



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1101 OF 2021 (PAR/POS)

BETWEEN:

1. SRI JAVAREGOWDA
S/O LATE NINGEGOWDA
AGED ABOUT 70 YEARS
2. SMT KEMPAMMA
W/O JAVAREGOWDA
AGED ABOUT 65 YEARS
3. SRI H J SHIVANNEGOWDA
S/O JAVAREGOWDA
AGED ABOUT 45 YEARS
4. SRI H J LINGEGOWDA
S/O JAVAREGOWDA
AGED ABOUT 38 YEARS
5. SMT H J BHAGYA
D/O JAVAREGOWDA
AGED ABOUT 35 YEARS

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signed by
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Location:
HIGH
COURT OF
KARNATAKA

ALL THE APPELLANTS ARE
R/AT HIRGE VILLAGE
KASABA HOBLI
HD KOTE TALUK



MYSURU DISTRICT.

...APPELLANTS

(BY SRI. MANJUNATH PRASAD H.R.,
SRI. NARENDRA P R., ADVOCATE)

AND:

1. KUM THANUSHREE
D/O LATE SOMASHEKAR
AGED ABOUT 12 YEARS
MINOR REPRESENTED
BY HER MOTHER / AND GUARDIAN
SMT PAVITHRA
2. SMT PAVITHRA
W/O LATE SOMASHEKAR
AGED ABOUT 35 YEARS

BOTH THE RESPONDENTS
RESIDING AT HIRGE VILLAGE
KASABA HOBLI, HD KOTE TALUK
MYSURU DISTRICT-571114.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 23.12.2020 PASSED IN RA No.243/2017 ON THE FILE OF THE VIII ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU, SITTING AT HUNSUR, PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 10.04.2015 PASSED IN OS No.31/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE, HUNSUR AND ETC.,

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



CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Manjunath Prasad H.R., learned Counsel for the appellants. This Court did not deem it fit to issue notice to the respondents.

2. Parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. Defendants No.1 to 5 in O.S.No.31/2012 are the appellants before this Court. They have challenged the validity of the judgment passed by the First Appellate Court in R.A. No.243/2017, whereby the learned Judge in the First Appellate Court reversed the finding recorded by the Trial Court in dismissing the suit of the plaintiffs and decreed the suit of the plaintiffs as prayed for.

4. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:



4.1 Plaintiffs filed a suit for partition and separate possession in respect of the following properties (hereinafter referred to as 'suit properties in O.S.No.31/2012 on the file of Principal Senior Civil Judge and JMFC, Hunsur'):

SCHEDULE

1. The Land bearing Sy.No.120 measuring 4 acres 13 Guntas of land (including Karab Land) situated at Hirge Village, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by : Madapura Gadi
West by : Land bearing Sy.No.84
South by: Land bearing Sy.No.121/2
North by: Land bearing Sy.No.121*

2. The Land bearing Sy. No.7/3 measuring 1 acres 24 Guntas of land (including Karab Land) situated at Gudumanahalli, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by : Land bearing Sy.No.6/1
West by : Land bearing Sy.No.19
South by: Land bearing Sy.No.6/1
North by: Land bearing Sy.No.19*



3. The Land bearing Sy. No.8 measuring 2 acres of land situated at Gudumanahalli, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by : Land bearing Sy.No.8/4
West by : Land bearing Sy.No.8/2
South by: Land bearing Sy.No.31
North by: Land bearing Sy.No.52*

4. The Land bearing Sy.No.19 measuring 7 acre 10 guntas of land situated at Gudumanahalli, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by : Land bearing Sy.No.19/7
West by : Land bearing Sy.No.19/2
South by: Land bearing Sy.No.19/2
North by: Land bearing Sy.No.7*

5. The Land bearing Sy. No.20/2 measuring 1 acre of land situated at Gudumanahalli, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by : Land bearing Sy.No.3
West by : Land bearing Sy.No.19
South by: Land bearing Sy.No.20/2
North by: Land bearing Sy.No.7*

6. The Land bearing Sy. No.20/3 measuring 1 acre of land situated at Gudumanahalli,



*Kasaba Hobli, H.D. Kote Taluk, Mysore
District and bounded on:-*

*East by : Land bearing Sy.No.21
West by : Land bearing Sy.No.2
South by: Land bearing Sy.No.20/2
North by: Land bearing Sy.No.7*

*7. The Land bearing Sy.No.52/2 measuring 1
acre 10 guntas of land situated at
Gudumanahalli, Kasaba Hobli, H.D.Kote
Taluk, Mysore District and bounded on:-*

*East by : Land bearing Sy.No.8
West by : Kere
South by: Land of Lingegowda son of
Kenchegowda
North by: Land of Basavegowda*

*8. The Land bearing Sy. No.9/3 measuring 20
guntas of land situated at Gudumanahalli,
Kasaba Hobli, H.D. Kote Taluk, Mysore
District and bounded on:-*

*East by : Land bearing Sy.No.19
West by : Land of Bolarinaika
South by: Land of Sannanaika
North by: Land of Siddanaika*

*9. The Land bearing Sy. No.21/1 measuring 1
acre 1½ guntas of land situated at
Gudumanahalli, Kasaba Hobli, H.D.Kote
Taluk, Mysore District and bounded on:-*



*East by : Land bearing Sy.No.21
West by : Land bearing Sy.No.21
South by: Land bearing Sy.No.21
North by: Land bearing Sy.No.21*

10. The Land bearing Sy. No.98 measuring 37 guntas of land situated at Gudumanahalli, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by : Land bearing Sy.No.98
West by : Land bearing Sy.No.98
South by: Land bearing Sy.No.98
North by: Land bearing Sy.No.98*

11. The A.C. sheet House property and vacant property bearing Khatha janjer No.374/219/219 measuring east to west: 46 feet, North to South 50 feet situated at Hirge village, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by:Road
West by: Govt H.P.School
South by: Property bearing Khatha No.375/22
North by: Property of Obalegowda*

12. The vacant property bearing Khatha janjer No.374/220/220 measuring east to west:46 feet, North to South:70 feet situated at Hirge Village, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

*East by: Road
West by: Govt H.P.School*



*South by: M M Road
North by: Property bearing Khatha No.
374/219/219*

*13. The AC. Sheet House property and vacant
property bearing Khatha janjer No. 553
measuring east to west: 30 feet, North to
South: 30 feet situated at Hirge Village,
Kasaba Hobli, H.D. Kote Taluk, Mysore
District and bounded on:-*

*East by : Property of Jayaramashetty
West by : Property of Puttanaika
South by: Road,
North by: Property of Kempanaik*

*14. The vacant property bearing Khatha
janjer No. 372/217/217 measuring east to
west: 40 feet, North to South: 74 feet
situated at Hirge Village, Kasaba Hobli, H.D.
Kote Taluk, Mysore District and bounded on:-*

*East by : Property of Musinaika
West by : Road
South by: Property bearing Khatha No.375
North by: Property of Dasegowda.*

*15. The vacant property bearing Khatha
janjer No. 373/218/218 measuring east to
west: 50 feet, North to South: 60 feet
situated at Hirge Village, Kasaba Hobli, H.D.
Kote Taluk, Mysore District and bounded on:-*



*East by: Property of Shabbir
West by : Road
South by: Road
North by: Property bearing Khatha
No.372/217/217*

*16. The Mangalore House property an vacant
property bearing Khatha janjer No. 53/A/56
measuring east to west: 22 feet, North to
South: 80 feet situated at Hirge Village,
Kasaba Hobli, H.D. Kote Taluk, Mysore
District and bounded on:-*

*East by: Road,
West by: Property of Ningegowda,
South by : Road
North by : Property of Shivanegowda.*

*17. The Land bearing Sy.No.9/3 measuring 2
acre situated at Gudumanahalli, Kasaba Hobli,
H.D. Kote Taluk, Mysore District and bounded
on:-*

*East by: Property of Javaregowda &
Ningegowda
West by : Remaining property of this same
Sy.Number.
South by: Property of Siddanaika.
North by : Property of Thimamma.*

*18. The Land bearing Sy.No.20/1 measuring
1 acre situated at Gudumanahalli, Kasaba
Hobli, H.D. Kote Taluk, Mysore District and
bounded on:-*



East by : Property of Sy.No.21
West by : Property of Sy.No. 19
South by: Property of block No. 1
North by: Property of Sy.No.7

19. The site bearing Assessment No. 193 of vacant measuring 40 X 50 situated at Hyrige Village & Panchayath, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

East by :House of Siddanayaka
West by :Road
South by: Vacant site of Veeregowda
North by:Property of Basavegowda.

20. The site bearing junjer No. 192 property No.191 of vacant site measuring 46 X 46 situated at Hyrige Village & Panchayath, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

East by : Road
West by :School
South by:Vacant site of Narasegowda
North by:Property of Dasegowda

21. The Vacant site Panchayath Katha No. 218/194 measuring 40 X 60 situated at Hyrige Village & Panchayath, Kasaba Hobli, H.D. Kote Taluk, Mysore District and bounded on:-

East by : Vacant site of Sabeer Sab,
West by: Road



South by:M.M. Road
North by:Vacant site of Javaregowda.

