



NC: 2026:KHC:48544
RSA No. 124 of 2016

CNR: KAHC010198142016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 124 OF 2016 (PAR)

BETWEEN:

SRI BYREGOWDA
S/O VENKATESHAPPA,
AGED ABOUT 36 YEARS,
R/O GUDIHALLI VILLAGE,
KASABA HOBLI,
SIDLAGHATTA TALUK-561 207,
CHICKBALLAPUR DISTRICT.

...APPELLANT

(BY SRI. G S BALAGANGADHAR, ADVOCATE)

AND:

1. SMT RATHNAMMA
W/O MUNIYAPPA,
AGED ABOUT 64 YEARS,
R/O NAGAMANGALA VILLAGE,
JANGAMAKOTE HOBLI,
SIDLAGHATTA TALUK,
CHICKBALLAPUR DISTRICT-561 207.
2. SMT PARVATHAMMA
W/O LATE DODDEGOWDA,
AGED ABOUT 59 YEARS,
R/O BOMMANABANDE VILLAGE,
HOSKOTE TALUK,
BANGALORE RURAL DISTRICT - 562 114.
3. SMT RADHAMMA
W/O MUNISHAMIGOWDA,
AGED ABOUT 57 YEARS,
R/O SEEGAHALLI VILLAGE,
KASABA HOBLI,

Digitally
signed by
VANDANA S
Location:
High Court
of Karnataka



NC: 2026:KHC:48544
RSA No. 124 of 2016

CNR: KAHC010198142016

SIDLAGHATTA TALUK,
CHICKBALLAPUR DISTRICT 561 207.

4. SRI N G SRINIVAS
S/O LATE GOPALAPPA,
AGED ABOUT 52 YEARS,
R/O NAGAMANGALA VILALGE,
JANGAMAKOTE HOBLI,
SIDLAGHATTA TALUK,
CHICKBALLAPUR DISTRICT - 561 207.
5. SMT VARALAKAHMAMMA
W/O LATE N.G.SHANKAR,
AGED ABOUT 39 YEARS,
R/O GUDIHALLI VILLAGE,
KASABA HOBLI,
SIDLAGHATTA TALUK,
CHICKBALLAPUR DISTRICT 561 207.

...RESPONDENTS

(BY SRI. SURYA TEJA B.M, FOR
SRI. M. SUBRAMANI, ADVOCATES FOR R-1 TO R-3
SRI. A.N. CHANDRASHEKARA, ADVOCATE FOR R-4
R-5 SERVED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 26.10.2013 PASSED IN R.A NO.77/2012
ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., SIDDLAGHATTA,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND
DECREE DATED 21.04.2012 PASSED IN O.S NO.216/2006 ON THE FILE OF
THE ADDL. CIVIL JUDGE AND JMFC., SIDDLAGHATTA.

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



CNR: KAHC010198142016

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

This Regular Second Appeal by defendant No.4 in O.S.No.216/2006 is directed against the impugned judgment and decree dated 21.04.2012 passed by the Addl. Civil Judge and JMFC, Shidlaghatta (for short "the Trial Court"), whereby the said suit for partition and separate possession filed by respondent Nos.1 to 3 against the appellant-defendant No.4 and other defendants was decreed by the Trial Court declaring that the plaintiffs and defendant Nos.1 and 2 are entitled to 1/5th share each in the suit schedule immovable properties, which was confirmed by the First Appellate Court in R.A.No.77/2012, whereby the said appeal preferred by the appellant was dismissed by the First Appellate Court.

2. Briefly stated the facts giving rise to the present appeal are as under:

Respondent Nos.1 to 3 are the daughters of late Gopalappa and Sannamma, who expired in the year 1980 and 1990 respectively, leaving behind three daughters viz., Rathnamma,



NC: 2026:KHC:48544
RSA No. 124 of 2016

CNR: KAHC010198142016

Parvathamma and Radhamma (plaintiffs) and two sons viz., N.G. Srinivas and N.G. Shankar, who were arrayed defendant Nos.1 and 2 in the instant suit for partition and separate possession filed by the plaintiffs against defendant Nos.1 and 2. Defendant No.3 is none other than the wife of defendant No.2, who executed a registered gift deed of 1 acre of land in item No.1 of the suit schedule properties in favour of his wife defendant No.3. The appellant herein, who is defendant No.4 in the suit purchased 1 acre of land from Varalakshamma vide registered sale deed dated 06.10.2006, while defendant No.5 is said to be one more purchaser of item No.2 of the suit schedule properties. The plaintiffs have put forth various contentions in support of their claim for partition *inter alia* contending that by virtue of amendment to Section 6 of the Hindu Succession Act, 1956, with effect from 09.09.2005, but the plaintiffs being daughters of Gopalappa and Sannamma, are entitled to equal 1/5th share each along with their brothers and that they would be entitled to seek 1/5th share in two items of the schedule properties i.e., the land bearing Sy.No.175/2 measuring 2 acres 20 guntas and land bearing Sy.No.78/2 measuring 1 acre 3 guntas situated at Nagamangala Village,



NC: 2026:KHC:48544
RSA No. 124 of 2016

CNR: KAHC010198142016

Jangamakote Hobli, Sidlaghatta Taluk, Chikkaballapura District.
Under these circumstances, the plaintiffs filed the aforesaid suit seeking the aforesaid reliefs before the Trial Court.

3. Before the Trial Court, defendant No.1 did not contest the suit and was placed exparte, while defendant Nos.2 to 4 entered appearance and defendant Nos.3 and 4 filed a separate written statement. Defendant Nos.3 and 4 took up a contention that there was earlier partition before the panchayathdars and as such, the plaintiffs are not entitled to any share in the suit schedule properties. Defendant No.2 further contended that he had executed registered Gift Deed dated 09.05.2002 gifting 1 acre of land in item No.1 of the suit schedule properties bearing Sy.No.175/2 out of that total extent of 2 acres 20 guntas in favour of his wife, defendant No.3, who in turn had sold 1 acre of land in favour of defendant No.4 vide registered sale deed dated 06.10.2006. It was contended that in pursuance of the aforesaid Gift Deed and Sale Deed in favour of respondent No.4, respondent No.4 was in lawful and peaceful possession of the aforesaid extend of 1 acre of land in Sy.No.175/2 as its absolute owner and since the suit schedule properties have already been partitioned much prior to institution of



CNR: KAHC010198142016

the suit, the suit was not maintainable and the same was liable to be dismissed.

4. On the basis of the pleadings, the Trial Court framed the following issues and additional issues:

- "1. Whether the plaintiffs prove that suit schedule properties are ancestral properties?*
- 2. Whether the defendant No.3 proves the prior partition as contended in para 4 of the written statement?*
- 3. Whether the defendant No.3 further proves that defendant No.2 had executed a gift deed dated 09.05.2002 in her favour measuring to an extent of 1 acre in Sy.No.175/2 and as such she is in possession over the same?*
- 4. Whether the defendants No.3 further proves that she has sold said 1 acre of land in favour of one Byregowda by virtue of registered sale deed dated 06.10.2006?*
- 5. Whether the plaintiffs are entitled for share in the suit schedule properties? If so what is the quantum of their share?*
- 6. What order or decree?"*

5. Plaintiff No.1 examined himself as PW.1 and got marked documentary evidence as Exs.P-1 to P-3 and defendant



CNR: KAHC010198142016

No.3 examined himself as DW.1, one witness as DW.2 and got marked documentary evidence as Exs.D-1 to D-12.

6. After hearing both parties, the Trial Court came to the conclusion that the suit schedule properties were ancestral properties and the specific plea of earlier partition put forth by defendant No.3 had not been established by her, in accordance with law. The Trial Court also came to the conclusion that whilst defendant No.2 executed Gift Deed to an extent of 1 acre in Sy.No.175/2, the Gift Deed dated 09.05.2002 in favour his wife, defendant No.3, who in turn had sold it to defendant No.4 vide registered Sale Deed dated 06.10.2006, the said Gift and Sale Deed were valid only to an extent of 20 guntas which was the undivided 1/5th share of defendant No.2 in item No.1 of the suit schedule properties and the same was the undivided share of defendant No.3 and the Gift and the sale in relation to the remaining 20 guntas, 1/5th share was not binding upon the plaintiffs or defendant No.1, since defendant No.4, who was the purchaser has not proved the legal necessity and benefit of estate for the purpose of defendant No.2 gifting the said property in favour of defendant No.3 and that the same was not gifted for the purpose of



execution of Gift Deed. Under these circumstances, the Trial Court proceeded to decree the suit in favour of the plaintiffs by applying the amendment to Section 6 of the Hindu Succession Act, 1966 with effect from 09.09.2005. Aggrieved by the aforesaid judgment and decree passed by the Trial Court, the appellant filed an appeal in R.A.No.77/2012 before the First Appellate Court, which proceeded to dismiss the said appeal by confirming the judgment and decree passed by the Trial court . Aggrieved by the judgment and decree passed by both the Trial Court and the First Appellate Court, the appellant/purchaser is before this Court by way of the present appeal.

7. This appeal was admitted by formulating the following Substantial Question of Law on 09.04.2019:

“Whether the Courts below were right in applying Section 6 of the Hindu Succession (Amendment) Act, 2005 retrospectively and granting equal shares to daughters/plaintiffs

8. Heard learned counsel for the appellant and learned counsel for respondent Nos.1 to 3 and perused the material on record.



CNR: KAHC010198142016

9. In addition to reiterating the various contentions urged in the appeal and referring to the material on record, learned counsel for the appellant would invite my attention to the judgment and decree passed by the Trial Court and the First Appellate Court, in order to contend that though in the case of ***Vineeta Sharma Vs. Rakesh Sharman and others – (2020) 9 SCC 1***, the Apex Court has come to the conclusion that Section 6 would operate retrospectively and retro actively with effect from 1956, the Apex Court has carved out an exception as regards earlier partition (both oral and written), which is available to the contesting defendants to contend that the suit for partition was not maintainable. It is submitted that both the Courts have failed to consider and appreciate the material on record, which would indicate that there was an earlier partition and failure to consider this has resulted in an erroneous conclusion.

10. It is also submitted that having regard to the undisputed fact that defendant No.2 was undisputedly entitled to 1/5th share (20 guntas) in item No.1 of the suit schedule properties, both the Trial Court and the First Appellate Court should have directed equitable partition by adjustment of equities and allotting



CNR: KAHC010198142016

20 guntas of land in favour of the appellant during the course of Final Decree Proceedings and in the absence of any such direction/finding or observation in the impugned judgment and decree, the appellant is not entitled to claim equitable partition in the Final Decree Proceedings initiated by respondent Nos.1 to 3 resulting in irreparable injury and hardship to the appellant. It is therefore submitted that the impugned judgment and decree passed by the Trial Court as well as the First Appellate Court deserves to be set aside and the suit of the plaintiff is liable to be dismissed.

11. Per contra, learned counsel for respondent Nos.1 to 3 would support the impugned judgment and decree and submit that there is no merit in the appeal and the same is liable to be dismissed, especially when the Substantial Question of law formulated by this Court (*supra*) is directly and squarely answered in favour of respondent Nos.1 to 3 – plaintiffs by the Apex Court in *Vineeta Sharma's case (supra)* and as such, the appeal is liable to be dismissed.



CNR: KAHC010198142016

NC: 2026:KHC:48544
RSA No. 124 of 2016

12. As stated supra, after hearing the parties, this Court is of the opinion that in addition to the Substantial Questions of Law referred to supra, additional Substantial Question of Law is required to be framed in the facts and circumstances of the instant case:

“Additional Substantial Question of Law

“Whether both the Courts were justified in coming to the conclusion that defendant No.3 had failed to prove the earlier partition, which is permissible in the light of direction No.4 in Vineeta Sharma’s case (supra), which would enure to the benefit of the appellant?”

13. Heard learned counsel for the appellant and learned counsel for respondent Nos.1 to 3 on the additional Substantial Question of Law and also perused the material on record.

Re. Substantial Question of Law :

14. It is pertinent to note that the present appeal was admitted on 09.04.2019 by formulating the Substantial Question of Law referred to supra. The judgment of the Apex Court in *Vineeta Sharma’s case (supra)*, had not been referred and the judgment of



the Apex Court (two judge Bench) in the case of ***Prakash and others Vs. Phulavati and others - (2016) 2 SCC 36*** was holding the field. However, subsequently in *Vineeta Sharma's case (supra)*, the Larger Bench of the Apex Court (Three Judge Bench) came to the conclusion that the amendment to Section 6 of the Hindu Succession Act, 1956, would operate retrospectively and retro actively and both daughters and sons would be entitled to equal share in the joint family / coparcenary properties as under:

"129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.



CNR: KAHC010198142016

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

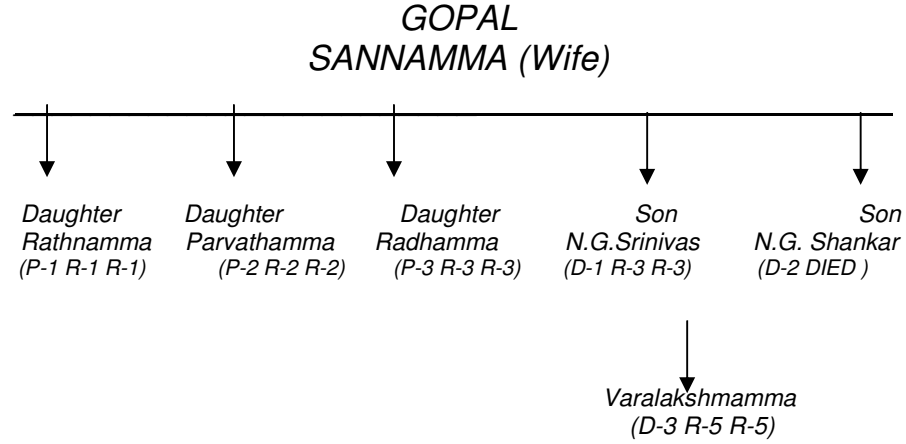
(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

15. In the instant case, the Genealogical Tree of the parties is as under:



CNR: KAHC010198142016

NC: 2026:KHC:48544
RSA No. 124 of 2016



16. The aforesaid undisputed material on record clearly indicates that late Gopalappa having expired in the year 1980 and his wife, Sannamma expired in the year 1990, three plaintiffs and defendant Nos.1 and 2 would be entitled to equal (i.e., 1/5th) share in both item Nos.1 and 2 of the suit schedule properties. Under these circumstances, I am of the considered opinion that both the Trial Court and the First Appellate Court were fully justified in placing reliance upon the amendment to Section 6 of the Hindu Succession Act, 1956 and have arrived at correct conclusion that the suit of the plaintiff deserves to be decreed by declaring that three plaintiffs and two defendants would be entitled to 1/5th share in the suit schedule properties. As a consequence thereof, the Gift Deed executed by defendant No.2 in favour of his wife, defendant No.3 and the Sale Deed dated 06.10.2006 executed in favour of



CNR: KAHC010198142016

the appellant would be valid and enforceable only to an extent of 20 guntas of land in item No.1 of the suit schedule properties bearing Sy.No.175/2 out of the total extent of 2 acres 20 guntas, the Gift Deed/Sale Deed in relation to the remaining 20 guntas would not be binding upon the plaintiffs or defendant Nos.1 and 2. Under these circumstances, the Substantial Question of Law No.1 is answered against the appellant and in favour of the respondents.

Re. Additional Substantial Question of Law:

17. A perusal of the material on record will indicate that though defendant No.3 has put forth a plea of earlier partition as permitted by direction No.5 of *Vineeta Sharma's case (supra)*, both Courts have come to the conclusion that the said plea is not established in the manner known to law and hence, the Additional Substantial Question of Law is answered against the appellant.

18. The next question that arise for consideration is whether the appellant is eligible for partition to an extent of 20 guntas is concerned, undisputedly the appellant has purchased 1 acre from defendant No.3, who in turn acquired the same from her husband, defendant No.2 vide registered Gift Deed dated



CNR: KAHC010198142016

09.05.2002. In this context, it is well settled that even the *pendente lite* purchaser would be entitled to equitable partition in the final decree proceedings. In the instant case, it is an undisputed fact that the appellant had purchased 1 acre of land in item No.1 of the suit schedule property prior to institution of the suit, which was instituted on 02.11.2006. Under these circumstances, I am of the considered opinion that the appellant would be entitled to claim equitable partition and the Final Decree Court shall allot 20 guntas of land out of 1 acre of land purchased by the appellant by way of equitable partition at the time of drawing up of final decree in the Final Decree Proceedings.

19. In the result, I pass the following:

ORDER

- i) The appeal is hereby dismissed.
- ii) However, the Final Decree Court before whom the FDP No.1/2015 is pending is hereby directed to allot 20 guntas of land in lieu of share of defendant No.2 in favour of the appellant-defendant No.4 by passing appropriate orders during the course of Final Decree proceedings.



**NC: 2026:KHC:48544
RSA No. 124 of 2016**

CNR: KAHC010198142016

- iii) All rival contentions regarding the improvements carried out by the appellant-defendant No.4 on 1 acre of land of the item No.1 of the suit schedule properties would also have to be adjudicated upon by the Court during the course of final decree proceedings.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

BMC: List No.: 1 SI No.: 80