

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.1142/2021 (PAR)

BETWEEN:

SRI. BYANNA,
S/O. MUNIYAPPA,
SINCE DECEASED BY LRS.

- 1 . SMT. PADMA
W/O LATE BYANNA
AGED ABOUT 51 YEARS
- 2 . SMT. DEVI
D/O LATE BYANNA,
AGED ABOUT 34 YEARS
- 3 . SIVA S/O LATE BYANNA
AGED ABOUT 28 YEARS

1 TO 3 ARE
RESIDING AT DOOR NO.1355,
NEW RAJIVNAGARA,
PAYAKAPURAM,
VIJAYAWADA-15,
KRISHNA DISTRICT-520 001.

APPELLANTS NO.1 TO 3 ARE
REPRESENTED BY THEIR SPA HOLDER
SMT. PUTTAMMA D/O MUNIAYAPPA,
AGED ABOUT 55 YEARS,
R/AT KARIGANAPALYA,

YALAGERE POST,
CHIKKABALLAPURA TALUK
AND DISTRICT-562101.

- 4 . SMT. PUTTAMMA
D/O MUNIAYAPPA,
AGED ABOUT 55 YEARS,
R/AT KARIGANAPALYA,
YALAGERE POST,
CHIKKABALLAPURA TALUK
AND DISTRICT-562 101.
- 5 . SMT. NAGARATNAMMA
W/O SAMPATH,
D/O MUNIAPPA,
AGED ABOUT 40 YEARS,
R/AT SONAPANAHALLI VILLAGE,
JALA HOBLI,
BENGALURU NORTH TALUK-560 001.

... APPELLANTS

(BY SRI. C. BABU, ADVOCATE)

AND:

- 1 . SRI. ANJINAPPA,
S/O BUDDAPPA,
AGED ABOUT 66 YEARS,
SINCE DEAD, RESPONDENT NO.2 TO 6 ARE
THE LRS OF RESPONDENT NO.1.
- 2 . SMT. VENKATAMMA,
W/O SRI. ANJANAPPA,
AGED ABOUT 60 YEARS,
- 3 . R.A. NARASIMHAMURTHY,
S/O SRI. ANJANAPPA,
AGED ABOUT 38 YEARS,

- 4 . SMT. MANJULA,
D/O SRI. ANJANAPPA,
AGED ABOUT 32 YEARS,
- 5 . SMT. ASHA,
D/O SRI. ANJANAPPA,
AGED ABOUT 28 YEARS.
- 6 . R.G. NARASIMHAMURTHY,
S/O R.B. GOVINDAPPA,
AGED ABOUT 32 YEARS,

ALL ARE R/AT RAJAGHATTA VILLAGE,
KASABA HOBLI, DODDABALLAPURA TALUK,
BENGALURU RURAL DISTRICT-561 203.

... RESPONDENTS

(BY SMT. NAGARATHNA S.K., ADVOCATE FOR R2 TO R6;
VIDE ORDER DATED 24.07.2025,
R2 TO R5 ARE LRS OF DECEASED R1)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 07.02.2020
PASSED IN R.A.NO.10104/2019 ON THE FILE OF THE IV
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DODDABALLAPURA, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
19.07.2019 PASSED IN O.S.NO.85/2008 ON THE FILE OF THE
SENIOR CIVIL JUDGE, DODDABALLAPUR AND ETC.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 12.12.2025 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

This second appeal is filed against the divergent finding of the Trial Court and the First Appellate Court wherein the Trial Court granted the relief of partition and the First Appellate Court reversed the finding the Trial Court and dismissed the suit of the plaintiffs.

2. The factual matrix of the case of the plaintiffs before the Trial Court that the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants and they are having half share in the suit schedule properties. Thus, entitled for the relief of partition. The defendants appeared and filed the written statement contending that already there was a partition between the plaintiffs and defendants' family as on 03.11.1972 with respect to the ancestral properties and further contend that the earlier partition was made through an unregistered document and hence, subsequently, a registered partition deed was also came into existence on 21.12.2004. The defendants contend that the Court fee paid is insufficient.

Defendant No.1 also took the contention that land bearing Sy.No.128/5 is his self-acquired property and the same was granted in his favour. The plaintiffs would contend that registered partition deed dated 21.12.2004 is a fraudulent document and not binding on them.

3. The Trial Court having considered the pleadings of the plaintiffs as well as the defendants, framed the following Issues:

1. *Whether plaintiffs prove that they are having half share in the suit schedule properties?*
2. *Whether defendant proves that there was already oral partition was held between plaintiffs and defendants family dated 13.11.1972 with respect to the ancestral properties?*
3. *Whether plaintiffs prove that registered partition deed dated 21.12.2004 is a fraudulent document and not binding on them?*
4. *Whether suit is properly valued and Court fee paid is sufficient?*

5. *Whether defendant proves that land Sy.No.128/5 is his self acquired property?*
6. *Whether plaintiffs are entitled for the relief sought by them?*
7. *What order or decree?*

Additional Issue No.1

Whether defendant father proves that there was a registered partition deed dated 21.12.2004 between himself and father of the plaintiff?

