

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 11TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100146 OF 2020 (PAR/POS)

BETWEEN

1. BHAGYASHREE @ BHAGYA
W/O. NARAYAN KULKARNI,
AGE: 66 YEARS, OCC: RETD.,
R/O. BHAGYASRI NARAYAN KULKARNI,
BLOCK NO.D-7/4, W.M.S. COMPOUND,
BSNL QUARTERS, 47 CROSS, 9TH MAIN,
5TH BLOCK, JAYANAGAR, BANGALORE-560011.
2. KUM. CHITRA D/O. NARAYAN KULKARNI,
AGE: 30 YEARS, OCC: STUDENT,
R/O. BHAGYASRI NARAYAN KULKARNI,
BLOCK NO.D-7/4, W.M.S. COMPOUND,
BSNL QUARTERS, 47 CROSS, 9TH MAIN,
5TH BLOCK, JAYANAGAR, BANGALORE-560011.
3. ADITYA S/O. NARAYAN KULKARNI,
AGE: 27 YEARS, OCC: PVT. SERVICE,
R/O. BHAGYASRI NARAYAN KULKARNI,
BLOCK NO.D-7/4, W.M.S. COMPOUND,
BSNL QUARTERS, 47 CROSS, 9TH MAIN,
5TH BLOCK, JAYANAGAR, BANGALORE-560011.
GPA HOLDER OF A2

...APPELLANTS

(BY SRI. ANOOP G. DESHPANDE, ADVOCATE)

AND

1. RAMACHANDRA
S/O. HANUMANTHRAO KULKARNI,

AGE: 57 YEARS, OCC: LEGAL PROFESSION,
R/O. C. ANGARAJ BUILDING,
3RD CROSS, GAVALI GALLI,
RAYARMATH ROAD, MALAMADDI,
DHARWAD-580007.

2. RAGHVENDRA
S/O. HANUMANTHRAO KULKARNI,
AGE: 63 YEARS, OCC: GOVT. SERVANT,
R/O. SANKALPA, 6TH MAIN ROAD, MALAMADDI,
DHARWAD-580007.
3. HARISH S/O. VIDYADHAR KADNI,
AGE: 37 YEARS,
R/O. #100, SHRE RAGH RESIDENCY,
FLAT NO.508, 5TH FLOOR, 7TH CROSS,
VIJAY BANK COLONY, BASVAPUR MAIN ROAD,
K.R. PURAM, BANGALORE-560036.
4. SMT. PRABHA @ SRIDEVI
W/O. SRIKANT NADKARNI,
AGE: 55 YEARS, OCC: HOUSE HOLD WORK,
R/O. 'SADHAVAN', II CROSS,
KYATCHARKANHALLI,
NEAR MILITARY QUARTERS,
KALYAN NAGAR, BANGALORE-560043.
5. SMT. VIDYA W/O. VINOD YARADI,
AGE: 53 YEARS, OCC: PVT. SERVICE,
R/O. GELEYAR BALAGA, II CROSS,
RAJAJI NAGAR, BANGALORE-560010.

...RESPONDENTS

(BY SRI. S.V. YAJI, ADVOCATE FOR R1;
NOTICE TO R2-R5 IS DISPENSED WITH)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 22.11.2019 IN O.S.NO.107/2013 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE, DHARWAD, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.01.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 96 CPC R/W Order XLI Rule 1 CPC by defendant No.4 and legal representatives of defendant No.3 challenging the judgment and decree dated 22.11.2019 passed in O.S.No.107/2013 on the file of Principal Senior Civil Judge and CJM, Dharwad (for short, Trial Judge').

2. Parties would be referred with their ranks, as they were before trial Court for the sake of convenience and clarity.

3. Plaintiff has filed the suit before trial Court praying for Partition and Separate Possession of his 1/4th share in suit 'A' schedule property and half share in suit 'B' schedule property; for Court costs and for such other reliefs.

4. The case of plaintiff before trial Court in nutshell is that defendant No.1 is the father of plaintiff, defendant No.2 and defendant No.3 are sons of defendant No.1 and defendant No.4 is the wife of defendant No.3; after filing the suit he impleaded his sisters i.e. defendant No.5 to 7 who are also daughters of defendant No.1. The contention of plaintiff is that defendant No.1 is a retired Government servant and head of the family of plaintiff and other defendants. He intended to purchase suit 'A' schedule property bearing Plot No.8 measuring 2 guntas and 2 annas situated at 1st main road, Jayanagar-Dharwad. The suit 'A' schedule property was purchased for a sum of ₹.43,500/- in the name of defendant No.3 from its holder Sri V.P.Desai under registered sale deed dated 03.11.1987. At the time of its purchase, defendant No.1 has paid ₹.36,000/- and defendant No.3 has paid the remaining amount and said property was purchased in the name of defendant Nos.3 & 4 with an intention to get loan because they were serving in BSNL. After purchase, the construction was made in the said property; at the time of construction, defendant No.1

