



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1227 OF 2021 (DEC/INJ)

BETWEEN:

SRI K MANJUNATHA
S/O LATE KRISHNAPPA,
AGED ABOUT 50 YEARS,
AGRICULTURIST AND SCHOOL MASTER
R/AT KADIVANAKATTE VILLAGE,
KASABA HOBLI, HOSDURGA TALUK,
CHITRADURGA DISTRICT- 577554

...APPELLANT

(BY SRI. GURUMURTHY M., ADVOCATE)

AND:

1. SRI K SURESH
SINCE DEAD BY LRS
- A SMT MEENA
WIFE OF LATE K SURESH
AGED ABOUT 55 YEARS,
- B SMT. BHARATHI
D/O LATE K SURESH
AGED ABOUT 33 YEARS,
- C SMT. PADMA
D/O LATE K.SURESH
AGED ABOUT 30 YEARS,
- D SMT. CHAYA
D/O LATE K.SURESH
AGED ABOUT 27 YEARS,

Digitally signed
by AASEEFA
PARVEEN
Location:
HIGH COURT
OF
KARNATAKA



E SRI. KIRAN
S/O LATE K.SURESH
AGED ABOUT 25 YEARS,

ALL ARE RESIDING AT
KADIVANAKATTE VILLAGE,
HEBBALI POST, HOSDURGA TALUK,
CHITRADURGA DISTRICT- 577554.

...RESPONDENTS

(BY SRI.A. M. MAHESHWARAPPA, ADVOCATE FOR R1 (A TO E))

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 13.08.2021 PASSED IN RA NO.41/2019 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, HOSADURGA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 11.10.2019 PASSED IN OS NO. 63/2015 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC, HOSADURGA.

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.Gurumurthy.M, learned counsel for the appellant and Sri.A.M.Maheshwarappa, learned counsel for respondent No.1 (a to e).



2. Plaintiff has filed second appeal challenging the dismissal of the suit in OS No.63/2015 confirmed in RA No.41/2019.

3. Facts of the case are as under:

3.1 A suit for declaration and injunction came to be filed by the plaintiff in OS No.63/2015 declaring that the oral partition entered into between the plaintiff and the defendant is valid and as per the same, plaintiff is entitled for share in the following immovable property (hereinafter referred to as the suit property).

SCHEDULE

A land with Borewell and Pomegranate crop situated at Kadivanakatte village, Kasaba Hobli, Hosadurga taluk, bearing Sy.No.73/P3-p1, measuring 2-00 acres; out of which 1-00 acre and assessed at Rs.1-75 pa; and bounded as follows:

East:	Road
West:	Land of Rajappa
North:	Land of Gangadharappa
South:	Hissa land of defendant in the same survey number



4. Pursuant to the suit summons in the plaint, it has been contended that plaintiff is the owner in possession of the suit property to an extent of 2 acres originally belonged to Sri.Mahalingappa S/o Batti Kariyappa of Kondapura Village. It is further contended by the plaintiff that plaintiff and defendant together purchased the said property from Mahalingappa on 29.10.2007 for a valuable consideration of Rs.38,000/- and on 29.10.2007 itself, plaintiff and defendant got divided the said property in the presence of the witnesses and therefore, there was a oral partition.

5. Plaintiff further contended that plaintiff developed the suit property and has grown pomegranate crop. Defendant being jealous of the improvements made by the plaintiff, started interfering with the possession of the property taking advantage of the fact that plaintiff was working as a teacher and got clandestinely khata in his name and entered the name of the defendant in the khata



and started interfering with the suit property and therefore, sought for the suit relief.

6. Defendant pursuant to the suit summons, entered appearance and filed written statement denying the plaint averments in toto.

7. Defendant denied the alleged oral partition. Further defendant pleaded that he acquired the suit property under the registered sale deed dated 29.10.2007 from Mahalingappa S/o Batti Kariyappa.

8. Defendant further pleaded that the written statement schedule property was purchased by him with his independent earnings and therefore, entire property is his self acquired property for which the plaintiff has no right and sought for dismissal of the suit.

9. Based on the rival contentions of the parties, learned trial judge raised necessary issues and after recording the evidence of the parties and hearing the



argument dismissed the suit of the plaintiff by holding that plaintiff has failed to prove the alleged oral partition.

10. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.41/2019.

11. Learned judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed the appeal by considered judgment dated 13.08.2021.

12. Being further aggrieved by the same, plaintiff is before this Court in this second appeal on following substantial questions of law:

1. *Whether the Court below as well as trial Court is right in holding that Ex.P2 agreement of sale produced by the Appellant as collateral purpose in order to prove oral partition took place between the parties, is required to be enforced by filing specific performance suit?*
2. *Whether the Court below as well as trial Court is right in not considering Ex.P2 sale agreement as a piece of evidence for collateral purposes to prove possession of the suit schedule property in a suit for declaration and partition?*



3. *Whether Court below as well as trial Court is right in dismissing the suit filed by the Appellant for declaration and partition without considering the issues based on the evidence adduced by the parties/*
4. *Whether Court below as well as trial Court is right in completely ignored the oral as well documentary evidence adduced by the appellant to prove oral partition and possession of the suit schedule property?*
5. *Whether Court below as well as trial Court is erred in not considering Ex.P2 as document produced by Appellant to prove oral partition took place on 29.10.2007 in respect of suit schedule property in a suit for declaration and partition?*
6. *Whether Court below as well as trial Court is right in saying that contents of Ex.P2 agreement to sale is contrary to the declaration of oral partition and possession pleaded by Appellant without considering that appellant produced said document as collateral purpose to prove oral partition in declaratory suit?*
7. *Can there be a bar for Appellant to seeking declaration and oral partition and consequential relief of Injunction in respect of suit schedule property as his share, which was purchased during the currency of undivided joint family?*
8. *Can there be a bar for Appellant to seek declaration and partition during the currency of Ex.P2 sale agreement between the brothers in respect of suit schedule property?*
9. *Can there be a bar for seeking partition be residing separately some years one of the joint family members even though there was no partition between the joint family members so for?*
10. *Whether Court below as well as trial Court is right in completely ignored to decide the Appellant suit for declaration of partition as he has share in the property or not by illusory finding?*



11. Whether Court below as well as trial Court is erred in dismissing the suit filed by the Appellant and confirmed by the First Appellate Court by illusory findings?

13. Sri.Gurumurthy.M, learned counsel for the appellant would contend that there is a mistake in the finding recorded by the learned trial judge that there is no pleading with regard to the agreement dated 29.10.2007. In fact, ignoring the pleading available in the plaint about the settlement deed such a finding has been recorded and thus sought for admitting the appeal.

14. He would further point out that taking advantage of the fact that plaintiff was a teacher and was away from the suit property, defendant clandestinely got revenue entries transferred in his name in collusion with the revenue authorities and started interfering with the plaintiff's possession of the suit property and the said aspect of the matter has not been appreciated by both the Courts while dismissing the suit of the plaintiff and thus



sought for admitting the appeal on the aforesaid substantial questions of law.

15. Per contra, Sri.A.M.Maheshwarappa, learned counsel for the legal representative of the deceased respondent No.1 supports the impugned judgments.

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, declaration that is sought for by the plaintiff is that the oral partition that took place between the parties on 29.10.2007 after the suit property was purchased from Mahalingappa is just and proper and therefore, plaintiff is entitled to maintain the suit for declaration and injunction.

18. In the cross examination of PW.1, contrary to the pleadings and the suit relief, PW.1 has stated that the suit is for partition of the joint family properties. Pertinently there is no joint family at all in existence. Pleadings of the parties would go to show that the suit



property has been purchased jointly by the plaintiff and defendant from Mahalingappa.

19. Pertinently, in the cross examination of PW.1 he clearly admits that he was present when the sale deed got executed by Mahalingappa in favour of the defendant. But he did not raise any objections for registering the property in favour of the defendant alone. The reason that is now offered before this Court by the counsel for appellant is that plaintiff is working as a teacher and therefore, his name was not included and out of filial affection, suit property was registered in the name of the defendant who is the elder brother of the plaintiff.

20. Insofar as the possession is concerned, in the plaint, he has specifically stated that he is in possession of the suit property by raising the pomegranate crop. Whereas in his cross examination plaintiff categorically admits that defendant is in possession of the suit property growing papaya and coconut trees. He also admits that



there is an electricity connection in the name of defendant for the motor for using the bore well.

21. PW.2 in his examination in chief has deposed that plaintiff is in possession of the suit property. But in cross examination he categorically admits that he has not visited the suit property. Therefore, his statement that plaintiff is in possession of the property is of no avail.

22. So far as PW.3's evidence is concerned it is still worse. Taking note of these aspects of the matter, learned trial judge noted that the oral partition said to have been allowed by the plaintiff is not proved.

23. Now coming to the question of the documentary evidence namely Ex.P2. Contents of Ex.P2 is extracted in the judgment of the trial Court itself. On perusal of the contents of Ex.P2, it is not a settlement deed that has been executed between the plaintiff and defendant, but it is the agreement to sell in respect of the property involved in Ex.P2.



24. In respect of an agreement to sell, a suit for styling the said document as settlement and seeking declaration that there was a oral partition cannot be sustained in the eye of law.

25. Thus, dismissal of the suit by the trial judge, confirmed by the First Appellate Court, needs no interference before this Court in this second appeal having regard to scope of Section 100 CPC.

26. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE