



CNR: KAHC010242642023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO.900 OF 2023(PAR)

BETWEEN:

MANJAPPA
S/O RANGAPPA
AGED ABOUT 51 YEARS
R.O HASAPETE EXTENSION
HALE SORABA POST,
SORABA TALUK-577 429,
SHIVAMOGGA DISTRICT.

...APPELLANT

(BY SRI UMESH MOOLIMANI FOR
SRI S V PRAKASH, ADVOCATES)

AND:

1. MANJULA
W/O PUTTAPPA,
AGED ABOUT 53 YEARS,
R/O KELADI VILLAGE,
SAGAR TALUK-577401.
SHIVAMOGGA DISTRICT.
2. NIRMALA
W/O SURESHA,
AGED ABOUT 48 YEARS
R/O RAJEEV NAGAR, SORABA
SORABA TALUK-577 429
SHIVAMOGGA DISTRICT.
3. GIRIJA
W/O GANAPATHI BANDARI,
AGED ABOUT 45 YEARS





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R/O TADAGALALE VILLAGE,
SIDDAPURA TALUK-577430
UTTARA KANNADA DISTRICT.

4. PARVATHI
W/O PADMANABHA
AGED ABOUT 40 YEARS,
R/O MYSORE,
NOW D/O NIRMALA,
W/O SURESHA,
RAJEEV NAGAR, SORABA,
SORABA TALUK-577429,
SHIVAMOGGA DISTRICT.
5. PRATHIMA
W/O CHANNABASAPPA
AGED ABOUT 37 YEARS,
R/O JINNURU VILLAGE,
KALLAGATAGI TALUK-581204
DHARWAD DISTRICT.
6. SMT. RANGAMMA
W/O GUTYAPPA,
AGED ABOUT 62 YEARS,
R/O KAMARURU VILLAGE,
SORABA TALUK-577429,
SHIVAMOGGA DISTRICT.
7. RENUKA
W/O RAMAPPA,
AGED ABOUT 43 YEARS,
R/O HULEMARADI VILLAGE,
SORABA TALUK-577429,
SHIVAMOGGA DISTRICT.
8. PARVATHI,
W/O PARASHURAMA,
AGED ABOUT 40 YEARS,
R/O HOSAPETE EXTENSION,
HALE SORABA POST,



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SORABA TALUK-577 429,
SHIVAMOGGA DISTRICT.

...RESPONDENTS

(BY SRI S.R.HEGDE HUDLAMANE, ADVOCATE FOR R1 TO R5;
SRI RAGHAVENDRA B. HANJER, ADVOCATE FOR R6;
R7 AND R8 ARE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE
DATED 18.11.2022 PASSED IN RA NO.1/2021 ON THE FILE OF
THE SENIOR CIVIL JUDGE AND JMFC, SORABA. ALLOWING
THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 06.01.2021 PASSED IN OS NO.111/2012 ON THE FILE
OF THE ADDITIONAL CIVIL JUDGE AND JMFC, SORABA.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA



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ORAL JUDGMENT

Heard Sri Umesh Moolimani, learned counsel appearing on behalf of Sri S.V. Prakash, counsel for the appellant, Sri S.R.Hegde Hudlamane, learned counsel for respondent Nos.1 to 5 and Sri Raghavendra B. Hanjer, learned counsel for respondent No.6.

2. First defendant is the appellant, challenging the judgment of the First Appellate Court, decreeing the suit of the plaintiffs granting 1/5th share by reversing the judgment passed in O.S.No.111/2012.

3. Facts which are utmost necessary for disposal of the present second appeal are as under:

4. A suit for partition and separate possession was filed by the plaintiffs in respect of the following properties (hereinafter referred to as the 'suit properties'):

