



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 246 OF 2014

(DEC/INJ)

BETWEEN:

1. SRI. BEERAI AH
S/O LATE ATHYAPPA,
SINCE DEAD BY HIS LRS,
- 1(A) SMT. DEVAMMA,
W/O LATE NINGAPPA,
D/O LATE BEERAI AH
AGED ABOUT 60 YEARS,
R/AT PILLAHALLI VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK-562123
- 1(B). SMT. BYLLAMMA
W/O CHANDRASHEKARA,
AGED ABOUT 55 YEARS,
R/AT HALASINAMARADAPALYA VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK-562123
2. SRI DODDEGOWDA
S/O LATE BEERAI AH,
AGED ABOUT 68 YEARS,
RESIDING AT BETTANAGERE VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK-562123

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signed by
SUNITHA K
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Location:
HIGH
COURT OF
KARNATAKA





3. SRI.ANDANAPPA
S/O LATE BEERAIAH,
AGED ABOUT 55 YEARS,
RESIDING AT BETTANAGERE VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK-562123
4. SRI NAGARAJU
S/O LATE BEERAIAH,
AGED ABOUT 50 YEARS,
RESIDING AT BETTANAGERE VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK-562123

...APPELLANTS

(BY SRI. T SESHAGIRI RAO., ADVOCATE)

AND:

SRI. GANGAIAH
S/O LATE DODDAIAH,
AGED ABOUT 69 YEARS,
R/AT NO.37, III CROSS,
MUNESHWARA BLOCK,
BANGALORE-560 032.

...RESPONDENT

(BY SRI. PRATHIMA N H, ADVOCATE FOR C/R (CP
No.246/2014)
SRI. P.M. SIDDAMALLAPPA, ADVOCATE)

THIS RSA FILED U/S.100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 17.12.2013 PASSED IN
R.A.NO.9/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE &
JMFC., NELAMANGALA, DISMISSING THE APPEAL FILED
AGAINST THE JUDGMENT AND DECREE DTD 7.2.2013 PASSED
IN OS.NO.16/2001 ON THE FILE OF THE CIVIL JUDGE & JMFC.,
NELAMANGALA. TRAIL COURT DECREED THE SUIT.



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

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

ORAL JUDGMENT

This regular second appeal is filed by the appellant challenging the judgment and decree dated 17.12.2013 passed in RA No.9/2013 by the Court of learned Senior Civil Judge and JMFC, Nelamangala (**'First Appellate Court'** for short), confirming the judgment and decree dated 07.02.2013 passed in OS No.16/2001 by the Court of learned Civil Judge and JMFC, Nelamangala (**'Trial Court'** for short).

2. For convenience, the parties are referred to based on their rankings before the Trial Court. The appellants were the defendants and the respondent was the plaintiff.

3. Brief facts leading rise to the filing of this appeal are as follows:



3.1. The plaintiff filed a suit against the defendants for declaration of title and consequential relief of injunction in respect of land bearing Sy.No.67 measuring 28 guntas situated at Bethanagere Village, Dasanapura Hobli, Bengaluru North Taluk. It is the case of the plaintiff that, his father Sri. Doddaiiah and the original defendant No.1 were brothers and they are the sons of Sri. Athyappa. The said Doddaiiah and original defendant No.1 effected a partition about 50 years back. The partition they had effected was by way of *zubani parikat*. Pursuant to the partition, they started enjoying their respective properties fell to their respective shares. The revenue authorities, after taking note of the partition effected between Doddaiiah and original defendant No.1 (Sri. Beeraiah), entered the names of Doddaiiah and Beeraiah in the revenue records maintained by them. It is contended that, land bearing Sy.No.67 measuring 28 guntas fell to the share of Doddaiiah. During his lifetime, the father of the plaintiff-Doddaiiah was looking after the said property



as a manager of Hindu undivided joint family consisting of Doddaiah and his two sons i.e., the plaintiff and Sri. Anandappa. There was a partition in the family among Doddaiah and his sons and the same was reduced into writing by way of *panchayat parikath* dated 03.08.1977. In the said partition, all the family properties were divided into three portions as 'A' to 'C' respectively. 'A' schedule property fell to the share of Doddiah, 'B' schedule property fell to the share of the plaintiff and 'C' schedule property fell to the share of the plaintiff's younger brother viz., Anandappa. After the demise of Doddaiah, the plaintiff regained the possession of the property which was allotted to the share of Doddaiah. Thus, he became the owner of the suit schedule property. The defendants have no right, title or interest over the suit schedule property. The defendants were trying to interfere with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. Hence, a



cause of action arose for the plaintiff to file a suit for declaration and perpetual injunction.

