

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.404 OF 2010 (PAR)

BETWEEN:

1. LAKSHMI NARAYANA,
S/O.VENKATARAYAPPA,
AGED ABOUT 43 YEARS,
RESIDING AT
MASTHENAHALLI VILLAGE,
KAIWARA HOBLI,
CHINTHAMANI TALUK,
KOLAR DISTRICT-563125.
2. KAMALAMMA,
W/O MESTRI NARAYANAPPA,
AGED ABOUT 60 YEARS,
RESIDING AT GAVI ROAD,
KAIWARA VILLAGE,
CHINTHAMANI TALUK,
KOLAR DISTRICT-563125.

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Location: HIGH
COURT OF
KARNATAKA

(TRANPOSED AS 2ND APPELLANT,
VIDE ORDER DATED 07.06.2021)

...APPELLANTS

[BY SRI. MICHEAL CHINNAPPA, ADVOCATE FOR
APPELLANT NO.1;
SRI. G.A.SRIKANTE GOWDA, ADVOCATE FOR APPELLANT NO.2]

AND:

1. MUNITHAYAMMA,
D/O. MUNISHAMAPPA,
W/O. DYAVAPPA,
AGED ABOUT 57 YEARS,
RESIDING AT RAILWAY STATION ROAD,

CHINTHAMANI TOWN,
KOLAR DISTRICT-563125.

2. KAMALAMMA,
W/O. MESTRI NARAYANAPPA,
AGED ABOUT 60 YEARS,
RESIDING AT GAVI ROAD,
KAIWARA VILLAGE,
CHINTHAMANI TALUK
KOLAR DISTRICT-563125.

(TRANPOSED AS 2ND APPELLANT,
VIDE ORDER DATED 07.06.2021)

3. LAKSHMAKKA,
W/O. BYRAPPA,
AGED ABOUT 58 YEARS,
C/O. BOMMANAHALLI MUNISHAMAPPA,
SANGADAHALLI ROAD,
(H. CROSS ROAD),
NEAR STATION GATE,
KOLAR-563101.
4. SHIVA,
S/O. VENKATARAYAPPA,
AGED ABOUT 37 YEARS.
5. MURTHY,
S/O. VENKATARAYAPPA,
AGED ABOUT 41 YEARS.
6. VENKATARYAPPA,
S/O. (KENCHAPPA) BYRAPPA,
AGED ABOUT 73 YEARS.

RESPONDENT NOS.4 TO 6 ARE
RESIDING AT MASTHENAHALLI VILLAGE,
KAIWARA HOBLI, CHINTHAMANI TALUK,
KOLAR DISTRICT-563125.

7. RAMAPPA,
S/O NARAYANAPPA,
DEAD BY HIS LRS

- 7(a) SMT. MEENAKSHAMMA,
W/O LATE RAMAPPA,
AGED ABOUT 40 YEARS.
- 7(b) SMT. NALINI,
W/O. LATE RAMAPPA,
AGED ABOUT 35 YEARS.
- 7(c) NANDINI,
AGED ABOUT 13 YEARS.
- 7(d) SATISHA,
AGED ABOUT 14 YEARS.

LR'S 7(c) AND 7(d) ARE CHILDREN OF DECEASED RAMAPPA, THEY ARE MINORS, REPRESENTED BY THEIR NEXT FRIEND NATURAL GUARDIAN I.E., MOTHER 7(a)-MEENAKSHAMMA.

RESPONDENTS 7(a) TO 7(d) ARE RESIDING AT MASTHENAHALLI VILLAGE, KAIWARA HOBL, CHINTHAMANI TALUK, KOLAR DISTRICT-563125.

- 8. KRISHNAPPA,
S/O. NARAYANAPPA,
R/AT MASTHENAHALLI VILLAGE,
KAIWARA HOBLI,
CHINTHAMANI TALUK,
KOLAR DISTRICT-563125.
- 9. SMT. SARASWATHAMMA,
AGED ABOUT 67 YEARS,
OCC: AGRICULTURIST,
R/AT MASTENAHALLI VILLAGE,
KAIWARA HOBLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.

