



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 25TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR
REGULAR SECOND APPEAL NO.100375 OF 2025
(PAR/POS)

BETWEEN:

1. DODDAPPA S/O. SIDDAPPA TIMMAPUR,
AGE: 56 YEARS, OCC: AGRICUTLURE,
R/O. RAMANAL VILLAGE,
TQ. KALAGHATAGI & DIST. DHARWAD-581196.
2. CHANNABASAPPA S/O. SIDDAPPA TIMMAPUR,
AGE: 54 YEARS, OCC: AGRICULTURE,
R/O. RAMANAL VILLAGE,
R/O. RAMANAL VILLAGE,
TQ. KALAGHATAGI & DIST. DHARWAD-581196.
3. MAHADEVAPPA S/O. SIDDAPPA TIMMAPUR,
AGE: 49 YEARS, OCC: AGRICULTURE,
R/O. RAMANAL VILLAGE,
TQ. KALAGHATAGI & DIST. DHARWAD-581196.
4. SUNANDA W/O. MANJUNATH MANAGUNDI,
AGED: 47 YEARS, OCC: HOUSEWIFE,
R/O. JODALLI VILLAGE, TQ. KALAGHATAGI &
DIST: DHARWAD-580114.
5. SANGAVVA W/O. MAHADEVAPPA MUDEPPANAVAR,
AGE: 58 YEARS, OCC: HOUSEWIFE,
R/O. KANAVIHONNAPUR VILLAGE,
TQ. KALAGHATAGI & DIST: DHARWAD-580114.

...APPELLANTS

(BY SRI SHIVARAJ C. BELLAKKI, ADVOCATE)





AND:

1. BHARMAVVA @ BASAVVA
W/O. FAKIRAPPA TIMMAPUR,
AGE: 82 YEARS, OCC: AGRICULTURE,
R/O. MATTIGATTI VILLAGE,
TQ: KUNDAGOL, DIST: DHARWAD-580028.
2. NINGAVVA W/O. TIRAKAPPA MANANNAVAR,
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,
R/O. MATTIGATTI VILLAGE, TQ: KUNDAGOL,
DIST: DHARWAD-580028.
3. PARASAPPA S/O. BHARAMAPPA BAIRIKOPPA,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O. RAMANAL VILLAGE, TQ: KALAGHATAGI
& DIST: DHARWAD-580028.
4. FAKKIRAPPA S/O. BHARAMAPPA BAIRIKOPPA,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O. RAMANAL VILLAGE, TQ. KALAGHATAGI
& DIST: DHARWAD-581196.
5. BASAPPA S/O. FAKKIRAPPA BAIRIKOPPA,
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O. RAMANAL VILLAGE,
TQ. KALAGHATAGI & DIST: DHARWAD-581196.
6. VEERUPAXAPPA S/O. FAKKIRAPPA BAIRIKOPPA,
AGE: 55 YEARS, OCC: AGRICULTURE,
R/O. RAMANAL VILLAGE,
TQ: KALAGHATAGI & DIST: DHARWAD-581196.
7. HOLEVVA W/O. SANGAPPA BAIRIKOPPA,
AGE: 51 YEARS, OCC: HOUSEWIFE,
R/O. HOSALLI VILLAGE, TQ. YELLAPUR &
DIST: KARWAR-581359.

...RESPONDENTS

(BY SRI S. R. HEGDE AND S. S. HEGDE, ADV. FOR R1 & R2;
NOTICE TO R3 TO R6 SERVED; NOTICE TO R7 HELD
SUFFICIENT)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION
100 OF THE CODE OF CIVIL PROCEDURE, PRAYING TO SET



ASIDE THE JUDGMENT AND DECREE DATED 15.10.2024 PASSED BY THE COURT OF SENIOR CIVIL JUDGE AND JMFC, KALAGHATAGI IN R.A.NO.10/2023 IN DISMISSING APPEAL AND CONFIRMING THE JUDGMENT AND DECREE PASSED BY THE COURT OF CIVIL JUDGE AND JMFC, KALAGHATAGI DATED 30.01.2019 IN OS NO.96/2012 BY ALLOWING THIS APPEAL AND IN ALTERNATIVE THE SUIT MAY KINDLY BE REMANDED BACK TO THE COURT OF CIVIL JUDGE AND JMFC, KALAGHATAGI FOR PROVIDING AN OPPORTUNITY TO THE APPELLANTS HEREIN TO FILE WRITTEN STATEMENT PRODUCE DOCUMENTS AND LEAD EVIDENCE ON THEIR BEHALF IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

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

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

This Regular Second Appeal is filed by defendant Nos.2 to 6 questioning the judgment and decree dated 15.10.2024 passed in R.A.No.10 of 2023 by the Senior Civil Judge and JMFC, Kalaghatagi¹, which confirmed the judgment and decree dated 30.01.2019 passed in O.S.No.96 of 2012 by the Civil Judge and JMFC, Kalaghatagi², thereby the suit filed for partition and separate possession is decreed.