4.2 Plaintiffs contended that first defendant is the husband of second defendant. Deceased husband of plaintiff No.2 by name Somashekar and defendants No.3 to 5 are the children of defendants No.1 and 2. Plaintiff No.1 is the daughter of Somashekar, while plaintiff No.2 is the legally wedded wife of Somashekar. Plaintiffs and defendants thus form the Hindu Undivided Family and the joint family possessed suit properties.

4.3 It is further contented by the plaintiffs that there is no partition effected in respect of the joint family properties after the death of Somashekar, who is the husband of plaintiff No.2 and when the plaintiffs demanded their legitimate share, defendants denied their share and therefore, suit is necessitated.

4.4 During the pendency of the suit, plaintiffs got amended the schedule by including few more properties.



4.5 Pursuant to the suit summons, defendants entered appearance and set up the plea that there is a previous partition vide Ex.D37 and therefore, suit is not maintainable. It is also contented that few properties which are subsequently included are the individual properties of defendants No.1 and 2 inasmuch as they purchased the same under the sale deeds marked at Exs.D11 to D13 and therefore, plaintiffs cannot lay claim on those properties and sought for dismissal of the suit.

4.6 Learned Trial Judge after raising necessary issues and recording the evidence of the parties believed Ex.D37 and dismissed the suit of the plaintiffs.

4.7 Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in R.A.No.243/2017.

4.8 Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and noted that Ex.D37 which the defendants propounded



as a previous partition deed, was not proved in accordance with law and allowed the appeal and decreed the suit as prayed for.

4.9 First Appellate Court also noted that the properties purchased under Exs.D11 to D13 which are the registered sale deeds also finds place in Ex.D37 and therefore, the defendants cannot contend that those properties are the individual properties of defendants No.1 and 2 and decreed the suit of the plaintiffs as prayed for.

5. Being aggrieved by the same, defendants No.1 to 5 have preferred the present appeal on following grounds:

GROUND:

- *That the judgment and Decree passed by the First Appellate Court are highly erroneous, illegal and arbitrary either under law or on facts and circumstances of the case.*
- *The Appellate Court has failed to appreciate the case of the defendants and their evidence in a proper prospective manner.*



- *The Learned Judge of the appellate court has ignored well settled legal position of law and has interfered with the finding of the trial court when there was no reason for the same.*
- *The Learned Judge gravely erred in failing to see the facts and circumstances and the nature of the case.*
- *The Learned Judge gravely erred in failing to see that the Appellant's valuable right was lost by the unjust interference.*
- *The Learned Judge gravely erred in failing to see that the Appellate Courts should refrain from substituting its conclusions and opinions to that of a trial court Judge in as much as factual aspects of the case are concerned.*
- *The Learned Judge gravely erred in ignoring the well settled principles that appreciation of fact that was given evidence was the domain of Trial Court Judge for he had occasion and privilege to record the same and the manner in which they were given.*
- *The Learned Judge gravely erred in failing to see that the order of the Trial Court was in*



fitness of things besides being just and equity.

- *The learned appellate judge gravely erred to appreciate the fact that there was a partition held between the plaintiffs husband and defendant No.1 under a partition deed dated 26.03.2003 as per Ex D37 the learned first appellate judge gravely erred in coming to conclusion that signatures in Ex- D37 is not admitted by the Pw1. Further learned judge erred in appreciate the fact that the plaintiffs not even produce any documents pertaining to substantiate their claim.*
- *The learned appellate judge gravely erred in wrongly appreciating Ex P 14 and P 15 claims to be a letter by the father of the plaintiff No1 with respect to financial assistance to the defendant No 1, on perusal of the said document the same it reflects that there was no financial transaction with respect to purchase of the schedule properties by the defendant No.1 in whatsoever manner.*
- *The learned judge gravely erred in appreciating the fact that plaintiff No.2 not produced any documents with respect to*



item number 10, 12, 14, 15 and 16 of the suit schedule property. But the learned appellate judge without appreciation and application of mind ordered for a partition with respect to item number 10 and 16 of the suit schedule property. It is also relevant to state that the schedule mentioned in item number 10 that is survey number 98 that too in the cross examination of PW1 she clearly admits that the property not stands in the name of any defendants and also admits that the said property stands in the name of one shivlingegowda and others who are no way related to defendants family.

- *The learned first appellate judge gravely erred in appreciating the fact that plaintiff not even produce an iota of evidence to show that the schedule properties are purchased by the financial assistance of the husband of the PW1.*
- *The learned first appellate judge gravely erred in appreciating the fact that item number 2,3,5,7,8 and 13 are the self acquired properties of the defendant No.w which was purchased by the defendant No.2 with the help of their parents under*



registered sale deeds which are produced as Ex D 10 to D 15.

