



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 26<sup>TH</sup> DAY OF NOVEMBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE C M JOSHI**

**REGULAR SECOND APPEAL NO.5291 OF 2013 (PAR)**

**BETWEEN:**

SMT. SHARADABAI  
W/O. FAKKIRAPPA JORAPUR,  
AGE: 66 YEARS, OCC. HOUSEHOLD WORK,  
R/O. SHETTAR ONI, GANESHPETH,  
HUBBALLI-580001.

...APPELLANTS

(BY SRI. SUJEET S. HIEMATH, ADVOCATE FOR  
SRI. JAGADISH PATIL, ADVOCATE)

**AND:**

1. KUM. ANAND S/O. GOPAL JORAPUR,  
AGE: 21 YEARS, OCC. NIL,  
R/O. GANESHPETH, HUBBALLI.
2. KUM. MANJU S/O. GOPAL JORAPUR,  
AGE: 19 YEARS, OCC. NIL,  
R/O. GANESHPETH, HUBBALLI-580001.
3. KUM. VISHWANATH S/O. GOPAL JORAPUR,  
AGE: 19 YEARS, OCC. NIL,  
R/O. GANESHPETH, HUBBALLI-580001.
4. SRI. SUBHAS S/O. RAMAPPA JORAPUR,  
AGE: 52 YEARS, OCC. PRIVATE SERVICE,  
R/O. JANNAT NAGAR,  
NEAR TOLL NAKA, DHARWAD-580001.
5. KUM. DOULAT S/O. RAJU JORAPUR,  
AGE: 20 YEARS, OCC. STUDENT,



**NC: 2025:KHC-D:16511**  
**RSA No. 5291 of 2013**

R/O. NAGARAJ KAMBLE,  
GALI LANE, RANEBENNUR, DIST. HAVERI.

SINCE DECEASED AND LRS ARE ALREADY ON RECORD  
AMENDMENT CARRIED OUT AS PER ORDER DATED 15.10.2025.

6. KUM. ANNAPPA S/O. RAJU JORAPUR,  
AGE: 18 YEARS, OCC. STUDENT,  
R/O. NAGARAJ KAMBLE, GALI LANE,  
RANEBENNUR, DIST. HAVERI-580035.

...RESPONDENTS

(BY SRI. PRAVEENKUMAR G. KULKARNI, ADVOCATE FOR R1-R3;  
R4 AND R6-NOTICE HELD SUFFICIENT;  
(LRS OF DECEASED R5 ARE ALREADY ON RECORD)

THIS RSA IS FILED UNDER SECTION 100 R/W. ORDER 41 RULE  
1 OF CPC, PRAYING TO PASS AN ORDER BY SETTING ASIDE THE  
IMPUGNED JUDGMENT & DECREE PASSED BY THE HON'BLE. FIRST  
ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD, SITTING  
AS HUBBALLI IN RSA NO.62/2009 DATED 18.01.2013 BY DISMISSING  
THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE IN  
O.S.NO.185/2006 DATED 06.03.2009 ON THE FILE OF FIRST ADDL.  
CIVIL JUDGE (SR.DN.) HUBBALLI, BY ALLOWING THIS APPEAL AND  
DISMISS THE SUIT OF PLAINTIFFS IN THE ENDS OF JUSTICE AND  
EQUITY AND ETC.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED  
ON 16.10.2025, COMING ON FOR PRONOUNCEMENT OF  
JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