has paid a sum of ₹.35,000/-; plaintiff and defendant No.2 also contributed and loan was obtained from LIC for construction of the said house. Acknowledging these facts, defendant No.3 made his intention clear that instead of Schedule 'A' property, the amount received by him from plaintiff and defendant Nos.1 and 2 as well as from joint family funds, he agreed that he would provide one gunta of plot and ₹.24,000/- to plaintiff and defendant No.2 and executed a deed of agreement dated 19.09.1997. According to said document, defendant No.3 has given categorical admission about payment of ₹.36,000/- at the time of purchase and ₹.35,000/- at the time of construction by defendant No.1 to defendant No.3. During 2005, defendant No.3 along with plaintiff thought of purchasing the adjacent suit 'B' schedule property, which belonged to their cousin Smt.Jayashree, wife of Bhimsen Shivamoggi. The said property was purchased for a sum of ₹.9,75,000/-. At that time, the defendant No.3 proposed that the same may be purchased in the name of his wife-defendant No.4 to make it convenient to raise loan in her name as she was working

in BSNL. Further, defendant Nos.3 & 4 not able to make any arrangement for the entire sale consideration amount. Hence, plaintiff has paid ₹.5,85,000/- to defendant No.3 by way of depositing cheques and cash to the SB Account No.4420 of defendant No.3 of Indian Overseas Bank, Saptapur Branch, Dharwad on 06.05.2005 and 10.05.2005. He has stated that through Cheque bearing No.963581 of Canara Bank, a sum of ₹.1,85,000/-, through Corporation Bank Cheque bearing No.062986, a sum of ₹.1,60,000/-, and through Cheque No.078788 of M.G. Bank, Dharwad, a sum of ₹.55,000/- and deposit of cash of ₹.1,85,000/- in Indian Overseas Bank, Dharwad, the aforesaid total amount of ₹.5,85,000/- for purchase of suit 'B' schedule property. Defendant No.3 acknowledged the receipt of same by executing an acknowledgment on 10.05.2005. Thus, plaintiff and defendant Nos.3 & 4 have paid the amount for purchase of this property. Thus, plaintiff has demanded his half share in suit 'B' schedule property and 1/4th share in suit 'A' schedule property. But, defendant No.3 went on

postponing the same on one or the other pretext. Hence, the suit for appropriate reliefs.

5. Defendant Nos.3 & 4 appeared through their counsels and filed their separate written statements. In the written statement, defendant No.3 has admitted the relationship between parties but denied all other averments made in the plaint regarding contribution of defendant No.1 to purchase and construct Suit 'A' schedule property and contribution of plaintiff in purchasing suit 'B' schedule property. He further took contention that defendant No.3 has taken responsibility of contributing his earnings towards the marriage of his elder and two younger sisters which was celebrated in the year 1984, 1986 and 1988 respectively. The long standing service in the Department till the marriage of defendant No.3 enabled him to purchase suit 'A' schedule property in the year 1986. He could avail loan. He made all his efforts in the construction of the house in the plot. The construction of the house was completed during June-1990. Plaintiff and defendant No.2 were looking after

the construction, utilizing the funds given by defendant Nos.3 and 4. As defendant No.1 and his wife i.e., mother of plaintiff and defendant Nos.2 and 3 were alive, all family members were lived together in the suit 'A' schedule property. During 1989, defendant No.3 left for Bengaluru and transferred to Bengaluru. During his stay in Bengaluru, he used to pay the amount to plaintiff in good faith towards construction of the house in suit 'A' schedule property. Since then till June-2010 plaintiff and defendant Nos.1 and 2 resided in Suit 'A' schedule property without making any consideration. During 2005, defendant No.4 purchased suit 'B' schedule property as she and her husband were able to contribute for its purchase. This was possible for them as they had raised loan from the bank. Except the financial assistance as exhibited by the plaintiff, there was no other intention of plaintiff in purchase of suit 'B' schedule property. He never contributed towards its purchase. Nowhere plaintiff has spoken about the assets of defendant No.1 that helped defendant Nos. 3 or 4 to purchase suit 'A' and 'B' schedule properties. Defendant Nos.3 and defendant

No.4 being Government employees were having economic ability to purchase those properties. Plaintiff and defendants have accumulated wealth while living in joint family. But, plaintiff had remained silent about it. Defendant No.2 also got movable and immovable properties and they are not included in the present suit schedule. Hence, only the properties of defendant Nos.3 & 4 which are their self acquired properties are included in this suit with malafide intention. Plaintiff has not stated anything about the savings of defendant No.1 i.e., being held by plaintiff when he was taking care of his parents in Dharwad. The jewelry of mother of the parties or fixed deposits of the defendant No.1 are also not found room in this partition suit. Hence, the suit is not maintainable for partial partition. The suit in the present form is not maintainable as the nature of suit is only for recovery of money or specific performance for which the deed in question needs to be registered and for filing the suit there is limitation and plaintiff has to pay the requisite Court fee which was not forthcoming in this suit.

