



NC: 2026:KHC:50890
RFA No. 539 of 2009

CNR: KAHC010385282009

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE JYOTI M

REGULAR FIRST APPEAL NO. 539 OF 2009 (RES)

BETWEEN:

LATE G.UMESHWAR RAO,
SINCE DECEASED BY LRS

1. SMT. G.U.RENUKA BAI,
W/O. LATE G.UMESHWAR RAO,
AGED ABOUT 42 YEARS,
2. SRI. G.U.RAGHAVENDRA RAO,
S/O. LATE G.UMESHWAR RAO,
AGED ABOUT 21 YEARS,
3. SRI. G.U.GAGAN RAO,
S/O. LATE G.UMESHWAR RAO,
AGED ABOUT 19 YEARS,

ALL ARE RESIDING AT
NO 8, GROUND FLOOR,
BDA EXTENSION, 1ST BLOCK EAST,
BYRASANDRA, BENGALURU - 560 011.

...APPELLANTS

(BY SRI. B.R.EKALAVYA, ADVOCATE FOR
SRI. B.K.SRIDHAR, ADVOCATE AND
SRI. C.A.DEVENDRA BABU, ADVOCATE)

AND:

SRI. G.KAMESHWARA RAO,
S/O. LATE G. GANGARAM RAO,
R/AT NO 8, 1ST FLOOR,



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BDA EXTENSION,
1ST BLOCK EAST BYRASANDRA,
BENGALURU - 560 011.

...RESPONDENT

(BY SRI. V.S.NARAYAN, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 AND ORDER 41 RULE 1 OF THE CODE OF CIVIL
PROCEDURE.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 11.09.2026, THIS DAY, AN
JUDGMENT IS PRONOUNCED AS UNDER:

CAV JUDGMENT

Sri.Ekalavya, counsel on behalf of Sri.B.K.Sridhar, for the
appellants, and Sri. V. S. Narayana, counsel for the respondent,
appeared in person appeared.

2. The appeal challenges the Judgment and Decree
dated 24.03.2009 passed by the XII Additional City Civil and
Sessions Judge, Bangalore City in O.S.No.7677/2003.

3. For the sake of convenience, the status and ranking
shall be referred as per their ranking before the Trial Court.



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4. The plaint averments are as under:

The plaintiff filed a suit seeking ejectment/ recovery of possession and directing the defendant to vacate and hand over vacant possession of the premises. The defendant is the plaintiff's brother and occupied and shared the ground-floor premises of Property No. 8, BDA Extension, 1st Block East, Byrasandra, Bangalore-11, along with another brother. It is stated that the plaintiff is the absolute owner of the suit-scheduled property, having purchased the same on 24.09.1977 and constructed the ground floor and the first floor out of his own self-earned money.

It is also stated that he had great respect for his elder brother, Sri.Ramachandra Rao, and that he, along with his other two brother, requested permission to reside in his house. Accordingly, the plaintiff agreed to the arrangement and accommodated the brothers. The plaintiff further stated that, despite his request, the brother has refused to vacate the portion he occupied. Hence, the cause of action arose for him to seek shelter under the Court of law. Accordingly, he filed a suit in O.S.No.7677/2003.



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The defendant appeared, filed a written statement, and denied the plaint averments. He contended that the property in question is joint family property. Accordingly, the question of vacation and payment of damages does not arise. On the other grounds, he prayed for the dismissal of the suit.

The Trial Court framed the issues, and the parties led evidence. The documents were marked and exhibited. By Judgment and Decree dated 24.03.2009, the Trial Court decreed the suit. Accordingly, the defendant filed the appeal under Section 96 of the CPC on several grounds, as outlined in the memorandum of appeal.

5. Counsel for the appellants and the respondent advanced several contentions.

Counsel for the appellants submits that the Trial Court's Judgment and Decree are unsustainable in law and contrary to the facts.

Next, he submits that the Trial Court failed to consider that the property is joint family property.



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It has been argued that HAL employed the plaintiff and that the loan was accessible to him; consequently, the property was purchased in his name. However, the plaintiff cannot claim it as his sole property. Instead, the property is considered joint family property, held for the benefit of all family members.

It is also argued that tenancy is not an issue here, as the family jointly owns the property and the defendant is in possession as a member of that family. However, the Trial Court did not consider this properly and wrongly passed the decree.

Regarding the award of damages, the appellants' counsel argues that the defendant possesses the property as an owner in his individual capacity, since it is a joint family asset. Therefore, awarding damages is legally untenable. Consequently, he asserts that the decree to hand over possession is also unsustainable in law, and the appeal should be allowed.

Conversely, the respondent's counsel defended the Trial Court's Judgment and Decree. He argued that the defendant



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has not proven that the property is joint family property. He submitted that the defendant filed a partition suit, claiming that the property listed in the suit is joint family property, in O.S.No.587/2004, which was dismissed. An appeal was filed in R.A.F.549/2016, but it was abated due to the non-appearance of the legal representatives. He highlighted other points and contended that the appeal lacks merit and should be dismissed.

6. Heard the arguments and perused the record with care.

7. The following Points will arise for determination:

1. Whether the suit property is joint family property.
2. Whether the decree for possession and damages granted by the Trial Court is legally sustainable.
3. Whether the appeal merits interference with the Judgment and Decree of the Trial Court.

8. The facts are sufficiently stated and do not require repetition. The appellants contend that the property was purchased in the plaintiff's name using a loan accessible to him by virtue of his employment. Still, the acquisition was for the benefit of the joint family. He argues that tenancy is not in



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issue, as the defendant's possession is referable to his status as a family member. He further submits that awarding damages and directing delivery of possession is untenable when the property is claimed as joint family property.

The respondent, however, relies on the dismissal of O.S.No.587/2004, wherein the defendant's claim of joint family property was rejected, and notes that the subsequent appeal as abated.

The record indicates that the defendant has not proven the property's joint family ownership. In his testimony, the defendant explicitly acknowledged that the plaintiff purchased the property, and that the father was alive at the time of the purchase. He also states that the plaintiff had taken a loan from Bhavasara Kshatriya Bank and that he was a guarantor.

The documents exhibited by the plaintiff clearly establish that he mortgaged the property, obtained a loan, and purchased the property in his individual name from his own earnings. Ex.P-11 is the sale deed; it is in the plaintiff's name.



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Nothing on record establishes that the property was joint family property.

The plaintiff allowed the defendant to occupy a portion of the property; that does not mean the property became joint family property or that the defendant became a co-owner.

The appellants' case rests on the assertion that the property, though purchased in the plaintiff's name, was acquired for the joint family. However, mere employment and access to a loan facility do not, by themselves, establish that the property was acquired with joint family funds or nucleus. The burden lies upon the defendant to prove the joint family character, which has not been discharged. The suit for partition was dismissed, and the appeal abated; the defendant cannot now re-agitate the same issue. In the absence of proof of joint family ownership, the defendant's possession cannot be treated as lawful co-possession. Consequently, the Trial Court's decree for possession and damages is sustainable.

9. The appeal is devoid of merit. The findings of the Trial Court are affirmed. The decree directing delivery of



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possession and awarding damages is upheld. Accordingly, the appeal stands ***dismissed***.

Because of dismissal of the appeal, interim order granted if any stands discharged and pending interlocutory applications if any are disposed of.

**Sd/-
(JYOTI M)
JUDGE**

MRP
List No.: 2 Sl No.: 1