4. The Trial Court allowed the parties to lead their evidence to substantiate their contention. Accordingly the plaintiffs examined two witnesses as PW1 and PW2 and got marked the documents at Ex.P1 to P22. On the other hand, defendants examined 4 witnesses as DW1 to DW4 and got marked the documents at Ex.D1 to D11. The Trial Court having appreciated both oral and documentary evidence placed on record comes to the conclusion that there was no partition of the year 1972 and suit item No.5 is also a joint family property of plaintiffs and defendant Nos.1 to 5 and the said grant is for the

benefit of all the joint family members of the plaintiffs and defendants and the same is not a self-acquired property as contented by defendant No.1. The Trial Court did not accept the contention of the defendant that earlier there was a partition on 03.11.1972 and the same was not having any legal sanctity for want of registration and alleged registered partition in the family of plaintiffs and defendants dated 21.12.2004 is also not binding on the plaintiffs which was created without consent and signature of the plaintiffs subsequent to cut-off date 20.12.2004 as per Section 6 of the Hindu Succession Amendment Act, 2005.

5. The Trial Court having assessed both oral and documental evidence placed on record partly decreed the suit granting $\frac{1}{3}^{\text{rd}}$ share plus $\frac{1}{8}^{\text{th}}$ share in the $\frac{1}{3}^{\text{rd}}$ share of his father by name of Sri Buddappa under notional partition whereas his brother Sri Anjinappa (defendant No.1) is entitled to get equal share as that of Sri Muniyappa whereas the three daughters of Sri Buddappa by name Smt. Lagmakka, Smt. Anjinamma and Smt. Muttakka are entitled to get $\frac{1}{8}^{\text{th}}$ share in $\frac{1}{3}^{\text{rd}}$ share of their father and Trial Court also observed that

three daughters of Sri Buddappa are not impleaded as parties in the suit and hence, directed to implead them as respondents in the FDP proceedings. The Trial Court also held that the alleged partition deed dated 21.12.2004 and alleged sale deed of suit schedule Item No.4 property in respect of Sy.No.119 measuring 1 acre 19 guntas of Rajaghatta village executed by defendant Nos.1 to 5 in favour of defendant No.6 dated 25.04.2005 are declared as null and void and not binding on the plaintiffs' undivided share, but such sale deed of Item No.4 property is binding only on the undivided share of defendant Nos.1 to 5 which shall be enjoyed by defendant No.6 as a *bona fide* purchaser. The Trial Court also held that the share of the plaintiffs in Item Nos.1 to 6 properties can be divided by meets and bounds by appointing Tahsildar, Doddaballapur as Court Commissioner whereas the share of the plaintiffs in Item Nos.7 and 8 house properties can be divided by appointing any Civil Engineer or any Advocate as Court Commissioner in accordance with law. The said judgment of Trial Court is questioned before the First Appellate Court in R.A.No.10104/2019.

6. The First Appellate Court having considered the grounds which have been urged in the appeal memo, formulated the following Points for consideration:

1. *Whether the impugned judgment and preliminary Decree in O.S.No.85/2008 dated 19.07.2019 on the file of Senior Civil Judge and JMFC, Doddaballapur is opposed to law, facts and circumstances of the case and interference of this Court is necessary?*
2. *What Order?*

7. The First Appellate Court having reassessed both oral and documentary evidence placed on record comes to the conclusion that judgment and decree of the Trial Court is opposed to law, facts and circumstances of the case and it requires interference and answered the point as affirmative in coming to the conclusion that already there was a partition between the brothers as on 03.11.1972 and they had independently dealt with their shares allotted in 'A' and 'B' schedule of the partition deed. It is observed that defendant No.1 and his family members have also alienated certain

properties to which plaintiffs or their father are not parties and plaintiffs' father - Muniyappa had also sold the properties to various persons under registered sale deeds particularly, document of Ex.D5 is the registered sale deed dated 03.07.1973 which came to be executed by plaintiffs' father Muniyappa in favour of Chikkashamanna in respect of Khaneshumari No.237 of Rajaghatta Village. Ex.D6 is sale deed dated 03.05.1973 in respect of land measuring 1 acre 12 guntas in Sy.No.118/P of Rajaghatta Village executed in favour of Rajanna son of Shivarudrappa. It is also observed that above properties are not included in the plaint schedule and there are no pleadings or explanations offered by the plaintiffs.

