



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 1221 OF 2017 (PAR)

BETWEEN:

1. SMT. C.H. SAVITHA
W/O PRAKASH AND
D/O LATE HUCHEGOWDA @ KOOGAPPA,
AGED ABOUT 45 YEARS,
R/AT MARAGURU BAGUR HOBLI,
C.R. PATNA TALUK
HASSAN DISTRICT - 573116.

...APPELLANT

(BY SRI. SARAVANA S., ADVOCATE)

AND:

1. SMT. PUSHPA
WIFE OF LATE NANJEGOWDA,
AGED ABOUT 42 YEARS,
RESIDING AT CHIKKANAYAKANAHALLI,
KASABA HOBLI,
C.R.PATNA TALUK
HASSAN DISTRICT-573116.
2. SMT. LAKSHMAMA
WIFE OF LATE HUCHEGOWDA @ KOOGAPPA,
AGED ABOUT 84 YEARS.
3. SRI. NANJUNDEGOWDA
SON OF LATE HUCHEGOWDA @ KOOGAPPA,



AGED ABOUT 54 YEARS,

RESPONDENTS NO.2 AND 3 ARE
RESIDENT OF CHIKKANAYAKANAHALLI
KASABA HOBLI,
CHANNARAYAPATNA TALUK
HASSAN DISTRICT-573116.

4. SMT. THAYAMMA
WIFE OF SATHYANARAYANA,
AGED ABOUT 64 YEARS,
R/AT DEVIGERE, KASABA HOBLI,
CHANNARAYAPATNA TALUK
HASSAN DISTRICT-573116.
5. SMT. CHANDRAMMA
WIFE OF J.SHIVEGOWDA,
AGED ABOUT 64 YEARS,
(YOGESH PRINTERS)
R/AT VIDYANAGAR, NEAR GOWTHAM SCHOOL
CHANNARAYAPATNA TOWN
HASSAN DISTRICT-573116.
6. SMT. SHIVAMMA
WIFE OF MALLESHA
AGED ABOUT 62 YEARS,
R/AT DINDAGURU KASABA HOBLI,
CHANNARAYAPATNA TALUK
HASSAN DISTRICT-573116.
PRESENT R/AT GANESH NAGARA,
CHANNARAYAPATNA TOWN
HASSAN - 573 116.

...RESPONDENTS

(BY SRI. K.N. NITISH, ADVOCATE FOR R1;
R2 TO R6 ARE SERVED AND UNREPRESENTED)



THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT & DECREE DATED 19.04.2017 PASSED IN R.A.NO. 74/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., CHANNARAYAPARTNA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DATED 10.08.2015 PASSED IN O.S. 187/2008 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC., CHANNARAYAPATNA.

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

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL JUDGMENT

1. This appeal is preferred by the plaintiff assailing the Judgment and Decree dated 19.04.2017 in R.A. No.74/2015 on the file of Senior Civil Judge and JMFC, Channarayapatna, allowing the appeal and setting aside the Judgment and Decree dated 10.08.2015, in O.S.No.187/2008, on the file of the Principal Civil Judge and JMFC, Channarayapatna, decreeing the suit of the plaintiff.

2. For the sake of convenience, parties are referred as per their status before the Trial Court.



3. It is the case of the plaintiff that the defendant No.1 is the mother of the plaintiff and defendant No.2 is the brother of the plaintiff. Defendant No.3 is the wife of her brother and defendant No. 4 to 6 are elder sisters of the plaintiff. It is contended in the plaint that the suit schedule properties are the joint family properties of the plaintiff and defendants and as such the plaintiff is having one seventh share in the suit schedule properties. It is also stated that the father of the plaintiff and defendants died long ago and also the husband of the respondent No. 3 - Nanjegowda died on 14.04.2008 and therefore, it is contended by the plaintiff that she is entitled for share in the joint family properties of her father - Huchhegowda. Hence, suit in O.S.No.187/2008 is filed.

4. After service of notice, the defendant Nos.1 and 2, have not contested the matter on merits. Defendant Nos.3 to 6 have filed written statement admitting the relationship between the parties. It is the specific case of the defendant No.3 that there was a partition in the joint family properties on 10.06.2003 and the properties of Huchhegowda got divided accordingly, and therefore, it is contended that, the claim made by the plaintiff



cannot be accepted. It is also stated in the written statement that husband of defendant No.3 has bequeathed his property through the Will dated 17.01.2008 in favour of defendant No.3 and therefore the defendant No.3 had acquired absolute possession of the properties of her husband and accordingly the defendant No. 3 sought for dismissal of the suit. Defendant Nos.4 to 6 have filed separate written statement and contended that the defendant Nos.4 to 6 are also entitled for 1/7th share in the suit schedule properties.

5. Based on pleadings on record, the Trial Court has framed the issues for its consideration. In order to establish their case, plaintiff examined one witness as P.W.1 and got marked 35 documents as Exhibits P1 to P35. Defendants have examined five witnesses as D.W.1 to D.W.5 and got marked 33 documents as Exhibits D1 to D33. The Trial Court, after considering the material record, by Judgment and Decree dated 10.08.2015, decreed the suit holding that the plaintiff is entitled for 1/7th share in the suit schedule properties and defendant Nos.4 to 6 are also entitled for one seventh share each, in the suit schedule properties.



6. Feeling aggrieved by the Judgment and Decree passed by the Trial Court, the defendant No. 3 has preferred R.A. No.74/2015 on the file of the First Appellate Court. The respondents therein have entered appearance. The First Appellate Court, after re-appreciating the material record by its Judgment and Decree dated 19.04.2017, allowed the appeal and consequently, set aside the Judgment and Decree dated 10.08.2015 in O.S. No.187/2008. Feeling aggrieved by the same, the plaintiff has preferred this Regular Second Appeal.

7. This Court, by order dated 13.03.2026 has formulated the following substantial question of law:

" Whether the finding recorded by both the Courts below requires to be interfered with, in the light of the Judgment of the Hon'ble Supreme Court in the cases of REVANASIDDAPPA AND ANOTHER Vs. MALLIKARJUN AND OTHERS reported in 2023 SCC OnLine SC 1087 and VINEETA SHARMA Vs. RAKESH SHARMA AND OTHERS reported in AIR 2020 SC 3717?"



8. Heard Sri. Saravana S., learned counsel for the appellant/plaintiff and Sri. K.N. Nitish, learned counsel for respondent No.1 / defendant No.3.

9. It is argued by the learned counsel appearing for the appellant that the suit schedule properties are the joint family properties of the plaintiff and the defendants and therefore, the plaintiff is having a right over the suit schedule properties, being a co-parcener in the family and therefore, sought for interference of the Court. It is also argued by the counsel appearing for the appellant that, as the father of the plaintiff - Huchhegowda was absolute owner of the suit schedule properties and in the light of Section 8 of the Hindu Succession Act, properties have to be devolved amongst the children of late Huchhegowda and accordingly, sought to allow this appeal.

10. Per contra, Sri. K.N. Nitish, learned counsel for the respondent No.1, sought to justify the impugned Judgment and Decree passed by the First Appellate Court.

11. In the light of the submissions made by the learned counsel appearing for the parties, upon careful consideration of



the records, would indicate that, Huchchegowda had two wives, namely Hombamma and Lakshmamma. Hombamma had a son Rangegowda. Lakshmamma is defendant No.1 in the above suit and defendant Nos.2, 4, 5 & 6 and the plaintiff are the children and the plaintiff are the children of defendant No.1. Defendant No.3 is the wife of son of Lakshmamma-late Nanjegowda. It is contended that, Huchchegowda married defendant No.1 after the demise of Hombamma. The plaintiff has filed suit seeking a right over the joint family properties of late Huchchegowda. On careful consideration of finding recorded by both the Courts below, would indicate that late Huchchegowda had a wife called Hombamma and she died leaving behind a son Rangegowda. Undisputedly, said Rangegowda is not a party to the proceedings. In that view of the matter, until the rights of the parties is crystallized as to the share of the children of Huchhegowda and Lakshmamma, which would comprise the share of plaintiff also, and in that view of the matter, taking into consideration the fact that as defendant No.1 claims to be the second wife of the late Huchhegowda and her share has to be considered in the light of the Judgment of the Hon'ble Supreme Court in the case of REVANASIDDAPPA AND ANOTHER



Vs. MALLIKARJUN AND OTHERS reported in 2023 SCC OnLine SC 1087. In that view of the matter, unless the said Rangegowda is made as a party to the proceedings in the suit, the rights of the plaintiff and the defendants in so far as the joint family properties of late Huchhegowda, cannot be crystallized.

12. Accordingly, having taken note of the divergent opinions of the Courts below, it is a fit case to remand the matter to the Trial Court for fresh consideration and also it is made clear that the plaintiff is required to array the said Rangegowda, son of late Huchhegowda as a party to the proceedings. Accordingly, the substantial question of law referred to above would give way for remanding the matter to the Trial Court in the light of the observations made above.

13. In the result, I pass the following:

ORDER

- (i) The Regular Second Appeal is allowed.



(ii) The Judgment and Decree dated 19.04.2017 in R.A. No.74/2015 on the file of the Senior Civil Judge and JMFC, Channarayapatna, and the Judgment and Decree dated 10.08.2015 in O.S. No.187/2008 on the file of the Principal Civil Judge and JMFC, Channarayapatna, are hereby set aside.

(iii) The matter is remitted to the Trial Court for fresh consideration, in the light of the observation made above.

(iv) It is also open for the parties to produce additional evidence, if so advised, in the circumstances of the case.

(v) Pending I.A. if any, does not survive for consideration.

Sd/-
(E.S.INDIRESH)
JUDGE

sac
List No.: 1 Sl No.: 61