



IN THE HIGH COURT OF KARNATAKAAT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.243 OF 2017 (PAR)

BETWEEN:

1. MADHUSHREE H S
D/O C SHANKAR,
AGED ABOUT 26 YEARS,
2. MANASA H S
D/O C SHANKAR,
AGED ABOUT 24 YEARS,

APPELLANTS NO.1 AND 2 ARE
R/O HONGANUR VILLAGE,
KASABA HOBLI,
CHANNAPATANA TALUK,
RAMANAGARA DISTRICT -571 511.

...APPELLANTS

(BY SRI S R HEGDE HUDLAMANE, ADVOCATE)

AND:

1. C SHANKAR
S/O H M CHIKKAPUTTAIAH,
AGED ABOUT 58 YEARS,
R/O HONGANUR VILLAGE,
KASABA HOBLI,
CHANNAPATANA TALUK,
RAMANAGARA DISTRICT-571 511
2. GEETHA
W/O LATE CHANDRASHEKAR,
AGED ABOUT 60 YEARS,

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



3. N VIDYA
D/O LATE VIJAYA,
AGED ABOUT 29 YEARS,

RESPONDENTS NO.2 AND 3 ARE
R/O SHANTHEMOGENAHALLI DODDI,
KASABA HOBLI,
CHANNAPATANA TALUK,
RAMANAGARAM DISTRICT- 571 511

4. NANDEESH
S/O C NAGARAJU,
AGED ABOUT 34 YEARS,

5. SHIVAKUMAR
S/O C NAGARAJU,
AGED ABOUT 34 YEARS,

6. C BHEEMAKUMAR
S/O H M CHIKKAPUTTAIAH,
SINCE DECEASED BY HIS LEGAL REPRESENTATIVES

- 6(a) SAVITA
W/O LATE C.BHEEMAKUMAR
AGED ABOUT 60 YEARS

- 6(b) DIVYA
D/O LATE C.BHEEMAKUMAR
AGED ABOUT 35 YEARS

- 6(c) DARSHAN
S/O LATE C.BHEEMAKUMAR
AGED ABOUT 30 YEARS

RESPONDENT NOS.6(a) to 6(c) ARE
RESIDENTS AT NO.20,
2ND CROSS,
R.V.SHETTY LAYOUT
SHESHADRUPURAM
BENGALURU – 20



7. VEERA ABHIMANYU
S/O H M CHIKKAPUTTAIAH,
AGED ABOUT 45 YEARS,

RESPONDENTS NO.4 TO 7 ARE
R/O HONGANUR VILLAGE,
KASABA HOBLI,
CHANNAPATANA TALUK,
RAMANAGARAM DISTRICT.

...RESPONDENTS

(BY SMT.GEETHADEVI M. PAPANNA, ADVOCATE FOR R2 TO R5,
R6(a) to R6(c) AND R7;

R1 -SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE
DATED 07.12.2016 PASSED IN R.A.NO.3/2014 ON THE FILE OF
THE III ADDL.DISTRICT AND SESSIONS JUDGE, RAMANAGARA,
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT
AND DECREE DATED 03.12.2013 PASSED IN O.S.NO.225/2012
ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC
CHANNAPTTANA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

Heard Sri Hegde Hudlamane, learned counsel for the appellant who appeared through Video Conferencing and Smt.Geethadevi Pappana, learned counsel for respondent Nos.2 to 5.

2. Plaintiff's second appeal challenging the judgment passed by the First Appellate Court in R.A.No.3/2014 dismissing the suit of the plaintiff's by judgment dated 07.12.2016.

