



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT SINDHANUR**

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M.,
Senior Civil Judge & J.M.F.C.
SINDHANUR.

: REGULAR APPEAL No : 45/2025:

DATED: 1st day of July 2026

- APPELLANTS :- Hussainamma D/o Ganga
aged 65 year Occ, Agri, and house hold
R/o Hulugunchi village
Tq Sindhanur Dist, Raichur.
Since deceased through her Lrs
1. Durugappa S/o Hussainamma
age 60 year Occ, agri.
R/o Hulagunchi village
Tq. Sindhanur.Dist, Raichur.
 2. Suresha S/o Hussainamma
age 50 year Occ, agri.
R/o Hulagunchi village
Now R/o Gunduru village
Tq, Karatagi Dist. Koppal.
 3. Smt Laxami W/o Ramappa
age 52 year Occ, agri.
R/o Hulagunchi village
Tq. Sindhanur.Dist, Raichur.
 4. Raju S/o Ramappa
age 24 year Occ, agri.
R/o Hulagunchi village
Tq. Sindhanur.Dist, Raichur.



5. Kumari Chandrika D/o Ramappa
age 22 year Occ, agri and house hold.
R/o Hulagunchi village
Tq. Sindhanur.Dist, Raichur.
6. Kumari Ashvini D/o Ramappa
age 20 year Occ, agri and House hold.
R/o Hulagunchi village
Tq. Sindhanur.Dist, Raichur.

(Lrs of deceased Deft No 1)

(By Sri.KAG., Advocate)

-V/s-

RESPONDENTS:-1. Smt. Hussaimma W/o Ramappa
Age 55 year Occ, agri and house hold
R/o Konapur pet ward No 29
Near Church Manvi town
Tq, Manvi Dist, Raichur.

(plaintiff in lower court)

2. State of Karanataka Represented by
Deputy Commissioner Raichur.
3. The Senior Sub Registrar office of Sub
Registrar Sindhanur.

(Defts No 2 and 3 in lower court)

(By Sri.KBG., Advocate)

Date of Institution of Appeal : 19.12.2025



Nature of Appeal : Appeal against the
Judgment and decree
dated 03.09.2024
in O.S.No. 104/2014
passed by the I Addl. Civil
Judge, Sindhanur.

Date on which the Judgment
was pronounced : 01.07.2026

Total duration : year/ s month/s Day/s
00 06 12

: J U D G M E N T :

This appeal filed by the appellants/LRs of defendant No.1 being aggrieved by the Judgment and decree dated 03.09.2024 in O.S.No.104/2014 passed by the I Addl. Civil Judge, Sindhanur in decreed the suit filed for partition and separate possession.

2. For the sake of convenience, the parties are referred in this Judgment as per their ranks before this court.

3. **The case of the plaintiffs, as set out in the plaint, is as**

below:-

The plaintiff submitted that, the Sri. Ganga S/o Earappa is the last ascendant of family of plaintiff and



defendant No.1. Herein he died leaving behind his wife Smt. Ayyamma and two daughters. Elder daughter by name: Smt. Yallamma, she is died leaving behind only daughter plaintiff herein and another daughter of Ganga defendant herein. After death of Sri. Ganga @ Gangappa the suit properties are mutated in the name of his wife Smt. Ayyamma, she also died subsequent to death of her husband in the year 1985. Thus said Ganga and Ayyamma died leaving mother of plaintiff and defendant herein Smt. Yallamma given marriage to one Mr. Hanumant R/o Manvi. She also died leaving behind her legal heir plaintiff only, Second daughter Smt. Hussainamma who is the defendant her in she is devdasi residing at Hulagunchi village after death of her mother. Thus the plaintiff and defendant No.1 are the related each other. The family tree of plaintiff and defendant No.1 filed herewith. It is submitted that recently there arose some difference in between the plaintiff and the



defendant. Due to this deference the defendant by taking the undue advantage of her name in the revenue records without consent and permission of plaintiff, the defendant No.1 had sold the property Sy No. 42/P3/1 infavour of Government of Karnataka. This fact came to know that after obtaining the subsequent computer record of right. Hence declared the suit registered sale deed executed by defendant No.1 in favour of defendant No.2 as illegal, null and void and not binding the share of plaintiff. Now the defendant try to enter into an agreement to dispose off plaint scheduled properties in favour some person in the Hulgunchi Village. With all this the plaintiff on 30-01-2014 approached the defendant refused to allotting the share of plaintiff. Under the circumstances, the plaintiff has been constrained to file and maintain this suit against the defendant. The plaintiff further submitted that, the defendant No.1 has illegally got mutated the suit-scheduled



properties, in her name with collagen of revenue authorities. And she has sold out Sy. No. 42/P3/1, in favour of Government of Karnataka without having any right. Hence this plaintiff has approached the defendant No.1 seeking her legitimate share, but defendant No. 1 has refused to give her share in the suit scheduled property. Hence this suit.

4. On the other hand, on service of suit summons, the defendant No. 1 to 3 are approached through their counsel. The defendant No. 1 she has filed her written statement. Defendant No. 2 & 3 has not filed any written statement, inspite of sufficient opportunity had been given.

5. The defendant No. 1 in her written statement, she has denied that, plaintiff is the daughter of Smt. Yallamma. And she submitted that, One Mr. Ganga @ Gangappa was the last ascendant of family of the



defendant. And Mr. Gangappa's wife name is Smt. Ayyamma and both died long back living behind two daughters namely Smt. Yallamma & Smt. Hussainamma as their legal heirs and successors. The elder daughter Smt. Yallamma had given in marriage and her husband died. Hence she took shelter under defendant No.1. The said Smt. Yallamma died in the house of defendant No.1, about 35 years back and she has no issues. Hence the defendant No. 1 is the only legal heirs of the Smt. Late Yallamma. Plaintiff is not a daughter of Yallamma as Smt. Yallamma has died as issue less. The plaintiff neither the ancestor nor the coparcenor. Hence the plaintiff is not entitle for any share in the suit scheduled property. Hence she prays to dismiss the suit with cost.

6. On the basis of contentions urged by the respective parties to the suit, following issues have been framed.



I S S U E S

1. Whether the plaintiff proves that, the suit schedule property are joint family properties and the plaintiff and defendants are members of the joint family?
2. Whether the plaintiff proves that she is entitled for half of share in the suit scheduled properties?
3. Whether the plaintiff entitled for the relief sought under prayer column No.2?
4. What order or decree?

7. In support of her case, the plaintiff got herself examined as PW 1 and got marked Ex.P.1 to 4. And got examined one more witness in her favour as PW-2. The defendant has not adduced any evidence.

8. After hearing the arguments and considering the oral and documentary evidence let in before it, the learned trial Judge has decreed the suit of the plaintiff by giving following findings on the above issues:

Issue No.1 & 2 : In the Affirmative
Issue No.3 : In the Partly Affirmative
Issue No.4 : As per final order, for the following;



9. Being aggrieved by decreed the suit the appellants/LRs of defendant No.1 has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) That the judgment dated 20-3-2019 and decree dated 10-2-2021 passed by the lower Hon'ble 2nd Additional Civil Judge Court at Sindhanur dated 10-2-2021 in OS No 104/2014 against the deceased defendant No 1 is totally erroneous, vexatious and contrary to the settled principles of law and facts and without application of mind giving finding on the basis the defendant no 1 not led evidence and not cross examined the PW 1 and 2 and claim of plaintiff is allowed hence the same is deserves to be set aside and the suit of the plaintiff is liable dismissed for want of proper pleading and proof.
- 2) That the plaintiff not pleaded and proved about the daughter of deceased Yallamma is her mother and not led any evidence and not proved about her relation as the daughter of defendant no 1's Sister daughter. That the plaintiff approached the court for seeking partition on the ground of plaintiff is the daughter defendant no 1's sister Yallamma. That the plaintiff not pleaded in the plaint who is her father and his address not stated in the plaint or in her chief examination affidavit. That it is burden on the plaintiff to prove her status as a daughter of Yallamma who is the sister



of defendant no 1. That there was no issues framed by lower court in this aspect. Hence the lower court judgment and decree is liable to set aside.

- 3) That the lower court ought to frame the issue on record to prove the plaintiff's status as the daughter of defendant No 1's sister Yallamma. Without Proper issue framed the very lower court judgment and decree is fit to be dismissed. That it is necessary to frame Addl issue No 1 as 1. Whether the plaintiff prove that she is the daughter of deceased Yallamma who is sister of defendant no 12.
- 4) That the burden on the plaintiff to prove her status as daughter of defendant no 1's sister Yallamma. That there is no documents and not led any cogent evidence on record to prove her status as per sec 55 of Indian evidence act. Hence the lower court has come to wrong conclusion only on the basis of defendant no 1 not led her evidence and not cross examined the PW 1 and 2. Hence the lower court Judgment and decree is liable to set aside.
- 5) That the lower court answered on Issue No 1 and 2 in the affirmative is totally erroneous one without supporting any materials on record. That the defendant no 2 purchased the suit schedule No 3 property for rehabilitation of flood affected old village Harijana family residents of Hulugunchi village and purchased suit Item No 3 property and distributed by making plots and constructed the houses through



Govt, and put their possession to various family of Huluginchi village Harijana caste. That unfortunately the state not shown the interest to protect the purchased property.

- 6) That the plaintiff not complied the mandatory provision U/Sec 79 of CPC hence suit is fit to be set aside non complying mandatory provision and failed to frame proper issues as per pleading and proof. Hence the lower court . finding on issue No 1 and 2 is totally erroneous one. That the court below come to conclusion due to non cross examination and not tender defence evidence is not a ground to decree the suit of the plaintiff. That it is settled law that the plaintiff ought to prove her own case and cannot be take the benefit of weakness of other side. Hence the lower court judgment and decree is totally erroneous and against the settled position of law therefore the same is liable to set aside.
- 7) That the Hon'ble lower court answer the issue no 3 partly affirmative hence the lower court finding on issue No 3 is liable to set aside.
- 8) That the finding on issue No 4 is liable to set aside and the suit of plaintiff is fit to be to dismissed.
- 9) That the defendant No 1 not attended the court as her advocate not at all informed about case status and not retired from the case by issuing retirement notice to defendant no 1. That the defendant No 1 is



uneducated rustic woman and being Devadasi age old woman and suffering from Paralysis before 3 years of her death. That there is no personally notice was not served to respondent in FDP No 9/2021 case. That if the defendant personally served court notice in FDP case the respondent no 1 will take the steps for to set aside X-Party Judgment and decree passed in OS case. Hence it is necessary to set aside X-Party Judgment and decree and it may be remanded to lower court to provide an opportunity to the defendant No ILrs to contest the suit.

- 10) That any other grounds will be urged at time of arguments with due permission of this Hon'ble court and due notice to other side.
- 11) That plaintiff paid the court fee of Rs 55-00 in the lower court and the same court fee is paid herein.
- 12) That the lower court pronounce the judgment on 20-3-2019 and decree was passed and signed on 10-2-2021. Since from the date of decree this appeal is filed after coming to know of the passing of judgment and decree. That the appellants secured the certified copies through previous counsel of deceased defendant no 1 filed an application on 4-6-2025 and certified copies are issued on 11-11-2025. That there is a delay of 4 years 9 months 26 days in filing top noted appeal and separate application is filed under Sec.5 of Limitation Act for condoning the delay.



10. I have heard the arguments addressed by the learned counsels appearing for the appellant and respondents.

11. From the grounds made out in the appeal, materials placed before this court and the arguments addressed by both sides the following points would arise for my consideration.

1. Whether the appellants/LRs of defendant No.1 prove that the impugned judgment and decree dated, 03.09.2024 passed in O.S. No.104/2014 by the trial court in decreed the suit, is contrary to law, facts, evidence and probabilities of the case and as such, it is liable to be interfered with?

2. What order?

12. My findings to the above points are as follows, as per the reasons discussed below: -

POINT NO.1 :- In the Negative

POINT NO.2 :- As per final the final order

:: REASONS ::

13. **POINT No.1 :-** This court dismissed RA No.46/2022 by its order dated 02.12.2024 in respect of same subject



matter arising out of judgment and decree passed in OS No.104/2014 dated 20.03.2019 on IA No.1 filed under Sec.5 of Limitation Act, 1963. Therefore, order passed in RA No.46/2022 dated 02.12.2024 has become final and conclusive. The appellant wherein did not question order passed in RA No.46/2022 dated 02.12.2024 passed by this court. Therefore, order passed in RA No.46/2022 dated 02.12.2024 passed by this court has become final and conclusive. The appellants did not produce any material to show that order passed in RA No.46/2022 dated 02.12.2024 passed by this court is questioned by them in any court of law. Therefore, order passed in RA No.46/2022 dated 02.12.2024 passed by this court has become final and conclusive. In spite of it again the appellant has filed the present appeal with similar relief which is against the order passed in RA No.46/2022 dated 02.12.2024 passed by this court. Since, order passed in RA No.46/2022 dated 02.12.2024 passed by this court is already operative against the appellant, she cannot again



filing the present appeal. The remedy for the appellant lies some where else. Since, order passed in RA No.46/2022 dated 02.12.2024 passed by this court in respect of same relief has become final and conclusive, the appellant cannot file the present appeal. Hence Point No.1 is answered in Negative

14. **POINT NO.2:-** In view of my findings on the above points, the appeal filed by the appellants/LRs of defendant No.1 is liable to be dismissed. Accordingly, I proceed to pass the following order.

:: ORDER ::

The appeal filed by the appellants/LRs of defendant No.1 dismissed.

Judgment and decree passed by the I Addl. Civil Judge and JMFC at Sindhanoor in OS No.104/2014 dated 03.09.2024 is confirmed.

Draw decree accordingly.



Sent back the entire file to the trial court
along with copy of this Judgment, forthwith.

(Dictated to the stenographer directly on computer, typed by him, revised by
me and after corrections pronounced in the open court on this the 1st day of July
2026)

(Lakshmikanth J. Miskin)
Senior Civil Judge & JMFC.
SINDHANUR