

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 30TH DAY OF JANUARY, 2026
BEFORE
THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.
REGULAR FIRST APPEAL NO.100017 OF 2018 (PAR/POS)

BETWEEN

1. SMT. PUTTAVVA
W/O. SANGAPPA GADDI,
AGE: 55 YEARS, OCC: HOUSEHOLD WORK,
R/O: ALLAPUR,
TQ: HANAGAL, DIST: HAVERI.
2. KUM. SAVITA
D/O. SANGAPPA GADDI,
AGE: 31 YEARS, OCC: HOUSEHOLD WORK,
R/O: ALLAPUR,
TQ: HANAGAL, DIST: HAVERI.
3. KUM. SUNITA
D/O. SANGAPPA GADDI,
SINCE DECEASED BY HER LRS-
APPELLANT NO.1.
4. KUM. KAVITA
D/O. SANGAPPA GADDI,
AGE: 26 YEARS, OCC: HOUSEHOLD WORK,
R/O: ALLAPUR,
TQ: HANAGAL, DIST: HAVERI.

...APPELLANTS

(BY SRI. N.S. KINI, ADVOCATE)

AND

1. SMT. RESHMA
W/O. RAVI VERNEKAR,
AGE: 22 YEARS, OCC: STUDENT,
R/O: BANKAPUR, TQ: SHIGGAON,
DIST: HAVERI.
2. GANESH
S/O. RAVI VERNEKAR,
AGE: 22 YEARS, OCC: STUDENT,
R/O: BANKAPUR, TQ: SHIGGAON,
DIST: HAVERI.
3. SANTOSH
S/O. RAVI VERNEKAR,
AGE: 25 YEARS, OCC: STUDENT,
R/O: BANKAPUR, TQ: SHIGGAON,
DIST: HAVERI.
4. SHANTAPPA
S/O. TIPPANNA SHANKRIKOPPA,
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
5. SMT. IRAVVA
W/O. KANTEPPA DODDAMANI,
AGE: 68 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
6. FAKKIRESH
S/O. KANTEPPA DODDAMANI,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
7. MALAKAPPA
S/O. KANTEPPA DODDAMANI,
AGE: 46 YEARS, OCC: AGRICULTURE,

R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.

8. CHANNABASAPPA
S/O. KANTEPPA DODDAMANI,
AGE: 44 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
9. SHEKHAPPA
S/O. KANTEPPA GADDI,
AGE: 55 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
10. SMT. SHANTAVVA
W/O. CHANNAPPA GADDI,
AGE: 65 YEARS, OCC: HOUSEHOLD WORK,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
11. SHANKRAPPA
S/O. CHANNAPPA GADDI,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
12. NINGAPPA
S/O. CHANNAPPA GADDI,
AGE: 43 YEARS, OCC: AGRICULTURE,
R/O: ALLAPUR, TQ: HANAGAL,
DIST: HAVERI.
13. SHRIKANTA
S/O. CHANNAPPA GADDI,
SINCE DECEASED BY HIS LR'S
- 13(a). SMT. SUREKHA,
W/O. SHRIKANTA GADDI,
AGED ABOUT 28 YEARS,
OCC: HOUSEWIFE,

R/O. ALLAPURA,
HANAGAL, HAVERI.

14. SMT. SHIVALEELA
S/O. HOLABASAPPA SHETTAR,
AGE: 42 YEARS, OCC: HOUSEHOLD WORK,
R/O: ALLAPUR, TQ: HANGAL,
DIST: HAVERI.

15. CHANNAPPA
S/O. BASAVANNEPPA GADDI,
SINCE DECEASED BY HIS LR'S
WHO ARE ALREADY ON RECORD AS
RESPONDENTS NO.10, 11, 12 & 14.

...RESPONDENTS

(BY SRI. SHIVASAI M. PATIL, ADVOCATE FOR R1-R3, R5-R8;
SRI. VISHWANATH HEGDE, ADVOCATE FOR R4;
NOTICE TO R9, R10, R11, R12, R13(A), R14 SERVED;
R15 IS DEAD, R10-R12, 14 ARE LRS OF DECEASED R15)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CODE OF CIVIL PROCEDURE PRAYING TO THE JUDGMENT AND DECREE DATED 23.09.2017 PASSED BY THE COURT OF SENIOR CIVIL JUDGE AND JMFC, HANAGAL, DISMISSING THE SUIT IN RESPECT OF SL.NO.1, 4, 5 & 7 OF SUIT SCHEDULE A PROPERTY MAY KINDLY BE SET ASIDE, AND THE SUIT IN O.S. NO.7/2007 MAY KINDLY BE DECREED IN FULL WITH COST THROUGHOUT IN INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14.01.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

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

This appeal is filed under Section 96 of CPC by the appellants questioning the judgment and decree dated 23.09.2017 passed in O.S. No. 7/2007 on the file of Senior Civil Judge and JMFC., Hangal in dismissing their suit in respect of item No. 1, 4, 5 and 7 of suit 'A' schedule properties.

