



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2468 OF 2018 (DEC/INJ)

BETWEEN:

SRI. SHAMBULINGAPPA
S/O HALLAPPA
DEAD BY HIS LRS

1(A). SMT. KARIYAMMA
W/O LATE SHAMBULINGAPPA
AGED ABOUT 65 YEARS

1(B). SMT. PALAKSHAMMA
D/O LATE SHAMBHULINGAPPA
W/O THIPPESWAMY
AGED ABOUT 45 YEARS
KUNCHIGANAL VILLAGE
CHITRADURGA TALUK AND DISTRICT.

1(C). S. VENKATESH
S/O LATE SHAMBULINGAPPA
AGED ABOUT 38 YEARS

1(D). S. GURULINGAPPA
S/O LATE SHAMBULINGAPPA
AGED ABOUT 36 YEARS

1(E). S. PUSHPAVATHI
D/O LATE SHAMBULINGAPPA
W/O HANUMANTHAPPA

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



AGED ABOUT 33 YEARS
NERILIGE VILLAGE
DAVANAGERE TALUK AND DISTRICT.

1(F). SIDDESH A.S
S/O LATE SHAMBULINGAPPA
AGED ABOUT 30 YEARS

1(G). GIRISH S
S/O LATE SHAMBULINGAPPA
AGED ABOUT 24 YEARS

APPELLANT 1(A), 1(C), 1(D) AND 1(F), 1(G)
ARE RESIDING AT HIREGUNTANUR VILLAGE
CHITRADURGA TAUKE AND DISTRICT - 577 501.

...APPELLANTS

(BY SRI. SIDDAPPA B.M, ADVOCATE)

AND:

1. SRI. ERAPPA
S/O HALLAPPA
AGED ABOUT 64 YEARS

2. SMT. KATAMMA
W/O HALLAPPA
AGED ABOUT 78 YEARS

3. SRI. NARAYANAMURTHY
S/O HALLAPPA
AGED ABOUT 49 YEARS

4. SRI. MALLIKARJUNA
S/O HALLAPPA
AGED ABOUT 44 YEARS



5. SRI. MANJANNA
S/O HALLAPPA
AGED ABOUT 43 YEARS

6. SRI. RAMAPPA
S/O HALLAPPA
AGED ABOUT 37 YEARS

ALL ARE RESIDING AT
HIREGUNTANUR VILLAGE
CHITRADURGA TALUK AND DISTRICT - 577 501.

...RESPONDENTS

(R1, R4, R5, R6 - SERVED;
VIDE ORDER DATED 25.10.2024, APPEAL AGAINST R3 AND R3
ABATES)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 24.08.2018
PASSED IN R.A.NO.68/2017 ON THE FILE OF THE I
ADDITIONAL SENIOR CIVIL JUDGE, CHITRADURGA,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT
AND DECREE DATED 11.08.2017 PASSED IN O.S.NO. 321/2014
ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC,
CHITRADURGA.

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.Siddappa B. M., learned counsel for the appellants. None appears for the respondent though served with the notice.

2. Plaintiff is the appellant who has challenged the dismissal of the suit in O.S.No.321/2014 dated 11.08.2017 which was confirmed by the First Appellate Court in RA No.68/2017 dated 24.08.2018.

3. Facts of the case are as under:

3.1. Plaintiff filed a suit in O.S.No.321/2014 declaring that plaintiff is the absolute owner-in-possession and enjoyment of the suit properties by virtue of the oral partition and to grant consequential relief of permanent injunction restraining the defendants and their henchmen from interfering with the following properties (hereinafter referred to as suit properties):



Suit Schedule 'A' Properties

"Item No.1 : A dry land situated in Sy.No.62 of Chikkaguntanuru village, Hireguntanturu Hobli, Chitradurga Taluk, Chitradurga Hobli, measuring 2 acres 30 guntas, assessed at Rs.2.70 bounded by-

East by: Land of Dasappa

West by: Land of Gopalappa

North by: Land of Sardar

South by: Land of M.A. Thimmappa.

