



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 313 OF 2017 (PAR)

BETWEEN:

1. SRI. SIDDARAMU
S/O LATE KOMBRAIAH
SINCE DEAD BY LRS
- 1(A). SMT. PARVATHAMMA
W/O LATE SIDDARAMU
AGED ABOUT 59 YEARS
- 1(B). SRI. G.S. BYRAVESHWARA
S/O LATE SIDDARAMU
AGED ABOUT 48 YEARS
- 1(C). SRI. RAJIV
S/O LATE SIDDARAMU
AGED ABOUT 45 YEARS
- 1(D). SRI. JAIKUMARA
S/O LATE SIDDARAMU
AGED ABOUT 42 YEARS
- 1(E). SRI. PURUSHOTHAMA
S/O LATE SIDDARAMU
AGED ABOUT 40 YEARS

ALL ARE RESIDENTS OF
DODDA GOSAYI GHATTA ROAD,

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



GANJAM, SRIRANGAPATNA TALUK
MANDYA DISTRICT.

...APPELLANTS

(BY SRI. THILAK RAJ S.V, ADVOCATE FOR
SRI. H.N. BASAVARAJU, ADVOCATE)

AND:

1. SMT. PUTTAMANCHAMMA @ LAKSHMAMMA
W/O CHALUVARAJU
AGEDA BOUT 49 YEARS
R/O NO.210, ILLAVALA VILLAGE
MYSORE TALUK AND DISTRICT.
2. SMT. MANCHAMMA
W/O KOMBRI SIDDAIAH
AGEDA BOUT 76 YEARS
3. SRI. GAVISWAMY
S/O LATE KOMBRI SIDDAIAH
AGED ABOUT 46 YEARS
4. SMT. PARVATHAMMA
W/O SIDDARAMU
AGED ABOUT 56 YEARS

R2 TO R4 ARE ALL R/O OF
GANJAM, SRIRANGAPATNA TOWN
MANDYA DISTRICT - 571 438.

5. SRI. AYUB PASHA
S/O ABDUL AZEEZ
MAJOR IN AGE
R/O NO.3333/3, WESLEY ROAD



TILAK NAGAR,
MYSORE

...RESPONDENTS

(BY SRI. KRISHNAMURTHY G. HASYAGAR, ADVOCATE FOR R5;
VIDE ORDER DATED 11.06.2026 APPEAL STANDS
DISMISSED AS ABATED IN RESPECT OF R2;
R1, R3, R4 - SERVED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 25.11.2016 PASSED IN
RA NO.41/2013 ON THE FILE OF THE PRL. SENIOR CIVIL
JUDGE AND JMFC, SRIRANGAPATNA DISMISSING THE APPEAL
FILED THE JUDGMENT AND DECREE DATED 19.07.2013
PASSED IN OS NO.144/2005 ON THE FILE OF THE PRL. CIVIL
JUDGE, SRIRANGAPATNA.

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.

2. Present second appeal is filed by defendant
No.3 challenging the decree passed in O.S.No.144/2005
dated 19.07.2013 which was confirmed by the First
Appellate Court in RA No.41/2013 dated 25.11.2016
decreeing the suit of the plaintiff granting 1/6th share in
item Nos.3 to 5 of the suit properties.



3. Facts of the case are as under:

3.1. Plaintiff filed a suit for partition and separate possession in respect of the following properties contending that she is the daughter of Manchamma and Kombri Siddaiah.

3.2. The suit properties according to the plaintiff were given the occupancy rights based on the possession held by the ancestors of the parties and by filing Form No.7 before the Land Tribunal.

3.3. Suit was resisted by defendant Nos.3 to 5. Defendant Nos.1 and 2 remained absent and they were placed *ex-parte* before the Trial Court. It is defendant Nos.3 to 5 who filed separate written statement and resisted the suit. Defendant No.5 is the purchaser of item No.9 of the suit properties.



3.4. Suit on contest came to be decreed and operative portion of the Trial Court Judgment reads as under:

The suit of the plaintiff is hereby partly decreed.

It is hereby declared that, the plaintiff is entitled to get 1/6th share in suit schedule item No.3 to 5.

