



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 764 OF 2017 (DEC)

BETWEEN:

HANUMANTHARAYAPPA,
S/O LATE KAMAIHAH,
AGED ABOUT 63 YEARS,
R/AT AMALAGONDI, SEEBI AGRAHARA POST,
KALLAMBELLA HOBLI,
SIRA TALUK, TUMKURU DISTRICT.

...APPELLANT

(BY SRI HANUMANTHARAYAPPA K.,ADVOCATE)

AND:

1. K RAMAIAH
S/O KANIMAIAH,
AGED ABOUT 39 YEARS,
2. KANIMAIAH
S/O KENCHAPPA,
AGED ABOUT YEARS,
4. PUTTARANGAMMA
W/O LATE KAMADASAPPA
AGED ABOUT 59 YEARS,

Digitally
signed by
PRAMILA G V
Location:
HIGH COURT
OF
KARNATAKA



5. MANJUNATHA
S/O MUDDAPPA,
AGED ABOUT 44 YEARS,
6. DODDAPPAIAH
S/O MUDDAPPA,
AGED ABOUT 41 YEARS,
7. DASAPPA
S/O LATE KAMAIAH
AGED ABOUT 69 YEARS,
8. K.LAKSHMAIAH
S/O LATE KAMAIAH,
AGED ABOUT 76 YEARS,
9. SANAPPA
S/O LATE KAMAIAH,
AGED ABOUT 39 YEARS.
10. K RANGANATHAPPA
S/O LATE KAMAIAH,
AGED ABOUT 54 YEARS,

ALL ARE R/AT AMALAGONDI,
SEEBI AGRAHARA POST,
KALLAMBELLA HOBLI,
SIRA TALUK,
TUMKURU DISTRICT - 572125.

11. LAKSHMAIAH
S/O KAMAIAH @ KANASGETTAPPA,
DEAD BY HIS LRS,

SMT. KAMAKSHI, W/O MANJUNATH,



- a. AGED ABOUT 50 YEARS,
R/AT AMALAGONDI, SEEBI AGRAHARA POST,
KAMLLAMBELLA HOBLI,SIRA TALUK.
- b. SMT. RANGAMMA
W/O LAXMAIAH,AGED ABOUT 70 YEARS,
R/AT AMALAGONDI,
SEEBI AGRAHARA POST,
KAMLLAMBELLA HOBLI,
SIRA TALUK - 572125.

...RESPONDENTS

THIS REGULAR SECOND APPEAL IS FILED U/S. 100 OF
CPC AGAINST THE JUDGEMENT DECREE DTD17.01.2017
PASSED IN R.A.NO.34/2012 ON THE FILE OF THE SENIOR
CIVIL JUDGE AND JMFC., SIRA.,

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Hanumantharayappa K, learned counsel for
the appellant.



2. This Court did not deem it fit to issue notice to the respondents having regard to the merits of the matter.

3. Plaintiff's second appeal challenging the dismissal of O.S.No.160/2008 which is a suit for declaration and partition and confirmed in R.A.No.34/12.

4. Facts in the nutshell which are at most necessary for disposal of the present appeal are as under:

- Plaintiff filed a suit for relief of declaration and partition in respect of the following properties (Hereinafter referred to as the 'suit properties'):

"SUIT SCHEDULE PROPERTIES

1. Land bearing Sy.No.163/8 totally measuring 2 acres 18 guntas out of which 1 acre 9 guntas, bounded on East: Govt., Oni, West: Land of K.Srinivasa, North: Land of Mukundappa, South: Land of K.Ranganathaiah.

2. Land bearing Sy.No.167 totally measuring 4 acres 15 guntas out of which 25 guntas of land East: Land of Udusappa, West: Land of Sannappa South: Halla, South: Road.



3. Land bearing Sy.No.164/11 measuring 27 guntas bounded on East: Land of Doddappaiah, West: Land of Mukindappa and Rangamma West: Land of Shivaraja North: Halla South: Road.

4. Land bearing Sy.No.164/4 measuring 2 guntas bounded by East: Land of Doddappaiah, West: Land of K.Srinivasa, North: land of Manjunatha, South: Land of Hanumantarayappa and K.Ranganathaiah.

5. Land bearing Sy.No.164/13A measuring 35 guntas, bounded on East: Land of Manjunatha, West: Land of Rangamma North: Land of Mukundappa South: Road.

6. Land bearing Sy.No. old No.163/3A New No.169/3A measuring 1 acre 13 guntas bounded by East: Land of Hanumantarayappa, K.Ranganathaiah & Janjappa, West: Land of K.Srinivasa North: Road, South: Land of Manjunatha.

7. Land bearing Sy.No.167, 4.15 out of which 30 guntas bounded by East Halla, West: Land of Manjunatha, North: Halla, South: Land of Kodappa.

All the properties are situated at Sheebi Agrahara Village, Kallambella Hobli, Sira taluk.

8. House property-bearing K.No.12/20 measuring East: West: 10 feet North-South: 30 feet, bounded on East: Oni, West: House of Maralappa, North : Road, South : House of site of Mutyasappa and Chikkanna.



9. House property bearing Kaneshumari No.16/24 measuring East - West : 15 feet, North - South : 30 feet bounded by East : Site of Chikkanna West: Site of Lakshmaiah, North : Road, South : Site belongs to Panchayath,

Items 8 & 9 are situated at Amalagondi, Kallambella hobli, Sira Taluk."

It was contended that original propositors by name Kamaiah had seven sons viz., Puttakamaiah, Dasappa, Hanumantappa, Lakshmaiah, Badeppa, Settappa and Sannakamaiah. It is his further case that there was a division in the family and among them, Settappa being one of the sons, died unmarried about 60 years earlier and his final rituals were performed by Sannakamashetappa and Kamaiah. Thus, properties of Settappa were enjoyed by his brothers jointly by name Puttakamaiah, Hanumanthappa and Badeppa.

