



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 486 OF 2017 (PAR)

BETWEEN:

SMT THIMMAKKA,
W/O YERRA HANUMAPPA,
AGED ABOUT 65 YEARS,
R/A KANGANAHALLY VILLAGE,
MAJRA ULLAPPANAHALLY VILLAGE,
AMBAJIDURGA HOBLI,
CHINTAMANI TALUK - 563125.

...APPELLANT

(BY SRI NARAYANA SWAMY V K,ADVOCATE)

AND:

1. SMT SAROJAMMA
W/O LATE KRISHNAMURTHY
AGED ABOUT 60 YEARS
R/A KANGANAHALLY VILLAGE
MAJARA ULLAPPANAHALLI VILLAGE
AMBAJIDURGA HOBLI, CHINTAMANI TALUK.

2. CHIKKA KRISHNAMURTHY @ KRISHNAMURTHY
S/O LATE NAMMLOR, AGED ABOUT 64 YEARS

3. DODDAKRISHNAMURTHY
S/O LATE NAMMLOR, AGED ABOUT 67 YEARS

BOTH ARE R/AT KANGANAHALLY VILLAGE,
MAJARA ULLAPPANAHALLI VILLAGE,
AMBAJIDURGA HOBLI,
CHINTAMANI TALUK - 563125.

...RESPONDENTS

(BY SMT G KAMALADHAR, ADVOCATE FOR R2,

Digitally
signed by
PRAMILA G V
Location:
HIGH COURT
OF
KARNATAKA



V/O/DT 04.06.2026 APPEAL STANDS DISMISSED AS
ABATED AS AGAINST R1 AND R3)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 07.12.2016 PASSED IN
RA NO.41/2011 ON THE FILE OF THE II ADDL. DISTRICT AND
SESSIONS JUDGE, CHICKBALLAPUR (SITTING AT
CHINTAMANI), DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DATED 08.06.2011 PASSED IN
OS NO.73/2001 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND JMFC., CHINTHAMANI.

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 Narayana Swamy V. K., learned counsel for the
appellant.

2. Purchaser of the share of the 3rd defendant in
O.S.No.73/2001 is the appellant in this second appeal.

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

A suit for partition and separate possession came to be
filed by the first respondent - Chikka Krishnamurthy alias
Krishnamurthy against Rangamma, Dodda krishnamurthy and



Sarojamma in respect of the following properties (Hereinafter referred to as the suit properties):

- "1. S.No.29/3, measuring 0-03 guntas, assessed at Rs.0-03,*
- 2. S.No.29/4, measuring 0-05 guntas, assessed at Rs.0-71,*
- 3. S.No.29/2, measuring 0-03 guntas, assessed at Rs.0-03,*
- 4. S.No.24/3, measuring 0-10 guntas, assessed at Rs.1-40,*
- 5. S.No.25/1, measuring 0-02 guntas, assessed at Rs.0-28,*
- 6. S.No.25/2, measuring 0-02 guntas, assessed at Rs.0-28,*
- 7. S.No.25/3, measuring 0-09 guntas, assessed at Rs.1-27,*
- 8. S.No.24/2, measuring 0-11 guntas, assessed at Rs.1-54,*
- 9. S.No.24/1, measuring 0-12 guntas, assessed at Rs.1-68,*
- 10. S.No.69/1, measuring 1-10 guntas, 0-02 Kharab,*
assessed at Rs.2-68,
- 11. S.No.81, out of which 2-00 acres, assessed at Rs.3-00,*

The above said properties are situated at Ullappanahalli village, Ambajidurga Hobli, Chintamani taluk"

4. Suit on contest came to be decreed and operative portion of the Trial Court Judgment reads as under:

"The suit of the plaintiff is decreed as under:

It is hereby declared that the plaintiff and the 2nd defendant are entitled each 1/3rd 1/9th share in the suit



schedule properties and 3rd defendant is entitled 1/9th share in the suit schedule properties.

The plaintiff is entitled for partition and separate possession of his 1/3rd 1/9th share in the suit schedule properties by metes and bounds acting under Sec.54 CPC.

No order as to costs."

5. Present appellant said to have purchased item Nos.1 to 9 of the suit properties from Sarojamma even before there was a partition by metes and bounds.

6. Purchaser-Thimakka was made as a party/defendant No.4 before the Trial Court itself and shares have been allotted after due adjudication of the suit as referred to *supra*.