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

3. Plaintiffs have filed the suit for partition and separate possession of their 4/5th share in respect of suit schedule properties by metes and bounds and to declare that the sale transaction in between defendant No.1 and defendant Nos.2 to 4 is not binding on the plaintiffs; for Court costs and for such other reliefs.

4. The case of plaintiffs in nutshell is that suit schedule property described in schedule 'A' and 'B' are the

joint family properties of plaintiffs and defendant No.1. Plaintiff No.1 is the wife of defendant No.1 and plaintiff Nos.2 to 4 are his daughters and they constitute Hindu joint family. Defendant No.1 is the Manager of joint family and addicted to bad vices like drinking alcohol, playing cards and a womanizer and to fulfill those bad vices, he has wasted the joint family income. Plaintiffs and first defendant's family is joint family having sufficient income, there was no necessity for first defendant either to raise loan or to alienate the properties for the benefit of the joint family. Scheduled properties are fertile and irrigated lands. Plaintiff No.2 is a handicapped lady and she is completely bedridden. Defendant No.1 has not at all looked after her and neglected to maintain the plaintiffs. There was some dispute in this regard in between plaintiffs and defendant No.1., since eight years, Defendant No.1 is residing separately from the plaintiffs and not maintaining the joint family. Now, due to his bad habits and ill-treatment to plaintiffs, they decided to reside separately from the joint family. Therefore, they demanded their legitimate share in

suit schedule properties with defendant No.1 during November-2006. However, defendant No.1 denied to give their legitimate share in the last week of November-2006 and immediately plaintiffs have obtained record of rights of suit schedule properties and then came to know that defendant No.1 without family necessity has sold suit item No.1 in favour of defendant No.3; item Nos.2 & 3 in favour of defendant No.2 and again defendant No.2 sold one of those items to defendant No.4. Hence, they are made as parties to the suit. Defendant No.5 is also having half-share in suit schedule item No.1. Hence, he is also made as party to the suit. The tractor and trailer bearing No.KA-37/TA 903 and KA-27/TA-904 are not in possession of the joint family and not purchased by the joint family. But, plaintiffs came to know that tractor and trailer are purchased by mortgaging the joint family properties. Immediately, plaintiffs have given their objection to the manager of the bank and expressed that said mortgage is not binding on plaintiffs. Said tractor and trailer is also not in possession of joint family. Hence, they are not claiming any share in the

said properties. They further contended that defendant No.1 in collusion with defendant Nos.2 to 5 only with an intention to grab the equal share of plaintiffs in suit schedule properties, behind their back has sold item Nos.1 to 3 in favour of defendant Nos.2 to 4 without family necessity and not for the benefit of joint family. Hence, the alleged transactions are illegal, unlawful and not binding on the shares of plaintiffs. Defendant Nos.2 to 4 knowing fully well that defendant No.1 has no right, title whatsoever to alienate the properties, behind the back of plaintiffs has purchased them without making any enquiry. Therefore, the alleged transactions are not binding on the plaintiffs. Hence, suit for appropriate reliefs.

5. Defendant No.1 has filed his written statement wherein he admitted the relationship between parties and also admitted that he is the manager of joint family but denied all other allegations made against him regarding bad vices, etc. He contended that he had dug six bore wells, out of which only 2 bore wells were successful and functioning

and from the water of those two bore wells he is irrigating the lands. He has given good education to plaintiff No.2 by spending more than ₹.1,00,000/- and got admitted her to D.Ed. at Harohalli in Kanakapura Taluk by spending more than ₹.1,00,000/-. He has searched a bridegroom for plaintiff No.2 and has performed her marriage. By suppressing these facts, suit is filed. Plaintiff No.2 is not only doing household work but she is working. Plaintiff No.4 is studying in SSLC and there is no one to assist defendant No.1, who is working hard in agricultural lands. He denied all other averments made in the plaint regarding wasting money and purchasing tractor and trailer and also selling property without any legal necessity or for family benefit. Defendant No.1 further took contention that for the purpose of cultivation of joint family property, he has obtained loan of ₹.10,000/- as crop loan from SBI, Hangal and as per M.E. No.443, charge is created on said bank. He has taken loan of ₹.8,000/- from the same bank in the year 1986 and accordingly, as per M.E. No.462, charge is created. Because of irregular monsoons, he could not get good crops