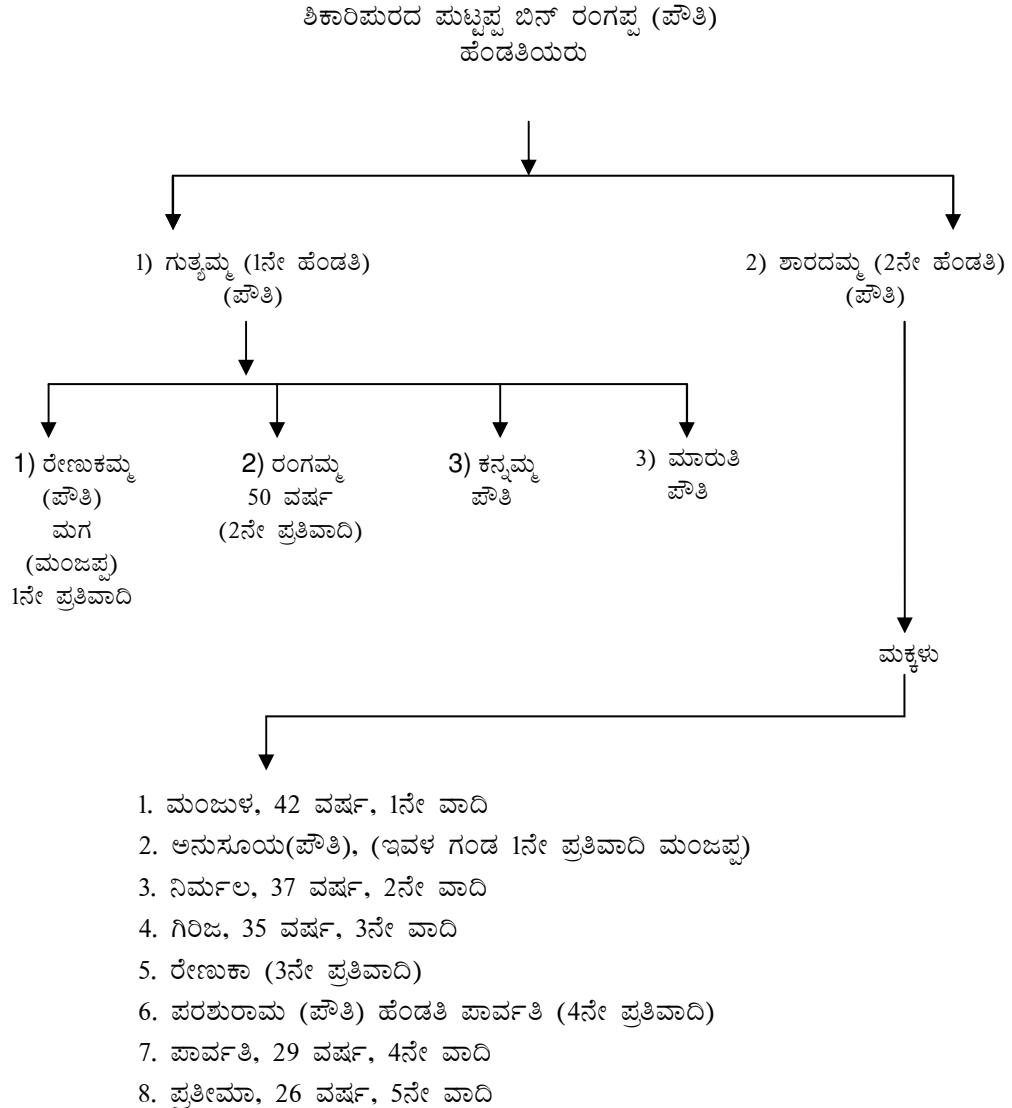
1) ಸೊರಬ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಹಿರೇಶಹನ ಗ್ರಾಮದ
ಸ.ನಂ:25 ರ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 7 ಎಕರೆ 11 ಗುಂಟೆ ತರಿ ಮಿಷ್ಣು ಜಮೀನು, ಇದಕ್ಕೆ
ಚತುರ್ಗಡಿ:-ಪೂರ್ವಕ್ಕೆ- ಹೊಳೆ, ಪಶ್ಚಿಮಕ್ಕೆ:- ರಸ್ತೆ, ಉತ್ತರಕ್ಕೆ- ಮಲ್ಲೇಶಪ್ಪನ
ಜಮೀನು, ದಕ್ಷಿಣಕ್ಕೆ-ಗುಡ್ಡಪ್ಪನ ಜಮೀನು.



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2) ಸೊರಬ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಹಳೇಸೊರಬ ಗ್ರಾಮ ಪಂಚಾಯ್ತಿ ವ್ಯಾಪ್ತಿಯ, ಹೊಸಪೇಟೆ ಬಡಾವಣೆಯ ಸ್ಟೇಟ್ ನಂ: 67 ರಲ್ಲಿರುವ ಮನೆ ಮತ್ತು ಹಿತ್ತಲು ಮುಂಚೆ ಅಡಿಸ್ಥಳ, ಇದಕ್ಕೆ ಚತುರ್ಗಡಿ:- ಪೂರ್ವಕ್ಕೆ:- ಕನ್ಸರ್ ವೆನ್ನಿ ರಸ್ತೆ, ಪಶ್ಚಿಮಕ್ಕೆ:- ರಸ್ತೆ, ಉತ್ತರಕ್ಕೆ:- ರಾಮು ಡಾಕ್ಟರ್ ರವರ ಮನೆ, ದಕ್ಷಿಣಕ್ಕೆ:- ದುರುಗಪ್ಪನ ಮನೆ ಮತ್ತು ಹಿತ್ತಲು.

5. In the plaint, the following is the described genealogy:





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6. Plaintiffs contended that they were born to second wife of Sri Puttappa also called as Shikaripurada Puttappa or Puttappa Bhovi. He has been granted the suit properties by the Land Tribunal. Puttappa had a wife by name Guthyamma.

7. In the marriage of Puttappa and Guthyamma four children were born namely, Renukamma, Rangamma, Kannamma and Maruthi. Maruthi died leaving behind his wife namely, Sarojamma. After death of Guthyamma, Puttappa married Smt.Sharadamma. Smt.Saradamma was earlier married to Shivabandari of Soraba.

8. In the marital relationship between Puttappa and Sharadamma, seven daughters and a son was born. One of the daughters namely, Anusuya was married to the first defendant Manjappa, who is the son of Renukamma, who is one of the daughters of Puttappa and Guthyamma.

9. When the matter stood thus, Puttappa died and he said to have executed a Will. As per the Will, portions of the suit property was allotted to Sharadamma and her children and some portions were also allotted to Rangamma and Renukamma.



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10. Plaintiffs claimed their right after death of Puttappa by filing the present suit.

11. Pursuant to the suit summons, defendants entered appearance and filed the written statement denying the relationship.

12. They specifically disputed the genealogical tree and denied that Puttappa never married Sharadamma and therefore plaintiffs are totally strangers to the family.

13. Learned Trial Judge raised necessary issues and after recording the evidence of the parties and hearing the arguments, dismissed the suit of the plaintiffs.

14. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court.

15. Learned judge in the First Appellate Court secured the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, allowed the appeal granting 1/5th share each to the plaintiffs holding in paragraphs 29 to 33 as under:

"29. As per section 50 of the Evidence Act, " when the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as



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to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1969 or in prosecution under Section 494, 495, 497 or 498 of the Indian Penal Code. In this case, P.W.2 and 3 being the neighbours of plaintiffs house have stated that the plaintiffs, defendant No.3 and husband of defendant No. 4 are the children of Puttappa and Sharadamma. P.W.2 and P.W.3 have further stated that Puttappa has contracted second marriage with Sharadamma after the death of his first wife-Gutyamma. As I have already stated, the counsel for the defendant No.1 has not elicited any fact to discredit the evidence of these two witnesses.

30. In this case, the defendant No.1 has produced the school record of Anasooya, who is his wife. It is marked at Ex.D1. On perusal of this document, it reveals that the said Anasooya is the daughter of Shivabhandari. In the genealogical tree, the plaintiffs have shown said Anasooya as daughter of Sharadamma and wife of defendant No.1. It is unusual and unexpected that the marriage of defendant No.1 with Anasooya, if she would have been daughter of Puttappa. At the same time, it is also not possible to disbelieve the case of the plaintiffs in view of the evidence adduced by them and pleadings of defendant No.2 in her written statement. The plaintiffs have produced the school record of defendant No.3- Renukamma, school record of Parashuram, school record



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of plaintiff No.5, plaintiff No.4, wherein, their father has been shown as Puttappa of Hosapete hakkalu. It is the contention of the counsel for the defendant No.1 that these school records have been created. But, the defendant No.1 has not made out any case to appreciate the contentions that these school records have been created. As per Section 35 of Evidence Act, "An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact". Therefore, when there is no sufficient evidence to disbelieve such public record or school record, the information found in them shall be considered". Therefore, on careful evaluation of evidence on record, I am of the considered view that there is every possibility of marriage of deceased Puttappa with Sharadamma, after her marriage with Shiva Bhandari. At the same time, as it is not possible to disbelieve the case of defendant No.1 that Anasooya is wife of Shivabhandari, as disclosed from Ex.D1, I am of the view that Sharadama might have been married or lead life with Puttappa after birth of Anasooya to Shivabhandari, otherwise was there was no possibility of the marriage of the defendant No.1 with Anasooya. In my considered view, Anasooya has been wrongly shown as daughter in genealogical tree given in the plaint.



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31. The plaintiffs have relied upon Ex.P21-"Will" of late Puttappa to prove their case. The recitals of the documents, discloses that Puttappa contracted 2nd marriage with Sharadamma. In this document, Puttappa has not stated that he had contracted second marriage with Sharadamma after the death of Guttyamma. By this "Will", Guttyappa has allotted share in the properties. This document has been registered in the Sub Registrar Office, bearing SR. No. 25/82-83. Before considering this document to appreciate the case of the plaintiffs, it is proper and correct to refer Section 68 of the Evidence Act, which deals with proof of execution of documents required by law to be attested. As per this provision," If a document is required to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied". From this provision, it is clear that the documents required by law to be attested shall not be used as evidence until proof of execution of it by examining at least one of the attesting witness, if he is alive and subject to the process of the Court and capable of giving evidence. More particularly, in the case of "Will", the examination of one attesting witness is compulsory in



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proof of execution of documents to use it as evidence. Therefore, even though Ex.P21 is a registered document, it cannot be used as evidence, unless and until proof of it as per the provision under Section 68 of the Evidence Act. In this case, the plaintiffs have not made any efforts to examine any attesting of this document. Under the circumstances, the plaintiffs cannot make use of Ex.P21 as evidence in support of their case. Even excluding Ex.P21, considering the oral and the documentary evidence on record, as I have referred above, in my considered view, it is clearly established that the plaintiffs defendant No.3 and husband of defendant No.4 - Parashuram are the children of Sharadamma and Puttappa and there is no reason to dis believe these facts which are in issue in this case. At the same time, as I have already stated that it also goes to show that Anasooya who is another daughter of Sharadamma must be the daughter begotten by her from Shiva Bhandri.

