

KAUK610001342024



**IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE OF THE FIRST CLASS AT HONNAVAR**

**PRESENT : SRI B.C. CHANDRASHEKAR B.A., LL.B.
SENIOR CIVIL JUDGE AND JMFC
HONNAVAR**

REGULAR APPEAL NO.05 OF 2024

DATED ON THIS 26TH DAY OF MARCH, 2026

APPELLANT/S : U.F.M. Halappa Narayan Naik,
Aged about 60 years,
Occ: Agriculturist,
R/o Nagare, Tq: Honnavar.

(By Sri GPH, Advocate)

VERSUS

RESPONDENT/S: 01. U.F.M. Madev Rama Naik,
Deceased, his LRs.

01(a). Neela Madev Naik
(W/o deceased),
R/o Balkuru, Tq: Honnavar.

01(b). Naveen Madev Naik
(S/o deceased),
R/o Balkuru, Tq: Honnavar.

- 01(c). Namita Madev Naik
(D/o deceased),
R/o Balkuru, Tq: Honnavar.
- 01(d). Kavita W/o Jagadish Naik,
(D/o deceased)
Aged about 29 years,
R/o Gerusoppa paiki Anegadde,
Tq: Honnavar.
02. U.F.M. Lakshman Ganapati Naik,
Aged about 60 years,
Occ: Agriculture,
R/o Balkuru, Tq: Honnavar.
03. U.F.M. Keshav Hanmant Naik,
Aged about 62 years,
Occ: Agriculture,
R/o Balkuru, Tq: Honnavar.
04. U.F.M. Bhaira Hanmant Naik,
Aged about 60 years,
Occ: Agriculture,
R/o Balkuru, Tq: Honnavar.

**(R-1(a) to (c) by Sri GVB,
Advocate; R-2 to 4 and R-1(d) are
placed Ex-parte)**

Date and nature of the order or decree appealed against	:	Against the judgment and decree passed by the Principal Civil Judge and JMFC., Honnavar in OS No.99/2018, dated 02-01-2024
Date of Institution of the appeal	:	12-03-2024
Date of Judgment	:	26-03-2026

Duration of appeal	:	Year/s	Month/s	Day/s
		02	00	14

J U D G M E N T

This is an appeal filed by the appellant/plaintiff challenging the findings of the trial court in OS No.99/2018 on the file of Principal Civil Judge and JMFC, Honnavar dated 02-01-2024.

02. The rank of the parties assigned by the trial court are also assigned in this appeal, for the sake of convenience.

03. Brief facts of the case of the plaintiff are that the plaintiff and defendant No.1 to 3 are governed by Hindu Mitakshara Law and till today there is no partition of schedule properties between them by meets and bounds.

04. It has further averred that one Sankoos Naik had 05 sons by name Rama, Hanmanth, Ganapati, Narayan and Subray. All the five sons are now no more. The defendant No.1 Sri Madev is a son of Rama, defendant No.3 Keshav is a son of Hanmanth, defendant No.2 Laxman is a son of

Ganapati and plaintiff Sri Halappa is a son of Narayan. Last son Subray is unheard for the past 15 to 20 years and since he is unheard for the past more than 07 years as per law it is declared as dead. The plaintiff and defendant No.1 to 3 are considered as a representative and manager of their respective branch.

05. It has further averred that the suit schedule properties are ancestral and joint family properties of plaintiff and defendant No.1 to 3 and each are having $1/4^{\text{th}}$ share. The Item No.11 of the property has been registered in the name of defendant No.1. But since it has been granted on behalf of the joint family and all are cultivating and having joint possession, it is also the joint family property required to be partitioned between plaintiff and defendant No.1 to 3. The defendant No.1 has refused to give shares to the plaintiff and defendant No.2 and 3 and trying to construct the structure in the schedule properties. Hence the plaintiff has approached the defendant No.1 on 10-09-2014 and requested for partition and separate possession of their $1/4^{\text{th}}$ share over the schedule properties. But he has refused for the partition. Hence the plaintiff has filed the suit for partition and separate possession of his $1/4^{\text{th}}$ share over the schedule properties by meets and bonds.

