RFA NO.100416/2023

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

REGULAR FIRST APPEAL NO.100416 OF 2023

BETWEEN

HANAMAPPA S/O BHIMAPPA KATAPUR
SINCE DIED BY HIS LRS

1. CHANNABASAPPA S/O HANAMAPPA KATAPUR
AGE 52 YEARS, OCC. AGRICULTURE,
R/O. KESUR-DOTIHAL
TALUK KUSHTAGI,
DIST. KOPPAL-583277.

2. KANAKAPPA S/O HANAMAPPA KATAPUR
AGE: 45 YEARS, OCC: AGRICULTURE
R/O: KESUR - DOTIHAL
TALUK: KUSHTAGI,
DIST: KOPPAL-583277

3. SANGAPPA S/O YANKAPPA
@ VENKAPPA KATAPUR
AGE: 64 YEARS, OCC: AGRICULTURE
R/O: KESUR - DOTIHAL
TALUK: KUSHTAGI, DIST: KOPPAL-583277

4. SHARANAPPA S/O SHIVAPPA KATAPUR
AGE: 36 YEARS, OCC: AGRICULTURE
R/O: KESUR - DOTIHAL

Digitally signed by MALLIKARJUN RUDRAYYA KALMATH
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2026.07.10 16:29:36 +0530

TALUK: KUSHTAGI,
DIST: KOPPAL-583277
SINCE DECEASED, BY L.R.

SMT. NAGAMMA W/O SHIVAPPA KATAPUR
AGE: 56 YEARS, OCC: AGRICULTURE
R/O: KESUR - DOTIHAL
TALUK: KUSHTAGI, DIST: KOPPAL-583277

...APPELLANTS

(BY SMT. PALLAVI S. PACHHAPURE, ADVOCATE)

AND

VENKAPPA S/O TIMMAPPA
@ TIMMANNA KATAKPUR
SINCE DIED BY HIS LRS

1. HANUMANTAPPA
   S/O VENKAPPA KATAPUR
   AGE: 58 YEARS, OCC: MASTER,
   R/O: KESUR-DOTIHAL,
   TALUK: KUSHTAGI, DIST: KOPPAL
   NOW AT R/O: RAMASAGAR,
   TALUK: KAMPLI, DIST: BALLARI-583101.

2. SMT. KAMALAVVA
   W/O PARASAPPA KATAPUR
   AGE: 51 YEARS, OCC: AGRICULTURE
   R/O: KESUR-DOTIHAL,
   TALUK: KUSHTAGI,
   DIST: KOPPAL-583277.

3. SMT. MALLAVVA
   W/O KUMAR HOTTI
   AGE: 30 YEARS, OCC: HOUSEWIFE
   R/O: NINGAPUR, TQ. KOPPAL,
   DIST: KOPPAL-583277.

4. KUMARI. PUSHPAVATI
   D/O PARASAPPA KATAPUR
   AGE: 28 YEARS, OCC: HOUSE HOLD
   R/O: KESUR- DOTIHAL,
   TALUK: KUSHTAGI,
   DIST: KOPPAL-583277.

5. MALLAPPA
   S/O PARASAPPA KATAPUR
   AGE: 26 YEARS, OCC: PRIVATE JOB,
   R/O: KESUR- DOTIHAL,
   TALUK: KUSHTAGI,
   DIST: KOPPAL-583277.

6. SMT. SHANTAVVA
   W/O KANAKAPPA KATAPUR
   AGE: 44 YEARS, OCC: AGRICULTURE,
   R/O: KESUR- DOTIHAL,
   TALUK: KUSHTAGI,
   DIST: KOPPAL-583277.

7. KUMARI. BHAGYA
   D/O KANAKAPPA KATAPUR
   AGE: 29 YEARS, OCC: STUDENT,
   R/O: KESUR- DOTIHAL,
   TALUK: KUSHTAGI,
   DIST: KOPPAL-583277.

8. MARUTI S/O KANAKAPPA KATAPUR
   AGE: 28 YEARS, OCC: AGRICULTURE
   R/O: KESUR- DOTIHAL,
   TALUK: KUSHTAGI, DIST: KOPPAL-583277.

9. SHREEKANT S/O KANAKAPPA KATAPUR
   AGE: 26 YEARS, OCC: AGRICULTURE

R/O: KESUR- DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277.

10. RAMANNA S/O VENKAPPA KATAPUR
AGE: 50 YEARS, OCC: AGRICULTURE
R/O: KESUR- DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277.

11. VENKATESH S/O VENKAPPA KATAPUR
AGE: 40 YEARS, OCC: AGRICULTURE
R/O: KESUR-DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277

12. MALLAPPA S/O VENKAPPA KATAPUR
AGE: 38 YEARS, OCC: AGRICULTURE
R/O: KESUR- DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277.

13. VEERAPPA W/O HANAMAPPA KATAPUR
AGE: 64 YEARS, OCC: AGRICULTURE
R/O: KESUR- DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277

14. NAGAPPA S/O HANAMAPPA KATAPUR
AGE: 56 YEARS, OCC: AGRICULTURE
R/O: KESUR- DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277.

15. SHANKRAPPA S/O HANAMAPPA KATAPUR
AGE: 41 YEARS, OCC: AGRICULTURE
R/O: KESUR- DOTIHAL,
TALUK: KUSHTAGI, DIST: KOPPAL-583277.

…RESPONDENTS

(BY SRI. S.H. MITTALKOD AND SRI AKARSH MITTALKOD, ADVOCATES FOR R1, R2, R5, R10, R11, R13, R14 AND R15; NOTICE TO R3, R4, R6 TO R9 AND R12 SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CIVIL PROCEDURE CODE, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 29.05.2023 PASSED IN O.S.NO.1388/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, KUSHTAGI, BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.07.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE)

1. The present appeal is filed by the plaintiffs/appellants challenging the judgment and decree dated 29.05.2023 passed by the Senior Civil Judge and JMFC, Kushtagi (hereinafter referred to as "the Trial Court") in O.S. No.1388/2017.

2. For the sake of convenience, the parties are referred to according to their ranking before the Trial Court.

3. The plaintiffs filed the suit seeking partition and separate possession of their half share in the suit Schedule

'A' and Schedule 'B' properties. The description of the suit schedule properties is as follows:

SCHEDULE "A" SUIT PROPERTIES

1. Land Sy.No.20*Hissa-1 Meas: 07A-28G @ Rs.10.41
2. Land Sy.No.20*Hiss-2 Meas: 04A-11G @ Rs.06.04
3. Land Sy.No.20*Hissa-3 Meas: 12A-19G @ 17.49

All lands are situated in the village of Upparabasapur, Tq: Kushtagi Hobli of Kushtagi Dist: Koppal.

4. Land Sy.No. 30* Hissa 1-ಅ Meas: 16A-00G @ Rs.46.14
5. Land Sy.No. 31* Hissa * Meas: 18A-30G @ Rs.54.75
6. Land Sy.No. 32* Hissa 1 Meas: 08A-37G @ Rs.27.71
7. Land Sy.No. 32* Hissa 3 Meas: 2A-21G @ Rs.07.93
8. Land Sy.No. 32* Hissa 4 Meas: 4A-36G @ Rs.15.23

All lands are situated in the village of Hesarura Tq: Kushtagi & Hobali of Kushtagi Dist: Koppal.

9. Land Sy.No. 34* Hissa 2 Meas: 50A-10G @ Rs.14.45

The land is situated in the village of Naduvalakoppa Tq: Kushtagi and Hobali of Kushtagi Dist: Koppal.

SCHEDULE "B" SUIT PROPERTIES

1. The House No.292 & S.L. No.334 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

2. The House No.293 & S.L. No.335 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

3. The House No.284 & S.L. No.326 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

4. The House No.285 & S.L. No.327 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

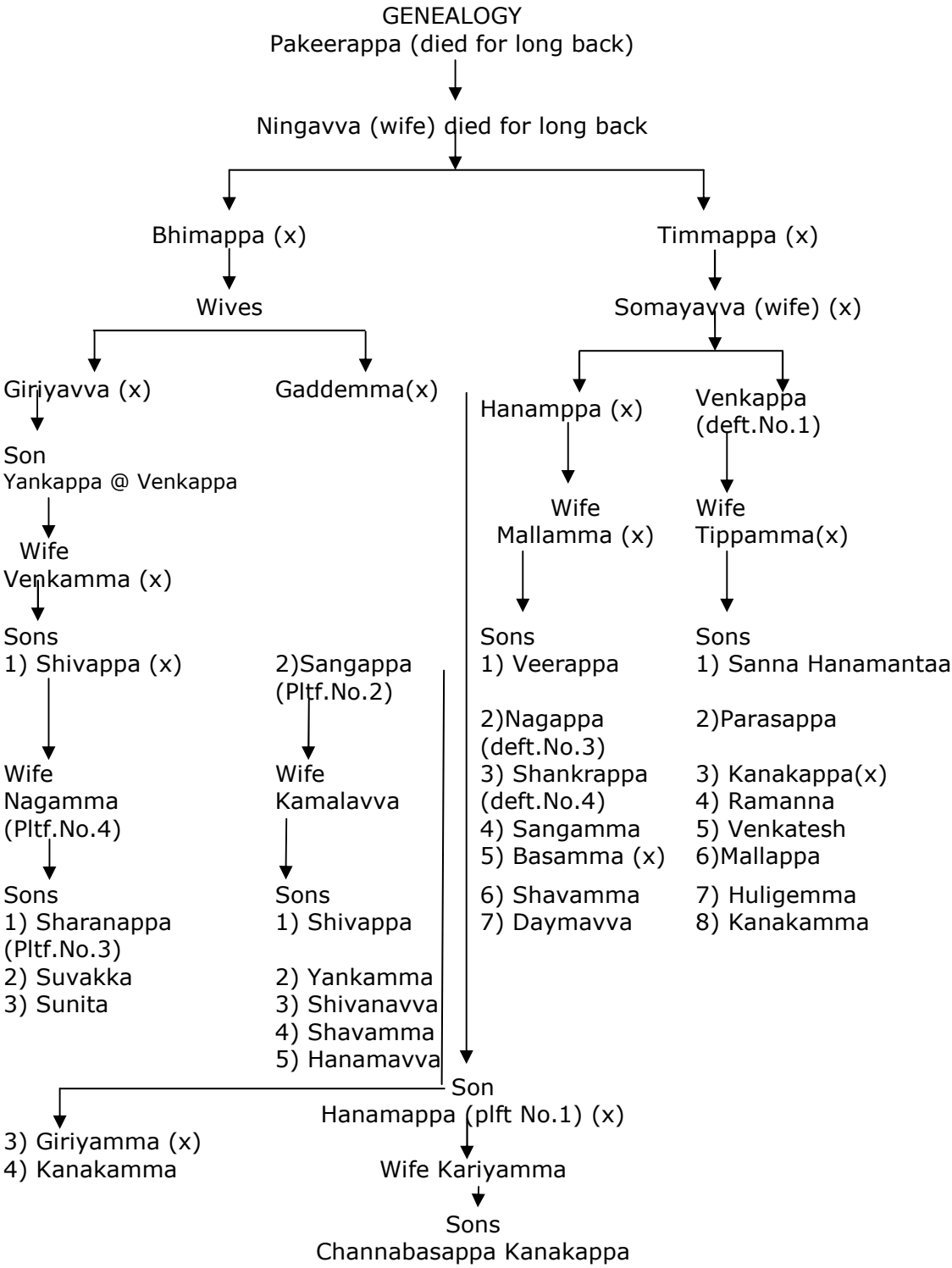
5. The House No.283 & S.L. No.325 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

