



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1330 OF 2019 (PAR)

BETWEEN:

SMT. LAKSHMAMMA
DAUGHTER OF ANNEGOWDA,
WIFE OF RAJEGOWDA,
AGED ABOUT 56 YEARS,
RESIDING AT BITTAGADANAHALLI VILLAGE,
TATTEKERE POST, KASABA HOBLI,
HASSAN TALUK, HASSAN DISTRICT - 573 220.

...APPELLANT

(BY SRI. P.M. GOPI, ADVOCATE FOR
SRI. SIDDAMALLAPPA P.M, ADVOCATE)

AND:

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

1. SRI. ANNEGOWDA
SON OF LATE HANUMANTHEGOWDA,
AGED ABOUT 91 YEARS,
RESIDING AT BITTAGADANAHALLI VILLAGE,
TATTEKERE POST, KASABA HOBLI,
HASSAN TALUK, HASSAN DISTRICT - 573 220.
2. SRI. THAMMANNAGOWDA
SON OF ANNEGOWDA,
AGED ABOUT 56 YEARS,
RESIDING AT BITTAGADANAHALLI VILLAGE,
TATTEKERE POST, KASABA HOBLI,



HASSAN TALUK, HASSAN DISTRICT - 573 220.

3. SMT. SUBSHEELAMMA
DAUGHTER OF ANNEGOWDA,
WIFE OF LATE KRISHNEGOWDA,
AGED ABOUT 51 YEARS,
RESIDING AT BITTAGADANAHALLI VILLAGE,
TATTEKERE POST, KASABA HOBLI,
HASSAN TALUK, HASSAN DISTRICT - 573 220.

4. SMT. SUSHEELA
WIFE OF THAMMANNAGOWDA,
AGED ABOUT 46 YEARS,
RESIDING AT BITTAGADANAHALLI VILLAGE,
TATTEKERE POST, KASABA HOBLI,
HASSAN TALUK, HASSAN DISTRICT - 573 220.

...RESPONDENTS

(BY SRI. CHETHAN B, ADVOCATE FOR R2 AND R4;
R3 - SERVED;
VIDE ORDER DATED 09.06.2026, APPEAL STANDS
DISMISSED AS AGAINST R1)

THIS RSA IS FILED UNDER SECTION 100 OF CPC
AGAINST THE JUDGMENT AND DECREE DATED 01.04.2019
PASSED IN RA.No.57/2017 ON THE FILE OF THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 13.04.2017 PASSED IN OS.No.105/2013
ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE,
HASSAN.

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.P.M.Gopi, learned counsel appearing for Sri.Siddamallappa P.M., learned counsel for the appellant and Sri.Chethan B., learned counsel for respondent Nos.2 and 4.

2. Unsuccessful plaintiff in O.S.No.105/2013 is the appellant in this second appeal. She is challenging the dismissal of the suit in O.S.No.105/2013 which was confirmed in RA No.57/2017.

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

3.1. Plaintiff filed a suit claiming that herself, defendant Nos.1 to 3 are the joint family members and defendant No.4 is the wife of defendant No.2.

3.2. Defendant No.5 was also impleaded in the suit and later on he was deleted and the suit continued only against original four defendants.



3.3. Plaintiff contended that she being the co-owner of the suit properties, demanded for the share which was refused by the defendants and therefore, she has to file the suit seeking partition and separate possession in respect of the following properties (hereinafter referred to as suit properties):

Item No.1: Property bearing old Sy.No.63, New Sy.No.64/2, measuring 3 guntas situated at Bittagodanahalli village, Kasaba Hobli, Hassan Taluk and bounded by:

East: Property of Thammaiah

West: Property of Krishne Gowda

North: Buffallows Pit (Yemme Gundi) and pathway

South: Property of Moganna Gowda and Mariyappa

Item No.2: Property bearing Sy.No.97/4 and Sy.No.97/2, measuring 35½ guntas dry situated at Bittagodanahalli village, Kasaba Hobli, Hassan Taluk and bounded by:

