

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100207 OF 2019

BETWEEN

SMT. RENUKA W/O. PRABHU K.,
AGED ABOUT 51 YEARS,
R/O. MCC 'B' BLOCK,
DAVANAGERE.

...APPELLANT

(BY SMT. SURABHI KULKARNI, ADVOCATE)

AND

1. SRI. SHANTAPPA S/O. SIDDAPPA,
AGED ABOUT 81 YEARS,
SINCE DECEASED BY HIS LR'S.
2. SMT. SUMATI
W/O. SIDDAPPA CHITTARAGI,
AGED ABOUT 43 YEARS,
R/O. DOOR NO.79,
BASAVARAJAPET, DAVANAGERE.
3. SAGAR SIDDAPPA CHITTARAGI,
AGED ABOUT 21 YEARS,
R/O. DOOR NO.79,

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BASAVARAJAPET, DAVANAGERE.

4. KUM. RAKSHITHA
D/O. SIDDAPPA CHITTARAGI,
AGED ABOUT 16 YEARS,
R/O. DOOR NO.79,
BASAVARAJAPET, DAVANAGERE.

(MINOR R/BY MOTHER &
NATURAL GUARDIAN I.E. R2)

5. SMT. MANJUAL
W/O. BASAVARAJAPPA ANAJI,
AGED ABOUT 47 YEARS,
R/O. K.E.B. QUARTERS, HADADI ROAD,
BEHIND ZILLA PANCHAYAT OFFICE,
LOKIKERE ROAD, DAVANAGERE-577 044.

RESPONDENTS NO.2 TO 5
HAVE BEEN TREATED AS THE LEGAL
HEIRS OF DECEASED RESPONDENT NO.1

VIDE ORDER DATED 05.03.2022

6. SRI. CHANDRASHEKHARAGOUDA
S/O. GADIGEPPAGOUDA
AGED ABOUT 73 YEARS,
R/O. DOOR NO.4487/3,
WARD NO.2, BEHIND I.B.,
VIJAYANAGARA EXTENSION,
ILKAL, TQ: HUNGUND, DIST: BAGALKOTE.
7. SMT. SANGAMMA
W/O. SHARANAPPAGOUDA,
AGED ABOUT 36 YEARS,
R/O. CHIKKASINGANAGUTTI,

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POST: HIRESINGANAGUTTI,
TALUK: HUNGUND,
DISTRICT: BAGALKOTE.

8. SRI. GADIGEPPA
W/O. SHARANAPPAGOUDA,
AGED ABOUT 21 YEARS,
R/O. CHIKKASINGANAGUTTI,
POST: HIRESINGANAGUTTI,
TALUK: HUNGUND,
DISTRICT: BAGALKOTE.
9. SMT. NEELAMMA CHANDRASHEKHAR PATEL,
AGED ABOUT 69 YEARS,
R/O. DOOR NO.4483/3,
WARD NO.2, BEHIND I.B.,
VIJAYANAGARA EXTENSION,
ILKAL, TQ: HUNGUND,
DIST: BAGALKOTE.

...RESPONDENTS

(BY SRI. ANAND R. KOLLI, ADVOCATE FOR R6;
SRI. S.B. HEBBALLI, ADVOCATE FOR R7-R9;
NOTICE TO R2, R3, R5 IS SERVED;
R1 IS DECEASED (APPELLANT AND R2-R5 ARE
TREATED AS LRS OF DECEASED R1)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96
OF CODE OF CIVIL PROCEDURE PRAYING TO SET-ASIDE THE
JUDGMENT AND DECREE DATED 13.02.2019 PASSED IN
O.S.NO.36/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE,
HUNGUND, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 09.02.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE
FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 96 of Code of Civil Procedure, 1908 (for short, 'CPC') by the plaintiff/appellant challenging the judgment and decree dated 13.02.2019 passed in O.S.No.36/2016 on the file of Senior Civil Judge, Hungund (for short, 'Trial Court'), wherein the suit of plaintiff was dismissed.

