

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 7th DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR SECOND APPEAL NO.100036/2023 (PAR/POS)

BETWEEN:

NEELAWWA
W/O. MALLAPPA MENASAGERI,
DECEASED BY HER LRS.,

1. SMT. RENAVVA
W/O. MUDAKAPPA BADAWADAGI,
AGE: 66 YEARS,
OCC: HOUSE HOLD & AGRICULTURE,
R/O: GOPASANI VILLAGE,
TQ: HUNDUNG, DIST: BAGALKOT.
2. SMT. YALLAWWA
W/O. SANGAPPA KHAIRAWADAGI,
AGE: 64 YEARS, OCC: HOUSE HOLD WORK,
R/O: PALATHI VILLAGE,
TQ: HUNGUND, DIST: BAGALKOT.

...APPELLANTS

(BY SRI. MRUTYUNJAYA S. HALLIKERI, ADVOCATE)

AND:

1. MUTTAPPA S/O. BHEEMAPPA GODI,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: BEVINAHAL VILLAGE,
TQ: HUNGUND, DIST: BAGALKOT.
2. BHANGARAWWA W/O. BASAPPA GONAL,
AGE: 54 YEARS,
OCC: HOUSE HOLD WORK & AGRICULTURE,
R/O: HULLALLI VILLAGE,
TQ: HUNGUND, DIST: BAGALKOT.
3. SMT. RAMAVVA W/O. HULLAPPA KOLKAR,
AGE: 48 YEARS,
OCC: HOUSEHOLD WORK & AGRICULTURE,



R/O: AIHOLE VILLAGE,
TQ: HUNGUND, DIST: BAGALKOT.

HANAMAPPA S/O. YALAGURADAPPA GODI,
DIED HIS LRS.,

4. SMT. MALLAMMA
W/O. MAHADEVAPPA MENASAGERI,
AGE: 42 YEARS, OCC: AGRICULTURE,
R/O: BUDIHAL (SK), TQ: HUNGUND,
DIST: BAGALKOT.
5. RAMALINGAPPA S/O. HANAMANTAPPA GODI,
AGE: 39 YEARS, OCC: AGRICULTURE,
R/O: BUDIHAL (SK), TQ: HUNGUND,
DIST. BAGALKOT.
6. SMT. SUMITRA W/O. MUDDAPPA GADED,
AGE: 34 YEARS, OCC: HOUSE HOLD WORK,
R/O: BENAL, TQ: HUNGUND,
DIST: BAGALKOT.
7. SMT. FAKEERAVVA @ PAKEERAWWA
W/O. HANAMANTAPPA GODI,
AGE: 72 YEARS,
OCC: HOUSE HOLD & AGRICULTURE,
R/O: BUDIHAL VILLAGE,
TQ: HUNGUND, DIST: BAGALKOT.

...RESPONDENTS

(BY SRI. SHIVA M. SHIRUR, ADVOCATE FOR R4 TO R7;
NOTICE TO R1 AND R2 IS HELD SUFFICIENT;
R3 - SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
19.10.2022 PASSED IN R.A.NO.171/2018 BY THE COURT OF
PRINCIPAL DISTRICT AND SESSIONS JUDGE, BAGALKOT AND
JUDGMENT AND DECREE DATED 19.04.2018 PASSED IN
O.S.NO.79/2014 BY THE COURT OF SENIOR CIVIL JUDGE, AT
HUNGUND, AND DECREE THE SUIT OF THE PLAINTIFFS, BY
ALLOWING THE PRESENT APPEAL, IN THE INTEREST OF
JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR FINAL HEARING,
HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON

07.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

The legal representatives of Plaintiff No.1 and Plaintiff No.2 in O.S.No.79/2014 on the file of learned Senior Civil Judge, Hungund have maintained this regular second appeal.

2. Originally Smt. Neelawwa and Smt. Yallawwa had maintained the suit in O.S.No.79/2014 for the relief of partition and separate possession claiming their 3/16th share in four items of landed properties i.e., Sy.No.27/3 measuring 03 acre 08 guntas situated in Khairawadagi, Sy.No.34 measuring 07 acre 16 guntas situated at Bevinal, Sy.No.53/5 measuring 06 acres 09 gutas situated in Boodihal Inam and Sy.No.136/2B measuring 01 acre 12 guntas situated in Ramathal.

3. The case of the plaintiffs is that suit properties are the ancestral properties of the parties to the suit and there was no partition in the family. They maintained the suit for partition on the ground that the defendants

refused to affect partition and give their legitimate share in the suit properties.

4. After service of summons, all the defendants appeared before the trial court through their counsel. Defendant No.1 filed his written statement and same was adopted by Defendant Nos.2 and 3. Defendant Nos.4 and 5 filed their separate common written statement.

5. Defendant No.1 contends that Plaintiff No.1 and mother of Plaintiff No.2 relinquished their share in suit Items Nos.1 and 3 in favour of Defendant No.4 and Sri Bheemappa, the father of Defendant Nos.1 to 3 and that Item No.2 is the land granted to Defendant No.4 and Sri Bheemappa by the Government. Under the said circumstances, he contends that the plaintiffs have no manner of right title or interest over the suit properties.

6. Defendant Nos.4 and 5 admitted the case of the plaintiffs and sought for allotment of their legitimate in the suit properties.

7. Based on the pleadings, the trial court framed the following issues:

- "1. Whether plaintiffs prove that suit properties are joint family properties of parties to the suit?*
- 2. Whether the defendant No.1 to 3 prove that plaintiff No.1 and Yamanavva, who is mother of plaintiff No.2 and defendant No.5, given up their right and interest in respect of suit item No.1 and 3 in their favour and defendant No.4?*
- 3. Whether the plaintiffs are entitled to the relief sought for?*
- 4. Whether the defendant No.1 to 3 are entitled to the relief sought in the written statement?*
- 5. What order or decree?"*

8. During the pendency of the suit, Plaintiff No.1 died and her legal representative was brought on record. Afterwards, the trial court recorded the evidence of the parties. During the trial, Plaintiff No.2 deposed before the court as PW-1 and got marked documents at Exs.P1 to 11. On the side of defendants, Defendant No.4 gave evidence as DW-1, Defendant No.1 got examined as DW-2 and got marked documents at Exs.D1 to D8. Further, Defendant Nos.1 to 3 examined two more witnesses and closed their evidence.

9. The trial court, after hearing both sides and considering the oral and documentary evidence available on record, answered Issue Nos.1, 3 and 4 partly in

affirmative, Issue No.2 in the negative and decreed the suit in part holding that Plaintiff No.1 is entitled for 1/4th share, Plaintiff No.2 and Defendant No.5 are jointly entitled to 1/4th share, Defendant Nos.1 to 3 are together entitled to 1/4th share and Defendant No.4 is entitled to 1/4th share in Items Nos.1 and 3 properties and dismissed the suit in respect of Item Nos.2 and 4 properties. Further, the trial court declared that Defendant Nos.1 to 3 are the absolute owners of Item Nos.2 property.

10. Being aggrieved by dismissal of the suit in respect of Item Nos.2 and 4, the legal representative of Plaintiff No.1 and Plaintiff No.2 maintained the appeal in R.A.No.171/2018 challenging the judgment and decree of the trial court to the said extent. Defendant No.4 died during pendency of this appeal and immediately thereafter his legal representatives were brought on record in the said proceeding.

11. Learned first appellate court relying on decisions in Nimbavva and Others Vs Channaveerayya and Others, reported in ILR 2013 KAR 6202 and Manjunath S/o

Fakkirappa Hajeri and another Vs Smt. Rajawwa and others [RFA 381/2005 DD 5.11.2016] held that the plaintiffs, being the married daughters of Yalagurdappa, are not entitled to claim share in the tenanted land, i.e, Item No.2 property. It further held that the plaintiffs have failed to prove that Item No.4 property is either coparcenary or joint family property and therefore, they are not entitled for share in this land. Accordingly, learned first appellate court confirmed the judgment and decree of the trial court and dismissed the appeal.

12. Feeling aggrieved, the legal representative of Plaintiff No.1 and Plaintiff No.2 have maintained this regular second appeal praying to set-aside the judgment and decree of the first appellate court and decree the suit in entirety.

13. This Court admitted the appeal on 08.02.2023 to consider the following substantial question of law:

*"Whether the First Appellate Court is justified in holding that the appellants being married daughters of Yalagurdappa are not entitled for share in the tenanted land in view of the judgment of this Court in the case of **RAMESH SANGAPPA RAGHA @ RAGHANNAVAR Vs SMT. KUSHANAVVA @***

***HEMALATA W/O SOMASHEKHAR BATTAL, decided
on 05.10.2020 in RFA No.100274/2017."***

14. During the course of argument on main appeal, based on the contentions put forth before the court, this Court framed an additional substantial question of law for consideration as under:

"Whether the Courts below are justified in overlooking the document marked at Ex.D4 coupled with admission of Defendant No.4 while holding that Item No.4 of suit property was neither a joint family property nor an ancestral property?"

15. Indisputably, one Yalagurdappa was the propositus of the family. He died in the year 1962 leaving behind two daughters viz., Yamanavva and Neelawwa (Plaintiff No.2) and three sons viz., Bheemappa, Hanamappa (Defendant No.4) and Neelappa. Yamanavva died leaving behind Plaintiff No.2 and Defendant No.5 as her legal heirs. Bheemappa died leaving behind Defendant Nos.1 to 3 as his legal heirs. Neelappa died issueless.

16. Admittedly, the propositus Yalagurdappa was cultivating Item No.2 property i.e. land bearing Sy.No.34 measuring 7 acres 16 guntas situated in Bevinall Village as

a tenant. After his death, his son namely Bheemappa filed Form No.7 for grant of occupancy right in respect of the said land. Thereafter, Item No.2 property was granted in the names of Bheemappa and his brother Hanamappa i.e. Defendant No.4. Accordingly, their names were entered in the revenue records as per ME No.421.

17. The plaintiffs claim their share in Item No.2 property on the ground that the occupancy right conferred on Bheemappa and Hanamappa is for the benefit of entire family and not in their individual capacity. Whereas, Defendant Nos.1 to 3 contend that the Land Tribunal granted the land to Bheemappa and Hanamappa and thereby, the said land exclusively belong to them.

18. Undisputedly, Sri Yalagurdappa died in the year 1962 and he was not alive as on the date of filing Form No.7 for grant of occupancy right of Item No.2 property. The courts below proceeded to hold that the plaintiffs are not entitled to claim share in Item No.2 property on the ground that it is a land granted by the Land Tribunal to

Bheemappa and Hanamappa and it is neither an ancestral nor a joint family property of the parties to the suit.

19. In **Ramesh Sangappa Ragha @ Raghannavar Vs Smt. Kushanavva @ Hemalata W/o. Somashekhar Battal (RFA No.100274/2017 DD 05.10.2020)** the Division Bench of this Court relying on the decision in **Vineeta Sharma Vs Rakesh Sharma and Others** reported in **AIR 2020 SC 3717** held that even a married daughter is a member of joint family irrespective of death of her father and that she is entitled to claim share in the joint family property. In the above referred case, some lands came to be granted to the father of the parties to the suit. There was also a division in the family, wherein the properties in question fell to the share of the family of the plaintiff and the defendant led by their father. In such circumstances, it was held that irrespective of the grant in the name of a particular person of the family, it enures to the benefit of the family and that the married daughter is entitled to a share in such property as a member of the joint family.

20. In **Sangappa Kalyanappa Bangi Vs Land Tribunal, Jamakhandi** reported in **(1998) 7 SCC 294**

Hon'ble Apex Court has held as under:

"Section 24 of the Act declares that when a tenant dies, the landlord is deemed to continue the tenancy to the heirs of such tenant on the same terms and conditions on which the tenant was holding at the time of his death. We have to read Section 21 with Section 24 to understand the full purport of the provisions. Section 24 is enacted only for the purpose of making it clear that the tenancy continues notwithstanding the death of the tenant and such tenancy is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death. The heirs who can take the property are those who are referable to in Section 21. If he is a member of the joint family, then the surviving members of the joint family and if he is not such a member of a joint family, his heirs would be entitled to partition. Again, as to who his heirs are will have to be determined not with reference to the Act, but with reference to the personal law on the matter. ..."

Accordingly, Hon'ble Apex Court held that the married daughters are also considered as coparceners, entitled for share in the suit properties.

21. In **Chikkarangaiah S/o Late Rangaiah Since rep by His LR and Successor in Interest Dr.Mohan Chandra Prasad and Another Vs Gurusiddaiah S/o Late Rangaiah and Others**, reported in **2010 SCC Online KAR 3692**, this Court while considering claim of

exclusive and separate tenancy, this Court has held as follows:

"Considering these decisions and also considering the evidence on record in this case, when the Defendant No. 1 has claimed occupancy rights as having inherited the same from his father, Plaintiff being one of the heirs, the tenancy being heritable, it devolves not only on one of the heirs, but it devolved on all the heirs. May be, the other heirs might not have filed an application for grant of occupancy rights, but it being the estate of the deceased, he having died intestate, by succession, by survivorship, it devolves on the heirs of the deceased, Plaintiff being one of the Class I heirs, he is also entitled to the share. No doubt, if the Defendant had claimed exclusive cultivation independent of his father and had claimed his tenancy not by inheritance, but by acquisition by himself, if the other heirs had claimed right out of the said grant, the Civil Court could not have decided the said issue, but it is not a case here that the Defendant No. 1 had claimed his exclusive separate tenancy, but he having claimed as successor to his father, it cannot be said that one of the successors alone is entitled for grant particularly in the light of the definition "to cultivate personally"

In this decision it is categorically held that the cultivation on 01.03.1974 does not mean only as on 01.03.1974 but cultivation prior to 01.03.1974 and that if the tenancy is inherited, it is inherited by all the heirs and not only by one or few heirs.

