



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF APRIL, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 1854 OF 2013 (PAR)

BETWEEN:

SUBBAMMA
W/O CHINNAPPA,
AGED ABOUT 47 YEARS,
BATLAHALLI VILAGE,
MUNGANAHALLI HOBLI,
CHINTAMANI TALUK,
CHICKBALLAPUR DISTRICT - 563 125.

APPELLANT

(BY SRI. S.A. SUDHINDRA, ADVOCATE)

AND:

1. SMT. BHAGAVATHAMMA
W/O SEENAPPA,
AGED ABOUT 67 YEARS,
2. SMT. VENKATALAKSHMAMMA
W/O HANUMANTHU,
AGED ABOUT 52 YEARS,
3. KRISHNAPPA
S/O SEENAPPA,
AGED ABOUT 42 YEARS,

RESPONDENT NOS.1 TO 3
RESIDING AT BATLAHALLI VILLAGE,
MUNGANAHALLI HOBLI,
CHINTAMANI TALUK,
CHICKBALLAPUR DISTRICT - 563 125.



4. M. VENKATARAVANAPPA
S/O LATE MADDIREDDY,
AGED ABOUT 72 YEARS,
5. N. SRINIVASA
S/O NARAYANAPPA,
AGED ABOUT 57 YEARS,
6. BHARATHI
W/O PRASAD P.S.
AGED ABOUT 42 YEARS,
RESIDING AT
SOMUKALAHALLI VILLAGE,
MUNGANAHALLI HOBLI,
CHINTAMANI TALUK,
CHICKBALLAPUR DISTRICT - 563 125.

...RESPONDENTS

(BY SRI. IMRAN PASHA, ADVOCATE FOR R3;
R1, R2, R4, R5 AND R6 - SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
16.04.2013 PASSED IN R.A.NO.32/2010 ON THE FILE OF
SENIOR CIVIL JUDGE AND JMFC, CHINTHAMANI AND
CONFIRMING THE JUDGEMENT AND DECREE PASSED BY THE
ADDITIONAL CIVIL JUDGE (JR.DN.) AND JMFC, CHINTAMANI,
IN O.S.NO.101/2006 DATED 22.07.2010 AND DECREE THE
SUIT.

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

In this Regular Second Appeal, the appellant is assailing the judgment and decree dated 16.04.2013 in R.A.No.32/2010 on the file of the Senior Civil Judge and JMFC, Chintamani (hereinafter termed as 'First Appellate Court'), allowing the appeal and setting aside the judgment and decree dated 22.07.2010 in O.S.No.101/2006 on the file of the Additional Civil Judge (Junior Division) and JMFC, Chintamani (hereinafter termed as 'Trial Court'), decreeing the suit of the plaintiff.

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 defendant No.1 is the mother of plaintiff and defendant Nos.2 and 3. It is stated that the defendant No.1 is the adopted daughter of deceased Thimmakka. It is also stated that the suit schedule



properties are the joint family properties of plaintiff and defendant Nos.1 to 3 and that the deceased Thimmakka had executed a registered Settlement Deed dated 03.06.1959 in favour of defendant No.1. It is the contention that the said deceased Thimmakka had no right to execute the alleged Settlement Deed and the suit schedule properties are the joint family properties of the plaintiff and defendant Nos.1 to 3 and as such the plaintiff is entitled for her share in the suit schedule properties. Accordingly, the plaintiff has filed O.S.No.101/2006 seeking relief of partition and separate possession in respect of the suit schedule properties.

4. After service of notice, the defendants entered appearance and defendant Nos.1 and 2 have filed a memo stating that they have no objection to allot the share in favour of the plaintiff. Defendant Nos.4 to 6 were subsequently impleaded in the suit. The suit is contested by defendant No.3 alleging that, the deceased Thimmakka had adopted the defendant No.1 and she had acquired the



suit schedule properties through her own income. It is also stated that the said deceased Thimmakka had executed the registered Will dated 13.06.1972 in favour of the defendant No.3 and thereafter the Khatha of the suit schedule properties have been mutated in favour of the defendant No.3 and therefore, the defendant No.3 has sought for dismissal of the suit.