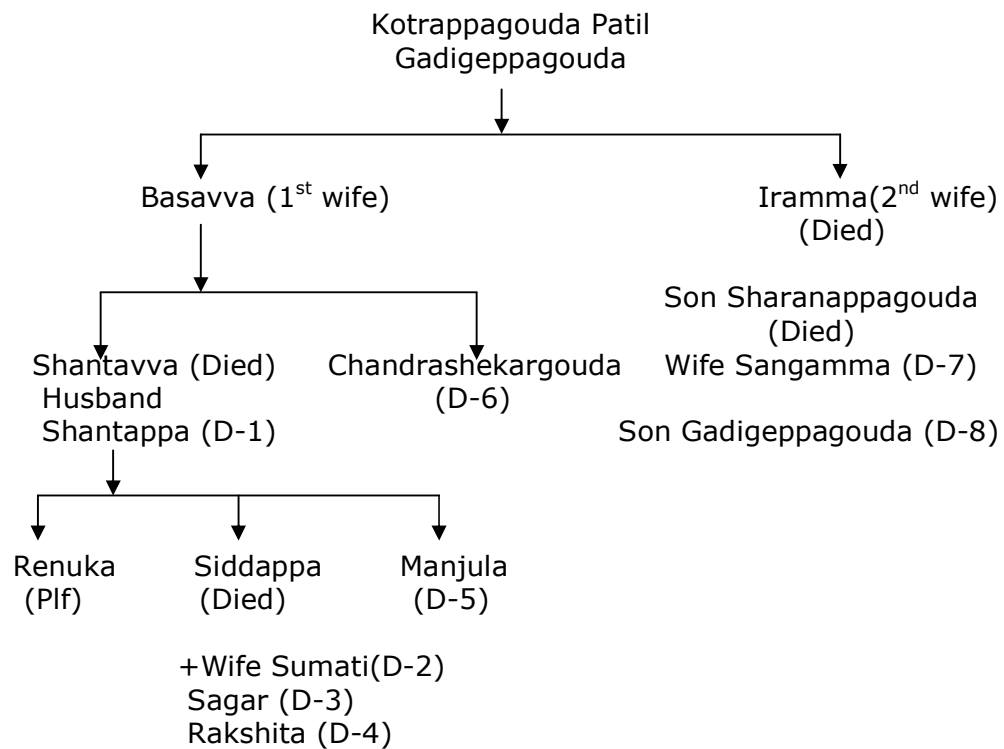
2. Parties would be referred with their ranks as they were before the Trial Court for sake of convenience and clarity.

3. Plaintiff has filed the suit before Trial Court praying for partition and separate possession of her 8/100th share in suit schedule properties by metes and bounds and to effect final decree by issuance of direction to Tahasildar; to award *mesne* profits under Order XII Rule 20 of CPC; for relief of permanent injunction restraining the defendants from alienating suit schedule properties by way of sale, gift,

mortgage, Will or lease; for Court costs and for such other reliefs.

4. The genealogy as narrated by the plaintiff before the Trial Court is as under:

GENEALOGY



5. The case of the plaintiff before Trial Court in nutshell is that, according to this genealogy, plaintiff is the granddaughter of Gadigeppagouda Patil and Basavva and suit schedule properties are ancestral properties of plaintiff

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and defendants. Due to difference of opinion between the original propositus and his first wife-Basavva, their marriage was dissolved on 20.07.1956. Afterwards, they started residing separately. But at that time, children of Gadigeppagouda were not provided with any share in the suit schedule ancestral joint family properties. After such divorce, Gadigeppagouda has married Iramma i.e. his second wife and got a son called Sharanappagouda, who was also no more in the year 2009 leaving behind his wife and son i.e. defendants No.7 & 8. Basavva has got two children i.e. Shantavva and defendant No.6-Chandrashekargouda. Shantavva died in the year 1977 leaving behind her husband-defendant No.1 and her three children i.e. plaintiff and defendant No.5 and one Siddappa. The son of Shantavva i.e., Siddappa died and his wife and children are defendants No.2 to 4.

6. Plaintiff demanded share in suit schedule properties, but defendant No.6 refused to give share to plaintiff. Hence, plaintiff tried to solve the matter through

well-wishers, but defendant No.6 has not agreed to give share to plaintiff. Hence, plaintiff has issued legal notice dated 26.12.2015 to defendants calling upon them to give legitimate share to plaintiff within 15 days from the date of receipt of the notice. Even though said notice is served upon defendants, they have not come forward to give share to the plaintiff. Hence, the suit for appropriate reliefs.

