

KABG010042282020



**IN THE COURT OF PRL. DISTRICT & SESSIONS JUDGE,
AT BELAGAVI**

DATED THIS THE 01st DAY OF JULY, 2026

PRESENT : **SHRI MANJUNATH NAYAK**
B.A.L. LL.B.
Prl. District & Sessions Judge
Belagavi.

REGULAR APPEAL No.99/2020

**APPELLANT/
PLAINTIFF:**

Mr. Atharva Vinayak Haibatti,
Age: 18 years, Occ: Student,
R/o: Jawan's Home, B.No.2,
Opp: B.M.Kankanwadi College,
Anandwadi, Shahapur,
Belagavi.

(By Sri B.A. Danawade, Advocate)

Vs.

**RESPONDENTS
DEFENDANTS:**

1. Sri Vinayak S/o Marutirao Haibatti,
Age: 44 years, Occ: Business,
R/o: 1664, Alwan Galli,
Shahapur, Belagavi.
2. Sri Marutirao S/o Balaram Haibatti,
Age: 70 years, Occ: Business,
R/o: Mangal Metal Works,
Goaves, Belagavi.
3. Sri Nagrendra S/o Balaram Haibatti,
Age: 75 years, Occu: Business,
R/o: Parvati, Besides Kagal Hospital,

Maratha Colony,
Tilakwadi, Belagavi-590006.

4. Sri Manjeet S/o Nagendra Haibatti,
Age: 45 years, Occ: Business,
R/o: Parvati, Besides Kagal Hospital,
Maratha Colony,
Tilakwadi, Belagavi-590006.

(R-1 by Sri G.R.Soner, Advocate)

(R-2 by Sri M.V.Maggavi, Advocate)

(R-3 and 4 by Sri S.R. Kawali, Advocate)

**PROPOSED
DEFENDANTS:**

5. Mr. Siddharth S/o Vinayak Haibatti,
Age: 20 years, Occ: Student,
R/o: Mangal Metal Works,
Basaveshawar Circle, Goaves, Belagavi.
6. Mrs. Gunavanti W/o Marutirao Haibatti,
Age: 65 years, Occ: Nil,
R/o: Mangal Metal Works,
Basaveshawar Circle, Goaves, Belagavi.
7. Mrs. Sangeeta W/o Harasharaj Punaji,
Age: 46 years, Occ: Household work,
R/o: H.No.M-2, Teju Housing Board Colony,
Porvorim, Goa.
8. Mrs. Suchita W/o Sandeep Patil,
Age: 44 years, Occ: Household work,
R/o: C/o: Bapusaheb Patil,
Opp: Vasant Dada Patil Sugar Factory,
Sangali.
9. Mrs. Ranjeeta w/o Sandeep Patil,
Age: 40 years, Occ: Household work,
R/o: Kalashree Apartment, 4th Floor,
R P D Cross, Tilakwadi, Belagavi.
10. Dr. Ravindra S/o Rudrappa Chikkodi,
Age: 55 years, Approximately,

Occ: Doctor, R/o: Flat No.F-6, Ground Floor,
Gondhali Galli, Belagavi.

11. Smt. Madhuri W/o Basavaraj Gogeri,
Age: 60 years, Approximately,
Occ: House wife.
12. Sri Manjunath S/o Basavaraj Gogeri,
Age: 40 years, Approximately,
Occ: Business.
13. Sri Viresh S/o Basavaraj Gogeri,
Age: 35 years Approximately,
Occ: Doctor, All R/o: Flat No.F-4,
First Floor, Gondhali Galli, Belagavi.
14. Sri Anil S/o Ravasaheb Patil,
Age: 54 years, Occ: Business.
15. Sri Ravasaheb Balagouda Patil,
Age: 52 years Approximately,
Occ: Business.
16. Sri Sunil S/o Ravasaheb Patil,
Age: 35 years Approximately,
Occ: Business,
All R/o: Flat No.7, ground Floor,
Gondhali Galli, Belagavi.
17. Sri Suresh S/o Yallogirao Ranoji,
Age: 40 years Approximately,
Occ: Business,
R/o: Flat No.G-8, ground Floor,
Gondhali Galli, Belagavi.
18. Sri Atul Bhimashankar Sadalgekar,
Age: 44 years Approximately,
Occ: Business,
R/o: Shop No.G-5, ground Floor,
Gondhali Galli, Belagavi.

19. Sri Khanoba Mahabaleshwar Keluskar,
Age: 45 years Approximately,
Occ: Doctor,
20. Smt. Vaishali Khanba Keluskar,
Age: 38 years Approximately,
Occ: Doctor, Both the R/o: Flat No.F-1,
First Floor, Gondhali Galli, Belagavi.
21. Sri Ratnad S/o Adinath Hiremath,
Age: 32 years Approximately,
Occ: Business,
22. Sri Adinath S/o Kashinath Hiremath,
Age: 34 years Approximately,
Occ: Business, Both the R/o: Flat No.G-6,
First Floor, Gondhali Galli, Belagavi.
23. Sri Prashant S/o Ravindra Inamdar,
Age: 34 years Approximately,
Occ: Business, R/o: Shop No.G-3,
ground Floor, Gondhali Galli, Belagavi.
24. Sri Girish S/o Mahadev Khannukar,
Age: 35 years Approximately,
Occ: Business.
25. Sri Ravindra S/o Mahadev Khannukar,
Age: 32 years Approximately,
Occ: Business, Both the R/o: shop No.G-4,
ground Floor, Gondhali Galli, Belagavi.
26. Dr. Satish S/o Bhopal Bhagewadi,
Age: 50 years Approximately,
Occ: Doctor,
R/o: Flat No.F-5 Paiki, First floor,
Gondhali Galli, Belagavi.
27. Dr. Rajendra S/o Narayan Takekar,
Age: 50 years Approximately,
Occ: Doctor,

R/o: Flat No.F-3 Paiki, First floor,
Gondhali Galli, Belagavi.

