



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 550 OF 2017 (PAR)

BETWEEN:

SMT. SANNAMMA
W/O LATE HELAVIAH,
AGED ABOUT 69 YEARS,
R/O BELAVADI VILLAGE, KASABA HOBLI,
SRIRANGAPATNA TALUK - 571 438
MANDYA DISTRICT.

...APPELLANT

(BY SRI. N.S. BHAT, ADVOCATE)

AND:

1. SRI. VENKATAIAH
S/O DEVEGOWDA,
AGED ABOUT 50 YEARS,
2. SMT. LAKSHMA @ LAKSHMAMMA
W/O LATE RAJU
AGED ABOUT 47 YEARS,
(DIED REPRESENTED BY HER LR'S
RESPONDENT NO.3 AND 4)
3. SMT. INDIRA
D/O LATE RAJU
AGED ABOUT 28 YEARS,
4. VINOD


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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



S/O LATE RAJU
AGED ABOUT 15 YEARS,
MINOR, BEING REPRESENTED BY
NEXT FRIEND AND NATURAL GUARDIAN
SMT. LAKSHMAMMA - RESPONDENT NO.2.

5. SRI. NINGARAJU
S/O LATE MADIAH
AGED ABOUT 44 YEARS,

ALL RESPONDENTS ARE
R/AT BELAVADI VILLAGE,
KASABA HOBLI,
SRIRANGAPATNA TALUK - 571 438,
MANDYA DISTRICT.

...RESPONDENTS

(BY SRI. N. BYRE GOWDA, ADVOCATE FOR R1, R3 TO R5
(ABSENT);
VIDE ORDER DATED 11.06.2026, R3 AND R4 ARE THE LR'S
OF DECEASED R2)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 9.12.2016 PASSED IN RA
NO.1/2011 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE
AND JMFC, SRIRANGAPATNA, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 27.11.2010
PASSED IN OS NO.217/2008 ON THE FILE OF THE PRL. CIVIL
JUDGE (JR.DN) 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 Sri N.B.Bhat, learned counsel for the appellant.

2. Unsuccessful plaintiff is the appellant in this second appeal challenging the dismissal of the suit in O.S.No.217/2008 dated 27.11.2010 which was confirmed in RA No.1/2011 dated 09.12.2016.

3. A suit for partition and separate possession came to be filed in respect of the following immovable property (hereinafter referred to as suit property) by the plaintiff against the defendants.

SCHEDULE

"Land bearing Survey No.360, measuring 3 Acre 21 guntas, out of which 0.37 guntas of Northern side portion situated at Belavadi Village, Srirangapatna Taluk, it is bounded on the:

East - Chowdaiahna Kundaiahna Land,

West - Ditch (Halla),

North - Land belongs to Musalman land & Dopaiah's land,

South - Portion of Sy.No.360 belongs to Papanna".



4. The plaintiff contended that herself, defendant and Kalyanamma are the daughters of late Dasaiah. The father of the plaintiff had no male issues. Second daughter of Dasaiah, namely Kalyanamma, died issueless. It is further case of the plaintiff that Dasaiah purchased the property under the registered sale deed dated 03.03.1918 from one Mariyappa. From the date of purchase, Dasaiah was in possession and enjoyment of the suit property as absolute owner and revenue entries were mutated and he was paying taxes to the concerned revenue authorities. Dasaiah died intestate in the year 1972, leaving behind plaintiff, defendant and deceased Kalyanamma as his only legal representatives. Thereafter, plaintiff, defendant and Kalyanamma became the absolute owner of the suit property by succeeding to the suit property.

5. Plaintiff further contended that Dasaiah had borrowed some ₹500 as a loan from one Papanna and executed an on demand promissory note. After the death of Dasaiah, Papanna demanded his money and at that juncture, the defendant was not in the village and hence, in order to meet the demand of Papanna, the plaintiff and deceased



Kalyanamma jointly executed a sale deed on 28.11.1974 in favour of Papanna. It is also the case of the plaintiff that suit schedule property is the joint family property of the plaintiff and defendants, as they succeeded the same after death of Dasaiah.

