

RFA NO.100229 of 2017 C/W
RFA NO.100284 of 2017

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 21ST DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100229 OF 2017
C/W
REGULAR FIRST APPEAL NO.100284 OF 2017

IN RFA NO.100229/2017
BETWEEN

1. VASHISHTA
S/O. CHANNAPPA BALAGANNAVAR,
AGE: 27 YEARS,
OCC: STUDENT,
R/O: GARDEN PETH,
HUBBALLI-580020,
DIST: DHARWAD.

2. CHANDRAHAS
S/O. CHANNAPPA BALAGANNAVAR,
AGE: 29 YEARS,
OCC: STUDENT,
R/O: GARDEN PETH,
HUBBALLI-580020,
DIST: DHARWAD.

...APPELLANTS

(BY SRI. SHRIHARSHA A. NEELOPANTH, ADVOCATE)

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AND

1. RAYAPPA @ RAJA
S/O MALLAPPA BALAGANNAVAR,
AGE: 53 YEARS,
OCC: PRIVATE SERVICE,
R/O: YALLAPUR ONI,
TQ: HUBBALLI-580020,
DIST: DHARWAD.
2. PRAKASH
S/O. MALLAPPA BALAGANNAVAR,
AGE: 43 YEARS,
OCC: PRIVATE SERVICE,
R/O: YALLAPUR ONI,
TQ: HUBBALLI-580020,
DIST: DHARWAD.
3. SMT. MAHADEVI
W/O. MALAKAJAPPA BALAGANNAVAR,
AGE: 45 YEARS,
OCC: HOUSEHOLD WORK,
R/O: YALLAPUR ONI,
TQ: HUBBALLI-580020,
DIST: DHARWAD.
4. SMT. ANASUYA
W/O. MALLESHAPPA BALAGALI,
AGE: 41 YEARS,
OCC: HOUSEHOLD WORK,
R/O: YALLAPUR ONI,
TQ: HUBBALLI-580020,
DIST: DHARWAD.
5. SMT. GIRIJAVVA
W/O. FAKKIRAPPA BALAGANNAVAR,
AGE: 77 YEARS,
OCC: HOUSEHOLD WORK,
R/O: YALLAPUR ONI,
TQ: HUBBALLI-580020,
DIST: DHARWAD.

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- 5(a) MALLAPPA
S/O. FAKKIRAPPA BALAGALI,
AGE: 57 YEARS, OCC: AGRICULTURE,
R/O. DEVIKOPPA-581204,
TQ: KALAGHATAGI, DIST: DHARWAD.
- 5(b) RAJU
S/O. FAKKIRAPPA BALAGALI,
AGE: 54 YEARS, OCC: AGRICULTURE,
R/O. ANCHATAGERI-580024,
TQ: HUBBALLI, DIST: DHARWAD.
- 5(c) HANAMANTAPPA
S/O. FAKKIRAPPA BALAGALI,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O. ANCHATAGERI-580024,
TQ: HUBBALLI, DIST: DHARWAD.
- 5(d) SMT. GURUSIDDAVVA
W/O. ASHOK MANSUR,
AGE: 63 YEARS,
OCC: HOUSEHOLD WORK,
R/O. MANSUR-580007,
TQ/DIST: DHARWAD.
- 5(e) SMT. SOMIBAI
W/O. KALLAPPA ULLAGADDI,
AGE: 46 YEARS,
OCC: HOUSEHOLD WORK,
R/O. MUTAGI-581204,
TQ: KALAGHATAGI,
DIST: DHARWAD.
6. KUMARI. GAYATRI
D/O. CHANNAPPA BALAGANNAVAR,
AGE: MAJOR, OCC: NIL,
R/O: GARDEN PETH,
TQ: HUBBALLI-580020,
DIST: DHARWAD.

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7. GOVIND
S/O. CHANNAPPA BALAGANNAVAR,
AGE: 27 YEARS,
OCC: PRIVATE SERVICE,
R/O: C/O: RAGHAVENDRA RENAKE,
GHARDEN PETH,
TQ: HUBBALLI-580020,
DIST: DHARWAD.

8. SMT. RUKMINI
W/O. CHANNAPPA BALAGANNAVAR,
AGE: 47 YEARS,
OCC: HOUSEHOLD WORK,
R/O: C/O. RAGHAVENDRA RENAKE,
GHARDEN PETH,
TQ: HUBBALLI-580020,
DIST: DHARWAD.

9. NIRMALKUMAR
S/O. HIRECHAND JAIN,
AGE: MAJOR, OCC: BUSINESS,
R/O: MADHURA COLONY,
KESHWAPUR, HUBBALLI,
DIST: DHARWAD-580023.

...RESPONDENTS

(BY SRI. N.S. KINI, ADVOCATE FOR R1 & R2;
SRI. PRASHANTH MATHAPATI, ADVOCATE FOR R5(B-E);
NOTICE TO R3, R4, R6-R9 DISPENSED WITH;
NOTICE TO R5A IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC PRAYING TO CALL FOR RECORDS IN O.S.NO.06/2014 ON THE FILE OF III ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI AND TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 10.03.2017 PASSED IN O.S.NO.06/2014 PASSED BY THE COURT OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND J.M.F.C. HUBBALLI AND DECREE THE SUIT OF THE PLAINTIFFS IN O.S.NO.06/2014 IN SO FAR AS ITEM NO.1 OF SUIT SCHEDULE-A PROPERTY IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

IN RFA NO.100284/2017
BETWEEN

1. SRI. RAYAPPA @ RAJA
S/O. MALLAPPA BALAGANNAVAR,
AGE: 47 YEARS,
OCC: PRIVATE SERVICE,
R/O: YALLAPUR ONI,
HUBBALLI-580020. DIST: DHARWAD.
2. SRI. PRAKASH
S/O. MALLAPPA BALAGANNAVAR,
AGE: 45 YEARS,
OCC: PRIVATE SERVICE
R/O: YALLAPUR ONI,
HUBBALLI-580020. DIST: DHARWAD.

