



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO.844 OF 2023 (PAR)

BETWEEN:

1. SMT.JAYALAKSHMI
W/O NAGARAJ R
S/O G.K.GOPALA BHATTA
AGED ABOUT 57 YEARS
R/AT MADUDARSHAN HOTEL
OPP. TO GOVT. JUNIOR COLLEGE
MADHUGIRI TOWN
TUMKURU - 572101
 2. SMT.SEETHA LAKSHMI
W/O PURUSHOTHAMA RAO
AGED ABOUT 52 YEARS
 3. SRI.G.MURALI
S/O GOPALA BHATTA
AGED ABOUT 48 YEARS
 4. SMT.G.SUJATHA
D/O GOPALA BHATTA
AGED ABOUT 44 YEARS
 5. SMT.G.SRIVALLI
W/O RAGHAVENDRA RAO
D/O G.K.GOPALA BHATTA
AGED ABOUT 40 YEARS
- APPELLANT NOS.2 TO 5 ARE
R/AT SADAHALLI VILLAGE





KASABA HOBLI
DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT - 562001

...APPELLANTS

(BY SRI.SHIVASHANKAR K, ADVOCATE)

AND:

1. SRI.G.K.GOPALA BHATTA
S/O LATE KRISHNAMURTHY
AGED ABOUT 76 YEARS
2. SRI.V.G.SUBRAMANYA
S/O G.K.GOPALA BHATTA
AGED ABOUT 60 YEARS
3. SMT.PILLAMUNIYAMMA
W/O LATE REDDY LAKSHMAIAH
AGED ABOUT 74 YEARS
4. SMT.VENKATALAKSHMAMMA
W/O MANJUNATHA REDDY
AGED ABOUT 45 YEARS
5. SRI.M.ASHOKA
S/O MUNISHAMAPPA
AGED ABOUT 43 YEARS
6. SMT.NAGARATHNAMMA
W/O BRAMA REDDY
AGED ABOUT 48 YEARS
7. SMT.MANJULA
W/O RAMESH REDDY
AGED ABOUT 45 YEARS
8. SRI.MANJUNATH
S/O LATE REDDY LAKSHMAIAH
AGED ABOUT 38 YEARS



RESPONDENT NOS.1 TO 8
ARE RESIDING AT
UGANAVADI VILLAGE
KASABA HOBLI
DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT - 562001

9. SMT.LAKSHMAMMA
W/O MUNIYAPPA
AGED ABOUT 55 YEARS
R/AT CHIKKASONNE VILLAGE
DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT - 562001

10. SMT.MUNIRATHNAMMA
W/O CHENNAPPA
AGED ABOUT 53 YEARS
R/AT PARAGODA GATE AND POST
THOTADAMANE
BAGEPALLI TALUK
CHIKKABALLAPURA DISTRICT - 561207

11. SMT.SAVITHRAMMA
W/O RAJANNA
AGED ABOUT 51 YEARS
R/AT VENKATAREDDY PALYA AND POST
KUNIGAL TALUK
TUMKUR DISTRICT - 572130

...RESPONDENTS

(BY SRI.M.RAMASWAMY, ADVOCATE FOR R.4 TO 11;

NOTICE TO R.1 TO 3 ARE SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED
01.03.2023 PASSED IN O.S.NO.431/2008 ON THE FILE OF THE



PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, DEVANAHALLI,
DISMISSING THE SUIT FOR PARTITION AND ETC.

THIS APPEAL, COMING ON FOR PART HEARD IN
ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS
UNDER:

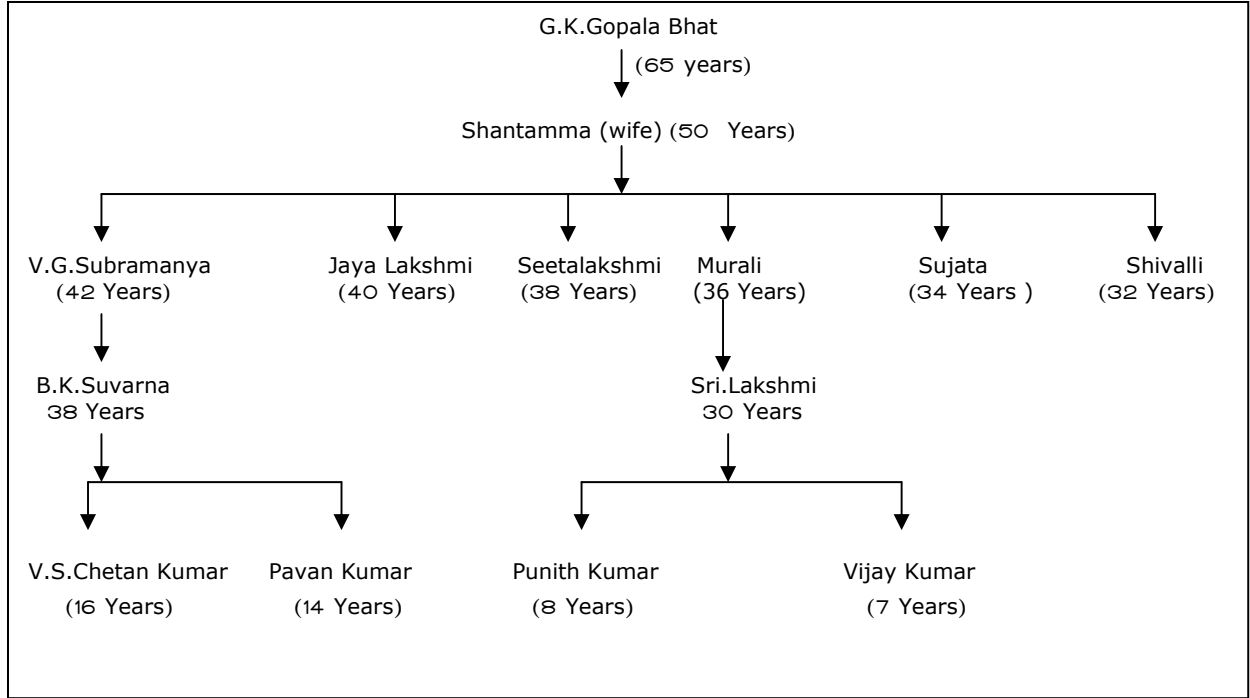
CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is filed by the unsuccessful plaintiffs, who are the son and daughters of defendant No.1 and siblings of defendant No.2, assailing the dismissal decree dated 01.03.2023 rendered in O.S.No.431/2008 on the file of the Principal Senior Civil Judge and JMFC at Devanahalli.

2. For the sake of brevity, the ranks of the parties are referred to as per their rankings before the Trial Court.

3. The genealogical tree of the family reads as under;



4. Brief facts leading to the case are as under;

The present suit is instituted by three daughters and one son seeking partition and separate possession of their respective shares in Item Nos.1 and 2 of the suit schedule properties. It is specifically pleaded that the plaintiffs along with defendant Nos.1 and 2 constitute an undivided Joint Hindu Family and that the suit properties are ancestral coparcenary properties. The plaintiffs have called in question the authority of defendant Nos.1 and 2 in executing a registered sale deed dated 14.02.1989 in



favour of defendant No.3 in respect of Item No.1 property. Consequently, the suit is laid not only for partition and separate possession but also for a declaration that the sale deed dated 14.02.1989 executed by defendant Nos.1 and 2 in favour of defendant No.3 is illegal, null and void and not binding on the plaintiffs' alleged shares.

5. On service of summons, defendant No.3 entered appearance and filed a detailed written statement denying the plaint averments insofar as Item No.1 property is concerned. Defendant No.3 asserted that he had acquired absolute right, title and interest over Item No.1 property under a registered sale deed executed by defendant No.1 (father of the plaintiffs) and defendant No.2 (brother of the plaintiffs). It was specifically contended that the sale deed is of the year 1989 and the present suit having been instituted in the year 2008, the challenge to the alienation is hopelessly barred by limitation. On these grounds, dismissal of the suit was sought.



6. In the light of the rival pleadings, the Trial Court framed appropriate issues and called upon the parties to adduce evidence. On behalf of the plaintiffs, plaintiff No.3 was examined as P.W.1 and Exs.P.1 to P.24 were marked. During the pendency of the suit, defendant No.3 died and his son was brought on record and examined as D.W.1. The defendants produced Exs.D.1 to D.13, including the registered sale deed of the year 1989 and RTC extracts, in order to substantiate their claim of lawful conveyance and possession.

7. Upon appreciation of the oral and documentary evidence, the Trial Court dismissed the suit in its entirety holding that the challenge to the sale deed dated 14.02.1989 was barred by limitation and consequently declined to grant any relief even in respect of Item No.2 property. Aggrieved by the dismissal of the suit, the plaintiffs are in appeal before this Court.



8. Learned counsel appearing for the appellants/plaintiffs would vehemently contend that the suit schedule properties are coparcenary properties of a Joint Hindu Family and, therefore, defendant No.1, being the father, and defendant No.2, being one of the coparceners, had no absolute authority to alienate Item No.1 property so as to defeat the rights of the other coparceners. It is further contended that there is no serious dispute with regard to Item No.2 property and, therefore, the Trial Court committed a grave error in dismissing the suit in its entirety solely on the ground of limitation in respect of Item No.1. According to the learned counsel, the judgment and decree of the Trial Court suffer from perversity and warrant interference by this Court.

9. This Court has heard the learned counsel for the appellants and has carefully examined the pleadings, evidence and the reasoning assigned by the Trial Court. This Court has also adverted to the scope and effect of the amended Section 6 of the Hindu Succession Act, 1956 as



well as Article 109 of the Limitation Act, 1963 to examine whether plaintiff No.3 could have maintained the present suit in the year 2008 challenging the sale deed dated 14.02.1989 and whether the daughters could assert coparcenary rights in the facts of the case.

10. In the above backdrop, the following points arise for consideration:

- (i) Whether plaintiff Nos.1, 2, 4 and 5, being the daughters of defendant No.1, could have maintained a suit for partition in respect of Item No.1 property, namely agricultural land bearing Sy.No.150 measuring 1 acre, in view of the first proviso to Section 6 of the Hindu Succession Act, 1956?*
- (ii) Whether the finding of the Trial Court that the suit for partition filed by plaintiff No.3 is barred by limitation under Article 109 of the Limitation Act, 1963 suffers from perversity or illegality warranting interference?*



(iii) Whether the learned Trial Judge, having recorded a finding that the suit schedule properties are joint family ancestral properties, erred in dismissing the suit in its entirety without advertent to the admitted position that there is no serious dispute in respect of Item No.2 property and that the suit for partition was, at least to that extent, maintainable?

(iv) What order?

Findings on point No.(i):-

11. It is not in dispute that Item No.1 property was alienated by defendant Nos.1 and 2 under a registered sale deed dated 14.02.1989 in favour of defendant No.3. Plaintiff Nos.1, 2, 4 and 5 are the daughters of defendant No.1. The recitals of the registered sale deed unmistakably disclose that the alienation was effected by their father (defendant No.1) along with one of the sons (defendant No.2). This foundational fact is not seriously disputed.



12. In the light of the admitted factual matrix, the crucial question that arises is whether the daughters could reopen the said alienation by instituting a suit for partition in the year 2008 by placing reliance on the amended Section 6 of the Hindu Succession Act, 1956. The answer, in the considered view of this Court, has to be in the negative.

13. The first proviso to Section 6, as amended, explicitly saves any disposition, alienation, partition or testamentary disposition of property which had taken place prior to 20.12.2004 (the cut-off date prescribed under the Amendment Act). The legislative intent is clear that transactions effected prior to the said date are insulated from challenge on the ground of the enlarged coparcenary rights conferred upon daughters by virtue of the amendment.

14. Admittedly, as on the date of execution of the sale deed dated 14.02.1989, plaintiff Nos.1, 2, 4 and 5 did



not possess coparcenary rights by birth in the joint family property during the lifetime of defendant No.1. Under the unamended provision of Section 6, daughters were not coparceners in a Mitakshara Joint Hindu Family and, therefore, had no birthright in the coparcenary property. Consequently, the alienation effected in the year 1989 by defendant No.1, being the Karta/father, along with defendant No.2, cannot be said to be void on the ground now urged.

15. In view of the saving clause contained in the first proviso to Section 6 of the Hindu Succession Act, 1956, the alienation dated 14.02.1989 stands protected and cannot be unsettled by invoking the amended provision. Therefore, plaintiff Nos.1, 2, 4 and 5, being daughters, were not entitled to maintain a suit for partition in respect of Item No.1 property so as to invalidate a transaction which is statutorily saved.



16. Accordingly, point No.(i) is answered in the **"Negative"**, holding that the daughters could not have maintained the suit for partition insofar as Item No.1 property is concerned.

Findings on Point No.(ii)

17. It is true that plaintiff No.3 was not an executant to the registered sale deed dated 14.02.1989 in favour of defendant No.3. However, a perusal of the recitals in the sale deed clearly indicates that plaintiff No.3 was aged about 17 years as on the date of execution. Thus, he was a minor at the time of alienation. Even if it is assumed that he attained majority in or about the year 1993, the statutory period of limitation prescribed for challenging such an alienation has to be computed from the date of his attaining majority.

18. Under Article 109 of the Limitation Act, 1963, a suit by a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property is required to



be instituted within 12 years from the date when the alienee takes possession of the property. In the case of a minor coparcener, the period would commence on his attaining majority. Even reckoning the limitation from 1993, the outer limit of 12 years would expire in the year 2005. The present suit, having been instituted in 2008, is clearly beyond the prescribed period of limitation.

19. Further, insofar as the relief of declaration that the sale deed dated 14.02.1989 is null and void is concerned, such a relief ought to have been sought within three years from the date when the right to sue first accrued, as contemplated under Article 58 of the Limitation Act, 1963. Plaintiff No.3 did not seek such declaratory relief within the stipulated period. Though it is permissible in certain circumstances to seek partition without a formal declaration within the broader framework of Article 109, even that remedy is circumscribed by the 12-year limitation prescribed therein.



