

KAHS700014262021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC., HOLENARASIPURA**

Present: Smt.Nivedita M.Munavallimath
B.Com, LLM,
Senior Civil Judge & JMFC.,
Holenarasipura.

Dated: this 02nd day of April 2026

R.A.No.40/2021

Appellant : Ramegowda,
S/o. Late Siddegowda,
Aged about 70 years,
R/o. Somanahalli village,
Hallimysuru hobli,
Holenarasipura taluk,
Hassan district.

(By Advocate Sri.K.K.R.)

v/s

Respondents: 1. Ambika,
W/o. Lavakumara,
D/o. Late Kalegowda,
Aged about 32 years,
R/at Jinnenahalli village,
Shravanabelagola hobli,
Channarayapatna taluk,
Hassan district.

2. Deepika,
W/o. Yuvaraja,
D/o. Late Kalegowda,
Aged about 30 years,
R/at Opp.Bharath boundary,

6th cross, N.T.Road,
Shivamogga district.

3. Rajamma,
W/o. Late Kalegowda,
Aged about 60 years,
R/at Somanahalli village,
Hallimysuru hobli,
Holenarasipura taluk.

Present R/at Nalluru village,
Kushalanagara hobli,
Somawarapete taluk,
Kodagu district.

4. Kamma @ Lakshamma,
W/o. Puttaswamygowda,
D/o. Siddegowda,
Aged about 58 years,
R/at Somanahalli village,
Hallimysuru hobli,
Holenarasipura taluk.

5. Gowamma,
W/o. Ramakrishna,
D/o. Siddegowda,
Aged about 50 years,
R/at Akulavadi village,
Konanuru hobli,
Arakalagudu taluk, Hassan district.

(R1 to 3 by Adv., Sri.K.R.)
(R4 & 5 Absent)

Date and nature of decree or order
appealed against

: Judgment and decree
passed in O.S.03/2014
dated 01.02.2020 on the
file of Addl. Civil Judge &
JMFC., Holenarasipura

Date of Institution of the Appeal : 07.10.2021

Date of Judgment : 02.04.2026

Total Duration : Year/s Month/s Day/s
04 05 25

J U D G M E N T

This is an appeal filed by the appellant under Order 41 Rule 1 of CPC, being aggrieved by the judgment and decree passed by the Addl. Civil Judge and JMFC, Holenarasipura in O.S.No.03/2014 dated 01.02.2020.

2. The appellant herein was defendant No.1 and the respondents were the plaintiffs and defendant No.2 and 3 before trial court. For the sake of brevity and convenience, the parties to the appeal referred as per their ranking before the trial court.

3. The brief facts of the plaintiffs case are as under:

The plaintiffs and defendants are the members of Hindu joint family. One Kalegowda is the father of plaintiff No.1 and 2 and husband of plaintiff No.3. The said Kalegowda died on 02.01.2000 leaving behind the plaintiffs as his legal heirs. The defendant No.1 is the brother and defendant No.2 and 3 are the

sister of Late Kalegowda. The suit item No.1 to 3 and 5 are the ancestral and joint family properties and item No.4 has been purchased out of joint family nucleus. There is no partition by metes and bounds between them and they are in joint possession of the same. After the demise of Kalegowda, the plaintiffs started residing in the parental house of plaintiff No.3 at Nalluru village. The plaintiff No.1 and 2 got married and residing in their matrimonial home.

4. It is further averred in the plaint that defendant No.1 being the elder member in the family got transferred the katha of the suit property in his name and refused to give share to the plaintiffs and now he is trying to dispose the suit properties in order to deprive the share of the plaintiffs in the suit properties. Therefore, the plaintiffs have filed the suit before the trial court for seeking the relief of partition and separate possession.

5. In response to the suit summons issued by the trial court, defendant No.1 appeared through counsel and filed written statement. In spite of service of summons, defendant No.2 and 3 remained absent and hence, they placed exparte.

6. In the written statement defendant No.1 admitted the relationship and denied rest of the averments of the plaint and inter alia contended that the plaintiffs are residing at Nalluru village and they never resided in joint family along with defendant No.1 at Somanahalli village. Further contended that he got purchased 3 acres of land in the name of Late Kalegowda and hence, Late Kalegowda has executed relinquishment deed in his favour on 14.12.1999 and hence, the plaintiffs have no right over the suit properties. Further contended that Late Kalegowda after receiving amount from him, has relinquished his right over the ancestral joint family properties situated at Somanahalli village and out of said amount, Late Kalegowda has purchased the property at Nalluru village and started residing at Nalluru village. The plaintiff No.3 has knowledge about the relinquishment deed, but filed false this suit and hence, it is liable to be dismissed. On these grounds, defendant No.1 prays to dismiss the suit.