...APPELLANTS

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

AND

1. SRI. VASHISHTA
S/O. CHANNAPPA BALAGANNAVAR,
AGE: 27 YEARS,
OCC: STUDENT,
R/O: GARDEN PETH,
HUBBALLI-580020,
DIST: DHARWAD.
2. SRI. CHANDRAHAS
S/O. CHANNAPPA BALAGANNAVAR,
AGE: 29 YEARS,
OCC: STUDENT,
R/O: GARDEN PETH,
HUBBALLI-580020,
DIST: DHARWAD.
3. SMT. MAHADEVI
W/O. MALAKAJAPPA BALAGANNAVAR,
AGE: 43 YEARS, OCC: HOUSEHOLD WORK,
R/O: YALLAPUR ONI,

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HUBBALLI-580020,
DIST: DHARWAD.

AFTER MARRIAGE CALLED AS
SMT. MAHADEVI
W/O. MALLAPPA BELAGALI,
R/O: DEVIKOPPA,
TAL: KALAGATAGI-580114,
DIST: DHARWAD.

4. SMT. ANASUYA
W/O. MALLESHAPPA BALAGALI,
AGE: 41 YEARS,
OCC: HOUSEHOLD WORK,
R/O: YALLAPUR ONI,
HUBBALLI-580020,
DIST: DHARWAD.

AFTER MARRIAGE CALLED AS
SMT. ANASUYA
W/O. PANCHAKSHARAYYA PURANIKMATH,
R/O: LAXMI NAGAR,
BIDNAL HUBBALLI,
DIST: DHARWAD.

5. SMT. GIRIJAVVA
W/O. FAKIRAPPA BALAGANNAVAR,
SINCE DECEASED BY HER LRS.

AMENDMENT CARRIED OUT AS
PER ORDER DATED 09.07.2025.

- 5(a) SMT. GURUSIDDAVVA
W/O. ASHOK MANSUR,
AGE ABOUT 58 YEARS,
OCC: HOUSE WIFE,
R/O. MANSUR,
TAL & DIST: DHARWAD.

- 5(b) SRI. MALLAPPA
S/O. FAKKIRAPPA BELAGALI,

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AGE ABOUT 63 YEARS,
OCC: AGRICULTURE,
R/O. DEVIKOPPA,
TAL: KALAGHATAGI.

5(c) SRI. RAYAPPA @ RAJA
S/O. FAKKIRAPPA BELAGALI,
AGE ABOUT 58 YEARS,
OCC: AGRICULTURE,
R/O. ANCHATAGERI,
TAL: HUBBALLI.

5(d) SMT. SUNAVVA
W/O. KALLAPPA ULLAGADDI,
AGE ABOUT 45 YEARS,
OCC: ANGANA VADI AYA,
R/O. MUTTAGI,
TAL: KALAGATAGI.

5(e) SRI. HANAMANTAPPA
S/O. FAKKIRAPPA BELAGALI,
AGE ABOUT 40 YEARS,
OCC: AGRICULTURE,
R/O. ANCHATAGERI,
TAL: HUBBALLI.

6. KU. GAYATRI
D/O. CHANNAPPA BALAGANNAVAR,
AGE: 30 YEARS, OCC: NIL
R/O: GARDEN PETH,
HUBBALLI-580020,
DIST: DHARWAD.

7. GOVIND
S/O. CHINNAPPA BALAGANNAVAR,
AGE: 29 YEARS,
OCC: PRIVATE SERVICE,
R/O: GARDEN PETH,
HUBBALLI-580020, DIST: DHARWAD.

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8. SMT. RUKMINI
W/O. CHANNAPPA BALAGANNAVAR,
AGE: 50 YEARS,
OCC: HOUSEHOLD WORK,
R/O: C/O RAGHAVENDRA RENAKE,
GARDEN PETH, HUBBALLI-580020,
DIST: DHARWAD.
9. NIRMALKUMAR
S/O. HIRACHAND JAIN,
AGE: MAJOR, OCC: BUSINESS,
R/O: MADHURA COLONY,
KESHWAPUR, HUBBALLI-580023,
DIST: DHARWAD.

...RESPONDENTS

(BY SRI. SHRIHARSHA A. NEELOPANTH,
ADVOCATE FOR R1 & R2, R6-R8;
SRI. PRASHANTH MATHAPATI, ADVOCATE FOR R5 (B-E);
NOTICE TO R3-R4 AND R9 NOTICE DISPENSED WITH;
NOTICE TO R5A IS SERVED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC PRAYING TO THE JUDGMENT AND DECREE DATED 10.03.2017 PASSED BY THE COURT OF III ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI PARTLY DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION BY GRANTING 1/16TH SHARE EACH IN THE SUIT SCHEDULE A(II) AND SUIT SCHEDULE B PROPERTIES TO THE PLAINTIFFS/RESPONDENTS NO.1 AND 2 AND DEFENDANTS NO.7 AND 8/RESPONDENTS NO.6 AND 7 MAY KINDLY BE SET ASIDE, AND THE SUIT IN O.S.NO.06/2014 IN THE COURT OF III ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI MAY KINDLY BE DISMISSED WITH COSTS THROUGHOUT IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.01.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

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

RFA No.100284/2017 is filed by defendants No.2 & 3 in O.S.No.6/2014 under Section 96 Code of Civil Procedure, 1908 (for short, hereinafter referred to as 'CPC') challenging the entire judgment and decree passed in O.S.No.6/2014 dated 10.03.2017 on the file of the III Additional Senior Civil Judge, Hubballi (for short, 'Trial Court'); RFA No.100229/2017 is filed under Section 96 of the CPC by plaintiffs challenging the judgment and decree passed in O.S.No.6/2014 only in respect of dismissal of suit in respect of Item No.1 of suit 'A' schedule property.

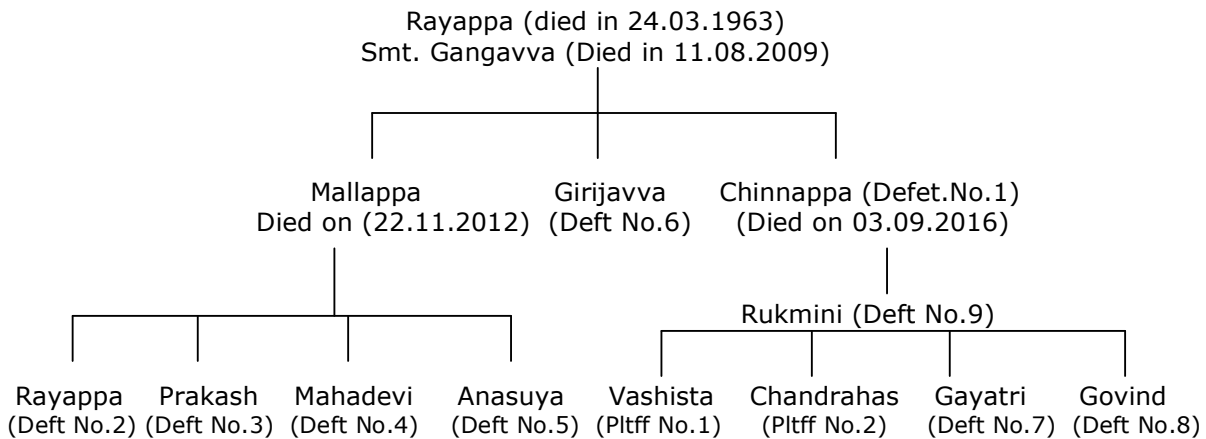
2. Parties would be referred with their ranks, as they were before the Trial Court for sake of convenience and clarity.

3. Plaintiffs have filed the suit before Trial Court praying for the relief of partition and separate possession of their share in suit schedule properties by metes and bounds; to declare that the transaction between defendants

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No.1 and 10 in respect of suit schedule Item No.1 (i) is not binding on plaintiffs; to declare that plaintiffs are not bound by the decision taken by defendant No.9 as their minor guardian, as she failed to discharge her duties in the best interest of minors; for court costs and for such other reliefs.

4. The family tree of the plaintiffs is furnished in the plaint as follows:



5. Plaintiffs contended that plaintiffs and defendants No.1 to 8 constitute joint Hindu family. Defendant No.10 is the purchaser of Sy.No.217/1A1 of Anchatgeri village from defendant No.1. Defendant No.1 has no absolute right to sell said property. Plaintiffs further contended that

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defendant No.1 out of the income derived from suit schedule property No.1(ii) and rent of suit schedule property No.1 and his hard labour earnings contributed by deceased Mallappa and defendant No.5 has purchased the suit schedule 'A(i)' property bearing Sy.No.217/1A1 situated at Anchatgeri village being the head of the family in the name of his wife deceased Gangavva in the year 1966. During lifetime of original propositus, there was no partition by metes and bounds. Even after his death, suit schedule properties continued to be cultivated jointly by all the members of joint family. Defendant No.1 is doing job typing at Civil Court Campus, Hubballi and has gained legal knowledge and aspect because of constant touch with the legal professionals. It appears that, by keeping his mother, deceased Gangavva, under duress, he got suit schedule 'A(i)' property transferred in his favour on the basis of an alleged *varadi*, without any registered document. He was aware that said property is the joint family property and there was no partition by metes and bounds and even then, only in collusion with defendant No.10, without there being

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any legal necessity, he got created sham and bogus transaction and sold the said property to defendant No.10 for a throwaway price. Defendant No.1 has no right, title or interest in said property for such alienation. Since several years there has been rift between defendant Nos.1 and 9 because of their personal ego and are residing separately at the stake and cost of their children. Though it transpired to the knowledge of plaintiffs that defendant No.9 being posing herself as minor guardian of then plaintiffs, now the present plaintiffs, fought a collusive suit with defendant No.1 so casually. There was no effective legal battle in protecting the interests of the then minor plaintiffs. Defendant No.1 has not taken minimum care which she was legally bound to take. Plaintiffs came to know about these developments recently when they have verified the records pertaining to landed property and immediately rushed to the Court and obtained certified copies of proceedings in O.S.No.115/1996 and thereafter obtained other documents and convinced that defendant No.1 has not acted in the welfare of minor plaintiffs. Hence, the decision taken by defendant No.9 is

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not binding on the plaintiffs. Plaintiffs approached defendant No.1 and insisted for effecting partition in respect of suit 'A' and 'B' schedule properties and to hand over their legitimate share. Defendant No.1 went on postponing the same on one or the other pretext. He is not ready to effect partition as demanded by plaintiffs. Hence, the suit for appropriate reliefs.

6. After service of suit summons, defendant No.1 appeared through his counsel and filed his written statement wherein he contended that the descriptions and boundaries of suit schedule properties are incorrect. He denied all the averments in the plaint in toto. He further contended that only the names of defendant Nos.4 to 6 mentioned in the plaint is correct, but the names of their respective husbands and their surnames are incorrect. Suit schedule properties were never in joint possession and cultivation of plaintiffs and defendants at any point of time. Court fee paid is insufficient. There is no cause of action to file the suit. The share claimed by plaintiffs in the suit is

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incorrect. Defendant No.7 is married and residing in her husband's house. Defendant No.8 and plaintiff No.2 have studied M.Tech. and residing in Bengaluru, but their address is wrongly furnished in the plaint; 3 guntas 14 annas property situated adjacent to P.B.Road at Rayapura village standing in the name of defendant No.9 worth about ₹.1 crore is not included in the suit schedule. Hence, suit is bad for non-joinder of all properties. He further contended that family properties were never leased to anyone and thus, the pleading that out of rental income, suit schedule 'A(i)' property was purchased is incorrect. Defendant No.1 is physically challenged person and there was no proper income from agricultural properties. Deceased Mallappa was working in a private Khadi Gramodyoga and was getting a meager salary and hence, suit schedule 'A(i)' property could not have been purchased from the income of joint family. Plaintiffs in collusion with defendants No.7 to 9 have filed another suit against defendant No.1 only to harass him and present suit is also a false and concocted suit and it is frivolous one. Plaintiffs have filed present suit at the

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instigation of defendant No.9. First plaintiff has completed his M.Tech.(RUBET) i.e., M. E. Degree; second plaintiff has completed her B.E. Degree in Computer Science; 7th defendant is working in K.S.R.T.C.; 8th defendant has completed M.E. and pursuing her PhD. Defendants No.1, 7 and 8 are getting very good salary. Second plaintiff will get very good job in Bengaluru with huge salary. Already second plaintiff is selected in campus selection for a job and thus, all the plaintiffs No.1 and 2, defendants No.7 and 8 are under the influence of defendant No.9 and they have filed this false suit at her instigation. Alternatively, defendant No.1 prayed for demarcating his share in suit schedule properties and that he will pay Court fee for it. He further contended that plaintiffs have not filed the suit with clean hands and are not entitled for any relief. Hence, prayed for dismissal of suit with costs.

7. Defendant No.2 filed his written statement wherein he contended that plaintiffs are never in joint possession and enjoyment of suit schedule properties along

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with defendants as alleged in the plaint. They are residing separately since 1993. Thus, the Court fee paid under Section 35(1) of the Court Fees and Suits Valuation Act is improper and insufficient. She has also taken contention that only at the instigation of defendant No.9, plaintiffs have filed the present suit with ulterior motives and malafide intentions. He also took further contention that the plaintiffs along with their mother has filed O.S.115/1996 for partition and separate possession against defendant No.1 and others and after trial, it was dismissed on merits with costs by passing judgment and decree dated 30.07.2005. In the said judgment and decree, the present suit schedule 'A(i)' property was involved. They said judgment and decree attained finality and thus, the present suit is hit by principles of *resjudicata*. Plaintiffs have filed said suit only in respect of one property and not included other properties of present suit schedule. Hence, the suit is hit by Order II Rule 2 of CPC. Thus, the present suit is not maintainable in law. The relationship mentioned in the plaint is vague and incomplete. The genealogy shown in the plaint is also

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incomplete, improper and thus, he denied the said genealogy. Defendant No.2 denied all other allegations made in the plaint. Defendant No.2 took further contention that there was partition in the year 1988-1989 and in that partition suit schedule 'A(i)' property was allotted to the share of defendant No.1. Defendant No.1 has borrowed loan from Hubballi Taluka Primary Co-Operative Agricultural and Village Development by mortgaging the property. Since he was unable to repay the said debt, he sold said property. Thus, the share of defendant No.1 is already given. Plaintiffs being the children of defendant No.1 cannot claim any partition against other defendants.

8. Defendant No.2 further contended that marriage of defendant No.1 with defendant No.9 has taken place in the year 1979. After said marriage defendant No.1 started residing separately. The mother of plaintiffs induced defendant No.1 to seek share in family properties and thus, this Sy.No.217/1A1 and a residential plot at Anchatgeri village were transferred into the name of defendant No.1

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towards full and final satisfaction of his share if any. After selling suit schedule 'A(i)' property, defendant No.1 has purchased N.A. plot bearing No.11 in Sy.No.187 measuring 3 guntas 14 annas at Rayapura village in the name of defendant No.9 from a part of said sale proceeds. Thus, it was purchased out of family funds and it is a joint family property and liable for partition. Suit 'A(ii)' and suit 'B' schedule properties are the absolute properties of defendant Nos.2 and 3 and they are in actual and lawful possession and enjoyment of those properties. Defendants No.1, 4 to 6 are parties to the registered partition deed dated 27.10.2014 and they have relinquished their right, title and interest in and over the property in favour of defendant Nos.2 and 3. The said partition is in accordance with the oral partition arrived between parties wherein suit 'A' (i) property was given to the share of defendant No.1. Defendant No.1 has signed and executed such registered partition deed as Karta of his smaller Hindu Undivided Family (H.U.F.) and thus, plaintiffs cannot claim any share in the remaining properties. The court has no jurisdiction to

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entertain the suit. Hence, prayed for dismissal of suit with costs and compensatory costs.

9. Defendant No.2 has filed additional written statement after amendment of the plaint, wherein he denied all the averments made in the amended plaint. He further contended that animosity between plaintiffs and their mother is neither pleaded nor advanced and such an allegation is only an afterthought. Mother of plaintiffs has acted as minor guardians for plaintiffs in the previous suit and her those acts, deeds and things cannot be questioned by plaintiffs in this suit. As on the date of filing of the present suit, plaintiffs No.1 and 2 were 23 and 26 years old respectively and therefore, the amended plaints are time-barred and deserve to be dismissed on the ground of limitation alone. The only motto of plaintiffs is to cause harm, injury and harassment to defendants. Hence, prayed for dismissal of suit with costs.