6. The House No.400/1 & S.L. No.459 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

7. The House No.400/1 & S.L. No.461 situated in the village of Kesur G.P. of Kesur Tq: Kushtagi, Dist: Koppal.

4. The brief facts of the case are that, with regard to the relationship between the parties, the genealogy stated in the plaint is extracted below:

RFA NO.100416/2023



Note : "X" denotes died, Pltf denotes: Plaintiff and deft denotes defendant.

5. The brief facts of the case are as follows:

6. According to the plaint, one Fakeerappa Khatapur was the propositus of the family. He had two sons, namely, Bheemappa and Timmappa. Fakeerappa and both his sons died long ago. Bheemappa had two wives, namely, Giriyamma and Gaddemma. Through his first wife, Giriyamma, he had a son named Yankappa. Yankappa married Yankamma, and they had two sons, namely, Shivappa, the husband of plaintiff No.4, and Sangappa, plaintiff No.2. Plaintiff No.3 is the son of Shivappa. Giriyamma, Yankappa and Shivappa have since expired. Through his second wife, Gaddemma, Bheemappa had a son named Hanamappa, who is plaintiff No.1.

7. It is the further case of the plaintiffs that Timmappa @ Timmanna, the second son of Fakeerappa, married Somamma. They had two sons, namely, Hanamappa and Venkappa (defendant No.1). Timmappa, Somamma and Hanamappa have expired. Hanamappa married Mallamma, who has also expired. They had three

sons, namely, Veerappa, Nagappa and Shankrappa, who are defendants Nos.2 to 4.

8. After the death of Fakeerappa Khatapur, the plaintiffs and the defendants effected a family arrangement for convenience in cultivation and to avail Government benefits. Pursuant to the said arrangement, mutation entries were effected in the names of the plaintiffs and the defendants. However, no partition by metes and bounds took place. The family continued to remain joint, and the plaintiffs and defendants continued as joint owners and joint possessors of the family properties. The family has no source of income other than agricultural income. Some of the suit properties were acquired out of the income derived from the joint family. Therefore, all the suit schedule properties are joint family properties belonging to the plaintiffs and the defendants.

9. It is further pleaded that Fakeerappa and his two sons, Bheemappa and Timmappa, died intestate while the family remained joint. The plaintiffs represent the branch of Bheemappa, whereas the defendants represent the branch

of Timmappa. Accordingly, the plaintiffs claim an undivided half share in all the suit schedule properties.

10. Owing to disputes between the parties, it became impossible for the plaintiffs to continue joint enjoyment of the family properties. The plaintiffs demanded partition and separate possession of their half share in the suit schedule properties. However, the defendants refused to effect partition on 13.09.2017. Consequently, the plaintiffs instituted the present suit seeking partition and separate possession of their half share in all the suit schedule properties.

11. After registration of the suit, summons were issued to the defendants. Defendants Nos.1 to 4 entered appearance through their counsel. Defendant No.1 filed a written statement, which was adopted by the remaining defendants.