East: Land property of Ere Gowda now purchased by Kala Chari

West: Land Property of Kariyappa

North: Land Property of Hanumanthe Gowda

South: Land Property of Rame Gowda

Item No.3: Property bearing Sy.No.10/P, measuring 1 acre 17 guntas situated at Sanklapura village, Kasaba Hobli, Hassan Taluk and bounded by:

East: Land property of Manjegowda S.o Sannegowda



West: Land Property of Hanumanthe Gowda S/o Krishne Gowda

North: Land Property of Manje Gowda S.o Dase Gowda

South: Gomala Land

Item No.4: Property bearing Sy.No.35/2, measuring 12½ guntas wet situated at Bittagodanahalli village, Kasaba Hobli, Hassan Taluk and bounded by:

East: Bund (Kere Aeri)

West: Property of Hanumanthe Gowda

North: Land Property of Krishne Gowda S.o Honne Gowda

South: Land Property of Krishne Gowda, Thimmaiah and Bore Gowda.

4. Pursuant to the suit summons, defendant No.1 being the father of the plaintiff and defendant Nos.2 and 3, supported the plaintiff by contending that suit properties are to be partitioned.

5. Defendant No.2 filed the written statement denying the plaint averments by contending that there is an earlier partition which was acted upon by mutating the revenue entries and plaintiff and defendant No.3 have also been granted share in the said suit property and therefore, suit is not maintainable.



6. Defendant No.2 also contended that apart from granting the share in the property, cash was also paid and sum of Rs.10,00,000/- was paid for construction of the house for the plaintiff and defendant No.3, but suppressing those material aspects, a false suit has been filed.

7. It is also specific contention of defendant No.2 that despite granting share in the suit properties, as well as sum of Rs.10,00,000/- for construction of the house, there was additional demand of Rs.5,00,000/- by the plaintiff which was not complied by defendant No.2 on account of his incapacity to pay the amount and a false suit has been filed by the plaintiff.

8. Based on the rival contentions, learned Trial Judge raised necessary issues:

- i. Whether the plaintiff proves that the suit schedule properties are the ancestral and joint family properties and available for partition between herself and defendant Nos.1 to 3?*
- ii. Whether the plaintiff proves that she is having 1/4th share in the suit properties?*



- iii. Whether the defendants prove that the valuation of the suit and court fee paid by the plaintiff is incorrect?*
- iv. Whether the defendants prove that the defendant No.2 and 4 are the absolute owners and in possession of suit schedule item No.1, 3, 4 and 20 gunta in suit item No.2 property?*
- v. Whether the defendant prove that the defendant No.5 is the owner and in possession of suit item No.5?*
- vi. Whether the plaintiff proves that she is entitled for the relief of partition and separate possession of 1/4th share in the suit properties?*
- vii. What order or decree?*

9. After recording the evidence of the parties, learned Trial Judge noted that P.W.1 was not able to establish that there existed a joint family between plaintiff, defendant Nos.1 to 3 and dismissed the suit.

10. Learned Trial Judge also held that defendant No.2 is successful in establishing the earlier partition based on which there is a mutation of revenue entries which has been evident from Ex.D.2 and therefore, dismissed the suit.



11. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.57/2017.

12. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappraisal of the material evidence on record, dismissed the appeal of the plaintiff *inter alia* holding in paragraph Nos.20 to 23 as under:

20. In order to fact of earlier division and it is acted upon or not is concerned, Ex.D.10 reveals that defendant No.1 and 2 entered agreement between them, wherein defendant No.1 has received Rs.2.00 lakhs from the 2nd defendant and has confirmed the fact with regard to division of properties and giving effect to the said division as per MR 4/2004-05. As per Ex.D.10 defendant No.1 is not claiming any right over the properties, which were shown in the schedule. But contents confirming the fact of division of properties between 1st defendant, plaintiff, defendant No.2 and 3. Signature of defendant No.3, as well as LTM of plaintiff is also put on Ex.D.10. In the plant itself contended that defendant No.1 and 2 have obtained the LTM of plaintiff on stamp paper and also in the cross-examination of P.W.1 specifically admitted her LTM on Ex.D.10, stating that she put her LTM as her father defendant No.1 assured to allot her share. Even defendant No.3 in her cross-examination has also



