

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 922 OF 2013 (PAR)

BETWEEN:

SRI RAVIRAJA HEBBAR
S/O LATE S.K.MANJAPPA HEBBAR
AGED ABOUT 53 YEARS
R/AT KAIMARA, POST: UNTOORKATTE
KASABA HOBLI, THIRTHAHALLI TALUK-577 432
SHIMOGA DISTRICT.

...APPELLANT

(BY SRI A.KESHAHA BHAT, ADVOCATE FOR
SRI K.SHRIKRISHNA, ADVOCATE)

AND:

1. DR. VIKRAM HEBBAR
S/O S.K.MANJAPPA HEBBAR
AGED ABOUT 50 YEARS
SINCE DEAD BY HIS LR'S.
- 1(a) SMT. GEETHA V. HEBBAR
W/O LATE VIKRAM HEBBAR
AGED ABOUT 53 YEARS.
- 1(b) PADMINI HEBBAR
D/O LATE VIKRAM HEBBAR
AGED ABOUT 20 YEARS.
- 1(c) VISHARUTH HEBBAR
S/O LATE VIKRAM HEBBAR
AGED ABOUT 19 YEARS.
- 1(d) PRAJHNA HEBBAR
D/O LATE VIKRAM HEBBAR
AGED ABOUT 14 YEARS
SINCE SHE IS MINOR

REP. BY HER MOTHER
SMT. GEETHA V. HEBBAR.

2. SRI SHASHIDARA HEBBAR
S/O LATE S.K.MANJAPPA HEBBAR
AGED ABOUT 44 YEARS
E.S.A. FOUNDATION, SINGANALUR
COIMBATORE, TAMIL NADU 600 120.
3. SMT. CHANDRIKA AITHAL
W/O DR. VASUDEVA AITHAL
AGED ABOUT 51 YEARS
H.A.W., C/O VASUDEVA AITHAL
SR. SPECIALIST, DEPT OF ORTHOPEDICS
NIZWA HOSPITAL, P.B.NO.21
NIZWA, POSTAL CODE 611
SULTANTE OF OMAN

SREEMATHI HEBBAR
W/O LATE S.K.MANJAPPA HEBBAR
SINCE DEAD REP. BY
APPELLANT AND R1, R2, R3
AND ALSO R4 AND R5.

4. SRI RANJAN HEBBAR
S/O S.M.RAVIRAJ HEBBAR
MINOR
5. SRI SUDHARSHAN HEBBAR
S/O S.M.RAVIRAJA HEBBAR
MINOR

R4 AND R5 MINORS
REP. BY THEIR GUARDIAN
SMT. JYOTHI HEBBAR
W/O S.M.RAVIRAJ HEBBAR
R/O UNTOORKATTEE KAIMARA
KASABA HOBLI, THIRTHAHALLI TALUK
SHIMOGA DISTRICT 577 432.

...RESPONDENTS

(BY SRI NIKHIL K.N., ADVOCATE FOR
SRI O.SHIVARAM BHAT., ADVOCATE FOR R4;
SRI G.S.VENKATA SUBBA RAO, ADVOCATE FOR R3;
R1(d) MINOR REP. BY R1(a);
R1(a) & R1(b) SERVED BUT UNREPRESENTED;
NOTICE TO R2 HELD SUFFICIENT V/O/DTD: 26.01.2014;
R5 SERVED BUT UNREPRESENTED;
NOTICE TO R1(c) HELD SUFFICIENT V/O/DTD 20.09.2018)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96, READ WITH ORDER XLI RULES 1 TO 5 OF CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 21.02.2013 PASSED IN O.S.No.143/1998 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE, SHIVAMOGGA, DECREETING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, **JAYANT BANERJI J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

This appeal is by the first defendant challenging the judgment and decree dated 21.02.2013 made in O.S.No.143/1998 passed by the II Additional Senior Civil Judge at Shimoga.