12. Defendant No.1, in his written statement, denied the plaint averments in their entirety. He specifically denied that the plaintiffs and defendants were joint owners and in joint possession of the suit properties and further denied

that the plaintiffs were entitled to a half share therein. He also denied that the plaintiffs had demanded partition and that such demand was refused.

13. According to defendant No.1, Fakeerappa and his wife Ningawwa had two sons, namely, Bheemappa and Timmappa. Bheemappa had two wives, Giriyamma and Gaddemma. Through Giriyamma, he had a son named Yankappa, and through Gaddemma, he had a son named Hanamappa, who is plaintiff No.1. Yankappa and his wife Yankamma had four children, namely, Shivappa, Sangappa, Giriyamma and Kanakamma. Shivappa and his wife Nagamma had three children, namely, Sharanappa (plaintiff No.3), Sukkavva and Sunitha. Sangappa, son of Yankappa, and his wife Kamalavva had five children, namely, Shivappa, Yankamma, Shivanagamma, Savamma and Hanamamma. Plaintiff No.1 and his wife Kariyamma have two sons, namely, Channabasappa and Kanakappa.

14. It is further stated that Timmappa and his wife Somavva had three children, namely, Hanamappa, Venkappa (defendant No.1) and Hanamavva. Hanamappa

and his wife Mallamma had seven children, namely, Veerappa (defendant No.2), Nagappa (defendant No.3), Shankrappa (defendant No.4), Sangamma, Basamma, Shavamma and Dyamavva. Defendant No.1 and his wife Tippamma have eight children, namely, Sannahanumantha, Parasappa, Kanakappa, Ramanna, Venkatesh, Mallappa, Huligemma and Kanakamma.

15. Defendant No.1 further contended that, after the death of Fakeerappa and his wife Ningawwa, an oral partition took place between their sons, Bheemappa and Timmappa, in the year 1950. In the said partition, land bearing Sy.No.20 measuring 7 acres 28 guntas fell to the share of plaintiff No.1. Land bearing Sy.No.20/2 measuring 4 acres 11 guntas fell to the share of Yankappa. In the year 1988, the said land was mutated in the names of Shivappa, the father of plaintiff No.3, and plaintiff No.2 Sangappa.

16. It is further stated that land bearing Sy.No.20/3 measuring 12 acres 19 guntas fell to the share of Timmappa and was thereafter mutated in the name of his son Hanamappa. House Nos.325, 326 and 327 situated at

Kesrur village fell to the share of Bheemappa and were subsequently mutated in the names of the plaintiffs. Plots bearing Nos.334 and 335 were purchased by the sons of Timmappa in the names of Hanamappa and Venkappa after the partition. Similarly, plots bearing Nos.459 and 461 situated at Kesrur village were purchased by the plaintiffs after partition in the names of plaintiffs Nos.2 and 4.

17. Defendant No.1 further stated that Item No.4, bearing Sy.No.30, Hissa No.1A, measuring 16 acres, was purchased by the defendants after partition from Gynanappa. The land was purchased in the name of Hanamappa and continues to stand in his name. Item No.5, bearing Sy.No.31 measuring 18 acres 30 guntas, fell to the share of defendant No.1. Though it was initially recorded in the name of Hanamappa, it was subsequently mutated in the name of defendant No.1. It is also stated that land bearing Sy.No.32, Hissa No.1, measuring 8 acres 37 guntas, was purchased by defendant No.1 from Hanamavva, wife of Mariyappa, and was mutated in the name of his brother Hanamappa. Item No.7, bearing

Sy.No.32, Hissa No.3, measuring 2 acres 21 guntas, is ancestral property which fell to the share of plaintiff No.1 and continues to stand in his name.

18. It is further stated that Item No.8, bearing Sy.No.32, Hissa No.4, measuring 36 guntas, fell to the share of Bheemappa and was thereafter partitioned between plaintiff No.2 and his brother Shivappa. Item No.9, bearing Sy.No.34, Hissa No.2, measuring 10 guntas, was purchased by defendant No.2 from Purushotham Rao during the year 1978-79, and since then defendant No.2 has been its absolute owner and possessor. The original sale deed was allegedly destroyed due to heavy rains.

19. The defendants further contended that the partition had taken place more than fifty years prior to the institution of the suit and, therefore, the suit filed in the year 2017 is hopelessly barred by limitation. It is also contended that the plaintiffs intentionally omitted certain house properties which had fallen to their share, rendering the suit one for partial partition and, therefore, not maintainable. It is further contended that all the necessary

members of the joint family have not been impleaded, making the suit bad for non-joinder of necessary parties.

20. It is further contended that the defendants invested more than ₹20,00,000/- in improving the lands. The plaintiffs, having no right over the properties allotted to the defendants' share, have filed a false suit. The mutation entries effected long ago have never been challenged before the competent authority. Pursuant to the partition of 1950, the revenue records were mutated accordingly. The defendants' family owns about 160 sheep and also runs a shop under the name "Renuka Khadi Gramodyoga Sangha". Out of the income derived from the said business and sheep-rearing, the defendants have purchased the properties in their own names.