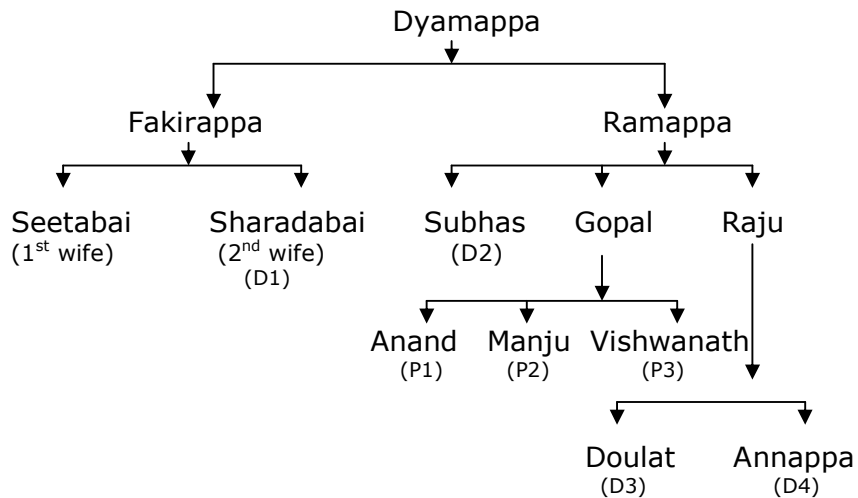
### **CAV JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

This appeal arises out of the concurrent findings of the Trial Court and the First Appellate Court in O.S.No.185/2006 dated 06.03.2009 and R.A.No.62/2009 dated 18.01.2013 whereby the suit filed for partition came to be decreed.

2. The factual matrix that is necessary for the purpose of this appeal may be summarized as below:

a) The plaintiffs and the defendants are the descendents of one Dyamappa Jorapur. The family pedigree as depicted, which is not in dispute is as below:



3. The case of the plaintiffs as per the pleadings is as follows:



a) The defendant No.1 happens to be the wife of Fakirappa, who was the first son of Dyamappa. Fakirappa had his first wife Sitabai, who is no more. Fakirappa and his first wife Sitabai and second wife-defendant No.1 were issueless. The brother of Fakirappa i.e., Ramappa predeceased him leaving behind his three sons i.e., Subhash, Gopal and Raju. Gopal died on 28.04.2006 leaving behind the plaintiff No.1 to 3. Raju, the third son of Ramappa, died leaving behind him his sons defendant No.3 to 4.

b) It is the case of the plaintiffs that Fakirappa and Ramappa were living together as a joint family and were doing mutton vending business. Out of their exertion, they purchased the properties in the names of elder brother-Fakirappa, who was the manager of the family. When Ramappa died, it was Fakirappa, who was looking after the affairs of the family.

c) Since Fakirappa did not have any children, he had great love and affection towards the sons of Ramappa. When Fakirappa died, the defendant No.1 at the instance and instigation of others and their parental family, diverted her mind and started causing trouble to the father of the plaintiffs i.e.



Gopal. Even she went to the extent of denying the relationship with the branch of Ramappa and started asserting that the properties were self-acquired properties of Fakirappa and as such, she alone had succeeded to them. She sold some of the properties by taking advantage of entry of her name in the records and diverted the mind to her parental house and she even built a separate house suppressing the same from the plaintiffs and their father-Gopal. The said Gopal and the plaintiffs were residing in one of the joint family house though their name was not appearing in respect of the same and the defendant No.1 attempted drive the plaintiffs and Gopal out of the said house. Therefore, the father of the plaintiffs, Gopal, filed O.S.No.493/2003 for injunction against the defendants before the III-Additional Civil Judge (Jr.Dn) Hubballi and obtained an injunction. The said suit came to be decreed and the R.A.No.64/2004 filed by the defendant No.5 therein also came to be dismissed.

d) Thereafter, the defendant No.1 filed a suit against the Gopal and others in O.S.No.306/2006 seeking possession of the property on the ground that Gopal and the plaintiffs were



only licencees in occupation of the property. The said suit came to be decreed and on the basis of the same, the plaintiffs and Gopal were dispossessed from the property. Gopal met with an untimely death leaving his widow and the plaintiffs, who were minor children. Being stripped of any partition in the joint family properties, they being earned by the sweat and labour of their grandfather and Ramappa and Fakirappa, the plaintiffs had to file the present suit for partition.

e) The defendant No.2-Subhash, the father of defendant No.3 and 4 and Raju have relinquished their right by giving consent in writing in favour of the plaintiffs and as such they are also entitled to get share in all the suit schedule properties.

4. On service of summons, defendant No.1 appeared and filed the written statement. Defendant No.2 to 4 remained *ex-parte*.

