



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE R.NATARAJ

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

REGULAR FIRST APPEAL NO.200051 OF 2014 (PAR/POS)
C/W.
RFA CROSS OBJ NO.200001 OF 2015

IN RFA No.200051/2014:

BETWEEN:

SHANKARLING S/O HANMANTAPPA TAKKA,
AGED ABOUT: 52 YEARS, OCC: AGRICULTURE,
R/O. NEELUR, TQ. AFZALPUR,
DIST. GULBARGA-585 102.

...APPELLANT

(BY SRI V.K. NAYAK, ADVOCATE)

AND:

1. SHIVASHARANAPPA S/O HANMANTAPPA TAKKA,
AGED ABOUT: 59 YEARS, OCC: AGRICULTURE,
R/O. NEELUR, TQ. AFZALPUR,
DIST. GULBARGA - 585 301.

2. CHANDERSHEKAR
S/O KASINATH RAO BHANDARI
AGED ABOUT: 47 YEARS, OCC: BUSINESS,
R/O. H.NO.1-866/A-6 BHAGWATI NAGAR,
M.S.K. MILLS ROAD,
GULBARGA - 585 102.

...RESPONDENTS

(BY SMT. MAYA T.R., ADVOCATE FOR R1;





NC: 2026:KHC-K:1967-DB
RFA No. 200051 of 2014
C/W RFA.CROB No. 200001 of 2015

SMT. VEERANI V. NANDI FOR SRI RAVI B. PATIL, ADVOCATE, FOR R2; AND
SRI MALLIKARJUNA C. BASAREDDY, AGA, FOR IMPEADING
RESPONDENT V/O DATED 19.03.2019)

THIS RFA IS FILED U/S 96 OF C.P.C, PRAYING TO SET ASIDE
THE JUDGMENT AND DECREE IN O.S. NO.112/2010 PASSED BY THE I
ADDL. SENIOR CIVIL JUDGE, GULBARGA, DATED 09.06.2014 ON
ADDITIONAL ISSUE NO.1 DATED 31.10.2013 BY ALLOWING THIS
APPEAL, DECLARING THAT APPELLANT IS ENTITLED TO HALF SHARE
IN ITEM NO.VIII OF THE SUIT PROPERTY, WITH COSTS
THROUGHOUT.

IN RFA.CROB NO.200001/2015:

BETWEEN:

SHIVASHARANAPPA S/O HANMANTAPPA THAKKA,
AGE: 60 YEARS, OCC: AGRICULTURE & BUSINESS,
R/O. NEELUR TQ.AFZALPUR- 585 301,
DIST. GULBARGA.

...CROSS OBJECTOR

(BY SMT. MAYA T.R., ADVOCATE)

AND:

1. SHANKARLING S/O HANMANTAPPA THAKKA,
AGE: 53 YEARS, OCC: AGRICULTURE,
R/O. NEELUR TQ. AFZALPUR- 585 301,
DIST. GULBARGA.
2. CHANDERSHEKHAR
S/O KASHINATH RAO BHANDARI,
AGE: 48 YEARS, OCC: BUSINESS,
R/O. H.NO.1-866/A/6, BHAGAWATI NAGAR,
MSK MILL ROAD,
GULBARGA- 585 102.

...RESPONDENTS

(BY SRI AYYANNA N.B., ADV. FOR R1;
SMT. VEERANI V. NANDI, FOR SRI. RAVI B. PATIL, ADVOCATE, FOR
R2)



NC: 2026:KHC-K:1967-DB
RFA No. 200051 of 2014
C/W RFA.CROB No. 200001 of 2015

THIS RFA CROB. IS FILED UNDER ORDER 41 RULE 22 OF C.P.C., PRAYING TO ALLOW THE CROSS-OBJECTION BY SETTING ASIDE, THE JUDGMENT AND DECREE DATED 09.06.2014 PASSED IN O.S. NO. 112/2010 BY THE I ADDL. SENIOR CIVIL JUDGE, GULBARGA, CONSEQUENTLY DISMISSING THE SUIT OF THE PLAINTIFFS WITH COSTS THROUGHOUT.

