



CNR: KAHC010634172024

NC: 2026:KHC:40160
WP No. 30770 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27TH DAY OF JULY, 2026
BEFORE
THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 30770 OF 2024 (GM-CPC)

BETWEEN:

1. SRI. M. LANKAPPA
S/O LATE MALLAPPA,
AGED ABOUT 64 YEARS,
R/AT BEHIND KEB, CHAMARAJPET,
CHIKKABALLAPURA,
CHIKKABALLAPURA DISTRICT-562 101
(SENIOR CITIZEN BENEFIT IS NOT CLAIMED)
2. SRI. M. NARAYANASWAMY
S/O CHIKKAMUNISHAMAPPA,
AGED ABOUT 53 YEARS,
R/AT NO.393, SY NO. 151/1B,
WARD NO.22, H.S. GARDEN,
SHIDLAGHATTA BAGILU, CHIKKABALLAPURA,
CHIKKABALLAPURA DISTRICT-562 101.
3. SRI. H.V. VISHNUPRASAD
S/O B.N. NARASIMHAPPA,
AGED ABOUT 49 YEARS,
R/AT BEHIND JUNIOR COLLEGE STADIUM,
KELAGINATHOTAGALU, SHIDLAGHATTA BAGILU,
CHIKKABALLAPURA,
CHIKKABALLAPURA DISTRICT-562 101.

...PETITIONERS

(BY SRI. YASHWANTH NETHAJI N T., ADVOCATE FOR
SRI. K V NARASIMHAN.,ADVOCATE)



CNR: KAHC010634172024

NC: 2026:KHC:40160
WP No. 30770 of 2024

AND:

1. SRI.ANANDA
S/O VENKATESH,
AGED ABOUT 46 YEARS
2. SRI. SHANTHA KUMAR
S/O VENKATESH,
AGED ABOUT 44 YEARS,
3. SRI. SANTHOSH KUMAR
S/O VENKATESH,
AGED ABOUT 40 YEARS

RESPONDENTS NO.1 TO 3 ARE
RESIDING AT NO.315, KURUBARAGALLI,
DEVATIPETE, OLD POST OFFICE CROSS ROAD,
CHICKBALLAPUR TOWN,
CHIKKABALLAPURA DISTRICT-562 101.

4. SMT. MANJULA,
D/O VENKATESH,
AGED ABOUT 45 YEARS,
R/AT DEVITIPETE TOWN, CHICKBALLAPUR TOWN,
CHIKKABALLAPURA DISTRICT-562 101.
5. SRI. SRIRAMAPPA,
S/O BYRAPPA,
AGED ABOUT 71 YEARS,
R/AT KELGINA THOTAGALU,
CHICKBALLAPUR TOWN,
CHIKKABALLAPURA DISTRICT-562 101.
6. SRI. V.N. VENKATESH
S/O NARAYANAPPA,
AGED ABOUT 74 YEARS,
R/AT KUMBARPET, CHICKBALLAPUR TOWN,



NC: 2026:KHC:40160
WP No. 30770 of 2024

CNR: KAHC010634172024

CHIKKABALLAPURA DISTRICT-562 101.

SRI. B. KRISHNAPPA
(DEAD BY LR'S)

7. NARAYANAMMA
W/O LATE B.KRISHNAPPA
AGED ABOUT 70 YEARS
 8. MURALI
S/O LATE B.KRISHNAPPA,
AGED ABOUT 50 YEARS,
 9. GANESH
S/O LATE B.KRISHNAPPA
AGED ABOUT 47 YEARS
 10. VARALAKSHMI,
D/O LATE B. KRISHNAPPA
W/O SHANKARAPPA,
AGED ABOUT 45 YEARS
- RESPONDENT NO.7 TO 10 ARE
R/AT KELAGINA THOTAGALU,
CHICKBALLAPUR TOWN,
CHIKKABALLAPURA DISTRICT-562 101.
11. SRI. H.M. RAMACHANDRAPPA
S/O LATE H.D. MUNIVENEERAPPA,
AGED ABOUT 64 YEARS,
R/AT D. HOSSUR, DODDAMARALI POST,
CHICKBALLAPUR TOWN,
CHIKKABALLAPURA DISTRICT-562 101.

