



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.2329 OF 2017 (PAR)

BETWEEN:

SRI. GANGAHANUMAI AH
DEAD BY LRS

1. SMT RATHNAMMA
W/O LATE GANGAHANUMAI AH
AGED ABOUT 57 YEARS
2. SRI SURESH
S/O LATE GANGAHANUMAI AH
AGED ABOUT 42 YEARS
3. SRI NATARAJ
S/O LATE GANGAHANUMAI AH
AGED ABOUT 40 YEARS
4. SRI CHUNCHAIAH
S/O LATE GANGAHANUMAI AH
AGED ABOUT 38 YEARS

ALL ARE RESIDING AT
JODI HOSUR VILLAGE,
GULUR HOBLI,
TUMKURU TALUK
TUMKURU DISTRICT – 572122

5. SRI CHUNCHAIAH
S/O LATE NINGAIAH @ LINGAIAH
AGED ABOUT 56 YEARS
R/AT VEERAGHAVANAPALYA VILLAGE,
KASABA HOBLI,
NELAMANGALA TALUK

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA



BENGALURU RURAL DISTRICT - 562123

...APPELLANTS

(BY SRI. NAGARAJA S, ADVOCATE)

AND:

1. SRI. GANGANNA
S/O LATE NINGAIAH @ LINGAIAH
AGED ABOUT 61 YEARS

SRI KRISHNAPPA
SINCE DEAD BY LR's

- 2(a) SMT.GOWRAMMA
W/O LATE KRISHNAPPA
AGED ABOUT 43 YEARS

- 2(b) SRI LINGARAJU
S/O LATE KRISHNAPPA
AGED ABOUT 48 YEARS

- 2(c) SRI GANGARAJA
S/O LATE KRISHNAPPA
AGED ABOUT 26 YEARS

BOTH ARE
R/AT JODI HOSUR VILLAGE,
GULUR HOBLI, TUMKURU TALUK
TUMKURU DISTRICT - 572122

...RESPONDENTS

(BY SRI NALINA.K FOR SRI S.K.VENKATA REDDY, ADVOCATE
FOR R1;

SRI T.M.VIJAYA KUMAR, ADVOCATE FOR R2(A AND C) -
ABSENT;

VIDE ORDER DATED 14.02.24, NOTICE TO R2(C) IS HELD
SUFFICIENT;

VIDE ORDER DATED 10.09.2025, NOTICE TO R2(B) IS HELD
SUFFICIENT)



THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE DATED 08.09.2017 PASSED IN R.A.NO.36/2015 ON THE FILE OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 05.03.2015 PASSED IN O.S.NO.201/2006 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, TUMAKURU.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Nagaraja S, learned counsel for the appellants and Smt.K.Nalina, advocate for Sri S.K.Venkata Reddy, learned counsel for respondent No.1. None appears on behalf of respondent No.2(a) and (c).

2. Parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. Plaintiffs' Second Appeal challenging the dismissal of the suit in O.S No.201/2006 dated 05.03.2015 on the file of the Prl. Senior Civil Judge and CJM, Tumakuru, filed for the relief of partition and separate possession confirmed in R.A No.36/2015 dated 08.09.2017 on the file of the I Additional District and Sessions Judge, Tumakuru.



4. Facts of the case are as under:

4.1 A suit in O.S No.201/2006 is filed in respect of following seven properties more fully described in the schedule hereunder and hereinafter referred as the 'suit properties'.

SCHEDULE

"Land situated at Jodi Hosur and A.K.Kaval, Tumakuru Taluk.

1) bearing Sy.No.195/1B measuring 1 acre 2 guntas.

2) bearing Sy.No.195/1A measuring 1 acres 1 gunta,

Item No.2 is bounded as follows:

East: Road,

West: Gangabyraiah's road,

North: Chunchaiah's land,

South: Krishnappa's land.

3) bearing Sy.No.61/2 measuring 5 guntas,

4) bearing Sy.No.195/2 measuring 2 acres 6 guntas,

5) bearing Sy.No.196/1 measuring 4 acres 8 guntas,

Item No.1, 3 and 4 are bounded as follows:

East: Sakamma's land,

West: Guddaiah and Lakkanna's land,

North: Kemparangaiah's land,

South: road.



- 6) Property bearing Sy.No.24/1 measuring 2 acre out of 1-00 acres situated at A.K.Kaval, Gulur Hobli, Tumakuru Taluk.*
- 7) Property bearing Sy.No.24/27 measuring 2-00 acres situated at A.K.Kaval, Gulur Hobli, Tumakuru Taluk.”*

4.2 Plaintiffs claimed the share in the suit property by contending that plaintiffs and defendants constitute joint family and suit properties are the co-parcenary joint family properties of plaintiffs and defendants.