5. Based on the pleadings on record, the Trial Court has formulated the issues for its consideration. In order to establish their case, the plaintiff herself was examined as P.W.1 and got marked nine (9) documents as Ex.P1 to Ex.P9. Defendant No.3 was examined as D.W.1 and got marked twenty three (23) documents as Ex.D1 to Ex.D23.

6. The Trial Court after considering the material on record by its judgment and decree dated 22.07.2010, decreed the suit holding that the plaintiff is entitled for $\frac{1}{4}$ share in the suit schedule properties. Feeling aggrieved by the judgment and decree passed by the Trial Court, the



defendant No.3 has preferred R.A.No.32/2010 on the file of the First Appellate Court. The said appeal was contested by the respondents therein. The First Appellate Court after re-considering the material on record by its judgment and decree dated 16.04.2013 allowed the appeal and consequently, set aside the judgment and decree passed by the Trial Court in O.S.No.101/2006. Feeling aggrieved by the same, the plaintiff has preferred this appeal.

7. This Court vide order dated 14.02.2020 has formulated the following substantial questions of law:

"(i) Whether the Trial Court and the First Appellate court failed to consider that Ex.D1 was unilateral cancellation of a settlement deed executed by Smt.Thimmakka in favour of the defendant No.1, was the defendant No.1 not entitled to challenge the execution of the Will-Ex.D2?

(ii) Whether Section 90 of the Indian Evidence Act is applicable to a Will so as to dispense the proof of its execution?



(iii) Whether the plaintiff would file a suit for partition and separate possession of her share in the suit property during the life time of the defendant No.1?"

8. Heard Sri. S.A. Sudhindra, learned counsel appearing for the appellant and Sri. Imran Pasha, learned counsel appearing for the respondent No.3.

9. Sri. S.A. Sudhindra, learned counsel appearing for the appellant/plaintiff contended that, the First Appellate Court has committed an error in coming to a conclusion by interfering with the judgment and decree passed by the Trial Court. It is also argued by the learned counsel appearing for the appellant/plaintiff that the defendant No.3 has not proved the registered Will dated 13.06.1972 and therefore, the First Appellate Court has committed an error in interfering with the share of the plaintiff in the suit schedule properties. It is also argued by the learned counsel appearing for the appellant/plaintiff that the defendant No.1 is the adopted daughter of



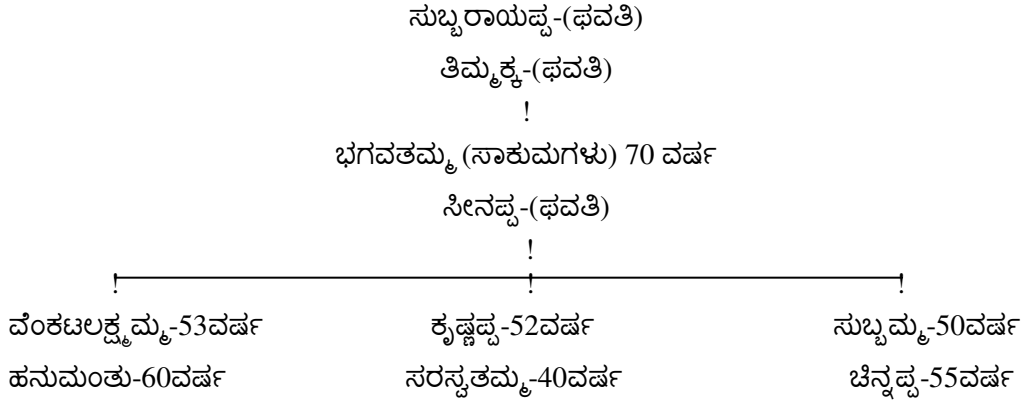
deceased Thimmakka and further, the plaintiff, defendant Nos.2 and 3 are the children of defendant No.1, and therefore, in view of the cancellation of the registered Settlement Deed made in favour of defendant No.1 as per Ex.D1, and therefore it is contended that, the judgment and decree passed by the Trial Court requires to be confirmed in this appeal.