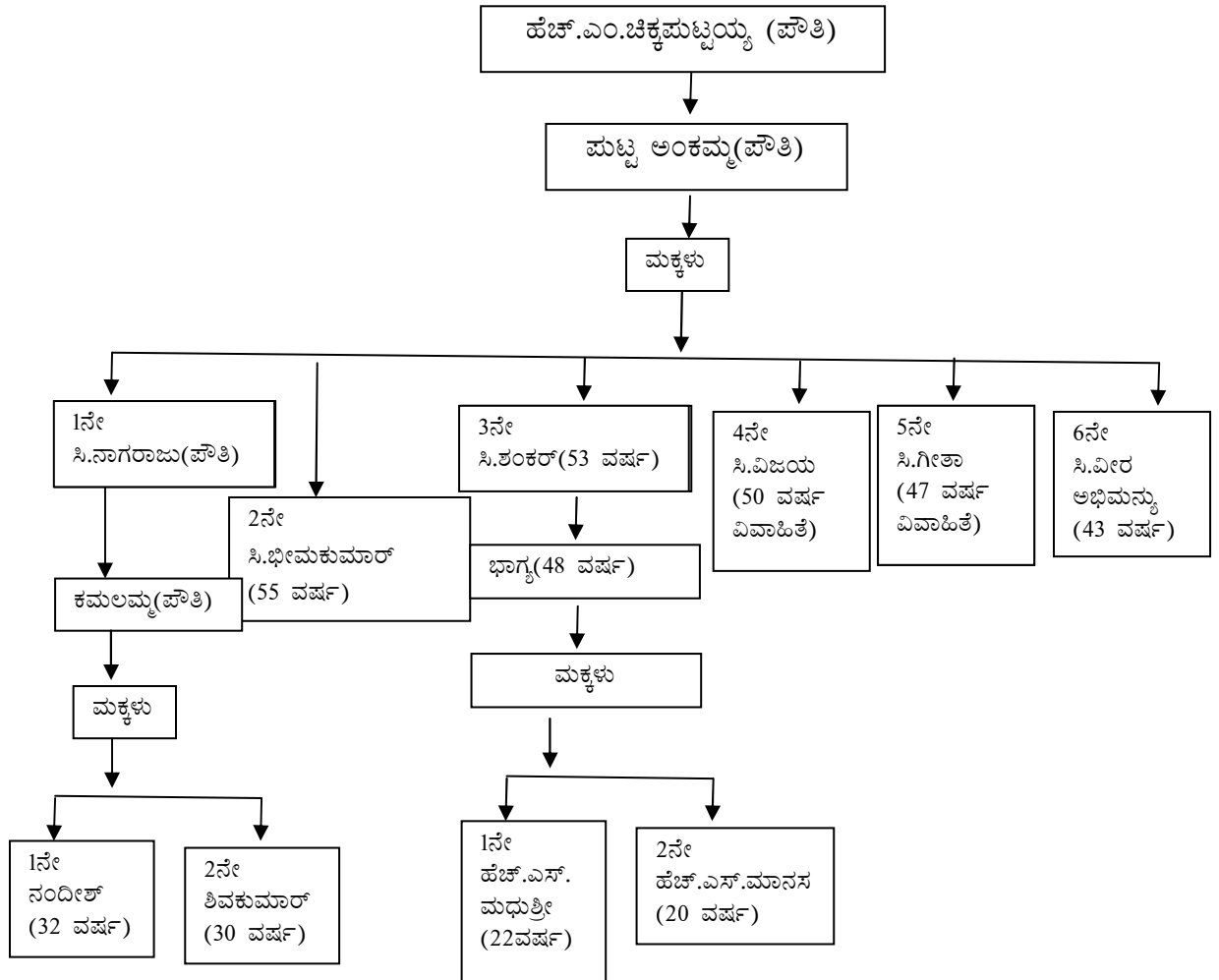
3. The appeal came to be admitted by the co-ordinate bench on 27.02.2020 on the following substantial questions of law.:

- (i) *Having regard to the age of the plaintiff as mentioned in the cause title, were they entitled to claim as coparceners, pursuant to the Hindu Succession (Karnataka Amendment) Act, 1994?*
- (ii) *Whether the Trial Court and the First Appellate Court were justified in rejecting the suit for partition on the basis of an unregistered partition (Ex.D.1) to which the plaintiffs were not the parties?"*



4. Facts of the case which are utmost necessary for disposal of the present second appeal are as under.

5. A suit for partition and separate possession came to be filed by the appellants herein who are the plaintiffs by contending that they are the daughters of defendant No.1-C.Shankara and that the original prepositious namely, Chikkaputtaiah had six children as per the family pedigree which is extracted hereunder.





6. It is further contented that suit properties are the ancestral properties and after death of Chikkaputtaiah, all the children of Chikkaputtaiah became the owners of the suit property. But, the grandmother-Putta Ankamma and defendants in collusion with each other to negate the rights over the suit property, created a partition deed and shown that father of the plaintiffs is residing separately. It is further alleged that father of the plaintiffs also joined hands with the other defendants to cheat the rights of the plaintiffs and on coming to know about the same, the plaintiffs demanded the share in the suit property which was refused by the defendants and therefore suit for partition in respect of the following properties came to be filed (hereinafter referred as the 'suit properties'):

ದಾವಾ ಸ್ವತ್ತುಗಳ ವಿವರ

1. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಹೊಂಗನೂರು ಗ್ರಾಮದ ಸರ್ವೇ ನಂ.309 ರಲ್ಲಿನ 0.39 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ	:	ಶಿವಲಿಂಗರಾಜೇ ಅರಸ್
ಪಶ್ಚಿಮಕ್ಕೆ	:	ವೆಂಕಟೇಗೌಡ
ಉತ್ತರಕ್ಕೆ	:	ರಂಜನ್‌ರಾಜೇ ಅರಸ್
ದಕ್ಷಿಣಕ್ಕೆ	:	ಸರ್ಕಾರಿ ರಸ್ತೆ



2. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಹೊಂಗನೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.310/2 ರಲ್ಲಿನ 0.34 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಚಿಕ್ಕ ವೆಂಕಟೇಗೌಡ
ಪಶ್ಚಿಮಕ್ಕೆ : ಹಚ್.ಪಿ.ಶ್ರೀನಿವಾಸ್
ಉತ್ತರಕ್ಕೆ : ಗುಂಡಯ್ಯ
ದಕ್ಷಿಣಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ

3. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಹೊಂಗನೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.197/1 ರಲ್ಲಿನ 0.27 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಚಿಕ್ಕ ವೆಂಕಟೇಗೌಡ
ಪಶ್ಚಿಮಕ್ಕೆ : ಹಚ್.ಪಿ.ಶ್ರೀನಿವಾಸ್
ಉತ್ತರಕ್ಕೆ : ಗುಂಡಯ್ಯ
ದಕ್ಷಿಣಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ

4. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಸುಣ್ಣಘಟ್ಟ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.60/2 ರಲ್ಲಿನ 1 ಎಕರೆ 20 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ
ಪಶ್ಚಿಮಕ್ಕೆ : ಚಲುವೇಗೌಡ
ಉತ್ತರಕ್ಕೆ : ಚಿಕ್ಕತಾಯಮ್ಮ
ದಕ್ಷಿಣಕ್ಕೆ : ದಾಸೇಗೌಡ

5. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಸುಣ್ಣಘಟ್ಟ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.46 ರಲ್ಲಿನ 1 ಎಕರೆ 12 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಪುಟ್ಟೇಗೌಡ
ಪಶ್ಚಿಮಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ
ಉತ್ತರಕ್ಕೆ : ಕುಮಾರ್
ದಕ್ಷಿಣಕ್ಕೆ : ರಾಮಮೂರ್ತಿಗೌಡ



6. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಸುಣ್ಣಘಾಟ್ ಗ್ರಾಮದ ಸರ್ವೇ ನಂ.30/2 ರಲ್ಲಿನ 2 ಎಕರೆ 2 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ
ಪಶ್ಚಿಮಕ್ಕೆ : ಚಲುವೇಗೌಡ
ಉತ್ತರಕ್ಕೆ : ಚಿಕ್ಕತಾಯಮ್ಮ
ದಕ್ಷಿಣಕ್ಕೆ : ದಾಸೇಗೌಡ

7. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಸಂತೆಮೋಗೇನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೇ ನಂ.68/2ಎ ರಲ್ಲಿನ 0.12 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ರಾಮಲಿಂಗೇಗೌಡ
ಪಶ್ಚಿಮಕ್ಕೆ : ಬೋರೇಗೌಡ
ಉತ್ತರಕ್ಕೆ : ಜಯಮ್ಮಣ್ಣಿ ಕೊಂ ಸುಬ್ಬರಾಜು ಅರಸ್
ದಕ್ಷಿಣಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ ಮತ್ತು ಪುಟ್ಟೇಗೌಡ

8. ರಾಮನಗರ ಜಿಲ್ಲೆ, ಚನ್ನಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಸಂತೆಮೋಗೇನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೇ ನಂ.68/2ಬಿ ರಲ್ಲಿನ 0.12 ಗುಂಟೆ ಜಮೀನಿಗೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ರಾಮಲಿಂಗೇಗೌಡ
ಪಶ್ಚಿಮಕ್ಕೆ : ಬೋರೇಗೌಡ
ಉತ್ತರಕ್ಕೆ : ಜಯಮ್ಮಣ್ಣಿ ಕೊಂ ಸುಬ್ಬರಾಜು ಅರಸ್
ದಕ್ಷಿಣಕ್ಕೆ : ಸರ್ಕಾರಿ ರಸ್ತೆ ಮತ್ತು ಪುಟ್ಟೇಗೌಡ”

7. Pursuant to the suit summons, first defendant appeared before the Court by engaging the counsel but did not choose to file a written statement.

8. It is defendant No.2 to 5 who filed written statement admitting the relationship but contented that there



was a partition that has taken place on 12.08.1988. Father of the plaintiffs has been given the grains (crop share) as his share and as such plaintiffs have no right to seek for partition in the suit properties and sought for dismissal of the suit.

9. Based on the rival contentions of the parties, the learned Trial Judge raised necessary issues and after recording the evidence of the parties decreed the suit of the plaintiffs in part.

10. The operative portion of the judgment of the Trial Court reads as under:

"The suit of the plaintiffs is partly decreed.

The plaintiffs and the defendants are declared to have the shares in the suit schedule properties and granage and the house which is standing in the name of defendant no.1 in to the following extent.

- a. The 1st Plaintiff is entitled for 1/18th share.*
- b. The 2nd plaintiff is entitled for 1/18th share.*
- c. The 1st defendant is entitled for 1/18th share.*
- d. The 2nd and 3rd defendants along with their mother are together entitled for 1/6th share.*
- e. The defendant No.4 is entitled for 1/6th Share.*
- f. The defendant No.5 is entitled for 1/6th Share.*
- g. The daughter C.Vijaya is entitled for 1/6th Share.*



h. The daughter C.Geetha is entitled for 1/6th Share.

3. The plaintiffs are hereby directed to include the granage claimed by the defendant Nos.3 to 5 to have been allotted to the share of the defendant No.1 in partition of the year 1988.

Draw preliminary decree accordingly."

11. Being aggrieved by the same, it is the defendant Nos.2 to 5 who filed the appeal before the First Appellate Court in R.A.No.3/2014.

12. Learned Judge in the First Appellate Court after securing the records heard the arguments of the parties and on re-appreciation of the material on record noted that common prepositious died on 09.12.1981 by then both the plaintiffs were not even born, as such, they cannot maintain the suit for partition against their own living father and uncles and thus, dismissed the suit of the plaintiffs.

13. Being aggrieved by the same, the present appeal has been filed.

14. Sri S.R.Hegde Hudlamane, learned counsel for the appellants, reiterating the grounds urged in the appeal memorandum, pursuant to the substantial questions of law



raised in the appeal, would contend that following the dictum of the Hon'ble Apex Court in the case of ***Vineeta Sharma vs. Rakesh Sharma*** reported in ***(2020) 9 SCC 1***, plaintiff being the daughters of defendant No.1 – C.Shankara, are entitled to share in the suit property as coperseners. Therefore, the dismissal of the suit by the First Appellate Court has resulted in perversity and illegality and thus sought for allowing the appeal.

15. He would further contend that Ex.D1 is a concocted document which is an unregistered partition deed wherein no shares have been given to the first defendant as no immovable property is granted to first defendant and so also to the sisters of defendant No.1, who are the paternal aunts of the plaintiffs. Therefore, said partition does not bind the rights of the plaintiffs and sought for allowing the appeal by answering the substantial questions of law in favour of the plaintiffs.

16. Per contra, Smt. Geethadevi Pappana, learned counsel for the contesting respondents who are defendant Nos.2 to 5 before the Trial Court, would contend that the dismissal of the suit by the First Appellate Court is just and proper as plaintiffs were not even born when the common



prepositious died and whatever the rights that the plaintiffs have got is only in respect of the property that has been granted to the first defendant. Therefore, dismissal of the suit is just and proper.

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

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

19. Admittedly common prepositious H.M. Chikkaputtaiah died in the year 1981.

20. Admittedly, from the age that has been shown in the plaint, the first plaintiff would have born in the year 1987 and second plaintiff in the year 1989.

21. Applying the principles of law enunciated in the case of **Vineeta Sharma** supra, it is the mandatory requirement for the plaintiffs to plead that they were born when the common prepositious was still alive so as to claim the right as a coparcener.

22. In the case on hand, since the plaintiffs were not even born at the time of the death of the common prepositious,



notional partition has taken place among the children of the common prepositious.

23. The share of common prepositious is to be shared by the mother and the other sharers equally as per Section 8 of Hindu Succession Act.

24. If at all if anybody who are aggrieved by the said partition in not granting the share, it is the paternal aunts of the plaintiffs.

25. Admittedly, they have not claimed any right, title or interest in the suit property nor it is their case that there is no equitable partition under Ex.D1.

26. Among the Hindus, the oral partition is permissible or anything even if reduced into writing, it need not be compulsory registered as is settled by various judicial pronouncements.

27. Therefore, Ex.D1 is acted upon among the parties and the paternal aunts of plaintiff did not choose to challenge the same. Therefore, plaintiffs cannot plead for and on behalf of defendant No.1 or the paternal aunts, who were not even born when the common prepositious died and as such they do not have any right to seek for the relief as prayed for in the plaint.



28. However, if the plaintiffs are really aggrieved that the first defendant is not granting any share in his property, it is always open for them to work out remedy in a duly constituted suit.

29. With the above observation this Court is of the considered opinion that substantial questions of law are to be answered against the appellants and accordingly they are answered.

30. Consequently, the following:

ORDER

Appeal is meritless and hereby dismissed.

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