



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 629 OF 2014 (PAR)

BETWEEN:

SMT. SIDDAGANGAMMA
W/O K H V BABU,
AGED ABOUT 59 YEARS,
R/AT, 143/D, 4TH CROSS,
2ND MAIN,
PRAKASH NAGAR,
BANGALORE-21

...APPELLANT

(BY SRI. A V AMARNATHAN., ADVOCATE)

AND:



1. SMT. MANJULA
D/O MAREGOWDA,
AGED ABOUT 30 YEARS
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203
2. MANJULA
D/O RAMAMURTHY,
AGED ABOUT 29 YEARS,
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203



3. ANITHA
D/O MAREGOWDA,
AGED ABOUT 30 YEARS,
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203
4. MAREGOWDA
S/O CHANNAHANUMAIAH,
AGED ABOUT 55 YEARS,
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203
5. RAMAMURTHY
S/O CHANNAHANUMAIAH,
AGED ABOUT 47 YEARS,
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203
6. GANESHA
S/O MAREGOWDA,
AGED ABOUT 28 YEARS,
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203
7. BYLAMMA
W/O CHANNAHANUMAIAH,
AGED ABOUT 86 YEARS,
R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203
8. LAXMAMMA
D/O CHANNAHANUMAIAH,
AGED ABOUT 60 YEARS,



R/AT KADANUR VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK – 561 203

...RESPONDENTS

(V/O DATED 03.09.2014 NOTICE TO R1-R5, R7 & R8 ARE
TREATED AS SUFFICIENT
R6 SERVED)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 6.2.2014 PASSED IN
R.A.NO.112/2012 ON THE FILE OF IV ADDITIONAL DISTRICT
AND SESSIONS JUDGE, DODDABALLAPUR, BANGALORE RURAL
DISTRICT, ALLOWING THE APPEAL AND SETTING ASIDE THE
JUDGEMENT AND DECREE DTD 21.1.2012 PASSED IN
OS.NO.102/2007 ON THE FILE OF SENIOR CIVIL JUDGE AND
JMFC, DODDABALLAPURA.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellant
challenging the judgment and decree dated
06.02.2014 passed in R.A.No.112 of 2012 by the
learned IV Additional District and Sessions Judge,
Doddaballapura, Bangalore Rural District, Bangalore.
2. For convenience, the parties are referred to based on
their rankings before the trial court. The appellant was



defendant No.6, respondent Nos.1 to 3 were the plaintiffs, and the other respondents were the other defendants.

3. Brief facts, leading rise to the filing of this appeal are as follows:
4. The plaintiffs filed a suit against the defendants for a partition and separate possession regarding the suit schedule property. It is the case of the plaintiffs that defendant No.1 is the father of plaintiff Nos.1 and 3. Plaintiff No.2 is the daughter of defendant No.2. defendant No.3 is the son of defendant No.1. Defendant No. 4 is the grandmother and defendant No.5 is the sister of defendant Nos.1 and 2. The plaintiffs and defendant Nos.1 to 6 are the members of a Hindu undivided joint family and the suit schedule property is the ancestral and joint family property and they are in joint possession of the suit schedule property. The plaintiffs demanded a partition and separate possession, but the defendants refused to



effect a partition. Hence, a cause of action arose for the plaintiffs to file a suit for partition and separate possession. Accordingly, prays to decree the suit.

5. Defendant No.6 filed a written statement denying the averments made in the plaint, and contended that the suit filed by the plaintiffs is not maintainable. It is contended that the plaintiffs have not approached the court with clean hands. It is contended that the suit schedule property is the self-acquired property of defendant No.4 and acquired by her under a registered sale deed from her vendor, Byregowda, s/o Byrelingegowda under a registered sale deed dated 15.12.1970 and since the date of purchase, he is in possession of the suit schedule property. Thereafter defendant No.4 executed a sale deed in favour of defendant No.6. It is contended that the plaintiffs are not entitled to any share in the property acquired by defendant No. 6 and prays to dismiss the suit.



6. The trial Court, based on the pleadings of the parties,
framed the following issues:

Issues:

1. *Whether the plaintiffs prove that the suit schedule property is the joint family property and they are in joint possession?*
2. *Whether the plaintiff proves that defendants No.1 and 2 addicted to bad vices and borrowed money and trying to sell the suit schedule property?*
3. *Whether the plaintiffs prove that as a guardian on behalf of minors the represented by defendants No.1 and 2 the 6th defendant got managed to get sale deed and it is not binding on the plaintiffs?*
4. *Whether the plaintiffs are entitle to partition and mesne profits as prayed?*
5. *Whether defendant No.6 proves that she has purchased the property out of her owned earned money and did not play fraud on plaintiffs?*
6. *Whether defendant No.6 proves that the son of 4th defendant signed the sale deed as a consenting witness?*
7. *Whether defendant No.6 proves that the suit is not properly valued and Court fee is paid insufficient?*
8. *What order or decree?*



7. The plaintiffs to substantiate their case, plaintiff no. 1 was examined as PW1, examined 2 witnesses as PW2 and 3 and marked 6 documents as Exhibit P1 to Exhibit P6. In rebuttal, defendant No. 6 examined the power of attorney holder as DW.1 and marked 7 documents as Exhibit D1 to Exhibit D7.
8. The trial Court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence, answered Issue Nos. 1 to 4 in the negative and Issue Nos.5 to 7 in the affirmative and consequently dismissed the suit of the plaintiffs with costs vide Judgment dated 21.01.2012.
9. The plaintiffs, aggrieved by the dismissal of the suit in O.S.No.102 of 2007, preferred an appeal in R.A.No. 112 of 2012 on the file of the learned IV Additional District and Sessions Court, Doddaballapur, Bangalore Rural District, Bangalore.



10. The first appellate court, after hearing the learned counsel for the parties, framed the following points for consideration:

Points:

1. *Whether the impugned judgment and decree passed by the trial Court is perverse, capricious and arbitrary and it calls for any interference by this Court?*
2. *What order or decree?*

11. The first appellate court allowed the appeal vide judgment dated 06.02.2014 and set aside the judgment and decree passed by the trial Court and consequently decreed the suit of the plaintiffs and declared that the plaintiffs No.1 and 3 are entitled to $1/12^{\text{th}}$ share each, and plaintiff No.3 is entitled to $1/6^{\text{th}}$ share in the suit schedule property by metes and bounds.



12. Defendant No.6 aggrieved by the judgment and decree passed in R.A.No. 112 of 2012, filed this Regular Second Appeal.
13. A Notice was issued to the respondents in this appeal. Despite service of notice, they remained unrepresented.
14. Heard the arguments of the learned counsel for defendant No.6.
15. Learned counsel for defendant No. 6 submits that the first appellate court being the final fact finding court is required to frame the proper points for consideration and re-appreciate the entire evidence on record. The judgment and decree passed by the first appellate court is not in compliance with Order XLI to 31 of CPC and to buttress his argument, he has placed reliance on the judgment of the Hon'ble Apex Court in case of ***H.Siddiqui (D) by LRs. vs. A Ramalingam reported in (2011) 2 KCCR 1389.*** Hence, the



judgment and decree passed by the first appellate court is contrary to the proposition of law laid down by the Hon'ble Apex Court in the case of ***H.Siddiqui (D) by LRs*** (referred supra). Hence, on these grounds, he prays to set aside the judgment and decree passed by the first appellate Court, and remit the matter with direction to the first appellate court to pass a judgment in compliance with Order XLI Rule 31 of the CPC.

16. This court vide order dated 07.07.2014, admitted the appeal to consider the following substantial questions of law:

- i. Whether the appellate Court is justified in reversing the well considered judgment of the trial Court having arrived at a conclusion that the burden is on the plaintiffs to establish that the suit schedule mentioned property is ancestral and not self acquired property?*
- ii. Whether the appellate Court had properly appreciated the questions of law relating to the burden of proof in the case of alienations made by 7th respondent for the*



legal necessity of the family or for the benefit of the family?

iii. Whether the appellate Court had properly appreciated the aspect of possession and whether it is justified in giving inconsistency findings regarding the nature of documents?

17. This Court on 23.02.2026, framed the Additional substantial question of law, which reads as follows:

"Whether the appellant proves that the judgment and decree passed by the first appellate court is not in compliance with Order XLI Rule 31 of the Code of Civil Procedure, 1908?"

Reg. Additional substantial questions of law:

18. The plaintiffs filed a suit for partition and separate possession contending that the suit schedule property is the joint family property of the plaintiffs and defendants and also contended that the plaintiffs and defendants 1 to 5 are the members of Hindu joint



family and they are in joint possession of the suit schedule properties, and no partition is effected between the plaintiffs and defendant Nos. 1 to 5. The plaintiffs demanded a partition and separate possession. The defendants refused to effect the partition. The plaintiffs to substantiate their case, Plaintiff No. 1 was examined as PW1, and marked the documents at Ex.P1 to Ex.P6. The plaintiffs also examined two witnesses to demonstrate that the suit schedule property is the joint family property of the plaintiffs and defendants No.1 to 5 and they are the members of Hindu joint family and no partition is effected.

19. In rebuttal, power of attorney of defendant No.6 was examined as DW1 and he reiterated the written statement averments in the examination in chief and contended that the suit schedule property is the self-acquired property of defendant No.4, who sold the same to defendant No.6.



20. Defendant No. 6 contended that defendant No. 4 had purchased the suit schedule property under a registered sale deed dated 15.12.1970 from a vendor Byregowda. She became the absolute owner of the suit schedule property by Section 14(1) of the Hindu Succession Act and the name of defendant No.4 is appearing in the revenue records. It is contended that the suit schedule property is not the joint family property of the plaintiffs and defendant Nos.1 to 5. Defendant No. 4 executed a registered sale deed in favour of defendant No.6. The plaintiffs have no right to claim a share in the suit schedule property.

21. The trial Court, after recording the evidence held that, the plaintiffs have failed to prove the suit schedule property is the joint family property and they are in joint possession of the suit schedule property and also held that plaintiffs have failed to prove that defendant Nos.1 and 2 addicted to the bad vices, and borrowed



the money and are trying to sell the suit schedule property.

22. Further, the plaintiffs have also failed to prove that, as the guardian on behalf of the minors they are represented by defendants Nos.1 and 2. Defendant No.6 managed to get the sale deed and it is binding on the plaintiffs and held that the plaintiffs are not entitled to partition and separate possession. The trial Court held that defendant No.6 has proved that she became the absolute owner of the suit schedule property, and consequently, dismissed the suit of the plaintiffs.

23. The plaintiffs, aggrieved by the judgment and decree passed by the trial Court, preferred an appeal in RA No.112/2012 on the file of the learned IV Additional District and Sessions Court, Doddaballapur, Bangalore Rural District, Bangalore.



24. The first appellate court, after hearing the learned counsel for the parties, framed the following points for consideration:

- 1. Whether the impugned judgment and decree passed by the trial Court is perverse, capricious and arbitrary and it calls for any interference by this Court?*
- 2. What order or decree?*

25. The first appellate court, reversed the judgment and decree passed by the trial court and consequently decreed the suit of the plaintiffs. I have perused the judgment passed by the first appellate Court. The first appellate court has not properly framed the points for consideration in compliance with Order XLI Rule 31 of the CPC. The trial Court has framed as many as 8 issues and the first appellate court is required to answer each issues raised by the first appellate Court. Further, the appellate court has not assigned any reasons for reversing the judgment and decree passed by the trial Court. The first appellate court has not



re-appreciated the entire evidence on record, and committed an error in reversing the judgment, and decree passed by the trial Court.

26. The Hon'ble Apex Court in the case of ***H.Siddiqui (D) by LRs.*** (referred supra) has framed the guidelines for dealing with the appeal under Section 96 of the Code of Civil Procedure, which reads as follows:

"18. It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record the mere general expression of concurrence with the trial Court judgment rather it must give reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions.

(emphasis supplied)



27. Admittedly in the instant case, it is mandatory for the first appellate court to independently assess the evidence of the parties, and to consider the relevant points, which arise for adjudication, and considering the evidence on those points. The first appellate court has not re-appreciated the entire evidence on record. The judgment and decree passed by the first appellate court is contrary to the proposition of law laid down by the Hon'ble Apex Court in the case of ***H.Siddiqui (D) by LRs.*** (*referred supra*). Hence, on this ground alone itself the impugned judgment passed by the first appellate court is liable to be set aside. In view of the above discussion, I answer additional substantial question of law in the '***affirmative***'.

28. Accordingly, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is ***allowed***.



- ii. The Judgment and decree dated 06.02.2014 passed in R.A.No.112/2012 by the learned VI Additional District and Sessions Judge, Doddaballapura, Bangalore Rural District, Bangalore, is hereby set aside.
- iii. The appeal in R.A.No.112/2012 is restored to its original file.
- iv. The parties are directed to appear before the first Appellate Court on **20.04.2026** without awaiting any further notice.
- v. It is made clear that this court has not made any adjudication on the merits in issue.
- vi. The Registry is directed to transmit the records to the First Appellate Court.
- vii. The First Appellate Court is directed to pass the judgment in compliance with Order XLI Rule 31 of CPC by framing the proper points for consideration, and assign the reasons and thereafter provide an opportunity of hearing to both the parties and to pass the judgment in accordance with law.



- viii. The First Appellate Court is directed to issue notice to both the parties and thereafter, pass an appropriate judgment.
- ix. All the contentions of the parties are kept open.
- x. Pending IA(s), if any, shall stand disposed of accordingly.
- xi. Office to transmit the trial Court records forthwith.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

sks,ssb
CT:KHV