

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY 2012

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

R.S.A. No. 5316/2011

BETWEEN:

MALLIKARJUN S/O SHIVAPPA ARALIKATTI,  
AGE: 47 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TALUK & DIST: BELGAUM.

... APPELLANT

(By Sri: HANAMANT R. LATUR, ADV.)

AND:

1. RUDRAPPA S/O VEERABHADRAPPA ARALIKATTI,  
AGE: 54 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TQ & DIST: BELGAUM.
2. SHIVANAPPA S/O VEERABHADRAPPA ARALIKATTI,  
AGE: 52 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TQ & DIST: BELGAUM.
3. CHANNAWWA W/O SHIVAPPA ARALIKATTI,  
AGE: 93 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TQ & DIST: BELGAUM.
4. IRAWWA W/O SIDDAPPA NABAPURI,  
AGE: 59 YEARS, OCC: COOLIE,  
R/O ANKALAGI, TALUK: GOKAK,  
DIST: BELGAUM.



5. NAGAPPA S/O SHIVAPPA ARALIKATTI,  
AGE: 56 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TQ & DIST: BELGAUM.
6. MALLAWWA W/O BASAVANNEPPA BASAPUR,  
AGE: 53 YEARS, OCC: COOLIE,  
R/O HIREBAGEVADI,  
TQ & DIST: BELGAUM.
7. SHANTAWWA W/O BASAVANNEPPA PATIL,  
AGE: 50 YEARS, OCC: COOLIE,  
R/O PANTA-BALEKUNDRI,  
TQ & DIST: BELGAUM.
8. SAIDDALINGAWWA W/O BASAVANNEPPA CHANDU,  
AGE: 73 YEARS, OCC: HOUSEHOLD,  
R/O HIREBAGEVADI,  
TQ & DIST: BELGAUM.
9. GANGAWWA W/O NAGAPPA GUNDLUR,  
AGE: 56 YEARS, OCC: HOUSEHOLD WORK,  
BENACHINAMARADI,  
TALUK: BAILHONGAL,  
DIST: BELGAUM.
10. GOURAWWA W/O SHIVAPUTRAPPA WALIKAR,  
AGE: 53 YEARS, OCC: HOUSEHOLD WORK,  
R/O PATTIHAL (KS),  
TALUK: BAILHONGAL,  
DIST: BELGAUM.
11. SHIVAPUTRAPPA S/O VEERABHADRAPPA ARALIKATTI,  
AGE: 50 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TALUK & DIST: BELGAUM.



12. PARAWWA W/O DAYANAND NANDAGAD,  
AGE: 48 YEARS, OCC: HOUSEHOLD WORK,  
R/O DEVARA-SIGIHALLI,  
TALUK: BAILHONGAL,  
DIST: BELGAUM.
13. KASTUREWWA W/O RUDRAPPA DASANNAVAR,  
AGE: 43 YEARS, OCC: AGRICULTURE,  
R/O M.K. HUBLI,  
TALUK: BAILHONGAL.  
DIST: BELGAUM.
14. ALANAYAK S/O BASANAYAK NAIKAR,  
AGE: 50 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TALUK & DIST: BELGAUM.
15. DODDAYANK S/O BASANAYAK NAIKAR,  
AGE: 48 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TALUK & DIST: BELGAUM.
16. PADEPPA S/O BASANAYAK NAIKAR,  
AGE: 46 YEARS, OCC: AGRICULTURE,  
R/O HIREBAGEVADI,  
TALUK & DIST: BELGAUM.
17. GOURAWWA W/O RAYAPPA KARAVINAKOPPA,  
AGE: 50 YEARS, OCC: HOUSEHOLD WORK,  
R/O KOLARAKOPPA VILLAGE,  
POST: HIREBAGEVADI,  
TQ & DIST: BELGAUM.
18. GANGAWWA W/O SOMAGOUDA PATIL,  
AGE: 50 YEARS, OCC: HOUSEHOLD WORK,  
R/O KOLARAKOPPA VILLAGE,  
POST: HIREBAGEVADI,  
TQ & DIST: BELGAUM.



19. SUNDARAWWA W/O BASANAYAK NAIKAR,  
AGE: 70 YEARS, OCC: HOUSEHOLD,  
R/O HIREBAGEVADI,  
TALUK & DIST: BELGAUM.

... RESPONDENTS

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THIS RSA FILED U/SEC.100 CPC, AGAINST THE JUDGEMENT & ORDER DTD:21-09-2010 PASSED IN R.A.NO.125/2008 ON THE FILE OF THE PRINCIPAL DISTRICT JUDGE, BELGAUM, AT BELGAUM, ALLOWING THE APPEAL BY SETTING ASIDE THE JUDGMENT DTD:19-02-2009 AND DECREE PASSED IN O.S.NO.136/2002, ON THE FILE OF THE III-ADDL. CIVIL JUDGE(SR.DN) BELGAUM, PARTLY DECREERING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION, ETC.,

THIS APPEAL IS COMING ON FOR ORDERS, THIS DAY THE COURT DELIVERED THE FOLLOWING:

#### JUDGMENT

This second appeal is by the unsuccessful plaintiff against the judgment in RA No. 125/2008.

2. The appeal is posted for admission. Heard.
3. The contextual facts needing reference are:

One Channawwa along with her sisters Erawwa & Mallawwa and brothers Nagappa and Mallikarjuna filed a suit in OS No.136/2002 against Smt. Siddalingawwa and



others seeking partition of the properties described in the schedule to the plaint on the premise that they and defendants 1 to 8 are successors from common ancestor. The propositus was one Kubeppa. He married one Gangawwa and out of the wedlock had two sons, viz., Veerabhadrappa and Shivappa. Plaintiffs claim to be the children of Shivappa and defendants 1 to 8 are children of Veerabhadrappa.

4. They further averred that Kubeppa was an agriculturist owning properties described in A Schedule and was cultivating personally. After his death his family members continued the avocation and were in joint possession and enjoyment. Since Kubeppa, his wife Gangawwa and their sons died, the property became divisible between lineal descendants. Hence, they sought division of property among themselves.

5. They further averred defendants 4, 5 and 7 had got mutated the revenue records in to their names, though it belongs to joint family. The defendants entered contest,



disputing plaint averments and alleged there was division of joint family properties between Veerabhadrappa and Shivappa, sons of Kubeppa. Under that division they divided the property equally and are enjoying the same. While Shivappa liquidated the property fallen to his share, but Veerabhadrappa preserved the property. He also purchased additional property, which are also included by the plaintiffs in the schedule.

6. Based on the material proposition in the pleadings the learned trial Judge framed relevant issues and applying the evidence decreed the suit being of the opinion that plaintiffs are coparceners. Assailing it defendant No.4 to 7 were in appeal. The learned appellate Judge found finding of the trial court was against material evidence on record. It has noticed from the evidence that Shivappa died in the year 1971 leaving behind Channawwa, plaintiff No.1 and her children. While Veerabhadrappa died leaving behind defendants as his legal heirs.



7. However, it was brought on record through evidence that property bearing No. 399/1A fallen to the share of Shivappa measuring 3 Acres  $\frac{1}{2}$  guntas was sold by Shivappa after acquiring it, but Veerabhadrapa preserved 3 Acres and  $\frac{1}{2}$  guntas after it was allotted to him in Sy. No.399/1B. Thereafter, he acquired two more properties in RS No.381/1 and 400/2 and also lands in RS No.363/10, 381/1 and 400/2. The plaintiffs kept quite and were silent spectators to the execution of absolute right in respect of other properties by Veerabhadrapa in the year 2002. They filed suit including those properties.

8. The learned appellate Judge found sufficient material evidence establishing partition between Shivappa and Veerabhadrapa and also division of the properties between them. It also noticed that there was equitable partition and Veerabhadrapa and Shivappa received almost equal share. The other properties purchased by Veerabhadrapa are subsequent to the death of Shivappa. Therefore, those properties could not be treated as joint family properties.



9. The learned appellate Judge had further noticed that Shivappa had not only acquired share but sold the same on 07.04.1966 thereby liquidated the property received by him under partition. Whereas Veerabhadrapa preserved it and had purchased other properties and added it to his original share.

10. In this view the learned appellate Judge held that the finding of the trial court that properties in Sy. No. 399/1B was amenable for division was not right. The finding of the appellate court is based on the material on record. The appellate court being the final court on facts was right in reassessing the material on record and reaching such a right conclusion. The trial court erred in examining the evidence and thereby the view taken by the trial court is not in the right perspective.

11. In this view the finding recorded by the appellate court to reverse the finding of the trial court is just and proper, calls for no interference. As no substantial





question of law arise for consideration the appeal is dismissed at the stage of admission itself.

Sd/-  
JUDGE

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