IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JUNE, 2025

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

RFA NO. 200036 OF 2017
C/W
RFA NO. 200032 OF 2020

IN RFA NO.200036/2017
BETWEEN:

SMT. DEVAMMA
W/O NAGAPPA @ NAGANAGOUDA
AGED ABOUT 54 YEARS
OCC: AGRICULTURE
R/O K.HOSALLI VILLAGE
TQ: SINDHANUR
DIST: RAICHUR-584101

...APPELLANT

(BY SRI.RAVI B PATIL, ADVOCATE)

AND:

1. THIMMANAGOUDA
S/O RAMANGOUDA METI
AGED ABOUT 47 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
TQ: SINDHANUR, DIST: RAICHUR-584101

2. BASANAGOUDA
S/O RAMANGOUDA METI
AGED ABOUT 47 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
TQ: SINDHANUR, DIST: RAICHUR-584101

3. SMT. MAHANTHAMMA
W/O RAMANGOUDA METI
AGED ABOUT 77 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
TQ: SINDHANUR, DIST: RAICHUR-584101

4. SMT. LAXAMI
W/O BASAVARAJ SAHUKAR
AGED ABOUT 27 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
NOW R/O KURKUNDA VILLAGE
TQ: SINDHANUR, DIST: RAICHUR-584101

5. KUMARI SHARNAMMA
D/O RAMANGOUDA METI
AGED ABOUT 24 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
TQ: SINDHANUR, DIST: RAICHUR-584101

6. SMT. RATNAMMA
W/O DEVAREDDY METI
AGED ABOUT 28 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
NOW R/O HIRE KADABUR VILLAGE
TQ: SINDHANUR, DIST: RAICHUR-584101

7. KUMAR MALLIKARJUN
S/O DEVAREDDY METI
AGED ABOUT 10 YEARS
SINCE MINOR, REP. THROUGH HIS
NATURAL MOTHER SMT. RATNAMMA

…RESPONDENTS

(BY SRI.MAHANTESH PATIL, ADVOCATE FOR R1 TO R5;
V/O DATED: 08.11.2017 NOTICE TO R6 D/W;
R7 IS SERVED)

THIS RFA IS FILED U/S 96 OF CPC, AGAINST THE JUDGMENT AND DECREE PASSED BY THE COURT OF SENIOR CIVIL JUDGE & JMFC AT SINDHANUR IN O.S.NO.130/2014

(OLD NO.67/2011) DATED: 31.08.2016 AND CONSEQUENTIALLY ALLOW THE PRESENT APPEAL BY DECREEING THE SUIT OF THE APPELLANT IN ENTIRETY.

IN RFA NO.200032/2020
BETWEEN:

1. SMT. DEVAMMA
W/O NAGAPPA @ NAGANGOUDA
AGED ABOUT 54 YEARS
OCC: AGRICULTURE
R/O K.HOSALLI VILLAGE
TQ. SINDHHANUR, DIST. RAICHUR

2. SMT. YANKAMMA
SINCE DECEASED
REP. THROUGH APPELANT NO.1

...APPELLANTS

(BY SRI.RAVI B PATIL, ADVOCATE)

AND

1 . THIMMANAGOUDA
S/O RAMANGOUDA METI
AGED ABOUT 47 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
TQ. SINDHANUR, DIST. RAICHUR

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S/O RAMANGOUDA METI
AGED ABOUT 47 YEARS
OCC: AGRICULTURE
R/O K.HOSAHALLI VILLAGE
TQ. SINDHANUR, DIST. RAICHUR

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W/O RAMANGOUDA METI
AGED ABOUT 77 YEARS
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TQ. SINDHANUR, DIST. RAICHUR

7 . KUMAR MALLIKARJUN
S/O DEVAREDDY METI
AGED ABOUT 10 YEARS
SINCE MINOR, REP. THROUGH HIS NATURAL MOTHER
SMT. RATNAMMA

…RESPONDENTS

(BY SRI.MAHANTESH PATIL, ADVOCATE FOR R1 TO R5;
V/O DATED: 20.02.2020 NOTICE TO R6 IS D/W)

THIS RFA IS FILED U/S 96 OF CPC, AGAINST THE JUDGMENT AND DECREE PASSED BY THE COURT OF SENIOR CIVIL JUDGE AT SINDHANUR IN O.S.NO.193/2014 DATED: 31.08.2016 AND CONSEQUENTIALLY ALLOW THE PRESENT APPEAL BY DISMISSING THE SUIT OF THE RESPONDENT NOS.1 TO 5 AND ETC.,

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.02.2025 AND COMING ON FOR

PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MS JUSTICE J.M.KHAZI

CAV JUDGMENT
(PER: HON'BLE MS JUSTICE J.M.KHAZI)

In these two Regular First Appeals, plaintiffs in O.S.No.130/2014, who are defendants in O.S.No.193/2014 have challenged the dismissal of their suit filed for partition and separate possession of half share in the suit schedule properties and grant of decree for relief of permanent injunction against them.

2. For the sake of convenience, parties are referred to by their ranks before the trial Court, in O.S.No.130/2014.

3. One Basanna @ Basanagouda and Ramana Gowda were true brothers. Plaintiff are respectively the daughter and wife of Basanna @ Basanagouda. Defendant No.3 is the wife, defendant Nos.1, 2, 4, 5 and Devareddy Meti are the children of Ramanagowda. Defendant No.6 is the wife and defendant No.7 is the Son of Devareddy Meti.

Plaintiffs and defendants constitute a Hindu joint family and suit schedule properties are their ancestral and joint family properties. Both Basanna @ Basanagouda and Ramanagouda are no more. Devareddy Meti also died in 2006. Plaintiffs are having half share in the suit schedule properties. Of late they could not continue to live jointly and therefore plaintiffs demanded their share, but defendants flatly refused and hence the suit.

4. Defendants appeared through counsel and filed written statement, admitting the relationship between the parties. However, they have denied that plaintiffs and defendants constitute a joint family and suit properties are their joint family properties. They have specifically pleaded that during 1954–55, partition has taken place between Basanna @ Basanagouda and Ramanagouda.

5. In the said partition in Sy.No.127/A, 11 acres 35 guntas, in Sy.No.187/A, 13 acres 35 guntas, in Sy.No.186/A, 6 acres 30 guntas and in Sy.No.202, 5 acres 10 guntas fell to the share of Basanna @ Basanagouda.

6. Similarly in the said partition in Sy.No.127/A, 11 acres 36 guntas, in Sy.No.187/A, 11 acres 39 guntas, in Sy.No.186/A, 6 acres 34 guntas and in lieu of land in Sy.No.202, the family residential house fell to the share of Ramanagouda.

7. Since from the time of partition, plaintiffs and defendants got mutated migrated properties fallen to their share and are living separately. In fact, they have borrowed loan on the basis of the properties fallen to their share and dealt with them independently. Plaintiff No.2 has sold land in Sy.No.187/A to an extent of 3 acres 10 guntas to one Palayya. Out of love and affection, plaintiff No.2 has relinquished her right over Sy.No.187/A measuring 10 acres 25 guntas in favour of defendant No.1 and since then he is in possession and enjoyment of the same. In 1982–83, Ramanagouda sold 3 acres 10 guntas in Sy.No.187/A through registered sale deed. After the said sale, defendant Nos.1 to 7 are joint owners and possessor of 10 acres 29 guntas in Sy.No.187/A.

8. During the year 2000, Ramana Gowda has purchased 2 acres 20 guntas in Sy.No.187/2 in the name of his wife, i.e, defendant No.3 Mahanthamma out of his self acquisition. House plot Nos.19 and 20 shown in serial No.6 of the plaint are purchased by Ramanagouda out of his self acquisition, in the name of defendant No.1 and Late Devareddy Meti. In fact, plaintiff No.1 is married in a very well to do family. However, they are high handed, preventing defendants from enjoying the properties fallen to their share and also acquired through their self acquisition and sought for dismissal of the suit.

9. Defendants filed O.S.No.193/2014 against the plaintiffs alleging illegal interference in respect of the properties, fallen to their share and also the properties acquired through self acquisition.

10. Of course, plaintiffs filed written statement reiterating the plaint averments and sought for dismissal of the suit filed against them.

11. Based on the pleadings, the trial Court has framed issues.

12. In O.S.No.130/2014, on behalf of plaintiffs, 3 witnesses are examined as PWs-1 to 3 including plaintiff No.1. Ex.P1 to 25 are marked. On behalf of defendants, 3 witnesses are examined as DWs-1 to 3 including defendant No.1. Exs.D1 to 52 are marked.

13. In O.S.No.193/2014, defendant No.1 is examined as PW-1 and Ex.P1 to 7 are marked.

14. By virtue of the orders passed on I.A.13, both suits were clubbed together and disposed off by common judgment.

15. The trial Court dismissed O.S.No.130/2014, which was a suit filed by plaintiffs for partition and decreed the suit in O.S.No.193/2014, which was a suit filed by the defendants for permanent injunction.

16. Aggrieved by the judgment and decree passed in both suits, plaintiffs have come up with these Regular First Appeals, contending that the same suffers from serious regularities and there is no application of judicial mind. They are not sustainable in law or on facts. The trial Court has proceeded in a mechanical manner without appreciating case put forth by the plaintiffs and their defence in the other suit. The trial Court has not appreciated the oral and documentary evidence placed on record in right perspective and as such its findings are perverse. It has wrongly relied upon Ex.D15 to hold that plaintiff No.2 has relinquished her right in respect of Sy.No.187/A measuring 10 acres 25 guntas mearly on the basis of mutation entry. Viewed from any angle, the impugned judgments and orders are not sustainable and liable to be interfered with.

17. On the other hand, learned counsel appearing for defendants supported the judgment and decree passed by the trial Court. He would submit that in the light of the

oral and documentary evidence placed on record, the trial Court has rightly held that partition has taken place during the lifetime of Basanna @ Basanagouda and Ramanagouda and the same was acted upon by all the parties. They have enjoyed the suit schedule properties separately and have also availed loan. They have also disposed of some of the properties and acquired new properties. In the light of the same, the trial Court has rightly refused to grant decree for partition and also restrained the plaintiffs from interfering with the properties, fallen into the share of defendants and sought for dismissal of the appeal.

18. In support of his arguments, learned counsel for respondents have relied the following decisions:

(i) Ram Swaroop & Ors. Vs. Mahindru and Ors. (***Ram Swaroop***)[1]

(ii) Chairman State Bank of India and Anr. Vs. M.J.James (***M.J.James***)[2]

(iii) B.L.Shreedhar and Ors. Vs. Km.Muni Reddy (dead) and Anr. (***Shreedhar***)[3]

[1] *(2003) 12 SCC 436*
[2] *(2022) 2 SCC 301*

19. Heard arguments of both sides and perused the record.

20. Thus plaintiffs are claiming partition of half share in the suit schedule properties contending that plaintiffs and defendants constitute a Hindu joint family and suit properties are their ancestral and joint family properties. Defendants admit the blood relationship between them and have claimed that partition has taken place as long back as during 1954-55 and the parties have acted upon the partition. They have alleged that after the marriage of plaintiff No.1 in a very well to do family, plaintiffs are preventing defendants from enjoying the properties fallen to their share and accordingly they have sought for permanent injunction. Of course, presumption is that the family is joint, unless the contrary is proved and the burden is on the defendants to establish that already partition has taken place and the respective shares are being enjoyed separately.

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[3] *(2003) 2 SCC 355*

21. Though PWs-1 to 3 have denied the suggestion that already a partition has taken place, PW-1 has admitted that Khata of the respective properties have been changed and separate pahani is made out. PW-1 has stated that about 10–12 years of the death of her father, her mother left the matrimonial home. PW-1 has claimed that she remained with the defendants, having regard to the fact that she was only 15 years old, it is doubtful whether plaintiff No.2 allowed her to remain with defendants when her relationship with them had become stained, forcing her to leave the matrimonial home. However, plaintiffs have not produced any evidence to establish that even after plaintiff No.2 left the matrimonial home, plaintiff No.1 - PW1 stayed back.

22. When suggested that her mother has sold 3 acres in Sy.No.187/A, PW-1 has admitted the said fact, but claimed that it is sold by all of them. But plaintiffs have not produced any document to show that the said alienation was made by all the parties to the suit. PW-1

has admitted that 5 acres of suit schedule properties standing in her name and she has secured loan on it. She expressed ignorance to the suggestion that defendant No.1 Ramanagouda has availed loan on 10 acres fallen to his share. She has admitted that Ramanagouda has purchased land in the name of his son and wife, but volunteer that it is purchased by all. When suggested that plaintiff No.2 out of love and affection has transferred Khatha of 10 acres of land in the name of defendant No.1, PW-1 has stated that she came to know about it after dispute arose between them. However, she has not taken any steps to get the same re-transferred to the name of plaintiff No.2.

23. The admission given by PW-1 establish the fact that she was married in a well off family having around hundred acres of land. After the marriage, she and her husband stayed with her mother to take care of properties fallen to the share of plaintiffs, though PW-1 has claimed that she came back to Hosahalli as it was better suited to

her than Chikkaberige where she was married. She has also admitted that plaintiff No.2 has sold 3 acres of suit schedule property, but claimed that it was sold by all of them. She has also admitted that during 1982–83, her mother has sold 3 acres 10 guntas to one Padmavati and in all 6 acres of land is sold. PW-1 has also admitted that before the suit was filed, a Panchayat was held and they were advised to enjoy the properties as per the division between them. PW-1 has claimed that her mother i.e., plaintiff No.2 has executed a Will in her favour. She has denied that in the said Will the properties fallen to the share of defendant No.1 are not included. However, the plaintiffs have not chosen to produce the said will.

24. Defendant No.1 who is examined as DW-1 has reiterated that already partition has taken place and they are enjoying the property separately by availing loan and also some of the properties are alienated and new properties have been acquired as per the partition. Khatha has been changed. Off late after plaintiff No.1 is married,

at the instance of the son of plaintiff No.1 and members of her matrimonial family interference is being made. The villagers are not ready to mediate as they are not ready to face the high handed attitude of the son of plaintiff No.1.

25. It is pertinent to note that DW-2 Mahantamma is defendant No.3. She is no other than the real sister of plaintiff No.2. They have married real brothers. She has clearly deposed with regard to the partition that has taken place in the family. Speaking with regard to the interference, she has deposed that since defendant No.1 is very mild person, plaintiffs at the instance of members of matrimonial family of plaintiff No.1 are acting in a high handed manner and preventing defendants from enjoying the properties fallen to their share.

26. Perusal of the oral and documentary evidence placed on record clearly indicate that already a partition has taken place in the family and the parties are enjoying their properties separately. As per the said partition and Khatha and RTC are also changed. In fact, both parties

have alienated number of properties fallen to their shares. They have also acquired separate properties. After getting support from the members of the matrimonial home of plaintiff No.1, plaintiff started demanding share in the suit schedule properties and also caused interference to the defendants in enjoying the properties fallen to their share. The trial Court after appreciating the oral and documentary evidence by both parties has rightly dismissed the suit filed by the plaintiffs for partition and decreed the suit filed by defendants for permanent injunction. The findings given and conclusions arrived at by the trial Court is consistent with the evidence. This Court finds no perversity calling for interference. In the result, both appeals are failed and accordingly the following:

ORDER

(i) Appeals filed by the plaintiffs under Section 96 of C.P.C are hereby dismissed.

(ii) The impugned judgment and decree dated 31.08.2016 in O.S.Nos.130/2014 and

193/2014 on the file of Senior Civil Judge, Sindhanur and judgment and decree is confirmed.

(iii) The Registry is directed to send back the entire court records along with copy of this judgment.

Sd/-
(J.M.KHAZI)
JUDGE

RR