

KACN010031612023



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, CHAMARAJANAGAR**

PRESENT:

**Smt. B.S.BHARATHI, B.Sc., LL.B.
Prl. District & Sessions Judge,
Chamarajanagar**

DATED: THIS THE 17th DAY OF AUGUST 2024

R.A./96/2023

[R.A.5022/2022]

Appellant/s:

1. Rajamma

W/o.late Rachashetty,
Aged about 70 years,
R/at.Ward No.24,
Jalahallihundi village,
Chamarajanagar Taluk.

2. Mahadevashetty,

[since dead by L.Rs.]

2[a] Smt.Gayathri,
W/o.late Mahadevashetty,

Aged about 50 years.

2[b] Sri.Manju,
S/o.late Mahadevashetty,
Aged about 30 years.

2[c] Sri.Giri,
S/o.late Mahadevashetty,
Aged about 28 years.

2[d] Jyothi,
D/o.late Mahadevashetty,
Aged about 26 years.

2[e] Shashi,
S/o. Late Mahadevashetty,
Aged about 24 years.

Appellants 2(a) to 2(e) are
residing at: Ward No.24,
Jalahallihundi village,
Chamarajanagar District.

3. Mahadevashetty,
S/o.late Veerashetty,
Aged about 65 years.
Residing at: Ward No.24,
Jalahallihundi village,
Chamarajanagar Taluk.

[By Sri.V.Nagarajendra.B, Adv.,]

V/s.

Respondent/s:**1. Jayamma**

W/o.late Basavashetty,
Aged about 65 years.

2. Chinnaswamy,

S/o.late Basavashetty,
Aged about 40 years.

3. Jayalakshmi,

D/o. Late Basavashetty,
Aged about 40 years.

4. Lakshmidevi,

D/o.late Basavashetty,
Aged about 37 years.

5. Sakamma,

D/o.late Basavashetty,
Aged about 35 years,

6. Krishna

S/o.late Basavashetty,
Aged about 25 years.

7. Sarasu,

D/o.late Basavashetty,
Aged about 38 years.

Respondents 1 to 7 are
residing at Doddamole village,
Kasaba Hobli,
Chamarajanagar District.

8. Ramaswamy,

S/o.late Rachashetty and

Puttarangamma,

Aged about 40 years.

Residing at:

Kodimole village,

Chandakavadi Hobli,

Chamarajanagar District.

9. Puttamma,

W/o. Late Sannashetty,

Aged about 60 years,

Residing at:

Jalahallihundi,

Chamarajanagar District.

10. Siddamma,

W/o.late Doddasiddashetty,

Aged about 50 years,

Residing at:

Nagavalli village,

Chandakavadi Hobli,

Chamarajanagar District.

[R.1 to 7: By **Sri.A.S.Vijayakumar,**
Adv.,]

[R.8 to 10: By
Sri.C.V.Raghavendraguru, Adv.,]

[R.9: By **Sri.D.M.Sreekantamurthy,**
Adv.,]

JUDGMENT

This appeal is filed by the Defendant No.1 and L.Rs., of Defendant No.2 and Defendant No.5 against the Plaintiffs and Defendant No.3, 4 and 6 praying for setting aside the judgment and decree passed by the Addl. Civil Judge (Sr.Dn) & JMFC, in O.S.76/2017 dtd:19.09.2022.

2. According to the Appellants, the Plaintiffs have filed the suit against the Defendants for relief of partition and separate possession in respect of the suit properties. Even though the Plaintiffs are not entitled to obtain any share in the suit properties, the learned Civil Judge without perusing the records, wrongly had come to the conclusion and decreed the suit of the Plaintiff. According to the Appellants, one Veerashetty of Channipuradamole village, Chamarajanagar taluk has married Chikkarachamma and due to their wedlock, 7 children were born by name Rachashetty, Basavashetty @ Puttabasavashetty, Mahadevashetty, Puttamma, Siddamma, Mahadevamma and Puttarangamma. Out of the above said persons, Puttamma and Siddamma are not alive and died long back. According to the Appellants, on 02.03.1980, the sons of Veerashetty by name Rachashetty, Basavashetty @ Puttabasavashetty and Mahadevashetty divided their ancestral properties through panchayat palu parikat. According to the same, the 1st son Rachashetty and 3rd son Mahadevashetty

