

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.1108/2023 (DEC/INJ)

BETWEEN:

- 1 . MAHALINGAPPA @ ANANDA
S/O. KARIYANNA,
AGED ABOUT 48 YEARS
R/O. KALENAHALLI VILLAGE
KALLAMBELLA HOBLI
SIRA TALUK
TUMAKURU DISTRICT-572125. ... APPELLANT

(BY SRI. MUDDURAJ C., ADVOCATE)

AND:

- 1 . JAYAMMA
D/O. LATE THIMMAIAH,
W/O. R. RAMAKRISHNA,
AGED ABOUT 51 YEARS,
NOW RESIDENT OF
R/O. NELADIMMANAHALI VILLAGE,
KALLAMBELLA HOBLI
SIRA TALUK,
TUMAKURU-572125.

NOW AT 2ND CROSS,
SHANKARMUTT ROAD,
RAGHAVENDRA EXTENSION,
MADHUGIRI TOWN,
TUMAKURU DISTRICT-572 132.

2 . K. GOVINDAPPA
S/O. KARIYANNA,
AGED ABOUT 53 YEARS

3 . SMT. PUTTAMMA
W/O. BYRAPPA
AGED ABOUT 72 YEARS,
SINCE DEAD, REPRESENTED BY HER
LEGAL REPRESENTATIVES

3(a) HENJARAPPA K.B.
AGED ABOUT 71 YEARS
S/O. LATE BYRAPPA

3(b) PUTTAIAH K.B.
AGED ABOUT 66 YEARS,
S/O LATE BYRAPPA

3(c) SHIVARAJU K.B.,
AGED ABOUT 63 YEARS,
S/O. LATE BYRAPPA

NO.2 TO 3 AND 3(a) TO 3(c) ARE
RESIDENTS OF KALENAHALLI VILLAGE,
KALLAMBELLA HOBLI, SIRA TALUK,
TUMAKURU DISTRICT - 572125.

... RESPONDENTS

(BY SRI. KIRAN KUMAR D.K., ADVOCATE FOR R1;
R2, R3(a), R3(b) AND R3(c) ARE SERVED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGEMENT AND DECREE DATED 21.03.2023
PASSED IN R.A.NO.4/2015 ON THE FILE OF SENIOR CIVIL
JUDGE AND JMFC AT SIRA, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGEMENT AND DECREE DATED
28.11.2014 PASSED IN O.S.NO.37/2008 ON THE FILE OF
PRINCIPAL CIVIL JUDGE AND JMFC AT SIRA.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.12.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

1. Heard the learned counsel for the appellant and also the learned counsel for the respondents.

2. This second appeal is filed against the divergent finding. The Trial Court dismissed the suit and the same is reversed by the First Appellate Court granting the relief as sought in the suit and also directed to the defendants to hand over the encroached portions i.e., 'B' schedule property to the plaintiffs within 3 months from the date of the order.

3. The factual matrix of case of plaintiff before the Trial Court while seeking the relief of declaration, recovery of possession and mandatory injunction, it is contended that suit schedule property originally belongs to one

Narasimhaiah. He gifted the suit property in favour of plaintiff through gift deed dated 19.03.1992. After execution of the gift deed, the plaintiff has taken possession of the suit property. The Katha and pahani of suit property made out in her name. The plaintiff got converted the suit property from agricultural to non-agricultural land. The plaintiff formed sites in the suit property. The plaintiff is residing at Madhugiri, after her marriage. Taking advantage of the absence of the plaintiff near the suit property, defendant Nos.1 and 2 encroached Item No.1 in 'B' schedule property and the 3rd defendant encroached Item No.2 in 'B' schedule property and 'B' schedule properties are part and parcel of 'A' schedule property. The plaintiff came to know about encroachment of 'B' schedule property by the defendants in the year 2006, when she measured the suit property through surveyor. The plaintiff requested the defendants to vacate the encroached portion. They agreed to remove, but subsequently, refused to hand over

the encroached portion. During the pendency of the suit, the defendant Nos.1 and 2 who had opened door on eastern side of their house, they closed the said door and opened the door towards northern side of their house, that is towards 'A' schedule property. The defendants have no right to do so and hence, filed the suit. In pursuance of the suit summons, defendants have appeared through their respective counsel. The defendant No.2 filed his written statement, defendant No.1 has adopted the written statement of defendant No. 2. The 3rd defendant filed her separate written statement. The 2nd defendant denied the entire case of plaintiff and particularly in paragraph No.8 pleaded that suit property belongs to one common ancestor of the plaintiff and the defendants namely Thimmaiah. There was no partition by metes and bounds among the children of ancestor Thimmaiah. The sons of ancestor Thimmaiah were enjoying the property roughly. The defendant Nos.1 and 2 have been enjoying the land bearing