- *The learned first appellate judge gravely erred in appreciating fact with respect to Ex D 39 and 40 I.e., ration cards which reveals that as on date of suit there was no joint family has alleged by the plaintiff's.*
- *The learned appellate gravely erred in appreciating the sale deed and gift deeds are self servient in respect of the fact that they are self acquired properties of defendant No 1 to 3 and consequently defendant No 1 and 2 have gifted their properties to their children. In the absence of pleadings and proof that the joint family nucleus had a sufficient income and out of the said income the members of the joint family have purchased the properties, inference cannot be drawn that the properties in the names of coparceners are the joint family properties.*
- *The Appellant seeks the leave of the Court to urge such other grounds at the time of arguments.*



- *No other appeal is pending on the same grounds and is within the period of limitation.*
- *Under the above facts and circumstances of the case the following substantial question of law arises for consideration of this Hon'ble Court:*

X X X X X X X

- *Viewed from any angle the judgment and decree passed by the courts below are highly arbitrary and erroneous which has resulted in great miscarriage of justice, hence the same is liable to be set aside."*

6. Sri Manjunath Prasad H.R., learned Counsel for the appellants representing Sri Narendra P.R. would contend with vehemence that the First Appellate Court grossly erred in not accepting the probative value of Ex.D37 though admitted by the plaintiffs, resulted in miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

- a. Whether it is proper for appellate court to interfere with the appreciation of*



evidence when the same is neither perverse nor unreasonable.

- b. Whether it is proper for the appellate court to reject the well reasoned finding with its own view without basis or evidence.*
- c. Can the appellate court gloss over the material and legal contentions that were considered by the trial court in the background of the evidence on record.*
- d. Whether the appellate court in utter disregard to evidence and pleadings come to an independent conclusion in relation to Exhibit P37.*
- e. Whether the interference by the appellate court in the matters relating to appreciation of evidence admission of documents on well reasoned legal and factual aspects of the case is proper. For eg:-The appellate court while considering Exhibit D37 coming to conclusion that signatures in Ex-D 37 is not admitted by the Pw1. Further learned judge erred in appreciate the fact that the plaintiffs not even produce any documents pertaining to substantiate their claim.*
- f. Whether the courts below justified in law in holding that the Defendants has failed to prove that the suit properties are self acquired properties, very much ignoring ExD 10 to 15 which on the face of it discloses that the properties therein are self acquired properties ?"*



7. Learned Counsel for appellants would further contend that when the joint family properties were partitioned vide Ex.D37, subsequent suit for partition is *per se* not maintainable and sought for admitting the appeal.

8. This Court having given its anxious consideration to the relevant aspects of the matter perused the records meticulously. On such perusal of the material on record, it is seen that in Ex.D37, the properties including the properties purchased by Exs.D11 to D13 are included. However, the learned Judge in the First Appellate Court after considering the probative value of Ex.D37 has recorded a categorical finding that there is no equitable partition. Signature of the sharers in Ex.D37 alone is not the proof of the document which is styled as partition deed. Further, conduct of the parties is to be looked into in this regard, as there are no revenue entries which were mutated pursuant to Ex.D37.



9. Learned Judge in the First Appellate Court also noted that DW1 has categorically admitted vide Exs.P14 to P17 that DW1 has taken money from husband of second plaintiff. However, an explanation is also voluntarily offered by DW1 in this regard that he obtained those monies for the purpose of chit transaction. While considering the said admission, learned Judge in the First Appellate Court noted that though DW1 has stated that he has obtained money vide Exs.P14 to P17, there is no mention of chit transaction in those letters.

10. If there is a severance of joint family status as contended by defendants why would DW1 seek money from husband of second plaintiff, is a question that remains unanswered. In this regard, DW1 has not offered any explanation.

11. It is further found from the records that DW2 does not know who bought the stamp paper for execution of Ex.D37 and who got typed the contents of partition deed and who prepared the Ex.D37. Moreover, the family



properties were kept intact and from the money that has been contributed by the husband of the plaintiffs, few properties are purchased, is evident from the material on record. When Ex.D37 is thus not proved by placing cogent and convincing evidence on record by defendants, decreeing of the suit of the plaintiffs by the First Appellate Court does not require any further interference, as there is no scope for revisiting to the factual aspects having regard to the scope of Section 100 CPC.

12. Thus, the following:

ORDER

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

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

JT/-
List No.: 1 Sl No.: 70