



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 29<sup>TH</sup> DAY OF OCTOBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE ASHOK S.KINAGI**

**REGULAR SECOND APPEAL NO. 539 OF 2013**

**(DEC/INJ)**

**BETWEEN:**

1. SRI VENKATARAMANA  
ALIAS THIMMAPPA  
S/O LATE MELEGOWDA  
SINCE DECEASED BY HIS LRS

1(A) SMT. GOWRAMMA  
D/O LATE VENKATARAMANA,  
AGE: 49 FYEARS,  
R/AT NO.65, 13<sup>TH</sup> CROSS,  
NEAR GANESH TEMPLE,  
TEACHER'S COLONY, KORAMANGALA,  
BANGALORE 560034

1(B) SRI. KRISHNAPPA  
AGED ABOUT 47 YEARS,  
S/O LATE VENKATARAMANA,

1(C) SRI.RAVI  
AGED ABOUT 45 YEARS,  
S/O LATE VENKATARAMANA,

RESPONDENTS 1(B) AND 1(C) ARE  
R/AT NO.63, 1<sup>ST</sup> CROSS, 5<sup>TH</sup> MAIN ROAD,

Digitally  
signed by  
SUNITHA K S  
Location:  
HIGH COURT  
OF  
KARNATAKA



TEACHER'S COLONY,  
KORAMANGALA,  
BANGALORE560034

2. SRI. PUTTASWAMY  
AGED ABOUT 77 YEARS,  
S/O LATE MELEGOWDA,  
R/AT NO. 107, SHANKAR MUTT ROAD,  
2<sup>ND</sup> CROSS,  
SHIMOGGA 577201.
3. SRI. CHINNA GIRI GOWDA  
AGED ABOUT 63 YEARS,  
S/O LATE MELEGOWDA,  
R/AT NO. 131, "SREENIDHI" 5<sup>TH</sup> "A" CROSS,  
CHIKKASWAMY LAYOUT,  
JARAGANAHALLI,  
J.PNAGAR POST,  
BANGALORE560078

...APPELLANTS

(BY SMT/MISS. RAKSHITHA D J., ADVOCATE)

**AND:**

SMT CHALUVAMMA  
W/O LATE MELEGOWDA  
SINCE DECEASED BY HER LRS,  
THE APPELLANTS AND RESPONDENTS 1 TO 3

1. SRI. VENKATAPPA,  
S/O LATE MELEGOWDA,  
AGE: 65 YEARS,  
R/AT MAVATHUR VILLAGE,  
GUTTALA HUNASE POST,



MARALAVADI HOBLI,  
KANAKAPURA TALUK

2. SMT. CHIKKA THAYAMMA  
SINCE DEAD BY HER LEGAL REPRESENTATIVE'S  
WHO ARE ALREADY ON RECORD  
AS APPELLANT No.1 (A-C)  
APPELLANT No.2 AND 3 AND RESPONDENT No.1
3. SRI.M.V. UMESH  
AGED ABOUT 37 YEARS,  
S/O VENKATAPPA,  
R/AT MAVATHUR VILLAGE,  
GUTTALA HUNASE POST,  
MARALAVADI HOBLI,  
KANAKAPURA TALUK

...RESPONDENTS

(BY SRI. D.G. SHANTAPPA, ADVOCATE FOR C/R  
VIDE ORDER DATED 28.01.2020 A1(A-C),  
A2, A3 & R1 ARE LEGAL REPRESENTATIVES OF R2  
VIDE ORDER DATED 28.01.2020  
LEGAL REPRESENTATIVES OF R2 D/W)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE  
JUDGEMENT & DECREE DTD 1.2.2013 PASSED IN  
R.A.NO.82/2010 ON THE FILE OF PRESIDING OFFICER, FAST  
TRACK COURT, KANAKAPURA, RAMANAGARA DISTRICT,  
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT  
AND DECREE DTD 27.9.2010 PASSED IN OS.NO.427/2006 ON  
THE FILE OF PRINCIPAL CIVIL JUDGE (SR.DN.), RAMANAGARA.

