



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 5271 OF 2008 (PAR)

BETWEEN:

- 1 . SHANTINATH S/O. GIRAMALLAPPA BOLGOND,
AGED ABOUT 65 YEARS,
OCC. AGRICULTURE,
R/O. TERDAL, TQ. JAMKHANDI,
DIST. BAGALKOT.
2. RAJANIKANTH S/O. SHRIDHAR BOLGOND,
SINCE DECEASED BY HIS LRS.
- 2A. ROHINI W/O RAJANIKANTH BOLGOND,
AGED ABOUT 42 YEARS,
OCC: HOUSEWIFE.
- 2B. ROHIT S/O RAJANIKANTH BOLGOND,
AGED ABOUT 42 YEARS,
OCC: STUDENT.
- 2C. SHRINIDHI D/O RAJANIKANTH BOLGOND,
AGED ABOUT 20 YEARS,
OCC: STUDENT.

APPELLANT NO. 2A TO 2C,
R/O KILLABAGA ONI, TERDAL
TQ: BANAHATTI-RABAKAVI,
DIST: BAGALKOT- 587 315.
3. SULOCHANA W/O. RAVASAHEB BOLGOND,
SINCE DECEASED BY HIS LRS.
- 3A. SHITAL D/O. RAVASAHEB BOLGOND,
AGED ABOUT 52 YEARS,

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OF
KARNATAKA



OCC. HOUSEWIFE.

- 3B. ANIL S/O. RAVASAHEB BOLGOND,
AGED ABOUT 50 YEARS,
OCC. STUDENT.
- 3C. SUNIL S/O. RAVASAHEB BOLGOND,
AGED ABOUT 48 YEARS,
OCC. STUDENT.

APPELLANT NO.3A TO 3C ARE
R/O. KILLABAGA ONI, TERDAL,
TQ. BANAHAATTI-RABAKAVI,
DIST. BAGALKOT-587 315.

4. SHEETAL S/O. RAVASAHEB BOLGOND,
AGED ABOUT 35 YEARS,
OCC. AGRICULTURE,
R/O. TERDAL, TQ. JAMKHANDI,
DIST. BAGALKOT.
5. ANIL S/O RAVASAHEB BOLGOND,
AGED ABOUT 33 YEARS,
OCC: AGRICULTURE,
R/O TERDAL, TQ: JAMKHANDI,
DIST: BAGALKOT.
6. SUNIL S/O RAVASAHEB BOLGOND,
AGED ABOUT 30 YEARS,
OCC: AGRICULTURE,
R/O: TERDAL, TQ: JAMKHANDI,
DIST: BAGALKOT.

...APPELLANTS

(BY SRI S.S.PATIL , ADVOCATE)

AND:

1. SMT. RAJMATI W/O BHUPAL BOLGOND,
SINCE RESPONDENT NO.1 DEAD HER
LR'S ARE ALREADY ON RECORD AS
RESPONDENT NO. 2,3 & 5.



2. SANDIP S/O APPASAHEB DESAI,
AGED ABOUT 40 YEARS,
OCC: HOUSEHOLD WORK,
R/O POOJA PARK BUILDING NO.9,
PLOT NO.8, CHINTAMANI NAGARBEBIWADI
POONA.
3. SACHIN S/O APPASAHEB DEASI,
AGED ABOUT 37 YEARS,
OCC: HOUSEHOLD WORK,
R/O POOJA PARK BUILDING NO.9,
PLOT NO.8, CHINTAMANI NAGARBEBIWADI
POONA.
4. APPASAHEB S/O BHUSAHEB DESAI,
RESPONDENT NO.4 IS DEAD HIS LR'S ARE
ALREADY ON RECORD AS
RESPONDENT NO. 2 & 3.
5. SUNANDA W/O BALASAHEB PATIL,
AGED ABOUT 50 YEARS,
OCC: HOUSEHOLD WORK,
R/O JALATARANG HOUSING SOCIETY
NEMINATH NAGAR, SANGALI.
6. SURESH S/O PARAPPA BOLGOND,
SINCE DECEASED BY HIS LR'S
- 6A. PRAKASH S/O SURESH BOLGOND,
AGED ABOUT 46 YEARS,
OCC: AGRICULTURE.
- 6B. PRATIBHA W/O BALASABHA AAKKIWATA,
AGED ABOUT 42 YEARS,
OCC:HOUSEWIFE.
- 6C. SMITA W/O BHARATHES MAGADUM,
AGED ABOUT 40 YEARS,
OCC: HOUSEWIFE.
- 6D. VRUSHABHA S/O SURESH BOLGOND,
AGED ABOUT 38 YEARS,



OCC: AGRICULTURE.

