HC-KAR

NC: 2026:KHC:64288
RSA No. 381 of 2019

CNR: KAHC010049382019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 381 OF 2019 (PAR)

BETWEEN:

SRI K S HEMANNA
SON OF LATE K SHIVALINGAIAH
R/AT KOLUR VILLAGE
MALUR HOBLI, CHANNAPATNA TALUK,
RAMANAGARA DISTRICT – 583 116.

…APPELLANT

(BY SRI. K R NAGARAJA, ADVOCATE)

AND:

1. SRI K S GOPALAIAH
   SON OF LATE K SHIVALINGAIAH
   AGED ABOUT 84 YEARS.

   SRI K S MURTHY
   S/O LATE K SHIVALINGAIAH
   SINCE DECEASED

2. SMT MANJULA
   W/O LATE K S MURTHY
   AGED ABOUT 61 YEARS,

3. SRI K M SANDYA
   D/O LATE K S MURTHY
   AGED ABOUT 41 YEARS.

4. SMT. K.M. YOGITHA
   D/O LATE K S MURTHY
   W/O SANDANADA .M
   AGED ABOUT 38 YEARS
   RESIDING AT, NO.1409,
   11TH MAIN ROAD,
   MAHALAKSHMIPURAM
   WEST OF CHORD ROAD,
   BENGALURU-560 086.

Digitally signed by VANDANA S
Location: High Court of Karnataka

5. SRI K M ROHITH
S/O LATE K S MURTHY
AGED ABOUT 27 YEARS.

R-2, R-3 AND R-5 ARE
RESIDENT OF SURABHI ENCLAVE
WFVVTQPM, 1ST FLOOR
2ND BLOCK, GNANABHARATHI
BENGALURU DEVELOPMENT
AUTHORITY LAYOUT
NAGADEVANAHALLI,
BENGALURU – 560 056.

6. SRI K S SHIVAPRAKAH
SON OF LATE K SHIVALINGAIAH
R/AT KOLUR VILLAGE
MALUR HOBLI,
CHANNAPATNA TALUK
RAMANAGARA DISTRICT – 562 160.

7. SMT K S SUJAYAMMA
D/O LATE K SHIVALINGAIAH
W/O LATE NANJUNDAIAH
NO.86, 1ST MAIN ROAD,
MALLATHALLI,
BENGALURU-560 056.

(AMENDED IS CARRIED AS
PER COURT ORDER DATED: 16.12.2025)

…RESPONDENTS

(BY SRI. UMESH MOOLIMANI, ADVOCATE FOR R-1 TO R-6
SRI. MOHAN.R, ADVOCATE FOR R-7)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 27.11.2018 PASSED IN RA NO.29/2013 ON THE FILE OF THE III ADDL.DISTRICT AND SESSIONS JUDGE, RAMANAGARA ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 13.02.2013 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., CHANNAPATTANA.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

The appellant was the plaintiff in O.S.No.113/2012 instituted by him against the respondents for partition and separate possession of his alleged share in the suit schedule properties and for other reliefs. The said suit having been contested by the respondents-defendants, the Trial Court proceeded to pass the judgment and decree dated 13.02.2013 in O.S.No.113/2012, decreeing the suit of the plaintiff against the defendants. Aggrieved by the judgment and decree of the Trial Court, the defendants filed an appeal in R.A.No.29/2013, which was allowed by the First Appellate Court, which set aside the judgment and decree of the Trial Court and consequently, dismissed the suit of the plaintiff. Aggrieved by the impugned judgment and decree dated 27.11.2018 passed in R.A.No.29/2013 by the First Appellate Court, setting aside the Judgment and Decree of the Trial Court and consequently dismissing his suit, the appellant-plaintiff is before this Court by way of the present appeal, which was admitted on 07.10.2026 to consider the following substantial questions of law:

"(i) Whether the Appellate Court committed a gross error in allowing the Appeal holding that there was a partition dated 05.01.1998 without considering the crucial aspect whether such a partition deed existed in the facts and circumstances of the case?

(ii) Whether the Appellate Court committed an error and whether the said judgment could be justified in view of the fact that the Trial Court had held that there was no earlier partition and in view of the fact that no effort was ever made seeking for the production of the alleged partition deed in the Trial Court?

(iii) Whether it could be justified that the judgment and decree of the Appellate Court below is not perverse, arbitrary, unreasonable and illegal from the pleadings and evidence on record?

(iv) Whether the lower Appellate court committed an error in holding that mutation entries were proof of partition?"

2. A perusal of the material on record will indicate that the relationship between the parties is not in dispute in as much as the appellant-plaintiff is the son of late K. Shivalingaiah, while respondent Nos.1 to 3-defendant Nos.1 to 3 are the brothers and sister of the appellant-plaintiff. The plaintiff instituted the aforesaid suit *inter alia* contending that the plaintiff and defendants were the children of late K. Shivalingaiah, who expired on 13.08.1990

leaving behind the suit schedule properties, which were joint family properties and upon the demise of late K. Shivalingaiah, the khatha in respect of the suit schedule properties were mutated into the name of their mother, Smt. Manchamma, who was managing the joint family properties and upon her demise, the plaintiff called upon defendant Nos.1 to 3 to effect partition and put the plaintiff in separate possession of his legitimate share in the suit schedule properties and since defendant Nos.1 to 3 did not comply with the demand and requests made by the plaintiff, he instituted the aforesaid suit seeking the aforesaid reliefs.

3. Defendant No.4 supported the claim of the plaintiff and requested the Court to pass a decree as sought for by the plaintiff. However, defendant Nos.1 to 3, who are the brothers of plaintiff and defendant No.4, contested the suit disputing and denying the various allegations and claim made by the plaintiff. It was contended that on 05.01.1998, there was a partition *interse* between the plaintiff, defendant Nos.1 to 4 and their mother, Manchamma, in which the suit schedule properties were divided as A, B, C and D schedule properties, which were allotted to the respective parties and the ‘E’ schedule properties in the said

partition were allotted to the share of defendant No.4, who got the khatha mutated into her name and consequently, neither the plaintiff nor defendant No.4 were entitled to any share in the suit schedule properties and the suit was liable to be dismissed.

4. Based on the aforesaid pleadings, the Trial Court framed the following issues:

> *"1. Whether the plaintiff proves that the suit schedule properties are ancestral joint family properties?*
> *2. Whether the defendant Nos.1 to 3 prove the alleged partition?*
> *3. Whether the plaintiff is entitled for the relief sought.*
> *4. What order or decree?"*

5. The plaintiff examined herself as PW.1 and got marked documentary evidence as Exs.P-1 to 20 on her behalf. While, defendant Nos.1 to 3 examined themselves as DWs.1 to 3 and two other witnesses as DWs.4 and 5 and got marked documentary evidence as Exs.D-1 to 11 on their behalf.

6. The Trial Court answered all the issues in favour of the plaintiff and decreed his suit in O.S.No.113/2012 by holding as under:

" 1. This is a suit for partition and separate possession.

2. It is the contention of the plaintiff that the suit schedule properties were belonging to one Mr. Shivalingaiah of whom he and the defendants are children and that no partition has taken place among them and that the said Shivalingaiah died on 13.08.1990 and that after the death of the father the suit schedule properters were mutated in the name of mother Mrs. Manchamma and that after the death of the said Manchamma the defendant No. 1 was managing the family properties and that though they have been residing separately they have been cultivating the properties jointly and that from 2005 he has been demanding partition of the schedule properties and though 2-3 panchayath for held, the defendant No. 1 did not effect the partition and that lostly about one month ago when he demanded for the partition of the family properties, the defendant No. 1 and hence the suit for partition and allotment of his 1/5th share.

3. The defendants appeared before the court and defendant No. 1 to 3 filed their written statement admitting the relationship between the parties and also the contention that the suit schedule properties were belonging to their father and also as to the date of death of their father and their mother and also contention as to suit schedule properties were mutated in the name of their mother but have denied the contention that the suit schedule properties continue to be the joint family properties and that as per the wish of plaintiff and

themselves during the lifetime of their mother the suit schedule properties were devided, themselves on 05.01.1998 and that the plaintiff was alloted with 'D' schedule properties while NO. 1 among them was alloted with 'A' schedule properties and No. 2Among them was alloted with 'B' schedule properties and No. 3 among them was alloted with 'C' schedule properties and defendant No. 4 was alloted with 'E' schedule properties and that since the partition already has taken place, there is no question of partition of the suit schedule properties and that the mutation of 'E' schedule properties in the name of the defendant No. 4 confirms the partition and that original partition deed is with the plaintiff and that the plaintiff has not included other ancestral properties and hence pray for dimissal of the suit with cost.

4. The defendant No. 4 has filed the written statement in consonance with the case of the plaintiff and has stated that she is also having 1/5th share and hence prays for judgment and decree accordingly.

5. On the basis of the pleadings the following issues have been framed.

> *"1. Whether the plaintiff proves that the suit schedule properties are ancestral joint family properties?*
>
> *2. Whether the defendant Nos. 1 to 3 prove the alleged partition?*
>
> *3. Whether the plaintiff is entitled for the relief sought?*

4. What order or decree?

6. To prove his contention the plaintiff has examined P. W. 1 and got marked Ex. P. 1 to P. 20. The defendant Nos. 1 to 3 examined D. W. 1 to 4 and got marked Ex. D. 1 to D. 11. The defendant No. 4 had not to led evidence.

7. I have heard the arguments. My findings on the above issues are as follows for the following reasons.

Issue No. 1 : In the affirmative.
Issue No. 2 : In the negative.
Issue No. 3 : In the affirmative.
Issue No. 4 : As per final order.

