



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 265 OF 2015 (PAR)

BETWEEN:

1. SMT. DEVAKI
W/O LATE BABU KOTTARI
AGED ABOUT 90 YEARS
R/AT KAMBLA PADAVU HOUSE
PAJIR VILLAGE
MANGALURU TALUK
SINCE DEAD, REPRESENTED BY HER LRS.

1(a) A. VARIJA
W/O SHEKAR KOTARY
GANESH KRIPA, VASANTH NAGAR
KAPITHAMIYA, MAROLI,
KULASHRKARA
MANGALURU (D.K).

1(b) RATHNA
W/O BHOJA KOTTARY
SOMAPPA KOTTARY COMPOUND
ATTAVARA, MELINA MOGARU
MANGALURU (D.K).

1(c) GIRIJA KOTTARY
W/O KRISHNA KOTTARY PARTHOSH
DOOR NO.1-68/5 KULUR
KAVOOR ROAD
MANGALURU (D.K).



- 1(d) HEMAVATHI
W/O RAMESH KOTTARY
SHESHAGIRI NIVAS
NAGARAKATTE ROAD
MOODABISRE POST
MOODABIDRI (D.K).
- 1(e) DEVADAS K.
S/O BABU KOTTARY
KAMBLAPADAV HOUSE
KAVOOR POST
MANGALURU TALUK (D.K).
2. SMT. INDIRA KOTTARY
AGED ABOUT 58 YEARS.
3. SMT. MOHINI KOTTARY
AGED ABOUT 54 YEARS.
4. SRI. RAJEEVA KOTTARY
AGED ABOUT 52 YEARS.
5. SRI. RAMANNA KOTTARY
AGED ABOUT 50 YEARS.
6. SMT. SUGANDHI KOTTAY
AGED ABOUT 48 YEARS.
7. SMT. USHA KOTTARY
AGED ABOUT 45 YEARS.
8. GEETHA KOTTARY
AGED ABOUT 40 YEARS.
9. DAKSHAYINI KOTTARY
AGED ABOUT 38 YEARS.
10. RAJESHWARI KOTTARY
AGED ABOUT 35 YEARS.



11. SRI. SUNIL KOTTARY
AGED ABOUT 32 YEARS.

(APPELLANTS NO.2 TO 11 ARE
THE CHILDREN OF
LATE RADHA KOTTARY
ALL ARE R/AT NADUMANE
BELMA KONAJE VILLAGE
MANGALURU TALUK-575 008.

...APPELLANTS

(BY SRI. SUYOG HERALE E., ADVOCATE)

AND:

1. SRI. SADASHIVA KOTTARY
S/O LATE SUBBAYYA KOTTARY
AGED ABOUT 70 YEARS
R/AT PAKKALAPADE HOUSE
MERAMAJALU POST
BANTWAL TALUK D.K
SINCE DEAD BY HIS LRS.
- 1(a) SMT. GIRIJA KOTTARY
W/O SADASHIVA KOTTARY
AGED : MAJOR
ADYAR BANATHADI, ADYAR POST
MANGALURU - 575 009 (D.K)
- 1(b) RAJESH KOTTARY
S/O SADASHIVA KOTTARY
ADYAR BANATHADI, ADYAR POST
MANGALURU - 575 009 (D.K)
2. LAXMI
DEAD BY LRS R3 TO R9 AS PER
ORDER DATED 01.06.2022.



3. SRI. THIMMAPPA KOTTARY
AGED ABOUT 51 YEARS.
4. SRI. VISHWANATH KOTTARY
AGED ABOUT 48 YEARS.
5. SRI. KAMALAKSHA KOTTARY
AGED ABOUT 46 YEARS.
6. SRI. SHANKARA KOTTARY
AGED ABOUT 43 YEARS.
7. SMT. JAYANTHI KOTTARY
AGED ABOUT 41 YEARS.
8. SMT. BHARATHI KOTTARY
AGED ABOUT 39 YEARS.
9. SMT. CHANDRAVATHI KOTTARY
AGED ABOUT 36 YEARS

RESPONDENT NO. 2 IS THE WIFE AND NO. 3 TO 9
ARE THE CHILDREN OF LATE GOPAL KOTTARY
ALL ARE R/AT BELMA NADUMANE
KONAJE VILLAGE
MANGALORE TALUK-575 008.

