

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

R

REGULAR SECOND APPEAL NO.1977/2021 (PAR/INJ)

BETWEEN:

- 1 . MUNIYAPPA
SINCEA DECEASED BY HIS LRS
- 1(a) SMT. MUNIRATHNAMMA
W/O MUNISIDDAPPA
D/O LATE R.M.MUNIYAPPA
AGED ABOUT 51 YEARS
R/AT WARD NO.22
C.B.PURA GARDEN
CHIKKABALLAPUR.
- 1(b) SRI. GANGADHARA R.M.
S/O LATE R.M.MUNIYAPPA
AGED ABOUT 48 YEARS
- 1(c) SRI. NARAYANASWAMY R.M.
S/O LATE R.M.MUNIYAPPA
AGED ABOUT 44 YEARS
- 1(d) SRI. DEVARAJA R.M.
S/O LATE R.M.MUNIYAPPA
AGED ABOUT 42 YEARS
- 1(e) SRI. BEERESHA R.M.
S/O LATE R.M.MUNIYAPPA
AGED ABOUT 38 YEARS

LR NO.1(b) TO 1(e) ARE
R/AT K.K.PET, GOWDARA BEEDI
SIDDLAGHATTA, WARD No.3
CHIKKABALLAPURA DISTRICT.

- 1(f) SMT. KALPANA
W/O KEMPAIAH
D/O LATE R.M.MUNIYAPPA
AGED ABOUT 36 YEARS
R/AT HEEREHALLI
BIDARAHALLI HOBLI
K.R.PURA TALUK
BENGALURU.

... APPELLANTS

(BY SRI. VISWANATHA SHETTY V., ADVOCATE)

AND:

- 1 . MUNIYAMMA
W/O NARAYANAPPA R.M.
AGED ABOUT 82 YEARS
R/AT AVATI VILALGE
DEVANAHALLI TALUK-562 110
BENGALURU RURAL DISTRICT.
- 2 . SMT. JAYAMMA
W/O KRISHNAPPA
AGED ABOUT 59 YEARS
R/AT DEVAGANAHALLI VILLAGE
JANGAMAKOTE HOBLI,
SIDLAGHATTA TALUK-562 105
CHIKKABALLAPUR DISTRICT.
- 3 . SRI. MUNIRAQJU
S/O LATE CHIKKANNA
AGED ABOUT 58 YEARS
R/AT AVATI VILALGE

DEVANAHALLI TALUK-562 110
BENGALURU RURAL DISTRICT.

... RESPONDENTS

(BY SRI. SURESH S. LOKRE, SENIOR COUNSEL A/W.
SRI. SHRAVAN S. LOKRE, ADVOCATE FOR C/R1 AND R2;
R3 - SERVED AND UNREPRESENTED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 13.08.2021 PASSED IN R.A.NO.89/2017 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHICKBALLAPURA, SITTING AT CHINTAMANI. DISMISSED THE APPEAL AND CONFIRMED THE JUDGMENT AND DECREE DATED 29.05.2017 PASSED IN O.S.NO.92/2003 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, SIDLAGHATTA.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.06.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard learned counsel for the appellants and learned counsel for caveator-respondent Nos.1 and 2.

2. This regular second appeal is filed challenging the concurrent judgment and decree passed in O.S.No.92/2003 and R.A.No.89/2017 in coming to the conclusion that Narayanappa R.M., who is the husband of plaintiff No.1 is the son of Doddamarappa.

3. The factual matrix of the case of plaintiff No.1 Smt. Muniyamma is that she is the wife of deceased Narayanappa R.M. and plaintiff No.2 is the daughter of plaintiff No.1 and Narayanappa R.M. and claimed the relief of partition of half share in respect of the suit schedule properties. The case of the plaintiffs is that deceased Narayanappa R.M. is brother of defendant No.1. The suit schedule properties also belong to Narayanappa R.M. and hence, they are having share in the suit schedule properties and the properties are joint family properties of Narayanappa R.M. and defendant No.1 and also the mother of defendant No.2-Smt. Muniyamma.

4. The defendant No.1 appeared and filed the written statement denying the contention of the plaintiffs and contend that Narayanappa R.M. is not the brother and himself and one Smt. Muniyamma are the only son and daughter of deceased Doddamarappa. The said Smt. Muniyamma got married 40 years ago and she is living with her husband and his father died in the year 1976 and plaintiffs are nowhere related with the defendant and his family.

5. The Trial Court taking note of pleading of both the parties, framed the following issues and additional issues:

"ISSUES

1. *Whether the plaintiff proves that the suit schedule properties are the joint family properties of her deceased husband and defendant?*
2. *Whether the defendant prove that the deceased R.M. Narayanappa, who is the husband of plaintiff, is not his own brother?*
3. *Whether the suit is bad for mis-joinder of necessary parties?*
4. *Whether the defendant further proves that this Court has no pecuniary jurisdiction to try the suit?*
5. *Whether the plaintiff is entitled her half share in the suit schedule properties?*
6. *What order of decree?*

ADDITIONAL ISSUE

1. *Whether plaintiff proves that she is the daughter-in-law of deceased Doddamarappa, who is the father of defendant, further proves that she is the legally wedded wife of deceased Narayanappa?"*

6. The plaintiffs in order to prove their case, they examined the witnesses as P.Ws.1 to 5 and got marked the documents as Exs.P1 to P7. On the other hand, the defendant No.1 examined himself as D.W.1 and examined other two witnesses as D.Ws.2 and 3 and got marked the document of certified copy of partition dated 30.08.1971 as Ex.D1, certified copy of registered sale deed dated 20.05.1963 as Ex.D2 and certified copy of RTC Extracts as Exs.D3 and D4.

7. The Trial Court having analyzed both oral and documentary evidence placed on record, particularly considered the evidence of P.W.4, who is the sister of defendant No.1, who comes and deposes before the Court that Narayanappa R.M. is her brother along with defendant No.1. The Trial Court accepted the her case and answered issue No.1 and additional No.1 as 'affirmative' and issue No.2 as 'negative and comes to the conclusion that suit schedule properties are joint family properties of her husband and defendants and the contention of the plaintiff that Narayanappa R.M. is not her brother is

answered as 'negative' and consequently, granted the relief of partition.

8. Being aggrieved by the judgment and decree, an appeal is filed before the First Appellate Court in R.A.No.89/2017. The First Appellate Court also concurred with the conclusion of the Trial Court and accepted the evidence of P.W.4 and also the evidence of P.W.1 and dismissed the appeal. Hence, the present second appeal is filed before this Court.

9. This Court having considered the grounds urged in the second appeal and also hearing learned counsel for the appellants and learned counsel for caveator-respondent Nos.1 and 2, framed the following substantial question of law which reads as hereunder:

"Whether both the Courts below have committed an error in construing the evidence of P.W.4?"

10. Learned counsel for the appellants would vehemently contend that Ex.D2 sale deed dated 20.05.1963 is very clear that very Doddamarappa sold the property in the year 1963,

wherein he has mentioned that defendant No.1 is minor and while selling the property on behalf of minor son also, executed the sale deed. If really the said Narayanappa R.M. was the son of Doddamarappa, he ought to have joined as one of the vendor of the said property and when the father had taken care of the minor son and also executed the sale deed on behalf of the minor, the same is made with an intention to protect the interest of the prospective purchaser. Hence, it is clear that Narayanappa R.M. was not his son and his name was not found in the said sale deed and the documentary evidence of Ex.D2 was not relied upon by both the Courts, instead relied upon the evidence of P.W.4, who is the sister of defendant No.1, who comes and deposes before the Court that Narayanappa R.M. is also her brother.

11. Having gone through the evidence of P.W.4, her evidence cannot be relied upon and construed as an evidence and she categorically deposed that she is not aware of the marriage of Narayanappa R.M. and even about date of her marriage. Learned counsel also would vehemently contend that

when P.W.4 says that Narayanappa R.M. also studied in a school and plaintiff ought to have placed on record school records before the Court to show that Narayanappa R.M. is son of Doddamarappa and not placed any documents before the Court. Learned counsel would vehemently contend that plaintiff No.1 is examined as P.W.1, P.W.2 is brother of plaintiff No.1 and husband of P.W.4. Hence, it is clear that P.W.4 supported the case of P.W.1, since P.W.2 is the brother of P.W.1 and the fact that all of them are interested witnesses have not been taken note by both the Courts. Learned counsel also would vehemently contend that when the plaintiff has not produced any school documents of Narayanappa R.M. and also the school document of P.W.2, only on the say of P.W.4, both the Courts have accepted the case of the P.W.4, excluding the documentary evidence. Learned counsel would further contend that oral evidence excludes the documentary evidence and both the Courts committed an error in accepting the evidence of P.W.4. Learned counsel would vehemently contend that this Court has frame the issue regarding validity of evidence of P.W.4 and evidence of P.W.4 cannot be accepted.

12. Per contra, learned counsel for the caveator-respondent Nos.1 and 2 would vehemently contend that evidence of P.W.2 and P.W.4 is clear that husband of plaintiff No.1 is the brother of P.W.4 and P.W.2 is the husband of P.W.4. Learned counsel would vehemently contend that when the document of Ex.D2 was placed on record, not examined the purchaser of the said sale deed. Hence, document of Ex.D2 has not been accepted by both the Trial Court and the First Appellate Court. Learned counsel would vehemently contend that defence was taken by the plaintiffs that not included the daughter of Doddamarappa and the suit is bad for non-joinder of necessary parties and the High Court, when challenge was made, directed to make the sister of defendant No.1 as well as daughter of plaintiff No.1 as parties to the proceedings. Learned counsel would vehemently contend that substantial question of law framed by this Court is in respect of fact and not in respect of question of law and hence, question of considering the second appeal does not arise. Learned counsel further contends that both the Courts held that P.W.4 is the daughter of Doddamarappa and her evidence was accepted and though

relationship is disputed, having considered the evidence of plaintiffs' witnesses, the Trial Court rightly comes to the conclusion that relationship is established and defendants failed to prove their contention.

13. Learned counsel for the caveator-respondent Nos.1 and 2, in support of his contention, relied upon the judgment of the Apex Court in **SUKHDEV SINGH VS. MAHARAJA BAHADUR OF GIDHAUR** reported in **1951 SCC 408** and brought to notice of this Court paragraph No.20, wherein the Apex Court has held that the statement in the District Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is compiled by experienced officials with great care after obtaining the facts from official records and further observed that there are a few inaccuracies in the latter part of the statement quoted above, but so far as the earlier part of it is concerned, it seems to derive considerable support from the documents to which reference has been made.

14. In reply to this argument of learned counsel for caveator-respondent Nos.1 and 2, learned counsel for the

appellants would vehemently contend that the plaintiffs relied upon document Ex.P6 and the same cannot be believed and there is no document to prove the fact that Narayanappa R.M. is son of Doddamarappa is placed on record and the findings of the Trial Court on issue No.1 and additional issue No.1 is erroneous and even though the plaintiffs not proved the same, the Trial Court answered the same as 'affirmative'. Learned counsel would vehemently contend that when the plaintiffs claim that Narayanappa R.M. is son of Doddamarappa, plaintiffs stand on their own legs and not on the weakness of the defendants and contend that they have not challenged Ex.D2 and now cannot dispute the document of Ex.D2.

15. In reply to this argument of learned counsel for the appellants, learned counsel for the caveator-respondent Nos.1 and 2 contend that Ex.P6 RTC Extract is clear that name of Narayanappa R.M. is found and P.W.4 daughter of Doddamarappa has supported the case and the same has been accepted by the Trial Court and the First Appellate Court.

16. Having considered the grounds urged in the second appeal as well as oral submission of learned counsel for the appellants and learned counsel for the caveator-respondent Nos.1 and 2 and also keeping in view the substantial of law framed by this Court, this Court has to analyze the material available on record. Admittedly, suit is filed for the relief of partition and separate possession claiming half share in the suit schedule properties. It is also the claim of the plaintiff No.1 that her husband Narayanappa R.M. is the son of Doddamarappa. It is her claim that Doddamarappa is having two sons i.e., her husband and defendant No.1 and also a daughter Smt. Muniyamma. In order to prove the factum that her husband is son of Doddamarappa, not placed any documentary evidence. The plaintiffs relied upon only the oral evidence of P.Ws.1 to 5. P.W.1 is plaintiff No.1, P.W.2 is the husband of P.W.4 and P.Ws.3 and 5 are other two witnesses. On the other hand, the defendant No.1 examined himself as D.W.1 and examined two witnesses as D.Ws.2 and 3 and they came and deposed before the Court that Narayanappa R.M. is not the son of Doddamarappa.

17. The Trial Court mainly relied upon the evidence of P.W.4. The contention of P.W.4 is that Narayanappa R.M. is her brother. It is not in dispute that P.W.4 is sister of defendant No.1 and there is no dispute with regard to the relationship between defendant No.1 and P.W.4. P.W.3 claims that Doddamarappa had two sons and a daughter. The substantial question of law framed by this Court is with regard to the credibility of evidence of P.W.4. P.W.4 categorically deposed before the Court that her father had three children including herself and Narayanappa R.M., i.e., husband of plaintiff No.1 and defendant No.1. But, the Trial Court made an observation that, in the cross-examination of P.W.4, nothing worthy was elicited during the course of cross-examination in favour of defendant No.1 and the fact that P.W.4 is sister-in-law of P.W.1 has emerged during the course of evidence. In view of framing of substantial question of law, this Court has to consider the evidence of P.W.4, as this Court has framed the substantial question of law whether the evidence of P.W.4 has to be construed as an evidence.

18. No doubt, P.W.4 deposed before the Court with regard to the relationship between herself and defendants as well as Narayanappa R.M., she claims that Narayanappa R.M. is her elder brother and defendant No.1 is her younger brother. It is her evidence that her marriage was performed by parents, her brother and her brother Muniyappa and all were living together and performed the marriage together. But, in the cross-examination, she admits that she cannot state in which year, her marriage was performed and also cannot state how many properties her father was having and whether she is having any right in the property and states that her father has not given any share to her. She even was not able to state her age at the time of marriage. No doubt, she says that she has not studied in any school, but claims that both Narayanappa R.M. and defendant No.1 have studied in the school. It is her evidence that defendant No.1 studied upto 6th standard and Narayanappa R.M. studied upto 4th standard in Sidlaghatta Kannada School, but not placed any documentary evidence before the Court, even the school records of Narayanappa R.M. She also claims that her marriage was performed by her parents and her brother

Narayanappa R.M. and defendant No.1. But, she deposes before the Court that she cannot state when the marriage of her brother Narayanappa R.M. was performed and even not able to state where and how the marriage of Narayanappa R.M. was performed and even she cannot state after how many years of her marriage, marriage of Narayanappa R.M. was performed. P.W.4 has not even deposed before the Court when her father passed away and denied the suggestion that Narayanappa R.M. is not the son of Doddamarappa.

19. Now the question before this Court is that evidence of P.W.4 could be believed by the Court. Having considered the evidence on record, except stating that Narayanappa R.M. was her brother, P.W.4 has not placed any material on record and also plaintiffs have not placed any documentary evidence before the Court. The main contention of learned counsel for the appellants before this Court is that if really Narayanappa R.M. was son of Doddamarappa, ought to have placed any documentary proof and not even produced school records. Admittedly, P.W.4 says that Narayanappa R.M. studied upto 4th

stands in Sidlaghatta Kannada School and the said document is not placed before the Court.

20. It is also important to note that defendant No.1 has placed on record the documents of partition dated 30.08.1971 and the same has taken place between the brothers of Doddamarappa and Beerappa and the same is marked as Ex.D1. It is also important to note that, it is clear that Doddamarappa got the property by way of partition between himself and his brother. It is also important to note that defendants also relied upon the document of Ex.D2 certified copy of the registered sale deed dated 20.05.1963. Having perused the documentary evidence of Ex.D2 which is relied upon by learned counsel for the appellants/defendants, no doubt, name of Narayanappa R.M. is not found in the document of Ex.D2, the main contention of learned counsel for the appellants is that documentary evidence excludes the oral evidence. The certified copy of sale deed is placed on record before the Court. It is also important to note that the recitals of this document is clear that Doddamarappa, who is the father of defendant No.1 had sold the property in the

year 1963 not only on his behalf and also on behalf of his minor son as a guardian and his brother has also joined hands in selling the property i.e., Chikkamarappa and the brother also while selling the property, sold the same on behalf of his minor son as a guardian. Having considered the recitals of the document, it is the very contention of defendant No.1 that if really the Doddamarappa, father of defendant No.1 is having a son by name Narayanappa R.M., he would have made him as a party to the sale deed.

21. It is also important to note that both the Courts have not taken note of this documentary evidence and though discussion was made, but comes to the conclusion that merely because the document of Ex.D2 is placed on record, the evidence of D.W.1 cannot be accepted and name of defendant No.1 is not shown in Ex.D2 and non-mentioning of name of Narayanappa R.M. in Ex.D2 cannot be a ground to conclude that Narayanappa R.M is not the son of Doddamarappa when both the Courts not relied upon this document Ex.D2 and there must be other evidence before the Court that Narayanappa R.M. is the

son of Doddamarappa, but only relied upon the oral evidence of P.W.4. Having read the evidence of P.W.4 and she was unable to tell when the marriage of her brother Narayanappa R.M. was performed and that too, when her marriage was performed and after how many years of her marriage, marriage of Narayanappa R.M. was performed and also even not able to state the place where the marriage was performed and how the marriage was performed. She being the own sister of Narayanappa R.M., how can she depose like that. But, claims that Narayanappa R.M. is her elder brother and defendant No.1 is her younger brother.

22. I have already pointed out that there is no dispute with regard to relationship between P.W.4 and defendant No.1. The defendant No.1 seriously disputes the very relationship with him i.e., Narayanappa R.M. and P.W.1 claims that Narayanappa R.M. is her husband and excluding the documentary evidence, this Court cannot rely upon the oral evidence of P.W.1. It is also important to note that P.W.4 is the wife of P.W.1 and brother of P.W.1 has also been examined as P.W.2. Hence, it is clear that all of them are interested witnesses. It is also important to note

that P.W.4 claims that Narayanappa R.M. is her elder brother, but no document is placed on record to disclose that Narayanappa R.M. is the son of Doddamarappa. Learned counsel mainly relied upon the document of Ex.P6, wherein name is mentioned as Narayanappa R.M. Having perused Ex.P6, no doubt, name of Narayanappa R.M. is found in RTC, name of Doddamarappa was rounded off and below the RTC, name of Narayanappa R.M., R. Muniyappa, Munivenkatappa is mentioned. Learned counsel also brought to notice of this Court that the name of Muniyappa i.e., the defendant No.1, son of Doddamarappa is found and merely because name of Narayanappa R.M. is mentioned, the Court cannot come to such a conclusion that he is the son of Doddamarappa and there must be cogent evidence before the Court. On the other hand, the very documentary evidence of Ex.D2 is very clear that name of Narayanappa R.M. is not mentioned in the sale deed which came into existence in the year 1963 itself and the fact that from the very document sale is also made on behalf of minor son is not in dispute and while executing the sale deed in favour of the prospective purchaser and on behalf of the minor son, the father

had executed the sale deed and if really, Narayanappa R.M. was his son, he would have made him as party to the sale deed.

23. Learned counsel for the caveator-respondent Nos.1 and 2 would vehemently contend that purchaser under the document of Ex.D2 has not been examined and non-examination of purchaser will not take away the case of the appellants and the same is a registered document which has come into existence in the year 1963 and the document is more than 30 year old document. The Court also has to take note of evidence of P.W.4. The evidence of P.W.4 also cannot be construed as an evidence and except in chief evidence deposing before the Court that Narayanappa R.M. was son of her father, in the cross-examination, she has stated that she is not aware about Narayanappa R.M., though claimed that he studied in Sidlaghatta Kannada School and to prove the said fact also, nothing is placed on record and even she was not aware when his marriage was performed, where and how it was performed. Hence, the evidence of P.W.4 cannot be construed as an evidence, to come

to a conclusion that Narayanappa R.M. is son of Doddamarappa, in the absence of any documentary evidence available on record.

24. This Court would like to rely upon the judgment of the Apex Court in **MAHANT BHAGWAN BHAGAT VS. G.N.BHAGAT AND OTHERS** reported in **(1972) 1 SCC 486** wherein held that appreciation of oral evidence discrepant and interested - Documentary evidence ante litem motam - Documentary evidence more reliable. Testimony and brought into existence at a time when the plaintiff was not on the scene and when no dispute was raging.

25. This Court also would like to rely upon the judgment of the Apex Court in **BAI HIRA DEVI AND OTHERS VS. OFFICIAL ASSIGNEE OF BOMBAY** reported in **1958 SCR 1384** wherein also held that Section 92 excludes the admission of oral evidence for the purpose of contradicting, varying, adding to or subtracting from the terms of the document properly proved under Section 91, it may be said that it makes the proof of the document conclusive of its contents.

26. Having considered the provisions of Sections 90 and 92 of the Indian Evidence Act, 1872, it is very clear that there is a presumption. In the case on hand, Ex.D2 is a registered document and more than 30 year old document. Further, Chapter VI of the Indian Evidence Act, 1872 is very clear with regard to exclusion of evidence of oral agreement by documentary evidence and when the documents have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained. It is very clear that when the documentary evidence is placed on record and the same excludes the oral evidence. In the case on hand also, the oral evidence which has been relied upon by the Trial Court and the First Appellate Court not supports the circumstances which proves the fact that Narayanappa R.M. was son of Doddamarappa and the

documentary evidence excludes oral evidence, since the documentary evidence mentions the minor son and not mentioned the name of Narayanappa R.M. If really he is the son on Narayanappa R.M., he would have joined as one of the vendor to the said sale deed.

27. It is also important to note that his brother also executed the sale deed on behalf of his minor son in the very sale deed and subsequent to the sale made by both the brothers in the year 1963, both of them have partitioned the property in the year 1971 in terms of Ex.D1. Hence Ex.D2 document excludes the oral evidence of P.W.4 and no documentary evidence is placed on record to prove the fact that Narayanappa R.M. was son is the very sale deed of Doddamarappa and the evidence of P.W.4 is not credible and the same cannot be construed as an evidence, in order to come to such a conclusion that Narayanappa R.M. is the son of Doddamarappa and both the Courts committed an error in accepting the evidence of P.W.4 as against the documentary evidence of Ex.D2 and P.W.4 failed to withstand in the cross examination regarding the chief evidence

and in the cross examination deposed that she is aware nothing about the Narayanappa R.M., the said evidence is relied upon by both the Courts and the same is erroneous and the same amounts to perversity. Accordingly, I answer the substantial question of law framed by this Court as 'affirmative'.

27. In view of the discussion made above, I pass the following:

ORDER

- (i) The regular second appeal is allowed.
- (ii) The impugned judgment and decree passed in O.S.No.92/2003 is hereby set aside. Consequently, the suit filed by the plaintiffs is dismissed.

Sd/-
(H.P. SANDESH)
JUDGE

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