



CNR: KAHC010536642017

NC: 2026:KHC:42394
RSA No. 736 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.736 OF 2017 (PAR)

BETWEEN:

1. B PRASANNA KUMAR
AGED 76 YEARS,
SINCE DEAD BY LRS
- 1(a) SMT.P.KRISHNAVENI,
AGE : 70 YEARS
W/O LATE B.PRASANNA KUMAR
- 1(b) B.P.YOGANANDA
AGE 53 YEARS
S/O LATE B.PRASANNA KUMAR
- 1(c) B.P.SHASHIKUMAR, AGE 35 YEARS
S/O LATE B.P.SOMANATH

ALL ARE RESIDENTS OF NO.7
13TH 'C' CROSS, AGRAHARA DASARAHALLI
MAGADI ROAD, BBMP
BENGALURU – 560 079

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

2. B.B.SATISH
AGED 72 YEARS,
SON OF LATE A.M.BELLIAPPA,
3. B.B.SURESH
AGED 70 YEARS,
SON OF LATE A.M.BELLIAPPA,

APPELLANT NO.2 AND 3 ARE RESIDING AT
NO.9, 11TH A CROSS, MARUTHI LAYOUT,



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VIRUPAKSHA PURA, VIDYARANYAPURA POST,
BANGALORE - 560 097.

...APPELLANTS

(BY SRI. M E NAGESH, ADVOCATE FOR A1(A TO C) AND A2
AND A3;

AND:

1. A. P. NANJAPPA
S/O LATE A.M.POOVAIAH,
AGE MAJOR,
NO.10, MANISH COMPLEX,
CONVENT ROAD,
RICHMOND TOWN,
BANGALORE - 560 025.
2. A. P. SOMAIAH
S/O LATE A.M. POOVAIAH,
AGE MAJOR,
NO.2075, 6TH CROSS,
PRASHANTHNAGAR,
PEENYA DASARAHALLI,
BANGALORE - 560 058.
3. SMT. KASTURI,
W/O. LATE A.P. GANAPATHI,
R/AT CHENNAN GOLLI,
GONIKOPPAL POST,
VIRAJPET TALUK,
KODAGU DISTRICT.
PIN 571 218
LR FOR A.P.GANAPATHY
4. SMT. RANI
D/O LATE A.M. POOVAIAH,
AGE MAJOR,
BADAGA VILLAGE,
PIN 571 201
MADIKERI TALUK.



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5. SMT. KAMALA
D/O LATE A.M. POOVAIAH,
AGE MAJOR,
8TH BLOCK, CAUVERY LAYOUT,
MADIKERI,
KODAGU DISTRICT.
PIN 571 201
6. A. M. KUTTAPPA
AGED 85 YEARS,
S/O. LATE ALLARANDA MADAPPA,
R/O NO.95, CHIKKA VEERA ROAD,
3RD CROSS, NEW BUNNY MANTAPA,
MYSORE- 570 015.
7. SMT A.K.INDIRA NANJAPPA
D/O A.M.KUTTAPPA,
AGED ABOUT 53 YEARS,
R/O NALLORE VILLAGE,
KIRGOOR POST,
PONNAMPET NAD,
VIRAJPET TALUK,
KODAGU DISTRICT
PIN – 571 218
8. SMT. M.SHANTHI APPANNA
D/O LATE A M CARIAPPA,
AGE MAJOR,
NO.47, HIG GROUP NO.IV,
KHB HOOTAGALLI,
BELAVADI POST,
MYSORE-570 018
10. SMT.PREMA SUBRAMANI
D/O LATE A M CARIAPPA,
AGE MAJOR,
R/AT CHENNAN GOLLI,
GONIKOPPAL POST,
VIRAJPET TALUK,
KODAGU DISTRICT



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PIN 571 218

10. SMT. KANTHI CARIAPPA
D/O. LATE. A M CARIAPPA,
AGE MAJOR,
R/AT KAVERI ESTATE,
POLLIBETTA VILLAGE,
VIRAJPET POST,
KODAGU DISTRICT
PIN -571 218
11. SMT. B SUSHI MANDANNA
D/O LATE. A M CARIAPPA,
AGE MAJOR,
R/AT KAVERI ESTATE,
POLLIBETTA, VIRAJPET POST,
KODAGU
PIN – 571 218
12. A N VITTALA
D/O. LATE. A M NANJAPPA,
AGE MAJOR,
R/AT NIDUGANE VILLAGE,
GALIBEEDU ROAD
MADIKERI TALUK,
KODAGU DISTRICT
PIN -571 201
13. SMT. M. KAVERAMMA THIMMAIAH
D/O LATE. A M NANJAPPA,
AGE MAJOR,
R/AT IKOLA VILLAGE,
MURNAD POST, MADIKERI TALUK,
KODAGU DISTRICT
PIN – 571 252
14. SMT P. KUSUMA THIMMAIAH
D/O. LATE. A M NANJAPPA,
AGE MAJOR,
R/AT CHERAMBANE,



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MADIKERI TALUK,
KODAGU DISTRICT
PIN – 571 201

15. SMT K M SHASHIMANI
AGED 38 YEARS,
W/O K.M.MUDDAPPA,
R/O GALIBEEDU VILLAGE & POST,
MADIKERI TALUK,
KODAGU DISTRICT.
PIN -571 201
16. K B DEVAIAH
AGED 35 YEARS,
S/O LATE K.M.BELLIAPPA,
R/AT GALILBEEDU VILLAGE,
MADIKERI TALUK,
KODAGU DISTRICT.
PIN 571 201
17. KALACHANDA B.PONNAPPA
AGED 40 YEARS,
S/O K.S.BELLIAPPA,
R/O MUKKODLU VILLAGE AND POST,
MADIKERI TALUK,
KODAGU DISTRICT.
PIN – 571 201
18. SMT VEENA RAJMOHAN
AGED 30 YEARS,
W/O P.N.RAJMOHAN,
R/A UDAYAPADMA,
COLLEGE ROAD,
MADIKERI TOWN,
KODAGU DISTRICT.
PIN – 571 201
19. K S RAJU
S/O.SIDDAPPA,
AGE 43 YEARS



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R/AT C/O RAJALAKSHMI RICE MILL,
COLLEGE ROAD,
MADIKERI TOWN,
KODAGU DISTRICT.
PIN-571 201

20. SMT BOTTOLANDA
M.MACHAIAH,
S/O B.P.MUDDAPPA,
AGED 34 YEARS,
R/AT MUTTLU VILLAGE,
SURLABBI POST,
MADIKERI TALUK,
KODAGU DISTRICT.
PIN -571 201
21. SMT A C PARVATHI
AGED 45 YEARS,
W/O SUBBAMANDA K.DEVAIAH,
R/AT KALAKERI NIDUGANE VILLAGE,
HEBBATAGERI POST,
MADIKERI TALUK,
KODAGU DISTRICT.
PIN-571 201
22. CHAMERA KUTTAPPA
AGED 66 YEARS,
S/O THIMMAIAH,
R/O KALAKERI NIDUGANE VILLAGE,
MADIKERI TALUK,
KODAGU DISTRICT
PIN – 571 201.
23. Y E ARUN KUMAR
AGED 33 YEARS,
S/O Y.G.ESHWARA,
R/AT KALAKERI NIDUGANE VILLAGE,
MADIKERI TALUK,
KODAGU DISTRICT.
PIN – 571 201



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24. F YOUSUF
AGE 44 YEARS,
S/O LATE A.M.KUNHI,
R/AT SUED MANZIL, RANIPET,
CITY MUNICIPAL COUNCIL,
MADIKERI, KODAGU DISTRICT.
PIN-571 201
25. B.B.LAXMI DEVI
W/O SRINIVAS
AGE MAJOR,
DOOR NO. 3672, 5TH CROSS,
GAYATHRI NAGAR,
BANGALORE -560 021.
26. SMT. A PARVATHI CARIYAPPA
AGE ABOUT 70 YEARS,
W/O LATE A.M.CARIYAPPA,
NO.47, HIG GROUP NO.4,
KHB HOOTAGALLI, BELAVDI POST,
MYSORE – 570 018.

...RESPONDENTS

(BY SRI SACHIN V R, ADVOCATE FOR R12;
SRI H.D.SOMESHA, ADVOCATE FOR SRI RAJARAM
SOORYAMBAIL, ADVOCATE FOR R15;
SRI B.S.BASAVARAJU, ADVOCATE FOR R20;
SRI K.L.SHREENIVASA, ADVOCATE FOR R25;
NOTICE TO R11, R19, R21 AND R24 ARE DISPENSED WITH;
VIDE ORDER DATED 05.09.17, R9, R10 AND R23 SERVICE
HELD SUFFICIENT;
R4 SERVICE HELD SUFFICIENT AND PLACED EX-PARTE V/O
DATED 19.08.19;
R1-R3, R5-R8, R13, R14, R16 TO R18, R26 ARE SERVED;
R22 -DEAD)



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THIS RSA IS FILED UNDER SECTION 100 R/W ORDER 47 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 13.2.2017 PASSED IN RA NO.21/2016 ON THE FILE OF THE I ADDL. DISTRICT JUDGE, KODAGU, MADIKERI DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 4.2.2016 PASSED IN OS NO.51/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, MADIKERI.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri M.E. Nagesh, learned counsel for the appellants, Sri Sachin V.R., learned counsel for the respondent No.12, Sri B.S. Basavaraju, learned counsel for respondent No.20, Sri K.L. Shreenevasa, learned counsel for respondent No.25.

2. Parties are referred to as plaintiff and defendants as per their original ranking before the Trial Court.

3. Present second appeal is filed by plaintiff challenging the dismissal of the suit in O.S.No.51/2010, on the file of Senior Civil Judge, Madikeri, confirmed in



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R.A.No.21/2016, on the file of I Additional District Judge, Kodagu at Madikeri.

4. Appeal came to be admitted on the following substantial question of law by the Co-ordinate Bench of this Court by Order dated 02.12.2024.

"When recitals in Ex.D5 - Will bequeathed properties were described as ancestral properties and bequeathal was of entire extent of joint family property by excluding plaintiffs, whether both Courts were justified in dismissing plaintiffs' suit for partition?"

5. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

5.1. A suit for partition and separate possession in respect of the following properties (hereinafter referred to as 'suit properties') came to be filed by the plaintiff against the defendants by contending that Sri Madappa S/o Somaiah was the kartha of Hindu joint family of Allaranda family, Badaga village, Madikeri Taluk, Kodugu District:

SCHEDULE -1

a) *One acre of land in Sy.No.12/1 of Badaga Village, Madikeri Taluk*



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- b) Four acres 74 cents of land in Sy.No.12/2 of Badaga village, Madikeri Taluk*
- c) Two acres 30 cents of land in Sy.No.16/1 of Badaga Village, Madikeri Taluk.*
- d) 53 cents of land in Sy.No.16/2 of Badaga village, Madikeri Taluk.*
- e) Five acres 91 cents of land in Sy.No.12/5 of Badaga Village, Madikeri Taluk.*

SCHEDULE – II

- a) Three acres thirty cents of land in Sy.No.27/1A of Nidugane village, Madikeri Taluk.*
- b) One acre fifty cents of land in Sy No.27/3 of Nidugane village, Madikeri Taluk.*
- c) Two acres thirty five cents of land in Sy.No.30/1 of Nidugane village, Madikeri Taluk.*
- d) Ninety two cents of land in Sy.No.30/2 of Nidugane Village, Madikeri Taluk.*
- e) Five acres thirty eight cents of land in Sy No.60/4 of Nidugane village, Madikeri Tahuk*
- f) One more of land in Sy No.60/5 of Nidugane villege, Madikeri Taluk.*
- g) One acre forty seven cents of land in Sy.No.61/1 of Nidugane village, Madikeri Taluk.*
- h) Fifty six cents of land in Sy. No.61/2 of Nidugane Village, Madikeri Taluk.*
- i) The ancestral house situated at Badaga Village.*



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SCHEDULE-III

*(The properties sold by the defendants to the defendants
18 to 30)*

- a) Five cents of land in Sy.No.12/5 of Badaga Village, Madikeri Taluk sold to Smt K.M. Shashimani on 3.5.2000 as per the sale deed registered in No.135/2000-2001 vol.930 pages 55-62.*
- b) Five cents of land in Sv. No.12/5 of Badaga Village, Madikeri Taluk sold to Smt. K.B. Devaiah on 25.5.2000 as per the sale deed registered in No.244/2000-2001 Vol.932 pages 55-62.*
- c) Six cents of land in Sy. No.12/5 of Badaga village, Madikeri taluk sold to Sri. Kalachanda B Ponnappa on 20.6.2000 as per the sale deed registered in No.363/2000-2001 Vol-936 pages 146-154.*
- d) Ten cents of land in Sy. No 12/5 of Badaga Village Madikeri Taluk sold to Smt. Veena Rejmohan on 1.2.2001 as per the sale deed registered in No.1162/2000-2001 Vol-956 pages 71-77*
- e) Five cents of land in Sy.No.12/5 of Badaga Village, Madikeri Taluk sold to Sri K.S.Raju on 20.6.2001 as per the sale deed registered in NO.651/2001-2002 Vol-971 Pages 241-248.*
- f) Five cents of land in Sy. No.12/5 of Badaga Village, Madikeri Taluk sold to Sri. Bottolanda M Machaiah on 14.11.2002 as per the sale deed registered in No.961/2002-2003 Vol-1015 pages 61-67.*



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- g) Six cents of land in Sy.No.12/5 of Badaga Village, Madikeri Taluk sold 5.11.2003 as to Smt.A.C.Parvathi on 5.11.2003 as per the sale deed registered in No.689/2003-2004 Vol-1 pages Moco-1.*
- h) Two & half cents of land in Sy.No.12/5 of Badaga village, Madikeri Taluk sold to Sri. Chamera Kuttappa on 24.2.2004 as per the sale deed registered in No.959/2003-2004 Moco-2.*
- i) Five cents of land in Sy. No. 12/5 of Badaga village, Madikeri Taluk sold to Sri. Y. E.Arun Kumar on 1.2.2001 as per the sale deed registered in as No.647/2004-2005 Moco-2.*
- j) Two acres forty eight cents of land in Sy. No.30/1 of Nidugane village, Madikeri Taluk sold Sri. N. Srinivasa Rao by his GPA., holder Sri.G.S.V.S.S. Prasad on 29.9.2005 as per the sale deed registered in No.387/2005-2006 Book-I pages 1-15.*
- k) One acre fifty cents of land in Sy. No.27/3 of Nidugane Village, Madikeri Taluk sold to Sri N.Srinivasa Rao by his G.P.A., holder Sri G.S.V.S.S Prasad on 29.9.2005 as per the sale deed registered in No.387/2005-2006 Book_I pages 1-15.*
- l) Three acre thirty cents of land in Sy. No.27/1A of Nidugane Village, Madikeri Taluk sold to Sri. N. Srinivasa Rao by his GPA., Sri G.S.V.S.S Prasad on 29.9.2005 as per the sale deed registered in No.387/2005-2006 Book-I pages 1-15.*



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m) One acre of land in Sy. No.30/2 of Nidugane Village, Madikeri Taluk sold to Sri. N. Srinivasa Rao by his GPA., holder Sri.G.S.V.S.S.Prasad on 29.9.2005 as per the sale deed registered in No.387/2005-2006 Book-I pages 1-15.

n) Five cents of land in Sy. No.12/5 of Badaga Village, Madikeri Taluk sold to Sri F. Yousuf on 30.6.2008 as per the sale deed registered in No.351/2008-2009 Moco-16.

o) Seven cents of land in Sy. No.12/2 of Badaga Village, Madikeri Taluk sold to Sri.N.Appa Rao on 19.8.2009 as per the sale deed registered in No.661/2009-2010 Moco-20.

p) Twenty Five cents of land in Sy.No.60/5 of K.Nidugane Village, Madikeri Taluk sold to Sri.N.Appa Rao on 19.8.2009 as per the sale deed registered in No.661/2009-2010 Moco-20."

5.2. Said Madappa had two wives; from the first wife he had two sons namely, A.M. Poovaiah and A.M. Belliappa. Through the second wife of Madappa had three sons and one daughter namely, A.M. Kuttappa, A.M. Kariappa, A.M. Nanjappa and Smt. Chowdamma.

5.3. Plaintiffs are children of Sri A.M. Belliappa. Defendant Nos.1 to 6 are the children of A.M. Poovaiah. Defendant No.7 is the son of Madappa. Defendant No.17 –



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Chowdamma is the daughter of Madappa. Defendant Nos.10 to 13 are the children of A.M. Kariappa, who is another son of Madappa through second wife. Defendant Nos.14 to 16 are the children of Nanjappa who is third son of Madappa through second wife.

5.4. Madappa possessed ancestral properties as well as certain self-acquired properties, as he is said to have purchased the same in court auction while working as a peon in a Government office.

5.5. Madappa during his lifetime has executed a Will which is marked as Ex.D.5. On perusal of Ex.D.5, it would make it clear that there are separate properties mentioned in the Will itself.

5.6. In the 'A' schedule, the properties have been referred to as the ancestral properties possessed by Hindu joint family of Madappa and his sons.

5.7. Insofar as the self acquired properties of Madappa, details have been furnished by Madappa as to how he acquired the same and bequeathed those portions of the properties



among the sons of first wife and second wife excluding A.M. Belliappa.

5.8. Reasons for exclusion of A.M. Belliappa from the self acquired properties is found from the Will itself.

5.9. In Ex.D.5 there is a clear and categorical mention that Belliappa went to Mysore and married a lady not belonged to Coorgi community and did not care for the other members of the family including Madappa. Therefore, he has denied the share in the self acquired properties.

5.10. However, with regard to 'A' schedule properties, there is no mention as to shares in the Will itself.

5.11. Thereafter, Belliappa applied for driver post in Mysore High Court and got a job of driver and therefore he continued to be discharging the job of a driver in Mysore High Court.

6. Suit was resisted by filing a written statement contending that Belliappa having married a lady belonging to some other community other than Coorgi community, severed all his connections with the family of Madappa. Therefore, he cannot claim any right over the suit properties.



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7. Learned Trial Judge after raising necessary issues recorded the evidence of the parties and placing reliance on the Will marked at Ex.D.5, dismissed the suit of the plaintiffs, holding that plaintiffs failed to prove that the 'B' schedule properties in the Will which are the suit properties are the joint family properties.

8. Being aggrieved by the same, appeal in R.A.No.21/2016 came to be filed on the file of the I Additional District Judge, Kodagu, Madikeri.

9. Learned Judge in the First Appellate Court after securing the records heard the arguments of the parties in detail and on re-appreciation of the material on record dismissed the appeal and upheld the dismissal of the suit.

10. Being further aggrieved by the same, present Second Appeal is filed.

11. During the course of hearing, this Court noted that in Exhibit D-5 there is no sharing of schedule 'A' properties to the Will which is the ancestral property as described in Exhibit D-5 and relied on by the defendants themselves. Therefore, dismissal of suit in respect of properties mentioned in 'B'



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schedule to the Will though can be upheld, right of the plaintiffs with regard to 'A' schedule property, being the son of Madappa cannot be denied, as he is the member of the joint family and has got every right to seek partition.

12. Mere love marriage of Belliappa being one of the sons of Madappa would not extinguish his right in respect of the ancestral property. Exclusion of rights of Belliappa in the self-acquired properties of Madappa while can be justified, the reason for exclusion for ancestral property cannot be sustained.

13. Furthermore, 'A' schedule property of the Will is not the subject matter of the suit either.

14. Therefore, having recognized the right of Beliappa being one of the sons of Madappa, since 'A' schedule properties being the ancestral properties which even today remains intact as the ancestral properties, and no share was claimed in respect of 'A' schedule properties in the suit either, the legal representatives of Belliappa may very well file a fresh suit in respect of 'A' schedule properties of Exhibit D-5/Will as those 'A' schedule properties still continue to be ancestral property.



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15. Having recognized the share of Belliappa in 'A' schedule properties to Exhibit D-5/Will, this Court cannot grant any decree, inasmuch as, all the parties are not represented in this suit and 'A' schedule properties are not subject matter of the plaint itself.

16. Therefore, while answering the substantial question of law partly against the appellants and holding that bequeath of 'B' schedule properties is valid, since ancestral properties were not dealt in the suit, substantial question of law is answered partly in favour of the appellants insofar as ancestral properties of Madappa's family.

17. Plaintiffs being the children of one of the sons of Madappa namely Belliappa, they can file a fresh suit seeking necessary relief insofar as 'A' schedule properties of Exhibit D-5.

18. With that observation, the following:

ORDER

(i) Appeal stands ***dismissed***.

(ii) Parties are at liberty to canvass all respective contentions in the intended suit.



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(iii) In view of dismissal of the appeal, pending applications if any, are consigned to record.

Sd/-
(V SRISHANANDA)
JUDGE

MR paragraphs 1 to 7
kcm paragraphs 8 till end
List No.: 1 Sl No.: 85