

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF MARCH, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE RAJESH RAI K**

**REGULAR FIRST APPEAL NO. 450 OF 2007 (PAR)**

**BETWEEN:**

SAROJA  
W/O. SHANKAREGOWDA  
AGED ABOUT 37 YEARS  
R/AT EREGOWDANAKOPPALU  
MELKOTE HOBLI  
PANDAVAPURA TALUK.

...APPELLANT

(BY SMT. KAVYA ANIL KUMAR, ADVOCATE)

**AND:**

1. PREMAMMA  
W/O. LAKSHMANA  
SINCE DEAD BY HER LEGAL REPRESENTATIVES  
R2 AND R3
2. MANUVANTHA  
S/O LAKSHMANA  
AGED ABOUT 31 YEARS,
3. KALYANAMMA  
W/O. LATE BOREGOWDA  
AGED ABOUT 79 YEARS

ALL ARE R/AT EREGOWDANAKOPPALU  
MALKOTE HOBLI, PANDAVAPURA TALUK  
MANDYA DISTRICT.

...RESPONDENTS

(BY SRI. H. MOHAN KUMAR, ADVOCATE FOR R2;  
V/O DATED 14.10.2024 R2 AND R3 ARE TREATED AS  
LR'S OF DECEASED R1)



THIS RFA IS FILED U/S 96 OF CPC AGAINST THE JUDGEMENT AND DECREE DATED 26.10.2006 PASSED IN O.S.NO.178/1998 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE (SR.DN.) AND CJM, MANDYA, PARTLY DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 10.03.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI K, J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

### **CAV JUDGMENT**

1. This Regular First Appeal is filed by the plaintiff-appellant challenging the judgment and decree dated 26.10.2006 passed by the Addl. Civil Judge (Sr.Dn), Mandya (for short, "the Trial Court"), in O.S.No.178/1998, wherein the Trial Court has partly decreed the suit filed by the appellant for partition and separate possession of her share in the suit schedule properties.

2. The factual matrix of the case is that, the plaintiff and defendant No.1 are the daughters of defendant No.3 and one Boregowda. The said Boregowda died on 13.05.1998, leaving behind the plaintiff and defendant Nos.1 and 3 as his legal representatives and they

succeeded his properties. At the time of his death, Boregowda was about 95 years old. He had been suffering from paralysis and was immobile for about 6 to 7 years prior to his death. Therefore, he had absolutely no independent capacity to deal with or manage the properties.

3. The suit schedule properties are the ancestral and joint family properties of the parties. It is the contention of the plaintiff that she being a coparcener, is entitled to half share in the suit schedule properties and also entitled to  $1/3^{\text{rd}}$  share in the share of late Boregowda. Thus, the plaintiff is entitled to  $4/6^{\text{th}}$  share in the suit schedule properties. The plaintiff further contended that defendant No.1 was given in marriage to one Lakshmana and residing with her husband. The plaintiff and defendant Nos.1 and 3 are in joint possession and enjoyment of the suit schedule properties.

4. The plaintiff further states that about one and a half months prior to the filing of the suit, when the plaintiff

demanded her lawful share from defendant Nos.1 and 3, initially, they agreed to give her share, but about a week prior to filing of the suit, they refused to do so. Hence, she filed the suit seeking appropriate reliefs.

5. After service of summons defendant Nos.1 and 3 appeared and filed their written statement denying the ill-health of Boregowda and contended that the marriage of the plaintiff took place on 18.04.1991 i.e., prior to commencement of amended Hindu Succession Act. As such, the plaintiff is not the coparcener. It is contended that Boregowda was hale and healthy and during his lifetime, he executed a registered Will dated 05.11.1997 in respect of item Nos.1 to 5 of suit schedule properties in favour of defendant No.2, who is the minor son of defendant No.1 and the plaintiff had the knowledge of the same. In view of the same, the plaintiff is only entitled to 1/3<sup>rd</sup> share in respect of item Nos.6 to 8 and 9 i.e., house property.

6. The Trial Court, after considering the rival pleadings, framed relevant issues and after examining the evidence in detail, partly decreed the suit against the defendants holding the plaintiff is entitled for 1/3<sup>rd</sup> share in item Nos.6 to 9 of the suit schedule properties and also entitled for 1/3<sup>rd</sup> share of Boregowda in item No.10 of the suit schedule properties.

7. Aggrieved by the same, the plaintiff is before this Court in this first appeal.

8. I have heard Smt.Kavya, learned counsel for Sri S.Anil Kumar, learned counsel for the appellant/plaintiff and Sri H.Mohan Kumar, learned counsel for respondent No.2/defendant No.2. Respondents 2 and 3 are the legal representatives of deceased respondent No.1.

9. The primary contention of the plaintiff/appellant is that, undisputedly item Nos.1 to 5 of the suit schedule properties are the ancestral properties and there was no partition effected during the lifetime of Boregowda. As such, the said Boregowda had no exclusive right to

execute a Will in favour of defendant No.2 in respect of item Nos.1 to 5 i.e., the ancestral and joint family properties. As such, the Will putforth by the defendants ought not to have been considered by the Trial Court by rejecting claim of the plaintiff in respect of item Nos.1 to 5 in the suit schedule properties. Accordingly, prays for allowing the appeal.

10. *Per contra*, learned counsel for the respondents/defendant Nos.2 and 3 contended that the Trial Court has rightly held that the plaintiff has failed to prove that item Nos.1 to 5 of the suit schedule properties are the joint family properties of Boregowda and also rightly held that late Boregowda executed a Will dated 05.11.1997 by bequeathing item No.1 to 5 of the suit schedule properties in favour defendant No.2. In such circumstances, the plaintiff is not entitled to her share in item Nos.1 to 5 of the suit schedule properties. He further contended that the Will executed by Boregowda in favour of defendant No.2 has been clearly proved in the evidence of attesting witnesses - D.W.2 and D.W.3 and the Will-

Ex.D1 being a registered document, there is no reason to disbelieve the same. As such, the Trial Court has rightly rejected the claim of the plaintiff in respect of item Nos.1 to 5 of the suit schedule properties and accordingly, prays for dismissal of the appeal.

11. Having heard the contentions of learned counsel for both the parties and having perused the impugned judgment and decree passed by the Trial Court, the following point would arise for my consideration:

*"(ii) Whether the Trial Court was justified in holding that the plaintiff is not a coparcener in respect of item Nos.1 to 5 of the suit schedule properties?"*

*(ii) Whether the Trial Court was justified in holding that in view of the Will dated 05.11.1997 executed by late Boregowda in respect of item Nos.1 to 5 in the suit schedule properties which are the ancestral and joint*

*family properties, the plaintiff is not entitled to her share in the said properties?"*

12. As could be gathered from records, the suit schedule properties are the ancestral and joint family properties of deceased Boregowda, plaintiff and the defendants. It is not in dispute that the said properties continued to remain in joint during the lifetime of Boregowda. There is no convincing documentary or oral evidence placed before the Court to establish that a lawful partition of the suit schedule properties had taken place during the lifetime of Boregowda. In the absence of proof of such partition, the legal presumption is that the properties continued to retain its character as joint family properties.

13. The plaintiff has specifically contended that she being the daughter of Boregowda, is a coparcener of the joint family properties. The Trial Court, however, held that the plaintiff is not a coparcener and thereby denied her claim in respect of item Nos.1 to 5 of the suit schedule properties. Such a conclusion requires reconsideration in

the light of the settled position of law in the case of ***Vineeta Sharma v. Rakesh Sharma - 2020 (9) SCC 1***, wherein the Apex Court has authoritatively interpreted the provisions of Hindu Succession Act, 1956, as amended by the Hindu Succession (Amendment) Act, 2005. The Supreme Court has held that a daughter becomes a coparcener by birth in the same manner as a son and has equal rights and liabilities in the coparcenary property. The Court further clarified that the right of a daughter as a coparcener does not depend upon whether the father was alive on the date of the amendment. The only exception recognized is whether a partition had been effected before 20.12.2004 by a registered partition deed or by a decree of a competent court.

14. Since the plaintiff is admittedly the daughter of Boregowda, she acquires the status of a coparcener by birth in the joint family property. Further, upon the death of Boregowda, the plaintiff also becomes a Class I legal heir under the scheme of succession provided in the Hindu Succession Act. Therefore, both by virtue of her birth and

by operation of statutory succession, the plaintiff is entitled to claim a share in the joint family properties.

15. Further, it is seen that deceased Boregowda executed the Will dated 05.11.1997 bequeathing item Nos.1 to 5 of the suit schedule properties in favour of defendant No.2 as per Ex.D1. However, at the time of execution of the said Will, Boregowda did not have exclusive ownership over the same since the properties were not partitioned. The properties were admittedly joint family properties and other coparceners, including the plaintiff, had a birthright in the same. Consequently, Boregowda could not have legally bequeathed the entire item Nos.1 to 5 of the suit schedule properties in favour of defendant No.2. In view of this legal position, even assuming for the sake of argument that the Will dated 05.11.1997 was duly executed, the same cannot be operated so as to defeat or extinguish the statutory and coparcenary rights of the plaintiff in respect of item Nos.1 to 5 of the suit schedule properties.

16. For the aforesaid reasons, the points for consideration are answered in favour of the appellant/plaintiff. Accordingly, I pass the following:

**ORDER**

- (i) The appeal is allowed.
- (ii) The findings in the impugned judgment with regard to the Will dated 05.11.1997 is set aside. The plaintiff is also held entitled to 1/3<sup>rd</sup> share in respect of item Nos.1 to 5.
- (iii) The impugned judgment and decree remains undisturbed in respect of other aspects of the matter.
- (iv) The impugned judgment and decree dated 26.10.2006 passed by the Addl. Civil Judge (Sr.Dn), Mandya in O.S.No.178/1998 is modified accordingly.

**Sd/-  
(RAJESH RAI K)  
JUDGE**

CR/PKS