Sy.No.11/1c1 and there is a bund put in East-West direction and the said bund has been there since from time immemorial. The said bund is situated towards the north of the said Sy.No.11/1c1. It is pleaded in paragraph No.12 of the written statement that Sy.No.11/1 totally measuring 1 acre 13 guntas which was originally belongs to Thimmaiah. He has got three sons, namely Narasimhaiah, Thimmaiah and Kariyanna. During their lifetime, they have divided their properties through Palupatti dated 29.04.1958. In the said partition, 6 guntas in Sy.No.11/1 reserved to put up hay-stock and cow dung. The said 6 guntas phoded and numbered as Sy.No.11/1A, and the remaining 1 acre 7 guntas, northern half portion fallen to the share of Thimmaiah and southern half portion fallen to the share of Kariyanna and 4 guntas of Thimmaiah share was alienated and it was numbered as Sy.No.11/1B. Therefore, the donor of the plaintiff has no title or possession of the gifting the suit property in favour of the plaintiff. The gift deed relied

upon by the plaintiff is sham and bogus document. The said gift deed does not convey any title or possession in favour of the plaintiff in respect of suit property and prayed the Court to dismiss the suit. The 3rd defendant has denied the case of the plaintiff as frivolous and concocted and specific defence of 3rd defendant that she has not encroached any property as claimed by the plaintiff. There is a bifurcating bund in between the land of 3rd defendant and suit property. The said bund is in existence from time immemorial. The said fact is well known to the plaintiff and her transferor. The plaintiff has filed the suit only to harass the 3rd defendant.

4. The Trial Court having considered the pleadings of the parties framed the following issues and additional issue:

- 1. Whether the plaintiff proves that she is the owner in possession of 'A' schedule property as per gift deed executed by Narasimhaiah?*

2. *Whether the plaintiff proves that the defendants have encroached 02 guntas of land in the suit schedule property as shown in the sketch?*
3. *Whether the suit is bad for non-joinder of necessary parties?*
4. *Whether the defendants prove that the boundaries of the suit schedule property is not proper?*
5. *Whether the plaintiff is entitled for relief as claimed in this suit?*
6. *What Order or Decree?*

ADDITIONAL ISSUES

1. *Whether the 2nd defendant proves that gift deed dated 19-3-1992 in favour of plaintiff is not binding on them?*

5. In order to substantiate the case, the plaintiff herself examined as P.W.1 and got marked Ex.P.1 to Ex.P.32. The plaintiff also examined one witness as P.W.2. The documents Ex.D.1 to Ex.D.5 were marked through

P.W.2 during the course of cross-examination. On the other hand, the defendant No.2 has examined himself as D.W.1 and got marked document Ex.D.1 to Ex.D.10. The defendants also examined two witnesses as D.W.2 and D.W.3. The Court Commissioner was appointed and the Taluk Surveyor is examined as D.W.1 and got marked 8 documents as Ex.C.1 to Ex.C.8. The Trial Court having considered both oral and documentary evidence, answered all the Issue No.1 to 5 as negative. However, answered the Additional Issue No.1 as affirmative. The Trial Court while dismissing the suit, considering the documents in paragraph No.15 mainly relies upon the document Ex.D.5 and Ex.D.6 of the applications given by the father of the defendant Nos.1 and 2 and the father of the plaintiff to the Tahasildar stating that they were partitioned the family properties on 29.04.1958 and the property bearing Sy.No.11/1c measuring 1 acre 13 guntas, equally divided between the father of the plaintiff and the defendant Nos.1 and 2. The

document Ex.D.7 is the certified copy of the partition deed dated 29.04.1958 executed amongst Narasimhaiah, Thimmaiah and Kariyanna, who are the sons of Thimmaiah. On perusal of the document Ex.D.7, the land bearing Sy.No.11/1 equally divided between the plaintiff's father and father of the defendant Nos.1 and 2. The Trial Court considering the document Ex.D.7 comes to the conclusion that there was no property in land bearing Sy.No.11/1 fallen to the share of Narasihmmaiah who is the senior uncle of the plaintiff. It is also oral testimony of P.W.1 that senior uncle of the plaintiff executed the gift deed in respect of property which were fallen to the share of her father. This clearly reveals that donor namely Narasihmmaiah had no title over the property to execute Ex.P.1 in favour of the plaintiff. Hence, comes to the conclusion that the Narasihmmaiah had no title to convey and plaintiff also fails to prove the Issue No.1 and the Trial Court answered the Issue Nos.1 to 5 as negative and comes to the conclusion

that Ex.P.1 no way binds on the defendants and accordingly dismissed the suit.

6. Being aggrieved by the judgment and decree of the Trial Court, an appeal is filed before the Appellate Court. The Appellate Court having considered the grounds urged in the appeal memo, formulated the following points:

- 1. Whether the Appellants proves the alleged interference as set out in the appeal memorandum?*
- 2. Whether the judgment and decree passed by the trial Court is capricious, perverse and illegal?*
- 3. Whether the judgment and decree of the trial Court needs interference?*
- 4. To what relief and decree the parties are entitled for?*

7. The First Appellate Court having re-assessed both oral and documentary evidence, answered the point

Nos.1 tfo 3 as affirmative, particularly from paragraph No.20 onwards comes to the conclusion that Trial Court mainly relied upon the document Ex.D.1 is an unregistered document and failed to consider the documents which have been placed by the plaintiff before the Trial Court and not discussed anything about the documents which have been relied upon by the plaintiff. The First Appellate Court also taken note of document Ex.D.5 and Ex.D.6 and also made an observation that the Trial Court fails to take note of the evidentiary value of Ex.D.6 and Ex.D.7 and particularly Ex.D.7 is an unregistered partition deed and no effort made by the defendants to prove the same by examining any of the witnesses and Ex.D.5 and Ex.D.6 are self-declaratory documents as the same have been produced before the Land Reforms Tribunal and Ex.D.7 also produced before the Land Reform Tribunal and based on the document Ex.D.7- unregistered partition deed which was written on plain paper which does not carry any evidentiary value in the eye

of law and comes to a conclusion that there was a partition and donor was not having any right over the property.

8. The Trial Court utterly failed to appreciate the evidentiary value by seeing that whether the said partition deed acted upon or not since as already discussed with regard to the documents Ex.P.13 to Ex.P.17 are the manual RTC extracts for the year 1992 to 1998 which also reflects that suit property stands in the name of Narasihmmaiah, the uncle of the plaintiff which substantiated by the recitals of Ex.P.1. The donor clearly mentioned that though there is a zubani partition, but the Katha still stands in his name with respect to all the properties. Therefore, the revenue documents and mutation documents are standing in his name and Ex.D.7 was not acted upon and fails to support the contention of the defendant after effecting partition as per Ex.D.7 and the document Ex.D.7 being self-declaratory document based on the same neither Katha nor pahani effected in the name of respective sharers as per Ex.D.7.

The Trial Court fails to take note of Ex.P.13 to Ex.P.17 and also taken note of Ex.D.2 - conversion order which has been passed by the competent authority also substantiate the case of the plaintiff and the same being a public document and there is no reason to disbelieve the same. Even vital document Ex.D.19, has been unfortunately ignored by the Trial Court, though it is self-declaratory document made by the plaintiff before the revenue authority where she has been stated that for the purpose of conversion order with respect to Sy.No.11/1c that is suit property, in order to construct the residential houses, survey authorities have been served notice and conducted the survey of the said property with respect to the 30 guntas of the land and she requested to conduct durasth proceedings and the crucial point is both the respondent Nos.1 and 2 are the signatories to the said document and this important aspect has been lost sight of by the Trial Court. The Trial Court also taken note of Commissioner

report which is marked as Ex.C.1 and also the document of Ex.P.12 with regard to the encroachment is concerned and even taken note of suggestions made to the P.W.1 by the counsel appearing for the defendant Nos.1 and 2.

9. The First Appellate Court mainly taken note of Ex.P.7 and Ex.P.8 RTC extracts for the year 2006-2007 also supports the case of the plaintiff by evidencing that the pahani was standing in the name of both plaintiff and defendant Nos.1 and 2 to an extent as claimed by plaintiff and the defendants were very well acquainting with the gift deed, so also passing conversion order in favour of the plaintiff and effecting of Katha and pahani with respect to the suit property in the name of the plaintiff and inspite of it, they kept quite and any point of them they have not taken any pain to challenge the gift deed as well as effecting of Katha and pahani in the name of the plaintiff. Having considered all these materials, reversed the finding of the Trial Court and granted the relief.

10. Being aggrieved by the judgment and decree of the First Appellate Court, the present second appeal is filed before this Court. The counsel for appellant mainly contended that the Appellate Court committed an error without considering the question of law and committed an error in granting the relief based on the gift deed dated 17.03.1992 and First Appellate Court is not justified in not upholding the gift deed even though he himself had no proper right and title over the suit properties. The First Appellate Court also committed an error in directing the defendants to hand over the 'B' schedule properties of Item No.1 and 2. This Court while considering the grounds urged in the appeal memo, admitted the second appeal on 27.06.2024 and framed the following substantive question of law:

- 1) *Whether the First Appellate Court committed an error in upholding the registered gift deed dated 17.03.1992 executed by one Sri.Narasimhaiah and*

whether he had right to execute the same in favour of the plaintiff?

- 2) *Whether the First Appellate Court committed an error in declaring the plaintiff as owner of the suit schedule property in accepting the gift deed and directing him to deliver the vacant possession?*
- 3) *Whether the First Appellate Court committed an error in ignoring the material evidence available on record and the said reasoning that the plaintiff has made out the case and proved the gift deed is against the material on record and whether it amounts to perversity?*

11. The counsel appearing for the appellant in his argument would vehemently contend that there was a partition between the legal heirs of original propositus Thimmaiah and partition was effected on 29.04.1958 in terms of Ex.D.7 though Ex.D.7 is unregistered document and particularly documents Ex.D.3, Ex.D.4, Ex.D.5 and

Ex.D.6 supports the document of Ex.D.7, it is contended that suit property was divided between Thimmaiah and Kariyanna and in the said partition Narasihmmaiah got different property and when such being the case, Narasihmmaiah had no title to execute the gift deed. The counsel would vehemently contend that Ex.D.3 to Ex.D.7 discloses the description, it was divided 23½ guntas each and remaining 6 guntas for common use was left out. The gift deed in favour of daughter of Thimmaiah by Narasihmmaiah and the same ought not to have been considered by the First Appellate Court. The counsel would vehemently contend that the Trial Court considering the material on record, particularly in paragraph No.15 correctly discussed the case of the parties and rightly comes to the conclusion that plaintiff has not made out the case. The counsel would vehemently contend that reversal made by the First Appellate Court after paragraph No.20 onwards is not correct. The very approach that Ex.D.7 is not proved is

erroneous and there is an admission by P.W.1 to that effect.

12. Per contra, the counsel appearing for the respondents would vehemently contend that the Trial Court passed the cryptic order and not discussed anything about the case of the plaintiff and only relies upon document Ex.D.3 to Ex.D.7 and particularly no evidentiary value can be attached to those documents and hence, Appellate Court in detail discussed the same in paragraph Nos.16, 19, 20, 21, 22 to 25. The First Appellate Court not committed any error in passing such an order and detailed discussion was made in the judgment.

13. In reply to this argument, counsel appearing for the appellant would submit that in terms of Ex.D.7, property was allotted only in favour of Thimmaiah and Kariyanna and not allotted in favour of Narasimhaiah and though document gift deed relies upon there was a zubani partition and the same ought not to have been relied upon

by the First Appellate Court and gift deed executed is not by a person having right. The document Ex.P.17 clearly discloses that jointly stands in the name of all the members of the family and even loan was taken from the bank and all these materials were not considered by the First Appellate Court.

14. Having heard the appellant's counsel and also the counsel appearing for the respondents, this Court has to consider the material available on record including the evidence since there is a divergent finding. No doubt, in second appeal, the Court no need to touch upon the evidence, but, when there is a divergent finding, matter requires to be reconsidered by considering both oral and documentary evidence available on record.