3.2. The defendants filed a written statement denying the averments made in the plaint and it is contended that, Athyappa was the *moola purush* of the family and he had two sons viz., Doddaiiah and Beeraiah. A partition was effected between Doddaiiah and Beeraiah including the suit property. The suit survey number was not exclusively allotted to Doddaiiah; on the contrary, northern half portion was allotted to the share of Doddaiiah and southern half portion was allotted to the share of Beeraiah. Accordingly, the defendants have been enjoying the property fell to the share of Beeraiah independently. The plaintiff, with the sole intention to knock off the entire property in Sy.No.67, approached the Court and filed a suit. It is contended that, from 1968-69 upto 1989-90, the entries in the RTC extract would disclose that half partition is being enjoyed by the branch of Doddaiiah and remaining half portion is being enjoyed by the branch of



Beeraiah. The mutation was accepted in the name of the plaintiff for the whole extent of land in Sy.No.67 as per MR No.42/1985-86. The defendants filed an appeal challenging MR No.42/1985-86 before the Assistant Commissioner in RA No.85/2000-01. The Assistant Commissioner set aside the mutation MR No.42/1985-86 and remitted the matter to the Tahsildar with a direction to enter the *khata* as per the rights of the parties after holding a detailed enquiry. There is no cause of action to file a suit. Hence, the suit filed by the plaintiff is not maintainable. Accordingly, prays to dismiss the suit.

3.3. The Trial Court based on the rival pleadings of the parties, framed the following issues:

- "1. *Whether the plaintiff proves that he is the absolute owner of the suit schedule property?*
2. *Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property?*
3. *Whether the plaintiff proves the interference by the defendants?*



4. *Whether the plaintiff is entitled for relief of declaration and permanent injunction?*

5. *What decree of order?"*

3.4. The plaintiff, to substantiate his case, examined himself as PW1 and marked thirteen documents as Exs.P1 to P13. In rebuttal, defendant No.2 examined himself as DW1, examined two witnesses as DW2 and DW3 and marked eight documents as Exs.D1 to D8.

3.5. The Trial Court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence, answered issue Nos.1 to 4 in the affirmative and issue No.5 as per the final order. The suit of the plaintiff was decreed with costs vide judgment dated 07.12.2013 and it was declared that the plaintiff is the absolute owner of the suit schedule property. Consequently, the defendants are restrained from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property by decree of permanent injunction.



3.6. The defendants, aggrieved by the judgment and decree passed in OS No.16/2001, preferred an appeal in RA No.9/2013 on the file of the First Appellate Court.

3.7. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- "1) Whether the approach of the Trial Court in decreeing the suit filed by the plaintiff is proper?*
- 2) Whether the interference by this court is required?*
- 3) What order?"*

3.8. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in the affirmative, point No.2 in the negative and point No.3 as per the final order. The appeal was dismissed with costs vide judgment dated 17.12.2013.

4. The defendants, aggrieved by the impugned judgments passed by the Courts below, filed this regular second appeal.



5. Heard the arguments of the learned counsel for the defendants and learned counsel for the plaintiffs.

6. Learned counsel for the defendants submits that, the entire case of the plaintiff is based on *panchayat parikat*. It is the case of the plaintiff that, there was a partition effected on 03.08.1977. He submits that, the defendants have denied the execution of *panchayat parikat*. He also submits that, mere suit for declaration of title based on partition deed and revenue records is not maintainable in view of the mandate laid down by this Court in the case of ***Sri Aralappa Vs. Sri Jagannath and Others***¹ and he also submits that, the said aspect was not considered by the Courts below and committed an error in passing the impugned judgments. Thus, the impugned judgments passed by the Courts below are arbitrary and erroneous. He also submits that, the defendants have produced Exs.D4 to D6 which clearly disclose that RTC

¹ ILR 2007 KAR 339



jointly stands in the name of Doddaiiah and Beeraiah. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned counsel for the plaintiff submits that, the plaintiff's father Doddaiiah and original defendant No.1 were the brothers and they are the sons of Athyappa. Partition was effected between them about 50 years back and, in the said partition, the suit schedule property fell to the share of the plaintiff's father and the partition was effected orally; names of the respective parties were entered in the revenue records based on *zubani parikat*. He submits that, land in Sy.No.67 fell to the share of the plaintiff's father and he was in possession of the suit schedule property till his demise. During his lifetime, there was a partition in the family on 03.08.1977 and the said *zubani parikat* was reduced into writing as *panchayat parikat*. Hence, both the Courts below were justified in passing the impugned judgments. Hence, on these grounds, he prays to dismiss the appeal.



8. This Court, vide order dated 25.01.2019, admitted the appeal to consider the following substantial questions of law:

- "i) Whether both the Courts below are right in concluding that the plaintiff is the absolute owner of the suit schedule property on the basis of Ex.P1 which is a panchayath parikhat dated 3.8.1977 effected in between Doddaiiah and his three children?*
- ii) Whether both the Courts below are correct in holding that the entire land in Sy.No.67 had fallen to the share of Doddaiiah in the partition effected in between Doddaiiah and Beeraiah in the absence of any material evidence in that regard ?*
- iii) Whether both the Courts below are justified Ex.D4 to Ex.D6 which are RTGs jointly standing in the names of Doddaiiah and Beeraiah ?*
- iv) Whether both the Courts below are right in not considering Ex.D1 which is a mortgage deed, said mortgage was redeemed by Beeriah alone, was not hit by Section 92 of the Transfer of Property Act ?*

Reg. Substantial Questions of Law No.(i):

9. The plaintiff, to substantiate his case, examined himself as PW1. He has reiterated the plaint averments in



the examination-in-chief. To show that there was a partition effected between the sons of Athyappa, he has produced the following documents:

- i. *Panchayat parikat* marked as Ex.P1 which discloses that, there was a partition between the sons of Athyappa and the same was reduced into writing on 03.08.1977;
- ii. Ex.P2 is the *panchayat parikat* of 'A' schedule property and Ex.P3 is the *panchayat parikat* of 'B' schedule property;
- iii. On the basis of Exs.P1 to P3, the names of the parties were entered in the revenue records marked as Ex.P4;
- iv. Ex.P5 is the copy of the order passed in RA No.85/2000-01;
- v. Ex.P6 is the genealogical tree;
- vi. Exs.P7 to P13 are the RTC extracts.

During the cross-examination of PW1, it was suggested that, the suit schedule property was not exclusively allotted to Doddaiiah. It was suggested that, northern half portion of land in Sy.No.67 was allotted to the share of



Doddaiah and southern half portion was allotted to the share of Beeraiah and the defendants have been enjoying the property fell to the share of Beeraiah independently. The said suggestion was denied by PW1.

10. In rebuttal, defendant No.2 examined himself as DW1 and he has deposed that, Athyappa was a *moolapurush* of the family; he had two sons viz., Doddaiah and Beeraiah; northern half portion of land in Sy.No.67 was allotted to the share of Doddiah and southern half portion was allotted to the share of Beeraiah; they were put in possession of their respective shares and they were in possession of their respective shares till their demise. It was also deposed that, from 1968-69 upto 1989-90, entries in the RTC clearly discloses that, half portions of the properties being enjoyed by the branches of Doddaiah and Beeraiah. Mutation was accepted in the name of the plaintiff for the whole extent of land in Sy.No.67 as per MR No.42/1985-86, and the defendants filed an appeal before the Assistant Commissioner in RA No.85/2000-01. The



Assistant Commissioner has set aside the mutation and remitted the matter to the Tahsildar with a direction to enter the *khata* as per the rights of the parties after holding a detailed enquiry in that regard. He has produced the following documents:

- i. Ex.D1 is the mortgage deed dated 19.10.1993 (*sic. 19.10.1933*);
- ii. Ex.D2 is the certified copy of the order sheet in RA No.85/2000-01;
- iii. Ex.D3 is the certified copy of the mutation register extract;
- iv. Exs.D4 to D8 are the RTC extracts.

The defendants have also examined two witnesses as DW2 and DW3. They have reiterated the examination-in-chief of DW1.

11. From the perusal of the entire evidence on record, the suit of the plaintiff is based on the *panchayat parikat* marked as Exs.P1 to P3. The said documents are unregistered documents. The said documents can be



looked into for collateral purpose. The question arises before this Court is, whether the suit for declaration of title based on the partition is maintainable?

12. The Co-ordinate Bench of this Court had an occasion to consider the said issue in the case of ***Sri Aralappa*** (supra) wherein this Court has held that, a partition is not a transfer, by partition, nobody acquires title to any property for the first time; partition deed only recognises an existing right, which each party to the deed has in the joint property and no right spring from the deed of partition. It is further held that, the plaintiffs are seeking declaration that they have become owners of the suit schedule property by virtue of the partition deed; if partition is not a transfer, if partition conveys nothing, the plaintiffs get nothing for the first time under the deed of partition; therefore, they are not entitled to the relief of declaration sought for.

13. Further, the judgment passed by this Court in the case of ***Sri Aralappa*** (supra) has been partly upheld



by the Hon'ble Apex Court in the case of ***P. Anjanappa (D) by LRs Vs. A.P. Nanjundappa and Others***².

14. Admittedly, in the instant case, the entire case of the plaintiff is based on the *panchayat parikat* and on the basis of the partition. Partition is not a transfer. The said aspect was not been considered by the Courts below and the Courts below committed an error in passing the impugned judgments. The impugned judgments passed by the Courts below is contrary to the mandate laid down by this Court in the case of ***Sri Aralappa*** (supra) and the plaintiff is not entitled for the relief of declaration of title on the basis of a partition.

15. In view of the above discussion, I answer substantial question of law No.1 in the negative.

16. As I have answered substantial question of law No.1 in the negative holding that the plaintiff has not acquired any right or title by virtue of *panchayat parikat* and the suit for declaration of title is not maintainable, the

² (2026) 4 SCC 492



other substantial questions of law do not arise for consideration.

17. Accordingly, I proceed to pass the following:

ORDER

- i. The regular second appeal is ***allowed***;
- ii. The impugned judgments and decrees passed by the Courts below are hereby set aside;
- iii. Consequently, the suit of the plaintiff is ***dismissed***;
- iv. Pending IA(s) in this appeal, if any, shall stand disposed of;
- v. No order as to costs.

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

SKS : Paras 1 to 6
PA : Paras 7 to 17

List No.: 2 Sl No.: 3