- 6E. AJITH S/O SURESH BOLGOND,
AGED ABOUT 36 YEARS,
OCC: AGRICULTURE.

RESPONDENT NO.6A TO 6E ARE
R/O KILLABAGA ONI, TERDAL,
TQ: BANAHATTI-RABAKAVI,
DIST.: BAGALKOT-587 315.

7. MALLINATH S/O PARAPPA BOLGOND,
AGED ABOUT 55 YEARS,
OCC: AGRICULTURE,
R/O TERDAL, TQ: JAMKHANDI,
DIST.: BAGALKOT.
8. PADMAVATHI W/O TAVANAPPA KOKATANUR,
AGED ABOUT 55 YEARS,
OCC: AGRICULTURE,
R/O TERDAL, TQ: JAMKHANDI,
DIST.: BAGALKOT.
9. MAHAVEER S/O TAVANAPPA KOKATANUR,
AGED ABOUT 35 YEARS,
OCC: AGRICULTURE,
R/O TERDAL, TQ: JAMKHANDI,
DIST.: BAGALKOT.
10. SANMANTI W/O DEVAGOUDA CHOUGALE,
AGED ABOUT 33 YEARS,
OCC: AGRICULTURE,
R/O SAVALAGI, TQ: JAMKHANDI,
DIST.:BAGALKOT.
11. TANGEWWA D/O TAVANAPPA KOKATANUR,
W/O SANJAY HARAVI,
AGED ABOUT 28 YEARS,
OCC: AGRICULTURE,
R/O NEAR YALLAMMA TEMPLE, TERDAL,
TQ: JAMKHANDI, DIST: BAGALKOT.
12. AJIT S/O TAVANAPPA KOKATNUR,



AGED ABOUT 22 YEARS,
OCC: AGRICULTURE,
R/O TERDAL, TQ: JAMKHANDI,
DIST.:BAGALKOT.

13. TANGEWWA W/O BHARAMAPA KHEMALAPURE,
AGED ABOUT 60 YEARS,
OCC: AGRICULTURE,
R/O TERDAL, TQ: JAMKHANDI,
DIST.: BAGALKOT.

14. SARASWATI W/O GUNDAPPA KHEMALAPURE,
SINCE DECEASED BY HIS LR'S.

14A. SHALINI W/O ASHOK HULLE
AGED ABOUT 73 YEARS,
OCC: HOUSEHOLD WORK.

14B. SHANTINATHA S/O GUNDAPPA KHEMALAPURE,
AGED ABOUT 70 YEARS,
OCC: AGRICULTURE.

14C. SUKUMAR W/O GUNDAPPA KHEMALAPURE,
AGED ABOUT 68 YEARS,
OCC: AGRICULTURE.

RESPONDENT NO. 14A TO 14C ARE
R/O BELLADA BAGEWADI,
TQ: HUKKERI, DIST.: BELAGAVI-591 309.

15. BALAWWA @ VIJAYA W/O VASANTRAO PATIL,
AGED ABOUT 67 YEARS,
OCC: AGRICULTURE,
R/O JAYASINGAPUR, TQ: SHIROL,
DIST: KOLHAPUR, DIST.: MAHARASHTRA.

16. SRI MAHAVEER S/O CHANDAPPA NANDREKAR,
AGED ABOUT 28 YEARS,
R/O MAHESHWADAGI, TQ; ATHANI,
DIST.: BELGAUM.

17. SIDDAPPA S/O PARAPPA ULGOND,
AGED ABOUT 25 YEARS,



R/O TERDAL, TQ: BANAHATTI-RABAKAVI,
DIST: BELGAUM.