6. Plaintiff further contended that she has three children and defendant also has three children. Hence, it is impossible for them to continue in joint family and therefore, she demanded the share in the suit property, as she was not a party to the sale in favour of Papanna and thus filed the suit.

7. Pursuant to the suit summons, defendant did not appear before the Court and she was placed *ex parte*. However, during the pendency of the suit, the defendant died and her legal representatives were brought on record.

8. The legal representatives of defendant filed written statement containing that genealogical tree furnished by the plaintiff is incorrect, but relationship is admitted. It is further contended that plaintiff and Kalyanamma are the daughters of Dasaiah through second wife, whereas Narasamma, the original defendant, is the daughter of Dasaiah through first wife.



9. It is also admitted that Dasaiah purchased the property by virtue of sale deed dated 03.03.1918. Further, they denied that Dasaiah died intestate, leaving behind plaintiff, defendant and deceased Kalyanamma as the legal representatives of Dasaiah. Further allegations regarding Dasaiah borrowing the loan etc., were denied.

10. The legal representatives of Narasamma took a specific defence that there is a division between Dasaiah plaintiff and Kalyanamma and after the said division, each one of them started enjoying their respective share in the suit property and Kalyanamma sold two acres in land bearing Sy.No.360 and remaining one acre of land out of three acres twenty one guntas had fallen to the share of the original defendant, i.e., Narasamma. It is further contended that the legal representatives of the original defendant have succeeded to the share of Narasamma and they are enjoying the property as their own.

11. Based on the rival contentions, the learned Trial Judge raised necessary issues and after due trial, dismissed the



suit of the plaintiff, holding that plaintiff was unable to prove that she had a right in the suit property.

12. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in R.A.No.1/2011.

13. 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, dismissed the appeal filed by the plaintiff, *inter alia*, holding in paragraph Nos. 26 to 31 as under:

"26. A perusal of recitals of Ex.P.7 certified copy of the registered sale deed dated 28-11-1974 discloses that the same supports the case of the LRs of the defendants that the land bearing Sy.No.360 measuring 3 acre 20 guntas was partitioned between plaintiff, defendant and Kalyanamma and in the sald partition 2 acre 21 guntas of land was allotted to the share of plaintiff and her sister Kalyanamma which they have sold to one Papanna and remaining 1 acre of land in Sy.No.360 was allotted to the share of defendant which is the suit schedule property which belongs to defendants.

27. A perusal of the cross-examination of plaintiff discloses that plaintiff in page 3 of her cross-examination has admitted the recitals of Ex.P.7 registered sale deed dated 28-11-1974 wherein the Northern boundary of the land sold under the said document was described as 1 acre of land belong to the share of defendant Narasamma. Plaintiff in her cross-examination has also



categorically admitted the fact that she had filed the suit seeking partition with respect to the above mentioned 1 acre of land allotted to the share of defendant Narasamma.

28 It is pertinent to note that Under Hindu L partition means severance of joint statue. All that is necessary to constitute a partition is a definite and unequivocal indication of the intention by members of joint family to separats themselves from the family and to enjoy their shares in the severalty. The true test of partition of the property according to the Hindu Law is the intention of the members of the family to become separate owners,

29 In the present case in hand a perusal of contents of Ex. P.7 registered sale deed dated 28-11-1974 discloses that there is severance of joint status between the plaintiff, defendant and their sister Kalyanamma pertaining to joint family property bearing Sy.No.360 measuring 3 acre 21 guntas, Further the plaintiff in her cross-examination has re-affirmed the recitals of Ex.P.7 registered sale deed wherein the severance of joint status between the plaintiff and her two sister was stated. Apart from that a perusal of the cross-examination of the plaintiff discloses that plaintiff in her cross-examination has categorically admitted the fact that since from last 36 years plaintiff and defendant were residing separately and managing their family affairs separately and khatha of the schedule property stood in the name of the defendant and she is enjoying the sald property separately which probabilizes the case of the LRs of the defendant that after the death of Dasalah the father of the plaintiff the plaintiff and her two sisters have partitioned the joint family properties and in the said family partition suit schedule land was allotted to the share of the defendant and the sald property was her separate property.



30. A perusal of the Impugned Judgement and decree passed by the trial Court discloses that the trial Court has considered the oral and documentary evidence led by the parties in a proper prospective and rightly came to the conclusion that the plaintiff has failed to prove that suit schedule land is joint family property belonging to her and defendant and rightly dismissed the suit of the plaintiff.

31. A perusal of the impugned Judgement and decree passed by the trial Court discloses that the same is judicious, well reasoned and based on the oral and documentary evidence produced by the parties. On the other hand the appellant/plaintiff has failed to show that the Impugned Judgement and decree under appeal is erroneous, unjust, Improper or it suffers from any legal infirmity. The appeal is devoid of merits. Hence, point No.2 to 4 are answered in the negative."

14. Being further aggrieved by the same, the plaintiff has filed the present appeal.

15. Sri N.S.Bhat, learned counsel for the appellant, reiterating the grounds urged in the appeal memorandum, would contend that both the Courts have not properly considered the material evidence on record and wrongly dismissed the suit of the plaintiff and thus sought for admitting the appeal on the following substantial questions of law:

- i. Whether the Judgment and decree passed by the Courts below are sustainable in eye of law?*



- ii. *On facts and circumstances of the case, the Appellant Narasamma and Kalyanamma being the successor/legal heirs of the deceased Dasaiah, Appellant and deceased Kalyanamm have being jointly executed sale deed on 28-11-1974 in favour of Papanna in respect of 2-21-0 in Sy.No.360 of Belavadi village in discharge of loan borrowed by their father and for legal necessity, whether the courts below justified in holding that the plaintiff failed to establish that the suit schedule property is the joint family property of herself and deceased defendant and they are joint family members?*

16. Respondent Nos.1, 3 to 5 have engaged the services of Sri N. Byre Gowda, who is not present before the Court today.

17. In the light of the argument put forth on behalf of the appellant, this Court perused the material on record meticulously.

18. On such perusal of the material on record, it is noticed that the relationship among the parties is not in dispute. However, legal representatives of the original defendant contended that Narasamma, the original defendant, was the daughter born to Dasaiah through his first wife and



plaintiff and Kalyanamma, who is no more, are the daughters born to Dasaiah through his second wife.

19. It is further the case of the defendants that there was a division in respect of the property left behind by Dasaiah, which was measuring 3 acres 21 guntas and each of the daughters, namely, plaintiff, defendant and deceased Kalyanamma, were given respective shares and out of the shares that had been granted, Kalyanamma sold the property in favour of Papanna for a valuable consideration and not towards the loan amount payable by Dasaiah to Papanna.

20. Plaintiff in her cross-examination admitted these aspects of the matter as is referred to by the learned Judge in the First Appellate Court.

21. Further, when the Dasaiah died, it was Section 8 of the Hindu Succession Act, 1956 (for short, 'Act') that would come into operation and not Section 6 of the Act in the absence of any male co-parceners as the Act stood in the year 1974.

22. Thus, each of the daughters have derived their respective shares, which is established by the defendants.



Thus, plaintiff claiming that it is the joint family property and laying claim is rightly rejected by both the Courts by supplying the cogent and convincing reasons.

23. Having regard to the factual finding recorded by both the Courts, this Court in this second appeal, having regard to the scope of Section 100, does not find merit in any one of the substantial questions of law raised in the appeal memorandum.

24. Accordingly, following:

ORDER

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

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