¹ hereinafter referred to as 'the First Appellate Court' for short

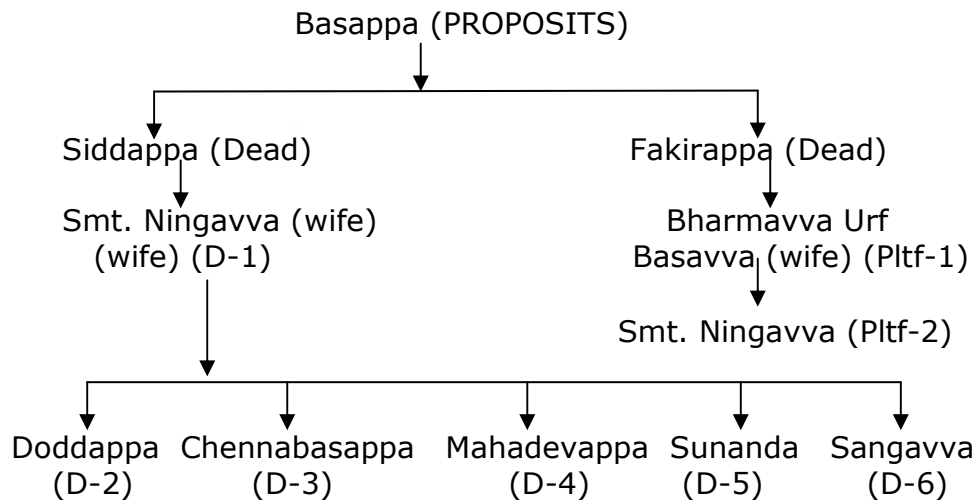
² hereinafter referred to as 'the Trial Court' for short



2. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

3. The plaintiffs have filed a suit for partition and separate possession by metes and bounds in respect of six agricultural lands and three house properties by claiming that the suit schedule properties are joint family and ancestral properties.

4. It is shown the genealogy in the plaint as below:



5. Plaintiff No.1-Bharamavva is the wife of Fakkirappa Thimmapur and plaintiff No.2 is the daughter of



plaintiff No.1 and Fakkirappa. Summons was issued to the defendants and defendant Nos.1 to 4 appeared through their respective Advocates but did not file written statement. Defendant Nos.7 and 8 have appeared through their Advocates and filed written statement. The defendants have not contested the suit and have not led any oral and documentary evidence. On behalf of the plaintiffs, plaintiff No.2 is examined as PW-1 and got marked documentary evidence as Exs.P-1 to P-7, which are RTC extracts.

6. The Trial Court has decreed the suit by granting half share in all the properties in favour of the plaintiffs. Further declared that the relinquishment deed stated to have been executed by defendant Nos.1 to 6 in favour defendant Nos.7 and 8 is not binding on the plaintiffs' share in the suit schedule properties.

7. Being aggrieved by the said judgment and decree, defendant Nos.2 to 6 have preferred a Regular Appeal before the First Appellate Court in R.A.No.10 of



2023. The First Appellate Court has also dismissed the appeal, confirming the judgment and decree passed by the Trial Court.

8. Being aggrieved by the concurrent finding of fact, defendant Nos.2 to 6 have preferred the instant regular second appeal by raising various grounds in the memorandum of appeal and submitted that there are substantial questions of law are involved.

9. Learned counsel for the appellants/defendant Nos.2 to 6 submitted that an application was filed before the First Appellate Court under Order XLI Rule 27 of CPC, but it was erroneously rejected by the First Appellate Court; therefore, prays to remand the matter to the Trial Court for fresh consideration.