10. Defendant No.9 has filed her written statement wherein she contended that suit is not maintainable either

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in law or on facts. Defendant No.9 is not a coparcener and thus, the dispute is not concerned against her. She is not a necessary party to the suit. The suit is liable to be struck down against defendant No.9. She further took contention that the description of suit schedule properties and the genealogy furnished in the plaint are correct. The relationship between parties is not disputed. She further took contention that as on the date of suit, joint family exists and defendant No.1 is Kartha of it. She denied other allegations made in the plaint at paragraph Nos.4 and 5. There is no partition in the family and the alleged partition is bogus, false and unsustainable document. It is made unilaterally that too during pendency of the suit. She further contended that due to strained relationship between her and defendant No.1, she was compelled and constrained to reside separately. Though defendant No.9 spent her entire life for the welfare of plaintiffs and other children at the stake and cost of her life, now they have colluded with defendant No.1 and neglected her. Hence, the suit is the result and connivance between plaintiff and defendant No.1

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only to curb and prevent defendant No.9 to be part and parcel of their undivided Hindu joint family. She is the absolute owner of property situated at Rayapura i.e., plot No.11 having R.S.No.187 measuring 3 guntas 14 annas. By virtue of Will, she acquired said property. Subsequently by virtue of Probate, the title of said property was confirmed on her. Hence, said property is her self-acquired property. Hence, prayed for dismissal of suit against defendant No.9 with costs.

11. From the above facts, the Trial Court has framed the following issues and additional issues:

"ISSUES

- 1) *Whether the plaintiffs prove that schedule properties are the joint family properties of the plaintiffs and defendants No.1 to 8?*
- 2) *Whether plaintiffs prove that transaction between defendants No.1 and 10 in respect of the property in schedule No.1 (I) is not binding on the plaintiffs?*
- 3) *Whether the defendants No.2 and 3 prove that there is a partition and in the partition schedule A(II) and schedule B property was allotted to the share of defendants No.2 and 3?*
- 4) *Whether defendants No.2 and 3 prove that plot bearing No.11 in Sy.No.187 was purchased in the name of defendant No.9 out of the joint family property?*

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- 5) *Whether suit is not properly valued for the purpose of court and the court fee paid is insufficient?*
- 6) *Whether the suit of the plaintiffs is barred by limitation?*
- 7) *Whether the plaintiffs are entitled for the share in the schedule property, if so to what extent?*
- 8) *Whether the plaintiffs are entitled for the reliefs claimed in the suit?*
- 9) *What order or decree?*

ADDL. ISSUES

- 1) *Whether the suit is barred by principles of resjudicata?*
- 2) *Whether the suit is barred U/Order 2 Rule 2 of CPC?"*

12. On behalf of plaintiffs, plaintiff No.1 was examined as P.W.1, got marked Exs.P.1 to P.9 and closed their side before Trial Court. On behalf of defendant No.1, defendant No.1 was examined as D.W.1. On behalf of defendant Nos.2 and 3, Defendant No.2 was examined as D.W.2. Defendant No.9 was examined as D.W.3 and they got marked Exs.D.1 to D.36 and closed their respective sides before Trial Court.

13. After recording evidence of both sides and hearing arguments of both sides, the learned Trial Judge

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held that plaintiffs have established that plaintiffs and defendants are members of joint family and Item No.A(ii) and all the Items of suit 'B' schedule properties are the joint family properties and plaintiffs and defendant Nos.7 & 8 are entitled for 1/5th share each in those properties by metes and bounds and directed to draw preliminary decree.

14. Aggrieved by the said judgment and decree of not granting share in suit schedule 'A(i)' property, plaintiffs have preferred RFA No.100229/2017; defendant Nos.2 and 3 have preferred appeal in RFA No.100284/2017 challenging the grant of share to plaintiffs in other properties.

15. Learned counsel for the appellants-defendant Nos.2 and 3 in RFA No.100284/2017 would submit that the suit of the plaintiffs ought to have been dismissed because there is a registered deed executed in the year 2014 by defendant No.1, who is Kartha of his small co-parcenary HUF family i.e., consisting of plaintiff Nos.1, 2 and defendant Nos.7 to 9. Hence, the deed executed by

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defendant No.1 and defendant No.6 in favour of defendant Nos.2 to 5 binds plaintiffs and defendant Nos.7 to 9. Thus, already partition had taken place between the parties and in that partition suit schedule 'A(ii)' property and other 'B' schedule properties were allotted to the share of defendant Nos.2 to 5 and defendant Nos.1 and 6 have relinquished their right in those properties. Furthermore, suit schedule 'A(i)' property was allotted to the share of defendant No.1 and thus the plaintiffs cannot claim any share in suit schedule 'A(ii)' property and 'B' schedule properties. However, learned Trial Judge has not considered these aspects and decreed the suit in respect of suit schedule 'A(ii)' property and 'B' properties and hence, prayed for allowing his appeal.

16. He would further submit that in view of the suit filed by defendant No.9 on behalf of herself and on behalf of her minor children i.e., plaintiff Nos.1, 2, 7 and 8 in respect of suit schedule 'A(i)' property, and as said suit was dismissed, it acts as *resjudicata*. Hence, plaintiffs cannot

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claim any share even in that property. Furthermore, in that suit, the plaintiffs have not included present suit 'A(ii)' property and 'B' schedule properties and thus it acts as a bar for them to file fresh suit as per Order II Rule 2 CPC. Hence, suit is hit by these two provisions i.e., principles of *resjudicata* and Order II Rule 2 CPC. However, learned Trial Judge has not appreciated these points of law in a proper manner and hence prayed for allowing his appeal and to dismiss the appeal of plaintiffs.

17. Learned counsel for appellants-plaintiffs in RFA No.100229/2017, Sri.Shriharsha A. Neelopanth would submit that the plaintiffs were minors when their mother filed suit for partition in respect of suit schedule 'A(i)' property and thus the decree passed in said suit is not binding on them because their mother has not acted as a prudent guardian while conducting the said suit.

18. He would further contend that this property was standing in the name of their grandmother-Gangavva and she was not having any independent income to purchase

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the said property and it is their grandfather who has purchased the said property in her name. Hence, without any registered document, she was not permitted to transfer the property in the name of defendant No.1 and defendant No.1 sold the property to defendant No.10 not for legal necessity or for family benefit and hence, the sale deed is not binding on them. He would further contend that since several years there was rift between his parents i.e., defendant Nos.1 and 9 and they are residing separately. Both of them have not taken proper care of plaintiffs and defendant Nos.7 & 8. In O.S. No.115/1996 filed by their mother, even before the plaintiffs attained majority, she got discharged guardianship on behalf of plaintiffs and ultimately the said suit was dismissed. Hence, defendant No.1 has not acted in the welfare of minor children. Suit 'A(ii)' and suit 'B' schedule properties are ancestral properties of plaintiffs and defendant Nos.2 to 5 as they were standing in the name of their grandfather and there is no partition in respect of those properties. Hence,

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considering this aspect, the Trial Court has decreed the suit in respect of those properties.

19. He would further contend that without the family necessity, family benefit and legal necessity, the sale by defendant No.1 in favour of defendant No.10 is not binding on plaintiffs, and defendant No.1 never resided with plaintiffs and not looked after their welfare. However, Trial Court has not appreciated these facts in a proper manner and wrongly came to the conclusion that the suit is hit by principles of *resjudicata* and hence, prayed for allowing the appeal in RFA No.100229/2017 by granting a share even in respect of suit 'A(i)' schedule property and hence, prayed for dismissal of RFA No.100284/2017.

20. Having heard the arguments of both sides and verifying the appeal papers along with Trial Court records, the following points would arise for our consideration:

- | |
|---|
| i) Whether plaintiffs-appellants in RFA No.100229/2017, prove that they are entitled for share in suit 'A(i)' schedule property and the |
|---|

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judgment and decree in dismissing the suit in respect of said property by the Trial Court is erroneous?

- ii) Whether appellants in RFA No.100284/2017 prove that the decree of suit in respect of suit 'A(ii)' property and suit 'B' schedule properties and granting share to plaintiffs by the Trial Court is erroneous and it requires interference?
- iii) What order or decree?

21. Our answer to the above points is as under:

Point No.1: In the Negative;

Point No.2: In negative;

Point No.3: as per final order

For the following:

REASONS

22. The undisputed facts of the case are that one Rayappa Balagannavar was the original propositus of the family having two sons i.e., Mallappa and Chinnappa (defendant No.1) and a daughter called Girijavva (defendant No.6) and he had a wife called Gangavva. The

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said propositus died in the year 1962 leaving behind his wife and 3 children. His wife Gangavva died in the year 2009; his first son Mallappa died in the year 2012 and second son Chinnappa died during pendency of these appeals and his daughter Girijavva is defendant No.6 in the suit. The first son Mallappa and his wife Shantavva died leaving behind his children i.e., defendants No.2 to 5. The second son Chinnappa is defendant No.1. Plaintiffs and defendants No.7 & 8 are children of defendants No.1 and 9. Plaintiffs claimed partition in respect of suit schedule properties contending that all the suit schedule properties are the ancestral and joint family properties.

23. The Trial Court decreed the suit in respect of suit schedule A (ii) property bearing Survey No.155/2B measuring 2 acres 20 guntas situated at Garden Peth village, Hubballi and also in respect of suit 'B' schedule properties consisting of house properties. The Trial Court dismissed the suit in respect of suit schedule 'A(i)' property on the ground that this property was already the subject

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matter of earlier suit bearing O.S.No.115/1996 and thus it operated as *resjudicata* to plaintiffs.

24. The oral and documentary evidence produced before the Trial Court clearly establishes that suit schedule 'A(i)' property bearing Survey No.217/1A1 measuring 3 acres 6 guntas situated at Anchatageri village, Hubballi Taluk was purchased in the name of Gangavva on 14.02.1966 through registered said deed and then it was mutated into the name of defendant No.1 only based on varadi during 1987 as per M.E.No.119/1987. Afterwards, defendant No.1 has sold the said property to defendant No.10 under registered sale deed dated 11.12.2006.

25. It is the contention of plaintiffs that without any registered document, only through varadi, the said property is mutated into the name of defendant No.1 and thus it would not confer any absolute right to defendant No.1 to sell it to defendant No.10 and hence, the said sale deed is not binding on their share.

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26. It is to be noted here that O.S.No.115/1996 was filed on behalf of plaintiffs No.1 and 2 and defendants No.7 and 8, who were minors at that time by their mother as natural guardian and also on her behalf against defendant No.1 for the relief of partition and separate possession of their share in respect of suit schedule 'A(i)' property. Said suit was dismissed on merits on 30.07.2005. Against the said judgment and decree, no appeal is preferred. Hence, it attained finality.

27. It is the contention of plaintiffs that they were minors at that point of time and even then though they have not attained majority, defendant No.9 in collusion with defendant No.1, has filed application for discharge of guardianship and it was allowed and then the said suit was disposed of and hence it is a collusive decree and thus said judgment and decree is not binding on them.

28. It is to be noted here that the certified copies of plaint, written statements and judgment of said suit are marked as Exs.D.9 to D.11 and Ex.D.16 in this suit. The

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certified copies of application accompanying with the affidavits of present plaintiffs and defendant No.7 & 8 filed for discharge of guardianship and vakalath of said suit are produced as per Exs.D.19 and D.20. This Ex.D.19 is the application filed under Order XXXII Rule 12 read with Section 151 of CPC to discharge the guardianship of plaintiffs No.1 to 4 of said suit contending that all of them have attained majority and it is supported by their respective affidavits and also affidavit of plaintiff No.5 of said suit, who is defendant No.9 in this suit stating that all of them attained majority and they can agitate their suit.

29. Based on this application, the guardianship of all the plaintiffs No.1 to 4 was discharged.

30. Learned counsel for the appellants would submit that the present plaintiffs have not attained majority as on that date as per their SSLC marks cards produced in this case as per Ex.P.38 and P.39.

31. It is to be noted here that the present plaintiffs might have been minors at that point of time because their

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date of birth mentioned in Ex.P.38 and P.39 reveals that they were born on 25.09.1989 and 01.03.1988. However, these plaintiffs were not uneducated people. They have studied well and they are Engineering graduate and M.Tech. graduate respectively and defendants No.7 and 8 are also highly educated and they have completed their ITI and M.Sc. courses. Present plaintiffs have sworn to the affidavits in said suit by putting their signatures that their age is 19 and 18 years respectively. Plaintiff No.1 in her evidence categorically admitted her signature in the affidavit annexed to this I.A.

32. Under Article 60 of the Limitation Act, the ward can file a suit to set aside a transfer of property made by the guardian within 3 years of he attaining majority. Hence, if the minor guardian i.e., mother of plaintiffs has not taken due care at the time of prosecuting O.S.No.115/1996 and because of that said suit came to be dismissed, it was open for plaintiffs to challenge the said judgment and decree within 3 years of they attaining majority. However, plaintiffs

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have not made any efforts to challenge the judgment and decree passed in O.S.No.115/1996. On the other hand, they have filed the present suit only in the year 2014 i.e., more than 3 years after they attained majority. No reason is assigned by plaintiffs for not challenging the judgment and decree passed in said suit.

33. In this suit, only as an afterthought, plaintiffs have amended the plaint and made certain allegations against their mother, defendant No.9 that it transpired to the knowledge of plaintiffs that defendant No.9 posing herself as minor guardian has fought a collusive suit with defendant No.1 so casually and there was no effective legal battle in protecting the interest of minor plaintiffs and has not taken minimum care which she was legally bound to take and plaintiffs came to know of these developments recently when they have verified the records pertaining to landed properties and immediately they have obtained certified copies of proceedings of O.S.No.115/1996 on 03.03.2011 and thereafter they have convinced that

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defendant No.9 has not acted in the welfare of family and then they have filed the present suit on 04.01.2014.

34. Even according to their pleadings, plaintiffs kept quiet for a period about 3 years after they came to know about the judgment and decree of O.S.No.115/1996 and not challenged the same. Only in this suit, they have prayed for declaration that the decision taken by defendant No.9 is not binding on them as she failed to discharge her duties in the best interest of minors. Even in this suit they have not made any prayer for setting aside the judgment and decree passed in O.S.No.115/1996.

35. It is to be noted here that the genealogical tree produced in the plaint and the sale deed produced in this suit of 1966 establish that the property in question was purchased by Smt.Gangavva and after her death not only plaintiffs but all her legal heirs i.e., her 2 sons i.e., Mallappa and Chinnappa-defendant No.1 and her daughter Girijavva would be entitle for share in this property, if defendant No.1

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failed to establish that the said property was not transferred to him in accordance with law.

36. However, at the time of filing the suit, this Mallappa was no more. His legal representatives i.e., defendants No.2 to 5 and the daughter of Smt.Gangava i.e., defendant No.6 have not questioned the said transfer of property from Gangavva to defendant No.1 or alienation of said property by defendants No.1 to 10 at any point of time till today. They have not even prayed for Counter-Claim in this suit. They have only stated that they reserved their right of Counter-Claim, but no counter claim is made.

37. It is to be noted here that during the lifetime of mother of defendant No.1, defendant No.1 has alienated the suit schedule 'A(i)' property to defendant No.10. Much earlier to it during 1987 itself as per ME No.119/1987, suit schedule 'A(i)' property was mutated into the name of defendant No.1. During her lifetime, mother of defendant No.1 has not challenged these transfers. Under these circumstances, when only father of plaintiffs No.1 and 2,

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who has alienated said property during lifetime of his mother, who has not questioned the same even though she was alive for about three years of such alienation by defendant No.1, this property was mutated into the name of defendant No.1 in the year 1987 itself. Even this Mallappa who was alive up to 2012, has not challenged the revenue entries mutated into the name of defendant No.1 or alienation made by defendant No.1 during 2006. Defendant No.6 has not challenged the said alienation.

38. With this background, the evidence adduced by both parties is to be looked into to say whether defendant No.1 has made any contribution for the education or other needs of plaintiffs or whether he acted adverse to the interests of plaintiffs.

39. As discussed above, plaintiffs No.1 and 2 are well educated and their mother i.e., defendant No.9 was not having any proper employment.

40. It is the case of plaintiffs that defendants No.1 and 9 were residing separately since long time and plaintiffs

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and defendant No.9 along with defendants No.7 and 8 were residing in the parental house of defendant No.9. Plaintiffs have not stated that their grandparents or their maternal uncles have looked after their welfare. On the other hand, plaintiff No.1 in her evidence has categorically deposed that defendant No.1 was often visiting their house. She has categorically deposed that till completion of her diploma, defendant No.1 has borne the educational and other expenses. She is not having any personal knowledge that what is the job plaintiff No.2 is doing and how much amount defendant No.1 spent towards their education or towards the education of defendants No.7 & 8. She has not denied the suggestion that defendant No.1 has obtained loan by mortgaging suit schedule 'A(i)' property before PLD Bank for the educational expenses of plaintiff and her siblings, but she has only deposed that she does not know about it. Said property was put in auction by PLD Bank for non-payment of loan amount.

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41. It is to be noted here that defendants No.1 and 9 loved each other and married against the will and wish of the family members of defendant No.1, but even then they have allowed defendants No.1 and 9 to reside in a room in their property. Both of them were working together at Janata Bazaar and after marriage defendant No.1 started job typing work and she was occasionally doing the said work along with defendant No.1.

42. It is the specific contention of defendant No.1 that his mother was herding cattle and doing milk vending business and from the income of her avocation and profits from milk vending business she has purchased the suit schedule 'A(i)' property. In this regard, defendant No.9 in her cross-examination expressed her ignorance, but she admitted that occasionally she was going to the house of mother of defendant No.1 to purchase milk. This shows that she was aware of the said fact. Anyway, the property was purchased in the name of a female; then the presumption is

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that it is her self-acquired property and person who disputes it, must rebut the said presumption.

43. In the instant case, neither the plaintiffs nor defendants No.2 to 5 have produced any iota of evidence to show that this property was purchased in the name of mother of defendant No.1 by his father and Gangavva has no independent income to purchase it. All of them have expressed their ignorance on this point and not deposed anything on this point. Anyway, this property was purchased in the year 1966 and transferred into the name of defendant No.1 during 1987 and he sold it in the year 2006 and these alienations were not challenged during lifetime of Gangavva or subsequently by the other parties to the suit at any point of time. Hence, it is to be held that the said property was self-acquired property of mother of defendant No.1 and even though it was transferred into the name of defendant No.1 without any registered document, as it is transferred within the family members and as other family members have not disputed it, he sold it and sale is

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also not questioned by any one. Hence, we are of the considered opinion that the sale deed executed by defendant No.1 is binding on all other family members. According to defendant No.1, he sold it for family benefit and legal necessity i.e., for educational expenses of his children and to clear the loan of society, which cannot be disputed.

44. Defendants No.1 and 2 to 5 have taken the contention that from the said sale proceeds, defendant No.1 has cleared bank loan and then he has given the remaining amount to defendant No.9 and in turn purchased the property at Raibag in her name. Defendants No.2 to 5 have contended that the said property should also be included in the present suit schedule property. However, defendants No.2 to 5 have not produced sufficient materials to show that the said property standing in the name of defendant No.9 was purchased out of sale proceeds of suit schedule 'A(i)' property. Hence, the said contention cannot be accepted. Furthermore, defendant No.9 has contended that

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she got the said property through Will and she has also obtained Probate in P & Sc.13/04 as per Ex.D.26. Hence, the contention of defendant No.2 to 5 on this point is not acceptable one.

45. Anyway sale of suit schedule 'A(i)' property has taken place long back and it is not questioned by anyone and it is for the benefit of the family. Hence, said sale deed is binding on other parties to the suit.

46. The cross-examination of defendant No.1 reveals that his mother has obtained loan to dig a bore-well in suit schedule 'A(i)' property and loan was not cleared and hence the property was put in for auction and without auctioning the same, he sold it to defendant No.10 and cleared the said loan. Thus, the property was used by defendant No.1 and his mother.

47. It is the specific contention of defendants No.2 to 5 that there was registered partition deed executed by defendants No.1 and 6 in favour of defendants No.2 to 5 on 27.10.2014. The suit is filed on 04.01.2014, whereas this

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document came into existence on 27.10.2014 i.e., during pendency of present suit. Anyway, under said document, no property was given to defendant No.1 or defendant No.6.

48. On perusal of the partition deed, it is to be noted that no share is allotted either to defendant No.1 or to defendant No.6. But it is only the partition amongst defendants No.2 to 5. No reason is assigned for not allotting any share to defendants No.1 and 6 in the said document. Furthermore, it came into existence during pendency of the present suit. Admittedly, suit schedule 'A(ii)' property and all items of suit 'B' schedule properties were standing in the name of original propositus Rayappa Balagannavar. Hence, after his death, his wife and children will get share in those properties. Admittedly, no partition had taken place between parties till commencement of Hindu Succession (Amendment) Act, 2005. Under these circumstances, definitely his two sons and daughter will get equal share in those properties. His first son is no more. The children of his first son together will get one share and his second son i.e.,

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defendant No.1 and his family i.e., his wife and children together will get one share and defendant No.6 will get one share.

49. Learned counsel for defendants No.2 to 5 vehemently submitted his arguments that the suit for partition filed by present plaintiffs along with defendants No.7 to 9 against defendant No.1 in O.S.No.115/1996 bars them from filing another suit for partition as per Order II Rule 2 of CPC.

50. It is to be noted here that the said suit in O.S.No.115/1996 is filed by plaintiffs, defendants No.7 to 9 against defendant No.1 alone in respect of only suit schedule 'A(i)' property and not in respect of other properties and other defendants i.e., defendants No.2 to 6 were not parties in that suit.

51. It appears that plaintiffs have filed said suit for partition only in respect of one of the suit schedule properties because it was standing in the name of their grandmother and during her lifetime it was mutated into the

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name of defendant No.1 alone. This is not at all disputed by other defendants as discussed above. Hence, filing of said suit only against defendant No.1 amounts to praying for partition in a small coparcenary property i.e., amongst plaintiffs and defendants No.1, 7 to 9. Other defendants were not included in the said suit. Under those circumstances, Order II Rule 2 of CPC is not a bar for plaintiffs to file present suit in respect of all other properties i.e., Item No.II of suit 'A' schedule properties and other items of suit 'B' schedule properties. Hence, the argument of learned counsel for defendants No.2 to 5 on this point is not tenable.

52. Even though learned Trial Judge has not considered these aspects, but he considered only the point of *resjudicata* and dismissed the suit in respect of suit schedule 'A(i)' property, which requires no interference. Likewise, the decree of suit in respect of other items of suit schedule properties by the learned Trial Judge is based on

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sound reasoning, which is justifiable and requires no interference.

53. For the above reasons, the points raised above are answered accordingly.

ORDER

1. Both ***appeals*** filed under Section 96 Code of Civil Procedure are ***dismissed*** by confirming the judgment and decree passed in O.S.No.6/2014 dated 10.03.2017 on the file of the III Additional Senior Civil Judge, Hubballi;
2. Under facts and circumstances of the case, parties to bear their own costs;
3. Draw preliminary decree accordingly.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

SSP-Para 1 to 14
HMB-para 15 to 21
SH-Para 22 to end, CT-MCK