

Reserved on: 25.08.2026

Pronounced on: 03.09.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 454 OF 2021 (PAR)

BETWEEN:

M. GANESH,
S/O LATE D.M. MUNIYAPPA,
AGED ABOUT 68 YEARS,
R/AT NO.809, 5TH MAIN,
6TH CROSS, M CLAYOUT,
VIJAYANAGAR,
BANGALORE - 560 040.

...APPELLANT

(PARTY-IN-PERSON)

AND:

1. VIJAYALAKSHMI,
SINCE DECEASED BY HER LRS

1(a). DR. DIVYATHA J.,
D/O LATE DR B.L. JAAYARAM,
AGED ABOUT 51 YEARS,

1(b). DR. MANJU JAYARAM,
S/O LATE DR. B.L. JAYARAM,
AGED ABOUT 47 YEARS,

BOTH ARE RESIDING AT
NO.2240/664, AVARTHAPURA,
CHURCH STREET,
CHANNAPATNA TOWN - 562 160.
BANGALORE SOUTH TALUK

M RAMASWAMY
SINCE DECEASED BY LRS.,

2. SMT. NIRMALA,
W/O LATE DR. M. RAMASWAMY,
AGED ABOUT 71 YEARS,
3. DR. RAHUL,
S/O LATE DR. M.R. RAMASWAMY,
AGED ABOUT 42 YEARS,
4. ASHWIN,
S/O LATE DR. M. RAMASWAMY,
AGED ABOUT 39 YEARS,

RESPONDENTS NO.2 TO 4 ARE
R/AT NO.143, UAS LAYOUT,
RMV 2ND STAGE,
SANJAYANAGAR,
BANGALORE - 560 094.

SMT. SHARADAMMA
BY LRS

5. B.V. SRINIVAS,
S/O LATE B. VENKATARAMAIAH,
AGED ABOUT 70 YEARS,
R/AT NO.1230,15TH MAIN,
B.T.M LAYOUT, 2ND STAGE,
BANGALORE - 560 076.
6. B.V. SHIVASHANKAR,
S/O LATE B. VENKATARAMAIAH,
AGED ABOUT 68 YEARS,
R/AT NO.1926/A, 3RD CROSS,
PRASHANTHANAGAR,
VIJAYANAGAR NORTH,
BANGALORE - 560 079.
7. B.V. HEMALATHA,
W/O LATE MUNISWAMY GOWDA,
AGED ABOUT 64 YEARS,
R/AT NO.53, 10TH CROSS,

MARIYAPPANAPALYA,
MASIDI BLOCK,
BANGALORE - 560 021.

8. B.V. NARAYANA,
S/O LATE V. VENKATARAMAIAH,
AGED ABOUT 66 YEARS,
R/AT KRS AGRAHARA KUNIGAL TOWN,
AND ALSO AT
C/O VENKATESWARA CLINIC,
KUNIGAL, TUMKUR DISTRICT.
9. B.V. MAHALAKSHMI,
W/O JAYARAM,
AGED ABOUT 60 YEARS,
R/AT NO.376, 4TH B CROSS,
3RD STAGE, 5TH BLOCK,
BANASHANKARI,
BANGALORE - 560 085.
10. B.V. GAYATHRI,
W/O M. GANESH,
AGED ABOUT 58 YEARS,
R/AT NO.809 (OUT HOUSE)
5TH MAIN, 6TH CROSS,
MAGADI ROAD,
VIJAYANAGAR,
BANGALORE - 560 040.
11. B.V. UMESH,
S/O LATE B. VENKATARAMAIAH,
AGED ABOUT 60 YEARS,
R/AT NO.101, 3RD CROSS,
KAVERI LAYOUT,
BANGALORE - 560 040.
12. SMT. ALUMELAMMA,
W/O LATE H. HEMANNA,
AGED ABOUT 86 YEARS,
R/AT NO.3091, 1ST CROSS,
GAYATHRINAGAR,
BANGALORE - 560 021.
SINCE DEAD BY LRS

- 12(a). SMT. SARASWATHI,
W/O LATE B.H. MURALIDHARA,
AGED ABOUT 56 YEARS,
- 12(b). HEMANTHA KUMAR M.,
S/O LATE B.H. MURALIDHARA,
AGED ABOUT 32 YEARS,
- 12(c). BHARATH KUMAR M.,
S/O LATE B.H. MURALIDHARA,
AGED ABOUT 28 YEARS,
- 12(d). SMT. B.H. KUMUDA,
W/O SHIVARUDRAIAH,
AGED ABOUT 66 YEARS,
- 12(e). SMT. B.H. SOWBHAGYALAKSHMI,
W/O MOHAMMED ARIEF,
AGED ABOUT 63 YEARS,
- 12(f). B.H. RAJU,
S/O LATE H. HEMANNA,
AGED ABOUT 58 YEARS,
- RESPONDENTS NO.12(a) TO (f)
ARE RESIDING AT: NO.3091,
10TH CROSS, 1ST MAIN,
"C" BLOCK, GAYATHRINAGAR,
BANGALORE - 560 021.
- SMT. CHAMPAKA,
SINCE DECEASED BY LRS
13. M.C. MAHADEVA,
S/O LATE CHIKKAHANUMAIAH,
AGED ABOUT 57 YEARS,
R/AT NO.1801, 3RD CROSS,
PRAKASH NAGAR,
BANGALORE.
14. SMT. M.C. SOWMYAPRABHA,
W/O SURESH,
AGED ABOUT 54 YEARS,

R/AT NO.216-B, 3RD MAIN ROAD,
MAHALAKSHMI LAYOUT,
BANGALORE - 560 086.

15. M. VENKATA SWAMY,
S/O LATE D.M. MUNIYAPPA,
AGED ABOUT 82 YEARS,
R/AT NO.250, 14TH CROSS,
2ND BLOCK, R.T. NAGAR,
BANGALORE - 560 032.
16. M. KARISHNA SWAMY,
S/O LATE D.M. MUNIYAPPA,
AGED ABOUT 70 YEARS,
R/AT NO.907, 6TH MAIN ROAD,
VIJAYANAGAR,
BANGALORE - 560 040.
17. M. PADMAVATHI,
W/O DR. K.H. CHIKKAYALAKKAIAH,
MAJOR,
R/AT NO.3091, 1ST CROSS,
PRAKASHNAGAR,
BANGALORE.

...RESPONDENTS

(BY SRI. B. RAVINDRA PRASAD, ADVOCATE FOR R1 TO R4,
SRI. K.M. MURARI MOUNI, ADVOCATE FOR R7, R13 & R17,
SRI. K.M. VENKATESHA MOUNI & SRI. M. ARUN KUMAR,
ADVOCATE FOR R12(A,B,C,E,F),
R5, R6, R8, R9, R11, R12(D), R15, R16 ARE SERVED
AND UNREPRESENTED,
VIDE ORDER DATED 11.10.2022 NOTICE TO R14
IS HELD SUFFICIENT,
VIDE ORDER DATED 09.10.2025 NOTICE TO R10(A&B)
IS HELD SUFFICIENT,
VIDE ORDER DATED 07.07.2026 APPELLANT AND
R1 TO R17 ARE LRS OF DECEASED R15)

THIS RFA IS FILED UNDER SECTION 96 OF THE CPC,1908
AGAINST THE JUDGMENT AND DECREE DATED:20.04.2021
PASSED IN O.S.NO.5076/1999 ON THE FILE OF THE XXXIV

ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU,
DECREEING THE SUIT FOR PARTITION.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR.JUSTICE
T.M.NADAF** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

This Regular First Appeal by defendant No.7,
assailing the Judgment and Decree dated 20.04.2021,
passed by the XXXIV Addl. City Civil and Sessions Judge,
Bengaluru¹ in O.S.No.5076/1999.

2. The Trial Court under the impugned Judgment
and Decree, decreed the suit, granting equal 1/9th share in
suit schedule 'A' to 'C' properties.

3. The parties are referred to as per their ranking
before the Trial Court.

4. Facts germane to file the present appeal are as
under:

¹ 'the Trial Court', for short

AS PER THE PLAINTIFFS:

- 4.1 The plaintiffs i.e, plaintiff No.1 Vijayalakshmi and original plaintiff No.2 Ramaswamy are brother and sister of Late Jayamma, filed a suit seeking partition of suit schedule 'A' to 'C' properties, equally between them and the defendants.
- 4.2 The plaintiffs asserted that the immovable properties stated in schedule 'A', i.e., Item No.1 property bearing Site No.809, Item No.2 property bearing Site No.33, and Item No.3 property bearing Site No.56/15-07 are the self acquired properties of Late Jayamma. Schedule 'B' pertains to amounts standing in different Bank accounts and National Saving Certificates & Kissan Vikas Patra in the name of Late Jayamma. Schedule 'C' contains cash and other movable properties left by Late Jayamma.
- 4.3 The plaintiffs contend that they and defendants 1(a), 2 to 7 are the heirs of Late Muniyappa and Ammayamma. Defendant No.1(a) died in the year 1980, survived by her legal representatives i.e.,

defendants 1(b) to 1(f). They had an elder sister Smt.Jayamma, who did not marry during her lifetime and she had no children, natural or adopted.

4.4 They contended that, Smt.Jayamma died on 19.02.1998 leaving behind the plaintiffs and defendants as her Class-II legal heirs to succeed to the estate in suit Schedule 'A' to 'C' properties. They also contended that Item Nos.1 to 3 in schedule 'A' are self acquired properties under registered Sale Deeds. They being the legal heirs of Late Jayamma, they are entitled for equal share i.e., 1/9th share in each of the properties, since denied by defendant No.7, they filed the suit seeking partition.

4.5 Though all the defendants served, except defendant Nos.3(a) and (b) and defendant No.7, none of them appeared before the Court and were placed *ex-parte*. Though defendant Nos.3(a) and (b) were represented by their counsel, they neither filed written statement nor contested the matter.

Defendant No.7 who appeared as party in person, filed written statement.

AS PER DEFENDANT NO.7

4.6 In the written statement, Ganesh - defendant No.7/party in person denied the rights of the plaintiffs and other defendants contending that, Item Nos.2 and 3 of suit 'A' schedule properties are purchased from the earnings of partnership firm between him and Jayamma. As such, the said properties are not available for others to divide. So far as item No.1 is concerned, he has profound the Will said to have been executed by Late Jayamma on 17.09.1988 in his favor.

4.7 He contended that, during the lifetime of Jayamma, she constructed two portions in Item No.1 of schedule 'A'. The front portion is a residential house and back portion is an outhouse. During her lifetime, he was residing along with Jayamma in the main portion and was utilizing the outhouse for the office purpose.

4.8 As things stood thus, after the death of Late Jayamma, the plaintiffs and other defendants high-handedly thrown out defendant No.7 from the main portion and at present, he is residing in the back portion i.e., the outhouse constructed on Item No.1 of Schedule 'A' property.

4.9 It is further contended that, defendant No.7 had filed a police complaint. Since the Police didn't take any action, he had filed a suit in O.S.No.3696/1998 before the City Civil Court, Bengaluru seeking declaration and permanent injunction. The Trial Court dismissed the suit against, which he preferred an appeal before this Court in RFA No.35/2005 (Ex.D4). This Court while confirming the Judgment of the Trial Court on declaration, partly allowed the appeal on permanent injunction.

4.10 A specific contention is raised by defendant No.7 in his written statement contending that, the suit for partial partition is not maintainable. The contention which was taken subsequent to amendment of the

written statement at paragraph No.16, reads as under:

"16. Late Jayamma was also owner of site No.571, formed in Block No.III, Khatha No.1319, Lingadheeranahalli, coming under Herohalli Panchayath, Yeshwanthapura Hobli, Bangalore North Taluk, measuring 30 x 40 feet and also agricultural land bearing Sy.No.15/1, Gubbalala Village, Utharahalli Hobli, Bangalore South Taluk, measuring 0.10 Guntas (Ten Guntas) only. Plaintiffs have not made these properties as suit schedule properties."

4.11 With this, defendant No.7 sought to dismiss the suit.

4.12 Upon completion of pleadings, the Trial Court framed following:

ISSUES

1. *Do the plaintiffs 1 and 2 prove that suit schedule properties are the self acquired properties of late Jayamma?*
2. *Does defendant No.7 prove he is the adopted son of Jayamma?*
3. *Does defendant No.7 prove the Will dated 17.9.1988 executed by Jayamma in his favour?*
4. *Does defendant No.7 prove that items 2 and 3 of A schedule were acquired out of the income from business of Partnership firm under the name and style of M/s.Dolphin Estate Agency as alleged?*

5. *Does defendant No.7 prove that valuation of suit is not proper and the court fee paid on the plaint is insufficient?*
6. *Are plaintiffs entitled to partition of suit schedule properties? If so, what share are they entitled to?*
7. *What order or decree?*

4.13 The plaintiffs, in order to prove their case, examined plaintiff No.1 as PW.1 and produced five documents and got them marked as Ex.P1 to P5. On the other hand, defendant No.7 examined himself as DW.1 and produced forty documents and got them marked as Ex.D1 to D40.

CONCLUSION OF THE TRIAL COURT

4.14 The Trial Court after trial and hearing the parties, i.e., the plaintiffs and party in person - defendant No.7, decreed the suit answering Issue Nos.1 and 6 in the Affirmative and Issue Nos.2 to 5 in the Negative, against defendant No.7 and granted 1/9th share to the plaintiffs as well as the defendants in the suit schedule properties left by Late Jayamma. It is this Judgment and Decree passed by the Trial

Court, is called in question in this appeal by defendant No.7 - party in person.

5. Heard, Sri.Ganesh - defendant No.7/party-in-person, Sri.B.Ravindra Prasad, learned counsel appearing for respondents 1 to 4/ plaintiffs, Sri.K.M.Murari Mouni, learned counsel appearing for respondents 7, 13 and 17 and Sri.K.M.Venkateshamouni, learned counsel appearing for respondents 12(a) to (f).

6. Sri.Ganesh - defendant No.7/ party-in-person, with all vehemence submits that the Trial Court has committed grave error in framing Issue Nos.2 to 4, since those issues were already framed and considered in O.S.No.3696/1998 and answered against him.

6.1 In paragraph Nos.49 and 50 of the appeal memorandum, the party-in-person has taken a specific ground that, Issue Nos.2 to 4 were issues in the former suit in O.S.No.3696/1998, which are negatived and answered against him. As such, the Trial Court committed an error in framing the said

issues again in the present suit and deliberating on the same, is hit by principles of *res-judicata*.

6.2 The party-in-person further submits that the Trial Court has failed to consider the observation of this Court in Crl.RP No.1205/2008, wherein this Court has directed the Court Commissioner appointed in that case to submit the properties to the custody of the Court dealing with the original suit for partition and in turn the Trial Court shall receive them and properties be kept as part of the parties in that suit. It was also ordered that, it is open for either parties to move the Trial Court for appointment of Receiver to keep custody of the property if they so desire, otherwise it will be kept with the Court till disposal of the civil suit.

6.3 Defendant No.7, further contended that, the plaintiffs have suffered alienation of Site No.571, Block No.III, Katha No.1319, Lingadheeranahalli, coming under Herohalli Panchayath, Yeshwanthapura Hobli, Bengaluru North Taluk, measuring 30 x 40 feet,

presently valued at Rs.60,00,000/- to Dr.K.H.Chikkayalakkiah, husband of defendant No.6 through a registered Sale Deed dated 19.11.2002, which belongs to Late Jayamma.

6.4 Defendant No.7 further submits that, the plaintiffs also suffered alienation of Sy.No.15/1, Gubbalala Village, Uttarahalli Hobli, Bengaluru North Taluk, measuring 10 Guntas, presently valued at Rs.2.5 Crores to (1) Smt.Kumuda and (2) Smt.Sowbhagyalakshmi, daughters of defendant No.2, through a Gift Deed dated 12.06.2001, which also belongs to Late Jayamma.

6.5 Defendant No.7/party-in-person also contended that, the Trial Court has failed to consider the contentions taken, especially at paragraph No.16 of his written statement urging that, the other properties owned by Late Jayamma are not included in the suit. As such, the suit for partial partition is not maintainable.

6.6 Mr.Ganesh raised a fresh ground in the appeal on non-framing of issue on the contention raised in Paragraph No.16 of his Written Statement, contending that, non-framing of appropriate issue on the contention at paragraph No.16, caused him prejudice to prove his case. Hence, the entire Judgment passed by the Trial Court gets vitiated for non-framing of proper and necessary issue to decide the *lis* between the parties. The plaintiffs to claim partition in the properties ought to have claimed relief in respect of all the properties and since they have deliberately left out the property stated in paragraph No.16 of the written statement, the suit for partial partition is not maintainable, in view of settled position of law.

6.7 Defendant No.7 contended that non-consideration of his claim by framing appropriate issue has resulted in miscarriage of justice and granting relief to the plaintiffs for which they are not entitled in law for

lack of including all the properties, the suit itself is not maintainable for partial partition.

6.8 He further submits that the Trial Court has failed to consider that, in view of the Judgment passed by this Court in RFA No.35/2005, his possession is protected stating that, he is in possession of the property and granted injunction against the plaintiffs and others. Hence, Item No.1 becomes exclusive property of defendant No.7. The Trial Court has failed to consider this aspect of the matter while answering the Issue Nos.1 and 6. Further, defendant No.7 relied on documents at Exs.D4, 27-31, 32, 33, 34, 39 and 40 in support of his arguments to contend that, the properties stated in paragraph No.16 of the Written Statement are the exclusive property of Late Jayamma. On this, he sought to allow the appeal and set-aside the Judgment and Decree passed by the Trial Court and dismiss the suit as not maintainable for partial partition.

6.9 Defendant No.7 – party in person has placed reliance on the decision of the Hon’ble Supreme Court in ***SURAJ LAMP & INDUSTRIES (P) LIMITED VS. STATE OF HARYANA & ANOTHER***², to contend that, the power of attorney executed in genuine transaction would not get vitiated.

6.10 Further, he relied on Judgment of the Hon’ble Supreme Court in the case of ***RAVINDER KAUR GREWAL AND OTHERS VS. MANJIT KAUR AND OTHERS***³, to contend that even an unregistered document which has created right in between family member shall be referred as a Family arrangement between the party and the same does not require any registration as contemplated under the provisions of Registration Act.

7. In contrast, Sri.Ravindra Prasad, with equal vehemence while supporting the Judgment of the Trial Court submitted that, though a contention was taken in

² (2012) 1 SCC 656

³ CDJ 2020 SC 629

respect of the right of defendant No.7 in Item Nos.1 to 3 of Schedule 'A' property, he has failed to substantiate the same. The Trial Court after considering the entire evidence on record, held that these properties are purchased by Jayamma exclusively in her name and there is nothing placed contra to contend that these properties though purchased are in the name of Late Jayamma, but for the benefit of defendant No.7. Since other contentions which were taken in the earlier suit on the basis of Will, so also on the basis of partnership firm having been answered and held against defendant No.7 in the suit earlier filed for declaration and injunction, the Trial Court rightly answered them in Negative against defendant No.7.

7.1 So far as defendant No.7's claim with respect to paragraph No.16 of the Written Statement, learned counsel submits that the Trial Court after considering the entire material placed by defendant No.7 with all understanding on the defence taken, answered his defence holding that, he has miserably failed to prove that the properties stated in Paragraph No.16

does belong to Late Jayamma, in the absence of any documentary evidence to that effect. The Trial Court has answered the entire claim under Issue No.6 in respect of entitlement of plaintiff and held that the plaintiffs along with other defendants being Class-II heirs of Late Jayamma, are entitled for equal 1/9th share in all the properties.

7.2 Learned counsel further submits that the contention now taken in respect to non-framing of issue, does not hold any water, as for the first time it is contended before this Court in argument, even not raising any ground on that aspect in the appeal memorandum. He submits that even the same if were to be considered as a ground available to him, mere non-framing of issue let alone cannot be a circumstance to set-aside the well considered and reasoned Judgment passed by the Trial Court.

7.3 Learned counsel further submits that defendant No.7 has led his evidence and produced documents in order to prove his claim in paragraph No.16 of his

written statement. The Trial Court having considered the evidence and documents placed by him on his specific contention, answered the same against defendant No.7 while answering Issue No.6. Therefore, now it is not open for defendant No.7 once he has contested the matter on the defence raised in paragraph No.16, to contend that appropriate issue was not framed and the Judgment is vitiated. The Trial Court having considered the entire material placed on record, answered the claim of the plaintiffs at paragraph No.14 of the Judgment holding that defendant No.7 has failed to prove his case, on both Issue No.1 with respect to ownership claimed on Item Nos.1 to 3 of schedule 'A' properties, so also on his contention raised in paragraph No.16 of the written statement. Hence, the Judgment and Decree passed by the Trial Court, does not call for any interference and sought to dismiss the appeal.

8. Sri.K.M.Murari Mouni, learned counsel appearing for respondents 7, 13 and 17 and Sri.K.M.Venkateshamouni, learned counsel appearing for respondents 12(a) to (f) argued in line with Sri.Ravindra Prasad and sought to dismiss the appeal.

