



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 325 OF 2017 (PAR)

BETWEEN:

1. SRI. CHIKKA MUNIYAPPA
S/O. DODDAPPA
AGED ABOUT 50 YEARS,
R/O. CHELUVANAHALLI VILLAGE
VOKKALERI HOBLI
KOLAR TALUK AND DISTRICT
PIN-562 102.
2. SRI. NARAYANASWAMY
S/O. CHIKKA MUNIYAPPA
AGED ABOUT 50 YEARS
3. SMT. RATHNAMMA
W/O. VENKATESHAPPA
AGED ABOUT 45 YEARS

BOTH ARE R/AT
KANAJENAHALLI VILLAGE
KASABA HOBLI
CHIKKABALLAPURA TALUK
AND DISTRICT, PIN-562 102.

...APPELLANTS

(BY SMT. DIVYA .K, ADVOCATE FOR
SRI. ANANDA .K, ADVOCATE)

AND:

1. SRI. PUJARI MUNIYAPPA
DEAD BY LRS

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



1(A) SRI. MUNIYAPPA,
S/O. LATE PUJARI MUNIYAPPA
AGED ABOUT 60 YEARS

1(B) SRI. RAMAPPA
S/O LATE PUJARI MUNIYAPPA
AGED ABOUT 57 YEARS

BOTH ARE R/AT
CHELUVANAHALLI VILLAGE
VOKKALERE HOBLI, KOLAR TALUK
AND DISTRICT-562 102.

1(C) SMT. NARAYANAMMA
W/O. RAMAPPA
AGED ABOUT 50 YEARS
R/AT ANDRAHALLI VILLAGE
KOLAR TALUK AND DISTRICT
PIN-562 102.

1(D) SMT. LAKSHMAMMA
W/O. HANUMANTHAPPA
D/O. PUJARI MUNIYAPPA
AGED ABOUT 45 YEARS
R/O. KURUDUMALE ARAHALLI VILLAGE
MULABAGAL TALUK
KOLAR DISTRICT, PIN-562 102.

1(E) SMT. MUNIRATHNAMMA
W/O. KRISHNAPPA
D/O. PUJARI MUNIYAPPA
AGED ABOUT 44 YEARS
R/AT OOLAVADI VILLAGE
CHINTHAMANI TALUK
KOLAR DISTRICT-563 125.

2. SRI. C. GOVINDA GOWDA
S/O. LATE C.S. CHOWDAPPA
AGED ABOUT 48 YEARS
R/AT CHELUVANAHALLI VILLAGE
VOKKALERI HOBLI



KOLAR TALUK AND DISTRICT
PIN-562 102.

3. SRI. DEVARAJA
S/O. LATE RAMAPPA
AGED ABOUT 53 YEARS
R/AT CHELUVANAHALLI VILLAGE
VOKKALERI HOBLI, KOLAR TALUK
AND DISTRICT, PIN-562 102.

...RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 05.11.2016 PASSED IN RA NO.52/2012 ON THE FILE OF THE II ADDL. DISTRICT AND SESSIONS JUDGE, KOLAR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 15.3.2012 PASSED IN OS NO.242/2000 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM., KOLAR. TRIAL COURT DISMISSED THE SUIT. APPELLATE COURT DISMISSED THE APPEAL. THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

The unsuccessful plaintiffs are the appellants challenging the judgment and decree passed in O.S.No.242/2000 confirmed in R.A.No.52/2012.

2. The facts in the nutshell, which are utmost necessary for disposal of the present appeal, are as under;



Plaintiff No.1 and defendant No.1 are brothers being the sons of Doddappa. According to plaintiff averments, they formed joint family and family was owning ancestral properties. Defendant Nos.1(a) and 1(b) are the sons of defendant No.1 and father of the plaintiff No.1 died about 40 years ago when the plaintiff was aged about 4 to 5 years. After his death, plaintiff's mother and plaintiff were living with the defendants and plaintiff was under care and protection of defendant No.1.

3. It is further contented that defendant No.1 appointed the plaintiff as an agricultural labourer for about 20 years under Sri.Maderahalli Gopalappa. After the marriage of the 1st plaintiff, his mother died and plaintiff No.1 and his wife continued to live with the defendants under the same roof enjoying the joint family and ancestral properties.

4. According to the case of the plaintiffs, Sri.Pujari Muniyappa was the common Propositus, who



had three sons namely Doddappa, who is the father of plaintiff No.1 and defendant No.1, Chikkanna and Pujari Muniyappa i.e., defendant No.1. Chikkanna said to have died issue less. Defendant No.1 had two sons, who are defendant Nos.1(a) and 1(b).

5. It is further contented by the plaintiffs that he refused to work under Sri.Maderahalli Gopalappa also as an agricultural labourer after his marriage, but defendants insisted that he should work as an agricultural labourer. At that juncture, plaintiff No.1 said to have demanded share in the ancestral property, but the same was postponed by defendant No.1 on one pretext or the other and a legal notice was issued.

6. Since there was no compliance to the callings of the legal notice, suit in O.S.No.242/2000 came to be filed for partition and separation in the respect of immovable properties, which are described hereunder (hereinafter referred to as suit item Nos.1 to 10):



" Item No:1

Land bearing Sy. No.6/4 measuring 1.00 acres situated at Cheluvanahalli Village, bounded on East by Muniyappa, West by: Chikka Muniyappa land, North by: Dyavegowda, South by: Chowdappa land.

Item No:2

Land bearing Sy. No.7/1A and 7/1B measuring 28 and 33 respectively situated at Cheluvanahalli bounded on East by: Dyavegowda, West by: Gramanatha, North by: Nagaraju, South by: Chikka Muniyappa land.

Item No:3

Land bearing Sy. No.9 measuring 0.39 respectively, situated at Cheluvanahalli bounded on East by: Government land, West by: Chowdappa, North by: Muniyappa, South by: Government land.

Item No:4

Land bearing Sy. No.110/1 and 110/2 measuring 1.09 and 3.03 respectively, situated at Cheluvanahalli bounded on east by: Nanjundaswamy, west by: Nagappa, North by: Chikka Ellappa, south by: Dodda Bychappa @ Doddappaiah land.

Item No:5

Land bearing Sy. No.111/4 measuring 0.08 respectively, situated at Cheluvanahalli bounded on east by: Nagappa, West by Ramappa, North and South by: Dodda Bychappa @ Doddappaiah land.



Item No:6

Land bearing Sy. No.11/6 total extent of 10 guntas, situated at Cheluvanahalli Village, Vokkaleri Hobli, Kolar Taluk, bounded on east by: Nanjundaswamy, west by: Nagappa, North by: Land of Yellappa, South by: Doddappaiah.

Item No:7

Land bearing Sy. No.111/2 measuring 0.11 guntas, situated at Chaluvanahalli Village, Vokkaleri Hobli, Kolar Taluk, bounded on east by: Nagappa's land, West by: Muniyappa's land, North by: Narayanappa and Appojappa's land, south by: Kaluve.

Item No:8

House property bearing Janjar No.229 and property No.180 tile roofed house measuring East-West: 7.3 meters, North-South 14.5 meters, bounded on east by: Ramappa, West by: Sandu and Chikkamuniyappa, North by: 8 feet road, South by: Doddappaiah.

Item No:9

House property bearing Janjar No.230 and property No.181 tile roofed house situated at Chaluvanahalli village, Vokkaleri Hobli, Kolar taluk, measuring East - West: 7.3 meters, North-South 14.5 meters, bounded on east by: Govt. road, West by: Sandu and P.Muniyappa, north by: 8 feet road, South by: Doddappaiah.



Item No:10

Land bearing Sy. No.7/2 measuring 1.34 guntas, situated at Chaluvanahalli village, Vokkaleri Hobli, Kolar taluk, bounded on east by: Out another property, and Dyavappa's land, west by: Govt road, North by: Land of Nagarajappa and Govindaswamy, South by: Land of Venkateshappa, Srinivasappa."

