HC-KAR

NC: 2026:KHC:63604
RSA No. 535 of 2016

CNR: KAHC010526372016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 535 OF 2016 (PAR)

BETWEEN:

1. NAGAMMA
   D/O RANGAPPA,
   AGED ABOUT 61 YEARS,

2. NARAMMA
   D/O RANAPPA,
   AGED ABOUT 59 YEARS,

3. SHARADAMMA
   D/O RAGNAPPA,
   AGED ABOUT 56 YEARS,

4. SIDDAMMA
   D/O RAGNAPPA,
   AGED ABOUT 51 YEARS,

5. SAVITHRAMMA
   D/O RAGNAPPA,
   AGED ABOUT 51 YEARS,

   ALL ARE AGRICULTURIST
   R/O DODDALAGHATTA VILALGE,
   CHITRADURGA TALUK-577 501.

...APPELLANTS

(BY SRI. R. SHASHIDHARA, ADVOCATE)

AND:

1. OMKARAPPA
   DEAD BY LRS.

1(A) SUMITHRAMMA
   W/O LATE ONKARAPPA
   AGED ABOUT 65 YEARS.

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Location: High Court of Karnataka

1(B) MEENAKSHAMMA
D/O LATE ONKARAPPA
AGED ABOUT 45 YEARS

1(C) NAGARAJAPPA R.O
S/O LATE ONKARAPPA
AGED ABOUT 42 YEARS.

RESPONDENTS NO.1 (A) TO 1(C) ARE
R/AT HALAGATTA VILLAGE
HEREGUNTANURU HOBLI
CHITRADURGA TALUK
CHITRADURGA DISTRICT – 577 501.

2. BASAVARAJAPPA
S/O RANGAPPA,
AGED ABOUT 66 YEARS,
AGRICULTURIST,
R/O DODDALAGHATTA VILALGE,
CHITRADURGA TALUK-577 501.

…RESPONDENTS

(BY SRI. M. GURUMURTHY, ADVOCATE FOR R-1(A TO C)
R-2 IS SERVED & UNREPRESENTED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 10.12.2015 PASSED IN RA.NO.13/2014 ON THE FILE OF THE II ADDL. SENIOR CIVIL JUDGE AND JMFC, CHITRADURGA, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 03.01.2014 PASSED IN OS.NO.52/2010 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC., CHITRADURGA.

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

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

ORAL JUDGMENT

The appellants were the plaintiffs in O.S.No.52/2010 filed by them against the respondents-defendants for partition and separate possession of their alleged share in the suit schedule immovable properties and other reliefs. According to the plaintiffs, they were the daughters of late Rangappa through his second wife Nanjamma, while defendant No.1 was the son of Rangappa through his first wife Naramma and defendant No.2 was the son of Rangappa through his second wife Nanjamma. It is not in dispute that defendant No.2 is the brother of the plaintiffs, while the Defendant No.1 is the step brother of the plaintiffs and defendant No.2. The plaintiffs instituted the aforesaid suit seeking partition and separate possession of their alleged share in the suit schedule immovable properties comprising of seven items of immovable properties. The said suit was contested by respondent No.1 - defendant No.1, who admitted the relationship between the parties but contended that Item Nos.2, 5 and 6 were his separate and self acquired properties, over which neither the plaintiffs nor defendant No.2 had any manner of right, title, interest, possession or share

over the said properties. Defendant No.1 also contended that there was a prior oral partition between the parties by virtue of which the plaintiffs would not be entitled to any share over any of the suit schedule properties and the suit was liable to be dismissed.

2. Plaintiff No.4 got examined herself as PW.1 and documentary evidence at Exs.P-1 to 11 were marked, while defendant No.1 got himself examined as DW-1 and documentary evidence at Exs.D-1 to 11 were marked.

3. After hearing the parties, the Trial Court decreed the suit partly by declaring that the plaintiffs are entitled to their legitimate share in Item No.1 - Survey No.90/5, Item Nos.2, 3, 4 and 7 of the Suit Schedule Properties. However, the Trial Court dismissed the suit of the plaintiff in respect of Sy.No.90/4 in Item No.2 as well as Item Nos.5 and 6 of the suit schedule properties. The plaintiffs, who are the appellants before this Court accepted the judgment and decree of the Trial Court insofar as it related to dismissing their suit in respect of Survey No.90/4 in Item No.2 and Item Nos.5 and 6 of the suit schedule properties and did not prefer

any further appeal. The said Judgment and Decree of the Trial Court is as under:

> *" That, the plaintiffs have filed this suit for partition and separate possession of the suit schedule properties to the extent of their 5/7 the share in the same. The suit schedule properties consist of both agricultural and non-agricultural lands.*
>
> *2. The facts leading to the filing of this suit are as under:*
>
> *The plaintiffs in the plaint have specifically averred that, one Rangappa S/o Giriyappa was the propositus of the family of the plaintiffs and defendants. Rangappa had 2 wives by name Naramma and Nanjamma. The plaintiff submits that after the death of Naramma first wife of Rangappa, he has taken Nanjamma as his second wife. The plaintiff submits that, the defendant no.1 is the son of Naramma from propositus Rangappa. The plaintiffs further submit that, the plaintiffs are the daughters of Rangappa from his second wife Nanjamma and second defendant is the son of Rangappa from his second wife Nanjamma. It is submitted by the plaintiffs that, the suit schedule properties are the joint family and ancestral properties of plaintiffs and defendants. The plaintiffs submit that, Rangappa, his 2 wives Naramma and Nanjamma died long back and the plaintiffs are in joint possession and enjoyment of the suit schedule property as joint family members. It is the specific case of the plaintiff that, in view of amendment to section 6 of Hindu Succession Act, they are having equal share in the suit schedule property. It is*

submitted by the plaintiffs that, there was no partition in the joint family, but, the parties are living separately as there was dispute between female members of the family. It is specifically averred in the plaint that after the death of Rangappa, the defendants without knowledge of the plaintiffs got entered their names in the RTC pertaining to the suit schedule property separately. It is submitted by the plaintiffs that, the defendants have not given any share in the income of the joint family properties to the plaintiffs. Therefore, about 2 months prior to the filing of this suit, the plaintiffs have demanded their 5/7 th share in the suit schedule property. In spite of the advice made by the village elders and relatives also, the defendants have refused to divide the suit schedule property in order to give legitimate share to the plaintiffs. Therefore, the plaintiffs having left no alternative way have filed this suit for partition and separate possession of the suit schedule property to the extent of their 5/7th share in them.

3. In response to the summons issued, the defendants herein have appeared before this court. The defendant no.2 though given opportunities has not filed the written statement. The defendant no.1 has filed written statement. The gist of the written statement filed by the defendant no.1 is as under:

The defendant no.1 in the written statement has admitted the relationship of the parties to the suit as stated in the plaint. The defendant no.1 has not disputed that, the mother of the plaintiff is the wife of his father Rangappa and

Rangappa has married Nanjamma mother of the plaintiffs after the death of his first wife Naramma. The defendant no.1 however, has disputed that, all the suit schedule properties are the joint family properties and ancestral properties of plaintiffs and defendant no.1 and 2. It is the specific case of the defendant no.1 that, suit item no.1 and 3 properties are the properties inherited by the plaintiffs and defendant no.1 and 2 through their father Rangappa. The defendant no.1 contended that, suit item no.2 property bearing Sy.No. 90/4 area 2 acres 27 guntas is the self acquired property of defendant no.1 as he has purchased the same as per registered sale deed dated: 18.01.1990. It is further submitted by the defendant no.1 that, suit item no.5 and 6 properties are also the self acquired properties of defendant no.1 as he has acquired the same through gift deed dated: 20.02.1957. The defendant no.1 has further contended that, the defendant no.1 and 2 have divided all the suit schedule properties orally and they are in respective possession of the properties allotted to them. It is the contention of the defendant no.1 that, the plaintiffs are not having any share in the property allotted to the defendant no.1 and they can claim partition in the properties allotted to the defendant no.2, who is representing the branch of second wife of his father Rangappa. This being the case, the defendant no.1 submitted that, the plaintiffs are not having any share in the suit schedule properties which are allotted to the share of defendant no.1 in the family partition & suit item no.2,5 and 6 properties which are self acquired property of the defendant no.1 On these grounds, the

defendant no.1 contended that, the suit of the plaintiffs is not maintainable and liable to be dismissed with cost.

4. By taking note of pleadings of the parties, my learned predecessor in office has framed the following issues:-

ISSUES

(1). Whether the plaintiffs proves that suit schedule properties are the Hindu Undivided Joint Family properties of plaintiffs and the defendants?

(2). Whether the defendant no.1 proves that suit schedule item no.2 is his self acquired property and suit schedule item no.5 and 6 are acquired by him by way of gift?

(3). Whether the defendant no.1 proves that defendants have partitioned their ancestral roperties?

(4). Whether the plaintiffs proves that they are entitled for 5/7 th share in all the suit schedule property?

(5). Whether the plaintiffs are entitled for the relief sought?

(6). What order or decree?

5. That, in order to prove the burden cast upon the plaintiff to prove the above said issues the plaintiff no.4 got herself examined as PW-1 and she has produced 11 documents. Ex.P1 to P9: RTC extracts, Ex.P10 & 11: DCB register extract. The defendant no.1 in order to disprove the

case of the plaintiffs and also to prove the contention taken by him in the written statement got himself examined as DW-1. DW-1/defendant no.1 has produced 11 documents. Ex.D1: C/c of Gift deed dated: 20.02.1957, Ex.D2: Sale deed dated: 18.01.1979, Ex.D3: M.R.No.95-91-92, Ex.D4 to D11: RTC extracts. Parties to the suit have not adduced any other further oral evidence.

6. Heard advocate appearing for the plaintiffs and defendant no.1. Perused the oral and documentary evidence adduced by the parties and my findings on the above issues are as below:

Issue no. 1 : Partly in the Affirmative
Issue no. 2 : Affirmative
Issue no. 3 : Negative
Issue no. 4 : Plaintiffs are entitled for 1/7th share in the suit property
Issue no. 5 : The plaintiffs are entitled for the relief of partition & Separate possession as sought with respect to item No.1,3,4 & 7 properties
Issue no. 6 : As per final order for the following

REASONS

ISSUE No.1 & 2 :

1. Whether the plaintiffs proves that suit schedule properties are the Hindu Undivided Joint Family properties of plaintiffs and the defendants?

2. Whether the defendant no.1 proves that suit schedule item no.2 is his self acquired property and suit schedule item no.5 and 6 are acquired by him by way of gift?

7. These two issues are with respect to nature of the suit schedule property and hence, in order to avoid repetition of facts and evidence these two issues are considered together.

8. That, the present suit is filed by the plaintiffs stating that, the suit schedule properties are the ancestral and joint family properties and they are having 5/7 th share in the same. The plaintiffs claimed that, as the defendant no.1 and 2 have refused to divide the suit schedule property, they are before this court seeking the relief of partition and separate possession of the suit schedule property.

9. That, the first defendant in this suit is contending that, suit item no.5 and 6 and item no.2 i.e Sy.No.90/4 is his self acquired property as the same is acquired by him through gift deed dated: 02.02.1957 and sale deed dated: 18.01.1979. The defendant no.1 further contended that, there is an oral partition between defendants with respect to other joint family properties mentioned in the suit and as such, the plaintiffs are not having share in the property allotted to the defendant no.1, but, they can claim share only in the property allotted to the second defendant. The parties to the suit have adduced oral and documentary evidence and the documents produced by the parties were considered.

10. With this oral and documentary evidence adduced by the parties to the suit, I have considered whether all the properties mentioned in the suit are the joint family

properties of plaintiffs and defendants or suit item no.2 (Sy.No.90/4) and suit item no.5 and 6 are the separate and self acquired property of defendant no.1. In this suit, there is no dispute with respect to relationship of the parties. The defendant no.1 has categorically admitted that, the plaintiffs are his sisters through his step mother Nanjamma. It is also admitted that, Nanjamma is the second wife of Rangappa who is the father of defendant no.1 herein. Rangappa had taken Nanjamma as his second wife after death of his first wife Naramma. So, the plaintiffs are the sisters of defendant no.1 and 2 herein. There is no dispute with respect to nature of item no.1, Sy.No.90/5 in item no.2, 3,4 and 7 properties mentioned in the suit. The defendant no.1 has admitted that, item no.1 and 3 properties were inherited by them through their father Rangappa. The acquisition of Sy.No.90/5 and Sy.No.28/6A is not stated either by the plaintiffs or by defendant no.1. But, these two properties are admitted to be joint family properties. The defendant no.1 contended that, there is an oral partition with respect to joint family properties i.e., with respect to item no.1,3, 4 and 7 properties. As per section 6 of Hindu Succession (Amended) Act 2005, the partition which is recognized by law are the partition by the court decree or registered document. In this suit, as per contention of the defendant no.1, the partition is not effected by registered document or by decree of the court. So, the partition alleged to have been effected between defendant no.1 and 2 is not valid under section Hindu Succession (Amended) Act 2005 to non-suit the daughters who are claiming share in the joint family properties. So, the

contention of the defendant no.1 is that, as there is oral partition in the family, the plaintiffs cannot claim share in the properties allotted to defendant no.1 cannot be considered as the oral partition is not recognized under section 6 of Hindu Succession Act to non-suit the daughters who are claiming share in the joint family properties as co-parceners. So, the defence of the defendant no.1 that, the joint family properties i.e., item no.1, 3,4 and 7 properties were divided between defendant no.2 and himself and as such, the plaintiffs cannot claim property allotted to defendant no.1 cannot be considered and is not having any force. As per admission given by the defendant no.1 in the written statement and as oral partition cannot be considered as per section 6 of Hindu Succession Act, in my considered opinion, item no.1,3, 4 and 7 properties are still joint family properties and joint family consisting of plaintiffs and defendant no.1 and 2.

11. I have also considered the contention of the defendant no.1 that, suit item no.2 i.e., Sy.No.90/4 are 2 acres 27 guntas is his self acquired property as he has purchased the same as per sale deed dated: 18.01.1979. It is also contention of the defendant no.1 that, suit item no.5 and 6 properties are his self acquired property as same is gifted to him as per gift deed dated: 20.02.1957. It is argued on behalf of the defendant no.1 that, the property acquired by defendant no.1 through gift deed dated: 20.02.1957 is his self acquired and separate property and cannot be considered as joint family property. Per contra, the Advocate appearing for the plaintiffs has argued that, the suit item no.5 and 6 properties

which were gifted in favour of defendant no.1 is also joint family property. The counsel for plaintiff contended that, gift is made by grand father of defendant no.1 by name Giriyappa and he has no right to gift the joint family properties in favour of defendant no.1. Therefore, the plaintiffs contended that, the suit item no.5 and 6 properties are also joint family properties of plaintiffs and defendants.

12. That, I have perused the gift deed dated: 20.02.1957 marked at Ex.D1 in detail. It is clear from the recitals of the gift deed dated: 20.02.1957 that, Giriyappa S/o Hanumappa is the grand father of defendant no.1. It is recited in the gift deed dated: 20.02.1957 that, there was partition between Giriyappa, his son Rangappa (father of plaintiffs and defendants) and his other sons with respect to joint family properties and the property gifted in favour of defendant no.1 is the property allotted to the share of Giriyappa in the family partition. As property gifted is allotted to Giriyappa in the partition between himself and his sons, the same will be his separate property. Giriyappa had absolute right over the property gifted as per gift deed dated: 20.02.1957. Giriyappa out of love and affection towards defendant no.1 has gifted item no.5 and 6 properties mentioned in the plaint in favour of defendant no.1. I have perused the gift deed in detail. Gift deed dated: 20.02.1957 is duly executed by the donor Giriyappa S/o Hanumappa and the same is registered in the Office of the Sub-Registrar, Chitradurga. The gift deed dated: 20.02.1957 is attested by 2 attesting witnesses as required under law and the same is legal and valid in all respect. As

per gift deed dated: 20.02.1957, Giriyappa S/o Hanumappa has made valid declaration that, he is bequeathing suit item no.5 and 6 properties in favour of defendant no.1 and gift made by Giriyappa is also accepted by defendant no.1 when, he had attained majority. As per gift deed dated: 20.02.1957, name of defendant no.1 is appeared in the RTC pertaining to the suit item no.5 and 6 properties which shows that gift is accepted & defendant No.1 is in possession and enjoyment of the item No.5 & 6 properties. Rangappa father of plaintiff and defendants who is one of the heirs of Giriyappa the donor has not questioned the gift deed during his life time. Till today, the gift deed dated: 20.02.1957 is not challenged. As suit item no.5 and 6 properties are separate properties of Giriyappa which is allotted to him in the family partition, in my considered opinion, Giriyappa had absolute right to transfer the same in favour of defendant no.1 and in view of gift deed dated: 20.02.1957 defendant no.1 has acquired valid title over the suit item no.5 and 6 properties. The property acquired by way of gift is a separate property. As, the defendant no.1 has acquired property under gift deed dated: 20.02.1957, it cannot be held that, the same is joint family and ancestral property of plaintiffs and defendant no.1 and 2. There is no pleading of blending to the effect that, the suit item no.5 and 6 properties are thrown in common stock of joint family. So, in my considered opinion, suit item no.5 and 6 properties being gifted in favour of defendant no.1 is his separate property.

13. That, I have also considered the contention of defendant no.1 that, suit item no.2 Sy.No.90/4 area 2 acres

27 guntas is his self acquired property. The defendant no.1 has produced sale deed dated: 18.01.1979 at Ex.D2. I have perused the sale deed dated: 18.01.1979 in detail. As per sale deed dated: 18.01.1979 the defendant no.1 has purchased the Sy.No.90/4 area 2 acres 27 guntas from one Bharathamma W/o K.S. Narappa for a consideration amount of `.1,500/-. It is recited in the sale deed that, the purchaser has paid entire consideration amount and purchaser defendant No.1 is put in possession of the properties with specific boundaries. The plaintiffs are claiming that, the suit properties originally joint family properties and it was sold to Bharatamma as a security to loan transaction and thereafter, the defendant no.1 has purchased the suit property as joint family manager. The plaintiffs in the suit have not averred that, the defendant no.1 is the joint family manager. It is also not pleaded that, when suit item no.2 property was purchased by defendant no.1, whether Rangappa father of defendant no.1 was alive or not. If Rangappa was alive then he being eldest member of the joint family will be Karta. The plaintiffs have also not adduced any evidence to the effect that, in fact, defendant no.1 has purchased item no.2 Sy.No.90/4 for and on behalf of the joint family of plaintiffs and defendants. It is admitted by the defendant no.1 that, he and defendant no.2 have purchased the property from Bharathamma. However, in the sale deed, it is clear that, the defendant no.1 is the purchaser under sale deed dated: 18.01.1979. It is elicited in the cross examination of DW-1/Omkarappa that, he has purchased Sy.No.90/4, 90/5 and 28/6A from Bharathamma. However, sale deed dated: 18.01.1979 makes it clear that,

defendant no.1 has purchased only Sy.No.90/4. It is clear from the RTC pertaining to Sy.No.90/5 and Sy.No.28/6A that, the said properties are purchased by defendant no.2. So, the admissions given by the defendant no.1 that, he and defendant no.2 have purchased the property Sy.No.90/4 and 90/5 and 28/6A is correct but, they have purchased these lands separately. Now the question is whether, for the purpose of purchasing these properties, joint family income is utilized or not. As discussed above, suit item no.5 and 6 agricultural lands are separate properties of defendant no.1. The defendant no.1 had income from the said two properties. So, it cannot be held that, consideration amount is in fact is paid from the income of the joint family. There is every possibility that, the sale consideration amount is paid by the defendant no.1 out of his separate earnings from item no.5 and 6 properties. There is no evidence to show that income from joint family properties were available in the hands of defendant No.1. This being the case, in my opinion, in the absence of oral and documentary evidence and pleadings with respect to acquisition of item no.2 Sy.No.90/4 that, the defendant No.1 has purchased suit item no.2 property on behalf of joint family, said property cannot be considered as the joint family property. The defendant no.1 being purchaser of Sy.No.90/4 is the owner of the same and it is his separate property. Apart from this, as per M.R. No. 95/91-92 marked at Ex.D3 joint family properties were entered in the name of defendant no.1 and 2 separately. If suit item no.2 Sy.No.90/4 is the joint family property then, in Ex.D3, there would have been mentioned with respect to suit item no.2 Sy.No.90/4.

However, in Ex.D3 through which, name of defendant no.1 and 2 are entered in the RTC pertaining to the suit item no.1 and 3 property, there is no mentioning of Sy.No.90/4 or item no.5 and 6 property. This being the case, in my considered opinion, suit item no.2 Sy.No.90/4 and item no.5 and 6 are separate property of defendant no.1 and remaining properties are the joint family properties of plaintiff and defendant no.1 and 2. ***Accordingly, I answer issue no.1 partly in the Affirmative and issue no.2 in the Affirmative.***

Issue No.3:

3. Whether the defendant no.1 proves that defendants have partitioned their ancestral properties?

14. This issue is framed with respect to oral partition. The defendant no.1 contended that, the joint family properties were divided orally and he has been allotted property in the joint family properties i.e., suit item no.1,3,4 and 7 properties. As discussed above, under section 6 of Hindu Succession Act, oral partition is not recognized. So, defence of oral partition to non-suit the daughters who are claiming share in the joint family property as co-parceners is not permissible in law. Apart from this the defendant no.1 has not given details when oral partition took place, which are the properties allotted to the share of defendant no.1 and 2 respectively, the boundaries of the properties allotted and who are the persons present and witnessed the oral partition. No oral evidence is adduced by the defendant no.1 to prove the aspect of oral partition. This being the case, in my opinion, it cannot be held that, defendant no.1 has proved oral

partition as contended by him in the written statement. Accordingly, I answer issue no.3 in the Negative and against the defendant no.1

ISSUE No. 4:

4. Whether plaintiffs proves that they are entitled for 5/7th share in all the suit schedule property?

15. This issue is framed regarding the share of the plaintiffs in the suit schedule properties. It is not in dispute that, the plaintiffs are sisters of defendants. The plaintiff's mother by name Nanjamma is married to Rangappa after death of his first wife Naramma. So, the plaintiffs and defendant no.1 and 2 have constituted Hindu Mithakshara joint family. As per section 6 of Hindu Succession (Amendment) Act 2005, plaintiff no.1 to 5 are co-parceners. The Rangappa who is the owner of suit item no.1,3,4 and 7 properties died leaving behind him plaintiffs and defendant no.1 and 2 as his legal heirs. This being the case, in my opinion, the plaintiffs being daughters of deceased Rangappa are having equal share along with defendant no.1 and 2. So, the plaintiffs are having 1/7th share each in the suit schedule property.

16. That, the defendant no.1 and 2 are also having 1/7 th share each in suit item no.1,3,4 and 7 properties. However, while answering issue no.2 I have concluded that, Sy.No.90/4 in suit item no.2 and item no.5 and 6 properties are self acquired properties of defendant no.1. Hence, the

plaintiffs or defendant no.2 is having share in these properties. With this observation, I conclude that, the plaintiffs are having 1/7th share each in suit item no.1, Sy.No.90/5 in item No.2, 3,4 and 7 only.

Issue no.5:

Whether the plaintiffs are entitled for the relies sought?

17. This issue is framed with respect to entitlement of relief claimed by the plaintiffs. While answering issue no.1 to 4, I have concluded that, suit item no.1,2-Sy.No.90/5, 3,4 and 7 properties are joint family property of plaintiffs and defendant no.1 and 2. I have also concluded while answering issue no.3 that, the alleged oral partition is not proved and cannot be considered to non-suit the plaintiffs. This being the case, as plaintiffs have demanded their share in the suit schedule property and defendants have not divided the suit properties to give share to the plaintiffs. So, it is necessary to award decree for partition and separate possession of the suit schedule properties to the extent of plaintiffs 1/7 th share in the suit item no.1,2-Sy.No.90/5, 3,4 and 7 properties. There is no impediment under any other law for the time being in force to grant the relief in favour of the plaintiffs. However, the plaintiffs are not entitled for any share in the suit item no.2-Sy.No.90/4, Item No.5 and 6 properties which are exclusive property of defendant no.1. Hence, I answer this issue accordingly.

*18. **Issue no.6**: In view of my above discussion and conclusion arrived at Issue No.1 to 5, the suit of the plaintiff is liable to be decreed in part. Looking in to relationship of the parties i.e., brothers and sisters, in my opinion, awarding of cost in favour of plaintiffs is not necessary. Hence, I proceed to pass the following:*

ORDER

- *The suit of the plaintiffs is decreed in part.*
- *It is ordered and decreed that, the plaintiffs are having 1/7 th share each totally 5/7th share in suit item no.1,2-Sy.No.90/5, Item No. 3,4 and 7 properties mentioned in the schedule of the plaint.*
- *It is further ordered and decreed that, the defendant no.1 and 2 are also having 1/7th share each in suit item no.1, Sy.No.90/5 in item No.2, 3,4 and 7 of the suit schedule properties.*
- *The suit item no.1, Sy.No.90/5 in item No.2, 3, and 4 properties being agricultural land is ordered to be divide by appointing Court Commissioner under section 54 of CPC. Suit item no.7 property being non-agricultural land is ordered to be divided by appointing court commissioner under Order XXVI of CPC.*
- *Suit of plaintiffs with respect to suit item no.2-Sy.No.90/4, item No.5 and 6 are hereby dismissed.*
- *Parties to bear their own cost.*
- *Draw preliminary decree accordingly."*

4. Aggrieved by the Judgment and Decree of the Trial Court, respondent No.1-defendant No.1 preferred an appeal in R.A.No.13/2014, which was partly allowed by the First Appellate Court only to the limited extent of reducing the share of the plaintiffs by declaring that they are entitled to 1/21th share in item Nos.1, 3, 4 and 7 of Survey No.90/5 of item No.2 of the suit schedule property, but confirmed the judgment and decree of the Trial Court in so far as dismissal of the suit of the plaintiffs in respect of item Nos.5 and 6 as well as in respect of Survey No.90/4 in item No.2 of the suit schedule properties.

5. It is also a matter of record and an undisputed fact that the judgment and decree of the First Appellate Court has not been challenged by respondent No.1 before this Court insofar as it related to granting a share in respect of item Nos.1, 3, 4 and 7 and Survey No.90/5 of suit schedule item No.2 of the suit schedule properties. On the other hand, it is only the plaintiffs, who are before this Court and who have agreed to the limited extent of reduction of their share from 1/7th share each in item Nos.1, 3, 4

and 7 and item No.2 in Survey No.90/5 to granting 1/21th share in these properties.

6. In this context, it is pertinent to note that when the matter was pending before the First Appellate Court, the Apex Court in the case of ***Prakash and others Vs. Phulavati and others - (2016) 2 SCC 36,*** came to the conclusion that the amendment to Section 6 of the Hindu Succession Act, which came into force from 1995 was prospective in nature, application and operation and consequently, the plaintiffs would be entitled to only 1/21th share in items No.1, 3, 4, 7 and Survey No.90/5 in item No.2 of the suit schedule properties. It is under these circumstances, that this Court admitted the present appeal to consider the following substantial questions of law in the light of the Judgment of the Apex Court, subsequent judgment of the larger bench of the Apex Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others – (2020) 9 SCC 1***, as hereunder on 31.01.2026:

> "Whether the First Appellate Court was justified in reversing the judgment and decree passed by the Trial Court following of the judgment of the Hon'ble Apex Court in the case of ***Prakash and others Vs. Phulavati***

and others reported in ***AIR 2016 SC 769*** and the said judgment has been partly overruled by the Hon'ble Apex Court, in view of the subsequent judgment of the Hon'ble Apex Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others*** reported in ***AIR (2020) SC 3717***?"

7. Heard learned counsel for the appellants and learned counsel for respondent Nos.1(a) to 1(c) and perused the material on record.

Re. Substantial Question of law:

8. A perusal of the material on record and the aforesaid fact and circumstances will clearly indicate that insofar as rejection of their claim in respect of Item Nos.5 and 6 and Survey No.90/4 in item No.2, the claim of the plaintiff has been negatived and the same has attained finality and become conclusive and binding upon the appellants-plaintiffs. It is therefore clear that the only question that arises for consideration is as to whether the judgment and decree of the First Appellate Court declaring that the plaintiff are entitled to 1/21st share in item Nos.1, 3, 4, 7 and in Sy.No.90/5 of item No.2 is correct and proper. As stated *supra*, in the

subsequent judgment by the larger bench of the Apex Court in ***Vineeta Sharma's case supra***, the Apex Court held as under:

> *"129. Resultantly, we answer the reference as under:*
>
> *(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.*
>
> *(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.*
>
> *(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.*
>
> *(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of*

such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

130. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B. Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits."

9. As can be seen from the aforesaid judgment of the Apex Court, Rangappa had five daughters through his second wife Nanjamma and one son, viz., Basavarajappa (defendant No.2), while defendant No.1 is Omkarappa, who is the son of Rangappa through his first wife Naramma. It is therefore clear that by virtue of the judgment of the Apex Court in *Vineeta Sharma's case (supra)*, the plaintiffs and defendant Nos.1 and 2 would have to be declared to be entitled to equal 1/7th share each in item Nos.1, 3, 4, and 7 and Sy.No.90/5 in item No.2 of the suit schedule property by setting aside the judgment and decree of the First Appellate Court and restoring the judgment and decree of the Trial Court.

Accordingly, substantial question of law accordingly is answered in favour of the appellants.

10. In the result, I pass the following:

ORDER

i) The appeal is **allowed**.

ii) The judgment and decree dated 10.12.2015 passed in R.A.No.13/2014 by the First Appellate Court only insofar as it relates to declaring that the defendants are entitled to 1/21th share in Item Nos.1, 3, 4 7 and in Sy.No.90/5 of suit schedule item No.2 is hereby set aside.

iii) The judgment and decree dated 03.01.2014 passed in O.S.No.52/2010 by the Trial Court in respect of Item Nos.1, 3, 4 and 7 and Sy.No.90/5 in item No.2 of suit schedule properties is hereby restored.

iv) The plaintiffs and defendant Nos.1 and 2 are declared to be entitled to 1/7th share each in item Nos.1, 3, 4 and 7 and Sy.No.90/5 in item No.2 of the suit schedule properties.

v) The suit of the plaintiffs in respect of item Nos.5 and 6 and Sy.No.90/4 of item No.2 is hereby dismissed.

vi) Draw up decree accordingly.

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

BMC: List No.: 1 Sl No.: 35