



NC: 2026:KHC-D:258-DB
RFA No. 100091 of 2016
C/W RFA No. 100055 of 2016
RFA No. 100071 of 2018
RSA No. 5392 of 2010

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 12TH DAY OF JANUARY 2026
PRESENT
THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND

R

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100091 OF 2016 (PAR/POS)
C/W REGULAR FIRST APPEAL NO.100055 OF 2016
REGULAR FIRST APPEAL NO.100071 OF 2018 AND
REGULAR SECOND APPEAL NO.5392 OF 2010

IN RFA NO. 100091/2016

BETWEEN:

1. VEERANNA
S/O. SHANTAVEERAPPA RITTIGANIGER,
AGE: 45 YEARS, OCC. AGRICULTURE,
R/O. SHIRAMAPUR VILLAGE,
TQ. AND DIST. HAVERI.
2. ANIL KUMAR
S/O. SHANTVEERAPPA RITTIGANGER,
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. SHIRAMPUR VILLAGE,
TQ. AND DIST. HAVERI.

...APPELLANTS

(BY SRI. R.G. KODLI, ADVOCATE)

AND:

1. SMT. ANASUYA @ AKKAMAHADEVI
W/O. ULAVAPPA TALAGERI,
AGE: 51 YEARS, OCC. HOUSE WORK,
R/O. KAMALAPUR, NARAYANPUR, DHARWAD.
2. SMT. CHANNABASAVVA
W/O. BASAPPA HONNALLI,
AGE: 56 YEARS, OCC. HOUSE WORK,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI.

SAROJA
HANGARAKI



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



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3. UMESH S/O. BASAPPA HONNALLI,
AGE: 38 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI.
4. PARAMESH S/O. BASAPPA HONNALLI,
AGE: 34 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI.
5. MANJU S/O. BASAPPA HONNALLI,
AGE: 31 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI.
6. SIDDAPPA S/O. VEERABHADRAPPA HONNALLI,
AGE: 66 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI.
7. VIRUPAKSHAPPA
S/O. VEERABHADRAPPA HONNALLI,
AGE: 56 YEARS, OCC. AGRICULTURE,
R/O. ADARGUNCHI, TQ. HUBBALLI.
8. IRANNA S/O. BASAPPA HEBBALLI,
AGE: 29 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL, TQ. HUBBALLI.
9. JAGADISH S/O. BASAPPA HEBBALLI,
AGE: 31 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL, TQ. HUBBALLI.
10. SHIVABASAYYA S/O. SIDDRAMAYYA HIREMATH,
AGE: 78 YEARS, OCC. DOCTOR,
R/O. KALYAN NAGAR, HUBBALLI.

...RESPONDENTS

(BY SRI. V.P. VADAVI, ADVOCATE FOR R1;
SRI. MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE FOR R2-R6;
R7 TO R9-NOTICE SERVED;
SRI. SHIVASHANKAR R. AMBLI, ADVOCATE AND
SRI. S.S. NIRJAN, ADVOCATE FOR R10)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO
SET ASIDE THE JUDGMENT AND DECREE IN O.S.NO.20/2010 DATED



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29.01.2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, HUBBALLI, BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

IN RFA NO. 100055/2016

BETWEEN:

1. SMT. CHANNABASAVVA
W/O. BASAPPA HONNALLI,
AGE: 58 YEARS, OCC. HOUSE WORK,
R/O. HALAGERI ONI, UNAKAL,
TQ. HUBBALLI-580030.
2. UMESH S/O. BASAPPA HONNALLI,
AGE: 38 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. HUBBALLI-580030.
3. PARAMESH S/O. BASAPPA HONNALLI,
AGE: 34 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. HUBBALLI-580030.
4. MANJU S/O. BASAPPA HONNALLI,
AGE: 31 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. HUBBALLI-580030.
5. SIDDAPPA S/O. VEERABHADRAPPA HONNALLI,
AGE: 66 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. HUBBALLI-580030.

...APPELLANTS

(BY SRI. MALLIKARJUNSWAMY B. HIEMATH AND
SRI. R.G. KODLI, ADVOCATES)

AND:

1. SMT. ANASUYA @ AKKAMAHADEVI
W/O. ULAVAPPA TALAGERI,
AGE: 51 YEARS, OCC. HOUSE WORK,
R/O. KAMALAPUR, NARAYANPUR,
DHARWAD-580030.



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2. VIRUPAKSHAPPA
S/O. VEERABHADRAPPA HONNALLI,
AGE: 56 YEARS, OCC. AGRICULTURE,
R/O. ADARGUNCHI, TQ. HUBBALLI-580030.
3. IRANNA S/O. BASAPPA HEBBALLI,
AGE: 29 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL,
TQ. HUBBALLI-580030.
4. JAGADISH S/O. BASAPPA HEBBALLI,
AGE: 31 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL,
TQ. HUBBALLI-580030.
5. SHIVABASAYYA
S/O. SIDDRAMAYYA HIREMATH,
AGE: 78 YEARS, OCC. DOCTOR,
R/O. KALYAN NAGAR, HUBBALLI-580030.
6. VEERANNA
S/O. SHANTAVEERAPPA RITTIGANIGER,
AGE: 45 YEARS, OCC. AGRICULTURE,
R/O. SHIRAMAPUR VILLAGE,
TQ. AND DIST. HAVERI-580030.
7. ANIL KUMAR
S/O. SHANTVEERAPPA RITTIGANGER,
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. SHIRAMPUR VILLAGE,
TQ. AND DIST. HAVERI-580030.