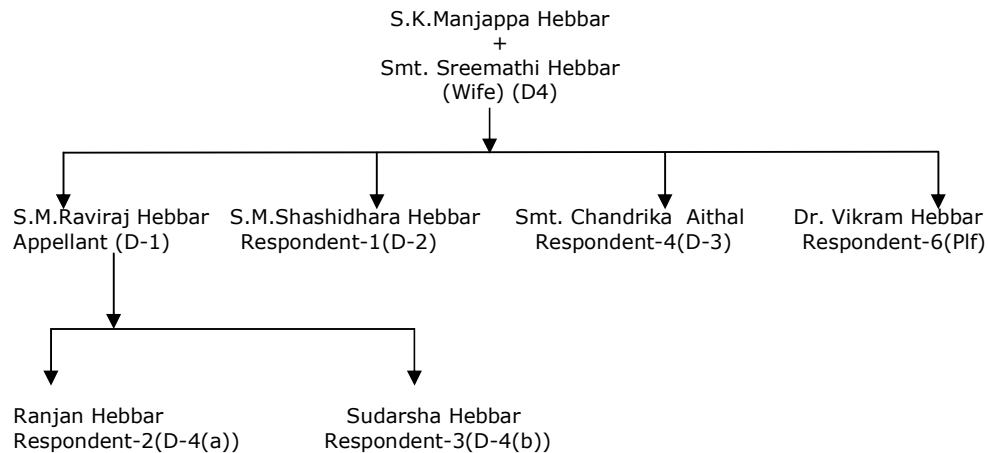
2. For the sake of convenience, the parties are being referred to by their ranks before the trial Court.

3. The plaintiff filed the aforementioned suit seeking the following reliefs:

"a.i) As for portion by metes and bounds and separate possession of his 1/4th share in respect of A to D schedule property. And 1/3rd share in the E schedule property with mesne profits.

- a.ii) To declare the right of the 2nd defendant over the suit schedule property was divested and vest with the legal heirs of the deceased Manjapa Hebbar.
- b) For an account of income from 1985 till date of delivery of possession of the share of plaintiff.
- c) For costs of the suit and such other relief as the Hon'ble court deems fit to grant in the circumstances of the case: and
- d) To declare that the sale transaction made by the defendant No.1 in respect of shares/securities as mentioned in the item No.3 of the schedule "D" of the above suit is null and void and not binding on the plaintiff."
4. The family members of the parties are as follows:

FAMILY TREE (O.S.No.143/1998)



5. It is stated in the plaint that the aforesaid S.K.Manjappa Hebbar had died on 16.09.1985. During his lifetime there was a partition of the family properties by means of a registered partition deed dated 27.12.1974 and suit schedule 'A' property were allotted to the share of the said S.K.Manjappa Hebbar. Suit Schedule 'B' properties were the self-acquired properties of Manjappa Hebbar and hence not the subject matter of partition.

5.1. It is stated that at the time when the partition took place the plaintiff was a minor. It was the first defendant who was looking after the properties of all. The first defendant secured a registered Power of Attorney dated 28.07.1990 from the plaintiff and others. The plaintiff has revoked the said Power of Attorney by means of a registered notice issued by him through his advocate. The first defendant became greedy and duped the plaintiff and other defendants. He caused all bank deposits of the plaintiff and others to be adjusted towards loans etc. It is contended that the income from the land was always very good. The lands have always been well yielding and valuable. The loans unnecessarily raised could have been discharged out of the income from the lands. It was stated that since the last three years he has not attended to agricultural

operations. The first defendant did not bother to maintain the rice mill. The building is collapsing and no attention was being paid to repair the building and various other allegations or misdeeds regarding the first defendant were made in the plaint.

5.2. It is also stated that the second defendant had become a sanyasi and he is recognized as a Senior Swamy, Nisarga Isha in the Isha Foundation at Coimbatore. It was stated that he embraced sanyasa and the property rights in respect of his hissa share, that is 1/6th schedule property was obtained through registered partition deed bearing S.R.No.387/74-75 dated 27.12.1974. At that time he was a minor, but the second defendant even after attaining majority neither took possession nor the management of the hissa share. The second defendant has left the native for his studies at various colleges by virtue of the aforesaid and the attitude of the second defendant relating to his hissa share, had become joint family property on account of embracing sanyas, his property right not only in respect of his hissa share i.e. E schedule, but also in respect of his rights over 'A to D' schedule property of the share property will be divested. In view of the above, his right over the property would vest with the other

coparceners of family and they are entitled to inherit the estate of the second defendant.

