

KARN210000552023



R.A./05/2023(J)

Presented on : 13-01-2023
Registered on : 13-01-2023
Decided on : 17-04-2026
Duration : 03 years, 03 months,
05 days

**IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE
& JMFC, CHANNAPATNA**

:PRESENT:

SANDESHA.K., M.A., L.L.B.,
Addl. Senior Civil Judge & JMFC,
Channapatna

Dated, this the 17th day of April 2026

R.A./05/2023

APPELLANT :

Sri.Shivakumar,
S/o Late C.Mallegowda,
Aged about 48 years,
R/at Mangadahalli Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.A.K.N., Adv.)

V/s

RESPONDENTS:

1. Smt.Mamatha,
W/o Late Basavaraju,
Aged about 46 years,

KARN210000552023



2

R.A./05/2023(J)

2. Sri.Likith Gowda,
S/o Late Basavaraju,
Aged about 28 years,
3. Smt.Priyadarshini,
D/o Late Basavaraju,
Aged about 26 years,

Respondent No.1 to 3 are
R/at, Mangadahalli Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

4. Smt.Girijamma,
W/o B.V.Rajanna,
Aged about 41 years,
R/at B.V.Halli Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(R-1 to 3 By Sri. T.R., Adv.)
(R-4 By Sri. T.M.L., Adv.)

IN O.S./223/2015 IN THE SUIT IN BETWEEN:-

Smt.Girijamma,

.....**Plaintiff**

-Vs-

KARN210000552023



3

R.A./05/2023(J)

Sri.M.Shivakumar and others

.....Defendant

**DATE OF PRESENTATION
OF THE REGULAR APPEAL**

: 13.01.2023

NATURE OF THE APPEAL

**: Against the Judgment
and Decree passed by
the learned Prl. Civil
Judge & JMFC,
Channapatna. in
O.S./223/2015 dated:
03.12.2022**

JUDGMENT PRONOUNCED ON

: 17.04.2026.

**DURATION OF THE
REGULAR APPEAL**

**: Year/s Month/s Day/s
-03- -03- -05-**

(SANDESHA.K.)

**Addl. Senior Civil Judge & JMFC
Channapatna.**

JUDGMENT

The appellant has preferred this appeal under Section 96 of CPC against the judgment and decree passed by the learned Principal Civil Judge in JMFC., Channapatna in O.S.No.223/2015 dated 03.12.2022.



2. The appellant was the defendant No.1. The respondent was the plaintiff and defendant No.3 to 4 before the trial Court.

3. For the sake of convenience, hereinafter the parties are referred to as their rank shown in the suit before the trial Court.

4. The brief facts of the plaintiff case is that:

Plaintiff and defendants are children of late Mallegowda. Mallegowda had two wives. Plaintiff schedule properties are properties of Mallegowda. Plaintiff schedule property are joint family property of plaintiff and defendants. In order to defeat the right of the plaintiff, defendants have created a will dated 26.12.2009. Said will is not binding to the plaintiff. Plaintiff has share over the plaintiff schedule property. Hence this suit.

KARN210000552023



5

R.A./05/2023(J)

5. Receipt of the summons issued by the learned trial Court. The Defendant No.1 to 4 have entered their appearance through their advocate and defendant No.2 to 4 have filed written statement and defendant No.1 filed separate written statement. Defendant No.2 to 4 contended that, there is oral partition held parties long back. After death of Mallegowda plaintiff marriage was performed and gold ornaments were given to the plaintiff equal to her share. After death of Mallegowda his two sons enjoy the plaintiff's schedule property. Hence, pray for dismissal of the suit.

6. Defendant No.1 in the written statement contended that, Smt.Sushellemma and Sannamma have executed relinquishment deed. Thereafter, said property divided between the 2nd wife children of Mallegowda. As per the request of Mallegowda defendant No.1 give a share to the plaintiff and 2nd defendant. In order to harass the



defendant No.1 plaintiff has filed this suit. Hence, pray for dismiss the suit.

7. Defendant No.2 to 4 have filed additional written statement and contended that, as per the desire of Mallegowda proprieties were divided equally between two sons and gold ornaments given to the plaintiff at the time of her marriage. Hence, pray for dismiss the suit.

8. On the basis of pleadings mentioned supra, the learned trial court has framed the following issues:

ISSUES

- 1. Whether the plaintiffs prove that the suit schedule properties are the ancestral joint family properties of the plaintiff and defendants and that they are in joint and constructive possession of the same?**
- 2. Whether the plaintiff proves that she is entitled to 1/3rd share in the suit schedule properties?**
- 3. Whether the plaintiff further proves that**



the will dated 26.12.2009 is not binding on her share in the suit schedule property?

