



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1998 OF 2016

(PAR)

BETWEEN:

1. SRI. MUNIYAPPA
S/O LATE KENCHIAIAH
@ GOYEGALAIAH
AGED ABOUT 70 YEARS
R/O DONNENAHALLI VILLAGE,
THIPPASANDRA HOBLI
MAGADI TALUK
RAMANAGARA DIST-582127
2. SMT. GANGAMMA
W/O RAMANNA
AGED ABOUT 38 YEARS
R/O DONNENAHALLI VILLAGE,
THIPPASANDRA HOBLI
MAGADI TALUK
RAMANAGARA DIST-582127
3. SRI RAMESH
S/O MUNIYAPPA
AGED ABOUT 35 YEARS
R/O DONNENAHALLI VILLAGE,
THIPPASANDRA HOBLI
MAGADI TALUK
RAMANAGARA DIST-582127
4. SRI VENKATESH
S/O MUNIYAPPA
AGED ABOUT 33 YEARS

Digitally
signed by
SUNITHA K
S
Location:
HIGH
COURT OF
KARNATAKA





R/O DONNENAHALLI VILLAGE,
THIPPASANDRA HOBLI
MAGADI TALUK
RAMANAGARA DIST-582127

5. SMT. LAKSHMIDEVAMMA
W/O SRI THOPEGOWDA
AGED ABOUT 31 YEARS
R/O HEGGANAHALLI CROSS
2ND STAGE
ANDRAHALLI CROSS
BENGALURU-560091

...APPELLANTS

(BY SRI. PRADEEP NAIK K., ADVOCATE)

AND:

1. SMT. BHAGYAMMA
W/O HUTCHEGOWDA
AGED ABOUT 50 YEARS,
R/O DONNENAHALLI VILLAGE,
THIPPASANDRA HOBLI
MAGADI TALUK
RAMANAGARA DIST-582127
2. SMT. PARVATHAMMA
W/O LATE SRI HANUMANTIAH
AGED ABOUT 48 YEARS,
R/O BORASANDRA VILLAGE
HUTHRIDURGA HOBLI
KUNIGAL TALUK
TUMKUR DIST-572130
3. SMT. GANGAMMA
W/O SRI RAMANNA
AGED ABOUT 46 YEARS,
HUTHRIDURGA VILLAGE
HUTHRIDURGA HOBLI
KUNIGAL TALUK



- TUMKUR DISTRICT-572130
4. THE SPL. LAND ACQUISITION OFFICER
LAND ACQUISITION OFFICE
NH-48
NELAMANGALA HASANA SECTION
KUNIGAL
TUMKUR DISTRICT-572130

...RESPONDENTS

(BY SRI. A V GANGADHARAPPA, ADVOCATE FOR R1 TO R3
SRI. M.V. KINI, ADVOCATE FOR R4))

THIS RSA IS FILED UNDER SEC.100 R/W ORDER XLII
RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE
DATED 06.08.2016 PASSED IN RA.NO.04/2016 ON THE FILE OF
THE SENIOR CIVIL JUDGE AND J.M.F.C., MAGADI, ALLOWING
THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 30.11.2015 PASSED IN OS.NO.235/2006 ON THE FILE
OF THE ADDL. CIVIL JUDGE AND J.M.F.C, MAGADI.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



ORAL JUDGMENT

1. This appeal is filed by the appellants challenging the judgment and decree dated 06.08.2016 passed in R.A. No.4 of 2016 by the learned Senior Civil Judge and JMFC, Magadi.
2. For convenience, the parties are referred to based on their ranking before the Trial Court. The appellants were defendant Nos.1 to 5, respondent Nos.1 to 3 were the plaintiffs and respondent No.4 was defendant No.6.
3. Brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit for partition and separate possession, contending that the suit schedule properties are the ancestral properties of the plaintiffs and defendants. The plaintiffs and defendants are the members of Hindu undivided family and no partition is effected between the



plaintiffs and defendant Nos.1 to 5. The plaintiffs demanded for partition and separate possession. But defendant No.1 refused to effect a partition. Hence, a cause of action arose for the plaintiffs to file a suit for partition and separate possession.

5. Defendant No.6 appeared through the counsel, however, has not filed written statement.
6. Defendant Nos.1 to 5 filed a common written statement denying the plaint averments and contended that the suit is not maintainable for non-joinder of necessary parties. It is also contended that there is no partition effected between defendant No.1 and his siblings. Hence, until a partition is effected between defendant No.1 and his siblings, the plaintiffs cannot maintain a suit for partition and separate possession. Defendant Nos.1 to 5 have taken a defence that there was a prior partition in 1978 and in the said partition, defendant No.1 had



acquired the suit schedule properties. The suit schedule properties are the joint family properties of the plaintiffs and defendants. Hence, prays to dismiss the suit.

7. Based on the rival pleadings of the parties, the Trial Court framed the following issues and additional issues:

- (i) Whether the plaintiffs prove that the suit schedule property is the ancestral and joint family properties of plaintiffs and defendants and they are in joint possession and enjoyment of the same?
- (ii) Whether the plaintiffs further prove that the suit schedule properties are fallen to the share of 1st defendant as per panchayath palupatti dated 15.05.1978?
- (iii) Whether the defendants prove that 5th item of the suit schedule property has been already sold by the 1st



defendant for their family legal necessity?

- (iv) Whether the defendants further prove that the suit is bad for joinder of necessary parties?
- (v) Whether the plaintiffs are entitled for their $3/8^{\text{th}}$ share in the suit schedule property?
- (vi) Whether the plaintiffs are entitled to mesne profit?
- (vii) What order or decree?

Additional Issue:

- (i) Whether the plaintiffs prove that they are entitled for $3/8^{\text{th}}$ share out of the compensation amount payable to the 1^{st} defendant by 6^{th} defendant?

- 8. The plaintiffs, to substantiate their case, plaintiff No.2 was examined as PW1 and marked 13 documents as Exhibits P1 to P13.
- 9. In rebuttal, defendant No.1 got examined himself as DW1, but has not produced any records.



10. The Trial Court, after recording the evidence, hearing both sides and on assessment of the verbal and documentary evidence, answered Issue Nos.1, 2 and the additional issue partly in the affirmative; Issue No.3 in the affirmative; Issue Nos.4 to 6 in the negative; Issue No.7, as per the final order. The suit of the plaintiffs was dismissed vide judgment dated 30.11.2015.
11. The plaintiffs aggrieved by the dismissal of the suit in O.S. No.235 of 2006 preferred an appeal in R.A. No.4 of 2016 on the file of the learned Senior Civil Judge and JMFC, Magadi.
12. The First Appellate Court, after hearing the learned for the parties, framed the following points for consideration:
 - (i) Whether the appellants prove that the judgment and decree passed by the trial Court is perverse, bad in



law and without application of mind
and it is to be set aside?

(ii) To what order?

13. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in affirmative and point No.2 as per the final order. The appeal was allowed and the judgment and decree passed by the Trial Court in O.S. No.235 of 2006 was set aside. Consequently, the suit of the plaintiffs in O.S. No.235 of 2006 was decreed and it was decreed that the plaintiffs are entitled for a partition and separate possession of $1/8^{\text{th}}$ share each or $3/8^{\text{th}}$ share jointly in the suit schedule properties.
14. The defendant Nos.1 to 5 aggrieved by the judgment and decree passed in R.A. No.4 of 2016, have filed this regular second appeal.
15. Heard the arguments of the learned counsel for defendant Nos.1 to 5 and the learned counsel for the plaintiffs.



16. Learned counsel for defendant Nos.1 to 5 submits that the suit schedule properties were owned and possessed by the father of defendant No.1 and the father of defendant No.1 had totally 11 children and out of 11, two are sons and nine are daughters. He also submits that there is no partition effected between defendant No.1 and his siblings. The suit filed by the plaintiffs is not maintainable, unless a partition is effected between defendant No.1 and his siblings. He also submits that the suit filed by the plaintiffs during the lifetime of the father is not maintainable. He also submits that a partition was effected in 1978, however, the mutation was effected in 2000-01. Hence, on these grounds, prays to allow the appeal.
17. *Per contra*, learned counsel for the plaintiffs submits that the suit schedule properties are the ancestral properties of the plaintiffs and defendants and he submits that there was a partition effected between



defendant No.1 and his brother, and in the said partition, the suit schedule properties fell to the share of defendant No.1. The suit schedule properties are the ancestral properties of the plaintiffs and defendant Nos.1 to 5. The plaintiffs are the coparceners and they are entitled to a share in the ancestral properties as per Section 6 of *the Hindu Succession Act, 1956*, as such, the First Appellate Court has rightly passed the judgment. He also submits that defendant No.1 has received the compensation in respect of the land acquired by the National Highways Authority of India. Hence, on these grounds, he prays to dismiss the appeal.

18. This Court, vide Order dated 19.09.2025 framed the following substantial question of law for consideration:

"Whether the First Appellate Court is justified in decreeing the suit of the plaintiffs, though



***the defendant No.1 had taken
averment in the written
statement that there is no
partition in the family of the
children of Chunchaiah?***

Reg. Substantial question of Law:

19. The plaintiffs have filed a suit for partition and separate possession contending that the suit schedule properties are the ancestral properties of the plaintiffs and defendant Nos.1 to 5. It is also contended that a partition was effected between defendant No.1 and his brother on 15.05.1979 and on the strength of the partition, defendant No.1 had acquired the properties. The plaintiffs, being the coparceners, are entitled for a share in the suit schedule properties. It is also contended that the plaintiffs and defendant Nos.1 to 5 are the members of a Hindu undivided family and no partition is effected.



20. In order to substantiate that the suit schedule properties were owned and possessed by the father of defendant No.1, the plaintiffs produced the RTC extracts marked as Exhibits P1 to P7. The plaintiffs also produced a copy of the mutation order marked as Exhibit P8, which clearly discloses that on the basis of a partition effected in 1978, the mutation came to be effected in 2000-01; Exhibit P9 is the genealogical tree; Exhibit P10 is the copy of DCRG; Exhibit P11 is the award notice, wherein a portion of the land was acquired for widening of National Highways and an award came to be passed; Exhibit P12 is the Gazette notification; Exhibit P13 is the copy of the legal notice, wherein plaintiff got issued a legal notice to defendant No.6 requesting not to release the compensation amount insofar as the portion of land acquired by defendant No.6.
21. In rebuttal, defendant No.1 was examined as DW1, who has deposed that no partition was effected on



15.05.1979 between him and his brother as contended by the plaintiffs. However, defendant No.1 has not produced any records in support of his contention.

22. From the perusal of the entire evidence on record, it is clear that the plaintiffs have contended that there was a partition effected between defendant No.1 and his brother on 15.05.1979. If at all a partition was effected on 15.05.1979, defendant No.1 or his brother could have made an application immediately for change of revenue records in the name of defendant No.1 and brother of defendant No.1. From 1979 till 2000, neither defendant No.1 nor his brother has taken any steps to transfer the revenue records in their respective names, based on the alleged partition effected on 15.05.1979.

23. The plaintiffs have produced the mutation extract marked as Exhibit P8. There is a finding recorded by



the revenue authority that there was a partition and there is a reference about the partition dated 15.05.1979. Despite there being a reference about the document, in the absence of examination of any witnesses to the alleged partition, the said mutation entry is based on an untrue piece of evidence.

24. In a suit for partition and separate possession, the initial burden is always on the plaintiffs to establish regarding the suit schedule properties are the ancestral and joint family properties of the plaintiffs. Even if the contention of the plaintiffs is accepted that defendant No.1 has acquired the properties in a partition effected in 1978-79, still the said properties become his self-acquired properties, as held by the Hon'ble Apex Court in the case of ***Angadi Chandranna v. Shankar and others***¹, wherein the Hon'ble Apex Court, in paragraph 17 has held as follows:

¹ 2025 INSC 532



"17. It cannot be disputed that the properties divided among Defendant No.1 and his brothers through partition deed dated 09.05.1986, are joint family properties. However, as per Hindu law, after partition, each party gets a separate and distinct share and this share becomes their self-acquired property and they have absolute rights over it and they can sell, transfer, or bequeath it as they wish. Accordingly, the properties bequeathed through partition, become the self-acquired properties of the respective sharers."

25. Considering the mandate laid down by the Hon'ble Apex Court in case of **Angadi Chandranna**, the suit schedule properties acquired by defendant No.1 under the alleged partition are his self-acquired properties. During his lifetime, the plaintiffs cannot claim a share in the suit schedule properties. The said aspect was not properly considered by the First



Appellate Court and committed an error in reversing the judgment and decree passed by the Trial Court.

26. Further, defendant No.1 himself has stated that no partition was effected between defendant No.1 and his siblings. The plaintiffs except producing the mutation extract marked as Exhibit P8 and the revenue records, have not examined any witnesses to establish that there was a partition effected between defendant No.1 and his brother. In the absence of any evidence regarding the partition alleged to have been effected between defendant No.1 and his brother, the plaintiffs are not entitled to a share in the suit schedule properties. Thus, the First Appellate Court has committed an error in decreeing the suit.

27. In view of the above discussion, I answer the substantial question of law in the ***negative***.

28. In the result, I proceed to pass the following order:



ORDER

- (i) The Regular Second Appeal is ***allowed;***
- (ii) The judgment and decree dated 06.08.2016 passed in R.A. No.4 of 2016 by the learned Senior Civil Judge and JMFC, Magadi is set aside.
- (iii) The judgment and decree passed in O.S. No.235 of 2006 dated 30.11.2015 passed by the learned Additional Civil Judge and JMFC, Magadi is restored.
- (iv) No order as to costs.
- (v) Learned counsel for the defendants submits that the defendants will not press I.A. No.1 of 2026. Submission is placed on record. Accordingly, I.A. No.1 of 2026 is disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**