06. In response of the summons issued by the trial court, the defendant No.1 and 2 have appeared through

counsel and in spite of service of summons defendant No.3 and 4 have not appear before the court and placed ex-parte. The defendant No.1 alone filed the written statement and he contended that suit is not maintainable under law or on facts and liable to be dismissed. It has contended by him that the plaintiff has filed the suit for partition in OS No.90/2014 against this defendant and other defendants, but he withdrawn it with a liberty to file a fresh suit. The court has permitted him to withdraw the suit. Accordingly, the plaintiff can only file the suit with respect to earlier suit schedule properties.

07. This defendant has admits the relationship of the parties, but contented that merely because Subray Sankos Naik was unheard for the past many years it cannot be considered that he is dead and there is no any declaration by Competent Court. This defendant has admits about grant of Item No.1 to 10 of the schedule properties as averred by the plaintiff. But he has specifically contented that Item No.11 of the property is a self-acquired property of his father and after his death it has allotted to his branch. Accordingly either plaintiff or other defendants have no share in Item No.11 of the properties. Rest of the plaint averments have been totally denied as false. This defendant further contended that already there is an oral partition about Item No.1 to 10 of the properties and the shares required to be allotted to father of

the plaintiff has already given and they are living separately. Hence the suit is not maintainable. However if the court considered that there is no partition by meets and bonds they requested to allot 1/5th share to the parties over Item No.1 to 10 of the properties as per their possession only. Accordingly the defendant No.1 prayed to dismiss the suit.

08. Based on the pleadings of the parties the trial court has framed as many as 05 issues as here under:

ISSUES

01. Whether the plaintiff proves that the suit schedule properties are ancestral and joint possession properties of plaintiff and defendant No.1 to 3?
02. Whether the defendant No.1 proves that the genealogy shown in the plaint is false?
03. Whether the defendant No.1 further proves that suit Item No.11 is his self acquired property?
04. Whether the plaintiff is entitled for the reliefs as sought for?
05. What order or decree?

09. In order to prove the above issues the plaintiff himself has examined as PW-1 and 27 documents have been produced and marked as Ex.P-1 to 27. On the other hand,

the defendant No.1 has examined as DW-1 and produced 14 documents and marked as Ex.D-1 to 14.

10. After being heard the arguments, the trial court has decreed the suit of the plaintiff in part and granted 1/5th share over Item No.1 to 10 of the properties. But claim of partition over Item No.11 of the property has been rejected.

11. Being aggrieved by the findings in rejecting the claim of the plaintiff in Item No.11, he preferred this appeal on the grounds urged in the appeal memo.

12. It has been contended by the appellant in the appeal memo that Item No.11 of the property is also the joint family property, but trial court has rejected his claim of partition illegally. The plaintiff has proved that Item No.11 of the property is also the joint family property by producing the documents, but trial court has not considered the same. The trial court has not given any importance on the cross-examination of DW-1. The trial court has failed to understand the explanation about Item No.11 of the property. The defendant No.1 has not proved that Item No.11 of the property is a self-acquired property of his father. Hence, the appellant has prayed to allow this appeal and set-aside the findings of the trial court on Item No.11 of the property and prayed to pass equitable partition over Item No.11 of the property also.

13. In response of the notice issued by this court, respondent No.1 has alone appeared through counsel and in spite of service of notice, respondent No.2 to 4 have not appear before the court and they placed absent.

14. The trial court records have been secured. In the meanwhile the respondent No.1 reported as dead and his legal heirs have brought on record. On issuance of notice, the legal heirs of respondent No.1 have appeared through counsel and continued the proceedings.