5. The defendant No.1, in her written statement, denied that the suit schedule properties are the ancestral joint family properties of the plaintiffs and defendants and termed genealogy is incorrect one. It was her case that the suit properties are the



self-acquired properties of Fakirappa and that Gopal and Raju had never contributed any amount to purchase the properties. Therefore, Ramappa had no right, title and interest over the suit schedule properties and therefore, the suit deserves to be dismissed. It was contended that she has already filed a suit in O.S.No.306/2006 for possession and it had been decreed and by executing the decree, she had taken the possession. Therefore, the suit is hit by Order II Rule 2 of CPC and as such, requested the Trial Court to dismiss the suit. On the basis of the above contentions, the Trail Court framed the following issues:

***"ISSUES***

- 1. Whether the plaintiffs prove that the suit properties are ancestral joint family properties and that they are in joint possession and enjoyment of the suit properties?*
- 2. Whether they further prove that they are entitled for half share in the suit properties?*
- 3. Whether defendant No1 proves that the suit properties are self acquired properties of deceased Fakkirappa?*
- 4. Whether court fee paid is proper?*
- 5. Whether the suit is hit under Order 2 Rule 2 CPC?*



6. *What order or decree?"*

6. The natural mother of plaintiffs, being their minor guardian, was examined as PW1 and one witness was examined on her behalf as PW2. Ex.P1 to Ex.P14 were marked. Defendant No.1 got herself examined as DW1 and one witness is examined as DW2. Ex.D1 to Ex.D8 were marked. After hearing the arguments of both the sides, the Trial Court answered issue No.1 and 4 in the affirmative, issue No.3 and 5 in the negative and held that the plaintiffs are jointly entitled for 1/6<sup>th</sup> share in the suit schedule properties.

7. Being aggrieved, the defendant No.1 approached the First Appellate Court in R.A.No.62/2009 and by impugned judgment, the First Appellate Court dismissed the appeal confirming the judgment of the Trial Court. It is against the said judgment, the defendant No.1 is before this Court in this second appeal.

8. After hearing the counsel for the appellant, the following substantial question of law was framed by this Court.



*(i) Whether the Courts below failed to consider that the suit was hit by the principle of res judicata in view of the decree obtained in O.S.No.306/2004 (**wrongly shown as O.S.185/2006**) by the appellant No.1 against the respondent Nos.1 to 3?*

*(ii) Whether both the courts below are justified in allowing the claim of the plaintiffs when the plaintiffs have failed to prove the legal title to the suit property?*

9. Heard the arguments of learned counsel for appellants and respondents.

10. The learned counsel appearing for the appellant submitted that the alleged joint family of Fakirappa and Ramappa did not have sufficient nucleus to enable them to purchase the suit schedule properties. Except the oral say of the plaintiffs, there is nothing else to show that they were jointly running mutton shop and from the income generated, the suit schedule properties were purchased. It is contended that when a party alleges that a particular property is the joint family property, though there is presumption about the joint family, there is no such presumption that the property held is also joint



family property. This aspect was not proved by the plaintiffs and therefore, the impugned judgment is not sustainable in law. He further argues that the appellant had filed a suit in O.S.No.306/2004 seeking possession of the property and the said suit came to be decreed. In pursuance to the execution filed, the appellant had obtained possession of the property. In the said suit, it was held that the suit schedule property is the property of the appellant/defendant No.1. Therefore, the said finding in O.S.No.306/2004 having become final, it acts as res-judicata and the same issue cannot be revisited again. He submits that provisions of the Order II Rule 2 of the CPC were not considered by both the Courts below. Therefore, he submits that the impugned judgments are not sustainable in law.

11. Per contra, learned counsel appearing for the respondents submits that the Trial Court as well as the First Appellate Court have considered the grounds now raised by the appellant. He submits that in the suit filed by the appellant/defendant No.1, the question whether the suit schedule property is the joint family property or not, was not involved. In the said suit, the Court considered that the property



stands in the name of the defendant No.1 in the revenue records and City Municipal Corporation records and held that it belongs to the plaintiff therein. It was not a comprehensive suit where the question as to whether it is a joint family property or not could be entertained and therefore, the principle of res-judicata is not applicable. So far as the provisions of Order II Rule 2 of CPC is concerned, he submits that the said provisions of Order II Rule 2 of CPC cannot be made applicable to the defendants in the suit. The present respondents were the defendants in O.S.No.306/2004 and therefore, it was open to them either to make a counterclaim or to file a separate suit. Therefore, in the present case, the provisions of Order II Rule 2 of CPC cannot bind or fetter the plaintiffs to file the present suit for partition. Therefore, he contends that the grounds alleged by the appellant-defendant No.1 are not sustainable. Insofar as the contention that the nucleus is not proved by the plaintiffs, he submits that the oral testimony of the plaintiffs and the defendants would be the only basis to establish the nucleus. All along it is the case of the plaintiff herein that it was Fakirappa who was looking after the entire family affairs and it was Ramappa, who was working at the instance of Fakirappa in



running the mutton shop. When there is oral evidence of the witnesses on this aspect, the onus shifts upon the defendant No.1 to establish that the property was purchased out of self-acquired income of Fakirappa. The standard of evidence, required to prove that certain property to be a joint family property, is different than the standard of evidence required to prove that a particular property is the individual property. Therefore, he submits that no infirmity can be found in the judgment of the Trial Court as well as the First Appellate Court. Hence, he seeks dismissal of the appeal.

12. So far as the question of res-judicata is concerned, It was not raised before the Trial Court and no issue was framed regarding the said contention. However, while considering Issue No.4 regarding Court fee, the Trial Court considers this aspect. It is noticed that the question whether the suit schedule property is the joint family property or not was not decided in O.S.No.306/2004. Therefore, when the contention is based on the joint acquisition of the property by Fakirappa and Ramappa, it held that there is no impediment to consider the contention of the plaintiffs.



13. So far as Order II Rule 2 of CPC is concerned, an issue was framed in the form of issue No.5 in O.S.No.185/2006 and the Trial Court observes that in O.S.No.306/2004 the question of title was not decided and no issues were raised on the aspect of the joint acquisition of the property. In paragraph 24, the Trial Court observes as below:

*"24. .... Here while discussing main issues 1 to 3, I have discussed the relief and nature of the suit in previously filed suit O.S.No.306/04 that title question was not at all decided there and no issues were raised on this point. Though it was contended by the defendant in that suit that in his own right as a member of joint family as a owner and possessor he was in possession of the property in question. But scope of that suit relief claimed do not cover the complex question of title with regard to ancestral joint family property coparcenary right, birth right of the parties and their share in the properties. All these questions are to be decided in a properly constituted partition suit and not in a suit filed by defendant No.1 basing on the point of license. Therefore it cannot be said that dispute decided in O.S.No.306/04 between father of plaintiffs and defendant No.1 amounts to relinquishment of part of claim. Therefore the legal heirs of deceased Gopal Jorapur have every right to file present suit in respect of all joint family properties for the relief of partition. Further more all the properties are not subject matter in O.S.No.306/04 and even one of the*



*property was involved still scope of that suit was limited and real question of right of succession, nature of the property, inheritance is expected to be decided in a properly constituted suit."*

14. After observing as above, the Trial Court holds that the judgment in O.S.No.306/2004 has no bearing on the suit in O.S.No.185/2006.

15. The First Appellate Court in the impugned judgment notices that in O.S.No.493/2003 filed by Gopal, the relief of permanent injunction was sought and the suit came to be decreed. In the said suit, Gopal had contended that it is the joint family property and he is in possession of the same. Subsequently, the defendant No.1-Sharadabai filed O.S.No.306/2004 seeking possession. The First Appellate Court notices that it was a mere suit for possession and declaration of title was not sought by Sharadabai-Defendant No.1. Therefore, when the question of title was not involved in the earlier suit i.e. O.S.No.306/2004 and issue regarding the title was not determined, it holds that the principle of res-judicata does not apply. In paragraph 19 of its judgment, the First Appellate Court observes as below:



*"19. .... If really the relief of declaration were to have been sought in the said suit, the matter in issue would have been different and if any findings are recorded by raising such an issue relating to the right, title and interest and nature of the properties then it would have operated as res-judicata. Therefore, when the question of title was not filed in the earlier suit in O.S.No.306/2004 and as such it was also not determined regarding constituting of the joint family and acquiring of the joint family properties in the said suit by raising necessary issues on the pleadings of the parties, it cannot be said that the Plaintiffs in the present suit are barred from bringing the present suit for partition as it operates as res-judicata."*

16. Let us examine the judgment of the Court in O.S.No.306/2004. It may be noted that the said suit was filed for possession but the defendant No.1-Sharadabai had not sought any declaration of title. It may also be noted that the said suit pertains to one of the suit schedule properties. There was nothing on record to show that the question of title and whether it is a joint family property or not, was not raised at all. An issue on that aspect was not available for adjudication. Though the defendant i.e. Gopal had contended that the property was acquired jointly by Ramappa and Fakirappa, since there was no



such counterclaim, the issue was not raised. The burden was to be upon the plaintiff i.e., Sharadabai.

17. It is trite law that to invoke the principles of res-judicata, the issue in question in the present suit should be the same as involved in the earlier suit and it has been determined on merits. Admittedly, it was a suit for possession and question of title was not at all involved. Therefore, no fault can be found in respect of the finding of the Trial Court as well as the First Appellate Court on the question of res-judicata. Therefore, this Court finds that either the principles of res-judicata come into paly or the provisions of Order II Rule 2 of CPC bar the plaintiffs to claim partition.

18. So far as the nature of property is concerned, the learned counsel appearing for the appellant places reliance on the recent judgment in the case of **Angadi Chandranna v. Shankar and others**<sup>1</sup> wherein it was held as below:

*"13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The*

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<sup>1</sup> 2025 SCC OnLine SC 877



*one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in R. Deivanai Ammal (Died) v. G. Meenakshi Ammal<sup>12</sup>, dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:*

*"13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Moopnar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to*



*lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a*



*manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.*

**15.** *It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value."*

19. It is worth to note that when a party approaches the Court contending that particular property is the joint family property, the burden of proving the same is on him. Though



there is a presumption about jointness of the family unless it is shown to be disrupted, there is no such presumption in respect of nature of the property being joint family property. For that purpose, the pleading and the proof are required to confer the status of the joint family property and it is necessary that the nature of acquisition of the property has to be established. The existence of sufficient nucleus for the joint family to acquire the property in question would be a relevant aspect in the case. Once such burden is discharged by the plaintiff, the onus shifts on the defendant, who claim that it is the self-acquired property.

20. In the case on hand, the plaintiffs contend that Fakirappa and Ramappa were together running mutton shop and out of the earnings from the said business, they purchased the suit schedule property in the name of Fakirappa. The Trial Court observes that 'A' schedule property bearing CTS No.1939 and 1940 are the house properties and open space and it was purchased by Fakirappa through registered sale deed dated 11.09.1953. It is pertinent to note that the defendant No.1 nowhere states that there was a partition between Fakirappa and Ramappa. Therefore, the jointness of Fakirappa and Ramappa



has to be accepted. The plaintiffs contend that Fakirappa and Ramappa were running mutton shop and out of earnings from the said business, they had sufficient nucleus and therefore, they purchased the property. On this aspect, apart from the testimony of PW1, the testimony of PW2-Durgaji Kalal, who was aged about 75 years at the time he deposed, throws some light. He states that Fakirappa and Ramappa were hardworking and their relationship was cordial. He states that out of their joint earnings, the suit schedule properties were purchased. The cross-examination of PW2 does not show anything that the suit schedule properties were self -acquired properties of Fakirappa. A feeble suggestion was made to him that Ramappa had properties at Dharwad and he says that he has no idea of the same.

21. The testimony of DW1 is that she asserts that the suit schedule property was purchased by her husband Fakirappa. A photograph was confronted to her as per Ex.P7 and she identified Fakirappa. The said photograph at Ex.P7 is that of the marriage of Gopal and his wife Saroja (PW1). She also denies the



Ex.P8, the marriage invitation card, which showed the name of Fakirappa as father of Gopal.

22. The testimony of the DW2/Durgamma states that the suit properties are of the ownership of Fakirappa and denies that they are the joint family properties.

23. The Trial Court at paragraph 16 of its judgment considers in detail the testimonies of the witnesses and notes the admission of DW2 that Ramappa used to butcher and sell mutton. Therefore, the Trial Court disbelieves the testimony of the defendant that Ramappa had never come to Hubli and doing any business. The Trial Court observes that there is some grain of truth in the contentions of the plaintiffs that their grandfather-Ramappa was also doing mutton vending business along with Fakirappa. The Trial Court also observes that admissions of DW1 regarding the photographs in which Fakirappa was shown to be attending the marriage of Gopal falsify the testimony of DW1. Therefore, it opines that the suit schedule properties were acquired during the jointness of Fakirappa and Ramappa.



24. It is pertinent to note that the plaintiffs were in possession of the suit schedule property and then the defendant obtained the possession under a decree of the Court. The relationship though at some point of time was denied, it was not a contentious matter in the present suit. It is evident that Fakirappa and Ramappa though they hail from Dharwad, they had their business at Hubli. The reliability of the testimony of the plaintiffs and their witness PW2 was weighed by the Trial Court in length and it came to the conclusion that the property was acquired by the joint exertion of Fakirappa and Ramappa. This factual aspect considered by the Trial Court cannot be found fault with for simple cause. The nature of the business did not warrant any documentary evidence on that aspect. Obviously, it was the testimony of the witnesses and their demeanor in the Court which weighed the Trial Court to lien in favour of the plaintiff. This Court also finds that the testimony of the DW1 and DW2 was not trustworthy since DW1 evaded to answer as to why her husband Fakirappa was seen in the marriage of Gopal. Therefore, the conclusions reached by the Trial Court that the suit schedule properties are the properties acquired by Fakirappa and Ramappa cannot be faulted.



25. This conclusion of the Trial Court based on the oral testimony of the witnesses, has been reiterated by the First Appellate Court and it also came to the conclusion that there is no reason to interfere with the finding of the Trial Court. The First Appellate Court, while re-appreciating the evidence on record, has towed the line of the Trial Court and has held that no fault can be found with the conclusions of the Trial Court. This is precisely the concept as held by the Apex Court in the case of ***Santosh Hazari v. Purushottam Tiwari***<sup>2</sup>. It is settled principle of law that the First Appellate Court cannot traverse a different way in appreciating the evidence and replace its own finding to that of the Trial Court. Under these circumstances, the conclusions reached by the Trial Court that there is material to show that Ramappa and Fakirappa together were doing mutton vending business, but the property was acquired in the name of Fakirappa out of the income derived from the business cannot be faulted. The testimony of DW1 and DW2 do not effectively rebut the evidence placed on record. It is not the case of the defendant that the joint family of Fakirappa and Ramappa did not exist. It

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<sup>2</sup> (2001) 3 SCC 179



is the case of the defendant that Ramappa was residing at Dharwad and he never came to Hubli while Fakirappa was living with the defendant No.1 at Hubli. This contention is falsified by the cross-examination of DW2 and the suit filed by defendant No.1 in O.S.No.306/2004. Therefore, the First Appellate Court is justified in holding that the suit schedule properties are jointly acquired by Ramappa and Fakirappa.

26. If that be so, the plaintiffs are entitled for a share in the suit schedule properties. The question that defendant No.2, 3 and 4 have relinquished their rights in favour of Gopal has been considered by the Trial Court and it holds that it is an interse matter between the plaintiffs and defendant No.2 to 4 and defendant No.2 to 4 having not questioned the said contention of the plaintiff, it do not require any consideration.

27. For the aforesaid reasons, both the substantial questions raised are answered in the negative and affirmative, respectively.

28. In the result, the appeal fails and as such, dismissed. No order as to costs.



**NC: 2025:KHC-D:16511  
RSA No. 5291 of 2013**

29. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of.

**SD/-  
(C M JOSHI)  
JUDGE**

YAN  
CT:PA  
List No.: 1 SI No.: 62