(AMENDED VIDE ORDER DATED 07.06.2021)

...RESPONDENTS

[BY SRI. C.M.NAGABHUSHANA, ADVOCATE FOR R1;
SRI. J.R. JAGADISH, ADVOCATE FOR R3;

R4, R5, R6, R7(a), R7(b) AND R8 ARE SERVED;
R7(c) AND R7(d) ARE MINORS, REPRESENTED BY R7(a)]

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGEMENT AND DECREE DATED 23.01.2010 PASSED IN R.A.NO.114/2005 ON THE FILE OF THE CIVIL JUDGE (SR. DN.) AND JMFC, CHINTHAMANI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DATED 19.09.2005 PASSED IN O.S.NO.237/1994 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JR. DN.) AND JMFC, CHINTHAMANI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for appellant Nos.1 and 2 and the learned counsel for respondent Nos.1 and 3.

2. The factual matrix of the case of the plaintiff before the Trial Court while seeking the relief of partition and separate possession of her 1/4th share in all the suit schedule properties, it is contended that the suit schedule properties are the ancestral properties of Munishamappa and Narayanappa. Munishamappa, the father of the plaintiff, did not have any male children, but only having four daughters. The defendant No.6, Venkatarayappa, was the husband of late Narayanamma, who was the eldest daughter of Munishamappa. He was managing the affairs of the entire family. Munishamappa had a

wife by name Channamma, who died about 25 years ago. The said Munishamappa also passed away about 10 years ago. The plaintiff was married to Dyavappa about 20 years ago. During the lifetime of Munishamappa, on his behalf, defendant No.6 was assisting and managing the affairs of said Munishamappa. The said Munishamappa did not have any sound mind and health. After the death of Munishamappa, the plaintiff asked for her share in the suit schedule properties. The defendant Nos.3 to 6 made her believe that the schedule properties are being improved on behalf of all the members of the family of deceased Munishamappa and when a higher value is expected, the entire suit schedule properties would be sold, and the plaintiff would be given her legitimate share. It is contended that none of the defendants had any independent source of income other than the income acquired from the nucleus of property of late Munishamappa. During the month of August 1994, the plaintiff approached the defendants claiming her 1/4th share. But the defendants denied her share in the properties. Hence, the suit is filed for the relief of partition.

3. It is also the contention of the plaintiff that the defendants stated that all the suit schedule properties have become their absolute properties, since late Munishamappa had

executed deeds in their favour. Without prejudice to the plaintiff claiming 1/4th share in the schedule properties, the plaintiff contend that Munishamappa did not have any necessity to sell any of the properties during his lifetime. Even if he had sold or alienated, the defendants belonging to joint family of Munishamappa, did not have any independent source of income to purchase the same and their purchase would in turn become joint family property.

4. In pursuance of the suit summons, defendant Nos.1, 2, 5, 6 and the legal representatives of defendant No.7 filed a common written statement. The defendants denied all the averments made in the plaint. But admitted that the plaintiff was married to one Dyavappa 20 years ago. The defendants have denied the allegation that defendant No.6 was assisting and managing the affairs of the said Munishamappa. The defendants also denied that Munishamappa did not have any sound mind and health. The defendants also denied that after the death of Munishamappa, the plaintiff had asked her share. The defendants also denied that the defendants were not having any source of income other than the income acquired from the nucleus of the property of Munishamappa. It is contended that late Munishamappa had executed deeds in their

favour and denied the contention that Munishamappa did not have any necessity to sell any of the properties. It is contended that there is no cause of action for filing the suit. It is also contended that item No.1 of the suit schedule property not at all belongs to Mastenahalli Village, Kaiwarva Hobli, Chintamani Taluk. The said property is situated at Marapalli Village, Kaiwarva Hobli, Chintamani Taluk, bearing Sy.No.10/3 measuring 0.25 guntas. The said land is sold by Munishamappa, who is the father of the plaintiff and defendant Nos.1 and 2 to one Ghouse Sab of Kaiwara Village. The said Ghouse Sab sold the same to one Bachanna of Mastenahalli. The said Bachanna sold the same property to one Venkatarayappa, son of Muni Byrappa, who is defendant No.6. The said Venkatarayappa sold the same to one Ramappa, who is defendant No.7. The said Ramappa died and now the property stands in the name of his wife Munilakshmamma and she is in continuous peaceful possession and enjoyment of the same as absolute owner.

5. The item No.2 of the schedule property in Sy.No.36/2, measures 6 acres and out of 4 acres only situated at Mastenahalli, Kaiwara Hobli, Chintamani Taluk. The father of the plaintiff and defendant No.2 Munishamappa sold the said

land to one T. Mune Gowda of Mastenahalli. The said T. Mune Gowda also sold the land to one Goorlu Lakshmaiah of Mastenahalli. The said Goorlu Lakshmaiah in turn sold the said property to one Munishamappa. The said Munishamappa S/o Seethappa of Mastenahalli sold the said land to defendant No.5, who was minor, hence his natural guardian and mother Narayanamma purchased the same.

6. The item No.1 of the suit schedule property bearing Sy.No.63/2, measuring 2 acres 32 guntas, out of half share only, situated at Mastenahalli Village. The father of the plaintiff and defendant No.2 Munishamappa sold the said land to one Mune Gowda. The said Mune Gowda sold the said land to Thathappanavara Narayanappa and in turn he sold the same to one N.Narayanappa. Those persons are in peaceful possession and enjoyment of the said properties. The item No.4 of the suit schedule property is a house situated at Mastenahalli Village. The said property was also sold by Munishamappa, father of the plaintiff and defendant Nos.1 and 2 to one Patel Mune Gowda son of Thippe Gowda of Mastenahalli, who in turn sold the same to one V.Lakshminarayanappa, who is defendant No.5 and as he is minor, his mother and natural guardian Narayanamma purchased the same. Hence, it is contended that no property is

available for partition. It is also contended that property is not an ancestral property.

7. Based on the pleadings of the parties, The Trial Court framed the following issues:

- 1. Whether the plaintiff proves that the defendant Muniswamappa was not having sound state of mind and health and he did not had any necessity to sell any of the suit properties as contended in para-8 and 11 of her plaint?*
- 2. Whether the plaintiff further proves that the suit schedule properties are her ancestral and joint family properties?*
- 3. Whether the defendants prove that the deceased Muniswamappa i.e. father of plaintiff and defendants 1 and 2 was sold the suit schedule properties long back to the respective persons as stated in para 14-A to D and plaintiff has no right over the same.*
- 4. Whether the plaintiff is entitled for the relief of 1/4th share in the suit schedule properties?*
- 5. What order or decree?*

8. The Trial Court allowed the parties to lead evidence and accordingly, the plaintiff examined herself as P.W.1 and also examined two witnesses as P.W.2 and P.W.3 and relies

upon the documents of Ex.P.1 to 15. On the other hand, the defendants also examined four witnesses as D.W.1 to D.W.4 and got marked the documents at Exs.D.1 to 12. The Trial Court having considered both oral and documentary evidence, answered issue Nos.1 and 2 in the negative and comes to the conclusion that the plaintiff fails to prove that the suit schedule properties are the ancestral and joint family properties of the plaintiff. The Trial Court answered issue No.3 in the affirmative that the father of the plaintiff and defendant Nos.1 and 2 during his lifetime sold the property and the plaintiff is not having any right and the plaintiff is not entitled for any relief.

9. Being aggrieved by the said judgment and decree of dismissal of the suit, an appeal is filed in R.A.No.114/2005. The Appellate Court having taken note of the grounds urged in the appeal memo, formulated the following points:

- 1. Whether the judgment and decree passed by the Trial Court is capricious, perverse, illegal and opposed to law as made out by the appellant in the grounds of appeal?*
- 2. Whether the judgment and decree of the Trial Court calls for interference of this Court?*
- 3. What order?*

10. The Appellate Court having considered both oral and documentary evidence placed on record, answered the points in the affirmative in coming to the conclusion that the judgment of the Trial Court is capricious, perverse, illegal and opposed to law and it requires interference of the Court.

11. The said judgment is challenged before this Court by filing the second appeal.

12. Having considered the grounds urged in the second appeal and also the indicated substantial question of law, this Court admitted the second appeal vide order dated 26.07.2011. The following substantial questions of law are framed by this for consideration of the second appeal:

- 1. Whether the judgment and decree of the Appellate Court stands vitiated for reversing the judgment and decree of the Trial Court without meeting the reasoning?*
- 2. Whether the Appellate Court was justified in granting a decree for partition on the weakness of the defendant's case?*

13. The learned counsel for appellant No.2 in his arguments would vehemently contend that the suit is filed for the relief of partition and separate possession against the

sisters and the other defendants. It is contended that the father of the plaintiff and defendant Nos.1 and 2 died 25 years ago and the plaintiff claimed 1/4th share. The learned counsel would contend that first of all, to prove that the suit schedule properties are ancestral properties, no material is placed on record and the same is taken note of by the Trial Court. The learned counsel would contend that no property was available for partition and when the father had sold the property during his lifetime, the same cannot be questioned. The learned counsel contend that item Nos.2 and 4 of the suit schedule properties are sold to defendant No.5 subsequently from the persons who had purchased the property from the original owner Munishamappa. It is contended that item No.3 of the suit schedule property is purchased by the husband of appellant No.2 as per Ex.D.8 sale deed dated 31.12.1974. The learned counsel would contend that after the execution of the sale deed by the father of the plaintiff Munishamappa, number of sale deeds had taken place and the same was not disclosed in the plaint. Even the selling of the property by the father was also suppressed by the plaintiff. The learned counsel would vehemently contend that, to prove that the suit schedule properties are the ancestral properties, no documents are

produced. The learned counsel would vehemently contend that the defendants when they filed the written statement jointly, categorically denied it. The Trial Court also rightly taken note of the material on record and dismissed the suit.

14. The learned counsel for appellant No.1/defendant No.5 in his arguments would vehemently contend that defendant No.5 had purchased item Nos.2 and 4 of the suit schedule properties. The learned counsel would contend that item No.1 measuring 25 guntas was sold by the father of the plaintiff in the year 1969 and the sale is also to clear the loan and the document is evident in Ex.P.14. In respect of item No.2 in Sy.No.36/2, measuring 6 acres, the sale deed was executed long back as per Ex.D.12 in the year 1972 i.e., on 04.02.1972 and the said sale is also made by the father of the plaintiff. The learned counsel would submit that item No.2 was already sold and there was no any share in favour of the plaintiff. The plaintiff also categorically admitted that before the death of her father, her marriage was performed by the father 13 years back. When already the properties were sold by Munishamappa himself and gifted the property in favour of one of the daughters long back, the suit is filed in the year 1994. The learned counsel would contend that in view of the sale

made by the father, all revenue entries are changed and the same was also within the knowledge of the plaintiff and the plaintiff has suppressed the very sale made by the father. The Trial Court rightly taken note of the same, but the Appellate Court committed an error in reversing the judgment of the Trial Court only on the hypothesis. The learned counsel would contend that though it is the case of the plaintiff that father was suffering from mental disability, no material is placed on record to substantiate the same and he was having sound state of mind and sold the properties during his lifetime.

15. The learned counsel for respondent Nos.1 and 3 in his arguments would vehemently contend that on account of death of his wife, Munishamappa was not having capacity to maintain himself. Hence, defendant No.6, who is his son-in-law was maintaining the said property. Item Nos.2 and 4 were sold to defendant No.5 and defendant No.5 is none other than the son of defendant No.6. The learned counsel would contend that in Ex.D.12, age is mentioned as 13 years when item No.2 property was sold. The learned counsel would contend that while selling the property at Sy.No.36, it is mentioned half portion of house property. It is contended that Venkatanarayanappa was not having any income to purchase

the property and he did not step into the witness box. The learned counsel would contend that defendant Nos.1, 2, 5, 6 and the legal representatives of defendant No.7 have filed the joint written statement and there was no need to sell the property by the father and only Venkatanarayanappa only to say about the need of the sale. The learned counsel contend that even other sister also not supports the case of the defendants and the same is not corroborated. D.W.1 in his evidence categorically admits that those who sold the property along with the father have not entered into the witness box.

16. The learned counsel in support of his arguments relied upon the judgment of the Apex Court in the case of **VINEETA SHARMA v. RAKESH SHARMA AND OTHERS** reported in **(2020) 9 SCC 1** and brought to the notice of this Court paragraph No.129 of the said judgment. The counsel relying upon paragraph No.129 would contend that when a purported document is proved to be a sham document, the effect would be that the family is considered joint. The learned counsel referring this judgment would contend that sale deeds which are executed are sham documents and no consideration is passed.

17. The learned counsel also relies upon the judgment of the Apex Court in the case of **KEWAL KRISHAN v. RAJESH KUMAR AND OTHERS** reported in **(2022) 18 SCC 489**. The counsel referring this judgment brought to the notice of this Court the discussion made in paragraph No.18 with regard to the sale of the property is concerned and a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If it is not proved that sale consideration is passed, the same cannot be a sale at all in the eye of law and it is of no legal effect. The learned counsel would contend that no sale consideration is passed and also brought to the notice of this Court paragraph No.19, wherein discussion is made that it is the specific case of the plaintiff that no such sale consideration was passed and it is the specific case made out in the plaint as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in

the sale deeds as well as the earning capacity at the relevant time, of his wife and minor sons.

18. The learned counsel also relies upon the judgment of the Apex Court arising out of **SLP (C) No.23709/2024** dated 15.05.2026, in the case of **B.S. LALITHA AND OTHERS v. BHUVANESH AND OTHERS** and brought to the notice of this Court paragraph No.3, wherein discussion was made with regard to scope of Order 7 Rule 11(d) of CPC and so also the reasoning of the Apex Court while discussing Section 6(5) of the Hindu Succession (Amendment) Act, 2005 wherein also, detailed discussion was made with regard to Order 7 Rule 11 in the light of the judgment of Vineeta Sharma case.

19. In reply to this argument, the learned counsel for appellant No.1 in his arguments would vehemently contend that P.W.1 categorically admitted that the subsequent purchaser is cultivating the suit property and that neither the plaintiff nor any member of the plaintiff's family is in possession of the property. The learned counsel would contend that in respect to the income is concerned also there was an admission by P.W.1. In respect of unsound mind pleading is concerned, there is no proof. With regard to the necessity to sell the

property is concerned, the learned counsel brought to the notice of this Court that there was a release deed on the very same day and sold the property on the very day and the same is to clear the liability. The learned counsel would contend that item No.2 is a gomal land and there was a gift deed in terms of Ex.D.9 in respect to item No.4. The learned counsel also relies upon the judgment of the Apex Court in the case of **Vineeta Sharma** (supra) that, when the sale was already made, there is a saving clause and brought to the notice of this Court paragraph No.13.12 of the judgment, wherein the Apex Court held that if the status of coparcenary on the daughter is to be conferred retrospectively, the limitations governing such legal fiction will have to take into consideration the implications of: (i) statutory partition; (ii) court's decree; and (iii) legitimate alienation of the property by karta/coparceners, prior to commencement of the Amendment Act. All other dispositions or alienations, including any partition or testamentary disposition of property made before 20.12.2004, are required to be saved as earlier the daughters were not coparceners. On a statutory partition, the property becomes the self-acquired property and is no more a coparcenary property.

20. The learned counsel for appellant No.2 in his arguments would vehemently contend that insofar as item No.3 is concerned, appellant No.2 is having 2/3rd share and sale deeds are also executed to that effect on 31.12.1974 itself and there was no any averment in the plaint with regard to the sale is concerned. With regard to the arguments of the learned counsel for the respondents, there is no foundational grounds of making any averment in the plaint. The suit was filed in the year 1994. The father died in the year 1984 and sale was made long back prior to 1972 and even not questioned the sale deeds when the suit is filed. The learned counsel also reiterates that in respect of Amended Act, there is a saving clause.

21. Having considered the submissions of the respective learned counsel and also the substantial questions of law framed by this Court, this Court has to take note of the contentions of the parties. It has to be noted that there is no dispute that the property belongs to Munishamappa. It is the specific case of the plaintiff that there was a division between Munishamappa and his brother Narayanappa. In order to prove the fact of partition between Munishamappa and his brother, no material is placed before the Court. It is important to note that when the suit is filed for the relief of partition and separate

possession, a specific plea is made in the plaint that the suit schedule properties are the ancestral properties of Munishamappa and Narayanappa and except producing the genealogical tree, nothing is placed on record to prove that it is an ancestral property and the Trial Court taken note of the same. The averments made in paragraph No.4 of the plaint is that the suit schedule properties are the ancestral properties of Munishamappa and Narayanappa and same is not proved by placing any documentary proof.

