



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 449 OF 2018 (PAR)

BETWEEN:

1. LT.COL.M.A.KARIAPPA,
SON OF LATE AIYAPPA
AGED ABOUT 79 YEARS
NO.16, SENA VIHAR (AWHO)
KAMMANAHALLY MAIN ROAD,
KALYANNAGAR POST,
BENGALURU – 560 043.
2. MUKKATTIRA A. UTHAPPA
SON OF LATE AIYAPPA
AGED ABOUT 66 YEARS,
ARUVATHOKLU VILLAGE POST,
GONIKOPPAL,
S. KODAGU – 571 213.

...APPELLANTS

(BY SRI. SATHYASAGAR MITHRA.,ADVOCATE FOR
SMT.MRINAL SHANKAR, ADVOCATE)

AND:

1. MUKKATTIRA A BOPANNA
SON OF LATE AIYAPPA
AGED ABOUT 61 YEARS
ARUVATHOKLU VILLAGE AND POST
VIA GONIKOPAL VIRAJPET TALUK
S. KODAGU – 571 213.
2. MUKKATTIRA A
MANDANNA
SON OF LATE AIYAPPA

Digitally signed
by
VIJAYALAKSHMI
B N

Location: HIGH
COURT OF
KARNATAKA



AGED ABOUT 78 YEARS
APPAIHSWAMY ROAD,
VIRAJPET, VIRAJPET POST
S.KODAGU – 571 218.

3. CHIMMANIRA T,
POOVAPPA SON OF LATE
C P NANJAMMA
AGED ABOUT 78 YEARS
HARIHAR VILLAGE POST
VIA HUDIKERI
VIRAJPET TALUK
S.KODAGU – 571 249.
4. C KAVERY MADAPPA
DAUGHTER OF C.P
NANJAMMA
AGED ABOUT 43 YEARS
1- BASAVESHWARA NILAYA,
7TH CROSS,
VENKATRPURA MAIN ROAD,
KORAMANGALA
BENGALURU – 560 034.
5. KAVITHA RAMESH
DAUGHTER OF LATE
C P NANJAMMA
AGED ABOUT 43 YEARS
NO.5, TUSHITHI NILAYA,
32ND FLOOR, 4TH MAIN,
1ST CROSS, SUMANGALAI
SEVA ASHRAM ROAD
HEBBAL
BENGALURU – 560 024.
6. CHIMMUNIRA P UTHAPPA
SON OF LATE C.P. NANJAMMA
AGED ABOUT 41 YEARS
HARIHARA VILLAGE POST
VIA HUDIKERI



S.KODAGU – 571 249.

7. C P KARIAPPA
SON OF LATE
C.P NANJAMMA
AGED ABOUT 38 YEARS
1- BASAVESHWARA NILAYA,
7TH B CROSS,
VENKATAPURA MAIN ROAD,
KORAMANGALA
BENGALURU – 560 034.

8. MUKKATTIRA A
BELLIAPPA
SON OF LATE AIYAPPA
AGED ABOUT 68 YEARS
PNM HOSPITAL ROAD,
1ST BLOCK,
GONIKOPPAL POST,
S.KODAGU – 571 213.

...RESPONDENTS

(BY SMT. VEENA J KAMATH, ADVOCATE FOR R1,
R2,4,5,6,7,8-SERVED,
VIDE ORDER DATED 04/06/2026 APPEAL STANDS
DISMISSED AGAINST R3)

THIS RSA IS FILED UNDER SECTION 100 R/W ORDER
XLII OF THE CPC, AGAINST THE JUDGMENT AND DECREE
DATED 08.09.2017 PASSED IN R.A.NO.1/2015 ON THE FILE OF
THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
KODAGU-MADIKERI, SITTING AT VIRAJPET, DISMISSING THE
APPEAL AND MODIFYING THE JUDGMENT AND DECREE DATED
05.03.2015 PASSED IN O.S.NO.11/2008 ON THE FILE OF THE
SENIOR CIVIL JUDGE AND JMFC, VIRAJPET AND ETC.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



ORAL JUDGMENT

Heard Sri.Sathya Sagar, learned counsel for Sri.Mrinal Shankar, learned counsel for the appellants. Defendant Nos.1 and 4 are the appellants in this second appeal challenging the decree passed in O.S.No.11/2018 declaring the shares of the parties in a suit for partition and passing the preliminary decree. The judgment of the Trial Court was challenged before the First Appellate Court by the very same appellants in R.A.No.1/2015.

2. Learned Judge in the First Appellate Court after securing the records and after hearing the parties, dismissed the appeal filed by the appellants herein. Thereafter, appellants are before this Court.

3. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

4. A suit for partition and separate possession came to be filed by the plaintiff by contending that in respect of the following property seeking 5 equal shares in



respect of the following immovable properties, hereinafter referred to as the suit properties:

Sl No.	Khatha	Sy No.	Area in acres	BOUNDARIES			
1	27	Redeemed House site 163/64	0.20 acres	Kadanga	Road	163/63	163/65
2	217	House site 163/66	0.10 acres	Kadanga	Road	163/65	163/67
3	27	House site 163/66	0.10 acres	Kadanga	Road	163/62	163/64

5. Plaintiff contended that he is the own brother of defendant No.1 and defendant Nos.1 to 5, who are the children of Mukkattira Aiyappa of Aruvathoklu Village. Defendant No.5 separated himself by taking his share in other properties in the year 1985 from his father and, thereafter, the suit properties as per the family partition and memorandum recorded on 18.07.1985 continued with the plaintiff and other defendants. Defendant No.1 possesses the said memorandum. It is further contended that common prepositus Aiyappa and his wife Gangamma died intestate in the year 1987 and 1998 respectively and, on their demise, plaintiff and defendants have succeeded to the suit properties as joint owners and when there is a



demand to grant a share, the same was denied resulting in filing of the suit.

6. Pursuant to the suit summons, defendants appeared before the Court through their respective Advocates and, despite sufficient opportunity, the second defendant failed to file any written statement.

7. Defendant Nos.1 and 3 filed separate written statements contending that suit of the plaintiff is incorrect, containing false factual aspects and sought for dismissal of the suit. It is further contended that defendant No.1 is not in possession of the alleged memorandum of partition dated 18.07.1985. They also contended that Mukkattira Aiyappa died leaving behind 4.5 acres of wetland in Sy.Nos.151/1, 151/2 and 151/3, which he had purchased from Maniapanda Ganapathy. Apart from those lands, Mukkattira Aiyappa had 50 cents of bane land at Aruvathoklo Village, South Kodagu. Out of the 50 cents of land, RTC stands only in respect of 40 cents of land, which is transferred from Vokkaligara Subbayya. Plaintiff has



shown 40 cents of land as suit property and omitted to show remaining 10 cents of the land, but entire 50 cents of land is one block and it is in joint possession of the parties to the suit.

8. It was also contended in the written statement that there is a house and other structures in the suit property apart from plantation.

9. It is the further contention of the defendant that defendant No.1 was granted 10 acres of bane land at Kothur Village in Sy.No.173/14 by the Government on account of his gallantry participation in Indo-Pak War and due to which he was also granted Sena Medal.

10. Further contention of the defendant No.1 is that 5 acres of such land was given to the plaintiff at a partition on 28.12.1995 without any consideration on account of family attachment.

11. Further contention of the defendants is that on 16.07.1985 there was a oral settlement that took place in the family, which was subsequently reduced into writing



for record purpose. In that partition, it was decided that house suit property along with 10 cents of the land should be kept as a common property and plaintiff consented for the same and thus, plaintiff is estopped from filing the suit for partition and sought for dismissal of the suit.

12. During the pendency of the suit, defendant No.4 died and her legal representatives were brought on record and they filed separate written statement contending that Aiyappa died leaving behind 4.5 acres of land and defendant No.1 having been granted 10 acres of land. In other words, they supported the case of defendant No.1.

13. Defendant No.5 filed a separate written statement wherein he admitted relationship and he also admits that he separated away from the family in the year 1985.

14. Based on the rival contentions, learned Trial Judge raised necessary issues and after recording the evidence of the parties decreed the suit of the plaintiff in



part. Operative portion of the Trial Court Judgment reads as under:

"The suit of the plaintiff is hereby decreed with cost.

The plaintiff and defendant No.1 to 3 are entitled for 6/25th share each and defendant No.4(a) to (e) togetherly entitled for 1/25th share in the suit schedule properties by metes and bounds.

Draw preliminary decree accordingly".

15. Being aggrieved by the same, defendant Nos.1 and 3 filed an appeal before the First Appellate Court in R.A.No.1/2015.

16. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record, dismissed the appeal of the appellants *inter alia* holding in paragraph number 32 as under:

"32. The defendant No.1 to 3 have taken contention that the property bearing Sy.No.163/65 measuring 10 cents is also joint family property. Through DW-1 the RTC Extract in respect of property bearing Sy.



No.163/65 is got marked as Ex.D-4. Wherein in column No.9 the name of Vakkaligara Subbaiah finds place. The learned counsel for the appellants relying on the document Ex.D-1 sketch argued that the property bearing Sy.No.163/65 is situated in between the property bearing Sy.No.163/66 and 163/64. On perusal of the document Ex.D-1 it shows that the property bearing Sy.No.163/65 is situate in between the property bearing Sy.No. 163/66 and 163/64. Merely because this property bearing Sy.No.163/65 is situated in between the property bearing Sy.No.163/66 and 163/64, that itself is not sufficient to hold that the property is also joint family property of the plaintiff and defendants. The document Ex.P-20 which is nominclatured as partition deed is admissible in evidence only to prove a collateral transaction. The defendant No.1 and 3 have not produced any documents to show that prior to the execution of the document Ex.P-20 this property bearing Sy.No.163/65 was standing in the name of Aiyappa and it is joint family property. No doubt perusal of Ex.P-20 would show the property bearing Sy.No.163/65 measuring 10 cents was also subjected to division and given to the 2nd party i.e., plaintiff and defendant No.1 to 3 as joint. Admittedly Sri Vakkaligara Subbaiah in whose name the property in Sy.No.163/65 measuring 10 cents



situated is not member of plaintiff and defendants family. The contention of the defendant No.1 and 3 that their father purchased this property bearing Sy.No.163/65 from Vakkaligara Subbaiah is not substantiated by any cogent evidence. To substantiate the contention taken by the defendants they have not produced sale deed or agreement of sale or any other documents executed by said Vakkaligara Subbaiah in favour of Aiyappa or his sons. Ex.D-4 RTC of this property bearing Sy.No.163/65 measuring 10 cents still standing in the name of Vakkaligara Subbaiah. During the course of cross-examination of DW-1 the document Ex.P-22 House Tax Paid Receipt is marked on the side of the plaintiff. DW-1 in his examination-in-chief contended that house is situated in property bearing Sy.No.163/65. In Ex.D-4 RTC extract of property bearing Sy.No.163/65 there is no mention regarding the house. DW-1 in his cross-examination admitted regarding the same. The document Ex.P-22 Tax Paid Receipt is with respect to the House Tax paid in respect of Sy.No.163/64. There is no document on the side of the defendants to show that house is situated in the property bearing Sy.No.163/65. On perusal of the document Ex.P-22 it would go to show that the house is situated in Sy.No.163/64. Defendant No.1 and 3 have not produced any documents to show



that they have paid Kandayam to the property bearing Sy.No.163/65. DW-1 in his cross-examination admitted that only 40 cents is standing in the joint name of the plaintiff and defendant No.1 to 3. He admits that 10 cents is still standing in the name of Vakkaligara Subbaiah. Eventhough in his cross-examination he deposed that Vakkaligara Subbaiah sold them 10 cents of the property in Sy.No.163/65, in order to substantiate the same, no documents are produced. There is no pleading on the side of the defendant No.1 and 3 that Subbaiah sold his 10 cents of property in Sy.No.163/65 to the plaintiff and defendant No.1 to 3. DW-1 in his cross-examination admitted the fact that they cannot claim the partition in the property, which is not standing in their name. DW-1 also admitted the fact that they have not made any efforts to change the revenue documents pertaining to the property in Sy.No.163/65 to their name. He admitted in his cross-examination that they can claim share only in respect of properties which are standing in their name. Eventhough defendant No.1 and 3 have taken contention that their father has purchased the property bearing Sy.No.163/65 from Vakkaligara Subbaiah and constructed the house, no documents are produced to substantiate the said contention. DW-1 in his cross-examination deposed that Subbaiah died about 15 years back. He has not



made it clear that where the Subbaiah was residing and where he died. The defendant No.1 and 3 have also not produced any documents such as Death Certificate to show that Vakkaligara Subbaiah died about 15 years back. Merely because there is reference in Ex.P-20 with regarding to the property bearing Sy.No.163/65, that is not sufficient to hold that the property bearing Sy.No.163/65 is the joint family property of the plaintiff and defendant No.1 to 3. Admittedly, as per Ex.P-21 the proceeding was held before the Deputy Tahasildar for change of Katha in respect of the property bearing Sy.No.163/64, 163/63. If at all the property bearing Sy.No.163/65 also in joint possession of the plaintiff and defendant No.1 to 3 the Record of Rights would have changed in the name of the plaintiff and defendant No.1 to 3. DW-1 himself admitted the fact that they have not made any efforts to change the revenue records to their name from the name of Vakkaligara Subbaiah. No doubt the suit for partial partition is not maintainable. In the suit for general partition without including all the joint family properties the suit cannot be maintained. But in the present case the property bearing Sy.No.163/65 measuring 10 cents is still standing in the name of Vakkaligara Subbaiah who is not related to the plaintiff and defendants family. There is no documents on the side of the defendant



No.1 and 2 to show that said Vakkaligara Subbaiah alienated the property bearing Sy.No.163/65 to the family of the plaintiff and defendants".

17. Being further aggrieved by the same, defendant Nos.1 and 3 are before this Court in the second appeal.

18. Sri.Sathya Sagar, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts have not properly appreciated the material evidence on record and wrongly decreed the suit of the plaintiff and suit property was agreed to be kept as common property for the benefit of all the sharers at the oral partition and, thus, sought for admitting the appeal for on following substantial questions of law:

"1. Whether the courts below erred in not appreciating that in view of the notation that "Though we have partitioned our properties and live separately we will be brothers and live peacefully", there was total severances of joint family status?

2. Whether the courts below erred in not appreciating that in view of severance of joint



family status, the suit should have been instituted under the Partition Act, 1893?

3. Whether the courts below erred in not holding that ad valorem court fee is payable?

4. Whether the courts below erred in not holding that the suit is barred by limitation in view of the fact that the demand for separation of commonly held properties was rejected under Ex.P21?

5. Whether the Trial Court and First Appellate Court committed a grave error of law in discarding/ignoring the materials and relevant evidence on record, thereby rendering the findings as total perverse?"

19. Per contra, learned counsel for respondents supports the impugned Judgment.

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

21. On such perusal of the material on record, in the case on hand, relationship among the parties is admitted so also nature of the property. Defendant No.1 contended that he retired as a Lieutenant Colonel and because of his contribution in the India-Pakistan War, he



has been granted 10 acres of the land by the Government in Kothur Village, of which he has given 5 acres to the plaintiff out of affection.

22. It is the specific case of the defendant No.1 that there was a oral partition on 16.07.1985 and in that oral partition, the suit land including the house is to be kept for the common usage of all the sharers. The said aspect of the matter is not established by defendant No.1 by placing necessary material evidence on record.

23. While, plaintiff has maintained that the memorandum that has been reduced into writing admitted by defendant No.1, defendant No.1 failed to place such a memorandum which was reduced into writing before the Court.

24. What has been placed on record is the sketch - Ex.D1 and RTC extract which are marked as Exs.D2 to D5. Since, the relationship is admitted and nature of property is also admitted which was left behind by Aiyappa and the suit property is the property that was left behind by



Aiyappa and after death of Aiyappa and his wife Gangamma, suit for partition is definitely maintainable for the properties which are left behind by Aiyappa and thus, decreeing of the suit is just and proper, which requires no further consideration in this appeal, as they are on the factual aspects and no point of law is involved.

25. As such, this Court does not find any merits in the substantial questions of law referred to *supra*. Hence, following order:

ORDER

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

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

GSR
List No.: 1 Sl No.: 75