21. The defendants further contended that both parties are separately enjoying their respective properties and have independently availed agricultural loans. Hence, the suit filed by the plaintiffs is not maintainable and is liable to be dismissed.

22. Based on the pleadings and evidence on record, the Trial Court framed the following issues:

a. *Whether the plaintiffs prove that, the suit properties are ancestral joint family properties ?*
b. *Whether the defendants prove that, the prior partition as pleaded in their written statement?*
c. *Whether the defendants prove that, suit item No.4 to 6 and 9 of schedule-A and item No.1 and 2 of schedule-B are their self acquired properties ?*
d. *Whether the defendants prove that, the suit for partial partition is not maintainable ?*
e. *Whether the defendants proves that the suit is barred by limitation ?*
f. *Whether the plaintiffs are entitled for relief sought ?*
g. *What order or decree ?*

23. In support of their case, the plaintiffs examined plaintiff No.1(a) and one other witness as PWs.1 and 2 and marked Exs.P-1 to P-129. Thereafter, they closed their evidence. On behalf of the defendants, defendant No.2 and five other witnesses were examined as DWs.1 to 6, and

Exs.D-1 to D-365 were marked. After the issues were re-framed, both parties submitted that they had no further evidence to adduce.

24. Upon hearing the arguments and appreciating the oral and documentary evidence on record, the Trial Court answered Issue Nos.1 to 3 in the affirmative and Issue Nos.4 to 6 in the negative. Consequently, by judgment and decree dated 29.05.2023, the Trial Court dismissed the suit filed by the plaintiffs with costs.

25. Aggrieved by the judgment and decree dismissing the suit, the plaintiffs have preferred the present appeal on the following grounds:

a. The impugned judgment and decree passed by the trial Court, whereby the suit was dismissed in its entirety, is perverse, capricious, and contrary to the material documents and oral evidence on record.

b. The trial Court, after completion of the pleadings, framed the issues. The parties led evidence on the basis of the issues framed by the trial Court. At the time of passing the judgment, the trial Court framed new issues on the

ground that the earlier issues framed were not properly worded.

c. The trial Court, after recasting the issues, introduced a new case and, without providing any opportunity to lead further evidence, dismissed the suit on erroneous grounds.

d. The procedure adopted by the trial Court in recasting the issues is quite unknown to law. The trial Court ought to have provided an opportunity to the parties to lead further evidence.

e. The written statement is silent with regard to the exact date of partition. Under these circumstances, the defendants have failed to discharge their burden of proving the earlier oral partition.

f. The trial Court, without any basis, came to the conclusion that there was an earlier partition and dismissed the suit.

g. The trial Court, while coming to the conclusion regarding the earlier partition, relied on Exs.D.362 to D.365. The plaintiffs have seriously disputed the contents

and signatures found on Exs.D.362 to D.365. Sangappa is an illiterate person, and he does not know how to sign. He affixes his thumb impression. The trial Court ought to have compared the disputed signatures with the admitted signatures.

h. The trial Court has not made any such observations while admitting the above exhibits and coming to the conclusion regarding the earlier partition. When there was a serious dispute with regard to the signatures on the documents, the trial Court neither compared the signatures nor sought any expert opinion. Hence, the finding of the trial Court with regard to the earlier partition does not hold any water and, as such, is liable to be set aside.

i. Ex.P.54 is the Property Extract pertaining to the year 1954-1955, wherein the name of Hanamappa S/o Timmappa Kesur, who is the grandson and successor of Pakeerappa, is entered. This falsifies the entire case of the defendants. If there was a partition in the year 1950, then why was the entry made showing Hanamappa as the successor of Pakeerappa? Even if there was an oral

partition, as per Ex.P.54, the said partition was not acted upon. This aspect was not considered by the trial Court, and it erred in dismissing the suit. On what basis the trial Court came to the conclusion that the properties mentioned in Ex.P.54 are the self-acquired properties of the defendants is not clear. It appears that the trial Court came to the said conclusion only on assumptions.

j. All the suit schedule properties are ancestral properties. The defendants claim that Item Nos.4 to 6 and 9 of Schedule 'A' and Item Nos.1 and 2 of Schedule 'B' are their self-acquired properties. On this point, the trial Court, while passing the judgment, recast a specific issue at Serial No.3. The burden lies on the person who asserts self-acquisition. The defendants have not produced either the original sale deeds or certified copies of the sale deeds to prove that the above properties are their self-acquired properties. There is no explanation regarding the non-production of the original sale deeds. Therefore, the said properties are also ancestral properties. This aspect has not been appreciated by the trial Court. The approach adopted

by the trial Court in deciding the suit for partition is quite unknown to the normal procedure.

k. The trial Court failed to apply its mind to the facts and the nexus with the properties involved in the suit. The trial Court miserably failed to exercise its judicial mind, which resulted in a miscarriage of justice.

l. The trial Court, while passing the judgment, observed that the revenue records prove the prior partition as pleaded by the defendants. The trial Court failed to take note of the fact that revenue entries are not conclusive proof of partition. Revenue entries, in the absence of any supporting evidence, cannot prove an oral partition, particularly in the absence of proof that the entries were acted upon. Hence, the observation made by the trial Court, in the absence of conclusive evidence regarding the oral partition, cannot be sustained.

m. On these grounds, the appellants prayed that the impugned judgment and decree are illegal, perverse, and call for interference by this Court.

26. Heard the learned counsel for the parties. We have perused the appeal papers, the records of the Trial Court, and the oral and documentary evidence adduced by the respective parties.

27. The point that would arise for our consideration in this appeal is:

> *"Whether the impugned judgment and decree passed by the Trial Court is perverse, illegal, and calls for interference by this Court?"*

28. 28. Arguments of the learned counsel for appellants is that, the trial Court without giving any opportunity to lead evidence on the basis of the issues which were framed on the ground that the earlier issues framed were not properly worded and thereby the trial Court has committed serious error.

29. In this regard, we have gone through the trial Court records and the issues framed earlier and issues framed afresh. Earlier issues framed on 02.08.2019 read as under:

1. *Whether the plaintiff proves that, genealogy furnish by plaintiff is true and correct?*

2. *Whether the plaintiff proves that, the plaintiff and the defendants are having joint family properties and they are in joint possession of the suit property?*

3. *Whether the defendants prove that, Venkappa had two wife's and they died long back?*

4. *Whether the defendants prove that, suit properties purchased out of joint family income?*

5. *Whether the defendant proves that, already partition taken place in the year 1950 ?*

6. *Whether the defendants prove that, suit for partial partition is not maintainable?*

7. *Whether the defendants prove that, suit is barred by limitation*

8. *Whether the plaintiff is entitled for the relief of partition?*

9. *What order of decree?*

30. The issues framed on 13.04.2023 read as under:

1. *Whether the plaintiffs prove that, the suit properties are the ancestral joint family properties?*

2. *Whether the defendants prove the prior partition as pleaded in their written statement?*

3. *Whether the defendants prove that, item No.4 to 6 and 9 of Schedule A and item No.1 and 2 of Schedule B are their self acquired property?*

4. *Whether the defendants prove that, the suit for partial partition is not maintainable?*

5. *Whether the defendants prove that, the suit is barred by limitation?*

6. *Whether the plaintiffs are entitled for relief sought?*

7. *What order or decree?*

31. On going through both the issues framed on the previous date and those framed afresh, it is evident that both sets of issues are the same, and the issues framed afresh are properly worded. Therefore, the contention of the learned counsel for the appellants, as set out in the grounds of appeal, that the appellants were not given an opportunity to lead evidence on the issues framed afresh is not sustainable.

32. According to the case of the appellants/plaintiffs, the suit properties are the joint family properties of the

plaintiffs and the defendants. The genealogy set out in the preceding paragraph is not disputed by the parties. However, according to the defendants, the plaintiffs have not included all the members of the family in the genealogy. Insofar as the contention of the defendants that all the family members have not been included by the plaintiffs is concerned, it is not in dispute that the present dispute pertains to the families of two persons. The plaintiffs represent the branch of Bhimappa, and the defendants represent the branch of Timmappa, who were the sons of the propositus, Fakkirappa. Therefore, the contention of the defendants that all the family members have not been impleaded as parties to the suit is of no consequence.

33. It is the case of the plaintiffs that the suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants and that there has been no partition in the family. *Per contra*, it is the contention of the defendants that an oral partition took place between Bhimappa and Timmappa in the year 1950 itself. In the said partition, suit item No.1, land bearing Sy.

No.20, measuring 7 acres 28 guntas, fell to the share of Bhimappa. Suit item No.2, land bearing Sy. No.20/2, measuring 4 acres 11 guntas, fell to the share of Yankappa, the son of Bhimappa through his first wife, Giriyamma, and the brother of plaintiff No.1. Subsequently, the revenue records in respect of the said land were mutated in the names of the son and grandson of Yankappa, namely, plaintiffs Nos.2 and 3, respectively.

34. The defendants further contended that suit item No.3, land bearing Sy. No.20/3, measuring 12 acres 19 guntas, fell to the share of Timmappa, the second son of the propositus, Fakkirappa. Thus, according to the defendants, in the oral partition held in the year 1950, suit item Nos.1 and 2 were allotted to the branch of Bhimappa, whereas suit item No.3 was allotted to the branch of Timmappa.

35. It is further contended that House Nos.325 (item No.5), 326 (item No.3), and 327 (item No.4) of the suit 'B' Schedule properties fell to the share of the branch of Bhimappa, whereas House Nos.334 (item No.1) and 335

(item No.2) of the suit 'B' Schedule properties fell to the share of the branch of Timmappa.

36. The defendants further contended that, after the partition, plot Nos.459 and 461 (item Nos.6 and 7 of the suit 'B' Schedule properties) were purchased by the plaintiffs, who constructed houses thereon and have been residing therein separately. The defendants further contended that suit item No.4, bearing Sy. No.30, suit item No.5, bearing Sy. No.31, and suit item No.6, bearing Sy. No.32/1 (item Nos.4 to 6 of the suit 'A' Schedule properties), were purchased by the defendants after the partition.

37. The defendants further contended that the lands bearing Sy. Nos.32/3 and 32/4 (item Nos.7 and 8 of the suit 'A' Schedule properties) are the ancestral properties that fell to the share of the branch of Bhimappa, i.e., the plaintiffs.

38. The defendants further contended that suit item No.9 of the suit 'A' Schedule property, bearing Sy. No.34/2, was purchased by defendant No.2. Therefore, according to

the defendants, the oral partition had already taken place in the year 1950.

39. The learned counsel for the appellants argued that, although the defendants have contended that an oral partition took place in the year 1950, they have failed to prove the said partition by any cogent evidence, except by relying upon the revenue records, namely, the mutation entries.

40. The learned counsel for the appellants further argued that the trial Court, solely on the basis of the RTC extracts, Panchayat extracts, and mutation extracts, came to the conclusion that an oral partition had taken place in the year 1950 and, on that basis, dismissed the suit filed by the plaintiffs.

41. The learned counsel for the appellants argued that the revenue records are not documents of title. According to him, the family members had merely made an arrangement for their convenience, and although they have been residing separately and some of the properties stand in the names of members of both branches, it cannot be

inferred that a partition by metes and bounds had taken place. Therefore, the learned counsel for the appellants contended that the trial Court, without properly appreciating the evidence on record, erroneously came to the conclusion that the plaintiffs had failed to prove that the suit schedule properties were the ancestral and joint family properties and that there had been no partition.

42. We have carefully gone through the evidence placed on record by the respective parties before the trial Court.

43. Plaintiff No.1(a), Channabasappa, was examined as PW.1. He deposed that, although the plaintiffs and the defendants have been residing separately, they have been enjoying the suit schedule properties jointly and that there has been no partition at all. During his cross-examination, he admitted that land bearing Sy. No.31, measuring 18 acres 30 guntas, stands in the name of his uncle, Venkappa, who is none other than defendant No.1, even during the lifetime of his father, Hanamappa, and his grandfather, Bhimappa. This admission discloses that the

parties were enjoying the properties separately and gives rise to an inference that there might have been an oral partition in the year 1950, as contended by the defendants.

44. PW.1 further admitted that his father's name has been entered in the RTC extracts for the last 60 years. He also admitted that plaintiffs Nos.3 and 4 had availed themselves of a loan from the PLD Bank by mortgaging the said property. These admissions of PW.1 disclose that the properties have not been jointly enjoyed by the plaintiffs and the defendants.

45. The plaintiffs have also examined Anandappa, a resident of Kesur-Dotihal Village, as PW.2. He deposed that there had been no partition and that the plaintiffs and the defendants were jointly enjoying the suit properties. However, during his cross-examination, he admitted that he did not know whether there had been a partition of the ancestral properties and whether the parties had been residing separately. For better appreciation, the relevant portion of his evidence is extracted below:

"ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳಲ್ಲಿ ಭಾಗವಾಗಿ ಪ್ರತ್ಯೇಕವಾಗಿದ್ದಾರೆ ಎನ್ನುವುದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ."

46. On a perusal of the aforesaid evidence of PW.2, it is evident that, although he stated in his examination-in-chief that there had been no partition, during his cross-examination he expressed his ignorance in that regard. Therefore, the evidence of PW.2 is of no assistance to the plaintiffs in establishing that the plaintiffs and the defendants have been jointly enjoying the suit schedule properties and that there has been no partition.

47. On the other hand, in order to establish that there had been a partition, the defendants examined defendant No.2 as DW.1. He deposed that an oral partition had taken place in the year 1950. During his cross-examination, it was suggested to DW.1 that the mutation extracts did not contain any recital or material to show that there had been a partition, which was admitted by him. However, DW.1 denied the suggestion that the plaintiffs and the defendants are still in joint possession of the suit schedule properties and that no partition had taken place.

48. The defendants also examined Parasappa as DW.2. He deposed that there had been a partition between the branch of the plaintiffs and the branch of the defendants. During his cross-examination, although he stated that he could not specify the exact date of the oral partition, he deposed that the partition had taken place about 70 years earlier.

49. The defendants also examined Venkatesh as DW.3, who likewise deposed that there had been an oral partition. During his cross-examination, it was suggested to him that no partition had taken place; however, he denied the said suggestion.

50. The learned counsel for the appellants argued that, although the documents, namely, the RTC extracts, mutation entries, and Panchayat records, disclose separate entries in the names of different persons, such entries were made only for the convenient enjoyment of the properties and do not establish that a partition by metes and bounds had taken place.