20. In the present case, plaintiff No.3, despite having a coparcenary birthright, did not initiate proceedings either to set aside the alienation or to seek partition within the time prescribed under law. The inaction on his part for more than 12 years after attaining majority extinguishes his right to question the sale deed in the present proceedings. Therefore, on both counts failure to seek declaration within the period prescribed under Article 58 and failure to institute a partition suit within the 12-year period under Article 109 the claim is barred by limitation.

21. Accordingly, point No.(ii) is answered in the **"Negative"**, holding that the finding of the Trial Court that the suit, insofar as plaintiff No.3 is concerned, is barred by limitation does not suffer from perversity or illegality warranting interference.

Findings on point No.(iii):-

22. A careful examination of the pleadings and the relief sought in the plaint would indicate that though the



principal challenge was directed against the alienation of Item No.1 under the sale deed dated 14.02.1989, the suit was also laid seeking partition and separate possession in respect of Item No.2 property. The plaintiffs, being the son and daughters of defendant No.1, have specifically pleaded that Item No.2, which is described as a vacant site, also forms part of the ancestral joint family properties.

23. It is significant to note that the alienation effected under the registered sale deed dated 14.02.1989 pertains exclusively to Item No.1 property. Item No.2 was never the subject matter of the said conveyance. Further, there is no serious or substantial dispute raised by defendant Nos.1 and 2 with regard to the character of Item No.2 as joint family property. In the absence of any alienation or competing title set up in respect of Item No.2, the lis concerning that property stood on an entirely different footing.



24. The learned Trial Judge, however, while dismissing the suit in its entirety on the ground of limitation insofar as Item No.1 is concerned, failed to independently examine the plaintiffs' claim for partition in respect of Item No.2 property. The dismissal of the entire suit without segregating the reliefs and without appreciating that the challenge to limitation was confined to the alienation of Item No.1 has resulted in a manifest error.

25. Even if the claim relating to Item No.1 is held to be barred by limitation, that finding could not have been mechanically extended to Item No.2, which admittedly was not alienated and continued to retain its character as joint family property. The right to seek partition of an unalienated joint family property is a recurring and continuing right, so long as the joint status subsists and there is no evidence of prior partition.



26. Therefore, the judgment and decree of dismissal, in so far as it relates to Item No.2 property, cannot be sustained. The learned Trial Judge, having failed to independently assess the plaintiffs' entitlement to seek partition of Item No.2, has erroneously dismissed the suit in its entirety by mechanically applying the finding on limitation pertaining to Item No.1. Such an approach has resulted in a manifest misdirection in law and non-consideration of a distinct and severable relief.

27. Inasmuch as Item No.2 was never the subject matter of alienation under the sale deed dated 14.02.1989 and there is no substantial dispute regarding its character as joint family property, the plaintiffs' right to seek partition in respect thereof remained intact. The refusal to grant a preliminary decree for partition in respect of Item No.2, therefore, suffers from perversity and warrants interference by this Court in exercise of its appellate jurisdiction.



28. Accordingly, the findings of the Trial Court are reversed in part, to the extent of declining the relief of preliminary decree in respect of Item No.2 property. Point No.(iii) is answered in the **"Affirmative"**.

29. The family comprises of defendant No.1 who is the father of plaintiff Nos.1 to 5 and defendant No.2, in all there are 7 sharers. The fact that there is no severance in the family, the present plaintiffs as daughters are entitled to be treated as equal co-parceners and are at par with defendant Nos.1 and 2. Hence, plaintiffs are entitled to $1/7^{\text{th}}$ share each.

29. **Point No.(iv)** :- For the foregoing reasons, this Court proceeds to pass the following;

ORDER

(i) The appeal is allowed in part.

(ii) The judgment and decree dated 01.03.2023 passed in O.S.No.431/2008 on the file of the Principal Senior Civil Judge and JMFC,



Devanahalli, insofar as it dismisses the suit in respect of Item No.1 property, is hereby affirmed.

(iii) The judgment and decree dated 01.03.2023 passed in O.S.No.431/2008 on the file of the Principal Senior Civil Judge and JMFC, Devanahalli, insofar as it dismisses the suit in respect of Item No.2 property, is set aside.

(iv) The suit of the plaintiffs is decreed in part in respect of Item No.2 property. It is hereby declared that the plaintiffs are entitled to 1/7th share each in Item No.2 property and a preliminary decree for partition is accordingly drawn.

(v) The Registry is directed to draw up the decree in terms of this judgment.

(vi) In view of disposal of the appeal, all pending interlocutory applications, if any, stand disposed of.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**