HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO. 1278 OF 2015 (PAR)

C/W

REGULAR SECOND APPEAL NO. 1277 OF 2015

IN RSA No. 1278/2015

BETWEEN:

1. T.V.NAGARAJ,
   S/O LATE VENKATARAMANAPPA,
   AGED ABOUT 57 YEARS,
   RESIDING AT KATARIPALYA,
   K0LAR CITY - 563 101.

2. T.V.PARVATHAMMA,
   D/O LATE VENKATARAMANAPPA,
   W/O R.H.NARAYANA MURTHY,
   AGED ABOUT 55 YEARS,
   RESIDING AT DOOR NO.896,
   KATARIPALYA,
   KOLAR - 563 101.

3. T.V.GURUNATH,
   D/O LATE VENKATARAMANAPPA,
   AGED ABOUT 46 YEARS,
   RESIDING AT KATARIPALYA,
   KOLAR - 563 101.

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Location: HIGH COURT OF KARNATAKA

4. T.V.VENKATACHALA,
D/O LATE VENKATARAMANAPPA,
AGED ABOUT 41 YEARS,
RESIDING AT KATARIPALYA,
KOLAR - 563 101.

…APPELLANTS

(BY SRI. KUMAR M N., ADVOCATE)

AND:

1. SMT. MUNILAKSHMAMMA,
W/O LATE N.RAMACHANDRAPPA,
AGED ABOUT 74 YEARS,
RESIDING AT KATARIPALYA,
KOLAR CITY - 563 101.

2. T.N.R. MURALI,
S/O LATE T.N.RAMACHANDRAPPA,
AGED ABOUT 51 YEARS,
RESIDNG AT KATARIPALYA,
KOLAR CITY - 563 101.

3. SMT. GIRIJA,
W/O LATE SRIDHAR,
AGED ABOUT 46 YEARS,
RESIDING AT PETECHAMANAHALLI,
KOLAR CITY - 563 101.

4. SMT.SHOBHA,
D/O LATE.T.N. VENKATARAMNAPPA,
W/O RAJANNA,
AGED ABOUT 49 YEARS,

RESIDING AT C/O RAMASINGH,
NO.149, GOKUL COLLEDGE ROAD,

VEERANJANEYANAGAR,
KOLAR CITY - 563 101.

5. SMT.T.V. NAVARATHNA,
DAUGHTER OF LATE VENKATARAMANAPPA,
WIFE OF SRIKUMAR,
RESIDNG AT NO.967,
KOTILINGESHWARA NILAYA,
5TH CROSS ROAD,
SWARNA NAGARA,
ROBERTSONPET,
K.G.F. - 563 101.

6. SMT.SHARADAMMA,
DAUGHTER OF LATE LAKSHMAMMA,
GRAND DAUGHTER OF LATE
THOTA NARAYANAPPA AND
LAKSHMAMMA,
WIFE OF VENKATACHALAPATHY,
AGED ABOUT 64 YEARS,
RESIDNG AT KATARIPALYA,
KOLAR POST,
KOLAR - 563 101.

7. SMT.JAGADHAMBA,
DAUGHTER OF LATE LAKSHMAMMA,
GRAND DAUGHTER OF LATE
THOTA NARAYANAPPA AND
LAKSHMAMMA,
WIFE OF LAXMINARAYANAPPA,
AGED ABOUT 62 YEARS,
RESIDING AT THIPPADODDI,
NANGALI POST, MULBAGAL TALUK,
MULBAGAL - 563 131.

8. MR.SUBRAMANI,
SON OF LATE LAKSHMAMMA,
GRANDSON OF
THOTA NARAYANAPPA AND
LAKSHMAMMA,
AGED ABOUT 60 YEARS,
SON OF LAKSHMINARAYANAPPA,
RESIDING AT PETECHAMANAHALLY,
KOLAR POST,
KOLAR - 563 101.

9. SMT.AMARAVATHY,
DAUGHTER OF LATE LAKSHMAMMA,
GRANDDAUGHTER OF
THOTA NARAYANAPPA AND
LAKSHMAMMA,
WIFE OF RAMADASAPPA,
AGED ABOUT 58 YEARS,
RESIDING AT THIPPA DODDI,
NANGALI POST, MULBAGAL TQ.,
MULBAGAL - 563 131.

10. MR.SATHYANARAYANA,
DAUGHTER OF LATE LAKSHMAMMA,
GRANDSON OF THOTA
NARAYANAPPA AND LAKSHMAMMA,
SON OF LAKSHMINARAYANAPPA,
AGED ABOUT 56 YEARS,
RESIDING AT PETECHAMANAHALLI,
KOLAR POST,
KOLAR - 563 101.

11. SMT.GIRIJA,
DAUGHTER OF LATE LAKSHMAMMA,
GRANDDAUGHTER OF THOTA

NARAYANAPPA AND LAKSHMAMMA,
WIFE OF SRIDHAR,
AGED ABOUT 54 YEARS,
RESIDING AT PETECHAMANAHALLI,
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12. SMT.SUMA,
DAUGHTER OF LATE LAKSHMAMMA,
GRAND DAUGHTER OF THOTA
NARAYANAPPA AND LAKSHMAMMA,
WIFE OF RAVINDRAKUMAR,
AGED ABOUT 52 YEARS,
RESIDING AT MALLAMPALLY,
PARANDAHALLY POST,
BANGARPET TQ.,
KGF - 563 122.

13. SMT.PUSHPA,
DAUGHTER OF LATE LAKSHMAMMA,
GRANDDAUGHTER OF THOTA
NARAYANAPPA AND LAKSHMAMMA,
WIFE OF CHALAPATHY,
AGED ABOUT 50 YEARS,
RESIDING AT MALLANDAHALLY,
HARATI POST,
KOLAR TALUK,
KOLAR - 563 101.

14. SMT.VENKATAMMA,
DAUGHTER OF LATE TOTA
NARAYANAPPA AND LAKSHMAMMA,
WIFE OF LATE DASAPPA,
AGED ABOUT 70 YEARS,
RESIDING AT PATNA VILLAGE,

CHAMARA HALLI POST,
KOLAR TALUK - 563 101.

15. SMT.SARASAMMA,
DAUGHTER OF LATE
TOTA NARAYANAPPA AND LAKSHMAMMA,
WIFE OF ASWATH NARAYANA,
AGED ABOUT 60 YEARS,
RESIDING AT BALAGIGARA BEEDI,
KATARIPALYA,
KOLAR - 563 101.

…RESPONDENTS

(BY SRI. B.V. ANANDA, ADVOCATE FOR C/R1 TO R3;
SRI.P.N.HARISH, ADVOCATE FOR R4;
SRI.MANJUNATH NAYAK, ADVOCATE FOR R5 TO 15)

THIS RSA IS FILED UNDER SEC.100 R/W SEC.103(a) & (b) AND ORDER XLII OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 28.04.2015 PASSED IN R.A. NO.37/2014 ON THE FILE OF THE II ADDL. DISTRICT AND SESSIONS JUDGE, KOLAR, ALLOWING THE APPEAL AND PARTLY SETTING ASIDE THE JUDGMENT AND DECREE DATED 21.12.2013 PASSED IN O.S NO.313/2009 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM., KOLAR.

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…RESPONDENTS

(BY SRI. P.N.HARISH, ADVOCATE FOR R1;
SRI.MANJUNATH NAYAK, ADVOCATE FOR R2 AND R6
TO R15; SRI. B.V. ANANDA, ADVOCATE FOR R3 TO R5)

THIS RSA IS FILED UNDER SEC.100 R/W SEC.103(a) & (b) AND ORDER XLII OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 28.04.2015 PASSED IN R.A. NO.37/2014 ON THE FILE OF THE II ADDL. DISTRICT JUDGE, KOLAR, DISMISSING THE APPEAL AND PARTLY SETTING ASIDE THE JUDGMENT AND DECREE DATED 21.12.2013 PASSED IN O.S

NO.313/2009 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM., KOLAR.

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

CORAM: **HON'BLE MR. JUSTICE E.S.INDIRESH**

ORAL JUDGMENT

These appeals are filed by the defendant Nos. 1,2,4 and 5 challenging the judgment and decree dated 28.04.2015 in RA.No.37/2014 and RA.No.38/2014 on the file of II Additional District Judge, Kolar, dismissing R.A.No.37/2014 and allowing R.A.No.38/2014 arising out of the Judgment and Decree dated 21.12.2013 in O.S.No.313/2009 on the file of the Principal Senior Civil Judge and CJM, Kolar, decreeing the suit of the plaintiffs.

2. The relevant facts for adjudication of these appeals are that, Totada Narayanappa, the original propositor, died leaving behind, five children namely, T.N. Venkataramanappa, Lakshmamma, T.N. Ramachandrappa, Smt.Venkatamma and Smt. Sarasamma.

3. It is the case of the plaintiff that, the plaintiff is the daughter of T.N. Venkataramanappa. It is stated that, the suit schedule properties are the joint family properties of the Totada Narayanappa and as such, the plaintiff filed a suit in O.S.No.313/2009 seeking relief of partition and separate possession.

4. On service of notice, the defendants entered appearance and filed detailed written statement and took up a specific contention that, even prior to the birth of the plaintiff, there were litigation between the mother of the Totada Narayanappa and Totada Narayanappa in O.S.No.119/1944-45 on the file of the learned Munsif, at Kolar as well as certain other litigations and therefore defendants sought for the dismissal of the suit.

5. On the basis of the pleadings on record, the Trial Court framed the following issues.

"(1) Whether the plaintiff proves that herself and defendants are members of Hindu undivided family ?

(2) Whether the plaintiff further proves that suit schedule properties are Hindu undivided joint family properties ?

(3) Whether the plaintiff further proves that she is entitled for 1/6th share in half share of the suit schedule properties by metes and bounds ?

(4) Whether the plaintiff is entitled for the relief claimed as alleged in the plaint ?

(5) What order or decree ?"

6. The Trial Court by its judgment and Decree dated 21.12.2013 decreed the suit holding that the plaintiff is entitled for 1/12th share in the suit schedule property. Being aggrieved by the same, defendants have preferred R.A.Nos.37/2014 and 38/2014 before the First Appellate Court and the said appeals were contested by the respondents herein. The First Appellate Court vide judgment and decree dated 28.04.2015 dismissed R.A.No.37/2014 and allowed R.A.No.38/2014 and accordingly partly decreed the suit in O.S.No.313/2009. Hence, these appeals are preferred by the defendant Nos.1,2,4 and 5.

7. This Court vide order dated 17.03.2025 formulated the following substantial questions of law:

> *"1) Whether daughters/legal heirs claiming under propositus Totada Narayanappa are necessary and proper parties to suit for partition in order to finally adjudicate issue of partition of suit schedule property?*
>
> *2) Whether both Courts were justified in not allotting share to daughter/legal representatives claiming under Totada Narayanappa or in excluding their share from suit schedule property for partition in face of settled law, there shall not be partial partition?"*

8. Heard Sri Kumar M.N., learned counsel for the appellants and Sri B.V. Ananda, learned counsel for respondent Nos. 1 to 3, Sri. P.N. Harish, learned counsel for the respondent No.4 and Sir. Manjunath Nayak, learned counsel for respondent Nos. 5 to 15.

9. Sri Kumar M.N., learned counsel appearing for the appellants contended that at the time of filing of the suit, the daughters of the late Totada Narayanappa were not parties to the suit and also the siblings of the plaintiff were not made

parties in the suit. Therefore, learned counsel sought for allowing the appeals.

10. Per contra, Sri. B.V. Ananda, learned counsel for respondent Nos. 1 to 3 and Sri. P.N. Harish, learned counsel appearing for the respondents No. 4 sought to justify the impugned judgment and decree.

11. In the light of the submission made by the learned counsel appearing for the parties, as per the contention of the appellants herein that, Totada Narayanappa died leaving behind five children particularly, the three daughters of Totada Narayanappa, who were not parties in the suit, and therefore, I am of the view that, the modification of the shares has to be made insofar as the properties that belong to the Totada Narayanappa. In that view of the matter, without going to the merits of the case, I am of the view that, the matter requires to be re-considered by the Trial court afresh by considering the share of the children of Totada Narayanappa and thereafter the suit schedule properties requires to be devolved among the respective children of the legal heirs of the Totada Narayanappa.

12. In that view of the matter, the substantial questions of law framed above, favours remitting the matter to the Trial court as to determine the shares of the parties, in the light of the observations made above. It is also to be noted that the appellants herein have impleaded the siblings of the plaintiffs as per I.A.No.2/2015

13. In that view of the matter, as this Court has allowed I.A.No.2/2015 vide order dated 09.09.2024 and impleading applicants therein have been arraigned as respondents No.6 to 15 before this Court, I am of the view that there is no impediment for the Trial court to consider the case afresh insofar as devolution of the properties are concerned.

14. It is also made clear that the appellants herein have filed I.A.No.1/2015 under Order 41 Rule 27 of C.P.C. and have filed additional documents. It is also made clear that additional documents produced by the appellants herein in I.A.No.1 of 2015 in RSA No.1278/2015, I.A.No.1/2015 and I.A.No.2/2024 in RSA No.1277/2015 be considered by the Trial Court while disposing of the appeals.

15. Accordingly, I pass the following:

ORDER

i) The appeals are allowed

ii) The Judgment and decree dated 21.12.2012 in O.S.No.313/2009 on the file of Prl. Senior Civil Judge and CJM, Kolar is hereby set aside.

iii) The judgment and decree dated 28.04.2015 in R.A.No. 37 and 38 of 2014 on the file of II Addl. District Judge, Kolar are hereby set aside.

iv) Suit is remitted to the Trial Court for considering the same afresh with regard to the shares of the parties.

All contentions of the parties are kept open.

SD/-
(E.S.INDIRESH)
JUDGE

HR
List No.: 2 Sl No.: 44