...RESPONDENTS

(BY SRI. V.P. VADAVI, ADVOCATE FOR R1;
R2 TO R3-NOTICE SERVED;
SRI. RAKESH BILKI, ADVOCATE FOR R4;
SRI. SHIVASHANKAR R. AMBLI, ADVOCATE AND
SRI. S.S. NIRANJAN, ADVOCATE FOR R5;
SRI. S.B. PATIL, ADVOCATE FOR R6, R7)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO SET
ASIDE THE JUDGMENT AND DECREE IN O.S.NO.20/2010 DATED
29.01.2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC, HUBBALLI, BY ALLOWING THIS APPEAL IN THE INTEREST



OF JUSTICE AND EQUITY.

IN RFA NO. 100071/2018

BETWEEN:

SHIVABASAYYA S/O. SIDDRAMAYYA HIREMATH,
AGE: 80 YEARS, OCC. DOCTOR,
R/O. KALYAN NAGAR, HUBBALLI-580001.

...APPELLANT

(BY SRI. S.S. NIRANJAN, ADVOCATE)

AND:

1. SMT. ANASUYA @ AKKAMAHADEVI
W/O. ULAVAPPA TALAGERI,
AGE: 53 YEARS, OCC. HOUSE WORK,
R/O. KAMALAPUR, NARAYANPUR,
DHARWAD-580001.
2. SMT. CHANNABASAVVA
W/O. BASAPPA HONNALLI,
AGE: 52 YEARS, OCC. HOUSE WORK,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI-580001.
3. UMESH S/O. BASAPPA HONNALLI,
AGE: 34 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI-580001.
4. PARAMESH S/O. BASAPPA HONNALLI,
AGE: 30 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI-580001.
5. MANJU S/O. BASAPPA HONNALLI,
AGE: 27 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI-580001.
6. SIDDAPPA S/O. VEERABHADRAPPA HONNALLI,
AGE: 62 YEARS, OCC. AGRICULTURIST,
R/O. HALAGERI ONI, UNAKAL,
TQ. AND DIST. HUBBALLI-580001.



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7. VIRUPAKSHAPPA
S/O. VEERABHADRAPPA HONNALLI,
AGE: 52 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL,
TQ. HUBBALLI-580001.
8. IRANNA S/O. BASAPPA HEBBALLI,
AGE: 25 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL,
TQ. HUBBALLI-580001.
9. JAGADISH S/O. BASAPPA HEBBALLI,
AGE: 27 YEARS, OCC. AGRICULTURE,
R/O. TEACHERS COLONY, UNKAL,
TQ. HUBBALLI-580001.
10. VEERANNA
S/O. SHANTAVEERAPPA RITTIGANIGER,
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. SHIRAMAPUR VILLAGE,
TQ. AND DIST. HAVERI-581110.
11. ANIL KUMAR
S/O. SHANTVEERAPPA RITTIGANGER,
AGE: 37 YEARS, OCC. AGRICULTURE,
R/O. SHIRAMPUR VILLAGE,
TQ. AND DIST. HAVERI-581110.

...RESPONDENTS

(BY SRI. V.P. VADAVI, ADVOCATE FOR R1;
SRI. MALLIKARJUNSWAMY B. HIEMATH, ADVOCATE FOR R2-R6;
R7 TO R10-NOTICE SERVED;
SRI. S.B. PATIL, ADVOCATE FOR R11)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO
SET ASIDE THE JUDGMENT AND DECREE IN O.S.NO.20/2010 DATED
29.01.2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC, HUBBALLI, BY ALLOWING THIS APPEAL IN THE INTEREST
OF JUSTICE AND EQUITY.



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IN RSA NO. 5392/2010

BETWEEN:

1. SIDDAPPA S/O. VEERABHADRAPPA HONNALLI,
AGE: MAJOR, OCC. AGRICULTURE,
R/O. UNKAL, HUBBALLI-580031.
2. CHANNABASAVVA S/O. BASAPPA HONALLI,
AGE: MAJOR, OCC. HOUSEHOLD WORK,
R/O. UNKAL, HUBBALLI-580031.
3. UMESH S/O. BASAPPA HONALLI,
AGE: 39 YEARS, OCC. AGRICULTURE,
R/O. UNKAL, HUBBALLI-580031.
4. PARAMESH S/O. BASAPPA HONNALLI,
AGE: 39 YEARS, OCC. AGRICULTURE,
R/O. UNKAL, HUBBALLI-580031.
5. MANJU S/O. BASAPPA HONNALLI,
AGE: 26 YEARS, OCC. AGRICULTURE,
R/O. UNKAL, HUBBALLI-580031.

...APPELLANTS

(BY SRI. MALLIKARJUN B. HIREMATH, ADVOCATE)

AND:

1. SMT. RUDRAVVA
W/O. VEERABHADRAPPA HONNALLI,
AGE: MAJOR, OCC. HOUSEHOLD,
R/O. C/O. SMT. A.U. TALAGERI,
KAMALAPUR, NARAYANAPUR,
DHARWAD-580001.
2. SMT. ANASUYA @ AKKAMAHADEVI
W/O. ULAVAPPA TALAGERI,
AGE: MAJOR, OCC. HOUSEHOLD,
R/O. KAMALAPUR, NARAYANPUR,
DHARWAD-580001.
3. SRI. IRAPPA VEERABHADRAPPA HONNALLI
AGE: MAJOR, OCC. AGRICULTURE,
R/O. UNKAL, HALAGERI ONI,
HUBBALLI-580031.



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4. PARVATEVVA W/O. YALLAPPA YALIWAL,
AGE: MAJOR, OCC. HOUSEHOLD WORK,
R/O. INGALGAI, TQ. KUNDAGOL,
DIST. DHARWAD-580001.
5. SIDDAWWA
W/O. PARAMESHWARAPPA HOTAGI,
AGE: MAJOR, OCC. HOUSEHOLD WORK,
R/O. UNKAL, HALAGERI ONI,
HUBBALLI-580031.
6. VEERUPAXAPPA S/O. VEERABHADRAPPA HONNALLI,
AGE: MAJOR, OCC. COOLIE,
R/O. ADARGUNCHI, HUBBALLI-580031.

...RESPONDENTS

(BY SRI. V.P. VADAVI, ADVOCATE FOR R2;
R1 AND R3-NOTICE SERVED; R4-ABATED;
R5 AND R6-DISPENSED WITH)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO
SET ASIDE THE JUDGMENT AND DECREE DATED 19.08.2009 PASSED
BY THE FAST TRACK COURT-II, DHARWAD SITTING AT HUBBALLI IN
R.A.NO.163/2003 AND CONSEQUENTLY DECREE THE SUIT IN
O.S.NO.213/2000 BY CONFIRMING THE JUDGMENT AND DECREE
DATED 21.01.2003 PASSED BY ADDITIONAL CIVIL JUDGE (SR.DN.)
AT HUBBALLI AND ETC.

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.)

1. Regular First Appeal Nos.100091/2016 is filed by defendant Nos.10 and 11, 100055/2016 is filed by defendant Nos.1 to 5 and 100071/2018 is filed by defendant No.9 challenging the judgment and decree dated 29.01.2016 passed in O.S.No.20/2010 on the file of the learned Principal Senior Civil Judge and J.M.F.C., Hubballi.

2. Regular Second appeal No.5392/2010 is filed challenging the judgment and decree dated 19.08.2009 passed in R.A. No.163/2003 on the file of the learned Fast Track Court-II, Dharwad sitting at Hubballi.

3. This second appeal is clubbed with the aforesaid regular first appeals, as the parties to both the suits are one and the same and they relate to the partition dated 23.09.1984 between the parties.



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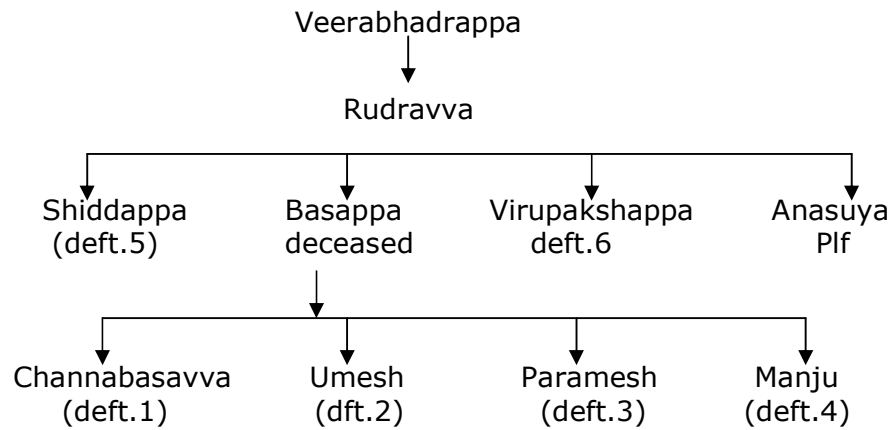
4. O.S.No.20/2010 is filed by Anasuya-daughter of Veerabhadrappa seeking partition and separate possession of her 1/4th share in the suit properties against her two brothers and legal representatives of another brother and also against purchasers in respect of 'A' to 'G' schedule properties. Said suit was decreed.

5. Two brothers of plaintiff in O.S.No.20/2010 have filed O.S.No.567/1987 against their father and another brother praying for declaration and injunction that they are the absolute owners of suit schedule property bearing No.887-888 based on the partition dated 23.09.1984. Said suit was renumbered as O.S.No.213/2000. The said suit was decreed. Against which R.A.No.163/2003 was filed. It was dismissed. Against said dismissal, Regular Second appeal No.5392/2010 is filed. Hence, both the regular first appeals and the regular second appeal are clubbed together and the arguments are heard commonly.



6. The parties would be referred with their names for sake of convenience and clarity.

7. The admitted genealogy of parties is as follows:



8. There are series of litigations pending between parties since 1987 onwards. The first suit was filed in the year 1987 i.e., O.S.No.567/1987, which is re-numbered as O.S.No.213/2000, for the relief of declaration that plaintiffs-Siddappa and Basappa are owners of the suit schedule properties which were fallen to their respective shares under partition deed dated 23.09.1984.

9. The second suit is O.S.No.690/1989 filed by father Veerabhadrapappa challenging the partition dated



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23.09.1984 alleging that it came into existence by fraud and misrepresentation. It was dismissed for non-prosecution on 18.06.1991 and it became final and nobody has filed miscellaneous petition to restore the said suit.

10. The third suit is filed by Siddappa for declaration in O.S.No.380/1990 in respect of property fallen to his share in the earlier partition and later he sold the said property to one Prabhavati Dambal and thus, he withdrew the said suit.

11. The fourth suit in O.S.No.28/1991 was filed by present plaintiff-Anasuya against her father for the relief of specific performance of contract in respect of three schedule properties and it was compromised within 17 days.

12. Afterwards fifth suit in O.S.No.130/1991 was filed by Siddappa and Basappa praying for the relief of declaration that the decree passed in O.S.No.28/1991 is not binding on them and to restrain Anasuya from



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alienating those properties, alleging impersonation and fraud against Anasuya.

13. Sixth suit in O.S.No.106/2012 is filed by Prabhavati Dambal against plaintiff-Anasuya and others.

14. O.S.No.130/1991 and O.S.213/2000 were clubbed together and common judgment was passed decreeing both suits. Challenging the said common judgment and decree, R.A.No.162/2003 and R.A.No.163/2003 are filed. R.A.No.162/2003 is filed challenging the judgment and decree passed in O.S.No.130/1991 and R.A.No.163/2003 is filed challenging the judgment and decree passed in O.S.No.213/2000. Ultimately, O.S.No.130/1991 is decreed by setting aside the compromise decree in O.S.No.28/1991. It became final because Anasuya has not challenged the said judgment and decree passed in R.A.No.162/2003.

15. The judgment and decree in R.A.No.163/2003 was passed on 19.08.2009. Only after passing said



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judgment and decree in R.A.No.162/2003, the plaintiff-Anasuya has filed seventh suit in O.S.No.20/2010 praying for partition in respect of all the joint family properties.

16. During pendency of these matters, the second son Basappa died and his legal representatives i.e., his wife and children are brought on record in all proceedings.

17. Against the judgment and decree passed in R.A.No.163/2003, the present RSA No.5392/2010 is filed by the Siddappa-son of the original propositus and the legal representatives of second son of the original propositus.

18. It is the contention of plaintiffs in O.S.No.567/1987 that there was an earlier partition in 20.08.1984 and the said partition was challenged by one of the sons of Veerabhadrappa through another wife of Veerabhadrappa-Erappa before the Revenue Authorities and ultimately, the revenue entries based on the said 20.08.1984 partition was set aside.



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19. The learned Appellate Judge has dismissed the suit filed by Siddappa and the legal representatives of deceased Basappa on some grounds. The first ground is that no share is allotted to father in immovable properties and no share is allotted to mother. The said partition deed dated 23.09.1984 is marked as Ex.P-14 in that suit. On perusal of Ex.P-14-partition deed, specifically a house property bearing No.863/864A and northern portion of agricultural property bearing block No.132 measuring 2 acres 17 guntas were allotted to the share of both parents and after their demise, they shall be equally divided amongst three brothers and even some movable properties were also allotted to their share. Hence, this reasoning of learned Appellate Judge is incorrect.

20. The second ground is that the second partition dated 23.09.1984 is a partition deed under which, the parties have partitioned the properties and thus, as per Section 17 of the Indian Registration Act, 1908 (for short, hereinafter referred to as 'the Registration Act') it is



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compulsorily registerable document and there was no such registration.

21. The third reason assigned by the Appellate Judge for dismissal is that, by filing O.S.No.690/1989, father himself challenged the second partition deed 23.09.1984. For these reasons, the suit of Siddappa and the legal representative of Basappa was dismissed.

22. This Court while admitting Regular Second Appeal No.5392/2010 on 26.03.2014, framed the following substantial questions of law:

- "i) Whether the first appellate Court has committed a serious error in not accepting the partition deed dated 23.09.1984 marked as Ex.P14 in spite of the same being not set aside till date?*
- ii) Whether the judgment and decree of the first appellate Court is perverse and illegal for misinterpreting Ex.P14 and other material evidence placed on record?"*



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23. Always, nomenclature of a document is not to be considered, but the recitals of the document are to be considered to say whether the document is memo of partition or partition deed. If the document is a memo of partition, then it requires no registration. If the document under which, parties have partitioned the properties, then it is partition deed and it requires compulsory registration under Section 17 of the Registration Act.

24. In this regard, the learned counsel for appellants places reliance on the judgment of the Hon'ble Apex Court in the case of **Roshan Singh and others vs. Zile Singh and others**¹ at paragraph No.9, as follows:

"9. It is well settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under Section 17(1)(b) of the Act, a writing which merely recites

¹ (2018) 14 SCC 814



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that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will



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not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition:"

25. In the aforesaid judgment, the Hon'ble Apex Court held that mere recitals of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. A partition may be effected orally, but if it is subsequently reduced into a form of document and that document purports by itself to effect a division and embodies all the terms of partition, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence.

26. With this background, the relevant recitals of Ex.P-14 are to be looked into.



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Ex-P-14:ನಾವು ಅಂದ್ರೆ (1) ಸಿದ್ಧಪ್ಪ (2) ಬಸಪ್ಪ (3) ವಿರುಪಾಕ್ಷಪ್ಪ ತಂದೆ
ವೀರಭದ್ರಪ್ಪ ಹೊನ್ನಳ್ಳಿ ಸಾ. ಉಣಕಲ್ಲ ತಾಲ್ಲು ಹುಬ್ಬಳ್ಳಿ. ನಾವು ಮೂವರೂ ಖಾಸಾ
ಅಣ್ಣ ತಮ್ಮಂದರಿದ್ದು, ಈ ಹಿಂದೆ ದಿ.18.8.84 ರಂದು ನಮ್ಮದೇ ಮಾಲ್ಕಿ ವ
ವಹಿವಾಟಿನ ಆಸ್ತಿಗಳನ್ನು ಅಪಸಾತಿ ನಲ್ಲಿ ವಾಟ್ಸಿ ಮಾಡಿಕೊಂಡಿದ್ದು ಇದ್ದು. ಆದರೆ,
ಹಿಸ್ಸೆ-ರಿಸ್ಸೆಯಲ್ಲಿ ಕೆಲವೊಂದು ತಾರತಮ್ಯವಾಗಿದ್ದ ಮೂಲಕ ಅದನ್ನು ರದ್ದು ಮಾಡಿ
ಇಂದು ದಿನಾಂಕ 23.9.1984 ರಂದು ಓಣಿಯ ಪಂಚರ ವ ಹಿರಿಯರ ಸಮಕ್ಷಮ
ಈ ಕೆಳಕಂಡಂತೆ ನಾವೆಲ್ಲಾ ಮೂವರು ಅಣ್ಣತಮ್ಮಂದಿರು ಆಸ್ತಿಗಳನ್ನು ವಾಟ್ಸಿ
ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ.

I) ಒಂದನೇ ಹಿಸ್ಸೇದಾರ ಸಿದ್ಧಪ್ಪ ತಂದೆ ವೀರಭದ್ರಪ್ಪ ಹೊನ್ನಳ್ಳಿ ಈತನ
ಹಿಸ್ಸೇಗೆ ಬಂದ ಆಸ್ತಿಯ ವಿವರಗಳು

1).....

2).....

3).....

2) ಎರಡನೇ ಹಿಸ್ಸೇದಾರ ಬಸಪ್ಪ ತಂದೆ ವೀರಭದ್ರಪ್ಪ ಹೊನ್ನಳ್ಳಿ ಈತನ
ಹಿಸ್ಸೇಗೆ ಬಂದ ಆಸ್ತಿಯ ವಿವರಗಳು

1).....

2).....

3).....

3) ಮೂರನೇ ಹಿಸ್ಸೇದಾರ ವಿರುಪಾಕ್ಷಪ್ಪ ತಂದೆ ವೀರಭದ್ರಪ್ಪ ಹೊನ್ನಳ್ಳಿ
ಈತನ ಹಿಸ್ಸೇಗೆ ಬಂದ ಆಸ್ತಿಯ ವಿವರ

1).....



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2).....

3).....

I) ಸದರ ಉಣಕಲ್ಲು ಗ್ರಾಮದಲ್ಲಿರುವ ಮಾದರ ಓಣಿಯಲ್ಲಿರುವ ಮನೆ ವ ಹಿತ್ತಲಾಯಿವುಗಳ H.D.M.C. ನಂ. 863-864 A ನೇದ್ದು ಇದ್ದು ಇವು ತಂದೆ ತಾಯಿಗಳು ಇರುವ ತನಕ ಅವರ ಹಿಸ್ಸೇಗೆ ಇರುತ್ತವೆ. ನಂತರ ಅವರು ಪೋತಿಯಾದ ಮೇಲೆ, ಸದರೀ ಆಸ್ತಿಯೂ, ಸಹ ಮೂರು ಮಂದಿಗೆ, ಸಮವಾಗಿ ಭಾಗವಾಗುವವು.

II) ಮತ್ತು ಸದರ ಹುಬ್ಬಳ್ಳಿ ತಾಲ್ಲು ಭೈರಿದೇವರಕೊಪ್ಪ ಗ್ರಾಮದ ಬ್ಲಾಕ್ ನಂ. 132 4-29 ಎಕರೆ 13-57 ಆಕಾರ ಯಿದರ ಪೈಕಿ ಉತ್ತರ ಭಾಗದ ಜಮೀನು 2=17 ಎಕರೆ ಇದರ ಚಕಬಂದಿ ಪೂರ್ವಕ್ಕೆ ಸಿದ್ಧಪ್ಪ ಕಳ್ಳಿಮನಿಯವರ ಜಮೀನು, ಪಶ್ಚಿಮಕ್ಕೆ ವ ದಕ್ಷಿಣಕ್ಕೆ ತಿಪ್ಪನಗೌಡ ಶೆಟ್ಟನಗೌಡರ ಇವರ ಜಮೀನು, ಉತ್ತರಕ್ಕೆ ಸರಕಾರಿ ಹಳ್ಳಾ, ಈ ಪ್ರಕಾರ ಚಕಬಂದಿ ಮಧ್ಯದಲ್ಲಿರುವ ಜಮೀನು, ತಂದೆ-ತಾಯಿಯವರು ಇರುವ ತನಕ ಅವರಗೇ ಇದ್ದು, ಅವರು ಇಲ್ಲದ ಕಾಲಕ್ಕೆ ಸದರೀ ಕಾಣಿಸಿದ ಜಮೀನು 2=17 ಎಕರೆ ಇದು ಅವರು ಇಲ್ಲದ ಕಾಲಕ್ಕೆ ಮೂರೂ ಮಂದಿ ಅಣ್ಣ ತಮ್ಮಂದಿರಿಗೆ ಭಾಗವಾಗಬೇಕು.

III) ತಂದೆ-ತಾಯಿಯವರು, ಉಳಿತಾಯ ವ ಗಳಿಸಿಟ್ಟ ಹಣದಲ್ಲಿ ಅವರು ಇರುವ ತನಕ ಬರೀ ಬಡ್ಡಿಯನ್ನಷ್ಟೇ ಪಡೆದುಕೊಳ್ಳತಕ್ಕದ್ದು. ಅವರು, ಇಲ್ಲದ ಕಾಲಕ್ಕೆ, ಸದರೀ ಮೋತ್ತವನ್ನು ಮೂರೂ ಜನರೂ, ಅಣ್ಣತಮ್ಮಂದಿರು ಸಮವಾಗಿ ಹಂಚಿಕೊಳ್ಳತಕ್ಕದ್ದು.

IV) ತಂದೆ, ತಾಯಿಯವರ ಹತ್ತಿರವಿರುವ 20(ಇಪ್ಪತ್ತು) ತೊಲೆ, ಬಂಗಾರದ ಆಭರಣಗಳಲ್ಲಿ ಅವರು ಪೋತಿಯಾದ ನಂತರ, 1) ಸಿದ್ಧಪ್ಪ 2) ಬಸಪ್ಪ



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3) ವಿರುಪಾಕ್ಷಪ್ಪ ತಲಾ 6 (ಆರು) ತೊಲೆಯಂತೆ ಹಂಚಿಕೊಳ್ಳತಕ್ಕದ್ದು. ಮಿಕ್ಕ ಎರಡು ತೊಲೆಯ ಬಂಗಾರವನ್ನು ತಂಗಿ, ಅಕ್ಕಮ್ಮನಿಗೆ ಕೊಡತಕ್ಕದ್ದು.

V) ಮತ್ತು ಎತ್ತು, ಚಕ್ಕಡಿ, ಎಮ್ಮೆ ಹಾಗೂ ಭೂ ಸಾಗುವಳಿಕೆಯ, ಎಲ್ಲಾ ವಸ್ತುಗಳು ಎಲ್ಲ ಅಣ್ಣ-ತಮ್ಮಂದಿರಿಗೆ, ಸಾಮೂಹಿಕ ಉಪಯೋಗಕ್ಕೆ ಇರುತ್ತವೆ.

ಈ ರೀತಿ ನಾವು ಮೂರು ಅಣ್ಣತಮ್ಮಂದಿರು ಪಂಚರ ವ ಹಿರಿಯರ ಸಮಕ್ಷಮ, ಈ ಹಿಂದೆ ಮಾಡಿಕೊಂಡ ಅಪಸಾತ್ ವಾಟ್ಸಿಯನ್ನು ರದ್ದು ಮಾಡಿ ಈ ವಾಟ್ಸಿಯನ್ನು ನಮ್ಮ ಆತ್ಮ-ಸಂತೋಷದಿಂದ, ಯಾವುದೇ ತಕರಾರು-ತಂಟೆಗಳಿಲ್ಲದೇ ಮಾಡಿಕೊಂಡ ವಾಟ್ಸಿ ಕರಾರು ಪತ್ರ ಸಹಿ. ತಾ. 23.9.84.”

27. This document is signed by the father and three sons and two witnesses. It is not signed by any Panchas or elders under whom the partition has taken place. Further, the names of those elders are not mentioned in this document.

28. As stated above “ಅಸ್ತಿಗಳನ್ನು ವಾಟ್ಸಿ ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ.” reflects the past events that is already partition had taken place amongst the parties and it was being reduced into writing. Thus, this is only a memo of partition and not a partition deed under which, the parties have partitioned the properties.



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29. Learned counsel for respondent No.1 Sri.V.P.Vadavi would vehemently contend that father himself has not accepted this document and challenged it and hence, this is not a partition amongst parties to the suit.

30. In this regard, he places reliance on the order sheet and plaint of O.S.No.690/1989 Exs.D.13 to D.17 filed by Veerabhadrappa contending that Siddappa and Basappa had created bogus, false Vatni Patra dated 23.09.1984 and it is a false and concocted one with *mala fide* intention to cause wrongful loss to him and Siddappa and Basappa have filed suit in O.S.No.567/1987, which is still pending for consideration. Hence, prayed for passing decree that Vatni Patra is illegally and high handedly created, and it is a false and bogus document dated 23.09.1984.

31. In that O.S.No.690/1989, Siddappa has filed written statement denying the contention of



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Veerabhadrappa and said written statement is adopted by the other legal representatives of second son-Basappa.

32. When said suit was pending, this plaintiff-Veerabhadrappa has not appeared in that suit and thus, finally said suit got dismissed for non-prosecution on 18.06.1991.

33. After such dismissal of the suit, Veerabhadrappa-plaintiff has not filed any miscellaneous petition under Order IX Rule 9 of CPC for its restoration. He died on 18.07.1991.

34. Under Order IX Rule 8 CPC, where only the defendant appears and plaintiff does not appear, when the suit is called on for hearing, then the Court shall make an order that suit be dismissed unless the defendant admits the claim wholly or in part thereof.

35. The dismissal of suit on 18.06.1991 is in accordance with Order IX Rule 8 CPC. After such dismissal, the only option available for plaintiff under Order IX Rule 9



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of CPC is to file a miscellaneous petition for restoration of the suit. If he did not do so, then such dismissal of suit shall preclude him from bringing a fresh suit in respect of the same cause of action.

36. As discussed above, after dismissal of O.S.No.690/1989, the plaintiff has not filed any miscellaneous petition. As per Article 122 of the Limitation Act, 1963, the limitation to file such a miscellaneous petition is 30 days from the date of dismissal. Within said 30 days, the original plaintiff has not filed any miscellaneous petition. After its dismissal, his legal representatives i.e., his another son Virupakshappa and his daughter-Anasuya @ Akkamahadevi could have filed a petition for its restoration claiming that they are the legal heirs of said plaintiff. But they also did not do so. Hence, the dismissal of suit in O.S.No.690/1989 became final and it precludes original plaintiff-Veerabhadrappe and after his death, his legal representatives to file a suit challenging



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the partition of 23.09.1984 on the ground that it is false, concocted and created by Siddappa and Basappa.

37. By filing a suit in the year 1987, both Siddappa and Basappa have claimed that suit schedule properties in those suits are their absolute properties because of partition amongst them, their another brother and parents. Veerabhadrappe was fully aware about filing of said suit in the year 1987 because in his suit of 1989; he made a reference of O.S.No.567/1987. Even then, he has not made any effort to file any written statement in the said suit.

38. Even though for a period of four years, this Veerabhadrappe was alive, he has not filed his written statement in the said suit. Only after his death, his legal representatives i.e., his daughter and his wife have filed written statement. During his lifetime, he has not taken any defence and thus, his legal representatives are



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precluded from taking any defence which was not taken by the original defendant.

39. Under those circumstances, the finding of Appellate Court that the father himself challenged the partition deed and it ought to have been compulsorily registerable document are erroneous findings and improper appreciation of evidence and thus, the First Appellate Court has committed serious error in not accepting the partition deed dated 23.09.1984, in spite of the same being not set aside till date and thus, the judgment and decree of First Appellate Court is perverse and illegal for wrong appreciation of Ex.P-14 and other material evidence placed on record.

40. After allowing R.A.No.162/2003 by decreeing O.S.No.130/1991 and holding that the compromise decree in O.S.No.28/1991 as null and void; only as an afterthought, plaintiff-Anasuya has filed O.S.No.20/2010



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praying for partition in respect of all the joint family properties.

41. It is to be noted here that, as on the date of partition of 1984, the plaintiff being a married daughter was not having any right over ancestral properties during lifetime of her father. Only after death of her father, under Section 8 of the Hindu Succession Act, 1956 she would have claimed a right in the share of her father. However, after commencement of the Hindu Succession (Amendment) Act, 2005 (for short, hereinafter referred to as 'the Act, 2005') the daughter will be considered as coparcener since from her birth. However, Proviso to Section 6 of the Act, 2005 bars the daughter to challenge any alienation made earlier to 20.12.2004 and as per Section 6(5) of the Act, 2005 bars the daughter to challenge any registered partition that had taken place earlier to said 20.12.2004.



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42. In this regard, the Hon'ble Apex Court, in the case of ***Vineeta Sharma vs. Rakesh Sharma and others***², has clearly held in paragraph Nos.117, 127 and 129 as follows:

"117. How family settlement is effected was considered in Kale v. Deputy Director of Consolidation, (1976) 3 SCC 119, thus:

"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;

² AIR 2020 SC 3717



(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."

15. In Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292, 295, it was pointed out by this Court that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum



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of what had been agreed to did not require registration. This Court had observed thus:

"Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.""

(emphasis supplied)

It is settled law that family arrangements can be entered into to keep harmony in the family.



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127. A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse



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dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the Court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intendment of Explanation to Section 6(5). It has to be remembered that courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition



was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.

129. Resultantly, we answer the reference as under section:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.



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(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition



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*based on oral evidence alone cannot be accepted
and to be rejected outrightly."*

43. Thus, heavy burden is on Siddappa and Basappa to establish the earlier partition. In this case, parties have produced some revenue records. Exs.P-1, 2 and 8 to 11 are extracts from the property register card. They reveal that property bearing Nos.3522/B/32 and 3522/B/33 were mutated into the names of Basappa based on partition dated 20.08.1984 and continued to stand in his name till his death. After his death, these properties are mutated into the names of his wife and children.

44. Ex.P-19 is property extract of house No.186 stands in the name of Veerabhadrappa. As per Ex.P-14 also, the said property has fallen to the share of Veerabhadrappa. Based on the partition of 23.09.1984, the revenue entries are not mutated into the names of respective sharers, this is because since from the date of partition, there are disputes.



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45. According to recitals of Ex.P-14, there was earlier partition on 20.08.1984 and it was set aside by entering into fresh partition on 23.09.1984. Based on the earlier partition of 20.08.1984, as discussed above some revenue entries were mutated. One of the sons of Veerabhadrappa through another wife of Erappa has raised revenue dispute in respect of those revenue entries and then, finally those revenue entries were set aside. Anyway, said Erappa is not brought as party in O.S.No.20/2010 filed by Anasuya even though she was fully aware that he is one of the legal representatives of her father. Hence, said suit is definitely bad for non-joinder of necessary parties. However, he was brought as one of legal representatives in O.S.No.213/2000 [defendant No.1(c)]. He has not contested the said suit or appeal or this second appeal.

46. In the aforesaid ***Vineeta Sharma's*** case cited supra, the Hon'ble Apex Court held that the intendment of Section 6 of the Act is only to accept the genuine partition



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that might have taken place under the prevailing law. The object of preventing, setting up false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full affect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such defence is taken, the Court should be extremely careful in accepting it.

47. With this background, the facts of the present case are to be analysed.

48. As discussed above, from 1984 onwards, the sons of Veerabhadrapappa are contending that there was partition. This plea is not taken after commencement of the Act, 2005. Furthermore, at that time, Anasuya being a married daughter had no right whatsoever over ancestral properties of her parental house. Such right was conferred upon a daughter only after commencement of the Act, 2005. Thus, as on 23.09.1984 itself there was



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partition amongst father and sons which cannot be challenged by the daughter subsequently in the year 2010.

49. It is to be noted here that as on 20.08.1984 itself, there was partition amongst father and his three sons and based on it, revenue entries were mutated. Those mutations of revenue entries were challenged by one of the sons of Veerabhadrappa-Erappa, through his another wife and those revenue entries were set aside, but that is challenged only in the year 1985-1986. But much earlier to it, in the year 1984 itself, during September 1984, again another partition was taken place between parties as per Ex.P-14 and said partition brings absolute right to parties.

50. This partition deed was acted upon between parties and it could be gathered from some of the sale deeds executed by respective sharers. As per Ex.D-20 of O.S.No.20/2010, the sale deed dated 16.10.1995 was executed by legal representatives of Basappa to defendant



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Nos.10 and 11 of O.S.No.20/2010 in respect of 'E' schedule property. The next sale deed was executed on 01.04.2004 in respect of 'F' schedule property of O.S.No.20/2010 by defendant No.5 i.e., Siddappa in favour of defendant No.9. The third sale deed was executed by said Siddappa on 28.02.2004 in respect of 'G' schedule property to defendant No.9. All these three sale deeds came into existence much prior to commencement of the Act, 2005. Furthermore, same Siddappa i.e., defendant No.5 in O.S.No.28/1991 has sold another Item No.B of schedule in O.S.No.20/2010 to defendant Nos.7 and 8 through registered sale deed dated 06.05.2005.

51. All the above four sale deeds clearly and categorically establish that parties have accepted the partition effected on 23.09.1984 and they have exercised their absolute rights over those properties and have sold some of the portions of properties which were allotted to their respective shares. These facts establish that partition deed was acted upon. Hence, even though a registered



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partition deed is not available in the exceptional circumstances noted above, in view of the principles laid down in ***Vineeta Sharma*** (supra), Siddappa and Basappa have successfully established the earlier partition of 1984. The plaintiff-Anasuya in the year 2010 cannot challenge the said partition. She was not having any iota of right over the ancestral properties during lifetime of her father. Hence, the partition that had taken place in 1984 and sale deeds that have come into existence from 1995 to 2005 categorically establish the rights of parties exercised by them and they are the absolute owners of their respective portion of properties.

52. The attitude and conduct of plaintiff in O.S. No.20/2010 is also to be looked into. During lifetime of her father i.e., at the fag end of his life, she got created agreement of sale in respect of some properties of joint family ('E' to 'G' schedule) and filed suit for specific performance of agreement and got it compromised by impersonating her father and it was set aside in



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O.S.No.130/1991 and confirmed in R.A.No.162/2003.
These facts clearly and categorically establish the conduct
of the plaintiff of O.S.No.20/2010.

53. The above discussion reveals that plaintiffs in
O.S.No.567/1987 re-numbered as O.S.No.213/2000 have
established the partition dated 23.09.1984 and thus, they
have to be declared as owners of the properties fallen to
them as mentioned in the said schedule. Thus, the
property No.887-888 situated at Ward No.3 of Halageri
Oni at Unkal village, Hubballi is the absolute property of
plaintiff Nos.1 and 2 i.e., suit schedule property of
O.S.No.213/2000 (old No.567/87). However, the learned
Trial Judge has not examined these points of law that the
suit filed by Veerabhadrappe was dismissed for default and
it precluded him from filing a similar suit based on the
same cause of action that means he was precluded from
contending that partition deed dated 23.09.1984 is based
on fraud and misrepresentation and thus, the plaintiff-



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Anasuya cannot claim any right over the property allotted to her brothers under said partition deed.

54. O.S.No.20/2010 is filed by plaintiff-Anasuya claiming partition alleging existence of joint family and suit 'A' to 'G' schedule are joint family and ancestral properties. Out of these properties already 'B', 'E' to 'G' schedule properties were sold under different sale deeds as discussed above. Out of them, 'E' to 'G' schedule properties were sold prior to 20.12.2004 and 'B' schedule was sold during May-2005.

55. While considering RSA No.5392/2010, it is already held that the plaintiffs in O.S.No.213/2000 have established the partition dated 23.09.1984 and it was acted upon. When said partition was acted upon, the plaintiff-Anasuya was not having any right over the joint family properties in question at that time. Hence, she cannot reopen the partition as per the principles noted in ***Vineeta Sharma's*** case by the Hon'ble Apex Court.



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Respectfully relying upon the principles laid down in ***Vineeta Sharma's*** case stated *supra*, we hold that the plaintiff-Anasuya is not entitled for any share in the joint family properties. This is more so, because in partition deed dated 23.09.1984, it is clearly stated that after death of both parents, the property which were allotted to the share of father will be equally divided by his sons. Under these circumstances, the suit of plaintiff-Anasuya in O.S.No.20/2010 cannot be decreed and is liable to be dismissed. However, the Trial Court has come to the wrong conclusion only by wrongly appreciating the oral and documentary evidence that there was no partition of 23.09.1984 and this partition was challenged by father himself. Learned Trial Judge without verifying proper provisions of law i.e., Order IX Rule 8 and Rule 9 of Code of Civil Procedure, came to the wrong conclusion and thus, it needs interference. Accordingly, all the Regular First Appeals are to be allowed.



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56. Accordingly substantial questions of law are answered in affirmative and we proceed to pass the following:

ORDER

- i) RSA No.5392/2010 is allowed by setting aside the judgment and decree dated 19.08.2009 passed in R.A.No.163/2003 on the file of the learned Fast Track Court-II, Dharwad sitting at Hubli and confirming the judgment and decree dated 21.01.2003 passed in O.S.No.213/2000 on the file of the learned Additional Civil Judge (Sr.Dn.), Hubballi.
- ii) RFA No.100091/2016, RFA No.100055/2016 and RFA No.100071/2018 are allowed by setting aside judgment and decree dated



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29.01.2016 passed in O.S.No.20/2010 on
the file of the learned Principal Senior Civil
Judge and J.M.F.C., Hubballi.

- iii) Under facts and circumstances of the
case, parties are directed to bear their
own costs.
- iv) Draw decree accordingly.

SD/-
(MOHAMMAD NAWAZ)
JUDGE

SD/-
(GEETHA K.B.)
JUDGE

KMV: Para 1 to 10
SSP: Para 11 to 36
RKM: Para 37 to end
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