



**IN THE HIGH COURT OF KARNATAKA,**

**KALABURAGI BENCH**

**DATED THIS THE 29<sup>TH</sup> DAY OF AUGUST, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

**REGULAR SECOND APPEAL NO. 200365 OF 2014 (INJ)**

**BETWEEN:**

1. SOMALINGAPPA ALIAS KHYAMALINGAPPA  
S/O IRANNA KURTANALLI,  
AGE: 25 YEARS, OCC: PRIVATE WORK,  
R/O. ATHARGA, TQ. INDI,  
DIST. BIJAPUR-586101.
2. RAJU S/O IRANNA KURTANALLI,  
AGE: 28 YEARS, OCC: PRIVATE WORK,  
R/O. ATHARGA, TQ. INDI,  
DIST. BIJAPUR-586101.

...APPELLANTS

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

**AND:**

1. IRANNA S/O SOMALINGAPPA KURTANALLI,  
AGE: 59 YEARS, OCC: AGRICULTURE,  
R/O. ATHARGA, TQ. INDI,  
DIST. BIJAPUR-586101.
2. SUMITRA D/O IRANNA KURTANALLI,  
AGE: 32 YEARS, OCC: HOUSE WORK,  
R/O. ATHARGA, TQ. INDI,  
DIST. BIJAPUR-586101.





3. SUNITA D/O IRANNA KURTANALLI,  
AGE: 25 YEARS, OCC: HOUSE WORK,  
R/O. ATHARGA, TQ. INDI,  
DIST. BIJAPUR-586101.
4. MAHADEVI W/O IRANNA KURTANALLI,  
AGE: 47 YEARS, OCC: HOUSE WORK,  
R/O. ATHARGA, TQ. INDI,  
DIST. BIJAPUR-586101

...RESPONDENTS

(BY SMT. REKHA PATIL, ADVOCATE APPEARED FOR  
SRI G.G. CHAGASHETTI ,ADVOCATE FOR R2 TO R4;  
R1 SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,  
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE OF THE  
LEARNED PRINCIPAL DISTRICT JUDGE AT BIJAPUR IN  
RA.NO.111/2013 DATED 03.09.2014 AND ALSO THE  
JUDGMENT AND DECREE OF THE LEARNED SENIOR CIVIL  
JUDGE AND JMFC, INDI IN O.S.NO.175/2007 ORDER DATED  
26.07.2013 AND CONSEQUENTLY DECREE THE SUIT OF THE  
PLAINTIFF.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

Heard learned counsel appearing for the appellants and  
learned counsel appearing for the respondents.



2. This regular second appeal is against the concurrent finding in a suit for declaration and injunction.

3. This appeal is admitted on 03.02.2015 to consider the following substantial question of law.

- i) Whether the trial Court and the first appellate Court have committed any serious error in holding that the plaintiffs are the legitimate children of the defendant No.1?*
- ii) Whether the trial Court and the first appellant Court have committed any serious error in not granting any share in the suit schedule property in favour of the plaintiffs and whether the plaintiffs are entitled to their share in the suit schedule property even in spite of Sec.16 of Hindu Marriage Act?*

4. The brief facts necessary for adjudication with these are noted as under:

5. Iranna is the propositus of the family. He had two wives. Mahadevi is the first wife and Gurubai is the second wife. The first marriage is a valid marriage and the second



marriage is the void. From the first wife, Iranna had two daughters namely Sumitra and Sunita and from the second wife he had two sons namely Somalingappa and Raju.

6. Two sons from the second wife Somalingappa and Raju have filed the suit for partition and separate possession, claiming share in the properties standing in the name of Iranna, the father, Sumithra and Sunita the daughters from the first wife as well as Mahadevi the first wife of Iranna, are the parties to the suit. They have also sought a declaration that the judgment and decree in OS No.212/1995 on the file of First Additional Senior Civil Judge, Bijapur is not binding on them. The said suit in OS No.212/1995 was filed by the two daughters from the first wife Mahadevi, against Mahadevi and Iranna. The said suit is decreed holding that each other plaintiffs is having  $1/4^{\text{th}}$  share and so also Iranna is having  $1/4^{\text{th}}$  share. It is also relevant to note in the said suit Gurubai, the second wife is also made a party and she is not given any share. The judgment and decree in the said suit has attained finality.

7. The suit is dismissed on the premise that the children from the void marriage (from second wife) are not



entitled share in the suit property. The First Appellate Court also dismissed the said appeal, aggrieved by the finding of the Trial Court.

8. Learned counsel Sri Harshavardhan R Malipatil appearing for the appellants would contend that the children from void marriage are also entitled equal share in the properties of Iranna and the suit could not have been dismissed. He would also contend that the earlier suit in OS No.212/1995 is wrongly decreed and granting 1/4<sup>th</sup> share to the daughters as well as the first wife. He would contend that the suit could not have been decreed at all, as daughters did not have any share in the suit property and the suit was filed in the year 1995.

9. Learned counsel Sri G.G.Chagashetti appearing for the respondents would contend that the suit in OS No.212/1995 is rightly decreed as the daughters from the first wife are not married, when the said suit was filed. As per the amendment to the Hindu Succession Act, as amended by the State of Karnataka, the unmarried daughters were entitled to get share in the co-parcenary property.



10. The admitted factual position is that the plaintiffs who are the appellants before this Court are the children from void marriage. The father is still alive. The Hon'ble Apex Court in the case of ***Revanasiddappa V/s Mallikarjun*** reported in ***AIR 2023 SC 4707*** has held that the children from the void marriage cannot be equated with the children from valid marriage and they do not get equal share in the co-parcenary property. It is held that the children from void marriage will get share in the self acquired property of the father. However, the right to seek partition in the self acquired property of the father would arise only after the demise of the father, when the succession opens in favour of the children. Father is still alive.

11. This being position, the plaintiffs cannot maintain a suit for partition in respect of the father's share and their father is still alive.

12. As far as the contention of the learned counsel appearing for the appellants that in OS No.212/1995 could not have been decreed granting share in favour of the daughters who are not co-parceners in the year 1995, as law is amended only in the year 2005 granting the status of co-parcener



daughters, it is to be noticed that there was State amendment to the Hindu Succession Act. Section 6A was amended and the unmarried daughters were given share in the properties.

13. Though Sri Harshavardhan R Malipatil, learned counsel appearing for the appellants would contend that the said illegal decree has reduced the extent of the share of Iranna, it is only Iranna who can question the decree and not the children of Iranna's from void marriage as the said children do not have any right over the properties during the lifetime of Iranna.

14. Under these circumstances, the substantial questions of law framed above have been answered against the appellant in favour of the respondents.

15. The Regular Second Appeal is dismissed.

**Sd/-**  
**(ANANT RAMANATH HEGDE)**  
**JUDGE**