

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

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

REGULAR SECOND APPEAL NO.1005 OF 2010 (PAR)

C/W

REGULAR SECOND APPEAL NO.1006 OF 2010

IN RSA NO.1005/2010:

BETWEEN:

1. LATE HANUMANTHARAYAPPA,
S/O LATE SUBBANNA,
SINCE DECEASED BY HIS LRS.

(DECEASED APPELLANT NO.1 REPRESENTED BY LRS
ALREADY ON RECORD I.E., APPELLANTS NO.2, 3 AND
RESPONDENT NO.1 VIDE ORDER DATED 08.01.2019)

2. H. SUBBARAYAPPA,
S/O SRI HANUMANTHARAYAPPA,
AGED ABOUT 44 YEARS.

3. H. RAJANNA,
S/O SRI HANUMANTHARAYAPPA,
AGED ABOUT 50 YEARS.

ALL ARE RESIDENTS OF
SHETTIGERE VILLAGE,
JALA HOBLI, BENGALURU NORTH TALUK.

...APPELLANTS

(BY SRI. K. DIWAKARA, SENIOR COUNSEL A/W
SRI. ABHISHEK KUMAR, ADVOCATE FOR APPELLANT NO.3;
SRI. C.M. NAGABHUSHAN, ADVOCATE FOR APPELLANT NO.2;
APPELLANT NOS.2 AND 3 ARE TREATED AS LRS OF DECEASED
APPELLANT NO.1, VIDE ORDER 08.01.2019)

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by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. S.H. BYRANNA,
S/O SRI. HANUMANTHARAYAPPA,
AGED ABOUT 54 YEARS,
RESIDENT OF SHETTIGERE VILLAGE,
JALA HOBLI, BENGALURU NORTH TALUK.
2. LAKHAN SINGH,
AGED ABOUT 53 YEARS,
ROOM NO.53, NAVIN APARTMENT,
13TH MAIN ROAD, II FLOOR,
VASANTHNAGAR,
BENGALURU-560052.
3. SAROJAMMA,
W/O LATE MUNIYAPPA,
AGED ABOUT 44 YEARS
RESIDENT OF AKLEMALLENHALLI,
KASABA HOBLI, DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.
4. JABIR ASGHER,
S/O H.A. ASGHER,
AGED ABOUT 44 YEARS
RESIDING AT NO A/1,
BLESSINGTON APARTMENT,
NO.34, SERPENTINE STREET,
RICHMOND TOWN,
BENGALURU-560025.
5. S. ARUNA,
D/O H. SUBBARAYAPPA,
AGED ABOUT 25 YEARS,
FLAT NO.2/5 LQAL LAYOUT,
SHANKARA NAGAR,
BENGALURU-560092.
6. SMT. JAYAMMA,
AGED ABOUT 66 YEARS,
W/O HANUMANTHARAYAPPA,
R/AT BIDALURU VILLAGE,
KASABA HOBLI,
DEVANAHALLI TALUK-562110.

7. SMT. AKKAYAMMA.
SINCE DEAD BY LR

SMT. C.H. LAKSHMAMMA,
AGED ABOUT 40 YEARS,
R/AT CHOKKONDANAHALLI,
JANGAMAKOTE HOBLI,
SIDDLAGATTA TALUK,
CHIKKABALLAPUR DISTRICT-562102.

8. SMT. SAKAMMA @ SAROJAMMA,
AGED ABOUT 60 YEARS,
D/O LATE HANUMANTHARAYAPPA,
W/O KARIAPPA,
R/AT CHOKKONDANAHALLI,
JANGAMAKOTE HOBLI,
SIDDLAGATTA TALUK,
CHIKKABALLAPUR DISTRICT-562102.

9. SMT. LAKSHMAMMA,
AGED ABOUT 58 YEARS,
D/O LATE HANUMANTHARAYAPPA,
W/O CHANAPPA,
SEEGEHALLI VILLAGE,
TOBIGE HOBLI, HAGODAHALLI POST,
DODDABALLAPURA TALUK-569205.

10. MR. S. AJITH SINGH BHANDARI,
S/O LATE INDER SINGH BHJANDARI,
AGED ABOUT 73 YEARS,
I-76, DIAMOND DISTRICT,
AIRPORT ROAD,
BENGALURU-560008.

(RESPONDENT NO.5-10 IMPEADED VIDE ORDER
DATED 27.10.2022 & 21.03.2023 ON I.A.No.1/2018
AND I.A.No.1/2020)

...RESPONDENTS

(BY SRI. H.V.DEVARAJU, ADVOCATE FOR R1;
SMT. VASUNDARA T.P., ADVOCATE FOR
SRI. P.M. SIDDAMALLAPPA, ADVOCATE FOR R3;
SRI. K.R.ANATHA MURTHY, ADVOCATE FOR R4;
SRI. K.R.NAGARAJA, ADVOCATE FOR

RSA No. 1005 of 2010
C/W RSA No. 1006 of 2010

SRI. V. VISHWANATH, ADVOCATE FOR R5;
SRI. S. VIVEKANANDA, ADVOCATE FOR R10;
R2 AND R6 TO R9 SERVED)

THIS RSA IS FILED U/O 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 22.1.2010 PASSED IN R.A.NO.186/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, DEVANAHALLI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 19.8.2006 PASSED IN OS.NO.18/1993 ON THE FILE OF THE ADDL. CIVIL JUDGE (JR.DN) AND JMFC, DEVANAHALLI.

IN RSA NO.1006/2010:

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S/O SRI. HANUMANTHARAYAPPA,
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SRI. C.M. NAGABHUSHAN, ADVOCATE FOR
APPELLANT NO.2;
VIDE ORDER DATED 08.01.2019,
APPELLANT NOS.2 AND 3 ARE
TREATED AS LRS OF DECEASED APPELLANT NO.1)

AND:

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SRI. V. VISHWANATH, ADVOCATE FOR R5;
SRI. S. VIVEKANANDA, ADVOCATE FOR R10;
R2 AND R6 TO R9 SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 22.01.2010 PASSED IN R.A.NO.190/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, DEVANAHALLI, ALLOWING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED 19.8.2006 PASSED IN O.S.NO.18/1993 ON THE FILE OF THE ADDL. CIVIL JUDGE (JR.DN) AND JMFC, DEVANAHALLI.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 31.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

Heard the learned counsel for the appellants and the learned counsel for the respondents.