7. On the basis of the rival contentions of the parties, the Trial Court framed the following;

ISSUES

1. Whether the plaintiffs prove that the suit schedule properties are the ancestral and joint family properties to them and defendants?

2. Whether the defendant No.1 proves that the late Kalegowda had relinquished his ancestral properties in his favour by executing relinquish deed on 14.05.1999?

3. Whether the plaintiffs prove that they are entitled 1/4th share in the suit schedule properties as prayed for?

4. To What order or decree?

8. After scrutinizing the oral and documentary evidence placed on record, the trial court decreed the suit of the plaintiffs and the same has been assailed and appeal by defendant No.1 on the following:

GROUND

The Judgment and Decree passed by the trial court is against to the law and facts. Though the plaintiffs sought for 1/4th share in the suit properties, but the trial court granted 1/3rd share in the same without following the judgments rendered by the Hon'ble High Court. The trial court without scrutinizing the documents placed by the appellant/defendant No.1 erred in decreeing the suit. The trial court has not considered citations placed by the appellant/defendant No.1 and wrongly decreed the suit. The trial court failed to appreciate the Ex.D1 and hence, the judgment and decree passed by the trial court is

without any justification and liable to be set aside. On these grounds the appellant/defendant No.1 prays to allow the appeal.

The appellant further filed I.A.No.IV U/O. 41 Rule 27 of CPC, seeking permission to lead additional evidence. The application is accompanied with an affidavit duly sworn by the appellant. It is stated in the affidavit that he has not produced some important documents before the trial court and the said documents are very much necessary to decide the matter in controversy and hence, he may be permitted to lead additional evidence. Percontra, respondent No.3 filed objection stating that the documents sought to be produce by the appellant is already produced before the trial court and got marked the same at Ex.D1 and hence, there is no reasonable grounds to allow the application.

9. In response to the notice issued by this court, respondent No.1 to 3 appeared through counsel and supported the judgment and decree passed by the trial court and not filed any cross appeal. In spite of service of notice, respondent No.4 and 5 remained absent and hence, they placed exparte.

10. Heard arguments addressed by both counsel and perused the records and written argument submitted by the counsel for the appellant.

11. The points that arises for my consideration are as under:

P O I N T S

1. Whether the appellant has shown sufficient cause for not leading the evidence before the trial court?
2. Whether the trial court failed to consider the evidence placed by the appellant/defendant No.1 more particularly Ex.D1 and erred decreeing the suit?
3. Whether the interference of this court is warrant?
4. What order or decree?

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

- Point No.1 : In the **Negative**,
Point No.2 : In the **Negative**,
Point No.3 : In the **Affirmative** and
Point No.4 : As per final order
for the following;

R E A S O N S

13. **Point No.1:** The appellant further filed I.A.No.IV U/O. 41 Rule 27 of CPC, seeking permission to lead additional evidence. The

application is accompanied with an affidavit duly sworn by the appellant. It is stated in the affidavit that he has not produced some important documents before the trial court and the said documents are very much necessary to decide the matter in controversy and hence, he may be permitted to lead additional evidence.

14. Percontra, respondent No.3 filed objection stating that the documents sought to be produce by the appellant is already produced before the trial court and got marked the same at Ex.D1 and hence, there is no reasonable grounds to allow the application.

15. It is relevant to note that Order 41 Rule 27 of CPC, provides an opportunity to the parties ti lead additional evidence at the appellate court under particular circumstances, which states as under :

"Rule-27. Production of additional evidence in Appellate Court.- (1) parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted,

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence such evidence was not

within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produce or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”.

16. The above provision of law makes it clear that the party who wants to lead additional evidence in the appeal, has to demonstrate before the Court that inspite of due diligence he could not lead the additional evidence before the trial court or other substantial cause for non-leading the same. In the instant case, in the affidavit filed in support of IA.No.IV, the appellant simply stated that the documents sought sought to be produce are important one. But, no reasons are disclosed for non-production of the same before the trail court. Moreover, the records discloses that the appellant has already got marked RTC at Ex.D1. Thus, I conclude that appellant has shown sufficient cause for not leading the evidence before the trail court. Accordingly, I answer the above point No.1 in the **Negative**.

17. **Point No.2 and 3:** Since these two points are inter-related to each other, hence, I have taken together for common discussion to avoid repetition of facts and evidence.

18. On going through the pleadings of the parties, it appears that there is no dispute about the relationship of plaintiffs and the defendants. According to the plaintiffs, suit item No.1 to 3 and 5 are the ancestral and joint family properties and item No.4 has been purchased out of joint family nucleus and there is no partition by metes and bounds between them and they are in joint possession of the same. They being the legal heirs of Late Kalegowda, entitled to legitimate share in the suit properties. But, defendant No.1 being the elder son got transferred the khata of the suit properties in his name and denied the share of the plaintiffs.