18. SRI RAMESH S/O PADMANNA HIPPARAGI,
AGED ABOUT 24 YEARS,
R/O MAHESHWADAGI, TQ: ATHANI,
DIST.: BELGAUM.
19. SRI JAKKAPPA S/O DHAREPPA HIPPARAGI,
AGED ABOUT 36 YEARS,
R/O MAHESHWADAGI, TQ: ATHANI,
DIST.: BELGAUM.

...RESPONDENTS

(BY SRI SHIVARAJ P MUDHOL, ADVOCATE FOR R5,
SRI VIJAYKUMAR B HORATTI, ADVOCATE FOR R7;
NOTICE TO R8, R9, R11 & R12 - HELD SUFFICIENT;
R2,R3, R10, R13, R15 - SERVED;
SRI GIRISH S HIEMATH, ADVOCATE FOR R16 - R19;
NOTICE TO R14(A) TO R14(C) - HELD SUFFICIENT;
R6(A) TO R6(D)- HELD SUFFICIENT;
R6(E) - SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGEMENT AND DECREE DATED 14.08.2008
PASSED IN R.A.NO.83/2003 ON THE FILE OF THE FAST TRACK
COURT, JAMAKHANDI, DISMISSING THE APPEAL, FILED
AGAINST THE JUDGMENT AND DECREE DATED 31.03.2003
PASSED IN O.S NO.91/1996 ON THE FILE OF THE CIVIL JUDGE
(JR.DN), BANAHATTI, DISMISSING THE SUIT FILED FOR
PARTITION, SEPARATE POSSESSION AND INJUNCTION.

THIS RSA HAVING BEEN HEARD AND RESERVED ON
04.12.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT
THIS DAY AT BENGALURU BENCH, COURT DELIVERED THE
FOLLOWING:



CAV JUDGMENT

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

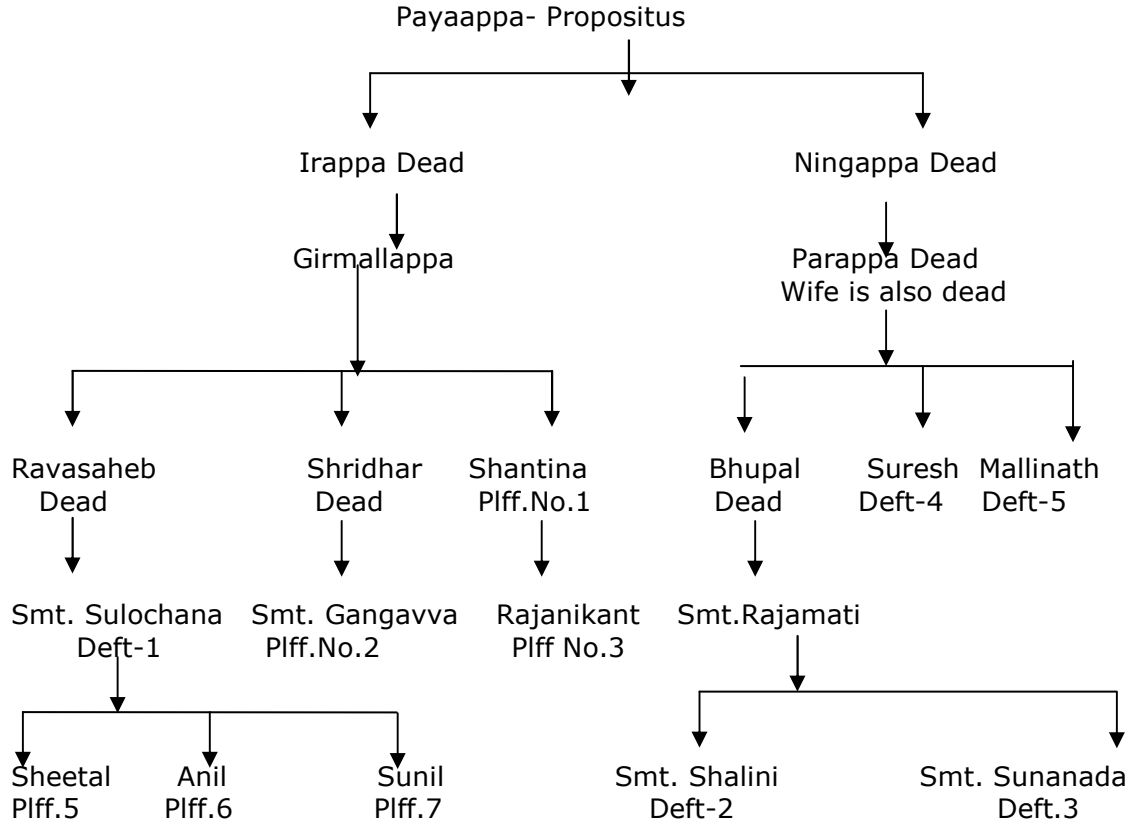
Being aggrieved by the dismissal of OS No. 91/1996 by the learned Civil Judge, (Jr.Dn), Banahatti, dated 31.03.2003 and the dismissal of RA No. 83/2003 by learned Presiding Officer, Fast Track Court, Jamkandy, dated 14.08.2008, the plaintiffs are before this Court in this second appeal.