32. In this case, indisputably, the suit schedule properties are the properties of late Puttappa. This fact has been proved from the documentary evidence marked at Ex.P1 to Ex.P3. Under the circumstances, the property of late Puttappa shall be dealt with as per the provision of Section 8 of Hindu Succession Act, 1956, which deals with general Rules of Succession in the case of male Hindu died intestate. As per this provision, the property of male Hindu died intestate, shall devolve according to the provisions of this Chapter-(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b)



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secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased. As per this schedule to the Act, son and daughters are the Class I heirs. The schedule has not discriminated whether son and daughter or from first wife or second wife. Further, it is pertinent to notice that as per Section 16 (3) of Hindu Marriage Act, 1955, it is very much clear that any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, are having rights to acquire the property of parents. It is clearly stated that no discrimination share shall be made between the legitimate and illegitimate children for claiming rights in the property of the parents.

33. The learned counsel for the respondents has vehemently submitted that there shall be proof of marriage even it is null and void to claim such rights in parents property by illegitimate child as per Section 16 of the Hindu Marriage Act. In my considered view, the contention of learned counsel for the respondents cannot be accepted as it is unexpected to prove the marriage which is indisputably void in eye of law. In my considered view, the plaintiffs, the defendant No. 1 to 3 and husband of defendant No. 4-Parashuram being the daughters and son of late Puttappa are equally entitled to claim share in the suit schedule properties of their father."



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16. Being further aggrieved by the same, it is the first defendant alone who has filed the present appeal on the following grounds:

- *The judgment and decree handed down by the first appellate court is not in conformity with order XLI Rule 31 of Code of Civil Procedure, 1908 and on the sole ground the impugned judgment and decree is liable to be set aside.*
- *The first appellate court has committed serious error in rejecting the cross objection filed by the first defendant on the ground that it was filed belatedly and no application was made seeking condonation of delay in filing the cross objection. It is needless to state that the learned judge of the first appellate court could not have rejected the cross objection on the ground that it was filed beyond the period of limitation. If the first appellate court was of the view that the cross objection is not maintainable for want of application seeking condonation of delay, an opportunity should have been provided to the cross objector to make an application to condone delay in filing the cross objection. If, inspite of providing an opportunity to make application to the cross objector seeking condonation of delay in filing the cross objection, the first appellate court could have rejected the same on the ground of delay. From the impugned judgment of the first appellate court, it is*



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manifested that the learned judge of the first appellate court has not provided an opportunity to the cross objector to make an application to condone the delay in filing the cross objection.

- *The first appellate court has failed to appreciate that the Hon'ble Apex Court and this Hon'ble Court held in umpteen number of cases that if an appeal or revision is filed beyond period of limitation, the court of appeal or revisional court shall provide an opportunity to the appellant or the petitioner as the case may be to make an application seeking condonation of delay in filing the appeal or revision. If inspite of the opportunity having been provided, the appellant or the petitioner fails to make the application, then the appeal or revision can be dismissed as barred by time. The impugned judgment and decree passed by the first appellate court rejecting the cross objection on the ground that it is belatedly filed without providing an opportunity to the cross objector to make an application is arbitrary and contrary to the binding decision of the Hon'ble Apex Court and also this Hon'ble Court.*
- *The learned judge of the first appellate court has not followed the decision of the Hon'ble Apex Court passed in a Suo moto writ petition (C) No.3/2020 and the miscellaneous applications filed in the said case. The Hon'ble Apex Court having noticed the fact that the entire country was affected on account of outbreak of COVID-19, a pandemic from March*



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2020 up to 2022 in order to safeguard the interest of litigant public, initiated suo moto proceedings and used to pass orders periodically on the miscellaneous applications filed in said suo moto writ petition. The Hon'ble Apex Court has passed an order dated 10.01.2022 directing that in cases where limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the remaining actual balance period of limitation, all persons shall have a limitation period of 90 days from 01.03.2022. It was further held that in the event of the actual balance period of limitation remaining w.e.f. 01.03.2022 is greater than ninety days, that longer period shall apply. It was further clarified that period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the period prescribed under Section 23 (4) and 29-A of Arbitration and Conciliation Act, 1996, Section 12 A of Commercial Courts Act, 2015 and provisos (b) (c) of Section 138 of Negotiable Instruments Act, 1881 and other laws. From the above said judgment of the Hon'ble Apex Court, the first appellate court ought to have excluded the above said period while computing limitation for the purpose of filing cross objection by the first defendant. The impugned judgment of the first appellate court rejecting the cross objection of the appellant on the ground of delay runs counter to the binding judgment passed by Hon'ble Apex



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Court in suo moto writ petition (C) No.3/2020 dated 10.01.2022.