2. R.S.A.No.1005/2010 is filed by the plaintiffs challenging the judgment and decree dated 22.01.2010 passed in R.A.No.186/2006, on the file of the Fast Track Court, Devanahalli, setting aside the judgment and decree dated 19.08.2006 passed in O.S.No.18/1993, on the file of the Additional Civil Judge (Jr.Dn.) and JMFC, Devanahalli, declining to grant the relief of partition in respect of item Nos.1 and 5.

3. R.S.A.No.1006/2010 is filed by the plaintiffs challenging the judgment and decree dated 22.01.2010 passed

in R.A.No.190/2006, on the file of the Fast Track Court, Devanahalli and to restore the judgment and decree dated 19.08.2006 passed in O.S.No.18/1993, on the file of the Additional Civil Judge, (Jr. Dn.) and JMFC, Devanahalli.

4. In both the appeals, the appellants have prayed this Court to grant such other relief as deemed fit to grant under the facts and circumstances of the case.

5. The factual matrix of the case of the plaintiffs while seeking the relief of partition and separate possession in O.S.No.18/1993 claiming 3/4th share in the suit schedule properties, it is contended that plaintiff No.1 is the father of plaintiff Nos.2 and 3 and defendant No.1 and they constitute the members of a joint Hindu family. It is contended that plaintiff No.1 had separated from his brothers about 25 years back. Sy.No.86/4 measuring 11 guntas, house property bearing No.43/6 have been allotted to plaintiff No.1 at the time of partition. The remaining items of the properties have been acquired by the joint efforts of the plaintiffs and defendants and they are in joint possession of the suit schedule properties. For the last one month the defendant is not co-operating with the plaintiffs in agricultural operation and the defendant is claiming

exclusive ownership in respect of item Nos.1 and 5 and is threatening to alienate the suit properties. It is contended that defendant No.1 has executed the registered sale agreement on 07.01.1995 in favour of defendant No.2 along with the GPA and another GPA was executed in favour of M.P.Soma Prasad on 07.01.1995. The said Soma Prasad executed sale deed dated 25.09.1995 in favour of defendant No.4 with the consent of defendant No.2. The names of Muniyappa and defendant No.4 have being mutated in the mutation register. The said transactions are not binding on the plaintiffs. Hence, claimed 3/4th share.

6. The defendant No.1 appeared and filed the written statement admitting the relationship between the parties. It is contended that plaintiff No.3 is not an agriculturalist and he is an employee of W.S. Factory and is residing in his father-in-law's house at Chikkajala Village. The defendant No.1 denied that the plaintiffs and the defendants are members of the Hindu joint family. It is stated that the suit is barred by limitation. One Muniyappa had purchased 23 guntas of land in Sy.No.15/1 and has not been made as party to the suit. Items Nos.1 and 5 being agricultural land and house property are his self-acquired property and in the year 1984, the plaintiffs and the defendants

have partitioned the joint family properties item Nos.2, 3, 4 and 6 and thereby they have been residing separately enjoying the respective share. Item No.1 has been purchased from one Gundappa under sale deed dated 27.02.1986 out of which, the plaintiff had executed an agreement to sale in favour of Muniyappa to an extent of 23 guntas. Now he is in possession of 1 acre 1 gunta. It is contended that he has paid up-to-date tax and RTC extract clearly goes to show the exclusive possession of the defendant. After purchasing item No.1 of the schedule land, he dug the well and installed electric pump set. In this connection, he has obtained loan from VSSN, Bengaluru North Taluk and the said loan has not been fully cleared by the defendant. After purchasing item No.5, the defendants have demolished the old mud roof house and afterwards constructed a new stone roof house. Due to the proposed international airport came near the suit land and value of the properties having increased by 100 times, the plaintiffs have filed the suit with an intention to knock off the self-acquired properties. Hence, prayed the Court to dismiss the suit.

7. The defendant No.1 also filed additional written statement denying the averments in paragraph No.5(8)(II). It is contended that defendant No.1 has not executed any sale

agreement in favour of Lakkan Singh or any other person and Lakkan Singh and M.P. Soma Prasad have concocted, created the GPA and sale deed in favour of Jabbar, Askar and Muniyappa. The said sale deeds and GPAs are created to knock off the defendant No.1's property.

8. The defendant No.4 filed the written statement denying the averments in the plaint. He admitted that plaintiff No.1 is the head of the family. He contended that defendant No.1 purchased item No.1 from his uncle under registered sale deed dated 27.02.1986 and subsequently, all the relevant documents were transferred to his name. The defendant No.1 being the absolute owner, sold item No.1 in favour of the defendant for valuable consideration under sale deed dated 28.09.1995 and put him in possession of the same. It is contended that before purchasing item No.1 of the suit schedule property, this defendant enquired in the village that plaintiff Nos.1 to 3 are separated by metes and bounds in the year 1978 itself and all of them are living separately and further defendant No.1 purchased item No.1 of the suit schedule property out of his own funds. The plaintiffs with an intention to knock off the suit schedule property have deliberately filed the suit. It is also contended that he became

the absolute owner in view of the purchase made by him from defendant No.1.

9. The Trial Court having considered the pleadings of the parties, framed the following issues:

- "1. *Whether the plaintiffs proves that plaintiffs and defendant are joint family members?*
2. *Whether the plaintiffs prove that themselves and defendant are in joint possession of the suit schedule properties?*
3. *Whether the defendant proves that in the year 1984 itself plaintiffs and defendants have partitioned their joint family properties item Nos.2, 3, 4 and 6?*
4. *Whether the defendant proves that 1st item and 5th items of suit schedule properties are himself acquired properties?*
5. *Whether the suit is bad for non-joinder of necessary parties?*
6. *Whether the suit is barred by limitation?*
7. *Deleted as per order dated 15.09.1998.*
8. *Whether the plaintiffs are entitled for 3/4th share in all the suit schedule properties?*
9. *What order or decree?"*

10. The plaintiff No.2 is examined as P.W.1 and got marked the documents at Exs.P.1 to 22. The defendant No.1 is examined as D.W.1 and the GPA of defendant No.4 is examined as D.W.2 and got marked the documents at Exs.D.1 to 17.

11. The Trial Court having considered both oral and documentary evidence placed on record, answered issue Nos.1 and 2 in the affirmative, in coming to the conclusion that the plaintiffs proves that the plaintiffs and the defendant are the joint family members and also proves that they themselves and defendant are in joint possession of suit schedule properties. The issue Nos.3, 4, 5 and 6 are answered in the negative that the defendant has not proved that in the year 1984 itself the plaintiffs and the defendants have partitioned their joint family properties item Nos.2, 3, 4 and 6 and also defendant No.1 has not proved that item Nos.1 and 5 of the suit schedule properties are his self-acquired properties, the suit is not bad for non-joinder of necessary properties and so also the suit is not barred by limitation. But the Trial Court comes to the conclusion that the plaintiffs are entitled for $\frac{3}{4}^{\text{th}}$ share in all the suit schedule properties.

12. Being aggrieved by the judgment and decree of the Trial Court, defendant No.4 filed an appeal in R.A.No.186/2006 and defendant No.1 filed R.A.No.190/2006. The First Appellate Court having considered both oral and documentary evidence placed on record and on re-appreciation, formulated the points whether item Nos.1 and 5 are the self-acquired property of defendant No.1 and whether the Trial Court committed an error in granting 3/4th share in favour of the plaintiffs and whether the same requires interference, whether the Trial Court committed an error in granting share in item Nos.1 and 5 of the suit schedule properties granting 1/3rd share and whether the Trial Court committed an error. The First Appellate Court having re-assessed the material on record, answered both the points for consideration in the affirmative and set aside the judgment and decree of the Trial Court in respect of item Nos.1 and 5 of the suit schedule properties and held that the granting of share in respect of other properties are concerned, the judgment and decree of the Trial Court is proper.

13. Being aggrieved by the reversal of judgment in respect of item Nos.1 and 5, these two second appeals are filed before this Court.

14. The main grounds urged in these two appeals are that the First Appellate Court committed an error in coming to the conclusion that item Nos.1 and 5 of the suit schedule properties exclusively belongs to defendant No.1. The First Appellate Court failed to see that the contention of the appellant in R.A.No.190/2006 is that he separated from the joint family in the year 1984 and in that partition he was allotted what properties and at that time he was only 25 years old and from/how he got the money to purchase item Nos.1 and 5 to claim that it is his self-acquired property and the same is not substantiated. The Lower Appellate Court failed to see that in the examination-in-chief he did not even mention the source of his income which enabled him to purchase item Nos.1 and 5 of the plaint schedule properties. The Lower Appellate Court also committed an error in taking into note of he was the eldest son and he was managing the affairs of the family and when the family decided to buy item Nos.1 and 5 of the suit schedule property, the same were purchased in the name of defendant No.1 as he was the eldest son. The very reasoning of the First Appellate Court is erroneous. It is contended that the First Appellate Court failed to consider that in a suit for partition, the onus of proving the character of the property i.e.,

property is joint family property or self-acquired property or separate property of the party determines the onus of proof of that. The First Appellate Court failed to see that respondent No.1, who claims that he is separated from the joint family, has not placed any material at all except a bald statement that he is separated from the family and the contention that there was a partition between him and the appellants has not been proved. The First Appellate Court fails to appreciate the material available on record and in order to substantiate that he was separated in the year 1984, nothing is placed on record. The First Appellate Court failed to see that in the examination-in-chief, he did not even mention the source of his income. The very approach of the First Appellate Court is erroneous and hence, this Court has to reverse the finding of the First Appellate Court in both the appeals and restore the judgment and decree of the Trial Court.

15. This Court having considered the grounds which have been urged and also that there was a divergent finding that the Trial Court granted the relief of partition in respect of all the suit schedule properties and the same is reversed in the First Appellate Court in respect of item Nos.1 and 5 of the suit schedule properties, admitted both the second appeals. While

admitting the second appeal on 05.08.2010, this Court framed the following substantial questions of law:

- "1. Whether the lower appellate court was justified in setting aside the judgment of the trial court and in the process, committed the error of putting the burden on the plaintiffs to prove that there was no partition when the said defence was set up by the defendants that there was a partition in the year 1984?*
- 2. Whether the findings of the lower appellate court can be upheld in the absence of the lower appellate court giving reasons for disagreeing with the findings recorded by the trial court?*

16. The learned counsel for the appellants in R.S.A.No.1005/2010 would vehemently contend that there is a divergent finding. The Trial Court granted the decree in respect of all the items of the suit schedule properties, but the First Appellate Court reversed in respect of item Nos.1 and 5. It is contended that plaintiff Nos.1 to 3 have filed the suit for the relief of partition. It is contented that plaintiff No.1 is the father of plaintiff Nos.2 and 3 as well as defendant No.1 and there is no dispute with regard to the relationship between the parties. The defendant No.4 is the purchaser. The defendant No.1 sold item No.1 in favour of defendant No.4 and defendant

No.4 also contested the matter. The learned counsel would vehemently contend that when the defence was taken that already there was a partition, no material is placed before the Trial Court that already there was an earlier partition. The learned counsel would contend that when defendant No.1 took the specific contention that item Nos.1 and 5 are his self-acquired properties and he was not having any independent income except the agricultural income. The learned counsel would contend that D.W.1 in his evidence has categorically admitted that he was aged about 25 years as on the date of purchase of item Nos.1 and 5 of the suit schedule properties. The First Appellate Court fails to take note of the said fact into consideration and committed an error in fixing the burden on the plaintiffs to prove that item Nos.1 and 5 were purchased out of the joint family nucleus.

17. The learned counsel for the appellants relies upon the judgment of the Apex Court in the case of **PRAHLAD PRADHAN AND OTHERS v. SONY KUMHAR AND OTHERS** reported in **(2019) 10 SCC 259** and brought to the notice of this Court paragraph Nos.4 and 5, wherein discussion was made in relying upon the judgment of the Apex Court in the case of **ADIVEPPA v. BHIMAPPA** reported in **(2017) 9 SCC**

586, wherein in paragraph No.19 it is held that it is a 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 member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. The learned counsel also brought to the notice of this Court the discussion made in paragraph No.5 when the specific defence was taken that it is a self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because the name was recorded in the survey settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property.