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

(a) One Payappa was a propositus and he was survived by his two sons Irappa and Ningappa. The branches of Ningappa and Irappa was continued by their sons Girmallappa and Parappa respectively. The branch of Girmallappa was survived by Ravsaheb, Shridhar and Shantinath. Ravsaheb is survived by plaintiff Nos. 4 to 7 and Shridhar is survived by plaintiff Nos. 2 and 3 and Shantinath is the plaintiff No. 1. The branch of Parappa was survived by one Bhupal, Suresh and Mallinath. Bhupal died and



defendant Nos.1 to 3 are survived by him. Suresh and Mallinath are defendant Nos. 4 and 5. For better understanding the genealogy is depicted as below:



(b) The suit schedule property is land bearing RS No. 41/3 measuring 16 acres 04 guntas situated at Terdal Village, Jamkhandi Taluk.

(c) The suit land was the ancestral joint family property of plaintiff Nos.1 to 7 and defendant Nos.1



to 5 and they have half share in it. It was contended that however in the record of rights the name of defendant Nos. 1 to 3 has been entered as kabjadars and the said entry is without knowledge and consent of the plaintiffs.

(d) The plaintiffs called upon defendant Nos.1 to 5 to award a division by meets and bounds in the suit land and the lawful demand of the plaintiffs for partition was postponed by defendant Nos.1 to 5 under false excuses. They started attempting to transfer the schedule property under colourable documents in favour of defendant No. 6, who is a stranger. Therefore, there was a cause of action for filing the suit and as such, they instituted the suit for partition of their half share in the schedule property. (It is pertinent to note that the plaint do not elaborate on the manner of acquisition of the schedule property by the family of the plaintiffs and defendants and in what



manner it is an ancestral joint family property of the family).

3. On service of summons, defendant No. 1 filed his written statement resisting the claim of the plaintiffs. He denied that the suit property is a joint family property and that plaintiffs have got any semblance of right, title or interest in the same. He also denied the joint possession of the plaintiffs over the suit schedule property. He further contended that there is severance of the joint family nucleus long back between the branch of Girmallappa and Parappa and the father of the plaintiffs Girmallappa had filed Form No.7 with respect to the suit schedule property claiming occupancy rights admitting the ownership of Bhupal and the said application came to be rejected. Therefore, the branch of Girmallappa, now represented by the plaintiffs, cannot claim any ownership right, title or interest and as such they are estopped from claiming the same. *Inter-alia*, he also contended that the suit suffers from non-joinder of necessary parties.



4. Defendant Nos.2 and 3 had adopted the written statement of defendant No. 1 by a memo.

5. Defendant Nos.4 and 5 filed their written statement contending that the suit schedule property is joint family property of defendant Nos. 1 to 5 but not of the plaintiffs. They contended that the plaintiffs were never in joint possession of the suit schedule property along with defendant Nos.1 to 5 and in that regard, they supported the contention of defendant Nos. 1 to 3 and ultimately, they sought for dismissal of the suit.

6. On the basis of the above pleadings, the following issues and additional issues were framed by the trial Court.

ISSUES

1. Whether plaintiffs prove that the plaintiffs and defendant Nos. 1 to 5 are in lawful possession of the suit property?
2. Whether plaintiffs prove that the suit property are joint and ancestral properties of plaintiffs and defendant Nos. 1 to 5?



3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether plaintiffs are stopped from claiming any rights in the suit properties?
5. Whether the relationship of plaintiffs and defendant Nos. 1 to 5 several long back?
6. Whether plaintiffs are entitled for permanent injunction?
7. Whether plaintiffs are entitled for partition and separate possession as prayed for?
8. What order or decree?

ADDITIONAL ISSUES

1. Whether the suit is not maintainable?
2. Whether the genealogy is incorrect and incomplete?
3. Whether the defendants Nos. 1 to 3 prove that the suit land is self acquired property of husband of defendant No.1 and father of defendants Nos. 2 and 3?
4. Whether the valuation made by the plaintiff is not proper and correct, fee paid on the plaint is not correct?
5. Whether the defendant Nos. 4 and 5 are entitled for compensatory costs of Rs.3,000/-?

7. Plaintiff No.1 was examined as PW1 and one witness was examined as PW2. Exhibits P1 to P9 were



marked on their behalf. Defendant Nos.1 to 3 have not adduced any evidence in their favour, despite sufficient opportunities. However, defendant Nos.4 and 5 examined defendant No. 5 as DW1, but no documents were marked on their behalf.

8. During pendency of the suit, defendant No. 6 died and his LRs were brought on the record.

9. After hearing the arguments by both the sides, the trial Court dismissed the suit by holding Issue Nos. 1 to 3, 6, 7 and Additional issue Nos.1 to 5 in the negative and issue Nos. 4 and 5 in the affirmative. In effect, it held that the joint family status had severed much prior to the purchase of the suit sale property by Bhupal in the year 1949 and as such the suit schedule survey number cannot be subject matter of partition.

10. Being aggrieved, the plaintiffs approached the First Appellate Court in RA No. 83/2003. On hearing the



arguments by both the sides, the First Appellate Court formed the following points for consideration:

1. Whether the plaintiffs prove that the suit property was purchased in the name of Bhupal out of the joint family nucleus?
2. Whether the plaintiffs further prove that the suit property was continued to be joint family property consisting of the plaintiffs and defendants?
3. Whether the impugned judgment and decree under challenge call for interference by this court?
4. What order?

11. During the pendency of the Regular appeal, defendant No.2 had died and her LRs were brought on record. The First Appellate Court answered the points 1 to 3 in the negative and dismissed the appeal and confirmed the judgment of the trial Court. Being aggrieved, the plaintiffs are before this Court in second appeal.



12. This Court, while admitting the appeal, has framed the following substantial questions of law on 28.01.2014:

1. Whether both the Courts below have concurrently erred in coming to the conclusion that the suit schedule property would be the self acquired property of Bhupal inspite of negative finding on issue No.1?

2. Whether the Courts below have committed an error in noticing that this property continued to be joint family property inspite of an application filed in Form No.7?

13. During pendency of the present appeal, the appellant Nos. 2, 3 and respondent Nos.1,4,6 and 14 died and their legal heirs are brought on record.

14. The arguments by both the sides were heard.

15. The learned counsel appearing for the appellant would submit that the burden of proving that any property is a self-acquired property is on the person who alleges the property to be self-acquired and in the absence of any



evidence, the presumption becomes perfect and it has to be held in favour of the plaintiffs. It is submitted that the Courts below have failed to consider that Bhupal, being a person aged 25 years in the year 1948 would not have acquired Rs.3,000/- at that time by his self earning to purchase the suit schedule property. There is nothing on record to show that Bhupal had any independent income and therefore, the suit property would become his independent and self acquired property. The Courts below have failed to appreciate this aspect and as such, the findings of the trial Court as well as the First Appellate Court are perverse. It is pointed out that the registered Partition Deed at Exhibit P1 speaks that the suit schedule property would be subjected to partition after disposal of the proceedings before the Courts and authorities and the observation of the Courts below that there is no evidence to prove that suit property is not subjected to partition is perverse. It is pointed out that the family partition had taken place in the year 1956 and if any property is



purchased before the date of partition, it has to be presumed to be the joint family property and the burden is upon the party who contends that it is such self acquired property. Therefore, he submits that the Courts below have erred in fastening the entire burden upon the plaintiffs in the absence of any material on behalf of the defendants to prove that it was the self-acquired property of Bhupal. He also pointed out that the Land Tribunal had given a categorical finding that the suit property is the joint family property and Girmallappa cannot claim tenancy against his own brother as it is the joint family property wherein he has an interest in the form of owner. It is further pointed out that the said finding of the Tribunal binds everyone including that of the defendants representing the branch of Parappa and therefore, the impugned judgment is not proper and correct. In other words, the learned counsel for the appellants places reliance on four documents i. e., Exhibit P1, P4, P7, P8 and P9 and made his submissions.



16. *Per contra*, learned counsel appearing for the respondents contends that the trial Court as well as the First Appellate Court have considered the burden of proof in the proper perspective and there is no need for interference. He submitted that the plaint is bereft of any pleadings to contend that the schedule property was acquired out of the joint family funds. It is pointed out that Exhibit P1 being a registered document of Partition do not mention anything about the suit property bearing No. 41/3 of Terdala Village. It is pointed out that Exhibits P6 and P7 which is an unregistered plain paper document has not been proved by the plaintiffs. If at all the suit property is slated to be partitioned subsequently after the litigation is complete, that mention should have found place in Exhibit P1 and therefore, Exhibit P6 and P7 cannot be of any relevance. He contends that a mutation entry in the form of Exhibit P3 cannot be of any relevance in the matter. He also points out that Exhibit P4, the loan application of Girmallappa and Parappa, to Sangli Bank for an overdraft



facility of Rs.1,000/- would indicate that the property was purchased out of the loan granted by Sangli Bank. But this document do not show that it was used for purchase of the suit schedule property. He also points out that the order of the Land Tribunal shows that the suit schedule property was admittedly in the name of Bhupal and the Tribunal by observing that they are the cousins, the claim of Girmallappa against Bhupal that he was the tenant under Bhupal cannot be accepted and as such the order of the Land Tribunal is not of any assistance to the contention of the plaintiffs.

17. Lastly, he submits that the trial Court as well as the First Appellate Court have rightly held that bereft of any pleadings, the proof alone cannot be of any value and as such have correctly held that the plaintiffs have failed to prove that the suit schedule property was the joint family property.



18. When we examine the above contentions raised by the appellants and respondents with reference to the substantial questions of law, it is pertinent to note that concurrent finding of fact by both the Courts cannot be interfered unless it is apparently perverse and arbitrary.

19. The crux of the matter appears to be *whether the evidence without pleading should have been considered by the Courts below?* It is in the light of this, the substantial questions have to be answered by this Court.

Re. substantial questions of law 1 and 2 :

20. Issue No.1 appears to be incorrectly framed. It may be noted that the lawful possession of the plaintiffs and defendant Nos.1 to 5 is not a relevant point which was to be considered by the trial Court. The lawful possession of the defendant Nos. 1 to 5 over the suit schedule property was not a disputed aspect in a suit for partition. The defendants never agreed that the plaintiffs were in lawful possession of the suit schedule property. The question of possession over



the property was not a subject matter of the suit. Therefore, Issue No. 1 has to be read that the trial Court had perceived the ownership rights of the plaintiffs and defendant Nos. 1 to 5 over the suit schedule property.

21. A perusal of the plaint shows that the plaintiffs simply state that the suit schedule property bearing Survey No. 41/3 measuring 16 acres is the ancestral joint family property. The plaintiff did not elaborate as to how the suit property became the ancestral joint family property. It is pertinent to note that there is lot of difference between the ancestral property and the joint family property. It has to be construed by this Court that the plaintiffs were referring to the suit schedule property to be the joint family property acquired by Bhupal during the jointness of the family. Except this averment, there is nothing in the pleadings of the plaintiffs.

22. The evidence is led by the plaintiffs, contending that the suit property was purchased by the members of the



joint family of Parappa and Girmallappa in the name of Bhupal son of Parappa. The partition was effected somewhere in the year 1957 as per Exhibit P1 and prior to it in the year 1955 there was another document in the form of Exhibit P6, the translated copy of which is at Exhibit P7. Both these documents show that there was an earlier partition and it is only reduced in the form of writing in the year 1955 and 1957. Obviously, Exhibit P1 is a certified copy of a registered document. The Exhibit P1 nowhere mention that Survey No. 41/3 is the subject matter of some litigation and it has to be partitioned at a subsequent date. It does not refer to the suit property at all. This document is dated 25.07.1957 and is executed between Parappa and Girmallappa. As per this document, a mutation entry was effected as per Exhibit P3.