have obtained item No.1 and 2 [a] and 2[b] of properties jointly. Basavashetty has obtained the mortgaged properties which were situated at Doddamole village, which is clearly mentioned in the panchayat palu parikat. What are the properties came to the share of Rachashetty, Basavashetty @ Puttabasavashetty and Mahadevashetty are clearly mentioned in the said palu parikat. The Appellants have furnished the said documents. According to the said panchayat Palu parikat dtd:02.03.1980, the husband of the 1st Plaintiff and father of the Plaintiff No. 2 to 7 by name Basavashetty @ Puttabasavashetty is not entitled to obtain any properties, which are mentioned in the suit schedule. Even though the Defendants / Appellants furnished necessary documents, the learned Civil Judge has not perused the said documents. As per Ex.D.5, unregistered panchayat parikath, the property of Doddamole village is allotted to the share of Basavashetty. In the judgment of the Trial Court, the learned Trial Judge has stated that except Ex.D.5, unregistered panchayat parikat, no document is produced by the appellant to show that the property of Doddamole village allotted to the share of Basavashetty, husband of Plaintiff No.1. Ex.D.5 is sufficient to prove that whether the partition is affected between brothers. According to the said palu parikat, Rachashetty and Mahadevashetty have obtained 0.24 guntas each in Sy.No.176/3 and Sy.No.242/1. Rachashetty and Mahadevashetty have obtained 0.23 guntas each and the said

Rachashetty and Mahadevashetty are in possession of the same. But kathas have not been changed. In this circumstances, Rachashetty has sold his share in Sy.No.176/3 measuring 0.24 guntas in favour of his brother Mahadevashetty though the registered sale deed dtd:19.09.1995. Hence, Mahadevashetty is the absolute owner of 1.08 guntas in Sy.No.176/3. Hence, katha of 1.08 guntas in Sy.No.176/3 is entered in the name of Mahadevashetty in revenue records. According to the Appellants in Sy.No.242/1, Rachashetty and Mahadevashetty have got equal share of 0.23 guntas and also katha of the said properties were changed in their respective names. The Trial Court has not considered these aspects. Hence, this appeal is filed on the following grounds:

GROUND

According to the Appellants, the judgment of the Trial Court in O.S.76/1970 is erroneous. The panchayat parikath dtd:02.03.1980 clearly speaks that partition was effected between Rachashetty, Basavashetty and Puttabasavashetty and Mahadevashetty. But the learned Civil Judge has not perused the said document clearly and wrongly come to the conclusion by decreeing the suit of the Plaintiffs. The Appellants have also furnished registered sale deed dtd:19.09.1995. It clearly speaks that partition was affected between the brothers and the

said Rachashetty has sold his share of property to Mahadevashetty. The Trial Court has not considered these aspects. Hence, prays for allowing the appeal on several other grounds.

3. After filing of the appeal, notices were issued to the Respondents and Respondents appeared through advocate.

4. I.A U/o.41 Rule 27 is also filed by the Appellants seeking permission to produce additional evidence to establish their case. Affidavit is filed by the 3rd Appellant along with the application stating that the Defendants have taken contention that there was a partition in the year 02.03.1980 between the sons of Veerashetty ie., Rachashetty, Basavashetty and Mahadevasehtty and all of them have got share in the same. According to them, all the kathas of the said properties have been changed in the name of the children of Veerashetty and they are enjoying the same. Along with the application, Raseedi patta in respect of Sy.No.176/3 and 242/1 patta receipt book standing in the name of Mahadevashetty s/o.Veerashetty in respect of Sy.No.242/1 and 176/3 and receipts, agreement executed by Rachashetty in favour of Mahadevashetty in respect of Sy.No.176/3 and RTC in respect of Sy.No.176/3 which is standing in the name of Mahadevashetty s/o.Veerashetty for the year 1995-96 and RTC in respect of Sy.No.176/3 which his standing in the name of

Veerashetty for the year 1978-79 to 1991 and mutation register extract and RTC in respect of Sy.No.242/1 standing in the name of Rangashetty are produced.

5. Objection is filed to this I.A by the Respondent No.1 stating that the Appellants have not produced any document to show that properties have been allotted to the share of Respondents. The documents sought to be produced are not relevant to adjudicate this appeal. Hence, prays for dismissing the application.

6. The 8th Respondent has also filed objection to this application stating that there is partition in the family and hence, the 8th Defendant has sought for partition of the family properties in the trial court. This application is filed to drag on the case. Hence, prays for dismissing the application on several other grounds.

7. Heard both sides.

8. Basing on the above said facts, following points that arise for my consideration are:-

1. Whether the Appellants have made out any ground to set aside the judgment of the Trial Court?
2. Whether the Appellants have made out any ground to permit the Appellants to produce the documents as sought by the Appellants along with the application?

3. What order?

9. My findings to the above said points are as under:-

Point No.1: **In the Negative,**

Point No.2: **In the Negative,**

Point No.3: As per final order for the following:

REASONS

10. On perusal of the Trial Court records, it is clear that the Plaintiffs who are the Respondents 1 to 7 in the appeal had filed O.S.76/2017 suit in the Trial Court praying for judgment and decree by declaring that the Plaintiffs are entitled for 7/24th share in the suit property and partition and separate possession of Plaintiffs share by metes and bounds. In the plaint, schedule properties have been shown as below:

Item No.1 – land bearing Sy.No.176/3 measuring 01 acre 08 guntas situated at Chamarajanagar village, Kasaba hobli, Chamarajanagar Taluk.

Item No.2 – land bearing Sy.No.242/1 measuring 01 acre 06 guntas situated at Chamarajanagar village, Kasaba hobli, Chamarajanagar Taluk and out of that 23 guntas is standing in the name of Defendant No.5.

11. According to the Plaintiffs, one Veerashetty had 3 sons and 4 daughters by name Rachashetty, Basavashetty,

Puttarangamma, Mahadevamma, Puttamma, Mahadevashetty and Siddamma. Out of them, Veerashetty, Rachashetty, Basavashetty, Puttarangamma and Mahadevamma are no more. The said Veerashetty died about 30 years back. The 1st Defendant is the wife and 2nd Defendant is the son of Rachashetty. The 1st Plaintiff is the wife and Plaintiffs No.2 to 7 are the children of late Basavashetty. The 3rd Defendant is the son of late Puttarangamma. The said Mahadevamma D/o. late Veerashetty had no issues. Defendant No.4 to 6 are the children of Veerashetty. According to the Plaintiffs, the property described in the schedule below is the ancestral and joint family properties of Plaintiffs and Defendants. During the life time of late Veerashetty, he was in possession and enjoyment of the suit property. According to the Plaintiff, after his death, his children are in joint possession and enjoyment of the suit property. After the death of Basavashetty, Rachashetty, the Plaintiffs and Defendants have been in joint possession and enjoyment of the suit properties. The Plaintiffs and Defendants have got share in the suit properties. There is no partition affected in the family of late Veerashetty. The Defendant No.5 and husband of the 1st Defendant i.e., Rachashetty got transferred the katha of the schedule property in their name without the knowledge and intimation to the Plaintiffs. Taking advantage of the change of katha, the 5th Defendant and Defendant No.1 and 2 are trying to alienate the schedule properties. Hence, on 02.04.2017, the Plaintiff came

to know about the same. Hence, the Plaintiffs are entitled for share of Basavashetty. Later, case was also amended and it is also stated that the sale deed dtd:19.09.1995 executed by Rachashetty s/o.late Veerashetty and Mahadevashetty s/o.late Rachashetty, i.e, 2nd Defendant in favour of Mahadevashetty ie., 5th Defendant in respect of item No.1 i.e., Sy.No. 176/3 measuring 24 guntas out of 1.08 guntas of Chamarajanagar taluk is void document and it is null and void and not binding on the Plaintiffs' share. Rachashetty and his son Mahadevashetty have no right to sell the above said properties. Hence, prays for decreeing the suit.

12. In the Trial Court, Defendant No.1, 2 and 5 filed written statement denying the same and it is the contention of these Defendants that on 02.03.1980, there was a partition in the family and unregistered palu parikat was executed between the parties and accordingly, all the properties which were allotted to the share of the sons of Veerashetty are in possession of their shares. The 1st Defendant's husband and 2nd Defendant has executed sale deed on 19.09.1995 in respect of 24 guntas of land in favour of 5th Defendant which is allotted to their share. Since 1995, 5th Defendant is in possession of the same. Hence, as per the palu parikat, the properties have been given to all the legal heirs of Veerashetty and all of them have got changed kathas in their name. Hence, this suit is not maintainable.

13. L.Rs., of Defendant No.2 after the death of Defendant No.2 adopted the written statement of Defendant No.2.

14. Defendant No.4 appeared in the Trial Court has filed written statement stating that there was already a partition in the family and Plaintiffs have no share in the same. In addition to the same, this Defendant No.4 has also contended that at the time of marriage, daughters were given amount and gold. This Defendant has also contended that there was a partition on 02.03.1980.

15. Basing on the above said pleadings, the Trial Court has framed the following issues:

1. Whether the plaintiffs prove that, suit schedule properties are ancestral and joint family properties of plaintiffs and Defendants and they are in joint possession and enjoyment of the same?
2. Whether the plaintiffs prove that, the Defendant No.5 and husband of Defendant No.1 by name Rachashetty got transferred the katha of the suit property in their names without their knowledge?
3. Whether the Defendant No.1, 2 and 5 prove the earlier partition taken place in between husband of the plaintiff No.1 and

father of plaintiff No.2 to 7 by name Basavashetty @ Puttabasavashetty, Rachashetty and Mahadevashetty and their mother Chikkarachamma and Veerashetty as per unregistered Paluparikath Dtd:02.03.1980 and they are in possession of the properties which were allotted in the said partition?

4. Whether the Defendant No.1, 2 and 5 prove that the husband of the Defendant No.1 and Defendant No.2 has alienated the 24 guntas which was allotted to their share in partition in favour of Defendant No.5 through a registered sale deed Dtd: 19.09.1995 and possession also handed over?

5. Whether the plaintiffs are entitled for 7/24 share in the suit properties?

6. What order or decree?

Additional Issues:

1. Whether the Defendant No.4 proves that, the husband of plaintiff No.1 and father of plaintiff No.2 to 7 by name Basavashetty @ Puttabasavashetty, Rachashetty, Mahadevashetty and the father and mother of Defendant No.4 by name Chikkarachamma and Veerashetty effected partition in the family properties on 02.03.1980 and accordingly they are in possession and enjoyment of their respective properties?

16. Later after recording evidence of both sides, the Trial Court has answered Issue No.1, 2 in the affirmative and Issue No.3,4 and Addl.Issue No.1 in the Negative and Issue No.5 partly in the affirmative and decreed the suit of the Plaintiffs and held that the Plaintiffs are entitled for 1/6th share in the suit property by metes and bounds and Defendant No.1 and Defendant No.2[a] to [e] are jointly entitled for 1/6th share and Defendant No.3 to 6 are entitled for 1/6th share each in the suit properties. The Trial Court has also held that registered sale deed executed by Rachashetty and Mahadevashetty s/o. Rachashetty in favour of Mahadevashetty dtd: 19.09.1995 in respect of item No.1 of the suit property bearing Sy.No.176/1, 176/3 measuring 24 guntas out of one acre 08 guntas of Chamarajanagar village is declared as null and void and not binding on the share of the Plaintiffs. The Sub-Registrar, Chamarajanagar is hereby directed to cancel the registered sale deed No. 848/1995-96 dtd:19.09.1995.

17. Aggrieved by the same, this appeal is filed by the Defendant No.1 and L.Rs., of Defendant No.2 and Defendant No.5.

18. On perusal of the judgment of the Trial Court, it is clear that Trial Court has come to the conclusion that even though the Defendants have produced the Ex.D.5 which is a unregistered palu patikat, there is no document to show that

the properties have been allotted to the share of the Plaintiffs and Defendants as per the palu parikat and it is acted upon.

19. Now the court has to re appreciate the evidence of the Trial Court in order to consider whether the Appellants have proved that there was already a partition in the family and properties have been allotted to the share of children of Veerashetty as per palu parikat dtd 02.03.1980 which is produced at Ex.D.5 and kathas have also been changed in the name of the share holders as per Ex.D.5 or not. The advocate for Appellants has vehemently argued that the kathas and RTCs of those properties have been changed in the name of the respective share holders as per the memorandum of partition deed dtd: 02.03.1980 which is produced at Ex.D.5. There is no dispute in respect of genealogy tree averred by the Plaintiff in the plaint. On perusal of Ex.D.5, which is produced by this Appellant in the Trial Court i.e., palu parikat, it is clear that in Ex.D.5, it is mentioned that the property bearing Sy.No.176/3 measuring 01 acre 08 guntas and property bearing Sy.No.242/1 measuring 01 acre 06 guntas of Kallamadi village and Mission house and Diesel pump-set, which are there in the property along with old 4 coconut trees and new 70 coconut trees which were planted in the said lands were allotted to Rachashetty and Mahadevashetty. The said partition deed was affected between Rachashetty, Puttabasavashetty and Mahadevashetty who are the children

of Veerashetty. In the partition deed, it is stated that the property which is mortgaged in favour of Sannamadashettar is allotted to Puttabasavashetty. In the said partition deed, the Sy.No of the property which is allotted to the 1st Plaintiff's husband and father of Plaintiff No.2 to 7 have not been shown. In addition to the same, in the said partition deed, it is mentioned that Sy.No.....land and 11 coconut trees and one roof tiled house of Channipuradamole is allotted to the share of the parents and after their death, the said property has to be partitioned among themselves. That means, what is the property which is allotted to the share of the parents is also not mentioned in the said palu parikat. Therefore, it is clear that the property which is allotted to the husband of the Plaintiff No1 is not at all shown in the palu parikat. Even if we consider that Puttabasavashetty has affixed his thumb impression on the same and Puttabasavashetty and Basavashetty are the same persons, when the property allotted to the Plaintiff No.1's husband Basavashetty is not shown in the palu parikat, the same cannot be considered by this court to show that there was a palu parikat as per Ex.D.5 and properties were allotted to the share of all the children of Veerashetty. In addition to the same, admittedly, daughters have not been shown in the palu parikat. Even though Defendant No.3 in the written statement has contended that at the time of marriage, amount and gold were given to the daughters, on perusal of the Trial Court records, it is clear that

there is no evidence to prove the said version of the Defendants. In addition to the same, no document is produced before the Trial Court or before this Appellate court to show that what is the property which is allotted to the Plaintiff No.1's husband Basavashetty and whether katha is standing in the name of the Plaintiffs or Basavashetty. Even though the advocate for Appellants has argued that memorandum of partition deed is already acted upon, the documents produced before the Trial Court do not disclose that it is acted upon and katha of the properties have been changed in the name of Basavashetty also. In the Appellate court, the Appellant has produced the above said documents i.e., RTCs and patta book and these documents only shows that kathas have been changed in the name of Appellants and not in the name of Basavashetty ie., the husband of the Plaintiff No.1 as per the memorandum of partition deed. Therefore, the documents produced by the Appellants will not help the Appellants to prove that partition is effected upon and kathas have been changed in the names of their respective share holders as per palu parikat which is marked as Ex.D.5 in the trial court. Therefore, the Trial Court has rightly discussed in detail about the documents and passed the decree. In addition to the same, as stated above, the daughters were not made as parties in the palu parikat and no evidence to show that cash and gold were given to the daughters of Veerashetty at the time of their marriage. Hence, they are entitled for share in the

family properties. The Appellants have relied the judgment of Hon'ble High court of Karnataka reported in **ILR 2002 KAR 3613 in the case of Anjanayyashetty Vs. K.H.Rangaiahshetty and ILR 2000 KAR 3955 between Chikkegowda and another Vs. L.Govindegowda**. In the said decisions relied by the Appellants, the Hon'ble High court of Karnataka has considered that, there is no total prohibition for receiving unregistered documents in evidence to prove any collateral transaction. However, in this case, since it is not a partition deed, it is a unregistered memorandum of partition deed, the court has already allowed the Appellants to mark the said document and it is marked as Ex.D5 in the Trial Court. However, the court has to consider whether the partition is effected and kathas have been changed as per partition deed. As stated above, no documents are produced by the Appellants in the Trial Court or in the Appellate court to show that as per the memorandum of partition deed, the husband of Plaintiff No.1 has been allotted some share and katha of the said properties has been changed in his name. Therefore, I feel that no case is made out by the Appellants to interfere with the judgment of the Trial Court. In addition to the same, there is no grounds made out by the Appellants to permit the Appellants to produce the documents which are in the name of the Appellants. Hence, I answer **Point No.1 and 2 in the Negative**.

20. **Point No.3:** In view of answering Point No.1 and 2 in the Negative, I pass the following:

ORDER

The Appeal filed by the Appellants is **DISMISSED.**

Application filed under Order 41 Rule 27 by the appellant is dismissed.

The Judgment of the Trial Court in O.S.76/2017 dtd: 19.09.2022 is **CONFIRMED.**

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

(Dictated to the Stenographer, thereafter same was typed by her, corrected and then signed by me on 17th day of August, 2024)

(B.S.BHARATHI)
Prl. District and Sessions Judge,
Chamarajanagar