22. In **Vishnu Since Deceased by LRs. and Others Vs Smt Buddavva and Others (NC: 2024:KHC-**

D:14076) this Court relying on decisions in Sangappa Kalyanappa Bangi Vs Land Tribunal, Jamakhandi (referred supra), Nagappa S/o Jatta Naik Vs Smt. Mahadevi W/o Manjunath Naik [RSA No.100164/2018 DD 21.06.2024], Ramesh Sangappa Ragha @ Raghannavar's Case (referred supra), Chikkarangaiah's Case (referred supra) and Nimbavva's case held that the married daughters are entitled for share in tenanted land where it is proved that the land granted enures to the benefit of joint family.

23. In the present case, Bheemappa and Hanamappa were the sons of the propositus. They claimed grant of occupancy right based on inheritance of the tenancy through the propositus. In view of the same, this Court holds that the grant of occupancy right in the name of Bheemappa and Hanamappa was not based on their exclusive and separate tenancy and as such they are not entitled to claim exclusive right over Item No.2 property or to deny the right of inheritance of other children of the propositus. In view of the same, this Court holds that the courts below were not justified in denying the share to the plaintiffs in Item No.2 property.

24. The courts below have even rejected the claim of the plaintiffs for a share in Item No.4 property on the ground that they have failed to prove that it is either a coparcenery or joint family property. It is the definite case of the plaintiffs that Item No.4 property i.e., land bearing Sy.No.136/2B measuring 1 acre 12 guntas situated in Ramathal Village is also the ancestral and joint family property of the parties to the suit. In support of this contention they have produced a Record of Right pertaining to the said property at Ex.P4. As per the said document the property stands in the joint names of Bheemappa, Hanamappa and Neelappa, the sons of Yalagurdappa and that their names were mutated in the revenue record as per order in M.E.No.426.

25. On the other hand, Defendant Nos.1 to 3 claim that Item No.4 property is the absolute property of Defendant Nos.1 to 4. First of all, Defendant No.4 has not supported the above contention of Defendant Nos.1 to 3. Added to it, Defendant Nos.1 to 3 have not placed any document before the court to prove their exclusive rights or ownership over Item No.4 property. Further, they have

not come up with a definite statement regarding the person who acquired the property or about the mode of its acquisition. Thereby, it becomes clear that Defendant Nos.1 to 3 have not adduced sufficient evidence on record to support their contention.

26. The case papers reveal that during the evidence of Defendant No.1 as DW-2 he got marked certain documents including a Record of Right pertaining to Item No.4 property, which is at Ex.D4. As per the said document Item No.4 property stands in the joint names of Hanamappa and Neelappa, sons of Yalagurdappa and legal heirs of Bheemappa. The contents of this document are nothing but reiteration of the entries in Ex.P4 except to the extent of showing the names of the legal heirs of Bheemappa pursuant to his death.

27. Defendant Nos.1 to 3 have examined two witnesses namely Sri Bhimappa S/o Basappa Hunagund and Sri Shivappa s/o Yamanappa as DW-3 and 4 respectively, in support of their case. In their examination in chief both these witnesses have specifically stated that

they are well acquainted with the family of the parties to the suit and they were involved in the process of division of the properties and that Item No.4 property i.e., land bearing R.S.No.136/2B measuring 1 acre 12 guntas was one of the properties belonging to the family of the parties to the suit. Thus, the materials on record clearly indicate that the courts below have completely ignored the evidence on record, i.e., Ex.P4, Ex.D4 and the admissions of DW-3 and DW-4 while appreciating the case of the plaintiffs in respect of Item No.4 property and erroneously come to conclusion that they have failed to prove that the said property is either coparcenary or joint family property. For the foregoing reasons, this Court holds that the plaintiffs are entitle to a share even in Item Nos.2 and 4 of Schedule 'A' and accordingly, the substantial questions of law framed in this appeal on 08.02.2023 and 07.07.2026 are answered in the negative.

28. In the result, this Court proceeds to the pass the following:

ORDER

- (i) The regular second appeal is allowed.
- (ii) The judgment and decree dated 19.10.2022 passed in R.A.No.171/2018 by the Court of learned Principal District and Sessions Judge, Bagalkot, confirming the judgment and decree dated 19.04.2018 passed by learned Senior Civil Judge and JMFC, Hungund insofar as dismissal of the suit in respect of Item Nos.2 and 4 of Schedule 'A' is set-aside.
- (iii) Consequently, the suit of the plaintiff is decreed in entirety, holding that the Plaintiff No.1 is entitled to 1/4th share in Item Nos.1 to 4 properties of Schedule 'A'.
- (iv) Plaintiff No.2 and Defendant No.5 jointly, Defendant Nos.1 to 3 jointly and Defendant No.4 are entitled to 1/4th share each in Item Nos.1 to 4 properties of Schedule 'A'.

(v) Draw a modified preliminary decree accordingly.

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

KMS/RH/ASN
CT:ASC