



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 2031 OF 2006 (PAR)

BETWEEN:

1. SMT KRISHNABAI
W/O LAXMAN RAO
SINCE DEAD, LRs ALREADY ON RECORD
2. SMT SAVITHA
W/O BASAVARAJ
AGED ABOUT 47 YEARS
3. SMT MEENA
W/O NAGARAJ
AGED ABOUT 45 YEARS
4. RAJU
S/O LATE LAXMAN RAO
AGED ABOUT 43 YEARS
5. PRASHANTH
S/O LATE LAXMAN RAO
AGED ABOUT 40 YEARS

ALL ARE R/O MARATHA GALLI
HARIHAR-577601
DAVANAGERE DISTRICT

...APPELLANTS

(BY SRI. R. GOPAL, ADVOCATE)

AND:

1. NAGARAJ

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NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

S/O SMT VENKUBAI
AGED ABOUT 36 YEARS

2. SMT RAJAMMA
W/O LAKSHMANA
SINCE DEAD

BOTH ARE R/O AGASARA BEEDI
SHIMOGA ROAD, HARIHAR-577601,
DAVANAGERE DISTRICT

3. B HANUMANTHAPPA
S/O ARERA BASAPPA
[DELETED VIDE COURT ORDER]

4. B CHANDRAPPA
S/O ARERA BASAPPA
AGED ABOUT 52 YEARS

5. THIPPESHI
S/O ARERA BASAPPA
AGED ABOUT 49 YEARS

6. MARUTHI
S/O ARERA BASAPPA
SINCE DEAD BY LR_s

- 6(A) SUNANDA
W/O LATE MARUTHI
AGED ABOUT 48 YEARS
C/O LAXMANA RAO BUILDING
AGASARA BEEDI, SHIMOGA ROAD
HARIHARA-577 601.

- 6(B) VINAY
S/O LATE MARUTHI
AGED ABOUT 22 YEARS
C/O LAXMANA RAO BUILDING
AGASARA BEEDI, SHIMOGA ROAD
HARIHARA-577 601.



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

- 6(C) RAMYA
D/O LATE MARUTHI
AGED ABOUT 30 YEARS
1ST MAIN, 5TH CROSS, J.C.EXTENTION
HARIHARA-577 601.
- 6(D) DIVYA
W/O SUNIL RAO (MAHESHAPPA)
D/O LATE MARUTHI
AGED ABOUT 27 YEARS
MYDHOLU-MALLAPURA VILLAGE
BHADRAVATHI TALUK, SHIMOGA DISTRICT
PIN CODE-577 243
7. SMT GANGAMMA
D/O ARERA BASAPPA
AGED ABOUT 47 YEARS
8. SMT GEETHA
W/O M.YALLOJI RAO
AGED ABOUT 42 YEARS
9. SMT DURUGAMMA
W/O ARERA BASAPPA
SINCE DEAD, LRs ALREADY ON RECORD
- RESPONDENTS 3 TO 9 ARE
R/O AGASARA BEEDI, SHIMOGA ROAD
HARIHAR, DAVANAGERE DISTRICT
PIN – 577601.
10. SMT HALAMMA
W/O HANUMANTHAPPA
AGED ABOUT 62 YEARS
11. MANJUNATH
S/O HANUMANTHAPPA
AGED ABOUT 45 YEARS
12. SMT SAROJA



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

W/O KRISHNAPPA
AGED ABOUT 47 YEARS
SINCE DEAD BY LR_s

12(A) PRAKASH .K
S/O KRISHNAPPA
AGED ABOUT 37 YEARS
R/O 2ND MAIN, 13TH CROSS
RAJARAM COLONY, HARIHAR-577 601.

12(B) MANJULA .K
W/O SHIVAKUMAR
AGED ABOUT 32 YEARS
R/O KUNIBELAKERE
HARIHAR TALUK
DAVANAGERE DIST-577 601.

13. SMT SUNANDA
W/O HANUMANTHAPPA
AGED ABOUT 44 YEARS

RESPONDENTS 10 TO 13 ARE
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601

14. VENKOJI RAO
S/O ARERA DEVAPPA
AGED ABOUT 59 YEARS
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601
SINCE DEAD BY LR_s

14(A) JEEJA BAI
W/O LATE VENKOJI ROA
AGED ABOUT 65 YEARS
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601

14(B) MADHUSUDHAN RAO
S/O LATE VENKOJI ROA



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

AGED ABOUT 51 YEARS
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601

14(C) MANJUNATH
S/O LATE VENKOJI ROA
AGED ABOUT 49 YEARS
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601

14(D) DEVARAJ
S/O LATE VENKOJI ROA
AGED ABOUT 46 YEARS
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601

14(E) LAXMI BAI
D/O LATE VENKOJI ROA
AGED ABOUT 44 YEARS
R/O AGASARA BEEDI, SHIMOGA ROAD, HARIHAR,
DAVANAGERE DISTRICT-577601

15. RAMACHANDRAPPA
S/O LATE GANGAMMA
SINCE DEAD BY LR_s

15(A) RAJU .R
S/O LATE RAMACHANDRAPPA
AGED ABOUT 42 YEARS
HOUSE NO.794/1, 2ND CROSS
PISALE COMPOUND
BESIDE POLICE STATION
P.B.ROAD, DAVANAGERE-577 001.

