



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 799 OF 2013 (PAR)

BETWEEN:

1. ANANTHAMMA
W/O RAMAREDDY,
AGED ABOUT 65 YEARS,
HOUSEWIFE,
R/O. VALSE, THALAK HOBLI,
CHALLAKERE TALUK,
CHITRADURGA DISTRICT,
PIN CODE NO: 577 522.
2. JAYALAKSHMI
W/O THIPPA REDDY,
AGED ABOUT 49 YEARS,
HOUSEWIFE,
R/O VALSE, THALAK HOBLI,
CHALLAKERE TALUK,
CHITRADURGA DISTRICT,
PIN CODE NO: 577 522.

Digitally signed by
CHAYA S A
Location: HIGH
COURT OF
KARNATAKA

...APPELLANTS

(BY SRI. H. KANTHARAJ, SENIOR COUNSEL FOR
SRI. RAVI H. K., ADVOCATE)

AND:

1. THIMMAREDDY
S/O LATE KOKKALA MUDALAGIRIYAPPA,
AGED ABOUT 57 YEARS,



AGRICULTURISWT,
R/O HANUMANTHANAHALLI,
THALAK HOBLI,
CHALLAKERE TALUK,
PIN CODE NO: 577 522

2. RANGAMMA
SINCE LATE REPRESENTED BY LRS
WHO ARE APPELLANTS AND RESPONDENT
NO.1 HEREIN

...RESPONDENTS

(BY SRI. V. SUBASH REDDY, ADVOCATE FOR R1
R2 - SD., V/O DTD. 27.02.2026 FOR R1 TREATED AS
LRS OF DEAD R2)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD. 29.01.2013 PASSED IN
R.A.NO.45/2012 & R.A.NO.46/2012 ON THE FILE OF
ADDITIONAL DISTRICT JUDGE (FAST TRACK COURT,
CHITRADURGA, ALLOWING R.A.45/2012 AND DISMISSING
R.A.46/2012 FILED AGAINST THE JUDGEMENT AND DECREE
DTD. 24.05.2012 PASSED IN OS.NO.7/2011 ON THE FILE OF
SENIOR CIVIL JUDGE, CHALLAKERE. TRAIL COURT DECREED
THE SUIT. APPELLATE COURT ALLOWED R.A.45/2012 AND
DISMISSED R.A.46/2012. SUIT FOR DECLARATION, PARTITION
AND SEPARATE POSSESSION.

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

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH



ORAL JUDGMENT

This Regular Second Appeal is preferred by the plaintiffs assailing the judgment and decree dated 29.01.2013 in R.A.No.45/2012 and R.A.No.46/2012 on the file of the Additional District Judge (Fast Track Court), Chitradurga (hereinafter termed as 'First Appellate Court'), modifying the judgment and decree dated 24.05.2012 in O.S.No.7/2011 on the file of the Senior Civil Judge, Challakere (hereinafter termed as 'Trial Court'), decreeing the suit of the plaintiffs and the counter claim filed by the defendants.

2. For the sake of convenience, parties are referred to as per their ranking before the Trial Court.

3. The relevant facts for adjudication of this appeal are that, the plaintiffs and defendant No.1 are the children of Kokkala Mudalagiriappa and defendant No.2-wife. It is stated in the plaint that one of the brothers of the plaintiffs- Gurumurthy, and his wife died without leaving behind any children. Therefore, the plaintiffs have sought partition of the suit schedule properties, stating that the scheduled properties are the joint family properties of their father-Kokkala



Mudalagiriappa. Accordingly, they sought for partition in suit schedule property by filing the suit in O.S.No.7/2011 before the Trial Court.

4. After service of notice, defendants entered appearance and filed detailed written statement denying the averments made in the suit.

5. It is the case of the defendant No.1 that 'B' schedule property is not the joint family property of the plaintiffs and also stated that the suit 'A' schedule property is the ancestral property of the father of the plaintiffs and defendant No.1. It is further stated that, after the death of the father-Kokkala Mudalagiriappa, the defendants and another son-Gurumurthy were in possession of the 'A' schedule property and as such, the said Gurumurthy had filed a suit for partition in O.S.No.117/2006 against the defendants, in collusion with defendant No.2, wherein defendant No.2 has sought for 1/3rd share in the suit 'A' schedule property. It is also stated that, in the said suit, the competent Court decreed the suit, holding that defendant No.1 is entitled for 1/3rd share in the suit schedule property. In view of the same, defendant



No.1, being only surviving son of defendant No.2 and therefore, it is contended by defendant No.1 that he is entitled for 1/2 share in the suit schedule properties. Accordingly, he sought for dismissal of the suit.

6. Further, the defendant No.2 has filed separate written statement, admitting the fact that the suit properties are the ancestral and joint family properties of the plaintiffs and defendants. It is stated that the 'B' schedule property was acquired by Gurumurthy and he had invested for construction of house. Therefore, it is contended by defendant No.2 that the 'B' schedule property is the self acquired property of her son- Gurumurthy, who died without leaving behind any children. Accordingly, sought for dismissal of the suit.

7. Based on pleadings on record, the Trial Court has formulated the issues and additional issues for its consideration. In order to establish their case, the plaintiff No.2 herself was examined as P.W.1 and got marked twenty two (22) documents as Ex.P.1 to Ex.P.22. Defendants have examined as D.W.1 and D.W.2 and got marked three (3) documents as Ex.D.1 to Ex.D.3.



8. The Trial Court after considering the material on record, by its judgment and decree dated 24.05.2012, decreed the suit, holding that the plaintiffs are entitled for 2/4th share in 'A' and 'B' schedule properties and defendants are entitled for 1/4th share each in 'A' and 'B' schedule properties. Further declared that, the judgment and decree passed in O.S.No.117/2006 dated 09.09.2008 is not binding on the share of the plaintiffs.

9. Being aggrieved by the same, defendant No.1 has preferred R.A.No.45/2012 and R.A.No.46/2012 challenging the judgment and decree passed by the Trial Court. The said appeals were contested by the plaintiffs. The First Appellate Court after re-appreciating the material on record by its judgment and decree dated 29.01.2013, allowed R.A.No.45/2012 and dismissed R.A.No.46/2012 in respect of the relief sought in the counterclaim with respect to 'B' schedule properties. Being aggrieved by the same, the plaintiffs have preferred this appeal.

10. This Court vide order dated 21.01.2020, formulated the following substantial question of law:



"1. Whether the Court below were justified in awarding 1/4th share to the plaintiffs in the suit schedule properties disregarding the fact that they were entitled to only a moiety out of the notional share of the propositus?

2. Whether the Court below failed to apply Section 15 of the Hindu Succession Act, 1956 in so far as the property that was succeeded to by the deceased Gurumurthy and whether Section 15(2)(b) of the said Act was to be invoked in respect of vested interest of the widow of Gurumurthy?"

11. Heard Sri.H. Kantharaj, learned Senior Counsel for Sri.Ravi H.K., learned counsel appearing for the appellant and Sri. V. Subash Reddy, learned counsel appearing for the respondent No.1.

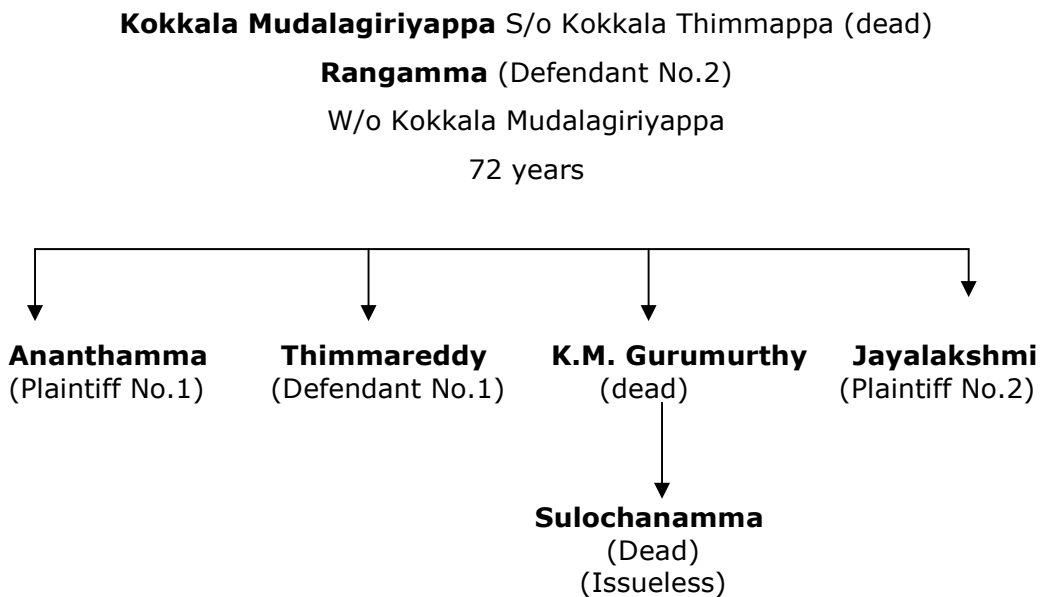
12. Sri.H. Kantharaj, learned Senior Counsel appearing for the appellants invited the attention of the Court to the genealogical tree produced in the appeal and also contended that, defendant No.2 and another brother of the plaintiffs-Gurumurthy are no more. Therefore, the entire suit schedule properties belonged to the father of the plaintiffs-Kokkala Mudalagiriappa as joint family properties. Therefore, the



plaintiffs and defendant No.1 are entitled for equal shares of $1/3^{\text{rd}}$ each in respect of the suit schedule properties. Accordingly, learned Senior Counsel sought for interference of this Court.

13. Per Contra, Sri. V. Subash Reddy, learned counsel appearing for respondent No.1 sought to justify the impugned judgment and decree passed by the First Appellate Court.

14. In the light of the submission made by the learned counsel appearing for the parties, the relationship between the parties is not disputed and the Genealogical tree of the parties reads as under:





15. Perusal of the Genealogical tree would indicate that the plaintiffs and defendant No.1 are the children of Kokkala Mudalagiriappa and Rangamma (defendant No.2). It is also not in dispute that the plaintiffs had another brother-K.M.Gurumurthy, who died without leaving behind any issue and his wife-Sulochanamma is also no more.

16. It is also submitted by the learned counsel appearing for the parties that defendant No.2 died on 16.02.2020 and the said fact is undisputed.

17. In that view of the matter, taking into consideration the factual aspects on record, as the suit schedule properties are the joint family properties of the Kokkala Mudalagiriappa, and the defendant No.2 is no more, I am of the view that the plaintiffs and defendant No.1 are entitled for equal shares i.e., $1/3^{\text{rd}}$ share each in the suit schedule properties. The substantial question of law, is answered in favour of the plaintiffs.

18. Following the declaration of law laid down by the Hon'ble Supreme Court in the case of ***Vineeta Sharma v. Rakesh Sharma and Ors.***, reported in ***(2020) 9 SCC 1***, the daughters are also considered to be the co-parceners by birth,



on par with the sons. Therefore, the plaintiffs and defendant No.1 are entitled for equal shares in the suit schedule properties.

19. Accordingly, I pass the following:

ORDER

- (i) The Regular Second Appeal is ***allowed***.
- (ii) Judgment and decree dated 24.05.2012 passed in O.S.No.7/2011 on the file of Senior Civil Judge, Challakere and judgment and decree dated 29.01.2013 passed in R.A.No.45/2012 and R.A.No.46/2012 on the file of Additional District Judge (Fast Track Court), Chitradurga is accordingly modified, holding that the plaintiffs and defendant No.1 are entitled for 1/3rd share each in the suit schedule properties.
- (iii) Office is directed to draw the decree accordingly.

**Sd/-
(E.S.INDIRESH)
JUDGE**