



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.90 OF 2017 (DEC/INJ)

BETWEEN:

SMT. GOWRAMMA
W/O LATE GOVINDASHETTY
D/O LATE VENKATAGIRI
(DIED ON 05.05.2025)
SINCE DEAD BY HER LR's

1. SMT.BHAGYA
AGE 58 YEARS
W/O RAMESHA
D/O LATE GOWRAMMA
GOVINDAIAH
R/AT NO.26, SRI VINAYAKA NILAYA
17TH CROSS,
SIR.M.V.NAGARA
RAMAMURTHY NAGAR
DOORAVANINAGAR NORTH
2. SRI K.G.KUMAR
AGE 55 YEARS
S/O LATE GOWRAMMA GOVINDAIAH
R/AT NO.50, GROUND FLOOR,
6TH CROSS, SEETHAPPA LAYOUT
CHOLANAYAKANAHALLY
R.T.NAGAR
BENGALURU NORTH.
3. SRI JAISHANAKRA
AGE 52 YEARS
S/O LATE GOWRAMMA AND
GOVINDAIAH

Digitally
signed by
MAHATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



R/AT KUDARAGUNDI
GEJJALAGERE
KASABA HOBLI, MADDUR TALUK
MANDYA DISTRICT – 571 427

...APPELLANTS

(BY SRI B S NAGARAJ, ADVOCATE)

AND:

1. SMT. R SUMA
AGED 35 YEARS,
W/O SHIVARAJU
D. HOSAHALLI VILLAGE
KOPPA HOBLI,
MADDUR TALUK
MANDYA DISTRICT
PIN-571 428
2. SRI B GUNDAPPA
AGED 65 YEARS,
S/O KOTIPILLE BOREGOWDA
KUDURAGUNDI VILLAGE
KASABA HOBLI,
MADDUR TALUK
MANDYA DISTRICT
PIN-571 428
3. KUM SWATHI
AGED ABOUT 26 YEARS
D/O SHANKARAI AH
4. N DEEPAK
AGED ABOUT 26 YEARS
S/O NARAYANA
5. KUM POORNIMA
AGED ABOUT 22 YEARS
D/O RAMAIAH

RESPONDENT NOS.2 TO 4 ARE
RESIDENTS OF



KUDURUGUNDI VILLAGE
KASABA HOBLI,
MADDUR TALUK
MANDYA DISTRICT
PIN-571 428

...RESPONDENTS

(BY SRI C.SHANKAR REDDY, ADVOCATE FOR R1 AND R3 TO R5;

SRI R.VIJAYAKUMAR, ADVOCATE FOR R2)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 01.10.2016 PASSED IN RA NO.200/2011 ON THE FILE OF THE I ADDL. DISTRICT AND SESSIONS JUDGE, MANDYA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 28.10.2011 PASSED IN O.S NO.119/2006 ON THE FILE OF THE SENIOR CIVIL JUDGE, MADDUR.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri B.S.Nagaraj, learned counsel for the appellants and Sri C.Shankar Reddy, learned counsel for respondent Nos.1, 3 to 5 and Sri R.Vijayakumar, learned counsel for respondent No.2.



2. Plaintiff's Second Appeal challenging the judgment and decree passed in R.A No.200/2011 whereby the judgment passed in O.S No.119/2006 is set aside.

3. Facts of the case are as under:

4. A suit in O.S No.119/2006 came to be filed seeking partition and separate possession, declaration and permanent injunction in respect of following properties hereinafter referred to as 'suit properties'.

1. Sy.No.12/1A1 of Kudurugundi village, Kasaba Hobli, Maddur Taluk, measuring 36 and half guntas asset at Rs.1-62 bounded on

East : by suit item No.2

West: by land of Siddegowda,

North: by another property of 2nd defendant

South: by land of Boregowda.

2. Sy.No.12/1A2 of Kudurugundi village, Kasaba Hobli, Maddur Taluk, measuring 138 and half guntas asst. of Rs.1-59 paise bounded on

East : by land of Channahegde and others

West: by suit item No.1,

North: by land of Chikkeramma

South: by land of Siddaiah.



3. *Sy.No.45/A of Kudurugundi village, Kasaba Hobli, Maddur Taluk, measuring 1 acres and 5 guntas of land, assed at Rs.4-20, bounded on*

East : by land of K.L.Devegowda and others
West: by land of Jayaramu and others,
North: by land of K.B.Chikkanna
South: by land of Devegowdara Puttalingegowda.

4. *A country tiled house with vacant space situated at Kudurugudi village, Sadolalu Gramapanchayath, Maddur Taluk, bearing janger No.175, and property No.174, bounded on*

East : by house of Boraiah, S/o Chikkaboraiah
West: by B.Nagaraja vacant site
North: by vacant space of Kothipille Siddegowda
South: by road.

5. Suit on contest came to be decreed in part directing that plaintiff is the owner of item Nos.2 to 4 of the suit properties and Defendant Nos.1, 3 to 5 were restrained from interfering with the peaceful possession and enjoyment of the suit property.

6. Operative portion of the Trial Court judgment reads as under:

"The suit of the plaintiff is partly decreed with cost.