Item No.2: A land situated in Sy.No.238/3 Hireguntanuru village, Hireguntanturu Hobli, Chitradurga Taluk, Chitradurga Hobli, totally measuring 1 acre 29 guntas, assessed at Rs.1.47 out of which 10 guntans is occupied by house, varanda, cattle shed etc., in which defendnat No.2 to 6 are in possession bounded by-

East by: Newly house constructed in the land of odo Thimmappa

West by: Huchchappa's Hittalu

North by : Grama Tana

South by: Grama Tana.

Item No.3: A dry land situated in Sy.No.229/1 of Hireguntanuru village, Hireguntanturu Hobli, Chitradurga Taluk, Chitradurga Hobli, totally measuring 5 acres 7 guntas, assessed at Rs.4.28 and bounded by-



East by: Land of Katappa

West by: Land of Erappa

North by: Land of Sangariyappa and Chairman Byrappa

South by : Land of secretary Jayanna.

Item No.4: A site which foundation situated in katha No.276, property No.512 and 507 of old grama tana, Hireguntanuru grama panchayath, Gollarahatti village, Hireguntanuru Hobli, Chitradurga Taluk, Chitradurga Hobli, measuring East X West = 46 feet, North X South = 60 feet bounded by:-

East by: Chittalingappa's house after 2 feet set bac

West by: Land of Gosera Thimmappa

North by: Road

South by: Land of Plainitff in Sy.No.238."

3.2. In the plaint, plaintiff contended that Hallappa is the common prepositus of the family of the plaintiff and defendants who had two wives namely Palamma and Katamma. Katamma is the second defendant in this suit and Hallappa has two sons through Palamma who are plaintiff and defendant No.1.

3.3. Hallappa had four sons through Katamma, who are defendant Nos.3 to 6. Mother of the plaintiff and defendant No.1 died about 60 years ago and Hallappa and his sons constituted Hindu Undivided Joint Family who owned ancestral



in Sy.No.52/2 at Chikkaguntanuru village and land in Sy.No.221, 222, 299 and 237 of Hireguntanuru village. Apart from the landed properties, family owned 200 sheep.

3.4. It is further contended that from utilizing the joint family fund, Hallappa purchased land in Sy.No.14/3, 14/4C situated in Hireguntanuru village in the name of defendant No.1 on 07.06.1978. It is also contended by the plaintiff that Halappa purchased land bearing Sy.No.62 and land bearing Sy.No.238 situated in Hireguntanuru village in the name of plaintiff.

3.5. It is further contention of the plaintiff that Hallappa also purchased land in Sy.No.105/2, 229/2, 221/3 and 237/4 in the name of defendant No.2 and all the properties are the joint family properties. It is further contended that after the purchase of the land in Sy.No.238 of Hireguntanuru village in the plaintiff's name, a house with Mangalore tiled roof was also constructed about 25 years ago.

3.6. As the differences arouse among the family members, plaintiff and defendant No.1 orally partitioned the joint family members in the presence of elderly persons and



suit properties were allotted to the share of the plaintiff and land bearing Sy.No.222/1, 221, 222 and portion of house situated in land in Sy.No.238 were allotted to defendant No.1.

3.7. Defendant No.2 and her sons and Hallappa continued to live together in the joint family and enjoyed the remaining properties. It is further contention of the plaintiff that after the oral partition, plaintiff and defendant No.1 were enjoying their respective shares.

3.8. Hallappa died on 29.08.2005 and plaintiff wanted to remove the old hut situated in item No.4 of the property and laid foundation to construct the house and at that juncture, plaintiff and defendant No.1 being illiterate, were not aware of the revenue entries pertaining to the joint family properties and as there were no documents evidencing the partition, in the month of November, 2013, plaintiff requested the defendants to effect the registered partition of the properties allotted to their respective shares as per oral partition which was refused by defendants and therefore, filed the suit with the aforesaid prayer.



4. Pursuant to the suit summons, defendant Nos.1 to 6 entered appearance and they failed to contest the suit by filing written statement.