28. Sri Kishor S/o Ramchandra Jadhav,
Age: 45 years Approximately,
Occ: Business,
29. Sri Sunil Baburao Suvare,
Age: 43 years Approximately,
Occ: Business, Both the R/o: Shop No.G-6,
ground Floor, Gondhali Galli, Belagavi.
30. Smt. Geetanjali W/o Vilas Pawar,
Age: 45 years Approximately,
Occ: House wife.
31. Smt. Anita D/o Vilas Pawar
Age: 30 years Approximately,
Occ: House wife.
32. Sri Mahesh S/o Vilas Pawar,
Age: 27 years Approximately,
Occ: Business, Both R/o: Shop No.G-1B,
ground Floor, Gondhali Galli, Belagavi.
- 33 Smt. Vaishali Kannoba Keluskar,
Age: 40 years Approximately,
Occ: Doctor,
R/o: Shop No.G-1, ground Floor,
Gondhali Galli, Belagavi.
- 34 Sri Kishan S/o Prabhu Halakatti,
Age: 30 years Approximately,
R/o: Flat No.F-8, First Floor,
Gondhali Galli, Belagavi.
- 35 Sri Sudhir Hanmanthrao Supali,
Age: 50 years Approximately,
Occ: Business, R/o: Flat No.G-15,
Ground Floor, Gondhali Galli, Belagavi.

- 36 Sri Ramesh R. Kittur,
Age: 49 years Approximately,
Occ: Business, R/o: Flat No.S-2A,
Second Floor, Gondhali Galli, Belagavi.
37. Smt. Rupali Santosh Shinde,
Age: 35 years Approximately,
Occ: House wife,
R/o: Flat No.S-4, second Floor,
Gondhali Galli, Belagavi.
- 38 Sri Vinaykumar Hanamanthgouda Patil,
Age: 50 years Approximately,
Occ: Business.
39. Smt. Nirmala Hanmanthgouda Patil,
Age: 40 years, Occ: Business,
Both the R/o: shop No.G-2, ground Floor,
Gondhali Galli, Belagavi.
40. Sri Dharshan S/o Manohar Herekar,
Age: 50 years Approximately,
Occ: Business, R/o: Ganesh Krupa
Apartment, First floor, Alwan Galli,
Shahapur, Belagavi.
- 41 Sri Govind S/o Shettuppa Kakatkar,
Age: 55 years approximately,
Occ: Business, R/o: Ganesh Krupa
Apartment, Block No.A, Alwan Galli,
Shahapur, Belagavi.
- 42 Sri Sambhaji Bacharam Sharanobat,
Age: 50 years approximately,
Occ: Business.
43. Sri Sudhir S/o Sambhaji Sharanobat,
Age: 30 years approximately,
Occ: Business, R/o: Ganesh Grupa
Apartment, Ground floor, Block No.B
Alwan Galli, Shahapur, Belagavi.

- 44 Sri Amit S/o Dilip Kalaskar,
Age: 50 years approximately,
Occ: Business, R/o: Ganesh Krupa
Apartment, Flat No.F-1, Alwan Galli,
Shahapur, Belagavi.
45. Sri Govind S/o Dilip Keluskar,
Age: 66 years approximately,
Occ: Business, R/o: Ganesh Krupa
Apartment, II Floor, Flat No.S-1-E,
Alwan Galli, Shahapur, Belagavi.

(Pro-Resp No.5, 7, 8 by Sri.B.L.Takkekar, Advocate)

(Pro-Resp.No.6 & 9 by Sri M.V. Maggavi, Advocate)

**(Pro-Resp.No.10, 19, 20, 26, 27, 34 & 37 by
Sri. S.G.Jayanache, Advocate)**

**(Pro-Resp.No.11 to 16, 18, 21 to 25, 28 to 33, 35, 38
and 39 Absent)**

(Pro-Resp.No.17 & 36 reported as dead)

**(Pro-Resp.No.40 to 45 by Sri A.N.Sambrekar,
Advocate)**

1.	Date of institution of the appeal	30.11.2020						
2.	Date on which judgment was pronounced	01.07.2026						
5.	Duration	<table> <tr> <td>Year/s</td><td>Months</td><td>Day/s</td></tr> <tr> <td>05</td><td>07</td><td>01</td></tr> </table>	Year/s	Months	Day/s	05	07	01
Year/s	Months	Day/s						
05	07	01						

J U D G M E N T

This appeal is filed by the above named appellant/plaintiff under Order 41 Rule 1 and Section 96 of the Code of Civil Procedure, 1908, challenging the legality and correctness of the

judgment dated 28.05.2020 passed by the II Additional Senior Civil Judge, Belagavi, in O.S.No.372/2015, in dismissing the suit filed by the plaintiff seeking decree for partition and separate possession. For the sake of convenience, parties are referred in this appeal as per their ranks before the trial court.

Brief Facts leading to filing of this Appeal are as follows:

2. The suit in OS No.372/2015 is filed claiming the decree for partition and separate possession of the plaintiff's 1/3rd share over the suit 'A' to 'C' schedule properties. 'A' schedule property described in the plaint consisting of 08 items of the properties and 'B' schedule properties consists of 06 items and 'C' schedule properties consists 02 items. The plaintiff and defendants are members of joint family and one Marutirao Haibatti is the propositus of the family. The defendant No.1 is the son of said Marutirao and plaintiff is the son of defendant No.1. The defendant No.1 married Smt. Deepali and from their wedlock, plaintiff and another son by named Siddharth was born. During the life time of father of the defendant No.2, he was doing business of preparing copper and other metal articles. From the income of the said business, he acquired movable and immovable properties. After his