9. Having considered the rival submissions, this Court perused the entire appeal papers as well as Trial Court record.

10. In view of narrowing down the *lis* between the parties, even as per defendant No.7 now contending only on the point of non-framing of issue, on his contention, this Court restricts its reasons only on the said contention since all other issues, except Issue No.1 even as per defendant No.7 are redundant. In respect of Issue No.1 with respect to ownership of Late Jayamma in view of admission given by defendant No.7 in his evidence regarding purchase of property in the name of Jayamma exclusively, in the absence of any contra evidence both ocular and documentary, the Trial Court has properly appreciated entire material placed on record and answered

the same in favor of the plaintiffs and against defendant No.7. The same does not call for any interference.

11. Now, the question which remains to be answered by this Court is on the ground, though not raised in the grounds of appeal, but as a legal ground taken by defendant No.7 with reference to non-framing of issue on the maintainability of the suit for partial partition on his defence raised in Paragraph No.16 of his written statement. This Court being the last fact finding Court, is bound to consider the grounds on facts as well as on law. The ground now raised though not raised as a ground, but if it goes to the roots of the claim in view of settled position of law, the same becomes a legal issue and required to be considered in view of cardinal principles of pleadings that the facts of law need not be pleaded and urged as contained under Order VI of CPC. In that view of the matter, the point that remains to consider is:

*Whether the Judgment and Decree passed
by the Trial Court gets vitiated for non-framing
of appropriate issue on the contention raised in*

paragraph No.16 of the Written statement by defendant No.7?

12. My answer to the above point for consideration is in the **Negative**, for the following:

REASONS

13. It is trite law that, a Court can validly decide a case on an impleaded or unframed issue, if both the parties went to trial fully understanding the *lis* between them, led evidence on that and suffered no prejudice or failure of justice. If both the sides knew what was the issue between them and brought witnesses testimony or documents to address the exact question, the missing formal issue or a pleading as the case may be, does not itself vitiates the decision.

14. It is also trite that, an Appellate Court while exercising its appellate jurisdiction, must be guarded itself with all the legal principles and keep in mind on the basis of the facts and circumstances involved in the case on hand, whether the parties are given an understanding

about the *lis* between them and they have led evidence and produced documents to that effect on the contention which they have taken in their respective pleadings and in those circumstances, on a let alone ground that an issue has not been framed on the pleadings, will not overturn the decision unless and until it is shown that, party litigants was misled or blocked or restrained from presenting their side, as the object of an issue is to tie down the evidence, arguments and the decision to a particular question, so that there may be no doubt on what the dispute is between the parties. In those circumstances, the Judgment which has answered the *lis* between the parties, even touching the pleadings which they have taken and evidence led on that and documents produced to that effect, if proceeds to give its verdict on a balanced reason in terms of law, the same cannot be disturbed or overturned on the technical point of non framing of an issue, as the cardinal principle of Civil Jurisprudence in framing issue between the parties is to make them or give them an understanding on what

dispute they are before the Court and what they have to prove to substantiate their contentions taken in the pleadings and the evidence led thereon, both ocular as well as documentary.

15. No doubt it is true that, framing of issue is the sacred and bounden duty of the Court to decide the real *lis* between the parties to adjudicate upon them. The Hon'ble Supreme Court in **MAKHAN LAL BANGAL VS. MANAS BHUNIA AND OTHERS⁴**, has held as under:

"An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission."

⁴ AIR 2001 SC 490

16. The object of an Issue is to tie down the evidence and arguments and decision to a particular question, so that there may be no doubt on what the dispute is.

17. The principle underlying the framing of the word 'Issue' in civil case means, the disputed questions relating to rival contentions taken by the parties in a particular suit and it is the focal point on which the parties rest their arguments. Therefore, framing of Issues is an important exercise, and utmost care & attention is required to be bestowed by the Judicial Officers/ Judges, but at the very same time by the lawyers and litigants too, at the time of framing of issues. This is because, if some extra time spent on framing of a real controversy by means of an Issue between the parties, would save several years in the Court proceedings. The correct decision of the Civil litigation largely depends upon the correct framing of issues. It is with this object in mind, the legislature framed the procedure under Order XIV of Civil Procedure Code, 1908.

18. Order XIV Rules 1 to 7, contains procedure on framing of issues and principles in civil litigation, which is as under:

Order XIV

*Settlement of Issues and Determination of suit on issues of law
or on issues agreed upon*

"1. Framing of issues. - (1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

[2. Court to pronounce judgment on all issues. - (1) *Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or

any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

- (a) the jurisdiction of the Court, or*
- (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]*

3. Materials from which issues may be framed. -

The Court may frame the issues from all or any of the following materials:-

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;*
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;*
- (c) the contents of documents by either party.*

4. Court may examine witnesses or documents before framing issues. -

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

[5. Power to amend and strike out, issues. - (1)

The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.]

6. Questions of fact or law may by agreement be stated in form of issues. - *Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that upon the finding of the Court in the affirmative or the negative of such issue,-*

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment. - *Where the Court is satisfied, after making such inquiry as it deems proper,-*

(a) that the agreement was duly executed by the parties;

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court, and

shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement, and, upon the judgment so pronounced a decree shall follow."

- (i) While Rule 1 states regarding framing of Issues.
- (ii) Rule 2 states about the Court to pronounce judgment on all issues.
- (iii) Rule 3 prescribes the basis or the materials from which the issues may be framed, which is more particular on framing of issues on the basis of materials. The same touches the evidence, pleadings or even the answers to the interrogatories delivered in the suit and the contents of the documents produced by either party.
- (iv) Rule 4 gives the discretionary power to the Court, even to examine witnesses or documents before framing issues. If the Court is of the opinion that, the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of

issues to a day not later than seven days and may subject to any law for the time being in force, compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

- (v) Rule 5 states about power to amend and strike out issues. This gives the discretionary to the Court at any time before passing of the decree to amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for adjudicating the real controversy between the parties shall be so made or framed. At the very same time, sub Rule (2) to Rule 5 also gives discretion to the Court at any time before passing a decree to strike out any issues which appears to the Court that they were unnecessarily framed or wrongly framed or introduced when compared to the pleadings, answers to the interrogatories, if any, evidence placed by the

parties and the contents of the documents in support of them.

- (vi) While Rules 6 and 7 state about question of fact or law, may by agreement be stated in the form of Issue and the Court if satisfied that agreement was executed in good faith may pronounce judgment.

19. What falls out from the procedural aspect contained in Order XIV is, the framing of issues is to decide the real controversy between the parties and for proper adjudication.

20. If the questions raised by the parties on the basis of the pleadings which they have taken for and against in the pleadings of respective parties and led evidence on that by producing documents in support of such a contention and if the Court upon deliberations on the same and hearing the parties, answer the same though without framing an Issue on the same, in appeal if the Appellate Court is satisfied with the adjudication of the Trial Court on the pleadings taken by the parties, then

only on technical point of non-framing of issue on the said pleadings, overturn the well reasoned Judgment, when the parties were given a proper understanding of the real controversy between them, which is a *lis* between them before the Court and in order to support or otherwise they have led their evidence and produced documents and argued.

21. Keeping these principles in mind and applying them to the case on hand, the Trial Court framed Issue No.1, casting the burden on the plaintiffs to prove 'Whether the properties stated in the suit schedule are the self-acquired properties of Jayamma' and Issue No.6 which is most important says that, 'Are the plaintiffs entitled to partition of suit schedule properties? If so, what share they are entitled to?'.

22. This issue is the issue which casts a burden on the plaintiff to prove his case if he wants the judgment in his favor, required substantiate that, he is entitled for the relief sought in the suit in respect of the suit schedule properties. The argument now placed even without any

ground raised in the appeal by the party in person/Ganesh a practicing advocate in the Trial Court i.e., before City Civil Court, Bengaluru, the Court within the Bengaluru rural district (as per his own disclosure while arguing) that, the Court has not framed proper issue on the pleadings raised by defendant No.7 i.e., the party in person, particularly in Paragraph No.16 of his written statement, which this Court already extracted above.

23. The issue No.6 is an exhaustive issue, which involves in its fold the entitlement of the plaintiff's claim, and this also includes whether he is disentitled to claim any relief to the suit in view of pleadings of defendant No.7, particularly in paragraph No.16 of his written statement, which he is now contending, that the suit for partial partition is not maintainable.

24. The Trial Court has answered this issue in Paragraph No.14 of its judgment after referring to several decisions relied on by the plaintiffs and particularly taking into consideration the contention of defendant No.7 that, this Court in Crl.RP No.1205/2018 as per Ex.D26, directed

the plaintiffs to add the properties which are left out by them, by order dated 18.02.2010.

25. The Trial Court answered the issue in favor of the plaintiffs stating that plaintiff No.1, LRs of plaintiff No.2 together, LRs of deceased defendant No.1(a) together, defendant No.2, LRs of deceased defendant No.3 together and defendants 4 to 7 are entitled equally $1/9^{\text{th}}$ share in suit schedule 'A' to 'C' properties, rejecting the contentions of the party in person – defendant No.7 that, the suit is not maintainable for partial partition, as per his contention taken at Paragraph No.16 of the Written Statement. The answer on this issue contained in Paragraph No.14 of the Judgment reads as under:

"14. Issue No.6. Defendant No.7 in his written statement has taken one more contention that late Jayamma was also owner of Site No.571 formed in Block III, Khata No.1319, Lingadheeranahalli Panchayat, Yeshwanthpur Hobli, Bangalore North Taluk, measuring 30 x 40 feet and an agricultural land bearing Survey No.15/1, Gubbalala village, Uttarahalli Hobli, Bangalore South Taluk, measuring 10 guntas and the suit of the plaintiffs is barred by nonjoinder of all the properties. That defendant No.7 in his argument has submitted that Hon'ble High Court of Karnataka, Bangalore, in the order passed in Crl.Rev.Pet.No.1205/2008 on 18.2.2010 has directed the

plaintiffs to add the properties which are left out by plaintiffs. Ex.D25 is the final report of the Court Commissioner submitted in Crl.Rev Pet. No.1205/2008. Ex.D26 is a certified copy of judgment passed 21 O.S. 5076/1999 in Crl.Rev.Pet.No.1205/2008. In the judgment, Hon'ble High Court of Karnataka at para No.24 has discussed as under:

"It will be in the interest of everyone to direct the Commissioner to submit these properties to the custody of the Court dealing with the said original suit for partition and in turn, the learned trial judge, who is trying the case shall receive them and properties be kept as part of the parties in the suit".

The Hon'ble High Court of Karnataka nowhere in the judgment has directed the plaintiffs of this suit to implead/add the properties which defendant No.7 has mentioned in his written statement at para No.16. Defendant No.7 also has not produced any documents to show Smt. Jayamma was the owner of the above stated properties when she died intestate.

The Defendant No.7 has furnished the following decisions in support of his argument.

- 1) CDJ 1997 Kar HC 422 (Tukaram vs. Sambhaji).*
- 2) CDJ 1980 APHC 039 (Vemavarapur Mallikarjuna Rao vs. Chaturvedula Siva Sankara Prasad).*

In these decisions his lord ship of Hon'ble High Court of Karnataka and Hon'ble High Court of Andra Pradesh have reiterated principle regarding partition that inclusion of all the joint family properties for partition is must and without brining all the joint family properties into the hotchpot, the suit is not maintainable.

Defendant No.7 in his argument has submitted several points, which he has not pleaded in written statement, has not suggested / questioned to PW.1 in the cross-examination and has not stated in his evidence.

The Defendant No.7 has furnished the following decisions in support of his argument.

- 1) Mys. L. J. Suppl. 757 (The State of Mysore vs. Turab Imamsaheb Bhalwani & another).*

In this case it has been held that, civil court should pass a decree which could be easily executed to give relief to the party and not issue an order in the nature of a writ which might be issued by the High court under Art. 226 of the constitution.

Defendant No.7 in his oral and written argument has not stated how this decision is applicable to the facts and circumstance of this case.

- 2) CDJ 2008 SC 436 (Tanusree Basu & Others vs. Ishani Prasad Basu & Others).*
- 3) CDJ 1985 cal HC 303 (Sujit Pal versus Prabir Kumar Sun and others).*
- 4) AIR 1975 Allahabad 48 (Hari Nandan Agrawal & another vs. S.N. Pandita & others).*
- 5) AIR 1956 Patna 455 (The State of Bihar vs. Usha Devi & another).*
- 6) AIR 1963 Rajasthan 3 (Magna and another vs. Rustam and another).*

In the decision reported in CDJ 2008 SC 436 Hon'ble Supreme Court of India has opined that, it is not the law that, a party to a suit during pendency thereof shall take law in to his hands and dispossess the other co-sharer. If a party takes recourse to any contrivance to dispossess another, during pendency of the suit either in violation of the order of injunction or otherwise, the court indisputable will have jurisdiction to restore the parties back to the

same possession. The same principle is reiterated and followed in the other decisions.

But the case of the defendant No.7 is not that, he is dispossessed from the possession of suit schedule properties. This court has already come to an opinion that, both plaintiffs and defendants are him deemed possession of suit schedule properties.

7) CDJ 1980 DHC 002 (Ram Naraian vs. The State).

In this case it has been held that, the offense is complete as soon as there is unlawful entry and it can be said to be continuing offense only when the entry is lawful but the subsequent possession becomes unlawful. Where the original entry is unlawful, the possession must be presumed to have commenced with unlawful entry and as such there is no fresh act of criminal trespass on any subsequent date.

Defendant No.7 in his oral and written argument has not stated how this decision is applicable to the facts and circumstance of this case.

8) CDJ 1998 Kar HC 586 (Narasimhasetty vs. Padmasetty).

This decision of Hon'ble High Court of Karnataka is in respect of conditions necessary for making out a defense for possession contemplated U/Sec. 53 A of the Act in a suit for ejectment by the owner. But this suit filed by the plaintiffs is for partition of properties which they inherited by Smt. Jayamma, who is sister of plaintiffs, defendant No.1(a), defendant No.2, deceased D.3 and defendant No. 4 to 7.

9) (2012) 1 Supreme Court cases 656 (Suraj Lamp & Industries Private Limited through director Vs. State of Haryana & another)

In this decision Hon'ble Supreme court of India has reiterated well settled legal possession that, sale agreement/General Power of Attorney/will transactions are not transfers or sales and that such transactions cannot be treated as completed transfers of

conveyances. Defendant No.7 in his oral and written argument has not stated how this decision is applicable to the facts and circumstance of this case.