5.3. It is stated that in view of the facts, the plaintiff is entitled to one-third share in the proposed 'E' schedule property with mesne profit. It is further stated that in lieu of the above facts and the changed circumstances, the plaintiff is entitled to one fourth share of 'A to D' schedule property and also mesne profits.

6. A written statement was filed by the first defendant, whereby, *inter alia*, he denied the allegations made against him by the plaintiff. It is stated that he being the eldest son, his father had imposed confidence in him. His father died on 16.09.1985 and thereafter the first defendant looked after all the comforts and finances for the plaintiff to complete the medical course at Hubballi.

6.1. It was stated by the first defendant with regard to the second defendant, that after his college education, he joined the Tata Institute in Bangalore and completed his M.E.Degree in Electronics in the year 1993. The first defendant provided all his educational expenses till he completed his M.E.degree. Unfortunately, he did not join any service, but

joined the Ashram at ISA Foundation (*sic*), Coimbatore in Tamil Nadu. The second defendant had become a sanyasi and virtually renounced material benefits and expressed his intention that he does not want anything from the family properties and that he should look after all the management of the properties including his properties.

6.2. The third defendant is the only sister of the first defendant. She completed her studies and got degree in Home Science in the year 1987. Her marriage proposal was brought by the first defendant and she was married to Dr.Vasudev Aithal on 26.11.1986. She completed her education even after the marriage and got the degree in the year 1987. The first defendant states that lot of things were demanded as dowry for the marriage. The first defendant spent the money towards marriage expenses. He had also purchased property in her name. It is stated that his mother namely the fourth defendant is colluding with the plaintiff and the third defendant. The fourth defendant had executed a lease deed on 22.12.1985 in favour of the first defendant in respect of her properties. Thereafter the first defendant as lessee had renovated the entire building and the expenditure had been met by the first defendant. It was stated that he allowed his mother to collect

the rent of some of properties. It is stated that partition dated 27.12.1974 is inequitable and against the law. His father was not keeping good health for several years prior to the death and all the children were young. There appeared to be no intention of Sri S.K.Manjappa Hebbar to effect the division of the properties in view of minor children. However a legal notice dated 16.08.1974 was got issued demanding partition of three fourth share in the family property. Thereafter Sri S.K.Manjappa Hebbar effected the partition on 27.12.1974. But the shares were allotted to the fourth defendant as well as to the third defendant.

6.3. With regard to the suit properties, the first defendant tried to demonstrate his rights over the same. It was stated that the plaintiff had taken possession of the properties allotted to his share only in the year 1997 and all his lands are in excellent condition and he is getting good income. The movable properties in 'C' schedule to the plaint was stated to be overvalued. Certain items in 'C' schedule were claimed as its exclusive property. As regard Schedule 'D' property, it was claimed that only the first defendant is entitled to that. With regard to the other items too, he claimed his right.

7. Written statements were filed on behalf of third defendant and fourth defendant. Thereafter, after the death of the fourth defendant, the legal representatives of fourth defendant namely, defendant Nos.4(a) and 4(b) filed the written statement. After the evidence was led and the depositions of the parties/witnesses were recorded, the judgment and decree as aforesaid was passed in O.S.No.143/1998.

8. The suit was decreed. It was declared that the rights of the second defendant has been divested to other members of the family. It was declared that the plaintiff, first defendant, third defendant and fourth defendant are entitled to one fourth share each in Schedule 'A' to Schedule 'D' properties, and one third share each by plaintiff, first defendant and third defendant in Scheduled 'E' Properties. With regard to one fourth share of the fourth defendant, it was decreed that it shall go to the legatees under the Will, if all the legatees do not wish to challenge the Will in respect of Schedule 'A' to 'D' properties. The first defendant was held liable to give the accounts in respect of the income and expenditure. As regards ascertainment of mesne profit, it was decreed that there shall be a separate enquiry as per Order XX Rule 12 of CPC. It was

decreed that the parties are at liberty to take their respective shares as per Section 54 of the CPC.

9. It is pertinent to mention here that after filing of O.S.No.143/1998, the first defendant had instituted a suit in O.S.No.187/1999 against the plaintiff, third defendant, the fourth defendant and against one Shaik Ahamed seeking decree of modification of registered partition deed dated 27.12.1974 relating to the shares allotted and for partition and separate possession of his one fourth share and for allotment of entire Schedule 'B' and 'C' properties therein to his share. Partition and separate possession of his share in Schedule 'D' property therein was also sought. This suit however came to be dismissed by means of the common judgment aforesaid.

10. The point for determination in the instant appeal is that *"whether the claim of the first defendant that the second defendant is a Brahmachari and not a sanyasi and therefore the second defendant is entitled to his share in the joint family property, is legally sustainable?"*

Submission of the learned Counsel for the appellant is as follows:

11. Though other grounds have been taken in the memo of appeal, however, the sole submission of the learned Counsel for the appellant is that the second defendant had become a sanyasi but he had not relinquished his share of the property that was given to him pursuant to a registered Partition Deed dated 27.12.1974 which is Ex.D80.

12. It is therefore his submission that his property would not come within the common pool to be shared by all the other family members. It is stated that the second defendant became a Brahmachari and not a sanyasi and even otherwise he cannot be divested of his properties, which has come to his share through a registered Partition Deed which is much prior to his adopting Brahmacharya. It is stated that at the time of filing of the suit, the 'E' schedule properties were not included in the plaint. However, later, the 'E' schedule properties which fell to the share of the second defendant were included. It is stated that the 'E' schedule properties belong exclusively to the second defendant and it cannot be a part of the properties to be partitioned among the rest of the family members. He submits that even if it is assumed that the second defendant

has become a sanyasi, he may be deprived of inheritance but cannot be divested of the properties which he already held prior to his becoming a sanyasi.

13. Learned Counsel for the appellant has relied upon a judgment of the Supreme Court in the case of **Krishna Singh v. Mathura Ahir**¹ to contend that it must be demonstrated and proved that a person has adopted the life of sanyasi by a proper procedure. It is stated that mere admission by parties to a suit cannot be a ground for holding that a person has become a sanyasi. It is stated that in this regard, the Trial Court has misdirected itself in putting the property of the defendant-respondent No.2 in the common pool.

14. Yet another decision relied upon by the learned Counsel for the appellant is in the case of **Madhusudhan Mohapatra v. Gobind Sabat**² of the Orissa High Court and reference has been made to paragraph Nos.7 and 8 of that judgment. In this regard his contention is that to make out the case that a person became a Vaishnava and met with a civil death, a mere expression of desire in a will of that person that he adopts Vaishnava Dharma is not enough. It has to be

¹ AIR 1980 SC 707

² AIR 1965 Orissa 54

demonstrated that he has already become a Vaishnava. The Court held that only an expression of desire to adopt Vaishnavism cannot conclusively establish that he had in fact renounced the world and became a Vaishnava. From further recital of the document, it appeared that he (the testator) had reserved to himself the power to deal with all his properties including the endowed properties until his death.

15. It is therefore contended that the judgment of the trial Court holding that the second defendant has embraced 'Sanyasthava' and has become a sanyasi, he has lost all his rights relating to his original family, and that the share of the second defendant in the suit schedule property shall be allotted to all other sharers, is wholly illegal and deserves to be set aside.

16. No other arguments were advanced by the learned Counsel for the appellant.

Submission of the learned Counsel for the respondents is as follows:

17. It is pertinent to mention here that learned Counsel for third defendant has supported the decree. However, learned Counsel for defendant No.4(a) supported the appellant. Since

no one other than first defendant has challenged the aforesaid judgment and decree, and his challenge is limited only regarding the rights of second defendant we proceed to adjudicate the matter accordingly.

Analysis

18. It is pertinent to mention here that in the order sheet of trial Court on 07.10.1998, it is recorded that the second defendant has been served. Moreover, thereafter, there was representation of the second defendant. Therefore it cannot be said that second defendant was not served or unrepresented.

