2025 INSC 1038

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 11330 OF 2011**

**Chowdamma (D) by LR and Another** ....Appellant(s)

**Versus**

**Venkatappa (D) by LRs and Another** ....Respondent(s)

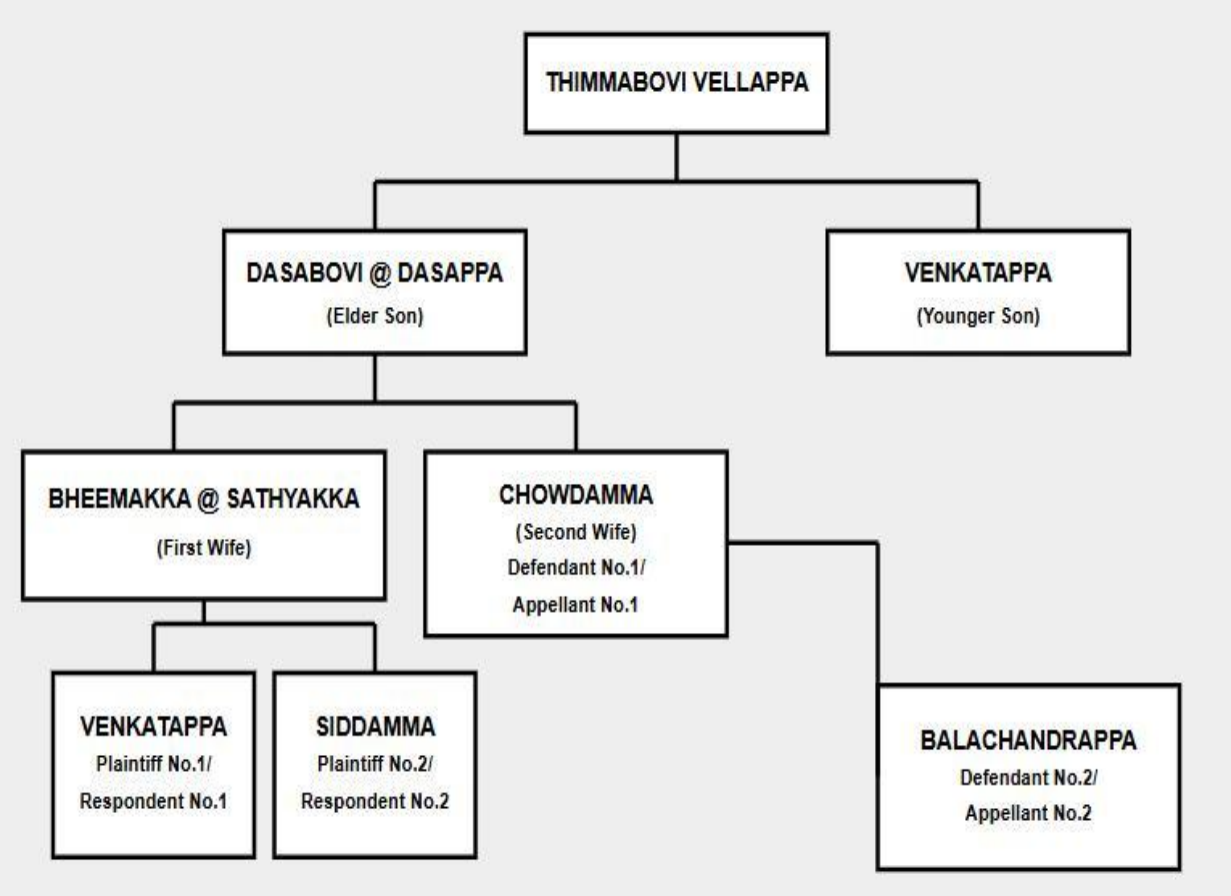
**J U D G M E N T**

**PRASHANT KUMAR MISHRA, J.**

**1.** This Appeal calls in question the impugned order dated 28.10.2010 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No.935 of 2005, whereby the High Court allowed the said appeal filed by the plaintiffs and set aside the judgment of the learned Civil Judge (Senior Division) Holalkere, dated 24.03.2005 in O.S No.102/2001, consequently decreed the suit for partition filed by the plaintiffs.

**2.** The defendants in O.S.No.102/2001 are the appellants herein, and the plaintiffs are respondents. The parties shall be referred to as their position before the Trial Court for convenience.

The genealogical chart germane to the present dispute is as under:




## FACTUAL MATRIX

**3.** The case of the plaintiffs is that their grandfather, namely Thimmabovi Vellappa, had two sons: Dasabovi @ Dasappa and Venkatappa. Dasabovi had two wives. The first wife, Bheemakka @ Sathyakka, is the mother of the plaintiffs. The second wife, Chowdamma, is defendant No.1, and their son is defendant No.2. Dasabovi died about five years prior to the filing of the suit, leaving

behind plaintiff Nos.1 and 2 and defendant Nos.1 and 2. The suit schedule lands bearing Survey Nos.39/1B, 149, 41/lP, 37/1, 37/lA, and 29/9, and the house bearing No.38, situated in Devigere and Kallahally village, Hosadurga Taluk.

**4.** About five years prior to the filing of the suit, during the lifetime of Dasabovi's father, the properties were divided between the father of the plaintiffs and his brother, Venkatappa. As a consequence, the suit schedule lands and the house property fell into the share of Dasabovi. After the partition, the plaintiffs became the manager of the joint family properties, and both the plaintiffs and the defendants were cultivating the suit schedule properties.

**5.** During the lifetime of Dasabovi, another property bearing No. 37/1 of Kallahally Village, Hosadurga, was purchased out of joint family funds and in the name of the joint family. However, the said property was registered in the name of defendant No.1 (Chowdamma).

**6.** After the birth of plaintiff Nos.1 and 2 to the first wife of Dasabovi, he fell in love with defendant No.1 (Chowdamma) and entered into a relationship with her. After some time, she was brought into his house and began living with him as his wife. In view of the second wife entering the house, the first wife and her children were

driven out. Consequently, Bheemakka, the first wife, along with the plaintiffs, went to her paternal home at Antharagange Village.

**7.** Even though the first wife and her children left the house of Dasabovi, he continued to visit them on several occasions. After the death of Dasabovi, the plaintiffs also visited their father's residence at Galirangaiahnahatti Village, as they were in joint possession and enjoyment of the suit schedule properties.

**8.** It is alleged that defendant No.1, who was a Panchayat member, exerted her influence, and got the names of herself and her children entered in the revenue records. Based on the change in the revenue entries, the defendants declined to acknowledge the plaintiffs as being in joint possession of the suit schedule properties. Hence, the plaintiffs were compelled to demand their share in the family properties. Having been denied the same, the plaintiffs have filed O.S.No.102/2001 seeking partition of the suit schedule property to the extent of half share, along with other consequential reliefs.

**9.** The defendants contended that the defendant No.1 is the only wife of the deceased Dasabovi, and hence, the plaintiffs have no right, title, or interest over the suit schedule properties. They denied the marriage of Dasabovi with the plaintiffs' mother and claimed that they

inherited the properties pursuant to a partition effected between the deceased Dasabovi and his brother Venkatappa.

**10.** The Trial Court, on framing six issues, dismissed the suit of the plaintiffs. Aggrieved by the same, the plaintiffs filed a Regular First Appeal being Regular First Appeal No.935/2005 before the High Court. The High Court, after relying on the evidence of P.W.2 (Hanumanthappa), which established the relationship of the plaintiffs' mother with the deceased Dasabovi and observing that the defendants' reliance was based solely on denial, further noted that defendant No.1 had deliberately chosen not to enter the witness box.

**11.** Considering the above, the High Court set aside the judgment of the Trial Court in O.S. No.102/2001 and decreed the suit in favour of the plaintiffs. Aggrieved thereby, the present Appeal has been preferred by the defendants.

**SUBMISSIONS**

**12.** The learned counsel for the defendants/appellants submitted that the High Court clearly erred in setting aside a well-reasoned judgment and decree rendered by the Trial Court. It is contended that the plaintiffs/respondents were admittedly not residing in the village where the suit schedule property is situated.