death, said business was continued by the defendant No.2 and his brothers. The brother of the defendant No.2 namely Subash Balaram Haibatti has filed a suit for partition in OS No.161/1991 against his mother, brothers and sisters. The said suit was compromised vide compromise decree dated 22.03.1993. As per the said partition, the suit A and B schedule properties were fallen to the share of the defendant No.2. Other properties were acquired by the defendant No.2 from joint family funds. After marriage, there was no cordiality between the defendant No.1 and his wife. Their marital relationship was broken and they agreed to dissolve their marriage. The defendant No.1 and plaintiff's mother filed MC No.188/2006 before the Family Court, Belagavi. Against the interim order passed in the said case, defendant No.1 preferred MFA No.22377/2009 before the Hon'ble High Court of Karnataka. As per the interim order, the defendant No.1 paid an amount of Rs.5,00,000/- to the plaintiff's mother towards maintenance. Thereafter, the defendant No.1 filed a divorce petition against the plaintiff's mother. The plaintiff's mother has filed a petition in Misc.No.108/2007 under the Domestic Violence Act and also filed private complaint against the defendant No.1 in CC No.796/2010. During pendency of these cases, at the intervention of the elders,

plaintiff's mother and the defendant No.1 agreed to dissolve their marital relationship and defendant No.1 has agreed to pay Rs.17,50,000/- to the plaintiff's mother and the plaintiff. Out of the said amount, Rs.7,50,000/- was retained with the plaintiff's mother and Rs.10,00,000/- was paid to the plaintiff and same was to be kept in FD. Accordingly, compromise petition filed before the Hon'ble High Court of Karnataka and petition pending before the Family Court, Belagavi were allowed and marriage of the plaintiff's mother and the defendant No.1 was dissolved. Though the defendant No.1 admitted the paternity of the plaintiff, he has not allotted any share to the plaintiff in A to C schedule properties. The defendants are trying to alienate the suit properties. Even after issuance of the legal notice, defendants failed to allot the plaintiff's share. On all these grounds, plaintiff claimed a decree for partition and separate possession of his share over the suit properties.

3. In response to the summons, defendants appeared before the trial court through their respective counsel and filed the written statement. The defendant No.1, in his written statement, denied the status of the plaintiff as his son and also disputed his paternity. The defendant No.1 admitted the filing of the suit by his

father's brother and compromise entered between them. According to the defendant No.1, the property was their absolute property and same was purchased by them from their own earnings through registered sale deed. There was no nucleus of joint family and the defendants No.2 and 3, from their own earnings, have acquired these properties. The defendants No.2 to 4 have made oral partition and 1/3rd share was allotted to them. The defendant No.1 admitted the proceedings between him and the plaintiff's mother. According to the defendant No.1, as per divorce decree, plaintiff's mother has taken the responsibility of plaintiff by keeping Rs.10,00,000/- in FD. The defendant No.1 prayed for DNA test before the Hon'ble High Court of Karnataka and Dy.S.P. Dharwad was appointed to conduct DNA test. The defendant No.1 has sold items No.1 and 2 of A schedule property vide sale deed dated 29.06.2005 and also sold item No.4 to 8 and possession was handed over to the purchasers. Those purchasers were not parties to this suit. Therefore, suit is bad for non-joinder of necessary parties. On all these grounds, defendants prayed for dismissal of the suit with costs.

4. On the basis of the above pleadings of both the parties, following issues were framed by the trial court:

1. Whether the plaintiff proves that he is the son of defendant No1 ?
2. Whether the plaintiff proves that suit properties are ancestral joint family properties ?
3. Whether the defendant No.1 proves that suit is not maintainable in view of earlier litigations ?
4. Whether the plaintiff is entitled for share in the suit properties as claimed ?
5. What order or decree?

5. To prove the above issues and to substantiate their respective contentions, plaintiffs mother was examined before the trial court as PW1 and got marked Exs.P1 to P34 documents. On the other hand, 03 witnesses were examined by the defendants as DW1 to DW3 and Exs.D1 to D31 documents were marked.

6. The learned trial court, by appreciating the oral and documentary evidence and after hearing arguments of both the parties, has proceeded to dismiss the suit, vide judgment dated 28.05.2020. Being aggrieved by the said judgment, the plaintiff preferred the present appeal on following grounds:

GROUND OF APPEAL

1. The Judgment and Decree under this appeal passed by the trial Court is contrary to law and evidence on records.
2. The trial Court has not weighed the documentary evidence produced by the appellant/plaintiff.
3. The trial Court's findings on Issue No-4 are erroneous and not correct.
4. The trial court failed to note that, the property bearing item No-6 of the suit schedule "B" property bearing R S No-236/1 is acquired by the joint family Business funds by defendant/respondent No-2 to 4 and the plaintiff/appellant is having his share in the said property.
5. The trial court further failed to note that, only the item No-1 to 4 of the schedule "B" properties are the agricultural lands, which are the ancestral properties of the appellant and the respondents. The appellant having his share in the suit properties.
6. The trial Court failed to note that, as per the compromised decree entered between the defendant/respondent, No-2, his brothers and

sisters in O S No-160/1992 dated 22/03/1993 by the II Addl Senior Civil Judge Belagavi, the suit schedule "A" properties its item No- 3 to 8 and in the schedule "B" properties item No- 1 to 4 are exclusively fallen to the share of the defendant/respondent No-2 and also other properties. The appellant is the grandson of the defendant /respondent No-2 and he is having his share by birth as per section-6 of the Hindu succession Act. 2005.

7. The trial court arrived at wrong conclusion that, the suit is bad for non joinder of the necessary parties and also bad for partial partition. The trial court ought to have decreed the suit of the plaintiff/appellant and the suit cannot be dismissed on mere technicalities.
8. The Trial court arrived at wrong conclusion that, the issue No-2 is required to be answered in affirmative only with regard to item No-3 to 8 of the suit schedule "A" properties and the item No-1 to 4 of the suit schedule "B" properties and required to be answered in negative with regard to the other properties are concerned.
9. The Trial court arrived at wrong conclusion and findings given in negative on issue No-4 are wrong.

10. The trial court arrived at wrong conclusion that, the property bearing R S No-236/1 belonging to one Shri, Parashuram Kudachawadkar and it cannot be said that the said property is ancestral property of the Plaintiff and the defendants. Therefore the claim of the appellant over this property cannot be accepted.
11. The trial court arrived at wrong conclusion that, the plaintiff/appellant claim over the item No-1 & 2 of the suit schedule "A" properties, the item No-5 & 6 of the suit schedule "B" properties and the suit schedule "C" properties cannot be accepted.
12. The trial court arrived at wrong conclusion that, the issue No-2 is required to be answered in affirmative only with regard to item No-3 to 8 of the suit schedule "A" properties and the item No-1 to 4 of the suit schedule "B" properties and required to be answered in negative with regard to the other properties are concerned.
13. The trial court arrived at wrong conclusion that, the Plaintiff/appellant has not made the wife and all the children of the defendant/respondent No-2, as the wife of the defendant/respondent No-2 during the life

time of his husband cannot claim share in the suit properties.

