



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 20TH 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.100158 OF 2014 (PAR)

C/W

REGULAR FIRST APPEAL NO. 100164 OF 2014

REGULAR FIRST APPEAL NO. 100167 OF 2014

IN RFA NO. 100158/2014
BETWEEN:

MALLIKARJUNAGOUDA S/O. SANKANAGOUDA ROTTI,
AGE: 47 YEARS, OCC. AGRICULTURE,
AT: ASUTI, TQ. RON, DIST. GADAG.

...APPELLANT

(BY SRI. ARAVIND D. KULKARNI, ADVOCATE)

AND:

1. KARIYAVVA W/O. NINGAPPA HADLI,
AGE: 79 YEARS, OCC. AGRICULTURE
R/O. ASUTI, TQ. RON, DIST. GADAG.
2. NINGAVVA W/O. SANNA NIMBANNA GORAVAR,
AGE: 51 YEARS, OCC. AGRICULTURE
R/O. UPPINBETAGERI, TQ. AND DIST. KOPPAL.
3. IRAVVA W/O. MALLAPPA CHIMMANAKATTI,
AGE: 49 YEARS, OCC. HOUSEHOLD WORK,
R/O. HALAKURKI, TQ. BADAMI, DIST. BAGALKOTE.

SAROJA
HANGARAKI



Digitally signed by
SAROJA HANGARAKI
Location: HIGHCOURT
OF KARNATAKA
DHARWAD BENCH
DHARWAD



4. DYAMAPPA S/O. NINGAPPA HADLI,
AGE: 44 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
5. MALLAVVA W/O. GAVISIDDAPPA HUJRATTI,
AGE: 43 YEARS, OCC. AGRICULTURE,
R/O. YAREHANCHINAL, TQ. YALBURGA,
DIST. KOPPAL.
6. AKAKAMAHADEVI W/O. MARIYAPPA KOUAGERI,
AGE: 36 YEARS, OCC. AGRICULTURE
R/O. KURAMUDI, TQ. RON, DIST. GADAG.
7. DRAKSHAYANI W/O. NEELAPPA CHIMMANAKATTI,
AGE: 32 YEARS, OCC. AGRICULTURE
R/O. HALAKURKI, TQ. BADAMI,
DIST. BAGALKOTE.
8. SHIVAPPA S/O. NINGAPPA HADLI,
AGE: 48 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
9. CHANNAPPA S/O. NINGAPPA HADLI,
AGE: 39 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
10. RUDRAPPA IRABASAPPA @ VEERABASAPPA HADLI,
SINCE DECEASED BY HIS LRS ARE ALREADY ON RECORD.
11. SMT. PARVATEVVA W/O. ADIVEPPA HADLI,
AGE: 65 YEARS, OCC. HOUSEHOLD WORK,
AT. ASUTI, TQ. RON, DIST. GADAG.
12. YALLAPPA S/O. ADIVEPPA HADLI,
AGE: 40YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
13. HANAMAPPA S/O. ADIVEPPA HADLI,
AGE: 30 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
14. SHIVAVVA W/O. ADIVEPPA HADLI,
AGE: 55 YEARS, OCC. HOUSEHOLD WORK,
R/O. ASUTI, TQ. RON, DIST. GADAG.



15. YALLAVVA W/O. HANAMAPPA GAJI,
AGE: 55 YEARS, OCC. HOUSEHOLD WORK,
R/O. MALLAPUR, TQ. RON, DIST. GADAG.
16. IRAVVA W/O. DEVAPPA SHIRPRI,
AGE: 30 YEARS, OCC. HOUSEHOLD WORK,
R/O. RON , TQ. RON, DIST. GADAG.
17. IRAPPA S/O. ADIVEPPA HADLI,
AGE: 25 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
18. SHARANAPPA S/O. ADIVEPPA HADLI,
AGE: 23 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
19. YALLAPPA S/O. RUDRAPPA,
SINCE DECEASED BY HIS LRS.
- 19A. DEVAKKA W/O. YALLAPPA HADLI,
AGE: 58 YEARS, OCC. HOUSEHOLD WORK,
R/O. ASUTI-582203, TQ AND DIST. GADAG.
- 19B. IRAPPA S/O. YALLAPPA HADLI,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. NEAR DODDABASAVESHWARA TEMPLE,
KUMBAR ONI, ASUTI-582203,
TQ AND DIST. GADAG.
- 19C. SMT. RENUKA W/O. RAMAPPA HIREHOLI,
AGE: 39 YEARS, OCC. HOUSEHOLD WORK,
R/O. SIDDARAMESHWAR NAGAR, WARD NO.9,
ASHRAYA COLONY, MUDHOL ROAD,
YALABURGA-583236, DIST. KOPPAL.
- 19D. NAGAPPA S/O. YALLAPPA HADLI,
AGE: 38 YEARS, OCC. AGRICULTURE,
R/O. ASUTI-582203, TQ. RON,
DIST. GADAG.
- 19E. BASAVARAJ S/O. YALLAPPA HADLI,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. ASUTI-582203, TQ. AND DIST. GADAG.



- 19F. DEVAPPA S/O. YALLAPPA HADLI,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. ASUTI-582203, TQ. AND DIST. GADAG.
20. YALLAPPA S/O. ADIVEPPA HADLI,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
21. HANAMAPPA S/O. ADIVEPPA HADLI,
AGE: 30 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
22. SMT. PARAVATEVVA W/O. ADIVEPPA HADLI,
AGE: 65 YEARS, OCC. HOUSEHOLD WORK,
R/O. ASUTI, TQ. RON, DIST. GADAG.
23. SMT. BHIMAVVA W/O. RUDRAVVA HADLI,
AGE: MAJOR, OCC. HOUSEHOLD WORK AND
AGRICULTURE, R/O. ASUTI, TQ. RON,
DIST. GADAG.
24. VEERABASAPPA S/O. NINGAPPA HADLI,
AGE: MAJOR,
OCC. HOUSEHOLD WORK AND AGRICULTURE,
R/O. ASUTI, TQ. RON, DIST. GADAG.
25. MALLAPPA S/O. KALASAPPA ITTAPPANNAVAR,
AGE: 45 YEARS, OCC. AGRICULTURE,
R/O. Y.S. HADAGALI, TQ. RON, DIST. GADAG.
26. HANAMANTAPPA S/O. MALLAPPA ITTAPPANNAVAR,
AGE: 14 YEARS, R/O. Y.S. HADAGALI,
TQ. RON, DIST. GADAG.
27. MAHESH S/O. MALLAPPA ITTAPPANNAVAR,
AGE: 12 YEARS, R/O. Y.S. HADAGALI,
TQ. RON, DIST. GADAG.
28. SAVITA D/O. MALLAPPA ITTAPPANNAVAR,
AGE: 10 YEARS, R/O. Y.S. HADAGALI,
TQ. RON, DIST. GADAG.

...RESPONDENTS

(BY SRI. S.S. BHAWAKHAN, ADVOCATE AND
SRI. S. BADAWADAGI, ADVOCATE FOR R1 TO R7, R9 AND R18;
SRI. K. L. PATIL, ADVOCATE FOR R19 (A TO F);



NC: 2026:KHC-D:642-DB
RFA No. 100158 of 2014
C/W RFA No. 100164 of 2014
RFA No. 100167 of 2014

LRS OF R8 (A TO C), R10 TO R17, R20 TO R21 AND R24, R25,
R26, R27-NOTICE SERVED;
R22, R23 (A TO D) HELD SUFFICIENT)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO
ALLOW THE APPEAL AND TO SET ASIDE THE JUDGMENT AND
DECREE OF O.S.NO.17/2012 PASSED BY SENIOR CIVIL JUDGE AND
JMFC., RON, ON 26TH JUNE 2014 AND THE SUIT BE DISMISSED AND
ETC.

IN RFA NO. 100164/2014
BETWEEN:

1. YALLAPPA S/O. ADIVEPPA HADLI,
AGE: 42 YEARS, OCC. AGRICULTURE,
2. HANAMAPPA
S/O. ADVIEPPA HADLI,
AGE: 32 YEARS, OCC. AGRICULTURE,
3. SMT. PARAVATHAWWA
W/O. ADVIEPPA HADLI,
AGE: 67 YEARS,
OCC. HOUSE HOLD AND AGRICULTURE,
ALL ARE RESIDENTS OF ASUTI,
TQ.RON, DIST. GADAG- 582101,
ALL ARE NOW RESIDING OF GAWARWAD,
TQ. GADAG, DIST. GADAG- 582101.

...APPELLANTS

(BY SRI. K.L. PATIL, ADVOCATE)

AND:

NINGAPPA S/O. IRABASAPPA HADLI,
SINCE DECESED BY HIS LRS,

1. SMT. KARIYAVVA W/O. NINGAPPA HADLI,
AGE: 81 YEARS, OCC. HOUSE HOLD,
R/O. ASUTI, TQ. RON, DIST. GADAG.
2. SMT. NINGAVVA W/O. SANNANIMBANNA GORAVAR,
AGE: 53 YEARS, OCC. HOUSE HOLD,
R/O. UPPIN BETAGERI,



TQ. AND DIST. KOPPAL.

3. SMT. IRAVVA W/O. MALLAPPA CHIMMANAKATTI,
AGE: 51 YEARS, OCC. HOUSE HOLD,
R/O. HALAKURI,
TQ . BADAMI, DIST. BAGALKOTE.
4. DYAMAPPA S/O. NINGAPPA HADLI,
AGE: 47 YEARS, OCC.AGRICULTURE,
R/O.ASUTI, TQ. RON -582209,
DIST. GADAG.
5. MALLAVVA W/O. GAVISIDDAPPA HUJRATTI,
AGE: 45 YEARS, OCC. AGRICULTURE,
R/O. YAREHANCHINAL, TQ. YALBURGA,
DIST. KOPPAL.
6. AKKAMAHADEVI W/O. MARIYAPPA KOUJAGERI,
AGE: 38 YEARS, OCC.AGRICULTURE,
R/O. KARUMADI, TQ. RON,
DIST. GADAG.
7. DRAKSHAYANI W/O. NEELAPPA CHIMMANAKATTI,
AGE: 34 YEARS, OCC.AGRICULTURE,
R/O. HALAKURKI, TQ. BADAMI,
DIST. BAGALKOTE.
8. SHIVAPPA S/O. NINGAPPA HADLI,
AGE: 50 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ . RON-582209,
DIST. GADAG.
9. CHANNAPPA S/O. NINGAPPA HADLI,
AGE: 42 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
- RUDRAPPA S/O. IRBSAPPA @ VEERABASAPPA HADLI,
SINCE DECEASED BY HIS LRS.
- ADIVEPPA RUDRAPPA HADLI,
SINCE DECEASED BY HIS LRS,
10. SHIVAVVA W/O. HANUMAPPA GAJI,
AGE: 42 YEARS, OCC. HOUSEHOLD,



R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.

11. YALLAVVA W/O. HANUMAPPA GANJI,
AGE: 42 YEARS, OCC. HOUSEHOLD,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
12. SMT. IRAVVA W/O. DEVAPPA SHIPRI,
AGE: 32 YEARS, OCC. HOUSEHOLD,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
13. IRAPPA S/O. ADIVEPPA HADLI,
AGE: 27 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
14. SHARANAPPA S/O. ADIVEPPA HADLI,
AGE: 25 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
15. YALLAPPA RADRAPPA HADLI,
SINCE DECEASED BY HIS LRS.
- 15A. SMT. DEVAKKA W/O. YALLAPPA HADLI,
AGE: 60 YEARS, OCC. HOUSEHOLD,
R/O. ASUTI, DIST. GADAG-582203.
- 15B. IRAPPA S/O. YALLAPPA HADLI,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. KUMBAR ONI,
NEAR DODDABASAVESHWARA TEMPLE,
R/O. ASUTI, DIST. GADAG-582203.
- 15C. RENUKA W/O. RAMAPPA HIREHOLI,
AGE: 38 YEARS, OCC. HOUSEWIFE,
R/O. MUDHOL ROAD, SIDDARAMESHWAR NAGAR,
WARD NO.9, ASHRAYA COLONY,
TQ. YELBURGA, DIST. KOPPAL.
- 15D. NAGAPPA S/O. YALLAPPA HADLI,
AGE: 36 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, DIST. GADAG-582203.



- 15E. BASAVARAJ S/O. YALLAPPA HADLI,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, DIST. GADAG-582203.
- 15F. DEVAPPA S/O. YALLAPPA HADLI,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, DIST. GADAG-582203.
16. SMT. BHEEMAVVA W/O. RUDRAPPA HADLI,
AGE: 77 YEARS, OCC. HOUSEHOLD,
R/O. ASUTI, TQ. RON-582209, DIST. GADAG.
17. VEERABHASAPPA S/O. NINGAPPA HADLI,
SINCE DECEASED BY HIS LRS.
- 17A. SMT. YALLAVVA @ SHANTAVVA
W/O. VEERABASAPPA HADLI,
AGE: 50 YEARS, OCC. HOUSEHOLD,
- 17B. IRAPPA S/O. VEERABASAPPA HADLI,
AGE: 28 YEARS, OCC. AGRICULTURE,
- 17C. GEETA D/O. VEERABASAPPA HADLI,
AGE: 25 YEARS, OCC. HOUSEWIFE,
- 17D. YALLAPPA S/O. VEERABASAPPA HADLI,
AGE: 22 YEARS, OCC. AGRICULTURE,

ALL ARE R/O. ASUTI, DIST. GADAG-582203.
18. MALLAPPA S/O. KALASAPPA ITTAPPANAVAR,
AGE: 47 YEARS, OCC. AGRICULTURE,
R/O.Y S HADAGALI, TQ. RON-582209,
DIST. GADAG.
19. HANAMANTAPPA S/O. MALLAPPA ITTAPPANAVAR,
AGE: 16 YEARS, OCC. AGRICULTURE,
R/O.Y S HADAGALI, TQ. RON-582209,
DIST. GADAG.
20. MAHESH S/O. MALLAPPA ITTAPPANAVAR,
AGE: 14 YEARS, OCC. AGRICULTURE,
R/O.Y S HADAGALI, TQ. RON-582209,



NC: 2026:KHC-D:642-DB
RFA No. 100158 of 2014
C/W RFA No. 100164 of 2014
RFA No. 100167 of 2014

DIST. GADAG.

21. SAVITA D/O. MALLAPPA ITTAPPANAVAR
AGE: 12 YEARS, OCC. AGRICULTURE,
R/O.Y S HADAGALI, TQ. RON-582209,
DIST. GADAG.

(SINCE RESPONDENTS NO. 19 TO 21 ARE MINORS
REP. BY THEIR FATHER AS MINOR GUARDIAN RESPONDENT
NO.18)

22. MALLIKARJUNAGOUDA S/O. SANKANAGOUDA ROTTI,
AGE: 47 YEARS, OCC. HOUSEHOLD,
R/O.ASUTI, TQ. RON-582209,
DIST. GADAG.

...RESPONDENTS

(BY SRI. S.S. BHAWAKHAN, ADVOCATE AND
SRI. SHIVAKUMAR S. BADAWADAGI, ADVOCATE FOR R1 TO R7, R9;
R8 (B), R10 TO R14, R16, R17(B), R18 TO R22 -NOTICE SERVED;
SRI. AKSHAY A. VASTRAD, ADVOCATE FOR R15(A TO F);
SRI. AVINASH BANAKAR, ADVOCATE FOR R17(A);
R8 (A,C) R17(C TO D), R23 (A TO D)-HELD SUFFICIENT)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO
CALL FOR THE RECORDS IN O.S.NO.17/2012 ON THE FILE OF SENIOR
CIVIL JUDGE, RON AND TO SET ASIDE THE JUDGMENT AND DECREE
DATED 26.06.2014 MADE IN O.S.NO.17/2012 ON THE FILE OF SENIOR
CIVIL JUDGE, RON AND DISMISS THE SUIT O.S.NO.17/2012 ON THE
FILE OF SENIOR CIVIL JUDGE, RON AND ETC.

IN RFA NO. 100167/2014
BETWEEN:

1. SHIVAVVA W/O. ADIVEPPA HADLI,
AGE: 57 YEARS, OCC. HOUSEHOLD,
R/O. ASUTI, TQ. RON-582 209,
DIST. GADAG.
2. YALLAVVA @ DEVAKKA W/O. HANAMAPPA GAJI,
AGE: 57 YEARS, OCC. HOUSEHOLD,
R/O. MALLAPUR, TQ. RON-582209,
DIST. GADAG.



3. IRAVVA W/O. DEVAPPA SHIPRI,
AGE: 32 YEARS, OCC. HOUSEHOLD,
R/O. RON, TQ.RON-582209,
DIST. GADAG.
4. IRAPPA S/O. ADIVEPPA HADLI,
AGE: 27 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ.RON-582209,
DIST. GADAG.
5. SHARANAPPA S/O. ADIVEPPA HADLI,
AGE: 25 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, TQ.RON-582209,
DIST. GADAG.

...APPELLANTS

(BY SRI. SAURABH A. SONDUR, ADVOCATE)

AND:

NINGAPPA S/O. IRABASAPPA @ VEERABASAPPA HADALI,
SINCE DECEASED BY HIS LRS.,

1. KARIYAVVA W/O. NINGAPPA HADLI,
AGE: 81 YEARS, OCC. AGRICULTURE,
R/O.ASUTI, TQ. RON-582209,
DIST. GADAG.
2. NINGAVVA W/O. SANNA NIMBANNA GORAVAR,
AGE: 53 YEARS, OCC. AGRICULTURE,
R/O.UPPIN BETAGERI,
TQ. AND DIST. KOPPAL-583231.
3. IRAVVA W/O. MALLAPPA CHIMMANAKATTI,
AGE: 51 YEARS, OCC.HOUSEHOLD,
R/O.HALAKURKI, TQ.BADAMI-587201,
DIST. BAGALKOTE.
4. DYAMAPPA S/O. NINGAPPA HADLI,
AGE: 46 YEARS, OCC.AGRICULTURE,
R/O.ASUTI, TQ. RON - 582 209,
DIST. GADAG.
5. MALLAVVA W/O. GAVISIDDAPPA HUJRATTI,



NC: 2026:KHC-D:642-DB
RFA No. 100158 of 2014
C/W RFA No. 100164 of 2014
RFA No. 100167 of 2014

AGE: 45 YEARS, OCC.AGRICULTURE,
R/O. YAREHANCHINAL,
TQ. YELBURGA-583236,
DIST. KOPPAL.

6. AKKAMAHADEVI W/O. MARIYAPPA KOUAGERI,
AGE: 38 YEARS, OCC. AGRICULTURE,
R/O. KARAMUDI, TQ. RON-582209,
DIST. GADAG.
7. DRAKSHAYANI W/O. NELAPPA CHIMMJANAKATTI,
AGE: 34 YEARS, OCC.AGRICULTURE,
R/O. HALAKURKI,
TQ. BADAMI-587201,
DIST. BAGALKOTE.
8. SHIVAPPA S/O. NINGAPPA HADLI,
SINCE DECEASED BY HIS LRS.
- 8A. SMT. RENAVVA W/O. SHIVAPPA HADLI,
AGE: 45 YEARS, OCC. HOUSEHOLD,
- 8B. ARUN S/O. SHIVAPPA HADLI,
AGE: 21 YEARS, OCC. AGRICULTURE,
- 8C. BASAV S/O. SHIVAPPA HADLI,
AGE: 19 YEARS, OCC. AGRICULTURE,

ALL ARE R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
9. CHANNAPPA S/O. NINGAPPA HADLI,
AGE: 41 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.

ADIVEPPA S/O. RUDRAPPA HADLI,
SINCE DECEASED BY HIS L.R.S.,
10. PARVATEVVA W/O. ADIVEPPA HADLI,
AGE: 67 YEARS, OCC. HOUSEHOLD WORK,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
11. YALLAPPA S/O. ADIVEPPA HADLI,



NC: 2026:KHC-D:642-DB
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AGE: 42 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.

12. HANAMAPPA S/O. ADIVEPPA HADLI,
AGE: 32 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
13. YALLAPPA S/O. RUDRAPPA HADLI,
SINCE DECEASED BY HIS LRS
- 13A. SMT. DEVAKKA W/O. YALLAPPA HADLI,
AGE: 60 YEARS, OCC. HOUSEHOLD,
R/O. ASUTI, DIST. GADAG-582203.
- 13B. IRAPPA S/O. YALLAPPA HADLI,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. KUMBAR ONI,
NEAR DODDABASAVESHWARA TEMPLE,
R/O. ASUTI, DIST. GADAG-582203.
- 13C. RENUKA W/O. RAMAPPA HIREHOLI,
AGE: 38 YEARS, OCC. HOUSEWIFE,
R/O. MUDHOL ROAD, SIDDARAMESHWAR NAGAR,
WARD NO.9, ASHRAYA COLONY,
TQ. YELBURGA, DIST. KOPPAL.
- 13D. NAGAPPA S/O. YALLAPPA HADLI,
AGE: 36 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, DIST. GADAG-582203.
- 13E. BASAVARAJ S/O. YALLAPPA HADLI,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, DIST. GADAG-582203.
- 13F. DEVAPPA S/O. YALLAPPA HADLI,
AGE: 34 YEARS, OCC. AGRICULTURE,
R/O. ASUTI, DIST. GADAG-582203.
14. YALLAPPA S/O. ADIVEPPA HADLI,
AGE: 42 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.



15. HANAMAPPA S/O. ADIVEPPA HADLI,
AGE: 32 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
16. PARVATEVVA W/O. ADIVEPPA HADLI,
AGE: 67 YEARS, OCC.HOUSEHOLD,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
17. BHIMAVVA W/O. RUDRAVVA HADALI,
AGE: 42 YEARS, OCC.AGRICULTURE,
R/O. ASUTI, TQ. RON-582209,
DIST. GADAG.
18. VEERABASAPPA S/O. NINGAPPA HADDLI,
SINCE DECEASED BY HIS LRS.
- 18A. SMT. YALLAVVA @ SHANTAVVA
W/O. VEERABASAPPA HADLI,
AGE: 50 YEARS, OCC. HOUSEHOLD,
- 18B. IRAPPA S/O. VEERABASAPPA HADLI,
AGE: 28 YEARS, OCC. AGRICULTURE,
- 18C. GEETA D/O. VEERABASAPPA HADLI,
AGE: 25 YEARS, OCC. HOUSEWIFE,
- 18D. YALLAPPA S/O. VEERABASAPPA HADLI,
AGE: 22 YEARS, OCC. AGRICULTURE,

ALL ARE R/O. ASUTI, DIST. GADAG-582203.
19. MALLAPPA S/O. KALASAPPA ITTAPPANAVAR,
AGE: 47 YEARS, OCC.AGRICULTURE,
R/O. Y.S.HADAGALI, TQ. RON-582209,
DIST. GADAG.
20. HANUMANTAPPA S/O. MALLAPPA ITTAPPANAVAR,
AGE: 16 YEARS,
MINOR GUARDIAN BY HIS NATURAL MINOR GUARDIAN
I.E., HIS FATHER
MALLAPPA S/O. KALASAPPA ITTAPPANAVAR.