4.3 It is also contended that plaintiffs and defendants are the children of late Ningaiah, who had left certain ancestral properties and remaining properties are acquired by the plaintiffs and defendants from out of the income of the joint family, out of joint labour and skill. Therefore, all seven items of the suit properties are to be treated as joint family properties.

4.4 It is further contented that plaintiff No.2 in his young age joined as a conductor in a private bus Company viz., S.R.S Bus Company and used to earn Rs.150/- as monthly salary which he utilised for purchase of the properties. Therefore, the suit



properties are to be treated as joint family properties and sought for share in the suit properties.

5. Pursuant to the suit summons, first defendant filed written statement denying the plaint averments in *toto*.

6. He further contended that plaintiffs and defendants did not constitute the joint family at any given point of time, as both the plaintiffs left the village after the death of their parents and started residing in Appegowdanapalya. Therefore, soon after the death of the common propositus, ancestors and parents, there was severance of the joint family status. It is the first defendant who toiled himself with available resources by doing coolie work and acquired the suit properties especially item No.5 of the suit properties to the extent of 21 guntas having purchased the same from his vendor-Kampaiah who got the property under the partition and also from Hanumanthaiah another 21 guntas in respect of the land in No.Sy.No.196/1 which is mentioned in Exhibit P-10 and Exhibit D-2.



7. He also contended that there was no joint family property or ancestral property left behind by the common ancestors and therefore, the very plaint averments itself is incorrect.

8. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and recorded the evidence of the parties.

9. Learned Trial Judge after hearing the parties noted that plaintiffs failed to establish with necessary material evidence on record to hold that the suit properties are the joint family properties and dismissed the suit of the plaintiffs.

10. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in R.A No.36/2015.

11. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, dismissed the appeal of the plaintiffs *inter alia* holding in paragraphs 24 to 29 as under:

"24. Now apart from the findings recorded by the learned trial Court, it is pertinent to note that the plaintiffs have come up with the suit alleging that themselves and the defendants constitute joint Hindu Family and the suit



properties are their joint family properties. Before advertng to other aspects, it is necessary to refer to the principles laid down on this aspect. It is the settled precedent law that the normal state of every Hindu family is joint. Presumably, every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption. But the said presumption of joint-ness is not an absolute one. It may be displaced by direct evidence of prior partition. There is no presumption that a family, because it is joint, possesses joint family property. The burden of proving that any particular property is joint family property is in the first instance upon the person who claims it as co-parcenary property. Where the possession of nucleus of joint family property is either admitted or proved, an acquisition made by a member of the family is presumed to be joint family property. Until and unless adequate nucleus is shown, the onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds and it is only after the possession of adequate nucleus is shown, the onus shifts on to the person who claims the property as self acquisition, affirmatively to make out that the property was acquired without any aid from the joint family estate. With these principles in my mind, let me consider the entire material placed on record.

25. As stated supra, the plaintiffs have asserted that themselves and the defendants constitute joint Hindu Family and the suit properties are joint family properties.



Therefore initial burden lies on the plaintiffs to establish their case in accordance with law. The plaintiffs are under the legal obligation to establish that the properties were acquired was out of the joint family nucleus. The plaintiffs in their plaint at para-3 have pleaded that some of the suit properties are the tenanted properties. The plaintiffs have not specifically pleaded as to which are the properties that are tenanted properties and which are the properties that were acquired by the joint family out of the joint family nucleus. They have simply pleaded that some of the properties are tenanted properties and some other properties are joint family properties. The pleadings so put forth by the plaintiffs is totally vague on this aspect. It is settled precedent law that the pleadings in a civil suit are sacrosanct and the plaintiffs are under the obligation to plead and prove their case in accordance with law. Therefore, simply on the basis of this vague pleadings the case put forth by the plaintiffs cannot be accepted.

26. This apart it is further pertinent to note that the plaintiffs though have claimed that the suit properties are the joint family properties, but as rightly held by the learned trial Court, the plaintiffs have not produced any documents except Ex.P9 to show that the suit properties were originally inherited from their ancestors or at least that the suit properties were standing in the name of their late father Ningaiah. Be that as it may. Now the plaintiffs have based their case on the basis of Ex.P9 which is pertaining to Sy.No.196 measuring 3 Acres 06 Guntas.



The plaintiffs have pleaded the description of this property at serial No.5 of the suit property, wherein the total measurement is shown as 4 Acres 08 Guntas. At this juncture if Ex.D1 and Ex.P29 are perused, these documents are pertaining to the purchase of land in Sy.No.196 measuring 21 Guntas each. Therefore under Ex.D1 and Ex.D2 the total extent of 1 Acre 2 Guntas was purchased by defendant No.1. But however the plaintiffs have included the extent shown in Ex.P9 as well as the extent shown in Ex.D1 and D2 in the suit schedule. Admittedly the entire extent measuring 4 Acres 8 Guntas in Sy.No.196 as pleaded by the plaintiffs is not a granted property. The plaintiffs' own document at Ex.P9 establishes the grant of 3 Acres 06 Guntas in Sy.No.196. The plaintiffs have not explained this aspect in their plaint or through the evidence of P.W.1 and 2.

27. As stated supra, the claim of the plaintiff is based on Ex.P9 and on careful perusal of Ex.P9, it is noticed that the name of Lingaiah is shown as an applicant and the signatures of plaintiff No.2 and defendant No.1 is found in the order sheet, which is at Ex.P9. Along with this the plaintiffs have produced the order portion wherein an order was passed to register Gangaiah and his brothers as occupants in respect of Sy.No.196. Interestingly the extent shown in this document which is apparently appears to have inserted at a subsequent stage. However the plaintiffs have also produced Form No.10 wherein the land in Sy.No.196 measuring 3 Acres 06 Guntas is shown to have been registered in the name of defendant No.1



and his brothers. But however, to establish that their father applied for grant of this land, the entire case of the plaintiffs is based on Ex.P9. No doubt there is a discrepancy about the name of the father of the plaintiff in Ex.P9, but however it is nobody's case that the name of Lingaiah as shown in Ex.P9 is not that of the father's name of the parties to the suit.

28. This apart, it is further pertinent to note that according to the plaintiffs their father applied for grant of occupancy rights during his lifetime and subsequently died, as such the grant was made in the name of defendant No.1 in the capacity of the elder member of the family. On perusal of Ex.P9 and Ex.D29, it is noticed that the grant was made on 28th June 1982. It is the admitted evidence placed on record that the father of the parties died in 1988. Therefore, apparently the grant was made in Ex.P9 during the lifetime of the father of parties and not after the death as pleaded by the plaintiffs. That being so, if really the father had applied for grant of occupancy rights, he alone should have been registered as an occupant since he was alive. The plaintiffs have not placed any evidence before the Court to show as to how the name of defendant No.1 is shown in Ex.P9 when their father was alive. It is not the case of the plaintiffs that their father consented for the grant of occupancy rights in the name of defendant No.1. Therefore, in the absence of such an evidence placed on record by the plaintiffs it is highly difficult to believe that the grant in respect of



Sy.No.196 was made after the death of the father and for the benefit of the joint family.

29. So far as other properties are concerned, as rightly held by the learned trial Court, the defendant No.1 has purchased these properties in his own name and the sale deeds stands absolutely in his favour and the plaintiffs have not placed any evidence to show that they are joint family properties and the alleged joint family had sufficient nucleus at its disposal and the said nucleus was utilized towards the acquisition of the remaining properties. Therefore the plaintiffs have failed to discharge their initial burden of proving that the suit properties are their joint family properties. As such the onus will never shifts on the defendants to establish the defense. Therefore in the considered opinion of this Court, the learned trial Court was justified in holding that the plaintiffs have utterly failed to establish the existence of joint family properties as well as the suit properties as the joint family properties of the parties and so also about the absolute right of defendant No.1 over the suit properties. Hence I record my findings on point Nos.1 and 2 in the affirmative."

12. Being further aggrieved by the same, plaintiffs are before this Court.

13. Sri Nagaraja, learned counsel for the appellants, reiterating the grounds urged in the appeal memorandum



would contend that there is a lapse on the part of the plaintiffs in not placing the documentary evidence to establish that suit properties are the joint family properties, except producing the RTC extract and other revenue documents.

14. He would further contend that such a lapse is on account of illiteracy of the plaintiffs in not securing the documents and furnishing it to the Trial Court.

15. He would further contend that before this Court, along with an application under Order XLI Rule 27 of the Code of Civil Procedure, necessary documents are placed.

