



CNR: KAHC010276242026

NC: 2026:KHC:36271
WP No. 12740 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 12740 OF 2026 (GM-CPC)

BETWEEN:

SRI JAYAPPA
S/O LATE RANGAIAH
AGED ABOUT 56 YEARS
R/AT MUTHUGANNE VILLAGE
KASABA HOBLI, BELUR TALUK
HASSAN DISTRICT - 573 115.

...PETITIONER

(BY SRI C.R.GOPALSWAMY, SR.COUNSEL FOR
SRI BHARGAV G., ADVOCATE AND
SMT. NANDINI B., ADVOCATE)

AND:

1. SRI HALAIAH
S/O LATE CHIKKAIAH
AGED ABOUT 54 YEARS.

2. SRI PUTTASWAMY
S/O LATE CHIKKAIAH
AGED ABOUT 52 YEARS

SRI KUMAR
S/O LATE CHIKKAIAH
SINCE DEAD BY LRS

3. SMT. SHANTHAMMA
W/O. LATE KUMAR
AGED ABOUT 50 YEARS.

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signed by
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Location:
HIGH COURT
OF
KARNATAKA



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4. SRI SHANTHI M. K.
W/O. MANJUNATH M.L.
AGED ABOUT 32 YEARS.

SRI SAGANAIAH
S/O LATE RANGAIAH
SINCE DEAD BY LRS.

5. SMT. SAVITHRAMMA
W/O LATE SAGANAIAH
AGED ABOUT 65 YEARS.

6. SRI CHANDRASHEKAR
S/O LATE SAGANAIAH
AGED ABOUT 31 YEARS.

7. SRI LATHA
D/O LATE SAGANAIAH
AGED ABOUT 25 YEARS.

8. SRI LOKESH
S/O LATE SAGANAIAH
AGED ABOUT 21 YEARS.

9. SRI CHIKKAIAH
S/O. LATE RANGAIAH
AGED ABOUT 60 YEARS.

MUTHAIAH
S/O LATE RANGAIAH
SINCE DEAD-BY LRS.

10. SRI THIMMAMMA
W/O. LATE MUTHAIAH
AGED ABOUT 55 YEARS.

11. SMT. GOWRAMMA
D/O LATE MUTHAIAH
AGED ABOUT 35 YEARS.



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12. SRI LAVA
S/O LATE MUTHAIAH
AGED ABOUT 31 YEARS.
13. SRI KUSHA
S/O LATE MUTHAIAH
AGED ABOUT 31 YEARS.
14. SRI CHANDRAKALA
D/O LATE MUTHAIAH
AGED ABOUT 27 YEARS.

ALL THE RESPONDENTS HEREIN ARE
RESIDING AT MUTHUGANNE VILLAGE
KASABA HOBLI, BELUR TALUK
HASSAN DISTRICT - 573 115.

...RESPONDENTS

(BY SRI JWALAKUMAR., ADVOCATE FOR C/R1 TO R3
(CP NO.7480/26 AND CP NO.7481/26))

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASHING/SETTING
ASIDE THE IMPUGNED ORDER DATED 10.03.2026 PASSED BY
THE CIVIL JUDGE AND JMFC, BELUR IN F.D.P.NO.3/2006 VIDE
ANNEXURE-A REJECTING THE CLAIM OF THE PETITIONER IN
RESPECT OF PETITION ITEM NO.7 OF THE PROPERTY.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON 02.06.2026, COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



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CAV ORDER

Aggrieved by the order passed in FDP.No.3/2006 dated 10.03.2026 by the Civil Judge and JMFC, Belur, the petitioner/defendant No.4 is before this Court.

2. The brief facts of the case as stated by the petitioner are that the respondent Nos.1 to 3 had filed O.S.No.477/1992 and the suit was decreed by judgment and decree dated 09.07.1998. The petitioner/defendant No.4 had filed an application to include item No.7 in FDP.No.3/2006 and the executing Court had allowed the amendment directing the plaintiffs to amend the petition. Questioning the same, the plaintiffs had filed WP.No.52118/2013 and that came to be dismissed by order dated 24.03.2015. Thereafter, the FDP petition was amended by the plaintiffs including item No.7 in FDP.No.3/2006. After the amendment, the petitioner requested an opportunity to file objections to the amended FDP petition which was denied by the executing Court on 18.01.2017. Then the petitioner filed WP.No.7463/2017 before this Court and the Court granted an interim stay on FDP proceedings until 2022. During this period, cross examination of witnesses could not be



completed. It is stated that the petitioner's attempt to file objections and participate fully in the execution proceedings was repeatedly constrained due to procedural rulings and the stay granted by the High Court.

