

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 4<sup>TH</sup> DAY OF JANUARY 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

RSA NO.5766/2013 (PAR)  
C/W RSA NO.6309/2012

IN RSA NO.5766/2013

BETWEEN

AKKAVVA W/O. SANGAPPA ANGADI  
AGE: 28 YEARS,  
OCC: HOUSEHOLD WORK  
R/O. MEVUNDI, TQ: MUNDARGI  
DIST: GADAG 591 116

... APPELLANT

(BY SRI.AVINASH BANAKAR, ADV.)

AND

- 1 . SANGAPPA S/O. ISHWARAPPA ANGADI  
AGE: 43 YEARS,  
OCC: AGRICULTURE  
R/O. MEVUNDI, TQ: MUDARGI  
DIST: GADAG 591 116
- 2 . DRAKSHAYANI W/O. NAGARAJ KORLAHALLI  
AGE: 27 YEARS,  
OCC: HOUSEHOLD WORK  
R/O. HALLIKERI, TQ: MUNDARGI  
DIST: GADAG 591 116
- 3 . SHARAWWA W/O. GURANAGOUDA PATIL  
AGE: 31 YEARS,

OCC: HOUSEHOLD WORK  
 R/O. MEVUNDI, TQ: MUNDARGI  
 DIST: GADAG 591 116

- 4 . BASAWWA @ BASAMMA W/O. BASAVARAJ HANCHINALI  
 AGE: 30 YEARS,  
 OCC: HOUSEHOLD WORK  
 R/O. KOPPAL TQ: and DIST: KOPPAL 561 091
- 5 . BASAVARAJ S/O. NAGAPPA SASI  
 AGE: 25 YEARS,  
 OCC: HOUSEHOLD WORK  
 R/O. MEVUNDI, TQ:MUNDARGI and DIST: GADAG 591 116
- 6 . NIRAMALA D/O. NAGAPPA SASI  
 AGE: 25 YEARS,  
 OCC: HOUSEHOLD WORK  
 R/O. MEVUNDI, TQ:MUNDARGI and DIST: GADAG 591 116
- 7 . SHAILA D/O. NAGAPPA SASI  
 AGE: 23 YEARS,  
 OCC: HOUSEHOLD WORK  
 R/O. MEVUNDI, TQ:MUNDARGI and DIST: GADAG 591 116
- 8 . VIDYA D/O. NAGAPPA SASI  
 AGE: 21 YEARS,  
 OCC: HOUSEHOLD WORK  
 R/O. MEVUNDI, TQ:MUNDARGI and DIST: GADAG 591 116
- 9 . ISHWARAPPA S/O. RACHAPPA ANGADI  
 AGE: 77 YEARS, OCC: AGRICULTURE  
 R/O. MEVUNDI, TQ:MUNDARGI and DIST: GADAG 591 116
- 10 . IRAWWA W/O. ISHWARAPPA ANGADI  
 AGE: 71 YEARS,  
 OCC: HOUSEHOLD WORK  
 R/O. MEVUNDI, TQ:MUNDARGI and DIST: GADAG 591 116

... RESPONDENTS

(BY SRI.SRIKANT T.PATIL, ADV. FOR R2-R8,  
 R1 & R9 SERVED REMAIN UNREPRESENTED,  
 APPAL STANDS ABATED AS AGAINST R10)

THIS APPEAL IS FILED UNDER SECTION 100 OF CPC SEEKING TO SET ASIDE THE JUDGMENT AND DECREE DATED 22.09.2012 PASSED BY THE COURT OF FAST TRACK JUDGE, GADAG IN R.A.NO.60/2011 IN CONFIRMING THE JUDGMENT AND DECREE DATED 02.04.2011 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE & CJM, GADAG IN O.S.NO.35/2010 AND DISMISS THE SUIT OF THE PLAINTIFF'S AND REMAND THE MATTER BACK TO THE LOWER APPELLATE COURT WITH A DIRECTION TO CONSIDER THE CROSS-OBJECTION FILED BY THE APPELLANT.

IN RSA NO.6309/2012

BETWEEN

- 1 . SRI. SANGAPPA S/O. ISHWARAPPA ANGADI  
AGE: 42 YEARS, OCC: AGRICULTURE  
R/O. MEVUNDI, TQ: MUNDARGI DIST: DIST: GADAG

... APPELLANT

(BY SRI.MAHANTA GOUDA, ADV.)

AND

- 1 . SMT.DRAKSHAYANI W/O. NAGARAJ KORLAHALLI  
AGE: 28 YEARS, OCC: HOUSEHOLD WORK  
R/O. HALLIKERI, TQ: MUNDARGI DIST: GADAG
- 2 . SMT.SHARAWWA W/O. GURUNGOUDA PATIL  
AGE: 30 YEARS, OCC:HOUSEHOLD WORK  
R/O. MEVUNDI, TQ: MUNDARGI, DIST: GADAG
- 3 . SMT.BASAWWA W/O. BASAVARAJ HANCHINALLI  
AGE: 29 YEARS, OCC:HOUSEHOLD WORK  
R/O. KOPPAL
- 4 . SRI.BASAVARAJ S/O. NAGAPPA SASI  
AGE: 28 YEARS, OCC: AGRICULTURE  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG

- 5 . SMT.NIRMALA D/O. NAGAPPA SASI  
AGE: 24 YEARS, OCC: HOUSEHOLD WORK  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG
- 6 . SMT.SHAILA D/O NAGAPPA SASI,  
AGE: 22 YEARS, OCC: AGRICULTURE  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG
- 7 . SMT.VIDYA D/O NAGAPPA SASI,  
AGE: 20 YEARS, OCC: HOUSEHOLD WORK  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG
- 8 . SMT.AKKAWWA W/O. SANGAPPA ANGADI  
AGE: 27 YEARS, OCC: HOUSEHOLD WORK  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG
- 9 . SRI.ESHWARAPPA S/O. RACHAPPA ANGADI  
AGE: 76 YEARS, OCC: AGRICULTURE  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG
- 10 . IRAWWA W/O. ISHWARAPPA ANGADI  
AGE: 70 YEARS, OCC: HOUSEHOLD WORK  
R/O. MEVUNDI, TQ: MUNDARGI DIST: GADAG

... RESPONDENTS

(BY SRI.SRIKANT T.PATIL, ADV. FOR R1-R7,  
SRI.PRASHANT HOSAMANI, ADV. FOR R8-R10)

THIS APPEAL IS FILED UNDER SECTION 100 OF CPC SEEKING TO SET ASIDE THE JUDGMENT AND DECREE DATED 22.09.2012 PASSED BY THE COURT OF FAST TRACK JUDGE, GADAG IN R.A.NO.60/2011 AND THE JUDGMENT AND DECREE DATED 02.04.2011 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE & CJM, GADAG IN O.S.NO.35/2010 AND CONSEQUENTLY DISMISS THE SUIT.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

## JUDGMENT

The captioned second appeals are filed by defendant Nos.1 and 2 challenging the concurrent finding of the courts below in a partition suit.

2. Respondent Nos.2 to 8/plaintiffs filed a suit for partition and separate possession against the present appellants in O.S.No.35/2010. The respondents/plaintiffs specifically contended that the suit schedule properties are the joint family ancestral properties and they are entitled for their legitimate share in the suit schedule properties. The cause of action for filing of the present suit was on account highhandedness of defendant No.1 who with an ulterior motive transferred Sy.No.198 measuring 13.04 acres in favour of defendant No.1/wife by way of mutation. The grievance of the respondents/plaintiffs is that defendant No.1 has no exclusive right, as the suit schedule properties are joint family ancestral properties and the plaintiffs mother Kotramma being the daughter of the

propositus Rachappa had legitimate share in the suit schedule properties.

3. The suit is contested by the present appellants herein. The trial court on appreciation of the oral and documentary evidence held that the suit schedule properties are the joint family ancestral properties and there is no partition by metes and bounds. The contention of defendant No.1 that on account of matrimonial dispute which was amicably settled and Sy.No.306/2/2 totally measuring 8 acres and house bearing VPC No.119 was allotted to defendant No.2 towards her maintenance and therefore, the suit properties are not available for partition was negated by the trial court. The trial court decreed the suit by granting 1/6<sup>th</sup> share jointly to plaintiff Nos.3 to 7 who represents Kotramma, i.e., daughter of propositus Rachappa.

4. Feeling aggrieved, the present appellant in RSA No.6309/2009 preferred an appeal in R.A.No.60/2011. It is

stated by the counsel appearing for defendant No.2 that she also filed a cross appeal. The appellate Court on re-appreciation of oral and documentary evidence on record has come to conclusion that the alleged mutation indicating that there was a partition in 1996 does not bind the legitimate share of the plaintiffs. The Appellate Court affirming the conclusions arrived by the Trial Court was of the view that the judgment and decree of the Trial Court is in accordance with law and does not require interference.

5. Heard the learned counsel for appellant and learned counsel appearing for respondent. Perused the judgment under challenge.

6. The appellant in RSA No.6309/2012 was arrayed as defendant No.1. Though defendant No.1 has set up a prior partition, both the Courts have negated and have not acceded to the said contention. The material on record clearly indicates that the suit schedule properties are joint family ancestral properties. Therefore, defendant No.1

being a male member of the family and also son of Eshwarappa has no exclusive right over the suit schedule properties and therefore he could not have transferred survey No.306/2/2 by way of mutation in favour of his wife i.e. defendant No.2. The said mutation would not create any right or title in favour of defendant No.2. If defendant No.2 has any grievance against her husband i.e. defendant No.1, it was always open for her to initiate appropriate proceedings either to claim maintenance or to seek appropriate relief. Only by way of mutation, no right is created in favour defendant No.2. Both the Courts below have concurrently held that the suit schedule properties are joint family ancestral properties and there is no severance in the family. The Trial Court has granted equal share to the daughters. The quantification done by the Trial Court is in consonance with the principles laid down by the Hon'ble Apex Court in the case of ***Vineeta Sharma vs. Rakesh Sharma and others*** reported in ***ILR 2020 KAR 4370***. On examination of the judgment under challenge, I



do not find any substantial question of law involved in the present case and both the appeals are devoid of merits and are dismissed accordingly.

7. In view of disposal of the appeals, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

Sd/-  
JUDGE

MBS/YAN/-