18. The learned counsel for the appellants also relies upon the judgment of the Apex Court in the case of

A.RAGHAVAMMA AND ANOTHER v. A. CHENCHAMMA AND ANOTHER reported in **AIR 1964 SC 136**. The learned counsel referring this judgment brought to the notice of this Court paragraph No.22, wherein it is referred to the judgment of the Apex Court in the case of **BHAGWATI PRASAD SHAH v. DULHIN RAMESHWARI KUER** reported in **AIR 1952 SC 72**, wherein it is held that the general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint family partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other coparceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief.

19. The learned counsel referring these two judgments would vehemently contend that it is settled law that unless the contrary is proved, it is presumed that joint family is continued. The learned counsel would contend that there was no any partition. The very approach of the First Appellate Court is erroneous and failed to consider both oral and documentary evidence placed on record.

20. The learned counsel for respondent No.5 would vehemently contend that a Will was executed by plaintiff No.1 in favour of respondent No.5 and the same was a registered Will and she was impleaded in this Court. The learned counsel would contend that no enquiry was conducted on the said Will.

21. The learned counsel for respondent No.10 in his arguments would vehemently contend that he is a purchaser in respect of item No.1 of the suit schedule property. He had purchased the property from defendant No.1 to the extent of 1 acre 1 gunta. The learned counsel would contend that defendant No.1 sold 23 guntas in favour of one Muniyappa and he was not made as party to the suit when the suit was filed for the relief of partition and ought to have made him as a party to the proceedings. The issue was also framed with regard to the

non-joinder of necessary parties and the same has not been considered by the Trial Court properly. The learned counsel would vehemently contend that insofar as item Nos.2 to 4 is concerned, those properties are the landed properties and there was no any income in those properties and nowhere it is pleaded with regard to the same that the family was having income from the said properties. The learned counsel would contend that defendant No.1 had purchased the property in the year 1986 for sale consideration of Rs.12,000/- and he had adjusted the said sale consideration by borrowing the amount from his relatives and purchased the same. Immediately after purchasing the property, loan was also borrowed to the extent of Rs.6,000/- and D.W.1 also admitted in the cross-examination that he had borrowed the loan and also categorically admitted that he only dug the borewell and installed the motor and he is under cultivation. The learned counsel would contend that the documents clearly disclose that item Nos.1 and 5 of the suit schedule properties belong to defendant No.1 and produced the sale deed Ex.P.8, which clearly depicts that sale was made in favour of defendant No.1 and not in the name of the family members. The learned counsel also vehemently contend that when the suit is filed

seeking the relief of partition, burden lies on the plaintiffs to prove that suit schedule item Nos.1 and 5 was purchased out of the joint family nucleus and there is no any pleading to that effect and also no evidence before the Court to show that the property was purchased out of the joint nucleus and with regard to income from item Nos.2 to 4 also no pleading and no evidence what was the income. Though the plaintiffs contend that they have contributed money for the purchase of this property, nothing is placed on record and it is categorically admitted by P.W.1 that no such document is placed before the Court for having paid the amount and the same is considered by the First Appellate Court and the First Appellate Court has not committed any error.

22. The learned counsel in support of his arguments, he relies upon the judgment of the Apex Court in the case of **BHAGWAT SHARAN (DEAD THROUGH LEGAL REPRESENTATIVES) v. PURUSHOTTAM AND OTHERS** reported in **(2020) 6 SCC 387**. The learned counsel referring this judgment would contend that when the claim is made that the property is a Hindu undivided family property, burden is on person who alleges existence of HUF to prove the same. Proof is required not only with respect to jointness of family but also

with respect to fact that property concerned belongs to joint Hindu family, unless there is material on record to show that the property is the nucleus of joint Hindu family or that it was purchased through funds coming out of this nucleus. No material to show that properties in question belonged to an HUF. Merely because business was joint, held, would not raise presumption that there was a joint Hindu family. The learned counsel brought to the notice of this Court paragraph No.21, wherein a detailed discussion was made that merely because the business is joint would not raise the presumption that there is a joint Hindu family.

23. The learned counsel also relies upon the judgment of the Apex Court in the case of **SHRINIVAS KRISHNARAO KANGO v. NARAYAN DEVJI KANGO AND OTHERS** reported in **(1954) 1 SCC 544** and brought to the notice of this Court the discussion made in paragraph Nos.10 and 11, wherein it is held that whether we hold, as did the learned Judges of the High Court, that the plaintiff had failed to discharge the burden which lay on him of establishing sufficient nucleus, or that the defendants had discharged the burden of establishing that the acquisitions were made without the aid of joint family funds, the result is the same. The Apex Court also discussed with

regard to when can be presumed to be the joint family property and burden of proving self-acquisition lies on the party claiming to. The learned counsel also brought to the notice of this Court, detailed discussion made in paragraph Nos.9 to 11.

24. The learned counsel also relies upon the judgment of the Apex Court in the case of **D.S. LAKSHMAIAH AND ANOTHER v. L. BALASUBRAMANYAM AND ANOTHER** reported in **(2003) 10 SCC 310** and brought to the notice of this Court paragraph Nos.17 to 19, wherein detail discussion was made with regard to the legal principle that, there is no presumption of a property being joint family property only on account of the 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.

25. The learned counsel also relies upon the judgment of the Apex Court in the case of **UNION OF INDIA AND**

OTHERS v. VASAVI COOPERATIVE HOUSING SOCIETY

LIMITED AND OTHERS reported in **(2014) 2 SCC 269** and brought to the notice of this Court paragraph Nos.15, 16, 17 and 19 and contend 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 the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

26. In reply to this argument, the learned counsel for the appellants would contend that an application is filed under Order 41 Rule 27 of CPC. In view of cross-examination of P.W.1, six documents are produced i.e., sale deeds, loan agreement, mortgage, pay slips and challan. The learned counsel would contend that these documents will strengthen the case of the appellants/plaintiffs and these documents are necessary for deciding the issue involved between the parties.

27. The learned counsel for respondent No.10 would vehemently contend that if no diligence is made by the appellants/plaintiffs in producing those documents, the question of entertaining the application under Order 41 Rule 27 of CPC does not arise. Three circumstances which have been

enumerated in proviso to Order 41 Rule 27 of CPC is very clear. The learned counsel would vehemently contend that there is a 30 years of delay in producing those documents and P.W.1 categorically admitted during the course of cross-examination that no documents are given in respect of his salary and salary was given to defendant No.1 to purchase the property.

28. In reply to this argument, the learned counsel for the appellants would contend that Order 41 Rule 27(2) of CPC is very clear in respect of not including the property in the written statement though contend that other portion of the property was sold. In the written statement also not stated what was the income he had to purchase the property and the same is purchased out of the income from joint family property and defendant No.1 was not having any avocation and he was aged about 25 years and also not stated in the written statement about borrowing of money from anybody else while purchasing the property.

29. Having considered the contentions of the respective parties and also considering the principles laid down in the judgments referred supra, this Court has to analyze the material on record, since there is a divergent finding. The Trial

Court granted the relief in respect of all the suit schedule properties granting the share as claimed in the plaint. The First Appellate Court reversed the same in the appeal filed by defendants Nos.1 and 4 in respect of item Nos.1 and 5. This Court has framed the substantial questions of whether the Lower Appellate Court was justified in setting aside the judgment of the Trial Court and in the process, committed the error of putting the burden on the plaintiffs to prove that there was no partition when the said defence was set up by the defendants that there was a partition in the year 1984 and whether the findings of the Lower Appellate Court can be upheld in the absence of the Lower Appellate Court giving reasons for disagreeing with the findings recorded by the Trial Court. This Court has to examine these aspects with regard to the partition as well as the reasoning given by the First Appellate Court in reversing the same.

30. Having considered the pleadings of the parties, this Court has to take note of the plaint averments while seeking the relief of partition in respect of all the suit items of the properties. The specific pleading made in the plaint in O.S.No.18/1993 is that the plaintiffs are agriculturists and permanent residents of Shettigere Village, Jala Hobli, Bengaluru

North Taluk. It is also contended that the defendant is also an agriculturist and permanent resident of Shettigere. That means both the plaintiffs and the defendants are the permanent residents of Shettigere. It is contended in paragraph No.3 of the plaint that the defendant is the son of plaintiff No.1 and plaintiff Nos.2 and 3 are also the sons of plaintiff No.1. There is no dispute with regard to the relationship between the parties is concerned. However, it is contended that the plaintiffs and the defendants are the members of Hindu joint family. With regard to the relationship between the parties is concerned, family tree is also given in paragraph No.3. It is the specific contention that plaintiff No.1 has separated from his brothers about 25 years back. Sy.No.86/4, measuring about 11 guntas, house property bearing No.43/64 have been allotted to plaintiff No.1 at the time of partition. Sy.No.86/4 measuring 11 guntas is mentioned in the plaint as item No.4 of the suit schedule property. Item No.6, assessment No.43 is the other house property allotted. That means item Nos.4 and 6 are the properties allotted to plaintiff No.1. It is the specific case of the plaintiffs that the plaintiffs and defendants are in joint possession of the suit schedule properties. It is specifically stated that for the last one month defendant No.1 is not co-

operating with the plaintiffs. The defendant is claiming exclusive ownership of Sy.No.15/1, measuring 1 acre 24 guntas and house property bearing No.30/4 and he is threatening to alienate the said property. Hence, the suit is filed for partition and separate possession.

31. On the other hand, it is the contention of defendant No.4 that he had purchased the property from defendant No.1 to the extent of 1 acre 1 gunta. It is not in dispute that the sale deed was executed in his favour on 28.09.1995 and put him in possession. The defendant No.1 claims that item Nos.1 and 5 are his self-acquired properties. The other defendants have not filed any written statement before the Court. The defendant No.1 contended in the written statement that in the year 1984 there was a partition in respect of item Nos.2, 3, 4 and 6 of the properties.

32. Now, this Court has to take note of the pleadings when the suit is filed for the relief of partition and separate possession. Having perused the plaint, it discloses that the foundational facts are not pleaded in the plaint with regard to that the property at Item Nos.1 and 5 was purchased in the name of defendant No.1 out of the joint nucleus. But the case

of the plaintiffs before the Trial Court while adducing the evidence that item Nos.1 and 5 was purchased out of the joint nucleus. Except pleading in the plaint at paragraph 4 that Item Nos.4 and 6 are allotted in favour of plaintiff No.1 in the partition among the brothers, nothing is pleaded. The general averment is made that remaining items of the properties have been acquired by the joint efforts of plaintiffs and defendants. Nothing is pleaded in the plaint with regard to that plaintiff Nos.2 and 3 have contributed for the purchase of the property at Item Nos.1 and 5 by defendant No.1. But they only claim that they are in joint possession of the suit schedule property. It is only stated that defendant No.1 is claiming Item Nos.1 and 5 as his exclusive property. Thus, there is no pleading with regard to purchase of the property particularly, Item Nos.1 and 5 with joint efforts. The plaint is very cryptic. It is a specific case of defendant No.1 that he had purchased item Nos.1 and 5 properties in his name in the year 1986.

33. It has to be noted that plaintiff No.2 was examined as PW1 before the Trial Court and he claims that Item Nos.1 to 4 are landed properties and Item Nos.5 and 6 are house properties and the same are ancestral properties. It is not in dispute that Item Nos.2 and 3 are purchased by the father in

the year 1972 and 1981 in his name. But it is very clear that Item Nos.1 and 5 were purchased in the name of defendant No.1 in the year 1986. Thus, the Court has to take note of the fact that when the father had purchased the property at Item Nos.2 and 3 in his name, what prevented him to purchase the Item Nos.1 and 5 also in his name if it is out of joint nucleus, instead of that the same was purchased in the name of defendant No.1.

34. It is the evidence of PW1 that his father's health was not good at the time of purchasing of item Nos.1 and 5. Hence, the said property was purchased in the name of defendant No.1 who is the elder member of the family and he was managing the family affairs. But to that effect also there is no pleading in the plaint and the same is an improvement in the evidence of PW1. Hence, without the pleading in the plaint, the evidence cannot be relied upon. Apart from that the admission on the part of PW1 is very clear that defendant No.1 had purchased Item Nos.1 and 5 on 27.07.1986. But witness volunteers to state that Item Nos.1 and 5 were purchased when they were living in joint family. But to that effect also, there is no pleading at all in the plaint. PW1 categorically admits that revenue documents are stands in the name of

defendant No.1 and also admits that electrical installation to pump set is in the name of defendant No.1. It is further admits that defendant No.1 had obtained loan to dug the borewell from Vyavasaya Seva Sahakara and SCFSCS, Chikkajala, but claims that it is on their consent. But in order to prove the factum that they gave the consent also, nothing is placed on record.

35. PW1 categorically admitted that he himself and his brother were working at Reva factory. It has come in the evidence that from 1983 itself PW1 was working in the factory and also admits that plaintiff No.3 also working in the same factory from 1984. The Court has to take note that Item Nos.1 and 5 were purchased in the year 1986 by defendant No.1. But in the evidence of PW1, he says that he was giving his salary to defendant No.1 and he had categorically admitted that he has not stated in the plaint that he always given his salary to defendant No.1 and there is no pleading at all in the plaint in this regard. PW1 also categorically admits that there are no documents to evidence the payment of salary to defendant No.1. But he says that his father was with his sister from 1987-1988 for three years.

36. In the cross-examination, PW1 admits that in the year 1986, his father was not living along with defendant No.1 but he was living along with the sister of PW1. Though it is stated that from the year 1987 onwards, father was living with his sister, but admission is very clear that as on the date of purchase of the property, father was not living along with defendant No.1. It is also an improvement in the evidence that from past 20 years, father was not managing the family affairs and his brother i.e., defendant No.1 was managing the same. This evidence is also against the material available on record since, if the father was not managing the family from past 20 years, what made him to purchase a property at Item No.2 in the year 1981 in his name and this evidence also falsifies the case of PW1.

37. It is suggested that since 1980, plaintiff No.3 has been residing separately and out of his income, he has constructed a house at Chikkajala and the same was denied. But the fact is that both plaintiff Nos.2 and 3 are having their own properties and the property which PW1 had purchased also not included in the suit. He admits that in house No.4364 at Shettigere, he is living in separate houses. It is the specific case of the plaintiffs that all of them are residing separately.

PW1 categorically admits that he has no difficulty to produce Ration Card. But he admits that he will try to produce the Ration Card of plaintiff Nos.1 and 3, but not produced the same.

38. It is elicited from PW1 that he do not know when his father got his share and also he do not know that how Item No.1 was purchased by defendant No.1 in 1986. He also admits that he did not participate in the sale discussion and do not know who are the witnesses to the said sale transaction. But he categorically admits that his father was healthy when Item No.1 was purchased by defendant No.1. When the father was healthy and when other properties were purchased in the name of the father in the year 1972 and 1981, if really the property at item Nos.1 and 5 was purchased out of the joint family income, what prevented him to purchase the said property in the name of defendant No.1 and there is no explanation in this regard. It is also important to note that when PW1 says that Item Nos.1 and 5 was purchased out of the joint family income, but his admission is very clear that he do not know the income of joint family during 1986. Hence, the very contention that property was purchased out of the joint family income cannot be accepted. He further admits that he do not know the income

of defendant No.1 and how he spent the money. He categorically admits that in the year 1986, he himself, plaintiff No.3 and defendant No.1 have not jointly transacted and he do not know that when defendant No.1 had paid sale consideration. There is clear admission that during 1986, his father was living in his sister's house. Though, earlier, an attempt was made that from 1987 onwards his father was living in his sister's house, but admission is very clear that in the year 1986, his father was living in his sister's house. PW1 also categorically admits that plaintiff No.3 was residing at Shettigere. He categorically admits that there was no difficulty to get the property registered in their names when the property was purchased by defendant No.1. He categorically admits that there is a borewell in Item No.1 and also categorically admits that defendant No.1 had obtained loan for digging the borewell from Society. Defendant No.1 had obtained the loan of Rs.6,000/- to install the pump set. Even with regard to the loan is concerned, PW1 admits that he do not know when defendant No.1 discharged the said loan.

39. PW1 categorically admits that Rukmini is his wife and in her name, Khatha No.61/61 site has been registered and also admits the khatha extract and the same is marked as

Ex.D1 and he admits that he has no difficulty to show as to how his wife acquired this property. He admits that he owned 3 storied building at Maruthi Nagar and categorically admits that he has not included these properties in the plaint. But he claims that both these properties are acquired subsequent to the filing of the suit and not produced those documents before the Court. He admits that he got these properties through a registered document. He admits that he had invested Rs.10 lakhs to the property situated at Maruthi Nagar. But he claims that he has obtained the loan. He admits that his father and brothers are not party to the said transaction. He categorically admits that he did not pay any tax in respect of Item No.1 and RTC stands in the name of defendant No.1 from the date of purchase. He categorically admits that he do not know that whether defendant No.1 was absolute owner of Item No.1 property and he was paying taxes or not. But he admits that the name of defendant No.4 is shown in RTC to an extent of 01 acre 01 gunta.

40. No doubt, this Court also considered the evidence of DW1 who claims that Item Nos.1 and 5 are his absolute properties. Before that, this Court has to take note of the fact in respect of other items of the property, father name was

shown in column No.9 but Ex.P4 and P7 stand in the name of defendant No.1 i.e., in respect of Item Nos.1 and 5. Ex.P8 is very clear that sale deed was executed in favour of defendant No.1 for a sale consideration. The Court also take note of the fact that Ex.P13 and P17 stands in the name of the father i.e., plaintiff No.1 who had purchased the property in the year 1972 as well as in 1981. When the property was purchased in the name of defendant No.1, the same was not objected by any one of the family members. No doubt, there is no material before the Court to show that there was a partition in the year 1984 as contented by defendant No.1. But the evidence available before the Court is very clear that as on the date of purchase of the property in the year 1986, the family members were not residing together and plaintiff Nos.2 and 3 are working at Reva factory from 1983 and 1984 as admitted and in view of the admission of PW1, father was also not living along with defendant No.1 as on the date of purchase.

41. Though, DW1 claims that item No.1 is a self-acquired property, but the suggestion was made to him by defendant No.4 that Item No.1 is his self-acquired property since defendant No.4 had purchased the property from defendant No.1. But in the cross-examination, except the

answer elicited from DW1 that he is the elder son to his parents and his father is aged about 70 to 80 years and he is illiterate, nothing is elicited that Item Nos.1 and 5 was purchased with the family income. But he categorically admits that he alone has separated from the joint family. But he does not have any document to show the same. But he says that in the partition, he got Sy.No.86/2 and 86/4 totally, measuring one acre. But he did not get the khata. He says that while purchasing the property, his wife got Rs.10,000/- from her mother and he says that society loan was obtained to discharge the loan borrowed from others. When the suggestion was made that sale deed was executed in his name as he was managing the family, the same was denied. When the suggestion was made that he paid the sale consideration out of joint family funds, he denied the same. He admits that except agriculture, he has no other source of income. But there is no material before the Court to show that out of the joint family nucleus, he had purchased the property and there is no pleading to that effect but there is an improvement in the evidence of PW1. But he admitted that he had executed GPA in favour of Somaprasad and he had cancelled the same under the GPA had received Rs.70,000/-. The material witnesses evidence is PW1 and DW1.

42. The First Appellate Court taken note of the fact while reversing the finding of the Trial Court particularly, in respect of item Nos.1 and 5. On perusal of the admissions on the part of PW1 it is very clear that PW1 categorically admitted that there was no pleading for having paid the amount to defendant No.1 in the plaint and there was an improvement in the evidence that he paid the salary to defendant No.1. But he categorically admits that there are no any documents to show that he had paid the amount to defendant No.1. Though it is contended that defendant No.1 was managing the family affairs, but there is no pleading to that effect in the plaint. So also, there is no pleading to the effect that Item Nos.1 and 5 was purchased when he was managing the joint family affairs. No doubt, there is no material to show that there was a partition in the year 1984 as contended by defendant No.1. That does not mean that all of them are living together. The evidence of PW1 is very clear that at the time of purchase of the property, father was living separately with his sister in the year 1986 and plaintiff Nos.2 and 3 were also residing separately and working at factory.

43. No doubt, the counsel appearing for the appellant relies upon judgment of the Apex Court in the case of

PRAHLAD PRADHAN referred supra wherein it is held that proof lies on that member who admits joint family status but contends that some properties are self-acquired properties. Appearance of name in revenue record does not make property as self-acquired property. The counsel also brought to notice of this Court the discussion made in paragraphs 4 and 5 of the said judgment. But in the case on hand, it has to be noted that defendant No.1 had purchased the property at item Nos.1 and 5 in his name in the year 1986 and PW1 categorically admits that he do not know what was the joint family income of that period. It has to be noted that when the specific evidence is given by PW1 before the Court that as on the date of purchase of the property, defendant No.1 was managing the family but to that effect, there is no material. Apart from that PW1 categorically admits that in the year 1986, his father was having good health. But an attempt was made that from last 20 years, the father was not having good health. To prove that due to the age factor, the father was not having good health, no material is placed on record. To the fact that defendant No.1 was managing the family being the elder member of the family also, there is no pleadings as well as evidence. In the case on hand, DW1 admits that he had purchased the property in the

year 1986 and subsequently, he dug the borewell and also obtained the loan in the year 1987. This admission goes against the plaintiffs.

44. The counsel appearing for the appellant also relies upon the judgment of **A RAGHAVAMMA** referred supra and brought to notice of this Court a discussion made in paragraph 22 that the general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved. But in the case on hand, it is very clear that plaintiff Nos.2 and 3 are working in factory from 1983 and 1984 respectively and father was also alive and father had purchased the property in the year 1981 in his name. If item Nos.1 and 5 property was purchased from the joint family income, he could have purchased the same in his name only and not in the name of defendant No.1. To show that defendant No.1 was managing the family affairs, nothing is placed on record and no admission is brought out during the course of cross examination of DW1. The judgment of **RAGHAVAMMA** referred supra also very clear that there is no presumption that the rest of the coparceners continued to be joint when one among them was separated. There is no presumption on the other side too that because one member of the family separated himself, there has been

separation with regard to all. It would be a question of fact to be determined in each case. The Court has to take note of the fact that the properties which are purchased by plaintiff Nos.2 and 3 were not included while filing the suit. PW1 categorically admits that he himself is prosecuting this suit and his father and other brother i.e., plaintiff Nos.1 and 3 have not given any power of attorney to him and both of them are not pursuing the matter.

45. In the judgment relied upon by the counsel for the respondents in the case of **BHAGWAT SHARAN** referred supra it is held that burden is on person who alleges existence of HUF to prove the same. Proof is required not only with respect to jointness of family but also with respect to the fact that property concerned belongs to joint Hindu family. Unless there is material on record to show that the property is the nucleus of joint Hindu family or that it was purchased through funds coming out of this nucleus. In the case on hand, though an attempt is made in the evidence of PW1 that it was purchased out of joint nucleus, but there is no foundational fact before the Court pleading in the plaint. Hence, this judgment comes to the aid of the respondents.

46. The other judgment relied upon by the counsel for the respondents is **SHRINIVAS KRISHNARAO KANGO's** case referred supra wherein it is held that burden of proving self-acquisition lies on the party who claims the same and no dispute to that effect and also says that absence of evidence as to when and by whom acquired, the same is indicative of property being ancestral, there cannot be any presumption. In order to come to a conclusion that it was purchased out of the joint nucleus, nothing is placed on record. PW1 also categorically admits that he do not know what was the income of the joint family. But an attempt is made that he contributed the money to defendant No.1 and to that effect also not produced any document.

47. The other judgment relies upon by the counsel for the respondents is **D S LAKSHMAIAH AND ANOTHER** referred supra and brought to notice of this Court paragraphs 17 to 19 wherein it is held that the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be a presumption of the property being joint and the onus would shift on the person who claims it to be a self-acquired to prove that he purchased

the property. But in the case on hand, no such circumstances are warranted to show that family was having income.

48. On the other hand, the record is very clear that property at item Nos.1 and 5 was purchased in the name of the defendant No.1 in the year 1986. Just prior to 5 years, other property was purchased in the name of the father. If really, the said property was purchased out of the joint family nucleus, it would have been purchased in the name of the father only. PW1 also categorically admits that there was no any difficulty to purchase the property in the name of all the family members if it is purchased out of the joint nucleus. PW1 also categorically admits that he do not know what was the sale consideration and also how DW1 got the money to purchase the property and none of the family members have participated in the said transaction or in any transaction. When such admissions given by PW1, it takes away the case of the plaintiffs. First of all, there is no pleading to that effect in the plaint and admittedly father had got only 11 guntas of land and a house i.e., Item Nos.4 and 6 in the partition among the brothers. But he had purchased the property in the year 1972 and 1981 in his name in respect of Item Nos.2 and 3. Though there was no any

document of proof regarding the partition is concerned, but the admissions of PW1 takes away the case of plaintiffs.

49. No doubt, the counsel appearing for the appellants have filed an application under Order 41 Rule 27 of CPC to produce additional documents viz., sale deed, loan agreement, mortgage, payslip and challan regarding depositing of the amount and these documents will not come to the aid of the appellants having taken note of admissions on the part of PW1 in the cross-examination. Having paid the salary to defendant No.1, there is categorical admission that he has no any documents to show that he has paid the amount to defendant No.1 and production of loan agreement and payslip also will not come to the aid of the appellants. Hence, those documents will not come to the aid of the appellant to consider the germane issues involved between the parties. The First Appellate Court also while considering the case of the appellants in both the appeals taken note of the evidence available on record and properly re-appreciated the same. But Trial Court committed an error in granting the decree in respect of Item Nos.1 and 5 also in favour of plaintiffs even though there was no any evidence to that effect to show that it was purchased out of the joint nucleus and there was no any pleading as well as no material

to show that out of the joint family income, defendant No.1 had purchased the said property. It is very clear that defendant No.1 was not managing the family affairs and father was healthy as on the date of purchase of the property by defendant No.1 in the year 1986. The First Appellate Court re-appreciated the evidence particularly, in paragraph 31, it is observed that though PW1 claims that he himself and plaintiff No.3 gave the money to defendant No.1 but to prove the said fact, nothing is placed on record. When there are no foundational facts pleaded in the plaint that the said property was purchased out of the joint nucleus and when PW1 categorically admits that he was not aware that what was the income of the family from the joint family property, the question of entertaining the case does not arise. But Trial Court committed an error in appreciating the material on record. But First Appellate Court properly re-appreciated the same. Hence, I do not find any error on the part of the First Appellate Court in re-appreciating the evidence available on record and there is no perverse finding since, the admissions given by PW1 takes away the entire case of plaintiffs and the same is taken note of by the First Appellate Court while reversing the judgment of the

Trial Court. When such being the case, I do not find any error on the part of the First Appellate Court.

50. The substantive question of law framed by this Court at the time of admission that whether the First Appellate Court committed an error on putting the burden on the plaintiffs to prove that there was no partition when the said defence was set up by the defendants that there was a partition in the year 1984 and no such burden is put on the plaintiffs with regard to the partition is concerned. When the claim was made by the plaintiffs that Item Nos.1 and 5 also joint family property, burden lies on them to prove the same. The material is very clear that all of them are residing separately from 1983, 1984 onwards as admitted by PW1 in his evidence. So also, on the date of purchase of the property even the father was also not living along with defendant No.1 and he was living along with the sister of PW1 and he was hale and healthy. First Appellate Court has given the reasons while reversing the finding for disagreeing with the findings recorded by the Trial Court. The Trial Court only presumed the things in coming to the conclusion that there was no partition. But as on the date of purchase of the property, all the family members were not residing together. Though, it is contended that defendant No.1

being the eldest son of the family was managing the property, the same was not established and to that effect, there was no pleading and evidence. Though an attempt was made by PW1 stating that father was not keeping good health from last 20 years, but his admission takes away the case since he stated that in the year 1986, his father was having good health. These are the things which were taken note of by the First Appellate Court and reasoned order has been passed.

51. Having considered the scope of RSA, this Court cannot look into the factual aspect and only have to consider substantial question of law. The substantial question of law framed by this Court includes question of fact and question of law. There is a divergent finding in respect of both question of fact and question of law. Hence, this Court having reassessed the material available on record comes to the conclusion that First Appellate Court has not committed any error even though there was no evidence before the Court that there was a partition. But factual aspect is very clear that all of them are residing separately and as on the date of purchase of the property at Item Nos.1 and 5, they were not together. It is also taken note of the fact that when plaintiff Nos.2 and 3 have acquired their own property independently, the same has not

been included in the suit and in an ingenious method, on the property of defendant No.1 who is the elder son, which was acquired, the suit was filed. The case of defendant No.1 is clear that the present suit was instituted only after the property was acquired for the airport. It is the specific contention of defendant No.1 that the plaintiffs, particularly PW1 (plaintiff No.2), became motivated by the prospect of compensation arising from the acquisition and, with that intention, filed the present suit. The father (plaintiff No.1) and brother (plaintiff No.3) have not shown any interest as admitted by PW1 in his cross-examination in pursuing the suit. Hence, it is clear that the First Appellate Court rightly comes to the conclusion that parties are entitled for a share in respect of other properties as there was no partition. But in respect of individual property of defendant No.1, there cannot be any partition and rightly reversed the judgment of the Trial Court. Hence, I answer the substantial questions of law accordingly.

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

ORDER

Both the second appeals are dismissed.

RSA No. 1005 of 2010
C/W RSA No. 1006 of 2010

The judgment of First Appellate Court in R.A.Nos.186/2009 and 190/2006 dated 22.01.2010 in respect of Item Nos. 1 and 5 is confirmed.

Sd/-
(H.P.SANDESH)
JUDGE

MD/SN