3. The petitioner had filed I.A.No.III under Order VI Rule 17 of CPC. It is contended that at the time of drawing decree, the property bearing Sy.No.242 measuring 3 acres 23 guntas situated at Muttuganne Village, Kasaba Hobli, Belur Taluk, was joint family property and the petitioner had informed to add the said property in the written statement. But in the decree, the said property was not added. Therefore, it is just and necessary to include the said property in the final decree proceedings. According to defendant No.4, item No.7 of the petition schedule property is his joint family property, other defendants and plaintiffs and he has got share in the said property. Hence, defendant No.4 prayed to draw final decree including item No.7 of the petition schedule property. It is the case of the plaintiffs that they have filed O.S.No.477/1992 against the defendants for partition and separate possession of ½ share in the suit schedule properties and for mesne profits. The said suit came



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to be decreed on 09.07.1998 by allotting ½ share in item No.1 to 6 of the suit schedule properties. It is the case that the appeal filed by the defendants before the Additional Sessions Court, Hassan in RA.No.54/2004 came to be dismissed and RSA filed by the defendants before the High Court also came to be dismissed. It is contended that the said property cannot be added and they sought for rejection of the claim of the defendants.

4. The plaintiffs had carried out the amendment and added item No.7 of the property in the petition schedule. In order to prove their case, plaintiff No.1 examined as PW1 and Ex.P1 to 11 documents have been marked. The defendants in support of their case had not examined and produced the documents. The executing Court had observed that in spite of granting sufficient time, the defendants have not submitted their arguments and as such the arguments of the defendants side is taken as nil which is evident from the order sheet dated 05.03.2026. The executing Court had framed the following issues:



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"1) Whether the respondent No.4 proves that item No.7 of the petition schedule property is joint family property of him, other respondents and petitioners?

2) Whether petitioners prove that item No.7 of the petition schedule property is their self acquired property?

3) What order?"

5. The plaintiffs contended that their father Chikkaiah and Rangaiah are brothers. Their father Chikkaiah was doing coolie work at coffee estate in Chikkamagalur District and was cultivating the property bearing Sy.No.74 measuring 4 acres situated at Muttuganne village and as such, the Tahasildar Belur by order dated 15.06.1957 has granted the said property and issued Hakkupathra. Therefore, item No.7 of the petition schedule property is the self acquired property. To prove that, the plaintiffs had produced Ex.P1 which discloses that the Amaldar of Belur Taluk now called as Tahasildar has granted the property vide order dated 10.06.1957. By virtue of the Ex.P1 grant certificate, mutation is carried out in the name of the father of the plaintiffs. The plaintiffs produced Ex.P2 which clearly discloses that as per the grant order, it has been mutated in the name of father of the plaintiffs Chikkaiah. Based on the mutation, the name of the father of the plaintiffs is



reflected in the RTC of the said property. The plaintiffs also produced Ex.P3 which clearly discloses that by virtue of Ex.P2 mutation, the name of the father of the plaintiffs is reflected in column No.9 of the RTC of the said property. Subsequently, Sy.No.74 has been given new Sy.No.242. After assigning the new survey number and after demise of the father of the plaintiffs, the plaintiffs have got divided the Sy.No.242. As per the partition taken place among the plaintiffs, MR No.H5/2012-13 has been mutated in the names of the plaintiffs.

6. The executing Court had observed that on going through Ex.P4 to 11, it appears that based on the partition taken place among the plaintiffs, the names of the respective share holders has been entered in the RTC of the petition schedule property. It is also observed that as per Article 228 of Mulla Hindu Law, the property which has been granted by the Government in the name of member of joint family becomes the separate property, unless it appears from the grant that it was intended for the benefit of the family. Ex.P1 does not refer that it is intended for the benefit of the family. By virtue of this grant, presumption arises in favour of Chikkaiah that it was his



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separate property. To rebut the same, the defendant No.4 was required to prove that it was intended for the benefit of joint family. In the case on hand, admittedly as per Ex.P1, item No.1 of the petition schedule property has been granted in the name of father of the plaintiffs Chikkaiah way back in the year 1956 by the then Amaldar and further, property is mutated in the name of father of the plaintiffs. The plaintiffs being the Class-I legal heirs have inherited the said property and partitioned among them. As per the partition, plaintiffs are enjoying the said property as its absolute owners.

7. The executing Court had further observed that the father of the plaintiffs Chikkaiah has acquired the property by way of grant and as such, item No.7 of the petition schedule property became the self acquired property of father of the plaintiffs. After demise of father of the plaintiffs, the plaintiffs having got divided the said property are in separate possession and enjoyment over item No.7 of the petition schedule property. By adducing oral and documentary evidence, the plaintiffs have proved item No.7 is their self acquired property and on the other hand, the defendant No.4 failed to prove that



item No.7 of the petition schedule property is the joint family property. As such, the executing Court had passed the order rejecting the claim of defendant No.4 seeking partition in respect of item No.7 of the petition schedule property.