Hence, their claim that they were in joint possession of the suit schedule property is unsustainable. It is further contended that the plaintiffs/respondents have miserably failed to adduce cogent and reliable evidence to prove that the plaintiffs' mother was married to Dasabovi. Mere submission of genealogical tree is not a proof of factum of marriage. It is strenuously urged that the High Court was wholly unjustified in drawing adverse inference for defendant no.1's failure to depose as she was medically unfit due to arthritis. It is also argued that the plaintiffs failed to discharge the burden of proving existence of a valid marriage between their mother and Dasabovi. It is further argued that the High Court failed to appreciate that the revenue records are in the name of the defendants and despite challenge by the plaintiffs, the higher revenue authorities dismissed their claim holding that they have failed to prove that they are the legal heirs of deceased Dasabovi.

**13.** Per contra, the learned counsel for the plaintiffs/respondents has argued that the Trial Court recorded a perverse finding in respect of the marriage of plaintiffs' mother with Dasabovi despite there being sufficient evidence on record. In such a view of the matter, the High Court has rightly set aside the judgment of the Trial Court which does not warrant interference in this Appeal. According to the learned

counsel for the plaintiffs/respondents, a reading of plaintiffs' evidence, particularly the evidence of P.W.2 (Hanumanthappa), would clearly prove that the plaintiffs' mother was married to Dasabovi. Defendant No.1 has not entered the witness box to disapprove the said fact. The High Court has rightly concluded that the plaintiffs' mother was married to Dasabovi. It is further argued that the revenue records are neither proof of title nor the said could be used to prove the factum of marriage. The plaintiffs having successfully discharged their burden of proof, the onus shifted on the defendants which was not discharged by them. Therefore, the finding regarding marriage is unimpeachable. The learned counsel for the respondents would pray for dismissal of this Appeal.

**ANALYSIS**

**14.** We have heard the learned counsel for both the parties and perused the material available on record.

**15.** The case of the defendants is that one Thimmabovi Vellappa had two sons, namely Dasabovi and Venkatappa. A partition was effected in the year 1962-1963 and Items Nos. 1 to 3 fell to the share of Dasabovi. It is further stated that Items Nos. 4 to 6 were subsequently purchased by Dasabovi through registered sale deeds. The defendants contend that the deceased Dasabovi never married the mother of the

plaintiffs, and that defendant No.1, Chowdamma, is the only wife of the deceased Dasabovi. The defendants further submitted that the plaintiffs were never in possession of the suit schedule properties, and denied that the plaintiffs and defendants were residing together in Galirangaiahnahatti or Kallahalli jointly.

**16.** The plaintiffs, on the other hand, contend that their mother was the first wife of the deceased Dasabovi. They stated that, after he married a younger woman, their mother was forced to leave the matrimonial home and reside at her parental house. It is admitted by both parties that the properties standing in the name of the deceased Dasabovi were ancestral in nature.

**17.** The principal issue that arises for our consideration is whether the plaintiffs have succeeded in establishing a valid marital relationship between their mother, Bheemakka @ Sathyakka, and the deceased Dasabovi, primarily on the basis of the oral testimony of P.W.2 (Hanumanthappa).

**18.** The High Court, while considering the issue of valid marital relationship between the plaintiffs' mother and the deceased Dasabovi, relied on the evidence of P.W.2 (Hanumanthappa). The witness stated in his evidence that he knows the families of both the plaintiffs and

the defendants. He further stated in his evidence that deceased Dasabovi married the plaintiffs' mother, Bheemakka, and through her, begot plaintiff Nos. 1 and 2. Later, the deceased Dasabovi married defendant no.1, which led to the plaintiffs' mother being ousted from the matrimonial home. Thereafter, she resided in her parental home in Antharagange village. The witness further deposed that the deceased Dasabovi would regularly visit the plaintiffs and their mother at Antharagange village. P.W.2 also stated that even after the death of the deceased, the plaintiffs used to visit their father's village to attend the agricultural operations regularly.

**19.** It is observed that, both P.W.1 (Venkatappa) and D.W.1 (Balachandrappa) being interested witnesses, their evidence cannot be relied upon to establish the relation between the deceased Dasabovi and the plaintiffs' mother. Further, D.W.3 (Thimmappa), who is the son of the sister of the father of Dasabovi, supports the claim of the defendants. However, he has no knowledge of any marriage between the deceased Dasabovi and the plaintiffs' mother. D.W.4 (V. Thimmappa), who is the son of Dasabovi's brother, has also deposed on similar lines with D.W.3.

**20.** In the present case, there is a paucity of documentary and contemporaneous material to conclusively establish the marital

relationship between the deceased Dasabovi and the mother of the plaintiffs. In such circumstances, the best possible evidence assumes crucial significance. The testimony of P.W.2 (Hanumanthappa) is the sole evidence adduced in support of the existence of such a relationship. Accordingly, the evidentiary value of the testimony of the P.W.2 must be examined in light of the principles laid down under Section 50 of the Indian Evidence Act 1872[1].

**PROOF OF RELATIONSHIP**

**21.** Section 50 of the Evidence Act makes provision regarding "Opinion on relationship, when relevant". The said provision is reproduced hereunder for ready reference:

> "**50. Opinion on relationship, when relevant.**—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, or 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, 1869 (4 of 1869), or in prosecution under sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).
>
> *Illustrations*
>
> (a) The question is, whether A and B, were married.
>
> The fact that they were usually received and treated by their friends as husband and wife, is relevant.
>
> (b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant."

[1] For short, "the Evidence Act"

**22.** The principle underlying Section 50 of the Evidence Act has been explained by this Court in ***Dolgobinda Paricha v. Nimai Charan Misra and Ors.***[2], wherein this Court observed thus:

> "(6)….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 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 fulfil 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. …"

**23.** P.W.2 (Hanumanthappa), aged 75 years and a resident of Antharagange village, Bhadravati Taluk, in his evidence dated 08.02.2005 affirmed having personal knowledge of the relationship between the deceased Dasabovi and the plaintiffs' mother. He stated that he was acquainted with both the plaintiffs' mother and defendant No.1. He unequivocally stated that the deceased Dasabovi married the plaintiffs' mother, Bheemakka, 57 years ago at Antharagange village, in accordance with the prevailing customs of their community.

[2] AIR 1959 SC 914.

**24.** P.W.2 (Hanumanthappa) further asserted that the plaintiffs' mother was the first wife of the deceased Dasabovi, and that the deceased Dasabovi and the plaintiffs' mother resided at Galirangaiahnahatti, where the plaintiffs were born. He stated that the deceased Dasabovi later brought defendant No. 1 into the household, and at her instance, the plaintiffs were ousted, compelling them to reside at Antharagange village. P.W.2 also testified that the deceased Dasabovi visited the Antharagange village on several occasions. Even after his demise, the plaintiffs continued to visit the deceased's village to attend agricultural operations.

**25.** The testimony of P.W.2 (Hanumanthappa), being that of a person residing in the same village and having a long-standing familiarity with both the plaintiffs and the defendants, coupled with his awareness of the events pertaining to the relationship between the deceased Dasabovi and the plaintiffs' mother, cannot be dismissed as mere hearsay. On the contrary, it reflects a narration of events personally witnessed or known to him directly. Such evidence, being rooted in personal knowledge, falls within the ambit of Section 50 of the Evidence Act.

**PROOF OF PEDIGREE**

**26.** At this juncture, it is appropriate to refer to the genealogical tree Ex.P-7, which has been produced by the plaintiffs. The genealogical

tree outlines the plaintiffs' descent from the deceased Dasabovi through his first wife, Bheemakka. It also reflects the second branch of the family, namely, the first defendant Chowdamma, the second wife and the second defendant (son born through the second wife).

**27.** This Court in ***State of Bihar v. Radha Krishna Singh and Ors.***[3] emphasized:

> *"***194.** Before, however, opening this chapter it may be necessary to restate the norms and the principles governing the proof of a pedigree by oral evidence in the light of which the said evidence would have to be examined by us. It is true that in considering the oral evidence regarding a pedigree a purely mathematical approach cannot be made because where a long line of descent has to be proved spreading over a century, it is obvious that the witnesses who are examined to depose to the genealogy would have to depend on their special means of knowledge which may have come to them through their ancestors but, at the same time, there is a great risk and a serious danger involved in relying solely on the evidence of witnesses given from pure memory because the witnesses who are interested normally have a tendency to draw more from their imagination or turn and twist the facts which they may have heard from their ancestors in order to help the parties for whom they are deposing. The court must, therefore safeguard that the evidence of such witnesses may not be accepted as is based purely on imagination or an imaginary or illusory source of information rather than special means of knowledge as required by law. The oral testimony of the witnesses on this matter is bound to be hearsay and their evidence is admissible as an exception to the general rule where hearsay evidence is not admissible. …
>
> **195.** In order to appreciate the evidence of such witnesses, the following principles should be kept in mind:
>
> > "(1) The relationship or the connection however close it may be, which the witness bears to the persons whose pedigree is sought to be deposed by him.

[3] (1983) 3 SCC 118

> (2) The nature and character of the special means of knowledge through which the witness has come to know about the pedigree.
> (3) The interested nature of the witness concerned.
> (4) The precaution which must be taken to rule out any false statement made by the witness post litem motam or one which is derived not by means of special knowledge but purely from his imagination, and
> (5) The evidence of the witness must be substantially corroborated as far as time and memory admit."

**28.** Although in the present dispute, P.W.2 (Hanumanthappa) does not expressly affirm or refer to the genealogical chart marked as Ex.P.7, his testimony neither deviates from nor contradicts the familial relationships outlined therein. On the contrary, his account is broadly consistent with the structure depicted in the chart. P.W.2 stated with familiarity regarding the plaintiffs' descent and inter se relationships within the family.

**29.** Though P.W.2 (Hanumanthappa) is not a blood relative of either party, he demonstrated long-standing familiarity with both the plaintiffs and deceased Dasabovi. His belonging to the same village as the plaintiffs reflects community-level proximity and sustained acquaintance with the familial relations in issue. This satisfies the statutory requirement of "special means of knowledge" under Section 50 of the Evidence Act. The specificity of his statements, particularly in identifying the relationship of plaintiffs' mother with the deceased

Dasabovi, indicates that he speaks from personal observation and not speculative knowledge.

**30.** There is no material on record to suggest that P.W.2 (Hanumanthappa) is an interested witness. His deposition is free from embellishment and stood the cross-examination. There is no indication that his testimony was tailored to suit the litigation or introduced as an afterthought (*Post litem motam*). The narrative appears to be rooted in long-standing village familiarity and reflects natural continuity.

**31.** Thus, in the totality of circumstances, and particularly in the absence of contemporaneous documentary evidence, the evidence of P.W.2 assumes evidentiary significance in establishing the nature of the relationship between the deceased Dasabovi and the plaintiffs' mother. His evidence is consistent with Section 50 of the Evidence Act and is being rooted in personal knowledge and long-standing acquaintance with both the plaintiffs and defendants.

**32.** It is further fortified by the fact that P.W.2's testimony was unimpeached in the cross-examination and warrants an inference in favour of the subsistence of a valid marital relationship between the deceased Dasabovi and the plaintiffs' mother. Furthermore, the

plaintiffs' regular visit to the deceased's village, even after his demise, corroborates the factum of cultivation of the suit lands by the plaintiffs.

**33.** Though Ex.P-7, by itself, does not constitute conclusive proof, it operates as corroborative evidence and, when read along with the oral testimony of P.W.2 (Hanumanthappa), it supports the inference of a valid marital relation between the deceased Dasabovi and the plaintiffs' mother.

**PRESUMPTION OF MARRIAGE**

**34.** At this juncture, it becomes imperative to address the question as to whether the relationship between the deceased Dasabovi and the plaintiffs' mother can be presumed to be a valid marital union, in the absence of formal documentary proof.

**35.** It would be beneficial to refer to ***Badri Prasad v. Dy. Director of Consolidation and Ors.***[4] wherein this Court held as follows:

> "…. A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. …"

[4] (1978) 3 SCC 527

**36.** Similarly, in ***Andrahennedige Dinohamy and Anr. v. Wijetunge Liyanapatabendige Balahamy and Ors.***[5], wherein the Privy Council observed that:

> "….where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage".

**37.** In ***Mohabbat Ali Khan (Plaintiff) v. Mahomed Ibrahim Khan and Ors. (Defendants)***[6], the Privy Council observed that*:*

> "… The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years. …"

**38.** The foregoing authorities indicate that the legal position enunciates a presumption in favour of a marriage where a man and woman have engaged in prolonged and continuous cohabitation. Such a presumption, though rebuttable in nature, can only be displaced by unimpeachable evidence. Any circumstance that weakens this presumption ought not to be ignored by the Court. The burden lies heavily on the party seeking to question the cohabitation and to deprive the relationship of legal sanctity.

**39.** It can be elicited from the evidence of P.W.2 (Hanumanthappa) that the deceased Dasabovi was regularly visiting the plaintiffs' mother and plaintiff Nos.1 and 2 at Antharagange village. A reasonable

[5] 1927 SCC OnLine PC 51
[6] 1929 SCC OnLine PC 21

presumption can, therefore, be drawn that the deceased Dasabovi maintained the relationship with the plaintiffs' mother even after marrying defendant No.1. This, in turn, gives rise to a presumption that the deceased Dasabovi and the plaintiffs' mother have lived as husband and wife.

**40.** Such prolonged cohabitation, coupled with the testimony of P.W.2 (Hanumanthappa), attracts a strong presumption in favour of a valid wedlock. Although the presumption is rebuttable, the onus lies on defendant No. 1 to disprove the legitimacy of the relationship. In the present case, defendant No. 1, except for mere denial, has not substantiated any material, oral or documentary, to rebut the presumption of a valid marriage between the deceased Dasabovi and the plaintiffs' mother.

**41.** It is a well-settled principle that the burden of proof lies upon the party who asserts a fact. In the present case, the plaintiffs have positively asserted that the deceased Dasabovi had a valid marital relationship with their mother. This assertion is supported by the oral testimony of P.W.2 (Hanumanthappa), the consistent conduct of the deceased Dasabovi in regularly visiting the plaintiffs' residence, and the absence of any contrary material from defendant No.1.

**42.** In view of the above, this Court is of the opinion that the plaintiffs have discharged the burden of proof placed upon them. They have sufficiently established that the deceased Dasabovi lived with their mother, Bheemakka @ Sathyakka, as husband and wife.

## BURDEN OF PROOF AND ONUS OF PROOF

**43.** This Court in ***Anil Rishi v. Gurbaksh Singh***[7] observed thus:

> "**19.** There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

**44.** Also, in ***Addagada Raghavamma and Anr. v. Addagada Chenchamma and Anr.***[8], this Court observed as follows:

> "**12.** ... There is an essential distinction between burden of proof and onus of proof : burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. ...Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. ..."

[7] (2006) 5 SCC 558
[8] 1963 SCC OnLine SC 37

**45.** As it is seen that the plaintiffs have successfully discharged their burden of proof regarding the factum of marriage, the onus now shifts to the defendants to rebut the same.

**46.** The defendants, except for denying the marriage between the deceased Dasabovi and the plaintiffs' mother, have not produced any oral or documentary evidence to challenge the legal sanctity of the said marriage. The contention that the plaintiffs' mother did not belong to the same caste as the deceased Dasabovi, is wholly bereft of any proof or material. In the absence of the same, the said assertion collapses merely into speculation.

**47.** The defendants have produced a genealogical chart marked as Ex.D-2, which refers only to themselves and the deceased Dasabovi, while omitting the plaintiffs and their mother. In contrast, Ex-P-7, produced by the plaintiffs, includes both the plaintiffs and the defendants, presenting a more consistent family structure. The defendants' failure to justify the exclusion of the plaintiffs in Ex.D-2 undermines the credibility of their denial.

**48.** It is also noted that it is not the case of the defendants that the plaintiffs were born from a marriage between the first wife, Bheemakka, and any other man. In view of the same, it can be

conclusively held that the defendants failed to discharge their onus to disprove the factum of a valid marriage between the plaintiffs' mother and the deceased Dasabovi.

**REVENUE RECORDS NOT PROOF OF TITLE**

**49.** In the absence of any substantive rebuttal, the defendants seek refuge in the revenue records. However, their reliance on the revenue records (Ex.P1-P6) is of no avail, as such records only hold presumptive value and don't confer title. This Court in ***Suraj Bhan and Ors. v. Financial Commissioner and Ors.***[9] observed thus:

> **"9.** … It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide Jattu Ram v. Hakam Singh, (1993) 4 SCC 403). …"

**PARTIES FAILURE TO ENTER WITNESS BOX: CONSEQUENCES**

**50.** The failure of the defendants to substantiate their claims through documentary evidence is eclipsed by a more consequential omission. In a case where the principal controversy turns on matters lying within her exclusive personal knowledge, the silence of defendant No.1, her absence from the witness box, is not a procedural lapse but a calculated withdrawal from scrutiny.

[9] (2007) 6 SCC 186

**51.** The conspicuous silence of defendant no.1 strikes not merely as omission but as deliberate evasion. Defendant No. 1, who lies at the heart of the controversy, chose not to step into the witness box and depose regarding the relationship between the plaintiffs' mother and her husband. Her testimony bore direct relevance not only to the status of plaintiffs' mother but also her own position. The only justification advanced was that defendant No.1, being an octogenarian and suffering from arthritis, was unable to attend the Court proceedings.

**52.** However, this defence is conclusively dismantled by the record itself. The deposition of D.W.1 (Balachandrappa) clearly indicates that defendant No. 1 was physically present in the Court during the examination of D.W.2 (G.V. Venkatappa), D.W.3 (Thimmappa) and D.W.4 (V. Thimmappa). It further emerges that defendant No.1 was also present in the Court when the evidence of P.W.1 (Venkatappa) was being recorded. If defendant No.1 was capable of attending the Court on multiple occasions, no explanation remains for her failure to offer her own testimony, except for calculated restraint.

**53.** This inference is inescapable. This is not a case of medical inability but of deliberate silence. In civil proceedings, particularly where the facts lie exclusively within the personal knowledge of the

party, the refusal to enter the witness box carries grave evidentiary consequences.

**54.** This principle is neither novel nor uncertain. This Court in ***Vidhyadhar v. Manikrao and Anr.***[10] held thus:

> "**17.** Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct …. "

**55.** The present case is a compelling invocation of the above principle. Defendant No.1, though physically present in the Court during the trial, abstained from stepping into the witness box to rebut the plaintiffs' assertions — assertions that strike at the very core of the dispute. In the absence of cogent medical evidence to support her alleged incapacity, her abstention from the witness box constitutes deliberate circumvention of the evidentiary burden resting upon her.

**56.** In the present factual matrix, the adverse presumption under Section 114(g) of the Evidence Act is inevitable.

**57.** This Court cannot overlook that defendant No. 1, while central to the controversy, chose not only to abstain from entering the witness box but also wilfully bypassed the statutory remedy available to those pleading physical incapacity.

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[10] (1999) 3 SCC 573

**58.** Order XXVI, Rule 1 of the Code of Civil Procedure, 1908, permits the recording of evidence through a commission in cases of age or infirmity. Yet, no application was filed invoking the said provision, nor was any explanation tendered for its non-invocation. In a dispute where the foundational facts lie squarely within her exclusive knowledge, such omission assumes critical significance. Her refusal to depose, despite the existence of a procedural safeguard specifically tailored to her alleged condition, cannot be dismissed as inadvertent. Rather, it reflects a conscious evasion from the evidentiary process, compounded by her unexplained failure to avail an accessible legal alternative, is not a neutral act. It constitutes wilful shielding from judicial scrutiny.

**59.** A Court of law cannot offer refuge to studied silence where a duty to disclose exists. The plaintiffs anchored their claim in measured and unwavering testimony of P.W.2 (Hanumanthappa), an account rooted in personal knowledge and long-standing familiarity, which withstood the rigours of cross-examination. His evidence, unshaken and consistent, found further corroboration in the genealogical chart presented by the plaintiffs. It, therefore, stands established that the plaintiffs have discharged the evidentiary burden imposed upon them by law. In contrast, the defendants, bereft of

probative material or candour, resorted solely to denials. When measured against the touchstone of preponderance of probabilities, the scales unambiguously tilt in favour of the plaintiffs.

**60.** It is our firm opinion the impugned judgment dated 28.10.2010 passed by the High Court of Karnataka in Regular First Appeal No.935/2005 does not suffer from any infirmity whatsoever so as to warrant interference by this Court.

**61.** Hence, the present Appeal fails and is dismissed as being devoid of merit.

No order as to costs.

**.....J.**
**(SANJAY KAROL)**

**.....J.**
**(PRASHANT KUMAR MISHRA)**

**NEW DELHI;**
**AUGUST 25, 2025.**