15. The P.W.1 who is the plaintiff reiterates the plaint averments in the suit. No dispute with regard to the relationship between the parties. No doubt P.W.1 also admits in the cross-examination that there was a partition

on 24.09.1958 and also admits that all the revenue records stands in the name of Narasimhaiah during his lifetime and in terms of the earlier partition, kathas are continued in his name only, but, she claims that in Sy.No.11, Kariyappa got 11 guntas and her father got 40 guntas of land and she came to know the same through her father and also she admits that she had seen the partition document between her father and Kariyappa, but, again says that not seen. It is elicited that after phodi of the Sy.No.11, in the cultivator's column, name of Narasimhaiah was shown and in column No.12, name of Thimmaiah and Kariyappa were found and after the phodi, 1 acre 7 guntas was remaining and in Ex.P.13, it is mentioned that half in favour of Thimmaiah and remaining half in favour of the Kariyappa. When the suggestion was made that both of them are cultivating equally and the same was denied. It is also her admission that her father's property stands in the name of her senior uncle.

16. The P.W.2 speaks about the existence of properties bearing Sy.No.11/1 and Sy.No.12/9 and in the cross-examination, P.W.2 admits that other than hay-stock area towards the south, the total extent of property is 1 acre 7 guntas and in 1 acre 7 guntas of land, on the northern area, northern portion was given to Thimmaiah and southern portion was given to the defendants. After the division between the plaintiff's father and defendant's father and they are cultivating the same by putting the bund and on the northern side after the bund, plaintiffs are cultivating and on the southern side defendants are cultivating the same, but admits that they have divided the same equally and he cannot tell when the phodi work was done and also cannot tell when alienation was made.

17. On the other hand D.W.1 in his evidence he reiterates the evidence in terms of the written statement. D.W.1 categorically says that all the documents stands in the name of Narasimhaiah and categorically admits that in

Ex.P.16, name of the plaintiff was found and also admits that in terms of Ex.P.4, Sy.No.11/1c to the extent of 30 guntas stands in the name of the plaintiff. When the question was put whether it was challenged, witness says that plaintiff approached the Court and hence, not challenged the same. He admits that Katha was made in terms of M.R.No.9/2003-04 in the name of his brother and also his senior uncle and the same was not challenged and whether he is not aware of the same was challenged or not. Even after filing of the suit also they have not challenged the M.R and also he did not enquire how many phod was made. He admits that Court Commissioner was inspected the property and given the report. He admits that in terms of Ex.D.1 to Ex.D.8, pahani was not effected and even in terms of cultivation, property was not changed in the revenue records.

18. The D.W.2 speaks about construction of the house by Kariyanna and enjoying the property. In the

cross-examination admits that he was not participated when the partition was taken place and also admits that he was not present at the time of measurement. He admits that there was an agreement and 2nd defendant was witness to the said document and witness says that not 2nd defendant, but, 1st defendant. He also admits that 1st defendant given evidence in favour of him in connection with the said agreement and also he is getting water from the land of defendant No.2.

19. The D.W.3 also gives evidence in correlation to the evidence of D.W.2. He also admits in the cross examination that he was not present at the time of partition and even at the time of survey. The Commissioner was also examined before the Trial Court and Commissioner in his evidence says that he had visited the spot and conducted the survey and prepared the report and documents Exhibit C- series are marked through him. He was subjected to cross-examination and in the cross-examination, when the

document Ex.P.12 was confronted to him, he says with regard to the encroachment is concerned and mentioned the same. He cannot tell who is in occupation on southern portion of Sy.No.12 of Sy.No.11/1c1 and he cannot tell when it was phoded as Sy.No.11/1A, Sy.No.11/1B and Sy.No.11/1C, but he admits that there was an existence of bund, but, he cannot tell how many bunds are there.

20. Having re-assessed both documentary and oral evidence available on record, particularly the evidence of P.W.1, he categorically admits that there was a partition among the members of the family on 24.09.1958 and witness volunteers that it was only a oral partition and categorical admission was given that Narasimhaiah, who is the senior member of the family, all the records standing in his name and in terms of the said earlier partition, kathas were not transferred. Hence, it is clear that property stands in the name of Narasimhaiah even after the partition. The P.W.1 categorically admits that he came to know about the

earlier partition, but claims that in Sy.No.11, measuring 40 guntas was allotted in favour of his father, but though earlier admitted that he had seen the document of partition, but immediately says not seen the same and categorical admission was given that property stands in the name of Narasimhaiah and her father property also stands in the name of senior uncle and hence, father had executed the gift deed including the property of the plaintiff's father.