➤ *The learned judge of the first appellate court has not appreciated that the Order XLI Rule 22 of Code of Civil Procedure, 1908 provides that any respondent though he may not have filed appeal from any part of the decree may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favor and may also take any cross objection to the decree which he could have taken by way of appeal provided such objection in the appellate court is filed within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal or within such further time as the appellate court may see fit to allow. From the language couched in Order XLI Rule 22 of Code of Civil Procedure, 1908, the limitation to file the cross objection is one month from the date of service of notice of the appeal or his pleader of notice of the date fixed for hearing the appeal. Further, the provision confers the discretionary jurisdiction on the appellate court to extend the period of limitation. The first appellate court has not considered the Order XLI Rule 22 of Code of Civil Procedure, 1908 in the right spirit and in the result it has erroneously rejected the cross objection filed by the first defendant.*



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- *The first appellate court has committed an error in not appreciating that regard being had to Order XLI Rule 31, the respondents in the appeal have a right to challenge the adverse finding given by the trial court in the suit without filing an appeal or cross objection as held by constitution bench of the Hon'ble Apex Court in the case of Panna Lal Vs. State of Bombay and others reported in AIR 1963 SC page 1516. Therefore, even in absence of the cross objection, the first appellate court ought to have examined whether the finding recorded by the trial court that Sharadamma is the wife of late Puttappa @ Shikaripurada Puttappa and the plaintiffs were born in their wedlock. In the circumstances, the impugned judgment and decree passed by the first appellate court cannot be countenanced.*
- *The first appellate court has committed serious error in not appreciating that the plaintiffs have not proved the documents produced as Ex.P5 to Ex.P8 which are school certificates. Admittedly, the plaintiffs have not examined the author of Ex.P5 to Ex.P8. Ex.P5 is school certificate of Renukamma. Ex.P6 relates to Parashurama, Ex.P7 is school certificate of Prathima. Ex.P8 relates to Parvathi. It is well settled position of law that when the defendants disputed the said documents, the plaintiffs ought to have examined the author of the Ex.P5 to Ex.P8. In the circumstances, both the courts have committed serious error in placing*



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reliance on said school certificates in order to hold that the plaintiffs are children of Puttappa and Sharadamma. The said finding recorded by both the courts is perverse in as much as it is based on no evidence.

- *Both the courts have not appreciated that Ex.P9 to Ex.P14 are copies of voter list. Admittedly, Ex.P9 and Ex.P10 do not contain the name of Puttappa and Sharadamma. Whereas in Ex.P11 at Sl. No.361, the name of Sharadamma finds a place and as per which the husband name of Sharadamma was Puttappa. In Ex.P12, name of Prathima and Parashurama are mentioned and it discloses that their father is Puttappa. Similarly, in Ex.P13, the name of Prathima and Parashurama are mentioned. Except, Ex.P5 to Ex.P16 there are no authenticated documents to establish that Puttappa married Sharadamma and they were living together as such. On the other hand, Ex.D5 is produced by the first defendant in his evidence and in that, the name of Puttappa is shown at Sl. No.674 and his wife's name is shown as Guthyamma wife of Puttappa Bhovi. Whereas, at Sl. No.743, name of Shiva Bhandary is shown and his wife name is shown as Sharadamma. There is no consideration of Ex.D5 by the trial court as well as the first appellate court. In any event, the finding recorded by both the courts that the plaintiffs are children of Puttappa and Sharadamma on the basis of aforesaid document cannot be said to be valid and sound.*



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- *Both the courts have failed to notice that in the plaint, the plaintiffs have not made the averments about the marriage having been performed between Puttappa and Sharadamma. They have also not mentioned the ceremonies performed in their marriage which constitute valid marriage in their community. It is not in dispute that Puttappa belongs to Bhovi community. Whereas, Sharadamma belongs to Bhandary community. It is not stated in the plaint that the marriage performed between puttappa and Sharadamma was valid which has given the legitimacy to the children born to them in the said wedlock. In absence of such averments having been made in the plaint, both the courts have acted illegally and without jurisdiction in recording finding that the plaintiffs are children of Puttappa and Sharadamma.*
- *Both the courts have not properly noticed that in paragraph 3 of the plaint, the plaintiffs have averred that Guthyamma is the first wife of Puttappa and after death of Guthyamma, he married Sharadamma and the plaintiffs were born to Puttappa and Sharadamma. The said statement made by the plaintiffs is absolutely false and the plaintiffs have made a false statement in the plaint. Both the courts have ignored the said aspect. The first defendant has produced the death certificate of Guthyamma as Ex.D4. Ex.D4 shows that Guthyamma died on 28.03.1988. Shiva Bhandary, the husband of Sharadamma died on 05.11.2002*