THIS APPEAL, COMING ON FOR FINAL 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 appellants challenging the judgment and decree dated 01.02.2013 passed in R.A. No.82 of 2010 by the learned Presiding Officer, Fast Track Court, Kanakapura, Ramanagara District.
2. For convenience, the parties are referred to based on their rankings before the Trial Court. The appellants were the plaintiffs, and the respondents were the 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 partition and separate possession. It is the case of the plaintiffs that the suit schedule properties were acquired by late Melegowda by purchasing the same in the name of his wife Smt.Cheluvamma i.e., defendant No.1. It is the case of the plaintiffs that



defendant Nos.2, 3 and the plaintiffs are the children of defendant No.1, and defendant No.4 is the son of defendant No.2; and the suit properties are the ancestral properties of the plaintiffs and the defendants. The said Melegowda had the ancestral properties i.e., property bearing Survey No.133/6 measuring 8½ guntas, Survey No.133/9 measuring 1½ guntas and Survey No.134/3 measuring 13 guntas and a house situated at Hallimaranahalli village measuring 5 ankanas of country tiled house including angala and hittalu. The father of the plaintiffs and the defendants sold the ancestral properties on 04.05.1949 with an intention to purchase the properties at Yerenahalli village, Kanakapura Taluk.

5. After selling the said ancestral properties, the suit schedule properties have been purchased in the name of their mother Smt.Chaluvamma. The said properties have to be construed as ancestral



properties of the parties to the suit. It is also contended that the plaintiffs got appointed in the Government job, hence they were residing in different places. The defendants were residing at Mavathoor village, Kanakapura taluk. Taking advantage of the same, defendant No.2 got manipulated the documents and tried to change the khata in the name of his son i.e., defendant No. 4. The plaintiffs and the defendants are the members of the Hindu Undivided Family and no partition is effected between them. It is contended that the plaintiffs requested the defendants to effect a partition and separate possession of the suit schedule properties. It is also contended that defendant No.2 had no right to execute a gift deed in favour of defendant No. 4. Hence, on these grounds, prays to decree the suit.

6. The defendants filed a written statement denying the averments made in the plaint, and it is contended



that the suit is not maintainable. The father of the plaintiffs and defendant Nos.2 and 3 and husband of defendant No.1 Melegowda was a drunkard and has developed all sorts of bad habits, as such, to meet his bad vices, he sold all his joint family properties situated at Hallimaranahalli village on 04.05.1949 in favour of different persons, and he has utilised the said sale consideration for his personal benefits and not for the benefit of the family. It is contended that the defendants have purchased suit item Nos.1, 2 and 4 and the said suit schedule properties are the self-acquired properties of the defendants. It is stated that said self-acquired properties were purchased from 1949 to 1963. The said properties are their self-acquired properties and the plaintiffs have no right to claim their share in item Nos.1 and 2 of the suit schedule properties. It is contended that defendant No.1 was cultivating item No.3 of the suit schedule properties on *Bagair Hukum* basis, and



considering her possession, the Government granted the said property in her favour. Suit schedule item Nos.1, 2 and 4 are the self-acquired properties of defendant Nos.1 and 2. Defendant No.1 with love and affection executed a registered gift deed on 04.07.2006 in favour of defendant No.4. Defendant No.4 became the absolute owner of the said property under a registered gift deed dated 04.07.2006. Hence, it is contended that plaintiff No.1 has earned a lot of money and constructed a three-storied RCC building at Koramangala, Bangalore and plaintiff No.2 constructed a two-storied building at Shivamogga and purchased number of sites, and the said properties are not included in the suit schedule properties, but, defendant No.2 has no properties elsewhere. Hence, prays to dismiss the suit.

7. The Trial Court, based on the rival pleadings of the parties, framed the following issues:



- 1) *Whether the plaintiffs proves the schedule properties are all ancestral joint family properties?*
  - 2) *Whether the plaintiffs proves gift deed executed by the 2<sup>nd</sup> defendant in favour of 4<sup>th</sup> defendant is null and void and not binding?*
  - 3) *Whether the defendants prove schedule properties are self acquired properties of 1<sup>st</sup> defendant?*
  - 4) *To what reliefs the plaintiffs are entitled for?*
  - 5) *To what order or decree?*
8. The plaintiffs, to substantiate their case, plaintiff No.3 was examined as PW-1, examined one more witness as PW-2 and marked 91 documents as Exhibits P-1 to P-91. In rebuttal, the defendants, to prove their defence, defendant No.2 was examined as DW.1 and defendant No. 4 was examined as DW.2



and examined four witnesses as DW.3 to DW.6 and marked 24 documents as Exhibits D-1 to D-24.

9. The Trial Court, after recording the evidence, hearing on both sides and assessing the verbal and documentary evidence, answered issue Nos.1 and 4 partly in the affirmative and partly in the negative; issue No.2 in the affirmative; issue No.3 in the negative and issue No.5 as per the final order. The suit of the plaintiff was decreed in part. It is declared that the plaintiffs are entitled for 1/5<sup>th</sup> share in suit schedule item Nos.1, 2 and 4, and the suit of the plaintiffs in respect of item No.3 was dismissed.
10. The defendants, aggrieved by the judgment and preliminary decree passed in O.S. No.427 of 2006, preferred an appeal in R.A. No.82 of 2010.
11. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for its determination:



- 1) Whether the suit properties are joint family properties of plaintiffs or suit item No.1, 2 and 4 properties are self acquired properties of defendant No.1?*
  - 2) Whether the gift deed dated 04.07.2006 is null and void and not binding on the plaintiffs?*
  - 3) Whether the trial Court is justified in partly decreeing the suit?*
  - 4) Whether the judgment and decree of the Trial Court is required to be interfered with in this appeal?*
12. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 partly in the affirmative and partly in the negative; point No.2 in the negative; and point Nos.3 and 4 partly in the negative and partly in the affirmative and consequently, allowed the appeal; set aside the judgment and decree passed by the Trial Court insofar as suit item Nos.1, 2 and 4 properties; and confirmed the judgment and decree passed by the



Trial Court as far as suit item No.3 property; and the suit of the plaintiff was dismissed.

13. The plaintiff, aggrieved by the judgment and decree passed in R.A. No.82 of 2010, filed this Regular Second Appeal.
14. Heard the learned counsel for the plaintiffs and the learned counsel for the defendants.
15. Learned counsel for the plaintiffs submits that the father of plaintiffs, after selling the properties owned and possessed by him, had purchased suit item Nos.1, 2 and 4 properties, in the name of defendant No.1-Chaluvamma. The suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants. The plaintiffs and defendants are the members of the Hindu Joint Family and no partition was effected between the parties to the suit; she submits that there is a recital in the registered sale deeds marked as Exhibits P2



to P6 that the sale consideration amount was paid out of the sale consideration received by their father after alienating the properties owned and possessed by him. The First Appellate Court has overlooked the recitals in Exhibits P2 to P6.

16. She places reliance on the judgment of this Court in the case of ***Fakirappa and others vs. Mallappa and others*<sup>1</sup>** and she also places her reliance on Section 92 of the Indian Evidence Act. She submits that when there is a recital in the registered sale deeds regarding suit item Nos.1, 2 and 4 properties were purchased out of the sale consideration amount received by the father after alienating the properties owned and possessed by him, no oral evidence contrary to the terms of instrument is permissible. Hence, the oral evidence is inadmissible in evidence.

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<sup>1</sup> 2004 (3) Kar.L.J. 154 : 2003 (4) KCCR (SN) 372



17. To buttress her arguments, she has also placed reliance on the judgment of the Hon'ble Apex Court in the case of ***V.Anantha Raju and another vs. T.M. Narasimhan and others***<sup>2</sup>. Hence, on these grounds, she prays to allow the appeal.
18. *Per contra*, learned counsel for the defendants submits that defendant No.1 had purchased the suit schedule item Nos.1, 2 and 4 properties out of her own earnings and not out of the sale consideration amount received by the father of the plaintiffs after alienating the properties owned and possessed by him. He also submits that the sale deeds are in the name of defendant No.1 and he submits that there is a presumption regarding the joint family and not regarding the joint family properties. He submits that the whereabouts of the father of the plaintiffs was not known. Hence, the question of purchasing the properties out of the sale consideration amount

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<sup>2</sup> (2021) 17 SCC 165



received by the father of the plaintiffs would not arise.

19. He submits that there is a gap of 14 years from the date of sale made by the father of the plaintiffs and the date of purchasing the suit properties by defendant No.1. The First Appellate Court considering the entire evidence on record has rightly dismissed the suit of the plaintiffs. Hence, on these grounds, prays to allow the appeal.
20. This Court, vide Order dated 27.08.2013, admitted the appeal to consider the following substantial question of law:

" Whether the finding of the appellate court that item Nos.(1), (2) and (4) are self-acquired properties of Cheuluvamma is sustainable in view of the documentary evidence produced by the appellants vide sale deeds-Exs.P2 to P6, wherein there is a specific recital of sale of the said properties ? "



**Reg. Substantial Question of law:**

21. To prove their case, plaintiff No.3 was examined as PW-1, who deposed that the father of the plaintiffs and defendant Nos.2 and 3 was possessing the properties bearing Survey Nos.133/6, 133/9 and 134/3 and those properties were sold by Melegowda i.e., the husband of defendant No.1 on 04.05.1949 for purchasing the suit properties. Thus, Melegowda was in possession and enjoyment of suit schedule item No.3. Considering his long possession, the Government had granted the same in favour of defendant No.1 for the enure of the joint family.
22. To prove that the said suit properties were purchased out of the sale consideration amount received by Melegowda, the plaintiffs have produced the documents marked as Exhibit P1 which is the Genealogical Tree. Exhibit P2 to Exhibit P6 are the registered sale deeds, which disclose that the said properties were purchased by Melegowda in the



name of defendant No.1, and there is a recital in the registered sale deed, which reads as follows:

"ನಾನು ಯರೇನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಜಮೀನ್  
ತೆಗೆದುಕೊಂಡು ಅಲ್ಲಿಗೆ ವಾಸಕ್ಕೆ  
ಹೋಗಬೇಕಾಗಿರುವುದರಿಂದ ನಾನು ಈ ಕೆಳಗೆ  
ವಿವರಿಸಿರುವ ನನ್ನ ಮನೆಯನ್ನು ನಿನಗೆ ನಗದು  
ಗೌರಮೆಂಟ್ ಐದು ನೂರು ರೂಪಾಯಿಗಳಿಗೆ ಕ್ರಯಕ್ಕೆ  
ಕೊಟ್ಟು ಕ್ರಯದ ಮೊಬಲಗಿನ ಪೈಕಿ ಎರಡು ನೂರ ಐವತ್ತು  
ರೂಪಾಯಿಗಳನ್ನು ಈ ಕೆಳಗೆ ಕಂಡ ಸಾಕ್ಷಿಗಳ ಮೊಗ್ಗಾ  
ತೆಗೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಉಳಿಕೆಯಾಗುವ ಎರಡು ನೂರ  
ಐವತ್ತು ರೂಪಾಯಿಗಳನ್ನು ಈ ದಸ್ತಾವೇಜು ರಿಜಿಸ್ಟ್ರ್  
ಮಾಡಿಸುವ ವೇಳೆ ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್‌ರವರ ರೂಬು ರೂಬು  
ಪಡೆಯುತ್ತೇನೆಯಾಗಿ ಕ್ರಯದ ಮನೆಯನ್ನು ಈ ದಿವಸವೇ  
ನಿನ್ನ ಸುಪರ್ದಿಗೆ ಬಿಟ್ಟಿರುತ್ತೇನೆ.

*(emphasis supplied)*

23. From the perusal of the recitals in Exhibits P2 to P6 disclose that suit item Nos.1, 2 and 4 properties were purchased out of the sale consideration amount received by Melegowda.
24. Admittedly, the said properties were purchased in the name of defendant No.1 and defendant No.1 is well aware regarding the recital of Exhibits P2 to P6



that the properties were purchased out of the consideration amount received by the father of the plaintiffs, after alienating the properties owned and possessed, after alienating the ancestral properties. Though the plaintiffs have produced other documents to prove that the said suit schedule properties were purchased out of the joint family nucleus, that is a question to be decided in this case.

25. Regarding item Nos.1, 2 and 4 of the suit schedule properties, though defendant No.1 contended that suit schedule item Nos.1, 2 and 4 properties are the self-acquired properties of defendant No.1 and she has purchased out of her own earnings. To substantiate her defence, defendant No.1 has not produced any records to establish that before purchasing item Nos.1, 2 and 4, defendant No.1 was having a source of income for purchasing the suit schedule properties.



26. It is settled that in a suit for partition and separate possession, the initial burden is always on the plaintiffs to establish the relationship between the parties to the suit and the nature of suit schedule properties.
27. Admittedly, the plaintiffs, by producing the documents at Exhibits P2 to P6 have established that the suit schedule properties were purchased out of the sale consideration amount received by their father i.e., Melegowda.
28. They have relied on the judgment of this Court in the case of ***Fakirappa***<sup>3</sup> (*supra*), wherein this Court has held that the recital contained in the sale deed becomes an acceptable piece of evidence to hold that the sale was for legal necessity. Further, the defendants, except leading the oral evidence, have

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<sup>3 3</sup> 2004 (3) Kar.L.J. 154



not placed any records to establish that the said recital in Exhibits P2 to P6 are incorrect.

29. To consider the case on hand, it is necessary to examine Section 92<sup>4</sup> of the Evidence Act. As per Section 92 of the Indian Evidence Act, 1872, which deals with exclusion of oral evidence, when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last Section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms.

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<sup>4</sup> **92. Exclusion of evidence of oral agreement.** -- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:



30. The defendants, by leading evidence, trying to contradict the terms of Exhibits P2 to P6, which is inadmissible in evidence.
31. The First Appellate Court, without considering the recitals in Exhibits P2 to P6 has committed an error in recording its finding that suit item Nos.1, 2 and 4 are the self-acquired properties of defendant No.1. Thus, the judgment and decree passed by the First Appellate Court in insofar as suit item Nos.1, 2 and 4 properties is arbitrary, erroneous and the same is liable to be set aside.
32. Admittedly, though the plaintiffs have filed a cross appeal regarding the dismissal of suit in respect of item No.3 of the suit properties, the First Appellate Court rejected the cross-appeal filed by the plaintiffs. The plaintiffs neither challenged the judgment passed in the cross-appeal, nor preferred any second appeal. Hence, judgment and decree passed by the First Appellate Court, insofar as suit



item No.3 property is concerned, has attained a finality.

33. In view of the above discussion, I answer substantial question of law in the negative.

34. In the result, I proceed to pass the following order:

**ORDER**

- (i) The Regular Second Appeal is ***allowed.***
- (ii) The impugned judgment and decree passed in R.A. No.82 of 2010 dated 01.02.2013 passed by the Presiding Officer, Fast Track Court, Kanakapura is ***partly set aside*** regarding suit item Nos.1, 2 and 4 properties.
- (iii) The impugned judgment and preliminary decree passed in O.S. No.427 of 2006 dated 27.09.2010 by the learned Principal Civil Judge (Senior Division), Ramanagara is ***restored.***



- (iv) No order as to the costs.
- (v) In view of disposal of the appeal,  
pending interlocutory  
applications, if any, do not  
survive for consideration and  
they are disposed of accordingly.

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

SKS,RK  
List No.2; Sl.No.4