



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100283 OF 2018 (PAR/POS)

C/W

REGULAR FIRST APPEAL NO.100261 OF 2018

IN RFA NO. 100283/2018

BETWEEN:

SMT. HEMAVVA @ LATA
W/O. KALLANAGOUDA KHANDIBHAGUR,
AGE: 31 YEARS,
OCC. AGRICULTURE AND HOUSEHOLD,
R/O. DUDIHALLI VILLAGE, TQ. HIREKERUR,
DIST. HAVERI-581111.

...APPELLANT

(BY SMT. POOJA KULKARNI, ADVOCATE FOR
SRI. DINESH M. KULKARNI, ADVOCATE)

AND:

1. DANAPPA
S/O. SADAPPA PATIL,
AGE: 56 YEARS, OCC. AGRICULTURE,
R/O. HIREMORAB VILLAGE,
TQ. HIREKERUR,
DIST. HAVERI-581111.
2. SHIVANANDAPPA

BHARATHI
H M



Digitally signed by
BHARATHI H M
Location: HIGHCOURT
OF KARNATAKA
DHARWAD BENCH
DHARWAD



S/O. BASAPPA HULATTI,
AGE: 64 YEARS,
OCC. AGRICULTURE,
R/O. HIREMORABA VILLAGE,
TQ. HIREKERUR,
DIST. HAVERI-581111.

3. SMT. AKKAMMA
W/O. DANAPPA PATIL,
AGE: 41 YEARS,
OCC. AGRICULTURE,
R/O. HIREMORABA VILLAGE,
TQ. HIREKERUR,
DIST. HAVERI-581111.
4. SHIVANAND (SHIVANAGOUDA)
S/O. RUDRAGOUDA PATIL,
AGE: 56 YEARS, OCC. AGRICULTURE,
R/O. HIREKERUR, DIST. HAVERI.

...RESPONDENTS

(BY SRI. S.G. KADADAKATTI, ADVOCATE FOR R1 AND R3;
SRI. GIRISH S. HULMANI, ADVOCATE FOR R2;
SRI. A.R. PATIL, ADVOCATE FOR R4)

THIS RFA IS FILED UNDER SECTION 96 READ WITH 41 RULE 1
OF CPC, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE
DATED 03.04.2018 PASSED BY THE SENIOR CIVIL JUDGE AND
JMFC., AT HIREKERUR IN O.S.NO.25/2012, IN REJECTING THE
COUNTER-CLAIM OF THE APPELLANT AND FINDING ON ADDL. ISSUE
NO.2, AS NULL AND VOID AND DECREE THE SUIT AS PRAYED FOR
AND ETC.

IN RFA NO. 100261/2018
BETWEEN:

DANAPPA S/O. SADAPPA PATIL,
AGED ABOUT 55 YEARS,
OCC. AGRICULTURE,
R/O. HIREMORAB-581210,
TQ. HIREKERUR, DIST. HAVERI.

...APPELLANT

(BY SRI. S.G. KADADAKATTI, ADVOCATE)



AND:

1. SHIVANANDAPPA S/O. BASAPPA HULLATTI,
AGED ABOUT 60 YEARS,
OCC. AGRICULTURE,
R/O. HIREMORAB-581210,
TQ. HIREKERUR, DIST. HAVERI.
2. HEMAVVA W/O. KALLANAGOUDA KHANDIBAGUR,
AGED ABOUT 30 YEARS,
OCC. AGRICULTURIST AND HOUSEHOLD WORK,
R/O. DUDIHALI-581111,
TQ. HIREKERUR, DIST. HAVERI.
3. SMT. AKKAMMA W/O. DANAPPA PATIL,
AGED ABOUT 41 YEARS,
OCC. AGRICULTURIST,
R/O. HIREMORAB-581210,
TQ. HIREKERUR, DIST. HAVERI.

...RESPONDENTS

(BY SRI. GIRISH S. HULMANI, ADVOCATE FOR R1;
SMT. POOJA KULKARNI, ADVOCATE FOR
SRI. DINESH M. KULKARNI, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 READ WITH 41 RULE
1 OF CPC, 1908, PRAYING TO CALL FOR RECORDS AND TO SET
ASIDE THE JUDGMENT AND DECREE DATED 03.04.2018 PASSED BY
THE COURT OF SENIOR CIVIL JUDGE AND JMFC., HIREKERUR IN
O.S.NO.25/2012 AND DECREE THE SUIT AS PRAYED BY ALLOWING
THIS APPEAL AND ETC.