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and his death certificate was produced as Ex.D3. Admittedly, Puttappa died on 21.01.1988 and his death certificate was produced as Ex.D2. From the death certificates, it is manifested that Guthyamma, the first wife of Puttappa died after death of Puttappa. From the above, it is manifested that the plaintiffs have made a false statement in the plaint that Sharadamma was married to Puttappa after death of his first wife Guthyamma. It is needless to state that the plaintiffs who have approached court of equity seeking the equitable relief, are expected to disclose all material facts in the plaint and if there is any suppression of true facts, they are not entitled for the reliefs from the court. In the case on hand, there is not only suppression of facts but the plaintiffs have made a false statement knowing it to be false. Therefore, the first appellate court could not have decreed the suit of the plaintiffs.

- *The appreciation of evidence made by the first appellate court is against the principles of appreciation of evidence. The first appellate court has adopted pick and choose method in the matter of appreciation of evidence. The first appellate court has not considered the materials placed by the first defendant and also the oral evidence of DW2. The first appellate court ought to have considered the documents produced by first defendant as Ex.D1 to Ex.D6. Ex.D1 is the school record of Anusuya who is the wife of the first defendant. In the school records, her father name is shown as Shiva*



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Bhandary. She was admitted to the school in the year 1972-73. Her date of birth is 14.10.1966. In the plaint her name is shown as one of the children born to Puttappa through her second wife Sharadamma. Admittedly, the first defendant is the son of Renukamma who is born to Puttappa through his first wife Guthyamma. If really, there was relationship as pleaded by the plaintiffs in the plaint, the first defendant could not have married Anusuya who becomes his aunt i.e. mother's sister. There is no consideration of these aspects by the first appellate court which resulted in passing an erroneous judgment. Both the courts could not held that the plaintiffs were born to Puttappa through his second wife Sharadamma solely on the basis of unproved documents namely Ex.P5 to Ex.P8.

- *The first appellate court has committed serious error in granting 1/5th share to each of the plaintiffs. Merely, because the defendants have not sought for carving out of their share in the suit schedule property, it doesn't mean that court cannot allot their share. The first appellate court has not considered the genealogical tree furnished in paragraph 2 of the plaint. As per the paragraph 2 of the plaint, Shikaripurada Puttappa through his first wife Guthyamma had four children namely Renukamma, Ningamma, Kannamma and Maruthi. Kannamma and Maruthi died without any issues. Puttappa through his second wife Sharadamma had seven daughters and a son by name Parashurama.*



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It is stated that Parashurama is no more and his wife is fourth defendant. Therefore, if the plaintiffs and defendants are considered as the Class-1 heir to Shikaripurada Puttappa @ Puttappa and Sharadamma is considered as validly married wife of Puttappa then there are ten persons who simultaneously succeed the estate left by Puttappa. If that is so, the plaintiffs are entitled for 1/10th share each in the suit schedule property. The 1/5th share granted by the first appellate court is contrary to law and the admitted facts and circumstances of the case.

- *Both the courts have not properly considered Section 50 of Indian evidence Act. According to said Act, when the court has to form an opinion as to relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family, or otherwise, as special means of knowledge on the subject is relevant fact. From the reading of said provision in the evidence Act, it is manifested that the plaintiffs have not adduced evidence to conclude that the plaintiffs have produced sufficient materials before the trial court to form an opinion as to the relationship of the plaintiffs with Puttappa. Therefore, the impugned judgment and decree passed by both the courts holding that the plaintiffs are children born to Puttappa through Sharadamma is contrary to law*



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and the admitted facts and circumstances of the case.

- *Viewed from any angle and having regard to admitted facts and circumstances of the case, the impugned judgment and decree passed by the first appellate court is arbitrary, illegal, so also the finding recorded by the trial court confirmed by the first appellate court that Sharadamma is wife of Puttappa and plaintiffs are children born to Puttappa through his second wife Sharadamma.*

17. Coordinate Bench of this Court admitted the appeal on the following substantial questions of law by Order dated 17.11.2025:

1) Whether the First Appellate Court committed an error in holding that plaintiffs are children born to Puttappa through Sharadamma solely based on Ex.P.5 to Ex.P.18 and Ex.P.11 to Ex.P.14 notwithstanding the said documents having not been proved in the manner known to law and also not considering the document Ex.D2 and Ex.D.4?

2) Whether the First Appellate Court committed an error in accepting the oral evidence of P.W.2 and P.W.3 who have been examined to prove the relationship of plaintiffs with Puttappa @ Shikaripurada Puttappa in the absence of proving the essential requirements of Section 50 of the Evidence Act?



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3) Whether the First Appellate Court is justified in granting 1/5th share each to the plaintiffs in respect of the suit schedule property when there are admittedly 10 persons who simultaneously succeed to the estate left by Puttappa @ Shikaripurdha Puttappa?

4) Whether the judgment and decree of the First Appellate Court is erroneous without considering the document Ex.D.1 to Ex.D.5 and oral and documentary evidence of witnesses and whether the same amounts to perversity?"

18. Sri Umesh Moolimani, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum contended that First Appellate Court while reversing the judgment of the Trial Court grossly erred in placing reliance on the uncorroborated evidence of PW1 based on Exs.P5 to P18 and Exs.P11 to P14 ignoring the probative value of Exs.D2 to D4.

19. He would further contend that oral evidence of PW2 and PW3 have been relied upon to prove the relationship of Puttappa with Sharadamma as is contemplated under Section 50 of the Indian Evidence Act which is *per se* incorrect and thus



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sought for allowing the appeal by answering the substantial questions of law in favour of the appellant.

20. He would also contend that when once the substantial question law 1 and 2 are answered in favour of the appellant, as a consequence, grant of share to the appellant would not arise at all assuming that the plaintiffs were born to the second wife, they are not entitled for 1/5th share in the suit properties as they cannot be equated as co-parceners of the joint family and thus sought for modifying the share in the event, this Court answering substantial question of law 1 and 2 against the appellant.

21. He would further contend that the First Appellate Court committed a grave error in erroneously considering the probative value of Exs.D1 to D5 and thus the, impugned judgment is suffering from perversity and sought for allowing the appeal.

22. Per contra, Sri S.R. Hegde Hudlamane learned counsel for the contesting respondent Nos.1 to 4 would support the impugned judgment.



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23. Whereas the counsel for respondent No.6 supports the arguments put forward on behalf of the appellant.

24. Having heard the arguments of both sides, this Court perused the material on record meticulously.

25. On such perusal of the material on record, the occupancy rights of the suit property being granted to Puttappa is not in dispute. Puttappa having a wife by name Guthyamma and having four children in the said marriage is also not in dispute. Among the four children of Puttappa with Guthyamma, Kannamma said to have died without marriage and issueless.

26. It is contented by the plaintiffs that after the death of Guthyamma, Shikaripurada Puttappa @ Puttappa Bhovi married Smt. Sharadamma.

27. It is also found from records that Smt. Sharadamma was earlier married to Shiva Bhandari of Soraba.

28. Details with regard to the children who were born when Sharadamma was having the marital relationship with Shiva Bhandari though not forthcoming, it is found that the first defendant namely, Manjappa who is the appellant before this Court had married to Smt Anusuya who was born in the marital



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relationship between Puttappa and Sharadamma. In other words, second wife of Sri Puttappa is the mother-in-law of defendant No.1.

29. Records also reveal that defendant No.1 killed Smt.Sharadamma, who is his mother-in-law. Anusuyamma wife of defendant No.1 also died. The other children of Puttappa are the plaintiffs. Defendant No.4 in the suit is Smt.Parvathi, who is the wife Sri Parashurama. Said Parshurama was the only son born to Puttappa and Sharadamma after seven daughters were born.

30. Relation being disputed by the defendants, it was incumbent on the part of the plaintiffs to prove that they were born to second wife of Puttappa i.e., Smt. Shardamma.

31. In that regard, school certificates and other Government documents namely, voters list etc., are placed on record.

32. Therefore, at an undisputed point of time if they have been shown as the children born to Puttappa, it should not now lie in the mouth of the defendants that plaintiffs are strangers to their family.



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33. Furthermore, in the revenue proceedings, especially Ex.P16, it has been mentioned that Parashurama being the minor and his guardian is shown as Smt.Sharadamma.

34. Likewise, it is pertinent to note that an appeal filed by mother of defendant Nos.1 and 2 against their brother-in-law, who is none other than the brother of deceased Puttappa before the Assistant Commissioner's Court, Sagar.

35. Further in the said order itself, it has been specifically mentioned that Puttappa had first wife namely, Guthyamma and in the said marriage, two daughters were born and through the second wife Sharadamma, seven daughters and a son was born, who is a minor as on the date of deciding the said revenue proceedings. Said minor son is Parashurama who is the husband of defendant No.4.

36. Admittedly, Ex.P16 came into existence at an undisputed point of time. Date that is found on Ex.P16 is 27.05.1999. If the mother of defendant Nos.1 and 2 have shown Sharadamma as the second wife of Puttappa, it should not now lie in the mouth of defendant Nos.1 and 2 that Sharadamma is total stranger to their family and plaintiffs are



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not born in the marital relationship between the Puttappa and Sharadamma.

37. Furthermore, plaintiffs have also taken the responsibility to prove the relationship of Sharadamma with Puttappa by examining PW2 and PW3.

38. How a relationship of this nature is to be established is no longer *res integra*. Hon'ble Apex Court in the case of ***Dolgobinda Paricha vs. Nimai Charan Misra & Others***, AIR 1959 Supreme Court 914: 1959 SCC ONLINE SC 210, has held as under:

"6. We proceed to consider the second question first. The Evidence Act states that the expression "facts in issue" means and includes any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follow; "evidence" means and includes (1) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry; and (2) all documents produced for the inspection of the court. It further states that one fact is said to be relevant to another when the one is connected with the other in any one of the ways referred to in the provisions of the Evidence Act relating to the relevancy of



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facts. Section 5 of the Evidence Act lays down that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are declared to be relevant and of no others. It is in the context of these provisions of the Evidence Act that we have to consider Section 50 which occurs in Chapter II, headed "Of the Relevancy of Facts". Section 50, insofar as it is relevant for our purpose, is in these terms:

"50. When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact."

On a plain reading of the section it is quite clear that it deals with relevancy of a particular fact. It states in effect that when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the section clearly bring out the true scope and effect of the section. It appears to us that the essential requirements of the section are — (1) there must be a case where the court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion



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expressed by conduct as to the existence of such relationship is a relevant fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfill the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the "belief" or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved. We are of the view that the true scope and effect of Section 50 of the Evidence Act has been correctly and succinctly put in the following observations made in Chandu Lal Agarwala v. Khalilar Rahman [ILR (1942) 2 Cal 299, 309]

:

"It is only 'opinion as expressed by conduct' which is made relevant. This is how the conduct comes in. The offered item of evidence is 'the conduct', but what is made admissible in evidence is 'the opinion', the opinion as expressed by such conduct. The offered item of evidence thus only moves the court to an intermediate decision : its immediate effect is only to move the court to see if this conduct establishes any 'opinion' of the person, whose



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conduct is in evidence, as to the relationship in question. In order to enable the court to infer 'the opinion', the conduct must be of a tenor which cannot well be supposed to have been willed without the inner existence of the 'opinion'.

When the conduct is of such a tenor, the court only gets to a relevant piece of evidence, namely, the opinion of a person. It still remains for the court to weigh such evidence and come to its own opinion as to the factum probandum — as to the relationship in question."

We also accept as correct the view that Section 50 does not make evidence of mere general reputation (without conduct) admissible as proof of relationship : Lakshmi Reddi v. Venkata Reddi [AIR (1937) PC 201] .

39. Applying the principles of law enunciated in the above decision to the facts of the case, plaintiffs have successfully established not only by documentary evidence but also placing necessary oral evidence as to the relationship that their mother Sharadamma had relationship with deceased Puttappa.

40. There is also a Will executed by Puttappa during his lifetime and in the said Will also it has been specifically mentioned that Sharadamma is the second wife of Puttappa.



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41. There is also a mention about the first wife Guthyamma and properties left behind by Puttappa is divided as per the said Will to both through the first wife children as well as the second wife children.

42. These aspects of the matter would be sufficient enough to infer that at an undisputed point of time, after the death of Guthyamma - the first wife, Puttappa married Sharadamma, who may be the earlier wife of Shivabhandari and seven daughters and a son were born in the said marital relationship between Puttappa and Smt. Sharadamma.

43. Thus, plaintiffs were successful in establishing their relationship with the family of Puttappa and defence taken by defendant Nos.1 and 2 in this regard is rightly negated by the First Appellate Court while re-appreciating the material evidence on record which has been missed out by the learned Trial Judge.

44. Thus, the substantial questions of law 1 and 2 are to be answered against the appellant.

45. Insofar as the grant of share is concerned, Sri Umesh Moolimani contended that the property is to be held as



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joint family property of Puttappa and therefore the second wife children cannot be permitted to claim equal share in the suit properties along with the children who were born from the first wife.

46. In that regard, Ex.P16 itself is the answer wherein it has been specifically stated that the suit properties are the self-acquired properties of Puttappa. Therefore, grant of 1/5th share to the plaintiffs is thus just and proper.

47. In fact, the plaintiffs should get more share in the suit properties if they had appealed against the judgment of the First Appellate Court.

48. As such, third substantial question of law is also to be answered in favour of the plaintiffs and against the appellant.

49. Insofar as the fourth substantial question of law is concerned, Ex.D1 to D5 are contrary to the admissions made by respective mothers of defendant Nos.1 and 2 in Ex.P16.

50. Therefore, necessarily the fourth substantial question of law is to be answered against the appellant as the



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First Appellate Court has rightly appreciated the material evidence on record.

51. In view of the above discussion, all the substantial questions of law are answered against the appellant.

52. Insofar as the argument that has been put forward by respondent No.6 who wants to support the plaintiffs, he did not choose to file a separate appeal at all.

53. Moreover, he is also getting a share in the suit properties. Therefore, he cannot have any better stand other than what the appellant has taken up.

54. Therefore, his argument is of no avail in getting the substantial questions of law in favour of the appellant.

55. Consequently, the following:

ORDER

- (i) Appeal is meritless and hereby dismissed.
- (ii) No order as to costs.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR
List No.: 1 Sl No.: 70