7. At the time of filing suit, defendant No.4 was minor. Her mother-natural guardian was placed *exparte*. Hence, Court guardian was appointed for defendant No.4. She has filed written statement, wherein she admitted the plaint pleadings and prayed for granting a share to defendant No.4 also.

8. Defendant No.6 filed his written statement, wherein he admitted the relationship between parties, but denied all other averments made in the plaint. He further contended that mother of plaintiff Smt.Shantavva died in the year 1977. She was born prior to commencement of Hindu Succession Act, 1956 and Shantavva was not having

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any right in the suit schedule properties. Hence, plaintiff and defendants No.1 to 5 are not having any share in the suit schedule properties and they cannot pray for partition. He further contended that out of suit schedule properties i.e. property No.6/7 was the Stridhana property of Basavva and she has gifted it to defendant No.6 through a registered gift deed. Hence, he is the absolute owner of said property. Hence, prayed for dismissal of suit with costs.

9. After filing the suit, the plaintiff got amended the suit and included defendant No.9 and also included some of the schedule properties to both suit 'A' and 'B' schedule.

10. After making such amendments, defendant No.6 has filed additional written statements twice.

11. In the first additional written statement, defendant No.6 has taken contention that the additional suit 'A' schedule properties bearing Re-Sy.No.40B/B1, 40B/B2, 40B/B3, 40/A4, 40/A5, 40/A6 of Vajjala Village and property No.71 and 73 of Tondihal Village Panchayat and suit 'B' schedule property cannot be added in this suit. Re-

Sy.No.40B/B1, 40B/B2, 40B/B3 are the absolute properties of the wife of defendant No.6-Smt.Neelamma and she has purchased them under registered sale deed dated 07.09.2010 and she is not party in the suit and hence the suit is bad for non-joinder of necessary parties.

12. Property No.3070 of Tondihal Village is the property purchased by defendant No.6 and Siddamma and thus Siddamma has transferred her right in favour of defendant No.6 and thus it is his self-acquired property. Plaintiff or her mother will not have any right, title or interest in or over this property. Mother of plaintiff died in the year 1977 and she was born much earlier to commencement of Hindu Succession Act, 1956. Only to harass defendant No.6, this suit is filed. Hence, prayed for dismissal of suit with costs.

13. In the second additional written statement, defendant No.6 took contention that Re-Sy.No.37/2 situated at Tangadabylu Village, Re-Sy.No.187 situated at Nalatawada Village, Re-Sy.Nos.23/1, 22/2A and 22/1 of

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Kamaladinni Village are the self-acquired properties of defendant No.6. Amongst them, Re-Sy.No.37/2 of Tangadabaida village and Re-Sy.No.187 of Nalatawada Village were the Stridhana property of Basamma and she has gifted those properties to defendant No.9 and through registered gift deeds and thus, they are absolute properties of defendant No.9 & 6 respectively. Re-Sy.No.64/3 was the property of deceased Gadigeppagouda and it was fallen to the share of defendant No.6 in the partition. Afterwards, in the partition between defendant No.6 and his son-Veeresh Chandrashekhar, said property was fallen to the share of his son and it stands in the name of his son.

14. As far as properties bearing Re-Sy.Nos.23/1, 22/2A and 22/1 of Kamaladinni Village are concerned, they are the self-acquired properties of defendant No.6, who purchased them. As far as CTS No.4487/3 is concerned, it is also the self-acquired property of defendant No.6. Defendant No.6 has given said property to defendant No.9 in lieu of maintenance and thus she is the absolute owner of

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said property. Plaintiff's mother-Shantavva was having three children i.e., plaintiff, Manjula and Siddappa. Said Manjula and Siddappa are not made as parties to the suit. Without making Veeresh Chandreshekar Patil, in whose name Sy.No.64/3 is standing, suit is bad and thus suit is bad for non-joinder of necessary parties. Hence, prayed for dismissal of suit with costs.

15. Defendants No.7 and 8 have filed memo adopting the written statement of defendant No.6.

16. Defendant No.9 appeared through her counsel and filed her written statement, wherein she has taken contention that Sy.Nos.40B/B1, 40B/B2, 40B/B3 are the absolute properties of defendant No.6, who purchased them under registered sale deed dated 07.09.2010 for a sum of ₹.4,73,000/- from Shashikala D/o Veerappa Dharmanthi and thus they are her absolute properties. Property No.3070, Plot No.73 and property No.3068, Plot No.71 of Tondihal Village are the properties of Smt.Siddamma Basappa Mudenur, the relative of defendant No.9 and she

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purchased it under the registered sale deed from its owner Mallikarjuna Indaragi and then she transferred it to defendant No.6 and now defendant No.6 is its absolute owner. Hence, prayed for dismissal of suit with costs.

17. Based on the above pleadings, the Trial Court has framed the following issues:

"ISSUES

1. *Whether the plaintiff proves that the suit schedule properties are ancestral properties of herself and defendants?*
2. *Whether the plaintiff is entitled to the relief sought for?*
3. *What order or decree?"*

18. On behalf of plaintiff, plaintiff was examined as P.W.1 apart from examining a witness as P.W.2 and marking Exs.P.1 to P.40, closed her side before the Trial Court. On behalf of defendants No.6 and 9, defendants No.6 and 9 were examined as D.W.1 and D.W.2 respectively apart from marking Exs.D.1 to D.42 and closed their side before the trial Court.

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19. After recording evidence of both sides and hearing arguments of both sides, the learned Trial Court has dismissed the suit of plaintiff on the ground that plaintiff has not placed any sufficient material to establish that except Item Nos.1 to 4 of 'A' schedule properties, the other properties were purchased out of joint family income and failed to prove that there was no partition amongst the sharers in respect of ancestral Item Nos.1 to 4 of 'A' schedule properties and thus she is not entitled for any share in the suit schedule properties.

20. Aggrieved by the said judgment and decree, plaintiff/appellant has preferred the present appeal.

21. In this appeal, plaintiff has filed I.A.No.1/2026 under Order VI Rule 17 of CPC to permit the plaintiff to amend the plaint paragraph Nos.6 and 7 and also to insert the prayers, which reads as under:

"SCHEDULE FOR AMENDMENT

i. To insert the following paragraph after paragraph No.6

"Para 6A: It appears that the Defendant No.6, husband of Defendant No.7, Iramma W/o Gadigeppagouda and

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Ninganagouda S/o Kotreppagouda (brother of Gadigeppagouda) have allegedly partitioned the ancestral family properties in 1997 among themselves behind the back of this Plaintiff. It is submitted that the same is bogus, unequitable and not binding on the Plaintiff".

ii. *To insert the following paragraph after paragraph No.7*

"Para 7A: Late Basavva has allegedly executed several gift deeds in favour of Deffendants No.6 and 9 and the same are bogus, void and not binding on this Plaintiff".

iii. *To insert the following Prayers after Prayer (a) as under:*

"(aa). If this Court comes to the conclusion that oral partition took place in the year 1997, the same shall be set aside as being unequitable and not binding on this Plaintiff".

"(aaa). To set aside the gift deeds executed by Late Basavva dated 24.07.2008 in favour of Defendant No.9, dated 15.11.2012 in favour of Defendant No.6, and dated 16.12.2016 by Defendant No.6 in favour of Defendant No.9 as void and not binding on this Plaintiff".

22. In the affidavit annexed to this I.A.No.1/2026, the appellant/plaintiff has stated she has filed the suit for partition and separate possession. Respondents No.4, 6 and 9 appeared and filed their written statements, wherein respondent No.6 has contended that plaintiff is not entitled for partition. The Trial Court dismissed the suit holding that

plaintiff failed to prove that suit schedule properties are joint family properties and in view of her alleged admission regarding oral partition that had taken place in the family; there is no pleading in the written statement of defendants about prior partition. The mutation entry is produced affecting partition. Therefore, the plaintiff had no occasion to deny those facts. Even presuming that partition had taken place, it is inequitable and not binding on the plaintiff since no share was given to the mother of plaintiff at that time. The proposed amendment will not change the nature of the suit and is necessary for effective adjudication. Respondents have alleged about the gift deeds executed by Smt.Basamma in favour of defendants No.6 and 9, which are not binding on the plaintiff. Hence, prayed for allowing I.A.No.1/2026.