7. Pursuant to the service of suit summons, defendant Nos.1 to 3 appeared before the Trial Court. During the pendency of the suit, defendant No.1 died and his legal representatives were brought on record, who have filed the written statement by denying the averments of the plaint except admitting the relationship between the parties.

8. They also brought to the notice of the Court that plaintiff No.1 had filed a separate suit earlier on 19.10.2000 against the defendants for partition and separate possession and an *ex-parte* decree was obtained by plaintiff No.1 on 03.09.2005. However, though defendant No.1 said to have died on 03.06.2001, without



impleading the legal representatives of the deceased defendant No.1, the plaintiffs managed to obtain an *ex-parte* decree on 03.09.2005 and the said judgment was thus against the dead person and was nullity.

9. It is also contented by the legal representatives of defendant No.1 that the common propositus did not possess any properties and therefore, his sons including Doddappa obtaining any property as an ancestral property itself is incorrect and all the three children of common propositus got separated in the year 1950 and they were living separately. Thus, legal representatives of defendant No.1 sought for dismissal of the suit.

10. Defendant Nos.2 and 3 filed separate written statements admitting the relationship between the parties, but they denied the plaint averments in *toto* in reiterating the contentions heard on behalf of the legal representatives of defendant No.1.



11. Based on the rival contentions, learned trial Judge framed four issues and an additional issue, which read as under:

"(i) Whether plaintiff proves that the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants?

(ii) Whether the plaintiff is entitle for partition and separate possession of his half share in the suit schedule properties by metes and bounds?

(iii) Whether defendants prove that the suit schedule properties are the self-acquired properties of defendant No.1?

(iv) What order or decree the parties are entitled to:

Additional Issue

(i) Whether the defendant Nos.2 and 3 prove that one P.M.Muniyappa sold Sy. No.111/5 to an extent of 0-12 guntas in favour of Govindagowda and Sy. No.111/4 to an extent of 0-04 gunta in favour of one Devarajaiah and they are the bonafide purchaser of the said properties?"

12. In order to prove the case of the plaintiffs, plaintiff No.1 got examined himself as PW1 and a witness by name Krishnappa as PW2 and placed on record



32 documents, which were exhibited and marked as Exs.P1 to P.32.

13. As against the material evidence placed on record, P.M.Muniyappa being the first legal representative of defendant No.1 got examined himself as DW1 and defendant No.2 - C.Govindagowda was examined as DW2 and defendant No.3 - Devaraja as DW3 and two independent witnesses namely Nagaraj and Pillappa were examined as DW4 and DW5 and on behalf of defendants, 30 documents were placed on record, which were exhibited and marked as Exs.D1 to D30.

14. Learned trial Judge thereafter heard the arguments of the parties noted that plaintiffs have filed an earlier suit on 19.10.2000, which came to be decreed *ex-parte* on 03.09.2005 against the deceased defendant No.1 and therefore, it was nullity and also noted the admission made by PW1 in his cross examination to the effect that there are no documents to show that suit



properties are standing in the name of himself or his father or his grandfather and dismissed the suit of the plaintiffs.

15. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.52/2012.

16. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on reappreciation of the factual and legal aspects of the matter, dismissed the appeal of the plaintiffs *inter alia* holding in paragraph Nos.15 and 16 as under:

"15. Inspite of it P.W.1 and P.W.2 stated that the suit schedule properties are the ancestral joint family properties of plaintiff No.1 and defendant No.1. The evidence of P.W.1 and P.W.2 have not been substantiated by any documentary evidence. Further I have gone through the RTCs of the suit land properties marked as Ex.P.1 to Ex.P.8, the house properties marked as Ex.P.13 to Ex.P.16. All these documents are standing in the name of defendant No.1. In column No.10 of Ex.P.1 it is shown that defendant No.1 has acquired the said property under



Darkasth, the property shown in Ex.P.2 to Ex.P.5 and Ex.P.8 are acquired by defendant No.1 under registered sale deeds. It could be seen from column No.10 of the above said RTCs. In column No.10 of Ex.P.6 it is mentioned as pauvathivarasu malki the name of one Muniyapa S/o.Pujarappa, Devegowda S/o.Devappa appeared. The MR No.5/83-84 is mentioned in column No.10. The said MR has not been placed by the plaintiff to show as to whether the said property was acquired by defendant No.1 through original propositor Pujarappa or not. Absolutely there is nothing to show that suit properties have been acquired by plaintiff No.1 and defendant No.1 from their ancestors through original propositor Pujarappa.

16. Ex.P.13 to Ex.P.16 are the house extracts of suit item Nos.8 to 10 which are standing in the name of defendant No.1. Ex.P.19 to Ex.P.20 are RTCs of survey No.111/6, 111/2 and 7/2 stands in the name of defendant No.1, Devaraja and Ramappa i.e. defendant No.3. Considering the documentary evidence as placed by the plaintiff establishes that suit properties are properties of the defendant No.1. The title of the said properties have not been flowed from ancestors of the plaintiffs to the defendant No.1. Ex.D.6 to Ex.D.30 establishes that after the death of defendant No.1, defendant No.1(a) and (b)



got partitioned the family properties, got mutated their names and three items have been sold to the defendant Nos.2 and 3 under sale deeds Ex.D.25, Ex.D.28 and Ex.D.29 and retained remaining properties. The documentary RA.52/201215 evidence produced by both parties establishes that these properties are not ancestral properties of plaintiffs and defendant No.1 and despite of it, it is claim of defendant Nos.2 and 3 that the suit properties are self acquired properties of defendant No.1, the initial burden is on the plaintiffs who approached the court should prove that the suit properties are ancestral joint family properties. But they have failed to prove that the suit schedule properties are the ancestral properties and after getting the said properties from their ancestors enjoying the same as joint family properties and also failed to prove that the plaintiffs have got share in the suit schedule properties to allot share to them by way of partition sought for. In the light of the above said discussion and findings, I held that, the plaintiffs have utterly failed to prove that the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 and they are entitled for share in the schedule properties. Hence, I answer point Nos.1 and 2 in Negative.”



17. Being further aggrieved by the same, plaintiffs are before this Court, in this appeal, on following grounds

- *That the judgment and decree passed by appellate court is highly erroneous, illegal, arbitrary.*
- *The learned Principle Civil Judge, though rightly recorded a finding that the defendants failed to prove that the suit schedule properties are self acquired properties of 1st defendant and ought to have decree the suit of the plaintiff, but erroneously dismissed the suit for the partition, On that ground alone the judgment and decree of the both courts liable to be set-aside and suit of the plaintiffs has to be decreed.*
- *The courts below wrongly comes to the conclusion that all the documents are standing in the name of 1st defendant, the pleading and documents are contrary hence plaintiff is not come to the Court with clean hands, hence he is not entitled for partition. Both the courts failed to notice that in Para-6 of plaint specifically pleaded that the suit schedule properties are standing in the name of 1 defendant. Hence there is no contrary to the pleadings and documents and on that ground*



alone the judgment and decree of the both the court liable to be set-aside.

- *That both the courts failed notice that father of the plaintiff died when the plaintiff was at the age of 4-5 years and the defendant is brought up the infant child and the defendants are not specifically denied said fact. On that ground only both the courts ought to have decreed the suit instead of dismissal.*
- *That both courts failed to notice that the contention of the defendants that the suit schedule properties are self acquired properties of 1st defendant and he himself purchased the same, but they have not produced any single paper to show that the suit schedule properties are purchased by the 1st defendant on his own earnings. On that ground only both the courts ought to have decreed the suit instead of dismissal.*
- *That both the courts failed notice that DW-1 in his cross examination admits that there was no document to show 50 years back plaintiff father and his father not in joint family and also admits that he admits that he does not know the exact date of the property purchased by his father and that itself shows that there*



was no partition in the family of plaintiff and defendants. On that ground only both the courts ought to have decreed the suit instead of dismissal.

- *That both the courts failed to notice that DW-3, DW-4 and DW-5 clearly admits that they are not seen 1st defendant and father of plaintiff and they do not know who had purchased the property from whom and date of sale. The said oral evidence was not considered by the both courts below while passing the judgment and dismissed the suit. The admission of the defendants witness itself shows that there was no partition between the father of 1st plaintiff and 1st defendant. On that ground only both the courts ought to have decreed the suit instead of dismissal.*
- *That both the courts failed to notice that the defendant No.1 (a) and 1(b) contended that there is a partition in the family about 50 years back but they are not produced any material to prove the said defense and they were not state which properties fallen to the share of plaintiff father. It clearly shows the defense taken by the defendants is only to deprive the legitimate right and share of the plaintiffs in the suit*



schedule properties. On that ground alone the suit of the plaintiffs is liable to decreed. only the defense of the defendants is liable to be

- *That both courts wrongly comes to the conclusion that the father of the plaintiff was not in possession and enjoyment of the suit schedule property as on the date of filing of the suit, but both the courts failed to notice that about 40 years back the father of the plaintiff is died and the documents are standing in the name of leaving elder member of the family and his possession and enjoyment over the schedule properties is as kartha of the family. But both the courts failed to notice this aspect of the matter and wrongly come to the conclusion and dismissed the suit. On that ground also the judgment and decree of the both the courts are liable to be set-aside.*
- *That both the courts given more importance to the evidence and documents produced by the defendant No.2 and 3, who are purchasers of the some of the properties, during the pendency of the suit and both courts failed to notice that the properties purchased by them attracts lis-pendency. On that ground alone the*



judgment and decree of the appellate court is liable to set side.

- *It is submitted that, on careful perusal of the judgment and decree passed by both the court, the learned judge had discussed the Ex. P series in Para-16 of the judgment and the learned | Appellate Judge has also discussed the Ex. P Series in Para-15 of the Judgment. However, both the courts have failed to consider Ex. P.12 & 13. Except Ex. P. 12 & 13, rest of the documents were considered and discussed. As a matter of fact, the Ex. P.12 & 13 are clearly goes to show that, the suit schedule property i.e., Item No. 2 is the property belonging to the Joint Family and also shows that, there was a Joint Family among all the parties and therefore, the impugned judgment and decrees are liable to be set aside."*

18. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum vehemently contended that both the Courts have grossly erred in not noticing the fact that when the relationship of parties is admitted, plaintiffs were also entitled for the share in the



suit properties as admittedly properties are ancestral properties and therefore, sought for admitting the appeal on following substantial questions of law:

- a. "Whether the Courts below are justified in holding that there is no joint family status between the parties and there is no ancestral properties existing when the documents produced by the plaintiffs clearly reveals that there is a ancestral properties?"*
- b. Whether the Courts below are right in coming to the conclusion that already there is a partition between plaintiffs father and defendant No.1 in the absence of any partition deed?*
- c. Whether the judgment and decree of the Courts below is sustainable for non consideration of Ex.P.11 and 12?*
- d. Whether the Courts below are justified in disbelieving the oral and documentary evidence produced by the plaintiff without any proper appreciation?*



e. Whether both the Courts are justified to hold that the defendant Nos.2 and 3 are bonafide purchasers of the portion of the suit schedule property?"

19. This Court having noted the contentions urged on behalf of the appellant, did not deem it fit to issue notice to the respondents.

20. In the light of the arguments put forth on behalf of appellants and on perusal of material on record, it is found that plaintiffs have failed to make out their case by placing necessary documentary evidence on record to establish that the suit properties are the ancestral properties.

21. Learned Trial Judge and learned Judge in the First Appellate Court have considered the case of the parties in detail and noted that documents filed by the plaintiffs especially Ex.P.1, wherein in column No.10, it has been mentioned that defendant No.1 got the property by way of 'darkasth'. Therefore, at no stretch of imagination,



suit properties could be treated as properties of either grandfather of the parties or he father -Doddappa.

22. Under such circumstances, when the suit properties are the individual properties of defendant No.1, plaintiffs being the nephew of defendant No.1, cannot lay any claim on the suit properties by contending that suit properties are the ancestral properties.

23. Thus, dismissal of the suit by both the Courts does not require any further consideration as there is no merit in the substantial questions of law raised in the appeal memorandum.

24. Hence, following:

ORDER

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

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