NC: 2026:KHC-D:642-DB
RFA No. 100158 of 2014
C/W RFA No. 100164 of 2014
RFA No. 100167 of 2014

21. MAHESH S/O. MALLAPPA ITTAPPANAVAR,
AGE: 14 YEARS,
MINOR GUARDIAN BY HIS NATURAL MINOR GUARDIAN
I.E., HIS FATHER
MALLAPPA S/O. KALASAPPA ITTAPPANAVAR.
22. SAVITA D/O. MALLAPPA ITTAPPANAVAR,
AGE: 12 YEARS,
MINOR GUARDIAN BY HIS NATURAL MINOR GUARDIAN
I.E., HIS FATHER
MALLAPPA S/O. KALASAPPA ITTAPPANAVAR.
23. MALLIKARJUNAGOUDA
S/O. SANKANAGOUDA ROTTI,
AGE: 47 YEARS, OCC. AGRICULTURE, R/O. ASUTI,
TQ. RON-582 209,
DIST. GADAG.

...RESPONDENTS

(BY SRI. S.S. BHAWAKHAN, ADVOCATE AND
SRI. SHIVAKUMAR S. BADAWADAGI, ADVOCATE FOR R1 TO R7, R9, R13;
R8 (A,B), R10 TO R12, R14, R15, R16, R17(B), R18 TO R22 -
NOTICE SERVED;
SRI. AKSHAY A. VASTRAD, ADVOCATE FOR R15(A TO F);
SRI. AVINASH BANAKAR, ADVOCATE FOR R17(A);
R8 (A,C) R17(C TO D), R23 (A TO D)-HELD SUFFICIENT)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO CALL
FOR RECORDS AND TO SET ASIDE THE JUDGMENT AND DECREE
DATED 26.06.2014 PASSED BY THE LEARNED SENIOR CIVIL JUDGE
AND JMFC RON, IN O.S.NO.17/2012 AND DISMISS THE SUIT OF THE
PLAINTIFFS, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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



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ORAL JUDGMENT

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

RFA No.100158/2014 is filed by defendant No.13/purchaser of one of the suit schedule properties during pendency of the suit; RFA No.100164/2014 is filed by defendant Nos.4 to 6 and RFA No.100167/2014 is filed by the legal representatives of defendant No.2. All these Regular First Appeals are filed challenging the judgment and decree dated 26.06.2014 passed in O.S.No.17/2012 (O.S.No.44/1999) on the file of Senior Civil Judge and JMFC, Ron.

2. O.S.No.44/1999 was earlier filed before the Additional Senior Civil Judge, Gadag by Ningappa Hadli against his brother Rudrappa Hadli and others, praying for partition and separate possession of his half share in suit schedule properties by metes and bounds. Initially, the said suit was decreed on 20.11.2003. Against such judgment and decree, two Regular First Appeals were filed in RFA.Nos.259/2007 and 904/2007 and both of them were



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clubbed together and they were partly allowed by setting aside the judgment and decree dated 20.11.2003 passed in O.S.No.44/1999 and remanded the matter for fresh disposal. After such remand, in view of establishment of the Senior Civil Judge Court at Ron, this suit was transferred to the Senior Civil Judge, Ron, and renumbered as O.S.No.17/2012.

3. During pendency of the suit, the original plaintiff and defendant Nos.1 and 2 died and their respective legal representatives are brought on record.

4. The case of plaintiff in brief is that the plaintiff and defendant No.1 are brothers and sons of one Veerabasappa Hadli. The plaintiff contended that the suit schedule properties are joint family properties of plaintiffs and defendant Nos.1 to 5 & 8, defendants No.6 & 7 are not entitled to any legal share, as they are female members of the joint family. The defendants No.2 & 3 are sons of defendant No.1. Defendants No.4 & 5 are sons of defendant No.2; defendant No.6 is the wife of defendant No.2;



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defendant No.7 is the wife of defendant No.1 and defendant No.8 is the son of plaintiff.

5. The contention of the plaintiff is that suit schedule properties are jointly owned and possessed by plaintiff and defendants No.1 to 5 & 8. The joint family had sufficient nucleus, from the income and savings of the said nucleus, and also from the joint labour of male members of the joint family, some of the properties were acquired by the joint family and thus, they are also joint family properties. Defendant No.1 is the manager of the joint family. He specifically contended that there is no partition in respect of the suit schedule properties between plaintiff and defendant No.1 at any point of time and there is no partition amongst parties to the suit. Plaintiff further contended that some suit properties are standing in the name of some of defendants. The mutations are affected illegally without the consent of original plaintiff and behind his back. Those entries will not convey absolute ownership to respective parties. Defendants No.6 & 7 are not the owners in possession of the properties standing in their names. The mutations came into existence



only to escape from the clutches of provisions of ceiling limits described by the Karnataka Land Reforms Act, 1961. Plaintiff and defendants did not live together jointly and hence plaintiff demanded his half share in the suit schedule properties, but defendant No.1 denied it in the second week of March-1999 and hence the suit was filed for appropriate reliefs.

6. Within a span of short period of filing of the suit, defendant No.1 died before he filing written statement.

7. Defendant No.2 appeared through his counsel and filed his written statement, wherein he admitted the plaint averments and contented that there is no partition between the parties and he also admitted the relationship between parties. He further stated that he has no objection to decree the suit.

8. The written statement of defendant No.2 is adopted by defendant No.8, who is none other than the son of plaintiff.



9. Defendant No.3 has filed his written statement, which is adopted by defendants No.4 to 7.

10. In the written statement, defendant No.3 has admitted the relationship between parties, but taken specific contention that only Sl.Nos.1 to 3 of suit schedule properties were the joint family properties of plaintiff and defendant No.1. Other items of suit schedule properties are self-acquired properties of deceased defendant No.1 and he got entered the names of defendants No.2 to 8 to some of those properties. Item No.8 of suit schedule property is the self-acquired property of deceased defendant No.1 and he got entered the same into the name of defendant No.4. The movable properties alleged in the plaint are not in existence. The properties standing in the name of defendants No.6 and 7 are their absolute properties and mutation is properly entered in respect of those properties. Item Nos.1 to 3 of suit schedule properties were fallen to the share of plaintiff in the family partition that had taken place 40-50 years prior to filing of the suit and since then there is no joint family in existence between plaintiff and defendants. Item Nos.4 to 20



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of Schedule I-A and Sl.Nos.1 to 8 of Schedule I-B are purchased by defendant No.1 during his lifetime from his own funds that too after the partition that had taken place in between him and plaintiff and got entered those properties in the names of other defendants respectively and handed over the actual possession to respective defendants. Defendant No.1 was not the manager of joint family of plaintiff and other defendants. He was the manager of joint family of only first defendant and his children and his family. The question of ceiling limits does not arise because the suit properties are standing in the names of different defendants since from beginning. There is no cause of action to file the suit as there was earlier partition between parties. Hence, prayed for dismissal of suit with costs.

11. During pendency of the suit, defendant No.2 died and his some legal representatives i.e., defendants No.4 to 7 were already on record and his other legal representatives were brought on record as defendants No.2(a to h). After bringing them on record, defendant No.2(h) has filed written



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statement, which is adopted by the other legal representatives of defendant No.2.

12. In his written statement, defendant No.2(h) has taken specific contention that suit is not maintainable in law. He has taken contention that there was partition as per M.E.No.2632 and rectified partition dated 03.05.1960. Thus, the partition has taken place in the year 1959-60 itself. In that partition, Sy.No.259 measuring 13 acres 6 guntas and house property No.370 were fallen to the share of defendant No.1 and thereafter, partition took place between defendant No.1 and his son-Adivappa (defendant No.2) through his first wife on 15.05.1966 and in the said partition, R.Sy.No.258/1+2 measuring 8 acres 24 guntas was fallen to the share of defendant No.1-Rudrappa and Re-Sy.No.258/2 measuring 6 acres, R.Sy.No.257 measuring 13 acres 6 guntas, R.Sy.No.497 measuring 6 acres 12 guntas were fallen to the share of defendant No.2. Thereafter, during lifetime of Adivappa, there was partition that had taken place between defendant No.2, his wife, sons and daughters on 02.11.2002. He has also mentioned that which properties



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were fallen to their respective shares under the said partition.

13. Defendant No.2(h) has taken further contention that the suit is clearly barred by limitation from 23.06.1959 onwards and thus if any rights were there to the plaintiff, it was extinguished. He has taken further contention that defendant No.2 was illiterate and taking undue advantage of his illiteracy by exercising threat, coercion and undue advantage of illiteracy of defendant No.2, the plaintiff got filed false written statement and affidavit of deceased defendant No.2 behind the back and without the knowledge and consent of defendants No.2(d) to 2(h). Plaintiffs have not challenged the mutation entries from 1959-60 onwards. Thus, there is presumption under Section 133 of Karnataka Land Revenue Act, 1961 that the entries in RTC's are presumed to be true, unless they are rebutted. Hence, prayed for dismissal of suit with costs.

14. During the pendency of the suit, one of the properties was sold to defendant No.13, who is impleaded



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later and he has filed his written statement, wherein he has taken contention that is taken by defendants No.3 to 7 and legal representatives of defendant No.2 and further stated that he is a *bonafide* purchaser without notice for a sum of ₹.1,54,000/- and thus the transaction binds other parties to the suit. He purchased the property from defendant No.7 under registered sale deed dated 17.10.2006 and prayed for dismissal of suit with compensatory costs of ₹.5,000/-.

15. Defendants No.9 to 13 are the legal representatives of Ratnavva, who is the daughter of plaintiff. During pendency of the suit, plaintiff died and his legal representatives were brought on record as plaintiffs No.1(a) to 1(i). During the pendency of these appeals, one of the sons of plaintiff-Irabasappa died and his legal representatives were brought on record as respondents No.23(a) to (d).

16. Another son of plaintiff-Shivappa also died during the pendency of the appeal and his legal representatives were brought on record as respondent No.8(a) to (c).



17. Based on these pleadings, the Trial Court has framed the following issues. As discussed above, after passing the decree, which was challenged by some of the defendants and after such remand, the Trial Court has framed one additional issue. Subsequent to filing of written statement by other defendants, several other additional issues were framed. The issues and additional issues are as under:

"ISSUES

- 1. Whether the plaintiff proves that, suit properties are the joint family properties of himself and defendants No.1 to 5 and 8?*
- 2. Whether the plaintiff proves that he is in joint possession and enjoyment of the suit properties along with defendants No.1 to 5 and 8?*
- 3. Whether the plaintiff proves that, he is entitled to half share in all the suit properties?*
- 4. Whether the plaintiff proves that movables mentioned in plaint para 1(C) are also available for partition?*
- 5. Whether the defendant Nos.3 to 7 prove that all the landed properties except the properties mentioned at sl.no.1 to 3 in para 1 (A) of the plaint are the separate properties of now deceased defendant No.1 and these*



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properties have been acquired by deceased defendant No.1 out of his own funds?

6. Whether the defendants No.3 to 7 further prove that all the house properties mentioned in para 1(B) of the plaint are also the self acquired properties of deceased defendant No.1?

7. Whether the plaintiff is entitled to any share? If so, what is the extent of his share?

8. Whether the plaintiff is entitled to preliminary decree as prayed for?

9. What order or decree?

ADDL.ISSUE Dated: 11.10.2013

1. Whether the defendants prove that, there was a partition taken place in the family in the year 1959?

ADDL.ISSUE Dated: 19.10.2013

2. Whether the defendant No.13 proves that, he is the bonafide a purchaser of the property bearing R.S.No.258/1+2B from the instant defendant No.7 for a valuable consideration amount of Rs.1,54,000/- and accordingly, he has become the absolute owner in possession of the same?

ADDL.ISSUE Dated: 02.01.2014

3. Whether the defendant No.2(h) proves that, himself & D2(d) to (f) are the absolute owners in lawful possession



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of the suit properties(lands) item Nos.4 to 7 since from the date of partition heitherto?

4. Whether the defendant No.2(h) proves that suit of the plaintiff is barred by time since 23.06.1959?"

18. On behalf of plaintiff one of the sons of plaintiff was earlier examined as power of attorney holder of original plaintiff and after the death of original plaintiff, same witness is examined once again; got marked Exs.P.1 to P.36 and closed their side before the Trial Court. On behalf of defendants, earlier defendant No.2 was examined as D.W.1 and four other witnesses are examined as D.W.2 to D.W.5 and got marked Exs.D1 to D.74 and closed their side. The defendants got summoned original revenue records from Tahasildar Office, who was examined as C.W.1, got marked Exs.C.1 to C.12 through him.

19. After recording evidence of both sides and hearing arguments of both sides, learned Trial Judge has decreed the suit and granted half share in all the suit schedule properties by metes and bounds to the legal representatives of plaintiff including defendant No.8 on the



ground that the defendants failed to prove the Mutation Entry Nos.2632 and 2778 and thus defendants failed to establish the partition between the plaintiff and defendant No.1.

20. Aggrieved by the said judgment and decree, these three appeals are filed as stated above.

21. Heard arguments of Sri Aravind D Kulkarni, Sri K.L. Patil and Sri Saurabh A Sondur, learned counsels for appellants in all the three appeals and Sri S.S.Bhawakhan and Sri Shivakumar S Badawadagi, learned counsels for respondents/legal representatives of plaintiff.

22. Learned counsel for appellants-defendants No.4 to 6, Sri K.L.Patil would submit that there were three sons to original propositus. They are Irappa Hadli, Rudrappa Hadli (defendant No.1) and Ningapa Hadli (plaintiff). It is an admitted fact that this Irappa Hadli was given in adoption and at the time of adoption, he was having a son.

23. It is the specific argument of the learned counsel for appellants that when this Irappa had gone in adoption to



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another family, he was having a son called Kuberappa and thus Irappa has affected partition amongst plaintiff, defendant No.1 and his son-Kuberappa, which is entered in the revenue records as per order dated 23.06.1959 in M.E.No.2632 and at that time, there was partition of the original properties available in the joint family i.e., Sy.No.172/2B, Sy.No.259, Sy.No.163 and Sy.No.196/1, totally measuring approximately about 30 acres. Afterwards, there was some understanding between the parties and they have entered into another Apsat Vatani partition as per Ex.C.4 on 30.05.1960 and in that partition, Sy.No.172/2 measuring 6 acres 38 guntas , Sy.No.163 measuring 5 acres 32 guntas + 5 guntas Kharab land and Sy.No.196/1 measuring 5 acres 1 guntas + 8 guntas Kharab land, totally 18 acres 6 guntas were fallen to the share of original plaintiff-Ningappa and Sy.No.259 measuring 13 acres 6 guntas was fallen to the share of defendant No.1-Rudrappa and it is stated that both agreed to give ₹.1,000/- each i.e., total ₹.2,000/- to Kuberappa and Kuberappa accepted the



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cash in lieu of his share in the joint family properties and thus this Mutation Entry No.2778 was affected as per Ex.C.4.

24. Learned counsel for the appellants would further submit that based on Ex.C.4, revenue entries were mutated into respective names of plaintiff and defendant No.1 during 1960 itself. Subsequently, from 1966 onwards defendant No.1 started purchasing several properties i.e., other items of suit properties in his name, in the name of defendant No.2 and also in the name of defendants No.3 to 7 and this purchase is only after the partition between plaintiff and defendant No.1. Hence, plaintiff will not get any share in the remaining suit schedule properties.

25. The learned counsel for appellant further submits that Kuberappa, the son of Irappa born before adoption is not made as party to the suit. Hence, the suit is not maintainable for non-joinder of necessary parties.

26. Learned counsel for the appellants would further submit that after this partition in the year 1959 subsequently, there was partition amongst defendants No.1



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and 2 in the year 1966 itself and then, in the year 1979 there was one more partition between defendant No.2, his wife, sons and daughters and thus, there is no existence of joint family as on the date of filing of the suit between plaintiff and defendants and thus plaintiff is not entitled for any share in the remaining properties, but plaintiff was the absolute owner of Item Nos.1 to 3 of suit schedule properties by virtue of partition that had taken place during 1959-60.

27. Learned counsel for the appellants would further submit that because this partition has taken place during 1959-60 and the suit is filed in the year 1999 i.e., after lapse of about 40 years and thus defendants could not produce the witnesses, who have witnessed this partition. He would further submit that the learned Trial Judge has misread the provisions of law and proposition of law improperly and held that the defendants failed to establish those facts. The original records were summoned from Tahasildar's Office, which establish this partition that had taken place in the year 1959 and also in the year 1960 and even subsequent partition between defendants No.1 and 2. These facts were



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not appreciated by the learned Trial Judge properly and hence prayed for allowing the appeal of defendants No.4 to 6.

28. Learned counsel for appellants in RFA No.100167/2014 Sri Saurabh A Sondur, who is appearing for LR. of defendant No.2 would adopt the arguments of learned counsel for appellants in RFA No.100164/2014.

29. Learned counsel for appellant-defendant No.13 in RFA No.100158/2014 Sri Aravind D Kulkarni adopts the aforesaid arguments and further submit that he is *bonafide* purchaser of one of the suit schedule properties for value and hence if the suit is to be decreed, then the property purchased by him shall be allotted to the share of defendant No.7 so as to validate his sale deed.

30. Learned counsel for respondents-LRs. of plaintiff Sri S.S.Bhawakhan would submit that in the written statement itself there is categorical admission by defendant No.2 that there is no partition amongst plaintiff and defendants. The admitted facts need not be proved. He



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would further submit that the total extent of suit schedule properties is more than 100 acres. In the alleged partition, only 18 acres 6 guntas was given to the share of plaintiff-Ningappa and hence apparently there is inequitable partition between plaintiff and defendants and hence even if it is stated that there was partition in the year 1959-60 that was not an equitable partition and that was not acted upon. In this regard, he would rely upon the judgment of Hon'ble Apex Court in the case of ***Kale and others V/s Deputy Director of Consolidation and others***¹.

31. Learned counsel for respondents/LRs. of plaintiff would further submit that even for the sake of arguments, if it is accepted that the partition has taken place between parties in the year 1959-60, then also it is not a partition, but it is only the release deed executed by Kuberappa in favour of other parties and thus it is compulsory registerable document and there is no registration of such document. Furthermore, as per Ex.C.7, there was partition deed, which is not at all produced in the case to believe the contention of

¹ (1976) 3 SCC 119



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defendants that partition had taken place. Hence, considering these aspects, rightly, the Trial Court has decreed the suit and it requires no interference.

32. Learned counsel for respondents/plaintiffs would further submit that merely because one of the parties is not impleaded as party in the suit, the suit shall not be dismissed, but even in the final decree proceedings, the Court can add necessary parties to the suit. In this regard, he relied upon the judgment of Division Bench of this Court in the case of ***Subbanna vs. Kamaiah*** reported in ***ILR 1988 KAR 786***.

"(B) CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908) - Order 1 Rule 9 Proviso - Notwithstanding proviso Order 1 Rule 10(2) empowers Court to add necessary party.

HELD:

Rule 9 of Order 1 of C.P.C., specifically provides that no suit shall be defeated by reason of the mis-joinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. A proviso has been added by Central Act 104 of 1976 to the effect that "nothing in this rule shall apply to non-joinder of a necessary party." But sub-rule (2) of Rule 10 of Order 1 C.P.C., empowers the Court to direct the plaintiff to add a person to the suit who ought to have joined whether as plaintiff or defendant whose presence before the Court is necessary in order to



enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit.

(Para-10.6)”

33. Learned counsel for respondent would further submit that except the agricultural income, defendant No.1 had no other source of income to purchase other suit schedule properties and thus, the joint family income was the nucleus to purchase them and hence, the plaintiff is entitle for half share in all the suit schedule properties by metes and bonds.

34. Thus, prayed for dismissal of all the three appeals.

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

1. Whether the appellants/LRs. of defendant No.2 and defendants No.4 to 7 would establish the earlier partition that had taken place between plaintiff and defendant No.1 in the year 1959-60?



2. Whether the learned Trial Judge has not appreciated the aforesaid fact in proper manner and judgment and decree passed by the learned Trial Judge is erroneous?

3. Whether interference of this Court on the above said judgment and decree is required?

4. What order or decree?

36. Findings on the above points are in **AFFIRMATIVE** for the following reasons:

37. The relationship between parties is an admitted fact. According to the admitted G-Tree furnished in this case, one Irabasappa Hadli was the original propositus having three sons and a daughter. They are Iramma, Irappa, Rudrappa (defendant No.1) and Ningappa (plaintiff). The said Iramma died, leaving behind a daughter called Parvatevva and a son called Rayappa Kambli. They are not made as parties in this case.



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38. It is an admitted fact that the first son Irappa was given in adoption to another family and before he was given in adoption, he was having a son called Kuberappa.

39. It is the contention of defendants that at the time of Irappa going in adoption to another family, a partition had taken place between plaintiff, defendant No.1 and son of Irappa-Kuberappa in the year 1959.

40. To substantiate this contention, defendants have produced Ex.D-50 as per M.E.No.2632. At that time, three properties were given to plaintiff, two properties were given to defendant No.1 and cash of ₹2,000/- in lieu of his share was given to Kuberappa. However, there were some corrections required in said M.E.No.2632. Hence, on 31.05.1960, as per M.E.No.2778 and Ex.C-4, a fresh mutual partition (Apsat Vatni) had taken place. Under said partition, Sy.No.172/2 measuring 6 acres 38 guntas, Sy.No.163 measuring 5 acres 37 guntas including 5 guntas kharab land and Sy.No.196/1 measuring 5 acres 9 guntas were fallen to the share of plaintiff-Ningappa i.e., totally 18 acres 6 guntas.



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In the said partition, Sy.No.259 measuring 13 acres 6 guntas was fallen to the share of defendant No.1 and both plaintiff and defendant No.1 have given ₹1,000/- each to Kuberappa, the son of Irappa before adoption. In view of his share in joint family properties, as he was willing to purchase the properties in the place where his adoptive father is going.

41. Based on this partition, as per M.E.No.2778, all revenue entries were mutated into respective needs of plaintiff and defendant No.1. In this regard, the RTCs produced by plaintiff as per Exs.P-2 and 3. Another RTC is in respect of Sy.No.172/3 and not in Sy.No.172/2. This suit is filed in respect of Sy.No.172/3 and not in respect of Sy.No.172/2. Even these Exs.P-2 to 4 establish that as per M.E.No.2778, these properties are mutated into the name of plaintiff. These documents further establish that the plaintiff has taken some agricultural loans from the Agricultural Co-Operative Society by mortgaging these properties and said mortgages are reflected with M.E.Nos.5899, 6997, 5685, 5899, 6899, 5728 and 5908. Thus, all the above three properties are standing in the name of plaintiff as on the



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date of filing of the suit based on M.E.No.2778 as per inheritance. However, another Sy.No.259 was renumbered as Sy.Nos.259/1, 259/2 because there is further partition in the family of defendant No.1. The plaintiff and defendants have not produced the RTCs. earlier to partition amongst defendant No.1 and his family and hence, this M.E.No.2778 is not shown in respect of Sy.No.259.

42. It is the further contention of defendants that in the family of defendant No.1, there was one more partition that had taken place in the year 1966. In this regard, they rely upon Ex.D.3. According to it, there was partition between defendant Nos.1 & 2. Defendant No.2 is the son of defendant No.1 through his first wife-Yallavva. There was partition between defendant Nos.1 & 2 and accordingly on 15.05.1966, in that partition, Sy.No.258/1+2, 497 and 268/1 were partitioned between them. In that partition, 258/1+2 measuring 8 acres 24 guntas and Sy.No.268/1 measuring 7 acres 39 guntas totally 16 acres 23 guntas were fallen to the share of defendant No.1-Rudrappa and Sy.No.259 measuring 13 acres 6 guntas, Sy.No.497



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measuring 6 acres 12 guntas i.e. 19 acres 18 guntas were fallen to the share of defendant No.2. Based on Ex.D.3, revenue entries were mutated.