Plaintiff No.1, LRs of plaintiff No.2 together, LRs of deceased defendant No.1(a) together, defendant No.2, LRs of deceased defendant No. 3 together and defendant No. 4 to 7 being sister and brothers of deceased Smt. Jayamma, are entitle equally 1/9th share in suit schedule A to C properties".

26. Defendant No.7 placed reliance on certain documents, particularly Ex.D27 in order to contend that, the properties which were stated in Paragraph No.16 of his written statement are the properties belonging to Smt.Jayamma and non-inclusion of the same amounts to partial partition.

27. Defendant No.7 who was examined as DW.1, in his cross-examination, admitted as under:

"ನಿ.ಡಿ.27 ರಿಂದ 31 ರ ದಾಖಲೆಗಳೆಲ್ಲ ಯಾವ ನಿವೇಶನಕ್ಕೆ ಸಂಬಂಧಿಸಿದೆ ಎನ್ನುವ ಬಗ್ಗೆ ನಮೂದು ಇಲ್ಲ ಎಂದರೆ ನಿಜ. ನಿ.ಡಿ.32ರ ದಾಖಲೆಯಂತೆ ಚಿಕ್ಕಯಾಲಕ್ಕಯ್ಯನವರ ಹೆಸರಿಗೆ ಕ್ರಯಪತ್ರ ಆಗಿದೆ ಎಂದರೆ ನಿಜ. ನಿ.ಡಿ.32ರ ಸಂಬಂಧಿಸಿದ ಸ್ವತ್ತು ಜಯಮ್ಮನವರಿಗೆ ಮಂಜೂರು ಆಗಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ಸ್ವತ್ತು ಜಯಮ್ಮನವರಿಗೆ ಮಂಜೂರಾಗಿತ್ತು ಎಂದು ತೋರಿಸಲು ನನ್ನ ಬಳಿ ದಾಖಲೆ ಇದೆ. ಸದರಿ ದಾಖಲೆಯನ್ನು ನಾನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿಲ್ಲ. ಸದರಿ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಜಯಮ್ಮನವರ ಹೆಸರಿಗೆ ಕ್ರಯಪತ್ರ ಆಗಿಲ್ಲ ಎಂದರೆ ನಿಜ. ನಿ.ಡಿ.32ರ ದಾಖಲೆಗೆ ಸಂಬಂಧಿಸಿದ ಸ್ವತ್ತು ಚಿಕ್ಕಯಾಲಕ್ಕಯ್ಯನವರಿಗೆ ಸೇರಿದ ಸ್ವತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ.

ನಿ.ಡಿ.33ರ ದಾಖಲೆಯಂತೆ ಜಯಮ್ಮನವರು ಹೆಚ್.ಹೇಮಣ್ಣನವರಿಗೆ ರೂ.1 ಲಕ್ಷ ಹಣ ನೀಡಿದ್ದರು ಎಂದರೆ ನಿಜ. ನಿ.ಡಿ.33ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಜಯಮ್ಮ ಮತ್ತು ಹೇಮಣ್ಣನವರ ಮಧ್ಯೆ ಕ್ರಯದ ಕರಾರು ಆಗಿರಲಿಲ್ಲ. ಸದರಿ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಜಯಮ್ಮನವರ ಹೆಸರಿಗೆ ಯಾವುದೇ ಕ್ರಯಪತ್ರ ಆಗಿಲ್ಲ ಎಂದರೆ ನಿಜ."

28. Further, on his contention by producing Ex.D39 and 40, on 29.05.2019 by means of his further examination in chief, he was cross-examined and in the cross-examination, he has admitted as under:

"The late Jayamma has made payment for Rs.15,500/- subsequent to receipt of the Ex.D.39. I have not produced the said payment receipt before the court. I have not produced any proof for having payment of the said amount by late Jayamma.

I do not know whether late Jayamma has made payment subsequent to receipt of the Ex.D.40. It is true that as per Ex.D.32 is the sale deed in respect of site No.571 made in the name of Sri.Chikkayalakkaiah who is none other than the husband of defendant No.6. It is true that I am one of the signatory as a witness to Ex.D.32. Witness volunteers that I was not allowed reading the said document. It is false to suggest that I am deposing falsely that I was not allowed to read the said document. It is false to suggest that I have read over the said document. It is false to suggest that I have actively participated while execution of Ex.D.32."

29. In his evidence, he further admits in respect of Ex.D32 Sale Deed, executed in favor of husband of defendant No.2 that, he signed on the said document as an attesting witness.

30. The contents stated in Ex.D32 Sale Deed clearly states that husband of defendant No.6 - Chikkayalakaiah was a Member of The Government Class 'D' Employees House Building Cooperative Society Limited and the said sale deed was executed in his favor, in respect of Site No.571. His admission in this regard has already been extracted afore.

31. A perusal of the documents which the party in person now referred, especially Ex.D33 GPA (ಅಧಿಕಾರ ಪತ್ರ) whereunder, he claims that, H.Hemanna – husband of defendant No.2 alleged to have executed the said document in favor of Jayamma. A perusal of Ex.D33 clearly shows that, it was written on stamp paper of Rs.10/-, with signature of the alleged person, visibly creates suspicion on the genuineness of the document, even

the document was not notarized, it just contains certain statement and an alleged signature. There were no signature forthcoming of the witnesses to the said document. In that view of the matter, the appellant has failed to prove the said document before the Trial Court.

32. In the cross-examination, defendant No.7 has clearly admitted regarding the Sale deeds in respect of suit schedule properties in the name of Late Jayamma. No contra evidence has been placed to contend that though the properties were purchased, it was purchased for him. In that view of the matter, the Trial Court has properly considered the entire material before it while rejecting the claim of defendant No.7 answering Issue Nos.1 and 5 framed on the contention taken in the pleadings.

33. Defendant No.7 has also placed reliance on two documents viz, Final Notice (Ex.D39) and Letter (Ex.D40) issued in respect of site No.571 to Late Jayamma which reads as under:

Ex.D.39

ಅಂತಿಮ ಸೂಚನೆ

ದಿನಾಂಕ 26.02.94 ರಂದು ನಿಮಗೆ ಅಂಗಧೀರನಹಳ್ಳಿ ಬಡಾವಣೆಯಲ್ಲಿಯ 3ನೇ ಬ್ಲಾಕಿನ 571 ಸೈಟ್ ಅಲಾಟ್ ಆಗಿದ್ದು, ನೀವು ಈ ವರೆವಿಗೆ ಬಾಕಿ ರೂ.15,500/- ಕಟ್ಟಿರುವುದಿಲ್ಲ, ಸೈಟ್ ಅಲಾಟ್‌ಮೆಂಟಿನ ನಿಯಮ 4 ರಂತೆ ನಿವೇಶನವು ವಜಾ ಆಗಿದ್ದು, ಈಗ ಬೇರೆ ಸದಸ್ಯರಿಗೆ ಅಲಾಟ್ ಮಾಡಲಾಗುವುದು. ಕಟ್ಟಿರುವ ಹಣವನ್ನು ಸೊಸೈಟಿಗೆ ಬಂದು ವಾಪಸ್ ಪಡೆಯಿರಿ.

ಇಂತಿ

(Sd/-)

ಸದಸ್ಯರು

Ex.D.40

ಪತ್ರ ಸಂಖ್ಯೆ: 1629/1467

ದಿನಾಂಕ:10.01.2000

ಸದಸ್ಯರ ಹೆಸರು : ಎಂ.ಜಯಮ್ಮ

ಮಾನ್ಯ ಸದಸ್ಯರೇ,

ನೀವು ನಿವೇಶನಕ್ಕಾಗಿ ಕೇವಲ ರೂ.19,500/- ಗಳನ್ನು ಮಾತ್ರ ಪಾವತಿಸಿದ್ದು, ನಿವೇಶನವನ್ನು ಅಲಾಟ್ ಮಾಡಿದ್ದಾಗ್ಯೂ, ಈವರೆವಿಗೆ ಬಾಕಿ ಕಟ್ಟಬೇಕಾಗಿರುವ ರೂ.19,900/- ಗಳನ್ನು ಕಟ್ಟಿ ಹಕ್ಕು ಪಡೆದಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ದಿನಾಂಕ 10.02.2000 ರೊಳಗೆ ನೀವು ಪೂರ್ಣ ಹಣ ಪಾವತಿಸಿ ಹಕ್ಕು ಪತ್ರ ಪಡೆಯದಿದ್ದಲ್ಲಿ ನಿಮಗೆ ನಿವೇಶನ ಅವಶ್ಯವಿಲ್ಲವೆಂದು ತಿಳಿಯಲಾಗುವುದು. ನೀವು ಕಟ್ಟಿರುವ ಹಣವನ್ನು ವಾಪಸ್ ಪಡೆಯಲು, ಅಲಾಟ್‌ಮೆಂಟ್ ಆಡರ್, ಹಣಕಟ್ಟಿದ ರಷೀದಿಗಳು ಮತ್ತು ಗುರುತಿನ ಚೀಟಿಯನ್ನು ಕೂಡಲೇ ಅರ್ಜಿಸಹಿತ ಹಿಂದಿರುಗಿಸುವಂತೆ ಸೂಚಿಸಲಾಗಿದೆ.

(sealed)

ಕಾರ್ಯದರ್ಶಿ

34. Ganesh – party in person/ defendant No.7 tried to link Ex.D39 with Ex.D40. Both the documents differs from one another. In one document, the site number is stated as 571, however the said site number is not

forthcoming in Ex.D40. Even the amount stated therein differs with one another. In Ex.D.39, it is stated Rs.15,500/-, whereas in Ex.D.40, the amount stated is Rs.19,900/-. At one place, it is stated Rs.19,500/- and at another it is stated Rs.19,900/-. However, no personal signature of the party who has issued the said document is found, except a Seal. Defendant No.7 has not led any evidence to prove the document now he trying to rely on.

35. The Trial Court while answering Issue No.6 considered all the documents. This Court has considered these documents along with other documents, which have been considered by the Trial Court, while answering Issue No.6 and finds that the documents have no evidentiary value to substantiate the claim of defendant No.7, in the absence of any supporting evidence to that effect by the author of the said documents. In view of admissions of defendant No.7 that, there were no sale deeds executed in favor of Late Jayamma, in respect of claim in Paragraph No.16 of the Written Statement, it becomes very hard for

this Court to countenance the contention of defendant No.7 now raised in this appeal in the arguments.

36. Defendant No.7 has miserably failed to establish his claim though not taken as ground in this appeal on the basis of non-framing of issues with respect to properties which he has raised in Paragraph No.16 of his Written Statement.

37. The Trial Court in Paragraph No.14 of its judgment considered the contention raised by defendant No.7 with respect to evidence led, documents produced thereon and rejected the same as he has failed to prove the contention taken in order to assert that the suit for partial partition is not maintainable.

38. In so far as the decisions relied on by defendant No.7/party-in-person is concerned, this Court is completely in agreement with the law laid down by the Hon'ble Supreme Court in both the Judgments (supra).

39. The Hon'ble Supreme Court in ***SURAJ LAMP*** (supra) has made it clear that, the observations made in

the Judgment are not intended to in any way affect the validity of sale agreements and power of attorneys executed in genuine transactions. A perusal of Ex.D33 produced by defendant No.7 visibly creates suspicion in the mind of the Court to its genuineness. Even otherwise, defendant No.7 had not produced any independent witness to substantiate the contents stated thereon in the said document i.e., alleged GPA said to have been executed by husband of defendant No.2 in favor of Jayamma. In that view of the matter, the decision referred is distinguishable on facts of the case.

40. So far as Judgment of the Hon'ble Supreme Court in **RAVINDER KAUR GREWAL** (supra) is concerned, it is in respect of some family arrangement creating right in favor of a family member. The contents stated in the alleged GPA executed, stating that Jayamma paid Rs.1,00,000/- to H.Hemanna and he in turn, executed a GPA in her favor, however nothing is forthcoming as to the rights granted to Late Jayamma in the said GPA. The party in person – defendant No.7 in his cross-examination

clearly admitted, neither Jayamma nor defendant No.7 has taken any steps on the said document.

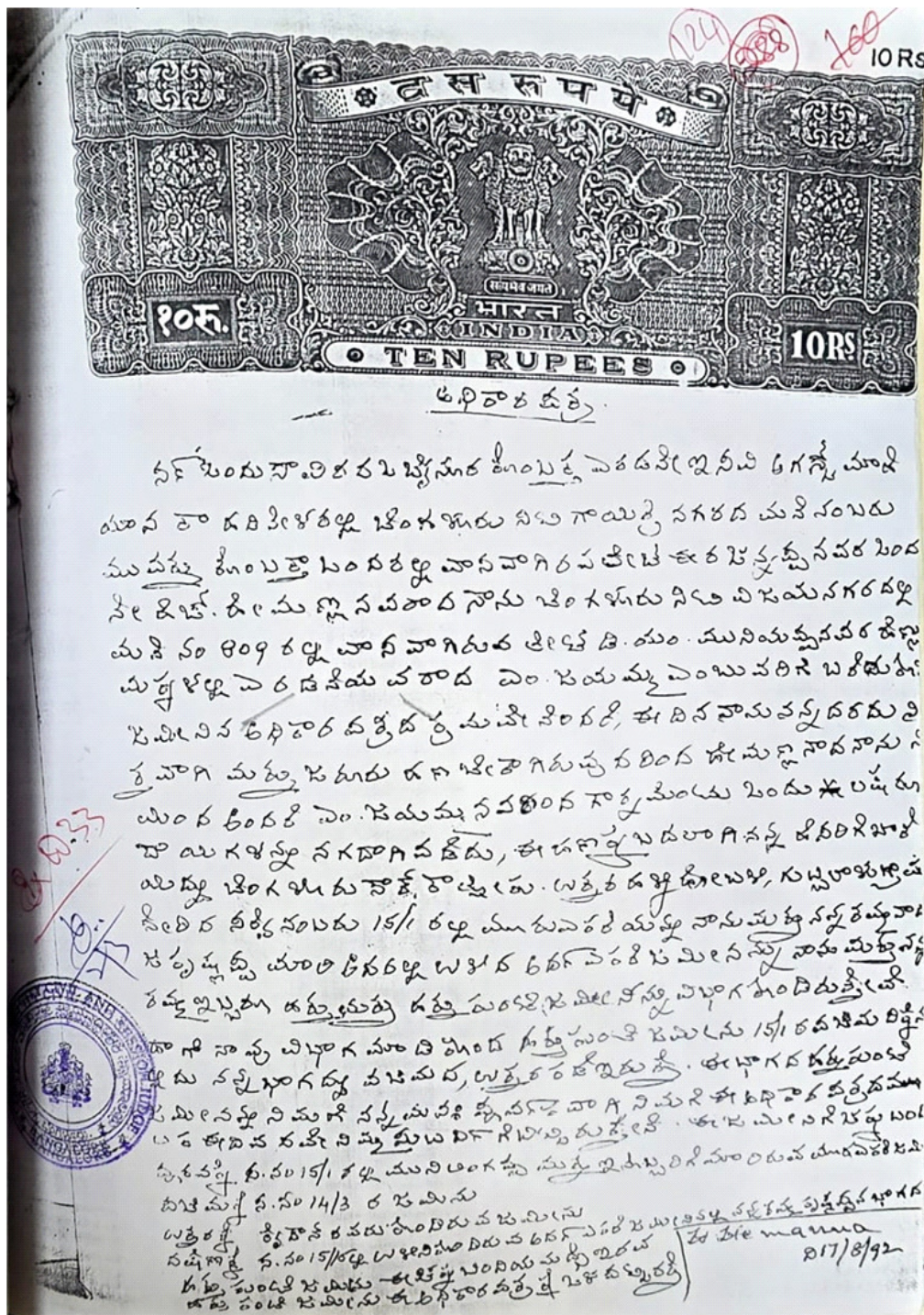
41. Defendant No.7 has clearly admitted in his cross-examination that, there was no sale agreement in respect of the property shown in Ex.D33 and there was no Sale Deed executed in the name of Jayamma. The GPA stated to be of the year 1992 and Jayamma died in the year 1998, she has not taken any action on the basis of the said document against Hemanna. That apart, the documents was written on stamp paper of Rs.10/- and even not notarized. In that view of the matter, the same cannot even be termed as a GPA under law. In view of the categorical admission and absence of any document in the name of Jayamma in terms of alleged Ex.D33 - GPA, it becomes very hard for this Court to accept the contentions of defendant No.7 – party-in-person. The Judgment relied on by him in **RAVINDER KAUR GREWAL** (supra) is not applicable to the present case, on facts. In the said case, the suit was filed by one Harbans Singh S/o.Niranjan Singh against his real brothers wherein, it was contended

that there was a family arrangement/ settlement with the intervention of respectable persons and family members, whereunder his ownership and possession in respect of suit land including the constructions there on (16 shops, a samadhi of his wife - Gurucharan Kaur and one service station with boundary wall) was accepted and acknowledged and structures were erected by him in the capacity as the owner of the land. The Hon'ble Supreme Court set-aside the judgment of the High Court and has held that, the High Court has committed manifest error in interfering with the Judgment, in particular, reversing the well-considered decision of the First Appellate Court, which has justifiably concluded that the document dated 10.03.1988 family arrangement/ settlement executed between the parties was merely a Memorandum of Settlement and did not require registration. Accordingly, retaining the Judgment of the First Appellate Court, set aside the judgment of the High Court, dismissing the second appeal before the High Court. The Hon'ble Supreme Court at Paragraph No.19 has held as under:

"19. Considering the above, we have no hesitation in concluding that the High Court committed manifest error in interfering with and in particular reversing the well-considered decision of the first appellate Court, which had justly concluded that document dated 10.03.1988 executed between the parties was merely a memorandum of settlement, and it did not require registration. It must follow that the relief claimed by the plaintiff in the suit, as granted by the first appellate Court ought not to have been interfered with by the High Court and more so, in casual manner, as adverted to earlier. "

42. In the case on hand, defendant No.7 claims that Hemanna executed GPA in favor of Late Jayamma. The alleged GPA at Ex.D33 cannot be considered as an outright sale by Hemanna in favor of Late Jayamma in law. Except mentioning some name, nothing is forthcoming as to the witnesses before whom such a document executed. Defendant No.7 has failed to substantiate the said document. Even a perusal of the said document with the signature on the right side down corner, creates suspicion in the mind of the Court with respect to the genuinity of the document.

43. For easy reference, the photocopy of Ex.D33 is
extracted here:



44. In the teeth of categorical admission that, no Sale Deeds in respect of the properties stated in Paragraph No.16 of the written statement available in the name of Late Jayamma, it becomes very hard for this Court to countenance the contention raised by defendant No.7. The documents relied on by him at Ex.D27 to 31, 32, 33, 39 and 40 falls short to answer the contentions raised by him in his favor, for lack of corroboration in terms of law.

45. As rightly observed by the Trial Court, the direction issued by this Court in the Crl.Revision Petition is only with respect to placing the movables in the hand of the Court Commissioner appointed before the Trial Court. There is nothing forthcoming with respect to the direction to the plaintiffs to add the properties contained in Paragraph No.16 of the Written Statement.

46. The view of this Court, on framing /non framing of issues when the parties were given a clear understanding, to the /is between them and both have led their evidence and produced documents on the contentions raised in respective pleadings, the judgment

of the trial Court cannot be overturned merely on the technical ground raised by the party who suffered the Judgment and Decree on non-framing of issues when, they went on trial fully knowing the rival issue, gains strength with the decision of three Judges Bench of the Hon'ble Supreme Court in **NEDUNURI KAMESWARAMMA Vs. SAMPATI SUBBA RAO**⁵.

47. The relevant paragraph in the said Judgment reads as under:

"On the first point, we do not see how the suit could be ordered to be dismissed, for, on the facts of the case, a remit was clearly indicated. The appellant had already pleaded that this was jeroyti land, in which a patta in favour of her predecessors existed, and had based the suit on a kadapa, which showed a sub-tenancy. It was the respondent who had pleaded that this was a Dharmila inam and not jeroyti land, and that he was in possession of the kudiwaram rights though his predecessors for over a hundred years, and had become an occupancy tenant. Though the appellant had not mentioned a Karnikam service inam, parties well understood that the two cases opposed to each other were of Dharmila Sarvadumbala inam as against a Karnikam service inam. The evidence which has been led

⁵ AIR 1963 SC 884

in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate ; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer. We therefore, proceed to consider the central point in the case, to which we have amply referred already."

48. The Trial Court has considered the documents placed on record by the plaintiffs to come to the conclusion that, the properties stated in the suit schedule belongs to Late Jayamma and she having died intestate and they being Class-II heirs, are entitled for 1/9th share each. In these circumstances, defendant No.7 has failed to demonstrate before this Court in this appeal to take a contra view than the one which has already been taken by the Trial Court, while answering Issue Nos.1, 5 and 6.

49. For the reasons stated afore, this Court finds no grounds to interfere with the Judgment and Decree passed by the Trial Court. The point for consideration is answered accordingly. The appeal fails and is accordingly, ***dismissed***.

50. However, given the facts and circumstances of the case and relationship between the parties, cost is made easy.

51. The Registry is directed to draw a decree accordingly.

**Sd/-
(T.M.NADAF)
JUDGE**

TKN