

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2026

BEFORE

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

REGULAR SECOND APPEAL NO.570 OF 2009 (PAR)

C/W

REGULAR SECOND APPEAL NO.569 OF 2009 (PAR)

IN RSA NO.570/2009:

BETWEEN:

1. SRI. B. MUNIKRISHNAPPA
S/O SRI. BYANNAPPA
AGED ABOUT 64 YEARS
R/AT NO.1820/12, 'C' BLOCK
SAHAKARANAGARA
BENGALURU-560092.

...APPELLANT

(BY SMT. SUSHEELA S., SENIOR COUNSEL FOR
SRI. P.M. NARAYANASWAMY, ADVOCATE)

AND:

1. SRI. BYANAPPA
S/O LATE KARIYAPPA
AGED ABOUT 88 YEARS
R/AT HANABE VILLAGE HOBLI
DODDABALLAPURA TALUK
BENGALURU RURAL DISTRICT.
- 1(a) SMT. SUJATHA G
AGED ABOUT 46 YEARS
W/O ASHOK KUMAR
R/AT MARALENAHALLI
HANABE POST
DODDABALLAPURA TALUK-561203.
- 1(b) SRI. G. VASANTHA KUMAR
AGED ABOUT 44 YEARS
S/O GOPALAPPA

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

R/AT TABASIHALLI
ANTHARAHALLI POST
TUBAGERE HOBLI
DODDABALLAPURA-561203.

- 1(c) SR. GOPALAPPA
AGED ABOUT 81 YEARS
S/O LATE SRI. BACHANNA
R/AT TABASIHALLI
ANTHARAHALLI POST
TUBAGERE HOBLI
DODDABALLAPURA-561203.

(AMENDED VIDE COURT ORDER DATED 04.07.2025)

2. SRI. B. KARIYAPPA
S/O LATE BYANAPPA
AGED ABOUT 57 YEARS
R/AT D.NO.857, DILIP NILAYA
HOORINA HANUMAIHAH ROAD
3RD CROSS, NEAR RAILWAY STATION
KODIGEHALLI, SAHAKARA NAGARA POST
BENGALURU-560092.

3. SRI. MUNIRAJU
S/O SRI GOPALAPPA
DEAD BY HIS LRS

- 3(a) SMT. JALAJA
W/O LATE MUNIRAJU G
AGED ABOUT 38 YEARS
R/AT NO.97/2, 2ND CROSS
NEAR THIMMAIAH GENERAL STORES
BHOOPASANDRA MAIN ROAD
NAGASHETTIHALLI
BENGALURU-560094.

(AMENDED VIDE COURT ORDER DATED 16.12.2014)

...RESPONDENTS

(BY SRI. K.N.PHANEENDRA, SENIOR COUNSEL FOR
SRI. M.A.SUBRAMANI, ADVOCATE FOR R2 AND R3(a);
SRI. R.P.SOMASHEKARAIHAH, ADVOCATE FOR R1(a to c))

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGEMENT AND DECREE DATED 20.02.2009
PASSED IN R.A.NO.148/2008 ON THE FILE OF THE PRL.
DISTRICT JUDGE, BENGALURU RURAL DISTRICT, BENGALURU,
ALLOWING THE APPEAL FILED AGAINST THE JUDGEMENT
AND DECREE DATED 18.01.2008 PASSED IN O.S.NO.154/2005
ON THE FILE OF THE CIVIL JUDGE (SR.DN.), DODDABALLAPUR.

IN RSA NO.569/2009:

BETWEEN:

1. SRI. B. MUNIKRISHNAPPA
S/O SRI. BYANNAPPA
AGED ABOUT 64 YEARS
R/AT NO.1820/12, 'C' BLOCK
SAHAKARANAGARA
BENGALURU-560092.

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S/O LATE KARIYAPPA
AGED ABOUT 88 YEARS
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BENGALURU RURAL DISTRICT.
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- 1(b) SRI. G. VASANTHA KUMAR
AGED ABOUT 44 YEARS
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R/AT TABASIHALLI
ANTHARAHALLI POST

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(AMENDED VIDE COURT ORDER DATED 16.12.2014)

...RESPONDENTS

(BY SRI. K.N.PHANEENDRA, SENIOR COUNSEL FOR
SRI. M.A.SUBRAMANI, ADVOCATE FOR R2 AND R3(a);
SRI. R.P.SOMASHEKARIAH, ADVOCATE FOR R1(a to c))

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGEMENT AND DECREE DATED 20.02.2009 PASSED IN R.A.NO.97/2008 ON THE FILE OF THE PRL. DISTRICT JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL (EXCEPT IN REGARD TO ITEM NO.6) FILED AGAINST THE JUDGEMENT AND DECREE DATED 18.01.2008 PASSED IN OS.NO.154/2005 ON THE FILE OF THE CIVIL JUDGE (SR.DN.), DODDABALLAPUR.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14.08.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

Heard learned Senior counsel for the appellant, learned Senior counsel for respondent Nos.2 and 3(a) and learned counsel for respondent Nos.1(a) to (c). Both of them filed written submissions and synopsis with extraction of admission of respective witnesses.