23. Learned counsel for respondents-defendants No.6 and 9 has filed objections to this I.A.No.1/2026 stating that the proposed amendment as sought by the plaintiff is not at all maintainable at this stage. The plaintiff has given

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a categorical admission about oral partition that had taken place in the year 1997 and it is within her knowledge. The proposed amendment is completely without any legal basis and even without the amendment, the appeal could be maintainable. The plaintiff has sought amendment in the prayer and prayed for the additional reliefs, which are in the nature of declarations. Hence, the nature of suit would be changed if the plaintiff is allowed to amend the plaint.

24. Learned counsel for respondents-defendants No.6 and 9 further contended that as per Order VI Rule 17 of CPC, before commencement of the trial, the amendment shall be made. In the instant case, the amendment is prayed only after passing of the judgment and decree by the Trial Court. Hence, it is against the principles of law. Hence, prayed for dismissal of I.A.No.1/2026 with costs.

25. Heard arguments of both sides on main appeal and also on I.A.No.1/2026.

26. Learned counsel for appellant Smt.Surabhi Kulkarni would submit that the relationship between the

parties is not disputed. Thus, according to this relationship, plaintiff is the granddaughter of original propositus Gadigeppagouda and his first wife Smt.Basavva i.e., she is the daughter of Gadigeppagouda and Basavva's daughter Smt. Shanthvva. During 1977 her mother died and thus plaintiff being the daughter of Shantavva is entitled for partition in the suit schedule ancestral and joint family properties.

27. Learned counsel for appellant would further submit that out of suit schedule properties, item Nos.1 to 4, 13 and 16 of suit 'A' schedule properties are admittedly the ancestral properties of the original propositus Gadigeppagouda. The total extent of these properties is 23 acres 24 guntas. So, item Nos.5 to 10 of suit 'A' schedule properties were purchased in the name of defendant No.9 who is a housewife having no other source of income and hence they were also purchased out of joint family income. Item Nos.11 and 12 are gifted by Basavva i.e., grandmother of plaintiff in favour of defendant Nos.9 and 6

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respectively. However, she had no absolute right to gift these properties. Item Nos.14 and 15 of suit 'A' schedule properties are purchased in the name of defendant No.6. Admittedly, there was sufficient nucleus to purchase these properties. Totally, 24 acres 37 guntas were standing in the name of Basavva and 23 acres 24 guntas were standing in the name of Gadigeppagouda. Hence, there was sufficient nucleus to purchase these scheduled properties. Item No.1 of suit 'B' schedule properties was purchased in the name of Basavva; Item No.3 & 4 of suit 'B' schedule properties were purchased in the name of defendant No.6 and Item No.2 of suit 'B' schedule property was purchased in the name of sister of defendant No.7. However, without giving any share to plaintiff, only to deprive plaintiff and other children of Smt.Shantavva, these properties were gifted by Basavva to defendant Nos.6 and 9 and some of the properties are purchased in the names of defendant Nos.6 and 9. However, plaintiff has got share in all these properties. Furthermore, defendant Nos. 6 to 9 only in the evidence have produced the alleged mutation register extract,

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alleging that there was partition between defendant No.6 and husband of defendant No.7- Sharanappagouda, who is the son of Gadigeppagouda through second wife; only after giving divorce to first wife, Gadigeppagouda married Iramma. There was alleged partition amongst defendant No.6 and Sharanappagouda which is not binding on the share of plaintiffs because, it is inequitable partition and no share is given to plaintiff. Without any pleading regarding prior partition, the trial Court came to the conclusion only based on stray admission of plaintiff that there was partition in the year 1997 between defendant No.6 and Sharanappagouda. Furthermore, as discussed above, there were some gift deeds to defendant Nos.6 and 9 which are not binding on the share of plaintiff. Hence plaintiff intends to amend the plaint cause title.

28. Learned counsel for plaintiff totally relied upon 8 citations.

29. Learned counsel for plaintiff would submit that any amount of evidence without pleading has no value in

the eye of law because there is no pleading about prior partition. In this regard, learned counsel for plaintiff relied on the judgment of Hon'ble Apex Court in the case of ***Srinivas Raghavendrarao Desai(Dead) by LRs Vs. Kumar Vamanrao alias Alok and others***, reported in ***2024 SCC Online SC 226***.