16. Therefore, this Court by exercising the power vested in this Court under Section 107 of the Code of Civil Procedure, may entertain the additional evidence and remit the matter to the Trial Court for fresh disposal in accordance with law, as the ignorance of the parties cannot be the reason for non-suiting the plaintiffs in dismissal of the suit and thus sought for admitting the appeal on the following substantial questions of law.

"(A) Whether the Judgment and Decree passed by the First Appellate Court is justified in dismissing the suit



and appeal even after coming to the conclusion that Ex. P 9 establishes the grant of land?

(B) Whether the Judgment and Decree passed by the First Appellate Court is justified in dismissing the suit and appeal without considering the material evidence available on record in the proper perspective which establishes that the existence of the joint family properties and there was no partition between the plaintiffs and defendants?

(C) Whether the Judgment and Decree passed by the First Appellate Court is justified in dismissing the suit and appeal without considering the material evidence available on record which establishes that the father of the plaintiffs and the defendants filed an application before the Tribunal for grant of land and after his death defendant No 1 has participated in the proceedings on behalf of the joint family consisting of the plaintiffs and the defendants?

(D) Whether the Judgment and Decree passed by the First Appellate Court is justified in dismissing the suit and appeal in holding that the defendant No.1 has proved that the suit schedule properties are self-acquired properties without considering and appreciating the documentary evidence available on record?

(E) Whether the Judgment and Decree passed by the First Appellate Court is justified in dismissing the suit and appeal In holding that the grant has been made in favour of the defendant No.1 and the same is his self acquired property without considering the evidence available on record which establishes that the Grant made in the name



of D1 was on behalf of the joint family, wherein the father of the defendants and the plaintiffs filed an application and the defendant No 1 took part in the proceedings before the Tribunal?"

17. *Apart from the above substantial questions of law, an additional point is raised for consideration i.e.,*

"Whether the additional evidence needs to be allowed by allowing the application under Order XLI Rule 27 of Code of Civil Procedure?"

18. *Per contra*, Smt.Nalina, learned counsel for the contesting respondent would contend that the suit is filed in the year 2006. At this distance of time, question of remitting the matter to the Trial Court would not arise at all.

19. She would further contend that suit was contested thoroughly and case of plaintiffs was appreciated based on 13 documentary evidence placed on record. Among them, Exhibits P-1 to P-4 are the RTC extracts and Exhibits P-5 to P-8 are M.R. extracts, Exhibit P-10 is the exchange deed and Exhibits P-11 to 13 are the certified copies of sale deeds.

20. Therefore, it should not lie in the mouth of the plaintiffs that they were ignorant, illiteracy and not having the worldly



knowledge, cannot be the ground to entertain the additional evidence before this Court, as admittedly, the documents that are now sought to be placed on record were in existence at the time of the filing of the suit itself and no material is found on record to show that despite exercising due diligence, they could not place such evidence before the Trial Court or before the First Appellate Court. Thus, sought for dismissal of the appeal *in toto*.

21. She would further emphasize that insofar as 5th item of the suit properties is concerned for which the present Appeal is now pursued, twenty one guntas of land is purchased by the first defendant from its vendor Kampaiah who got the property by virtue of a partition. So also, another twenty one guntas of land in Sy.No.196/1 was purchased by first defendant from its vendor Hanumanthaiah. Therefore, one acre two guntas of the land is acquired by the first defendant out of his earnings after the joint family got disrupted after death of common ancestors and parents.

22. She would further emphasize that insofar as the remaining extent of the land in Sy.No.196/1 which is item No.5



of the suit property, same is granted to defendant No.1 exclusively and grant certificate is placed on record which would clarify the issue with regard to the claim of the plaintiffs insofar as the 5th item of the suit property is concerned.

23. She would further emphasize that no documentary evidence is placed on record by the plaintiffs in respect of other items of the suit property and therefore, dismissal of the suit before the Trial Court confirmed by the First Appellate Court needs no interference.

24. Having heard the arguments of both sides, this Court perused the material on record meticulously.

25. On such perusal of the material on record, it is noticed that suit was filed in the year 2006 and, suit on merits came to be dismissed by a considered judgment dated 05.03.2015 after considering the rival contention of the parties.

26. In other words, sufficient time was spent before the Trial Court itself to place necessary material evidence on record.



27. For the reasons best known to the plaintiffs, they did not place necessary documentary evidence on record to establish that all the suit properties are the joint family properties.

28. On the contrary, material evidence available on record, especially the answers elicited in the cross-examination wherein the second plaintiff being the bus conductor and literate has answered that in the year 1978 he was pursuing his SSLC, whereas he has completed his SSLC in the year 1974 itself.

29. These aspects of the matter would only go to show that somehow plaintiffs wanted to lay claim on the suit properties though the alienations have taken when the second plaintiff was minor. Admittedly first plaintiff is elder to the second plaintiff.

30. In the year 1974 if the second plaintiff has already completed 10th standard, admittedly, by the time the alienation took place, he was a major. Plaintiffs did not choose to challenge the alienations within three years of the alienation as registered documents is to be construed as public notice.



31. Be that what it may. As a feeble attempt after several years of alienations, plaintiffs approached the Court in the year 2006 to file the suit. No explanation whatsoever is forthcoming on record with regard to when the cause of action arose.

32. Cause of action paragraph in the plaint reads as under:

"That the cause of action for the suit arose on 09.08.2005 and subsequently when the defendants failed to allot the respective shares of the plaintiffs at Jodi Hosur, within the jurisdiction of this Hon'ble Court."

33. Contents of said paragraph is as vague as anything without any particulars being found.

34. Thus, noticing the fact that the plaintiffs failed to prove that there existed a joint family and out of the joint efforts, the suit properties are acquired is rightly negated by the Trial Judge.

35. Moreover, there is overwhelming evidence placed on record by defendant No.1 to show that in respect of suit item No.5, he has got the exclusive title, inasmuch as, he purchased two bits of land in Sy.No.196/1 by two separate sale deeds



executed by Kempaiah and Hanumaiah in his favour. Balance land in Sy.No.196/1 which is the suit item No.5, there is a grant made in favour of the first defendant much after the joint family got disrupted.

36. Thus, it is to be held that, at no stretch of imagination, plaintiffs have right to claim.

37. Exhibit P-9 is sought to be relied upon by the plaintiffs to show that the grant was a joint grant. But, in Exhibit P-9 there is an interpolation in showing that Gangaiah and his two brothers, where 'two' is inserted. Moreover, if it is 'two brothers' there could not be 'son of Lingaiah' stated in singular.

38. Further, measurement of the land namely, 3 acres 6 guntas is not found when the original order came to be passed and there is no sub number that is mentioned in the order.

39. The words '3 acres 6 guntas' is subsequently inserted with a different ink as could be seen from the photocopy of Exhibit P-9. Pertinently, Exhibit P-9 is mentioned not as 'true copy' but as 'xerox copy' by the Tahasildar.



40. What prevented the plaintiff to produce the original of Exhibit P-9 or at least to summon the same before the Court by taking recourse to law is not forthcoming.

41. Moreover, in the very same order, there is also a mention of Rs.195/-. Who paid the said amount is not forthcoming.

42. These aspects of the matter when taken into consideration, based on the photocopy alone which is an interpolated document, this Court cannot hold that plaintiffs have proved that Exhibit P-9 is a joint grant and therefore the plaintiffs are entitled to share in the suit item No.5.

43. Moreover, what is mentioned in the schedule with regard to the measurement in respect of the suit item No.5 is not tallying with the measurement found in Exhibit P-9.

44. Further, there is no material evidence on record to show that parties were in joint possession of the suit properties as admittedly, both the plaintiffs started residing in Appegowdanapalya, after the death of their parents.



45. If it is so, when did they cultivate the land in item No.5 and what prevented them to examine the bajudars that after the grant they were also cultivating the land along with the defendant No.1 is not forthcoming.

46. Therefore, in the absence of any oral and documentary evidence placed on record, dismissal of the suit by the Trial Court as well as the First Appellate Court by recording the factual finding that plaintiffs have failed to prove the existence of joint family and suit properties are joint family properties, this Court having regard to scope of Section 100 of the Code of Civil Procedure, cannot interfere with the factual finding recorded by both the Courts.

47. Now, insofar as the additional evidence which has been sought to be placed on record, this Court has noted that the documents that are now sought to be placed on record by way of an application were in existence at the time of filing the suit itself.

48. In the affidavit, there is no reason mentioned much less sufficient reason to allow the additional evidence on record by



resorting to the power vested in this Court under Section 107 of Code of Civil Procedure.

49. Thus, from the above discussion, the substantial questions of law raised in the appeal are held against the appellants.

50. Accordingly, the following:

ORDER

- (i) Application filed under Order XLI Rule 27 of Civil Procedure Code is hereby dismissed.
- (ii) Consequently, appeal is also ***dismissed***.

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

kcm- paragraphs 1 to 24,
MR-paragraphs 25 till end.
List No.: 1 Sl No.: 84