



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 19TH DAY OF AUGUST, 2025
BEFORE
THE HON'BLE MR. JUSTICE ASHOK S. KINAGI
REGULAR FIRST APPEAL NO. 100117 OF 2017 (DEC/POS-)

BETWEEN:

1. GURAPPA S/O. SAIDAPPA AMBI
SINCE DECEASED BY HIS LR'S.,
 - 1a. SMT. CHINNAWWA
W/O SURESH AMBI
AGE: 46 YEARS, OCC: HOUSEHOLD
R/O: KOLUR, TQ. BILAGI
DIST: BAGALKOT-587116.
 - 1b. SMT. SHOBHA
W/O SURESH SHIRAGUR
AGE: 40 YEARS, OCC: HOUSEHOLD
R/O: BIDARI, TQ. JAMKHANDI
DIST: BAGALKOT-587301.
 - 1c. SMT. RENUKA
W/O GANGAPPA YAKKUNDI
AGE: 38 YEARS, OCC: HOUSEHOLD
R/O: NIDUVANI, TQ. VIJAYAPUR
DIST: VIJAYAPUR-586101.
 - 1d. SMT. BHARATI
W/O PUNDLIK SUNAGAR
AGE: 34 YEARS, OCC: HOUSEHOLD
R/O: MUGALKHOD, TQ. MUDHOL
DIST: BAGALKOT-587313.
 - 1e. SMT. SAVITRI
W/O LAKKAPPA SUNAGAR
AGE: 29 YEARS, OCC: HOUSEHOLD
R/O: TODALABAGI, TQ. JAMKHANDI
DIST: BAGALKOT-587301.
2. SMT. YALLAWWA
W/O. GURAPPA AMBI

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NC: 2025:KHC-D:10417
RFA No. 100117 of 2017

AGE: 58 YEARS, OCC: AGRICULTURE
R/O: TODALABAGI-5874032
TAL: JAMKHANDI, DIST: BAGALKOT.

3. MALLAPPA S/O. GURAPPA AMBI
AGE: 33 YEARS, OCC: AGRICULTURE
R/O: TODALABAGI-587302
TAL: JAMKHANDI, DIST: BAGALKOT.

...APPELLANTS

(BY SRI. RAVI S BALIKAI, ADV)

AND:

1. KRISTAPPA @ KRISTNAPPA
S/O SAIDAPPA AMBI,
AGE: 69 YEARS,
OCC: AGRICULTURE
R/O: CHINAGUNDI-587403
TAL: JAMKHANDI,
DIST: BAGALKOT.
2. SAIDAPPA S/O. GURAPPA AMBI
AGE: 31 YEARS,
OCC: AGRICULTURE
R/O: TODALABAGI-587302
TAL: JAMKHANDI,
DIST: BAGALKOT.

...RESPONDENTS

(BY SRI. MALLIKARJUN C. HUKKERI, ADV FOR R1;
AND NOTICE TO R2 IS SERVED)

THIS RFA IS FILED U/SEC.96 OF CPC, 1908, AGAINST THE
JUDGMENT AND DECREE DTD: 09.02.2017 PASSED IN O.S.
NO.52/2014 ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE,
JAMKHANDI, DECREETING THE SUIT FILED FOR DECLARATION,
PARTITION AND SEPARATE POSSESSION.

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

CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. This Regular appeal is filed by the appellants, challenging the Judgment and decree dated 09.02.2017 passed in O.S.No.52/2014 by the learned Additional Senior Civil Judge, Jamkhandi (for short 'the trial Court')

2. For convenience, the parties are referred to based on their ranking before the trial Court. The appellants were defendant Nos.2 to 4; respondent No.1 was the plaintiff; and respondent No.2 was defendant No.1.

3. Brief facts, leading rise to the filing of this appeal, are as follows:

3.1 Plaintiff filed a suit against the defendants, for relief of declaration of his ownership over the property bearing R.S.No.364/1 measuring 3 acres 5 guntas situated at Todalbagi village, and also sought the relief of possession, and consequential relief of mesne profit.



3.2 It is the case of the plaintiff that the plaintiff, defendant No.2 and Chinnppa are the brothers. After the demise of their father Saidappa in 1982 or 1983, they succeeded to the property bearing Sy.No.364/1 of Todalbagi village, measuring 9 acres 5 guntas. In 1990, a partition was effected. In the said partition, Northern strip measuring 3 acres 5 guntas fell to the share of plaintiff, middle strip of 3 acres fell to the share of defendant No.2, and Southern strip measuring 3 acres fell to the share of Chinnappa. The parties acted upon the said oral partition. Based on the oral partition, the names of the respective parties were entered in the Revenue Records vide ME No.5710. Defendant No.3 is the wife, and defendant Nos. 1 and 4 are the children of defendant No.2. Defendant No.1 filed a suit in O.S.No.50/2012 for a partition, and separate possession on the file of the Principal Senior Civil Judge, Jamkhandi, against defendants No.2 to 4. A collusive compromise petition was filed in the said suit. As per the compromise, the suit property was fallen to the



share of defendant Nos.1,3 and 4. It is contended that the plaintiff is not a party to the said suit and that the compromise decree passed in O.S.No.50/2012 is not binding on the plaintiff. The defendants denied the title of the plaintiff to the suit schedule property. Hence, a cause of action arose for the plaintiff to file the instant suit. Accordingly, prays to decree the suit.

4. Defendants Nos. 2 and 4 filed a written statement admitting the relationship between the parties to the suit and denying the other averments made in the plaint. It is admitted that erstwhile Sy.No. 364/1, measuring 9 acres 5 guntas, was owned and possessed by the propositus, Saidappa. After the demise of Saidappa, the partition was effected between the legal heirs of Saidappa in 1990. In the said partition, defendant No.2 and Chinnappa were allotted 3 acres each in the said land. The suit property and another land measuring 10 acres of Kolor village were kept jointly in the names, of the plaintiff and defendant No. 2. There is no partition effected



between the plaintiff and defendant No.2 in these properties as aforementioned. In 1996, the plaintiff and defendant No.2 partitioned these two properties vide ME No.5710, and in the said partition, the suit property fell to the share of defendant No.2, and 10 acres of forest land of Kolor village fell to the share of the plaintiff. Since then, defendant No.2 and his family members have been in possession and enjoyment of the suit schedule property. It is contended that defendant No.1 filed the suit in O.S.No.50/2002 for partition and separate possession against the other defendants. The said suit ended in compromise, and a compromise decree was drawn. Hence, prays to dismiss the suit of the plaintiff.

5. The trial Court, based on the pleadings of the parties, framed the following issues:

ISSUES

1. *Whether plaintiff proves that he is the absolute owner of the suit property?*
2. *Whether the plaintiff further proves that the defendant has obtained a collusive decree of compromise in O.S.No.50/2012 and same is not binding on him?*



3. *Whether the defendants prove that, the plaintiff is estopped from claiming ownership and possession over the suit property?*
4. *Whether the plaintiff is entitled for the reliefs sought for?*
5. *What Order or Decree?*

6. The plaintiff, to substantiate his case, examined himself as PW-1, examined 3 witnesses as PW-2 to PW-4 and marked 9 documents as Ex.P1 to P9. In rebuttal, defendant Nos.1 and 2 examined themselves as DW-1 and DW-2, and marked 4 documents as Ex. D1 to D4.

7. The trial Court, after recording the evidence, hearing both sides, and assessing the verbal and documentary evidence, answered Issue Nos.1 and 2 in the affirmative, Issue No.3 in the negative, Issue No.4 partly in the affirmative and Issue No.5 as per the final order. The suit of the plaintiff was decreed with costs vide Judgment dated 09.02.2017. It is declared that the plaintiff is the absolute owner of the suit property, and the defendants were directed to hand over the vacant



possession of the suit property to the plaintiff forthwith. ME No.5710, the compromise decree passed in O.S.No.50/2002 on the file of learned Principal Senior Civil Judge, Jamkhandi and ME No.H-139/2012-13 are not binding upon the plaintiff.

8. Defendant Nos.2 to 4, aggrieved by the Judgment and decree passed in O.S.No.52/2014, preferred this Regular First Appeal.

9. Heard the arguments of the learned counsel for defendant Nos.2 to 4 and the plaintiff.

10. Learned counsel for defendant Nos. 2 to 4 submits that the partition was effected in 1996 and the plaintiff filed the suit in 2014. Hence, the suit filed by the plaintiff is barred by limitation. He also submits that the plaintiff admits the partition which took place in 1996. Therefore, the suit filed by the plaintiff is not maintainable, and the trial Court has not correctly appreciated the entire evidence placed on record. Therefore, on these grounds,



he submits that the Judgment passed by the trial Court is perverse, arbitrary, and erroneous. Accordingly, he prays to allow the appeal, and set-aside the Judgment and decree passed by the trial Court, and consequently, dismiss the suit of the plaintiff.

11. *Per contra*, the learned counsel for the plaintiff submits that there was a partition effected between the plaintiff, defendant No.2 and Chinnappa in 1990 and in the said partition, the suit schedule property fell to the share of the plaintiff, and the parties have acted upon the partition effected in 1990. The name of the plaintiff was entered in the revenue records based on the oral partition effected in 1990. He submits that the defendants are in possession of the suit schedule property. The plaintiff requested the defendants to hand over the vacant possession of the suit schedule properties, but the defendants refused to hand over the possession of the said properties. He submits that there is no dispute regarding the partition effected in 1990 and the suit schedule



property fell to the share of the plaintiff. He submits that though, the defendant has contended that the defendant is in long possession of the suit schedule property, admittedly, the defendants have not claimed the title, by way of adverse possession. Hence, the suit filed by the plaintiff is well within time, and the trial Court, considering the entire evidence on record, was justified in decreeing the claim. He also submits that the compromise decree passed in O.S.No.50/2002 is a collusive decree, and the plaintiff was not a party to the suit in O.S.No.50/2002. He submits that the compromise decree passed in O.S.No.50/2002 is not binding upon the plaintiff. Hence, on these grounds, he prays to dismiss the appeal.

12. Perused the records, and considered the submissions of the learned counsel for the parties.



13. The points, that would arise for consideration in this appeal are as follows:

- (i) Whether the plaintiff proves that the plaintiff is the absolute owner of the suit schedule property?
- (ii) Whether the defendants prove that the suit filed by the plaintiff is barred by limitation ?
- (iii) Whether the defendants prove that there was partition in 1996 between the plaintiff and defendant No.2 ?
- (iv) Whether the defendants prove that Judgment and decree passed by the trial Court are perverse and arbitrary ?
- (v) What order or decree?

14. **Point No.(i) and (iii)**:- Point Nos. (i) and (iii) are interrelated with each other and are taken together for common discussion to avoid the repetition of facts.



15. There is no dispute regarding the relationship between the parties to the suit. It is the case of the plaintiff that the original propositus, by name Saidappa, died, leaving behind the plaintiff, defendant No.2 and Chinnappa. After his demise, the plaintiff, defendant No.2 and Chinnappa divided the land bearing Sy.No.364/1, measuring 9 acres 5 guntas, in the partition effected in 1990. The Northern strip measuring 3 acres 5 guntas fell to the share of the plaintiff, the middle strip 3 acres fell to the share of defendant No.2 and the Southern strip 3 acres fell to the share of Chinnappa. Based on the partition effected in 1990, the parties submitted an application to the Revenue Authorities to effect the mutation in the name of the respective parties based on the oral partition. The Revenue Authorities, after due enquiry, effected a mutation vide ME No.4832 marked as Ex.P2, which discloses that a partition was effected between the plaintiff, defendant No.2 and Chinnappa, and in the said partition 3 acres 5 guntas i.e. Northern strip fell to the



share of the plaintiff, the middle portion measuring 3 acres fell to the share of defendant No.2 and the Southern strip measuring 3 acres fell to the share of Chinnappa. The plaintiff, to substantiate his case, examined himself as PW-1 and reiterated the plaint averments in the examination-in-chief. To prove that there was a partition in the year 1990, the plaintiff produced the Record of Rights pertaining to the suit schedule property marked as Ex.P1. Ex.P1 is the RTC extract of the land bearing Sy.No.364/1, measuring to the extent of 9 acres 5 guntas. Ex.P2 is the ME No.4832, which discloses that the parties i.e. plaintiff, defendant No.2 and Chinnappa, jointly submitted an application to transfer the land Sy.No.364/1 to the extent of 3 acres 5 guntas in the name of plaintiff, 3 acres in favour of defendant No.2 and 3 acres in favour of Chinnappa. The Revenue Authorities, after due enquiry, passed a mutation order on 07.11.1990, wherein it disclosed that the partition was effected and between the plaintiff, defendant No.2 and Chinnappa.



From the perusal of Ex.P2, it is evident that the suit schedule property fell to the share of the plaintiff, and the plaintiff became the absolute owner of the suit schedule property by Ex.P2. The plaintiff also produced Ex.P3, which is a copy of the mutation extract, disclosing a partition effected between plaintiff and defendant No.2. Ex.P4 is a copy of the certificate issued by the Village Accountant, which states that there is no property belonging to the family of the plaintiff in Kolor village. Ex.P5 is the certified copy of the plaint in O.S.No.50/2012, which discloses that the son of defendant No.2 had filed a suit against defendant No.2 herein and others for a partition and separate possession regarding the land bearing R.S. No.364/1, measuring 6 acres 5 guntas of Todalbagi village. Ex.P6 is the compromise decree passed in O.S. No.50/2012, which discloses that the parties therein entered into a compromise, and a compromise petition was filed before the trial Court, and a compromise decree was drawn. Ex.P8 is the copy of the objection submitted



by the plaintiff to the Tahasildar, Jamkhandi. Ex.P9 is the R.O.R. of land bearing Sy.No.364/1, which discloses that defendant No.2 is the owner of land bearing Sy.No.364/1. During the cross-examination, it was suggested to PW-1 that there was a partition between the plaintiff and defendant No.2 in 1996 and, in the said partition, the suit schedule property fell to the share of defendant No.2, and the mutation was effected in the name of defendant No.2 based on the partition effected in 1996. PW-1 denied the said suggestion. Further, the plaintiff also examined three witnesses as PW-2 to PW-4 to show that there was a partition in 1990, and the suit schedule property fell to the share of the plaintiff, and the name of the plaintiff appeared in the revenue records.

16. In rebuttal, defendant No.1 was examined as DW-1. Though, defendant No.1 did not file a written statement, he, however, examined himself as DW-1. He deposed that there was a partition between the plaintiff and defendant No.2 in 1996, and in the said partition, the



suit schedule property fell to the share of defendant No. 2, and the properties situated at Kolur village fell to the share of the plaintiff.

17. Defendant No.2 was examined as DW-2. He reiterated the written statement averments in the examination-in-chief, and to prove the defence, the defendants produced documents. Ex.D1 is the house property extract of VPC No.36 of Chinagundi village. Ex.D2 is the house property extract of VPC No.38 of Chinagundi village. Ex.D3 is the ROR of land bearing Sy.No.24/1 of Chinagundi village. Ex.D4 is the ROR of the land bearing Sy.No.364/1 situated at Todalbagi village, standing in the names of defendant Nos.2 and others.

18. From the perusal of the entire evidence on record, there is no dispute that the suit schedule property i.e. land bearing Sy.No.364/1 measuring 9 acres and 5 guntas, was owned and possessed by the propositus i.e. Saidappa. He died leaving behind the plaintiff, defendant No. 2, and Chinnappa. After the demise of Saidappa, the



plaintiff, defendant No. 2, and Chinnappa divided the suit schedule property, i.e., Sy.No.364/1. In the said partition, 3 acres 5 guntas towards the Northern strip fell to the share of the plaintiff, the middle strip measuring 3 acres fell to the share of defendant No.2, and the Southern strip measuring 3 acres fell to the share of Chinnappa. Based on the oral partition, the mutation was effected vide M.E.No.4832, marked as Ex.P2.

19. It is not the case of the defendant that, after partition, the plaintiff and defendants were reunited. It is the case of the defendant that, after the partition 1990, there was another partition between the plaintiff and defendant No.2 in 1996. However, defendant No.2 has not produced any record to establish that, after a partition in 1990, the plaintiff and defendant No.2 reunited, put the suit property into hotchpot.

20. Though, the defendants have contended in a written statement that the properties situated at Kolor village were allotted to the share of the plaintiff,



admittedly, the plaintiff has produced an endorsement issued by the Tahsildar, marked as Ex.P4, which discloses that the family of Saidappa was did not hold any properties in Kolur village. Admittedly, the properties shown in the alleged partition of 1996 is the Forest land. Admittedly, under the partition in 1996, no properties were allotted to the share of the plaintiff.

21. The plaintiff has proved that he became the absolute owner of the suit schedule property by the partition, that took place in 1990, and the parties have acted upon the oral partition effected between the plaintiff, defendant No.2, and Chinnappa as per M.E.No.4832, marked as Ex.P2. Thus, in view of the above discussion, I answer point No.(i) in the affirmative and Point No. (iii) in the negative.

22. **Point No.(ii):-** Though, the defendants have taken a defence that the suit is barred by limitation. It is contended that the partition was effected in 1996 and the suit was filed in 2014. As observed above in point No.(i),



at the cost of repetition, the defendants have failed to establish that there was a partition in 1996, and that the suit schedule property fell to the share of defendant No.2. The defendants have not examined any witnesses to prove the alleged partition effected in 1996. The plaintiff has produced ME.No.5710. From the perusal of ME No.5710, the properties situated at Kolor village were allotted to the share of the plaintiff. As the plaintiff has produced Ex.P4, which discloses that the family of the parties to the suit do not possess any properties in Kolor village. The property shown, is the Forest land, and no sane person would agree to give up his land, and take the Forest land, which does not belong to the families.

23. Though, the defendant has contended that he has been in possession of the suit schedule property since 1996 as an absolute owner, admittedly, the defendants have not pleaded the plea of adverse possession. In the absence of a plea of adverse possession, mere long possession over the suit schedule property does not entitle



the defendants to acquire any title by way of adverse possession and to continue in possession of the suit schedule property. Admittedly, the plaintiff filed a suit for declaration, and possession. As the defendants have denied to vacate the suit property, the cause of action arose for the plaintiff to file the instant suit in 2014, when the defendants claimed ownership over the suit schedule property based on the judgment and compromise decree passed in O.S.No. 50/2012. Admittedly, the plaintiff is not a party to the compromise decree in O.S.No. 50/2012, and the decree passed therein is not binding on the plaintiff. Therefore, the suit filed by the plaintiff is well within time. The defendants have failed to establish that the suit is barred by limitation. In view of the above discussion, I answer point No.(ii) in the negative.

24. **Point No.(iv):-** The plaintiff has produced Ex.P2 to demonstrate that he is the absolute owner of the suit schedule property, as the suit schedule property fell to the share of the plaintiff in the partition effected between



the plaintiff, defendant No.2 and Chinnappa. Further, the parties have acted upon the oral partition effected in 1990, and the revenue records have been changed as per mutation order in ME No.4832. Further, the defendants admit that the partition was effected in 1990. However, the defendants have taken a defence that, subsequent to the partition in 1990, another partition was effected between the plaintiff and defendant No.2 and in the said partition, the property which fell to the share of the plaintiff in earlier partition was allotted to the share of defendant No.2 along with the properties situated at Kolor village.

25. The plaintiff has also produced Ex.P4 i.e. the endorsement issued by the Village Accountant, Kolor village, which discloses that the parties to the suit did not possess any landed properties in Kolor village. Thus, the defendants have failed to establish the alleged partition effected in 1996. The trial Court considering the entire evidence on record, has rightly held that the plaintiff has



proved that he is the absolute owner of the suit schedule property, and that the defendants, in collusion with each other got a compromise decree in O.S.No.50/2012. Admittedly, the plaintiff is not a party to the suit in O.S.No.50/2012 and the compromise decree passed therein, is not binding on the plaintiff. The trial Court was justified in decreeing the suit. I do not find any error in the impugned Judgment. In view of the above discussion I answer point No.(iv) in the negative.

26. **Point No.(v):-** Since points No.(i) to (vi) are answered in favour of the plaintiff, in view of the same, I proceed to pass the following:

ORDER

- (i) The appeal is dismissed.
- (ii) The Judgment and decree passed in O.S.No.52/2014 dated 09.02.2017 passed by the learned Additional Senior Civil Judge, Jamkhandi, is hereby confirmed.



NC: 2025:KHC-D:10417
RFA No. 100117 of 2017

(iii) No order as to the costs.

(iv) Pending applications, if any, stands
disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE

RHR/- CT: BSB
List No.: 1 SI No.: 5