HC-KAR

NC: 2026:KHC:56474
RSA No. 719 of 2017

CNR: KAHC010547032017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 719 OF 2017

BETWEEN:

SRI HANUMANTHAPPA
S/O LATE AGASARA HANUMANTHAPPA
AGED ABOUT 55 YEARS,
RESIDING AT DODDAKIDDAHALLI,
AND JANKAL VILLAGE,
MADADAKERE HOBLI,
HOSADURGA TALUK – 577 527
CHITRADURGA DISTRICT.

…APPELLANT

(BY SRI. SIDDAPPA B. M., ADVOCATE)

AND:

1. SMT. SHANTHAMMA
W/O LATE AGASARA HANUMANTHAPPA
AGED ABOUT 57 YEAWRS,
RESIDING AT DODDAKIDDAHALLI VILLAGE,
MADADAKERE HOBLI,
HOSADURGA TALUK – 577 527
CHITRADURGA DISTRICT

2. SMT. LAXMI
D/O LATE AGASARA HANUMANTHAPPA
AGED ABOUT 41 YEARS,
W/O N.A. SHIVAPPA
PEON, PWD OFFICE,
CHANNARAYAPATTANA – 573 116
HASSAN DISTRICT.

3. SMT. RUDRAMMA
W/O DAGGE HANUMANTHAPPA
AGED ABOUT 66 YEARS,

RESIDING AT DODDAKIDDAHALLI VILLAGE,
MADADAKERE HOBLI,
HOSADURGA TALUK,
CHITRADURGA DISTRICT – 577 527
DEAD BY LRs

3(a) DAGGE HANUMANTHAPPA S.
S/O LATE SIDDAPPA,
H/O. LATE RUDRAMMA,
AGED ABOUT 73 YEARS,

3(b) ONKARAPPA H.,
S/O DAGGE HANUMANTHAPPA
AGED ABOUT 50 YEARS,

3(c) SHEKARAPPA H.,
S/O DAGGE HANUMANTHAPPA,
AGED ABOUT 47 YEARS,

3(d) NINGAPPA H.,
S/O DAGGE HANUMANTHAPPA
AGED ABOUT 45 YEARS,

3(e) MANJUNATH H.,
S/O DAGGE HANUMANTHAPPA,
AGED ABOUT 38 YEARS,

3(f) MALLIKARJUNA H.,
S/O DAGGE HANUMANTHAPPA,
ABED ABOUT 34 YEARS,

ALL ARE R/O DODDAKITTADAHALLI,
HOSADURGA TALUK – 577 527
CHITRADURGA DISTRICT.

4. SRI. DAGGE KARIYAPPA
S/O KENCHAPPA
AGED ABOUT 54 YEARS
RESIDING AT DODDAKIDDAHALLI VILLAGE,
MADADAKERE HOBLI,
HOSADURGA TALUK – 577 527,
CHITRADURGA DISTRICT

…RESPONDENTS

(BY SRI. K. R. LINGARAJU, ADVOCATE FOR R1 & R2;
SRI. M. G. KANTHARAJAPPA, ADVOCATE FOR R3(A) TO R3(F);
R4 – SERVED \)

THIS RSA IS FILED UNDER SEC.100 OF CPC, AGAINST THE JUDGMENT AND DECREE DTD 02.02.2017 PASSED IN RA.NO.290/2016(OLD NO.2/2013) ON THE FILE OF THE SENIOR CIVIL JUDGE, AND JMFC, HOSADURGA, PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE JUGMENT AND DECREE DTD 22.11.2012 PASSED IN OS.NO.24/2007 ON THE FILE OF THE ADDL. CIVIL JUDGE & JMFC., HOSADURGA.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

The appellant was defendant No. 1 in O.S. No. 24/2007 on the file of learned Addl. Civil Judge & JMFC, Hosadurga (for short, the 'trial Court') instituted by the Respondents No. 1 and 2 / plaintiffs against the appellant / Defendant No. 1 and Respondents No. 3 and 4 / Defendants No. 2 and 3 for partition and separate possession of their alleged share in the suit schedule immovable properties and for other reliefs. In the said suit filed by the respondents No.1 and 2 specifically contended that they are the second wife and daughter of Late Agasara Hanumanthappa, whose first wife was one Gangamma, whose son is the Hanumanthappa, the appellant herein and the suit schedule

properties being the joint family properties of the plaintiffs and defendant no.1, the plaintiffs were entitled to their legitimate share in the suit schedule properties. It was also contended that prior to institution of the suit, the defendant no. 1 sold the portion of the suit schedule property in favour of defendants no. 2 and 3 vide registered sale deeds dated 09.06.2006 and 17.07.2006 and since the defendant No. 1 refused to effect partition and division of the suit schedule properties and give the plaintiffs their legitimate share in the suit schedule properties, they instituted the aforesaid suit for declaration, partition and for other reliefs in relation to the suit schedule immovable property.

2. The said suit was contested by the appellant / defendant no. 1 as well as defendants No. 2 and 3, who disputed and denied the various allegations and claim made by the plaintiffs and *inter alia* disputed the alleged relationship of the plaintiffs with the deceased Agasara Hanumanthappa. It was contended that the deceased Hanumanthappa was not the husband of plaintiff no. 1 or the father of plaintiff no. 2 and consequently the plaintiffs did not have any manner of right, title, interest, possession or share over the suit

schedule properties and accordingly the plaintiffs sought for dismissal of the suit.

3. Based on the pleadings of the parties, the trial Court framed the following issues:

> *1) Whether the plaintiffs prove that the plaintiff No.1 is the 2nd wife and plaintiff No.2 is the daughter of deceased Agasara Hanumanthappa?*
> *2) Whether the plaintiffs prove that they and defendant No.1 are the members of Hindu undivided joint family as alleged?*
> *3) Whether the plaintiffs prove that the suit schedule property is the joint and ancestral property of them and defendant No-1 as alleged?*
> *4) Whether the plaintiffs prove that the alleged alienation of 5 acres of land in the suit property by the defendant No-1 in favour of defendant No.2 and 3 through the registered sale deeds dated 19.04.2006 is not binding on their right in the suit property as alleged?*
> *5) Whether the plaintiffs are entitled for ½ share in the suit schedule property?*
> *6) Whether the defendant No.2 and 3 prove that they are the bonafide purchasers of 3 acres and 2 acres of land in the suit property for a valuable consideration as alleged?*
> *7) Whether the plaintiffs entitled for the reliefs as sought?*
> *8) What order or decree?*

4. The plaintiffs examined themselves as PWs1 and 2, and three witnesses as PWs3 to 5 and documentary evidence at Exhibits P1 to P11 were marked on their behalf. The defendants

examined themselves as DW1 to DW3 and documentary evidence at Exhibits D1 to D27.

5. After hearing the parties, the trial Court answered issue No.1 in favour of the plaintiffs thereby coming to the conclusion that the plaintiffs were the wife and daughter of the deceased Agasara Hanumanthappa. However, the trial Court answered Issues No. 2 and 3 against the plaintiffs by holding that the suit schedule properties were not ancestral joint family properties, but came to the conclusion that the plaintiffs No.1 and 2 and defendant No.1 being the legal heirs of deceased Agasara Hanumanthappa, the suit schedule properties were ancestral joint family properties in which Agasara Hanumanthappa had a share to an extent of 50% while the remaining half share belonged to his son, defendant No.1-Hanumanthappa and out of the undivided notional half / 50% share of the deceased Agasara Hanumanthappa, his daughter / plaintiff no. 2 would be entitled to 1/4 share. Accordingly the trial Court partly decreed the suit of the plaintiffs by declaring that the sale deed dated 19.04.2006 executed by defendant no. 1 in favour of defendant no. 2 was not binding upon plaintiff no. 2 and that the

plaintiff no. 2 had 1/4th share and defendant no. 1 had 3/4th share in the suit schedule properties. Further though there was no prayer sought for by the plaintiffs for cancellation of the aforesaid sale deed or a direction to send a copy of the decree to the office of the Sub Registrar, the trial Court issued such directions as can be seen from the operative portion of the impugned judgment and decree of the trial Court as hereunder:

> *"The suit of the plaintiff is partly decreed.*
>
> *It is declared that, the sale deed dated on 19.04.2006 executed by the defendant No-1 in favour of the defendant No.2 are not binding on the plaintiff No.2 share in the suit schedule property.*
>
> *The plaintiff No.2 had 1/4th share and defendant No.1 had 3/4th share in the suit schedule property.*
>
> *Other reliefs of the plaintiffs are hereby dismissed.*
>
> *Further, office is directed to send a copy of this decree to the officer in whose office the instrument has been registered and such officer shall note on the instrument has been so registered and such officer shall note on the copy of the instrument contained in his book the fact of its cancellation as per Section 132 of Karnataka Land Revenue Act and Section 31 of the Specific Relief Act"*

6. Aggrieved by the aforesaid judgment and decree of the trial Court, the appellant / defendant No. 1 filed an appeal in R.A. No.290/2016 (Old R.A. No. 2/2013) on the file of learned Senior

Civil Judge & JMFC, Hosadurga which was contested by the respondents No.1 and 2 and the same came to be allowed by the impugned judgment and decree of the first appellate Court which set aside the judgment and decree of the trial Court only to the extent of purporting to direct cancellation of the sale deeds dated 19.04.2006 (Exs.D.24 and 25) and directing the said decree to be sent to the office of the Sub Registrar by holding as under:

> *The appeal under Order 41 Rule 1 of C.P.C filed by the appellant/ defendant No.1 is allowed in part.*
>
> *The impugned Judgement and decree passed by learned Addl. Civil Judge, Hosadurga in O.S 24/2007 dated 22.11.2012 as regards directions to Sub-Registrar to note about cancellation of sale deeds in concerned book is set aside. As far as determining and allotting ¼ share in favour of plaintiff No.2 in suit schedule property is concerned the judgement and decree is confirmed with following modification.*
>
> *The lands measuring 3 and 2 acres out of 17 acres 24 guntas in Sy.No.13/2 sold in favour of defendant No. 2 and 3 under registered sale deeds dated 19.04.2006 shall be allotted to the share of defendant No.1.*
>
> *In the facts and circumstances of the case parties are directed to bear their own costs.*
>
> *Draw preliminary decree accordingly.*

7. Aggrieved by the impugned judgment and decree of the trial Court and First Appellate Court, the appellant / defendant no. 1 is

before this Court by way of the present appeal seeking to urge the following substantial questions of law:

> *1. Whether the first appellate Court is right in law after having noticed the fact that the judgment and decree passed by the learned Senior Civil Judge in R.A. No. 6/2010 was stayed by the Hon'ble High Court of Karnataka in M.S.A. No. 181/2012 dated 12.02.2013 in holding that the judgment and decree passed by the learned Addl. Civil Judge & JMFC, Hosadurga in O.S. No. 24/2007 dated 22.11.2012 is valid in accordance with law?*
>
> *2. Whether the 1st appellate Court is right in law when admittedly the trial Court has received the records from the appellate Court on 09.10.2012 and trial Court taking the arguments of the defendants as NIL on 02.11.2012 and passing the judgment and decree on 22.11.2012 in holding that the trial Court has provided sufficient opportunity to the defendants after remanding the case by it?*
>
> *3. Whether both the Courts are right in law in holding that the sale deed executed by the defendant No.1 in favour of defendant No.2 and 3 on 19.04.2006 is not binding on the share of the plaintiff No.2 though after recording the finding that the plaintiff No.2 is illegitimate child?*
>
> *4. Whether both the Courts are right in law in granting the share to the plaintiff No.2, when admittedly the suit schedule properties are ancestral and joint family properties and defendant No.1 father died in the year 1988?*
>
> *5. Whether both the Courts are right in law in recording the finding that the plaintiff No.1 has not proved the marriage in accordance with law with late Agasara Hanumanthappa in holding that plaintiff No.2 is illegitimate child of late Agasara Hanumahnthappa?*

8. Learned counsel for the appellant would submit that having regard to the finding recorded by the trial Court and first appellate Court that the suit schedule properties are the ancestral joint family properties in the hands of late Agasara Hanumanthappa, both the Courts were not justified in coming to the erroneous conclusion that the defendant no. 2 being the illegitimate daughter was entitled to a share in the suit schedule properties after the demise of late Agasara Hanumanthappa. It was therefore contended that the impugned judgment and decree passed by the trial Court and confirmed by the first appellate Court upholding the relationship of late Agassara Hanumantha with the plaintiffs and declaring that the plaintiff no.2 was entitled to 1/4 share in the suit schedule properties deserves to be set aside.

9. Per contra learned counsel for the respondents would support the impugned judgment and decree and submits that in the light of the judgment of the Apex Court in the case of ***Revansiddappa and another Vs. Mallikarjun and another*** reported in ***AIR 2023 SC 4707***, both the Courts were fully justified

in passing the impugned judgment and decree which does not warrant interference by this Court in the present appeal.

10. A perusal of the judgment and decree of the trial Court will indicate that as stated supra while answering issue no. 1, the trial Court comes to the conclusion that the respondents no. 1 and 2 had established that they were the wife and daughter of the deceased Agasara Hanumanthappa and consequently came to the conclusion that out of the notional half share of Agasara Hanumanthappa, the plaintiff No. 2 being the illegitimate daughter, was entitled to a share in the notional half share of late Agasara Hanumanthappa and decreed the suit of the plaintiffs by holding as under:

> *"9. Issue No-1: The plaintiffs in order to prove their case, got examined themselves as PWs-1 and 2 and examined other three witnesses as PWs-3 to 5 and exhibited Ex.P-1 to 11 documents, in which they have specifically deposed that plaintiff No-1 is 2nd wife of Agasara Hanumanthappa and plaintiff No-2 is daughter of deceased Agasara Hanumanthappa. The learned counsel for plaintiffs relied the cross-examination of DWs-2 & 3 which reads as under:*
>
> > *"ಅಗಸರ ಹನುಮಂತಪ್ಪನಿಗೆ ಇಬ್ಬರು ಹೆಂಡತಿಯರು ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ, 1ನೇ ಹೆಂಡತಿಗೆ ಮಕ್ಕಳಾಗದೇ ಇದ್ದುದರಿಂದ, 1ನೇ ವಾದಿಯನ್ನು ಮದುವೆಯಾಗಿ ಒಂದು ಮಗು ಆಯಿತು ಎನ್ನುವ ವಿಚಾರ ಗೊತ್ತಿಲ್ಲ, 1ನೇ*

ಪ್ರತಿವಾದಿ ಅಗಸರ ಹನುಮಂತಪ್ಪನ 1ನೇ ಹೆಂಡತಿಗೆ ಹುಟ್ಟಿದ ಮಗ ಎಂದು ನನಗೆ ಗೊತ್ತು. ಆ ನಂತರ 2ನೇ ಹೆಂಡತಿ ಶಾಂತಮ್ಮನಿಂದ 2ನೇ ವಾದಿ ಹುಟ್ಟಿದಳು ಎಂದರೆ ಸರಿ. ಅಗಸರ ಹನುಮಂತಪ್ಪನಿಂದ ಶಾಂತಮ್ಮನಿಗೆ ಚಿದಾನಂದ ಎಂಬ ಹುಡುಗ ಹುಟ್ಟಿದ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ."

10. Upon close scrutiny of evidence of defendants, it is noticed that they have clear denied the relationship with Agasara Hanumanthappa and plaintiffs. But in their cross-examination they have clearly admitted that Agasara Hanumanthappa had contact with plaintiff No-1/Shanthamma. Further, they have specifically admitted that plaintiff No-2 being daughter of Agasara Hanumanthappa who being father of defendant No-1. Then said witness not denied the birth of one Chidananda to the plaintiff No-1 through Agasara Hanumanthappa. They have stated that they have not known it. Further, the plaintiffs have produced the documents in which Ex.P-8 is declaration certificate issued by Headmaster, Government Higher Primary School, Dodda kittadahalli of Hosadurga taluk dated on 12-8-2008 in which it is noticed that one Chidananda S/o Hanumanthappa was born on 26.10.1963 who belongs to a Madivala community. It is assertion of the plaintiffs that said document is birth document of deceased son Chidananda. On the other hand the defendants have denied the birth of said Chidananda and relationship with father of defendant No-1. But evidence of PWs-2 and 3 clearly reveals that father of defendant No-1/Agasara Hanumanthappa had married with plaintiff No-1 and during their wedlock one Chidananda and Laxmi were born to him. The evidence of DWs-2 and 3 alongwith Ex.P-9 reveals the relationship with Agasara Hanumanthappa and plaintiffs, which is proved by the plaintiffs and there is no contrary evidence against it, and there is no reason to disbelieve that a woman have stating name of other person as her husband and

another women stating name of other person as her father is not believable. Hence plaintiffs proved that plaintiff No-1 is the 2nd wife, and plaintiff No-2 is the daughter of decades Agasara Hanumanthappa. Hence I answer issue No-1 in the affirmative.

11. Issues No-2 & 3: Admittedly the plaintiff No-1 is the 2nd wife of Agasara Hanumanthappa and there is no evidence that their marriage was took place before 1956; and 2nd wife has no right to claim any share in the property of her husband, but her daughter plaintiff No-2 had right to claim her share in the property of her father. Here, the defendants have specifically asserted that suit schedule property is the ancestral property of Hanumanthappa. The plaintiff also not denied it and there is no document to substantiate the suit schedule property is the exclusive property of the deceased Hanumanthappa. Therefore, I am satisfied to hold that though the marriage between the 1st plaintiff and deceased Agasar Hanumanthappa is void marriage. As much as it took place during the subsistence of the marriage of deceased with the Gangamma. But children born to the 1st plaintiff and the deceased are legitimate and they are entitled to the benefits conferred under the amended Section 16 (1) of the Hindu Marriage Act 1976. Therefore, they have a right to succeed to the properties of the deceased as per with the legal heirs under Section 8, 10 and Schedule annexed to the Hindu Succession Act. Here deceased father, Agasara Hanumanthappa and his legitimate son defendant No-1 had ½ share each in the suit schedule property. Now deceased Agasara Hanumanthappa had ½ share, it is his separate property, in which illegitimate children, plaintiff No-2 and defendant No-1 had ½ share each in the share of the deceased Hanumanthappa. Since the plaintiff No-2 entitled 1/4th share and defendant No-1 entitled 3/4th share in the suit schedule property.

12. The property to which such a child can lay claim must be the separate property of the parents and not the coparcenary property in which the parent has a share. Since no child, where legitimate or otherwise acquires right by birth in separate property of its parent, a child of any void marriage can only succeed to the property of its parent in accordance with the provisions of Sec.8 or Section 15, Hindu Succession Act.

13. A child of a void marriage is related to its parents within the meaning of Sec.3 (1) (j) Hindu Succession Act becomes of the provisions of Section 16 of Hindu Marriage Act provision to Sec.3 (1) (j) must be confined to those children who are not clothed with legitimacy U/S 16 of Hindu Marriage Act relied upon a decision reported in AIR 2001 A.P. 104, G. Nirmalamma V/s G.Seethapathi which is held as follows:

> *"Hindu Marriage Act (25 of 1955) S.16-Hindu Succession Act (30 of 1956), S.3(1) (j)-Illegitimate son-He is to be treated as coparcener for properties-He cannot, however,claim partition during lifetime of father."*
>
> *"By virtue of S.16 (1) of the Hindu Marriage Act, as amended in 1976, the illegitimate son can be equated with natural sons and treated as coparceners for the properties held by the father whether the property be originally joint family property or not. The only limitation is that during the lifetime of the father, the illegitimate son of a void marriage is not entitled to seek a partition.*
>
> *Section 16 of the Hindu Marriage Act has conferred on an illegitimate son benefits of a legitimate son and his pre-existing rights are in no way curtailed. He becomes a member of family and has status as a son and by virtue of that he is entitled to right of survivorship."*

Hence I answer issue Nos-2 and 3 in the negative.

14. Issues No-4 & 6: Upon perusal of entire evidence of the parties, it is noticed that through the evidence of defendants No-2 and 3 reveals that they have known the fact with respect to birth of plaintiff No-2 through Agasara Hanumanthappa by plaintiff No-1, but they have not taken any care with respect to consent of her. Further, it is well settled establish principle of law that buyer must be an aware, but in this case, defendants No-2 and 3 have not taken any care to purchase the suit schedule property, since said sale is not binding on the right of the plaintiff No-2. Further the defendants No-2 and 3 have failed to prove that they have bonafide purchaser of the suit schedule property. Accordingly, I answer issue No-4 in the affirmative and issue No-6 in the negative.

15. Issues No-5 and 7: Both issues are interlinked with each other, in order to avoid repetition of discussion both issues are discussed together. Through the evidence of DWs-2 and 3 it is crystal clear that plaintiff No-1 had married with deceased Agasara Hanumanthappa and plaintiff No-2 is daughter of said Agasara Hanumanthappa. Further the suit schedule property is ancestral property of Agasara Hanumanthappa, and it is not the self acquired property of defendant No-1. The plaintiff No-2 had share in the property of her father equal to the legitimate son. Here father of the plaintiff No-2 and defendant No-1 was died. In this circumstance both have equal shares in the share of their father. Admittedly plaintiff No-1 being 2nd wife of Agasara Hanumanthappa, but there is no evidence with respect to marriage in between plaintiff No-1 and Agasara Hanumanthappa was took place before the year 1956. Since she had no share in the suit schedule property and she had no right to claim any property of her deceased husband. On these grounds, the plaintiff No-2 is entitled 1/4th share in the suit schedule property and

plaintiff No-2 had entitled for the suit relief as sought by her, because 1st plaintiff had no share in the suit schedule property, but 2nd plaintiff had 1/4th share in the suit schedule property, even though she being a illegitimate daughter of Agasara Hanumanthappa. Hence issue No-5 answered as affirmative and issue No-7 partly in the affirmative.

16. Issue No-8: In the result, I proceed to pass the following;

ORDER

The suit of the plaintiff is partly decreed.

It is declared that, the sale deed dated on 19.04.2006 executed by the defendant No-1 in favour of the defendant No.2 are not binding on the plaintiff No.2 share in the suit schedule property.

The plaintiff No-2 had 1/4th share and defendant No.1 had 3/4th share in the suit schedule property.

Other reliefs of the plaintiffs are hereby dismissed.

Further, office is directed to send a copy of this decree to the officer in whose office the instrument has been registered and such officer shall note on the instrument has been so registered and such officer shall note on the copy of the instrument contained in his book the fact of its cancellation as per Section 132 of Karnataka Land Revenue Act and Section 31 of the Specific Relief Act."

11. As stated earlier, aggrieved by the aforesaid judgment and decree, the appellant defendant no. 1 approached the first appellate Court which confirmed the judgment and decree of the trial Court in all respects including the relationship of late Agasara

Hanumanthappa with plaintiffs No.1 and 2 and also the entitlement of the plaintiff No. 2 towards her 1/4 share in the suit schedule property. However, the finding of the trial Court that the decree is to be sent to the office of the Sub Registrar to effect cancellation was reversed by the First Appellate Court which came to the conclusion that in the absence of any prayer for cancellation, the question of sending the decree to the office of the Sub-Registrar, would not arise; the Court also came to the conclusion that by way of equitable partition, the purchasers would be entitled to the undivided 3/4th share of the appellant Hanumanthappa in the suit schedule property sold by him in favour of defendants No.2 and 3 and accordingly modified the judgment and decree of the trial Court as hereunder:

> *"The appeal under Order 41 Rule 1 of C.P.C filed by the appellant/ defendant No.1 is allowed in part.*
>
> *The impugned Judgement and decree passed by learned Addl. Civil Judge, Hosadurga in O.S 24/2007 dated 22.11.2012 as regards directions to Sub-Registrar to note about cancellation of sale deeds in concerned book is set aside. As far as determining and allotting ¼ share in favour of plaintiff No.2 in suit schedule property is concerned the judgement and decree is confirmed with following modification.*
>
> *The lands measuring 3 and 2 acres out of 17 acres 24 guntas in Sy.No.13/2 sold in favour of defendant No. 2 and 3*

under registered sale deeds dated 19.04.2006 shall be allotted to the share of defendant No.1.

In the facts and circumstances of the case parties are directed to bear their own costs.

Draw preliminary decree accordingly."

12. It is a matter of record and undisputed fact that the respondents No.1 and 2/ plaintiffs have not challenged the judgment and decree of the first appellate Court to the extent it modifies the judgment and decree of the trial Court. Under these circumstances, the only question that arises for consideration in the present appeal is as to whether both the Courts were justified in declaring that the plaintiff no. 2 being illegitimate daughter of late Agasara Hanumanthappa was entitled to 1/4th share i.e. half share in the notional half share of late Agasara Hanumanthappa in the suit schedule property. The said issue is no longer res integra in the light of the judgment of the Apex Court in Revansiddappa's case supra wherein it is held as under:

54. We now formulate our conclusions in the following terms:

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the

Act and the marriage is held to be void otherwise than on a petition under the enactment;

(ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable PART K marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

(iv) While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation 'related by legitimate kinship' and cannot be regarded as an 'illegitimate child' for the purposes of the proviso;

(v) Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to

daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

(vi) Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception PART K to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm;

(vii) Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

(viii) While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that 'the PART K coparcenary property shall be deemed to have been divided as if a partition had taken place'. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

(ix) For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

(x) The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be

ascertained in terms of the Explanation to sub-section (3), as interpreted above."

13. As can be seen from the aforesaid judgment of the Apex Court the plaintiff no. 2, being the illegitimate daughter of late Agasara Hanumanthappa would be entitled to claim a share in his undivided share upon his demise. In the instant case, it is an undisputed fact that during his lifetime Agasara Hanumanthappa was entitled to half share in the suit schedule property while the remaining half share belonged to his son the appellant herein and upon the demise of late Agasara Hanumanthappa, his undivided half (50%) share would necessarily have to be divided equally between the respondent no.2 / plaintiff no. 2 and the appellant / defendant no. 1. In accordance with this well settled legal position, both the Courts have come to the correct conclusion that in the light of the judgment of the Apex Court defendant no. 1 would be entitled to the remaining 3/4th share in the suit schedule property. The judgment and decree of the trial Court and the first appellate Court is in complete / total conformity / consonance with the principles laid down by the Apex Court in Revansiddappa's case supra.

14. Under these circumstances I do not find any question of law, much less any substantial question of law arising for consideration in the present appeal which is devoid of merit and the same is hereby dismissed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BVV
List No.: 1 Sl No.: 54