THIS APPEAL ALONGWITH RFA CROB. COMING ON FOR REPORTING SETTLEMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

RFA No.200051/2014 is filed by the plaintiff in O.S. No.112/2010 and RFA Crob. No.200001/2015 is filed by defendant No.1, challenging the judgment and decree dated 09.06.2014 passed by the I Additional Senior Civil Judge, Kalaburagi [for short 'Trial Court'].

2. The parties shall henceforth be referred as they were arrayed before the Trial Court.

3. (i) The suit in O.S. No.112/2010 was filed for partition and separate possession of the plaintiff's half share in



the suit schedule properties. The suit schedule properties are agricultural lands, situated in Neelur Village of Afzalpur Taluk and two house properties situate in Neelur and a house property situated in Bhagavati Nagar, Kalaburagi. The plaintiff claimed that the sale deed executed by defendant No.1 in favour of defendant No.2 in respect of the house property situated at Bhagavati Nagar in Kalaburagi is not binding upon him.

(ii) The plaintiff claimed that he and defendant No.1 are the children of Hanmantappa. The suit agricultural properties were owned and possessed by Hanmantappa and after his death, the plaintiff and defendant No.1 were cultivating jointly. Plaintiff claimed that there was no partition between him and defendant No.1 in respect of the suit properties, but the suit properties including the suit houses were commonly enjoyed by the plaintiff and defendant No.1. He claimed that out of the suit properties items No.1, 2 and 7 stood in the name of the defendant, while items No.3, 4 and 5 stood in the name of the plaintiff. Item No.6 stood in the name of the father of the plaintiff and defendant No.1. Plaintiff claimed that suit item



No.1 was owned and possessed by his mother and out of 6 acres 20 guntas of land, an extent of 3 acres was acquired by the State Government for Amarja Project and compensation of Rs.3,63,034/- was paid by the State Government on 22.06.2002. He claimed that the defendant had received the said compensation and did not share the same with him. Plaintiff filed objections and also an application in LAC No.350/2005 that was then pending before the Principal Senior Civil Judge (Sr.Dn.) Gulbarga, for enhancement of the compensation. Plaintiff claimed that he too was entitled to an equal amount of compensation for the acquisition of the aforesaid land. He claimed that after the death of his mother, the defendant No.1 got his name entered in respect of item No.1. He also claimed that the house properties bearing No.7-768 to 7-770, situated at Naya Mohalla, Mijaguri Chowk, Gunj Road, Kalaburagi, was purchased out of the joint income of the plaintiff and defendant No.1 in the name of their father in the year 1967-68. The said house was sold and from the sale proceeds, a house bearing No.1-866/A/6 situate at Bhagavati Nagar, Kalaburagi was purchased in the name of defendant No.1. The plaintiff claimed that defendant No.1 sold the said



house to defendant No.2 on 03.06.2009 in order to defeat the share of the plaintiff. The defendant No.2 being aware that the property belonged to a joint family had purchased the same in order to defeat the share of the plaintiff. The plaintiff claimed that he had earlier filed O.S. No.57/2006 for partition and separate possession before the Civil Judge (Jr.Dn.) at Afzalpur and during the pendency of the suit, the plaintiff revalued the suit property and as the valuation exceeded the pecuniary jurisdiction of the Court, the suit was dismissed with liberty to file a fresh suit on the same cause of action. The plaintiff therefore contended that he is entitled for half share in the suit properties and the sale deed executed by defendant No.1 in favour of defendant No.2 in respect of suit item No.8 as not binding upon him.

4. The suit was contested by defendant No.1, who claimed that the description of the suit properties was wrong and incomplete, as proper boundaries were not furnished in the suit. He therefore claimed that the plaint was defective and not in accordance with Order VII Rule 3 of CPC. He claimed that the suit properties were not cultivated by his father as the



owner and that after his death, plaintiff and defendant No.1 were cultivating. He also denied that the suit properties were ancestral properties of the plaintiff and defendant No.1. He claimed that the contentions of the plaintiff that there was no partition of the properties of the family was false. He also denied that the house properties described as items No.6, 7 and 8 were commonly enjoyed by the plaintiff and defendant No.1. He also denied that items No.1, 2 and 7 nominally stood in the name of defendant No.1, but contended that items No.3, 4 and 5 stood nominally in the name of the plaintiff. He admitted that House No.3-331 (item No.6) stood in the name of the father of the plaintiff and defendant No.1. He claimed that suit schedule property in Survey No.270/3 stood in the name of his mother and out of 6 acres 20 guntas, 3 acres were acquired by the State Government for Amarja Project and compensation of Rs.3,63,000/- was paid. He also admitted that he had received the said amount. He claimed that plaintiff is not entitled to any share in the compensation in view of the partition effected between him and the plaintiff in respect of the joint family properties. Therefore, he claimed that in view of the partition, plaintiff is not entitled to any share in the



compensation amount or the compensation that is enhanced in LAC No.350/2005. He contended that the application filed by the plaintiff for impleading him in LAC No.350/2005 was rejected.

5. He denied that properties bearing House No.7-768 to 7-770 situate at Naya Mohalla was purchased out of the joint income of the plaintiff and defendant No.1 in the name of defendant No.1. He denied the allegation that the house was sold and that out of the proceeds of the same, item No.8 was purchased in the name of the defendant. He claimed that both the houses mentioned above were his self acquisition and therefore the defendant No.1 was the absolute owner of the same. He claimed that the income of the joint family was not expended to purchase the above properties. He contended that the allegation of the plaintiff that item No.8 was sold to defendant No.2 to deny the share of the plaintiff as false. He contended that he had purchased item No.8 out of his own money earned from trading in food-grains and due to legal necessity and to clear of a huge debt taken for the treatment of plaintiff's illness, he sold item No.8 to defendant No.2. He



contended that in April-1985 there was an oral partition between the plaintiff and the defendant No.1 in the presence of some villagers and in the said partition, items No. 1, 7 and House No.3-38 were allotted to the share of the defendant No.1. He claimed that item No.1 was divided between the plaintiff and the defendant No.1, in terms of which, 3 acres of land on the eastern side was allotted to the share of the plaintiff and 3 acres 20 guntas of land was allotted to the share of the defendant No.1, out of which 3 acres was acquired by the State Government for Amarja Project. He claimed that in the said partition, item No.7 and a property bearing House No.3-38 were divided, in terms of which, House No.3-38 fell to the share of the plaintiff and suit item No.7 *i.e.* House No.3-39 fell to his share. He therefore contended that plaintiff has no share in the property bearing item No.7. He contended that the plaintiff had sold House No.3-38 that fell to his share to one Srimant and that he has not included that property in the suit but claimed partition illegally in item No.2 that fell to the share of defendant No.1. He contended that suit item No.2 was his self-acquisition, he having purchased it in terms of a sale deed dated 01.04.1959 from its previous owner - Chandawwa.



Therefore, he contended that the suit property was his exclusive property, where the plaintiff is not entitled for any share. Therefore, he claimed that suit items No.3, 4, 5, 6 and 7 are the joint properties and hence, the plaintiff and defendant No.1 are entitled to share therein. He claimed that suit No.8 was his exclusive property, which was sold to defendant No.2 for family and legal necessity. Thus he claimed that the suit for partition and separate possession is not maintainable. Based on these contentions, the Trial Court framed the following issues:

- "1. Whether plaintiff proves that, all the suit properties are available for partition and separate possession as they being joint family property ?*
- 2. Whether 1st defendant proves that, house bearing No.1-866/A/6 is the self acquired property and sold the same without legal necessities as alleged ?*

(Issue No.1 and 2 deleted and amended separately vide separate order dated 20.6.2013)

- 3. Whether he further proves that, in the year 1985 oral partition was effected between himself and plaintiff as stated in written statement para No.8?*
- 4. Whether he further proves that land bearing Sy.No.271/1 measuring 8 acres 24 guntas of Neelur*



is self acquired property, as he purchased the same through registered sale deed dated 1.4.1959 from one Smt. Chandawwa W/o Channappa ?

5. *Whether he further proves that suit is improperly valued and court fee paid is insufficient ?*
6. *Whether he further proves that suit is bad for non-inclusion of joint family house property bearing No.3-38 ?*
7. *Whether 2nd defendant proves that he is bonafide purchaser for value in respect of suit house property shown at Sl. No.8?*
8. *Whether plaintiff is entitle for relief as sought for ?*
9. *What order or decree ?*

Recasted issues dated 20.6.2013:-

1. *Whether the plaintiff proves that the suit schedule property is the ancestral property of the both the parties?*
2. *Whether 1st defendant proves that house bearing No.1-866/A/6 is his self-acquired property and the same has been sold for his legal necessities?*

Addl. Issues framed on 31.10.2013:-

1. *Whether the plaintiff proves that House No.7-768 to 7-770 has been purchased out of the joint income of*



plaintiff and defendant No.1 in the name of their father Sri Hanmanthappa in the year 1967-1968 ?

2. *Whether the defendant No.1 proves that he is the absolute owner of the House Nos.7-768 to 7-770 by virtue of registered sale deed dated 14.10.1968?"*

6. The plaintiff was examined PW1 and he marked Exs.P1 to P17. Defendant No.1 was examined as DW1 and also examined three witnesses as DW2, DW3 and DW4. and marked Exs.D1 to D27.

7. Based on the oral and documentary evidence, the Trial Court held that the plaintiff had proved that the suit properties were the properties of the joint family, where the plaintiff is entitled to an equal share. Consequently, decreed the suit in part and held that the plaintiff is entitled to half share in suit items No.1 to 7. However, *insofar* as item No.8 is concerned, it held that the said property was the absolute property of defendant No.1, which was conveyed to defendant No.2 and hence, denied the relief of partition in item No.8.

8. Being aggrieved by the said judgment and decree, the plaintiff is before this Court challenging the judgment and



decree in so far as it denies the share of the plaintiff in item No.8, while defendant No.1 has filed cross-objections challenging the said judgment and decree for granting half share in the suit schedule properties.

9. The learned counsel for the plaintiff submitted that plaintiff and the defendant No.1 have amicably settled the dispute insofar as item No.8 is concerned in terms of which the defendant No.1 has offered to pay a sum of Rs.5,00,000/- and therefore he would not press RFA No.200051/2014. The learned counsel for the cross objector on the other hand submits that the cross objector would not have any objection, if the appeal is disposed off directing that both the plaintiff and the defendant are entitled to equal share in item Nos.2 to 7.

10. Since the parties have already settled the dispute insofar as suit item No.8 is concerned and defendant No.1 has already received compensation in respect of 03 acres in suit item No.1, there is no substantial dispute between the plaintiff and the defendants as both the plaintiff and the defendants are consensus *ad idem* over the fact that both of them are entitled to an equal share in the remaining properties.



11. In that view of the matter, both these appeals are disposed off on the following terms :

- i) RFA No.200051/2014 is disposed off in view of settlement entered into between the appellant and the respondent No.1 in respect of item No.8 whereby plaintiff has received a sum of Rs.5,00,000/- towards his share in respect of item No.8. Consequently, the plaintiff shall not make any further claim insofar as item No.8 is concerned.
- ii) RFA CROB No.200001/2015 is also disposed off holding that the compensation received by the defendant No.1 in respect of 03 acres in item No.1 shall be allotted to his share and out of the balance of 03 acres 20 guntas, the plaintiff shall be entitled 03 acres 10 guntas while the defendant No.1 shall be entitled to the remaining 10 guntas.
- iii) So far as item Nos.2 to 7 are concerned, plaintiff and defendant No.1 are entitled to an equal share in the suit properties.



- iv) To this extent, the impugned judgment and decree passed by the I Additional Senior Civil Judge at Gulbarga in O.S.No.112/2010 dated 09.06.2014 is modified.
- v) Office is directed to draw a decree in terms of this order.

Sd/-
(R.NATARAJ)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE