

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 5<sup>th</sup> DAY OF JULY, 2010

BEFORE

THE HON'BLE MR.JUSTICE K.GOVINDARAJULU

RSA No.1584/2006 [DEC/INJ]

BETWEEN

1. SHARANAVVA  
W/O CHANDRAM WAZEER  
AGED ABOUT 52 YEARS  
OCC: AGRICULTURE  
R/O KULEKUMATAGI  
TALUK SINDAGI  
BIJAPUR DIST-586 104
  2. BALABHIMA CHANDRAMAPPA WAZEER  
AGED ABOUT 31 YEARS  
OCC: AGRICULTURE  
R/O KULEKUMATAGI  
TALUK SINDAGI  
BIJAPUR-586 104
- ... APPELLANTS

(By Sri AMRESH S ROJA, ADV.,)

AND

1. SHIVAPPA  
S/O CHANDRAMA WAZEER  
AGED 28 YEARS  
OCC: COOLIE  
R/O KULEKUMATAGI  
TALUK SINDAGI  
BIJPAUR DIST-586 104

2. HADAGALAPPA CHANDRAM WAZEER  
AGE: 26 YEARS  
OCC: COOLIE  
R/O KULEKUMATAI  
TALUK SINDAGI  
BIJPAUR DIST-586 104
3. SOMAVVA  
W/O KALLAPPA TALAWAR  
AGE: 24 YEARS OCC: AGRICULTURE  
R/O SHEMAWAD  
TALUK SINDAGI  
BIJPAUR DIST-586 104                      ... RESPONDENTS

(By Sri AMEET KUMAR DESHPANDE, ADV.,)

THIS RSA FILED U/O 41 R 1 R/W S 100 CPC AGAINST THE JUDGMENT AND DECREE DATED:12.1.2006 PASSED IN RA.NO.120/2005 ON THE FILE OF PRESIDING OFFICER, FAST TRACK COURT-I, BIJAPUR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED: 7.12.2001 PASSED IN O.S.NO.72/2001 ON THE FILE OF PRL.CIVIL JUDGE (JR.DN.), SINDGI.

THIS RSA COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

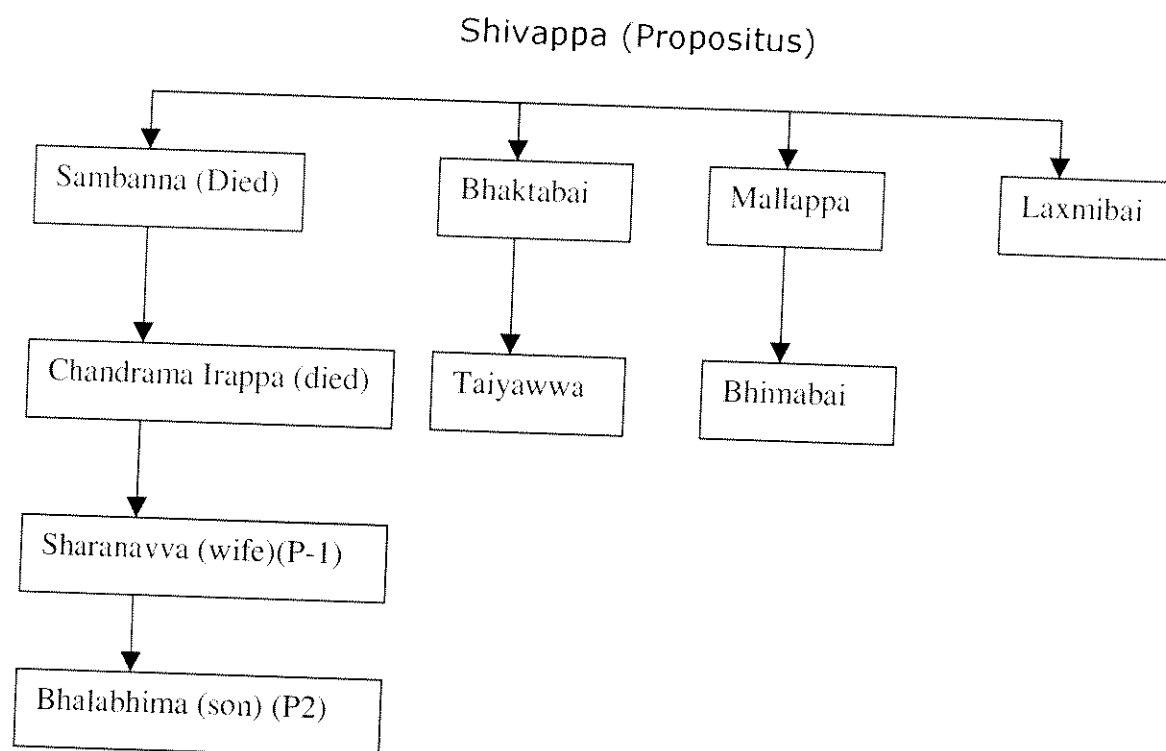
### JUDGMENT

Plaintiffs in O.S.No.72/2001 on the file of Prl. Civil Judge [Jr.Dn], Sindagi are the appellants in this appeal. Parties will be referred according to their status found in the suit for convenience.



2. Case of the plaintiffs is that one Shivappa was the propositus was owning Sy.Nos.35, 43 and 44 of Kulekumatagi Village in Sindagi Taluka. He died on 25.6.1976. Daughters of Shivappa have given up their claim in favour of Sambanna, Chandram, Mallappa and Iranna i.e., sons of deceased Shivappa. Accordingly, mutation entries were recorded in M.E.No.2400 as directed. Thereafter, in the year 1977, there was a partition between Chandram, Iranna and Mallappa and sons of Sambanna. According to the partition, land in Sy.No.35/1 measuring 13 acres 6 guntas of Kulekumatagi Village is allotted to the share of Chandrama-husband of plaintiff No.1. First plaintiff is the legally wedded wife of Chandram. Chandram died on 1.4.2001. Defendants are unnecessarily obstructing the possession of the properties by the plaintiffs. Plaintiffs made enquiry and found that the defendants have illegally got their names entered in M.E.No.2560. They contended that Chandram has relinquished his rights in favour of the defendants. So, pray for declaration for consequential relief of permanent injunction and for such other reliefs.





3. Defendants in the written statement contend that they have acquired title as they are the legitimate sons of Chandram and Sharanavva. Deny marriage of first plaintiff with Chandram and second plaintiff is their son. The suit is bad for non joinder of necessary parties and they are not obstructing the enjoyment of properties. So, seek for dismissal of the suit.

4. Learned trial judge has framed issues, permitted parties to lead evidence. PWs.1 to 4 are examined in response DWs.1 to 6 are examined. Exs.P1 to P6 and Exs.D1 to D14 are marked. Learned trial judge has decreed the suit, declared that the plaintiffs are the

owners of the properties in Sy.No.35/1 measuring 13 acres 6 guntas of Kulekumatagi Village. Defendants have preferred appeal. Learned appellate Judge has allowed the appeal and dismissed the suit of the plaintiffs.

5. Learned Advocate for the plaintiffs substantiates his client case contending that the appellate Judge ought not to have interfered with the well reasoned Judgment of the learned trial Judge. Learned appellate Judge has not considered Ex P6-School Leaving Certificate in its proper perspective. After bringing to the notice of the learned Advocate, the evidence of DW.2 seeks time for withdrawal of the suit.

6. Learned Advocate for the defendants is absent.

7. On 20.3.2008, following substantial question of law is raised by this Court:-

*"Whether the lower appellate Court was justified in dismissing the suit of the plaintiffs when admittedly first plaintiff is none other than the sister's daughter of Chandram?"*

8. Evidence of DW.2 is that she is the wife of Chandram. In spite of such an evidence, in spite of specific plea that the mother of the defendants is not added as a



party, suit is proceeded as if it is a suit for declaration without seeking the status of the first plaintiff. In view of these facts found in the case, even permission given will not enure to the benefit of the plaintiffs. This Court **in SIVHAMURTHY SWAMY v. AGODI SONGANNO [AIR 1969 MYSORE 12]**, has held that evidence is recorded to find the truth to the best of one's ability. In the facts of the case, DW.2 denies marriage of first plaintiff with Chandram, also denies second plaintiff being born to Chandram, contend that she is the wife of Chandram. So, to seek declaration of the plaint schedule property. First plaintiff has to prove her marriage, seek a declaration on the subject. So, this Court holds that the appellate Court was justified in allowing the appeal and dismissing the suit.

9. Advocate for the plaintiffs submits that plaintiffs may be given liberty to file a partition suit. If law permits, Advocate for the plaintiffs are at liberty to take any steps, which are permissible in law.

Sd/-  
JUDGE

cp\*