19. As against this, defendant No.1/appellant taken the stand that he got purchased 3 acres of land in the name of Late Kalegowda and hence, Late Kalegowda has executed relinquishment deed in his favour on 14.12.1999 and hence, the plaintiffs have no right over the suit properties. In support of his defence, he got marked the relinquishment deed at Ex.D1. It is the main ground urged in the appeal memo that the trial court failed to consider Ex.D1 and wrongly decreed the suit.

20. In the light of above contention of the appellant, I have perused Ex.D1. It is pertinent to note that Ex.D1 on which defendant No.1 place reliance about extinguishment of right by Late Kalegowda itself is in admissible for want of registration. **Section 17 of Registration Act, 1908**, states that a release of rights in the immovable property must be registered. In the instant case, admittedly Ex.D1 is un-registered. The trail court discussed the relevancy of Ex.D1 in the light of law laid down by the Hon'ble High Court of Karnataka in a citation reported in 2017 SCC Online Kar 3676 and rightly answered issue No.2 in the negative. It is worthful to note that during the cross-examination, DW.1 who is the appellant admitted relationship of the plaintiffs and nature of the suit properties and the same has been rightly appreciated by the trail court and rightly answered issue No.1 in the affirmative.

21. With regard to quantum of share is concerned, the trail court applied notional partition holding that the propositus Siddegowda died before 2005. It is worthful to note that before an amendment was made in the Hindu Succession Act, 1956, women did not enjoy a right on their ancestral property after their

marriage as they were not considered as a co-parceners. The old laws basically denied co-parcenary status to women. After the amendment, in the Succession laws through the Hindu Succession (Amendment) Act, 2005, women have been accepted as co-parceners. Now, both, sons and daughters are co-parceners in the family and share equal rights and liabilities over the property. A daughter remains a co-parcener in the property even after her marriage. While it said that, a daughter has the same rights over the ancestral properties as a sons. The Hon'ble Apex Court put a caveat that, both, father and daughter, had to be alive on September-9, 2005, for this provision coming into force. It is relevant to note that in a case of ***Vineeta Sharma V/s Rakesh Sharma, the Hon'ble Apex Court*** held and clarified that the daughters have equal co-parcenary rights in the joint Hindu family property even if the father died before the Hindu Succession (Amendment) Act, 2005. Since the right in co-parcenary is by birth, it is not necessary that the father should be alive as on September-9-2005. The daughters confer the states of "Co-parcener" whether they were born before or after amendment to Hindu Succession Act (2005) in the same manner as a son with the same rights and liabilities. The verdict also makes it clear that the amendment to the Hindu Succession Act 1956, granting equal

rights to daughters to inherit ancestral property, would have retrospective effect. In the instant case, it is undisputed that defendant No.2 and 3 are legitimate daughters of propositus Siddegowda. Therefore, in view of the ratio laid down by Hon'ble Apex Court in Vineeth Sharma case, defendant No.2 and 3 being daughter of Siddegowda are entitled to equal share along with defendant No.1 and Late Kalegowda. Therefore, the date of death of propositus Siddegowda is not relevant for deciding the quantum of shares of defendant No.2 and 3. But, the trail court failed to appreciate the law laid by the Hon'ble Apex Court in Vineeth Sharma case and wrongly awarded share by applying notional partition. Thus, interference is required only in issues No.3 in respect of quantum of shares. Therefore, I hold that the plaintiffs together entitled to $\frac{1}{4}$ share in the suit properties by metes and bounds. Similarly, defendant No.1 to 3 are entitled to $\frac{1}{4}$ th share each in the suit properties by metes and bounds. Accordingly, I answer the above point No.2 in the **Negative** and Point No.3 in the **Affirmative**.

22. **Point No.4:** In view of my findings on point No.1 to 3, I proceed to pass the following;

ORDER

The appeal filed by the appellant under order 41 Rule 1 of CPC, is hereby allowed.

Consequently, the Judgment and Decree passed by the Addl. Civil Judge and JMFC., Holenarasipura, in O.S.No.3/2014 dated 01.02.2020 is hereby modified.

The plaintiffs/respondent No.1 to 3 are together entitled to 1/4th share in the suit properties by metes and bounds. Similarly, defendant No.1/appellant is entitled to 1/4th share in the suit properties by metes and bounds. Similarly, defendant No.2 and 3 /respondent No.4 and 5 are entitled to 1/4th share each in the suit properties by metes and bounds.

Draw preliminary decree accordingly.

Transmit the copy of this judgment to the Trial Court along with TCR forthwith.

(Dictated to the stenographer, transcribed by him, revised by me and after corrections, pronounced in the Open Court on 02nd day of April 2026)

(Smt.Nivedita M.Munavallimath)
Senior Civil Judge & JMFC.,
Holenarasipura.