7. Being aggrieved by the same, it is the third defendant who filed appeal against the judgment and decree passed by the Trial Judge in R.A.No.41/2011, wherein the present appellant was a party/respondent said to have filed the cross objections in the said appeal. No Court fee was paid nor it was separately numbered and R.A.No.41/2011 came to be dismissed by a considered judgment dated 07.12.2016. Being



aggrieved by the same, fourth defendant has now preferred the present second appeal on following grounds:

- *"8. The impugned judgment and order of the trial court is against facts, law and evidence in the case and as such, liable to be set-aside.*
- *The impugned judgment and decree of the lower court is also suffers from illegalities and perversities in stamping the lower court's judgment and decree, warranting interference by this Hon'ble High Court.*
- *The courts below failed to appreciate the facts that Defendant No.1 who got her part of share viz. 'A' Schedule Properties in terms of the family partition dated:13.08.2001 in accordance with law. And subsequently Defendant No.3 sold out the same under a registered Sale Deed dated:24.3.2003 in favour of the Appellant herein (Defendant No.4) lawfully, who became absolute owner in occupation and enjoyment of the same, after perfecting her title and transferring all the necessary titles in her favour in accordance with law.*
- *Both the courts below failed to consider candidly that the 1st Defendant who was allotted 'C' Schedule Properties who given to his first wife Smt. Bhaygamma and remaining 'C' Schedule Properties was allotted to 2nd wife Smt. Lakshmiddevamma, respectively.*



- *Both the courts below seriously erred in not taking into consideration the fact that the Appellant herein during the pendency of the suit, aggrieved by the illegal interference and peaceful disturbance of possession of the suit property, by the Plaintiff and Defendant No.2, filed an original suit in O.S No.225/2011 against them for permanent injunction and the same was decreed by the judgment and order dated:15.7.2016 as prayed for, with costs, subject to the result of R.A. No.41/2011 filed by the Defendant No.3 Sarojamma.*

- *Both the courts below also seriously erred in not considering the entire evidence brought for by the Appellant before trial court which granted permanent injunction against the Respondents, after considering necessary documents like Registered gift deed, Sale Deed RTC extract, Patta Book, Certified copy of the Will etc., and after hearing arguments on both sides. Both the courts below have blindly given a good-bye to the said judgment and decree granting permanent injunction against the Respondents concerned, and which has not yet been challenged.*

- *Infact, the court below in O.S No.25/2011 while granting permanent injunction against the Plaintiff and Defendant in O.S No.73/2011, filed by this Appellant, have minutely and judiciously considered the marital documents of title in favour of this*



Appellant and have also recorded cogent and convincing reasons in support of the injunction. These important piece of evidence has been lost sight of by both the courts below, warranting interference in this appeal.

- *Both the courts below further erred in not considering the salient factors and the legal position in regard to the suit Schedule Property in so far as it fallen to the share of 1st Defendant could not have been clubbed and taken as a whole along with other Schedule Properties, for the sole aim of claiming their part of share in the family properties, by metes and bounds, particular in view of the family partition effected on 6.5.1995 which was reduced into writing and the Plaintiff himself is a signatory to the partition 'A' Schedule allotted to 1st Defendant, while 'B' Schedule and 'C' Schedule properties were allotted to 2nd e and the Plaintiff respectively.*
- *The trial court failed to see that during the pendency of the suit filed by the Plaintiff in O.S No.73/2001 and as on the date of judgment and decree dated: 08.06.2011 decreeing the suit, the permanent injunction and decree granted in the suit filed by this Appellant in O.S No.225/2011 was pending and final judgment and decree came to be delivered on 15.7.2016. This very crucial point of time and balance of convenience and titleship was*



not at all taken on face value, resulting in substantial justice, warranting interference in this appeal.

- *So also, the lower appellate court has fallen a prey to the judgment and decree of the trial court in all its probabilities, by justifying endorsing its views without recording independent and cogent reasons.*
- *It is respectfully advised to submit that, the trial court and the court below seriously erred in decreeing the suit of the Plaintiff for partition of suit Schedule Properties, including the suit land sold to the Appellant and in her possession measuring totally to an extent of 057 guntas of Ullappanahalli village, Ambajidurga Hobli, Chintamani Taluk. It is further submitted that, courts below ought to have confined and restricted the judgment and decree to the extent of equitable share entitled to each of the family members, excluding the share of 0.57 guntas fallen to the share of 1st Defendant (Smt. Rangamam W/o late Nammallor) AS PER 'a' SCHEDULE, as per family partition dated: 6.5.1995.*
- *The courts below further erred in not taking into consideration that the 1st Defendant, his part of 'C' Schedule Properties was allotted to his first wife Smt. Bhagyamma and remaining part of it to his second wife Smt. Lakshmiddevamma.*



- *The trial court committed a serious error of law in not framing the issue in respect of the 4th Defendant (the Appellant herein), who being the bonafide Purchaser of 'A' Schedule Properties.*
- *The appreciation of entire evidence on record by the trial court, and reappraisal of the same by the court below is illegal and contrary to the civil jurisprudence, and principles of evaluation of evidence, thereby resulting in substantial injury and failure of justice to the Appellant herein, warranting interference in this second appeal.*
- *Even otherwise, the impugned judgment and decree of both the courts below are illegal, based on mere surmises and conjectures, and wrongful evaluation of the entire evidence brought on record, and as such, liable to be set-aside."*

8. Sri V. K. Narayana Swamy, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that in a suit for general partition when appellant has purchased suit Item Nos.1 to 9 from the third defendant, in those properties shares ought not to have been allotted by the Trial Court and the shares of the other sharers viz., plaintiff and defendants No.1 and 2 should have been carved out in the remaining properties and therefore,



appeal needs to be admitted on following substantial questions of law:

- 1) *Whether the trial court justified in framing issue no.1 that the Plaintiff and the Defendants are the joint family members and are in possession and enjoyment of the Suit Schedule Property jointly, including the 'A' Schedule Properties sold to Defendant No.4 (Appellant)?*
- 2) *Whether the trial court is correct in framing issue No.2 that the Plaintiff is entitled for his legitimate share in all the Suit Schedule Properties, including 'A' Schedule Properties sold to Appellant herein?*
- 3) *Whether the trial court justified in negating the issue No.4 as to whether Defendant No.4 proves that the 3rd Defendant Sarojamma had sold the property allotted to her by her mother through registered gift deed in favour of the Defendant No.4?*
- 4) *Whether the trial court is right in decreeing the suit of the Plaintiff by negating all the issues framed by it?*
- 5) *Whether the court below is correct in holding issue No.1 in favour of the Plaintiff regarding the proof of existence of family oral partition dated 6.5.1995 effected between the Plaintiff and the Defendant*



No.3 in respect of the Suit Schedule Properties and 'A' Schedule Properties allotted in favour of Defendant No.1?

- 6) *Whether the court below justified in negating issue No.2 that the Appellant in cross appeal (Defendant No.4) is entitled to produce document as an additional evidence?*
- 7) *Whether the court below is right in holding issue no.3 in favour of the Plaintiff interference of the court?*
- 8) *Whether the courts below were justified decreeing the suit of the Plaintiff even though there was injunction operated against the Plaintiff and Defendant No.2 in O.S No.225/2011 filed by the Appellant herein, which came to granted permanent injunction by the judgment and order dated: 15.7.2016 during the pendency of the O.S No.73/2001 filed by the Plaintiff, which came to be decreed on 08.06.2011?*

The aforesaid questions of law are substantial in nature which required to be determined and decided by this Hon'ble High Court, in the interest of justice, equity and fairplay."



9. None appears for the respondents.

10. In the absence of the counsel for respondents, this Court perused the matter on record in the light of the arguments put forth on behalf of the appellant/fourth defendant.

11. Admittedly, fourth defendant (appellant) is a stranger to the family and not a sharer. He having purchased Item Nos.1 to 9 of the suit properties from third defendant, cannot put forth his case other than what the third defendant could canvass before the Trial Court as well as the First Appellate Court.

12. Pertinently, third defendant, who is the vendor of fourth defendant having filed an appeal in R.A.No.41/2011, lost the battle inasmuch as, no challenge is there on the judgment of the First Appellate Court by the third defendant.

13. Alleged cross objection of fourth defendant in the appeal filed by the third defendant was *per se* not maintainable as there was no conflict of interest between the third defendant and the fourth defendant.



14. Further, no Court fee is paid nor separate adjudication with regard to the rights of the fourth defendant has taken place in R.A.No.41/2011.

15. At any rate, since the fourth defendant is a purchaser of the property, he can only step into the shoes of the third defendant.

16. If any adjustment is to be made with regard to the properties as is canvassed on behalf of the appellant, that is the scope and ambit of the final decree proceedings.

17. Since, there is no dispute as to the relationship between plaintiff and defendants no.1 to 3 and the nature of property, shares allotted by the learned Trial Judge while decreeing the suit confirmed by the First Appellate Court needs no interference as there is no question of law involved in the second appeal.

18. In view of the foregoing discussions, this Court does not find merit in any one of the substantial questions of law referred to supra. Accordingly, following is passed:



ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.
- (iii) It is made clear that this Court has not expressed any opinion about the adjustment of the property and the appellant is at liberty to canvass the same in the Final Decree Proceedings in accordance with law.

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

brn
List No.: 1 Sl No.: 75