



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1095 OF 2017

BETWEEN:

1. SMT LAXMAMMA
W/O LATE RAMANNA,
AGED ABOUT 86 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI,
HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527
2. SRI KRISHNAIAH
S/O LATE THIMMAIAH,
AGED ABOUT 65 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527
3. SRI KENCHAPPA
S/O LATE THIMMAIAH,
AGED ABOUT 71 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527

...APPELLANTS

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signed by
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Location:
HIGH
COURT OF
KARNATAKA

(BY SRI. P.M. GOPI, ADVOCATE FOR
SRI. SIDDAMALLAPPA P.M., ADVOCATE)



AND:

1. SRI PARANNA
S/O LATE THIMMADASAPPA,
AGED ABOUT 46 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527
2. ANANDAPPA
S/O LATE THIMMADASAPPA,
AGED ABOUT 44 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527
3. SRI NARAYANAPPA
S/O LATE THIMMADASAPPA,
AGED ABOUT 46 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI,
HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527
4. SRI MANJUNATH
S/O LATE THIMMADASAPPA,
AGED ABOUT 46 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527
5. SRI GOVINDARAJU
S/O LATE THIMMADASAPPA,
AGED ABOUT 46 YEARS,
R/AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT - 577 527

...RESPONDENTS

BY SRI. M.T. JAGAN MOHAN, ADVOCATE FOR R1 TO R3 AND
R5 (ABSENT).

VIDE ORDER DATED 09.06.2026, APPEAL STANDS DISMISSED
AS ABATED IN R/O R4)



THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 07.04.2017 PASSED IN RA.NO.2/2016 (OLD NO.17/2010) ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 20.04.2010 PASSED IN OS.NO.238/2004 ON THE FILE OF THE ADDL. CIVIL JUDGE AND JMFC., HOSADURGA.

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.P.M.Gopi, learned counsel for Sri.Siddamallappa.P.M., learned counsel for the appellant. None appears for the respondents. Respondent No.4 is the plaintiff No.4, appeal against whom stood dismissed as abated.

2. A suit for partition came to be filed by the children of Thimmadasappa in OS No.238/2004 in respect of the following properties (hereinafter referred to as 'the suit properties'):



SCHEDULE

*LANDS SITUATED AT GAVIRANGAPURA VILLAGE,
SRIRAMPURA HOBLI, HOSADURGA TALUK:*

*1) Bearing Sy.No.13/5, measuring 1Acre-39Guntas
and bounded by:-*

East:- Land of Kempanna,

West: Land of Ku. Varada Setty.

North:- Road,

South: Land of Archakara Krishnamurthy

*2) Bearing Sy.No.17/1A, measuring 3Acres-
24Guntas and
bounded by:-*

East:-Land of G.K. Ramalingaiah,

West:- Land belongs to plaintiffs & defendants,

North:- Land belongs to Archakaru,

South:- Land of Varada Setty.

*3) Bearing Sy.No.17/1B, measuring 3Acres-32
Guntas and bounded by:*

East:- Land of plaintiffs & defendants,

West:- Land belongs to Archakaru,

North:- Boragondanahally Village,

South:- Land belongs to Archakaru.

*4) Garden land, Bearing Sy No.18/3. measuring
4Acres-04Guntas and bounded by:-*

East:- Land of Honnappa,

West:- Land of Kariyanna,

North: Land of Bhyrasetty,

South:- Boragondanahally Village



5) *Graden land Bearing Sy. No.74, measuring 1 Acre - 13Guntas and bounded by:-*

East:- Land of Kallamma,

West:- Land of Chinnappa,

North:- Land of G.S. Paranna,

South:- Land of Umapathi.

6) *Garden land Bearing Sy.No.83/1P1, totally measuring 4Acres-19Guntas, out of which 1Acre-38Guntas and bounded by:-*

East:-Land of Kempanna,

West: Land of Kallarama,

North:- Horagalla mane,

South-Grama thana.

3. Defendants are uncles of the plaintiffs namely Ramanna, Gaviyappa, Krishnaiah @ Kitta and Kenchappa.

4. The facts in the nutshell, which are utmost necessary for disposal of the present appeal, are as under:

4.1. At an undisputed point of time, properties belonged to Thimmaiah, who had a wife by name Thimmakkajji. He is the common propositus. Said Thimmaiah and Thimmakkajji, had only one daughter by name Girimanme @ Giryamma. She had succeeded to the properties of Thimmaiah and Thimmakkajji after they died intestate. She was married to Thimmaiah.



Girimanme @ Giryamma and Thimmaiah had six sons namely Thimmadasappa, Ramanna, Gaviappa, Ranganna, Krishnaiah @ Kitta and Kenchappa. This is depicted in Ex.P7 genealogical tree. Defendants are second, third, fifth and sixth sons of the couple. Plaintiffs are the children of first son Thimmadasappa and Lakkamma. 4th son of Girimanme @ Giryamma and Thimmaiah is Ranganna, who died without marriage.

4.2. Plaintiffs claim their 1/5th share in the suit properties, as they are the children of Thimmadasappa. Defendant Nos.1 to 4, who are the uncles of plaintiffs, entered appearance and resisted the suit claim by contending that Ranganna during lifetime, has executed a Will in favour of one Girisha, who is the son of Kenchappa. Therefore, suit is bad for non-joinder of necessary parties and there was a prior partition.

5. Learned Trial Judge after raising necessary issues, recorded the evidence of the parties and decreed the suit of the plaintiff by granting 1/5th share in the suit properties to the plaintiffs.



6. Being aggrieved by the same, defendant Nos.1 to 4 filed an appeal in RA No.2/2016 (old No. 17/2010) before the First Appellate Court.

7. Learned judge in the First Appellate Court after securing the records, heard the arguments of the parties and did not accept the contentions heard on behalf of the defendants that father of the plaintiffs got separated from the joint family by taking his share in a partition that took place between the sons of Thimmaiah. Therefore, upheld the judgment of the trial judge stating that the properties are the joint family properties and Thimmadasappa had a 1/5th share in the suit properties and which has to be allotted the children of Thimmadasappa.

8. Being further aggrieved by the same, defendant Nos.1 to 4 have preferred the present second appeal on the following grounds and substantial questions of law.

1) Whether the courts below are justified in decreeing the suit for partition by discarding the material evidence produced as per Ex.D-1 and supported with the oral evidence of DW-1 to 4 in proof of earlier partition?



2) Whether the courts below are justified passing the impugned Judgment and Decree without there being any issue framed on the defense of earlier partition under Ex. D-1?

3) Whether the courts below are justified in granting decree of declaration declaring that Will dated: 30.06.1999 executed by Rangappa in favour of R.Girisha null and void though profounder of the Will was not made party?

9. Sri.P.M.Gopi, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that there was a previous partition and in such partition, the eldest brother of the defendants namely, Thimmadasappa got separated from the joint family by taking his share in the suit properties. Therefore, children of Thimmadasappa cannot claim any claim in the suit properties.

10. He would further contend that the evidence placed on record in this regard has been ignored by learned trial judge and there is improper appreciation of the material evidence on record by First Appellate Court and thus, sought for admitting the appeal on the aforesaid substantial questions of law.



11. Learned counsel for respondent Nos.1 to 3 and 5 is absent. Appeal stood dismissed as against respondent No.4 as abated.

12. Having heard the arguments of Sri. P.M. Gopi, learned counsel for appellants, this Court perused the matter on record meticulously.

13. On such perusal, it is noted that in the first place, appeal itself is not maintainable in the absence of bringing the legal representative of deceased respondent No.4 on record, who was one of the plaintiffs.

14. Nevertheless, since no steps are taken to arraign legal representatives of respondent No.4, the appeal is considered in respect of the remaining plaintiffs.

15. As could be seen from the plaint averments itself, and Ex.P7, the properties were earlier belonging to Thimmaiah and Thimmakkajji, who had only daughter by name Girimanme @ Giryamma.

16. Since they are the properties of the Girimanme @ Giryamma, Thimmaiah being the father of defendants and



grandfather of the plaintiffs, had no right to deal with those properties.

17. Assuming that Giriyamma predeceased Thimmaiah, at the most, Thimmaiah would also get a share along with his children by operation of Section 14 and 15 of the Hindu Succession Act.

18. The plaintiffs are the children of one of the sons by name Thimmadasappa. Defendant Nos.1 to 4 are the uncles of plaintiffs. After the death of Thimmaiah and Girimanme @ Giriyamma, all the children of couple Girimanme @ Giriamma and Thimmaiah would get the shares in the properties equally.

19. Ranganna being one of the sons of the couple died without marriage. No doubt defendant Nos.1 to 4 took up contention that the suit is not maintainable in the absence of impleading the beneficiary of the Will executed by Ranganna namely Girisha. But, defendant Nos.1 to 4 cannot plead for and on behalf of Girisha.

20. Further, it is the specific contention taken by defendant Nos.1 to 4 that Thimmadasappa got separated from



the family. In that regard, they placed reliance on Ex.D.1. To prove Ex.D.1, they examined D.W.3, who in his cross-examination categorically admits that there is no separate palupatti. Further, when Ex.D.1 was written is not known to him especially when husband of Girmanme @ Giryamma who is the father of the defendants and grandfather was alive. It is stated in Ex.D.1 that he had given consent for writing Ex.D.1. There is a specific admission by D.W.3 as well that except Ex.D.1, there is no other palupatti.

21. Under such circumstances, when the properties that of Girmanme @ Giryamma, Thimmaiah had no right to partition the properties.

22. Further, when the fact that Ex.D.1 is not proved and Thimmadasappa has separated away from the joint family, decreeing of the suit by the learned Trial Judge is just and proper.

23. This would take this Court to yet another contention raised on behalf of the appellants herein on additional issue No.1.



24. Learned Trial Judge in paragraph No.18 of its judgment has discussed in detail as to additional issue No.1 and held in affirmative by holding that Will is not binding on the plaintiffs.

25. Assuming that Ranganna during his lifetime has executed a valid Will, in the absence of any previous partition, Ranganna did not get any right to execute the Will and bequeath the properties in favour of Girisha.

26. At any rate, if anybody who is affected by the said finding it is Girisha who is not a party to the suit. It is always open for Girisha to claim his rights if any, in a duly constituted suit as admittedly Girisha is not a party to the suit.

27. Defendant Nos.1 to 4 cannot plead on behalf of Girisha as a defence in their written statement.

28. What has been granted is the $1/5^{\text{th}}$ share and so also defendant Nos.1 to 4 are entitled for $1/5^{\text{th}}$ share in the suit properties if they pay necessary Court fee as the suit is one for partition.



29. All that the Trial Court has declared is the 1/5th share of Thimmadasappa to be given to the plaintiffs together.

30. Therefore, the judgment of the learned Trial Judge which was confirmed by the First Appellate Court needs no interference as there is no question of law involved and there is no merit in any one of the substantial questions of law raised in the appeal.

31. Consequently, following:

ORDER

- i. Admission declined.
- ii. Appeal is ***dismissed***.

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

BH,KAV
List No.: 1 Sl No.: 36