Hence, the suit is not maintainable in law. Hence, prayed for dismissal of suit with costs.

6. Defendant No.4 filed her written statement wherein she almost taken the contention similar of defendant No.3 in his written statement and also admitted about relationship of the parties, but denied all other averments made in the plaint and further contended that it is defendant No.4 who has purchased the suit 'B' schedule property. Because, she was working at BSNL and saved money and she has also obtained loan from the banks. Thus, it is her self-acquired property. Defendant No.4 being part of the family has performed her role of supporting the family economically till she was living in Dharwad. Later, she was transferred to Bengaluru and started living with her husband in Bengaluru. The inclusion of her property and impleading defendant No.4 in the suit does not arise at all. She is not a necessary party to the suit. Hence, prayed for dismissal of suit with costs.

7. During pendency of the suit, Defendant No.1 died, plaintiff, defendant Nos. 2, 3 and 5 to 7 are his legal representatives.

8. During pendency of the suit, defendant No.3 died and his legal representatives were brought on record. Amongst them defendant No.3(b) has filed his written statement, wherein, he has taken the similar contention taken by his father. He further contended that defendant No.1 is the grandfather of defendant No.3(b) who retired from his service in the year 1980 and he was having a huge family of 6 children and a wife to maintain. Thus, he was unable to purchase or make any property during his time of service or from his income. Defendant No.3 started his service as part time lecturer in Kuthambari College, Hubballi during 1980 and then he was appointed at BSNL during 1981 and purchased suit 'A' schedule property in the year 1987 from his own earnings i.e., even prior to the marriage. At the time of marriage, defendant No.4 was already employed in BSNL. Defendant Nos.3 & 4 were sound

enough to purchase and construct a house in suit 'A' schedule property. Both of them have taken loan amounting to ₹.1,40,000/- from LIC, Dharwad. A loan of ₹.6,00,000/- from Indian Overseas Bank, Sapthapur for purchase of suit 'B' schedule property. Plaintiff utterly failed to prove that why plaintiff and other defendants were not parties to the sale deeds of suit schedule properties. Plaintiff being an advocate is fully aware of legal consequences and lacuna in his claims and fully aware that suit schedule properties were totally self-affirmed properties of defendant Nos.3 & 4 and thus they were not parties to the same deeds. There is no existence of joint family as alleged in the plaint. Plaintiff has already relinquished his right over suit 'A' schedule property in exchange of taking one gunta residential land and ₹.24,000/-. Plaintiff should have initiated suit for recovery of said one gunta residential land with ₹.24,000/-. But, he has filed a suit for partition which is not maintainable in law. Hence, prayed for dismissal of suit with exemplary costs.

9. After completion of pleadings, the learned Trial Judge has framed the following issues and additional issues:-

ISSUES

- 1) *Whether the Plaintiff proves that he contributed the amount while purchasing the suit properties in the name of Defendants No.3 and 4 as urged?*
- 2) *Whether the Plaintiff further proves that he is having share over the suit properties as urged?*
- 3) *Whether the Defendant No.3 proves that the suit of the Plaintiff is bad for non-joinder of necessary parties as urged?*
- 4) *Whether the Plaintiff is entitle for the relief of partition as sought?*
- 5) *What Order or Decree?*

Addl. Issues:

1. *Whether the Defendant No.3(b) proves that the Plaintiff has already relinquished his rights over the schedule A property in lieu of taking 1 gunta of residential land and also receiving Rs.24,000/-?*
2. *Whether the Defendant No.3(b) further proves that the suit is hopelessly barred by limitation?*

10. On behalf of plaintiff, plaintiff was examined as PW1, examined a witness as PW2, apart from marking Exs.P1 to P22 and closed his side before the trial Court. On behalf of defendant Nos.3 and 4, defendant No.4 and one of

the legal representatives of defendant No.3 were examined as DW.1 and DW.2 and got marked Exs.D.1 to D.19 and closed their side before the trial Court.

11. After recording evidence of both sides and hearing arguments of both sides, the learned trial judge came to the conclusion that plaintiff by producing Exs.P8, P15 and other relevant documents has established that plaintiff has contributed for purchase of suit 'B' schedule property and defendant No.1 has contributed for purchase of suit 'A' schedule property and thus decreed the suit as prayed in the plaint.

12. Aggrieved by said judgment and decree, legal representatives of defendant No.3 and defendant No.4 have preferred the present appeal.

