



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR FIRST APPEAL NO. 551 OF 2020

BETWEEN:

1. HANUMAIAH
S/O LATE MARULAIAH,
AGED ABOUT 77 YEARS,
R/AT NO.44, 4TH CROSS,
3RD MAIN, KENGERI UPANAGARA,
BANGALORE-560060

...APPELLANT

(BY SRI. RAVINDRA M.R., ADVOCATE)

AND:

1. SMT. GAYATHRI
W/O MANDAPPA,
AGED ABOUT 32 YEARS,
R/AT BABASAHEBARA PALYA,
KENGERI HOBLI,
BANGALORE SOUTH TALUK,
BANGALORE - 560 060
2. SMT. MANJULA
W/O SADASHIVAPPA,
AGED ABOUT 29 YEARS,
R/AT HARSHA LAYOT,
KENGERI HOBLI,
BANGALORE SOUTH TALUK,
BANGALORE - 560 060
4. SRI. BASAVARAJU
S/O CHANNAMARAPPA,
AGED ABOUT 25 YEARS,

Digitally signed
by CHANDANA
B M
Location: High
Court of
Karnataka



CHANNAMARAPPA SINCE DEAD BY HIS LRS

5. SMT. THIMMAKKA
W/O LATE CHANNAMARAPPA,
AGED ABOUT 55YEARS,
6. SMT. MUNIYAMMA
W/O LATE THIMMAPPA,
AGED ABOUT 52 YEARS,
7. SRI. BASAVARAJU
S/O LATE THIMMAPPA,
AGED ABOUT 26 YEARS,
8. SRI. GALISWAMY
S/O LATE KEMPAIAH,
AGED ABOUT 55 YEARS,
9. SRI. THIMMARAYAPPA
S/O LATE KEMPAIAH,
AGED ABOUT 53 YEARS,

RESPONDENTS NO.3 TO 9 ARE
R/AT BABASABARAPALYA,
Kengeri Hobli,
BANGALORE SOUTH TALUK,
BANGALORE - 560 060

10. SMT. MARAKKA
W/O LATE DODDAJANAPPA,
AGED ABOUT 60 YEARS,
11. SRI. GUNDAPPA
S/O MARAKKA,
AGED ABOUT 49 YARS,
12. SMT. VARANANDAMMA
D/O MARAKKA,
AGED ABOUT 40 YEARS,



RESPONDENTS NO.10 TO 12 ARE
R/AT SOMANAHALLI VILLAGE,
UTTARAHALLI HOBLI,
BANGALORE SOUTH TALUK.

13. SMT. MAYAMMA
D/O. BETTATHIMMAIAH,
AGD ABOUT 57 YEARS,
R/AT HEMMIGEPURA,
KENGARI HOBLI,
BANGALORE SOUTH TALUK.
14. SMT. KEMPAMMA
W/O LATE MUNIYAPPA,
AGED ABOUT 51 YEARS,
15. SMT. NAGAMMA D/O KEMPAMMA,
AGED ABOUT 38 YEARS,
16. SMT. BHAGYAMMA D/O KEMPAMMA,
AGED ABOUT 35 YEARS,
17. SRI. JAYARAMA S/O KEMPAMMA,
AGED JABOUT 31 YEARS,
18. SRI. KRISHNAMURTHY
S/O KEMPAMMA,
AGED ABOUT 31 YEARS,

RESPONDENTS NO.14 TO 18 ARE
R/AT MACHOHALLI VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK,
BANGALORE-560091

...RESPONDENTS

(BY SRI. KARTHIK P.M., ADVOCATE FOR R1 TO R4
R5 TO R9, R11, R13 TO R15, R17, R18 ARE SERVED
VIDE ORDER DATED 08.11.2024, R11 AND R12 ARE
TREATED AS LEGAL REPRESENTATIVES OF DECEASED R10)



THIS RFA IS FILED UNDER SECTION 96 OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 18.08.2018 PASSED IN O.S.NO.3204/2016 ON THE FILE OF THE X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

This appeal by defendant No.15 in O.S.No.3204/2026 is directed against the impugned judgment and decree dated 18.08.2018 passed by the X Addl.City Civil and Sessions Judge, Bangalore, whereby the said suit filed by respondents 1 to 4 - plaintiffs against the appellant - defendant therein for partition and separate possession of their legitimate share over the suit schedule property and for declaration that the sale deed dated 15.05.2006 executed by defendant Nos. 6 to 14 in favour of defendant No.15 was null and void and not binding on them and mesne profit, was decreed by the trial court in favour of the plaintiffs and against the defendants.

2. Heard learned counsel for the parties and perused the material on record.



3. A perusal of the material on record will indicate that the originally the suit schedule property was owned and possessed by ancestor of plaintiffs namely Sri. Thimmarayappa; said Thimmarayappa had two wives namely Kempamma and Chikkamma. Through his first wife, Sri. Thimmarayappa had a son by name Sri. Bettathimmaiah; through his second wife, he had four children namely Lakkanna, Kempaiah, Marakka and Bettathimmakka; Sri. Kempaiah - the second son of Thimmarayappa and Chikkamma had four sons namely Channamarappa, Thimmappa, Galiswamy and Thimmarayappa; the plaintiffs are the daughters and sons the first son of Kempaiah i.e., Channamarappa.

4. It is further contended that defendant No.1 is the father of plaintiffs and defendant Nos.2 and 3 are wife and son of Thimmappa, who is the paternal uncle of plaintiffs; defendant Nos.4 and 5 are paternal uncle of the plaintiffs; defendant Nos.6, 9 and 10 are the daughters of Bettathimmaiah and Savandamma, who was the son of Thimmarayappa through his first wife Kempamma; defendant Nos.7, 8, 11 to 14 are the inheritors and representatives of



defendant Nos.6, 9 and 10; defendant No.15 is the purchaser of the suit schedule property through defendant Nos.6 to 14.

5. Further, it was contended that the suit schedule property is the joint family property of the plaintiffs and defendant Nos.1 to 14; they are in joint possession and enjoyment of the suit schedule property; the defendant No.1 being the father of the plaintiffs was not willing for partition of the suit schedule property and to allocate the share of the plaintiffs inspite of repeated demands. In this regard, a Panchayath was convened on 25.03.2016, wherein it was revealed that the suit schedule property had already been alienated by the defendant Nos.6 to 14 in favour of defendant No.15, deceiving the legitimate share of plaintiffs and defendant Nos.1 to 5; after obtaining the certified copy of the said sale deed, it was confirmed that in order to deprive the share of plaintiffs and defendant No.1 to 5, defendant Nos. 6 to 14 have alienated the suit schedule property in favour of the defendant No.15. Hence, the plaintiffs have filed the aforesaid suit seeking for the aforesaid reliefs.



6. The said suit was not contested by defendants 2 to 15 and they have remained *ex-parte* before the trial court. Defendant No.1(a) – 5th respondent herein appeared before the trial court and filed written statement admitting the plaint averments.

7. The plaintiff No.4 was examined himself as PW-1 and defendant No.4 was examined as PW-2. The documentary evidence at Exs.P1 to P32 were got marked on behalf of the plaintiffs and defendant No.1(a) did not choose to cross-examine PWs 1 and 2 nor adduced any oral or documentary evidence on her behalf. Based on the aforesaid pleadings of the parties and considering the oral and documentary evidence of the plaintiffs, the trial Court proceeded to decree the suit in favour of the plaintiffs against defendant No.15, who is before this Court by way of the present appeal.

8. Learned counsel for the appellant submits that due to *bonafide* reasons, unavoidable circumstances and sufficient cause, the appellant was not in a position to approach the Advocate nor make arrangements or give instructions to file the written statement and contest the suit and by the time he



approached the trial Court in this regard, the suit was decreed in favour of the plaintiffs. It is therefore submitted that the impugned judgment and decree may be set aside and the matter be remitted back to the trial court for reconsideration afresh by providing an opportunity to the appellant to appear before the trial court and to contest the suit.

9. Per contra, learned counsel for the respondents submits that he has no objection for the impugned judgment and decree to be set aside subject to imposition of exemplary costs upon the appellant and with a direction to the appellant to file the written statement on a date to be fixed by this Court for appearance of the parties and with a direction to the trial Court to dispose of the suit within the stipulated time frame.

10. In view of the aforesaid facts and circumstances and the joint submissions made by both sides, I deem it just and appropriate to set aside the ex-parte impugned judgment and decree and remit the matter back to the trial Court for reconsideration afresh in accordance with law by issuing certain directions in this regard.

11. In the result, I pass the following:-



ORDER

i) The appeal is hereby allowed.

ii) The impugned judgment and decree dated 18.08.2018 passed in O.S.No.3204/2026 by the trial court is hereby set aside, subject to payment of cost in a sum Rs.25,000/- to the respondents before the Trial Court.

iii) The matter is remitted back to the trial Court for reconsideration afresh in accordance with law.

iv) The appellant and respondents shall appear before the trial Court on **24.11.2025** without awaiting further notice from the trial court.

v) The appellant is directed to file the written statement on 24.11.2025 without seeking any adjournment under any circumstances whatsoever.

vi) It is made clear that in the event the appellant does not file the written statement on 24.11.2025 and pay the cost of Rs.25,000/- to the respondents, the present order shall stand automatically recalled / revived and the impugned



judgment and decree passed by the trial Court shall stand affirmed.

vii) Liberty is reserved in favour of both the parties to adduce evidence/additional evidence in support of their respective claims.

viii) The trial Court is directed to dispose of the suit afresh within a period of six months from **24.11.2025**.

ix) All rival contentions and all aspects of the matter are kept open and no opinion is expressed on the merits/demerits of the rival contentions.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

BSV/SRL
CT-SG
List No.: 1 Sl No.: 20