from the agricultural properties and continuously there was drought for more than 3 years and thus he could not repay the loan amount of the bank. Consequently, the Bank has filed suit against defendant No.1 before Civil Judge(Senior Division), Haveri for recovery of the loan amount and as he has mortgaged the property to said bank. He has repaid the bank loan amount of more than ₹.1,00,000/- and got redeemed Re-survey No.33/1+2B. For such redemption and to save other joint family properties, he was compelled to alienate Re-survey No.41/1+2C measuring 4 acres 18 guntas of Allapur village, Hangal taluk to one Sri.Raveendra alias Ravi (defendant No.2) for a sum of ₹.1,50,000/- by executing registered sale deed dated 19.06.2000 and based on it, under M.E. No.2723 dated 01.10.2000, name of purchaser is entered in revenue records and it is certified. Plaintiffs are aware about these facts. They were aware that, the said sale is for legal necessity of the family and thus, they kept quiet for all these years. Likewise, defendant No.1 has alienated Re-survey No.33/1+2B/1+2B measuring 3 acres 13 guntas of Allapur Village, Hangal

Taluk for valuable consideration to defendant No.2, who alienated the same to one Kantappa i.e., defendant No.4 for a sum of ₹.1,00,000/- under a registered sale deed dated 06.02.2004. Based on it, his name appeared in record of rights as per M.E.No.638 dated 24.03.2004. Accordingly, defendant No.4 became absolute owner of said property. Defendant No.1 and plaintiffs are living together. Defendant No.1 is the only sole surviving coparcener and manager of the family, he got absolute right to deal with family properties for family necessities. His rights cannot be curtailed by taking injunction order. Defendant No. 1, for benefit of joint family and to cultivate the remaining family properties has purchased tractor bearing No.KA-27/TA-903 and trailer bearing No.KA-27/TA-904 by obtaining loan from SBM, Haveri by mortgaging the suit schedule properties on 28.11.2006, since it is very difficult to get labourers to cultivate the properties, it is defendant No.1 who is working hard day and night to look after the joint family. The brother of plaintiff No.1-Dundappa Shivappa Nandikatti of Narayanpura-Shiggaon instigated the plaintiffs with a

jealous nature to destroy the family is the cause for filing present false suit. Hence, prayed for dismissal of suit with compensatory costs of ₹.3,000/-.

6. Defendant No.4 filed his written statement wherein he has taken similar contentions taken by defendant No.1 in his written statement. He further contended that even after filing the suit, defendant No.1 is acting as manager of the joint family, has solemnized the marriage of plaintiff No.2 by spending huge amount. Hence, the suit is not maintainable in law. Hence, prayed for dismissal of suit with compensatory costs of ₹.5,000/-.

7. Defendant No.3 has filed his written statement wherein he has also taken similar contention taken by defendant No.1 and further contended that the suit is bad for non-joiner of necessary parties and properties, as the other properties are not included in the suit and in owners' column of those properties, names of other persons are included. He further took contention that defendant No.1 considered his daughters as his sons because he is not

having any male issue and has provided good education to them and also performed the marriage of plaintiff No.2 and plaintiff No.4 by spending huge amount. He has further taken contention that since 1991, defendant No.1 is obtaining crop loan and other loans from the agricultural Co-operative Bank Ltd., and also from State Bank, Hangal and from other financial institutions. He has stated about filing of O.S.No.69/1994 against defendant No.1 by the bank for recovery of loan amount and for sale of mortgaged property and at that time, defendant No.1 sold the property to defendant No.3 and defendant No.3 has cleared the bank loans. Defendant No.1 has sent second plaintiff to Bengaluru for her higher education and also spent huge amount for treatment of plaintiff No.3 and was working hard to fulfill the legitimate demands of plaintiffs. The suit schedule properties are not properly valued and court fee paid under Section 35(1) of the Karnataka Court Fees and Suits Valuation Act, 1958 is improper because already some of the properties are alienated and thus plaintiffs are not in joint possession of those properties and they have to pay

Court fee on market value on ₹.1,50,00,000/- and hence prayed for dismissal of suit with costs.

8. After completion of pleadings and framing of issues, on behalf of plaintiffs, plaintiff No.2 was examined as P.W.1, examined a witness as P.W.2 and another witness as PW.3 and got marked Ex.P.1 and Exhibit P.25 before trial court.

9. On behalf of defendants, they examined DW.1 to DW.4 and got marked Exs.D.1 to D.39 and closed their side before trial court.

10. After recording evidence of both sides and hearing arguments of both sides, the trial Court decreed the suit in respect of some of the suit properties, but dismissed the suit in respect of item Nos. 1, 4, 5 and 7 of suit schedule properties on the ground that they were already alienated by defendant No.1 for valuable consideration, for legal necessity and family benefit.

11. Aggrieved by the said judgment and decree, plaintiffs have preferred the present appeal.

12. During pendency of this appeal, plaintiff No.3 died without marriage, plaintiff No.1 being her mother is her legal representative. During pendency of the suit, defendant No.1 died and plaintiffs are his legal representatives. During pendency of the suit, defendant No.2 died and his legal representatives are brought on record as defendant Nos.2(A) to 2(C); Defendant No.4 died and his legal representatives were brought on record as Defendant Nos.4(A) to 4(D). Respondents Nos.13 & 15 are also no more and defendant No.15 is represented by his legal representative i.e. respondent No.15(A).

13. Learned counsel for appellants Sri N.S.Kini would submit that plaintiff No.1 is the wife and plaintiffs No.2 to 4 are daughters of defendant No.1. Defendant No.1 has alienated Item Nos.1, 4 & 5 of suit schedule properties to defendants No.2 to 4 without any legal necessity and not for family benefit. Admittedly, all those properties are ancestral

and joint family properties of plaintiffs and defendant No.1. He would further submit that defendant No.1 was addicted to bad vices like drinking alcohol, gambling and womanizer and for his unlawful and illegal activities, he sold those properties. Plaintiffs No.2 to 4 were his minor daughters at the time of alleged sale deeds. Even though Hindu Succession (Amendment) Act, 2005 (for short, Act of 2005) had not come into force at that time, but Amendment was made on 03.07.1994 by insertion of Section 6-A by Karnataka Amendment (Act 23 of 1994) in the Hindu Succession Act, 1956 and according to this Act, the daughters who were not married at that time were treated as coparceners. Hence, plaintiffs being minor daughters at the time of alienation were coparceners of the family and thus first defendant could not have sold those properties without any family benefit or legal necessity. Defendants have produced some concocted receipts to show that defendant No.1 has dug bore well in his properties and for that purpose, he has obtained loan. However, most of those documents are duplicate documents or replica of already

produced documents i.e., Exs.D.6 and D.13, D.7 and D.4, D.8 and D.9 are one and the same documents. Moreover, the author of those documents is not examined and for which survey-number of property, the bore well is being dug is not mentioned in those documents. Hence, all of them are concocted and created documents.

14. Learned counsel for appellants would further submit that the joint family was having huge properties and there was no occasion to obtain loan from the banks for the welfare of the family and for management of the properties. Defendant No.1 only for his bad vices has obtained loan from bank and other institutions alleging as agricultural loan. Hence, the alleged sale deeds executed in favour of defendants No.2 & 3 by defendant No.1 is not binding on the share of plaintiffs. Third plaintiff was a handicapped girl and no proper treatment was given to her by defendant No.1. The welfare of plaintiffs was not at all looked by defendant No.1. It is only plaintiff No.1 with the assistance of her parental house has looked after plaintiffs No.2 to 4

and has given good education to them and not defendant No.1. However, learned Trial Judge has not considered these aspects and wrongly dismissed the suit in respect of Item Nos.1, 4, 5 & 7 of suit 'A' schedule properties. Furthermore, during pendency of the suit, first defendant died and during pendency of this appeal, third plaintiff died. Hence, as it is, only plaintiffs No.1, 2 & 4 are there and share of plaintiff No.3 to be allotted to plaintiff No.1 and hence prayed for modification of the shares and also prayed for granting decree in respect of Item Nos.1, 4, 5 & 7 of suit 'A' schedule properties.

15. Sri Shivasai M Patil, learned counsel for respondents No.1 to 3 and 5 to 8 would submit that there is ample evidence produced before the Trial Court to show that defendant No.1 has acted prudently on behalf of the joint family and only to protect the interest of joint family and to protect the remaining properties intact, defendant No.1 has executed sale deeds in respect of the aforesaid Item Nos.1, 4 & 5 of suit 'A' schedule property. Defendants

No.2 and 3 are *bonafide* purchasers for value received from defendant No.1. They have made proper enquiries. Defendant No.1 was not addicted to any bad vices as alleged in the plaint. On the other hand, he has looked after plaintiffs well and it has come in the evidence of plaintiffs that defendant No.1 was visiting the house of plaintiffs and was looking after them. Under Ex.P.2 dated 19.06.2000, defendant No.1 has sold Item No.5 of suit 'A' schedule property bearing Re-Sy.No.41/1+2C measuring 4 acres 18 guntas for a sum of ₹.1,50,000/- to defendant No.2. Before that, the suit filed by the bank in O.S.No.69/1994 as per Ex.D.39 for recovery of the loan amount based on mortgage was already decreed.

16. Learned counsel for respondents No.1 to 3 and 5 to 8 would further submit that defendant No.1 has sold Item No.4 of suit 'A' schedule property bearing Re-Sy.No.33/1+2B/1+23 measuring 3 acres 13 guntas for a sum of ₹.73,000/- to defendant No.2. In turn, defendant

No.2 has sold said property to defendant No.4 for a sum of ₹.1,00,000/- under registered sale deed dated 06.02.2004.

17. Learned counsel for respondents would further submit that as far as Item No.1 of suit schedule property is concerned, it was standing in the joint names of defendant No.1 and his brother defendant No.5. Both of them together sold Item No.1 of suit schedule property bearing Sy.No.2 measuring 9 acres 34 guntas under Ex.P.3 to defendant No3.

18. As far as Item No.7 of suit schedule property is concerned, P.W.1 in her affidavit evidence and D.W.4 in his evidence have categorically stated that even though this property is standing in the joint names of defendant No.1 and others, there was partition between defendant No. 1 and his brothers long back and in that partition, this Item No.7 of Suit 'A' schedule property bearing Re-Sy.No.9999, P.R.No.5 measuring 1 acre 26 guntas was fallen to the share of defendant No.7. Considering these aspects, rightly

the Trial Court has dismissed the suit in respect of Item Nos.1, 4, 5 and 7. Hence, it requires no interference.

19. Learned counsel for respondents No.4 would adopt the arguments of learned counsel for respondents No.1 to 3 and 5 to 8 and would pray for dismissal of the appeal.

20. Having heard the arguments of both sides and upon verifying the Trial Court records, the points that would arise for consideration are:

"1. Whether the appellants/plaintiffs prove that the learned Trial Judge erred in holding that sale of Item Nos.1, 4 and 5 is for legal necessity and family benefit and Item No.7 was fallen to the share of defendant No.7 in the earlier family partition that had taken place between defendant No.1 and his brothers?

2. Whether the judgment and decree passed by the learned Trial Judge is erroneous?

3. Whether the judgment and decree of Trial Court requires interference?

4. What order or decree? "

21. Findings on the above points are in **NEGATIVE** for the following:

REASONS

i. The admitted facts of the case are that plaintiff No.1 is wife, plaintiffs No.2 to 4 are daughters of defendant No.1 and in the earlier partition that had taken place between defendant No.1 and his brothers, some of the properties were inherited and succeeded by defendant No.1. Plaintiffs No.2 to 4 being his unmarried daughters at the time of alienation of Item Nos.1, 2 & 5 were coparceners by birth with defendant No.1 as per Section 6-A of the Karnataka Amendment (Act 23 of 1994). Under those circumstances, defendant No.1 being the eldest male members of the family and father of plaintiffs No.2 to 4 is the Kartha of the joint family. Plaintiffs cannot dispute this. Kartha is having every right to alienate the ancestral and joint family properties for the benefit of family or for legal necessity. If he alienates any ancestral property as Kartha, then such alienation binds other members or other coparceners of HUF.

ii. In this regard, learned counsel for respondents relied upon the judgment of Hon'ble Apex Court in Civil Appeal No.5340/2017 dated 16.09.2025 (***Dastagirsab vs. Sharanappa @ Shivasharanappa Police Patil (D) by LRs. and Others***). In the aforesaid judgment, the Hon'ble Apex Court relied upon the judgment of Apex Court in *Beereddy Dasaratharami Reddy vs. V. Manjunath and Another* reported in (2021) 19 SCC 263, wherein His Lordship held at para No.11 and relied upon Hindu Law by Mulla at Article No.254 and 241 as follows:

"11. xxxxx

6. Right of the Karta to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil vide several judgments of this Court including Sri Narayan Bal v. Sridhar Sutar (1996) 8 SCC 54], wherein it has been held that a joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property. A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction against the Karta restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate. Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that

establish the existence of legal necessity and the existence of legal necessity depends upon facts of each case. The Karta enjoys wide discretion in his decision over existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the Karta on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparceners.

7. *Elucidating the position in Hindu law, this Court in Kehar Singh v. Nachittar Kaur (2018) 14 SCC 445 has referred to Mulla on Hindu Law and the concept of legal necessity to observe thus: (SCC pp. 449-51, paras 20-21 & 26)*

"20. Mulla in his classic work Hindu Law while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

'Article 254

254. Alienation by father.—A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral

immovable property to the extent mentioned in Article 224;

(2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes (Article 294).'