15(B) RENUKA
W/O LAKSHMANA RAO
D/O LATE RAMACHANDRAPPA
AGED ABOUT 46 YEARS
BEHIND SRI ANTHARAGHATTAMMA TEMPLE
JANNAPURA, BHADRAVATHI-577 301.



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

- 15(C) JYOTHI
W/O HANUMANTHAPPA
D/O LATE RAMACHANDRAPPA
AGED ABOUT 44 YEARS
POOJA FANCY STORES
LINGAYATHARA BEEDI, JANNAPURA
BHADRAVATHI-577 301.
16. HANUMANTHAPPA
S/O LATE GANGAMMA
[DELETED VIDE COUT ORDER]
17. ROOPRAJ
S/O DOWLATRAM
AGED MAJOR
MAHAVEERA INDUSTRIES
SHIMOGA ROAD, HARIHAR-577601
DAVANAGERE DISTRICT
18. DASAPPA AND SONS
ARRACK CONTRACTORS
REPRESENTED BY ITS MANAGER
AGASARA BEEDI, SHIMOGA ROAD,
HARIHAR-577601
DAVANAGERE DISTRICT
19. T G VITTOBA RAO
S/O GOVINDAPPA
AGED MAJOR
KIRANI SHOP, AGASARA BEEDI
SHIMOGA ROAD, HARIHAR-577601
DAVANAGERE DISTRICT
20. GADIGEPPA
S/O RAMAPPA
21. PARAMESHWARAPPA
S/O RAMANNA



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

22. JANARDHANA RAO
S/O RAMAPPA

RESPONDENTS 20 TO 22 ARE
AGED MAJORS,
R/O AGASARA BEEDI, SHIMOGA ROAD
HARIHAR-577601, DAVANAGERE DISTRICT

23. DR. RAJARAM
S/O RAMACHANDRA RAO
AGED MAJOR
SHIMOGA ROAD, HARIHAR-577601
DAVANAGERE DISTRICT

24. DAYANANDA SARASWATHI
S/O RAMACHANDRA RAO
AGED MAJOR
SRI.PATEKAR ENGINEERING
SHIMOGA ROAD, HARIHAR-577601
DAVANAGERE DISTRICT

25. SIDDEGOWDA
S/O JOGAIAH
AGED MAJOR
R/O DOOR NO 236, MARATHA GALLI
HARIHAR-577601
DAVANAGERE DISTRICT

26. BABU RAO RAMACHANDRA PATIL
AGED MAJOR
R/O D. NO 237, MARATHA GALLI
HARIHAR-577601,
DAVANAGERE DISTRICT

27. H M VEERAIHAH
S/O MAHADEVIAHAH
AGED MAJOR
R/O D.NO 237, MARATHA GALLI
HARIHAR-577601, DAVANAGERE DISTRICT.



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

28. KRISHNASE PAWAR
S/O NAGAPPA PAWAR
AGED MAJOR

29. R RAJU
S/O RAMANUJAM
AGED MAJOR

RESPONDENTS 28 AND 29 ARE
R/O SHIMOGA ROAD, HARIHAR-577601
DAVANAGERE DISTRICT

30. GHOUSE SAB
S/O BABU SAB
AGED MAJOR
R/O MARATHA GALLI,
HARIHAR-577601, DAVANAGERE DISTRICT.

31. SHIVAJI
S/O ARERA BASAPPA
[DELETED VIDE COURT ORDER]

32. SMT. BASHAMMA,
W/O LATE B. HANUMANTHAPPA,
AGED ABOUT 50 YEARS,
AGRICULTURIST,
R/O AGASARA BEEDI, SHIVAMOGGA ROAD,
HARIHAR, PINCODE-577601.

33. SRI. MAHANTESHA,
S/O LATE B. HANUMANTHAPPA
AGED ABOUT 45 YEARS,
AGRICULTURIST,
R/O AGASARA BEEDI,
SHIVAMOGGA ROAD, HARIHAR,
PINCODE-577601.

34. THIPOJI RAO,
S/O LATE B. HANUMANTHAPPA
AGED ABOUT 42 YEARS



NC: 2026:KHC:55232
RSA No. 2031 of 2006

CNR: KAHC010430462006

- AGRICULTURIST,
R/O AGASARA BEEDI,
SHIVAMOGGA ROAD, HARIHAR,
PINCODE-577601.
35. SMT. MANJAMMA,
D/O LATE B. HANUMANTHAPPA
AGED ABOUT 40 YEARS
AGRICULTURIST
R/O AGASARA BEEDI,
SHIVAMOGGA ROAD, HARIHAR,
PINCODE-577601.
36. SMT. NETHRAVATI,
D/O LATE B. HANUMANTHAPPA
AGED ABOUT 50 YEARS
AGRICULTURIST
R/O AGASARA BEEDI,
SHIVAMOGGA ROAD, HARIHAR,
PINCODE-577601.
37. SMT. SHOBHA
W/O LATE SHIVAJI
AGED ABOUT 46 YEARS
AGRICULTURIST
R/O AGASARA BEEDI,
SHIMOGA ROAD
HARIHAR, DAVANAGERE - DISTRICT
PINCODE-577601
38. SRI. KIRAN KUMAR
W/O LATE SHIVAJI
AGED ABOUT 38 YEARS
AGRICULTURIST,
R/O AGASARA BEEDI, SHIMOGA ROAD
HARIHAR, DAVANAGERE - DISTRICT
PINCODE 577601
39. SRI. ARUN KUMAR
S/O LATE SHIVAJI



