



CNR: KAHC010413872016

NC: 2026:KHC:49469  
RFA No. 1544 of 2016

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF SEPTEMBER, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD**

**REGULAR FIRST APPEAL NO. 1544 OF 2016 (DEC/INJ)**

**BETWEEN:**

1. NARAYANALAL CHOWDHAR  
S/O LATE NENARAM  
AGED ABOUT 53 YEARS
2. SMT. JATHAN BAI  
W/O NARAYANALAL CHOUDHAR  
AGED ABOUT 47 YEARS.
3. BHAWARILAL SOLANKI  
GOWARAM CHOUDHAR  
AGED ABOUT 45 YEARS

ALL ARE R/O NO.5, 1<sup>ST</sup> CROSS  
ATTI MARAMMA TEMPLE STREET  
KURUBAR PET (COTTON PET)  
BENGALURU-53.

...APPELLANTS

(BY SRI.T.I. ABDULLA., ADVOCATE)

**AND:**

1. S L MANJUNATH  
S/O A.N.DOESWAMY  
AGED ABOUT 43 YEARS  
R/O NO.203, 2<sup>ND</sup> FLOOR  
PLOT NO.5, 1<sup>ST</sup> C CROSS  
3<sup>RD</sup> MAIN, MATTIKERE EXTENSION  
BENGALURU-560054.





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2. SMT. S.L.SARASWATHY  
W/O ANJANA  
AGED ABOUT 40 YEARS  
R/O NO.203, 2<sup>ND</sup> FLOOR  
PLOT NO.5, 1<sup>ST</sup> C CROSS  
3<sup>RD</sup> MAIN, MATTIKERE EXTENSION,  
BENGALURU-560054.  
  
D RAVIKUMAR SINCE DEAD  
HIS LRS
3. SMT. CHANDRAKALA  
W/O LATE D. RAVIKUMAR  
AGED ABOUT 39 YEARS
4. R VARSHA  
D/O LATE D. RAVIKUMAR  
AGED ABOUT 15 YEARS  
MINOR REP. BY HER MOTHER  
AND NATURAL GUARDIAN  
RESPONDENT NO.3(1)  
R3 AND R4 ARE R/O NO.888  
28<sup>TH</sup> MAIN, 9<sup>TH</sup> BLOCK, JAYANAGAR  
BENGALURU-560069.  
  
D.NANJUNDASWAMY  
S/O A.N.DORESWAMY  
SINCE DEAD BY HIS LRS
5. SMT. GEETHA NANJUNDASWAMY  
AGED ABOUT 52 YEARS
6. DIVYA  
D/O LATE D. NANJUNDASWAMY  
AGED ABOUT 17 YEARS  
SINCE MINOR REP BY HER MOTHER  
NATURAL GUARDIAN I.E., R5  
R5 AND R6 ARE R/O NO.16  
PRAKASHA NAGAR, NEAR PIPELINE  
T DASARAHALLI, BENGALURU.



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7. S.L.RAGHAVENDRA  
S/O A.N.DOESWAMY  
AGED ABOUT 47 YEARS  
R/O NO.888, 28TH MAIN  
9TH BLOCK, JAYANAGAR  
BENGALURU-560069.
8. SMT. KAVITHA  
W/O LATE YOGA SUDHAKAR  
AGED ABOUT 34 YEARS  
R/O NO.888, 28<sup>TH</sup> MAIN  
9<sup>TH</sup> BLOCK, JAYANAGAR  
BENGALURU-560069.
9. SMT. GEETHA  
W/O SWAMY  
AGED ABOUT 52 YEARS  
R/O NO.347, AVALAHALLI  
ANJANAPURA POST  
BENGALURU-560062.

...RESPONDENTS

(BY SRI. SATHISH B, ADVOCATE FOR R2, R3 & R4:  
SRI. M.M. PRASHANTH, ADVOCATE FOR R1 & R7:  
SRI. B.R. RAGHAVENDRA, ADVOCATE FOR R5,R6,R8 & R9)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W  
SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE  
DATED 09.11.2015 PASSED IN O.S.NO.2924/2005 ON THE FILE  
OF THE XXII ADDL. CITY CIVIL AND SESSIONS JUDGE,  
BENGALURU, PARTLY DECREETING THE SUIT FOR PARTITION,  
SEPARATE POSSESSION AND PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD



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### **ORAL JUDGMENT**

This appeal is filed under Section 96 of the Code of Civil Procedure, challenging the judgment and decree dated 09.11.2015 passed by the XXII Additional City Civil and Sessions Judge, Bengaluru (CCH No.7) (for short, 'the Trial Court') in O.S.No.2924/2005, whereby the suit filed by the plaintiffs/respondent Nos.1 to 4 for partition and separate possession came to be partly decreed.

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

3. The facts of the case, in brief, are that one S.K. Lakshmaiah was the propositus. He acquired Site No.888, situated at 28<sup>th</sup> Main, 9<sup>th</sup> Block, Jayanagar, Bengaluru – 560069, measuring 55 feet x 30 feet, consisting of two main houses, ground and first floors, and two outhouses measuring 15 feet x 30 feet, having ground and first floors, from the then CITB, Bengaluru (now BDA), under a lease-cum-sale deed dated 21.02.1967. Thereafter, a



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registered sale deed dated 19.02.1980 was executed by the BDA in favour of the said Lakshmaiah. Thus, the said property was the absolute property of Lakshmaiah.

4. Lakshmaiah and his wife, Rajamma, had only one daughter, namely, Smt. Krishnaveni, who succeeded to the suit property after the death of Lakshmaiah and Rajamma. Krishnaveni was married to Doreswamy and had five sons and one daughter, namely, Nanjudaswamy, Raghavendra, Manjunath, Yoga Sudhakar, Ravikumar and Saraswathy. Nanjudaswamy, who was defendant No.1 in the suit, died during the pendency of the proceedings, and his wife and daughter were brought on record as defendant Nos.1(a) and 1(b), respectively. Raghavendra, Manjunath and Saraswathy were defendant No.2, plaintiff No.1 and plaintiff No.2, respectively. Yoga Sudhakar had already died and his wife, Kavita, was brought on record as defendant No.3. Ravikumar also died, and his wife and



children were brought on record as plaintiff Nos.3(a) to 3(c), respectively.

5. The case of the plaintiffs is that the suit property is joint family property and that the defendants refused to allot to the plaintiffs their legitimate share therein on the ground that Krishnaveni had succeeded to the suit property as the absolute heir of Lakshmaiah and Rajamma and had executed registered gift deeds dated 21.04.2003 in favour of defendant Nos.1 and 3 in respect of certain portions of the outhouse of the schedule property. Defendant No.1, during the pendency of the suit, sold the ground floor portion of the outhouse in favour of defendant No.4 under a registered sale deed dated 10.01.2007. Defendant No.3 had acquired the first floor of the outhouse under the registered gift deed dated 21.04.2003 executed by Krishnaveni in her favour. Defendant Nos.3 and 4 thereafter sold the entire outhouse



in favour of defendant Nos.5 to 7 under a registered sale deed dated 18.03.2010.

6. The further case of the plaintiffs is that, since the suit schedule property is a joint family property, Krishnaveni had no right to execute the aforesaid gift deeds. Contending that they have a share in the suit property, the plaintiffs instituted the suit seeking partition and separate possession.

7. On service of summons, defendant Nos.1 to 3 appeared through their counsel and filed their written statement. They admitted the purchase of the suit property by Lakshmaiah from the BDA, Bengaluru, under a registered sale deed. It was further contended that Lakshmaiah had bequeathed the suit property in favour of his wife, Rajamma, under a Will dated 15.06.1981. After the death of Rajamma, her daughter, Krishnaveni, being her sole surviving heir, inherited the suit property as its absolute owner.



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8. It was therefore contended that Krishnaveni had the right to execute the registered gift deeds dated 21.04.2003 in favour of defendant Nos.1 and 3 in respect of the ground and first floor portions of the outhouse. Defendant No.1, by virtue of the registered gift deed executed by Krishnaveni in his favour, acquired ownership over the ground floor portion of the outhouse and thereafter executed a registered sale deed in respect of the said portion thereof in favour of defendant No.4. Defendant Nos.3 and 4, in turn, sold the entire outhouse in favour of defendant Nos.5 to 7 under a registered sale deed. It was thus contended that the defendants had acquired their respective portions of the outhouse and that defendant Nos. 1 to 3 were also entitled to their respective shares in the main house.

9. Defendant No.2 filed a separate written statement, wherein he reiterated substantially the averments made by defendant Nos.1 and 3 in their written statement.



10. Defendant Nos.1 and 3 admitted the relationship between the parties and also admitted that the suit property had been purchased by Lakshmaiah from the BDA under a registered sale deed dated 19.02.1980. He further contended that Lakshmaiah had bequeathed the suit property in favour of his wife, Rajamma, under a Will dated 15.06.1981 and that, after the death of Rajamma, her daughter, Krishnaveni, being her sole surviving heir, acquired the suit property absolutely. It was further contended that Krishnaveni had executed registered gift deeds in favour of defendant Nos.1 and 3 in respect of the outhouse and, accordingly, defendant Nos.1 and 3 became the absolute owners of their respective portions thereof. Defendant No.1 thereafter executed a registered sale deed in respect of the portion acquired by him under the gift deed in favour of defendant No.4, and defendant Nos.3 and 4, in turn, sold their respective portions of the outhouse in favour of defendant Nos.5 to 7 under a registered sale deed.



11. Defendant Nos.5 to 7 filed a separate written statement contending that, by virtue of the registered gift deeds executed by Krishnaveni in favour of defendant Nos.1 and 3, the latter acquired their respective portions of the outhouse. They reiterated that defendant No.1 subsequently sold the portion acquired by him under the gift deed in favour of defendant No.4 under a registered sale deed and defendant Nos.3 and 4 thereafter sold their respective portions in favour of defendant Nos.5 to 7 under a registered sale deed. Consequently, defendant Nos.5 to 7 contended that they had acquired absolute ownership over the outhouse portion of the suit property.

12. On the basis of the pleadings of the parties, the Trial Court framed the following issues:

*"1. Whether the plaintiffs prove that, suit property is un-divided joint family property of the plaintiffs and defendants?*

*2. Whether plaintiffs prove that, gift deeds referred to in the plaint are not binding on the plaintiffs?*



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*3. Whether plaintiffs have share in the suit property?*

*4. Whether plaintiffs are entitled for the relief of perpetual injunction sought for?*

*5. Whether suit is bad for non-joinder of necessary parties?*

*6. Whether suit is bad for mis-joinder of parties?*

*7. Whether defendant Nos. 1 to 3 prove that, the gift deeds referred to in the plaint are valid and binding on the plaintiffs?*

*8. Whether Court Fee paid is insufficient?*

*9. What Decree or Order?"*

13. To prove their case, the plaintiffs examined plaintiff Nos.1 and 2 as PW1 and PW2, respectively, and relied upon 26 documents, which were marked as Exs.P1 to P26. The defendants examined defendant No.5 as DW1 and relied upon 20 documents, which were marked as Exs.D1 to D20.

14. On the basis of the oral and documentary evidence adduced by the parties, the Trial Court answered issue Nos.1 and 3 in the affirmative and issue Nos.2 and 4



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to 8 in the negative, and consequently decreed the suit as follows:

*"The suit of the plaintiffs is decreed in part.*

*The plaintiffs 1 and 2 are jointly entitled to 1/6<sup>th</sup> share each in the suit properties, plaintiff No.3(a) to 3(c) are jointly entitled to 1/6<sup>th</sup> share in the suit properties, defendants 2 and 3 are entitled to 1/6<sup>th</sup> share each in the suit properties and defendant No.1(a) and 1(b) being the legal heirs of deceased defendant No.1 are jointly entitled to 1/6<sup>th</sup> share in the suit properties.*

*The suit of the plaintiffs for Permanent Injunction for restraining defendants from interfering with plaintiffs peaceful possession and enjoyment over their shares is dismissed.*

*The gift deeds dated 21/04/2003 executed by Smt. Krishnaveni in favour of defendants 1 and 3 is declared as not binding upon the plaintiffs.*

*Further, the sale deed executed by defendant No.1 in favour of defendant No.4 on dated 10/01/2007 and sale deed executed by defendant No.3 and 4 in favour of defendants 5 to 7 on dated 18/03/2010 in respect of outhouse of the suit properties is declared as not binding upon the plaintiffs.*

*The defendants shall put the plaintiffs in to*



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*their respective shares as stated above within two months from the date of decree, failing which the plaintiffs can take the possession of their respective shares by taking recourse to law.*

*The parties are directed to bear their own costs.*

*Draw up preliminary decree accordingly."*

15. Being aggrieved by the said judgment and decree, defendant Nos.5 to 7, who are the purchasers of the property, are before this Court.

16. Learned counsel appearing for the appellants/defendant Nos.5 to 7 submits that the suit schedule property was the absolute property of Krishnaveni, who succeeded to the same from her father, Lakshmaiah. She being the only daughter of Lakshmaiah and, upon succeeding to the property, acquired absolute rights therein. The property is governed by Section 14 of the Hindu Succession Act, 1956, and, therefore, Krishnaveni had absolute right to deal with the property and execute the gift deeds in favour of the respective



defendants. It is contended that the Trial Court erred in holding that the entire suit property was joint family property and was available for partition. Such finding, according to the learned counsel, is contrary to Section 14 of the Hindu Succession Act, 1956.

17. Per contra, learned counsel appearing for the plaintiffs contended that the suit schedule property was the self-acquired property of Lakshmaiah, who was the grandfather of the plaintiffs. The plaintiffs inherited the property by succession and, therefore, have a share therein. It is submitted that the Trial Court, having considered the oral and documentary evidence on record, has rightly decreed the suit and that the judgment and decree do not call for interference by this Court.

18. Heard the learned counsel for the parties and perused the judgment and decree of the Trial Court as well as the original records.



19. The points that arise for consideration in this appeal are,

*(i) Whether the judgment and decree passed by the Trial Court suffers from perversity, illegality or arbitrariness so as to call for interference of this Court?*

*(ii) Whether the Trial Court is justified in holding that the entire suit schedule property is available for partition, without considering Section 14 of the Hindu Succession Act, 1956?*

20. It is not in dispute that the suit schedule property was the absolute property of Lakshmaiah. Rajamma was the wife of Lakshmaiah, and they had only one daughter, namely, Krishnaveni. Lakshmaiah and Rajamma died intestate, leaving behind their only daughter, Krishnaveni. Consequently, the suit schedule property devolved upon Krishnaveni, and she acquired absolute right and title over the same.

21. Krishnaveni, thereafter, executed gift deeds in favour of the defendant Nos.1 and 3 in respect of certain



portions of the suit schedule property. The execution of the said gift deeds is also not in dispute between the parties. The plaintiffs instituted the suit seeking partition and separate possession, including in respect of the portions of the property covered under the said gift deeds.

22. The defendants specifically contended that the suit schedule property had become the absolute property of Krishnaveni by virtue of Section 14 of the Hindu Succession Act, 1956. Despite the specific pleadings of the parties on this aspect, the Trial Court did not frame any issue with regard to the nature and character of the suit schedule property or the effect of Section 14 of the Hindu Succession Act, 1956.

23. Without considering the said aspect, the Trial Court proceeded to hold that the entire suit schedule property was available for partition. In the absence of a proper consideration of the specific defence raised by the



defendants and the applicable provisions of law, the said finding of the Trial Court cannot be sustained.

24. On this short ground alone, the judgment and decree passed by the Trial Court are liable to be set aside. The points for consideration framed by this Court are answered accordingly.

25. In view of the above, the following order:

- (i) Appeal is allowed.
- (ii) The judgment and decree passed by the Trial Court dated 09.11.2015 in O.S.No.2924/2005 is set aside.
- (iii) The matter is remanded back to the Trial Court with a direction to the Trial Court to frame an additional issue on the basis of the pleadings of the parties and reconsider the matter afresh, after giving opportunity to both the parties.
- (iv) All the contentions of the parties are left open.



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(v) In view of disposal of the main appeal, all pending applications are disposed of as they do not survive for consideration.

Digitally Signed by NARENDRA PRASAD  
HAREKOPPA THIMMANNA GOWDA on 19-  
09-2026

**(H.T. NARENDRA PRASAD)**  
**JUDGE**

CM  
LIST NO.: 1 SL NO.: 78