family. Therefore plaintiffs are also entitled for the half share in the suit properties inasmuch as the grant in favour of Hanuma Bhovi is for and on behalf of the joint family and from that income, Item No.2 came to be purchased.

3.7 Soon after the receipt of suit summons, first defendant being the wife of Hanuma Bhovi entered appearance, engaged the services of an advocate, filed detailed written statement denying the plaint averments and maintained that both the suit properties are the self-acquisitions of Hanuma Bhovi and therefore plaintiffs cannot lay any claim onto the suit properties and sought for dismissal of the suit.



3.8 Learned Trial Judge after recording the evidence of the parties and on cumulative consideration of the oral and documentary evidence placed on record, decreed the suit of the plaintiffs granting half share in the suit properties and also directed for partition of the suit properties by metes and bounds.

3.9 Being aggrieved by the said judgment and decree passed by the learned Trial Judge, defendant filed an appeal before the First Appellate Court in R.A. No.3/2009.

3.10 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, allowed the appeal and dismissed the suit of the plaintiffs *inter alia* holding in Paragraphs No.17 to 23 as under:

17. The PW1 during the course of her evidence has deposed that, her father Hanumanthaiah was residing at Tumkur. In fact, she has admitted in her cross



examination that, the suit item No.1 property is originally belonging to the government and her senior uncle Hanuma Bhovi got granted the land in 1990-91. Further, in her evidence she has deposed the fact that, after the grant of land, Hanumabhovi mutated katha of item No.1 property into his name. Added to it, there is crucial admission in the evidence of PW1 to the effect that, subsequent to the issuance of saguvalu chit, it is the defendant and her family members are in possession and enjoyment of item No.1 of suit schedule properties. Therefore. absolutely, there is nothing on record to accept the evidence of PW1 that, suit item No.1 property is granted to Hanumabhovi as the kartha of Hindu undivided joint family.

18. It is the contention of the plaintiffs that, the plaintiffs and the defendants are the members of the joint family. In fact, PW1 during the course of her cross examination has deposed that, the plaintiffs have constructed separate house and they are residing separately. It is also elicited from the mouth of PW1 that, her father got granted land in Sy.No.75 measuring 30 guntas. Intelligently, the plaintiffs have not included their house property as well as 30 guntas of land in sy.No.75. Therefore, non inclusion of the property granted in the name and favour of the father of the plaintiffs and the house property which is in the possession of the plaintiffs is one of the strong circumstances to come to the conclusion that, there was no joint family in existence at the time of grant of item



No.1 property in the name and favour of husband of the 1st defendant.

19. On behalf of the plaintiffs' witness by name Ramaiah examined as PW2 and he has reiterated that, the suit item Nod.1 property is granted to Hanumabhiovi. It is also his evidence that after the death of Chowdaiah his sons by name Hanumanthaiah and Hanumabhovi have been cultivating item No.1 of the schedule property. The meaningful reading of the evidence of PW2 would disclose that, 30 gutnas of land in THE SESSI S No.75 granted to the father of the plaintiffs. The PW2 during the course of examination has deposed that, he do not know the family affairs of the family of Chowdaiah. He has also deposed that, Hanumabhovi and Hanumanthaiah have been residing separately. He has deposed that, the plaintiffs and defendant are residing separately. When a specific suggestion is directed to PW2 stating that 30 guntas of land in Sv. No.75 is granted to the father of the plaintiffs he expressed his inability to say about the same. The RTC at Ex.P2 would disclose that, the grant certificate issued by the Revenue Department is acted upon and accordingly katha has been mutated in the name of the husband of the defendant. The defendant Gowramma stepped into witness box as DW1 and her evidence would disclose that her husband got granted Sy.No. 75/p5 measuring 2 acre 5 guntas in his individual capacity and he has paid amount to the government. That evidence of DW1 is supported by the documentary evidence. Now, one thing is clear as on today the katha of item No.1



property has been in the name of 1st defendant. Ex.P3 is the mutation extract, Ex.P4 and P5 are RTC extracts. Similarly, defendant has produced the mutation order at Ex.D15 and EC at Ex. D16. These two documents would disclose that by virtue of death of Hanumabhovi as per orders in IHC No.7/2003-04 katha of item No.1 has been mutated in the name of the 1st defendant.

20. The evidence of DW1 in cross examination clearly establish the fact that, it is the defendant who has been in possession and enjoyment of item No.1 property. The plaintiffs have not included 30 guntas of land in Sy. No.75 which has been granted to their father. Similarly, they have not included house property which is in possession of the plaintiff. Hence, one thing is clear that, both Hanumabhovi Hanumanthaiah got granted land in Sy.No.75 in their individual capacity. and

21. The counsel for the plaintiffs has placed reliance on a decision reported in 1998(6) KCJ 13 and argued that the land is granted in the name of one of the family member it shall be treated as benefit of the entire family. But, in the suit there is no evidence available on record to effect that, after death of Chowdaiah, Hanumabhovi and Hanumanthaiah have jointly cultivated the land in Sy. No.75. Thus one thing is clear that, Hanumabhovi and Hanumanthaiah got granted the land in Sy. No.75 in their individual capacity and they have started to cultivate the same. The evidence of PW1 and the revenue documents available on record would disclose that 1st defendant has



been cultivating item No.1 of the suit schedule properties. Therefore, at any stretch of imagination it cannot be said that, the suit item No.1 property granted to Hanumabhovi on behalf of joint family. Hence, the ratio of the above decision is not applicable to present case.

22. The item No.2 property bearing kaneshumari No. 62/359:430 measuring 60X60'. It is pleaded by the plaintiffs that, after the death of Chowdaiah, the husband of the defendant got mutated the katha of item No.2 property into his name. However, the plaintiffs have not pleaded as to how Chowdaiah got right over item No.2 of the schedule property. In fact, the defendant has produced the certified Hanumanthaiah Kariyappa has purchased the property copy of sale deed dated 15-11-1971. which disclose that. from one Dasanna. In fact, it is contended by the plaintiff that their father name is Hanumanthaiah @ Kariyappa. However, PW1 during the course of her cross examination has categorically deposed that Hanumabhovi the husband of the 1st defendant also called as Kariyappa. Thus, it is clear that, it is the husband of the defendant has purchased item No.2 in the year 1971. Therefore, there is no substance in the contention of the plaintiffs that, after the death of Chowdaiah and Hanumanthaiah, Hanuma Bhovi has got mutated katha of suit item No.2 property into his name.

23. The defendant has produced mutation extract Ex.D7. which disclose that, katha of item No.2 property stands in the name of the 1st defendant Gowramma. Similarly, she



has produced tax paid receipts at Ex.D8 to D14, these documents would clearly establish the fact that, it is the defendant who has been in possession and enjoyment of the suit item No.2 property as as she is the wife of the deceased Hanumabhovi. It is not the evidence of the plaintiffs that, item No.2 property is purchased in the name of Hanumabhovi out of joint family income. In fact, they have contended that item No.2 property is the property belonged to Chowdaiah and that contention of the plaintiff is contrary to the documentary evidence of the year 1971. Thus, on careful appreciation of the oral and documentary evidence this court is of the opinion that, item No.2 property is the absolute property of Hanumabhovi and after his death, the defendant being his wife got mutated katha of the same into her name. Therefore, on appreciation of oral and documentary evidence it is crystal clear that, the suit schedule properties are not the ancestral joint family properties of plaintiffs and defendant. Even there is no cogent and convincing piece of evidence to show that the plaintiffs and defendant are members of joint family. On the other hand, the facts elicited from the mouth of PW1 itself is sufficient to come to the conclusion that, two brothers have got granted land in Sy. No.75 separately and got mutated katha into their respective names. The property granted to Hanumanthaiah the father of the plaintiffs is in their possession and the property is granted to Hanumabhovi is in the possession of the defendant. Therefore, the plaintiffs have failed to prove the existence of joint family as well as acquisition of property by



Hanumabhovi as kartha of joint family. Therefore, the plaintiffs are not entitle for any share much less claim in the suit. Accordingly point No.1 and 2 answered in the negative.

4. Being further aggrieved by the same, plaintiffs No.2 to 6 have preferred the present second appeal.

5. As referred to supra, appeal came to be admitted and thereafter Sri. D.R. Rajashekharappa reiterating the grounds urged in the appeal memorandum, would further contend that oral evidence of Gowramma and production of documents alone was not sufficient enough to re-appreciate the matter and dismiss the suit of the plaintiffs by the First Appellate Court.

6. He would further contend that no doubt, as per Exhibit D1, the first item of the suit property was granted in favour of Hanuma Bhovi. But, learned Judge in the First Appellate Court failed to note that the said grant was for and on behalf of the joint family of Chowdappa, Hanuma Bhovi and Hanumanthaiah.



7. He would further emphasize that in the cross-examination of DW1, there is a clear admission by DW1 that Hanuma Bhovi and Hanumanthaiah are the only children to Chowdaiah.

8. He would also invite the attention of the Court that in the cross-examination, DW1 admits that she is not aware of a dispute between Hanumanthaiah and plaintiffs.

9. He would further invite the attention of the court that PW2 categorically admitted that suit Item No.1 was part of Gomala and on account of the fact that Hanuma Bhovi being the eldest son of Chowdaiah, it has been allotted to him.

10. He also invited the attention of the Court that DW1 admitted that wife of Chowdaiah is Puttamma and they had two sons namely Hanuma Bhovi and Hanumanthaiah.

11. He also invites the attention of the Court that there is an admission in the cross-examination of DW1



that first item of the property was allotted to Hanuma Bhovi. However, he denied that it is for and on behalf of the joint family.

12. Therefore, when there is no severance of joint family, the property held by the joint family is to be presumed as joint family properties and when plaintiffs have discharged the initial burden, it was for the defendant to prove that both the suit properties are self-acquisition by placing cogent and convincing evidence on record, and mere production of Exhibit D1 and Exhibit D6 was not sufficient enough to rebut the presumption available to the plaintiffs, which has been not properly appreciated by learned Judge in the First Appellate Court and thus sought for allowing the appeal by answering the substantial questions of law in favour of the appellants.

13. Per contra, Ms. Shriya, counsel for the respondent supports the impugned judgment of the First Appellate Court by contending that probative value of



Exhibits D1 and D6 has been rightly appreciated by the learned Judge in the First Appellate Court.

14. She would further contend that the plaintiffs have failed to establish the fact that they have an independent right as a coparcener being the daughters of Hanumanthiah who abandoned them and therefore, dismissal of the suit by the First Appellate Court is just and proper.

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

16. On such perusal of the matter on record, there is no dispute as to the relationship among the parties.

17. Admittedly, Chowdaiah had two sons namely Hanuma Bhovi and Hanumanthaiah. No doubt in the cross-examination, it was suggested to PW2 that Chowdaiah had a daughter by name Jayamma. The same is not established by placing necessary material evidence.



18. Hanumanthaiah said to be alive according to the plaintiffs. If it is so, efforts were required to be made by plaintiffs to summon him before the Court, especially when a suggestion is made to DW1 that Hanumanthaiah is living happily with the second wife.

19. Be it what it may. Fact remains that it is for the plaintiffs to establish that the suit properties are joint family properties and the grant made in favour of Hanuma Bhovi was for and on behalf of joint family. In that regard except the oral testimony of plaintiffs and their witnesses there is no other material on record.

20. In other words, initial burden which is required to be discharged by the plaintiffs to raise the presumption that the suit properties are joint family properties is not discharged by placing cogent and convincing evidence on record.

21. PW2 K.C. Ramaiah no doubt has filed an affidavit in lieu of his examination-in-chief wherein he has



stated that the suit properties are joint family properties. But in the teeth of Exhibit D1, which is the Saguvali Chit that has been issued in favour of Hanuma Bhovi, mere oral testimony of PW1 and PW2 would not be sufficient to believe that the suit Item No.1 was granted for and on behalf of the joint family.

22. Material evidence on record would not also indicate that Chowdaiah was cultivating the land and only in the name of Hanuma Bhovi out of respect that he the elder son, Exhibit D1 came to be issued is not forthcoming on record.

23. Likewise the application seeking grant of land and other particulars that are to be filed while seeking the grant of land are also not summoned and placed on record by the plaintiffs in order to establish that the grant was in fact for and on behalf of the joint family and not in the individual capacity of Hanuma Bhovi.



24. In the absence of such initial burden being discharged by the plaintiffs, the argument put-forth on behalf of the appellants that there is no proper rebuttal evidence on record to rebut the presumption available to the plaintiffs by the defendant cannot be countenanced in law.

25. More so, when the document Exhibit D1 has come into existence at an undisputed point of time and Hanumanthaiah did not choose to challenge the grant of land only in the name of Hanuma Bhovi.

26. Further, in respect of Item No.2 of the suit properties is concerned, admittedly vide Exhibit D6 is acquired which a registered sale deed. The contents of registered sale deed would go to show that Hanuma Bhovi has spent money for purchase of the item No.2 of the suit properties out of his own earnings.

27. It is a far fetched argument on behalf of the plaintiffs that from the fruits of item No.1 of the suit



properties which is to be held as a joint family, the nucleus for purchase of Item No.2 of the suit properties, has been utilized cannot also be countenanced in law in the absence of any material evidence placed on record either by PW1 or by PW2.

28. It is not uncommon that in a matter of this nature, plaintiffs would contend that all the properties are joint family properties.

29. Mere say of plaintiffs would not *ipso facto* result that the suit properties are joint family properties unless necessary proof is placed on record to discharge the initial burden to raise the presumption in that regard.

30. Only on the ground that there is no severance of status of the joint family, plaintiffs cannot contend that suit properties are the joint family properties and they are entitled for the share which would be allottable to Hanumanthaiah.



31. Thus, viewed from any angle, this Court does not find any good grounds whatsoever to interfere with the order of the First Appellate Court which has been based on sound and logical reasons, applying the correct and apt legal principles.

32. Thus, invariably substantial questions of law raised in the appeal at the time of admission would go against the appellants and they are answered 'in the negative'.

33. From the foregoing discussion, following Order is passed:

ORDER

Appeal is meritless and hereby ***dismissed***.

No order as to the cost.

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

SNC
List No.: 1 Sl No.: 85