8. The First Appellate Court also taken note of Ex.D10 sale deed dated 25.04.2005 executed by defendant Nos.1 to 5 in favour of defendant No.6 in which plaintiffs' father Muniyappa has affixed his signature as attesting witness. The recitals in the sale deed show that by virtue of partition deed dated 21.12.2004, defendant No.1 got Item No.4 property measuring 1 acre 19 guntas in Sy.No.119 of Rajaghatta Village to his share.

The fact that plaintiffs' father had attested his signature to the sale deed which clearly reflects that the above property was fallen to the share of defendant No.1. The First Appellate Court also taken note of the fact that as far as the registered partition deed dated 21.12.2004, defendants Nos.1 to 5 have explained that Panchayath Palupatti dated 03.11.1972 was not registered and therefore, the subsequent partition deed was registered. By that time, plaintiffs' father had alienated certain properties and in the above partition deed only Item Nos.1 and 2 are shown in the 'A' schedule. The recitals in the said partition deed show that the parties have earlier made out separate katha in their names by virtue of mutation proceedings in M.R.No.31/1997-98. The said recitals are suffice to show that even before the registered partition deed, the katha of the properties was made out in their respective names by the brothers and they have independently dealt with their shares. The First Appellate Court also taken note of the fact with regard to the subsequent partition deed is concerned. An attempt was made while cross examining DW1 that plaintiffs' father had sustained burn injuries and he was mentally and physically incapable of giving consent for partition.

But Trial Court committed an error in accepting the case of plaintiffs and granted the relief of partition ignoring the earlier partition wherein parties have acted upon. Thus, the First Appellate Court considering all these materials, reversed the judgment of the Trial Court.

9. Being aggrieved by the reversal of the judgment by the First Appellate Court, the plaintiffs have preferred this second appeal before this Court.

10. The main contention of the learned counsel for the appellants before this Court is that First Appellate Court committed an error in coming to the conclusion that father of the appellants and respondent No.1 had divided the family properties under the unregistered Palupatti dated 03.11.1972 at Ex.D11 and several properties fallen to the share of the appellants' father. The counsel also would vehemently contend that the First Appellate Court committed an error in wrongly holding that appellants' father sold the properties considering the unregistered Palupatti and the said finding is unsustainable. The very reasoning of the First Appellate Court that there was a

partition but the same is erroneous. Defendant Nos.1 to 5 have not disputed about the nature of suit properties and acquisition of properties through re-granted proceedings in favour of the plaintiffs' father and defendant No.1 in Case No. HOA CR No.68/1996-97. The Tahsildar has re-granted the suit properties jointly in favour of the plaintiffs' father and defendant No.1. Thereafter, all the revenue records stand transferred in the name of plaintiffs' father and defendant No.1 in M.R.No.31/1997-98. But the First Appellate Court while giving the finding, in the absence of any record, has erred in holding that joint family properties were partitioned. Defendant No.1 clearly admitted in the cross examination that suit schedule properties are granted to him and his brother. But the First Appellate Court ignored the said evidence on record and committed an error in not granting relief in respect of granted land and erroneously reversed the judgment of the Trial Court. The counsel also would vehemently contend that the First Appellate Court also committed an error in considering the subsequent partition deed and not justified in dismissing the suit

of the plaintiffs in the absence of any material to show that suit schedule properties were already partitioned.

11. This Court admitted the second appeal considering the grounds urged in appeal memo on 01.06.2023 and framed the following substantial question of law:

1. *Whether the First Appellate Court justified in reversing the judgment and decree of the trial Court?*
2. *Whether the First Appellate Court justified in rejecting the relief of partition in the absence of any material to show that the suit schedule properties were already partitioned in the year 1972?*

12. The learned counsel appearing for the appellants in this arguments would vehemently contend that First Appellate Court fails to take note of the fact that in Sy.No.34 to the extent of 17 guntas and in Sy.No.24 to the extent of 16 guntas, in total, 33 guntas was allotted in favour of the plaintiffs' father vide partition document dated 21.12.2004. The counsel also brought to notice of this Court that the property which was allotted in

favour of the plaintiffs' father is shown as 'A' schedule and property which was allotted in favour of the defendants is shown as 'B' schedule property. Sy.No.48 to the extent of 1 acre 8 guntas and Sy.No.119 to the extent of 1 acre 19 guntas and in Sy.No.239 to the extent of 2 3/4th guntas and Sy.No.34 to the extent of 17 guntas were allotted in favour of the defendant. The counsel also would vehemently contend that Ex.D11 is an unregistered partition document. The counsel also vehemently contend that when the unregistered document is inadmissible, ought not to have relied upon the same. The counsel would vehemently contend that re-grant was made jointly to the plaintiffs' father and defendant and the same was also not taken note of by the First Appellate Court. The counsel also would vehemently contend that property was jointly sold by the plaintiffs' father and defendant in 2001. That means, all of them were together and there was no any partition. If partition was took place in the year 1972, no need to execute the sale deed jointly in 2001. All these materials were not taken note of by the First Appellate Court.