5. Thereafter, learned Trial Judge recorded the evidence of the plaintiff and one witness and thereafter raised following points for consideration and dismissed the suit of the plaintiff:

- i. "Whether the plaintiff proves that the suit schedule properties were allotted to his share by virtue of oral partition entered between him, the defendant No.1 and their father Hallappa and the same was acted upon?"*
- ii. Whether the plaintiff is entitled for the relief of permanent injunction?*
- iii. What order or decree?"*

6. Learned Trial Judge noted that there is a registered partition deed as per Ex.P.3 and therefore, claim made by the plaintiff is incorrect *inter alia* holding in paragraph No.11 as under:



"11. The plaintiff claims that there was a oral partition between him, the defendant No.1 and his father Hallappa about 24 years ago. To show that there was an oral partition the plaintiff has deposed his evidence and also got examined PW-2 who speaks about oral partition. The burden also lies on the plaintiff to prove that the oral partition was acted upon. No doubt there is oral evidence of PW-1 and 2 in this regard but the fact remains that the father of plaintiff No.1 Hallappa had entered into a registered partition deed between him and the defendants Nos.2 to 6. The said document is marked at Ex.P-3. If really the oral partition was entered between plaintiff, defendant No.1 and their father, there was no reason for the said Hallappa to enter into partition with other defendants. Furthermore, the plaintiff has claimed that the oral partition was made about 24 years ago. If there was an oral partition about 24 years ago as contended, then the father of the plaintiff would not have ventured into registered partition deed dated 21.08.2002. The same goes to show that even if there was any oral partition, the same was not acted upon. Further if the same was acted upon, the khathas of the properties would have been also got mutated in the names of plaintiff, the defendant No.1 and their father Hallappa respectively. No doubt, there is unrebutted oral evidence as to oral partition on record. However, any amount of oral evidence cannot overcome the registered partition deed which, go to show that the oral partition was not acted upon. Thus, this court is of the opinion that the plaintiff has failed to establish that there was an oral



partition and that the same was acted upon. Accordingly, point No.1 is answered in the negative."

7. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.68/2017.

8. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappreciation of the material evidence on record, dismissed the appeal of the plaintiff *inter alia* holding in paragraph Nos.28 to 31 as under:

"28. Further, the trial court has held that the evidence of PW-1 and PW-2 has not been rebutted. Since, there is no rebuttal evidence. Nevertheless, the oral evidence on record does not overcome the registered partition deed at Ex.P-3. Under the trial court held that Ex.P-3 would falsify the contention and case of the plaintiff. Under such circumstances and upon considering the plaint pleadings and oral and documentary evidence no fall can be found with judgment of the trial court upon. Considering the material on record, the trial court held that, the plaintiff has failed to prove the oral partition, wherein the suit properties have been allotted to the share of the plaintiff.

29. Further, the judgment of the trial court goes to show that, except Ex.P-19 and Ex.P-20 i.e. RTC Phanies, there is no any material is produced to show the title and possession of the suit properties by the plaintiff. Apart



from that, on going through the plaint averments, so also the evidence of PW-1 and PW-2 and finding of the trial court it is quite clear that, absolutely there is no any pleadings regarding the alleged interference so as to grant the relief of permanent injunction U/s 38 of Specific Relief Act, 1963. Even, on going through the plaint, it is quite clear that, there is no requisite pleadings U/s 34 of Specific Relief Act for grant of declaratory relief.

30. The cause of action for the suit, is shown and pleaded that, the cause of action for the suit has arisen in the month of December-2013. When the defendants refused to execute the registered partition deed and the plaintiff came to know the concoction of partition deed and revenue records, at Hireguntanuru and Chikkaguntanuru village, Hireguntanuru Hobli, Chitradurga Taluk and District, where the suit property situated with the jurisdiction of this Hon'ble Court. If the said pleadings are taken into consideration, the very suit for declaration and injunction is not at all maintainable in the eye of law.

31. Apart from that, it is worth to note that, the plaint pleadings and evidence on record go to show that, the defendant No.1 is none other than plaintiff's full brother but, he has not joint hands with the plaintiff. But, the plaintiff says that, he has also colluded with defendant No.2 to 6, who are the sons of plaintiff's father born through 2nd wife by name Katamma. If really, the father of the plaintiff and defendant No.2 to 6 have partitioned the properties as per Ex.P-3, despite oral partition has contended by the plaintiff, definitely, the defendant No.1



would not have kept quite without challenging the same. On the other hand, the material on record goes to show that, the defendant No.1/own brother of the plaintiff is sailing with the defendant/respondent . This is also one of the circumstances, which casts doubt on the case of the plaintiff."