13. Heard arguments of both sides.

14. Learned counsel for appellants Sri.Arvind D. Kulkarni would contend that marriage of defendant Nos.3 and 4 has taken place in the year 1988 whereas suit 'A'

schedule property was purchased in the Year 1987 in the name of defendant No.3. But, in the plaint it is stated that said property was purchased in the name of defendant Nos. 3 & 4 only to facilitate them to obtain loan, which is apparently wrong. Learned counsel for Appellant would further submit that according to the recitals of Ex.P.1-sale deed, only ₹.30,000/- was the sale consideration amount i.e. ₹.5,000/- was paid in advance and ₹.25,000/- was paid in presence of Sub-Registrar. But, the Sub-Registrar has collected stamp duty only based on market value of the property at ₹.43,500/-. Admittedly, as on the date of said sale deed, no joint family nucleus, as there was no property standing in the name of any of the family members at that time. Suit 'A' schedule property was first purchased property by defendant No.3.

15. Learned counsel for appellants would further submit that as far as Ex.D.5 is concerned, it is defendant No.4 who has taken loan of ₹.1,40,000/- from LIC on 21.12.1989 for construction of house in suit 'A' schedule

property. He would further submit that the documents produced by plaintiff themselves establish that according to plaintiff through Cheque No.963581, he has given ₹.1,85,000/- to defendant No.3 on 09.05.2005, but said cheque was returned on 10.05.2005, cash of ₹.1,85,000/- was deposited in the bank account of defendant No.3. According to plaintiff, the second cheque was for ₹.1,60,000/- and it was given by the wife of plaintiff and she is not a party to the suit. Even considering all these things, only ₹.4,00,000/- was paid and not ₹.5,85,000/- as alleged by the plaintiff. Furthermore, Ex.P.9 receipt is for ₹.5,00,000/- and it is not tallying with either to ₹.5,85,000/- or to ₹.4,00,000/- and furthermore, in Ex.P9, it is stated that only for funding purchase of house this amount is paid by plaintiff to defendant No.3 and not for any other purpose and thus plaintiff cannot be called as joint owner in respect of suit 'B' schedule property. Furthermore, suit 'B' schedule property is purchased in the name of defendant No.2 and she has taken loan from Indian Overseas Bank. Her loan account details establish that

₹.6,00,000/- loan was taken on 10.05.2005 and credited to her savings bank account on the same day. Hence, said argument is also not tenable in law. Hence, as both properties i.e. suit 'A' and suit 'B' schedule properties are purchased by defendant Nos.3 and 4 in their respective names and they have produced ample material before the Court to show that defendant Nos. 3 and 4 were working at BSNL since long time prior to purchase of suit 'B' schedule property and some time prior to purchase of suit 'A' schedule property. Hence, they were having sufficient nucleus to purchase these two properties and they have also obtained loan for construction of the house in suit 'A' schedule property.

16. Learned counsel for appellants would further submit that Ex.P15 cannot confer any rights over these two properties to plaintiff or to other defendants because it is not duly stamped and not registered in accordance with law. Its nomenclature itself is incorrect. This document is not fit into any type of transactions admissible under law.

However, these facts are not considered by the trial Court and suit was wrongly decreed.

17. The learned counsel for appellants would further submit that as the suit 'B' schedule property was purchased for a sum of ₹.9,00,000/-, But, stamp duty was paid on ₹.9,85,000/- as it was the market value fixed by Sub-Registrar. These facts clearly establish that plaintiff is not aware about the total sale consideration for both suit 'A' and suit 'B' schedule properties. It is his contention that he and other defendants have contributed for purchase of suit 'A' schedule property and he has contributed for purchase of suit 'B' schedule property holds no water. Hence, prayed for dismissal of appeal with costs throughout. Hence, prayed for allowing the appeal and to dismiss the suit of plaintiff in respect of both suit 'A' and 'B' schedule properties.

18. Learned counsel for respondent No.1/plaintiff would submit that admittedly father of plaintiff and defendant Nos.2 and 3 i.e. defendant No.1 was working as Chief Jailer and retired from service in the year 1980 and he

was getting pension. Thus, there was income for the family. Since 1981 onwards plaintiff, defendant Nos.2 & 3 were all working. Defendant No.3 was working from 1980. Defendant No.1 was working from 1981 and plaintiff was working as advocate from 1987 and prior to that he was working as Civil Contractor and thus all of them were residing together and they were blending their income and thus they have purchased suit 'A' schedule property in the name of defendant No.3 only because defendant No.3 was working in BSNL and it was easy for them to get loan from the bank.

19. Learned counsel for plaintiff would further submit that accordingly on 19.09.1997 as per Ex.P15, defendant No.3 has executed the document in favour of plaintiff, defendant Nos.2 & 3, wherein he acknowledges the receipt of ₹.36,000/- from his father at the time of purchase of suit 'A' schedule property and acknowledges the receipt of ₹.35,000/- at the time of construction of house in suit 'A' schedule property. Hence, there is major contribution from

defendant No.1-father to purchase suit 'A' schedule property. Hence, not only plaintiff, defendant Nos.2, 3 and 5 to 7 will get equal share in said property. But, the trial Court has granted 1/4th share to plaintiff and he fairly concedes the error on this point by the trial Court.