8. Learned Senior counsel representing learned counsel for the petitioners submits that admittedly, the land was granted on behalf of the family of the plaintiffs and defendants. However, grant certificate was issued in the name of one Chikkaiah, who was the member of joint family and it is also an admitted fact that till partition is effected, they happen to be the members of the joint family and inadvertently or deliberately, the said property was not included in the plaint schedule. It is submitted that the executing Court had committed a gross error by holding that in spite of sufficient time granted, the defendants have not submitted their arguments and as such, it was taken as nil. Irrespective of the fact that witness was not subjected to cross examination, it is a fact on record that the subject land was granted in favour of Chikkaiah. The Chikkaiah and one Rangaiah were brothers and were living together. The petitioner is one of the sons of



Rangaiah and they were in joint family. Learned Senior counsel further submits that the law is well settled that if any property is granted by the competent authority, it is for the purpose of family and cannot be said that it is the personal property of the grantee. The learned Judge has erroneously interpreted the definition of separate property under Hindu Law. It is submitted that the plaintiffs have not proved that the property is not a joint family property. On the other hand, the learned Judge was completely under wrong notion that the subject property cannot be divided. The learned Judge has failed to consider the evidence in its proper perspective and went wrong in dismissing the petition.

9. Learned counsel appearing for respondent Nos.1 to 3 submits that the executing Court had rightly come to the conclusion that the property is granted to Chikkaiah, who is the father of the plaintiffs and that is not granted in the name of the joint family, but in the individual name of Chikkaiah and it cannot be considered as the joint family property. It is submitted that the executing Court had rightly considered the judgment of this Court in case of ***S.P.Subbarao Vs.***



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M.Lakshmanarao arising out of **RFA.No.683/2003 dated 19.02.2013** and rightly held that item No.7 is not a joint family property but it is the self-acquired property of Chikkaiah.

10. Having heard the learned Senior counsel appearing for the petitioner and the learned counsel for the respondents, perused the material on record. In the light of the arguments advanced by both the parties, the issue that falls for consideration is:

"Whether the property covered under the Hakkupathra issued by the Tahsildar dated 15.06.1957 in favour of Chikkaiah i.e item No.7 of the suit schedule property constitutes his separate or form part of the joint Hindu family property."

11. There is no dispute about the fact that the Hakkupathra stands exclusively in the name of the Chikkaiah, i.e., the father of the plaintiff, and that his name has been mutated in the revenue records. The defendant's contention is that the grant was made during the subsistence of the joint family, hence the property automatically became joint family property, and that they are entitled to a share in the said property. Under Hindu law, there is no presumption that every



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property standing in the name of a coparcener belongs to the joint family property. A coparcener is competent to own separate property independently of the joint family. The burden lies upon the party ascertaining that the property is joint family property to establish the same.

12. The Hon'ble Apex Court in several cases had laid down the law that every property in the hands of a Hindu joint family is not necessarily a coparcenary property. The Hon'ble Apex Court in ***Uttam Vs Saubhag Singh and Ors***¹ reiterated that a co-parcener may simultaneously possess co-parcenary property and separate property.

13. In the light of settled law, whether the grant is for the benefit of the individual or the joint family is essentially a matter of consideration looking at the grant with reference to its terms and surrounding circumstances. Ex.P1 discloses that the Tahsildar has granted the land exclusively in the name of the father of the plaintiff. Ex.P1 does not describe the father of the plaintiff as the kartha or the representative of the joint family. There is no indication in the recital that the grant was

¹ 2016 (4) SCC 68



intended to benefit all the coparceners. Nothing on record shows that the benefit was meant for the entire family. The defendants have not produced any documents to show that after the grant, the father of the plaintiff unequivocally abandoned his exclusive title and blended the property with the joint family estate. Mere joint cultivation, joint residence, or inclusion of income in common family expenses is not sufficient to constitute blending. The intention to waive exclusive ownership must be clear and unequivocal.

14. In the considered opinion of this Court, the defendant has failed to discharge the burden cast upon him to show that Ex.P1 was granted for the benefit of the joint family. Considering Ex.P1, Ex.P2, and the RTC extracts, the trial court has rightly concluded that the property is the self-acquired property of the plaintiffs' father, and the defendant is not entitled to a partition of the said property. Accordingly, the issue is answered in favour of the respondent. In view of the above discussion, this Court does not find merit in the writ petition, and hence this Court is passing the following order:



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ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

MEG
List No.: 1 Sl No.: 3