



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 244 OF 2018

BETWEEN:

1. SRI SHANTHALINGASWAMY
S/O LATE MADAPPA
AGED ABOUT 50 YEARS
R/AT GUNDAPURA VILALGE
HALAGUR HOBLI,
MALAVALI TALUK,
MANDYA DISTRICT - 571 421.

BASAPPA
S/O LATE MADAPPA
SINCE DEAD BY HIS LRS

2. SRI. BASAPPADEVARU
S/O LATE BASAPPA
AGED ABOUT 35 YEARS

3. SMT. MAHADEVAMMA
D/O LATE BASAPPA
AGED ABOUT 34 YEARS

4. SRI.G.S. MAHADEVASWAMY
S/O LATE SHIVANANJAPPA
AGED ABOUT 33 YEARS

ALL ARE R/AT GUNDAPURA VILLAGE
HALAGUR HOBLI, MALAVALI TALUK,
MANDYA DISTRICT
PIN - 571 421

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Location: High
Court of
Karnataka





NC: 2026:KHC:34645
RSA No. 244 of 2018

ALL ARE R/AT GUNDAPURA VILLAGE
HALAGUR HOBLI
MALAVALLI TALK
MANDYA DISTRICT
PIN - 571 421

5. SRI. MAHADEVAPPA
S/O LATE MADAPPA
AGED ABOUT 71 YEARS
R/AT BASAVANAHALLI VILLAGE
HALAGUR HOBLI,
MALAVALLI TALUK
MANDYA DISTRICT
PIN - 571 421

APPELLANTS NO.2 TO 5 ARE
REPRESENTED BY THEIR GPA HOLDER
MR. SHANALINGASWAMY
APPELLANT NO.1,
GUNDAPURA VILLAGE, HALAGUR HOBLI,
MALAVALLI TQ, MANDYA DIST,
PIN - 51 421.

...APPELLANTS

(BY SRI. D. GANGADHARA, ADVOCATE)

AND:

SMT. SHIVAMMA
W/O. LATE CHANNABASAPPA
AGED ABOUT 71 YEARS
R/AT GOWDAGERE VILLAGE
MALAVALLI TALUK
MANDYA DISTRICT
PIN - 571 421

...RESPONDENT

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 13.11.2017
PASSED IN R.A.NO.64/2014 ON THE FILE OF THE SENIOR
CIVIL JUDGE, MALAVALLI, DISMISSING THE APPEAL AND



CONFIRMING THE JUDGMENT AND DECREE DATED 25.08.2014
PASSED IN O.S.NO. 291/2012 ON THE FILE OF THE PRINCIPAL
CIVIL JUDGE AND JMFC, MALAVALLI.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. D. Gangadhara, learned counsel for
the appellants and Sri. Ravikumar C.S., learned counsel
for the respondent.

2. The present appeal is the plaintiffs' second
appeal challenging the dismissal of the suit in O.S.
No.291/2012 confirmed in RA No.64/2014.

3. Facts of the case are as under:

3.1 A suit in O.S. No.291/2012 came to be filed in
respect of following immobile properties (hereinafter
referred to as the suit property).

SCHEDULE

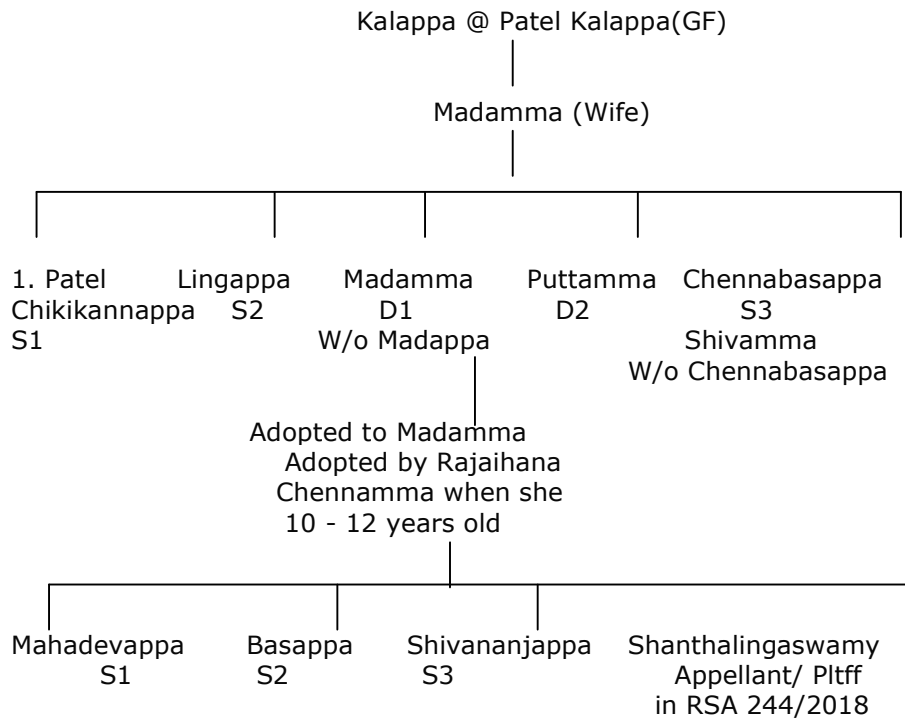
*Site No. 14, Janjar No.165, Property No. 136
measuring East-West: 38 feet, North-South: 82 feet
having Mangalore tiled house, one basement by having
Jinksheet and remaining vacant site situated at*



*Gowdagere Village, Nidagatta Grama Panchayath, Kasaba
Hobli, Malavalli Taluk, bounded on:*

*East by : House of Sons of Angadiputtappa
West by : House of Basavaraju S/o Puttappa
North by: Vacant site of Mallamma W/o G. Madalah
South by: Public Road.*

3.2 Genealogy by which the plaintiffs claim the right
title in respect of the suit property is as under.



3.3 From the genealogy it is seen that
Shantalingaswamy is the 4th son of Channamma, who is



the adopted daughter of Smt. Madamma. Second plaintiff Basappa is the second son of said Channamma. Madamma is one of the children of Kalappa alias Patel Kalappa and Madamma. Siblings of Madamma are Patel Chikkannappa, Lingappa, Puttama and Channabasappa. The defendants in this suit Shivamma, who is wife of the third siblings of Madamma, wife of Chennabasappa.

3.4 Plaintiffs contended that Madamma had no issues and therefore she adopted Smt. Channamma as her daughter when she was aged 10 to 12 years. Madamma being the adopted mother of said Channamma, had been granted two sites which is suit properties as is evidenced by the grant certificate marked at Exhibit P21 and Exhibit P22.

3.5 It is the contention of the plaintiffs that defendant was also allotted a site. Said site was sold by defendant and after selling the site that was allotted to the defendant, in order to lay claim in respect of the suit



properties, the defendant started interfering with the suit property and therefore plaintiff filed a suit in OS No.121/1986. Said suit came to be ultimately dismissed in RSA No.1423/2010 with a permission for the plaintiffs to file a comprehensive suit seeking declaratory relief.

3.6 Pursuant to the said judgment, O.S. No.291/2012 came to be filed by the plaintiffs with a prayer for declaration and injunction.

3.7 Suit was contested by the defendant by filing detailed written statement denying the relationship of the plaintiffs with Madamma and thus sought for dismissal of the suit.

3.8 Learned trial Judge after raising necessary issues recorded the evidence of the parties and noted that plaintiffs failed to prove that they are the children of adopted daughter of Madamma and thus, dismissed the suit.



3.9 Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.64/2014.

3.10 Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of the material on record dismissed the appeal and confirmed the dismissal of the suit passed by the trial Judge in O.S. No.291/2012.

4. Being further aggrieved by the same, plaintiffs are before this Court in this appeal.

5. Sri. D. Gangadhara, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that there is no dispute that Madamma has been granted sites as per Exhibit P21 and Exhibit P22.

6. It is further argued that there is no dispute that the defendant was also granted the site and the same was sold by the defendant to third party. Thereafter started claiming right over the property that was exclusively



granted to Madamma and therefore, plaintiffs being the being the children of foster daughter Channamma, are entitled to an order of declaration and injunction and thus sought for admitting the appeal on following substantial questions of law:

1] The Appellant submits that the order of the trial court and the Appellate court has not looked into the records, as earlier the order of the trial court is not set aside by the Hon'ble High Court of Karnataka passed in O.S. No.121/1986.

02] The Appellant submits that the trial court and the Appellate court has not appreciated the facts as the Appellant's mother is the foster daughter to the Rajaiahann Chennamma, and she succeeded the rights. In fact the allotment of the site which is made separate allotment to the Madamma and Chennabasappa as per the resolution passed by the panchayath authority by confirming the rights and possession of the Appellant's mother Smt. Madamma. The same is succeeded by the Appellant as a successor of her mother's property and the same facts has not been looked into by the trial court or the appellate court.

03] The trial court and the Appellate court has not looked into the aspect that the Respondent's husband Chennabasappa being allotted site No.1 on 29/07/1974 in GLQ 07/71-72, and this allotment made by the



panchayath authority to the husband of the respondent Chennabasappa, and he sold it on 18-5-1976 to one Basappa during his life time.

04] Without any legal right or title it is entered the name of the Chennabasappa as joint right holder in respect of the Appellant's mother property. The said Chennabasappa is being member of the panchayath he has misused his power and got his name entered in the katha record of the panchayath and tried to disposses the Appellant from the schedule property. The same fact is not looked into by the trial court or the appellate court.

05] The Appellant's mother Madamma and Chennabasappa are being brother and sister and they were allotted separate sites and there is no right accrued to the Chennabasappa in respect of the Site No.14. The said Chennabasappa is not having any document to change the revenue entries and the trial court or the appellate court has not detailed records and it has not appreciated the records and it is wrongly given a finding against the Appellant, only to favourize the Respondent which is contrary to records.

06] It is submitted that the substantive facts is that after the death of the original parties in the proceedings, the respondent has taken a different stand. After the death of the party the LRS cannot change their stand, as the respondent has given a new version by stating that there was property will was made in favour of the Respondent. The trial court has not appreciated these facts and it is



not produced any documents or records in favour of the respondent. The order of the Hon'ble High Court of Karnataka passed in RSA No.1423/2010, which is permitted the Appellant to file fresh suit for declaration in respect of the schedule property. Except that WILL reasons the Respondent has not given any new aspect to consideration by the Hon'ble High Court of Karnataka. Even then the respondent has given a new facts before the trial court has given a wrong finding on this aspect.

07] It is submitted that the evidence is led by the Appellant proves that the foster daughter is being succeeded by the Appellant which is deposed by the Appellant as PW-1. Supporting to this the witnesses has also deposed, even then trial court has also given a finding contrary to records and documents by dismissing the suit of the Appellant.

08] It is submitted that the order of the trial court is opposing to the statutory law and facts and documents and the Hon'ble High Court of Karnataka being permitted the Appellant to file fresh suit in RFA No.1423/2010. It is not cancelled the order of the trial court and it is not confirmed the right of the respondent about the In view of these facts the appeal to be schedule property. considered as the substantive question of law is involved in this appeal.



7. Per contra, Sri. C.S. Ravishankar, learned counsel for the respondent, supports the impugned judgment and sought for dismissal of the appeal.

8. Having heard the arguments of both sides, this Court perused the material on record meticulously.

9. On such perusal of the material on record, pertinently the written statement filed by the defendant did raise a valid defense that the relationship of plaintiffs with the Madamma was in dispute. Whenever such dispute is raised, party who is seeking that she is the member of a family is bound to prove the said issue by placing necessary material evidence on record.

10. In the case on hand, no relatives of Madamma are examined to establish that Madamma during her lifetime had adopted Chennamma when Chennamma was aged 10 to 12 years and children born to said Chennamma are thus to be treated as the grandchildren of Madamma.



11. In this regard, how to prove the relationship is no longer *res integra*. Hon'ble Apex Court, way back in the year 1959, in the case of ***Dolgobinda Paricha versus Neemani Charan Misra*** reported in ***AIR 1959 SC 914*** has held as under:

(7) It is necessary to state here that how the conduct or external behaviour which ex-presses the opinion of a person coming within Abe meaning of S. 50 is to be proved is not stated in the section. The section merely opinion is a relevant fact on the subject of relationship of one person to another in a case where the court has to II of the Evidence Act is headed "On Proof" form an opinion as to that relationship. Part Chapter III thereof contains a fascicule of sections relating to facts which need not be proved. Then there is Chapter IV dealing with oral evidence and in it occurs S. 60 which says inter alia:

"Section 60. Oral evidence must, in all cases whatever, be direct; that is to say-

if it refers to a fact which could be seen, it must be the evidence of a witness who says saw it; he

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;



if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds."

If we remember that the offered item of evidence under S. 50 is conduct in the sense explained above, then there is no difficulty in holding that such conduct or outward behaviour must be proved in the manner laid down in S.60; if the conduct relates to something which can be conducted must be proved which can be heard then it must be proved by the person who heard it; and so on. The by the person who saw it; if it is something conduct must be of the person who fulfils the proved in the manner laid down in the pro-that that portion of S. 60 which provides that essential conditions of S. 50. and it must be visions relating to proof. It appears to us the person who holds an opinion by the person must be called to prove his opinion does not necessarily delimit the scope of S. 50 in the sense proved only by the person whose conduct expresses the opinion. Conduct, as an exter-perceptible fact, may be proved either by opinion is evidence under S. 50 or by some the testimony of the person himself whose other person acquainted with the facts which express such opinion, and as the testimony must relate to external facts which constitute conduct and is given by



persons personally acquainted with such facts, the testimony is in each case direct within the meaning of S. 60. This, in our opinion, is the true inter-relation between S. 50 and S. 60 of the Evidence Act. In Queen Empress v. Subbarayan, ILR 9 Mad 9 at p. 11, Hutchins J., said: expressed by conduct must be

"That proof of the opinion, as expressed by conduct, may be given, seems to imply that the person himself is not to be called to state his own opinion, but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to us to afford an exceptional way of proving a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge."

"While we agree that S. 50 affords an exceptional way of proving a relationship and by no means prevents any person from stating a fact of which he or she has special means of knowledge, we do not agree with Hutchins J., when he says that the section seems to imply that the person whose opinion is a relevant fact cannot be called to state his own opinion as expressed by his conduct and that his conduct may be proved by others only when he is dead or cannot be called. We do not think that S. 50 puts any such limitation".

12. In the absence of any material evidence placed on record to establish that plaintiffs are the children of



Channamma who has been adopted by Madamma during lifetime, the very frame of the suit seeking declaration about the suit properties claiming that they are the grandchildren of Madamma itself was not maintainable. Therefore, the learned Trial Judge has rightly dismissed the suit which has been rightly upheld by the First Appellate Court.

13. Having regard to the factual aspects being concluded by both the Courts, this Court does not find merit in any one of the substantial questions of law raised in the appeal.

14. Consequently, following order :

ORDER

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

**Sd/-
(V SRISHANANDA)
JUDGE**

SNC
List No.: 1 Sl No.: 47