21. What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

'Article 241

241. What is legal necessity.—The following have been held to be family necessities within the meaning of Article 240:

- (a) payment of government revenue and of debts which are payable out of the family property;*
- (b) maintenance of coparceners and of the members of their families;*
- (c) marriage expenses of male coparceners, and of the daughters of coparceners;*
- (d) performance of the necessary funeral or family ceremonies;*
- (e) costs of necessary litigation in recovering or preserving the estate;*
- (f) costs of defending the head of the joint family or any other member against a serious criminal charge;*
- (g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a preexisting debt;*

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity.'

(See Hindu Law by Mulla "22nd Edition".)

26. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no

legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all."

iii. Thus, it is first defendant being Kartha of the joint family was having every right to alienate the property for the purpose of family benefit and legal necessity. The other coparceners can challenge such alienation only on the ground that those properties were not sold for family benefit or legal necessity and the Kartha was wasting the money for his bad vices.

iv. In the instant case, plaintiffs have taken specific contention in the plaint that defendant No.1 was addicted to bad vices i.e., he was addicted to alcohol, gambling and he was womanizer.

v. To substantiate these aspects, no iota of evidence is produced before the Trial Court or before this Court. It is only stated in the affidavit evidence of P.W.1 and she denied the suggestions that defendant No.1 was not a gambler, not addicted to alcohol or not womanizer. P.W.1

being the daughter of defendant No.1 will have first hand information that to which place this first defendant was going to drink alcohol or to play gambling etc., but she has not deposed those specific details.

vi. On the other hand, she has categorically admitted that defendant No.1 is the manager of the joint family. Furthermore, she has categorically deposed that she has studied degree and also D.Ed. She denied the suggestion that first defendant has looked after her and her educational expenses. But first plaintiff being a housewife was not having any independent income to look after these expenses of plaintiffs No.2 to 4. It is to be noted that plaintiff No.2 has deposed that her maternal uncle has helped them in their day to day affairs and also in looking after their education. However, said maternal uncle is not examined to substantiate her case.

vii. It is an admitted fact that plaintiff No.3 was handicapped and suffering from several ailments and during the pendency of this appeal she died without marriage and

thus her mother is her only legal heir. It is the contention of first defendant that he is the only male member in the family who can look after agriculture and according to him he was working very hard on every day and there was no one for substitute. He has taken further contention that the expenses of looking after agricultural properties are becoming more and more as the time passes. In this regard, in the cross-examination, P.W.1 categorically admitted that after separating from his other brothers, first defendant was cultivating suit schedule properties with the help of labourers and the wages of labourers increased since 15-20 years because the working male members would go to Mangaluru and Goa for work and there is a huge scarcity of labourers in their place and hence their wages has become high. She has also admitted that earlier they were only using cow dung as fertilizer and since 20 years they are using chemical fertilizers and also pesticides and since 20 years they are applying pesticides for all the crops and earlier they were using pesticides only for cotton crop and because of these things the expenses to maintain

and to get yield from landed properties is becoming more and more. She has also admitted that since 15-20 years, there was no proper rain at proper time and thus it is becoming difficult to get crop and yield.

viii. P.W.1 further admitted that her father was purchasing the seeds, fertilizers, etc. from city and after he became separated from his brothers, he himself was selling the yields of the agricultural property. She admits that her father was giving some money to her and her mother for purchasing the groceries and for other day-to-day expenses.

ix. On careful perusal of the sale deeds produced in this case as discussed above, the sale deeds were executed in between June-2000 and March-2002.

x. Even though P.W.1 has deposed that she does not know about the sale, loan taken by her father from Societies and Banks, it is defendants who have produced certified copy of judgment and decree passed in O.S.No.69/1994 and it was decreed in the year 1999. Said

judgment and decree is a mortgage decree. Hence, if defendant No.1 has not repaid the amount to bank, then bank could have filed FDP proceedings and put the property in auction. Under those circumstances, if property is put to auction, the defendant No.1 cannot presume the value that he may get. On the other hand, if he himself made efforts to sell the property, he would get proper market value for the sale. Hence, to avoid those things, he has sold some of the suit schedule properties. It is also come on record that after such sale, one of the purchasers has cleared the entire bank loan.

