



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1716 OF 2024 (PAR)

BETWEEN:

1. SMT. RAJAMMA
W/O LATE RACHASHETTY,
AGED ABOUT 71 YEARS,

R/AT WARD NO. 24,
JALAHALLIHUNDI VILLAGE,
CHAMARAJANAGARA TALUK
AND DISTRICT - 571 313.

MAHADEVASHETTY
(SINCE DEAD BY LRS)
2. SMT. GAYATHRI
W/O LATE MAHADEVASHETTY,
AGED ABOUT 51 YEARS,
3. SRI MANJU
S/O LATE MAHADEVASHETTY,
AGED ABOUT 31 YEARS,
4. SRI GIRI
S/O LATE MAHADEVASHETTY,
AGED ABOUT 29 YEARS,
5. SMT. JYOTHI
D/O LATE MAHADEVASHETTY,
AGED ABOUT 27 YEARS,
6. SHASHI @ SACHIN. J. M.
S/O. LATE MAHADEVASHETTY,
AGED ABOUT 25 YEARS,

APPELLANTS NO.1 TO 6

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



ARE ALL RESIDING AT
WARD NO. 24,
JALAHALLIHUNDI VILLAGE,
CHAMARAJANAGARA TALUK,
CHAMARAJANAGARA DISTRICT - 571 313.

7.

SRI MAHADEVASHETTY,
S/O LATE VEERASHETTY,
AGED ABOUT 67 YEARS,

R/A JALAHALLYHUNDI
CHAMARAJANAGARA TALUK,
CHAMARAJANAGARA DISTRICT - 571 313.

...APPELLANTS

(BY SRI GOPALAKRISHNAMURTHY C., ADVOCATE)

AND:

1. SMT. JAYAMMA
W/O. LATE BASAVASHETTY,
AGED ABOUT 67 YEARS,
2. SRI CHINNASWAMY
S/O LATE BASAVASHETTY,
AGED ABOUT 42 YEARS,
3. SMT. JAYALAKSHMI
D/O. LATE BASAVASHETTY,
AGED ABOUT 42 YEARS,
4. SMT. LAXMI DEVI
D/O. LATE BASAVASHETTY,
AGED ABOUT 39 YEARS,
5. SMT. SAKAMMA
D/O. LATE BASAVASHETTY,
AGED ABOUT 37 YEARS,
6. SRI KRISHNA
S/O. LATE BASAVASHETTY,
AGED ABOUT 27 YEARS,
7. SMT. SARASU
D/O LATE BASAVASHETTY,
AGED ABOUT 40 YEARS,



ALL ARE RESIDING AT
DODDAMOLE VILLAGE,
KASABA HOBLI,
CHAMARAJANAGAR TALUK,
CHAMARAJANAGARA DISTRICT - 571 313.

8. SRI RAMASWAMY
S/O LATE RACHASHETTY AND
PUTTARANGAMMA,
AGED ABOUT 42 YEARS,

R/A KODIMOLE VILLAGE,
CHANDAKAVADI HOBLI,
CHAMARAJANAGAR TALUK
CHAMARAJANAGARA DISTRICT - 571 313.

9. PUTTAMMA
W/O. LATE SANNASHETTY,
AGED ABOUT 62 YEARS,

R/A JALAHALLYHUNDI,
CHAMARAJANAGAR TALUK
CHAMARAJANAGARA DIST.-571 313.

10. SMT. SIDDAMMA
W/O LATE DODDASIDDASHETTY,
AGED ABOUT 52 YEARS,

R/AT NAGAVALLI VILLAGE,
CHANDAKAVADI HOBLI,
CHAMARAJANAGARA TALUK
AND DISTRICT - 571 313.

...RESPONDENTS

(BY SMT. NALINA K., ADVOCATE FOR R1 TO R8 & R10;
SRI THYAGARAJ, ADVOCATE FOR R9)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 17.08.2024 PASSED IN RA
NO.96/2023 (RA.5022/2022), ON THE FILE OF PRL. DISTRICT AND
SESSIONS JUDGE, CHAMARAJANAGAR, DISMISSING THE APPEAL
AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.09.2022
PASSED IN OS NO.76/2017 ON THE FILE OF ADDITIONAL SENIOR
CIVIL JUDGE AND JMFC, AT CHAMARAJANAGARA.



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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and decree dated 17.08.2024 passed by Principal District & Sessions Judge, Chamarajanagar, in RA no.96/2023 (RA no.5022/2022) confirming judgment and decree dated 19.09.2022 passed by IV Addl. Senior Civil Judge & JMFC., Chamarajanagara, in OS no.76/2017, this second appeal is filed.

2. Sri Gopalakrishnamurthy C., learned counsel for appellants submitted, appeal was by defendants no.1, 2 and 5 in OS.no.76/2017 filed for relief of partition and separate possession of suit properties.

3. In plaint, it was stated that suit schedule properties originally belonged to late Veerashetty, who had three sons and four daughters namely Rachashetty, Basavashetty, Puttarangashetty, Mahadevamma, Puttamma, Mahadevashetty and Siddamma. Amongst them, Veerashetty, Rachashetty, Basavashetty, Puttarangamma and Mahadevamma were dead. It was further stated that Veerashetty died 30 years ago



survived by defendant no.1 - wife and son Rachashetty - defendant no.2. It was stated that plaintiff no.1 was wife and plaintiffs no.2 to 7 were children of late Basavashetty. It was stated that defendant no.3 was son of late Putttarangamma and Mahadevamma died without any issues. It was stated that suit schedule properties were in possession of Veerashetty and after his death his children were in joint possession. As such, they had share in suit properties. However, defendant no.5 and Rachashetty had got transferred Khata in their name without knowledge of plaintiffs and other defendants and taking advantage of same were trying to alienate them. Therefore, cause of action arose for filing suit.

4. On service of summons, defendant no.1 filed written statement denying plaint averments and contending that Basavashetty- husband of defendant no.1 Rachashetty and Mahadevamma had partitioned joint family properties long ago and therefore reopening of partition was impermissible. It was further stated Chikkarachamma and Veerashetty had three sons and four daughters. It was stated mother of defendants no.3, 4 and 6 was given gold and immovable properties at time of marriage. Further, husband of plaintiff no.1 - Basavashetty,



Mahadevashetty, Veerashetty and his wife had entered into unregistered *paluparikath* dated 02.03.1980, wherein there was division of suit schedule properties and parties were in possession of their respective shares and khata mutated in their respective names. Therefore, there was no merit in suit and sought for dismissal.

5. Defendant no.4 filed separate written statement supporting defendants no.1, 2 and 5.

6. Based on pleadings trial Court framed following :

ISSUES

- 1) *Whether the plaintiff prove that, suit schedule properties are ancestral and joint family properties of plaintiffs and defendants and they are in joint possession and enjoyment of the same?*
- 2) *Whether the plaintiff prove that the defendant No.5 and husband of defendant No.1 by name Rachashetty got transferred the Khata of the suit property in their names without their knowledge?*
- 3) *Whether the defendant No.1, 2 and 5 prove the earlier partition taken place in between husband of the plaintiff No.1 and father of plaintiff No.2 to 7 by name Basavashetty @ Puttabasavashetty, Rachashetty and Mahadevashetty and their mother Chikkarachamma and Veerashetty as*



per unregistered Paluparikath dated 02.03.1980 and they are in possession of the properties which were allotted in the said partition?

- 4) *Whether the defendant No.1, 2 and 5 prove that the husband of the defendant No.1 and defendant No.2 has alienated the 24 guntas which was allotted in their share in partition in favour of defendant No.5 through a registered sale deed dated 19.09.1995 and possession also handed over?*
- 5) *What order or Decree?*

ADDITIONAL ISSUES

- 1) *Whether the defendant No.4 proves that, the husband of plaintiff No.1 and father of plaintiff No.2 to 7 by name Basavashetty @ Puttabasavashetty, Rachashetty, Mahadevashetty and the father and mother of defendant No.4 by name Chikkarachamma and Veerashetty effected partition in the family properties on 02.03.1980 and accordingly they are in possession and enjoyment of their respective properties?*

7. Thereafter, plaintiff no.1 got herself examined as PW1 and got marked Exs.P.1 to 17. In rebuttal, defendant no.5 was examined as DW1 and defendants no.2 and 3 as DWs.2 and 3 and Exs.D1 to 5 were got marked.

8. On consideration, trial Court answered issues no.1 and 2 in affirmative, additional issue no.1, issues no.3 and 4 in



negative, issue no.5 partly in affirmative and issue no.6 by decreeing suit and holding plaintiffs entitled for 1/6th share in suit properties and defendant no.1 and legal representatives of defendant no.2 are entitled for 1/6th share jointly, defendants no.3 to 6 entitled for 1/6th share each in suit properties. It was held registered sale deed dated 19.9.1995 executed by Rachashetty and Mahadevashetty son of Rachashetty in respect of item no.1 of suit property as null and void and not binding on share of plaintiffs.

9. Aggrieved, defendants no.1, 2 and 5 filed RA no.96/2023 on various grounds. In said appeal, they also filed IA under order XLI Rule 27 of CPC for additional evidence. Documents sought to be produced were two *patta* books, three tax paid receipts, agreement dated 31.05.1995, five RTCs and Mutation register extract copy. It was submitted, while passing impugned judgment, first appellate Court observed that defendants/appellants failed to produce any records to demonstrate that partition between Veerashetty and his sons was acted upon. It was submitted said observation would be contrary to material produced as additional evidence. First appellate Court framed following points for its consideration:



POINTS:

1. Whether the Appellants have made out any ground to set aside the judgment of the Trial Court?

2. Whether the Appellants have made out any ground to permit the Appellants to produce the documents as sought by the Appellants along with the application?

3. What order?

10. It was submitted without examining application on merits, on said observation alone points for consideration was answered in negative and appeal was dismissed. Aggrieved thereby, plaintiff had filed this appeal.

11. Learned counsel for appellants submitted, there was virtually no consideration of IA for additional evidence as required. Hence, substantial question of law would arise for consideration and prayed for answering same in favour of appellants and allow appeal.

12. Sri Thyagaraj, learned counsel for respondent no.9 submitted he has no objection in allowing appeal.

13. On other hand, Smt.Nalina K., learned counsel for respondents no.1 to 8 and 10 opposed appeal.



14. Heard learned counsel, perused impugned judgment and records.

15. Hon'ble Supreme Court in case of **Malayalam Plantation Ltd., v. State of Karnataka**, reported in **2010 (13) SCC 487**, held non-consideration of application for additional evidence to be a substantial question of law. Once an application under Order XLI Rule 27 of CPC is filed, it was incumbent on Court to consider application. In instant case, observation of first appellate Court, document produced did not indicate mutation in name of Basavashetty and rejecting application by merely stating no grounds made out even when documents produced showed change of Khata in pursuance of earlier partition, would be contrary to material on record and amount to non-consideration.

16. A bare perusal of impugned judgment reveals that application for additional evidence is rejected on all, but one observation that no grounds are made out to permit appellants to produce documents. At same time, there is observation that appellants failed to produce any records to show mutation in pursuance of memorandum of partition. But, perusal of



document sought to be produced as additional evidence, would indicate that *patta books* in respect Sy.nos.242/1 and 176/3 indicating mutation in name of defendants no.1 and 5, tax paid receipts are also in respect of said land of year 1990. Copy of agreement dated 31.05.1995 contains reference to partition and record of rights of lands from year 1978-79 to 1995-1996, refer to *palu patti* and lands being ancestral properties.

17. It is seen that in written statement there is clear pleading about issuance of change in *patta book* and mutation in pursuance of partition claim. Therefore there are sufficient pleadings in support of additional evidence, which would meet requirement of law stated by Hon'ble Supreme Court in case of **Iqbal Ahmed (dead) by LRs & Anr. v. Abdul Shukoor**, reported in **2025 INSC 1027**. Hence, on sole ground of improper/non-consideration of application for additional evidence substantial question of law is answered in affirmative. Consequently, judgment and decree passed by first appellate Court is set-aside. Matter is referred back to first appellate Court for fresh consideration in light of observations made hereinabove.



18. Since parties are represented, in order to expedite disposal, they are directed to appear before first appellate Court without requirement of issuance of fresh notice on 23.02.2026. Both parties are also directed to cooperate for expedite disposal of appeal.

19. Registry to forthwith ensure transmission of trial Court records along with IA no.1/2026 filed for additional evidence well before said date. While considering application for additional evidence, first appellate Court shall keep in mind principles laid down by Hon'ble Supreme Court in **Iqbal Ahmed's** case (supra).

20. At this stage, counsel for appellants submits that Final Decree Proceedings are proceeded with in haste and if FDP drawn appeal would be rendered infructuous.

If it is so, liberty is reserved to seek for retaining interim order in first appeal.

**Sd/-
(RAVI V HOSMANI)
JUDGE**