THIS APPEAL, COMING ON FOR FURTHER ARGUMENTS, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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



ORAL JUDGMENT

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

RFA No.100261/2018 is filed by plaintiff/appellant, praying for setting aside the judgment and decree dated 03.04.2018 passed in O.S.No.25/2012 on the file of the learned Senior Civil Judge and J.M.F.C., Hirekerur and to decree the suit as prayed for.

2. The appellant-defendant No.2 has filed RFA No.100283/2018 challenging the judgment and decree dated 03.04.2018 passed in O.S.No.25/2012 in rejecting the Counter-Claim of appellant and finding on additional issue No.2 as null and void and for such other reliefs.

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

4. Plaintiff has filed a suit praying for judgment and decree of partition and separate possession of his half



share in suit schedule properties by metes and bounds for good cause and for such a delay.

5. The case of plaintiff before Trial Court in nutshell and the G-tree of the family is that, one Basappa is the original propositus having a wife by name Gangawwa and two children. First one is Shivanandappa and second one is Eramma. Shivanandappa is defendant No.1 in the suit. Eramma died on 11.03.2000 leaving behind her husband/plaintiff and her daughter-defendant No.2 as her legal representatives. Marriage of Eramma had taken place with plaintiff in the year 1989 and defendant No.2 was born from the said wedlock. She was married and residing in her husband's house. Original propositus and his wife Smt.Gangawwa died long back. Defendant No.1 and Eramma were his only legal representatives. After death of Eramma, plaintiff and defendant No.2 being his legal representatives continued with defendant No.1 as joint family members. Suit schedule properties are “ದತ್ತಕ ಆಸ್ತಿಗಳು” of original propositus-



Basappa. There is no partition in the joint family. Defendant No.1 in collusion with Revenue Officials has got mutated the suit schedule properties into his name, after death of his father by getting M.E.No.1573 illegally without the consent of Eramma. Those revenue entries will not bind the legitimate right of plaintiff over suit schedule properties. Plaintiff came to know about those illegal revenue entries recently. Hence, the plaintiff demanded his legitimate share in suit schedule properties with defendant No.1. But defendant No.1 refused to effect partition and told that, he is the absolute owner of suit schedule properties and he will not give any share to plaintiff. Hence, the suit for appropriate reliefs.

6. After service of notice, defendant No.1 appeared through his counsel and filed his written statement, wherein, he denied the entire averments made in the plaint and further contended that, suit schedule properties along with Sy.No.121/16 measuring 1 acre 15 guntas and re-survey.No.40/15 measuring 2 acres and 5



guntas situated at Hiremorab village belonged to the father of defendant No.1. The father of defendant No.1 died on 10.07.1981 and after his death, all the above said properties came to defendant No.1. Defendant No.1 has given application to mutate the above said properties into his name for that his mother-Gangawwa and his younger sister-Eramma have given their consent and accordingly, those properties were mutated into the name of defendant No.1. Gangawwa or Eramma during their lifetime have not questioned the revenue entry in M.E.No.1573 and it continued in the name of plaintiff absolutely. He is in continuous exclusive possession and enjoyment of all the above said properties. Plaintiff and defendant No.2 are not having any right, title, interest in or over suit schedule properties. 30 guntas in Sy.No.121/16 and 8 guntas in Sy.No.40/15 were acquired by the Government for Upper Tunga Project and in this regard, notification under Section 6(1) of the Karnataka Land Acquisition Act was published. Under the notice issued under Section 5(1), bearing



No.Cr.90/2004-2005 dated 04.01.2004, the aforesaid lands were acquired, and a notice under Section 12(2) was issued to Defendant No.1, and compensation was awarded to him by the concerned authorities. About 25 years prior to filing of the written statement, marriage of Eramma has taken place with plaintiff and at that time, defendant No.1 and his father have spent huge money and have given gold ornaments. After the marriage, Eramma lived with plaintiff for about 7-8 years. She died on 11.03.2000. She has a daughter i.e., defendant No.2. Defendant No.1 has performed the marriage of defendant No.2 by spending entire marriage expenses. After death of Eramma, plaintiff married Akkamma who is his second wife i.e., defendant No.3 and thus, now plaintiff is not related to defendant No.1 or to suit schedule properties. After death of Eramma, plaintiff in collusion with Revenue Officials has got mutated Re-survey No.40/15 measuring 2 acre 5 guntas situated at Hiremorab Village into his name behind the back of defendant No.1 by getting M.E.No.2813. The



said mutation will not convey any right to plaintiff. He got mutated the same as per M.R.No.97/2005-2006. But he is not getting any right under said mutation and right of defendant No.1 was not set aside. Further, plaintiff by concocting his second wife as the own sister of defendant No.1 got relinquishment from her in respect of Sy.No.121/16 measuring 1 acre 15 guntas as per M.R.No.1836/2003-2004 behind the back of defendant No.1 in collusion with Revenue Officials. Plaintiff in collusion with defendant No.3 i.e. his second wife has filed L.A.C.No.80/2006 and L.A.C.No.79/2006 for awarding compensation in respect of re-survey No.121/16 measuring 1 acre 15 guntas and Sy.No.40/15 measuring 2 acres 5 guntas even though, they are not having any right, title, or interest in or over the said properties; they got concocted the oral and documentary evidence and have obtained compensation. In those cases, learned Senior Civil Judge, Hirekerur has passed award granting compensation to them. The said compensation awarded in



favour of present plaintiff and defendant No.3 in L.A.C.Nos.79/2006 and 80/2006 is challenged by defendant No.1 by filing O.S.No.9/2012 to declare him as absolute owner of those properties. Even though, the facts are as above, without including Sy.Nos.40/15 and 121/16, plaintiff has filed this suit. Hence, suit is bad for non-joinder of all properties. After marrying defendant No.3, plaintiff severed all his ties with the family of defendant No.1. Defendant No.2 is the daughter of Eramma and she is the legal representative of Eramma. However, Eramma has relinquished all her rights in suit schedule properties during her lifetime itself. Hence, defendant No.2 is also not entitled for any right in suit schedule properties. Eramma died in the year 1981. Within 12 years from the date of her death, plaintiff has not filed the suit. Hence, suit is barred by law of limitation. Hence, prayed for dismissal of suit with compensatory costs of ₹.30,000/-.

7. Defendant No.2 filed her written statement, wherein she contended that suit of plaintiff is based on



concocted facts and is not maintainable in law. She further contended that, before commencement of Hindu Succession (Amendment) Act, 2005 (for short referred as "Act 2005") Eramma died and Basappa died long back. Hence, Eramma was having right in family properties only as per the Hindu Succession Act, 1956 i.e., notional partition. After the time of death of father-Basappa, defendant No.1, Eramma and their mother-Gangawwa were alive. Hence, all of them would get $1/3^{\text{rd}}$ share each. Thus, totally defendant No.1 would get $4/6^{\text{th}}$ share and Eramma would get $4/18^{\text{th}}$ share. After death of Basappa, defendant No.1 with the consent of his mother-Gangawwa and his sister-Eramma, got mutated Re-survey No.121/16 into the name of defendant No.1. After death of Eramma on 04.03.2000, without the knowledge and consent of defendant Nos.1 and 2, plaintiff got mutated said property into the name of defendant No.3-Akkamma as per MR No.1836/2003-04. Defendant No.3 is in no way related to the family of defendant No.1 or Eramma. However, it was



wrongly stated before revenue authorities that defendant No.3 is the own sister of defendant No.1 and said revenue entry came into existence in collusion with revenue officials and defendant No.3 is not having any right, title or interest in or over the said property. Said property stands in her name and hence, she is also proper and necessary party to the suit. After death of Basappa, defendant No.1 with the consent of his mother-Gangawwa has given portion of item No.7 in 'A' schedule property, measuring 1 acre 15 guntas to his sister-Eramma as per M.E.No.2032. However, after death of Eramma even without the knowledge of defendant No.2, plaintiff got mutated said property into his name as per M.R.No.97/2005-2006 and obtained compensation alone without including defendant No.2. Plaintiff has obtained compensation in respect of re-survey No.121/16 in LAC No.80/06, but defendant No.2 has got 1/2 share in said property. Portion of said amount 21,649/- is in CCD No.36/2011-12. Hence, prayed for not to disburse said amount to plaintiff till disposal of the suit



and finally prayed for 1/6th share by metes and bounds. She is ready to pay Court fee in that regard.