19. In the impugned judgment, the trial Court noted that no serious arguments were addressed in the case. All the learned Counsel have admitted that the suit schedule properties were allotted to the share of late S.K.Manjappa Hebbar in a partition dated 27.12.1974 and 1966 partition. S.K.Manjappa Hebbar died intestate and that all his children are entitled to get share in the properties. These were stated to be admitted facts. It was noted that another admission that 'B' schedule properties had fallen to the share of S.K.Manjappa Hebbar in the partition between himself and his brother Srinivas Hebbar. Therefore, those too are ancestral joint family

properties and those properties were accepted as ancestral properties. As regards the contention of the first defendant, that 'C' schedule and Item No.5 of 'A' scheduled properties are his self-acquired properties and he also is alone entitled to get 'D' schedule properties, the trial Court held that his claim cannot be accepted.

20. It is noted from perusal of the written statement of first defendant that a categorical stand was taken with regard to the second defendant therein that he got his M.E.Degree in Electronics in the year 1993. But he did not join any service, and joined the Ashram at Coimbatore in Tamil Nadu. It was his contention that he has become a sanyasi and virtually renounced material benefits and expressed his intention that he does not want anything from the family properties and that the first defendant should look after the management of the family including the properties of the second defendant.

21. In paragraph 18 of the amended written statement of the first defendant, it is stated that the second defendant has become a sanyasi and has informed the first defendant that all his properties have to be enjoyed by the first defendant as the owner.

22. As noted above, on perusal of the order sheet of the aforesaid suit in O.S.No.143/1998, the second defendant was represented by a Counsel throughout the proceedings. The second defendant has not challenged the decree aforesaid. Apart from the self-serving statement of the first defendant regarding the alleged stand of the second defendant of having relinquished his share in the suit schedule property in favour of the first defendant, no evidence has been led in that regard.

23. It is pertinent to mention here that the plaintiff in his rejoinder filed to the written statement of the first defendant had stated that the second defendant had completed M. E. in the Indian Institute of Science, Bangalore, but he came down to the village to take up agriculture as his avocation. But the first defendant did not encourage him nor obliged him with any financial assistance. It was also stated that the second defendant was beaten up mercilessly by the first defendant. Disgusted by the attitude of the first defendant he left for Coimbatore, Tamil Nadu to join the R S A Foundation (*sic*). It was denied that the second defendant had informed the first defendant that his properties also should be enjoyed by the first defendant as owner. On perusal of the paper book, in the examination-in-chief, the first defendant has nowhere stated

that the second defendant has become a sanyasi or that he has relinquished his share in the suit schedule property in favour of the first defendant.

24. The first defendant in his cross examination has stated that the second defendant started a school in Ooty. Since 1995 he has been living in Coimbatore. He also stated that the second defendant did not become a sanyasi, but he is with a Guru. It was stated that no relinquishment deed in respect of the properties that had gone to the share of the second defendant was executed by the second defendant. It was stated that the second defendant has his share in the suit properties.

25. Thus from perusal of the cross examination of the first defendant, it is clear that he has adopted a different stand in his deposition than what was stated by him in his written statement as amended. While on one hand he states in his written statement that the second defendant had become a sanyasi, on the other hand in his deposition he states that he has not become a sanyasi. Therefore the evidence of the first defendant with regard to the second defendant having become a sanyasi or not, cannot be relied upon.

26. It would be pertinent to mention here that a new plea regarding the second defendant being a Brahmachari and not a sanyasi is being sought to be raised by the appellant for the first time in this appeal. The provision of Order VI Rule 7 of CPC provides that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegations of fact inconsistent with the previous pleadings of the parties pleading the same. It has not been demonstrated by learned Counsel for the appellant that any amendment was moved by the first defendant to amend the written statement. The appeal must fail on this ground too.

27. In view of the aforesaid, the submission of learned Counsel for the appellant/first defendant that the second defendant is a Brahmachari and not a sanyasi, is rendered academic and cannot be relied upon for purpose of adjudication of the instant appeal. It was for the first defendant to establish by cogent evidence in support of proper pleadings with regard to the second defendant being a Brahmachari and not a sanyasi, which averments are conspicuously absent from his written statement and even in his testimony.

28. For the aforesaid reason, we find no merit in this appeal and it is accordingly dismissed.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(RAJESH RAI K)
JUDGE**

KSR