



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1094 OF 2017

BETWEEN:

1. SMT. SHARADAMMA
WIFE OF LATE SHIVANNA,
AGED ABOUT 53 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
2. SRI. OMKARMURTHY
SON OF LATE SHIVANNA,
AGED ABOUT 28 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
3. SMT. M.S. RAMYA
DAUGHTER OF LATE SHIVANNA,
AGED ABOUT 30 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.

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Location:
HIGH
COURT OF
KARNATAKA

(BY SRI. P.M. GOPI, ADVOCATE)

...APPELLANTS

AND:

1. SRI. BASAVARAJU
SON OF LATE YENJARA SIDDAPPA,
AGED ABOUT 59 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.



2. SRI.CHIKKANNAIAH
SON OF VEERAPPAJI,
AGED ABOUT 64 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBBI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
3. SRI. UGRAIAH
SON OF LATE CHIKKANNA,
AGED ABOUT 56 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBBI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
4. SMT. SIDDAGANGAMMA
WIFE OF YENJARAPPA,
AGED AOBUT 56 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBBI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
5. SMT. SHIVARUDRAMMA
SON OF LATE SHIVALINGAPPA,
AGED ABOUT 54 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBBI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
6. SRI. SWAMY
SON OF LATE SIDDARAMAIAH,
AGED ABOUT 49 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBBI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
7. SRI. RENUKAIAH
SON OF LATE SIDDARAMAIAH,
AGED ABOUT 46 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,



BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.

8. SMT.CHANNABASAPPA
WIFE OF LATE SIDDARAMAIAH,
AGED ABOUT 74 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
9. SMT.BASAMMA
WIFE OF LATE RAMANNA,
AGED ABOUT 89 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
10. SMT.BHADRAKALAMMA
WIFE OF LATE CHANNABASAVEGOWDA,
AGED ABOUT 69 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.
11. SMT.DEVEERAMMA
WIFE OF SHANKARAIAH,
AGED ABOUT 64 YEARS,
RESIDING AT RUDRESHWARA NILAYA,
ANNAPOORNESHWARI PROVISION STORE,
8TH CROSS, WARD NO.17,
VRUSHABHAVATHI NAGAR,
KAMAKSHIPALYA, SANNAKKI BAYALU
BANGALORE - 560 077.
12. SRI.PUJAR RAMAIAH
SON OF MADDAIAH,
AGED ABOUT 62 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.



13. SRI. NAJAIAH
SON OF LATE CHIKKANNA,
AGED ABOUT 59 YEARS,
RESIDING AT MALLENAHALLI VILLAGE,
BELLAVI HOBLI, TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.

14. THE SUB REGISTRAR
TUMKUR TALUK,
TUMKUR DISTRICT - 572 101.

...RESPONDENTS

(BY SRI. V.B. SIDDARAMAIAH, ADVOCATE FOR R2, R11 AND
R12
R1, R4, R5, R6 TO R9, R14, R14 ARE SERED;
VIDE ORDER DATED 08.06.2026, APPEAL AGAINST R3 AND
R10 STANDS DISMISSED AS ABATED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 12.4.2017 PASSED IN RA
NO.180/2013 ON THE FILE OF THE II ADDL. SENIOR CIVIL
JUDGE AND JMFC, TUMAKURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 25.10.2013
PASSED IN OS NO.537/2000 ON THE FILE OF THE I ADDL.
CIVIL JUDGE AND JMFC-II.

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.P.M.Gopi, learned counsel for the appellants and Sri.V.B.Siddaramaiah, learned counsel for respondent Nos.2, 11 and 12.

2. Unsuccessful plaintiff is represented by his legal representatives are the appellants challenging the dismissal of the suit in O.S.No.537/2000 dated 25.10.2013 which was confirmed in RA No.180/2013 dated 12.04.2017.

3. A suit for partition and separate possession came to be filed in respect of the following immovable properties (hereinafter referred to as suit properties) by the original plaintiff – Shivanna:

a. Land bearing Sy.No.38, measuring 9 acres and 21 guntas situated at Mallenahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Chikkannaiah's land

West - Malleshaiah and Veerabasavaiah's land

North - Talvar Doddaiiah's land

South - Huchanna's land



b. Land bearing Sy.No.65/1, measuring 4 acres and 39 guntas situated at Huchabasavanahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Kempeeraiah's Nanjaiah's land

West - M.N.Veerabasaiah's land

North - Boramma and Shivaganganna's land

South - Yelagaiah's land

c. Land bearing Sy.No.43/2, measuring 2 acres and 12 guntas situated at Mallenahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Sadashivaiah's land

West - Chidanandaiah's land

North - Huchanna's land

South - Road

d. Land bearing Sy.No.43/4, measuring 1 acre and 17 guntas situated at Mallenahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Road

West - Gowdanagaiah's land

North - Road

South - Shivanandaiah's land



e. Land bearing Sy.No.65/2, measuring 3 acres and 33 guntas situated at Huchabasavanahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Kempeeraiah's land

West - Malleshaiah and Veerabasavaiah's land

North - Boramma and Shivaganganna's land

South - Shivarundramma's land

f. Land bearing Khanishumari No.6, mudroofed house situated at Mallenahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Eramma's land

West - Seenapp's land

North - Gramatana

South - School

g. Land bearing Sy.No.38/1, measuring 4 acres and 21 guntas situated at Mallenahalli, Bellavi Hobli, Tumkur Taluk and bounded by:

East - Chikkannaiah's land

West - Malleshaiah and Veerabasavaiah's land

North - Talvar Doddaiiah's land

South - Huchanna's land



- h. Land bearing Old Sy.No.35 New Sy.No.53, measuring 3 acres and 21 guntas situated at Mallenahalli, Bellavi Hobli, Tumkur Taluk and bounded by:*
- East and West – Doddaobalaiah's land*
- North – Kharab Halla*
- South – Boramma's land*

4. During the pendency of the said suit, plaintiff died and his legal representatives were brought on record.

5. Plaintiff contended that suit properties are the joint family properties and he is in joint possession with the defendants. It is also contended that the suit properties are tried to be meddled with by the defendants denying the share to the plaintiff and therefore, sought for partition and separate possession.

6. Suit was resisted by the defendants by contending that there was a previous partition during the lifetime of grandfather of the plaintiff and grandfather of defendant No.1.

7. Defendants also contended that in fact, plaintiff was aged about 35 years when he filed a suit in O.S.No.323/1984 and in that suit itself, he has pleaded that there was a previous



partition during the lifetime of grandfather of the plaintiff and grandfather of defendant No.1 and whatever the property that has fallen to the share of his father, he has sold several properties in the year 1965, 1966 and 1967 itself and thus sought for dismissal of the suit.

8. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and after recording the evidence of the parties, took into consideration of the plaint copy filed by the plaintiff in O.S.No.323/1984 which was marked as Ex.D.17, dismissed the suit of the plaintiff holding that plaintiff failed to prove that suit properties are the joint family properties and plaintiff is in joint possession of the suit property along with the defendants.

9. Being aggrieved by the same, legal representatives of the original plaintiff filed an appeal before the First Appellate Court in RA No.180/2013.

10. 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 on record, dismissed the appeal on merits.



11. Being further aggrieved by the same, legal representatives of the original plaintiff preferred the present appeal.

12. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that at the time of filing the suit in O.S.No.537/2000, plaintiff has suppressed the filing of earlier suit in O.S.No.323/1984 and therefore, nothing is mentioned in the plaint about the previous suit.

13. He would further contend that even after the disposal of the said suit, item No.7 of the suit properties stands in the name of the plaintiff. Therefore, suit properties are to be construed as joint family properties and thus sought for admitting the appeal on following substantial questions of law:

- a) *"Whether the Courts below are justified in dismissing the suit of the plaintiffs for partition without there being materialization of the defence raised by the defendants by placing cogent and material evidence to prove that there was partition of the suit schedule properties?"*



- b) Whether the Courts below are justified in dismissing the suit though the suit of the plaintiffs required to be decreeing for the latches of proving the earlier partition by the defendant?*
- c) Whether the courts below are justified in having concurrent find and held that the plaintiffs are not entitled for share in the suit schedule properties without any satisfactory evidence on record to disprove the claim of the plaintiffs?"*

14. Per contra, learned counsel for respondent Nos.2, 11 and 12 would oppose the appeal grounds by contending that when there is a specific admission in the suit filed in the year 1984, when the plaintiff was aged about 35 years in O.S.No.323/1994 as to the previous partition that took place between grandfather of the plaintiff and grandfather of defendant No.1, it should not lie in the mouth of plaintiff that suit properties are the joint family properties.

15. He would further contend that mere revenue entries would not confer right in respect of the parties especially when there is a clear admission by one of the parties in a previous suit and thus sought for dismissal of the appeal.



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

17. On such perusal of the material on record, plaintiff has suppressed the filing of the earlier suit in O.S.No.323/1984 in the present suit. The plaintiff did not retrace the steps even after written statement was filed by the defendants.

18. Ex.D.27 is the plaint copy that has been confronted to P.W.1. In the plaint copy, it has been clearly mentioned that there was a previous partition between the grandfather of the plaintiff and grandfather of defendant No.1.

19. Atleast at that point of time, if the plaintiff has terminated the suit, probably he would not have been liable for the cost. But he maintained that suit properties are the joint family properties and suffered a decree.

20. During the course of the suit, plaintiff died and his legal representatives were brought on record and they ventured to file an appeal before the First Appellate Court even after coming to know about the probative value of Ex.D.27 and averments made in the present suit in O.S.No.537/2000.



21. However, learned counsel for the appellant would contend that plaintiffs are the rustic villagers and they did not know the consequences of pursuing the appeal further and therefore, they may not be penalized for the cost.

22. Taking note of these aspects of the matter, both the Courts have categorically held that the plaintiff has failed to prove the nature of the properties as joint family properties especially in the light of the admission made by the original plaintiff in O.S.No.323/1984 when he was aged about 35 years.

23. Thus, suit is to be treated as speculative suit which got continued in the appeal also after a categorical finding has been recorded by the learned Trial Judge that in view of the admission made by the plaintiff in O.S.No.323/1984, suit properties cannot be held to be the joint family properties.

24. Accordingly, this Court does not find any merits in any one of the substantial questions of law raised in the second appeal and second appeal is further in the nature of speculative spirit of the legal representatives of the original plaintiff which needs to be curbed by imposing suitable cost.



25. Accordingly, following:

ORDER

- i. Admission is ***declined***.
- ii. Appeal is ***dismissed*** with cost of Rs.20,000/- payable by the legal representatives of the plaintiff to the contesting respondents.

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

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List No.: 1 Sl No.: 74