23. The Exhibit P6 is in Marathi and this document shows that the suit Survey No. 41/3 was purchased in the name of Bhupal and Bhupal had undertaken that he is only in possession of half of the two lands which were purchased



and the Girmallappa had half share in it and it would be partitioned after the litigations in respect of the properties are cleared. Obviously, this is not a document which was registered. It is relevant to note that the contents of Exhibit P6 that the suit property and another property were to be partitioned later do not find place in the subsequent document which is produced at Exhibit P1 in the year 1957. It is curious to note that if at all Exhibit P1 represented a partial partition, definitely, it would have mentioned that Survey No. 41/3 has to be partitioned at a later point of time. But nowhere such an averment is found in Exhibit P1.

24. Exhibit P8 happens to be the order of the Land Tribunal. It was between one Channayya, Gadigaya, Magaya, Chanabasaya and the Girmallappa against the LRS of Bhupal. It is worth to note that the Land Tribunal upholds the contention of Channayya, Gadigaiya, Magaiya and Channabasaya, but rejects the claim of Girmallappa on the ground that Girmallappa happens to be the member of the family of the Bhupal and therefore, occupancy rights as a



tenant cannot be given. It may be noted that Exhibit P8 simply mentions that the applicant Girmallappa is the uncle of Bhupal and therefore, he cannot claim the tenancy. It is worth to note that this Order of the Land Tribunal nowhere mention anything about the Partition Deed at Exhibit P1 or the document allegedly executed by Bhupal as per Exhibit P6. Therefore, the order of the Land Tribunal cannot be construed to be sacrosanct in respect of its holding that Girmallappa is part of the joint family and as such he would also have ownership rights in it.

25. The Trial Court in para 15, 16 and 17, considers these aspects elaborately. It also observes that the evidence let in by the plaintiffs is bereft of any pleadings so far as it relates to the partial partition as mentioned in Exhibit P1 and the consent of Bhupal to partition the suit property subsequently as per Exhibit P6. These aspects are nowhere to be found in the pleadings of the plaintiffs.



26. So far as the loan from the Sangli bank (Exhibit P4) is concerned, it holds that there is no pleading to the effect that the loan was raised for the purpose of purchase of the suit property. In para 16, the trial Court holds as below:

16. xxxx The document as per Ex.P.4 on its careful reading goes to show that Parappa Giramallappa and Bhupal have availed cash credit facility of Rs.1000/- which was to be in force inbetween 30.09.1949 till end of year i.e. 31.12.1949. The suit property is purchased in the name of deceased Bhupal as per Ex.P.2 on 19.4.1949 for Rs.3,000/-. Therefore it is evident that the cash credit facility availed by them is not for the purpose of purchasing the suit property, since suit property was already purchased on 19.4.1949 much prior to the availment of cash credit facility as per Ex.P.4. The loan availed is also Rs.1000/- whereas the sale consideration under Ex.P.2 is Rs.3000/- there is no any pleading or reasonable explanation coming from the plaintiffs to prove that during the subsistence of joint family status between Parappa and Giramappa the suit property was purchased in the name of deceased Bhupal. xxxx



27. Further, the trial Court also observed that there is no material to show that there was any litigation in respect of the suit property which would have substantiated the contents of Exhibit P6, (translated copy P7), which would have given credence to it.

28. The First Appellate Court in the impugned judgment, has discussed all these aspects in length. In para 15 of the impugned judgment it observes as below:

"15. xxxxx The suit property though purchased in the year 1949 in the name of Bhupal it was not subjected to partition during the year 1957. There is no recital that the suit property was kept in joint possession of the family of plaintiffs and defendants as such it is not included in Ex.P.1. There is no whisper in Ex.P.1 partition deed in respect of the suit property. The first paragraph of Ex.P.1 indicates that parappa and Giramallappa had partitioned the joint family properties long back under Apasat-Watani and the said terms of partition are incorporated in Ex.P.1. PW.1 during the course of evidence stated that his father Giramallappa and Parappa father of Bhupal were partitioned the family properties excluding the suit property - during



the year 1955. PW.1 in cross-examination admitted that he has not produced any documents to show that Giramallappa and Parappa had partitioned the family properties in the year 1955. On the contrary DW.1 deposed that Giriamallappa and parappa had partitioned the family properties during the year 1945 and thereafter in the year 1949 the suit property was purchased in the name of Bhupal out of self-earnings of the branch of Parappa. In fact the suit property had purchased out of the joint family funds that would have mentioned in Ex.P.1. partition deed".

29. Further in para 18, it observes as below:

"The Land Tribunal, Jamakhandi after making detail enquiry rejected the application filed by Giramallappa father of plaintiff No.1 an defendant Nos. 4 and 5 in respect of the suit property. The father of plaintiff No.1 filed Form No. VII stating that Bhupal husband of defendant No.1 was owner of the suit property. The said Form No.VII filed on 28.06.1976 PW.1 during the course of cross-examination on page No.7 admitted that his father had filed Form No. VII for grant of occupancy rights in respect of the suit property PW.1 explained that his father filed form No. VII during the year 1976 to retain the suit property for their family PW.1 on page No.7 further admitted that his father filed Form No.VII claiming that he is tenant of the suit



property admitting that Bhupal was its owner PW.1 further admitted that Form No. VII filed by his father is dismissed in the year 1992 and he gave evidence before the Land Tribunal Jamakhandi in respect of the suit property. The admission of plaintiff No.1 indicates that his father while filing form No. VII before the Land Tribunal Jamakhandi admitted that Bhupal husband of defendant No.1 was owner of the suit property."

30. Finally in the concluding part, the First Appellate Court observes as below:

"The above discussion shows that the plaintiffs failed to prove that the suit property had purchased prior to severance of joint family status in between Giramallappa and parappa and it was purchased out of joint family funds. secondly, they failed to prove that the suit property was not subjected to partition in the year 1956. Lastly, the plaintiffs failed to establish that the suit property was continued to be in joint possession and enjoyment of them and defendants."

31. Thus, it is evident that both the Courts below have considered that the primary burden of proving the fact that the suit schedule property is the joint family property and it was acquired out of the joint family nucleus is on the



plaintiffs. Obviously, there was a partition prior to 1957 as per Exhibit P1 and Exhibit P6, an undertaking or a consent for a deferred partition by Bhupal was not proved as required under law. If at all there was an Exhibit P6, the contents of which should have found place in Exhibit P1. Therefore, when there is no pleading on the part of the plaintiffs to establish as to how Bhupal had purchased the property and how there was tenancy which was created in favour of Girmallappa which showed that it was a joint family property and as such, the Land Tribunal had dismissed the application filed by Girmallappa, it is not in the mouth of the plaintiffs to say that the suit property continued to be the joint family property. Though there is a presumption that a family is joint unless it is shown to be severed, such presumption is not available in respect of the nature of the property.

32. In the case on hand, evidently there was a partition much prior to 1955 as may be seen from Exhibit P1. Moreover, Bhupal happens to be the brother's son of



Girmallappa. It is not known how and why the property was purchased in the name of Bhupal. There is no explanation as to how and why the property was purchased in the name of Bhupal. On the other hand, the documents of partition at Exhibit P1 and Exhibit P7 show that there was a partition much earlier. Curiously, Exhibit P1 does not mention anything about the suit property. The pleading is also silent on that aspect. The explanation by the plaintiffs that suit schedule property was to be partitioned later emanates only from the Exhibit P6 and nothing else. Exhibit P6 do not find any mention in the pleading and it has not been proved by the plaintiffs. Therefore, this Court finds that the concurrent findings cannot be held to be erroneous either on the ground of negative finding on Issue No. 1 or an application filed by Girmallappa to the Land Tribunal in Form No. 7 having been dismissed by it as per Exhibit P8. Therefore, the substantial questions of law deserve to be answered in the negative and accordingly, they are answered in the



negative. Consequently, the appeal fails and hence, the following:

ORDER

The appeal is dismissed.

Costs made easy.

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

tsn*
List No.: 19 Sl No.: 5