REASONS

8. Issue Nos. 1 to 3 :

a. These issues are inter connected with each other and hence I take up these issues together for discussion.

b. It is the contention of the plaintiff that the suit schedule properties are the joint family properties. On the other hand it is the contention of the defendant Nos. 1 to 3 that the suit schedule properties though were joint family properties, the same have been partitioned on 05.01.1998.

c. P. W. 1 has reiterated the contention of the plaintiff in toto and had denied the suggestions of the defendants to the contrary. The D. W. 1 to 4 have deposed in consonance with the case of the defendant Nos. 1 to 3 and have denied the suggestions of the plaintiff to the contrary.

d. Admittedly the suit schedule properties were belonging to one Late. Shivalingaiah who was the father of plaintiff and the defendants. As such it can be presumed that the suit schedule properties were the joint family properties.

e. The defendant Nos. 1 to 3 have not produced partition deed alleged to be under which the family properties for partitioned among the plaintiff and the defendants. It is the contention of the defendant Nos. 1 to 3 that the original of the said partition deed is with the plaintiff. If at all the original partition deed were with the plaintiff, the defendant Nos. 1 to 3 would have taken steps to summon the original partition deed from the plaintiff. The very fact that the defendant Nos. 1 to 3 have not taken any steps though summon the plaintiff to produced the original partition deed indicates the non existance of the partition deed. It is the argument of learned counsel for the defendant Nos. 1 to 3 that as per Ex. D. 10 the 'D' schedule propety were mutated in the name of the defendant No. 4 and the same confirms the partition. At the first instance since the defendant Nos. 1 to 3 have not produced the original partition deed, it can be said that the properties alleged to have been alloted to the share of defendant No. 4 were mutated in the name of the defendant No. 4. Secondly the defendant No. 4 has categorically denied the alleged partition. The defendant Nos. 1 to 3 have not produced any document to show that at the instant of any of the parties the said properties were mutated in the name of defendant No. 4. Hence the alleged factum of mutation

cannot be considered to hold that the partition has taken place. It is the argumuent 0f learned counsel for the defendant Nos. 1 to 3 that admittdely by the plaintiff, they and plaintiff have been residing separately and the separate resident prove the partition. If at all the partition had taken place as alleged by the defendant Nos. 1 to 3, the properties which were alloted to the shares of the plaintiff and the defendant Nos. 1 to 3 would have been mutated in the name of plaintiff and the defendant Nos. 1 to 3. The very fact that the suit schedule properties have not been mutated in the name of any of the plaintiff or defendant Nos. 1 to 3 in persuance of the the alleged partition, the contention of the defendant Nos. 1 to 3 in this regard cannot be accepted. Under the circumstances contention of the defendant Nos. 1 to 3 that the suit schedule properties have been partitioned as on 05.01.1998, cannot be accepted. Hence it has to be presumed that the defendant Nos. 1 to 3 have failed to prove the partition.

f. Even if the partition claimed by the defendant Nos. 1 to 3 is taken into consideration, as per the Ex. P. 17 and P. 18 the plaintiff, defendant Nos. 2 and 3 have not accepted the partition claimed and as such partition cannot be said to have taken place.

g. Even if the partition claimed by the defendant Nos. 1 to 3 has taken place, the same cannot be considered to be a valid partition as admittedly the partition has not taken place by metes and bounds.

h. Admittedly father and mother of the plaintiff and the defendant Nos. 1 to 4 are dead and hence only the plaintiff and the defendant Nos. 1 to 4 are entitled for 1/5th share in the suit properties by metes and bounds.

i. Hence I answer the above issue accordingly.

9. Issue No. 4 :

For the reasons discussed hereinabove, I proceed to pass the following order.

ORDER

1. The suit is decreed as prayed for.

2. The plaintiff is entitled for 1/5th share in the suit schedule properties and for separate possession thereof.

3. All the defendants are also entitled for 1/5th share in the suit schedule properties and for separate possession thereof.

4. The sharing in the suit schedule properties shall be by metes and bounds.

5. Draw preliminary decree accordingly."

7. As can be seen from the aforesaid judgment and decree of the Trial Court, the Trial Court took note of the fact that despite having set up specious plea of earlier partition, defendant Nos.1 to 3 had not adduced any legal or acceptable evidence to establish that the suit schedule properties had been divided between the parties. The Trial Court also came to the conclusion that the mutation register extracted at Ex.D-10 merely refers to the

mutation of khatha into the name of Sujayamma, defendant No.4 in respect of only one property i.e., land bearing Survey No.204, which is described as Item No.11 of the suit schedule properties, which was not sufficient to prove that all the suit schedule properties comprising of 14 items had been divided and partitioned among the parties.

8. Under these circumstances, the Trial Court came to the conclusion that the plea of earlier partition put forth by defendants Nos.1 to 3 had not been proved by them in accordance with law and proceeded to decree the suit of the appellant against the respondent-defendant Nos.1 to 3. In the appeal filed by respondent Nos.1 to 3, the First Appellate Court framed the points for consideration and proceeded to answer the points in favour of respondents-defendant Nos.1 to 3 by holding that the suit schedule properties had not remained as ancestral or joint family properties since defendant Nos.1 to 3 had proved that the suit schedule properties were subjected to partition under the unregistered partition deed dated 05.01.1998 and held as under:

"9. Perused the oral and documentary evidence available on record. Now the points that are arisen for the due consideration of this court are:

1) Whether the plaintiff has proved that the suit schedule properties are remained as ancestral and joint family properties?