9. Being further aggrieved by the same, plaintiff is before this Court, in this appeal on following grounds:

- *The judgment and decree passed by the courts below are highly illegal besides being erroneous.*
- *Both the courts below have grossly erred in holding that the plaintiff has failed to prove his case though none of the facts stated by the plaintiff is disputed by the other side.*
- *Both the courts below have proceeded only on the basis of the judgments of the Hon'ble Supreme Court and Hon'ble High Court without considering the facts and circumstances of the case.*
- *It is submitted that both the courts below have believed the registered partition deed dated 21.08.2002 as a gospel truth though the same is challenged by the plaintiff, which is bad in law.*
- *Both the courts below have not at all considered the oral evidence of the plaintiff and his witnesses on the*



ground that the entries are not there in the revenue records in pursuant to the partition deed without taking into consideration the rural background of the plaintiff.

- *The trial court has not at all considered the scope and ambit of Order 8 Rule 10 CPC while passing the impugned judgment and decree as such the judgment and decree of the trial court is bad in law.*
- *The trial court recorded the finding that any amount of oral evidence cannot overcome the registered partition deed which goes to show that the oral partition was not acted upon. This approach of the trial court is bad in law as admittedly, there are 5 children to Hallappa. To show that the partition is genuine one though names of the plaintiff and defendant No.1 not at all find a place in the partition deed. Under these circumstances, the partition deed is surrounded with many so suspicious circumstances. Therefore, the finding of the trial court is bad in law.*
- *It is submitted that the judgment and decree of the trial court is contrary to the provisions of CPC, as the evidence let in by him are cogent and consistent and there is no reason to disbelieve the same.*
- *The First Appellate Court has mechanically approved the finding of the trial court though without*



examining the fact that the evidence on record is sufficient or not to hold that the registered partition deed is genuine one or not, since admittedly, the plaintiff and the defendant No.1 fact that there was partition in the joint family are not parties to the partition deed. It pre-supposes the under these circumstance, the findings of the trial court is based on surmises and not based on facts.

- *The First Appellate Court though there is a pleading to the effect that the defendant No.1 is colluding with the defendants No.2 to 6 as such he has not joined the plaintiff, still the First Appellate Court holds that if at all there was oral partition the defendant No.1 could have supported the case of the plaintiff. It is nothing but ignoring the pleadings and evidence on record."*

10. Learned counsel appearing for legal representatives of the appellant/plaintiff reiterating the grounds urged in the appeal memorandum would contend that Ex.P.3 does not contain the suit properties and therefore, dismissal of the suit by both the Courts has resulted in grave miscarriage of justice and sought for admitting the appeal on the following substantial questions of law:



"1. Whether both the courts are right in law in the absence of written statement and contrary evidence on record in disbelieving the case of the plaintiff solely on the ground that there was a registered partition deed?

2. Whether both the courts are right in law admittedly the defendants Nos.2 to 6 represented by an Advocate, but he did not choose to cross examine the plaintiff and the witnesses on the basis of the plaintiff's case in order to hold that the plaintiff failed to prove the case?

3. Whether both the courts are right in law in not passing the judgment and decree in terms of the Order 8 Rule 10 CPC?"

11. Since the respondents are served with the notice and remained absent, this Court perused the material on record meticulously in the light of the grounds and arguments put forth on behalf of the appellants.

12. On such perusal of the material on record, it is the father of the plaintiff – Hallappa who has executed a registered partition deed.



13. To substantiate that the properties mentioned in Ex.P.3 are the properties which are acquired from income of the joint family, no material evidence is placed on record.

14. Further, oral partition is said to have taken place about 24 years earlier to the filing of the suit.

15. If it is so, necessarily revenue entries should have been mutated in the respective shares of the parties. But no such revenue entries are mutated.

16. Therefore, properties are to be held as properties of Hallappa who had settled the properties by way of registered partition deed marked at Ex.P.3. When there is a registered partition deed as per Ex.P.3 and said partition deed does not speak about the earlier oral partition, contentions urged on behalf of the plaintiff is rightly rejected by the Trial Court and upheld by the learned Judge in the First Appellate Court.

17. As such, this Court does not find any merits in any one of the substantial questions of law raised in the appeal memorandum.



18. Accordingly, following:

ORDER

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

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

KAV
List No.: 1 Sl No.: 59