It is hereby declared that, the plaintiff also entitled to get 1/3rd share in suit schedule item No.1 i.e., survey No.534, measuring 0.8 guntas only (but not 0.16 guntas as shown in schedule).

It is further declared that, defendants No.1 and 2 also entitled to get 1/6th share each in suit schedule item No.3 to 5.

The defendants No.1 and 2 also entitled to get 1/3rd share each in suit schedule Item No. 1 i.e., survey No.534 only measuring to an extent of 0.8 guntas (but not 0.16 guntas as shown in the schedule).

The defendant No.3 Siddaramu is entitled to get 3/6th share in suit schedule item No.3 to 5.

Suit of the plaintiff with respect to suit schedule item No.2 and 6 to 9 is hereby dismissed.



On considering the facts and circumstances of the case, parties are bear their own cost.

Draw preliminary decree accordingly.

3.5. Being aggrieved by the same, it is the defendant No.3 filed the appeal before the First Appellate Court in RA No.41/2013.

3.6. Learned Judge in the First Appellate Court after securing the records heard the arguments of the parties and dismissed the appeal by considered judgment dated 25.11.2016.

4. Being further aggrieved by the same, it is third defendant who has filed the present appeal on following grounds:

- *It is submitted that the impugned judgments and decrees of the Courts below are erroneous in law as well as illegal and against to the principles established in law in so far as decreeing the suit in favour of the plaintiff and defendant Nos.1 and 2 to the extent of the share as declared in the impugned judgments and decrees. As such, the same are liable to be set aside.*



- *It is submitted that admittedly item Nos.3 to 5 of the schedule properties viz., Sy.No.533 measuring 0-51 guntas; Sy.No.532 measuring 0-10 guntas and Sy.No.548 measuring 0-11 guntas of Srirangapatna Village are tenanted lands and occupancy right was granted in favour of the defendant No.3 and this aspect is not in dispute. There is no plea claiming that these items of schedule properties are jointly family tenancy or there is no evidence to that effect either before the Land Tribunal or before the trial Court. In the absency of the pleading, issue No.1 ought not to have been framed by the trial Court. However, admittedly this is the suit filed by the married daughter. Under sub-section (12) of Section 2 of the Karnataka Land Reforms Act, 1961, the word 'family' is defined which reads thus:-*

"(12) "family" means, (a) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

(c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and



unmarried daughters, whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters;"

- *On perusal of the definition, the spouse or spouses and their minor sons and unmarried daughters are only fallen within the category of the family. Even clauses (b) and (c) also refer only to unmarried daughters. Even under Section 2(17), the words "joint family" was also defined which reads thus:-*

"joint family" means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence;

- *According to the definition, when a married daughter is not a member of the family, the Courts below have committed an error in recording the finding that the occupancy right granted in favour of defendant No.3 by the Land Tribunal, is also enure to the benefit of the plaintiff and defendant Nos. 1 and 2. Defendant Nos.1 and 2 were placed exparte before the trial Court and they have not appeared and not pleaded that the occupancy right granted by the Land Tribunal is enure to their*



benefit. When the plaintiff is not entitled for a share in related to the tenanted lands and the plaintiff was not included within the definition of the term 'family', the suit filed by her ought to have been dismissed in its entirety by the trial Court, but it has decreed the suit to such an extent. As such, the impugned judgment and decree is bad and liable to be set aside. The issue as raised before the Courts below as well as this Hon'ble Court is fully covered by the Division Bench judgment of this Hon'ble Court rendered in the case of Nimbavva Vs. Smt. Channaveerayya, reported in 2015 (1) KCCR 205, wherein it is held that the married daughters are not the members included within the definition of the 'family', much less in view of Section 24 of the Karnataka Land Reforms Act. The finding recorded by the Courts below that the occupancy right granted in favour of defendant No.3 would also enure to the benefit of the plaintiff and defendant Nos. 1 and 2, is illegal and erroneous in law. As such, the same is liable to be set aside.

- *It is submitted that even assuming for a moment that the tenanted properties are ancestral properties as the finding recorded by both the Courts below, the married daughters, though also made as coparcenaries by virtue of 2005 amendment to the Hindu Succession Act, but because of the fact the coparcener Kombri Siddaiah has died long prior to the Amendment Act came into force, where an equal share to the daughter by applying the provisions under the 2005 Amendment Act is also incorrect and it is illegal, much less in view of Pulavathis's*



judgment as rendered by the Hon'ble Apex Court, the daughter is not entitled for equal share where a coparcener died long prior to 2005 Amendment Act given effect to. Even in that view of the matter also, the judgments and decrees of the courts below are bad and liable to be set aside.

- *It is submitted that the courts below, even without taken risk to appreciate the evidence according to the proper perception only upon referring to the documents as marked before the trial court without appreciating its contents decreed the suit. As such, the courts below have committed a serious error in law in decreeing the suit in favour of the plaintiff as well as granting share to defendant Nos.1 and 2 though they have not chosen to contest the suit, much less they were placed exparte.*

- *It is submitted that, on perusal of the judgment and decree passed by the first Appellate Court, the findings are nothing but reiterating the findings recorded by the trial court only by referring to the documents marked in the course of the evidence, more particularly at paragraphs 23, 24 and 25 of the judgment of the first Appellate Court and it only reveals that the first Appellate Court even without discussing and re-appreciating the evidence available on record, simply holds that the trial Court has considered each and every document in detail and findings are recorded and therefore the findings of the trial court does not call for any interference. This is not the duty expected to be rendered by the first*



Appellate Court in exercise of its power under Order 41 Rule 1 of the C.P.C. much less as per Section 96 of the C.P.C. also. Therefore, the findings recorded by the first Appellate Court are also erroneous as well as it is not exercising its power conferred on it under Order 41 Rule 1 of the C.P.C. in considering and deciding the appeal filed under Section 96 of the C.P.C.

5. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would vehemently contend that both the Courts failed to note that the plaintiff had no right in respect of suit property as she was a married daughter. As such, decreeing the suit in respect of items No.3 to 5, granting 1/6th share has resulted in grave miscarriage of justice and sought for admitting the appeal on the following substantial questions of law:

a. Whether the courts below have committed an error in decreeing the suit allotting the share in related to tenanted properties in favour of the plaintiff with reference to item Nos.3 to 5 properties holding that the occupancy right granted in favour of defendant No.3 would enure to the benefit of the joint family members



ignoring the definition of family' as provided under sub-sections(12) and 17 of Section 2 read with Section 24 of the Karnataka Land Reforms Act ?

b. Whether the courts below are justified in decreeing the suit awarding share to defendant Nos.1 and 3 despite they have not appeared before the Court and they have not pleaded their entitlement claiming as a joint family property in related to the lands covered under the Land Tribunal's order in favour of defendant No.3, as such could it not vitiate the judgments and decrees of the courts below?

c. Whether the courts below are justified in decreeing the suit without appreciating the documentary evidence according to the proper perception and approaching the matter with perversity; as such could it not vitiate the judgments and decrees of the courts below?

d. Whether the judgment and decree of the first appellate court is justified in law as the first Appellate Court has failed to exercise its power in a manner provided under Order 41 Rule 1 of the C.P.C. in the process of re-appreciating the evidence; as such, the judgment and decree of the first Appellate Court be justified in law?

6. Contesting respondents are absent and fifth defendant is represented by Sri Krishnamurthy G.



Hasyagar, who would submit that suitable orders be passed as there is no decree as against fifth defendant.

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

8. On such perusal of the material on record, the reasons assigned by learned Trial Judge as well as the First Appellate Court is on the factual aspects of the matter on which there is not much dispute.

9. Insofar as the contentions urged on behalf of the appellant that the plaintiff being the married daughter is not entitled for the share in the ancestral property does not hold water for further consideration in view of the judgment of Hon'ble Apex Court in the case of ***Vineetha Sharma vs. Rakesh Sharma*** reported in ***(2020) 9 SCC 1***, having regard to the scope of Section 100 of the Code of Civil Procedure.

10. As such, this Court does not find any merit in any one of the substantial questions of law.



11. Consequently, following:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

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

KAV/SNC
List No.: 1 Sl No.: 47