



**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT CHINTAMANI.**

Dated this the 27th day of March 2026

PRESENT

**SMT. G. GEETHANJALI,
B.A., LL.B.,**

SENIOR CIVIL JUDGE AND J.M.F.C., CHINTAMANI.

R.A No.10/2024

Appellant : 1. Smt. Lakshamma,
D/o Late. C.K.Narayanappa,
Aged about 52 years,
R/at Boodala Village,
Sidlaghatta Taluk,
Chikkaballapur district.

(By Sri G.M.S., Advocate).

- versus -

Respondent 1. K.N.Muniyappa,
S/o Late. C.K. Narayanappa,
Aged about 54 years,
R/at Kaiwara Village,
Kaiwara Hobli,
Chintamani Taluk.



2. Smt. Rathnamma,
D/o Late. C.K.Narayanappa,
W/o Seenappa,
Aged about 50 years,
R/at S.Devaganahalli Village,
Sadali hobli,
Sidlaghatta Taluk,
Chikkaballapur District.

3. Smt. Shanthamma,
D/o Late. C.K.Narayanappa,
W/o Chinnappaya,
Aged about 48 years,
R/at S. Devaganahalli Village,
Sadali hobli,
Sidlaghatta Taluk,
Chikkaballapur District.

4. K.N.Ramappa,
S/o Late. C.K.Narayanappa,
Aged about 46 years,
R/at Balagi Pete, Kaiwara Village,
Kaiwara hobli,
Chintamani Taluk.



**(R-1 by Sri. S.V, Advocate., R-4
by Sri. G.B.V., Advocate)**

Date of Institution of the
Regular Appeal 19-02-2024

Judgment and decree Judgment and decree passed in
against which the appeal O.S.No.78/2016 on the file of
was preferred: Hon'ble Addl. Civil Judge and
JMFC, Chintamani.

Nature of the suit For the relief of partition and
Declaration.

Date on which the
judgment was 27-03-2026
pronounced

Duration of the Appeal : Year/s Month/s Day/s
02 01 08

Sd/-

(G. GEETHANJALI)
Senior Civil Judge & JMFC,
Chintamani.

J U D G M E N T

This is the Regular Appeal preferred by the
appellant/ plaintiff Under Section 96 R/w order 41
rule 1 of CPC challenging the judgment and decree in
O.S.No. 78/2016 dated: 19-01-2024 on the file of the



Hon'ble Addl. Civil judge and JMFC, Chintamani.
Dismissed the suit filed by the plaintiff.

Appellant was the plaintiff and respondents are the defendants before the trial court. For sake of convenience they are referred at their rank in the trial Court.

2. Brief facts and grounds given before here:-

The trial court failed to consider the effect of the liberty granted in O.S.No.236/2012. The trial court ought to have considered all matters a fresh in view of the liberty granted earlier.

The trial court ought to have declared the partition deed between the father and two sons as a void documents. The partition deed clearly says that the properties are joint family properties and therefore it is void because the female coparceners including the plaintiff are not parties . The trial court failed to notice that the plaintiff need not seek for declaration if a document is prima facie void and illegal being contrary to the amended Hindu Succession Act, 1956.



There has been a miscarriage of justice by the impugned judgment in that the effect of the partition deed contents have not been considered by the trial court on technicalities. The substantive rights of the female co-parcener has been defeated by procedural errors.

Brief facts of the plaintiff case:

The plaintiff and defendants are children of late. C.K. Narayanappa. The plaintiff initially filed O.S.No.236/2012 for partition and separate possession of her 1/5th share in the suit schedule properties. The defendants 2 and 4 who are the male children of late C.K.Narayanappa took up the contention that the suit schedule properties are the self acquired properties of their parents and their parents made a Will on 09-07-1997 and that C.K.Narayanappa and the defendants 1 and 4 entered into a registered partition deed dated 14-03-2009 marked as Ex.D5 in O.S.No.236/2012.

The said suit has been resisted by defendant no 1 to 4 where defendant no 1 and 4 filed written



statement and defendant no 2 and 3 were filed joint written statement however all of them taken similar contention of non maintainability of suit in view of previous O.S.No.236/2012 for partition and separate possession of her 1/5th share and also contended that, the suit schedule properties are the self acquired properties of their parents and their parents made a Will on 09-07-1997 and that C.K.Narayanappa and the defendants 1 and 4 entered into a registered partition deed dated 14-03-2009 marked as Ex.D5 in O.S.No.236/2012.Hence prays to dismiss the suit.

The learned trial judge in O.S.No.236/2012 dismissed the suit of the plaintiff and reserved the plaintiff right and liberty to file a separate suit for appropriate reliefs.

3. The trail on the basis of the above pleadings of both parties, the following issues have been framed as:



Issues

1. Whether the plaintiff proves that she and defendants are Hindu un-divided joint family members?
2. Whether she further proves that the suit schedule properties are their joint family properties?
3. Whether she further proves that the alleged Will dated 09-07-1997 and Registered partition deed dated 16-03-2009 are all void documents and not binding on her legitimate share as contended in her plaint?
4. Whether she is entitled to the relief as sought for?
5. what order or decree?

05. The trial court answered issues as under:

Issue No. 1 : In the Negative
Issue No.2 : In the Negative



Issue No.3 : In the Negative
Issue No.4 : In the Negative
Issue No.5 : **As per final**

In order to prove the plaintiff's case, the plaintiff filed her examination in chief and got examined as P.W.1 and marked 42 documents as per Ex.P1 to Ex.P42 and closed her side evidence. On the other hand, defendant no.1 filed his examination-in-chief and got examined as Dw.1 and also got examined one independent witness as Dw.2 and got marked 60 documents as Ex.D1 to Ex.D60 and closed their evidence.

After conclusion of trial the suit got dismissed, being aggrieved by the same the plaintiff preferred this appeal.

06. In response of notice the respondent appeared before the court through his counsel.

07. The entire records of O.S.No.78/2016 have been called for and the same has been perused by me.



08. Heard the arguments along with the records. Written arguments submitted by the 4th respondent.

09. The points that arise for consideration are:

1. Whether the Appellants proves the alleged interference as set out in the appeal memorandum ?
2. Whether the judgment and decree passed by the trial Court is capricious, perverse and illegal?
3. Whether the judgment and decree of the trial Court needs interference?
4. To what relief and decree the parties are entitled for?

10.The findings on the above Points are as follows:

Points No.1 to 3 : In the partly affirmative

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



REASONS

11. Points No.1 to 3 :- This points are interconnected with each other therefore in order to avoid repetition of fact these points were taken up for joint discussion.

12. The first and foremost ground urged in the appeal is that the trial court fails to consider the liberty granted in O.S.No.232/2012.

13. 2nd ground urged that the trial court fails to consider that, the plaintiff need not to seek declaration if prima-facie the documents itself is invalid and illegal contrary to amended Hindu Succession Act 1956.

14. 3rd ground is the partition deed was have not been considered by the trial court.

15. So these are the 3 main grounds urged in this appeal, With this now let us once again go through the oral as well as documentary evidence with comprehensive analysis of the trial court findings.



16. Herein as already mentioned the first and for most ground itself is non considering the liberty given in O.S.No.236/2012 of the trial court , as such it is just and necessary to take a glance of judgment and decree in O.S.No.236/2012 and the judgment and decree in O.S.No.236/2012 before the trial court got marked as Ex.P6 and thorough scrutiny of Ex.P6 is evident to the fact that , earlier the plaintiff of the present case on the same defendants brought the suit for partition and separate possession with respect to the suit schedule properties of the present case except item no.4 of the present suit.

17. In the said O.S.No.236/2012 it has been projected by her that, her legitimate share has been denied in the suit schedule properties which are Hindu ancestral and joint family properties and they are the joint family members and in the said suit the defendant no.1 and 4 who were also defendant no.1 and 4 of the case in hand, contested the matter on the ground that execution of registered Will by his father Narayanappa and mother Smt. Balamma. As the Suit schedule properties are alleged to be self acquired



properties and they bequeathed the same through Will in favour of the defendant no.1 and 4 and sy.no.357/12, sy.no 357/1 are self acquired properties of Smt. Balamma and she bequeathed same through registered Will dated 09-07-1997 along with her husband and even the registered partition deed dated 14-03-2009 came into effect.

18. Based on the said contention it has been further contended that, there are no properties available for partition by taking such contention in their written statement the trial was proceeded and thereafter the trial court after conclusion of the trial dismissed the suit with liberty to file separate suit for appropriate relief.

19. Therefore Ex.P6 and 7 the judgment and decree in O.S.No.236/2012 being vital documents based on which the plaintiff brought the present suit, thus grab the attention of this court, since in the said judgment the trial court has given the liberty to the plaintiff to file separate suit for appropriate relief as such it is necessary to consider the intention behind the same and findings of the trial court for such



liberty O.S.No.236/2012 as per ExP-6 and on careful scrutiny of the same, the trial court while discussing on item no.1 in para 18 given finding that, the suit item no.1 is the self acquired property of plaintiff's father, the relevant portion is given here below for better understanding,

“When it is proved that, the suit item no.1 is the self acquired property of plaintiff father, then it is his exclusive right to alienate and the plaintiff cannot be questioned right of the father over the suit item no.1, since, it is settled in favour of his sons defendant no.1 and 4 through registered partition deed dated 14-03-2009 and there is no bar in law to settled the exclusive properties in favour of any of the member of the family and it is settled in between the defendant no.1 and 4, as such the plaintiff has not right to question the registered partition deed dated 14-03-2009 which is marked as Ex.D5, hence, it can be hold that, the plaintiff has failed to prove that, the suit item no.1 is the ancestral and joint family property”.



20. Therefore from going through the findings of the court in O.S.No.236/2012 as per Ex.P6, which made it clear that the trial court hold that suit item no. 1 is not ancestral property and plaintiff has failed to prove the same and the item no.1 of O.S.No.236/2012 is nothing but the item no.1 of the present suit, as such when a civil court has given finding and the same was not at all assailed by any appellate court that holds good in the eye of law in view of section 114(E) of Indian Evidence Act.

21.Since the plaintiff had not at all challenged the said findings of the trial court in O.S.No.236/2012 as per Ex.P6 and 7, such being the fact, she cannot claim any right with respect to the item no.1 of the present suit in view of binding in nature of the trial court finding as per section 114(e) of Indian Evidence Act.

22. Further, Item no.2 to 5 are concerned ,the trial court in para 19 as per Ex.P6 held as follows ,

“the very suggestion put to Dw-1 by the plaintiff that suit item no.2 to 5 erstwhile belonged to her grand mother , then she cannot claim it as ancestral and



joint family properties. Therefore it appears that she is blowing hot and cold at the same time”.

23. Further on continuation of appreciation of the fact and documentary evidence of item no.2 to 5 the trial court come to the conclusion that,

“she has not framed her suit properly and blindly without verifying the documents in respect of suit item no.1 to 5” and based on the documents Ex.D23 which is the sale deed dated 05-03-1984 reflecting purchasing of item no.2 and 3 by one Balamma, the trial court in para 15 of Ex.P6 clearly held that, Ex.D23 disclosing that, those properties are purchased by one Smt. Balamma none other than the mother of the plaintiff, as such section 14 to 16 of Hindu Succession Act which applicable to the item no.2, 3 and 4 and 5 as Item no.5 as per Ex.P59 earlier stands in the name of Balamma and as per Ex.P58 the same stood in the name of Muniyappa the brother of the plaintiff.

24. Therefore the pleading in O.S.No.236/2012 as rightly observed by the trial court with respect item no.2 to 5, that without going through the



documents which earlier stood in the name of Smt. Balamma for which section 14 to 16 of Hindu Succession Act comes into play and made it clear that the same are being absolute properties of such female i. e. Balamma it cannot be considered as joint family properties and the plaintiff rather than claiming her share as being legal heirs of said Smt. Balamma as per section 16 of Hindu Succession Act she pleaded that the properties are joint Hindu family properties which resulted in dismissal of the suit as per Ex.P6 and 7 .

25. Thus, the plaintiff was hastened in drafting of the pleading and without going through the documents as rightly observed by the trial court in Ex.P6 and 7, claimed item no.2 to 5 as ancestral and joint family properties though the nature and character of the said properties comes under purview of section 16 of Hindu succession Act, As the trial court had intention to provide an opportunity to seek proper relief by the plaintiff, accordingly dismissed the suit with liberty to file the separate suit for appropriate relief,



26. Thereafter ,the plaintiff brought the present suit and at this time the trial court unfortunately without going through the findings in O.S.No.236/2012 and the intention behind giving liberty to the plaintiff to seek appropriate relief, hastened in forming opinion in para 26 that , “the suit properties are not the joint family properties to the plaintiff and defendants and when there was already a findings that the suit properties are joint family properties again the plaintiff filed the very same suit stating that they are the joint family members and suit properties and joint family properties the same is not sustainable”and the said finding is given without going through the pleading of the plaintiff in this suit ,Since the plaintiff after dismissal of the suit as per Ex.P-6 and 7 . he brought the present suit and In page no.5 para 6 of the plaint he had specifically pleaded as follows ,

The said Subbamma to meet her family and legal necessities sold the said land in favour of Smt. Balamma wife of C.K. Narayanappa Dio Chinnappa under sale deed dated 05-03-1984 and the consideration passed to the vendor out of joint



family funds and after sale deed vide Doc. No.2035/83-84 the mutation also accepted in to the name of Balamma vide MR No. 121-50/96-97. Herewith furnished mutation register extract as Annexure-9 and RTC extracts for the year 1996-97 to 2015-16 as Annexure 10 for kind reference and perusal of this Hon'ble Court. The said property referred in plaint schedule as suit item no.2 and still the mutation of said land is continued in the name of deceased Balamma and hence after her demise the parties being legatees of the deceased succeeded the item no.2 of plaint schedule property and enjoying the same jointly being members of the joint family.

In further in para 7 of the plaint he further pleaded that ,

it is submitted that land bearing sy.no. 357/1 measuring to an extent of 0-04 guntas situated at Kaiwara village, Kaiwara hobli, Chitnamani taluk originally an absolute property of Sri. Smt. Subbamma W/o Sunkara Thimmaiahi.



**The said property clearly shown in item no.3 of
plaint schedule property and hence after demise of
Balamma the parties in the suit inherited the
same and enjoying the same being members of
undivided joint Hindu family.**

In further in para 8 page no.6 of the plaint it has
been pleaded that ,

**it is submitted that house and vacant space
bearing HL/DR No.104, A.No.290 and now the
katha of item no.4 of the plaint schedule property
standing in the name of first defendant. The
parties in the suit also enjoying the item no.4 of
plaint schedule property being members of the
joint family.**

In further in para 9 of the plaint pleaded as
follows,

**it is submitted that, house bearing HL/DR
No.104, A.No.380, measuring east to west 54 feet
and North to South 24 feet, situated at Kaiwara
Village, Kaiwara Grama Panchayath, Kaiwara
Hobli, Chintamani Taluk has been in continuous**



possession and enjoyment by parties since their predecessor period and hence considering the long possession the concerned panchayath authorities mutated the katha in to the name of Balamma. After her death the katha transferred in to the name of 4th defendant.

27. Therefore, from going through the above said pleading it is clear that the plaintiff had got rectified the mistake crept in earlier suit O.S.No.236/2012 about pleading pertains to suit item no 2,3 5 and 6 and she clearly pleaded the nature and character of said properties and further enlighten that ,the same are belonging to Balamma and as being her legal heirs she is entitled to receive her legitimate share, moreover the contesting defendants in O.S.No.236/2012 also have not challenged the finding of the trail court as per Ex.P-6 about holding that ,item no.2 to 5 earlier stood in the name of female member i.e., Smt. Balamma and it cannot be considered as joint family properties. Which also attain finality in view of non challenging the same by the defendants as well as in view of sec 114(e) of the Indian evidence Act. Moreover the defendant no. 1 and 4 have also as per Ex.P6



contended that the same are belonging to Smt. Balamma , as such the pleading in the present suit clearly shed light on the said fact as the extract of the plaint has been mentioned above and the trial court has not been considered the same .

28. That apart, the plaintiff also sought relief of 1/5th share in the suit schedule property and other relief which the court deems fit, under these circumstances this court is of the opinion that the trial court not even take pain to look into the pleading of plaintiff in plaint and fails to understand the case facts that the plaintiff by virtue of section 16 of Hindu succession Act she will also sit on par with the defendants And without considering the same, the trial court formed its opinion that, already the court has given findings again the similar suit has been filed and thus dismissed the suit which is not an proper approach of law ,as the trial court fails to consider the appreciation of legal right of the plaintiff with respect to the suit item no.2 to 5 in O.S.No.236/2012 as the right of the plaintiff was reserved to bring separate suit, however, unfortunately the trial court ignored the same and simply on the ground that in the



earlier suit itself this court has come to the conclusion that the suit schedule properties are not joint family properties, hold that the suit is not sustainable, which is unsustainable under law.

29. Added to it the crucial point is ,the defendants who have taken contention with respect item no. 2, 3, 5 and 6, wherein in para 9 they have contended that the suit item no.2 and 3 of the present suit purchased by their mother Smt.Balamma under registered sale deed dated 05-03-1984 and item no.6 was purchased by the father of the plaintiff and the said item no.6 is nothing but the item no 5 in the earlier suit in O.S.No.236/2012 and if we recall the findings of the trial court in O.S.No.236/2012 as per Ex.P6 as forthcoming from para 19 held as, earlier the same stands in the name of Balamma.

30. And Item no.4 in O.S.No.236/2012 which item no.5 in the present suit to which the defendant no 1 and 4 have contended in their written statement that the same was also self acquired property of their father and in per para 12 of their written statement of defendant no 1 and 4 contended that as per the



joint Will registered No.59/97-98 coupled with the partition deed registered No.3997/2008-09 the properties where disposed of in favour of plaintiff and defendant no.1 to 4. however, in order to prove the same the defendant no.1 got examined as Dw.1 with GPA Holder of defendant no.4 as Dw.2 and got marked Ex.D1 to Ex.D58. Wherein, the defendant no.1 have taken contention about disposal of self acquired properties of the father of the plaintiff by virtue of joint Will and in order to prove the same they have not examined any one of attesting witness in compliance under **Section 63 of the Indian succession Act read with Section 68 of Indian Evidence Act.** As such this court is of the opinion that since the trial court in O.S.No.236/2012 by giving liberty to the plaintiff to bring separate suit by considering the nature and character of the suit item no.2 to 5 dismissed the suit, as such it is the burden upon the defendant who contended that the item no.2 to 5 properties were disposed through the partition deed as well as Will and this court is of the opinion that the Will is not at all proved as no compliance made by examining the attestor of the Will as provided



under Section 63 of the Indian succession Act read with Section 68 of Indian Evidence Act.

Accordingly item no.2 and 3 entertains the right of the plaintiff by virtue of section 16 of Hindu Succession Act and item no.5 and 6 also entertain the right of the plaintiff by virtue of this 16 of Hindu Succession Act and therefore this court is of the opinion that item no.2, 3 and 5 and 6 still available for partition and plaintiff is entitle for 1/5th share in the said property ,as there is no rebuttal evidence by the defendant and item no. 4 is concerned the said suit property was not at all added in previous O.S.No.236/2012 therefore there is a bar under order 2 rule 2 of CPC and plaintiff cannot seek right in the same with this court is of the opinion that the trial court lost sight on the intention of the trial court in O.S.No.236/2012 as per Ex.P6 & 7 where the liberty to bring the separate suit for appropriate relief given to the plaintiff and the registered partition deed dated 16-03-2009 is concerned in view of section 6 of Amended Hindu Succession Act the same is not come in the way of the right of the plaintiff and thus this court is of the opinion that, the trial court not at



all consider the same and fails to understand the facts of the plaintiff case and not take a glance of the plaint which certainly do warrant interference by this court and in view of discussion as held above , **I answered point no.1 to 3 in the partly affirmative.**

31. Point No.4:- For the foregoing reasons, I proceed to pass the following:-

ORDER

The appeal filed by the appellant Under Section 96 R/w order 41 rule 1 of CPC challenging the Judgment and Decree passed in O.S.No. 78/2016 dated: 19-01-2024 on the file of the Hon'ble Addl. Civil judge and JMFC., Chintamani. is hereby Partly allowed .

Consequently, the judgment and decree passed in O.S.No.78/2016 dated 19-01-2024 on the file of Addl. Civil Judge and JMFC., Chintamani is hereby confirmed with respect to item no.1 and 4 .

Further, the judgment and decree passed in O.S.No.78/2016 dated 19-01-2024 on the file of



Addl. Civil Judge and JMFC., with respect to item no.2, 3, 5 and 6 is hereby set aside and consequently declared that the plaintiff is having 1/5th share each in item no.2, 3 and 5 and 6.

Further the will dated 09-07-1997 and the registered partition deed dated 16-03-2009 are hereby declared as not binding on the right of the plaintiff

No order as to costs.

Draw decree accordingly.

Send back the records to the trial court along with copy of judgment and keep the original in appeal record.

(Dictated to the Stenographer, computerized transcript revised and then pronounced by me in the open court on this the 27th day of March 2026).

Sd/-
(GEETHANJALI G.)
Senior Civil Judge and
J.M.F.C., Chintamani.