10. SMT. LEELAVATHI
AGE:MAJOR
W/O LATE PADMANABHA KOTARY
11. SRI. MOHANDAS
S/O LATE PADMANABHA KOTARY
AGE: MAJOR
12. KUM. MALATHI
D/O LATE PADMANABHA KOTARY
AGE: MAJOR



13. KUM. SUNITHA
D/O LATE PADMANABHA KOTARY
AGE: MAJOR
14. SRI. SHANKARA
S/O LATE PADMANABHA
AGE: MAJOR

RESPONDENTS NO. 10 TO 14 ARE
R/AT K C ROAD,
KALLADKA POST,
BANTWAL TALUK,
DAKSHINA KANNADA -574 218.

...RESPONDENTS

(BY SRI. AJAY PRABHU M., ADVOCATE FOR
R3 TO R9 & R1(A & B)
R3 TO R9 ARE LRS OF R2 V/O DATED 01.06.2022;
NOTICE TO R11-H/S, V/O DATED 04.08.2025;
R10, R12, R13 & R14 ARE SERVED AND UNREPRESENTED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 21.11.2014 PASSED IN
R.A.NO.151/2007 ON THE FILE OF THE I ADDL. SENIOR CIVIL
JUDGE, MANGALURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 25.08.2007
PASSED IN O.S.NO.198/2005 ON THE FILE OF THE II ADDL.
CIVIL JUDGE (JR.DN) MANGALURU, D.K.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL JUDGMENT

1. This appeal is preferred by the defendant Nos. 1 to 11,
assailing the Judgment and Decree dated 21.11.2014 in R.A.



No.151/2007 on the file of the I Additional Senior Civil Judge, Mangaluru, dismissing the appeal and confirming the Judgment and Decree dated 25.08.2007 in O.S. No.198/2005 on the file of II Additional Civil Judge (Jr. Dn.), Mangaluru, decreeing the suit of the plaintiffs.

2. For the sake of convenience, parties are referred with reference to their rank before the Trial Court.

3. It is the case of the plaintiffs that the original propositus Subbayya Kottari had five children namely Sadashiva (P1), Devaki (D1), Radha (mother of D2 to D11), Gopala, (husband of P2 and father of P3 to P9) and Padmanabha (husband of D12 and father of D13 to D16). It is further averred in the plaint that the father of the plaintiff No.1-late Subbayya Kottari was cultivating the suit schedule properties, and after the death of Subbayya Kottari, the elder daughter of the Subbayya Kottari-Radha had filed declaration in Form No. 7 before the Land Reforms Tribunal, Mangaluru, seeking occupancy right in respect of the scheduled properties. It is also stated that, since the scheduled properties are being cultivated by the father of plaintiff No.1-Subbayya Kottari and therefore, the plaintiffs are



entitled for share in the suit schedule properties after the demise of their father- Subbayya Kottari and accordingly, the plaintiffs have preferred suit in O.S.No.198/2005 before the Trial Court, seeking relief of partition and separate possession in respect of the suit schedule properties.

4. After service of notice, defendants entered appearance. Defendant No.4 has filed the written statement, denying the averments made in the plaint. It is the specific case of defendant No.4 that, the late Subbayya Kottari was not cultivating the land in question and Smt. Radha Kottari was cultivating the land in question and as such the Land Tribunal has conferred occupancy right in favour of Smt. Radha Kottari and she was in continuous possession of the land in question and accordingly, the suit schedule properties are the self-acquired properties of late Radha Kottari. It is further pleaded that, after the demise of Radha Kottari, the defendant Nos.2 to 11 are entitled for the suit schedule properties as her legal heirs and accordingly sought for dismissal of the suit. The defendant Nos. 1 to 3, 5 to 12 and 14 to 16 have adopted the written statement filed by the defendant No.4. Defendant



No.13 though served notice through paper publication, remained absent and was placed ex-parte. The trial Court after considering the material on record, based on the pleadings has formulated the issues for its consideration.

5. In order to establish their case, the plaintiffs have got examined plaintiff No.1 as P.W.1 and got marked 24 documents as Exhibits P1 to P24. Defendants have got examined defendant No.1 as D.W.1 and produced 56 documents and same were marked as Exhibits D1 to D56. The Trial Court after considering the material on record, by its Judgment and Decree dated 25.08.2007, decreed the suit holding that the children of late Subbayya Kottari, are entitled for one fifth share each in the suit scheduled properties. Feeling aggrieved by the Judgment and Decree passed by the Trial Court, the defendants have preferred R.A.No.151/2007 before the First Appellate Court and the said appeal was resisted by the plaintiffs. The First Appellate Court, after considering the material on record, by its Judgment and Decree dated 21.11.2014, dismissed the Appeal and as such, confirmed the Judgment and Decree in O.S.No.198/2005. Feeling aggrieved by the same, the



contesting defendants have preferred this Regular Second Appeal.

6. I have heard Sri.Suyog Herale E., learned counsel for the appellants and Sri. Ajay Prabhu M., learned counsel appearing for the respondent Nos.1(a &b), and 3 to 9.

7. It is contended by Sri.Suyog Herale E., learned counsel appearing for the appellants, that the plaintiffs have admitted in their plaint itself that late Radha Kottari, elder daughter of late Subbayya Kottari was cultivating the land in question and as such she had filed Form No.7 before the Land Tribunal on behalf of entire family of late Subbayya Kottari and after the death of Subbayya Kottari, Radha Kottari was enjoying the suit schedule properties along with her children i.e. defendant Nos.2 to 11 and therefore, the finding recorded by both the Courts below requires to be interfered with in this Appeal. It is also argued by the learned counsel appearing for the appellants by placing reliance on the Judgment of this Court, in the case of **NIMBAVVA AND OTHERS Vs. CHANNAVEERAYYA AND OTHERS** reported in **(2015) 1 KCCR 205** and in the case of **VENKATARAYAPPA AND OTHERS Vs. RAMAKKA**



NARAYANAPPA AND OTHERS reported in **2017 SCC OnLine Kar 7116**, with reference to the definition of 'family' Under Section 2(12) of the Karnataka Land Reform Act, 1961, that the said provision excludes married daughters and therefore, he contended that the said aspect of the matter has not been considered by both the Courts below and accordingly sought for interference of the Court.

8. Sri. Ajay Prabhu M., learned counsel appearing for the respondent Nos.3 to 9 sought to justify the impugned Judgment and Decree passed by the Trial Court and further submitted that not only Radha Kottari, but all the children of the late Subbayya Kottari had filed an application in Form No.7 and also the names of the children of the late Subbayya Kottari are mentioned in the order passed by the Land Tribunal as to conferring occupancy right and therefore, it is contended that since the properties in question stand in the name of late Subbayya Kottari (father of the plaintiff No.1) and therefore, sought for dismissal of the present Appeal.

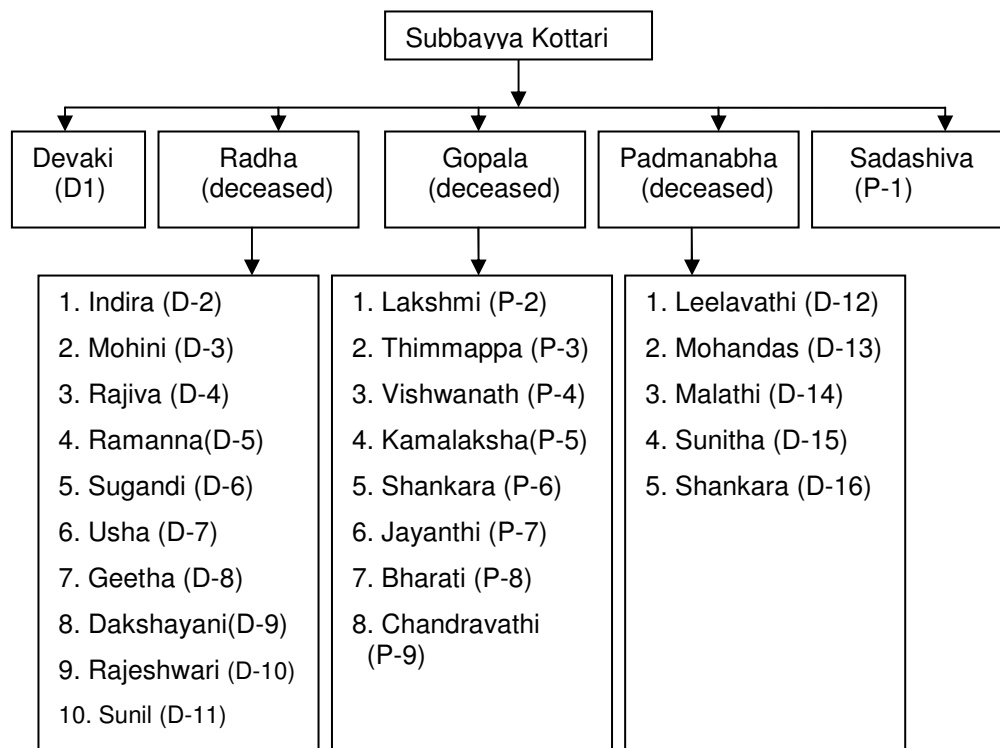
9. In the light of the submission made by the learned counsel appearing for the parties, I have carefully examined



the finding recorded by both the Court below and perused the records.

10. The core question to be answered in this Appeal is as to whether the suit schedule properties are the self-acquired properties of Radha Kottari on account of the conferring the occupancy right by the Land Tribunal?

11. In this regard, it is relevant to extract the relationship between the parties through the genealogy tree which is as below:





12. Perusal of the genealogy would indicate that late Subbaiah Kottari had five children, namely Devaki (D1), Radha (mother of the D2 to D11), Gopala (husband of P2 and father of P3 to P9), Padmanabha, (husband of D12 and father of D13 to D16) and Sadashiva (P1).

13. In the light of the submissions made by the learned counsel appearing for the parties, perusal of the RTC Extracts produced by the plaintiffs at Exhibit P11 to Exhibit P16, wherein the name of the late Subbayya Kottari-father of the plaintiff No.1 has been shown in the cultivators' column. It is also to be noted that though the occupancy right in respect of suit schedule properties was conferred to Radha Kottari, being the eldest daughter of late Subbayya Kottari, however, the perusal of the record would indicate that all the children of late Subbayya Kottari had filed application seeking occupancy right in respect of the subject matter of the suit schedule properties. In that view of the matter, since the suit schedule properties were being cultivated by the father of the plaintiff No.1 and defendant No.1 prior to 01.03.1974 and continued thereafter, and as such, following the declaration of law by this Court in



the case of **VERUPEGOWDA AND ANOTHER Vs. SHANKAREGOWDA AND ANOTHER** reported in **ILR 2009, KAR 1867**, wherein it is held that, when the occupancy right is ordered to be registered in the name of a member of the family whose name appeared in the record of rights or in any other public or revenue record, it would enure to the benefit of the entire family. The moment occupancy right is registered or granted, such property becomes partible. It is only the vesting of the land under the Act, which can be ordered to be granted. The land in respect of which occupancy rights are registered/granted, the same would be with reference to the date of vesting in the State Government though the orders are passed by the Tribunal effectuating the conferment of occupancy rights.

14. In that view of the matter, since the land in question is being cultivated by the father of the plaintiff No.1 and defendant No.1, and therefore, the finding recorded by both the Courts below holding that the suit schedule properties have to be partitioned and all the five children of late Subbayya Kottari are entitled for one fifth share each in the suit schedule



properties, cannot be found fault with. Accordingly, taking into account the material and record and the concurrent finding recorded by both the Courts below, I am of the view that no interference is called for in this Appeal and the Judgments referred to by the learned counsel appearing for the appellants cannot be made applicable to the facts of this case, since all the children of the late Subbayya Kottari had filed application seeking occupancy rights.

15. In that view of the matter, the appellants have not made out a case for formulating a substantial question of law as required under Section 100 of CPC. Accordingly the Regular Second Appeal is dismissed.

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

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List No.: 2 Sl No.: 25