10. Per contra, Sri. Imran Pasha, learned counsel appearing for the respondent No.3 sought to justify the impugned judgment and decree passed by the First Appellate Court. It is further contended by the learned counsel appearing for the respondent No.3 that as the defendant No.1 is alive, she is the absolute owner of the suit schedule properties and therefore, the suit itself is not maintainable. Accordingly sought for dismissal of the appeal.

11. In the light of the submissions made by the learned counsel appearing for the parties, it is not in



dispute as to the relationship between the parties and the
Genealogy of the parties reads as under:



12. Perusal of the Genealogy would indicate that, one deceased Thimmakka - Propositus, is the wife of late Subbarayappa. The said deceased Thimmakka had adopted the defendant No.1. The defendant No.1 had three (3) children i.e., the plaintiff, defendant Nos.2 and 3. Perusal of the Ex.P1 and Ex.D1 would makes it clear that, the suit schedule properties belong to deceased Thimmakka and it is also to be noted that the defendant No.1 was adopted by the deceased Thimmakka. Perusal of the Ex.P1 would indicate that, the deceased Thimmakka



had executed the Settlement Deed in favour of her adopted daughter - defendant No.1 on 03.06.1959. It is also to be noted that the recitals in the document would indicate that, the deceased Thimmakka had released her rights in respect of the suit schedule properties in favour of the defendant No.1. It is further noted that the said Settlement Deed dated 03.06.1959 (Ex.P1) came to be cancelled by the deceased Thimmakka by way of the registered Cancellation Deed dated 13.06.1972 and thereafter the deceased Thimmakka had executed the registered Will dated 13.06.1972 (Ex.D2).

13. The Trial Court after considering the material on record, by taking into consideration, the fact that the suit schedule properties were absolutely belonging to the deceased Thimmakka, answered the issue No.1 in favour of the plaintiff holding that the suit schedule properties are the joint family properties of the plaintiff and defendants. The said aspect was interfered with by the First Appellate Court in its judgment and decree dated 16.04.2013.



14. Taking into consideration the fact that the defendant No.1 is the adopted daughter of the deceased Thimmakka and irrespective of the fact that the said deceased Thimmakka had executed the registered Will dated 13.06.1972 in favour of the defendant No.3, as the defendant No.3 has to prove the said Will dated 13.06.1972, and further, since the defendant No.1 is alive, after the demise of the deceased Thimmakka, the property shall devolve to the defendant No.1.

15. In that view of the matter, the suit schedule properties are the absolute properties of the defendant No.1 by virtue of Section 14 of the Hindu Succession Act.

16. Taking into consideration the fact that the deceased Thimmakka had executed the registered Will dated 13.06.1972, it is open for the defendant No.3 to prove the aforementioned Will in a manner known to law under the said circumstances. Therefore, if the schedule property is belonged to defendant No.1 and as, she alive



as such, the said property is her absolute property, the plaintiff will not get share in the property.

17. In that view of the matter, I am of the opinion that, the plaintiff cannot maintain a suit seeking relief of partition and separate possession in the lifetime of her mother-Defendant No.1. In that view of the matter, the suit itself is not maintainable seeking partition and separate possession in respect of the suit schedule properties, in the lifetime of the defendant No.1. Particularly, the substantial question of law No.3 favours the defendants when the suit itself is not maintainable. Accordingly, I pass the following:

ORDER

- i) The Regular Second Appeal is ***dismissed***.
- ii) The judgment and decree passed by the First Appellate Court in R.A.No.32/2010 on the file of the Senior Civil Judge and JMFC, Chintamani is hereby confirmed.



- iii) The judgment and decree passed by the Trial Court in O.S.No.101/2006 on the file of the Additional Civil Judge (Junior Division) and JMFC, Chintamani is accordingly set aside.
- iv) The suit of the plaintiff in O.S.No.101/2006 is dismissed.

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