20. Learned counsel for plaintiff would further submit that as far as purchase of suit 'B' schedule property is concerned, it is purchased in the name of defendant No.4 for a sum of ₹.9,75,000/- under registered sale deed dated 10.05.2005. At that time on previous day of this sale deed, totally ₹.5,85,000/- was given by plaintiff to defendant No. 3 and it is through bank transaction and it clearly establishes that plaintiff has contributed at least 50% to purchase said property. Hence, he is entitled for half share in suit 'B' schedule property. He would further contend that even though in the sale deed, the sale consideration amount is only mentioned as ₹.30,000/- in respect of suit 'A' schedule property, the stamp duty and registration charges would be ₹.6,100/- and there will be other

miscellaneous expenses also and thus father has paid ₹.36,000/- for its purchase and remaining petty amount was being paid by defendant No.3 and it is clearly admitted by defendant No.3 in Ex.P.15. Exs.P.16, P.17 and P.22 establish the payment of ₹.5,85,000/- by plaintiff to defendant Nos.3 and 4.

21. After hearing the arguments of both sides and upon verifying the appeal papers along with Trial Court records, the following point would arise for consideration:

1. Whether the judgment and decree passed by the Trial Court is erroneous and it requires interference?

22. Finding of this Court on the above point is in **'affirmative'** for the following reasons:

23. The admitted facts of the case are that plaintiff and defendants No.2 & 3 are brothers and defendants No.4 to 7 are sisters. Plaintiff, defendants No.2, 3 and 5 to 7 are children of defendant No.1. During pendency of the case,

defendant No.1 died and his LRs. i.e., plaintiff, defendants No.2, 3 and 5 to 7 were already on record; Defendant No.3 died during the pendency of the appeal and he is represented by his LRs. i.e., defendants No.3(a and b) and also his wife-defendant No.4; Defendant No.5 also died during the pendency of the matter and her LRs. defendant No.5(a) is brought on record.

24. The relationship between parties is admitted. Suit 'A' schedule property is Plot No.8 measuring 2 guntas and 2 annas and suit 'B' schedule property is Plot No.7 measuring 3 guntas and 13.5 annas.

25. Certified copies of Sale deeds as per Ex.P.1 & 3 reveals that suit 'A' schedule property was purchased in the name of defendant No.3 for a sum of ₹.30,000/- under registered sale deed dated 03.11.1987 and suit 'B' schedule property is purchased in the name of defendant No.4 for a sum of ₹.9,00,000/- under registered sale deed dated 10.05.2005. However, stamp duty for suit 'A' & 'B' schedule property was paid on the existing market value of

₹.43,500/- and ₹.9,85,000/- respectively. This sale deed as per Ex.P.1 further reveals that totally ₹.5,220/- towards stamp duty and ₹.882/- towards registration charges i.e., ₹.6,100/- is paid.

26. It is the specific contention of plaintiff that his father has contributed a sum of ₹.36,000/- to purchase suit 'A' schedule property, which was vacant plot and ₹.35,000/- for putting up of construction in suit 'A' schedule property and thus it is the joint family properties of plaintiff and defendants No.1 to 3 and 5 to 7. It is his further contention that to purchase suit 'B' schedule property, he has contributed ₹.5,85,000/- and it is purchased for a sum of ₹.9,85,000/-.

27. As discussed above,, in both these sale deeds, sale consideration amount mentioned is ₹.30,000/- and ₹.9,00,000/- respectively, whereas plaintiff in the plaint and in his evidence contended that the sale consideration amount is ₹.43,500/- and ₹.9,85,000/- respectively. Hence, learned counsel for defendants No.3 and 4 would submit

that plaintiff is not aware about the actual sale consideration amount itself to purchase these two properties. This shows that he has not contributed anything for purchase of these two properties. Hence, he is not entitled for any share in these two properties.

28. It is to be noted here that at the time of purchase of suit 'A' schedule property in the year 1987, plaintiff, defendants No.2 and 3 were unmarried. Marriage of defendant No.3 was celebrated in the year 1988. After such marriage, defendant No.3 & 4 together have obtained loan of ₹.1,40,000/- from LIC and put up construction in suit 'A' schedule property. Ex.D.5 is the loan account extract, which establishes the same.

29. As far as purchase of suit 'B' schedule property is concerned, it was purchased on 10.05.2005.

30. It is the specific contention of plaintiff in the plaint and also in his affidavit evidence that totally he has contributed ₹.5,85,000/- for purchase of this suit 'B' schedule property. In this regard, he has stated that he has

issued Cheque bearing No.963581 of Canara Bank for a sum of ₹.1,85,000/-; another Cheque of Corporation Bank bearing No.062985/- was issued for a sum of ₹.1,60,000/-, another cheque of MG Bank was issued for a sum of ₹.55,000/-, and ₹.1,85,000/- cash was deposited in the Indian Overseas Bank.

31. The account extract of defendant No.3 establishes that Cheque bearing No.963581 of Canara Bank for a sum of ₹.1,85,000/- was returned on 10.05.2005. Hence it was not encashed.

32. Ex.P.16 is the bank account extract of one Leelavati Ganapathrao Mulgund, who is none other than the wife of plaintiff and from her account, this ₹.1,60,000/- was transferred on 07.05.2005. Ex.P.17 is the Canara Bank account of plaintiff. According to it, on 10.05.2005 he has withdrawn ₹.1,85,000/- as per Cheque No.963582 for self.

33. Ex.D.1 is the bank account extract of defendant No.3. It reveals that ₹.1,60,000/- is received from the bank account of wife of plaintiff on 09.05.2005. On the same day

i.e., 09.05.2005, ₹.55,000/- is received from the bank account of plaintiff and Cheque of ₹.1,85,000/- was returned on 09.05.2005, but cash of ₹.1,85,000/- is deposited on 10.05.2005. The loan account of defendant No.4 as per Ex.D.6 reveals that ₹.6,00,000/- was transferred from the loan account on 10.05.2005 to her savings bank account.

34. The certified copy of sale deed produced by the plaintiff as per Ex.P.3 reveals that ₹.6,00,000/- was transferred from the Indian Overseas Bank account of the purchaser i.e., of defendant No.4 to the bank account of seller; ₹.10,000/- was paid in advance and remaining ₹.2,90,000/- was paid through Banker's Cheque bearing No.802178 dated 10.05.2005 and thus the entire sale consideration amount was paid.

35. Even though defendants No.3 & 4 have denied receipt of the aforesaid amounts by plaintiff and his wife to defendant No.3, these documents clearly and categorically establish the payment of ₹.1,85,000/- cash, ₹.1,60,000/-

through Cheque of the wife of plaintiff, ₹.55,000/- through Cheque of plaintiff. Thus, ₹.4,00,000/- was transferred from the bank accounts of plaintiff and his wife to bank account of defendant No.3.

36. In this regard, defendant No.3 has written one receipt as per Ex.P.9. Its recitals are as follows:

"RECEIPT"

Received Rs.5,00,000/- (Rupees Five lakhs only) from my brother R.H. KULKARNI, "Parijata" I main Road, Jayanagar, Dharwad on 10.5.2005 for funding purchase of house."

Below that, name and signature of defendant No.3 is forthcoming in Ex.P.9.

37. Defendant No.3 has also executed one agreement as per Ex.P.15 dated 19.09.1997. It is recited in that document that father of defendant No.3 during 1987 has given ₹.36,000/- for purchase of plot No.44/E-8 measuring 2 guntas and 2 annas situated at C.I.T.B. Jayanagar, Saptapur Village, which was purchased for a sum of ₹.43,500/-. Out of which, ₹.36,000/- was paid by the father and remaining amount is given by defendant

No.3. Afterwards, to construct the house in that property, they have taken loan from LIC and at that time their father has given ₹.35,000/- for construction of the house. Thus, according to the recitals of this document, it is the father of plaintiff and defendants No.2, 3 and 5 to 7 who gave ₹.35,000/- for construction of the house.

38. It is an admitted fact that the construction of house was completed in the year 1990 and since from 1990 till 2010, plaintiff and defendant No.2 along with defendant No.1 were residing in the same house. Defendants No.3 and 4 were also residing in the same house. But in the meanwhile whenever they were transferred from Dharwad to other places i.e., Bengaluru and Hubballi, they were residing in Bengaluru and Hubballi respectively and even at that time, plaintiff, defendants No.1 and 2 with their family members were residing in the same house.

39. These facts clearly and categorically establish the contribution of money by the father of plaintiff and defendants No.2, 3 and 5 to 7 to purchase and construct a

house in suit 'A' schedule property. In this regard, defendants No.3 and 4 have produced Ex.D.5, the details of housing loan issued by the Senior Divisional Manager of LIC, Dharwad Branch. According to this document, loan of ₹.1,40,000/- sanctioned to defendants No.3 and 4 jointly for construction of a house at suit 'A' schedule property, which was completely repaid on 05.10.2000.

40. Learned counsel for defendants No.3 and 4 vehemently submits that Ex.P.15 is an inadmissible document because it is unstamped and it is not fit into any type of transaction. The further recitals of this document are that the ownership of defendant No.3 would be confirmed only after defendant No.3 gave one gunta property and cash of ₹.24,000/- to plaintiff and defendant No.2 in Dharwad and they have to get it registered into their name without any delay and only afterwards defendant No.3 would become the absolute owner of suit 'A' schedule property and it is accepted by all the members of

family. It is duly signed by defendant No.3 and signed by some of the attestors.

41. Even though it is recited in this document that defendant No.3 will give a property of one gunta and ₹.24,000/- to plaintiff and defendant No.2, it appears that no such property and cash was given by defendant No.3 to plaintiff and defendant No.2.

42. It is to be noted here that plaintiff, defendants No.2, 3 and their family members together resided in suit 'A' schedule property from 1990 till 2010 i.e., for a continuous period of 20 years even in the absence of defendant No.3 & 4 and they have not given any rent during their stay. This factum is clearly and categorically admitted by defendant No.4 in her cross-examination.

43. It is to be noted here that the sale deed is in the name of defendant No.3 and even then why defendant No.3 executes such letter as per Ex.P.15 saying that he would give property and cash and then only he would become absolute owner of said property. These recitals at

undisputed point of time during 1997 itself reveals that when both parties were cordially living together under single roof, even though this property was purchased in the name of defendant No.3, it appears it is blended in the joint family.

44. Learned counsel for defendants No.3 & 4 would submit that there is no joint family property exists before purchase of suit 'A' schedule property and hence there is no question of blending of this property.

45. It is not in dispute that prior to purchase of suit 'A' schedule property, no other immovable property was in the joint family; father of plaintiff and defendants No.2 & 3 was working as Chief Jailor i.e., he had Government job and retired during 1980 and he was getting pension. Thus, though there is no joint family, immovable property existed prior to purchase of suit 'A' schedule property; it is defendant No.1 and plaintiff and defendants No.2 and 3 and also plaintiff were working and all of them were getting the income. When all of them were residing together under

same roof, it appears that they have blended their income to construct the house in suit 'A' schedule property. Hence, only for that reason, it appears that this letter as per Ex.P.15 came into existence. This letter does not confer or extinguish any right on any property. It is only a remark that defendant No.3 would get absolute right over suit 'A' schedule property after he makes some arrangements to plaintiff and defendant No.2. That itself cannot be considered as the relinquishment of right of plaintiff and defendant No.2 in the property or conferring right to defendant No.3 on the property. Hence, it is only a family arrangement and thus it need not be stamped or registered. Hence, the arguments of learned counsel for defendants No.3 & 4 that this document requires compulsory registration are not proper.

46. As far as taking loan and repayment in respect of suit 'B' schedule property is concerned, it is not in dispute that father of plaintiff and other defendants was getting pension and he was having his pension account as per

Ex.P.22. This document reveals that he was making some payments often to the account of defendant No.3 and sometimes to the loan account. On 09.05.2011, through Cheque No.598447, ₹.1,55,000/- was credited to the account of defendant No.3. Likewise, there are several transactions in this document, which reveal that often ₹.10,000/-, ₹.3,000/-, ₹.4,000/-, etc., were being transferred from the account of defendant No.1 to defendant No.3 even after 2010. Thus, the contention of plaintiff of blending is substantiated even by producing Ex.P.21.

47. It is the contention of plaintiff that as defendant No.3 was working in BSNL and defendant No.4 was also working in BSNL, it was easy for them to obtain housing loan and hence suit 'A' and 'B' schedule properties were purchased in the name of defendants No.3 and 4 respectively.

48. It is not in dispute that defendants No.3 and 4 were working in BSNL. Defendant No.3 commenced his job

in BSNL during 1983 as class-III telephone operator. Thus, there would not be huge sum of salary to defendant No.3 at that time.

49. With this background, the oral evidence of both sides is to be looked into.

50. To substantiate the contention of plaintiff, plaintiff examined a witness as P.W.2. He has stated in his affidavit evidence regarding payment of ₹.5,00,000/- by plaintiff to defendant No.3. In this regard, he was examined in respect of Ex.P.9. According to Ex.P.9, it is only stated that defendant No.3 received ₹.5,00,000/- from plaintiff. But according to cross-examination of P.W.2, ₹.5,00,000/- cash was paid on that day because it was suggested to him that whether ₹.5,00,000/- cash was paid in his presence on that day, for which he answered 'yes'. However, according to contention of plaintiff under different Cheques and cash, he has paid the amount as discussed above. Accordingly, because P.W.2 deposed that ₹.5,00,000/- was paid in his presence, that would not take away the entire case of

plaintiff because his case is based on documentary evidence as discussed above.

51. D.W.1 is defendant No.4 in this case. Her contention is that it is she and defendant No.3 alone has contributed for purchase of suit 'B' schedule property. In this regard, in the cross-examination, defendant No.4 admitted the signature of her husband in Vakalathnama and also in written statement. Even according to her, suit 'A' schedule property was purchased for a sum of ₹.45,000/- and not ₹.30,000/- as per the recital. According to her, she purchased suit 'B' schedule property for a sum of ₹.9,00,000/- for which ₹.6,00,000/- was taken as loan from Indian Overseas Bank. ₹.1,00,000/- was her savings and ₹.2,00,000/- was given by defendant No.3. She has not produced any other document except the documents as discussed above to prove the aforesaid contention.

52. She has not produced documents to show that she was having savings of ₹.1,00,000/- in her account at the time of purchase of this property. According to her,

defendant No.3 has obtained loan from BSNL Employees Co-operative Society to purchase suit 'A' schedule property and to put up construction on it. But no such documents are produced to prove it. Suit 'B' schedule property was already consisted of a house property. Defendants No.3 and 4 have taken loan by mortgaging suit schedule property only for the education of defendant No.3(a).