admitted her signature Ex.D.10(b). So, LTM of plaintiff and signature of defendant No.3 on Ex.D.10 is not disputed. Whether they have put their LTM and signature as a witnesses or defendant No.1 and 2 obtained their signature fraudulently by misrepresenting them is different aspect. Of course, Ex.D.10 is not a registered one and it is not creating any legal right of the parties over the immovable properties. However, contents of Ex.D.10 may be considered for collateral purpose to show that already there was a division in the family. Admittedly, names of plaintiff and defendant No.3 entered in RTC as per Ex.D.2, since 2004-05. Such being the case, plaintiff has not whispered a single word in the plaint in respect of their names entered in the RTC. Either plaintiff or defendant No.3 have not challenged the said mutation since 2004. Even, plaintiff has not produced the Ex.D.2 RTC. Plaintiff has intentionally suppressed the material aspect and not produced recent RTC, even though already division in the family and katha has been mutated in their name. The plaintiff has not approached with clean hands. When plaintiff and defendant No.3 are not disputing the fact of execution of EX.D.10, simply stated that they have by keeping them in dark and defendants No.1 and 2 have obtained their signature on stamp paper. It is not the case of the plaintiff that she has been defrauded, coercion or played fraud or undue influence or whether defendants No.1 and 2 cheated her. As stated above, Ex.D.10 is not a registered deed and not creates any right. Ofcourse, plaintiff and defendant No.3



are not made party to Ex.D.10 and they are signatories as a witness. However, contents of Ex.D.10 can be looked into for collateral purpose to believe that there was a partition in the family. Now plaintiff and defendant No.3 estopped from claiming share. After their marriage, they ousted from joint family. Even, coparcener or co-sharer voluntarily thrown out the their property/share into joint family and not challenged within a specified period, naturally they loses their share.

21. It is settled principle is that under Hindu Law, there is a scope or oral evidence prior to amendment Act. If the partition is reduced in writing, then only it requires to be compulsorily registered under Section 17 of the Registration Act. However, if there is a oral partition by way of family settlement and same is acted upon, the said partition is having its validity in the eyes of law.

22. In the cross-examination of P.W.1 stated that she was given in marriage to Thejur village and defendant No.3 was given in marriage to Hassan, but they have residing at Bittagondanahalli after their marriage. P.W.1 specifically admits that she is residing with her father defendant No.1 and sister defendant No.3 in the same house. She does not know survey number of item No.2, 3 and extent. P.W.1 denied that already there was a partition in the family. Even, she has not specifically denied that 7½ guntas allotted to defendant No.3 and herself in Sy.No.97/4, she shown her ignorance in her cross-examination. Even after partition in the family,



defendant No.2 given the land to her wife defendant No.4. As per Ex.D.5 name of defendant No.4 Susheela shown in Sy.No.35/2 12 acre 8 guntas and remaining 12 acre 8 guntas shown the name of 1st defendant. Ex.D.6 mutation reveals that name of the 4th defendant is entered. Plaintiff has not challenged the MR effected in her name and also subsequently the name of defendant No.4 mutated in revenue records. So, it clearly goes to show that said oral partition is acted upon. In the cross-examination of P.W.1 denied that she is residing in her property measuring 7½ guntas and growing Cucumber crop and also constructed the house and residing in the house. But she has stated that she is not residing in her property, it is a joint family property. P.W.1 denied that as per Ex.D.10 1st defendant received Rs.5.00 lakhs from 2nd defendant, then constructed a house in her property. She also denied that she received Rs.10.00 lakhs for construction of the house. Ex.D.11 to 13 photos reveal 2 houses constructed in the land and there is a Cucumber crop and Coconut trees. Ofcourse, P.W.1 denied that said 3 photos pertaining to their house constructed in their respective shares. It is pertinent to note here that even though plaintiff and defendant No.3 T Nagaraju got married and they are residing in the schedule property by constructing houses, after allotment of 7½ guntas to them.

23. Learned counsel for appellant relied a decision reported in KCCR 2010(2) – 1249 (DB) in Pushpalatha N.V. V/s. V. Padma and others. The facts and



circumstances of the above decision is not similar with the case on hand, as prior to came into amendment Act, 2005, there was a partition in the family. Further, learned counsel for appellant argued that defendant No.2 taken inconsistent defence as he has not produced any settlement deed. As per MR 4/2004-05 it was given effect on 5.10.2004, but 2nd defendant has not produced any partition deed dated 5.10.2004 to show that there was a partition in the family. It is not the case of defendant No.2 that there was a registered partition in the family. Defendant No.2 specifically contended that there was a oral partition in the family. As per partition mutation has been effected. So, the question of producing partition deed does not arise. Further, contended that as per MR 7/2003-04 it has been shown as partition deed dated 3.7.2004, but the defendant No.2 has been effected. Merely in revenue record shown as MR 7/2003-04 through partition, is not sufficient to believe that there was a registered partition. Further, in the appeal memo contended that there are 2 partition deeds dated 5.10.2004 and 3.7.2004, but the defendant No.2 has not at all produced the said deeds. As stated above, as per mutation, date shown as 5.10.2004 and 3.7.2004. Admittedly, there is an oral partition and the said oral partition is not in writing or registered. Merely defendant No.2 stated that there was a partition effected as per Panchayath Paluparikathu, is not a ground to disbelieve his case that there was a registered Panchayath Paluparikath. For the above, trial Court has properly



appreciated the available oral and documentary evidence and came to the right conclusion and dismissed the suit. Hence, the appellant has failed to prove that the judgment and decree passed by the trial Court is not sustainable and needs to be interfered. Accordingly, I answer point No.1 in the Negative."

13. Being further aggrieved by the same, plaintiff filed the present appeal on following grounds:

- *"The impugned Judgment and Decree passed by both the courts below are not maintainable either in law or facts of the case and is liable to be set aside.*
- *The impugned Judgment and Decree passed by both the courts below are otherwise opposed to law, facts and all probabilities of the case, and liable to be set aside.*
- *The impugned Judgment and Decree passed by both the courts below are highly capricious, perverse, illegal and bad in law and liable to be set aside.*
- *The impugned Judgment and Decree passed by both the courts below are very much arbitrary in nature and suffers for want of proper and convincing reasoning and the reasons which one assigned are arbitrary in nature and unsustainable in law; hence liable to be set aside.*



- *The impugned Judgment and Decree passed by both the courts below are very much against to the principles of natural justice and liable to be set aside.*
- *That Courts below have misread the evidence of PW-1 and documents produced and marked at Ex.P-1 to P-8 though the same is corroborative in nature and substantial in proving the claim of the Plaintiff on her entitlement of share in the suit schedule properties. Even then the courts below erred in dismiss the suit of the Appellant and thereby committed a miscarriage of justice.*
- *The courts below have totally erred in not considering the fact that the subsistence of Hindu Undivided Joint family pleaded by the Plaintiff and statutory presumption also stands in favour of the Plaintiff and that the earlier partition claimed by the Defendants, the burden lies on the Defendants to prove the partition and division. The courts below erred in passing judgment and decree dismissal the suit which is bad in law and liable to be set aside.*
- *The courts below are also not justified in dismissed the suit of the Appellant though the facts pleaded and evidence led on behalf of the Plaintiff is substantial and materialized the claim by placing acceptable and cogent evidence. It is as such, the*



impugned Judgment and Decrees suffers and liable to be set aside."

14. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum contended that both the Courts have committed a grave error in dismissing the suit of the plaintiff ignoring the fact that defendant No.2 failed to prove the earlier partition by producing panchayat parikath though in his cross-examination he has stated that he has produced the document to establish the earlier partition. Therefore, dismissal of the suit has resulted in grave miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

"1) Whether the courts below are justified in dismissed the suit of the Appellant misreading or appreciation of the evidence on record?

2) Whether the courts is justified in dismissing the suit of the Appellant in the absence proper pleading and evidence in proof of their defense of earlier partition?

3) Whether the courts below is justified in dismissing the suit though Plaintiff claim of share is very much within the provisions of Hindu Succession(Amendment) Act, 2005?"



15. He would further invite the attention of this Court that earlier partition is not proved by defendant No.2 and clandestinely he transferred the property in favour of defendant No.4 who is his wife without there being a valid document and thus, sought for admitting the appeal.

16. Per contra, learned counsel for respondent Nos.2 and 4 supports the impugned judgments.

17. Appeal stood dismissed as against respondent No.1 and respondent No.3 is served with the notice of the appeal and remained absent.

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

19. On such perusal of the material on record, it is noted that relationship among the parties is not in dispute. Though the cousin of plaintiff who is the nephew of defendant No.1 was impleaded as a party-defendant in the suit as defendant No.5, later on he was deleted in view of the document placed on record namely Ex.D.1 which is an order of



the Assistant Commissioner challenging the revenue entries by defendant No.1 which was clandestinely got entered into by father of defendant No.5.

20. Therefore, written statement of defendant No.5 as well his cross-examination to P.W.1 and D.W.1 need not be looked into.

21. Ex.D.2 is the document which has been placed on record to establish that plaintiff, defendant Nos.1 and 3 have also been granted share in the suit properties. Likewise, Ex.D.6 is the order passed in mutation register proceedings in MR No.4/1995-96.

22. Pertinently, learned counsel for the plaintiff while cross-examining D.W.1 who is defendant No.2, did not challenge the veracity or validity of Exs.D.2 and Ex.D.4 or for that matter, Ex.D.8.

23. It is the specific case of D.W.1 that after the panchayat parikath, the parties have approached the revenue authorities and based, on the panchayat parikath, the properties were divided and revenue entries were mutated.



24. In this regard, in Ex.D.6 itself, there is a clear mention that after issuing the notice to the concerned, taking note of the fact that nobody has objected for transfer of the revenue entries.

25. In Ex.D.6, names of the plaintiff, defendant Nos.1 to 3 is mentioned and necessary orders have been passed by the concerned revenue authorities after notifying all of them.

26. Pertinently, said order is dated 05.10.2004 passed by the revenue authorities and suit is filed in the year 2013.

27. What made the plaintiff to keep quiet from 05.10.2004 till 2013, is a question that remains unanswered. Conveniently while filing the suit, the latest pahani wherein the property has been shown in the name of plaintiff is also not produced by the plaintiff and there is a suppression that earlier to Ex.D.6, pahani's are produced.

28. In fact, there is a specific suggestion put to plaintiff in her cross-examination that knowing fully well that she has got a share as per Ex.D.2 – pahani, she has suppressed to file the latest pahani.



29. But the plaintiff has denied the same and has produced the pahani entry wherein it has been shown that property is standing in the name of Yelakki Gowda son of Dase Gowda, Hanumanthe Gowda son of Krishne Gowda, Thamanna Gowda son of Anne Gowda. Those entries are pertaining to the year 2003 and 2004.

30. Taking note of these aspects of the matter and subsequent entry was in the year 05.10.2004, learned Trial Judge was justified in holding that there is a previous partition and therefore, suit was second partition is not maintainable.

31. Learned Judge in the First Appellate Court not only accepted the reasons assigned by the learned Trial Judge but has also assigned additional reasons to uphold the judgment of the Trial Court as referred to supra.

32. Taking note of these aspects of the matter, when there is a concurrent finding of fact by bath the Courts, there is no merit in any one of the substantial questions of law raised in the appeal.



33. Accordingly, following:

ORDER

- i. Admission declined.
- ii. Appeal is dismissed.

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

KAV/List No.: 1 SI No.: 54