2. These two appeals are filed questioning the judgment and decree passed in O.S.No.154/2005 dated 18.01.2008, wherein the Trial Court rejected the prayer in respect of item No.1 of the suit schedule properties and also dismissal of R.A.No.97/2008 filed by the appellant questioning the dismissal of suit in O.S.No.154/2005 and so also setting aside the judgment of the Trial Court in respect of item Nos.2 to 5 of the suit schedule properties in R.A.No.148/2008 by the First Appellate Court and prayed this Court to grant the relief of

partition and separate possession in respect of item Nos.1 to 5 as well.

3. The factual matrix of case of the appellant/plaintiff before the Trial Court while seeking the relief of partition and separate possession in respect of the suit schedule properties is that plaintiff is the member of joint family along with defendant Nos.1 and 2 and contend that item Nos.2 to 5 are ancestral properties and item No.1 was acquired in the year 1957 by defendant No.1 out of the income derived from item Nos.2 to 5 of the suit schedule properties. It is also the contention of the plaintiff that gift deed dated 21.11.2003 and so also another gift deed in favour of defendant No.3 of the year 2005 i.e., 14.11.2005 executed by defendant No.1 in respect of item No.1 of the suit schedule properties was acquired from joint family nucleus. Hence, the plaintiff is entitled for a share over the suit schedule properties and gift deeds in favour of defendant Nos.2 and 3 are null and void.

4. The defendant No.1 appeared and filed the written statement contending that suit schedule properties are his self-acquired properties and the plaintiff is not entitled for the relief of partition and separate possession and the suit valuation and

Court fee paid is incorrect and the plaintiff is not entitled for the relief of partition and separate possession. The defendant No.1 contend that suit is bad for non-joinder of legal representatives of another deceased sister Lakshmamma as necessary parties and suit is also bad for non-joinder for 10 other items of properties standing in his name which were also acquired from joint family funds as pleaded in the written statement. The defendant Nos.1 and 2 are also entitled for counter claim in those 10 items of properties standing in the name of plaintiff. So also, the defendant No.2 contend that item No.1 of the suit schedule properties belongs to his ownership and possession as derived under registered gift deed dated 14.11.2005 executed by defendant No.1 and so also House Building No.857 standing in the name of defendant No.2 also is of joint in nature for its inclusion in the suit for partition.

5. In order to prove his case, the plaintiff examined himself as P.W.1 and relied upon the documents Ex.P1 to P32 and so also, defendant No.1 is examined as D.W.1 and defendant Nos.1 to 3 have examined themselves as D.W.1 to D.W.3 and relied upon the documents Ex.D1 to D47.

6. The Trial Court having considered the material on record, answered issue No.1 as 'partly affirmative', in coming to the conclusion that plaintiff is the member of the joint family and entitled for the relief in respect of item Nos.2 to 6 and with respect to the gifted property is concerned, answered the same as 'negative and answered additional issue No.1 as 'affirmative' in coming to the conclusion that suit is bad for non-joinder of legal representatives of another deceased sister Lakshamma as necessary parties and answered additional issue Nos.2 and 3 as 'negative' and additional issue No.4 as 'affirmative' that item No.1 of the suit schedule properties belongs to defendant No.2 in view of the gift deed and granted the relief only in respect of item Nos.2 to 6.

7. Being aggrieved by the said judgment, both the plaintiff/appellant as well as the defendants have filed appeals in R.A.No.97/2008 and R.A.No.148/2008. The First Appellate Court dismissed the appeal filed by the plaintiff in respect of item No.1 of the suit schedule properties and allowed the appeal filed by the defendants in R.A.No.148/2008 and even rejected the claim regarding item Nos.1 to 5. But, in respect of item No.6 is concerned, confirmed the same. Hence, the present second appeals are filed before this Court by the

plaintiff questioning the judgment of the Trial Court as well as judgment of the First Appellate Court.

8. The main contention of learned Senior counsel for the appellant/plaintiff in these two appeals is that the very approach of both the Trial Court and the First Appellate Court is erroneous. It is contended that granting of decree in respect of item Nos.2 to 6 and declaring to the effect that gift deeds dated 14.11.2005 and 21.11.2003 are null and void is erroneous. The defendant No.1 has executed the gift deed dated 21.11.2003 in favour of defendant No.2 during the pendency of the suit. The plaintiff is seeking for a prayer in the plaint to direct the defendant No.1 to furnish the account regarding income from all the properties and to pay mesne profits to the extent of the plaintiff's share and no dispute with regard to the relationship between the parties. The properties mentioned in item Nos.2 to 6 to the plaint schedule are ancestral and joint family properties and it is specifically pleaded in the plaint that plaint schedule item No.1 is also acquired out of income derived from other ancestral properties. It is also contended that the plaintiff and defendant Nos.1 and 2 have borrowed loan from PLD Bank Limited for the purpose of improvement of the land. The plaintiff has also contributed for repayment of the loan amount

to the bank in the name of defendant No.1, as the loan was borrowed in the name of defendant No.1. It is further contended that both the Trial Court and the First Appellate Court have committed an error in dismissing the suit in respect of item No.1 and the First Appellate Court committed an error in reversing the finding of the Trial Court without giving any reason. It is the contention that the First Appellate Court failed to exercise the powers under Order 41, Rule 31 of CPC and the Lower Appellate Judge has grossly erred in holding that item Nos.1 to 5 of the suit schedule properties are self-acquired properties of defendant No.1 without any basis. The Lower Appellate Judge ought to have noticed that insofar as item Nos.2 to 6 of the suit schedule properties are concerned, the Trial Court verifying the document produced and also admission and evidence, has passed a well reasoned judgment and the same is not discussed by the First Appellate Court and erroneously proceeded to allow the appeal in R.A.No.148/2008.

9. This Court having perused the grounds urged in both the appeals vide judgment dated 04.11.2010 has framed the substantial questions of law in R.S.A.No.569/2009 and so also, in lieu of framing of substantial questions of law, separate substantial question of law was not framed in

R.S.A.No.570/2009. The substantial questions of law framed by this Court vide judgment dated 04.11.2010 are as follows:

- "1. *Whether the Lower Appellate Court was justified in overlooking the decisions of the Supreme Court in **Chikkam Koteswara Rao v. Chikkam Subarao & Ors. (AIR 1971 SC 1542)** & the Karnataka High Court in **Parmeshwari Bai v. Muthojirao Scindia (AIR 1981 KAR 40)** following the aforementioned judgment of the Supreme Court?*
2. *Whether the allotment of a share to a female member having regard to the provisions of the amended Section 6 of the Hindu Succession Act could be applied prospectively or retrospectively, which is yet to be decided by a larger bench due to conflicting judgments rendered by co-ordinate 2-judge benches?"*

10. The matter was finally taken up on 27.03.2019, wherein this Hon'ble Court while dictating the judgment, has reframed the substantial questions of law which reads as hereunder:

- i) *Whether there could be separate properties and joint family properties in a joint family?*

- ii) *What is the effect of gift made by the head of the family in favour of another member of the family claiming that property is self-acquired property and without indicating the purpose?*
- iii) *Whether the assertion regarding possessing of properties by the plaintiff not included in the properties list, is established?*

11. This Court vide judgment dated 27.03.2019 framing the substantial questions of law allowed both the appeals. The same is questioned before the Apex Court. The Apex Court, in Civil Appeal Nos.14460-14461/2024 (Special Leave Petition (Civil) Nos.26938-26939/2019) dated 11.12.2024, set aside the same only on the ground that this Court framed substantial questions of law at the time of disposal of both these appeals and not given an opportunity to the parties and remitted back the matters to this Court for fresh consideration.

12. Having remitted the matter, this Court once again considered the grounds and comes to the conclusion that substantial questions of law framed on 04.11.2010 are sufficient to consider the question involved in both the appeals.

13. This Court heard learned Senior counsel appearing for the appellant and she also filed a memo dated 06.08.2026

extracting the substantial questions of law framed by this Court vide order dated 04.11.2010. This Court also earlier framed substantial questions of law while disposing the appeals on 27.03.2019 and the counsel also submitted draft substantial questions of law to consider whether the Courts below committed an error in law regarding the true nature of each of the suit schedule properties and committed an error in law in not identifying all the suit schedule properties as ancestral and joint family properties, whether the Trial Court was justified in denying the share of plaintiff in respect of item No.1 of the suit schedule properties, whether the First Appellate Court was justified in rejecting the claim even in respect of item Nos.1 to 5, whether the gift deed executed by defendant Nos.1 to 3 is valid in law and whether the First Appellate Court was justified in dismissing R.A.No.97/2008 filed by the plaintiff.

14. In support of this argument, the counsel would vehemently contend that suit is filed for the relief of partition and separate possession in O.S.No.154/2005 in respect of six items of properties which have been morefully described in the schedule. The counsel would contend that the Trial Court granted relief in respect of item Nos.2 to 6, but dismissed the suit in respect of item No.1. Hence, R.A.No.97/2008 is filed in

respect of item No.1. The defendant No.1 filed R.A.No.148/2008 questioning grant of relief in respect of item Nos.2 to 6. The First Appellate Court committed an error in dismissing the appeal in R.A.No.97/2008 and allowing the appeal in R.A.No.148/2008. Hence, these two second appeals are filed before this Court, as there is no decree except item No.6.

15. The learned Senior counsel for the appellant would vehemently contend that in respect of item No.6 is concerned, there is no dispute and both the Trial Court as well as the First Appellate Court granted the relief i.e., the house building and it has reached its finality. The counsel would vehemently contend that original propositus of the family is one Kariyappa, who had a son by name Byanappa, who is the defendant No.1. The counsel would contend that the plaintiff and defendant No.2 are the sons of Byanappa and he was also having a daughter by name Lakshmamma, but the said Lakshmamma was not made as party. But, defendant No.3 is the son of Lakshmamma, who got portion of the property in respect of item No.1 of the property by way of gift deed. The defendant No.1 also executed a gift deed in favour of defendant No.2 also. The counsel would contend that it is not in dispute that item No.2 is 1 acre 6

guntas, item No.3 is 1 acre 1 gunta, item No.4 is 14 guntas of land which are agricultural ancestral properties. Item No.5 is 2 sites and item No.6 is a house property. The counsel would vehemently contend that item Nos.2 to 4 are ancestral properties and out of the joint nucleus of the said properties, item No.1 of the property was purchased. The defendant No.1 was not having any other independent income, other than agriculture. The counsel also would contend that, in order to improve the property of the family, loan was availed by the father, since item No.1 of the property stands in the name of the father which was purchased on 05.11.1957 and Ex.P2 is the document for having purchased the same by defendant No.1.

16. The counsel would vehemently contend that both the Courts committed an error in coming to the conclusion that item No.1 is a self-acquired property of defendant No.1 and both the Courts failed to consider the evidence available on record, particularly, answer elicited from the mouth of D.W.1 and though, he makes counter-claim, but not paid the Court fee and not proceeded in respect of the counter-claim is concerned. D.W.1 to D.W.3 have not denied that the properties are the ancestral properties and though denied in the written statement, nothing is placed on record. Though, D.W.1 claims

that he was doing business, no proof is placed before the Court for self-acquisition. It is categorically admitted by D.W.1 that parents land are at Hanabe Village and there is a clear admission that no share was given in the property of the family to plaintiff as well as defendant No.2.

17. There is a clear admission on the part of D.W.2 and D.W.3 that the father had not taken any permission while executing the gift deed in favour of defendant Nos.2 and 3. The Trial Court though granted relief in respect of item Nos.2 to 6, but failed to grant the relief in respect of item No.1 of the property and erroneously comes to the conclusion that it was a self-acquired property of defendant No.1. The First Appellate Court committed an error in not considering both oral and documentary evidence and erroneously proceeded in passing a cryptic judgment reversing the judgment of the Trial Court even in respect of item Nos.2 to 5 allowing R.A.No.148/2008 and the very approach is erroneous.

18. Learned Senior counsel for the appellant in support of her argument relied upon the judgment of the Apex Court in **ADIVEPPA AND OTHERS v. BHIMAPPA AND ANOTHER** reported in **(2017) 9 SCC 586** and brought to notice of this

Court paragraph No.19, wherein the Apex Court held that it is settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the person that the same is his self-acquired property.

19. The counsel also relied upon the judgment of the Apex Court in **RANDHI APPALASWAMI v. RANDHI SURYANARAYANAMURTI AND OTHERS** reported in **1947 SCC ONLINE PC 42** and brought to notice of this Court page No.416, wherein discussion was made that in Hindu law, this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.

20. The counsel also relied upon the judgment of the Apex Court in **MUDI GOWDA GOWDAPPA SANKH v. RAM CHANDRA RAVAGOWDA SANKH** reported in **(1969) 1 SCC 386** and relied upon paragraph No.6 of the judgment, wherein discussion was made with regard to existence of joint family properties and also self-acquisition. Of course there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance, upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property.

21. The counsel also relied upon judgment of the Apex Court in **D.S. LAKSHMAIAH AND ANOTHER v. L. BALASUBRAMANYAM AND ANOTHER** reported in **(2003) 10 SCC 310**. The counsel for the respondents also relied upon this judgment i.e., paragraph No.18, wherein it is held that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint

family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

22. The counsel also relied upon the judgment of the Apex Court in **ACHUTHAN NAIR v. CHINNAMU AMMA AND OTHERS** reported in **1965 SCC ONLINE SC 303** and brought to notice of this Court paragraph No.7, wherein also discussion was made that under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that property was acquired by him without the aid of the said nucleus.

23. The counsel also relied upon judgment of the Apex Court in **CHIKKAM KORESWARA RAO v. CHIKKAM SUBBA RAO AND OTHERS** reported in **1970 (1) SCC 558** and brought to notice of this Court paragraph No.7, wherein discussion was made with regard to existence of joint Hindu family property and also acquiring of the property by self-earning.

24. The counsel also relied upon judgment of the Apex Court in **ROHIT CHAUHAN v. SURINDER SINGH AND ORS.** reported in **(2013) 9 SCC 419** and brought to notice of this Court paragraph No.11, if already there was a partition and an individual interest is created, then it will become the individual property as long as no partition and also the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become coparcener. If any property is in the hands of Kartha of the family, if no son born and the same becomes his individual property.

25. The counsel also relied upon judgment of the Apex Court in **SURENDRA KUMAR v. PHOOLCHAND (DEAD) THROUGH LRS. AND ANOTHER** reported in **(1996) 2 SCC 491** and brought to notice of this Court paragraph No.6,

wherein discussion was made that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. The presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish the same.

26. The counsel also relied upon judgment of the Apex Court in **K.V. NARAYANASWAMI IYER V. K.V.RAMAKRISHNA IYER AND OTHERS** reported in **AIR 1965 SC 289** and brought to notice of this Court paragraph No.15, wherein also it is held that legal position is well-settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown.

27. The counsel also relied upon judgment of this Court delivered in **R.F.A.NO.2208/2018** dated **14.01.2020**

wherein, this Court in paragraph No.26 held that ancestral property is also a term which has a special meaning in Hindu law. It does not mean property inherited from any ancestor. It is only when the property is inherited by a male from his father, father's father and father's father's father that it becomes ancestral property. Besides, it is absolutely immaterial whether the sons were born to the inheritor before or after the inheritance fell in. But if the property is inherited from a paternal ancestor beyond the third degrees, then the property is not ancestral as against the inheritor's sons and the inheritor has absolute powers of disposal over it.

28. The counsel also relied upon the judgment in **HERO VINOTH (MINOR) v. SESHAMMAL** reported in **(2006) 5 SCC 545**. The counsel referring this judgment brought to notice of this Court paragraph No.24, wherein discussion was made with regard to principles relating to Section 100 CPC that the High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

The counsel referring this judgment would contend that these two appeals involves substantial questions of law having debatable legal issue.

29. Per contra, learned Senior counsel for respondent Nos.2 and 3(a) and learned counsel for respondent Nos.1(a) to (c) in their argument would vehemently contend that the Trial Court granted the relief in respect of item Nos.2 to 6 and the First Appellate Court reversed the same in respect of item Nos.2 to 5. But, held that item No.6 is the ancestral property and parties are entitled for a share over the same. The counsel would vehemently contend that there is no presumption that property standing in the name of a Hindu is a joint family property; the burden lies on the party asserting existence of a HUF/joint family property and joint family nucleus to strictly prove it, the same is not done by the plaintiff.

30. Learned Senior counsel for respondent Nos.2 and 3(a) in respect of this contention is concerned, relied upon judgment of the Apex Court in **ANGADI CHANDRANNA v. SHANKAR AND OTHERS** reported in **2025 SCC ONLINE SC 877** and brought to notice of this Court paragraph No.13, wherein a detailed discussion was made that there is no

presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

31. The counsel also brought the notice of this Court judgment of the Apex Court in **BHAGWAT SHARAN (DEAD THROUGH LEGAL REPRESENTATIVES) v. PURUSHOTTAM AND OTHERS** reported in **(2020) 6 SCC 387** and relying upon this judgment, the counsel brought to notice of this Court paragraph Nos.10, 12 and 21. In paragraph No.10, wherein discussion was made with regard to HUF that law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. In paragraph No.12 also, the judgment of **D.S. Lakshmaiah** which was referred by learned counsel for the appellant is also discussed and in paragraph No.21, the Apex Court discussed with regard

to the admission made by a party is only a piece of evidence and not conclusive proof of what is stated therein. It is in this light that we have to examine the admission made while filing written statement to the suit and also the averment made in the written statement. The counsel also brought to notice of this Court the written statement filed in the original suit.

32. The counsel also relied upon the judgment of Apex Court in **D.S.LAKSHMAIAH AND ANOTHER v. L. BALASUBRAMANYAM AND ANOTHER** reported in **(2003) 10 SCC 310**. This Court referred the very same judgment when learned Senior counsel for the appellant also referred the same.

33. The learned Senior counsel for respondent Nos.2 and 3(a) in his argument would contend that plaintiff must succeed on the strength of his own case and not on the weakness of the defendants. To that effect, he relies upon judgment of the Apex Court in **UNION OF INDIA AND OTHERS v. VASAVI COOPERATIVE HOUSING SOCIETY LIMITED AND OTHERS** reported in **(2014) 2 SCC 269** and brought to notice of this Court paragraph Nos.15 and 19, wherein discussion was made that, it is trite law that, in a suit

for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and so also discussion was made in paragraph Nos.16, 17 and 19 with regard to the legal position is concerned that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited and not based on the weakness of the defendant.

34. Having considered the material on record and also keeping in view the judgment of the Apex Court subsequent to framing of substantial questions of law, this Court has to consider the substantial questions of law framed by this Court on 04.11.2010 to consider the question involved in these two appeals for consideration of the suit for the relief of partition.

35. Having considered the substantial questions of law framed by this Court and also the pleadings, this Court has to consider the material on record. In paragraph No.3 of the plaint, it is the case of the plaintiff that suit schedule properties are ancestral properties and acquired from the income of the ancestral property. The description of item Nos.2 to 4 of the properties are also given in the plaint in paragraph No.3. So

also in respect of item No.1 is concerned, it is pleaded that defendant No.1, who is the kartha of the family in the year 1957 purchased the property out of joint nucleus derived from the ancestral properties. The pleadings are made in paragraph No.5 for having availed the loan from PLD Bank Limited and pleaded that defendant No.1 being the kartha of the family, the loan was availed in his name. However, contribution was given by the plaintiff and loan was repaid from time to time and last payment was made to the bank in 1994. So also in paragraph No.4, pleading was made with regard to execution of gift deed that defendant No.1 has no right to execute the gift deed as he was not having absolute right.

36. This Court also has to take note of the pleading of the defendants in the written statement and no doubt, defendants in the written statement in paragraph No.4 disputed the very existence of joint family, but in paragraph No.4 has also contended with regard to family was having the ancestral property and denied the joint nucleus. But, it is contended that item No.1 was a self-acquired property. In paragraph No.5, discussion was made with regard to plaintiff and defendant No.2 were residing separately and the plaintiff was working as Teacher and defendant No.2 was employed in Escorts Pvt. Ltd.

But, contend that loan was obtained in his name and loan was also cleared by him only, not by the plaintiff in paragraph No.6. It is also contented that he only performed the marriage of plaintiff as well as defendant No.2. It is also pleaded that he performed the marriage of defendant No.3, who is staying along with him and gift deed was executed out of love and affection towards grandson and he dealt with the property and the same is his self-earned property.

37. This Court having taken note of the written statement filed by other defendants, the same is also in corollary to the written statement of defendant No.1 and no difference in their written statement.

38. Now this Court has to examine the evidence of P.W.1. No dispute with regard to the relationship between the parties and he categorically says that he joined the service in the year 1968. He categorically denies purchasing of the property by defendant No.1 i.e., item No.2 in the year 1940. But, he admits that property was purchased by the father of defendant No.1 on 05.11.1957. He admits that the document at Ex.P17 is signed only by his father. But, he categorically denies that father was doing bullock cart and cattle business. He

admits that crops grown in item Nos.1 to 4 depends upon the rain and denies the specific suggestion that item Nos.2 to 4 properties are only for maintaining family necessities. He admits that father only gave education to him and he categorically admits that defendant No.2 got the employment in the year 1975. The very defence was denied by P.W.1 in the cross- examination, except admitting that item No.1 of the property was purchased in the year 1957 in the name of the father.

39. The Court has to take note of evidence of D.W.1 also. Though in second appeal, substantial questions of law are involved, but there is a divergent opinion. He claims that apart from agriculture, he used to run bullock cart selling plywood and was also working as commission agent for sale of plywood. But, in the cross-examination, he categorically admits that he married in the year 1945. He categorically admits that he has not divided the property between his two sons and daughter's children. There is a clear admission that there is no division in the family property and also admits that he gave education to defendant No.3 and also performed the marriage. When the defendant No.3 was brought to his house, already P.W.1 had got the job and defendant No.2 was pursuing his education. He

also admits that for his father, he himself and his sister are the only two children. He categorically admits that his parents are in Hanabe Village and he had purchased item No.1 of the properties and also a house and he sold the house. But, he has gifted the property. But, he has not obtained the signature of his children while gifting the property.

40. He categorically admits that the family properties are not given to his children. But, he claims that his children were not born when he had purchased item No.1 of the suit schedule properties. But, the same is falsified for the reason that this property was purchased in the year 1957. But, the evidence of P.W.1 is clear that he got the job in the year 1968. If he was not born, question of getting the job in the year 1968, when the property was purchased in the year 1957 does not arise. Hence, it is nothing but false statement of D.W.1. But, he claims that subsequent to his children were born, he has not acquired any property and the same is also a false statement. However, he admits that he had borrowed a loan of Rs.4,000/- from PLD Bank Limited. But, his admission is very clear that his son Munikrishna i.e., plaintiff had cleared the said loan and further he has given the admission that he has cleared the said loan. Hence, the very case of plaintiff is probable that

he had cleared the loan in the respect of item No.1 of the suit schedule properties in view of admission of D.W.1. It is also the admission that plaintiff came along with his brother and demanded for partition and he categorically admits that it is his duty to give share in the property to his children. But, he says that, if they are ready to give share in their property, then he is ready to give share in the property. These are the admissions which are very clear that there was no division in the family and also it is not in dispute that the family was having an ancestral property and having joint family property. Though D.W.1 categorically claims that all the properties are self-acquired properties, he has not produced any document before the Court for having acquired the same, except producing the document of Ex.P2 in respect of item No.1 which was purchased in the year 1957 and already the family was having other properties.

41. The evidence of D.W.1 is also corollary to the evidence of D.W.2. The D.W.2 also categorically admits that his grandfather i.e., D.W.1 had not divided the properties of joint family and this admission also takes away the case of D.W.1. He categorically admits that while gifting the property by defendant No.1, he had not taken the signature or consent of

either the plaintiff or defendant No.2 and he is not aware of the same. This admission also supports the case of the plaintiff.

42. The other witness is D.W.3 who is defendant No.2. He categorically admits that the property was purchased prior to his birth. But, his evidence is very clear that he was born in the year 1951 and property was purchased in the year 1957 and also he categorically admits that either himself, plaintiff or the father have got divided the property. He categorically admits that in suit schedule properties they have grown Neelagiri. From the admission on the part of D.W.3 also, it is very clear that there was an existence of joint family and all the witnesses D.W.1, D.W.2 and D.W.3 categorically admit that there was no division in the family and nothing is placed on record that other items of the suit schedule properties are self-acquired properties of D.W.1. When such being the case, the Trial Court granted the relief in the respect of item Nos.2 to 6, but committed an error in rejecting the prayer in the respect of item No.1 and admission of D.W.3 is very clear that he has not produced any documents relating to his milk production business and business done by his father and defendant No.1 also has not produced any document with regard to his business is concerned. When the family was in existence and

there was no division and family was also having ancestral properties and document of Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P9 clearly disclose that item Nos.2 to 4 properties are ancestral properties and there are index of land and also there was reference of R.R.Nos.646 and 648 to show that it was an ancestral property. Apart from that, plaintiff also produced the receipt for having cleared the loan and there is a clear admission on the part of D.W.1 that he did not clear the loan of the PLD Bank Limited and his son Munikrishna had cleared the loan and this admission takes away the case of D.W.1 and the clearance of bank loan is also evident from document Ex.P29.

43. When there is a clear admission on the part of D.W.1 and case of the plaintiff is admitted by D.W.1 that loan was availed in the name of the father, since he was the kartha of the family. Hence, it is clear that there was existence of joint family and there was no division in the family. Hence, the principles laid down in the judgments referred supra by the learned Senior counsel for the appellant are aptly applicable to the case on hand that family was having an ancestral property and was having income from ancestral property and there was joint nucleus. Apart from that, D.W.1 was not having any independent income and though claims that he was doing

business, nothing is placed on record that he was having income. Though in the year 1957, plaintiff and defendant No.2 were not major, but material discloses that the family was having ancestral joint family property and the same is evident.

44. The First Appellate Court committed an error in considering the material on record and only considering point No.1, taken note of admission on the part of P.W.1 that father had purchased the property in the year 1957 and no dispute that father had purchased the property. But, First Appellate Court failed to consider the evidence of D.W.1 to D.W.3 and nowhere discussed the admission on the part of D.W.1 to D.W.3 in the cross-examination. The first appeal being the statutory appeal ought to have considered the question of fact and question of law under Order 41 Rule 31 of CPC and the same has not been considered and passed a cryptic judgment in four paragraphs and no discussion at all in the judgment of the First Appellate Court with regard to the evidence of D.W.1 to D.W.3 and answer elicited from the mouth of D.W.1 to D.W.3 is very clear that there was no division and there was existence of a joint family and all of them were together and failed to consider the scope of appeal. The First Appellate Court being the Appellate Court ought to have considered the

material available on record as the original Court and reassess both oral and documentary evidence and the same has not been done, but committed an error in reversing the judgment of the Trial Court.

45. No doubt, as on the date of filing the suit there was no partition and a document of gift deeds are executed, but though defendant No.1 purchased the property in the year 1957 and there was a joint family property i.e., item Nos.2 to 6 and other joint nucleus as he was not having any other independent income and he is an agriculturist and property belongs to the family and there was existence of joint family. Though, he claims that he was doing business, no documents are produced. No doubt, both the counsels relied upon judgment of the Apex Court in **D.S. LAKSHMAIAH AND ANOTHER v. L. BALASUBRAMANYAM AND ANOTHER** reported in **(2003) 10 SCC 310** and relied upon paragraph No.18 of the judgment and the same is very clear that it is the duty cast upon the plaintiff to prove that there was an existence of joint family and there was no division and there was joint nucleus. When the defendants claim that it was self-acquired property and the burden shifts on the defendants, who claim that it is a self-acquired property and no such material is

available before the Court to substantiate that the same is a self-acquired property. When such being the case, both the Trial Court as well as First Appellate Court committed an error in respect of the material available on record, particularly the Trial Court committed an error in rejecting the claim in respect of item No.1 and the First Appellate Court being the statutory Appellate Court committed an error in reversing the finding of the Trial Court in respect of item Nos.2 to 5 is concerned, but comes to the conclusion that item No.6 is the ancestral property belonging to the family and the finding given by the First Appellate Court is against the material on record and failed to consider the evidence of D.W.1 to D.W.3 while re-appreciating both oral and documentary evidence and not discussed the evidence of D.W.1 to D.W.3.

46. When such being the case, it is evident that there was existence of joint family and was having joint family properties and out of that joint family nucleus itself property was purchased and defendant No.1 was not having any independent income and to the effect that he was doing business and having income, no material before the Court, except stray admission of P.W.1 that property had been purchased by the father and failed to consider both oral and

documentary evidence placed on record in toto and proceeded erroneously. Hence, suit of the plaintiff is liable to be decreed.

47. Now, in view of the recent judgment of the Apex Court regarding partition is concerned, when there is no earlier partition, even daughters are also entitled for a share over the property as co-parceners. But, in this case, son of the daughter is made as party i.e., defendant No.3, consequent upon gift deed executed in his favour. But, now the other children of daughter of defendant No.1 are also entitled for a share in respect of the property of daughter of defendant No.1 and they may be arrayed as parties in the FDP proceedings, since the suit is filed for the relief of partition and separate possession and the defendant No.1 was not having absolute right to convey the property in respect of item No.1 by executing the gift deed in favour of defendant Nos.2 and 3. Hence, I answer substantial questions of law Nos.1 and 2 accordingly.

48. In view of the discussion made above, I pass the following:

ORDER

- (i) The appeals are allowed.

- (ii) The judgment and decree of the Trial Court passed in O.S.No.154/2005 in respect of item No.1 is set aside and the suit is decreed in respect of item No.1 also declaring that gift deed in favour of defendant Nos.2 and 3 as null and void.
- (iii) The judgment of reversal passed by First Appellate Court in R.A.No.148/2008 in respect of item Nos.2 to 5 of the suit schedule properties is also set aside. Consequently, decree of the Trial Court in respect of item Nos.2 to 5 of the suit schedule properties is also restored.
- (iv) Consequently, the suit filed by the plaintiff is allowed in its entirety granting share among all including the father, brother and sister equally granting $1/4^{\text{th}}$ share, if father is alive and if father is not alive, granting $1/3^{\text{rd}}$ share.

Sd/-
(H.P.SANDESH)
JUDGE

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