43. Afterwards, once again there was partition in the family of defendant No.1 and his second wife-Bhimavva and children of second wife. As per Ex.D-34 based on M.E.No.5646, there was partition between the second wife of Rudrappa (Bhimavva) and her son Yallappa (defendant No.3) and in that partition, Sy.No.258/1+2/B, measuring 8 acres 24 guntas, was fallen to the share of Bhimavva and Sy.No.229/4A, measuring 5 acres 18 guntas and 268/1+2A+2B, measuring 11 acres 39 guntas and 268/2B/2, measuring 5 acres totally more than 22 acres and 17 guntas were fallen to the share of defendant No.3 and only 8 acres 24 guntas was fallen to the share of defendant No.7. Ex.D-35 is M.E.No.6816 dated 26.08.1995. According to it, some of the properties were standing in the name of defendant No.4, who was minor represented by his minor guardian-Rudrappa (defendant No.1) and defendant No.1 has given application and accordingly the four properties



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bearing Sy.No.220/2A, 258/H2, 259/2 and 497 properties shall continue in the name of defendant No.1 and after his death, they shall be mutated equally in to the name of his grandchildren-Yallappa and Hanumappa (defendant No.4 & 5). Exs.D-34 and 37 are one and the same documents.

44. It is the specific contention of plaintiff that several other properties were purchased in the names of members of joint family only from the joint family income and nucleus and hence, plaintiff is entitled for share in all those properties. Ex.D.31 is the mutation register extract bearing M.E.No.4244. It reveals that, five properties were purchased by defendant No.1 i.e., R.Sy.Nos.258/1, 258/2, 497, 268/1, 268/2 for a sum of ₹4,500/- under registered sale deed dated 21.12.1964 and based on that registered document, these five properties were mutated into the name of defendant No.1 as per M.E.No.4244 dated 24.01.1965.

45. During 1975, defendant No.1 has purchased an open site bearing V.P.C.No.821. Ex.D.44 is the original registered sale deed dated 02.01.1975 in respect of this



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property, V.P.C.No.821. One more property is purchased in the name of defendant No.3 i.e., open site bearing V.P.C.No.822 on 27.04.1976 and said sale deed is produced, but not marked separately. It is purchased in the name of minor grandson-Yallappa (defendant No.4) by defendant No.1. Another site bearing V.P.C.No.108 is purchased in the names of Ramappa and Yallappa, the sons of defendant No.2, as per registered sale deed dated 03.12.1987 as per Ex.D-48. Another property was purchased i.e., resurvey No.77/5 measuring 3 acres 21 guntas under registered sale deed dated 29.04.1982 as per Ex.D-49 in the name of minor son-Yallappa Adivappa Hadli (defendant No.4). Under registered sale deed dated 24.11.1983, one more property is purchased in the name of defendant No.3, bearing resurvey No.60 measuring 6 acres by defendant No.1 as minor guardian.

46. All the above sale deeds reveal that defendant No.1 has purchased the above said properties in the name of his minor grandchildren.



47. As stated above, all the above said sale deeds came into existence from 1966 till 1987.

48. If defendants establish the earlier partition of 1959-60, then these properties were purchased by defendant No.1 after separation and in those circumstances, plaintiff or his legal representatives will not get any right over those properties. If defendants failed to establish the earlier partition of 1959-60, then plaintiffs will get share on those properties.

49. Hence, it is very crucial to verify about existence or non-existence of earlier partition.

50. In this regard the defendants have produced M.E. No.2632 of 1959 and M.E.No.2778 as per Ex.D-1. As the legal representatives of plaintiff disputed the mutations, to establish those documents, the defendants have summoned the original records from Tahasildar and he has given evidence as C.W-1 and produced several documents as per Exs.C-1 to C.12(a). Under Ex.C-1-M.E.No.2632, on 23.06.1959, there was partition and some properties were



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allotted to the share of plaintiff and defendant No.1. Ex.D.50 and Ex.C-4 are one and the same documents. Later under Ex.C.4-M.E.No.2778, there was alteration (ದುರಸ್ತಿ) in the properties allotted to each sharer.

51. As discussed above, these documents reveal that there was partition between plaintiff, defendant No.1 and son of Irappa-Kuberappa and in that partition, Kuberappa has taken cash in lieu of his share and remaining properties were mutated separately in the names of plaintiff and defendant No.1.

52. Ex.C.2 is the application given by plaintiff, defendant No.1 and Kuberappa. In this document, it is stated that all the above three had mutually partitioned the properties and they have attached partition deed to the said application and accordingly, they requested to mutate their respective names into the respective properties. However, the partition deed attached to this Ex.C.2, is not forthcoming. In this regard, C.W.1, in his cross-examination has deposed that, document annexed to Ex.C.2 is not



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available in their office. He further deposed that there is an endorsement in Ex.C.2 dated 05.09.1960 stating that the RTC, partition deed and also the Mutation Register Extracts were sent to Tahsildar office, Ron.

53. C.W.1 has further deposed that even though the properties which are partitioned under Ex.C.2 were not mentioned in that document, it is available in Ex.C.1. However, Ex.C1 is bearing M.E.No.2632 dated 23.06.1959 and this is in respect of earlier partition. Under Ex.C.4, the parties have rectified the partition and details of said partition is shown in Ex.C4.

54. As discussed earlier, under this document, three properties measuring more than 18 acres was given to the plaintiff and only one property measuring 13 acres 6 guntas was given to defendant No.1 and Kuberappa has received cash from both plaintiff and defendant No.1.

55. In this regard, learned counsel for respondents/legal representatives of plaintiff would vehemently submits that the suit schedule properties



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measure more than 100 acres, but only, 18 acres 06 guntas was given to the share of plaintiff and hence, even if it is held that there was a partition, the same is unequal and hence, cannot be held as proper partition.

56. In this regard, learned counsel for the respondents/legal representatives of plaintiff rely upon the judgment of Hon'ble Apex Court in the case of **Kale and others V/s Deputy Director of Consolidation and others²**, wherein at paragraph Nos.9 & 10, held as follows:

"9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise Kerr on Fraud at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

² (1976) 3 SCC 119



"The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal



defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:



"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."



57. The above judgment is also relied upon by the learned counsel for the appellants. In the aforesaid judgment, it is held that the properties shall be equitably divided between various coparceners, so as to achieve an equal distribution of wealth, instead of concentrating in the hands of a few. Some guidelines that is, essentials of family settlement are noted in the aforesaid judgment at paragraph No.10. According to it, the family settlement must be *bonafide*, and voluntary. It may be oral and if it is reduced into writing, then, if the document containing the terms and recitals of family arrangement, then it requires registration. If it is only a memorandum of partition, which does not create or extinguish any rights and thus, it does not require registration. It is further held that the family arrangement may be a settlement between parties. In such a settlement, if one of the parties relinquishes his claim in favour of other persons, even then, the family arrangement will be upheld and the Courts.

58. In the instant case, as discussed above, Kuberappa had received ₹.2,000/-, in lieu of his share in



joint family properties because he was intending to purchase the properties in the place where his father was given in adoption and other two brothers i.e., plaintiff and defendant No.1 have partitioned the properties. It appears that 18 acres and odd was given to the plaintiff and only 13 acres and odd was given to defendant No.1. Hence, if there was any unequal partition, then, it is defendant No.1 who ought to have taken that contention. However, strangely only at the time of arguments, learned counsel for plaintiff is taking said contention.

59. One of the sons of plaintiff was examined as GPA holder of plaintiff initially and after death of plaintiff, he was again examined. In the cross-examination, a suggestion was put to this witness that about 50 years prior to his deposition, there was partition between his father and defendant No.1, which is denied by him. But he categorically admitted that, at that time, the joint family was having only five landed properties and a house property. He also admitted that out of these five properties, some properties were mutated into the name of plaintiff and some others



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were mutated into the name of defendant No.1. There is categorical admission that, at that time, there were only 31 acres of property available in the family.

60. The relevant portion of evidence of P.W.1 in this regard reads as follows:

"ಮೂಲ ಪುರುಷ ಈರಬಸಪ್ಪ ಹದಲಿ ಈತನ ಮನೆತನಕ್ಕೆ ಒಟ್ಟು 31 ಎಕರೆ ಬೆಲ್ಲರೆ ಗುಂಟೆ ಜಮೀನು ಇತ್ತು ಎಂಬುದು ಸರಿ".

61. When P.W.1 admitted that only 31 acres were there at that time, if 18 acres and odd was given to his father, then if properties were purchased after the partition, plaintiff cannot claim any share in those properties. Admittedly, mutation entries were made in the name of plaintiff and defendant No.1 separately.

62. The contention of plaintiff that to avoid ceiling limit of Karnataka Land Reforms Act, 1961, this mutation of 1959-60 had taken place. However, admittedly, the question of ceiling limit came into existence in 1970s and not during 1959-60. Hence, said contention is not tenable.



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63. These mutation entries were not challenged either by plaintiff or by defendant No.1 at any point of time, till filing of suit in the year 1999 i.e., for a period of about 39 years, both plaintiff and defendant No.1 have not challenged the said mutation entry. Furthermore, after 1960 also, as discussed above, several internal partitions have taken place in the family of defendant No.1. Admittedly, defendant No.1 had two wives and from the first wife, he got a son i.e., defendant No.2 and from second wife, he got other sons and daughters. There was internal partition earlier between defendant Nos.1 and 2. Later, there was partition between defendant No.1 and his other sons. Subsequently, there was partition between defendant No.3 and his mother also. These partitions have not taken place at single time. They have taken place from 1966 to 1979 onwards. None have challenged those entries.

64. Initially, this PW1 was denying the partition of 1959-1960, but subsequently, he has only deposed that he does not know about said partition and he does not know that those properties i.e., item Nos.1 to 3 of suit schedule



properties were mutated into the name of plaintiff No.1. However, he himself has produced RTCs which establish the aforesaid facts as discussed above. He denied even the subsequent partition amongst defendant No.1 and his family. But, mutation entries produced by both parties establish those partitions.

65. Initially, plaintiffs have not impleaded their sister-Ratnavva in the suit. Subsequently, her legal representatives are brought on record.

66. It is to be noted here that Kuberappa is not made as party in the present suit. Always, there is presumption that a Hindu family is Hindu joint family until and unless it is rebutted. However, when defendants have produced ample material before the Court to show the partition between plaintiff and defendant No.1 and subsequently, in between defendant No.1 and his other family members and mutations were affected and RTCs also reflect those facts, the presumption under Section 133 of Karnataka Land Revenue Act would arise and the entries in revenue records are



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presumed to be true until they are rebutted. No rebuttal evidence is produced by legal representatives of plaintiff to rebut the said presumption.

67. The defendants have examined one witness as D.W.4, who is aged about 76 years at the time of filing his affidavit evidence and he has stated in his affidavit evidence regarding the partition that had taken place between plaintiff and defendant No.1 in the year 1959 and 1960. He has also stated the extent of properties fallen to respective shares of plaintiff and defendant No.1. In this regard, in the cross-examination, he has deposed that the partition has taken place in the year 1959, but, he does not remember the date and moment. He has also stated who were all present at the time of said partition.

68. The above evidence of D.W.4 substantiates the contention of defendants.

69. Some of the defendants' witnesses have admitted that defendant No.1 was not having any other source of income, except, the income from agriculture. Hence, learned



counsel for plaintiff vehemently submitted that the properties which were acquired by defendant No.1 from 1965 to 1987 are acquired from the joint family nucleus and thus, they are the ancestral and joint family properties of both plaintiff and defendant No.1. However, it is to be noted here that, after severance of status between plaintiff and defendant No.1 during 1959-60, defendant No.1 has purchased the other properties. Hence, they are the joint family properties of defendant No.1 and his family and plaintiff cannot claim any share in those properties.

70. Learned counsel for respondents vehemently submitted his arguments that defendant No.2 in his written statement and also in his affidavit evidence has categorically admitted that there was no partition between plaintiff and defendant No.1.

71. In the affidavit evidence of defendant No.2, he contended that there was no partition in the family and he has no objection to decree the suit. In the cross-examination, he has admitted that his father has purchased



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Sy.No.253/1A, 229/4A and till his death, they were in the absolute possession of defendant No.1. He also admitted that two landed properties and two open sites were purchased by his father in his name and they are standing in his name and he is looking after those properties. He further admitted that defendant No.1 has purchased three landed properties, three open sites in the name of defendant No.3 and defendant No.3 is enjoying those properties. Likewise, he admitted that defendant No.6 is his wife, defendant Nos.4 and 5 are his children and they are having landed properties and house properties at Gavarawada and they were purchased by his father in the names of his wife and children. He also admitted that his father has purchased a property at Gavarawada in the name of defendant No.6. His father has purchased property in the name of his second wife Bhimavva(defendant No.7) and those properties are being enjoyed by defendant Nos.6 and 7 separately. He admitted that during his lifetime, his father has purchased several properties.



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72. On careful perusal of all the above materials, i.e., oral and documentary evidence, they clearly and categorically establish that partition had taken place in the year 1959-60 and it was acted upon. 39 years after such partition, the plaintiff is not permitted to challenge the same and to file a suit for partition. However, learned Judge has not considered these aspects and only held that the mutation entries were not proved by defendants because the partition deed is not produced. As discussed above, said partition deed was sent to the office of Tahsildar at Ron and hence, the defendants could not produce those documents.

73. Exs.C1 to 11 are the official records maintained in regular course by the revenue officials in their revenue office. Furthermore, all those records are 30 years old documents. Hence, the presumption arises that they are maintained in a proper manner and entries in those revenue records are genuine. If anyone disputes them, then, he has to establish that how they are concocted records. No material is produced by plaintiff or legal representatives of plaintiff that those revenue records are concocted records.



As discussed earlier, in ***Kale's case*** referred *supra*, it is held that even if, one of the parties to the settlement has no title, but under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld.

74. In the instant case, plaintiff and defendant No.1 were having right by birth over the ancestral properties and one of the legal representative of the ancestor i.e., Kuberappa has taken cash in lieu of his share and he acknowledges the right and title of the plaintiff and defendant No.1. Hence, merely because cash is given to Kuberappa in lieu of his share, it cannot be said that said document is a release deed and it requires compulsory registration. These aspects were not dealt by the Trial Court properly and the oral and documentary evidence were not properly appreciated by the Trial Court and the point of law was misread by the Trial Court, which resulted in miscarriage of justice in decreeing the suit of the plaintiff. Hence, the



said judgment and decree is erroneous and it requires interference.

75. The appellants/legal representatives of defendant No.2 and defendant Nos.4 to 7 have established the earlier partition that had taken place in the year 1959-1960 and thus, the judgment and decree of the Trial Court needs interference. When it is established that there was partition between plaintiff and defendant No.1; subsequently, between defendant No.1 and defendant No.2; and subsequently, between defendant Nos.4 and 7. Defendant No.7 was having every right to sell her property to defendant No.13 and thus, the sale deed executed by defendant No.7 in favour of defendant No.13 is valid and binding on other parties to the suit. Accordingly, point Nos.1 to 3 are answered in ***affirmative***.

76. In view of findings on point Nos.1 to 3, we proceed to pass the following:



ORDER

- i) All three appeals filed under RFA Nos.100158/2014, 100164/2014 and 100167/2014 are allowed by setting aside the judgment and decree passed in O.S.No.17/2012 (O.S.No.44/1999) on the file of Senior Civil Judge and J.M.F.C., Ron.
- ii) The suit of plaintiff is dismissed.
- iii) Under facts and circumstances of the case, the parties are directed to bear their own costs.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE