



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 1562 OF 2015 (PAR)

BETWEEN:

1. LAXMAMMA
W/O.LATE DR.DASAPPA,
AGED ABOUT 53 YEARS,
R/O KORLA KUNTE VILLAGE,
PARASHURAMPURA HOBLI,
CHALLAKERE TALUK - 577 501.

SINCE DEAD ON 28.02.2022
APPELLANT NOS.2 TO 4 AND
RESPONDENT NOS.1 TO 6 SHALL BE TREATED
AS LR'S OF APPELLANT NO.1

2. D L ANUSUYA
W/O.K.B.RAVI @ K.B.RAYAN,
AGED ABOUT 56 YEARS,
3. D L RENUKA
W/O GURURAJ,
AGED ABOUT 53 YEARS
4. D L NATARAJ
S/O.LATE DASAPPA,
AGED ABOUT 41 YEARS,

APPELLANTS NO.2 TO 4 ARE
R/AT HOUSE NO.1287, MIG



MAGADI ROAD,
HOUSING COLONY, 23RD MAIN,
GOVINDARAJ NAGAR,
BANGALORE - 560 079.

...APPELLANTS

(BY SRI.A.HANUMANTHAPPA., ADVOCATE FOR A1, 3 & 4;
SRI.SHANKARAPPA., ADVOCATE FOR A2 [ABSENT])

AND:

1. H HAMSAKUMARI
W/O.LATE D.SUDHARSHAN,
AGED ABOUT 40 YEARS,
2. YASHASH GOWRAV
S/O.LATE D.SUDHARSHAN,
AGED ABOUT 13 YEARS,
3. DATTU SHREERAMA RAYADU @ DHANUSH GOURAV.S
S/O.LATE D.SUDHARSHAN,
AGED ABOUT 5 YEARS (MINOR)

RESPONDENTS NO.2 AND 3 ARE MINORS AND
REPRESENTED BY THEIR NEXT
FRIEND NATURAL MOTHER
SMT. H. HAMSAKUMARI,
W/O. D. SUDHARSHAN,

ALL RESPONDENTS 1 TO 3 ARE
R/O. C/O. DR.RAMESH,
SHIVAKRUPA,
NO.56, 3RD FLOOR,
4TH MAIN, KALYANANAGAR,
MUDRAPALYA,
NAGARBAVI MAIN ROAD,
BANGALORE - 560 072.

4. LATHA
W/O.LATE D.L.C.KUMAR,
AGED ABOUT 44 YEARS,



5. GAGANA
D/O.D.L.C.KUMAR,
AGED ABOUT 22 YEARS

RESPONDENT NO. 4 AND 5 ARE
R/AT C/O.GOPI, SADGURU NILAYA
2ND FLOOR, 4TH CROSS,
SHRI. CHOWDESHWARI LAYOUT,
BVKS, BEEMASAMUDRA ROAD,
NEAR CHOWDESWAMY TEMPLE,
CHITRADURGA - 577 501.

OFFICE AT: ARAVIND LTD.,
C/O.SITE BABU,
SG NO.4, KENCHANAKATTE,
OPP. DAVALAGIRI BADAVANE,
BEEMASAMUDRA ROAD,
CHITRADURGA - 577 501.

6. D L REKHA
AGED 55 YEARS,
W/O. RAGUNATH,
RESIDING AT NO.41,
SRI LAKSHMI VENKATESWARA NILAYA,
NEXT TO ST.PHILOMINA SCHOOL,
NEW KEMPAMMA TEMPLE,
MARIYAPPANA PALYA,
GNANABHARATHI(PO),
BANGALORE - 560 026.

...RESPONDENTS

(BY MS.VASUNDARA.T.P., ADVOCATE FOR
SRI.SIDDAMALLAPPA.P.M., ADVOCATE FOR R1 TO R3;
V/O DATED 09.08.2021 R4 & 5 HELD SUFFICIENT;
R6 - SERVED)

THIS RFA IS FILED UNDER SEC.96 OF CPC R/W ORDER
41 RULE 1(1) OF CODE OF CIVIL PROCEDURE, 1980, AGAINST
THE JUDGMENT AND DECREE DATED 26.08.2015 PASSED IN
OS NO.17/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE &
JMFC., CHALLAKERE AND ETC.,



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

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M NADAF)

Defendants 1, 4 to 6 are in this first appeal under Section 96 of Civil Procedure Code challenging the Judgment and Decree dated 26.08.2015 in O.S No.17/2013 passed by the Senior Civil Judge & JMFC, Challakere. The trial Court by the impugned order, decreed the suit filed by the plaintiffs granting 1/7th share in the suit schedule properties.

2. During the pendency of this appeal, appellant No.1 died and vide order dated 28.07.2022, appellant Nos.2 to 4 and respondent Nos.1 to 6 who were already on record were treated as legal representatives of deceased appellant No.1.



3. The parties are referred to as per their rankings before the Trial Court.

4. Though Sri.A.Hanumanthappa., filed vakalath for appellant Nos.3 and 4, he restricts this appeal only with respect to Issue No.5 pertaining to Item No.7 of the suit schedule properties, which according to the appellant No.3 (defendant no. 5 before the trial Court), was purchased by her in her individual capacity under a registered sale deed dated 28.12.1987. Counsel has also filed a memo to this effect.

5. Sri.Shankarappa., learned counsel appearing for appellant No.2 is absent. A perusal of the daily order sheet reflects that on several occasions since 2023, the matter is being adjourned at the request of the learned counsel appearing for the appellants. Since the appeal is of the year 2015 and the suit is of the year 2013, appeal by appellant No.2 is dismissed for non-prosecution and in view of the memo filed by learned counsel for appellant



No.3, the appeal is heard only with respect to appellant No.3 in respect of Item No.7 of the suit schedule properties.

6. Heard, Sri.A.Hanumanthappa., learned counsel appearing for appellant No.3 and Ms.Vasundara.T.P., learned counsel for Sri.Siddamallappa.P.M., for respondents 1 to 3. Vide order dated 09.08.2021, notice to respondent Nos.4 and 5 is held sufficient. Though respondent No.6 is served, she is unrepresented.

7. The brief factual matrix involved in the dispute are as under:

The plaintiffs filed the suit in O.S.No.17/2013 for the following reliefs:

- "1. For partition and separate possession of plaintiffs each got 1/7th share in the entire schedule properties.*
- 2. Division the plaintiffs share by metes and bounds through the competent authorities and put the same in the respective possession.*



3. *And Court cost and such other reliefs as the Hon'ble Court deems fit to grant under the circumstances of the case."*

8. It is the case of plaintiff No.1 that she is the daughter in law of one Late Dasappa and original defendant No.1. All the properties shown in the suit schedule are the ancestral property. Her husband D.Sudarshan died on 08.10.2012 leaving behind plaintiff No.1 - widow and plaintiff Nos.2 and 3 - sons. Since this appeal is restricted only to Item No.7 of the suit schedule properties, we are of the opinion that discussing the entire facts of the suit is not necessary. As such, we have stated facts only with respect to Item No.7 of the suit schedule properties.

9. As per the plaintiffs, suit item No.7 is a commercial complex bearing Katha No.191 measuring 25 X 50 feet, comprising of cellar, ground floor and first floor, leased to several lessees, situated at Parashurampura village, Challakere Taluk. According to the plaintiffs, this



property was purchased in the name of defendant No.5 - D.L.Renuka by her father Late Dasappa. It is her further case that when the property was purchased, defendant No.5 was pursuing her M.B.B.S course, as such she had no independent source of income to purchase the property by paying consideration of Rs.30,000/- as of 1987. In that view of the matter, the property is purchased in her name by Late Dasappa - retired Government Doctor. As such, the said property is available for partition.

10. In response to notice defendants appeared before the Court. Defendants 1 & 6 filed written statement and the same was adopted by defendants 2 to 5. Defendant No.7 filed separate written statement.

11. Defendants 1 & 6 in their written statement denied the entire case of the plaintiffs. In respect of Item No.7 of the suit schedule property, they have taken a specific contention at paragraph No.11 of the written statement that the entire case presented by the plaintiffs



contending that the said property was purchased in the name of defendant No.5 by her father Late Dasappa is false and denied. They have stated that Item No.7 property was purchased by defendant No.5 Renuka out of her own income and it is her individual property and nobody except defendant No.5 have got any right, title, possession and interest over the said property.

12. Defendant No.7 though filed written statement, supported the case of the plaintiffs.

13. The Trial Court upon completion of pleadings, framed as many as 11 issues. Since this appeal is restricted only to Issue No.5, the said issue is extracted hereunder.

"ISSUE NO.5:

*Whether the defendants prove the suit
schedule item No.7 is self-acquired property of
defendant No.5?"*



14. Plaintiff No.1 in order to prove her case, examined herself as PW.1 and her brother Venugopal as PW.2. They have produced in all five documents and marked as Ex.P1 to P5. On behalf of the defendants, defendant No.1 was examined as DW.1, defendant No.6 was examined as DW.2, defendant No.5 was examined as DW.3 and a witness by name K.B.Ravi - brother of defendant No.1 was examined as DW.4. They have produced in all twenty-four documents and marked as Ex.D1 to D24.

15. In view of the memo filed by learned counsel for the appellant No.3, since the appeal is restricted only to Item No.7, the finding of the Trial Court and the evidence with respect to the said property is considered in this appeal.

16. The plaintiff in her examination-in-chief reiterated her plaint averments. In the cross-examination, she has admitted the fact that she was married with Late



Sudarshan on 25.06.2000 and she is not aware of the affairs of the family earlier to the marriage. Defendant No.1 has clearly stated regarding the purchase of the property by defendant No.5 out of her own income. Defendant No.5 who has been examined as DW.3, in her examination in chief has stated that she has purchased Item No.7 of the suit schedule property out of her own earnings. In her cross-examination, she has given explanation to the suggestion that she was taking tuitions from 1975 to 1984 and out of the income earned from the tuitions, she has purchased Item No.7 of the property.

17. The Trial Court while answering Issue No.5 at Paragraph Nos.40 and 41 of its Judgment has opined that defendant No.5 has not produced any document to show that she had independent income and earnings. The Trial Court further opined that she has not produced any income tax assessment, which she has admitted in her cross-examination to prove the fact that she has purchased the property out of her own earnings. Giving



more weightage to the cross-examination that she was pursuing M.B.B.S in 1987, the Trial Court has held that defendants have failed to prove that suit schedule property Item No.7 is the self-acquired property of defendant No.5 and granted share in the said property. It is this portion of the Judgment is challenged i.e., granting share in Item No.7 of the suit schedule property by appellant No.3.

18. Learned counsel Sri.Hanumanthappa., submits that the Trial Court casted reversal burden on defendant No.5. He submits that it is for the plaintiff to prove that the property is purchased by Dasappa in the name of defendant No.5 and it was brought into the common hotpot/ pool of the joint family and being enjoyed by each member of the family. In the absence of specific assertions in the plaint regarding the payment by Dasappa with respect to purchase of Item No.7 of the suit schedule property, the plaintiffs have failed to discharge the burden casted on them under Section 101 and 102 of the Indian



Evidence Act. He further submits that all the defendants have categorically stated that Item No.7 is purchased by defendant No.5. The Sale deed is in the name of defendant No.5, that apart, the statement of accounts for home loan raised by defendant No.5 for the purpose of construction of complex has been produced at Ex.D.23 and 24 and it is only defendant No.5 who has mortgaged the property under Ex.D.9 to 22, especially, Ex.D.22 is the Certificate issued by Pragathi Krishna Gramin Bank acknowledging that the property has been mortgaged by defendant No.5 with regard to loan raised by her. He further submits that the Trial Court has failed to consider the cross-examination of PW.1/ plaintiff No.1 with respect to Item No.7 where she has categorically stated that sale deed was executed in 1987 that is prior to her marriage and she has further admitted the fact that she has no personal knowledge regarding the transaction of the said property. Though she says that she gained knowledge through her husband, but she admitted the fact that it is only



defendant No.5 who has mortgaged the property to the Bank and she is not aware of the installments, though she has stated that installments are being paid by the family, however the same has been denied by all the defendants stating that defendant No.5 is paying the installments. These facts and the cross-examination has been missed by the Trial Court while dealing with Issue No.5 and submits that the appeal be allowed with respect to Item No.7 of suit schedule properties by answering Issue No.5 in affirmative and in favor of defendant No.5 and other defendants.

19. Per contra, Ms.Vasundara., with all vehemence submits that defendant No.5 has not produced any documents to show that as of 1987 she has income to purchase the property. She further submits that the Late Dasappa was a Government Doctor and had properties and out of the income from the properties, he purchased item No.7 of the suit schedule properties in the name of defendant No.5. In these circumstances, despite the



property is purchased in the name of defendant No.5, it is indeed brought into the common hotpot/ pool of the joint family and being enjoyed by each member of the family. With this, she sought to dismiss the appeal.

20. Having considered the rival submissions and in view of restriction of the claim only with respect to Item No.7 of the suit schedule properties in this appeal filed by appellant No.3, the only point that would arise for our consideration is:

Whether the Trial Court is right in answering Issue No.5 i.e., '*Whether the defendants prove the suit schedule item No.7 is self-acquired property of defendant No.5?*', in the Negative?

21. Our answer to the above point is in the **Negative** and in favor of appellant No.3 - defendant No.5 for the following:



REASONS

22. As could be gathered from Paragraph No.8 of the plaint, except making a submission/averment that Item No.7 property measuring 25 X 50 feet, comprising of cellar, ground floor and first floor has been purchased by late Dasappa in the name of his daughter Renuka - defendant No.5, nothing stated further regarding in what mode the payment of consideration was made by Dasappa and no particulars to that effect has been placed on record. A perusal of the recital in Ex.D18 i.e., the Sale Deed dated 28.12.1987 clearly depicts that the sale consideration has been paid by defendant No.5. It further depicts that defendant No.5 was 26 years as on the date of execution of the sale deed. Nothing is forthcoming in the sale deed that the sale consideration has been paid by some body else. The plaintiff has neither filed any document nor examined any witness with respect to purchase of the property by Dasappa in the name of defendant No.5. Both the plaintiff who was examined as



PW.1 and her brother examined as PW.2 categorically admitted that they came to know regarding the affairs of the family only after plaintiff No.1 married to Sudharshan in 2000 and they are not aware of the earlier transactions of the family. That apart, the plaintiff categorically admitted in her cross examination that she married Sudharshan after 13 years from the date of sale transaction and she had no personal knowledge regarding the same. Further, she has admitted that it is only defendant No.5 who has mortgaged the said property. Though the plaintiff tried to state that EMI's are being paid by the family members, however a perusal of account statement of home loan clearly depicts that it is in the name of defendant No.5 and the EMI's are being paid by her and no contra evidence is led by the plaintiff to prove her assertion that the installments are being paid with the income of the family.

23. The Trial Court while answering Issue No.5, failed to consider that the plaintiff has not discharged



initial burden casted upon her under Section 101 and 102 of the Indian Evidence Act. On the other hand, it has casted reversal burden on defendant No.5 stating that she has not produced any document to show that she had independent income. All the witnesses examined on behalf of the defendants, categorically stated that defendant No.5 has purchased the property out of her own earnings and it is her self-acquired property. In the absence of any material produced by the plaintiff in discharging her burden, the defendants cannot be asked to prove the case of the plaintiff. In the absence of proof by the plaintiff to establish that defendant No.5 is just an ostensible owner who has lent her name for the sale deed and in fact it is Dasappa who is the real owner and paid the sale consideration, the Trial Court held that the plaintiff has proved her case that Item No.7 is part of the family properties and granted share in the same. There are legion of Judgments rendered by the Supreme Court as well as this Court that the burden on defendant to prove his stand



comes only when the initial burden by the plaintiff has been discharged. In the absence of the initial burden having been discharged by producing cogent and substantial evidence to prove that Item No.7 has been purchased by Late Dasappa in the name of Renuka - defendant No.5, the Trial Court has committed serious error in decreeing the suit in respect of Item No.7 of the suit schedule properties.

24. We have perused the evidence of all the defendants witnesses. Nothing worthwhile has been elicited in their cross-examination to dislodge the case of defendant No.5 that she is the absolute owner of Item No.7 of the suit schedule properties. Since the plaintiff has failed in establishing that defendant No.5 is not the absolute owner of Item No.7 of the suit schedule properties, the part of the Judgment granting share in Item No.7 of the suit schedule properties requires to be modified and set-aside. We accordingly, **allow** this appeal, setting aside the Judgment of the Trial Court only with



respect to Item No.7 of the suit schedule properties, as the same is purchased by defendant No.5 under a registered sale deed dated 28.12.1987 as per Ex.D18. On all the other aspect, Judgment of the Trial Court is unaltered.

25. No order as to costs. The Registry is directed to draw the decree accordingly.

26. Appeal in respect of appellant No.2 is ***dismissed for non-prosecution.***

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN
List No.: 1 Sl No.: 27