15. Heard the arguments of both counsels. Perused.

16. On the basis of the above, the following points are arises for my consideration:

POINTS

01. Whether the appellant/plaintiff proved that the Land Tribunal has granted Item No.11 of the property during the existence of joint family consisting all the children of Sankos Naik and benefit of grant to father of defendant No.1 shall enure to all brothers and it became the joint family property?
02. Whether the judgment and decree of the trial court is illegal, capricious, perverse and call for interference by this court?
03. What order?

17. My answers to the above points are as follows:

Point No.1 : In the negative,
Point No.2 : In the negative,
Point No.3 : As per the final order
for the following:

REASONS

18. Point No.1 and 2: Since both the points are inextricably mixed up with each other, I have taken them together for common discussion in order to avoid the repetition of discussion.

19. On perusal of the case papers, it appears that the plaintiff had filed a suit for partition of Item No.1 to 11 of the properties and the trial court has granted the partition over Item No.1 to 10 of the properties. But the trial court has rejected the claim of partition over Item No.11 of the property only. Hence the plaintiff/appellant has assailed the findings of trial court only in rejecting his claim over Item No.11 of the property as contained in the appeal memo. Hence now it is only the stage to know whether the trial court has committed any error in rejecting the claim of the plaintiff over Item No.11 of the property. It is not in dispute that Sankoo Naik had 05 sons and 04 sons are no more and last son Subray is unheard for the past many years. On perusal of oral and documentary evidence, it appears that the sons of Sankoo Naik have submitted Form No.7 to the Land Tribunal for the

grant of Item No.1 to 10 of the properties and the Land Tribunal has granted the occupancy rights in favour of all 05 sons of Sankoo Naik and this fact is not in dispute. Since the Tribunal has granted the Item No.1 to 10 of the properties in favour of all the sons of Sankoo Naik, all are having equal rights and the trial court has rightly granted the decree of partition over Item No.1 to 10 of the properties.

20. Now the only dispute is with respect to Item No.11 of the property. Hence, it is a stage to figure out whether Item No.11 of the property is also the joint family property and plaintiff has proved the same.

21. The counsel for the appellant has argued that the Land Tribunal has granted Item No.11 of the property in favour of Rama Sankoo Naik, the elder son of Sankoo Naik as a tenant, since the tenancy right has been granted to the elder son, the benefit of grant shall enure to all his brothers. Thereby it also became the joint family property in the hands of other brothers of Rama Sankoo Naik and they requested for partition of Item No.11 of the property also. In support of their arguments they have relied upon the decision of Hon'ble High Court of Karnataka reported in **ILR 2000 KAR 487 in between Narayana and Others V/s A. Sadashiva and Others** and another decision reported in **ILR 2001 KAR 426 in between Kanteppa and Another V/s Land Tribunal,**

Bidar Taluk, Bidar and Another and another decision reported in ***ILR 2000 KAR 4809 in between Balawwa and Another V/s Hasanabi and Others.***

22. Per contra, the counsel for the respondent No.1(a) to (d) have argued that the Item No.11 of the property has not granted by the Land Tribunal on the strength of Form No.7 submitted by him. But because he was a protected tenant cultivated separately for the past 20 years, his protected tenancy has been confirmed independently. Since he was separately cultivating the said land and the Tribunal has confirmed it and granted it and it exclusively became the self-acquired property of Rama Sankos Naik and other brothers have no share in it. Accordingly, they prayed to dismiss the appeal. By considering the arguments of both counsel, I carefully gone through the materials available on record.

23. On perusal of the evidence placed by the plaintiff, it appears that he himself has examined as PW-1 and reiterated the plaint arguments in his affidavit. Apart from the oral evidence Ex.P-1 to 5 are the copies of plaint, written statement, issues, interlocutory application and order sheet in OS No.90/2014 which filed by him for partition and separate possession of Item No.1 to 10 of the properties and he himself has got withdrawn the same with a liberty to file a fresh suit. Accordingly he filed this suit. Ex.P-6 to 27 are the

RTC extracts of schedule properties. Except these documents, plaintiff has not produced any documents to show that during the existence of joint family all the sons of Sankos Naik have been cultivating Item No.11 of the property or all the sons have submitted Form No.7 for the grant of the said property and it has been granted in the name of defendant No.1 for the benefit of family. Thus virtually plaintiff has not placed any documents to show that Item No.11 of the property is joint family property.

24. On perusal of the evidence placed by the defendants, it appears that the defendant No.1 has examined as DW-1 and reiterated the written statement averments. Apart from the oral evidence, Ex.D-1 to 3 are the mutation extracts, Ex.D-4 to 7 are the Form No.7. Ex.D-8 is the order of Land Tribunal. Ex.D-9 is the Form No.10. Ex.D-10 is the mutation extract. Ex.D-11 is the Form No.7. Ex.D-12 is the order of Land Tribunal. Ex.D-13 is the Form No.10 and Ex.D-14 is the mutation extract.

25. The counsel for the appellant has requested to draw the attention of this court on Ex.D-5 the Form No.7 submitted by Ganapati Naik and argued that as per the said Form No.7, the Ganapati Naik has submitted the said application and it includes the Item No.11 of the property. Since Ganapati Naik has submitted the Form No.7 for the

grant of Item No.11 of the property it could be held that the grant in favour of Rama Naik is for the benefit of family and requested to hold that it is the joint family property. By considering the same, on perusal of Ex.D-5, it appears that as argued by the counsel for the appellant Ganapati Sankoos Naik has submitted Form No.7 for the grant of Item No.1 to 10 of the properties along with Item No.11 of the property. But the fact is the Tribunal has not granted Item No.11 of the property on the strength of Form No.7 submitted by the sons of Sankoos Naik. On the other hand on perusal of Ex.D-11, it appears that it is a Form No.7 submitted by one Hanumant Bhaira Naik and he requested to grant Item No.11 of the property bearing survey No.47/2 measuring 0-23-8 guntas. The Land Tribunal has passed an order on 20-01-1976 and issued the Form No.10. On careful verification of order of the Land Tribunal and it reads as here under:

ಆರ್.ಟಿ.ಸಿ. ರಿಕಾರ್ಡ್ ಪರಿಶೀಲನೆಯಿಂದ ಮತ್ತು ತನಿಖೆಯಿಂದ ಅರ್ಜಿದಾರರು ತನ್ನ ತಂದೆಯ ಕಾಲದಿಂದ ಅಂದರೆ ಸಾಧಾರಣ 50-60 ವರ್ಷಗಳಿಂದ ಬಳಕೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 47/2ರಲ್ಲಿ 0-24-0 ಎಕ್ರೆ ಕ್ಷೇತ್ರದಲ್ಲಿ ಸಂರಕ್ಷಿತ ರೈತರಾಗಿ ಸಾಗುವಳಿ ಮಾಡುವುದು ತಿಳಿಯುತ್ತದೆ. ತನಿಖೆಯ ಸಮಯದಲ್ಲಿ ಸದರಿ ಕ್ಷೇತ್ರದ ಅರ್ಧಭಾಗದಲ್ಲಿ ಅರ್ಜಿದಾರನ ಚಿಕ್ಕಪ್ಪನ ಮಗನಾದ ರಾಮ ಸಣ್ಣಕೂಸ ನಾಯ್ಕು ಸಾಧಾರಣ 20 ವರ್ಷಗಳಿಂದ ಸ್ಥಳದಲ್ಲಿ ಮನೆ ಮಾಡಿ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿರುವುದನ್ನು ಅರ್ಜಿದಾರರು ಮತ್ತು ಹಾಜರಿರುವ ಭೂ ಮಾಲೀಕರು ಕೂಲಿಸುರುತ್ತಾರೆ. ಭೂ ಮಾಲೀಕರು ಇಬ್ಬರಿಂದಲೂ ಬೆಳೆಯಲ್ಲಿ ಸಮಪಾಲು ಪಡೆಯುತ್ತಿದ್ದುದನ್ನು ಕೂಲಿಸುತ್ತಾರೆ. ರಾಮ ಸಣ್ಣಕೂಸ ನಾಯ್ಕರನ್ನು ಪರಿಗಣಿಸಿ ಗೇಣಿದಾರರೆಂದು ತೀರ್ಮಾನಿಸಲಾಯಿತು.

26. As per the above order of Land Tribunal, the applicant Hanumant Bhaira Naik has submitted the Form No.7 for the grant of Item No.11 of the property and at the time of enquiry before the Land Tribunal, it came to notice that the said Hanumant Bhaira Naik was a protected tenant cultivating it for the past 50 to 60 years. But he was cultivating only half of the property and remaining half of the property had been cultivating by his uncle's son Rama Sankos Naik for the past 20 years by constructing the house and it has been admitted by the land owners as well as the petitioner. Since the Rama Sankos Naik had been cultivating the half of the property in Survey No.47/2 as a protected tenant and it has been admitted by the owner, the Land Tribunal has granted the Item No.11 of the property in favour of Rama Sankos Naik only. Thus the Land Tribunal has issued Form No.10 as per Ex.D-13. Accordingly one thing is clear the grant of Item No.11 is not on the strength of Form No.7 submitted by the sons of Sankos Naik. Since at the time of enquiry in Form No.7 submitted by Hanumant Bhaira Naik, it came to the Tribunal about possession of Rama Sankos Naik for the past 20 years Item No.11 of the property has been granted in his favour. Accordingly it could be concluded that by considering the long-standing possession of 20 years of Rama Sankos Naik, the tribunal has granted it in his favour. But on meticulous verification of remaining entire evidence, absolutely there is no any

materials to hold that other sons of Sankoos Naik were also cultivating Item No.11 of the property. Accordingly though Ganapati has submitted Form No.7 requesting for the grant of Item No.11 of the property, the Tribunal has not granted it. But the Tribunal has granted the said property to the Rama Sankoos Naik only. On careful verification of entire materials, this court did not found any materials to believe that all sons of Sankoos Naik have been in joint possession of Item No.11 of the property. But the Rama Sankoos Naik alone was in possession of it and it has been granted by the Tribunal.

27. The counsel for the appellant has argued that though Item No.11 of the property has granted in favour of Rama Sankoos Naik alone the benefit of grant shall enure to the all family members. In support of their arguments they have relied upon a decision of Hon'ble High Court of Karnataka reported in ***ILR 2000 KAR 487 in between Narayana and Others V/s A. Sadashiva and Others.*** Similarly they have relied upon other decisions reported in ***ILR 2001 KAR 426 in between Kanteppa and Another V/s Land Tribunal, Bidar Taluk, Bidar and Another*** and another decision reported in ***ILR 2000 KAR 4809 in between Balawwa and Another V/s Hasanabi and Others.*** By considering the arguments, I carefully gone through the decision relied upon by the counsel for the appellant.

28. The counsel for the appellant has rightly argued that benefit of grant shall enure to all the family members if any property granted under the Karnataka Land Reforms Act by granting the occupancy rights and accepting the tenancy rights. But in order to confirm the benefit of grant to all family members, at the time of grant all family members must residing together along with the grantee. During existence of family consisting many members, if any property has been granted to any of the one member, the benefit of grant shall enure to all the family members. But the parties are required to prove that the person who is seeking for partition must be one of the member in the family residing along with the grantee at the time of grant and there is no quarrel in this aspect. By considering the said submission on perusal of the evidence placed by the plaintiff, absolutely there is no materials to show that at the time of grant all the 05 sons of Sankoos Naik were residing together and they have been cultivating together and one of the member has submitted the Form No.7 and on the basis of said Form No.7 Item No.11 of the property has granted. But on the other hand, as per the order of Land Tribunal as stated above the Rama Sankoos Naik alone was in possession of Item No.11 of the property and he was alone cultivating it for the past 20 years. Hence the arguments of counsel for the appellant cannot be acceptable.

29. On perusal of the decision relied upon by the counsel for the appellant in '*Narayan and others*' case, it appears that the lordship of Hon'ble High Court of Karnataka was pleased to relied upon the Full Bench decision of '*Veerabhadrapam and Others*' case as well as '*Booda Poojary*' case and wherein the lordship of Full Bench of Hon'ble High Court of Karnataka was pleased to held that when once the occupancy rights has granted without damaging the rights of the occupants in the family it is open for all family members to claim the share in it. But it is not the dictum of Hon'ble High Court of Karnataka that when grantee was in separate possession of the property the benefit of grant shall enure to other person also. On the other hand, the plaintiff has not placed any materials to show that there was a joint cultivation by all sons of Sankoos Naik.

30. Similarly the counsel for the appellant has relied upon another decision of Hon'ble Supreme Court reported in ***ILR 2000 KAR 4809 in between Balawwa and Another V/s Hasanabi and Others***. On careful reading of the entire decision, it appears that defendant No.1 and 2 being the widow of the son of Imam Sab and defendant No.3 being the husband of daughter of said Imam Sab have been granted the occupancy rights and the plaintiff is one of the daughter of Imam Sab the original tenant filed the suit for partition

and Hon'ble Supreme Court held that the benefit of grant of order of Land Tribunal shall enure to all the persons in the property left by Imam Sab. Thus as per the dictum of Hon'ble Supreme Court when a land has been granted to any of the member of the family the benefit of grant shall enure to all the family members. But in the facts on hand the Item No.11 of the property has not granted on the strength of Form No.7 submitted by any of the sons of Sankoos Naik. But it has been granted in a petition submitted by Hanumant Bhaira Naik that too by considering the only 20 years possession of Rama Sankoos Naik. If the Item No.11 of the property has granted on the strength of Form No.7 submitted by any one of the sons of Sankoos Naik, certainly the matter would have been different and it could have been held that benefit of grant is on behalf of the family and benefit of grant shall enure to all the family members. But since Item No.11 of the property has been granted only by considering the 20 years possession of Ram Sankoos Naik and it is not on the strength of Form No.7 submitted by any of the sons it could be concluded that it is the grant in favour of Ram Sankoos Naik only and it is his property.

31. In view of the detailed discussion made above the Tribunal has considered the cultivation and separate possession of Rama Sankoos Naik and granted the Item No.11 of the property it became his property. Since the

plaintiff failed to prove that other sons were also cultivating it along with other Item No.1 to 10 of the properties it could be concluded that they have no share in it. Accordingly the trial court has rightly rejected the claim of the plaintiff. Thus the trial court has considered all the evidence of parties and rightly hold that Item No.11 of the property is the property of the Rama Sankoo Naik and rightly dismissed the claim of the plaintiff over Item No.11 of the property. In view of the detailed discussion made above, this court did not find any grounds to call for the interference into the findings of the trial court. Hence, I answered **Point No.1 and 2 in the negative.**

32. Point No.3: In the result, I proceed to pass the following:

ORDER

The appeal filed by appellant/plaintiff under Order XLI, Rule 1 of CPC is hereby dismissed with cost.

The judgment and decree in OS No.99/2018 dated 02-01-2024 on the file of Principal Civil Judge and JMFC, Honnavar is hereby confirmed.

Send the TCR along with the copy of the judgment to the trial court for information.

(Dictated to the stenographer directly on the computer, typed by her, corrected, then signed and pronounced in the open court on this 26th day of March, 2026)