2) Whether the defendant Nos.1 to 3 have proved that the suit schedule properties are subjected to partition under the unregistered partition deed dated 05.01.1998?

3) Whether the trial court is justified in decreeing the suit of the plaintiff?

4) What order?

10. My findings to the above points are as under:

Point No.1 : In the Negative,

Point No.2 : In the Affirmative,

Point No.3 : In the Negative,

Point No.4 : As per final order for the following:

REASONS

*11. **POINT No.1**: These two points are taken up together for discussion for the sake of convenience and to avoid repetition of facts as the same are interconnected with each other.*

12. The fact that the plaintiff K.S.Hemanna and defendant Nos.1 to 3 K.S.Gopalaiah, K.S.Murthy and K.S.Shivaprakash are the sons of K.Shivalingaiah is not in dispute. Similarly, the fact that the 4th defendant K.S.Sujayamma is the only daughter of K.Shivalingaiah and in turn sister of plaintiff and defendant Nos.1 to 3 is not in

dispute. However to substantiate the interse relationship by and between the plaintiff and defendants, the plaintiff has placed reliance on Ex.P.1 family genealogy. The genuineness or otherwise of the same has not been denied by the defendant Nos.1 to 4. The parties to the litigation have admitted the interse relationship by and between them. Therefore, by virtue of Ex.P.1 and through admitted facts, it is proved that the plaintiff and defendant Nos.1 to 4 are the children of K.Shivalingaiah.

13. It is the contention of the plaintiff that K.Shivalingaiah died on 13.08.1990 and mother Manchamma died on 21.03.2004. To substantiate that aspect of the matter, the plaintiff has produced the death certificates at Ex.P.14 and Ex.P.15 respectively. Even otherwise the defendant Nos.1 to 3 in their written statement have categorically admitted that their father K.Shivalingaiah died on 13.08.1990 and mother Manchamma died on 21.03.2004. Therefore, it is proved that the father and mother have died on 13.08.1990 and 21.03.2004 respectively.

14. It is the contention of the plaintiff that the suit schedule properties in Sy.No.146/1 measuring 1 acre 3 guntas, Sy.No.16/1 measuring 37 guntas, Sy.No.151 measuring 15 guntas, Sy.No.88 measuring 1 acre 7 guntas, Sy.No.76/1 measuring 5 guntas, Sy.No.126/1 measuring 1 acre 32 guntas, Sy.No. 136 measuring 1 acre 6 guntas, Sy.No.138 measuring 1 acre 21 guntas, Sy.No.190 measuring 2 acres, Sy.No.87/2 measuring 2 acres 2 guntas, Sy.No.204 measuring 2 acres, Sy.No.144/2 measuring ½

guntas, Sy.No.91/1 measuring 5 ¾ guntas, old country tiled house bearing K.No.133 are the properties belonged to K.Shivalingaiah. That contention of the plaintiff is not in dispute.

15. It is the contention of the plaintiff that during the lifetime of K.Shivalingaiah or subsequent to his death, there was no partition of the properties left behind by him. However, in his plaint at paragraph No.2, the plaintiff has pleaded that after the death of Manchamma in the year 2004, there was misunderstanding between the members of the family and accordingly, the plaintiff and defendants started to reside separately and cultivated the properties jointly. Therefore, from the plaintiff's pleadings, it is clear that after the death of Manchamma, the 4 brothers have started to reside separately.

16. It is contended by the plaintiff that after the death of Manchamma, it is 1st defendant Gopalaiah being the elder son of the family was the Manager of the joint family. According to plaintiff, though he has demanded his share over the schedule properties, the 1st defendant has not agreed to effect partition and hence, without any alternative, he has filed the suit for partition. It is relevant to note here itself that the defendant Nos.1 to 3 being the brothers of the plaintiff have unequivocally in single voice have stated that the properties belonged to K.Shivalingaiah are subjected to partition under the partition deed dated 05.01.1998. It is their contention that in the partition, the plaintiff has got a share in Sy.No.88 measuring 1 acre 6

guntas, Sy.No.99 measuring 1 gunta, Sy.No. 144/2 measuring ½ gunta, Sy.No.190 measuring 20 guntas, Sy.No.15 and 16 measuring 29 guntas, Sy.No.76/1 measuring 5 guntas, Sy.No.1/4 measuring 2 guntas and Sy.No.136 measuring 23 guntas and totally an extent of 3 acres 29 ½ guntas to his share. However, that aspect of the matter is categorically denied by the plaintiff.

17. To substantiate the contention of the plaintiff, he has stepped into witness box as PW1 and according to him, the suit schedule properties are the properties belonged to his deceased father and after the death of Manchamma in the year 2004, though he has demanded for partition, the 1st defendant being kartha of the family has only effected the partition. When the PW1 is subjected to the test of cross-examination, he has denied the fact that after the death of Manchamma, her four children are residing separately. The evidence of PW1 with regard to existence of joint family and joint residence is contrary to his own contention with regard to 4 brothers residing separately.

18. According to him, the ration card of the family is stands in the name of Manchamma and there is a single ration card. However, for the reasons best known to him, the PW.1 has not produced the ration card before the court. When the plaintiff himself has pleaded that after the death of Manchamma in the year 2004, 4 brothers started to reside separately, no value can be attached to his evidence to the effect that all the 4 brothers were residing separately even after the death of Manchamma.

19. It is contended by the plaintiff that after the death of Manchamma all the four children are residing separately. In fact, PW.1 has deposed that he is residing in the house situated at garden and defendant No.1 Gopalaiah is residing in the house situated in the village. That evidence of PW.1 further substantiates the contention of the defendant Nos.1 to 3 that all the brothers are residing separately.

20. It is the contention of the plaintiffs that by virtue of partition, certain properties were allotted to the 4th defendant Smt.Sujayamma and she has got mutated katha of Sy.No.204 measuring 2 acres and Sy.No. 87/P2 measuring 11 guntas as per the orders in MR No.6/03-04. To substantiate that aspect of the matter, the defendants have produced the certified copy of the orders in MR No.6/03-04 at Ex.D.10. The reading of Ex.D.10 would show that the katha of 2 acres of land in Sy.No.204 is mutated in the name of 4th defendant Sujayamma as per the partition deed dated 05.01.1998. In fact, PW1 during the course of his cross-examination has categorically deposed that he does not know the fact that the katha of Sy.No.204 stands in the name of defendant No.4 Sujayamma. That evidence of PW.1 is contrary to the contents of his own document produced at Ex.P.11 and Ex.P.13. In fact, the defendants have produced the RTC of Sy.No.204 at Ex.D.11. The reading of Ex.D.10 and Ex.D.11 would demonstrately indicate that the katha of Sy.No.204 mutated in the name of 4th defendant Sujayamma by virtue of partition deed dated 05.01.1998. It is relevant to note here itself that for the best reasons known to

the plaintiff, he has not produced the RTC of Sy.No.204 measuring 2 acres, which stands in the name of 4th defendant. Therefore, it can be gathered that only to wood-wink the court, the plaintiff has not produced the RTC of Sy.No.204 measuring 2 acres, which stands in the name of 4th defendant Sujayamma. Thus it is proved that the katha of Sy.No.204 measuring 2 acres is stands in the name of 4th defendant Sujayamma by virtue of order in MR No.6/03-04.

21. Though the defendant Nos.1 to 3 have contended that the properties of Shivalingaiah are subjected to partition under the unregistered partition deed dated 05.01.1998, the plaintiff has denied that aspect of the matter. The plaintiff has produced the RTC of the suit schedule properties at Ex.P.2 to Ex.P.13. The fact that at the given point of time, katha of suit schedule properties stood in the name of Shivalingaiah and after his death, katha mutated in the name of Manchamma as per the orders in IHC No.14/91-92 is not in dispute. Now one thing is clear that though the defendants have contended that the properties of Shivalingaiah are subjected to partition under the partition deed dated 05.01.1998, for the reasons best known to them, they have not got mutated the katha in their respective names.

22. The plaintiff has produced the letter alleged to have written by K.Shivalingaiah as per Ex.P.16. As per Ex.P.16, K.Shivalingaiah has expressed his intention to allot 1 acre 20 guntas of land to the plaintiff Hemanna. However, that document will not come to the aid of the plaintiff to prove

the fact that there was no partition either written or oral as on 05.01.1998. The plaintiff has also produced Ex.P.17 and Ex.P.18, the objections given by him to the Tahsildar not to mutate the katha of the schedule properties in the names of the defendants.

23. To substantiate the contention of the defendants, the 1st defendant Gopalaiah has stepped into witness box as DW.1. It is his specific evidence that after the death of Manchamma, the schedule properties are subjected to partition under the partition deed dated 05.01.1998. However, he during the course of his cross-examination has deposed that he has produced the partition deed before the court. That evidence of DW.1 is without any substance because the partition deed dated 05.01.1998 has not been produced before the trial court. In fact, DW.1 during the course of cross-examination has categorically admitted that on 11.03.2004, he, his mother and younger brothers have jointly borrowed loan from Mudagere Bank. To substantiate that aspect of the matter, the plaintiff has placed reliance on Ex.P.19 passbook. That document is admitted by DW.1 and accordingly, marked by the plaintiff at the time of cross-examination of DW.1. Just because Manchamma and her 4 sons have jointly borrowed loan from State Bank of Mudagere Branch, it does not lead to the presumption that there was no partition. It can be gathered that since mother and 4 sons were in cordial terms, mother being the eldest member of the family has borrowed loan on behalf of the family. However, Ex.P.19 itself is not sufficient to come to the

conclusion that there was no partition in the family of K.Shivalingaiah.

24. During the course of cross-examination of DW.1, it is suggested that the plaintiff has not consented for the partition deed of the year 1998. If that portion of evidence is taken into consideration, it can be gathered that there was partition in the year 1998, however the plaintiff has not consented for the same. To substantiate the contention of the defendants, the 2nd defendant Murthy is examined as DW.2, he has also reiterated that the suit schedule properties are subjected to partition on 05.01.1998 and in that partition, 3 acres 29 ½ guntas of land was allotted to the share of plaintiff. That evidence of DW.2 is in accordance with the evidence of DW.1 and contention taken in the written statement.

25. During the course of cross-examination of DW.2 he has categorically deposed that the property which is abutting to Mysuru-Bengaluru Highway has not been given to the plaintiff. He has also contended that based upon the partition deed of the year 1998, katha has not been mutated. Even he has deposed that he has no impediment to mutate the katha based upon the partition deed dated 05.01.1998. However, non-mutation of katha itself is not a ground to disbelieve the theory of the defendants that there was a partition on 05.01.1998.

26. To substantiate the contention of the defendants, the defendant No.3 K.S.Shivaprakash has stepped into witness box as DW.3 and he has reiterated the

evidence of DW.1 and DW.2 and there was a partition in the year 1998 and in that partition, 3 acres 29 ½ guntas allotted to the plaintiff. Even he has also deposed that during the lifetime of mother Manchamma, as per Ex.P.19 he and his brothers have jointly borrowed the loan. However, that aspect of the matter itself is not sufficient to come to the conclusion that there was no partition among 5 children of deceased K.Shivalingaiah and Manchamma. However, the fact that the suit schedule properties are the properties acquired by K.Shivalingaiah is categorically admitted by DW.3.

27. The collective study of evidence of DW.1 to DW.3 clearly demonstate the fact that the suit schedule properties are subjected to partition under the unregistered partition deed dated 05.01.1998. So as to prove the alleged partition, the defendants have examined one Chandregowda as DW.4 and another Puttaswamy as DW.5. Both of them have reiterated that the properties are left behind by K.Shivalingaiah are subjected to partition on 05.01.1998. DW.4 has deposed that no property was allotted to the share of plaintiff which is abutting to Mysuru-Bengaluru Highway. It is also made clear from his evidence that the market value of the property attached to Mysuru-Bengaluru Highway is very high. Even DW.5 has also deposed that no share was given to the plaintiff in the property attached to Mysuru-Bengaluru Highway. Thus it is clear that though there was a partition, since the market value of the property given to the share of defendant No.1 is very high as the

same is attached to Mysuru-Bengaluru Highway, the plaintiff being not satisfied with the partition, filed the suit for partition.

28. The defendant No.4 Sujayamma has filed her written statement and contended that there was no partition of the properties left behind by K.Shivalingaiah.

Thus it is clear that the 4th defendant is sailing with the plaintiff. However, the mutation register extract produced by the 1st defendant at Ex.D.10 in MR No.6/03-04, would show that based upon the partition deed dated 05.01.1998, katha of Sy.No.204 measuring 2 acres mutated in the name of 4th defendant as per the orders of the Tahsildar dated 06.06.2003. It is very relevant to note here itself that though the katha of Sy.No.204 measuring 2 acres mutated in the name of 4th defendant during 2003, the plaintiff has not challenged the same before the competent Revenue Court. There is no proper explanation from the side of the plaintiff as to how the katha of Sy.No.204 measuring 2 acres is mutated in the name of 4th defendant. On the other hand, from the appreciation of Ex.D.10, it is crystal clear that based upon the partition deed dated 05.01.1998, katha of Sy.No.204 measuring 2 acres mutated in the name of 4th defendant as per the orders of Tahsildar dated 06.06.2003.

29. In fact, the defendants have produced RTC of Sy.No.204 at Ex.D.11. It further demonstrate the fact that the order at Ex.D.10 is acted upon and katha of Sy.No.204 measuring 2 acre mutated in the name of 4th defendant Sujayamma. However, for the reasons best known to the plaintiff, the plaintiff has not produced the RTC of Sy.No.204

measuring 2 acres, which stands in the name of 4th defendant. In fact, the plaintiff has produced the RTC of Sy.No.87/P2 measuring 11 guntas at Ex.P.11 and Sy.No.91/1 measuring 5 acres 4 guntas at Ex.P.13, which stands in the name of 4th defendant Sujayamma. There is no explanation from the side of the plaintiff as to why he has not produced RTC of Sy.No.204 measuring 2 acres. Therefore, only conclusion that can be arrived is that the plaintiff has intentionally not produced the RTC of Sy.No.204 measuring 2 acres on the impression that if the same is produced before the court, it will reveal the change of katha in the name of 4th defendant based upon the order in MR No.6/03-04, which is based upon the partition deed dated 05.01.1998.

30. It is made clear from the evidence of DW.1 to DW.3 who are the brothers of the plaintiff that the suit schedule properties are subjected to partition among the 5 children of K.Shivalingaiah under the partition deed dated 05.01.1998. Only contention taken by the plaintiff at the time of cross-examination of DW.1 to DW.3 is that no property is allotted to the share of plaintiff, which is abutting to Mysuru-Bengaluru Highway. Just because, no property is allotted to the share of the plaintiff abutting to Mysuru-Bengaluru Highway, it itself is not a ground to come to the conclusion that there was no partition among the children of K.Shivalingaiah on 05.01.1998.

31. The evidence of DW.1 to DW.3 would demonstrately indicate that the properties left bheind by K.Shivalingaiah is subjected to partition on 05.01.1998.

However, from the evidence of DW.1 to DW.3, it is made clear that they have not got mutated the katha into their respective names. It is also borne out from the evidence that even after the partition of the properties during 2004, they have jointly borrowed the loan from State Bank of Mysuru, Mudagere Branch. It can be inferred that since katha has not been mutated in the name of respective sharers, they have jointly borrowed loan. What can be gathered from the perusal of Ex.P.19 passbook is that as on 2004, all the 4 sons of K.Shivalingaiah were in cordial terms.

32. It is made clear from the evidence of DW.3 that he is working as a clerk at Vivekananda Law College and the property found in Ex.P.20 stands in his name. It is relevant to note here itself that the property found in Ex.P.20 bearing door No.1569/24 measuring 30 ft x 40 ft, is not a subject matter in the suit. Therefore, it can be gathered that the 3rd defendant has got house property of his own. Even there is specific contention of the plaintiff that after the death of Manchamma, all the 4 brothers started to reside separately. Thus it is clear that there was partition between the five children of K.Shivalingaiah.

33. The counsel for the defendants has contended htat the revenue entries are the strong piece of evidence with regard to factum of partition. It is very pertinent to note here itself that though the katha of Sy.No.204 measuring 2 acres was mutated in the name of 4th defendant as per the orders in MR No.6/03-04, the plaintiff has not challenged the same.

*34. In **AIR 1995 SUPREME COURT 1728 in a case between Digambar Adhar Patil vs. Devram Girdhar Patil (died) and another**, it is held that "Entries in Records of Rights maintained in official course of business-Is relevant piece of evidence with regard to factum of partition." In the said decision, it is also held that "Under the Hindu Law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof."*

35. The ratio of the above decision is squarely applicable to the present case because of the fact that the katha of Sy.No.204 measuring 2 acres is mutated in the name of 4th defendant Sujayamma based upon the partition deed dated dated 05.01.1998. The fact that the parties to the litigation are Hindus and governed by Hindu Law as well as Hindu Succession Act, 1956 is not in dispute. The document at Ex.D.10 the certified copy of the order in MR No.6/03-04 would demonstrate and establish the factum of partition on 05.01.1998. Therefore, by virtue of the above decision, the defendant Nos.1 to 3 can very well establish the fact that the properties left behind by K.Shivalingaiah are subjected to partition.

36. To show that the 1st defendant has been paying tax separately, he has produced the tax paid receipts at Ex.D.1 to Ex.D.9. The genuineness or otherwise of the receipts is not in dispute. It is borne out from the evidence of PW.1 that he is residing in the garden house, whereas the

1st defendant is residing in the house situated at village. Even it is his pleading that after the death of Manchamma, all the sons were residing separately. The property tax demand register extract at Ex.P.20 would demonstrate the fact that the 3rd defendant Shivaprakash is also residing separately at Channapatna. Thus on appreciation of evidence on record, this court is of the considered view that there was a partition in the family of K.Shivalingaiah and accordingly, certain properties in Sy.Nos.88, 99, 144/2, 190, 15,16, 76/1, 1/4 and 136 and RCC and tiled house allotted to the share of the plaintiff and total extent is 3 acres 29 ½ guntas. Thus there is no substance in the contention of the plaintiff that the suit schedule properties are remained as ancestral and joint family properties.

37. It is relevant to note that the 1st defendant has produced the certified copy of the sale agreement dated 15.10.2015, which would show that the 4th defendant and her son have entered into a sale agreement with one Smt.Dr.Suparna Ravishankar to sell the property in Sy.No.204 measuring 2 acres for a sum of Rs.18 lakhs. In fact, the reading of the agreement would show that Smt.Sujayamma the 4th defendant herein has claimed property right by virtue of order in MR No.6/03-04. Though such is the circumstances, the 4th defendant has taken the contention that there is no partition of the schedule properties. The fact that the Sy.No.204 measuring 2 acres of land is the property of K.Shivalingaiah is not in dispute. Thus the act of the defendant No.4 in entering into sale agreement

with Smt.Dr.Suparna Ravishankar is yet another strong circumstance to come to the conclusion that by virtue of partition, katha of Sy.No.204 measuring 2 acres mutated in the name of 4th defendant in MR No.6/03-04 and accordingly, she has expressed her intention to exercise property right. Thus on appreciation of evidence on record, this court is of the opinion that the properties left behind by K.Shivalingaiah are subjected to partition and accordingly, the respective sharers are in possession and enjoyment of their respective shares. Hence, it is held that the suit schedule properties are no more remained as ancestral and joint family properties as defendant Nos.1 to 3 have proved the severance of joint family properties and partition of the joint family status left behind by K.Shivalingaiah. Accordingly, point No.1 is answered in the Negative and point No.2 is answered in the Affirmative.

*38. **POINT No.3**: The learned trial Judge has held that the defendants have not taken steps to summon the original partition deed from the plaintiff. No doubt, that observation is in accordance with the records available. However, the fact that the evidence of DW.1 to DW.3 is consistent with their contention with regard to factum of partition is not at all appreciated by the trial court. In fact, the evidentiary value of Ex.D.10 and Ex.D.11 is also not appreciated by the trial court. The parties to the litigation are governed by Hindu Law and Hindu Succession Act, 1956. From the decision referred to above, under Hindu Law, oral partition is also recognized. The factum of partition is*

evidenced by producing Ex.D.10 and Ex.D.11. Therefore, the trial court is not justified in decreeing the suit of the plaintiff, hence it calls for interference. Accordingly, point No.3 is answered in the Negative.

*39. **POINT No.4**: In view of my findings on point Nos.1 to 3 as given supra, I proceed to pass the following:*

ORDER

The appeal filed by the appellants/defendant Nos.1 to 3 under Sec.96 of CPC is hereby allowed.

Resultantly, the judgment and decree in OS No.113/2012 dated 13.02.2013 on the file of Senior Civil Judge and JMFC at Channapatna is hereby stands set aside.

The suit in OS No.113/2012 is hereby dismissed.

The parties to the appeal shall have to bear their own costs.

Draw decree accordingly."

9. In this context, it is pertinent to note that as per the judgment and decree of the First Appellate Court, except placing reliance upon a mutation register extract at Ex.D-10, there was absolutely no other legal or acceptable evidence to establish that there was a partition as contended by respondent Nos.1 to 3 on 05.01.1998. Interestingly, the alleged unregistered partition deed had also not been produced by respondent Nos.1 to 3 as defendant Nos.1 to 3 in support of their claim for partition. So also,

the plea of earlier partition i.e., that the partition took place in respect of all suit schedule properties on 05.01.1988 was also not forthcoming by any revenue records, survey records, mutation register extracts etc., all of which did not indicate that there was a partition effected on 05.01.1998.

10. Under these circumstances, I am of the considered opinion that the First Appellate Court clearly misdirected itself in failing to consider and appreciate that in the absence of any legal or acceptable evidence to establish that a partition had been effected on 05.01.1998 as contended by defendant Nos.1 to 3, the question of dismissing the suit on the ground of earlier partition would not arise in the facts and circumstances of the instant case. The First Appellate Court also placed reliance upon a mutation register extract in MR No.6/2003-04 in relation to Survey No.204, which was said to be mutated into the name of defendant No.4 and in which there was a reference to a partition said to have taken place on 05.01.1998. In this context, it is pertinent to note that in the absence of any other evidence, mere reference to an alleged partition dated 05.01.1998, that too only with reference to Survey

No.204, measuring 2 acres said to have been allotted to the share of defendant No.4 would not be sufficient or conclusive to prove and establish that all the suit schedule properties comprising of 13 items of suit schedule properties had been divided and partitioned between the parties; in addition thereto, the alleged partition dated 05.01.1998 is also not forthcoming in the mutation register extract, RTC's, revenue records, survey records in respect of all other properties i.e., the remaining 12 items of suit schedule properties subsequent to 05.01.1980 and the revenue records in the relation to the remaining properties do not contain any recital of any partition and on the other hand, the said revenue records show that the khatha was mutated into the name of Shivalingaiah's wife Manchamma by way of inheritance, thereby indicating that the alleged partition dated 05.01.1998 in respect of the suit schedule properties was never accepted or acted upon by any of the parties, thereby leading to the sole conclusion that defendant Nos.1 to 3 had failed to establish the plea of earlier partition, which had been incorrectly accepted by the First Appellate Court without there being any legal or acceptable evidence in this regard.

11. Under these circumstances, I am of the considered opinion that the impugned judgment and decree of the First Appellate Court deserves to be set aside by answering the substantial questions of law in favour of the appellant and by restoring the judgment and decree of the Trial Court.

12. In the result, I pass the following:

ORDER

i) The appeal is allowed.

ii) The impugned judgment and decree dated 27.11.2018 passed in R.A.No.29/2013 by the First Appellate Court, is hereby set aside.

iii) The judgment and decree dated 13.02.2013 passed in O.S.No.113/2012 by the Trial Court is hereby restored.

iv) The suit of the appellant-plaintiff in O.S.No.113/2012 is decreed as prayed for.

v) Draw up decree accordingly.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC: List No.: 1 Sl No.: 12