



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.749 OF 2024 (PAR)

BETWEEN:

1. SHANKARAPPA
AGED ABOUT 65 YEARS
S/O GADIYAPPA
R/O KODIYALA
CHELUR HOBLI
GUBBI TALUK
TUMAKURU DISTRICT-572117

...APPELLANT

(BY SMT. DEEPASHREE, ADVOCATE)

AND:

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

PAPANNA
SINCE DEAD BY LRS

1. SHIVAMMA
AGED ABOUT 59 YEARS
W/O LATE PAPANNA
R/O DODDASARANGI VILLAGE
GULUR HOBIL, TUMAKURU TALUK
TUMAKURU DISTRICT-572112
2. KEMPAVVA
AGED ABOUT 28 YEARS
R/O DODDASAGANGI VILLAGE
GULUR HOBIL,
TUMAKURU TALUK
TUMAKURU DISTRICT-572118



3. KEMPANNA
AGED ABOUT 48 YEARS
S/O LATE SIDDAPPA
R/O KODIYALA
CHELUR HOBLI,
GUBBI TALUK
TUMAKURU DISTRICT-572117
4. RANGASWAMIAH
AGED ABOUT 43 YEARS
S/O LATE GANGAMMA
R/O KODIYALA
CHELUR HOBLI,
GUBBI TALUK
TUMAKURU DISTRICT-572117
5. LAKSHMAMMA
AGED ABOUT 45 YEARS
D/O LATE GANGAMMA
W/O RANGASWAMIAH
R/O HEGGERE
KASABA HOBLI,
TUMAKURU TALUK
TUMAKURU DISTRICT-572107
6. KEMPAMMA
AGED ABOUT 33 YEARS
W/O PAPAIAH
R/O CHELUR VILLAGE
GUBBI TALUK
TUMAKURU DISTRICT-572117
7. NAGAMMA
AGED ABOUT 40 YEARS
W/O SIDDAPPA
R/O CHELUR VILLAGE
GUBBI TALUK
TUMAKURU DISTRICT-572117



8. SURAIAH
AGED ABOUT 55 YEARS
S/O SIDDAPPA
R/O MUDIGERE
BELLAVI HOBI,
TUMAKURU TALUK
TUMAKURU DISTRICT
9. RANGASWAMIAH
AGED ABOUT 58 YEARS
S/O GADIYAPPA
R/O KODYALA
CHELUR HOBLI,
GUBBI TALUK
TUMAKURU DISTRICT-572117
10. CHAYAMMA
AGED ABOUT 43 YEARS
W/O RANGASWAMIAH
AGED ABOUT 40 YEARS
R/O MUDIGERE
BELLAVI HOBLI
TUMAKURU TALUK
TUMAKURU DISTRICT-572107
11. SHARADAMMA
AGED ABOUT 33 YEARS
W/O KUMAR
R/O KODIYALA
CHELUR HOBLI
GUBBI TALUK
TUMAKURU DISTRICT-572117
12. K.K. BASAVARAJ
AGED ABOUT 68 YEARS
S/O KEMPANNA
R/O MUDIGERE
BELLAVI HOBLI
TUMAKURU TALUK
TUMAKURU DISTRICT-572107



13. K.C. SREERANGAPPA
AGED ABOUT 68 YEARS
S/O CHIKKANAN
R/O MUDIGERE
BELLAVI HOBLI
TUMAKURU TALUK
TUMAKURU DISTRICT-572107

14. K.C. KEMPANNA
AGED ABOUT 65 YEARS
S/O CHIKKANNA
R/O KODIYALA
CHELUR HOBLI,
GUBBI TALUK
TUMAKURU DISTRICT-572117

...RESPONDENTS

(BY SRI. M.B,CHANDRA CHOODA, ADVOCATE FOR
R3, R4, R5, R7 AND R8;
VIDE ORDER DATED 24.09.2025
R6, R12 AND R13 CALLED OUT ABSENT;
R1, R2, R9, R10, R11 AND R14 ARE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 29.01.2024
PASSED IN R.A.NO.36/2021 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC, GUBBI, DISMISSING THE
APPEAL AND CONFIRMING THE JUDGMENT AND DECREE
DATED 03.04.2021 PASSED IN O.S.NO.187/2010 ON THE FILE
OF THE PRINCIPAL CIVIL JUDGE AND JMFC, GUBBI.

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



CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

1. Heard the learned counsel for the appellant. This matter is listed for admission. This second appeal is filed against a concurrent finding.

2. The factual matrix of case of plaintiff before the Trial Court while seeking the relief of partition and separate possession that suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. It is contended that one Billemane Gadiyappa had three sons Surappa, Kempaiah and Chikkagadiyappa. The sons of which said Billemane Gadiyappa have divided their joint family properties on 09.12.1959 under a panchayath paalupatti. Chikkagadiyappa died issueless. Surappa was also died by leaving his wife Chikkakempamma and adopted son Shankarappa that is plaintiff in the present case. The said Surappa and Chikkakempamma have adopted the plaintiff when he was in 2 years baby. Since then the plaintiff was living with the



said Surappa and Chikkakempamma. Further, the plaintiff averred that some differences were arose between the plaintiff and said Chikkakempamm as such the plaintiff had filed an original suit against the said Chikkakempamma under O.S.No.183/1987 to declare him as adoptive son of said Chikkakempamma and also filed a suit under O.S.No.245/1987. The said suits were disposed of together on 30.09.1993. Further, it is averred by the plaintiff that plaintiff and said Chekkakempamma have equal shares in the suit schedule properties. The suit filed by the plaintiff in O.S.No.183/1987 and O.S.No.245/1987 were dismissed vide order dated 08.04.2010. The suit schedule properties were originally fallen to the husband of Chekkakempamma i.e., Surappa and the said Surappa and Chekkakempamma died issueless and being the adoptive son of said Surappa and Chekkakempamma, the plaintiff has got rights over the suit schedule properties. Further, the plaintiff averred that himself and his brother i.e., defendant No.4 are having half share in the suit



schedule properties. The alienation made by the said Chekkakempamma are not binding upon the plaintiff. On these grounds, suit is filed for the relief of partition and separate possession.

3. In pursuance of the suit summons, defendant Nos.2 to 7 have appeared before the Court and defendant Nos.1, 8 and 9 have failed to appear before the Court and hence, they were placed ex-parte. Defendant Nos.2 and 5 were also died subsequent to the filing of the suit and their legal representatives were brought on record. The defendant No.10 has been treated as additional defendant during the pendency of the suit. The defendant Nos.3, 4 and 10 have filed their separate written statement. The defendant No.3 in his written statement has admitted about the sons of Bilimane Gadiyappa and division made between the sons of said Billemane Gadiyappa. The defendant No.3 has also admitted the fact of institution of original suit and those suits were dismissed. The defendant No.3 also specifically taken the defence that



plaintiff is not the adoptive son of Surappa and Chikkakempamma.

4. It is also his contention that one Chikka Gadiyappa had settled at Mudigere without taking any share in their joint family properties. Later, the remaining sons of said Billemane Gadiyappa, Kempaiah and Surappa have divided their joint family properties under the registered partition dated 09.02.1959. The suit schedule properties were fallen to the share of Surappa since the day of partition, the Surappa and his wife Chikkakempamma were in possession and enjoyment of the same. It is also contended that when Surappa died leaving behind his wife and the said Chikkakempamma sold the suit schedule item Nos.1 and 2 to the defendant No.10 under the registered sale deed and delivered the possession of the same in favour of the defendant No.10. The defendant No.10 is in possession from the date of purchasing of the property and also enjoying the property item Nos.1 and 2. On the same day itself that is on



17.06.2004, said Chikkakempamma sold the suit Item Nos.3 and 6 to defendant Nos.3 and 10. On the same day itself, she handed over the possession of the suit Item Nos.3 and 6 in favour of defendant Nos.3 and 10. Since, the day of said purchase, the defendant Nos.3 and 10 have become absolute owners of the suit schedule properties. The defendant No.4 also supported the case of the plaintiff and sought for allotment of share. The defendant No.10 in his written statement also admitted about the relationship between the parties, but pleaded about the earlier partition and the properties were sold. Hence, Trial Court framed the Issue Nos.1 to 4 as well as additional Issues and allowed the parties to lead evidence. Having considered both oral and documentary evidence available on record, the Trial Court comes to the conclusion that plaintiff has not proved the Issues and answered the same as negative and dismissed the suit.

5. Being aggrieved by the said judgment and decree of the Trial Court, an appeal is filed before the



Appellate Court in R.A.No.36/2021. The Appellate Court having considered the grounds urged in the appeal memo, narrated the plaint averment and defence as well as extracted the Issues and Additional Issues and also formulated the points whether the Trial Court came to the right conclusion that plaintiff has no right over the suit schedule properties in view of alienation made by Smt.Chikkakempamma during her lifetime, whether the impugned judgment and decree requires interference. The Appellate Court having re-assessed both oral and documentary evidence, answered the point No.1 as affirmative that Chikkakempamma had sold the property. The plaintiff is not having any right and also answered the point that it doesn't require any interference of the Appellate Court.

6. Being aggrieved by the concurrent finding, the present second appeal is filed before this Court. The main contention of the counsel appearing for the appellant before this Court is that the Appellate Court ought to have



remanded the matter to the Trial Court as per the provisions of Order 41 Rule 25 of CPC and failed to give any findings on the additional issues framed. The counsel would vehemently contend that both the Courts have committed an error in not properly considering both oral and documentary evidence. When the defendants made specific pleading that there were sale deeds in favour of them, ought to have been answered the same. The Trial Court without answering the same, dismissed the suit. The First Appellate Court also failed to consider the same. Hence, matter requires admission and frame substantive question of law.

7. Having heard the appellant's counsel and also the reasoning of the Trial Court, the very case of plaintiff before the Trial Court that suit schedule properties are ancestral properties. In order to prove the factum that property is an ancestral property, nothing is placed on record before the Trial Court. It is also clear in the admission on the part of P.W.1 which has been extracted



by the Trial Court in paragraph No.16 that he admitted his father's name as Gadiyappa and also admitted that there was a partition in the year 1959 between Surappa and his family members. He also admitted that suit schedule properties allotted in favour of Surappa and admitted that after Surappa got the property, he was enjoying the suit schedule properties. He categorically admits that he had filed a suit against Chikkakempamma who is the wife of Surappa in O.S.No.183/87 claiming that he is an adopted son. It is suggested that Smt.Kempamma had sold the property during her life time in favour of defendants on 17.06.2004 and the same was denied. However, when the application is filed for transfer of khata, he categorically admits that he himself and his brother had filed objections and the same was rejected by the Tahasildar and the said suggestion was denied. However, admits that after the property was purchased by them, they dug the borewell and they improved the property by coconut plantation. He also admits that the documents which he has relied upon



are standing in the name of the purchaser and admits that Surappa and Kempaiah were paying the tax.

8. The Trial Court having taken note of this admission and also the judgment of the Apex Court reported in ***AIR 2011 SC(Civil) 2637***, particularly in paragraph No.15, comes to the conclusion that it is an admitted fact that suit schedule properties were fallen to one Surappa in a family partition and after his demise, the properties were transferred in the name of Chikkakempamma on the basis of pavathi Varasu. It is also noted that Smt.Kempamma had sold the suit schedule properties under a registered sale deeds on the same day and also categorically admitted that when he filed a suit claiming that he is an adopted son in O.S.No.183/1987 and same was dismissed and having taken note of all these factors into consideration, comes to the conclusion that plaintiff has not proved the Issue No.1 i.e., suit schedule property is an ancestral property of the plaintiff



and defendant No.4 and also take note of Issue Nos.2 to 4 and answered the same.

9. No doubt as rightly pointed out by the counsel appearing for the appellant that additional issues were not discussed by the Trial Court. But, the counsel brought to notice of this Court that in Appellate Court, additional issues which have been framed were extracted in page 23 of the judgment. The Trial Court though not answered Addl. Issue Nos.1 and 2, when answered Issue No.1 comes to the conclusion that plaintiff failed to prove the suit schedule properties of the ancestral and joint family properties of the plaintiff and defendants, question of granting any share as claimed in the suit doesn't arise.

10. It is also important to note that for having sold the property by the Smt.Chikkakempamma, documents are also produced before the Court. It is the contention of the plaintiff that properties were sold in favour of the defendants, but the said sale deeds are not legal, but no such relief is sought in the suit filed by the plaintiff in



O.S.No.187/2010. The fact that Chikkakempamma is the wife of Surappa is not disputed and also the sale deeds are executed by Kempamma in favour of the defendants after the death of Surappa. It is also not in dispute that property was belongs to the Surappa. The P.W.1 categorically admitted that property belongs to the Surappa. When such being the case, when the Chikkakempamma being the legal heir of Surappa had sold the property in the year 2004 itself which has been marked as Ex.D12 and Ex.D.13, the present suit was filed in the year 2010. The said suit is filed after the plaintiff is unsuccessful in O.S.No.183/1987 and judgment and decree of O.S.No.183/87 are marked as Ex.P.5 and Ex.P.6. The P.W.1 also admitted that both the suits were the suits earlier filed by him claiming that he is an adopted son is also dismissed. The said judgment and decree also attained finality. When the plaintiff not made out any locus to prove a case for the relief of partition and separate possession, the very contention of the appellant's counsel



that matter ought to have been remanded back to the Trial Court for consideration of additional Issue Nos.1 and 2 cannot be accepted for the reason that nothing is there to decide by remanding the matter when the Chikkakempamma who succeeded to the property of the Surappa was sold the property in the year 2004 itself and the present suit is filed in the year 2010, but not challenged the earlier sale deed and now cannot contend that the sale deed executed by Chikkakempamma are not legal sale deeds in favour of the defendants. Hence, I do not find any ground to admit and frame substantive question of law.

11. In view of the discussions made above, I pass the following:

ORDER

Second Appeal is ***dismissed.***

Sd/-
(H.P.SANDESH)
JUDGE

RHS
List No.: 1 Sl No.: 40