51. The learned counsel for the respondents/defendants argued that, after the branch of Bhimappa, represented by the plaintiffs' family, effected a partition between Sangappa (plaintiff No.2) and Sharanappa (plaintiff No.3), mutation extracts, namely Exs.D.362, D.363, and D.364, pertaining to the year 2011, came to be recorded. According to the learned counsel, these documents clearly disclose that a partition had taken place between plaintiffs Nos.2 and 3, namely, Sangappa and Sharanappa, respectively.

52. In reply, the learned counsel for the appellants/plaintiffs argued that no partition had taken place between Sangappa and Sharanappa, as alleged by the defendants. It was further contended that, as per Ex.D.365, the signatures purported to be those of Sangappa (plaintiff No.2) and Nagamma (plaintiff No.4) were not their genuine signatures but were forged. It was argued that, on the basis of the said Ex.D.365, mutation entries reflected in Exs.D.362 and D.363 were recorded. Therefore, it was contended that the said documents cannot be relied upon to

conclude that a partition had taken place, as asserted by the defendants.

53. It is true that long-standing revenue records standing in the names of the parties do not, by themselves, amount to proof of partition or constitute conclusive evidence thereof. However, long-standing revenue records, such as mutation entries, Record of Rights (RTC), khasra/pahani entries, khata extracts, and similar revenue records, are relevant pieces of evidence regarding possession and enjoyment and may lend support to a claim that a partition has taken place.

54. Although revenue records, by themselves, do not conclusively establish a legal partition or confer title, they constitute relevant pieces of evidence when considered along with other material on record, such as a family settlement, the long-standing conduct of the parties, separate possession and enjoyment of the properties, separate payment of land revenue, and other documentary and oral evidence. All these factors may be taken into consideration in determining whether an oral partition had

taken place in the family, notwithstanding the absence of a registered document evidencing such partition.

55. The learned counsel for the appellants further argued that, in the present appeal, the appellants have filed an application under Order XLI Rule 27 of the Code of Civil Procedure (I.A. No.2/2023) seeking permission to produce additional documents. The said documents have been produced to establish that the signatures of Sangappa and Nagamma appearing on Ex.D.365 are not their genuine signatures. In support of this contention, the appellants have produced documents containing the admitted signatures of Sangappa and Nagamma, including the bank account opening forms, to demonstrate that the admitted signatures do not tally with the signatures found on Ex.D.365. Therefore, it is contended that Ex.D.365 is a forged document and that, on the basis of the said document, mutation entries reflected in Exs.D.362, D.363, and D.364 came to be recorded.

56. In reply, the respondents have also filed an application under Order XLI Rule 27 of the Code of Civil

Procedure (I.A.No.1/2026) along with a copy of the sale deed dated 17.05.2024. It is contended therein that, even during the pendency of the present appeal, Channabasappa, plaintiff No.1(a), sold land bearing Sy. No.32/3, measuring 2 acres 32 guntas, in favour of one Hanamavva. According to the respondents, this transaction clearly discloses that the property allotted to the branch of Bhimappa was dealt with by plaintiff No.1(a) as his exclusive property during the pendency of the appeal.

57. Insofar as the sale of the aforesaid property, namely, Sy. No.32/3, during the pendency of the present appeal is concerned, the learned counsel for the appellants argued that, merely because plaintiff No.1(a) sold the said property, it cannot be inferred that there had been a partition. We find this contention of the learned counsel for the appellants to be unsustainable.

58. Having regard to the pleadings of the respective parties and upon reappreciation of the oral and documentary evidence placed on record, we are of the considered opinion that the trial Court was justified in

dismissing the suit filed by the plaintiffs on the ground that an oral partition had taken place between the branches of Bhimappa and Timmappa, through whom the plaintiffs and the defendants claim their respective rights.

59. The plaintiffs approached the Court contending that the suit schedule properties are the ancestral and joint family properties. The initial burden was upon them to establish that the suit schedule properties were ancestral and joint family properties. In our considered opinion, the plaintiffs have failed to discharge the said initial burden.

60. On the other hand, the defendants have consistently contended that an oral partition had taken place as far back as the year 1950. On a consideration of the entries in the Record of Rights, mutation entries, the oral evidence adduced by the defendants, and the subsequent conduct of the parties, we are of the opinion that the factum of the oral partition stands established.

61. The trial Court has properly appreciated the oral and documentary evidence on record and has rightly dismissed the suit filed by the plaintiffs. The grounds urged

in the present appeal are devoid of merit. Accordingly, the appeal is liable to be dismissed.

62. In the result, the point raised for consideration is answered in the negative, and we proceed to pass the following:

ORDER

a. The Regular First Appeal is ***dismissed***.

b. The judgment and decree dated 29.05.2023 passed by the Senior Civil Judge and JMFC, Kushtagi, in O.S. No.1388/2017 is hereby confirmed.

c. No order as costs.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

AC/MRK
CT-CMU