



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

REGULAR SECOND APPEAL NO. 397 OF 2009 (PAR-)

BETWEEN:

1. SMT. PAMMAKKU
WIDOW OF ANNU MOOLYA
AGED ABOUT 76 YEARS.
2. THIMMAPPA
S/O LATE ANNU MOOLYA
AGED ABOUT 55 YEARS.
3. DOMBAYYA
S/O LATE ANNU MOOLYA
AGED ABOUT 52 YEARS.
4. LINGAPPA
S/O LATE ANNU MOOLYA
AGED ABOUT 48 YEARS.
5. SRI DHARNAPPA MOOLYA
S/O LATE ANNU MOOLYA
AGED ABOUT 45 YEARS.

ALL ARE RESIDING AT
KAJE HOUSE, BANNUR VILLAGE
AND POST, PUTTUR TALUK D.K.

...APPELLANTS

(BY SRI SANATH KUMAR SHETTY K, ADV.)

AND:

1. SRI LINGAPPA MOOLYA
S/O SHANKAR MOOLYAARWARA
DIED ON 04.05.2015
REPRESENTED BY HIS LRS.



R(a) SMT. SEETHA
W/O LATE LINGAPPA MOOLYA
AGED AOBUT 55 YEARS.

R(b) SRI RAJESH
S/O LATE LINGAPPA MOOLYA
AGED ABOUT 34 YEARS.

R(c) RAMESH
S/O LATE LINGAPPA MOOLYA
AGED ABOUT 30 YEARS.

R(d) RAMYA
S/O LATE LINGAPPA MOOLYA
AGED ABOUT 28 YEARS.

ALL ARE R/AT ARWARA HOUSE
PADNOOR VILLAGE
PUTTUR TALUK, D.K.

2. MONAMMA
W/O SANJEEVA A
ADULT, BOOK SELLER
R/AT NALKEDIAKODI HOUSE
THANNIRPANTHA VILLAGE
AND POST, BELTHANGADY TALUK, DK.

3. REVATHI
W/O DAYANANDA MOOLYA
ADULT, R/AT PUTHYE HOUSE
PADANGADY VILLAGE AND POST
PUTTUR TALUK D.K.

4. SMT. KORAPALU
(SINCE DEAD)
W/O SHANKAR MOOLYA
ADULT R/AT ARWAR HOUSE
PADNOOR VILLAGE AND POST
PUTTUR TALUK, DK.

RESPONDENTS 5 & 6 ARE LRS OF
RESPONDENT NO.4 AND THEY
ARE ALREADY ON RECORD.



5. SMT. KAMALA
D/O SHANKAR MOOLYA
R/O UDYARE HOUSE
ARASINAMAKKI VILLAGE AND PO.
BELTHANGADY TALUK, DK.
6. SMT. JANAKI
D/O SHANKER MOOLYA
W/O ANNI MOOLYA
R/O CHIKKAMUDNOOR
PUTTUR TALUK, DK.

...RESPONDENTS

(BY SRI ISMAIL R, ADV., FOR R-1(a) TO R-1(d);
R-2, R-3, R-5 & R-6 SERVED - UNREPRESENTED)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DATED 18.12.2008 PASSED IN
R.A.NO.24/1994 ON THE FILE OF THE III ADDL.DISTRICT JUDGE,
D.K., MANGALORE, ALLOWING THE APPEAL AND SETTING ASIDE
THE JUDGEMENT AND DECREE DATED 29.10.1992 PASSED IN
OS.NO. 97/1989 ON THE FILE OF THE CIVIL JUDGE, PUTTUR, D.K.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL JUDGMENT

1. This regular second appeal is filed by the legal
representatives of defendant No.1 - Annu Moolya challenging
the judgment and decree dated 18.12.2008 passed in RA
No.24/1994 by the Court of III Addl. District Judge, Dakshina
Kannada, Mangaluru.

2. Heard the learned counsel for the parties.



3. Facts leading to filing of this regular second appeal narrated briefly are, OS No.97/1989 was filed by respondent No.1 - Lingappa Moolya originally against Annu Moolya, who is the younger brother of plaintiff's father - Shankara Moolya. Subsequently, daughters of Shankara Moolya were impleaded as defendant Nos.2 to 4 in OS No.97/1989. Defendant No.1 had filed his written statement opposing the prayer made in the suit while defendant Nos.2 and 4 had filed their written statement supporting the claim of the plaintiff. Before the Trial Court, the plaintiff had examined himself in support of his case as PW1, three other witnesses were examined as PW2 to PW4 and 22 documents were got marked on behalf of the plaintiff as Ex.P1 to P22. On behalf of defendant, he examined himself as DW1 and got marked 19 documents as Ex.D1 to D19. The Trial Court by judgment and decree dated 29.10.1992 dismissed the suit of the plaintiff in OS No.97/1989 and as against the said judgment and decree, the plaintiff had filed RA No.24/1994 which was allowed vide the impugned judgment and decree dated 18.12.2008 and aggrieved by the same, the legal representatives of defendant No.1 are before this Court in this regular second appeal.



4. This Court, while admitting this appeal on 17.07.2013 had formulated the following substantial questions of law, which arises for consideration in this regular second appeal:-

"1) whether the first appellate court was justified in interfering with judgment and decree of the trial court without examining the correctness or otherwise of the reasoning adopted by the trial court?

2) Whether the finding recorded by the first appellant court that occupancy right granted in the name of the plaintiff also is sustainable for it is against the pleadings and the evidence on record?

3) Whether the first appellate court could have granted a decree for partition when according to the plaintiff that there was already a partition in Ex.P-14?"

5. Plaintiff in order to prove his case had examined himself as PW1 and one Sri. Babu Poojary as PW2. PW3 - Sri. S. Venkatramana Bhat, is the son of Sri. K. Ramakrishna Bhat, who was the original land lord of the suit schedule properties. One Sri. Srinivasa Pangannaya was examined as PW4. On behalf of the plaintiff, 22 documents were got marked as Ex.P1



to P22. Defendant No.1 examined himself as DW1 and got marked 19 documents as Ex.D1 to D19. It is the specific case of the plaintiff that his father Shankara Moolya, was the original tenant of the suit schedule properties and after his death, since plaintiff was a minor, defendant No.1, who is the younger brother of Shankara Moolya had filed Form No.7 before the Tribunal claiming occupancy rights of the suit schedule properties on behalf of the family of Shankara Moolya and himself. According to the plaintiff, after the death of Shankara Moolya, his wife and children were in possession of the suit schedule properties along with defendant No.1. After the Land Tribunal had granted occupancy rights of the suit schedule properties, the plaintiff was put in possession of the suit schedule B property under an agreement vide Ex.P14 dated 03.02.1980 by defendant No.1.

6. DW1, during the course of his deposition, has admitted that plaintiff is in possession of suit schedule B property. Defendant has also admitted that when the suit schedule properties were taken on lease, there existed two houses in the suit schedule properties and Shankara Moolya, was in



occupation of one house along with his family members and in the other house, defendant No.1 was in occupation. DW1 has admitted that PW3 is the son of the original land lord of the suit schedule properties under whom occupancy rights of the land in question were claimed by him before the Land Tribunal. PW3 has categorically stated that suit schedule properties were originally leased to Shankara Moolya by his father and after the death of Shankar Moolya in the year 1969, his younger brother, who is defendant No.1 was cultivating the suit schedule properties and had filed Form No.7 claiming occupancy rights of the lands in dispute.

7. It is relevant to note here that Ex.P20 which is the certified copy of the final decree passed in RIA No.2597/1966 arising out of OS No.6/1965 on the file of Civil Judge, Mangaluru, Dakshina Kannada District, which was filed *inter se* by the family members of the land lords of the suit schedule properties, seeking partition and separate possession of their family properties, it is mentioned as follows:-

"Properties situate in Bannur village of Puttur taluk

<u>S.No.&S.DNo.</u>	<u>Kissam</u>	<u>Extent</u>	<u>Remarks</u>
		<u>A. C.</u>	



26-2	Nanja	0-33	}	<i>These items are in possession of chalageni tenant Shankara Moolya who is liable to pay rent of 21 muras of rice and 80 coconuts per year"</i>
26-3	Nanja	0-31		
4	-do-	0-90		
5	-do-	0-21		
7	-do-	0-45		
1	Bagayat	0-20		
6	Punja	1-44		

8. From the aforesaid statement found in the final decree proceedings which relates to the year 1965, it is apparent that at an undisputed time, it has come on record that Shankara Moolya, who is the father of the plaintiff was the chalageni tenant of the suit schedule properties. Shankar Moolya had died in the year 1969 and his children were minors at the said time and it appears that therefore, his younger brother, who is defendant No.1 in the present suit started cultivating the suit schedule properties and subsequently, had filed Form No.7 claiming occupancy rights of the suit schedule properties. Therefore, I am of the considered view that First Appellate Court was fully justified in arriving at a conclusion that the occupancy rights of the suit schedule properties granted in the name of defendant No.1 enures to the benefit of plaintiff and defendant Nos.2 to 4, who are the wife and children of Shankara Moolya. The finding recorded by the First Appellate



Court therefore, cannot be said to be against the pleadings and the evidence available on record. The First Appellate Court was therefore, fully justified in reversing the judgment and decree of the Trial Court and accordingly, I answer substantial questions of law No.1 and 2, in the ***affirmative***.

9. Plaintiff has pleaded that after the occupancy rights of the suit schedule properties were granted in favour of defendant No.1, by way of arrangement, an agreement was executed on 03.02.1980 as per Ex.P14 and under the said agreement, he was put in possession of the suit schedule B property by defendant No.1. Defendant No.1 has admitted that plaintiff is residing in the house existing in suit schedule B property. According to the defendant No.1, plaintiff is in permissive possession of the suit schedule B property but according to the plaintiff by way of arrangement, he was put in possession of suit schedule B property, under Ex.P14. Therefore, at any event, Ex.P14 cannot be considered as a partition of the suit schedule properties between the plaintiff and defendant No.1 and therefore, substantial question of law No.3 framed by this Court is answered in the ***negative***.



10. Learned counsel for the appellant has brought to the notice of this Court that in the impugned judgment and decree, first appellate court has observed that the plaintiff and defendant Nos.2 to 4 are entitled for partition of the suit schedule properties into two fair and equal share and allot one such share to them. The First Appellate Court ought to have observed that plaintiff and defendant Nos.2 to 4 are together entitled for half share of the suit schedule properties and defendant No.1 and his legal representatives are together entitled for the other half share of the suit schedule properties. To the said extent, the judgment and decree impugned requires to be modified. Accordingly, the following:-

ORDER

(i) The regular second appeal is ***partly allowed.***

(ii) The judgment and decree dated 18.12.2008 passed in RA No.24/1994 insofar as it relates to decreeing the suit in OS No.97/1989 is confirmed.

(iii) However, the impugned judgment and decree insofar as it relates to observing that the plaintiff and defendant Nos.2 to 4 are entitled for



partition of the suit schedule properties into two fair and equal shares and allot one such share to them, is modified, and it is held that plaintiff and defendant Nos.2 to 4 are together entitled for half share in the suit schedule properties and defendant No.1 and his legal representatives are together entitled for the other half share in the suit schedule properties.

(iv) The impugned judgment and decree insofar as it relates to mesne profits, is confirmed.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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