10. Upon considering the records available at this stage, the defendants have received the summons and also engaged the services of Advocates, but defendant Nos.1 to 4 have not filed written statements though they engaged



services of Advocates. Defendant Nos.5, 6, 7(b) and 8(c), in spite of service of summons remained absent. Defendant Nos.7(a) and 8(a) and (b) have filed written statement through an Advocate; therefore, it is not as if the defendants did not know the suit proceedings in the Trial Court.

11. Upon considering the copy of application filed for production of additional evidence by the appellants/defendant Nos.2 to 6 before the First Appellate Court, the First Appellate Court is found to be correct that the additional documents are some voters' lists and that it is an attempt made by the defendants to show that plaintiff No.1 is the wife of Mahadevappa Bairikoppa.

12. Just because, plaintiff No.1-Bharamavva is shown as the wife of Mahadevappa Bairikoppa, that does not mean that the said Bharamavva Mahadevappa Bairikoppa is the same person as plaintiff No.1. There may be two persons having the common name of Bharamavva,



but upon considering the voters' list, the name shown in the voters' list is Bharamavva wife of Mahadevappa Bairikoppa. There is no other document to show that plaintiff No.1-Bharamavva has married another person as Mahadevappa Bairikoppa; therefore, the First Appellate Court has rightly dismissed the application filed for additional evidence. The defendants have woken up suddenly at this stage when the suit is filed for partition and separate possession by the plaintiffs stating that plaintiff No.1 is not the wife of Fakkirappa Thimmapur. If really, plaintiff No.1 is not the wife of Fakkirappa Thimmapur, then the defendants would have taken such plea at the earliest point of time, but defendants have woken up after filing the suit by the plaintiffs and are contending that plaintiff No.1-Bharamavva is not the wife of Fakkirappa Thimmapur, which shows the intention of the defendants to protract the matter on the guise of seeking remand of the case to the Trial Court. Even after considering the written statement filed by defendant



Nos.7(b) and 8(a) and (b), there is no pleading that plaintiff No.1-Bharamavva is not the wife of Fakkirappa Thimmapur.

13. But, on the other hand, it is pleaded in the written statement that during the lifetime of Fakkirappa and Siddappa, there was partition and this partition is known by the plaintiffs. Hence, from the written statement, it is also not proved that plaintiff No.1-Bharamavva is not the wife of Fakkirappa Thimmapur. Whereas, an inference could be drawn on the preponderance of probabilities that Bharamavva is the wife of Fakkirappa Thimmapur.

14. Therefore, when it is found that the landed properties and house properties are joint family and ancestral properties, what effort is being made by the defendants is to remand the case to the Trial Court for fresh consideration, even when the entire case is considered substantially and comprehensively and there is no illegality or perversity. Even if the case is remanded to the Trial Court, considering the admitted fact that the relationship of



the parties and also that the properties are joint family properties, the result would be the same. Hence, when the case is considered substantially, the consideration of the case on its substantial aspects prevails over considering the case on its technicality. Therefore, even if the case is remanded as above stated that would be only in a technical way, but the substantial justice is that the plaintiffs are entitled to half share in view of the relationship of the parties is not disputed.

15. Also considering that the original propositus is Basappa and in the absence of contra material that the defendants have purchased the suit properties, the house property is also to be considered as joint family property. Therefore, when the entire case is considered substantially, the decree passed by the Trial Court in granting half share in the suit schedule property is found to be correct, which is rightly confirmed by the First Appellate Court.



16. The suit is filed in the year 2012. At that time plaintiff No.1 was 70 years old. The Trial Court took 06 years 07 months 05 days in disposing of the suit. The record discloses that after four years the defendants preferred appeal before the First Appellate Court. The time taken for disposal of the Regular Appeal is 01 year 10 days. Therefore, now plaintiff No.1 is proved to be aged 86 years old considering the cause title of the plaint and once again if the case is remanded, then it may take a decade to decide the matter. Then in such an event the plaintiff No.1 would not get the fruit of the decree in her lifetime. Therefore, for the aforesaid reasons, having found no illegality in the judgment and decree passed by the Trial Court and the First Appellate Court and having found no merits in the case and there is no substantial questions of law involved for considering the second appeal, the appeal is liable to be dismissed. Accordingly it is dismissed at the admission stage itself.



17. In view of disposal of the appeal, pending interlocutory applications, if any, stand disposed of as they do not survive for consideration.

18. No order as to costs.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA Para: 1 to 14
MRK Para: 15 to end
CT-AN,
List No.: 1 SI No.: 4