xi. In the further cross-examination, P.W.1 categorically admitted that except the income from agriculture there was no other source of income to their family from 2000 to 2002. After partition between her father and his other brothers, the properties which were fallen to the share of her father were properly and correctly mutated into the name of her father. She also admitted that after such mutation i.e., after separation from his brothers by

defendant No.1 till sale of properties on 19.06.2000 and subsequently Khata and Pahani were standing in the name of defendant No.1 and he has mortgaged the agricultural properties to VSSN Bank, SBI and other societies and it is also noted in RTCs.

xii. It is not the case of plaintiffs that Item Nos.1, 4 & 5 suit schedule properties were sold for a throwaway price. They have not produced any material to show that these properties were sold for lesser sum than the market value.

xiii. About 2 - 3 months of filing the suit, plaintiff No.2 was married. It is the contention of defendants that first defendant has spent huge amount for the purpose of her marriage but material is not produced. Anyway, first defendant being father would spend a reasonable amount for the purpose of marriage of second plaintiff. She has admitted that the value of landed properties increased and the total value of suit schedule properties worth more than Rupees 1.5 Crores. Thus, inference could be drawn that only to get back those properties, plaintiffs have filed the

suit. In the plaint, plaintiffs contended that defendant No.1 has purchased tractor and trailer and it is not in their family and they are not using it. She admits that her father has purchased said tractor by obtaining loan from the bank.

xiv. It is the contention of defendant No.1 that he dug 6 times bore wells in his properties. But only two of them became succeeded and other four became failed and hence he incurred a huge amount to dig the bore wells. In this regard, some bore well receipts issued by Reena Agro Wells and Venus Bore wells are produced in this case. On careful perusal of all those receipts, it is noted that Ex.D.6 and D.13; D.7 and D.14; D.8 and D.9 are one and the same documents. Since from 1998 till 2002, defendant No.1 has made several efforts to dug bore well in his properties and only two of such efforts became successful. Even then P.W.1 in her cross-examination has deposed that no bore well is standing in their properties, which is contrary to the documentary evidence produced in this case.

xv. To substantiate the contention of plaintiffs, they have examined two witnesses as P.W.2 and P.W.3. P.W.2 in his affidavit evidence has stated about the bad vices of defendant No.1. In this regard, in the cross-examination, he has deposed that at no point of time defendant No.1 joined him for playing O.C. Espit (gambling). He has not stated that defendant No.1 was playing gambling in Bankapur. He never had been to receive the money from defendant No.1 to those places. Under those circumstances, how this P.W.2 can depose about the bad vices of defendant No.1. On the other hand, the purchasers have categorically deposed that defendant No.1 was hard working person and he was alone looking after his properties, etc. Nothing was elicited in their cross-examination on these points.

xvi. P.W.3 has filed only affidavit evidence, but after remand, has not appeared and not faced the cross-examination. Hence, his evidence is not useful to the plaintiff.

xvii. D.W.2 is the brother of defendant No.4 and he has given evidence on behalf of LRs. of defendant No.2 because during pendency of the suit, defendant No.2 died. He is not stranger but he is fully aware about the family affairs of defendant No.1, his brothers and plaintiffs.

xviii. It is to be noted here that all the properties, which were fallen to the share of first defendant in family partition were dry lands and thus they were not giving good yields. In one of the sale deeds, defendant has mentioned that to purchase other properties and as this property was not giving good yield, he and his another brother i.e., defendant No.5 together sold Item No.1 of suit schedule properties. Thus, proper reason is assigned for sale. Even in other sale deeds also, there is specific mention that for family necessity and to clear the loans of banks and societies, this defendant No.1 sold those properties. He denied all the suggestions or all the contentions of plaintiffs in their plaint at the time of his cross-examination.

xix. Before leading evidence, defendant No.1 died and has only filed his written statement. Hence, the averments in written statement of defendant No.1 will have some evidentiary value. Even though the family of plaintiffs and defendant No.1 were having some other properties i.e., tractor and trailer and other house properties, they were not included in this suit.

xx. Defendant No.3 is examined as D.W.3 and he has also stated the contentions of defendants. His cross-examination reveals that he has made proper enquiry before purchasing the property with bank and as he was ready and willing to repay the loan amount, he has purchased the property from defendant No.1. It is an admitted fact that the original propositus was having two sons i.e., Kanthappa and another. Kanthappa was having three children i.e., Channappa, Shekhappa and first defendant-Sangappa. Said Channappa was no more and his wife and children are defendants No.6 to 9. This Shekhappa is defendant No.5 and he has not contested the suit. This defendant No.5

along with defendant No.1 has sold one of the suit schedule properties, as discussed above.

xxi. Defendant No.7 is examined as D.W.4. He has supported the entire case of plaintiffs in his affidavit evidence. But in cross-examination has categorically admitted that there was partition between his father and other brothers, but it was not a registered partition. He does not know anything about purchase of tractor and where it is. He is not having any first-hand information about the personal life of family of plaintiffs and defendant No.1. This is more so because he studied in Dharwad at Muruga Matha and he was residing at that time in Muruga Matha, Dharwad and not at the place where the plaintiffs and defendant No.1 were residing i.e., Allapur. After completion of his education, he is working since 4 years at Hubballi and residing there only.

xxii. In the cross-examination, he has admitted that defendant No.1 has taken loan from banks by mortgaging some of the joint family properties and utilized the amount

for development of those properties. Since 2015 he is residing at Allapur. However, before that when all these transactions had taken place, he was not at all in the village, but he was studying in Dharwad and working in Hubballi and residing in those places. Even though in his affidavit evidence, D.W.4 stated that no tractor is with defendant No.1 and he has mortgaged the property only to purchase tractor and gave said tractor to some other persons, but in the cross-examination, he categorically admitted that first defendant was also having tractor and he was tilling his property through his tractor and admitted that there was huge scarcity of labourers and hence first defendant has purchased tractor. He could not mention even the name of one woman with whom first defendant was having illicit relationship. He admitted that notice was issued as per Ex.D.3 to defendant No.1 that they are going to auction the properties of defendant No.1 for clearance of loan amount. Even though he is a family member, he does not know how many properties have fallen to the share of first defendant and what his requirement was and how he

was spending money, etc. According to this witness, defendant No.1 has put up a small house in his landed properties and was residing there and the house property which was fallen to the share of defendant No.1 in the family partition is being used by plaintiffs and they are residing in that house and defendant No.1 was often visiting them, but plaintiffs have not looked after defendant No.1 during the fag end of his life.

xxiii. On careful perusal of the aforesaid evidence put forth by both parties, it is crystal clear that defendant No.1 was residing in his own property only to look after the landed properties because there was no one to look after those properties, but allowed his wife and children to live in the village and made all arrangements to his children to go to the schools and colleges and to study well. Plaintiff No.2 studied up to D.Ed. and at the time of filing the suit, plaintiff No.4 was in SSLC and she completed her PUC during pendency of the suit. Because plaintiff No.3 was

handicapped and unable to walk, it appears that she has not pursued her higher education.

xxiv. Plaintiffs have not produced any material to substantiate their contention of bad vices of first defendant. It has come on record that there was drought for continuous several years and because of that first defendant has sustained loss in agriculture and even though he dug bore wells several times, most of them were unsuccessful but he succeeded only twice and furthermore, he has obtained loan from banks and societies for development of agriculture lands only. Not even a single document is produced to show that first defendant has taken private loans with moneylenders, but he has taken loan from established nationalized banks and societies. Furthermore, suit is also filed against him by the State Bank of India to repay loan amount as he failed to repay the loan amount and it was decreed. First defendant has contested the suit and it is not a simple *exparte* decree. It took five years to dispose of the said suit, which itself shows that there was

proper contest by defendant No.1 in that suit. If really the first defendant was addicted to bad vices, he would not have contested the suit filed by the bank. He acted prudently as Kartha of the family.

xxv. As discussed earlier, Kartha of the family is having special powers to alienate coparcenary property, which binds other coparceners also. The legal necessity includes clearance of debts of the family. Once existence of legal necessity is established, then other coparceners have no right to challenge the sale made by Kartha of the family.

xxvi. Under these circumstances, considering these aspects in a right and proper perspective, rightly the Trial Court has dismissed the suit in respect of the sold properties by defendant No.1 i.e., Item Nos.1, 4 & 5.

xxvii. As far as Item No.7 is concerned, it is fallen to the share of defendants No.6 to 9. Plaintiffs were not having any right over the said property. Hence, suit cannot be decreed in respect of the said property. Accordingly, it was

dismissed. The Trial Court has decreed the suit in respect of remaining properties.

xxviii. As on today, defendant No.1 is no more and his share will be equally distributed to the plaintiffs. Thus, plaintiffs would get 1/4th share each in the joint family and ancestral properties. Presently, plaintiff No.3 is no more and her share is to be allotted to plaintiff No.1 as plaintiff No.1 is the only legal heir of plaintiff No.3.

xxix. In view of the above discussion, we proceed to pass the following:

ORDER

Appeal filed under Section 96 of CPC is dismissed by confirming the judgment and decree dated 23.09.2017 passed in O.S.No.7/2007 on the file of Senior Civil Judge and JMFC., Hangal.

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

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