14. The trial court arrived at wrong conclusion that, the purchasers of the properties bearing No-CTS No-3403+3404, 3405/2, 3445/14, 3445/2 & 3445/113 i.e., the Ex-D 25 to 28 are not impleaded in the present suit and as such the suit is bad for non joinder of the necessary parties. In view of the alienation made by the defendant/respondent No-2 the description of the suit properties as given by the plaintiff/appellant is also found to be unacceptable one.
15. The trial court arrived at wrong conclusion that, the property bearing plot No-12, out of R S No-157, is the self acquired property of the defendant/respondent No-1, but the said property is not included in this suit. The trial court has discretionary power to mould the relief and grant the additional relief.
16. The trial court has not considered all the documentary and oral evidence produced by the appellant/plaintiff in support of his contentions.

17. The trial court ignored 'the admissions given by the defendant/respondent No-1 to 3 in the evidence.
18. The entire approach of the trial court is one-sided and contrary to the oral as well as documentary evidence.
19. The trial court failed to note that, the respondent have not produced any cogent reliable evidence to disprove the claim of the appellant/plaintiff.
20. The Judgment and Decree of the trial court is otherwise illegal and against the settled principles of law.
21. The trial court ought to have decreed the claim of the appellant/Plaintiff, in O S No-372/2015.

7. In response to the notice, the respondents/defendants appeared before this court through their respective counsel. During pendency of this appeal, the appellant/plaintiff filed IA No.2 under Order I Rule 10 of CPC to implead the proposed defendants and IA No.3 under Order VI Rule 17 of CPC seeking amendment of the plaint and I.A.No.5 under XLI Rule 27 of CPC to permit him to produce the additional evidence. The defendants and proposed respondents have filed objections to these applications.

8. This court secured the entire file relating to OS No.372/2015 from the learned II Additional Senior Civil Judge, Belagavi.

9. I have heard the arguments of both the parties.

10. The points that arose for my consideration are :

- 1. Whether the appellant/plaintiff can be permitted to amend the plaint as prayed for, at this stage ?**
- 2. Whether the proposed defendants are necessary parties to this suit and they are to be impleaded at this stage?**
- 3. Whether the plaintiff has made out grounds to permit him to produce the documents as additional evidence at this stage?**
- 4. Whether the plaintiff proves the suit properties as their ancestral and joint family property and he has right to claim share over the same?**
- 5. Whether the impugned judgment is against the law, facts, evidence and probability of the case liable to be interfered by this court?**
- 6. What Order or decree?**

11. My answer for the above points are in the following, because of my below discussed reasons:

Point No.1: **IN THE NEGATIVE**

Point No.2: **IN THE NEGATIVE**

Point No.3: **IN THE NEGATIVE**

Point No.4: **IN THE NEGATIVE**

Point No.5: **IN THE NEGATIVE**

Point No.6: **AS PER THE FINAL ORDER**

R E A S O N S

12. **Point No.1 to 5:** To avoid repetition of my discussion on facts, these points are taken together for determination. The suit in OS No.372/2015 is filed claiming the decree for partition and separate possession of plaintiffs 1/3rd share over the suit A to C schedule properties and for partition and separate possession of the same. The suit properties described in the plaint as A schedule property consist of 08 items whereas B schedule property consist of 06 items and C schedule properties consist of 02 items. The plaintiff claimed that he is the minor son of defendant No.1 and there was matrimonial dispute between the plaintiff's mother and defendant No.1, due to which, they were residing separately. According to the plaintiff, the suit properties are their ancestral and joint family properties and it was fallen to the share of defendant

No.2 as per the compromise decree passed in OS No.160/1991. The plaintiff further contended that other properties were purchased from the income of ancestral and joint family properties. The plaintiff alleged that the defendant No.1 neglected him and refused to allot his share, which made him to file the present suit.

13. The defendants appeared before the trial court through their counsel and defendant No.1 filed the written statement and denied all the plaint averments, including the relationship between him and plaintiff and the suit properties as their joint family properties and plaintiff having right to claim share over the same. The defendants No.2 and 3 have filed separate written statement and denied claim of the plaintiff and also contended that the suit is bad for non-joinder of necessary parties, as the another brother of the plaintiff and brothers and sisters of the defendant No.1 were not made as the parties to this suit.

14. To prove and substantiate their respective contentions, the plaintiffs mother examined as PW1 and produced the CTS extracts, record of rights, plaint, compromise petition and decree relating to OS No.160/1991, OS No.188/2006, compromise petition filed in MFA No.20197/2010, legal notice, postal receipts,

postal acknowledgments as per Exs.P1 to P34. On the other hand, the defendant No.1 examined himself as DW1 and defendants No.2 and 3 were examined as DW2 and DW3. The defendants have produced the copy of the deposition in G & Wc No.11/2023, CTS extract, RTC, judgment and decree relating to MFA No.20197/2010, order sheet of compromise petition No.7929/2010 as per Exs.D1 to D31. The learned trial court, by appreciating oral and documentary evidence of both the parties, has proceeded to dismiss the suit. Challenging the said judgment, plaintiff preferred this appeal.

15. During pendency of the appeal, plaintiff filed application being IA No.II under Order I Rule 10 of CPC to implead the brother of plaintiff, brothers and sisters of defendant No.1 and also purchasers of portion of the suit schedule properties, as the parties to this suit. The proposed defendants appeared before this court through their respective counsel and filed objections to this application. The plaintiff filed IA No.III under Order VI Rule 17 of CPC to amend the plaint. The plaintiff filed I.A.No.V under order XLI Rule 27 of CPC to permit him to produce the documents as additional evidence. The defendants filed objections to all those

applications. I will consider these applications later during the course of this judgment.

16. Before proceeding to consider the disputed questions involved in this appeal, let me state some of the admitted and undisputed facts and the facts which cannot be disputed at all and also about other litigations between the parties and in respect of subject matter of the suit. The plaintiff filed the present suit by claiming to be the son of defendant No.1. The relationship of the plaintiff with the defendant No.1 as his son is disputed, as it was denied by the defendant No.1 in his written statement. However, there is no dispute that the defendant No.1 married the plaintiff's mother and natural guardian, Smt. Deepali and there was matrimonial dispute between them.

17. Regarding matrimonial dispute between them, there were many proceedings held before the Family Court, Belagavi, Magistrate Court, Belagavi, District Court, Belagavi and also before the Hon'ble High Court of Karnataka Dharwad Bench. The materials on record reveals that initially the defendant No.1 and his wife have filed a joint petition before Family Court, Belagavi in MC No.188/2006 claiming divorce by mutual consent. Even though, the

said petition was filed jointly by the plaintiff's mother and defendant No.1 seeking divorce by mutual consent, subsequently mother of the plaintiff has withdrawn her consent for divorce. The Family Court, Belagavi permitted the plaintiff's mother to withdraw her consent for divorce and dismissed the petition. Challenging the said order, the defendant No.1 approached the Hon'ble High Court of Karnataka, Dharwad Bench, with an appeal in MFA No.20197/2010. During pendency of the said appeal, a compromise petition was filed and same was accepted and the marriage between them was dissolved by mutual consent.

18. In terms of the compromise, the defendant No.1 agreed to pay an amount of Rs.17,50,000/- to the plaintiff's mother, out of which Rs.7,50,000/- was retained by the plaintiff's mother and Rs.10,00,000/- was kept as FD in the name of this plaintiff. In terms of the compromise, petition filed under the Domestic Violence Act in CrI.Misc.Petition No.108/2007 before the JMFC II Belagavi and CrI. Appeal No.189/2017 pending before the Additional District & Sessions Judge, Belagavi were also dismissed as withdrawn.

19. Another litigation which has to be referred and relevant for the purpose of this suit is about filing of the suit by the brother of the defendant No.2 by name Subash Balaram Haibatti in OS No.161/1991 claiming the decree for partition. Said suit was also compromised between them by passing compromise decree, as evident from Ex.P29. As per the said compromise decree, the defendant No.2 got the item No.3 to 8 of the suit A schedule properties and item No.1 to 4 of the suit schedule B property as his share.

20. Except the relationship between the plaintiff and defendant No.1, in respect of other relationship between the parties, there is no dispute as such. The defendant No.1 is the son of defendant No.2, whereas defendants No.3 and 4 are the brothers of defendant No.2. Let me first consider the dispute relating to relationship between the plaintiff and defendant No.1. Even though the defendant No.1 admitted the plaintiff's mother Smt. Deepali as his wife and the marriage between them, he denied the plaintiff as his son. In this regard, the trial court has framed the issue No.1. In order to succeed in the present suit and appeal, burden is upon the plaintiff to prove that he is the son of

the defendant No.1. The learned trial court has answered issue No.1 in the affirmative and held that the plaintiff has proved his relationship with the defendant No.1 as his son.

21. In this regard, the trial court has mainly relied upon the admission of the defendant No.1 while entering into compromise with the plaintiff's mother, in respect of their matrimonial dispute. As I said earlier, when the matter between them was pending before the Hon'ble High Court of Karnataka, Dharwad Bench in MFA No.20197/2010, dispute between them was settled by filing a compromise petition. Copy of the compromise petition and order passed by the Division Bench of Hon'ble High Court of Karnataka is produced as per Ex.P31. As per the said compromise petition, the defendant No.1 has specifically admitted to the marriage between him and the plaintiff's mother on 21.12.2000 and birth of 02 sons by name Siddharth and Atharava (present plaintiff) from the said wedlock. There is a specific averment in para No.1 of the compromise petition, which states that the defendant No.1 admits to the paternity of both the children.

22. So in the compromise petition filed before the Hon'ble High Court of Karnataka in MFA No.20197/2010, there is an admission by the defendant No.1 admitting the paternity of plaintiff as his son. After making such an admission, the defendant No.1 agreed to pay an amount of Rs.17,50,000/- to the plaintiffs mother, out of which, Rs.10,00,000/- was ordered to be kept in FD in the name of this plaintiff. The defendant No.1, not only admitted paternity of the plaintiff, but also agreed to pay amount towards maintenance of the plaintiff and also paid the same. Under such circumstances, now it cannot lie in the mouth of the defendant No.1 to say that the plaintiff is not his son.

23. Of course, during earlier proceedings and matrimonial dispute the defendant No.1 denied the plaintiff as his son. It is also true that steps were taken for conducting DNA test and blood samples were also collected. However, steps initiated for conducting DNA test was not finalized, as in the meanwhile they have settled their dispute by filing compromise petition before the Hon'ble High Court of Karnataka by admitting paternity of the plaintiff. Therefore, this court has to accept findings given by the

trial court on issue No.1 in holding that the plaintiff has proved his paternity as the son of defendant No.1.

24. The next question, which has to be considered by this court is about the plaintiff's right to claim share in the suit schedule properties. The plaintiff claimed that the suit properties are their ancestral and joint family properties, over which, he has 1/3rd share. Regarding this claim of the plaintiff, issue No.2 was framed by the trial court. By appreciating the evidence on record, the learned trial court has answered the issue No.2 partly in the affirmative. If I draw my attention to the discussion made by the learned trial court on issue No.2, it has held that the item No.3 to 8 of the suit A schedule properties and item No.1 to 4 of the B schedule properties were acquired by the defendant No.2 as per the compromise decree passed in OS No.160/1991. Therefore, according to the trial court these are ancestral properties. In respect of item No.1 and 2 of A schedule properties and item No.5 and 6 of B schedule properties and in respect of C schedule properties, the learned trial court held that those properties are not the ancestral properties as the plaintiff failed to prove the same.