SRI MUNIVENKATAPPA,
(DEAD BY LR'S)



CNR: KAHC010634172024

NC: 2026:KHC:40160
WP No. 30770 of 2024

12. SRI. SRINIVASA MURTHY
S/O LATE MUNIVENKATAPPA
AGED ABOUT 73 YEARS.

13. SRI. RAVICHANDRA
S/O LATE RAMESH,
AGED ABOUT 43 YEARS

14. KUMARI. BHAVANA
D/O LATE. RAMESH,
AGED ABOUT 40 YEARS,

RESPONDENTS NO.12 TO 14 ARE
R/AT SADALI, SADALI POST,
SHIDLAGHATTA TALUK,
CHICKBALLAPUR DISTRICT- 562 104.

SMT. MUNITHAYAMMA (DEAD BY LR'S)

15. SRI. VENKATARAYAPPA
HUSBAND OF MUNITHAYAMMA,
AGED ABOUT 83 YEARS

16. SMT. LAKSHMAMMA
D/O VENKATARAYAPPA,
AGED ABOUT 45 YEARS

17. SMT. MUNIYAMMA
D/O VENKATARAYAPPA,
AGED ABOUT 43 YEARS

18. SRI. RAVI
S/O VENKATARAYAPPA,
AGED ABOUT 40 YEARS,



NC: 2026:KHC:40160
WP No. 30770 of 2024

CNR: KAHC010634172024

19. SRI. BYREGOWDA
S/O VENKATARAYAPPA,
AGED ABOUT 50 YEARS,

RESPONDENTS NO.15 TO 19 ARE
R/AT H.S. GARDEN, SHIDLAGHATTA BAGILU,
CHICKBALLAPUR TOWN,
CHIKKABALLAPURA-562 101.

20. SRI. VENKATESH RAJU
S/O LATE NARAYANA RAJU,
AGED ABOUT 45 YEARS,
R/AT NO. 159, SADHUBHAVI ROAD,
OPO ROAD CROSS, CHIKKABALLAPUR TOWN.
CHIKKABALLAPURA-562 101.

21. SRI. VENKATARAMANAPPA
S/O LATE SRI. B. BYRAPPA,
AGED ABOUT 49 YEARS,
R/AT KELAGINA THOTA VILLAGE,
KASABA HOBLI, CHIKKABALLAPUR TOWN.
CHIKKABALLAPURA-562 101.

...RESPONDENTS

(BY SRI.R S RAVI., SENIOR COUNSEL FOR

SRI.M G RAVISHA., ADVOCATE FOR R1 TO R3;

SRI.M C MARISIDDEGOWDA., ADVOCATE FOR R4;

SRI.SHYAM PRASAD H S., ADVOCATE FOR R6;

R8,R11 TO R14, R16, R17,R19 ARE SERVED;

NOTICE TO R18 AND R20 ARE DISPENSED WITH

V.C.O DATED 19.12.2024;

NOTICE TO R5 HELD SUFFICIENT V.C.O DATED 19.12.2024;

R9 AND R21 ARE DECEASED NO NEED TO BRING LR'S

V.C.O DATED 19.12.2024;



CNR: KAHC010634172024

NC: 2026:KHC:40160
WP No. 30770 of 2024

NOTICE TO R7,R10 AND R15 ARE HELD SUFFICIENT
V.C.O DATED 19.02.2025)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO DIRECT,
QUASHING THE ORDER DTD 25.09.2024 PASSED ON IA NO. 8
IN FDP NO. 13/2003 BY THE LEARNED I ADDL. SENIOR CIVIL
JUDGE AND JMFC AT CHIKKABALLAPUR AT ANNEXURE-J

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON 22.06.2026, COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

The present writ petition is filed aggrieved by the order
dated 25.09.2024 passed in I.A.No.8 in FDP No.13/2003. The
petitioners before this Court are respondent Nos.8, 9 and 10 in
the Final Decree Proceedings.

2. The facts of the case are that respondent Nos.1 to 3
herein have filed a suit in O.S.No.49/1997 seeking the relief of
partition and separate possession. The suit schedule property



CNR: KAHC010634172024

was sold by defendant No.2 in favour of defendant No.1 on 15.01.1996, and defendant No.1 sold the suit property in favour of defendant No.3 on 27.02.1997. The petitioners before the FDP Court, who are respondent Nos.8 to 10, have purchased the suit property from defendant No.3 during the pendency of the suit. The suit came to be decreed on 02.11.2002. While decreeing the suit, the Court observed that, if it is found that the family of the plaintiff and defendant No.2 owned other immovable properties, the suit property, i.e., Sy.No.159/1B measuring 10 ½ guntas, shall be allotted to the shares of defendant No.2. The shares of the plaintiffs shall be adjusted with the other immovable properties of the joint family. The respondent Nos.1 to 4 herein have initiated the final decree proceedings by filing FDP No.13/2003. The petitioners herein, who are respondent Nos.8 to 10 before the FDP Court, filed an application in I.A.No.8 seeking to include 5 additional joint family properties which were standing in the name of defendant No.2. The FDP Court earlier had dismissed the said application. They then filed a petition before this Court, i.e., W.P.No.13062/2023, which was disposed of by the order dated 05.03.2024, which set aside the order and remanded the



CNR: KAHC010634172024

matter. After that remand, the executing Court has considered the case of the petitioner, and by the impugned order, has dismissed the application. It is the case of the petitioners herein, who are respondent Nos.8 to 10 before the FDP Court, that the properties described in the schedule to the application, belonged to the joint family of the plaintiffs and defendant No.2, as on the date of the decree in the year 2002 and have continued to belong to the family till now. The plaintiffs and defendant No.2 are entitled to 1/4th share each in the plaintiff schedule property. It is the case of respondents Nos. 8 to 10 who are the petitioners herein, that the joint family properties are allotted to the plaintiff's father, Venkatesh (i.e., defendant No. 2), and his father. It is the case of the respondents herein who have filed the final decree proceedings that the property mentioned in IA No.8 is the maternal property, which was succeeded by Guramma from her father, Chikka Ankappa. The said Guramma is the mother of Venkateshappa, who is the second defendant. After the death of Guramma, her son, Venkateshappa, has succeeded her interests. Therefore, the properties mentioned in IA No.8 are maternal properties and not joint family properties of the petitioners. Hence, the



CNR: KAHC010634172024

petitioners are not entitled to any right or interest and cannot seek partition during the lifetime of their father, V.N. Venkatesh, who is the second respondent in the FDP, as the properties are the separate properties of Venkateshappa. The executing Court has rejected the application filed by the petitioners herein.

3. While dismissing the application, the Executing Court observed that, admittedly, the mother of Gurramma died in the year 1977. After her death, Venkatesh, who is the second respondent and the father of defendant No.2, was impleaded. The Executing Court further observed that respondent No.2 and his father have acquired the properties through a compromise decree, and that the properties are not the ancestral properties of the said defendant No.2. The properties were allotted to the shares of defendant No.2 and his father jointly, who represent the branch of Gurramma, who is the mother of defendant No.2. From the documents produced by the respondents, it is clear that the second defendant acquired Item Nos. 2 to 5 from his mother, Gurramma, who got the share from her father's property. Therefore, the said properties are absolute properties of the second respondent.



CNR: KAHC010634172024

**NC: 2026:KHC:40160
WP No. 30770 of 2024**

Hence, the petitioners have no right to claim their share during the lifetime of respondent No.2. Therefore, the contention of respondent Nos.8 to 10 is not sustainable. The Court further observed that when Item Nos.1 to 5 of the properties shown in IA.No.8 were not divisible between the petitioner and respondent No.2, the question of adjusting the property of the petitioners by allotting the proposed properties towards the share of the petitioner does not arise. Therefore, in view of the above discussion, it is held that the properties shown in IA.No.8 are not the ancestral and joint family properties of the petitioners and respondent No.2, and as such they are not available for partition between the petitioners and respondent No.2. Hence, the Court has dismissed I.A.No.8 filed by respondent Nos.8 to 10.

4. Sri Yeshwanth Nethaji N.T, learned counsel representing Sri K.V Narasimhan, advocate for the petitioners, submits that the suit is a collusive one. It is submitted that the very conduct of the plaintiffs, who actively objected to the application filed by the petitioners to include additional five joint family properties, clearly shows that the present suit was brought by the plaintiffs at the instance of defendant No.2, by



CNR: KAHC010634172024

including only one property, i.e., Sy.No.159/1B measuring 10 ½ guntas, which was already alienated before the institution of the suit. It is submitted that if the application filed by the petitioners is allowed and the additional five properties are included in the FDP proceedings, no prejudice will be caused to the plaintiffs. On the other hand, they would be entitled to a share in the entire five properties. It is submitted that an adverse inference ought to be drawn against defendant No.2 for not entering the witness box. It is stated that the best person who could have proved or contested that the additional five properties were the absolute properties of defendant No.2 was defendant No.2 himself. He could have filed objections to the application and led evidence before the FDP Court to prove that the additional properties sought to be included are not joint family properties. But the same was not done. Hence, the court ought to have drawn an adverse inference against defendant No.2 under Section 114(g) of the Indian Evidence Act, and the finding that the additional properties are the absolute property of defendant No.2 is liable to be set aside.

5. Learned counsel for the petitioner has drawn the attention of this Court to the compromise decree, which shows



CNR: KAHC010634172024

that the properties noted hereunder shall belong exclusively to the defendants, i.e., Venkatesh and his father. Point No.5 reads that the plaintiffs and defendants No.1 have entered into a compromise as managers of their respective branches, for its benefit. It is submitted that this makes it very clear that the property is for the benefit of the joint family, and this aspect was not considered by the Court. Learned counsel has relied on the judgment of the Hon'ble Apex Court in the case of ***Chowdamma (D) by LR and another Vs. Venkatappa (D) by LRs and Another¹***, which holds that the Court must draw an adverse inference against a person who refuses to enter the witness box. Relying on this, it is submitted that the Court failed to consider the application in proper perspective and dismissed the petition.

6. Sri R.S Ravi, learned Senior Counsel representing learned counsel for respondent Nos.1 to 3 submits that the property will not become the ancestral property of Venkatesh or the father as they are not the members of a co-parcenary in the other branch. It belongs to Venkatesh, maternal grandfather, it cannot be termed as a joint family property. It is

¹ 2025 LiveLaw (SC) 838



CNR: KAHC010634172024

submitted that the expression 'branch' used in the compromise decree itself will not make the property a joint family property. The court has rightly considered and held that the property shall exclusively belongs to Venkatesh and that it is not a joint family property. It is submitted that there is no infirmity with the order impugned and the writ petition is liable to be dismissed.

7. Having heard the learned counsels on either side, perused the material on record. The entire case of the petitioner rests on the assumption that once the properties were allotted jointly to defendant No.2 and his father under a compromise decree, the properties automatically becomes ancestral or coparcenary properties. The character of a property is determined not by the mode in which possession is obtained or by the form of the decree under which it is allotted, but by the source from which the title emanates. The inquiry must therefore necessarily begin with the origin of the property. The material placed on record discloses that the earlier litigation was not instituted between coparceners seeking partition of an admitted Hindu joint family estate. On the contrary, it was instituted by the maternal family of



CNR: KAHC010634172024

Venkatesh. During the pendency of the proceedings, the mother died, and thereafter Venkatesh and his father were brought on record. Ultimately, the dispute culminated in a compromise. It is also a significant fact that Venkatesh and his father were not members of a common coparcenary asserting rights by birth. Their claims arose out of succession to the estate of the deceased and not out of any pre-existing coparcenary interest. It is equally well settled that even if there is a presumption regarding the existence of a Hindu joint family, there is no corresponding presumption that every property possessed by members of such family is joint family property. The burden lies upon the person asserting such character. The petitioner relies on the compromise decree, wherein it is stated that it is given to both the branches. A compromise decree is essentially a settlement of dispute between parties. It neither creates a new title nor alters the legal character of the property unless the terms of the compromise expressly manifest such an intention. Ordinarily, a compromise acknowledges, adjusts, and rearranges the rights claimed by the parties. The compromise relied upon by the petitioners merely records the allotment of certain properties to



CNR: KAHC010634172024

Venkatesh and his father. It nowhere declares that the properties constitute ancestral properties. It nowhere records that the allotment is made in recognition of pre-existing coparcenary rights. Equally, there is no recital that the parties agreed to treat the allotted properties as joint family properties or that the separate properties stood blended with any coparcenary estate. The petitioner places considerable reliance upon the recital that it is for the benefit of their respective branches. Despite such a mention in the compromise, this Court is not able to appreciate the said submission.

8. The expression 'branch' is not a term of legal art denoting a coparcenary. In family settlements, it is frequently employed to identify different lines of descendants or different groups of heirs to facilitate an amicable settlement of disputes. Such an expression does not declare that the parties constituted a Hindu coparcenary. In this case, the important aspect is that the parties to the said compromise decree were not litigating as coparceners but were asserting rights arising from succession. The use of the expression 'branch' merely indicates that the compromise was intended to bring peace amongst different family groups. It does not convert the



CNR: KAHC010634172024

property into coparcenary property. Therefore, the Court is not able to appreciate the submission that as the properties are jointly allotted to Venkatesh and his father in the compromise, the legal character of the property underwent a transition from separate property into coparcenary property. The character of the property continues to be governed by the source of acquisition and the rights recognized under the compromise. In the light of the above, this Court is of the opinion that the compromise did not alter the character of the properties.

9. Then, coming to the adverse inference on account of defendant No.2 not entering the witness box, which is the next submission of the learned counsel for the petitioner, the principle embodied in Section 114(g) of the Indian Evidence Act undoubtedly empowers the Court to draw an adverse inference where a party having special knowledge of material facts deliberately withholds himself from the witness box. However, such an inference is only a rule governing the appreciation of evidence. It does not dispense with the obligation resting upon the party to discharge the burden of proof. The petitioner herein is the one seeking the inclusion of additional properties in the partition. Consequently, the initial burden lies upon him



CNR: KAHC010634172024

to establish, by adducing cogent evidence, that the disputed properties are joint family properties. Unless such facts are first established, the failure of defendant No.2 to depose, or defendant No.2 not entering the witness box, cannot cure the inherent deficiencies in the petitioner's case. An adverse inference cannot convert separate property into coparcenary property in the absence of evidence establishing such transformation. The non-examination of DW.2 constitutes a circumstance that has to be weighed along with the other evidence. It cannot become a substitute for proof regarding the origin and legal character of the properties. In the present case, the petitioner has failed to establish the ancestral origin of the properties or that the compromise recognized and pre-existing coparcenary right. In such circumstances, defendant No.2 not entering the witness box loses much of its significance.

10. In the considered opinion of this Court, the trial Court has correctly appreciated both the evidence and the legal principles and rightly dismissed the application. In that view of the matter, this Court do not find any reason to interfere. Accordingly, this Court is passing the following:



CNR: KAHC010634172024

NC: 2026:KHC:40160
WP No. 30770 of 2024

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**

PKN
List No.: 1 Sl No.: 1