5. Plaintiff further contended that after the death of Puttakamaiah, Hanumantappa and Badeppa their sons enjoyed the suit properties. When there was a dispute as to the joint possession, a suit in O.S.No.271/74 was filed



before the Court of Munsiff at Sira by Kamashettappa and Kamaiah. Later on, the suit was withdrawn as the suit was suffering from technical reasons.

6. However, the joint possession continued and son of the first plaintiff namely Kamaiah alias Sanna Kamashettappa and plaintiffs No.2 to 6 being the sons of Kamaiah and third plaintiff being the daughter-in-law of said Kamaiah continued in joint possession and enjoyment of the suit properties.

7. It is further case of the plaintiffs that defendants no. 1 to 4 were total strangers to the family of the plaintiffs and defendant no.3, in collusion with defendants no. 1 and 2 started interfering with the suit properties based on a concocted Will executed in favour of defendant no. 1. Therefore, they sought for share in the property.

8. After service of summons in the suit, defendants entered appearance and defendant no.1 and



defendant no.2 filed their written statement contending that plaintiffs were never in joint possession of the suit property and defendants no.1 and 2 are the owners of the property.

9. It is further contented that first defendant became the owner of the suit properties by virtue of the Will executed by Kamashettappa and therefore, suit is to be dismissed.

10. Learned Trial Judge after raising necessary issues heard the arguments of the parties and by considered judgment dated 18.04.2012 dismissed the suit of the plaintiff interalia holding in paragraph No.19 as under:

"19. It is pertinent to note that, in the cross examination of P.W.1, he clearly admits that, defendant No.1 already sold some properties which have been bequeathed in his favour through the Will dated 7.10.1976. This fact clearly goes to show that, defendant No.1 being the owner of said properties, which are mentioned in Ex. D1, he got entered his name to the RTCs as owner and possessor. Thereafter, he sold some properties to others. The plaintiffs also not disputed the said transaction of defendant No.1. These facts clearly go to show that, the plaintiffs are well



aware about the Will executed by Kamashettappa S/o Puttakamaiah in favour of defendant No.1. It is pertinent to note that, defendant No.1 is none other than the sister's son of Kamashettappa. Accordingly, there may be chance to execute a Will in favour of defendant No.1 by Kamashettappa S/o Puttakamaiah. It is pertinent to note that Kamashettappa died issue less. Further the Will dated 7.10.1976 i.e., Ex.D1 is 30 years old document. As per Sec. 90 of Indian Evidence Act, there is a presumption about 30 years old document. If really, the plaintiffs have any grievance about the entries in the name of defendant No.1, they have to challenge the said entries before competent forum. Further, the name of defendant No.1 mutated to the RTCs of the suit schedule properties in the year 1987-88. Therefore, the admissions given by P.W.1 clearly reveals that, there may be probability to execute the Will by Kamashettappa in favour of defendant No.1. Therefore, the plaintiffs in favour of defendant No.1. Therefore, the plaintiffs fail to prove that defendant No.1 created Will said to have been executed by Kamashettappa S/o Puttakamaiah. Accordingly, I answer this Issue in 'Negative'."

11. Being aggrieved by the same, plaintiff's filed an appeal in R.A.No.34/2012. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and by considered judgment dated 17.01.2017, dismissed the appeal.

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



13. Sri Hanumantharayappa, learned counsel for the appellants, reiterating the grounds heard in the appeal memorandum would contend that Will said to have been executed by Kamashetappa in favour of the first defendant is a concocted and created Will and Kamashetappa himself did not have any right to bequeath the entire suit properties in favour of the first defendant. Therefore, plaintiffs are entitled for share in the property as their ancestors have performed the final rituals of Setappa who got the property at the partition and from the date of death of Setappa, three brothers of Setappa jointly enjoyed the properties, from whom plaintiffs and defendants no.1 and 2 are claiming the right, title and interest over the suit property which aspect has been lost sight of by both the Courts and thus, sought for admitting the appeal for further consideration on following substantial questions of law:

- a. Whether one co-parcener can alienate the properties of another co-parcener who died



unmarried, in favour of third parties, under a will?

b. Whether the law of limitation applied to the void document?

c. Whether the surviving brothers can succeed to the estate of the deceased brother who died unmarried, under section 8 of the Hindu Succession Act?

14. Having heard the arguments of learned counsel for the appellant, this Court perused the material on record meticulously.

15. On such perusal of the material on record, the alleged joint possession of the plaintiffs along with defendants no.1 and 2 being the successors in interest of Settappa is not proved by placing necessary material evidence on record. Likewise, the withdrawal of the suit earlier filed before the Munsiff Court in Sira in O.S.No.271/74, no explanation is forthcoming nor anything is pleaded in the present suit.



16. Further, to establish the joint possession, no material documents are also placed on record. On the contrary, not only the right, title and interest for Kamashettappa to execute and bequeath the suit properties in favour of defendant no. 1 is placed on record by the defendants but also documentary evidence is placed on record to substantiate said contention.

17. These aspects of the matter has been rightly appreciated by learned Trial Judge while dismissing the suit of the plaintiff which has been rightly re-appreciated and confirmed by the First Appellate Court.

18. Since there is a concurrent finding recorded by both the Courts on factual aspect, no legal issue is involved so as to admit the appeal for further Consideration.

19. Accordingly, substantial questions of law raised in the appeal memorandum do not merit for further consideration.



20. Hence, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal dismissed.

Sd/-
(V SRISHANANDA)
JUDGE

brn/List No.: 1 Sl No.: 76