53. By examining all the above factors, rightly the learned Trial Judge came to the conclusion that major contribution for purchase of suit 'A' schedule property is by the father of plaintiff and defendants No.2, 3 and 5 to 7. Even though he came to that conclusion, while passing decree, $1/4^{\text{th}}$ share is awarded to plaintiff and defendants No.1 to 3 in suit 'A' schedule property and excluded defendant No.5 to 7.

54. However, when father has made major contribution to purchase the property and also made some contribution to put up construction in it and when all the parties resided together in that property as the joint family

property, then all the sons and daughters of defendant No.1 will get equal share in that property and thus the share of plaintiff shall be only $1/6^{\text{th}}$ on this property and not $1/4^{\text{th}}$ as prayed by him and as granted by the Trial Court. Hence, that portion of judgment is to be modified.

55. Even though plaintiff has not produced proper evidence to show that entire ₹.5,85,000/- was paid by him to purchase suit 'B' schedule property, but he has produced materials to show that on 06.05.2005, 09.05.2005 and 10.05.2005 i.e., he and his wife have contributed ₹.4,00,000/- to purchase suit 'B' schedule property and it was purchased on 10.05.2005. Under those circumstances, definitely plaintiff also contributed to purchase suit 'B' schedule property is established by him.

56. Considering it, the learned Trial Judge has granted $1/2$ share to plaintiff in suit 'B' schedule property.

57. As far as suit 'B' schedule property is concerned, there is no evidence to show that except plaintiff, his wife and defendants No.3 and 4, other parties i.e., defendants

No.2 or 1 have contributed to purchase this property. Hence, both plaintiff and defendants No.3 and 4 are entitled for ½ share and thus the decree in respect of said property is unaltered.

58. Thus, contention of plaintiff is that his father has repaid some of the loan amount made by defendants No.3 and 4 even in respect of suit 'B' schedule property and in this regard, he relied upon Ex.P.22-bank account extract of his father as discussed above.

59. According to Ex.D.5, the loan account of both defendant No.3 & 4 in respect of suit 'A' schedule property was cleared on 5.10.2000. Thus, any payment by father to the loan account of defendant No.3 would be only pertaining to suit 'B' schedule property. As discussed above, there are several transactions in Ex.P.22 that father has paid amount to the account of defendant No.3. Once, it was ₹.1,55,000/- as stated above. Thus, the contention of plaintiff of blending the income of all family members is substantiated by this entry.

60. Under these circumstances, when father and plaintiff and defendants No.3 & 4 contributed for purchase of suit 'B' schedule property and when all the members were residing together in these properties and when there was blending of their income, then, it is impossible to say who contributed how much, the plaintiff, defendants No.2, 3 and 5 to 7 will be equally entitled for $1/6^{\text{th}}$ share even in suit 'B' schedule property. However, the learned Trial Judge has granted $1/2$ share to plaintiff in suit 'B' schedule property and not granted share to other defendants. Hence, all are entitled for equal share even in suit 'B' schedule property. However, the learned Trial Judge has not considered these aspects properly and decreed the suit granting $1/2$ share in suit 'B' schedule property, which is not proper.

61. For the above reasons, we proceed to pass the following:

ORDER

1. The appeal filed under Section 96 read with Order XLI Rule 1 of CPC is allowed in part.

2. Judgment and decree dated 22.11.2019 passed in O.S.No.107/2013 on the file of Principal Senior Civil Judge and CJM, Dharwad is hereby modified.
3. Share of plaintiff in suit 'A' & 'B' schedule property shall be $\frac{1}{6}^{\text{th}}$ instead of $\frac{1}{4}^{\text{th}}$ and $\frac{1}{2}$ respectively as granted by the Trial Court.
4. Draw preliminary decree accordingly.
5. Send back TCR along with copy of this judgment to Trial Court for reference.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

IN THE HIGH COURT OF KARNATAKA AT DHARWAD
[BHAGYASHREE @ BHAGYA W/O NARAYAN KULKARNI AND OTHERS VS.
RAMACHANDRA S/O HANUMANTHRAO KULKARNI AND OTHERS]

26.02.2026

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MRS JUSTICE GEETHA K.B.

ORAL ORDER

(PER: HON'BLE MRS JUSTICE GEETHA K.B.)

ORDER ON FOR BEING SPOKEN TO

The observation in paragraph 57 of the judgment is the finding of the trial Court.

Learned counsel for the respondent would submit that there is some ambiguity at point 3 of the operation portion of the order.

As already discussed in para 59 and 60 of the judgment, the operative portion of the order at point No.3 is clarified as under:

"3. Share of plaintiff in suit 'A' schedule property shall be 1/6th instead of 1/4th granted by the trial Court and share of the plaintiff in suit 'B' schedule property shall be 1/6th instead of 1/2 granted by the trial Court."

This order shall be in conjunction with the judgment passed in the above appeal.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE