



**IN THE HIGH COURT OF KARNATAKA,**

**KALABURAGI BENCH**

**DATED THIS THE 11<sup>TH</sup> DAY OF AUGUST, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR**

**MISCL SECOND APPEAL NO.200514 OF 2022 (RO)**

**BETWEEN:**

SHARANGOUDA  
S/O CHANDRAMAPPA KALAGI,  
AGE: 36 YEARS,  
OCC: AGRICULTURE,  
R/O: MURUGANUR,  
TQ: JEWARGI,  
DIST: KALABURAGI – 585 310.

...APPELLANT

(BY SRI HULEPPA HEROOR AND  
SRI B.BHIMASHANKAR, ADVOCATES)

**AND:**

1. NAGAMMA  
W/O KAREPPA BENKOTAGI  
D/O LATE SIDRAMAPPA BIRENDAR,  
AGE: 56 YEARS,  
OCC: AGRICULTURE,  
R/O: HAALGATHARAGA,  
TQ: JEWARGI,  
DIST: KALABURAGI – 585 310.
2. BHAGAMMA  
W/O LATE BHIMARAYA BIRENDAR,  
AGE: 49 YEARS,  
OCC: AGRICULTURE,  
R/O: MURGANOOR,





TQ: JEWARGI,  
DIST: KALABURAGI – 585 310.

3. BASALINGAMMA  
W/O SHARANGOUDA KALAGI  
D/O LATE BHIMARAYA BIRENDAR,  
AGE: 29 YEARS,  
OCC: AGRICULTURE,  
R/O: MURGANOOR,  
TQ: JEWARGI,  
DIST: KALABURAGI – 585 310.

...RESPONDENTS

(BY SRI AMEET J. HATTI, ADVOCATE FOR  
SRI GANESH S. KALBURGI, ADVOCATE FOR R1;  
R2 AND R3 SERVED)

THIS MSA IS FILED UNDER SECTION 105 READ WITH  
ORDER 43 RULE 1 (U) OF THE CODE OF CIVIL PROCEDURE,  
1908, PRAYING TO ALLOW THE APPEAL SET ASIDE THE  
IMPUGNED ORDER PASSED IN R.A.NO.15/2018 DATED  
28.09.2020 BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC  
AT JEWARGI BY GRANTING THE SHARE OF DECEASED  
CHANDAWWA IN FAVOR OF APPELLANT AND ETC.

THIS MSA, COMING ON FOR ADMISSION, THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR  
AMARANNAVAR

### **ORAL JUDGMENT**

This second appeal is filed challenging the judgment  
dated 28.09.2020, passed in R.A.No.15/2018, by the  
Senior Civil Judge and JMFC, Jewargi.



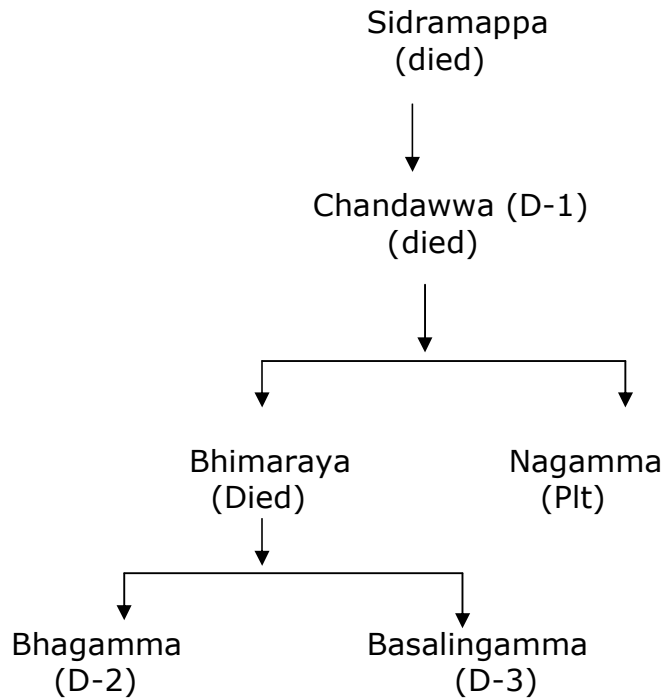
2. Heard learned counsel for the appellant and learned counsel for respondent No.1.

3. Respondent No.1/plaintiff filed a suit for partition and separate possession of her share in two properties which are as under:

- (1) Agricultural Land bearing Sy.No.9 measuring 14 acres 33 guntas.
- (2) Agricultural Land bearing Sy.No.47/1 measuring 6 acres 33 guntas.

4. The suit in O.S.No.138/2012 is filed against the appellant/defendant No.4, respondent Nos.2 and 3/defendant Nos.2 and 3 and one Chandawwa (defendant No.1).

5. For the purpose of better understanding, the genealogy of the family of the plaintiff is as under:



6. The present appellant was defendant No.4 in the said suit. Defendant No.4 had purchased Sy.No.47/1 measuring 6 acres 33 guntas under registered sale deed dated 07.03.2012 from defendant No.1/Chandawwa. Defendant Nos.1 to 4 did not contest the suit. The suit filed by respondent No.1/plaintiff came to be decreed by judgment dated 19.11.2012 declaring that the plaintiff has got 4/9<sup>th</sup> share in the suit schedule properties. It is further declared that the registered sale deed bearing document No.5700/2011-12 dated 07.03.2012 in respect of suit



property bearing Sy.No.47/1 to the extent of share of the plaintiff is null and void and same is not binding on the plaintiff. A preliminary decree was ordered to be drawn. Defendant Nos.1 to 4 challenged the preliminary decree in R.A.No.4/2013 and the same came to be dismissed. Defendant Nos.1 to 4 filed second appeal challenging the judgment of the First Appellate Court in RSA No.200017/2014 and the same came to be dismissed confirming the preliminary decree passed by the Trial Court. The plaintiff thereafter filed FDP No.8/2013 for demarcation of her share in the suit schedule properties and for drawing of final decree. The said petition came to be allowed by order dated 09.04.2018 and the final decree was ordered to be drawn based on the Commissioner report. The said order passed in FDP No.8/2013 has been challenged by defendant Nos.1 to 4 in R.A. No.15/2018. The appellant herein/defendant No.4 was a purchaser has sought allotment of share of Chandawwa (defendant No.1) to his share, as he has purchased the said property from



defendant No.1/Chandawwa. During the pendency of the said appeal, Chandawwa died. The First Appellate Court taking note of the same in the impugned judgment has observed as under:

*"17. That apart it could be seen from the case papers that the suit was filed by the plaintiff against the defendant No.1 to 4. Defendant No.1 is the mother and defendant No.2 and 3 are the wife and daughter of deceased brother of the plaintiff. Defendant No.4 is none other than the husband of defendant No.3. The trial court has decreed the suit holding that plaintiff is entitle for 4/9th share in the suit schedule properties by metes and bounds and the Registered Sale Deed executed by defendant No.1 in favour of defendant No.4 is null and void and not binding on the share of plaintiff. The trial court has decreed the suit and allotted the share equal to the share of her brother and allotted notional share to the mother. But during pendency of the appeal the defendant No.1 (appellant No.1) was passed away. It is well settled that the share of the members of the joint family will increase in case of death of any member and decrees in case of birth of member. Therefore in view of death of defendant No.1 naturally the share of plaintiff is increased. Therefore in the present case on hand the plaintiff is entitle for share equal to her brother and hence the plaintiff is entitle for ½ share in the suit schedule properties. Therefore in view of changed circumstances the preliminary decree passed by the learned Civil Judge & JMFC, Jewargi is liable to be modified.*



HC-KAR

18. Therefore on consideration of the trial court records and also the arguments advance from both sides and also after perusing the lower court records in FDP No.08/2013, I am concluding that the trial court has not given opportunity to the defendants to file objection to the commission report and also not given opportunity to the defendants side to advance the arguments on merits. Therefore the order of the trial court for drawing the final decree is liable to be set-aside. Similarly in view of changed circumstances such as death of defendant No.1, the share of plaintiff and defendant No.2 and 3 is increased and therefore the preliminary decree has to be modified. Hence the order of the trial court for drawing the final decree is liable to be set-aside and matter has to be remanded to trial court with a direction to give opportunity to the defendants to file objection to commission report and also to advance the arguments on merits and after concluding necessary requirements of the law to modify the preliminary decree in accordance with the present position of law. Hence I am answering to **point No.1 in the negative and point No.2 in the affirmative.**"

7. By making the said observation, the First Appellate Court has remanded the matter back to the Trial Court for fresh disposal of FDP No.8/2013 by giving opportunity to both sides while considering the Commissioner report. The said remand order has been passed only on the ground that the defendants have not



been given opportunity to file objections to the Commissioner report.

8. Learned counsel for the appellant would contend that there was no necessity for the First Appellate Court to make observation regarding shares of the parties after death of Smt. Chandawwa (defendant No.1/appellant No.1). The appellant, purchaser of property from defendant No.1/Chandawwa has stepped into the shoes of the said Chandawwa and he can make a claim to allot the property purchased by him from defendant No.1/Chandawwa to her share.

9. Learned counsel for respondent No.1/plaintiff submits that the plaintiff has no objection for allotting 1/9<sup>th</sup> share of Smt. Chandawwa/defendant No.1 to appellant herein, who has purchased the property from her.

10. In view of sale of property bearing Sy.No.47/1 measuring 6 acres 33 guntas by defendant





No.1/Chandawwa, prior to filing of suit for partition, the purchaser i.e., defendant No.4 can seek allotment of property purchased by him to the share of defendant No.1. What is declared in the preliminary decree passed in O.S.No.138/2012 is that the sale deed dated 07.03.2012 in respect of the suit property bearing Sy.No.47/1 measuring 6 acres 33 guntas is not binding on the share of the plaintiff. Therefore, the appellant/defendant No.4, being a purchaser of property from defendant No.1 can make a claim in the final decree proceedings to allot 1/9<sup>th</sup> share of defendant No.1/Chandawwa to him. Considering the sale of property by defendant No.1/Chandawwa prior to suit for partition, her 1/9<sup>th</sup> share will not devolve on the plaintiff and defendant Nos.2 and 3. Even on the death of Chandawwa (defendant No.1), the shares of plaintiff and defendant Nos.2 and 3 will not enlarge as observed by the First Appellate Court in paragraph No.17 of the impugned judgment passed in R.A.No.15/2018. In view of the above, the observations of the First Appellate Court contained in



paragraph No.17 of the impugned judgment, regarding enlargement of the shares of the plaintiff and defendant Nos.2 and 3 on the death of defendant No.1/Chandawwa requires to be set aside.

11. Learned counsel for the appellant submits that after remand as per the impugned order, FDP No.8/2013 has been reopened and Commissioner has proposed  $\frac{1}{2}$  share to the plaintiff and  $\frac{1}{2}$  share to defendant Nos.2 and 3 in the suit properties and accordingly the Final Decree Court has passed order allotting  $\frac{1}{2}$  share to plaintiff and remaining  $\frac{1}{2}$  share to defendant Nos.2 and 3. He further submits that he has challenged the said order in R.A.No.5/2022.

12. In view of the above, the following:

**ORDER**

(1) The Miscellaneous Second Appeal is allowed in part.



- (2) The observations of the First Appellate Court contained in Paragraph No.17 to the effect that the shares of plaintiff and defendant Nos.2 and 3 will not enlarge on the death of defendant No.1/Chandawwa is set aside.
- (3) The appellant/defendant No.4 can make an application in FDP No.8/2013.
- (4) The order in respect of drawing of final decree dated 28.02.2022 passed in FDP No.8/2013 based on observations in paragraph No.17 of the judgment passed in R.A.No.15/2018 is also set aside.
- (5) FDP No.8/2013 is ordered to be reopened with a direction to give an opportunity to the appellant/defendant No.4 to make an application to allot 1/9<sup>th</sup> share of Chandawwa/defendant No.1 to defendant No.4.



- (6) The Final Decree Court has to appoint the Court Commissioner afresh at the cost of the present appellant/defendant No.4.
- (7) In view of the above, the appellant/defendant No.4, who is the appellant in R.A.No.5/2022 is permitted to withdraw the same.
- (8) As the FDP is of the year 2013, the Final Decree Court shall expedite the matter and dispose it of as early as possible.

**Sd/-**  
**(SHIVASHANKAR AMARANNAVAR)**  
**JUDGE**

RSP  
List No.: 1 SI No.: 20  
CT: VK