



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 574 OF 2013 (PAR)

BETWEEN:

1. SMT MADAMMA
SINCE DECEASED, REP. BY HER L.R.

1(A) GURUMALLAIAH,
NOW AGED ABOUT 63 YEAR,
S/O LATE MADAMMA,
RESIDING AT HORALAGALLU VILLAGE,
KASABA HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT - 571 511

2. SMT BASAMMA
SINCE DECEASED, REP. BY HER L.R.

SRI. MAHADEVAIAH
AGED ABOUT 56 YEARS
S/O LATE BASAMMA AND LATE HALAGAIAH
RESIDING AT HORALAGALLU VILLAGE,
KASABA HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT - 561 127

...APPELLANTS

[BY V/O DATED 24.02.2020 SRI. S KALYAN BASAVARAJ &
DR. PRAJWAL K. AVADHY, ADVOCATE FOR APPELLANTS
(VK NOT FILED)
SRI. PRADEEP J S., ADVOCATE FOR A2(A)

Digitally
signed by
KIRAN
KUMAR R
Location:
High Court
of Karnataka



AND:

1. SMT BHADRAMMA
D/O LATE SIDDALINGAMMA,
SICNE DEAD BYHER L.RS.,
- 1(A) SMT SHIVARUDRAMMA,
AGED ABOUT 51 YEARS,
W/O SIDDALINGAIAH,
RESIDING AT HORALAGALLU VILLAGE,
KASABA HOBLI,
KANAKAPURA TALUK,
RAMANAGAR DISTRICT – 571 511
- 1(B) SMT SHIVAMMA
AGED ABOUT 49 YEARS,
W/O MADEGOWDA,
RESIDING AT HORALAGALLU VILLAGE,
KASABA HOBLI,
KANAKAPURA TALUK,
RAMANGARA DISTRICT – 571 511
- 1(C) R PARASHIVAIAH
AGED ABOUT 47 YEARS,
S/O LATE RACHUTAIAH,
RESIDING AT HORALAGALLU VILLAGE,
KASABA HOBLI,
KANAKAPURA TALUK,
RAMANGARA DISTRICT – 571 511
- 1(D) UMAKANTHA
W/O SHIVARUDRAIAH,
AGED ABOUT 40 YEARS,
R/AT KODIHALLI ROAD,
KANAKAPURA TOWN,
RAMANAGARA DISTRICT – 571511
- 1(E) SHARADAMMA
W/O SRI. RAJU,
AGED ABOUT 36 YEARS,
R/AT KOTAHALLI VILLAGE,



KAILANCHA HOBLI,
RAMANAGARA TALUK,
RAMANGARA DISTRICT – 571 511

...RESPONDENTS

[BY SRI. H K BASAVARAJ, ADVOCATE FOR R1(A)
A.V.G. ASSTS. BY A.V. GANGADHARAPPA, (NOC VK FILED)
G. RAVISHANKAR, ADVOCATE FOR R1(B-E)]

THIS RSA IS FILED U/S 100 OF CPC., AGAINST THE JUDGMENT & DECREE DATED 14.9.2012 PASSED IN R.A.NO.153/2010 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE & C.J.M, RAMANAGARA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 24.8.2010 PASSED IN OS.NO.498/1996 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN) & JMFC., KANAKAPURA.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This regular second appeal is filed by the appellants challenging the Judgment and Decree dated 14.09.2012 passed in Regular Appeal No.153 of 2010 by the learned Principal Senior Civil Judge and CJM, Ramanagara and confirming the Judgment and Decree dated 24.08.2010 passed in O.S. No.498 of 1996 by the learned Civil Judge (Junior Division) and JMFC, Kanakapura.



2. For the sake of convenience, the parties are referred to based on their ranking before the Trial Court. The appellants were the defendants and the respondents were the legal representatives of the deceased plaintiff.
3. Brief facts leading rise to the filing of this regular second appeal are as follows:
4. The plaintiff filed a suit for partition and separate possession. The suit schedule properties i.e., land bearing Survey No.218/1 measuring 3 acres 17 guntas; land bearing Survey No.273 measuring 2 acres 34 guntas; land bearing Survey No.275/2B measuring 2 guntas; land bearing Survey No.279/4 measuring 19 guntas and a house property bearing Kaneshumari No.121/A-69. All these properties are situated at Horalagallu Village, Kasaba Hobli, Kanakapura Taluk.



5. It is the case of the plaintiff that the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants. The plaintiff and the defendants are the members of the Hindu undivided joint family and no partition is effected. The plaintiff demanded for a partition and separate possession of the properties. But, the defendants refused to effect a partition. It is contended that the original propositus-Halagaiah, had three wives namely Siddalingamma, Madamma and Basamma. The plaintiff is the daughter of original propositus through his wife Siddalingamma. Madamma is defendant No.1 and Basamma is defendant No.2. The original propositus during his lifetime was possessing and enjoying the suit schedule properties as the absolute owner. The khata stood in his name and he was regularly paying the kandaya (tax). Defendant Nos.1 and 2 had no issues. Halagaiah and Siddalingamma died leaving behind



the plaintiff and defendants as his legal heirs. After his demise, the estate of Halagaiah devolved upon the plaintiff and defendants. The plaintiff had got one-third share in the suit schedule properties. Thus, a cause of action arose for the plaintiff to file a suit for partition and separate possession.

6. Defendant Nos.1 and 2 filed a written statement denying the averments made in the plaint and also specifically denied the relationship of the plaintiff with Halagaiah. It is contended that defendant No.1/Madamma is the first wife of Halagaiah. As Madamma did not conceive, Halagaiah married defendant No.2, namely Basamma. At the desire of Halagaiah, defendant No.1 adopted Gurumallaiah by a registered adoption deed dated 12.02.1979, and defendant No.2 adopted Mahadeviah as their adopted son. Gurumalliah and Mahadevaiah are the adopted sons of Halagaiah. After his demise, defendant No.1 was residing with her adopted son, so also,



defendant No.2 was residing along with her adopted son. The properties were divided equally between defendant No.1 and defendant No.2. Defendant Nos.1 and 2 are living separately with their respective adopted sons and enjoying their respective shares. Defendants have bequeathed all the properties in favour of their son under a registered Will dated 29.03.1997. It is contended that the plaintiff has no right, title or interest over the suit schedule properties. When the suit filed by the plaintiff is not at all maintainable, there is no cause of action to file a suit. The cause of action shown in the plaint is false and imaginary. Accordingly, they pray to dismiss the suit.

7. During the pendency of the suit, the plaintiff died leaving behind her legal heirs and her legal heirs were brought on record in the suit.



8. The Trial Court, based on the rival pleadings of the parties, framed the following issues:

- (i) Whether the suit exceeds the pecuniary jurisdiction of this Court?*
- (ii) Whether the plaintiff proves that she is the daughter of one Halagaiah and that Smt. Siddalingamma is the wife of the said Halagaiah?*
- (iii) Whether the plaintiff proves that she is in joint possession of the suit properties along with the defendant No.1 & 2?*
- (iv) Whether the plaintiff proves that she is entitled for 1/3rd share in the suit properties?*
- (v) Whether the plaintiff is entitled for partition and separate possession?*
- (vi) What order or relief the parties entitled to?*

9. The plaintiff, to substantiate her case, examined five witnesses as PW1 to PW5, and marked 13 documents as Exhibits P1 to P13.

10. In rebuttal, the legal representatives of defendant No.1 filed an affidavit in the form of examination-in-chief, and examined three witnesses as DW2 and



DW4 and marked 19 documents as Exhibits D1 to D19.

11. The Trial Court, after recording the evidence of the parties, hearing both sides, and assessing the verbal and documentary evidence, answered Issue No.1 in the negative; Issue Nos.2 to 5 in the affirmative, Issue No.6 as per the final order.
12. The suit of the plaintiff was decreed. It is declared that the plaintiffs are entitled for one-third share by partition by metes and bounds in the suit schedule properties vide judgment and preliminary decree dated 24.08.2010.
13. The defendants aggrieved by the judgment and decree passed in O.S. No.498 of 1996 preferred an appeal in R.A. No.153 of 2010 on the file of the learned Principal Senior Civil Judge and CJM, Ramanagara.



14. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

- (i) Whether the trial Court has committed any error in decreeing the suit of the plaintiff?*
- (ii) Whether the judgment and decree of the trial Court calls for any interference?*
- (iii) What order?*

15. The First Appellate Court, after re-appreciating the entire evidence on record, answered Point Nos.1 and 2 in the negative and point No.3 as per the final order. The appeal was dismissed and the judgment and decree passed in O.S. No.498 of 1996 was confirmed.

16. The defendants, aggrieved by the impugned judgment and decree of the Courts below, filed this regular second appeal.

17. Heard the arguments of the learned counsel for the defendants and learned counsel for the plaintiff.



18. The learned counsel for the defendants submits that, admittedly, the plaintiff has filed a suit for partition and separate possession. Initially, the burden is on the plaintiff to prove her relationship with the deceased Halagaiah, and the plaintiff has to prove that Siddalingamma was married to Halagaiah. He submits that, the plaintiff has not produced any records to demonstrate that Halagaiah married Siddalingamma. He submits that though the plaintiff has examined four witnesses as PW2 to PW5, none of the witnesses have deposed about the date and place of marriage and necessary ceremonies alleged to have taken place and performed at the time of marriage. He submits that the witnesses PW2 to PW5 were minors as on the date of death of Halagaiah and it is not the case of PW2 to PW5 that they have attended the marriage of Halagaiah with Siddalingamma. Hence, the Courts below have committed an error in considering the evidence of



PW2 to PW5 to record a finding that the plaintiff is entitled for a partition and separate possession.

19. He also submits that the plaintiff, except adducing the oral evidences of PW2 to PW5, has not produced any other records to demonstrate that the plaintiff is the daughter of Halagaiah and Siddalingamma, as such, both the Courts below have committed an error in passing the impugned judgments. He also submits that defendant Nos.1 and 2 have adopted one Gurumalliah and Mahadevaiah respectively. He submits that defendant Nos.1 and 2 are residing separately along with their respective adopted sons. He submits that the adoption deeds are duly registered, as such, there is a presumption under Section 16¹ of the Hindu Adoptions and Maintenance Act, 1956.

¹ **16. Presumption as to registered documents relating to adoption.**—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.



20. To buttress his arguments, he has placed reliance on the judgment of a Co-ordinate Bench of this Court in ***RFA No.1871 of 2007***².

21. DW2, during the course of cross-examination, has admitted in a stray sentence that *Halagaiah married Madamma as Siddalingamma did not conceive male issues*.

22. It is pertinent to note that in a suit for partition and separate possession, the entire pleadings and the evidence has to be looked into, and one stray sentence cannot be picked up and hold against the party in the property matters. To buttress his arguments, he has relied upon a judgment by the Division Bench of this Court in the case of ***Puttanna Shetty S/o Late Annayya Shetty vs. Smt.Padma Shetty S/o Late Annayya Shetty***³. He submits hat

² ***Naganagouda Adoptive Father and another vs. Smt.Nagavva W/o.Channappa Kalageri***, RFA No.1871 of 2007 connected with RFA Crob. No.6/2008, disposed on 27.03.2014 at Dharwad Bench, Coram: Hon'ble Mr.Justice A.V.Chandrashekar

³ 2007 (2) Kar.LJ 28



both the Courts below have committed an error in considering only the evidence of PW2 to PW5 and Section 50⁴ of the Indian Evidence Act. Thus, the impugned judgments passed by the Courts below are arbitrary and erroneous.

23. Learned counsel for the plaintiff submits that, defendant Nos.1 and 2 died during the pendency of the proceedings. The plaintiff, being the daughter of Halagaiah, has become an absolute owner of the suit schedule properties. He submits that the plaintiff has filed an application for amendment of the plaint seeking for a relief of declaration that the plaintiff became an absolute owner of the suit schedule properties in view of the death of defendant Nos.1 and 2. He also submits that defendant Nos.1 and 2 have failed to establish the adoption and the adoption deeds are created as per the desire of

⁴ **50. Opinion on relationship, when relevant.** —When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869), or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).



Halagaiah. Hence, on these grounds, he prays to allow the appeal.

24. *Per contra*, learned counsel for the plaintiff submits that the legal representatives of defendant Nos.1 and 2 have no locus to file an appeal. He submits that defendant Nos.1 and 2 died during the pendency of the suit and their legal representatives are brought on record for a limited purpose. He submits that Siddalingamma was the first wife of Halagaiah. He submits that in the written statement at paragraph 10, defendants have admitted that Halagaiah married Siddalingamma, and she was his first wife. As Halgaiah could not beget any children from her, he married defendant No.1 as second wife, and even from her, he could not beget any children, he married defendant No.2. He possessed properties. He submits that Halagaiah had married Siddalingamma and defendant Nos.1 and 2. He submits that if Gurumallaiah and Mahadevaiah—the



adopted children of defendant Nos.1 and 2 are considered to be the adopted sons of Halagaiah, then they are also entitled for a share in their father's estate as per Section 16(3)⁵ of Hindu Marriage Act, 1955.

25. He submits that in view of the admission of DW2 in the course of cross-examination that Siddalamma is the wife of Halagaiah, the said admission is sufficient to hold that Halagaiah married Siddalingamma. He submits that in view of the admission of DW2, as per Section 58⁶ of the Evidence Act, 1872 the facts admitted need not be proved. He also submits that the plaintiff is the

16. Legitimacy of children of void and voidable marriages.—(1) x x x

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

⁶ **58. Facts admitted need not be proved.**—No fact need be proved in any proceeding which **the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:** Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.



daughter of Halagaiah and has produced Exhibit P12, which is a wedding invitation card, and discloses that plaintiff is the daughter of Halagaiah. The said document is 30 years old, as such, a presumption has to be drawn under Section 90⁷ of the Indian Evidence Act. Both the Courts below, considering Exhibit P12, have rightly drawn a presumption under Section 90 of the Indian Evidence Act and passed the impugned judgments. Hence, the impugned judgments passed by the Courts below are just and proper and doesn't require any interference at the hands of this Court. Hence, on these grounds, he prays to dismiss the appeal.

⁷ **90. Presumption as to documents thirty years old.** — Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.— Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. This explanation applies also to section 81.



26. Learned counsel for the defendants submits that from the perusal of the affidavit accompanying the application, it is clear that the plaintiff has not stated that when defendant Nos.1 and 2 have died and how the plaintiff became the absolute owner of the suit schedule properties. The proposed amendment sought by the plaintiff is barred by limitation. He submits that defendant Nos.1 and 2 died during the pendency of the suit and the present legal representatives of the deceased plaintiff have not made any attempt to file an application immediately after the death of defendant Nos.1 and 2. He submits that the present appeal is filed in 2013 and the legal representatives of the deceased plaintiff filed an application in I.A. No.1 of 2025 for amendment of the plaint in 2025. As such, there is a delay of more than 12 years in filing the said application.
27. To buttress his arguments, he has placed reliance on the judgments of the Hon'ble Apex Court in the cases



***L.C.Hanumanthappa (since dead) repled. By LRs
v. H.B.Shivakumar⁸, and South Konkan
Distilleries and another v. Prabhakar Gajanan
Naik and others⁹***. Hence, on these grounds, he
prays to reject the application.

28. This Court, vide Order dated 10.03.2020, admitted
the appeal to consider the following substantial
question of law:

**“Whether the Courts below were
justified in considering that the
evidence placed by the plaintiff
regarding the proof of relationship of
their mother Smt. Siddalingamma
with the deceased Halagappa pass
the muster under Section 50* of the
Evidence Act?”**

(*By inadvertence, while framing the
question, it was typed as Section 150)

⁸ (2016) 1 SCC 332

⁹ (2008) 14 SCC 632



Substantial question of law:

29. The plaintiff filed a suit for partition and separate possession, claiming that the plaintiff is the daughter of Halagaiah through Siddalingamma. It is contended that Siddalingamma is the legally wedded wife of deceased Halagaiah. That the suit schedule properties are the ancestral properties of the plaintiff and defendants. That Halagaiah married defendant No.1 and defendant No.1 is the second wife of Halagaiah. Defendant No.2 is the third wife of Halagaiah. It is contended that the plaintiff and defendants are the members of the Hindu joint undivided family and no partition is effected. The plaintiff demanded for a partition and separate possession. The defendants refused to effect a partition.
30. The plaintiff-Bhadramma filed an affidavit in lieu of her examination-in-chief and thereafter, she passed away. The examination-in-chief of Bhadramma was



declined by the trial Court on the ground that she did not tender herself for cross-examination.

31. The legal representatives of the deceased plaintiff were brought on record.
32. The legal representatives of deceased plaintiff, to substantiate their case, examined the son of the plaintiff as PW1. He has deposed that himself and his siblings are the only legal heirs of the original plaintiff, who is no more. He has deposed that his mother has filed a suit for partition and separate possession claiming one-third share in the suit schedule properties and that the suit schedule properties were owned and possessed by Halagaiah and his mother died on 01.05.2005 leaving behind PW1 and his siblings as her only legal heirs and they have succeeded to the estate of the deceased plaintiff. He has also deposed that during the lifetime of Halagaiah, he was in possession and enjoyment of



the suit schedule properties along with the plaintiff. The plaintiff and Halagaiah were living in an Hindu undivided joint family, possessing and enjoying all the properties and the khata of those properties was transferred in the name of PW1 and he was paying the kandaya (tax) out of the joint family properties. He has deposed that the plaintiff is the only daughter of his grandfather and his grandfather Halagaiah had no issues through defendant No.1 and defendant No.2 who are the second and third wives of Halagaiah respectively.

33. Plaintiff also examined one Ramakrishna as PW2, who has deposed that he is a permanent resident of Horalagallu Village, Kasba Hobli, Kanakpura. He deposed that he knows the grandfather of the plaintiff. He knows the father of the original plaintiff—Halagaiah, who is the husband of Siddalingamma. He died 35 years ago, leaving behind his three wives namely, Siddalingamma,



Madamma and Basamma. Said Siddalingamma is the legally wedded wife of the deceased Halagaiah and out of their wedlock, Siddalingamma begot one daughter by name Bhadramma, who is the plaintiff in the present case. Madama and Basamma, who are defendant Nos.1 and 2 respectively, are the second and third wives of deceased Halagaiah, and the plaintiff died about 4 years ago, leaving behind her children. He has deposed that Halagaiah died without any testament and without partitioning the suit schedule properties among his wives. The legal heirs of the deceased plaintiff and defendants are in joint possession and enjoyment of the same and are living in a Hindu undivided joint family without any partition by metes and bounds.

34. The plaintiff examined one more witness as PW3, who has reiterated the averments made in the examination-in-chief of PW2.



35. The plaintiff also examined another witness as PW4, who has also reiterated the averments made in the examination-in-chief of PW2.

36. The plaintiff examined one Parashivaiah as PW5, who has also reiterated the averments made in the examination-in-chief of PW1 to PW4.

37. The plaintiff has produced the documents:

- Exhibits P1 to P4 are the RTC Extracts pertaining to Survey No.218/1;
- Exhibits 5 and 6 are the mutation register extract;
- Exhibits 7 to 9 are the RTC extracts;
- Exhibit P10 is the certified copy of the sale deed of the property purchased by Halagaiah;
- Exhibit P11 is the demand register extract;
- Exhibit P12 is the wedding invitation card;
- Exhibit P13 is the office copy of the legal notice wherein the plaintiff issued a legal notice calling upon the defendants to effect a partition of the suit schedule properties.

38. In rebuttal, defendant No.1(a) was examined Gurumallaiah as DW1. He has deposed that the



plaintiff is not the daughter of Halagaiah and Siddalingamma, and Siddalingamma is not the wife of Halagaiah. That defendant No.1 is the legally wedded wife of deceased Halagaiah and defendant No.2 is the second wife of Halagaiah. He has deposed that defendant No.1 could not beget any children and hence, he married defendant No.2. Defendant No.2 could not beget children as well. Defendant Nos.1 and 2 had no issues. Defendant No.1 got adopted Gurumallaiah under a registered adoption deed dated 12.02.1979 and defendant No.2 adopted Mahadevaiah. Gurumalliah and Mahadevaiah are the adopted sons of defendant No.1 and defendant No.2 respectively. There was a partition between defendant No.1 and defendant No.2. The suit schedule properties were equally divided between defendant Nos.1 and 2. They are in possession of the suit schedule properties, and their names are mutated in the revenue records respectively.



39. It is contended that defendant No.2 executed a Will in favour of her adopted son dated 29.03.1997. He has deposed that the plaintiff has no right, title or interest over the suit schedule properties. It is also contended that the plaintiff is not the daughter of Halagaiah and hence, in order to prove the defence, the defendants produced the documents.

- Exhibit D1 is the certified copy of the registered adoption deed dated 12.02.1979, which discloses that defendant No.1 has adopted Gurumallaiah as the adopted son.
- Exhibit D2 is the certified copy of the order dated 23.02.1982 passed by the Land Tribunal.
- Exhibits D3 to D10 are the RTC Extracts, which discloses the name of defendant No.1 and defendant No.2 in the revenue records.
- Exhibit D11 is the Electoral Voter's identity card.
- Exhibit D12 is the Death Ceremony Invitation card.
- Exhibit D13 is the Death Certificate of Madamma.



- Exhibits 14 to 19 are the tax paid receipts.

40. Defendants examined one witness as DW2. He has deposed that defendant No.1 is the legally wedded wife of deceased Halagaiah and defendant No.2 is the second wife of Halagaiah, and defendant No.1 and defendant No.2 have adopted Gurumallaih and Mahadevaiah respectively, and it is also deposed that there was a partition between defendant Nos.1 and 2, and in the said partition, the properties of deceased Halagaiah were divided equally between defendant Nos.1 and 2, and the names of defendant Nos.1 and 2 were entered in the revenue records.

41. Defendant No.1 also examined two witnesses as DW3 and DW4, who have deposed in the same line as that of defendant No.2 and defendant No.3.

42. DW1 in the cross-examination has admitted that PW1 is the grandson of Halagaiah. DW2 and DW3 during



the course of cross-examination have admitted that Siddalingamma was the wife of Halagaiah.

43. From the perusal of the entire evidence on record, it is clear that the plaintiff has filed a suit for partition and separate possession. In a suit for partition and separate possession, the initial burden is always on the plaintiff to prove the relationship between the parties and also the nature of suit schedule properties.
44. Admittedly, in the instant case, the plaintiff claims to be the daughter of Halagaiah through Siddalingamma.
45. The defendants in the written statement have specifically denied the relationship of Siddalingamma with Halagaiah and also denied that the plaintiff is the daughter of Halagaiah. The plaintiff, except adducing the evidence of PW2 to PW5, has not produced any other records to demonstrate that the



marriage of Siddalingamma was performed with Halagaiah. Further, from the perusal of evidence of PW2 to PW5, it is clear that none of the witnesses have spoken about the alleged marriage performed between Halagaiah and Siddalingamma. They have not deposed regarding the date and place of marriage.

46. In order to prove a valid marriage, it is necessary to establish the ceremonies to be performed during a Hindu marriage, as per Section 7 of Hindu Marriage Act. Section 7 thereof reads as follows:

"7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the



marriage becomes complete and binding
when the seventh step is taken.”

47. Admittedly, in the instant case, the plaintiff has not produced any records to establish the performance of rituals/ceremonies during the marriage of Halagaiah with Siddalingamma. In the absence of necessary ceremonies, the marriage is said to be incomplete, so also in the absence of any material on record, the legal status of husband and wife is not recognized.
48. The Hon'ble Supreme Court in the case of ***Priya Bala Ghosh v. Suresh Chandra Ghosh***¹⁰, held that the plaintiff should establish and prove the marriage in dispute and there must be concrete evidence, such as deposition of eye witnesses or the family members to confirm the marriage, especially the rituals which were ceremoniously conducted.
49. Admittedly, as observed above, the plaintiff has not produced any records to establish that the marriage

¹⁰ (1971) SCR (3) 961



of Halagaiah was performed with Siddalingamma. Thus, both the Courts below, without considering the provisions of Section 7 of the Hindu Marriage Act (*extracted supra*) and also the aspect that plaintiff has failed to prove the alleged marriage of Halagaiah with Siddalingamma, have committed an error in passing the impugned judgments.

50. Learned counsel for the plaintiff submits that DW2 and DW3 have admitted that Siddalingamma is the wife of Halagaiah.
51. In a suit for partition and separate possession, the entire evidence and pleadings has to be looked into as a whole, in view of the mandate laid down by the Division Bench of this Court in ***Puttanna Shetty***¹¹ (*supra*), wherein this Court has held that an admission particularly in civil matters dealing with properties has to be clear and it has to be read in the light of the pleadings and the other evidence

¹¹ (2007) 3 Kant LJ 28 (DB)



available on record. One stray sentence cannot be picked up for holding against the plaintiff in property matter.

52. From the perusal of cross-examination of DW2 and DW3, it is evident that there is a stray admission during the cross-examination.

53. As observed above, in a suit for partition and separate possession, the initial burden always lies on the plaintiff to prove the relationship between the parties and the nature of the suit schedule properties. The plaintiff cannot depend upon the weakness of the defendant.

54. The Hon'ble Supreme Court in the case of ***Union of India v. Vasavi Co-operative Housing Society Ltd. and others***¹² has held that in a suit for declaration of title and possession, the plaintiff has to succeed only on the strength of his own title and that

¹² (2014) 2 SCC 269



could only be done by adducing sufficient evidence to discharge the onus on it irrespective of the question as to whether the defendant has proved their case or not. Even if the title set up by the defendant is found against them, in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.

55. Admittedly, in the instant case, the plaintiff, except examining the witnesses PW2 to PW5, have not produced any cogent records to establish the marriage of Halagaiah with Siddalingamma. Further, none of the witnesses are having a personal knowledge regarding performance of marriage of Halagaiah with Siddalingamma. Both the Courts below have committed an error in recording a finding based on the evidence of PW2 to PW5, as per Section 50 of the Indian Evidence Act.

56. Both the Courts below have not considered the material aspect that none of the witnesses have



spoken about the date and place of marriage of Siddalingamma with Halagaiah and performance of the ceremonies as required to be conducted as per Section 7 of the Hindu Marriage Act.

57. Thus, the impugned judgments passed by the Courts below are arbitrary and erroneous, and same are liable to be set aside.
58. In view of the above discussion, I answer substantial question of law in the ***negative***.
59. The legal representatives of the deceased plaintiff have filed an application in I.A. No.1 of 2025 for amendment of the plaint seeking for a relief of declaration that the legal representatives of the deceased plaintiff are the absolute owners of the suit schedule properties.
60. In support of the application, they have filed an affidavit stating that the appeal is filed by a person who has no right, title or interest over the suit



schedule properties and is falsely claiming themselves as legal representatives of the deceased original defendant Nos.1 and 2. The appellants in this appeal are utter strangers to the family and the suit properties. By making a false claim that the original defendant Nos.1 and 2 have adopted them, they are causing obstruction to the possession, peaceful possession and enjoyment of the suit schedule properties by the LRs of the deceased plaintiff.

61. It is contended that the original plaintiff filed a suit for partition and separate possession. Due to the death of original defendant Nos.1 and 2, the legal representatives of the deceased plaintiff became the absolute owner and in possession and enjoyment of the suit schedule properties.
62. By making a false claim, the appellants are trying to interfere with the peaceful possession and enjoyment of the suit schedule properties by the LRs of the



deceased plaintiff. There are developments which have taken place during the pendency of the appeal. Hence, it has become essential for the legal representatives of the deceased plaintiff to amend the plaint seeking the proposed relief of declaration of title.

63. Said amendment was opposed by the legal representatives of the deceased defendant Nos.1 and 2, and it is contended that the application filed by the legal representatives of the deceased plaintiff is misconceived. It is contended that the application filed by the legal representatives of the deceased plaintiff is barred by limitation, so also, the proposed relief sought by the legal representatives of the deceased plaintiff is barred by limitation. It is also contended that after the demise of Halagaiah, the legal representatives of deceased defendant Nos.1 and 2 have succeeded to the properties of Halagaiah and there was a partition effected between defendant



Nos.1 and 2 and also contended that the present legal representatives of the deceased defendant Nos.1 and 2 are their adopted sons, and they have got every legal right to file an appeal and to contest the suit. Hence, prays to reject the application.

64. The plaintiff, produced Exhibit P12, which is the wedding invitation card. Admittedly, the said document is a private document. In order to prove the execution of such private document Exhibit P12, the plaintiff has not examined any witnesses in order to prove that the plaintiff is the daughter of Halagaiah and Siddalingamma.

65. The said document, in the absence of proof of execution of such document, will not establish that the marriage of Siddalingamma was performed with Halagaiah. Hence, the said document does not come to the aid of the plaintiff to prove the relationship between Siddalingamma and Halagaiah.



66. The learned counsel for the plaintiff submits that, in view of the death of defendant Nos.1 and 2, the plaintiff became the sole legal representative of the deceased Siddalingamma and becomes the absolute owner of the suit schedule properties. Hence, the proposed amendment is necessary for the purpose of deciding the matter in dispute. The proposed amendment does not change the nature of dispute nor gives a cause of action. He also submitted that while considering the application for amendment, the question of limitation does not arise. He submitted that a party can take a plea in the pleadings.
67. *Per contra*, learned counsel for the legal representatives of deceased Nos.1 and 2 submits that the suit was filed in the year 1996 and the said suit was decreed. Thereafter, an appeal came to be filed in the year 2010 and the appeal was also disposed of on 14.09.2012. Admittedly, defendant Nos.1 and 2 died during the pendency of the suit.



The plaintiff could have filed the instant application for amendment in the suit itself. The plaintiff has not filed any application for amendment to the plaint. The proposed amendment sought for by the plaintiff is barred by limitation. If the amendment application is allowed, it changes the cause of action, and further, the said application is filed after a lapse of 12 years from the date of filing of appeal.

68. The Hon'ble Apex Court in the case of ***L.C.Hanumanthappa (supra)***¹³ has held as follows:

" 29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16th May, 1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated para in the written statement, namely, para 2 by the trial court on the facts of this case has been

¹³ (2016) 1 SCC 332



correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March, 2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of ***Khatri Hotels Private Limited*** (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of



relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed."

69. Admittedly, defendant Nos.1 and 2 filed a written statement denying that the plaintiff is not the daughter of Halagaiah and Siddalingamma. Merely admitting that PW1 is the grand-son of Halagaiah does not prove the marriage of Halagaiah with Siddalingamma.

70. Defendant Nos.1 and 2 died during the pendency of the suit. The legal representatives of the plaintiff could have filed an application for amendment in the suit itself. As such, the application of the plaintiff is barred by limitation. The defendants have denied the title in the written statement.



71. The plaintiff could have sought for a declaration of title within three years from the date of filing of the written statement, as per Article 58 of the Limitation Act.

72. Article 58 of the Limitation Act reads as follows:

Sl. No.	Description of suit	Period of limitation	Time from which period begins to run
	PART-III—Suits Relating to Declarations		
58	To obtain any other declaration	Three years	When the right to sue first accrues

73. The right to sue accrued for the plaintiff in the instant case on 16.04.1998. The plaintiff could have sought for the said relief of declaration within three years from the date of filing of the written statement. However, the plaintiff has not made any attempt to seek for the relief of declaration of title. Hence, there is no ground to entertain I.A. No.1 of 2025.



Accordingly, I.A. No.1 of 2025 is liable to be rejected.

74. In view of the above discussion, I proceed to pass the following:

ORDER

- (i) This Regular Second Appeal is ***allowed***;
- (ii) The judgment and decree dated 14.09.2012 passed in Regular Appeal No.153 of 2010 on the file of the learned Principal Senior Civil Judge and CJM, Ramanagara and the judgment and decree dated 24.08.2010 passed in O.S. No.498 of 1996 on the file of the learned Civil Judge (Junior Division) and JMFC, Kanakapura are ***set aside***;
- (iii) Consequently, the suit in O.S. No.498 of 1996 on the file of learned Civil Judge (Junior Division) and JMFC, Kanakapura filed by the plaintiff is ***dismissed***;



- (iv) I.A. No.1 of 2025 filed by the plaintiff in this appeal is also rejected;
- (v) No order has to costs.

Sd/-
(ASHOK S.KINAGI)
JUDGE

RK
List No.: 2 Sl No.: 2