

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 2461 OF 2011 (PAR)

BETWEEN:

MAHADEVAPPA
DEAD BY LRS

1. SMT. YELLAMMA
W/O MAHADEVAPPA
AGED ABOUT 73 YEARS
UDRI VADDIGERE VILLAGE
SORABA TALUK, SHIMOGA DISTRICT.
2. HANUMANTHAPPA
S/O MAHADEVAPPA
AGED ABOUT 38 YEARS
UDRI VADDIGERE VILLAGE
SORABA TALUK, SHIMOGA DISTRICT.
3. SMT. SHANTHAMMA
W/O VIRUPAXAPPA
AGED ABOUT 48 YEARS
KONDOJI VILLAGE, HANGAL TALUK
HAVERI DISTRICT.
4. SMT. SHARADA
W/O KRISHNAPPA
AGED ABOUT 51 YEARS UDRI WADDIGERE VILLAGE
SORABA TALUK, SHIMOGA DISTRICT.
5. SMT. VANAIAKSHI
W/O VASAPPA
AGED ABOUT 43 YEARS
SUTHUKOTAI VILLAGE, SORABA TALUK
SHIMOGA DISTRICT.



6. SMT. PARVATHI
W/O BASAVANAPPA
AGED ABOUT 38 YEARS
MANCHIKOPPA VILLAGE
SORABA TALUK, SHIMOGA DISTRICT.
7. BHARMAPPA
S/O HANUMANTHAPPA
AGED 58 YEARS
8. MARIYAPPA
S/O HANUMANTHAPPA
AGED 50 YEARS
9. BHEEMAPPA
S/O HANUMANTHAPPA
AGED 48 YEARS
10. ESHWARAPPA
S/O HANUMANTHAPPA
AGED 47 YEARS
11. SIDDARAMAPPA
S/O HANUMANTHAPPA
AGED 43 YEARS
12. CHANDRAPPA
S/O HANUMANTHAPPA
AGED 30 YEARS

R7 to R10 AND R12 ARE R/AT
UDRI WADDIGERE VILLAGE
SORABA TALUK, SHIMOGA DISTRICT.

R11 IS R/AT SAGAR TOWN, SHIMOGA DIST.

...APPELLANTS

(BY SRI. H.K. BASAVARAJ, ADVOCATE)

AND:

1. SRI RAMAPPA
S/O HANUMANTHAPPA
AGED 61 YEARS

2. LAKSHMANAPPA
S/O HANUMANTHAPPA
AGED 60 YEARS
3. BHARAMAPPA
S/O HANUMANTHAPPA
AGED 54 YEARS
4. YALLAPPA
S/O HANUMANTHAPPA
AGED 48 YEARS
5. LOKAPPA
S/O HANUMANTHAPPA
AGED 45 YEARS
6. YALLAMMA
W/O MARIYAPPA
AGED 40 YEARS
7. RAJAPPA S/O MARIYAPPA
AGED 19 YEARS
8. DEVENDRAPPA
S/O MARIYAPPA
AGED 17 YEARS,
MINOR REP BY GUARDIAN YELLAMMA(R-6)

R1 TO R8 ARE R/O
UDRI VODDIGERE VILLAGE
SORAB TALUK, SHIMOGA DISTRICT
PIN-577 429.

SAVITHRAMMA W/O BHEEMAPPA
DECEASED BY LRS

9. PUTTAMMA W/O BANGARAPPA
AGE 39 YEARS
R/O UDRI VODDIGERE VILLAGE
SORAB TALUK, SHIMOGA DISTRICT.
10. BHARAMAKKA
W/O YALLAPPA
AGE 59 YEARS

R/O CHIKKAIDAGODU VILLAGE
ANAVATTI HOBLI, SORAB TALUK.

11. JAYAMMA
W/O PARAMESHWARA
AGE 57 YEARS
R/O JEEVAGATTA VILLAGE
TALAGUNDA HOBLI, SHIKARIPURA TALUK-577 427.

12. YELLAPPA
S/O BHEEMAPPA
AGE 57 YEARS, AGRICULTURIST

13. HANUMANTHAPPA
S/O BHEEMAPPA
AGE 55 YEARS,

ANANDAPPA S/O BHEEMAPPA
SINCE DECEASED BY LRS

14. SHIVAMURTHY S/O ANANDAPPA
AGE: 16 YEARS,
MINOR REP BY GUARDIAN MOTHER
RESPONDENT NO.17
KAMALAMMA

15. SHASHI S/O ANANDAPPA
AGED 18 YEARS

16. RAVI
S/O ANANDAPPA
AGE: 20 YEARS

17. KAMALAMMA
W/O ANANDAPPA
AGE: 39 YEARS

R12 TO R17 ARE R/AT
UDRI VADDIGERE VILLAGE
SORAB TALUK, SHIMOGA DISTRICT-577 429.

...RESPONDENTS

(BY SRI. H. DAYANANDA SARASWATHI, ADVOCATE FOR R1 TO
R6, R10 TO R13, R16 AND R17;

R8 IS MINOR REP. BY R6; R14 IS MINOR REP. BY R17;
V/O DATED 07.09.2023 APPEAL AGAINST R9 STANDS
ABATED;
NOTICE TO R7 AND R15 ARE SERVED AND
UNREPRESENTED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 9.8.2011 PASSED IN
R.A.NO.24/2008 ON THE FILE OF THE SENIOR CIVIL JUDGE &
JMFC., SORABA, DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DATED 22.1.2008 PASSED IN
O.S.NO.146/2003 ON THE FILE OF THE CIVIL JUDGE (JR.DN) &
JMFC., SORAB.

THIS RSA HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 15.09.2026, THIS DAY JUDGMENT WAS
PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CAV JUDGMENT

The captioned second appeal is by the unsuccessful
plaintiffs questioning the judgment and decree passed by
the Court of first instance in O.S.No.146/2003, whereby
the suit for partition came to be dismissed, which
judgment and decree has been affirmed by the appellate
Court in R.A.No.24/2008.

2. For the sake of convenience, the parties shall
be referred to as per their rank before the Trial Court.

3. The plaintiffs instituted the suit for partition specifically contending that they represent the branch of Bharmappa @ Bheema, whereas the defendants represent the branch of Sanna Bheemappa, and that both branches constitute an undivided Hindu joint family. It is the specific case of the plaintiffs that the suit schedule properties are the ancestral joint family properties and that the plaintiffs' branch is entitled to one-half share therein. It is further pleaded that despite repeated demands for effecting partition by metes and bounds, the defendants declined to effect partition, compelling the plaintiffs to institute the present proceedings.

4. The defendants, on service of summons, entered appearance and filed their written statement, specifically disputing the very foundation of the suit. They contended that the plaintiffs and defendants do not constitute an undivided Hindu joint family and that there had already been a severance in status and partition in the family. It was further contended that the suit schedule properties had been dealt with separately by the

respective branches. In particular, the defendants asserted that the properties were sold as far back as on 19.03.1946 by the father of defendants 1 to 5 and the father of defendants 10 to 12 and were thereafter repurchased on 22.04.1948. On these pleadings, the defendants maintained that there was no subsisting joint family or joint family property available for partition.

5. On the basis of the rival pleadings, the Trial Court framed the requisite issues. The parties were permitted to lead oral and documentary evidence. On appreciation of the entire material on record and on consideration of the pleadings and evidence, the Trial Court answered issue Nos.1 and 2 in the negative and held that the plaintiffs had failed to establish that they continued to constitute an undivided Hindu joint family with the defendants and had further failed to establish that the suit schedule properties continued to retain the character of joint family ancestral properties. Consequently, the suit came to be dismissed.

6. The plaintiffs, being aggrieved by the judgment and decree of the Trial Court, preferred R.A.No.24/2008. The appellate Court, being the final fact-finding Court, independently re-appreciated the entire oral and documentary evidence. While doing so, it attached considerable significance to the admissions made by PW.1 in cross-examination. The appellate Court noticed that the plaintiffs had candidly admitted that the plaintiffs and defendants had been residing separately for nearly seven decades and that they had been cultivating and enjoying their respective lands separately for the same length of time. Having regard to these admissions, the appellate Court concluded that the plaintiffs had failed to establish the continued existence of a joint Hindu family or joint possession of the suit schedule properties. The appeal was accordingly dismissed. It is these concurrent findings which are called in question in the present second appeal.

7. Heard the learned counsel appearing for the plaintiffs and the learned counsel appearing for the defendants. This Court has bestowed its anxious

consideration on the concurrent findings recorded by the Courts below and has also examined the material placed before this Court.

8. The principal contention urged by the learned counsel for the plaintiffs is that there is a presumption in Hindu law that a Hindu family is joint and that the burden was therefore on the defendants to establish disruption of the joint family. There can be no quarrel with the broad proposition that Hindu law recognizes a presumption of jointness in a Hindu family. However, the presumption cannot be divorced from the facts and circumstances of each case. More importantly, where the evidence discloses prolonged separate residence, separate possession, separate cultivation, separate enjoyment and independent dealings with the properties over several decades, the presumption cannot be mechanically invoked to resurrect a joint family which the evidence demonstrates had long ceased to exist in fact.

9. The principles stated by Mulla on Hindu Law are apposite in this regard. The normal condition of a Hindu family is jointness. The presumption of jointness, however, is essentially a presumption arising from the normal state of affairs and is not an immutable rule of evidence. The further the members are removed from the common ancestor and the longer the period during which they have lived and dealt with their properties separately, the weaker the presumption becomes. In other words, the presumption of jointness is not of uniform strength irrespective of the degree of relationship. It becomes progressively weaker as the relationship becomes remote, particularly when the dispute is between members belonging to the third generation or beyond and the surrounding circumstances establish prolonged separation in residence, possession and enjoyment.

10. The principle assumes significance in the present case. The genealogy produced by the plaintiffs themselves demonstrates that the contest is no longer between the sons or even immediate descendants of a

common ancestor. The plaintiffs represent the branch of Bharmappa @ Bheema, whereas the defendants represent the branch of Sanna Bheemappa. The contest is between descendants of the respective branches extending into the third generation. Thus, this is not a case where two immediate branches of a recently deceased common ancestor are asserting their rights against each other. The relationship has become considerably remote.

11. The distinction is important because the presumption of jointness, though available, becomes weaker and weaker with the remoteness of the relationship. The law does not presume perpetual jointness merely because persons can trace their descent to a common ancestor. If such a proposition were accepted, a Hindu family could be treated as joint in perpetuity notwithstanding generations of separate residence, separate possession, separate cultivation and independent dealings with properties. Such a conclusion would be contrary to both the principles of Hindu law and ordinary human experience.

12. In the present case, the weakening of the presumption is not founded merely upon the fact that the parties belong to the third generation. There is substantive evidence which displaces whatever initial presumption of jointness may have existed. PW.1 himself has admitted that the plaintiffs and defendants have been residing separately for approximately seven decades and that they have been cultivating their respective lands separately for the same period. These admissions are of considerable significance. A period extending over nearly seventy years cannot be brushed aside as a temporary arrangement or mere separate residence without severance of status.

13. Separate residence by itself may not necessarily establish partition. Likewise, separate cultivation or separate enjoyment of a particular property may, in an appropriate case, be referable to convenience or arrangement amongst family members. But when these circumstances continue uninterruptedly for several decades and are coupled with independent possession and enjoyment of the properties and separate dealings with

the properties as owners, they constitute compelling circumstances against the continued existence of a joint family.

14. The documentary evidence noticed by the Courts below further reinforces this conclusion. The record discloses that the properties had been dealt with independently by the respective branches. The transaction dated 19.03.1946 and the subsequent repurchase dated 22.04.1948 were also relied upon by the defendants to demonstrate the manner in which the properties had ceased to be treated as joint family properties. These transactions, read along with the long-standing separate possession and enjoyment admitted by PW.1, constitute circumstances which cannot be ignored while determining whether the plaintiffs have discharged the burden of establishing subsisting jointness.

15. It is necessary to bear in mind the distinction between the initial presumption of jointness and the ultimate burden of establishing a subsisting right to

partition. A plaintiff who approaches the Court seeking partition cannot succeed merely by establishing that the parties have a common ancestor. The plaintiff must establish the existence of a joint family property available for partition and a subsisting right therein. Where the defendants specifically plead prior partition or severance and place material before the Court showing long-standing separate possession and enjoyment, the plaintiff cannot rest his case merely on the abstract presumption of jointness.

16. The present case is therefore not one where the Courts below have ignored the presumption recognized under Hindu law. On the contrary, the Courts below have examined whether that presumption stands displaced by the conduct and admissions of the parties. Having regard to the admitted position that the two branches have been living separately and cultivating their respective lands separately for nearly seventy years, coupled with the documentary evidence showing independent dealings with the properties, the Courts below were justified in

concluding that the plaintiffs had failed to establish subsisting jointness.

17. There is another important aspect. The plaintiffs themselves have placed reliance upon the genealogy to establish their relationship with the defendants. That very genealogy demonstrates that the parties are now in the third generation from their respective branch ancestors. The further the parties move away from the common ancestor, the less tenable becomes an assumption that the family continued joint merely because there was no formal registered partition deed. Hindu law does not insist that disruption of the joint family status must, in every case, be evidenced by a registered instrument. Severance may be established from the conduct of the parties and the attendant circumstances. Long, continuous and unequivocal separate possession and enjoyment are material circumstances in determining such severance.

18. In the case on hand, the plaintiffs have failed to establish any circumstance which would explain away the

admitted position of separate residence and separate cultivation for nearly seven decades. No convincing material is placed before the Court to demonstrate that notwithstanding such prolonged separation, the parties continued to possess the suit properties jointly as members of one undivided Hindu family. The mere assertion in the plaint that the properties are ancestral cannot substitute proof of their continued joint character.

19. It is also trite that the expression "ancestral property" cannot, by itself, establish that the property is presently joint family property. A property may have an ancestral origin, but the question for determination in a partition suit is whether the property retained its character as joint family property and continued to be jointly held by the parties at the time when the suit was instituted. That essential fact has not been established by the plaintiffs.

20. The appellate Court has carefully considered the admissions of PW.1 and the documentary evidence and has recorded a categorical finding that the plaintiffs failed

to prove the existence of a joint Hindu family and joint possession of the suit schedule properties. Such a finding is essentially one of fact. Both Courts have concurrently arrived at the same conclusion upon appreciation of the evidence.

21. This Court, in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908 cannot interfere with concurrent findings of fact merely because another view of the evidence may be possible. Interference would be warranted only where the findings are shown to be perverse, contrary to the evidence on record, or otherwise give rise to a substantial question of law. No such infirmity is demonstrated in the present case.

22. On an overall consideration of the matter, this Court is of the considered opinion that the plaintiffs have failed to establish the foundational facts necessary for maintaining a suit for partition. They have failed to establish that the plaintiffs' branch and the defendants' branch continued to constitute an undivided Hindu joint

family; they have failed to establish that the suit schedule properties continued to retain the character of joint family properties; and they have failed to establish joint possession and enjoyment.

23. The long duration of separate residence and separate cultivation, extending to nearly seven decades, assumes particular significance when viewed against the genealogy produced by the plaintiffs themselves, which places the dispute at the third generation. The presumption of jointness recognized in Hindu law becomes progressively weaker with the remoteness of the relationship, and where such weakened presumption is met by clear and consistent evidence of long-standing separation and independent enjoyment, the Court cannot continue to presume jointness in the teeth of the evidence.

24. Consequently, the findings recorded by the Trial Court and affirmed by the First Appellate Court are neither perverse nor contrary to the settled principles of Hindu law. The Courts below have correctly appreciated the

evidentiary value of the admissions made by PW.1 and the circumstances emerging from the documentary record.

No substantial question of law arises for consideration in the present second appeal.

25. Accordingly, the second appeal stands ***dismissed***. The judgment and decree passed by the Court of first instance in O.S.No.146/2003 and affirmed by the appellate Court in R.A.No.24/2008 are hereby confirmed.

(SACHIN SHANKAR MAGADUM)
JUDGE

ALB