13. The counsel for the appellants also brought to notice of this Court to the admission of the part of DW2 and DW3 in the cross-examination and contend that the Trial Court evaluated both oral and documentary evidence rightly and decreed the suit. But First Appellate Court erred in dismissing the suit accepting the defence of the defendant in coming to the conclusion that there was a partition in the year 1972 and parties have acted upon. The counsel would vehemently contend that with regard to the burn injuries sustained by the plaintiffs' father was admitted and the same is also admitted by the witnesses and specific pleading is also made that taking advantage of his incapability, signatures were obtained to the registered partition deed. The counsel would vehemently contend that after the death of their father only the plaintiffs came to know that there was a registered partition deed. The counsel also vehemently contend that Ex.P3 to P11 clearly discloses that property jointly stands in the name of plaintiffs and defendants. The counsel also would vehemently contend that Item No.4 was granted and Form No.7 is very clear that grant was made in favour of the joint family and not in the

individual capacity and the same is also not properly appreciated by the First Appellate Court. Hence, this Court has to answer the above substantial question of law affirmatively.

14. Per contra, the learned counsel appearing for the respective respondents would vehemently contend that in the plaint, not pleaded with regard to fraud and misrepresentation and obtaining of signature to the document by fraud and even to the burn injuries concerned. The counsel also would vehemently contend that father of the plaintiffs was alive till 2007 and he did not challenge the earlier partition of the year 1972 and subsequent document came into existence on 21.12.2004 and the said document was registered document. Only after the death of their father, sets up the false defence that they were not aware of the earlier registered partition deed. The counsel would vehemently contend that in the partition deed of the year 2004, left out some of the properties and because of that, the parties have acted upon in terms of the earlier partition and sold the properties. The counsel also would vehemently contend that already there was a partition in the year 1972 and the same was

acted upon and even some of the properties are transferred in the name of the father of the plaintiffs and subsequently, sold some of the properties and documents of Ex.D5 and D6 are substantiated the same. The counsel also would vehemently contend that there was an unregistered partition in terms of document at Ex.D11 and equal shares were allotted at the time of earlier partition. The specific defence was also taken that what are all the properties were allotted in favour of the plaintiffs' father and same is also put to the witness PW1 during the cross examination and PW1 in the cross examination admitted that certain properties are stands in the name of their father. If there was no partition, what made to change the katha in favour of the plaintiffs' father. The counsel would vehemently contend that grant was made after the partition and the same was in favour of the defendant and records also clearly disclose that grant was made in favour of the defendant only. The counsel would vehemently contend that no fraud was pleaded and particulars are not given in terms of Order VI Rule 4 of CPC and if no particulars are given, question of fraud and misrepresentation does not arise. The First Appellate Court rightly reversed the

judgment of the Trial Court reconsidering both oral and documentary evidence available on record. The counsel contend that the Trial Court committed an error in applying Section 6 of the Hindu Succession Act and ought not to have relied upon the said Section since there was already a partition. Hence, the question of interference of this Court does not arise.

15. In reply to this arguments, counsel appearing for the appellants would vehemently contend that in paragraph 9 of the plaint, it is specifically pleaded with regard to misleading of the plaintiffs' father and there is a clear allegation of fraud and there is an admission to that effect. The counsel also would vehemently contend that Ex.P8 clearly discloses RTC stands in the joint name of Anjinappa and Muniyappa for the year 1984-1985 and in the cultivation column also, joint name is shown. These materials were not considered by the First Appellate Court. Hence, interference of this Court is required.

16. Having heard the learned counsel appearing for the respective parties, this Court has to reanalyze the material available on record, since there is a divergent finding. At the first

instance, the Trial Court granted the relief of partition, but the First Appellate Court reversed the finding of the Trial Court. In view of the divergent finding, this Court even can look into the evidence available on record while considering the second appeal keeping in view the substantial questions of law framed by this Court at the time of admission.

17. Having perused both oral and documentary evidence available on record, the very pleading of the plaintiffs is that there was no any partition and the suit schedule properties are ancestral and joint family properties. The partition deed dated 21.12.2004 obtained by the defendants from the father of the plaintiffs in respect of the suit schedule property is not binding on the plaintiffs and so also the sale deed dated 25.04.2005 executed by defendant Nos.1 to 5 in favour of defendant No.6 in respect of item No.4 of the suit schedule property is not binding on the legitimate share of the plaintiffs. It is the specific contention of the respondents that there was no specific pleading in the plaint with regard to obtaining of partition deed fraudulently and there must be a particulars to fraud.

18. Having perused this contention, this Court has to take note of the contents of the plaint. In paragraph No.5 of the plaint, it is stated that the landed properties were originally thoti service inam land attached to the Village office Rajaghatta Amanikare Village granted to the grandfather of the plaintiffs, namely Sri Budappa and was discharging the duties of thoti-inamdari of the said village and after his death, the father of the plaintiffs and defendant No.1 being the sons of Budappa were jointly discharging the duties of the thoti naukari of Rajaghatta Village and were cultivating the schedule properties accordingly. It is contented that on coming into the force of Karnataka Village Officers Abolition Act, the plaintiffs' father and defendant No.1 jointly filed an application of re-grant of the suit schedule properties in their favour before the Tahsildar, Doddaballapura and the same was re-granted in favour of the plaintiffs' father and defendant in Case No.H.O.A.CR.No.68/1996-97 and the grant was jointly in favour of the plaintiffs' father and the defendant. Thereafter, all the revenue records stands transferred in the name of the plaintiffs' father and the defendant through M.R.No.31/1997-98. The copy of the

Tahsildar order, mutation and RTC's are also produced and both of them have continued the joint possession. The father of the plaintiffs died on 19.11.2007. The defendant No.1 being the uncle of the plaintiffs and the elder member of the joint family continued to look after the management of the joint family as kartha and when the defendant started neglecting the welfare of the plaintiffs, a panchayat was convened on 01.12.2007 to effect the partition. But the defendant contended that already there was a partition between the father of the plaintiffs and defendant on 21.12.2004 and the same was surprise to the plaintiffs and applied for certified copy of the registered partition deed.

19. The plaintiffs after obtaining the certified copy of the partition deed, came to know that only land to an extent of 17 guntas in Sy.No.34 of Rajaghatta Amani Kare and 16 guntas in Sy.No.243 of Rajaghatta Village was allotted to the share of the plaintiffs' father and in that partition, the defendant was shown to be allotted a lion share. It is specifically pleaded that the plaintiffs' father was an illiterate and innocent and he had no worldly knowledge and further both the plaintiffs and father were

having very good faith and cordial relationship with the defendant. It is also contended that the plaintiffs' father was aged more than 70 years and he was suffering from old age ailments and he was not in a position to understand anything and not having sound state of mind to know anything except following the plaintiffs and the defendant. It is contended that no such partition was entered between the parties. Taking the undue advantage of innocence and illiteracy and on good faith the plaintiffs' father having on him has abused the good faith and has obtained the registered partition deed clandestinely behind the back of the plaintiffs with an intention to deprive the legitimate equal share of the plaintiffs over the suit schedule properties and thus, the partition deed dated 21.12.2004 is a fraudulent document obtained by the defendant on misrepresenting the facts and hence, the same is not binding on the plaintiffs.

20. Having considered these averments made in the plaint and also considering the evidence of P.W.1, P.W.1 reiterated the same in his affidavit. In the cross-examination, it

is emerged that the father of the plaintiffs and the defendant are living separately and having separate ration cards and contend that there was no partition and denies the specific suggestion that there was a partition on 03.11.1972. He says that he cannot tell when the ration card came into existence separately. In the cross-examination, a suggestion was made that in terms of the partition of 1972, particular properties are allotted to the father of the plaintiffs and the same was denied. However, he admits that khatha in respect of Sy.No.35 to an extent of 17 guntas and Sy.No.243 to an extent of 16 guntas, was standing in the name of his father. When a suggestion was made that, on 20.01.2005, Sy.No.128/5 was allotted to the defendant, he says that it may be allotted. He admits that his uncle only paid the amount to the Government. He says that his uncle was looking after the affairs of the family and hence, he has paid the amount. He claims that pahani stands in the name of his grandfather and also his father's name. However, he admits that both his grandfather and his father have not given any application to the Land Tribunal. A suggestion was made that in the year 1972, his father had sold the property which was

allotted to him in respect of Sy.No.207, but he claims that both of them sold the property. He admits that his mother was suffering from TB and she was provided treatment at Kolar Hospital. It is suggested that on 03.05.1973, his father had sold Sy.No.118 to an extent of 1 acre 12 guntas to one Rajanna and he says that he is not aware of the same. However, he admits that khatha stands in the name of Rajanna.

21. It is suggested that his father had sold the property in Sy.No.118/3 to one Mruthyunjayappa and the witness says he is not aware of the same. It is suggested that his father had sold the property in Sy.No.207 to an extent of 1 acre 3 guntas to one Ramesh and he says that may be, but he is not aware of the same. But again he says that both of them joined together and sold the same. He admits that other than agricultural income, his father had no other income. A suggestion was made that his uncle sold Sy.No.119 to an extent of 1 acre 19 guntas to one Narasimhamurthy and he says that he is not aware of the same. However, he admits that his father may be a signatory to the said sale deed as witness. It is suggested that the said property

was allotted to Anjinappa and hence, he sold the same and the same was denied. In further cross-examination, he admits that Sy.No.207 to an extent of 1 acre 3 guntas was sold on 11.05.2001 to Ramesh and he was a signatory to the said sale deed. He says he did not go to the Sub-Registrar Office when the document was registered on 21.12.2004. However, he admits that he himself and his father were residing together. He admits that his father was informing him and his uncle about all the transactions. He categorically admits that the properties, which have been sold were not included in the suit and the suit is filed in respect of remaining lands and he had not filed any appeal against the change of khatha.

22. P.W.2 is the sister of P.W.1 and she also reiterated the plaint averments. In the cross-examination, P.W.2 admits that the suit property was sold on 25.04.2005 by her uncle in favour of Narasimhamurthy. She admits that her father is also a signatory to the said document and subsequent to the purchase, they are in possession of the property. A suggestion was made that, in the sale deed dated 25.04.2005, there was a reference

that there was a partition on 21.12.2004 and the said suggestion was denied. It is admitted that when the father was alive, they have seen the revenue documents and some of the documents are standing in the name of her father and she did not challenge the partition till date and also not questioned the sale deed executed by her father. She admits that her father was having drinking habit and except that he was not having any other bad wises. She admits that the property sold by her father was for the family necessity. A suggestion was made that property in Sy.No.207 to an extent of 1 acre 35 guntas was sold to Ramesh by her family and she denies the same. She admits that the said property is an ancestral property. She further admits that Sy.No.207 to an extent of 1 acre 35 guntas was not included in the suit. A suggestion was made that subsequent to the partition, her father and uncle had sold the property and she denies the same and says that her uncle only sold the property. It is admitted that she has not produced any document to show that her father and uncle were living together. It is admitted that her marriage and her sister's marriage was performed by

her father only. But P.W.1 claims that marriage was conducted by both the father and uncle.

23. Having perused the documentary evidence, it is clear that the properties are inamthi land as per Ex.P1 and the same is regranted. Ex.P.2 clearly discloses that the land was granted jointly in the name of Muniyappa and Anjinappa. As per Ex.P.1, mutation came into existence in M.R.No.31/1997-98 based on HOA/CR.No.68/1996-97. Ex.P.3 discloses joint name in respect of Sy.No.35 in the name of Muniyappa and Anjinappa for the year 1997-1998. The other RTC extract Ex.P.4 discloses both the names of Muniyappa and Anjinappa in column No.12. Ex.P.5 is in respect of Sy.No.243 and it stands in the joint name of Muniyappa and Anjinappa for the year 1997-1998. Sy.No.48 stands in the name of Muniyappa and Anjinappa to an extent of 1 acre 8 guntas in column No.12. The RTC extract for the year 2007-08 stands in the name of Anjinappa to an extent of 1 acre 8 guntas in respect of Sy.No.48. Sy.No.119, stands in the joint name of Muniyappa and Anjinappa to an extent of 1 acre 19 guntas for the year 1997-98. Sy.No.128/5 stands in the name

of Anjinappa for year 2007-2008. Sy.No.239 to an extent of 2½ guntas stands in the name of Muniyappa and Anjinappa as per re-grant. Sy.No.239 to an extent of 5 guntas stands in the name of Anjinappa.

24. It is not in dispute that the father of the plaintiffs died on 19.11.2007 and there is no dispute with regard to the relationship between the parties is concerned. On perusal of the document Ex.P.12 partition deed dated 21.12.2004, there is no reference of earlier partition of the year 1972. The defendants also not disputed this document of partition. On perusal of the recitals of the document, it is mentioned that both of them are residing together jointly and they are making the partition voluntarily. This document contains the signature of Anjinappa and the left thumb impression of the plaintiffs' father. It is also emerged during the course of evidence that, the plaintiffs' father was not keeping good health and he was taken to Sub-Registrar Office. The documents which have been produced before the court as exhibit 'P' series clearly discloses that both the names are found jointly. Ex.P.19 RTC extract for the year 1985-1986

discloses joint names of Muniyappa and Anjinappa in Sy.No.128/5, which the defendant claims that, that is an independent property. There is no explanation on the part of the defendant with regard to this document is concerned. Hence, it is clear that both plaintiffs' father and the defendant are cultivating the property in Sy.No.128/5 together. No doubt, there was a grant in favour of Anjinappa. Ex.P.20 discloses that the same stands in the name of Anjinappa subsequent to the grant in 2010-11. But old document discloses the cultivation by both the plaintiffs' father and the defendant in respect of Sy.No.128/5.

25. Having considered the oral evidence of D.W.1, he reiterates the written statement contents. In his evidence, he states that there was a partition deed dated 21.12.2004 between himself and his brother. He admits that himself and his brother both executed the document in favour of Narasimhamurthy as per Ex.D.3 and also relies upon Ex.D.4 sale made by his brother and his family members. However, he admits in the cross-examination that Exs.D.4 to 6 is signed by himself and his

brother. He denies the suggestion that both of them have sold the property. However, he admits that as per Ex.D.3, he himself and his brother jointly sold the property. It is suggested that his brother signed only as a witness to Ex.D.3 and the same is denied. He admits that in the year 2005, his all children were major. He claims that he filed Form No.7 and hence, land was granted in his name. It is suggested that partition deed was created and the same is denied. When a question was put that in the partition deed dated 21.12.2005, there was no any reference of earlier partition of 1972, he says that he is not aware of the same. He claims that partition was taken place in terms of Ex.D.11 and Katha was transferred in the year 2001-2002 and he cannot tell whether M.R. is available or not. It is suggested that Sy.No.207 to an extent of 3½ guntas was sold to Ramesh and both of them executed the sale deed on 11.05.2001. But he claims that he has signed the said document on the request of his brother. It is suggested that Ex.D.11 was created for this case and the same was denied. It is suggested that his brother was not feeling well in 2004 and when he was bed ridden, the document of partition deed was created and the

same was denied. He admits that his brother was suffering from burn injuries and hence he was taken in an autorickshaw to the Sub-Registrar's Office and got registered the document.

26. The defendants also examined the witness D.W.2 and D.W.2 in his evidence he says that there was a partition in the year 1972 and since then joint family was not in existence. He says that property in Sy.No.128/5 was granted in favour of defendant No.1 based on Form No.7A filed before the Land Tribunal. He says that subsequently there was a registered partition on 21.12.2004. This witness was also subjected to cross-examination. In the cross-examination, he says that there was a partition in the year 1972, but he is not aware of the survey numbers allotted to the plaintiffs' father and the defendant No.1. He says that he had participated in the said partition and document also came into existence and he had signed the document as a witness. He says that in the year 2004, defendant No.1 took his brother to the Sub-Registrar Office and got executed the document, but he was not a signatory to the said document. He admits that his son had

purchased Sy.No.119 to an extent of 1 acre 19 guntas and the same was executed by defendant No.1 and his children.

27. The other witness is D.W.3. In the cross-examination, D.W.3 categorically admits that he had not participated in 1972 partition and he is not aware of the same. He categorically admits that in the partition of the year 2004 also he was not present. He admits that in the year 2004, father of Byanna was not having good health condition and he had sustained burn injuries. He admits that he had purchased the property in Sy.No.207 to an extent of 1 acre 3 guntas and the same belongs to the father of the plaintiffs and defendant No.1 and there was a re-grant. He says that except purchasing that property, he is not aware of anything about the family of the plaintiffs and the defendant. D.W.1 requested him and hence, he came and deposed before the Court.

28. The other witness is D.W.4 and he also reiterates the evidence of D.W.2 and D.W.3 that there was a partition between himself and his brother Muniyappa and that his father Buddappa died leaving behind himself, his brother Muniyappa and his elder

sister Smt. Anjinamma. He also speaks about the earlier partition. He was subjected to cross-examination. In the cross-examination, he admits that he is originally resident of Rajaghatta Village. He admits that he cannot say the averments made in paragraph Nos.4 and 5 of the affidavit. He admits that in terms of partition of the year 2004, he had purchased the property in terms of Ex.D.10. He admits that, to that sale deed neither the plaintiffs nor the plaintiffs' father had signed the same. But he claims that Muniyappa signed as a witness.

29. Having considered the evidence of D.W.1 to D.W.4, it is very clear that D.W.2 and D.W.3 are interested witnesses, since D.W.2 admits that his son had purchased the property in respect of Sy.No.119/1 to an extent of 1 acre 10 guntas and the same was executed by defendant No.1 and his children. D.W.3 in the cross-examination admits that he is not aware of anything except purchasing the property in Sy.No.207. But his admission is very clear that the father of the plaintiffs had sustained burn injuries and the same is also admitted by D.W.1. D.W.1 in his evidence says that while getting the document of partition

executed in the year 2004, he took his brother i.e., the plaintiffs' father in an autorickshaw and got registered the document. The material clearly discloses that the plaintiffs' father was an illiterate. The evidence of D.W.4 also will not come to the aid of the defendants, since he was not aware of the contents of affidavit in paragraph Nos.3 and 4. He speaks about he had purchased the property and the plaintiffs' father was a signatory to the document. There is no dispute that subsequent to the registered partition, the document of Ex.D.10 came into existence. Though D.W.2 speaks about he was aware of the earlier partition of the year 1972 and he was very much present, his evidence is not credible, since he is an interested witness.

30. Having perused both oral and documentary evidence available on record, no doubt, sale deeds are executed by the plaintiffs' father and also defendant No.1. The fact is that both defendant No.1 as well as the plaintiffs' father have jointly executed the documents of Ex.D.3 and Exs.D.4 to 6. Apart from that, in the document of Ex.D.2 partition deed of the year 2004, which came into existence subsequent to amendment to Section

6 of the Hindu Succession Act, nothing is stated about earlier partition of the year 1972 and no recital in the said document that partition was taken place earlier. But, the registered document of partition dated 21.12.2004 clearly discloses that both of them are residing together and joint family was in existence and hence, documentary evidence prevails over the oral evidence of D.W.1. Having perused the document of Ex.P.12 and Ex.D.2, partition deed dated 21.12.2004, if really there was an earlier partition in the year 1972, there would have been reference and merely because P.W.1 and P.W.2 admits that two properties are standing in the name of their father and the same is not evident from consequent upon the partition in the year 1972, khatha was changed. All the documents which have been produced by the plaintiffs is very clear that the property was re-granted in terms of Ex.P.1 in respect of suit schedule properties and M.R.No.31/1987-88 came into existence consequent upon the order passed in terms of Ex.P.1 and the same is in the joint name of both of them. Hence, it is clear that there was a joint name and exhibit 'P' series and other documents which have been produced by the defendants clearly discloses the joint

name of plaintiffs and defendant No.1. Hence, there is no material proof with regard to the earlier partition of the year 1972. With regard to the subsequent registered partition deed of the year 2004, it is categorically admitted by DW1 and witnesses that the father of the plaintiffs had suffered burn injuries. D.W.1 categorically admits that he took his brother to the Sub-Registrar Office in an autorikshaw. Whether he had conscious about the partition deed and subsequent document of sale deed in terms of Ex.D.10 that he had signed as a witness only and the pleadings made in the plaint clearly discloses that there was an existence of joint family and there was no any severance and also specifically pleaded with regard to taken advantage of illiteracy of the plaintiffs' father and all these factors were taken note of by the Trial Court in detail while considering the case of the plaintiffs and granted the relief.

31. No doubt, the First Appellate Court reversed the finding of the Trial Court taking note of there was a grant in the name of defendant Anjinappa and Form No.7A was issued in his name. No doubt, the same was issued in his name. But, the

documents which have already been referred i.e., Ex.P19 shows the joint name of the plaintiffs' father and defendant No.1 was in existence and cultivating together and hence granted in favour of family. The First Appellate Court while reversing the finding of the Trial Court, particularly taken note of Ex.D.11 is an unregistered papupatti, which has no evidentiary value and the same has been discussed in paragraph No.15 by the Trial Court and comes to the conclusion that defendant No.1 and his family members have also alienated certain properties to which plaintiffs or their father are not parties. Ex.D.5 registered sale deed dated 03.07.1973 came to be executed by the plaintiffs' father Muniyappa in favour of Chikkashamanna in respect of khaneshumari No.237 of Rajaghatta Village. Ex.D.6 is sale deed dated 03.05.1973 in respect of land measuring 1 acre 12 guntas in Sy.No.118/P of Rajaghatta Village executed in favour of Rajanna S/o Shivarudrappa but DW1 categorically admitted that he is signatory to Ex.D3 to D6. The fact is that those properties are not included in the plaint schedule. Both of them have signed the said document. The First Appellate Court taken note of Ex.D.10. But the fact is that the father of the plaintiffs also

affixed his signature as attesting witness. But whether he had the knowledge that he is signing the same as attesting witness or not, nothing is forthcoming. No doubt, in paragraph No.16 it is observed with regard to document of 21.12.2004 and affixing of signature by the father of the plaintiffs. The circumstances under which the document was executed is very clear that the plaintiffs' father had sustained burn injuries and he was taken to the Sub-Registrar Office in an autorickshaw as admitted by D.W.1 and he has given consent for partition cannot be taken and the observation made by the First Appellate Court is not discussed with regard to the injury sustained by the father of the plaintiffs and taken him to the Sub-Registrar Office and only carried away with the observations made in paragraph No.18 that there was a grant in favour of Anjinappa on 19.05.2005. The fact that earlier both of them were cultivating the said property was not taken note of by the First Appellate Court about Ex.P19. The very document of RTC clearly discloses that both of them were cultivating the property. When such being the case, there was no any discussion with regard to the same by the First Appellate Court and hence, the very approach of the

First Appellate Court is erroneous. The Trial Court in detail taken note of both oral and documentary evidence and hence, I answer the substantial questions of law accordingly.

32. In view of the discussions made above, I pass the following:

ORDER

- (i) The second appeal is allowed.
- (ii) The judgment and decree of the First Appellate Court dated 07.02.2020 passed in R.A.No.10104/2019 is set aside.
- (iii) The judgment and decree of the Trial Court dated 19.07.2019 passed in O.S.No.85/2008 is restored.

Sd/-
(H.P. SANDESH)
JUDGE

SN/MD