



CNR: KAHC010718502011

NC: 2026:KHC:41428  
RFA No. 1680 of 2011

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 6<sup>TH</sup> DAY OF AUGUST, 2026**

**BEFORE**

**THE HON'BLE MS. JUSTICE JYOTI M**

**REGULAR FIRST APPEAL NO. 1680 OF 2011 (PAR)**

**BETWEEN:**

K.N.JAYASHANKAR,  
S/O. LATE K.C.NANJUNDA SETTY,  
AGED ABOUT 58 YEARS,  
R/AT NO.12, 3RD MAIN ROAD,  
SOCIETY COLONY,  
BENGALURU-560 030.

...APPELLANT

(BY SRI. R.B.SADASIVAPPA, ADVOCATE A/W  
SRI. H.K.SATHEESH, ADVOCATE FOR  
SRI. B.BOPANNA, ADVOCATE)

**AND:**

1. DR. K.N.SREEKANTH @ SRIKANTHA,  
S/O. LATE K.C.NANJUNDA SETTY,  
AGED ABOUT 49 YEARS,  
R/AT KARTHICK GENERAL CLINIC,  
V.S.RAJU ROAD, KUMARA PARK WEST,  
BENGALURU-560 020.
2. SMT. GAYATHRI,  
W/O. LATE K.N.MANJUNATH  
AGED ABOUT 52 YEARS,
3. HARISH,  
S/O. LATE K.N.MANJUNATH  
AGED ABOUT 29 YEARS,



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4. KUM PRATHIMA  
D/O. LATE K.N.MANJUNATH  
AGED ABOUT 27 YEARS,  
  
APPELLANTS NO.2 TO 4 ARE  
R/AT NO.28/A, 3RD CROSS,  
2ND MAIN, SUDDAGUNTE PALYA,  
VENKATESHWARA LAYOUT,  
BENGALURU-560 029.
5. SMT. K.N.ANANTHALAKSHMI,  
W/O.THIRUMALA SETTY,  
D/O. LATE K.C.NANJUNDA SETTY,  
AGED ABOUT 56 YEARS,  
R/AT NO.31, 2ND CROSS,  
KAVERI LAYOUT,  
SUDDAGUNTE PALYA,  
BENGALURU-560 029.
6. SMT. K.N.KAMALAMMA @ GOWARAMMA,  
W/O. MANJUNATHA R.,  
D/O. LATE K.C.NANJUNDA SETTY,  
AGED ABOUT 53 YEARS,  
R/AT NO.10, RAILWAY PARELLEL ROAD,  
KUMARA PARK EAST,  
BENGALURU-560 001.
7. SMT. K.N.PARVATHI,  
W/O. R.VISWANATH,  
D/O. LATE K.C.NANJUNDA SETTY,  
AGED ABOUT 51 YEARS,  
R/AT RAGHAVENDRA NILAYA,  
NRUPATHUNGA LAYOUT,  
BEHIND H.M.S., SETTY HALLI ROAD,  
TUMAKURU.
8. SMT. KAMALAMMA  
W/O. LATE K.C.NANJUNDA SETTY  
SINCE DECEASED



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(APPELLANT AND RESPONDENTS NO.1 TO 7  
ARE LRS OF DECEASED R8)

...RESPONDENTS

(BY SRI. V.B.SHIVAKUMAR, ADVOCATE FOR R1;  
SRI. K.SRINIVASA, ADVOCATE FOR R5 TO R8 - (ABSENT);  
VIDE COURT ORDER DATED 23.07.2026, APPELLANT  
AND RESPONDENTS NO.1 TO 7 ARE LRS OF DECEASED R8;  
R2 TO R4 ARE SERVED AND UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION  
96 READ WITH ORDER XLI RULE 1 OF THE CODE OF CIVIL  
PROCEDURE.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT ON 23.07.2026, THIS DAY, AN  
JUDGMENT IS PRONOUNCED AS UNDER:

### **CAV JUDGMENT**

Sri.R.B.Sadasivappa, counsel, along with  
Sri.H.K.Satheesh, counsel on behalf of Sri.B.Bopanna, for the  
appellant and Sri.V.B.Shivakumar, counsel for respondent No.1,  
appeared in person.

2. The present appeal is filed challenging the  
Judgment and Decree dated 14.07.2011 passed by the Court of  
17<sup>Th</sup> Addl. City Civil and Sessions Judge (CH-16), Bengaluru, in  
O.S.No.3985/2004.



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3. For convenience's sake, the parties are referred to as per their status and ranking before the Trial Court.

4. The plaint averments are these:

The plaintiff and defendants Nos. 1, 5, 6, and 7 (husband of defendant No. 2 and father of defendants Nos. 3 and 4), along with defendant No. 8, are the children of late K.C. Nanjunda Setty and Smt.Kamalamma.

During the lifetime of late Nanjunda Setty, the joint family acquired property bearing No. 12, measuring 50 × 40, situated at Society Colony, Adugodi, Bangalore, under a registered sale deed. The purchase was made using joint family funds, although it was registered in the name of Nanjunda Setty, the Karta. A building was constructed there with joint family resources, and the property remained in joint possession and enjoyment. The Khata was in his name, and taxes were paid from family funds. He died in 2000, leaving the property undivided. The marriages of defendants Nos. 5, 6, and 7 were financed from joint family funds, with gold, silver, and cash



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given to them at the time. They are settled in their matrimonial homes and have no remaining rights in the suit property.

After Nanjunda Setty's death, the plaintiff and defendants Nos. 1 to 4, and defendant No. 8 lived together until December 2003. Thereafter, due to family differences, the plaintiff took a small portion on the north-western side of the second floor, while defendants Nos. 1 and 8 collected rent from tenants in other parts of the building.

It is further submitted that the plaintiff sacrificed his own studies to support defendant No. 1's education, enabling him to become a doctor. The plaintiff took out loans for defendant No. 1's marriage in 1995, for his subsequent travel abroad, and for the construction of the building, repaying them by selling immovable properties purchased in his name within the joint family.

Despite repeated demands, the defendants have failed to partition the property or allocate the plaintiff his rightful share. Defendants Nos. 1 and 5 to 8 conspired to dispossess him, attempting forcible eviction on 27.05.2004 and again on



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03.06.2004. They also tried to change the Khata to facilitate alienation. The plaintiff resisted, filed objections before the Corporation, and lodged a police complaint, but was advised to approach the Civil Court.

In these circumstances, the plaintiff approached the Civil Court for the protection of his lawful possession and appropriate relief regarding the suit-schedule property.

After the summons was served, defendants 1 and 5 to 8 appeared in Court; defendant No.1 submitted a written statement denying the allegations in the plaint. Defendants 5 to 8 submitted a memo and adopted Defendant No.1's written statement. Defendants 2 to 4 placed ex-parte. They raised additional arguments and requested that the suit be dismissed.

Based on the pleadings, the Trial Court identified issues, the parties presented evidence, and documents were admitted. In its Judgment and Decree dated 14.07.2011, the Trial Court dismissed the suit. Aggrieved, the plaintiff has filed the present appeal under Section 96 of the Civil Procedure Code.



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5. Counsel for the appellant submits that the Judgment and Decree of the Trial Court are contrary to the law, facts and circumstances of the case.

The argument is that the Court committed a serious legal error by concluding, under the Will, that the first defendant became the owner of the property. It is also claimed that this decision conflicts with the facts, as the property in question is joint family property, not the defendant's personal asset. The contention is that the father lacked the authority to create the Will, which was allegedly devised to undermine the plaintiff's legal rights. Furthermore, it is argued that the Court did not consider the issues separately; rather, it addressed them together and delivered judgment. Finally, it is emphasised that the property was purchased using joint family funds derived from the sale of family property, with the proceeds used to purchase the property. The counsel for the appellant urges that the judgment and decree should be overturned and the appeal be allowed.

Counsel for the appellant placed reliance on the following decisions:



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1. *SHRINIVAS KRISHNARAO KANGO V/S. NARAYAN DEVJI KANGO AND OTHERS IN 1954 1 SCC 544.*
2. *V.K.SURENDRA V/S. V.K.THIMMAIAH AND OTHERS IN (2013) 10 SCC 211.*
3. *KIRPAL KAUR V/S. JITENDER PAL SINGH AND OTHERS IN (2015) 9 SCC 356.*
4. *MANJULA AND OTHERS V/S. SHYAMSUNDAR AND OTHERS IN (2022) 3 SCC 90.*
5. *SANJAY KUMAR SINGH V/S. STATE OF JHARKHAND IN (2022) 7 SCC 247.*
6. *STATE OF RAJASTHAN V/S. T.N.SAHANI AND OTHERS IN (2001) 10 SCC 619*

The counsel for respondent No.1 supported the Trial Court's judgment and decree, arguing that the property was the father's self-acquired asset, giving him the right to manage it. He also stated that the father had executed a Will. Furthermore, he asserted that the Trial Court thoroughly considered the evidence on record and properly dismissed the suit, which does not warrant any interference. Therefore, counsel requested that the appeal be dismissed.

6. Heard and perused the papers and records with care.



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7. The following points arise for consideration.

- 1. Whether the plaintiff has established that the suit property is joint family property.*
- 2. Whether the plaintiff has demonstrated the existence of a joint family nucleus sufficient to acquire the suit property.*
- 3. Whether the Judgment and Decree of the Trial Court warrant interference.*
- 4. Whether the application filed under Order 41 Rule 27 should be allowed.*

8. Since the facts have been sufficiently outlined, repetition is unnecessary. The plaintiff has filed a suit for partition. The first defendant explicitly stated that the property in question is self-acquired and that his father executed a Will leaving it to him.

9. The parties are Hindus. In a partition suit where the plaintiff claims the property is joint family property, the initial burden is on the plaintiff to prove both the existence of a joint family and a nucleus from which the property could have been acquired. Only after the plaintiff provides this proof does the



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burden shift to the defendant, who must then disprove or rebut the plaintiff's case. The burden of proof lies with the plaintiff, who must demonstrate a joint family and a source of funds for the property before the defendant is obliged to respond.

10. Reverting to the facts of the case, aside from asserting that the suit property is joint family property, the plaintiff has not proved both the existence of a joint family and the source from which the property could have been acquired.

The plaintiff argues that although the father purchased the property using his separate income, he later merged it into a common pool. As a result, it is claimed that the property became joint family property. The counsel highlighted Ex.P11, the passbook of T.N. Jayashankar, the plaintiff, to show that Sri T.N. Jayashankar provided some income to Sri Nanjunda Shetty. For instance, an entry dated:10.11.1987 shows a Cheque No.704 for Rs.10,000/- was issued to his father. Another entry on 03.02.1988 records Rs.2,000/-. Overall, he transferred Rs.1,48,300/- to his father over various dates.



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Counsel informed the Court that Ex.P10 is a sale deed signed by Sri Sanna Shamappa Shetty, the grandfather, on 24 June 1968, transferring ownership to Chandrashekar for Rs.10,000/-. The plaintiff's counsel further states that Sri Nanjunda Shetty used the sale proceeds to purchase the property. The said contention cannot be accepted for the simple reason that there is nothing on record to show that the amount transferred and the sale proceeds were used to purchase the property. Mere transfer of a certain amount does not mean it was transferred for the purchase of the property.

As previously noted, the first defendant argued that the father had made a Will leaving the property to his children. The initial Will was revoked, and the father executed a second Will, which was presented as Ex.D1 and Ex.D2. A close review of the latest Will shows that the plaintiff was assigned two properties, and the first defendant was assigned two as well. Notably, although the plaintiff inherited his properties through a Will, he now seeks a partition of the property allotted to the first defendant. This claim is unfounded. Since there is no contest against the Will, and the properties were inherited



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under it, the plaintiff cannot request a partition of his brother's allotted properties. His behavior raises questions about his trustworthiness in the Court's eyes. Therefore, it is held that the plaintiff has failed to demonstrate the existence of the joint family nucleus and that the suit schedule property is a joint family property.

11. Now, let me consider the application filed under Order 41 Rule 27 of the CPC. The plaintiff has sworn to a declaration of fact by affidavit and has attempted to furnish certain documents.

Counsel for respondent No.1 submits that the appellant has produced the certified documents, but the originals have not been presented. It is also argued that due diligence has not been demonstrated; therefore, the application should be dismissed.

In response to this argument, counsel for the appellant states that the originals do not need to be produced now; they will be provided at the time of the evidence before the Trial



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Court. It is also argued that the sale deeds submitted with the application are certified copies.

12. I have perused the application and the true copies of the documents filed with it.

13. Under Rule 27 of Order 41, production of additional evidence, whether oral or documentary is permitted only under three circumstances which are: (1) the Trial Court had refused to admit the evidence though it ought to have been admitted (2) the evidence was not available to the party, despite the exercise of due diligence; and (3) the Appellate Court required additional evidence to enable it to pronounce better judgment or for any other substantial cause of like nature.

The true test is whether the Appellate Court can pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. When the Appellate Court finds itself unable to pronounce judgment owing to a lacuna or defect in the evidence as it stands, it may admit additional evidence.



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In the present case, an attempt is made on behalf of the appellant to furnish certain documents as additional evidence, contending that they are crucial and may therefore be accepted. The affidavit states that, during the pendency of the suit, the plaintiff made every effort to produce them but was unable to do so. Therefore, he should be allowed to submit additional evidence. The non-production of these documents before the Trial Court, it is averred, was neither deliberate nor intentional, nor was it with a view to filling up any lacuna in the appellant's case. Therefore, the appellant contend that he may be permitted to rely upon these documents to establish his case.

This contention must necessarily fail. The reason is apparent. The appellant has failed to produce the documents before the Trial Court. He cannot now be permitted to improve his case by subsequently assigning reasons and seeking permission to produce additional documents under Order XLI Rule 27 of the CPC. Furthermore, the certified copies are produced, while the originals are not.



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I am of the view that the production and leading of evidence in the Appellate Court, whether oral or documentary, is not a matter of right, nor does it follow ipso facto. Parties are entitled to produce additional evidence only when the conditions prescribed under Rule 27 of Order XLI CPC are satisfied. In the present case, the reasons advanced to produce additional evidence do not meet the requirements of Order XLI Rule 27.

14. Furthermore, the law is well settled that the power to admit additional evidence is discretionary and must be exercised in accordance with sound judicial principles. In my considered opinion, the appellant/ plaintiff has failed to satisfy the conditions laid down under Order XLI Rule 27 of the Code. Hence, I decline to exercise the discretionary power, and accordingly, the application is rejected.

15. Counsel for the appellant placed reliance on the decisions referred to supra. But I do not think that the law is in doubt. Each decision turns on its own facts. The present case is also tested in the light of the aforesaid decisions.



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16. The points are answered. Resultantly, the appeal is ***dismissed.***

Because of dismissal of the appeal, interim order granted if any stands discharged and pending interlocutory applications if any are disposed of.

**SD/-  
(JYOTI M)  
JUDGE**

MRP  
List No.: 1 Sl No.: 1