IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

DATED THIS THE 03RD DAY OF JUNE, 2025

BEFORE

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

RSA NO. 7451 OF 2013 (PAR)

BETWEEN:

1. POORNACHANDRA
S/O DATTU PAWAR
AGE: 13 YEARS, OCC: NIL

2. BASAVARAJ
S/O DATTU PAWAR
AGE: 11 YEARS, OCC: NIL

3. MANJUNATH
S/O DATTU PAWAR
AGE: 9 YEARS, OCC: NIL

4. SMT. BEBIBAI
W/O DATTU PAWAR
AGE:32 YEARS, OCC: HOUSEHOLD
PRESENT ALL R/O BALURAGI VILLAGE
TQ: AFZALPUR, DIST: GULBARGA
(APPELLANT 1 TO 3 ARE MINORS
UNDER GUARDIAN OF THEIR NATURAL
MOTHER APPELLANT NO.4)

...APPELLANTS

(BY SRI.GANESH NAIK, ADVOCATE)

AND:

1. SMT. AMBUBAI
W/O DHANSING PAWAR
AGE: 66 YEARS, OCC: HOUSEHOLD

2. GURUNATH
S/O DHANSING PAWAR
AGE: 51 YEARS, OCC: AGRICULTURE

3. SMT. KAMALABAI
D/O DHANSING PAWAR
W/O GURUNATH

4. DATTU
S/O DHANSING PAWAR
AGE: 41 YEARS, OCC: TEACHER/AGRICULTURE

ALL R/O GOBBURWADI, TQ: AFZALPUR - 585301
DIST: GULBARGA

5. SMT. SAKKUBAI
D/O DHANSING PAWAR
W/O MOHAN
R/O CHOUDAPUR, TQ: AFZALPUR-585301
DIST: GULBARGA

6. LIMBAJI
S/O DHANSING PAWAR
AGE: 41 YEARS, OCC: AGRICULTURE
R/O GOBBURWADI, TQ: AFZALPUR-585301
DIST: GULBARGA

…RESPONDENTS

(BY SRI.B C JAKA, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 14.03.2011 IN O.S.NO.61/2011 PASSED BY THE LEARNED CIVIL JUDGE (JR.DN) AFZALPUR AND JUDGMENT AND DECREE DATED 17.8.2013 IN R.A.NO.79/2012 PASSED BY THE SENIOR CIVIL JUDGE AT AFZALPUR AND FURTHER DECREE THE SUIT OF THE PLAINTIFF.

THIS RSA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.02.2025 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 this Regular Second Appeal, the plaintiffs have challenged concurrent findings of the trial Court and First Appellate Court, which dismissed the suit filed by them seeking partition and separate possession of 1/4th share in suit schedule properties.

2. For the sake of convenience, parties are referred to by their ranks before the trial Court.

3. It is the case of the plaintiffs that they are the children and wife of defendant No.4 Dattu Pawar. Suit schedule properties consisting of an agricultural land and a residential house originally belong to one Rupalu S/o Bhavani Singh, forefather of plaintiff Nos.1 to 3. Defendants 1 to 6 are the wife and children of Dhansing, the paternal grandfather of plaintiff Nos.1 to 3. The marriage of plaintiff No.4 and defendant No.4 Pawar was performed about 13 years back and through their wedlock, plaintiff Nos.1 to 3 are born. However, defendant No.4 married another woman and the plaintiffs were driven out

of their house. Defendants refused to grant legitimate share of plaintiff Nos.1 to 3 and hence the suit.

4. Though duly served with summons, the defendants failed to file written statement.

5. In order to prove their case, on behalf of plaintiffs, plaintiff No.4 is examined as PW-1 and Exs.P1 to 4 are marked.

6. The trial Court dismissed the suit by holding that plaintiffs have failed to establish that defendant No.4 Dattu Pawar is the successor of Rupala, in whose property the plaintiffs sought share.

7. Aggrieved by the same, plaintiffs approached the First Appellate Court in RA.No.79/2012.

8. However, the First Appeal also came to be dismissed, upholding the judgment and decree of the trial Court.

9. Thus, in this Regular Second Appeal plaintiffs have challenged the concurrent findings of trial Court and the First Appellate Court, contending that the judgment and decree of trial Court as well as the First Appellate Court is

arbitrary, contrary to the law, facts and evidence placed on record. The reasons assigned by the Courts below for dismissing the suit is not cogent and convincing. Their findings that Rupalu has already partitioned family properties and therefore plaintiffs have failed to prove that suit properties are joint family properties is not correct. As per Ex.P1, the share of the grandfather of plaintiff Nos.1 to3 was directly transferred to the name of defendant No.2. In the absence of defendants filing written statement, the entire case of the plaintiffs has remained unchanged. Such being the case, both Courts below have committed grave error in dismissing the suit and hence, this appeal.

10. On 28.08.2024, the appeal is admitted on the following substantial question of law:

> *"(i) Whether the Trial Court and the First Appellate Court were justified in holding that the suit for partition is not maintainable on the premise that partition has already taken place in the family of the plaintiffs and the defendants?"*

11. Heard arguments and perused the record.

12. According to the plaint averments plaintiff Nos.1 to 3 are the children and plaintiff No.4 is the wife of

defendant No.4 Dattu S/o Dhansing Pawar. Suit schedule properties originally belong to their ancestor Rupalu, S/o Bhavani Sing. His son Dhansing was the grandfather of plaintiff Nos.1 to 3. In that view of the matter, plaintiff Nos.1 to 3 are entitled for partition and separate possession of 1/4th share in the suit schedule properties by not filing written statement, defendants very cleverly have remained silent regarding there relationship with the plaintiffs. Therefore, it is necessary for the plaintiffs to prove that they are the children and wife of defendant No.4 Dattu S/o Dhansing Pawar and who in turn is the son of Rupalu S/o Bhavani Sing. Unless and until plaintiffs establish their relationship with Rupalu s/o Bhavani Sing, they cannot claim that Suit Schedule Properties are their ancestral and joint family properties. Except the self-serving statement of plaintiff No.4, there is no evidence led by the plaintiffs to prove their relationship with Rupalu S/o Bhavani Sing through whom they are claiming share in the suit schedule properties.

13. Plaintiffs have relied upon Ex.P1, which is a Mutation register extract. As per this document one Rupalu, S/o Bhavani Sing has given an application to transfer the Khata in the name of his children Gurunath, Jainabai, Santhosh, Laxman, Mansing and Chandu. The name of grandfather of plaintiff Nos.1 to 3 does not find place as one of the children of Rupalu, whom plaintiffs' claim to be their ancestor. Except this document, plaintiffs have not produced any documents to prove their relationship with Rupalu. They have also not chosen to examine any of the relatives of defendants to prove that they are the children of defendant No.4, who in turn is the grandson of Rupalu.

14. Such being the case, despite the fact that defendants have not filed written statement disputing the claim of the plaintiffs, they have failed to prove that they are the descendants of Rupalu and entitled for share in the suit schedule properties. The trial Court as well as the First Appellate Court have rightly refused to grant partition. In the light of the same, the substantial question of law framed

does not survive for consideration, and the second appeal is also liable to be dismissed and accordingly the following:

ORDER

1. Appeal filed by the plaintiffs under Section 100 of C.P.C is hereby dismissed.
2. The impugned judgment and decree dated 14.03.2011 in O.S.No.61/2011 on the file of Civil Judge (Jr.Dn.) at Afzalpur and judgment and order dated 17.08.2013 in RA.No.79/2012 on the file of Senior Civil Judge at Afzalpur are confirmed.
3. The Registry is directed to send the trial Court as well as First Appellate Court records along with copy of this judgment forthwith.

In view of disposal of the appeal, pending application/s, if any, stands disposed off, as no separate order is required.

Sd/-
(J.M.KHAZI)
JUDGE

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