21. It is also important to note that when the plaintiff examined one more witness as P.W.2, the witness P.W.2 categorically admits that division between the plaintiff's father and defendants and remaining land of 1 acre 7 guntas southern portion was allotted in favour of the defendants and northern portion was allotted in favour of the plaintiff's father and both of them have put bund and cultivating the same in the respective portions. This admissions takes away the case of the plaintiff. Hence, it is clear that both plaintiff and defendants were cultivating the

property to the extent of half of the area on the northern side and southern side and the same is in terms of the document of Ex.D.7 and there is a clear admission with regard to the document of Ex.D.7 that there was a partition in the year 1958 and Sy.No.11 was equally divided among the family of the plaintiff and defendant. Hence, rightly the Trial Court taken note of those materials on record though the partition of the year 1958 is not registered document there is a clear admission on the part of P.W.1 and also the P.W.2. Hence, it is clear that the earlier partition was acted upon and though revenue records are not changed, but categorical admission goes against the plaintiff. When such being the case and though the judgment of the Trial Court is very cryptic and discussion was made in paragraph No.15 and the Trial Court not discussed the documents of plaintiff which have been relied upon, but it is very clear that document stands in the name of Narasimhaiha who being the senior member of the family and even half of the

partition in the year 1958 continued in the name of the Narasimhaiah and the Trial Court rightly comes to the conclusion that the said Narasimhaiah was not having absolute right to execute the gift deed in favour of the plaintiff. There is a clear admission with regard to the earlier partition of the year 1958 by the P.W.1 and also the P.W.2 clear admission was given, both of them are cultivating southern portion and northern portion equally that is 1 acre 7 guntas of land excluding the 6 guntas which has been used for common usage. The First Appellate Court committed an error in reversing the finding of Trial Court and no doubt in detail discussed the same, but fails to take note of admission on the part of P.W.1 and P.W.2 that there was a division in respect of Sy.No.11 and the same was allotted equally to the plaintiff's father and defendant's father and both of them are cultivating the southern portion and also the northern portion and even they have put up bund to demarcating the property and merely because no

revenue documents are changed in the name of the respective parties in terms of the partition, First Appellate Court committed an error in discussing the same in paragraph Nos.20 to 25. Though elaborate discussion was made, but lost sight of the admission on the part of P.Ws.1 and 2. The P.W.1 also categorically admits even the property which was allotted in the said partition was also gifted in favour of the plaintiff since all the property stands in the name of Narasimhaiah who being the elder member of the family including the father's property and these are the admissions were taken note of by Trial Court. But, First Appellate Court failed to take note of the same and the admission of P.W.2 takes away the case of the plaintiff. He categorically deposes that there was a division and in terms of the division, both of them cultivating equally and even document was not registered that is Ex.D.7. The Trial Court taken note of the exhibit D-series documents Ex.D.4, Ex.D.5 and Ex.D.6. No doubt gift deed was executed in

favour of the plaintiff in terms of Ex.P.1, but the said Narasimhaiah was not having any exclusive right over the property and First Appellate Court only comes to the conclusion that before executing the gift deed, property was stands in the name of the donor and hence, donor has got right and the said reasoning is erroneous. Hence, the judgment of the First Appellate Court is against the material on record particularly the admission on the part of P.W.1 and P.W.2 and there was a division in the year 1958 and subsequent to the division, parties are enjoying the property and not changed the Katha in the revenue records in terms of the earlier partition and that cannot give any right to the Narasimhaiah to execute the gift deed and hence, the Trial Court rightly comes to the conclusion in answering Additional Issue No.1 as affirmative in coming to the conclusion that the same is not binding on the defendants. Hence, I answer the substantive question of law accordingly that First Appellate Court committed an

error in reversing the finding of the Trial Court and hence, the appellant succeeds in the appeal.

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

ORDER

- i) The Second Appeal is ***allowed***.
- ii) The impugned judgment and decree passed by the First Appellate Court in R.A.No.4/2015 dated 21.03.2023 on the file of Senior Civil Judge and JMFC, at Sira is set-aside and the judgment and decree passed by the Trial Court in O.S.No.37/2008 dated 28.11.2014 on the file of Prl. Civil Judge and JMFC, at Sira is restored.

Sd/-
(H.P. SANDESH)
JUDGE

RHS