25. It is true that the brother of defendant No.2 by name Subash Balaram Haibatti has filed a suit in OS No.160/1991 against the defendants No.1 to 4 herein, claiming the decree for partition and separate possession. Said suit was compromised and ended in a compromise decree. The plaintiff has produced the certified copies of the order sheet, plaint, compromise petition and compromise decree passed in OS No.160/1991 as per Exs.P26 to P29. Of course, as per the said compromise decree, items No.3 to 8 of the A schedule properties and items No.1 to 4 of the B schedule properties were fallen to the share of the defendant No.2, who is grand father of the plaintiff.

26. In respect of other properties, the trial court held that the plaintiff has failed to prove that the item No.1 and 2 of the suit A schedule property, item No.5 and 6 of the B schedule properties and C schedule properties as their joint and ancestral properties. The plaintiff has failed to produce any evidence before the trial court to show that those properties were their ancestral and joint family properties. There is also no evidence let in by the plaintiff to show that those properties were acquired from the income of the ancestral properties or joint family business. Under such

circumstances, the trial court has rightly answered the issue No.2 partly in the affirmative in holding that the plaintiff has not proved the item No.1 and 2 of the A schedule properties and item No.5 and 6 of B schedule properties and C schedule properties as their joint and ancestral properties. I have not found any grounds for interference of this court with the said finding of the trial court.

27. Now I have to consider the findings of the trial court in respect of issue No.2 in holding the item No.3 to 8 of the A schedule properties and item No.1 to 4 of the B schedule properties as their ancestral joint family properties. In this regard, the trial court relied upon the compromise decree passed in OS No.160/1991. As per the compromise decree, these properties were fallen to the share of the defendant No.2.

28. The learned counsel for the defendants vehemently argued before me that the plaintiff, who is the grand son of the defendant No.2, has no right to claim the share and partition in the properties of his grand father in view of Section 6 and 8 of the Hindu Succession Act. In this regard, the learned counsel for the defendants have relied upon the decision of Hon'ble Supreme Court reported in **2020 SAR Civil 127 (Radha Bai Vs. Ram Narayan**

& others) It was held in the above decision that a grand son or grand daughter is clearly excluded from Class-I heirs. Therefore, they have no right to claim share in the properties of their grand father.

29. Another decision relied upon by the learned counsel for the defendants is reported in **AIR 2016 Supreme Court 1169 (Uttam Vs. Saubhag Singh and Others)**. In the said decision the Hon'ble Supreme Court has considered the question of a right of a grand son to claim partition during life time of his father over the property of the grand father. The Hon'ble Supreme Court held that a suit for partition filed by grand son in respect of the properties allotted to the share of his grand father is not maintainable during the life time of his father and grand father. In the case on hand, father of the plaintiff, i.e. defendant No.1 as well as the grand father of the plaintiff, i.e. defendant No.2 are alive. During life time of his father and grand father, the plaintiff has filed the present suit claiming the share over the properties allotted to the share of his grand father in the family partition.

30. Another decision relied upon by the learned counsel for the defendants is the decision of Hon'ble Supreme Court

reported in **(2008) 3 SCC 87 (Bhanwar Singh Vs. Puran and Others)**. As per the ratio laid down in the above decision, when son inherits the property in the situations contemplated under Section 8 of the Hindu Succession Act, he does not take it as karta of his own undivided property. Under such circumstances, the properties cease to be joint family property and all the heirs and legal representatives of the deceased would succeed to his interest as tenants in common and not as joint tenants. Therefore, as per the above decision, grand son has no right to claim share over the property.

31. Another decision relied upon by the learned counsel for the defendants in this regard is reported in **(1986) 3 SCC 567 (Commissioner of Wealth Tax Kanpur and Others Vs. Chander Sen and Others)**. As per the ratio laid down in the above decision, the Class-I legal heir only includes son and does not include son's son. Another decision relied upon by the learned counsel for the defendants is reported in **2021(1) Civil.C.R. 368 Punjab & Hariyana High Court (Kanha Vs. Mange Ram and Others)** It was held in the above decision that once property comes to the hands of Class-I heirs under Section 8 of the Hindu Succession Act, such

property would not continue to be a coparcenary property. In view of the ratio laid down in the above decisions, merely because the defendant No.2 has got the item No.3 to 8 of the A schedule properties and item No.1 to 4 of the B schedule properties, as per the compromise decree, same cannot be said to be the ancestral and joint family properties for claiming share by the plaintiff during the life time of his grand father and father. Under such circumstances, it is wrong on the part of the trial court to answer the issue No.2 partly in the affirmative by holding the item No. 3 to 8 of the A schedule properties and item No.1 to 4 of the B schedule properties as joint family properties.

32. The learned counsel for the appellant/plaintiff, by relying upon the decisions reported in **ATR Online 2019 SC 2271 (Doddamunyappa (dead) through Lrs. Vs. Muniswamy.)**, **AIR 2019 Supreme Court 3098 (Arshonooor Sing Vs. Harpal Kaur.)**, **1983 SCR (3) 20 (Smt. Dipo Vs. Wassan Sing and others)**, **SA No.623/2007 dated 05.06.2023** in between **Smt.V. Vandhana Vs Vijayasekarn, (Madras High Court)** and **RFA No.1812/2007 Dated 21.12.2023** in between **Munivenkatappa and others vs Smt Muniyamma and others**, has argued before me that when

the property has been acquired by the defendant No.2 in the family partition, it acquires the status of coparcenary property. Therefore, even during life time of defendant No.2, plaintiff, being his grand son, is entitled claim share over those properties.

33. I have carefully gone through the ratio laid down in the above decisions. It is true that item Nos. 3 to 8 of the A schedule property and item No.1 to 4 of the B schedule properties were acquired by the defendant No.2 as per the compromise decree passed in OS No.160/1991. Now the important legal question before this court is as to whether the acquisition of those properties by the defendant No.2 is under Section 6 of the Hindu Succession Act as a coparcenary property or under Section 8 of the Hindu Succession Act. If the plaintiff is able to prove before the court that the acquisition of property by the defendant No.2 as per the compromise decree passed in OS No.160/1991 is under Section 6 of the Hindu Succession Act, then the plaintiffs claim and him having right of share can be accepted. Whereas, if the property acquired by the defendant No.2 by way of compromise decree passed in OS No.160/1991 is as under Section 8 of the Hindu Succession Act, then it will be the absolute property of defendant

No.2, over which, neither his son nor his grand son will be having any share.

34. In this regard, it is necessary to state distinction between acquisition of property as per Section 6 and Section 8 of the Hindu Succession Act, 1956. Section 6 of the Hindu Succession Act governs the coparcenary property via birth right while Section 8 of the Hindu Succession Act governs the self acquired and separate property via testamentary or intestate succession. Section 6 of the Hindu Succession Act operates through survivorship or notional partition. Whereas, Section 8 of Hindu Succession Act deals with the individual ownership among heirs. Section 6 of the said Act applies to Mitakshara coparcenary property i.e., ancestral property which is inherited by family lineage, whereas, Section 8 applies for self acquired and separate property of male Hindu, who died intestate or property separate from the joint family.

35. So far as method of acquisition of property under Section 6 and Section 8 of the Hindu Succession Act are concerned, as per Section 6, rights are acquired by birth, whereas under Section 8, the rights are acquired by inheritance upon the death of the owner. Regarding the nature of ownership and

succession, as per Section 6, coparcener holds the property as a joint tenants, whereas, as per Section 8, heirs take the property as tenants in common. Keeping in mind these major distinction between acquisition of property under these two provisions, I have to consider the nature of the properties, which were fallen to the defendant No.2, as per the compromise decree passed in OS No.160/1991.

36. In this regard, it is necessary to refer to the plaint averments of OS No.160/1991. The certified copy of the same has been produced before the trial court as per Ex.P27. The recitals of Ex.P27 plaint reveals that the brother of the defendant No.2 filed the said suit for partition, against his mother, brothers and sisters, in respect of the properties held by their father and claimed the share, after the death of his father. As per the plaint averments, all these properties were acquired by the father of the defendant No.2, from their joint family business. Therefore, according to him, it is their joint family property. There is no reference in the plaint of OS No.160/1991 about acquisition of any property by the father of the defendant No.2 from his father or their fathers father. There is no reference in the plaint of OS No.160/1991 about any of the

properties as their ancestral property, having acquired by the same from their forefathers. As per the pleadings, all those properties held by their father Balaram Haibatti were acquired from joint family business.

37. The plaintiff has also not produced any documents before this court to show that any of those properties were acquired by the defendant No.2 or his family from their ancestors. All these properties were initially held by the father of the defendant No.2, acquired by him from their joint family business and after his death, a suit for partition has been filed and said suit was compromised and the items No.3 to 8 of the A schedule property and items No.1 to 4 of the B schedule property were allotted to the share of defendant No.2.

38. Even though these properties were allotted to the share of the defendant No.2 as per the family partition and as per the compromise decree, it is an acquisition under Section 8 of the Hindu Succession Act and not an acquisition under Section 6 of the Hindu Succession Act. As these properties were not the properties acquired by the defendant No.2 from their ancestors, it cannot be having status of ancestral properties. The defendant No.2 has

acquired those properties as the son of his father and after the death of his father. Therefore, it is a case of acquisition of property by the defendant No.2 under Section 8 of the Hindu Succession Act.

39. The above referred decisions relied upon by the plaintiff would have helped the plaintiffs cause, if the properties were acquired by the defendant No.2 under Section 6 of the Hindu Succession Act. When the properties acquired by the defendant No.2 is under Section 8 of the Hindu Succession Act, the plaintiff cannot be having any right to claim share during the life time of his father and grand father. The decisions relied upon by the defendants, which were already referred by me above, would substantiate the said proposition of law. Hence, the ratio laid down in the above decisions will not help the cause of the plaintiff to succeed in the present suit and the appeal.

40. It is true that these defendants have not filed any independent appeal or cross-objection in the present appeal challenging the findings of the trial court on issue No.2 in answering the same partly in the affirmative. That does not mean that this first appellate court has to accept the said findings and

can not interfere. This court, being the first appellate court, has every right to consider the correctness and legality findings of the trial court on merits, even if it is not challenged by filing appeal or cross-objections. Order XLI Rule 33 of Civil Procedure Code empowers this court to consider any findings given by the trial court though the said findings has not been specifically challenged either by filing the appeal or by filing cross appeal or cross-objection. It is true that the powers conferred to the Appellate Court under Order 41 Rule 33 of CPC is an extraordinary power and to be exercised rarely and sparingly. In the case of hand, exercise of such an extraordinary power is required because of the wrong interpretation of provisions of law and decisions by the learned trial court. In order to advance the justice to the parties, I feel it is just and proper to exercise the power conferred upon this court. Therefore, this court has to hold that the findings of the trial court in holding that plaintiff has right to claim share in respect of the item No.3 to 8 of the A schedule properties and item No.1 to 4 of the B schedule properties can not be accepted.

41. Even though the learned trial court held that item No.3 to 8 of the A schedule properties and item No.1 to 4 of the B

schedule properties are the joint family properties, still the trial court went on to dismiss the suit, on the ground that the suit is bad for non-joinder of necessary parties. The trial court held that the plaintiff has not made his younger brother as a party to the suit. The trial court also held that the brothers and sisters of defendant No.1 are also having share in those properties and they were not made as parties to the suit. The trial court also held that some of the properties were sold by the defendant No.2 long back and purchasers were not made as parties to this suit. It is on these grounds, the trial court proceeded to dismiss the suit.

42. The plaintiff has admitted the defects in his suit, as all those parties are the necessary parties. However, the learned counsel for the plaintiff submitted that the a suit could not have been dismissed for non-joinder of necessary parties and the trial court could have directed the plaintiff to arraign them as parties to this suit, rather than dismissing the suit for non-joinder of necessary parties. In this regard, the learned counsel for the plaintiff drew the attention of this court to order I Rule 9 of Civil Procedure Code, which says that no suit shall be defeated by the reason of mis-joinder or non-joinder of parties. It is true that as

per the above provision, if the court comes to the conclusion that, a necessary party has not been made as party to this suit, rather than dismissing the suit, court has to direct the plaintiff to make those necessary parties as the parties to the suit. It is true that the trial court, before dismissing the suit for non-joinder of necessary parties, has not made this exercise and not followed the above procedure.

43. During pendency of this appeal, the plaintiff filed IA No.2 under Order I Rule 10 of Civil Procedure Code to implead those necessary parties to this suit. By way of IA No.2 the plaintiff wants to implead his elder brother, brother and sisters of his father and purchasers of the properties from the defendant No.2 as the parties to this suit. By way of IA No.2 the plaintiff wants to make altogether 41 persons as parties to this suit. After filing of IA No.2, notices were issued to the proposed defendants and they appeared before this court and filed objections to the applications. The proposed defendants have contended in their objections that the suit for partition itself is not maintainable. The purchasers further contended that much before birth of the plaintiff they have purchased the property from the defendant No.2. Therefore,

according to them, plaintiff has no right over the property purchased by them and accordingly they are not the necessary parties.

44. Apart from IA No.2, the plaintiff has filed IA No.3 under Order VI Rule 17 of Civil Procedure Code to amend the plaint for insertion of para No.9A and 9D to the plaint and also claim the relief of declaration to nullify those sale deeds. One more application filed by the plaintiff is IA No.5 under Order XLI Rule 27 of Civil Procedure Code to permit them to lead additional evidence in the form of production of documents. All those applications were ordered to be considered along with merits of the appeal. In the light of my discussion and the findings given in respect of the right of plaintiff, these interim applications are to be considered by this court.

45. So far as the IA No.2 is concerned it is filed for impleading the brother of the plaintiff, brothers and sisters of defendant No.1 and also purchasers of the properties from the defendant No.2. In view of my above findings, the suit itself is not maintainable as the plaintiff failed to establish his right to claim over the suit properties. So far as the purchasers of the properties

are concerned, affidavit filed in support of IA No.3 reveals that majority of the proposed defendants have purchased the properties during the year 1997-98. Birth of the plaintiff is somewhere during the year 2002-03. When the properties have been sold much before the birth of the plaintiff, the plaintiff cannot challenge those sale deeds on the ground that he has right over the properties sold to the proposed defendants. Hence, the proposed defendants are not necessary to be impleaded since the suit itself is liable to be dismissed.

46. So far as the IA No.3 is concerned, it is filed to amend the plaint to introduce plea relating to the purchasers of the properties by the proposed defendants and also to seek the relief of declaration to nullify those sale deeds. Again the proposed amendment is not necessary since the plaintiffs right to challenge the sale deed itself is not proved before the court.

47. So far as IA No.5 is concerned, it is filed by the plaintiff under Order XLI Rule 27 of Civil Procedure Code for permitting him to lead additional evidence by way of production of documents. The documents sought to be produced are the documents relating to the purchase of the properties by the proposed defendants.

When the impleading of the proposed defendants and relief to challenge the said sale deeds by way of amendment to the plaint, cannot be allowed, production of documents in respect of those sale deeds need not be allowed. Therefore, all the interim applications filed by the plaintiff has to be rejected.

48. Other decisions relied upon by the learned counsel for the plaintiff are reported in **2022 Live law (SC) 729 (Life Insurance Corporation of India Vs.Sanjeev Builders Private Limited and Another.)**, **AIR 2015 SC 2270 (Mahila Ramkali Devi and Others Vs. Nandram (D) Thr. LRS and Others)** and **RSA No.796/2014 dated 29.09.2015 in between Smt. Puttamamma Vs. Giryappa and Others.**). The learned counsel for the plaintiff has relied upon these decisions in support of the interim applications filed for impleading the parties, amendment of pleadings and for production of additional evidence. In view of my above findings, the plaintiffs right to claim share itself is not proved. Therefore, ratio laid down in the above decisions are not helpful to the cause of the plaintiff.

49. Considering all these aspects, I have to say that the learned trial court was right in answering the issue No.1 in the

affirmative and holding that the plaintiff has proved his relationship as a son of defendant No.1. Even though the learned trial court was right in answering the issue No.2 partly in the affirmative in respect of other properties, it has committed error in holding the item No.3 to 8 of the A schedule properties and items No.1 to 4 of the B schedule properties as the joint family properties of the plaintiff and defendants. The trial court was also wrong in dismissing the suit on the ground of non joinder of necessary parties, rather than directing the plaintiff to implead necessary parties. However, there are no grounds for interference of this court with the final judgment in dismissing the suit as the plaintiff failed to prove his right to claim share over the suit properties and the suit properties as their ancestral and joint family properties. There are also no grounds to allow the interim applications filed by the plaintiff. Therefore, I answer the points No.1 to 5 **in the Negative.**

50. **Point No.6:** In view of my findings on above points, the appeal filed by the plaintiff and I.A.No. 2, 3 and 5 filed by the plaintiff are liable to be dismissed by confirming the impugned judgment. Hence, I proceed to pass the following:

ORDER

The appeal filed by the appellant/plaintiff under Order 41 Rule 1 R/w Section 96 of Civil Procedure Code, 1908 is dismissed.

The impugned judgment dated 28.05.2020 passed by the II Addl. Senior Civil Judge, Belagavi, in O.S.No.372/2015, in dismissing the said suit, is confirmed.

I.A.No.II filed by the plaintiff under Order I Rule 10 of CPC, I.A.No.III under Order VI Rule 17 of CPC and I.A.No.V under Order XLI Rule 27 of CPC are all dismissed.

I direct both the parties to bear their respective costs.

Send back the trial court records along with the copy of this judgment forthwith.

(Dictated to the Stenographer, after transcription, computerized and print out taken by him, corrected, signed and then pronounced by me in the Open Court on this **01st day of July, 2026**)

**(Manjunath Nayak),
Prl. District & Sessions Judge,
BELAGAVI.**