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

AGED ABOUT 35 YEARS
AGRICULTURIST
R/O AGASARA BEEDI, SHIMOGA ROAD,
HARIHAR, DAVANAGERE - DISTRICT,
PINCODE-577601

...RESPONDENTS

(BY SRI. HAREESH BHANDARY .T & SRI. SURESH .C,
ADVOCATES FOR R1 AND R4;

SRI. VISHWANATH R. HEGDE, ADVOCATE FOR R2 & R10
TO R13;

V/O DATED 18.07.2016 R4 TO R8 ARE TREATED AS LRS
OF DECEASED R9;

SRI. SURESHA .C, ADVOCATE FOR R5, R6(A TO D), R7,
R8 AND ALSO FOR R32 TO R39;

R14(A & B) ARE SERVED;

V/O DATED 06.03.2015 NOTICE TO R17 TO R22, R25
AND R29 ARE DISPENSED WITH;

R23, R24, R26, R27, R28, R30 ARE SERVED AND
UNREPRESENTED;

V/O DATED 23.06.2017, R3 & R16 ARE DELETED;

V/O DATED 13.08.2019 R31 IS DELETED;

R15(A), R15(B), R15(C) ARE SERVED;

V/O DATED 24.04.2025 NOTICE TO R14(C TO E) ARE
HELD SUFFICIENT;

R14(C), R14(D), R14(E), PROPOSED R12(A), PROPOSED
R12(B) ARE SERVED)

THIS RSA IS FILED U/S 100 CPC, AGAINST THE
JUDGMENT AND DECREE DATED 18.4.2006 PASSED IN RA.NO.
248/2002 ON THE FILE OF THE CIVIL JUDGE (SR.DN.),
HARIHAR, ALLOWING THE APPEAL AND SETTING ASIDE THE
JUDGMENT AND DECREE DATED 19.11.2001 PASSED IN
OS.NO. 299/1989 ON THE FILE OF THE ADDL.CIVIL JUDGE
(JR.DN.), HARIHAR.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

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SACHIN SHANKAR MAGADUM
Verified



CNR: KAHC010430462006

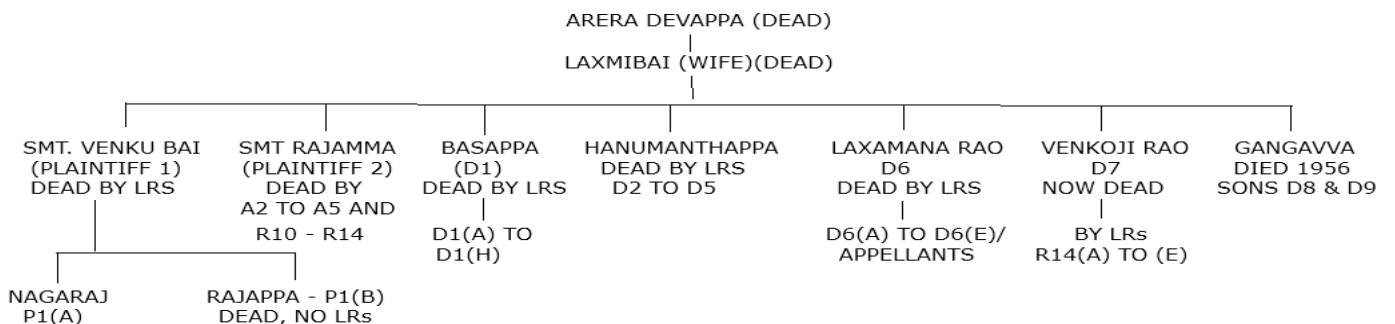
NC: 2026:KHC:55232
RSA No. 2031 of 2006

ORAL JUDGMENT

The captioned second appeal is by the legal heirs of original defendant No.6 questioning the judgment and decree rendered by the Appellate Court reversing the decree of the Trial Court and consequently, decreeing the suit granting share to the plaintiffs.

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

3. It would be appropriate for this Court to extract the family tree which is as under:



4. Facts leading to the case are as under:

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CNR: KAHC010430462006

The original plaintiffs namely Venko Bai and Rajamma, sisters of defendant Nos.1, 6 and 7 instituted a suit seeking relief of partition and separate possession in O.S.No.299/1989. The plaintiffs contended that one Arera Devappa is the father of the plaintiffs and defendant Nos.1, 6 and 7 and that he owned the suit schedule properties and has died intestate and after his demise, it is asserted that plaintiffs and defendants have lived together as members of Hindu Undivided family and are in joint possession of the suit schedule properties. Plaintiffs further alleged that defendant No.6 being educated used to manage the entire affairs of the properties and distributed the yield generated from the ancestral properties. It is alleged that since April 1986, defendant Nos.1 to 9 started acting adversely to the interests of the plaintiffs. The plaintiffs also on verification found that defendants have not maintained proper accounts and therefore demanded their legitimate share in January 1987. The defendants however went on postponing and



CNR: KAHC010430462006

refused to effect partition by metes and bounds. Plaintiffs also alleged that defendant Nos.1 to 7 have created documents styled as partition deeds which are behind the back of the plaintiffs and therefore, these partition deeds are not binding on their legitimate share.