- 4. Whether the defendant No.2 to 4 prove that there is already a partition in the joint family properties?**
- 5. Is the plaintiff entitled for partition and separate possession as sought for in the plaint?**
- 6. What order and decree?**
- 7. Whether the suit is maintainable?**

9. In order to prove the case of the plaintiff, the plaintiff has examined herself as PW1 and got admitted 9 documents as Ex.P1 to Ex.P9 and in order to prove the defence of the defendants, defendant No.1 and 2 have examine themselves as DW-1 and 2 and produced 3 documents which are marked as Ex.D-1 to 3.

10. After considering the ocular and documentary evidence placed by the plaintiff, the Learned trial Court

KARN210000552023



8

R.A./05/2023(J)

has partly decree the suit and suit is dismiss with respect to the item No.1 and 2 of the plaint schedule property. Being agreed by the impugned judgment and decree passed by the learned trial court, the defendant No.1 has preferred an appeal before this court. Hence, the matter before this court through an appeal. In the appeal, appellants contended that, the judgment and decree passed by the trial court is erroneous. The trial court not consider oral and documents defendant No.1 and 2. Trial court has dismiss the suit with regard to the item No.1 and 2 of the plaint schedule property. Item No.1 and 2 of the plaint schedule property is the joint family property of the plaintiff and defendants. Hence, the appellants sought for allow the appeal and set aside the decree passed by the trial court.



11. Pursuant to the notice issued by this court, the respondents have appeared before the court through their advocate.

12. Subsequently, the record of trial court has secured. I have heard the argument of erudite counsel for the appellant and respondents.

13. After hearing the argument and on going through the material record, the following points arise for my consideration.

1. Whether the appellant/defendant No.1 prove that, the trial court has erred in dismiss the suit with regard to the item No.1 and 2 the suit schedule property?

2. Whether the interference of this Court is called for in the Judgment and Decree of the trial court?

3. What order or decree?



14. My findings to the above points are as under:

Point No.1 : In the **Affirmative**

Point No.2 : In the **Affirmative**

Point No.3 : **As per final order**

For the following:-

REASONS

15. POINT No.1 and 2 : Since all these points are interconnected to each other, they are taken up together for common discussion in order to avoid repetition of fact and finding.

16. Before embarking upon the facts of the case, it is relevant to ascertain the essential elements which are required in a suit for the partition. Whereas, with respect to partition, if the parties to the lis contended that the suit properties are joint family and ancestral properties, such party/parties must establish that the properties to the lis

KARN210000552023



11

R.A./05/2023(J)

were ancestral and joint family property plaintiff and defendants.

17. The submission of the appellant counsel is the trial court has not consider the document produced by the appellant and partly decree the suit. The judgment and decree of the trial court is not in accordance with law, the trial court has partly decree the suit without consider in the evidence of parties. Item No.1 and 2 of the plaint schedule property are the family properties. Due to non payment of revenue, in RTC entered has Sarkari Beelu if the parties have paid the revenue to the concerned authority said properties are restore. Item No.1 and 2 of the plaint schedule properties also partible properties. Hence, pray for the allow the appeal.

18. Respondent No.1 to 3 have filed notes of arguments and contended that, item No.1 and 2 of the

KARN210000552023



12

R.A./05/2023(J)

plaint schedule property are the family properties of the plaintiff and defendants said properties also partible properties. Hence, pray for the dismiss the appeal.

19. As per the contention of the plaintiff that, suit schedule property is ancestral property of the plaintiff and defendants. In order to the above said claim the plaintiff produced 9 documents before trial court which are marked as Ex.P-1 to 9. The plaintiffs have produced RTC extracts with regard to the plaint schedule property which are clearly shows that item No.3 and 4 of the plaint schedule property stands in the name of Puttalingamma who is the wife of Mallegowda. Defendants have admitted the relationship of the plaintiff. This appeal arise only with regard to the item No.1 and 2 the plaint schedule property. Plaintiff has produced RTC extracts with regard to the item No.1 and 2 of the plaint schedule property, said RTC's are

KARN210000552023



13

R.A./05/2023(J)

clearly shows that, item No.1 and 2 of the plaint schedule property stands in the name of the Government as Sarkri Beelu. The appellant contended that, the father of the plaintiff and defendants have not paid the revenue to the concerned the authority. Therefore schedule property stands in the name of Government as Sarkri Beelu. If the parties of the lis have pay the tax to the concerned the authority said properties are restore but trial court has not consider the same. As already stated above RTC of the item No.1 and 2 of the plaint schedule property stands in the Government. If the parties of the suit have paid tax to the concerned authority said properties are restore. Therefore, the plaintiff and defendants have right over the item No.1 and 2 of the plaint schedule property after getting in their name only. Other wise plaintiff and defendants have not entitled any share over the item No.1 and 2 of the plaint schedule property. If the parties to the lis pay the tax to the

KARN210000552023



14

R.A./05/2023(J)

concerned authority and rectify the government error entered in the RTC and change the RTC to their name, the plaintiff and the defendants will have the right to the said property. If the parties of the lis rectify the same and change the RTC their name then plaintiff is entitled 1/3rd share in the item No.1 and 2 of the plaint schedule property and defendant No.1 is also entitled 1/3rd share over the item No.1 and 2 of the plaint schedule property and defendant No.2 to 4 jointly entitled 1/3rd share over the item No.1 and 2 of the plaint schedule property. As already stated above the appeal is filed only with regard to the item No.1 and 2 of the plaint schedule property. Trial court has dismiss the suit with regard to the item No.1 and 2 of the plaint schedule property.

20. This court has given anxious consideration to the Judgment and decree rendered by the learned trial

KARN210000552023



15

R.A./05/2023(J)

court. The learned trial court has carefully perused entire material on record. In the course of arguments, the learned counsel for appellant has contended that the learned trial court has failed to consider the evidence of the witnesses and also failed to appreciate the document produced by the parties. But on perusal of the judgment of the trial court, it is unequivocally clear that the trial court has failed to consider the RTC extracts with regard to the item No.1 and 2 of the plaint schedule property. Though the RTC of item No.1 and 2 of the plaint schedule property stands in the name of Government as Sarkari Beelu but if the parties of the lis have paid tax to the concerned authority said property is restore in the name of the parties. But trial court has not consider the same. If the parties have not paid the tax to the concerned authority and failed to restore the in the name of the parties they cannot entitled any share over the item No.1 and 2 of the plaint schedule



property. Hence, the trial court is not correct to dismiss the suit with respect to item No.1 and 2 of the plaint schedule property. The Judgment and decree rendered by the learned trial court is not in accordance with law. Hence, interference of this court called for. Moreover, the appellant has to prove his case with respect to points in question. Therefore, for the praefatus reasons, this court is of the view that the appeal filed by the appellant is liable to be modified. Accordingly, this court answering the Points No.1 and 2 in the **Affirmative.**

21. POINT No.3:- In view of my findings on the point No.1 to 3, this court proceed to pass the following:

ORDER

**The appeal filed by the appellant/
defendant Under Order 96 of C.P.C. is
hereby modified.**



The impugned Judgment and Decree passed by the learned Prl. Civil Judge & JMFC, Channapatna, on dated:03.12.2022 by partly decree the suit and dismiss the suit with respect to item No.1 and 2 of the plaint schedule property in O.S.No.223/2015 is hereby modified.

The plaintiff is entitled 1/3rd share with respect to item No.1 and 2 of the plaint schedule property.

Defendant No.1 is entitled 1/3rd share with respect to item No.1 and 2 of the plaint schedule property

Defendant No.2 to 4 are jointly entitled 1/3rd share with respect to item No.1 and 2 of the plaint schedule property

In the result I.A.No.I stands disposed.

KARN210000552023



18

R.A./05/2023(J)

Draw decree accordingly.

**Send back the trial court record
immediately along with the copy of the
Judgment.**

**(Dictated to the Stenographer directly on the computer and signed by me and
then pronounced in the Open Court on this 17th day of April 2026)**

(SANDESHA.K.)

**Addl. Senior Civil Judge & J.M.F.C.
Channapatna.**

KARN210000552023



19

R.A./05/2023(J)

***(JUDGMENT PRONOUNCED IN THE OPEN COURT
(ON /17/04/2026)
(VIDE SEPARATE ORDER)***

ORDER

**The appeal filed by the appellant/
defendant Under Order 96 of C.P.C. is
hereby modified.**



The impugned Judgment and Decree passed by the learned Prl. Civil Judge & JMFC, Channapatna, on dated:03.12.2022 by partly decree the suit and dismiss the suit with respect to item No.1 and 2 of the plaint schedule property in O.S.No.223/2015 is hereby modified.

The plaintiff is entitled 1/3rd share with respect to item No.1 and 2 of the plaint schedule property.

Defendant No.1 is entitled 1/3rd share with respect to item No.1 and 2 of the plaint schedule property.

Defendant No.2 to 4 are jointly entitled 1/3rd share with respect to item No.1 and 2 of the plaint schedule property.

In the result I.A.No.I stands disposed.

KARN210000552023



21

R.A./05/2023(J)

Draw decree accordingly.

**Send back the trial court record
immediately along with the copy of the
Judgment.**

Addl. Senior Civil Judge & J.M.F.C.
Channapatna.