8. Defendant No.3 appeared through her counsel and filed her written statement wherein she has taken contention that one Veerabasappa was the original propositus having two sons and three daughters i.e. Basappa, Bailappa, Thippamma, Gangawwa and Nagavva. Defendant No.1-Sivanandappa and Eramma are children of Gangawwa and defendant No.3 is the daughter of Nagavva through Subhas Chandra Rudragowda. She contended that earlier plaintiff married the younger sister of defendant No.1-Eramma and from said wedlock, they got defendant No.2. During 2000, Eramma died due to cancer. Afterwards, plaintiff married defendant No.3 with the consent of defendant No.1 to look after his child-defendant No.2. This is at the instance of defendant No.1. Defendant No.1 has performed the marriage of plaintiff with defendant No.3 and defendant No.1 told that he would give the properties, which he is going to give to Eramma



to defendant No.3. Based on it, defendant No.1 has got mutated M.R.No.1836/2003-2004 stating that defendant No.3 is his own sister. Now, defendant No.1 is taking contention that defendant No.3 is not his family members only to grab the properties. With the consent of defendant No.1, Sy.No.121/16 measuring 1 acre and 15 guntas was mutated into the name of defendant No.3. Defendant No.1 has given consent to mutate Sy.No.40/15 measuring 2 acres to plaintiff and said property was acquired for Upper Tunga Project, at that time, defendant No.1 has given consent to mutate said property into the name of defendant No.3 and also consented to give compensation to defendant No.3. But defendant No.1 has concocted records during 2010 and he has taken compensation in respect of Sy.Nos.40/15 and 121/16. After plaintiff and defendant No.3 came to know about it, they enquired with defendant No.1. But he refused to give any share to them and told that, he will not give any property or any compensation to them. After marrying plaintiff, defendant



No.3 has fostered defendant No.2 as her own daughter and performed her marriage with person of Dudihalli Village. Hence, prayed for decreeing the suit of plaintiff and to dismiss the contention of defendant No.1.

9. On behalf of plaintiff, plaintiff was examined as P.W.1, examined a witness as P.W.2, got marked Ex.P.1 to 24 and closed his side before trial court. On behalf of defendants, 4 witnesses were examined as D.W.1 to 4, got marked Ex.D.1 to 38 and closed their side before trial Court.

10. After recording evidence and hearing arguments, learned trial judge has dismissed the suit of plaintiff on the ground that the suit is barred by limitation and plaintiff has no share in suit schedule properties.

11. Aggrieved by said judgment and decree, the plaintiff/appellant IN RFA No. 100261/2018 and defendant No.2/appellant in RFA No. 100283/2018 have preferred these appeals.



12. Heard arguments of both sides.

13. Learned counsel for the appellant/defendant No.2 Smt.Pooja Kulkarni in RFA No.100283/2018 would submit that one Sri Basappa was the original propositus who died on 10.07.1981 leaving behind his two children i.e., Shivanandappa/defendant No.1 and Eramma and his wife Gangawwa; Gangawwa also died subsequently. Thus, only defendant No.1 and Eramma succeeded to the properties of Basappa. Eramma died on 11.03.2000 leaving behind her daughter-defendant No.2 and her husband-the plaintiff. She would further submit that all the suit schedule properties are the ancestral and joint family properties of defendant No.1 and Eramma. Hence, after death of Basappa, both, defendant No.1 and Eramma would get equal share. The share of Eramma is to be equally divided between the plaintiff and defendant No.2, who succeeded to the share of Eramma.



14. Learned counsel for the appellant would further submit that suit schedule A(6) and A(7) properties were transferred into the name of the plaintiff by giving an application by defendant No.1. Some portions of those properties were acquired for Upper Tunga Project and compensation was given to defendant No.1. The plaintiff and defendant No.3 (2nd wife of the plaintiff) filed LAC No.79/2006 and 80/2006 and compensation was awarded on their behalf. However, defendant No.3 is not the family member of the plaintiff and defendant Nos. 1 & 2 and thus she will not get any share in those properties.

15. Learned counsel for the appellant would further submit that after commencement of Hindu Succession (Amendment) Act, 2005, Eramma would get equal share with defendant No.1. Based on the judgment of the Hon'ble Supreme Court in the case of ***Vineeth Sharma v. Rakesh Sharma and others*** reported in ***(2020) 9 SCC 1***, a coparcener, the daughter need not be alive at the time of commencement of said Act. However,



the learned trial Judge has not considered these aspects and has wrongly dismissed the suit of the plaintiff. Even though defendant No.2 had prayed for a share in her written statement by paying court fee, that was also not considered by the trial Court. Hence, prayed for allowing her appeal and to grant 1/4th share in all suit schedule properties by metes and bounds.

16. Learned counsel Sri S.G. Kadadakatti for the appellant-(plaintiff) in RFA No.100261/2018 would submit that, the plaintiff, being the husband of deceased-Eramma, is Class-1 heir as per Section 15 of Act 2005. Hence, he is having right in the suit schedule properties. He adopted the arguments of learned counsel for appellant in RFA No.100283/2018 and submit that suit A(6) and A(7) properties were mutated into his name as per the application given by defendant No.1 to Revenue Officials. However, the defendant No.1 denied his signature on such application along with his signature on the written statement, affidavit evidence and vakalat. This shows the



conduct of defendant No.1. He would further submit that some portion of items in suit schedule A(6) and A(7) properties were acquired for Upper Tunga project and in that regard, LAC No.79/2006 was filed by him. Defendant No.3 is his second wife. Defendant No.1 himself got performed the marriage of plaintiff with defendant No.3 by assuring him that he would give the properties of Eramma to defendant No.3 and thus he has given application to change their names i.e., names of plaintiff and defendant No.3 in revenue records pertaining to suit schedule A(6) and A(7) properties. He would further contend that, LAC Nos.79/2006 and 80/2006 were allowed, against which, defendant No.1 filed O.S. No.9/2012 for declaration of his ownership in respect of those properties which is pending consideration with a new number O.S. No.128/2019 before the court of Senior Civil Judge, Hirekerur. Hence, prayed for allowing the appeal.

17. Learned counsel Sri. G.S. Hulmani appearing for respondent No.1/defendant No.1 would submit that, the



original propositus-Basappa died in the year 1981, at that time itself, all the suit schedule properties along with two more properties were mutated into the name of defendant No.1 as per the consent of his mother and his sister i.e., Gangawwa and Eramma and since then he is enjoying those properties as absolute owner and as a sole surviving coparcener. During the year 2000, Eramma died and during her lifetime, she has not questioned the revenue entries bearing ME No.1573 dated 29.08.1981. She was alive for about 19 years after such change in the revenue entry. Furthermore, after 4 years of her death, the plaintiff along with defendant No.3, who is his second wife, in collusion with the revenue officials, got mutated revenue entries in respect of suit schedule A(6) and A(7) properties into their names, which was not known to defendant No.1. Some portions of those properties were acquired for Upper Tunga project and compensation was given to defendant No.1 alone by the revenue authorities. Aggrieved by the same, the plaintiff and defendant No.3 filed LAC



Nos.79/2006 and 80/2006 claiming compensation by producing several concocted documents. Based on those fraudulent and concocted documents, those LAC petitions were allowed. Against which, defendant No.1 filed O.S. No.9/2012 for the relief of declaration of his title over the suit schedule A(6) and A(7) properties and also for the relief of injunction before the learned Senior Civil Judge, Hirekerur, which was decreed by judgment and decree dated 22.07.2015. Against the said judgment and decree, the plaintiff and defendant No.3 filed R.A. No.85 by 2015, which was partly allowed and the matter was remanded to trial Court for fresh trial by setting aside the judgment and decree. The said suit was transferred to the Court of Civil Judge and JMFC-Hirekerur on the point of pecuniary jurisdiction and re-numbered as O.S. No.128/2019, which is pending consideration. In the meanwhile, the plaintiff filed the present suit i.e. O.S. No.25/2012 seeking partition and separate possession of his ½ share in the suit schedule properties. The plaintiff, in his cross-



examination has given categorical admission in respect of the application given by his wife to revenue authorities to change the entries in respect of the suit schedule properties into the name of defendant No.1 and also given several other admissions in his cross-examination which clearly show that the plaintiff and defendant No.2 are not having any right over suit schedule properties. Furthermore, 12 years after the death of Eramma, the present suit was filed by the plaintiff alone and defendant No.2 has not filed any suit. Considering the aspect on the point of limitation and other aspects, the learned trial judge has rightly dismissed the suit of plaintiff. Hence, prayed for dismissal of both appeals by confirming the judgment and decree passed in O.S. No.25/2012.

18. Being aggrieved by dismissal of O.S.No.25/2012, plaintiff preferred RFA No.100261/2018 and defendant No.2 being aggrieved by rejection of her Counter-Claim in aforesaid O.S., has preferred RFA No.100283/2018.



19. Having heard the arguments of both sides and verifying the trial court records and appeal papers of both the appeals, the points that arise for consideration are:

- i. Whether the plaintiff and defendant No.2 are entitled for any share in suit schedule properties?
- ii. Whether the judgment and decree passed by trial Court is erroneous and it requires interference?

20. The findings on these points are in "**Negative**" for the following:

Reasons:-

The plaintiff has filed the suit for the relief of partition and separate possession of his share in suit schedule properties contending that the suit schedule properties are the properties of original propositus-Basappa which came to him through adoption. Basappa has a wife by name Gangawwa, son – Shivanandappa (defendant No.1) and daughter Eramma (wife of the plaintiff and mother of defendant No.2). Basappa died on 10.07.1981 since then, the suit schedule properties are the joint family properties



of plaintiffs and defendant Nos.1 & 2 and they are in joint possession and enjoyment of the suit schedule properties and there is no partition amongst them.

21. In the written statement, defendant No.1 has denied the relationship between the plaintiff and himself. However, at the time of evidence, defendant No.1 has categorically admitted the relationship between parties. Some dates of incidents, which are not in dispute are very important to decide the present case. Firstly, date of death of Basappa is on 10.07.1981. At that time, the law in force was that, "only male members were considered as coparceners". Hence, at that time, as per Section 6 of Hindu Succession Act, 1956, first defendant was the only sole surviving coparcener in the family. As per Section 8 of the Hindu Succession Act, 1956, the wife and daughter of deceased Basappa would get a share in the share of Basappa under notional partition. However, Eramma, who died on 11.03.2000, during her lifetime, did not file any suit for partition claiming her share in the suit schedule



properties. Mother of defendant No.1-Gangavva also died long back and not claimed any share in the properties.

22. After death of Basappa, Gangawwa and Eramma being the wife and daughter of deceased-Basappa have given application as per Ex.P.7 dated 29.08.1981 to change revenue entries into the name of defendant No.1. Based on said application and after giving notice, which was duly served on 02.10.1981, the M.E.No.1573 came into existence and all the properties of Basappa were succeeded by defendant No.1 by way of inheritance. They continued in his name as on the date of suit and subsequently except suit schedule A(6) and A(7) properties.

23. As far as suit schedule A(6) and A(7) properties are concerned, plaintiff and his second wife have given application to revenue authorities to change those properties into their names and accordingly as per Ex.D.12, they were mutated into the name of plaintiff and



defendant No.3 As per M.E.No.2813 dated 15.05.2004 and as per RTSCR No.853/2003-04 dated 17.03.2004.

24. In the meanwhile, 30 guntas in suit schedule A(6) property bearing Re.Sy.No.121/16 and 8 guntas in suit schedule A(7) property bearing Re.Sy.No.40/15 were acquired for Upper Thunga Project and initially compensation was disbursed to first defendant; later LAC No.79/2006 and LAC No.80/2006 were filed by plaintiff and defendant No.3 and those petitions were allowed holding that they are entitled for enhanced compensation as per reference under Section 18 of the Land Acquisition Act. At that time they have produced some revenue entries i.e., Ex.D.12 and another revenue entry which is not marked in this case and application as per Ex.D15.

25. First defendant has filed O.S.No.9/2005 before Senior Civil Judge, Hirekerur challenging the revenue entries mutated into the name of plaintiff and defendant No.3 in respect of suit schedule A(6) and A(7) properties



contending that they are the collusive revenue entries based on fraud and misrepresentation and he has not given any application to revenue authorities and based on these pleadings, he has prayed for declaration of his title over those properties and also for the relief of injunction. Said suit was decreed initially. After such decree, R.F.A.No.85/2015 was filed by plaintiff and defendant No.3 and it was allowed partly by setting aside the judgment and decree dated 22.07.2015 in O.S.No.9/2001 and the matter was remanded back to the trial Court for fresh disposal. Afterwards, said suit was transferred to Civil Judge and JMFC., Hirekerur on the point of pecuniary jurisdiction and re-numbered as O.S. No.128/2019 and it is still pending for consideration. Hence, the initial judgment and decree in favour of defendant No.1 of this suit is not having any bearing on the present suit.

26. In this suit, plaintiff was examined as P.W.1 and reiterated his contention in his affidavit evidence. In his cross-examination, he has admitted that he married the



sister of defendant No.1-Eramma and his family is entirely different from the family of defendant No.1. He also admitted that from said marriage he got a daughter i.e., defendant No.2-Hemavva and her marriage is already performed and she is residing in her husband's house. He further categorically admitted that based on the application given by Eramma and her mother Gangawwa during 1981, the suit schedule properties were mutated into the name of defendant No.1. He admitted that at the time of marriage, sufficient dowry and cash was given to Eramma and hence no property was given to her and thus she has given application for change of properties into the name of first defendant. He also admits that during her lifetime, Eramma has not prayed for partition in joint family properties.

27. The above admission of plaintiff clearly and categorically establish that the date of death of Basappa in the year 1981, change of mutation entries into the name of defendant No.1 in the year 1981 and death of Eramma



on 11.03.2000 are not in dispute. It is also not in dispute that Eramma has not prayed for partition during her lifetime in any of the properties of her parental family.

28. It is to be noted that about four years after the death of Eramma, suit schedule A(6) and A(7) properties were mutated into the name of plaintiff and defendant No.3, based on the alleged application given by defendant No.1 to revenue authorities stating that defendant No.3 is the own sister of defendant No.1.

29. As already discussed above, defendant No.1 has got only one sister-Eramma and this defendant No.3-Akkamma is not his sister. However, she is the daughter of his maternal aunt. But, application was given to revenue authorities stating that she is the own sister of defendant No.1 and some properties were mutated into her name based on such application. In this regard, plaintiff has categorically deposed that, he does not know that about four years after the death of Eramma by



creating concocted documents, survey No.171/2016 measuring 1 acre 16 guntas and re-survey No.40/15, measuring 2 acres 5 guntas were mutated into the name of plaintiff and defendant No.3. He categorically admitted that based on M.E.No.2813, she got mutation entries into his name by concoction as per M.R.No.97/2005-06. He also admitted that his second wife-Akkamma (defendant No.3) is neither the sister of first defendant nor the sister of Eramma. He admitted that survey No.121/16 is mutated into the name of Akkamma by giving alleged application that she is the own sister of first defendant and said entry is a concocted entry based on M.R.No.1836/200-04. He admitted that under Upper Tunga Project, those two properties were acquired. However, entire properties were not acquired but only a portion of those properties were acquired and compensation was given to defendant No.1 initially. She admitted that he is in no way related to both those properties. Only after filing of O.S.No.9/2012 by first



defendant, he impleaded those properties in this suit. He categorically admitted that during her lifetime, his wife has not prayed for partition and likewise his daughter-defendant No.2 also not prayed for partition in the share of her mother.

30. On behalf of plaintiff, a witness was examined as PW.2. He also admitted about death of Basappa during 1981, change of properties into the name of defendant No.1 during 1981. It is to be noted here that after the death of his first wife, plaintiff married third defendant-Akkamma, who is not the member of the family of Basappa but she is the daughter of Basappa's younger sister. It is pleaded in the plaint itself that suit schedule properties were the properties of Basappa as he was the adopted son. Thus, the sisters of Basappa would not get any right, title or interest in or over the properties of Basappa. Under those circumstances, definitely defendant No.3 being stranger to the family of Basappa would not get any share in the properties of Basappa. However,



stating that first defendant has given application, she got mutated some of the properties into her name before revenue authorities, which will not create any title or interest to her. Defendant No.3 was not having any title, or interest over the property initially and hence, mere revenue entries will not confer title to her.

31. Only, if a party is having a right by birth or any such right in the property before entering his name into revenue records, then without any registered document, only based on the application, revenue entries could be mutated into the name of such party. But not vice versa.

32. Earlier M.E. No.1573 came into existence and revenue entries are mutated into the name of first defendant because he was having right over the properties immediately after death of his father. However, this defendant No.3 is in no way related to the family of Eramma and first defendant and hence her name could not have been mutated into suit schedule A(6) and A(7)



properties only based on the application without any registered document. Hence, a registered relinquishment deed was very much required to change suit schedule A(6) and A(7) properties into the name of defendant No.3, which is not forthcoming in the present case. Hence, the admission or denial of first defendant in giving an application to change suit schedule A(6) and A(7) properties into the name of first defendant has no relevance in this case. Hence, the argument of learned counsel Smt.Pooja Kulkarni for Sri.Dinesh M. Kulkarni, counsel for appellants that the attitude of first defendant in denying his signature on said application along with written statement, his affidavit evidence and also in vakkalath has no consequence in this case.

33. Admittedly, Basappa had a son and a daughter. During his lifetime, marriage of his daughter was not performed. Only after death of Basappa, her marriage was performed in the year 1988-1989 as per the evidence of both parties. Thus, at the time of death of Eramma in the



year 2000, she was not having any right over the properties of her father, except if she had claimed notional partition in the joint family properties by filing a suit or by obtaining her share from defendant No.1. However, even though she was alive for about 19 years, she never claimed her right in any of the properties, which were standing in the name of first defendant after death of his father.

34. It is an admitted fact that on 11.03.2000 Eramma died and present suit is filed on 26.06.2012 i.e., 12 years after the death of Eramma.

35. To file a suit for partition, based on notional partition, the period of limitation would be 12 years and within that period Eramma has not exercised her right and within 12 years of her death, plaintiff and defendant No.2 have not exercised their right for partition. Hence, apparently, the suit is barred by limitation.



36. Ex.D.15 is said to be the application given by defendant No.1 to change khatha of Re.Sy.No.121/16 measuring 1 acre 15 guntas into the name of defendant No.3. However, as discussed above, she is in no way related to defendant No.1 and hence said application even if given by defendant No.1 has no value in the eye of law. Hence, M.E.No.2836 based on said alleged application is also having no value in the eye of law.

37. As far as Ex.D.12 is concerned, even the application alleged to be given by defendant No.1 is not produced in this case. Only based on an unavailable application, it is M.E.No.2813 came into existence in respect of 2 acres 5 guntas of Survey No.40/15. Thus, these two entries would not confer any right over any of the suit schedule properties either to plaintiff or to defendant No.2. Only based on Exs.D.12 and D.15, defendant No.1-plaintiff has given application as per Ex. D.17 and got mutated those properties into his name, which is also not a proper one. Under those circumstances,



the suit filed by plaintiff and the relief claimed by defendant No.2 in her written statement are clearly barred by time. Even though, learned counsel for defendant No.2 would submit that defendant No.2 has prayed for Counter-Claim, on perusal of her written statement would not establish the said fact. She had only prayed for allotting share to her and she was ready to pay court-fee. However, the court-fee was also not paid.

38. For the reasons stated above, both plaintiff and defendant No.2 are not entitled for any of the reliefs prayed in the plaint. Considering these aspects, rightly, the learned trial Judge has dismissed the suit of the plaintiffs.

39. It is to be noted here that in ***Vineeth Sharma's case***, stated supra, the father need not be alive at the time of commencement of Hindu Succession (Amendment) Act, 2005. But before commencement of said Act, both the father and daughter were not alive.



Should parties be permitted to initiate litigation ex-post facto, long after the demise of the original coparcener and the subsequent death of the daughter—who would have derived interest solely via the 2005, Act—it would result in perpetual, unending litigation. Were centenarian partitions or century-old revenue entries to be amenable to challenge subsequently, it would, without doubt, lead to an incessant stream of litigation, which fundamentally contradicts the legislative intent of the 2005, Act and violates the principles articulated in ***Vineeth Sharma's case***, supra.

40. The only intention is that the daughter who has got right over the property, because of the Act, 2005 shall not be deprived of such right by manipulation, concoction of revenue entries or oral partition deeds. However, that is not the situation in present case as discussed above.

41. Considering these aspects, we are of the opinion that the relief sought in the suit of the plaintiffs or the relief sought by defendant No.2 cannot be granted.



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Hence, both appeals shall not survive for consideration. Accordingly, the points under consideration are answered in "Negative" and we proceed to pass the following:

ORDER

RFA Nos.100283/2018 and RFA No.100261/2018 filed under Section 96 R/W 41 Rule 1 of CPC are dismissed by confirming the judgment and decree passed in OS No.25/2012 on the file of the Senior Civil Judge and JMFC.

Under the facts and circumstances of the case, parties are directed to bear their own costs.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

SSP: Para 1 to 7
kmv from Para 8-16
HMB: Para 17 to end
CT:PA
LIST NO.: 1 SL NO.: 12