5. Defendant No.6, on receipt of summons, entered appearance, filed written statement and stoutly denied the entire averments made in the plaint. Defendant No.6 per contra, specifically contended that their father Devappa had gifted a site measuring 16 ½ feet x 38 feet to plaintiff No.1 Venko Bai under registered gift deed dated 27.12.1961 which is abutting to schedule 'C' property being part and parcel of larger property bearing No.B-48 (schedule 'C' property) and that plaintiff No.1 has constructed an RCC building and she is residing in the said property. Defendant No.6, further contended that after demise of their father Devappa, defendant Nos.1, 2, 6 and 7 divided the properties under palu patti dated 18.03.1966



CNR: KAHC010430462006

and the husband of plaintiff No.1 has witnessed the partition among the male members and he has signed the palu patti and later registered the same under registered partition deed dated 20.08.1969. However, Property No.B-48 (schedule 'C') which was a site consisting of kana and house was kept for maintenance of their mother Lakshmi Bai with a stipulation that after her demise, defendant Nos.1, 2, 6 and 7 could further divide the property. Defendant No.6 therefore contented that on 13.06.1974, defendant No.6 and their brothers with the consent of Lakshmi Bai effected a second partition pertaining to Schedule 'C' property under palu patti dated 13.06.1974 to which mother Lakshmi Bai is also a signatory and plaintiff No.1's husband is an attesting and later by registered partition deed dated 10.03.1983, the palu patti effected on 13.06.1974 is confirmed regarding division of schedule 'C' property.

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CNR: KAHC010430462006

6. Defendant No.6 further specifically pleaded that post partition, applications were tendered to the local authorities and mutations were effected in terms of partition and that severance is well within the knowledge of the plaintiffs and they were ousted in respect of both the properties, one under 1966 partition followed by 1974 partition. Defendant No.6 therefore contended that post severance in the family, he has invested his hard earned money as he was employed and has constructed RCC building in the portion allotted to him in schedule 'B' property. Defendant No.6 therefore specifically pleaded that plaintiffs being adjacent owner was fully aware of the constructions made by defendant No.6 and has remained a passive witness to these constructions. He has also specifically pleaded that there were litigation between defendant Nos.6 and 7 where the judgment favoured defendant No.6 and since defendant No.7 failed to pay the costs of construction insofar as his share is concerned, was subject matter of O.S.No.40/1985 and that appeal is



CNR: KAHC010430462006

pending before the District Judge in R.A.No.5/1988. Defendant No.6 specifically pleaded that it is defendant No.7 who has instigated his sisters to file a suit for partition in connivance with defendant Nos.1 and 5. Therefore, sought for dismissal of the suit alleging that suit is barred by limitation.

7. Trial Court formulated appropriate issues referring to the pleadings of the parties. Plaintiffs and defendants have let in oral and documentary evidence.

8. The Trial Court while answering additional Issue No. 2 in the affirmative, held that suit is barred by limitation and suit is accordingly dismissed.

9. The plaintiffs feeling aggrieved by the dismissal of the suit preferred an appeal before the Appellate Court in R.A.No.248/2002. The Appellate Court, however, allowed the appeal and reversed the decree granting share to the plaintiffs by holding that suit schedule properties are joint family ancestral properties and the registered



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

partition deed effected among male co-parceners does not bind the plaintiffs/sisters. Assailing the judgment and decree rendered by the Appellate Court, the legal heirs of defendant No.6 are before this Court.

10. This Court vide order dated 08.02.2008 formulated following substantial question of law:

"Whether the lower appellate Court was justified in granting equal share to the daughters even in respect of joint family properties?"

11. This Court, after hearing the counsels on record extensively, found that an appropriate additional substantial question of law arises for consideration. This Court, vide order dated 16.09.2026 formulated the following additional substantial question of law:

"Whether the First Appellate Court, while reversing the judgment and decree of the Trial Court and consequently decreeing the suit, was justified in not recording any independent or

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

specific findings, with reasons, on Additional Issue No.2 relating to limitation, which had been answered by the Trial Court in the affirmative and against the plaintiff, and whether such omission renders the judgment and decree of the First Appellate Court contrary to the mandate of Order XLI Rule 31 of the Code of Civil Procedure, 1908?"

12. It would be appropriate for this Court to first answer the additional substantial question of law framed by this Court regarding limitation.

Finding on additional substantial question of law:

13. On a bare perusal of the genealogy, it is evident that Venko Bai and Rajamma, being the daughters of Devappa, instituted the present suit seeking partition and separate possession of the suit schedule properties. While plaintiff No.2/Rajamma entered the witness box and deposed in support of the plaint averments, plaintiff No.1/Venko Bai did not choose to enter the witness box. The records further disclose that Venko Bai died during the pendency of the proceedings. Thereafter, her son, namely,



CNR: KAHC010430462006

Nagaraj, came to be brought on record as plaintiff No.1(a), claiming under a Will said to have been executed by Venko Bai and also asserting that he was her adopted son.

