

RESERVED ON : 08.04.2026

PRONOUNCED ON : 08.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT APPEAL NO. 1158 OF 2025 (KLR-RR/SUR)

BETWEEN:

SRI. RAMAPPA,
S/O SIDDAPPA,
AGED ABOUT 64 YEARS,
RESIDING AT:
KALAGHATTE VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 217.

...APPELLANT

(BY SRI. SRINIVASA., ADVOCATE)

AND:

1. THE SECRETARY,
MINISTRY TO REVENUE DEPARTMENT,
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA,
BENGALURU -560 001.
2. THE DEPUTY COMMISSIONER,
DAVANAGERE DISTRICT,
DAVANAEGRE - 577 001.
3. THE ASSISTANT COMMISSIONER,
DAVANAGERE SUB-DIVISION
DAVANAEGRE - 577 001.



4. THE THASILDHAR,
HONNALI TALUK,
DAVANAEGRE - 577 001.

5. SRI. M. NAGENDRAPP,
S/O SIDDAPPA,
AGED ABOUT 61 YEARS,
RESIDING AT
KUNIBELAKERE VILLAGE,
HONNALI TALUK,
DAVANAGERE DISTRICT - 577 001.

...RESPONDENTS

(BY SRI. G.S. ARUNA, HCGP FOR R1 TO R4,
SRI. S.B. HALLI, ADVOCATE FOR R5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED:24.04.2025 PASSED IN WRIT PETITION No.32368/2016 (KLR-RR/SUR) AND CONSEQUENTLY, BE PLEASED TO CONFIRMED THE ORDER PASSED BY THE 2ND RESPONDENT IN RA/CR-55/2013-14 DATED:06.03.2015 AND ETC.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

Respondent No.5 in W.P.No.32368/2016 has filed this writ appeal under Section 4 of the Karnataka High Court Act, 1961, challenging the order dated 24.04.2025 passed by the Writ Court. In the impugned order the Writ Court allowed the writ petition directing the revenue authorities to enter the name of Nagendrappa in the revenue records as the successor-in-interest of Gangamma as Gangamma died unmarried.

2. The parties are referred to as per their rankings before the Writ Court.

3. The brief facts leading to filing of this appeal are as under:

4. The petitioner claims to be the husband of Gangamma, whereas respondent No.5 denies that he is not the husband. There was no marriage between Gangamma as the petitioner was the husband of one Lakshmidēvi and not Gangamma. As per the case put forth

by the petitioner in the writ petition, the petitioner married to one Lakshmidevi. As there was no issues from the wedlock, wife Lakshmidevi brought her sister Gangamma as early in the year 2003 and asked the petitioner to marry her. However, the petitioner used to postpone the same, in view of his sentiments towards Lakshmidevi. But in view of her persistent request and on compulsion by the first wife (mentioned as senior wife), the petitioner agreed to marry Gangamma.

5. The said Gangamma in the year 2005 purchased two items of the properties, which are agricultural land in Sy.No.47/2 measuring 16 guntas and Sy.No.48/3 measuring, situated at Kamalapura Village, Sasvenahally Hobli, Honnali Taluk. Subsequent to the purchase of the properties under the registered sale deed dated 26.07.2005, name of Gangamma came to be entered in the RTC under the provisions of Karnataka Land Reforms Act, 1964 ('KLR Act' for short) vide M.R.No.5/2005-06. Thereafter in the year 2008 i.e., on 18.04.2008, petitioner married Gangamma as second wife.

Gangamma after two years died due to serious illness on 17.01.2010.

6. The petitioner noticed that in the year 2006 itself, the respondent No.5 by giving false information before the revenue authorities got his name entered with respect to the agricultural land stated *supra* in M.R.No:INH.04/2006-07. The petitioner called the said M.R. in question before the Assistant Commissioner. The Assistant Commissioner had set aside the M.R.No.INH.04/2006-07 and directed the Khata to be entered in the name of petitioner with respect to the lands stated *supra*.

7. Respondent No.5 taken the order in challenge before the Deputy Commissioner in Revision Petition. The Deputy Commissioner after considering the rival submissions, directed the revenue authorities to enter in the joint name of respondent No.5 and the first wife of petitioner i.e., Lakshmidevi. The petitioner aggrieved by the same called in question the order before the Writ Court. The learned single judge passed an order allowing

the writ petition, holding that in view of Section 15(2) of the Hindu Succession Act, 1956, the petitioner being the husband and survived his wife and relying on the death certificate produced in the writ petition vide **Annexure-C**, wherein the name of petitioner referred in the column No.7 as the husband and only on that ground set aside the order passed by the Deputy Commissioner and directed the revenue authorities to enter the name of petitioner. However, observing that the respondent No.5 may approach the Civil Court to establish that the Nagendrappa was not the husband of Gangamma. It is this order passed by the learned Single Judge called in question in this writ appeal.

8. Heard, Sri.S.Sreevatsa, learned Senior counsel for Sri.Srinivasa, learned counsel for appellant and Sri.G.S.Aruna, learned High Court Government Pleader for respondent Nos.1 to 4 and Sri.S.B.Halli, learned counsel for respondent No.5.

9. Sri.Sreevatsa, learned Senior counsel taking us through the petition averments submits that as per the

admissions of the petitioner, (though it is denied by respondent No.5 that he is the husband, the Gangamma is the second wife), the fact remains that first marriage is still subsisting and there is no proceedings to show that there is a valid decree of divorce between the first wife and the petitioner, in view of operation of law under Section 5(1) of Hindu Marriage Act 1955, which prescribes that neither party has a spouse living at the time of marriage and in the express provision of Section 11, which contemplates regarding void marriages, states that any marriage solemnized after the commencement of Hindu Marriage Act 1955, shall be null and void, and may, on a petition presented by either party thereto (against the other party) be so declared by a decree of nullity if it contravenes any one of the conditions specified in clause (i), (iv) and (v) of Section 5.

10. Learned Senior Counsel further submits that even the averments stated in the petition itself lucidly indicates that Gangamma is the second wife of the petitioner during the subsistence of first marriage. In

these circumstances under Section 5 read with Section 11, marriage was *void ipso jure*, that is void from the inception and no rights under law flows to the petitioner. To substantiate his arguments, Learned Senior Counsel relied on the judgment of the Supreme Court in the case of ***Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another***¹ and stressed on paragraph No.3, which reads as under:

"...3. For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) have to be examined. Section 11 of the Act declares such a marriage as null and void in the following terms:

11. Void marriages - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

Clause (1)(i) of Section 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. It was urged on behalf of the appellant that such a marriage should not be treated as void because such a marriage was earlier recognised in law and custom. A reference was made to Section 12 of the Act and it was said that in any event the marriage would be voidable. There is no merit in this contention. By reason of the overriding effect of the Act as mentioned in Section 4, no

¹ (1988) 1 SCC 530

aid can be taken of the earlier Hindu law or any custom or usage as a part of that law inconsistent with any provision of the Act. So far as Section 12 is concerned, it is confined to other categories of marriages and is not applicable to one solemnised in violation of Section 5(1)(i) of the Act. Sub-section (2) of Section 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose. The provisions of Section 16, which is quoted below, also throw light on this aspect:

16. Legitimacy of children of void and voidable marriages- (1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) of sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents. (emphasis added)

*Sub-section (1), by using the words italicised above clearly implies that a void marriage can be held to be so without a prior formal declaration by a court in a proceeding. While dealing with cases covered by Section 12, sub-section (2) refers to a decree of nullity as an essential condition and sub-section (3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Sections 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child. The marriage of the appellant must, therefore, be treated as null and void from its very inception.
(emphasis supplied)"*

11. Learned Senior counsel with this sought to allow the appeal and set aside the order passed by the learned Single Judge and rests his case.

12. In contrast, Sri.S.B.Halli, in his aggressive voice contended that unless and until an application is filed seeking for voidance of the marriage in terms of Section 11 of Hindu Marriage Act, 1955, by a party to the marriage, the marriage cannot be termed as void marriage. There is no petition in the case on hand as required to have been filed under Section 11 of the Hindu Marriage Act 1955. The petitioner being the legal heir covered under Section 15(1) of the Hindu Succession Act 1956, the order passed by the

learned Single Judge is just and proper and does not require any interference. He further contends that the brother has no right to file any petition seeking for voidance of the marriage as he being the third party. While arguing, Sri.S.B.Halli, would submit that the marriage is a valid marriage and if that be so, it is for the petitioner to get a declaration from the Court with respect to the status regarding the validity of the marriage.

13. To buttress his argument, he relied on the judgment of Supreme Court in ***Om Prakash and Others Vs. Radhacharan and Others***², to contend that self-acquired property of a woman is her absolute property and upon her death would be succeeded by her legal heirs under Section 15(1) of the Hindu Succession Act. Since the petitioner stands in the first row, his name has to be entered in the record, being a legal representative of deceased Gangamma. He further refers to judgment of the Supreme Court in the case of ***ARUNACHALA GOUNDER (DEAD) BY LEGAL REPRESENTATIVES VS.***

² (2009) 15 SCC 66

PONNUSAMY AND OTHERS³, on the same ground. He further refers to the judgment of learned Single Judge of this Court in RSA.No.7094/2010, in the case of **BASANAGOUDA, S/O NAGANGOUDA VS. MUDDANGOUDA AND OTHERS** decided on **14.03.2023**, on the same ground.

14. He further submits that the constitutional validity of Section 15(1) of Hindu Succession Act is called in question, on the ground that there is a gender discrimination in the devolution of estate of a woman who dies intestate in comparison with the Rules for devolution where a male has died intestate, on the contention that in the case of death of a Hindu female, the property would devolve first upon the sons and daughters and the husband and then on the heirs of the husband and it is only thereafter the mother and father are recognized. In reference to Section 16, which gives preferential rights in succeeding entry. On the other hand, in the case of Male Hindu dying intestate it stipulates that the estate will first

³ (2022) 11 SCC 520

devolve upon the legal representative specified in Clause (1) of the Schedule and the Supreme Court considering on the important question of gender equality, issued notice in W.P(C) No.1517/2018, and the matter is pending consideration, as such the respondent No.5 brother has no right in the property and sought to dismiss the appeal.

15. Having heard the rival submissions, we have perused the entire writ appeal papers and the judgments relied on by the respective counsels.

16. The Supreme Court in its judgment in the case of **YAMUNABHAI ANANTRAO ADHAV** supra, considering the effect of Section 11 of the Hindu Marriage Act, has held that a marriage in contravention of clause (1) of Section 5 r/w Section 11 is therefore null and void and further held that the marriage covered under Section 11 are *void ipso jure*, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. What falls from the verdict of the Supreme Court is Section 11 clearly holds that a marriage is void, if it is in contravention of clauses (i), (iv)

and (v) of Section 5 of the Hindu Marriage Act. However, the Section permits a formal declaration to be made on the presentation of a petition. This clarifies that in the absence of a formal declaration, a marriage which is void under law cannot be valid for all other purposes. A thing which is *void ab initio* is void for all purposes and cannot be legalized or valid in the absence of a formal declaration.

17. As per the contention of the petitioner himself in the petition that he married Gangamma as his second wife during the subsistence of first marriage. There is nothing forthcoming even to suggest that the first marriage has ended in divorce and thereafter he married Gangamma. Since the marriage itself is a void marriage in law, as per Section 5 r/w Section 11 of Hindu Marriage Act, no rights flows under Section 15 of Hindu Succession Act, wherein it says regarding the entitlement of right on the death of female intestate. In the absence of the husband and other relatives specified in clause (a), (b) and (c), the next one comes in picture is under clause (d), that is, heirs of the father. Admittedly, even according to the

petitioner, which even admitted by the learned counsel for the petitioner that respondent No.5-Sri.Ramappa is the brother of deceased Gangamma, on query by us in the open Court. In that view of the matter R-5 being the heir of the father of deceased Gangamma, to the estate succeeds under Section 15 of the Hindu Succession Act.

18. Learned Single Judge, only on the basis of the death certificate, ignoring the contentions taken in the writ petition, as also objection by R-5 applied Section 15 to hold that the petitioner is the husband and set aside the order passed by the Deputy Commissioner, directing the revenue authorities to enter the name of Nagendrappa and directed Ramappa, brother of Gangamma to establish his rights before the Civil Court. This finding of the learned Single Judge is therefore erroneous and against the provisions contained under Section 5 R/W Section 11 of Hindu Marriage Act. There is one more reason for us to set aside the order of the learned Single Judge, is that the learned Single Judge directed the respondent No.5 to approach the Civil Court to establish that Nagendrappa

was not the husband of Gangamma, which amounts to seek a negative claim against a person which is impermissible in law. A suit cannot be filed seeking for a negative relief. The status of a party cannot be called in question in a suit as a plaintiff, but the status can be agitated as a defence in a suit.

19. So far as the contention of learned counsel for the petitioner Sri.Halli, with respect to challenge on the constitutionality of Section 15 of the Hindu Succession Act, the issuance of notice and pendency of the case has no bearing on the case on hand, as it is only in respect of preferential right granted in respect of father and mother as against the rights of succession under Section 8 of the Hindu Succession Act. As such the pendency of the petition will not come in the way of this Court passing the order. In the present case wherein the facts of the case are different and even the right to succession, are different and not identical.

20. In that view of the matter, we are of the concerned opinion that the order passed by the learned

Single Judge is erroneous and requires interference. For the foregoing reasons, we proceed to pass the following:

ORDER

- (i) The appeal is ***allowed***.
- (ii) The order passed by the Writ Court is set aside, upholding the order passed by the Deputy Commissioner.
- (iii) Given the facts and circumstances, there is no order as to costs.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR
ct-vn