30. Learned counsel for appellant would further contended that there is no proper pleading about how defendant Nos.6 and 9 have acquired some of the suit 'A' and 'B' schedule properties. In the absence of such pleading and proof, the finding of trial court that those properties are self-acquired properties of defendant Nos.6 and 9 is incorrect. In this regard, she relied on the judgment of Hon'ble Apex Court in the case of ***D.S.Lakshmaiah and Another Vs. L.Balasubramanyam and another*** reported in ***(2003) 10 SCC 310***.

31. Learned counsel for the appellant would further submit that the alleged oral partition between defendant No.6 and Sharanappagouda does not come into effect.

There is no document produced to show that based on this alleged mutation entry, properties are mutated into the respective names of defendant No.6 and Sharanappagouda. In this regard, she relied on the judgment of Hon'ble Apex Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others***, reported in ***(2020) 9 SCC 1***.

32. Learned counsel for appellant would further submit that the ancestral property cannot be gifted by one coparcener, without the consent of other coparcener. Hence, the alleged gift deeds in favour of defendant Nos.6 and 9 are null and void. In this regard, she relied on the judgment of Hon'ble Apex Court in the case of ***K.C.Laxmana Vs.K.C.Chandrappa Gowda and another*** reported in ***(2022) 18 SCC 483***.

33. Learned counsel for appellants would further submit that if this Court comes to the conclusion that defendants have established prior partition, then it is to be challenged by plaintiff, no opportunity was given to plaintiff to challenge the said earlier partition because there is no

pleading on this point. Under those circumstances, remand of the matter is required. In this regard, she relied on the judgment of Hon'ble Apex Court in the case of **J.Balaji Singh Vs.Diwakar Cole and others** reported in **(2017) 14 SCC 207** and **Divya Exports Vs.Shaliman Video Company and others** reported in **(2014) 16 SCC 194**.

34. Learned counsel for appellant would submit that even at the stage of appeal, appellant could amend the plaint pleadings and this is more required in the present case that in the absence of proper pleadings from defendants, the trial Court came to the conclusion that there was prior partition amongst defendant No. 6 and husband of defendant No.7 and hence, she has to amend the plaint. In this regard, she relied on the judgment of Hon'ble Apex Court in the case of **M.R.K.Rau Vs. Corporation of the City of Bangalore** reported in **ILR 1992 KAR 110** and **Pandit Ishwardas Vs. State of Madhya Pradesh and others** reported in **(1979) 4 SCC 163**. Hence, prays for allowing the appeal.

35. Learned counsel for respondent Nos.6 and 9 would submit that plaintiff is the daughter of deceased Shanthavva i.e., the sister of defendant No.6. At the time of commencement of this Hindu Succession (Amendment) Act, 2005 (for short 'Act, 2005') neither the original propositus Gadigeppagouda nor his daughter Smt.Shantavva were alive because Shantavva died in the year 1977 and Gadigeppagouda died in the year 1990. Hence, at the time of commencement of this Act, 2005, none of them were alive. Hence, plaintiff cannot claim any share in the properties of Gadigeppagouda. From the date of death of her mother or from the date of death of Gadigeppagouda, plaintiff has not filed suit within 12 years. But, she filed this suit only in the year 2016. There is a clear cut admission from plaintiff regarding earlier partition between defendant No.6 and husband of defendant No.7. Hence, plaintiff is not entitled for any share in joint family properties. Hence, prays for dismissal of appeal.

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36. Having heard the arguments of both sides, verifying appeal papers along with trial Court records, the points that arise for consideration are:

- 1) Whether appellant is entitled for any share in suit 'A' and 'B' schedule properties?
- 2) Whether appellant be permitted to amend the plaint cause title at this stage?
- 3) What order or decree?

37. Finding on Points No.1 & 2 is in '**NEGATIVE**' for the following:

Reasons

38. The genealogical tree furnished in the plaint is admitted. According to this G-tree, one Gadigeppagouda had a brother called Ninganagouda and this Gadigeppagouda had two wives. The first wife is Smt.Basavva to whom he has given divorce on 20.07.1956 and then married his second wife Smt.Iramma. This Basavva had two children i.e., Smt. Shantavva and defendant No.6-Chandrasekhar. This Shantavva married to
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one Shanthappa (Defendant No.1) and they have three children i.e., plaintiff-Renuka, one Siddappa and defendant No.5-Manjula. Siddappa died leaving behind his wife and children i.e., defendant Nos.2 to 4. Shanthappa died in the year 1977. Original propositus-Gadigeppagouda died on 12.09.1990. The second wife-Iramma had a son called Sharanappagouda who died leaving behind his wife and son i.e., defendant Nos.7 and 8.

39. There are 16 properties in suit 'A' schedule property and 4 properties in suit 'B' schedule property.

40. According to the plaintiff, Item Nos.1 to 4, 13 and 16 of suit 'A' schedule properties were the ancestral properties and they were standing in the name of Gadigeppagouda.

41. Plaintiff claims to be coparcener along with defendant No.6 and claims partition in suit 'A' and 'B' schedule properties.

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42. As per Section 6 of Act, 2005, the daughter will be considered as coparcener along with son.

43. In ***Veenita Sharma's*** case cited supra, it is clearly held that the benefit of Section 6 of Act, 2005 is available to daughters who are alive as on the date of enforcement of the Amendment Act and it is not required that the coparcener shall also be alive as on that date.

44. In the instant case, as discussed above, the original propositus died in the year 1990 much earlier to commencement of the Act, 2005 and his daughter i.e., mother of plaintiff predeceased the original propositus and died in the year 1977 itself i.e., much earlier to commencement of the Act, 2005. Admittedly, this Gadigeppagouda had two sons one from first wife and another from second wife.

45. Even though, there is no pleading regarding partition between defendant Nos.6 and husband of defendant No.7 in the written statement, there is categorical admission from plaintiff that there was partition

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between defendant No.6 and husband of defendant No.7 in the year 1997. She has categorically admitted that after the death of Gadigeppagouda, she had not prayed for partition in suit schedule properties. She admitted that during 1997, there was partition in the ancestral properties between defendant No.6 and husband of defendant No.7 and since then, they are enjoying their properties separately and they are exercising their absolute rights over the properties which were fallen to their respective shares. She has admitted that item Nos.5 to 10 of suit 'A' schedule properties were purchased under registered sale deed in the name of defendant No.9. The documents are also produced in that regard. She has also admitted that the mother of defendant No.6 and her grandmother-Basavva had gifted properties under registered gift deed in favour of defendant No.9 i.e. in respect of item No.11. The said gift deed is dated 25.07.2008 and gift deed dated 15.11.2012 is executed by Basavva in favour of defendant No.6 in respect of Item Nos.12; item No.14 and 15 of suit 'A' schedule properties are standing in the name of defendant No.6 as

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he purchased them under a registered sale deed dated 07.06.2013. Item No.1 of suit 'B' schedule property i.e., house property was standing in the name of Basavva and it was purchased under registered sale deed dated 24.02.1962. Likewise, item No.4 of suit 'B' schedule property i.e., house property was standing in the name of defendant No.6 which he purchased in the year 1992. Afterwards, he gifted the said property to defendant No.9. item No.3 of suit 'B' schedule property i.e., house property was standing in the name of defendant No.6 which he purchased in the year 2006. Item No.2 of suit 'B' schedule property was standing in the name of one Siddamma, i.e., sister of defendant No.1 who is not a party to the suit. At the time of arguments, learned counsel for appellant would fairly concede that she is not pressing the appeal in respect of said property.

46. Defendant Nos.6 and 9 in their written statement have categorically stated that they have these properties

which are standing in their names either through sale or through gift and they are their self acquired properties.

47. It is to be noted here that in ***Vineeth Sharma's case***, stated supra, the father need not be alive at the time of commencement of Act, 2005. But in the instant case, before commencement of said Act, 2005 both the father and daughter were not alive. Should parties be permitted to initiate litigation ex-post facto, long after the demise of the death of the daughter—who would have derived interest solely via the Act, 2005, and death of original coparcener long prior to commencement of Act, 2005—it would result in perpetual, unending litigation. Were centenarian partitions or century-old revenue entries to be amenable to challenge subsequently, it would, without doubt, lead to an incessant stream of litigation, which fundamentally contradicts the legislative intent of the Act, 2005, and violates the principles articulated in *Vineeth Sharma's case*, supra.

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48. Learned counsel for appellant would submit that there is no pleading in the written statement of defendant No.6 & 9 that how they acquired those properties.

49. It is to be noted here that if a party pleads that any property is his self-acquired property, then it is his burden to establish that it is his self-acquired property. Then he need not make any pleading that how he acquired. What was the source of his acquisition to purchase said property. Hence, the above argument of learned counsel for appellant is tenable.

50. Defendant No.6 in her evidence has categorically deposed that she was doing clothes business and from said clothes business, she was making some savings and thus she purchased the properties which are standing in her name under separate registered sale deeds.

51. As far as earlier partition of 1997 is concerned, definitely there is no pleading. But, plaintiff has categorically admitted about it and furthermore, defendants have produced Ex.D.34 i.e., the mutation register extract.

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According to this document, defendant No.6, husband of defendant No.7 and their uncle Ninganagouda have partitioned the joint family properties and in that partition they have got their respective shares. After such partition, those properties are re-numbered as 43/3, 43/4 etc. In this case, learned counsel for appellant would submit that the defendants have not produced the RTC extract to show that this mutation was acted upon. Under Ex.D34, Survey No.43/1/1, 45/1, 64/1 and 5/1+2 were partitioned. Presently, the suit is filed in respect of survey Nos.43/3, 45/2, 5/1-2p, 64/2, 64/3 and 43/4 contending that these are ancestral properties. This S.No.43/1/1 or 45/1 or 64/1 or 5/1+2 are not at all the suit schedule properties. But, there is little change in the sub-numbers of these properties which indicate the partition and categorical admission of plaintiff in her cross examination. Hence, even though, no such document is produced, there is an ample evidence to establish that there is earlier partition in the year 1997. Now, plaintiff has filed the suit in the year 2016 praying for partition.

52. In this regard, the Hon'ble Apex Court, in the case of ***Vineeta Sharma vs. Rakesh Sharma and others***¹, has clearly held in paragraph Nos.117, 127 and 129 as follows:

"117. How family settlement is effected was considered in Kale v. Deputy Director of Consolidation, (1976) 3 SCC 119, thus:

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

¹ AIR 2020 SC 3717

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to

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the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

15. In Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292, 295, it was pointed out by this Court that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been agreed to did not require registration. This Court had observed thus:

"Family arrangement as such can be arrived at orally. Its terms may be

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recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.””

(emphasis supplied)

It is settled law that family arrangements can be entered into to keep harmony in the family.

127. A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent

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nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the Court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and

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contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intendment of Explanation to Section 6(5). It has to be remembered that courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.

129. Resultantly, we answer the reference as under section:

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(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of

a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

53. Thus, it is the burden of defendant Nos.6 to 9 to establish the earlier partition. As discussed above, it is established as per Ex.D.34 and the RTC extracts of these survey numbers produced by plaintiff.

54. In the instant case as discussed above, virtually, plaintiff did not get any share in suit 'A' or 'B' schedule properties by alleging that her mother was coparcener of suit schedule properties because her mother and her

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grandfather were not alive as on the date of commencement of Act, 2005. Section 6 of the **Hindu Succession (Amendment) Act, 2005** reads as under:

"6. Devolution of interest in coparcenary property.—(1) *On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*

- (a) by birth become a coparcener in her own right the same manner as the son;*
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;*
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,*

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

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(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

- (a) the daughter is allotted the same share as is allotted to a son;*
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted*

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to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or*
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such*

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right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

Explanation.—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]"

55. Under these circumstances, plaintiff cannot be permitted to amend the plaint and the case cannot be commenced afresh that too in a suit of 2016.

56. Hence, we are of the considered opinion that plaintiff is not entitled for any share in suit 'A' or 'B'

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schedule properties and thus, the judgment and decree of trial Court needs no interference. Accordingly, we proceed to pass the following:

ORDER

IA No.1/2026 filed under Order II Rule 17 r/w Section 151 CPC is dismissed.

Appeal filed under Section 96 CPC is dismissed by confirming the judgment and decree dated 13.02.2019 passed in O.S. No. 36/2016 on the file of the Senior Civil Judge, Hungund.

Parties to bear their own costs.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

Sh-upto para 25
HMB- 26 to end
CT-MCK