14. It is in the backdrop of these undisputed and material circumstances that the specific defence set up by original defendant No.6 assumes significance. Defendant No.6 has specifically pleaded that the plaintiffs were aware of the earlier partitions effected amongst the male coparceners in the years 1966 and 1974 and that the husband of plaintiff No.1, namely, Rajappa, was actively associated with the said family transactions and had participated in the partition arrangements. Since the question of the plaintiffs' knowledge of the earlier partition and the subsequent separate possession and enjoyment of the properties is central to the plea of ouster set up by defendant No.6, it would be apposite to advert to the



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

specific pleadings in the written statement. The relevant portion thereof reads as under:

"Both the plaintiffs are aware that their brothers D1, D2, D6 and D7 had already divided the property as per the Regd. Partition deed dated 20-8-1969. B-48 was an open site at that time which consisted of a khana and a house which measures East-West 52 yards, North South 27 yards and this property was kept for the maintenance of Smt. Laxmi Bai i.e., mother of Def.No.1, 2, 6 and 7 as plaintiffs and it is stipulated that the only 4 brothers to be partitioned among themselves i.e., D1, D2 and D6 and D7 after the death of Laxmibai W/o Arera Dyavappa other properties were all divided according to the partition deed dated 20-8-69. To this palupatti and first plaintiff's husband has attested. The schedule A,B,C are all incorrectly described and this defendant has filed separate schedule to this written statement which were allotted in the year 1966. Again on 13-6-74 this defendant and three other brother with voluntary consent of Laxmibai effected partition by means of a palupatti to which mother Laxmibai also has attested as a consenting witness. To this deed also first plaintiff's husband attested."

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

15. It would also be appropriate for this Court to extract the relevant portion of second partition effected among male co-parceners as set up by defendant No.6.

The same reads as under:

"As per the palupatti the property left for maintenance of their mother thus also became divided. Eversince 18-3-1966 the brother living separately eaking out their livelyhood separately. The same palupatti has been confirmed and division has been confirmed by the registered partition deed dated 10-3-83 by then Laxmibai the mother of plaintiff who as an active consent to the palupatti dated 13-6-1974 had died. This was done in order to prevent any misunderstanding between the brothers. The first plaintiff resides as averred above in the property that was divided among the brothers by a palupatti dated 13-6-1974. A rought sketch is herewith produced detailing with regard property left for maintenance of Smt. Laxmi Bai in this behalf parties to the palupatti have filed an application before Municipality on 21-6-1974 which has been accepted by Municipality and Khatha has been transferred."

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

16. The aforesaid pleadings assume considerable significance. Defendant No.6 has not merely raised a general or vague plea of prior partition; he has specifically pleaded that the properties had already been divided amongst the male coparceners under the partition arrangements effected in the years 1966 and 1974, which were subsequently evidenced and confirmed by registered partition deeds. More importantly, there is a specific and categorical assertion that Rajappa, the husband of plaintiff No.1/Venko Bai, had actively participated in both the partition transactions and had signed the respective partition documents as an attesting witness. Despite such specific pleadings touching upon the knowledge attributable to plaintiff No.1 through the conduct of her husband, no rejoinder or specific denial was filed by plaintiff No.1 disputing these material assertions. The absence of any specific denial assumes significance while appreciating the subsequent conduct of the parties and the plea of ouster set up by defendant No.6.

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CNR: KAHC010430462006

17. It is no doubt true that, under the law as it stood prior to the statutory amendment, a daughter did not acquire, by birth, the status of a coparcener in the Mitakshara coparcenary during the lifetime of her father. Nevertheless, upon the death of a male coparcener, the interest devolving upon his heirs was governed by the provisions of the Hindu Succession Act, 1956, including Section 8, as applicable to the facts of the case. The existence of such a legal right, however, does not conclude the controversy in the present proceedings. The material question which arises for consideration is whether, notwithstanding the asserted right of the plaintiffs, the male coparceners had already effected partitions in the years 1966 and 1974 and, more importantly, whether the plaintiffs had knowledge of such partitions and the consequent separate possession and enjoyment of the properties by the respective allottees, yet remained silent until the institution of the suit in the year 1989.

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

18. In order to examine this aspect of the matter, it would be apposite to first advert to the description of the suit schedule properties furnished by the plaintiffs themselves, particularly Schedule 'C'. The description of Schedule 'C' property, as set out in the plaint, reads as under:

"c) The vacant site situated in B division Harihar, bearing assessment No.48 measuring about East-West 32½ feet and North-South 32 feet and bounded as follows.

<i>East -</i>	<i>Vacant site</i>
<i>West -</i>	<i>House of Venkamma</i>
<i>North -</i>	<i>Road</i>
<i>South -</i>	<i>Agasarageri oni.</i>

19. The fact that defendant No.6 has specifically pleaded that the father had gifted a vacant site in favour of plaintiff No.1/Venko Bai, over which she constructed a residential house adjoining Schedule 'C' property, assumes significance. The description of Schedule 'C' furnished by the plaintiffs themselves in the plaint indicates that the



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

property situated to its west was the house of Venkamma. This circumstance, when considered in the backdrop of the evidence on record, indicates that plaintiff No.1 was residing in close proximity to the properties which were subsequently divided and separately enjoyed by the male coparceners. The said circumstance becomes relevant while examining whether the plaintiffs were aware of the partition and the subsequent assertion of exclusive rights by the respective allottees.

20. The plea of ouster cannot, no doubt, be sustained merely on the basis of long-standing possession or separation in residence. It has to be established by cogent and tangible evidence demonstrating an open assertion of hostile title and exclusive possession to the knowledge of the other coparcener. However, the peculiar facts of the present case disclose circumstances which require consideration cumulatively. Both the married sisters were residing in a property which, according to the

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CNR: KAHC010430462006

defence, had been gifted by their father to plaintiff No.1. More importantly, the husband of plaintiff No.1, namely Rajappa, was actively associated with the family transactions. His participation was not confined to the partition arrangements; he had also attested subsequent alienations effected by the male coparceners, including the alienations evidenced by Exs.D-9 and D-12, wherein the concerned coparceners asserted exclusive rights over the properties claimed to have fallen to their respective shares. These circumstances furnish material to draw an inference that plaintiff No.1 had constructive notice of the partition and the subsequent assertion of exclusive ownership.

21. The rebuttal evidence adduced by defendant No.6 assumes considerable significance in determining whether the plaintiffs were, in fact, excluded from possession and whether the male coparceners had thereafter exercised exclusive rights over the properties



CNR: KAHC010430462006

allotted to them. Ex.D-8, which was also marked as Ex.P-10 at the instance of the plaintiffs, contains recitals regarding the division of the properties and their separate enjoyment by the respective allottees pursuant to the partition effected in the year 1966, particularly insofar as Schedule 'A' and Schedule 'B' properties are concerned. Thus, the documentary evidence furnishes contemporaneous material indicating not merely a claim of partition but separate possession and enjoyment following such partition.

22. The registered sale deed executed by defendant No.7 in respect of Schedule 'B' property is yet another significant circumstance. Ex.D-12 is the registered sale deed dated 12.02.1971 executed by defendant No.7 in favour of defendant No.6. The recitals therein indicate that defendant No.7 was dealing with the property as the portion exclusively allotted to him under the earlier partition arrangement. The subsequent registered



CNR: KAHC010430462006

alienation, therefore, constitutes tangible evidence of the assertion of exclusive title and possession following the partition.

23. Ex.D-3, the registered gift deed dated 27.12.1961, produced by defendant No.6, further establishes that a vacant site had been gifted in favour of plaintiff No.1, over which she constructed a residential house and resided with her husband Rajappa and plaintiff No.2. Defendant No.6, apart from examining himself as DW-1, examined DWs-2 and 3, who were connected with the execution of Exs.D-5 and D-12. The evidence further discloses that defendant No.6 undertook substantial construction and development upon the property claimed to have fallen to his share.

24. The evidence elicited in the cross-examination of PW-1/Rajamma is of considerable relevance. There are material admissions indicating that the members of the family were residing separately and were enjoying



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

properties independently. A further significant admission is that, in respect of the property situated on Shimoga Road, corresponding to Schedule 'C' property and claimed by defendant No.6 to have fallen to his share, an RCC building had been constructed and was being let out to tenants. The Municipal Assessment Extracts produced at Exs.P-1 to P-9 also disclose that the respective male coparceners were independently paying municipal assessments in respect of the properties in their possession. These circumstances lend substantial corroboration to the defence that the parties had been separately possessing and enjoying their respective properties for several decades.

25. The plea of ouster, therefore, has to be examined in the backdrop of the cumulative circumstances emerging from the evidence. The participation of Rajappa, husband of plaintiff No.1/Venko Bai, in the family arrangements assumes particular significance. The

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

evidence indicates that Rajappa was not a stranger to the affairs of his wife's parental family. On the contrary, he was actively associated with the partition arrangements amongst the male coparceners and had attested the relevant documents. His participation extended to subsequent transactions whereby the male coparceners dealt with the properties as exclusive owners. Such conduct constitutes a relevant circumstance in determining whether plaintiff No.1 had knowledge of the partition and the subsequent exclusive enjoyment.

26. Another circumstance which assumes significance is the registered gift deed dated 27.12.1961. The evidence indicates that the propositus, Arera Devappa, father of the plaintiffs and defendants, had gifted a vacant site in favour of Venko Bai, over which she constructed a house and resided with her husband Rajappa. Thus, Venko Bai was not residing at a distant or unrelated place; she was residing in a property situated

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CNR: KAHC010430462006

within the family setting and in close proximity to the properties which were subsequently divided and separately enjoyed by the male coparceners. This circumstance, coupled with the active participation of her husband in the family transactions, assumes relevance in determining whether the subsequent partition and assertion of exclusive rights could have escaped her notice.

27. The legal position governing ouster amongst co-heirs is well settled. Mere exclusive possession by one co-heir does not, by itself, constitute ouster. There must be clear and unequivocal evidence of an open assertion of hostile title coupled with exclusive possession and enjoyment to the knowledge of the other co-heir. The Hon'ble Supreme Court, in ***P. Lakshmi Reddy vs. L. Lakshmi Reddy***¹, has authoritatively explained the principles governing such a plea. The evidence on record in the present case has, therefore, to be tested on the touchstone of these settled principles.

¹ AIR 1957 SC 314



CNR: KAHC010430462006

28. In the present case, the assertion of exclusive title is not founded merely on long possession. It is evidenced by the partition arrangements, the subsequent registered documents, separate possession and enjoyment, construction and development undertaken by defendant No.6, the registered alienations effected by the other male coparceners and the payment of municipal assessments over several decades. Of particular significance is the fact that Rajappa, husband of Venko Bai, participated in the family partition arrangements and attested subsequent alienations. These transactions constituted open acts of assertion of exclusive ownership. The fact that Venko Bai was herself residing in a house constructed upon the property gifted to her by her father further strengthens the inference that she was situated within the family setting and had sufficient opportunity to know of the manner in which the remaining properties were being dealt with.



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

29. The prolonged silence of Venko Bai, despite the existence of such open and tangible assertions of exclusive ownership by the male coparceners, assumes significance. The partition arrangements were followed by registered transactions, separate possession, construction, development and alienation of the properties. Her husband had participated in the partition arrangements and had attested subsequent alienations. Yet, there is no evidence of any contemporaneous objection raised by Venko Bai challenging the partition or the exclusive possession of the male coparceners. The absence of any such objection over a prolonged period is a circumstance which supports the defence that the exclusion was within her knowledge.

30. The non-examination of Venko Bai also assumes considerable significance. She was the original plaintiff and was the person directly asserting a right to a share in the joint family properties. She was the best person to explain whether she had knowledge of the

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CNR: KAHC010430462006

earlier partitions, whether she had objected to the separate possession and enjoyment of the properties by the male coparceners and whether her husband had participated in or attested the relevant family transactions. However, she did not enter the witness box. Her subsequent death during the pendency of the proceedings cannot explain her failure to depose when the opportunity was available to her.

31. The subsequent impleadment of Nagaraj as plaintiff No.1(a), claiming through Venko Bai on the strength of the Will relied upon by him and also asserting that he was her adopted son, does not alter the evidentiary position. Nagaraj was not the person who had admittedly participated in or witnessed the family transactions of 1966 and 1974. The matters relating to Venko Bai's personal knowledge, conduct and alleged acquiescence were matters which were peculiarly within her knowledge. Her successor could not, merely by



CNR: KAHC010430462006

stepping into the proceedings, supply the direct evidence which she herself could have furnished regarding these matters.

32. In these circumstances, an adverse inference under Section 114 illustration (g) of the Indian Evidence Act, 1872, is legitimately attracted. The adverse inference is not being drawn merely because Venko Bai failed to enter the witness box. It arises from the cumulative effect of her status as the original plaintiff, the specific pleadings regarding her husband's participation in the family transactions, the documentary evidence relating to the partitions and subsequent alienations, the absence of any contemporaneous challenge by her and her failure to enter the witness box to controvert the specific case pleaded by defendant No.6. Her evidence would have had a direct bearing upon the crucial question of her knowledge of the partition transactions and her conduct thereafter.



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

33. The subsequent conduct of the parties also requires consideration. The material placed on record indicates that the male coparceners continued to deal with the properties as exclusive owners after the partition, effected alienations, raised constructions and separately paid municipal assessments. The conduct of Rajamma also assumes significance, particularly insofar as the material relating to the subsequent compromise and acknowledgement of the earlier partition is concerned. These subsequent events, when considered along with the documentary evidence and the conduct of Venko Bai and her husband, substantially weaken the case that the plaintiffs remained unaware of the earlier severance and continued to treat the properties as joint family properties until the institution of the suit.

34. The circumstance that the other male coparceners supported the plaintiffs' claim cannot, by itself, displace the documentary and circumstantial

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

evidence produced by defendant No.6. The Court is required to examine the case on the basis of the evidence and the conduct of the parties rather than merely on the basis of the stand subsequently taken by individual family members. The material evidence, particularly the registered partition documents, subsequent registered alienations, separate possession, development of the properties and the participation of Rajappa in the relevant transactions, provides a consistent course of conduct extending over several decades.

35. On an overall appreciation of the oral and documentary evidence, this Court is of the considered view that the severance amongst the male coparceners stood established by admissible documentary evidence and was followed by separate possession and enjoyment of the respective properties. The subsequent conduct of the parties demonstrates an open assertion of exclusive ownership. The participation of Rajappa in the family

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CNR: KAHC010430462006

partition arrangements and his attestation of subsequent alienations, coupled with the failure of Venko Bai to enter the witness box and the absence of any contemporaneous challenge by her, constitutes a strong circumstance establishing her constructive knowledge of the partition and the subsequent exclusive enjoyment by the respective allottees. The plea of ouster, therefore, cannot be rejected on the ground that there is no evidence of open assertion of exclusive title.

36. The decisions relied upon by the learned counsel appearing for the plaintiffs, when examined in the factual backdrop of the present case, do not advance the case of the plaintiffs. The principles laid down in those decisions relating to the stringent requirements for establishing ouster are not in dispute. However, the question is whether those requirements stand satisfied on the evidence available in the present case. Having regard to the registered partition arrangements, subsequent



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

registered alienations, separate possession and enjoyment, the conduct of the parties over several decades and, in particular, the participation of Venko Bai's husband in the relevant transactions, this Court finds that the necessary factual foundation for the plea of ouster has been established.

37. The conduct of the parties furnishes yet another significant circumstance which cannot be overlooked. Though Venko Bai and Rajamma jointly instituted the suit seeking partition and separate possession, it was only Rajamma who entered the witness box and actively prosecuted the proceedings. Venko Bai, despite being one of the original plaintiffs and the person claiming an independent share in the suit properties, never entered the witness box. This circumstance, when considered in conjunction with the fact that she had already received a vacant site under the registered gift deed executed by her father and had constructed a residential house thereon,

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CNR: KAHC010430462006

gives rise to a legitimate inference that Rajamma was prosecuting the claim not merely in assertion of her own alleged share, but also representing the claim purportedly set up on behalf of Venko Bai. At the very least, the complete absence of any independent evidence or conduct on the part of Venko Bai asserting her alleged right assumes considerable significance.

38. The subsequent conduct of Rajamma lends further support to the aforesaid inference. Plaintiff No.1(a), Nagaraj, is admittedly the biological son of Rajamma and has subsequently sought to prosecute the present proceedings tracing his right through Venko Bai, on the strength of the testamentary disposition relied upon by him. At the same time, Rajamma herself has entered into a compromise and acknowledged the earlier partition. Such subsequent acknowledgment by the very plaintiff who had originally instituted and actively prosecuted the suit is a circumstance which cannot be brushed aside while



CNR: KAHC010430462006

examining the genuineness and continuity of the claim sought to be prosecuted through Venko Bai.

39. The Court cannot lose sight of the fact that plaintiff No.1(a) is prosecuting the present appeal as a person claiming through Venko Bai, whereas his mother Rajamma, who was the other original plaintiff and who had personally deposed in the suit, has subsequently acknowledged the partition. The evidentiary value of such subsequent conduct, coupled with the failure of Venko Bai herself to enter the witness box or independently assert her claim, assumes considerable significance. In the absence of cogent evidence demonstrating that Venko Bai had herself persisted in asserting a claim adverse to the partition, plaintiff No.1(a), merely by tracing his alleged right through a testamentary disposition, cannot improve upon or enlarge the case originally pleaded and proved by Venko Bai.



CNR: KAHC010430462006

40. Viewed cumulatively, the circumstances that Venko Bai never entered the witness box, that she had received a separate property by way of gift from her father and constructed her residential house thereon, that there is no evidence of any independent assertion by her against the partition for several decades, that Rajamma alone actively prosecuted the suit and subsequently acknowledged the partition, and that plaintiff No.1(a), being Rajamma's son, is now seeking to prosecute the claim through Venko Bai, materially affect the credibility and sustainability of the claim. These circumstances, therefore, furnish an additional reason to decline the relief sought in the present Second Appeal and to uphold the finding that the earlier partition and the consequent separate enjoyment of the properties cannot now be reopened at the instance of plaintiff No.1(a).

41. Consequently, the suit instituted in the year 1989, seeking to reopen the family arrangement and claim



CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

a share in properties which had been separately possessed and enjoyed pursuant to the earlier partition, is liable to fail on the ground of limitation as well. The learned First Appellate Court, while reversing the judgment and decree of the Trial Court, has failed to properly appreciate the documentary evidence, the material admissions elicited in the cross-examination of PW-1 and the cumulative effect of the conduct of the parties. The findings recorded by the First Appellate Court, therefore, suffer from an erroneous appreciation of the material evidence on record.

42. For the foregoing reasons, the additional substantial question of law is answered in the ***Affirmative***. In view of the answer recorded to the said substantial question of law and the findings hereinabove, the substantial question of law framed on 08.02.2008 does not survive for further consideration.

43. Accordingly, the Second Appeal succeeds and the judgment and decree passed by the First Appellate

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CNR: KAHC010430462006

NC: 2026:KHC:55232
RSA No. 2031 of 2006

Court are liable to be set aside. The judgment and decree of the Trial Court dismissing the suit are liable to be restored.

44. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The Second Appeal is ***allowed***.

(ii) The judgment and decree dated 18.04.2006 passed in R.A.No.248/2002 by the learned Civil Judge (Sr.Dn.), Harihar, are hereby set aside.

(iii) Consequently, the judgment and decree dated 19.11.2001 passed in O.S.No.299/1989 by the learned Additional Civil Judge (Jr.Dn.), Harihar, are restored and affirmed.

(iv) In view of the above, the suit filed by the plaintiffs stands dismissed.

(v) There shall be no order as to costs.

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**NC: 2026:KHC:55232
RSA No. 2031 of 2006**

CNR: KAHC010430462006

(vi) The compromise petition filed by the appellants and the memo dated 06.03.2015 filed by respondent No.2 do not survive for consideration.

(vii) Pending interlocutory applications, if any, stand disposed of.

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**(SACHIN SHANKAR MAGADUM)
JUDGE**

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