It is hereby declared that plaintiff is absolute owner and in possession of suit item Nos.2 to 4. Defendant Nos.1 and 3 to 5 are restrained from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule item Nos.2 to 4 properties.

Further plaintiff's claim with regard to item No.1 of the suit property is rejected."

7. Being aggrieved by the same, defendant Nos.1, 3 to 5 filed an appeal in R.A No.200/2011. Pertinently, plaintiff did not choose to challenge the finding of the Trial Court denying the relief of declaration and other consequential prayers in respect of item No.1 of suit property either by filing the cross appeal or cross objection.

8. Therefore, the finding of the Trial Court with regard to denial of the relief to the plaintiff has become final.

9. Learned Judge in the First Appellate Court after entertaining the appeal of defendant No. 1, 3, to 5, heard the arguments of the parties and on re-appreciation of the material on record dismissed the entire suit by allowing the appeal.



10. Being further aggrieved by the same, plaintiff has filed the present appeal challenging not only the dismissal of the suit in entirety in R.A No.200/2011 but also has prayed for granting the share in the respect of item No. 1 of the suit property which right she had already abandoned in the First Appeal by non-filing the cross appeal or cross objection.

11. The present Second Appeal came to be admitted by the Order of this Court dated 16.03.2017 on the following substantial questions of law.

(i) Whether the First Appellate Court was justified in reversing the finding of the Trial Court on issue No.1 and holding plaintiff has failed to prove her ownership, title and possession over the suit item Nos.2 to 4 and interference of her said possession by the defendants?

(ii) Whether the First Appellate Court has failed in not considering sale of 36 guntas of land by Lakshamma in favour of defendant No.2/B. Gundappa was adjusted against her share which she got in the notional share of her husband and therefore, she did not challenge the finding of the Trial Court on issue No.3?



(iii) Whether the judgment and decree passed by the First Appellate Court in allowing the appeal preferred by defendant Nos.1 and 3 to 5 and reversing the judgment and decree passed by the Trial Court wherein it has decreed the suit of the plaintiff contrary to material evidence on record are sustainable in law?"

12. Pertinently, in the aforesaid substantial questions of law also, what is the subject matter of the appeal is item Nos.2 to 4 of the suit properties and not item No.1.

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

14. On such perusal, relationship among the parties is found from the genealogical tree filed along with the appeal memorandum. The common propositus is one Venkatagiri, who had a wife by name Venkatamma and two children namely Venkatakrishnaiah and Gowramma.

15. Present appellant-Gowramma is the daughter of Venkatagiri and Venkatamma. The other respondents except the purchaser are the children of the sister of Lakshamma who is wife of Venkatakrishnaiah.



16. Venkatagiri and Venkatamma admittedly died intestate. Therefore, the property left behind by Venkatagiri was succeeded by Venkatakrishna and Gowramma equally.

17. Venkatakrishna died and his wife Lakshamma executed a Will in favour of her nephew and nieces. Based on the same, they resisted the suit.

18. Learned Trial Judge after considering the rival contentions of the parties, decreed the suit as referred to supra.

19. Being aggrieved by the same, it is defendant Nos.1, 3 to 5 who filed the appeal in R.A No.200/2011.

20. The finding recorded by the Trial Judge with regard to item No. 1 on the ground that the same is not available for partition attained its finality in the absence of challenge by the plaintiff before the First Appellate Court either by filing the Cross Appeal or Cross Objection.

21. Insofar as remaining items of the suit properties are concerned, the defendants resisted the suit claim based on the Will executed by Lakshamma. First Appellate Court upheld



the Will executed by Lakshamma in favour of defendant Nos.1, 3 to 5 by supplying the cogent and convincing reasons.

22. However, fact remains that whether the Lakshamma had the absolute right, title or interest over the suit item Nos.2 to 4 so as to execute the Will is the question that has missed the notice of the First Appellate Court inasmuch as even according to the case of the defendant Nos.1, 3 to 5, they are only entitled for half share of the property as Lakshamma being the wife of Venkatakrishnaiah and Gowramma being the daughter of Venkatagiri, she had only half share in the suit property.

23. Therefore, dismissal of the suit by the First Appellate Court in entirety needs interference by this Court in this appeal.

24. Since the relationship of the plaintiff is admitted by defendant Nos. 1, 3 to 5, her half share in the suit properties item Nos.2 to 4 are to be granted to her by decreeing the suit in part by modifying the judgment of the Trial Court as well as the First Appellate Court.



25. In view of the foregoing discussion, no further discussion is necessary on other aspects of the matter.

26. Accordingly, the first substantial question of law is answered partly in the affirmative, second substantial question of law is answered against the appellant and third substantial question of law is answered partly in favour of the appellant.

27. Accordingly, following:

ORDER

- (i) Appeal ***allowed in part***
- (ii) In modification of the decree passed by the Trial Judge in O.S No.119/2006 which was reversed by the learned Judge in the First Appellate Court in R.A No.200/2011, suit of the plaintiff stands decreed as under:

"Plaintiff, defendants 1, 3 to 5 are entitled for half share in item Nos.2 to 4 of the suit properties".

- (iii) Office to pass modified decree.
- (iv) No Order as to costs.

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