22. The other contention of the plaintiff is that Munishamappa had only the daughters and defendant No.6 Venkatarayappa was the husband of late Narayanamma, who was the eldest daughter of Munishamappa and he was managing the affairs of the entire family. In order to substantiate the contention that Venkatarayappa was managing the affairs of the family property, nothing is placed on record. It is also the contention that Munishamappa's wife Channamma died about 25 years ago and on account of the death of his wife, Munishamappa became unsound mind and hence defendant No.6 was assisting and managing the affairs of the family of Munishamappa. But the same is also not proved by placing any document. The very contention made in paragraph

No.8 of the plaint that the said Munishamappa did not have very sound mind and health is also not substantiated by placing any documentary proof before the Court. It is also important to note that it is emerged during the course of evidence that Munishamappa himself has sold the property during his lifetime and the same is not disputed. The only contention raised in the plaint is that, if Munishamappa had sold any of the suit properties or executed any documents in respect thereof, there was no legal necessity for such sale during his lifetime. The said contention is also not proved and the same is taken note of by the Trial Court. It is also contended that the defendants were not having any independent income to purchase the same. When the plaintiff contends that there was no need to sell the property, the said averments made in the plaint ought to have been proved by the plaintiff and the same was not proved. Hence, the Trial Court while answering issue Nos.1 and 2, taken note of these factors into consideration.

23. It is also important to note that the Trial Court while answering issue Nos.1, 2 and 3, taken note of the admission on the part of P.W.1 that defendant No.6 was residing in a separate house. The Trial Court even taken note of the recitals made in the document for having sold 2/3rd share in

respect of Sy.No.63/2 to the extent of 2 acres 32 guntas in paragraph No.26. In paragraph No.27, the Trial Court taken note that though it is contended that father was not having sound state of mind, nothing is placed on record to prove the same. Item No.1 was sold in favour of Ghouse Sab by the father in the respect of 25 guntas of land and in turn 3 to 4 sale deeds are exchanged and so also in the respect of other properties also. The defendant No.5 purchased the property from third party and defendant No.5 pledged the property in the bank and availed the loan and the same is taken note of in detail in paragraph No.27. The Trial Court also taken note of the execution of gift deed in favour of Narayanamma by Munishamappa in the year 1964 itself. The Trial Court also taken note of the sale deed Ex.D.10 dated 31.12.1974 and answered issue Nos.1 and 2 in the negative. The Trial Court also taken note of issue No.3 that property was already sold by Munishamappa during his lifetime in respect of all the items of the suit schedule properties and answered the same in favour of the defendants.

24. No doubt, the First Appellate Court reversed the finding of the Trial Court and the First Appellate Court did not apply its mind while invoking Order 41 Rule 31 of CPC. The

First Appellate Court being the Court of consideration of question of fact and question of law, ought to have framed the proper points for consideration and the same is not done and the only point for consideration framed by the First Appellate Court is whether the judgment and decree passed by the Trial Court is capricious, perverse, illegal and opposed to law. While answering the same also, a hypothetical answer was given in reversing the finding appreciating the evidence of P.W.1 in paragraph No.28. In paragraph No.29 taken note of the evidence of D.W.1 that D.W.1 was residing in his grandparents' house when he was a child and he himself admitted that after the death of his grandmother, he came to his father's house. This shows that the said Munishamappa might have got upset after the death of his wife Channamma. But the First Appellate Court failed to consider the fact that the said Munishamappa might have got upset and there must be a positive evidence before the Court that father Munishamappa was not having a sound state of mind, since the plaintiff has pleaded the same in the plaint and the burden lies on the plaintiff to prove that he was not having the sound state of mind. But the fact is that sale was made long back by the father himself and no property was available for partition. But the First Appellate Court made

an observation in paragraph No.31 that it is pertinent to note that even if the schedule property is the ancestral property, the plaintiff is entitled for the share and further even if the schedule property is belonging to her mother, she is entitled for the share in the schedule properties. This observation is also hypothetical and no such evidence before the Court that property was an ancestral property and the same is observed by the Trial Court.

25. The First Appellate Court while reversing the judgment of the Trial Court not considered any cogent evidence before the Court and comes to the conclusion that the plaintiff has established that the schedule properties are the properties belonging to Munishamappa and the plaintiff being the daughter is entitled for share in the schedule property. But no positive finding is given that it was an ancestral property and when the father had already sold the property which belonged to him and the sale deeds are made long back, the same are not questioned and consequent upon the sale, all the revenue entries are made in favour of the subsequent purchasers long back. The First Appellate Court also made an observation that there are number of said transactions held with respect to the schedule properties. However, it is very pertinent to note that

the plaintiff is not a party to those sale deeds and she is not the signatory of the said sale deeds. First of all, the plaintiff has to make out a case that she is having a right over the properties. When the father had sold the properties belonging to him, it is his self-acquired property and daughter was not having any share, unless it is proved that it was an ancestral property and on the date of sale she was having right. Even assuming that it is an ancestral property as on the date of sale, daughter was not having any share.

26. It is also important to note that in the judgment of the Apex Court in the case of **Vineeta Sharma** (supra), relied upon by learned counsel for respondent Nos.1 and 3, in paragraph Nos.129, it is held that when a purported petition is proved to be a sham, the effect would be that the family is considered joint. In the case on hand, no such material is placed on record to prove that the document of sale deed executed by the father is a sham document. The learned counsel for respondent Nos.1 and 3 also relied upon the judgment of the Apex Court in the case of **Kewal Krishan** (supra) that no consideration was passed. Such argument cannot be raised by the daughter and the person who has sold the property can raise the issue that there was no sale

consideration. It is admitted that Munishamappa died in the year 1984 and when the properties were sold in the year 1969, 1972 and 1974, the same were not challenged by the father Munishamappa during his lifetime as no sale consideration was passed. Hence, these two judgments will not come to the aid of the learned counsel for respondent Nos.1 and 3.

27. The learned counsel for appellant No.1 also brought to the notice of this Court paragraph No.13.12 of the judgment of the Apex Court in the case of **Vineeta Sharma** (supra), wherein the Apex Court categorically held that if already sale was made and the same is the dispositions or alienations, including any partition or testamentary disposition of property made before 20.12.2004, the same are saved. It is categorically held that daughters were not coparceners earlier and only subsequent to the amendment they became coparceners. In the case on hand, already sale was made by the father long back when the daughter was not a coparcener. First of all, to prove that it is an ancestral property, no material is placed on record. The proviso is very clear while making the amendment that if any sale already made, the same was saved. Even assuming that there was a partition between the brothers Munishamappa and Narayanappa, the property

becomes the separate property and is no more a coparcenary property and to show that it was an ancestral property, nothing is placed on record. The principles laid down in the judgment in paragraph No.13.12 relied upon by the learned counsel for the appellants is aptly applicable to the case on hand.

28. The judgment of the Apex Court in the case of **B.S. Lalitha** (supra) relied upon by the learned counsel for respondents will not come to the aid of the respondents. The Appellate Court committed an error in exercising the powers under Order 41 Rule 31 of CPC and ought to have considered both question of fact and question of law and failed to consider the same being a statutory Appellate Court. The First Appellate Court erroneously proceeded to come to a conclusion that the judgment of the Trial Court is capricious and perverse and not framed proper points for consideration with regard to the issues between the parties and in a casual manner framed the points for consideration whether the judgment is perverse and capricious. The Trial Court while dismissing the suit given the reasons based on the material available on record and considered all documents of the plaintiff as well as the defendants and taken note of that already sale was made by the father during his lifetime and the same was not questioned

and belatedly the suit is filed in the year 1994 contending that father was not having sound mind. Hence, the substantial questions of law are answered accordingly that the judgment and decree of the Appellate Court stands vitiated for reversing the judgment and decree of the Trial Court without meeting the reasoning. The Appellate Court was not justified in granting a decree for partition on the weaknesses of the defendants' case and there is no such weaknesses also as the specific case of the defendants is that the property was sold long back during the lifetime of Munishamappa to different persons. Admittedly, number of sale deeds have taken place subsequent to the sale and property stands in the name of subsequent purchasers and the property is also not available for partition as contended by the learned counsel for the appellants.

29. In view of the discussions made above, I pass the following:

ORDER

- (i) The second appeal is allowed.
- (ii) The judgment and decree dated 23.01.2010 passed by the First Appellate Court in R.A.No.114/2005, is set aside.

- (iii) The judgment and decree dated 19.09.2005 passed by the Trial Court in O.S.No.237/1994, dismissing the suit for partition and separate possession is restored.

**Sd/-
(H.P.SANDESH)
JUDGE**

MD