



CNR: KAHC010624212024

NC: 2026:KHC:46034
RSA No. 1536 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1536 OF 2024 (PAR)

BETWEEN:

MALE GOWDA
S/O LATE SANNA MARIGOWDA,
AGED ABOUT 59 YEARS,
R/AT RAMMANAHUDI, JAYAPURA HOBLI,
MYSORE TALUK - 570 008.

...APPELLANT

(BY SRI. B. SHARATH KUMAR, ADVOCATE)

AND:

MOOGE GOWDA
SINCE DEAD BY LRS(A)

1. JAVARE GOWDA
S/O LATE MOOGE GOWDA,
AGED ABOUT 74 YEARS
2. CHIKANNA
S/O LATE MOOGE GOWDA
AGED ABOUT 69 YEARS
3. SWAMY
S/O LATE MOOGE GOWDA
AGED ABOUT 62 YEARS



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4. CHIKKA JAVAREGOWDA
S/O LATE MOOGE GOWDA
AGED ABOUT 64 YEARS
5. AMASE GOWDA
S/O LATE MOONGE GOWDA
AGED ABOUT 74 YEARS

PUTTASWAMY
S/ O LATE MOOGE GOWDA
SINCE DEAD BY LRS

6. SAKAMMA,
W/O LATE PUTTASWAMY,
AGED ABOUT 44 YEARS,
7. LOKESH
S/O LATE PUTTASWAMY,
AGED ABOUT 23 YEARS,
8. MAHESH
S/O LATE PUTTASWAMY,
AGED ABOUT 21 YEARS

ALL ARE R/A RAMMANAHUNDI,
JAYAPURE HOBLI, MYSORE TALUK,
MYSORE - 570 008.

9. KEMPAMMA
W/O LATE MUDDE GOWDA
AGED ABOUT 74 YEARS,
R/AT CHIKKBEECHANAHALLI,
HUNSUR TALUK, HUNSUR - 571 103.



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10. ANNAIAH
S/O LATE MARI GOWDA,
AGED ABOUT 74 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.
11. PUTTASWAMY GOWDA
S/O LATE. MARIGOWDA,
AGED ABOUT 59 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.
12. NAGARAJU
S/O LATE MARI GOWDA
AGED ABOUT 49 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.
13. SAKAMMA
W/O JAVARE GOWDA
AGED ABOUT 74 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.
14. CHIKKANAMMA
W/O LATE CHALUVE GOWDA,
AGED ABOUT 84 YEARS,
R/AT HALYA, HULLAHALLI HOBLI,
NANJANGUD TALUK, MYSORE - 571 314.



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15. LAKSHMI
W/O LATE MARIGOWDA,
AGED ABOUT 54 YEARS,
R/AT KALISIDDANAHUNDI,
VARUNA HOBLI, MYSORE TALUK,
MYSORE - 570 010.
16. ANNAIAH
S/O LATE CHAKLEGOWDA.
AGED ABOUT 49 YEARS
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK
MYSORE - 570 008.
17. DODDE GOWDA
S/O CHAKALEGOWDA
AGED ABOUT 64 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.
18. MARIGOWDA
S/O CHAKALEGOWDA,
AGED ABOUT 64 YEARS,
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.
19. MAHADEVU
S/O CHAKALEGOWDA,
AGED ABOUT 54 YEARS,
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.



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20. MALEGOWDA
S/O CHAKALEGOWDA,
AGED ABOUT 44 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURE HOBLI, MYSORE TALUK,
MYSORE - 570 008.
21. CHIKANAMMA
D/O LATE CHAKALEGOWDA SHIVANNA,
S/O LATE CHIKKASIDDEGOWDA,
AGED ABOUT 62 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.
22. KARAGAMMA
W/O LATE CHAKALEGOWDA,
AGED ABOUT 74 YEARS,
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.
23. CHIKAMMA
D/O LATE MOOGEGOWDA,
AGED ABOUT 69 YEARS,
R/AT RAMMANA HUNDI, JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.
24. SAKAMMA
D/O LATE. MOOGEGOWDA,
AGED ABOUT 59 YEARS,
R/AT RAMMANAHUNDI
JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.



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25. LAKSHMI
D/O LATE. MOOGEGOWDA,
W/O GOVINDEGOWDA
AGED ABOUT 49 YEARS,
R/ AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.
26. JOGEGOWDA
S/O LATE CHIKKASIDEGOWDA,
AGED ABOUT 64 YEARS,
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK, MYSORE - 570 008.
27. SHIVANNA
S/O LATE CHIKKASIDEGOWDA,
AGED ABOUT 62 YEARS.
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK,
MYSORE - 570 008.
28. PUTTEGOWDA
S/O LATE DODDEGOWDA,
AGED ABOUT 69 YEARS,
R/ AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.
29. BYREGOWDA
S/O LATE. DODDEGOWDA,
AGED ABOUT 64 YEARS,
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK,
MYSORE - 570 008.



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30. SIDDEGOWDA
S/O LATE DODDEGOWDA,
AGED ABOUT 59 YEARS,
R/AT RAMMANAHUNDI,
JAYAPURA HOBLI, MYSORE TALUK,
MYSORE - 570 008.

31. SWAMY
S/O LATE DODDEGOWDA,
AGED ABOUT 54 YEARS
R/AT RAMMANAHUNDI, JAYAPURA HOBLI,
MYSORE TALUK,
MYSORE - 570 008.

...RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 19.07.2024 PASSED IN
RA NO.152/2020 ON THE FILE OF THE III ADDITIONAL
DISTRICT AND SESSIONS JUDGE, MYSURU, DISMISSING THE
APPEAL AND CONFIRMING THE JUDGMENT AND DECREE
DATED 13.11.2019 PASSED IN OS NO. 233/2009 ON THE FILE
OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND CJM,
MYSURU.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.B.Sharath Kumar., learned counsel for the appellant. This Court did not deem it fit to issue notice to the respondent.

2. Unsuccessful plaintiff is the appellant challenging the dismissal of the suit in O.S.No.233/2009 which was confirmed by the First Appellate Court in RA No.152/2020.

3. Facts in the nut shell which are utmost necessary for disposal of the appeal are as under:

3.1. A suit for partition and separate possession in respect of the following property (hereinafter referred to as suit property) came to be filed in O.S.No.233/2009:

"All that piece and parcel of the agricultural land bearing No.179/2 measuring 3 acres 23 guntas situated at Keregalli Jayapura Hobli, Mysore Taluk Mysore bounded on:

East by: Road

West by: Land belongs to Malegowda

South by: Land belongs to Raju

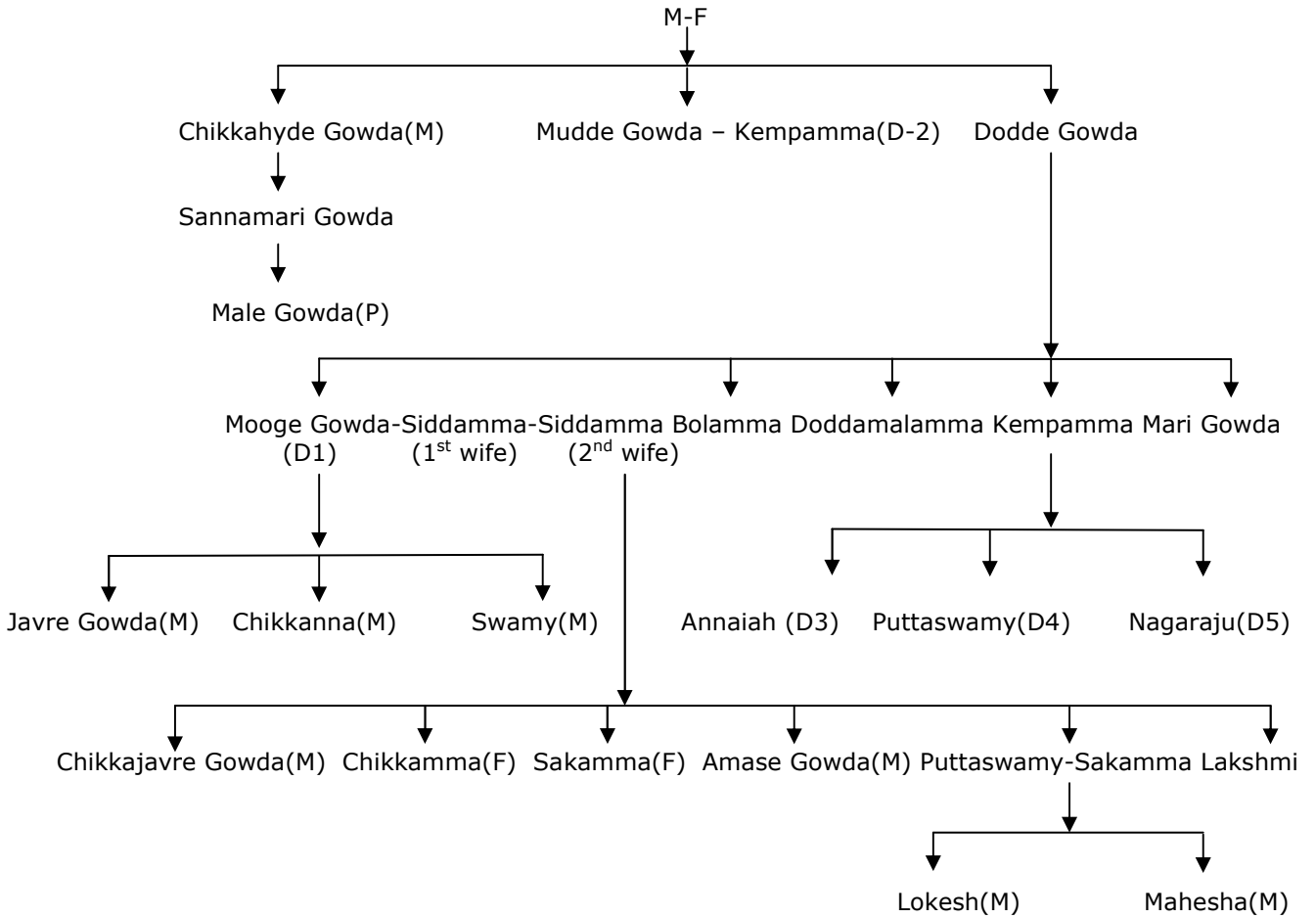


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North by: Land belonging to Mallegowda."

3.2. Relationship of the plaintiff in respect of the suit property in the joint family is depicted in genealogy as under:



3.3. Plaintiff contended that he is the son of Sannamarigowda and grandson of Chikkahydegowda. Chikkahydegowda had a brother by name Doddegowda. Defendant No.1 is the son and defendant No.2 is the sister-in-



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law and defendant Nos.3 and 5 are the grandchildren of Doddegowda.

3.4. Suit property belonged to the joint family and plaintiff has succeeded to the interest of Chikkahydegowda who was his grandfather and there is no division in the suit property and thus plaintiff and defendants formed members of joint family and sought for grant of share in the suit property.

4. Pursuant to the suit summons, defendant No.1 to 8 appeared through Advocate and defendant Nos.9 to 24 remained absent and they were placed *ex parte*.

5. Defendant No.1 filed written statement denying the plaint averment as well as the relationship of plaintiff with the family of common prepositus namely Moogimalegowda.

6. Written statement filed by defendant No.1 was adopted by defendant Nos.2 to 5. Defendant No.4 also filed a separate written statement which was similar with the written statement of defendant No.1.

7. Based on the rival contentions of the parties, learned Trial Judge after raising necessary issues, recorded the



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evidence of the parties and dismissed the suit especially in view of the finding recorded on issue No.1 which is the relationship of plaintiff with the joint family property.

8. Being aggrieved by the same plaintiff filed an appeal before the first appellate court in RA No.152/2020.

9. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and noted the admission of P.W.1 in his cross-examination to the effect that “ಮೂಗಿಮಾಲಯ್ಯನ ಅಣ್ಣಯ್ಯ ಃಉಃ ಮೂಗಿಮಾಲೇಗೌಡ ನನ್ನ ತಾತನ ತಂದೆ ಎಂದು ತೋರಿಸುವ ದಾಖಲೆ ಇಲ್ಲ. ಚಿಕ್ಕಹೈದೇಗೌಡ ಮತ್ತು ದೊಡ್ಡೇಗೌಡ, ಅವರ ಮಕ್ಕಳು ಎಂದು ತೋರಿಸುವ ದಾಖಲೆ ಹಾಜರುಪಡಿಸಿಲ್ಲ.”

10. Being further aggrieved by the same, present second appeal is filed by the plaintiff on the following grounds and substantial questions of law:

GROUND

- *The Courts below grossly erred in dismissing the appeal and confirming the order of trial court failed to satisfy the legal requirements and the impugned judgment is opposed to the principles of law and natural justice.*



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- *The Courts below has miserably failed to see the glaring discrepancies between the pleading and the proof of the respondents herein and has passed the impugned order, which is liable to be set aside.*
- *The Courts below has failed to appreciate the probative value documents produced by the appellant.*
- *The Courts below has failed to look into the aspect that 'during the course of Cross Examination of P.W.1, Doddahydegowda, Chikkahydegowda, Chikkathayamma and Doddamallamma are not made as Doddegowda, parties to the suit', it is clear admission of the defendants. When admission is given, it is conclusive proof, under the circumstances P.W.1 establishes the relationship and there is no need to call for further proof.*
- *The Courts below has failed to look into the aspect that 'during the curse of cross examination of P.W.1, the specific question of the defendant that Chikkahydegowda and Doddegowda were not in joint family' it is denied by P.W.1 but cursory look into the admission that the plaintiff prove the relationship, without appreciating the same the courts below come to erroneous conclusion.*
- *On several occasion, during the course of the cross examination of P.W.1 made suggestion relating to relationship, the courts below failed to appreciate the same.*
- *The properties of the suit originally held by the ancestor, the documentary evidence established the same but the courts below without looking into the documents passed the impugned judgment.*
- *There is no conflict in origin of the properties, the defendant admit the origin, the courts below without looking into the documents come to erroneous conclusion, the courts below traversed beyond scope and given reasoning on assumption and presumptions. The courts below has failed to*



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give reason on the evidence given by the plaintiff in the suit, but the court below blindly relied upon the alleged contentions.

- *The courts below has failed to appreciate the exhibits, the defendants failed to rebut the same but the courts below lost the sight over the facts. Further, the documents clearly established the contention of the plaintiff without any doubt.*
- *The courts below has failed to give reason on the evidence given by the plaintiff in the suit and the court below has failed to give proper reasons in the suit.*
- *Viewed from any angle the impugned judgment and decree cannot be assigned to be one sound in law, as there is a total failure to take into consideration the entire material facts hence the appellant to seek interference of this court.*

SUBSTANTIAL QUESTIONS OF LAW

1) Whether on the facts and circumstances of the case the first Appellate Court below was right in rejecting the application filed by the Appellant under order 41 Rule 27 R/w Section 151 of Code of Civil Procedure for production of Additional evidence?

2) Whether on the facts and circumstances of the case the Appellate Court was right in dismissing the appeal when the case of the plaintiff was it is joint family property and suit O.S.No.113/2018 would clearly show the same?

3) Whether on the facts and circumstances of the case the Courts below totally disbelieved the Family Tree furnished by the plaintiff and in the similarly filed suit showed the same geneological/Family tree about the relationship between the parties is admitted?

4) Whether on the facts and circumstances of the Case the appellate Court erred in not following the procedure as per Order 41 Rule 31 of the Code of Civil Procedure.



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5) Whether on the facts and circumstances of the case the first appellate court was right in dismissing the case on the documents which are not proved by the defendant's documents when the plaintiff has proved his case ?

6) Whether on the facts and circumstances of the case the first appellate court failed to note that the plaintiff/respondent who has approached the court should prove this case, when the document relied upon is disputed ?

7) Whether on the facts and Circumstances of the case, the first appellate court rightly came to an erroneous conclusion without following the Section 114 (e) of the Indian Evidence Act.

8) Whether on the facts of circumstance of the case the Courts below was right in not at all considering the documents marked by the Defendant /appellant while the plaintiff not producing any documents contrary to prove their case. ?"

11. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum vehemently contended that both the Courts have not considered the material evidence in proper perspective especially when there is a detailed cross-examination as to the relationship among the family members to P.W.1 on behalf of the defendants and P.W.1 withstood such cross-examination and has answered almost all questions put to him by defendant No.1 which would establish that plaintiff is the member of the joint family is



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entitled for the share in the suit property. Thus, he sought for admitting the appeal on the aforesaid substantial questions of law.

12. In the light of the arguments put forth on behalf of the appellant, this Court perused the material on meticulously.

13. On such perusal of the material on record, as referred to supra, there is a clear admission in the cross-examination of P.W.1.

14. How to establish a relationship when the same is in dispute is no longer *res integra*. It has to be proved in accordance with Section 50 of the Indian Evidence Act.

15. In this regard, this Court gainfully places reliance on the judgment of the Hon'ble Apex Court in the case of ***Dolgobinda Paricha v. Nimai Charan Mishra*** reported in ***AIR 1959 SC 914*** in paragraph No.7 it has been held as under:

"7. It is necessary to state here that how the conduct or external behaviour which expresses the opinion of a person coming within the meaning of Section 50 is to be proved is not stated in the section. The section merely



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says that such opinion is a relevant fact on the subject of relationship of one person to another in a case where the court has to form an opinion as to that relationship. Part II of the Evidence Act is headed "On Proof". Chapter III thereof contains a fascicule of sections relating to facts which need not be proved. Then there is Chapter IV dealing with oral evidence and in it occurs Section 60 which says inter alia:

"60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds."

If we remember that the offered item of evidence under Section 50 is conduct in the sense explained above, then there is no difficulty in holding that such conduct or outward behaviour must be proved in the manner laid down in Section 60; if the conduct relates to something which can be seen, it must be proved by the person who



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saw it; if it is something which can be heard, then it must be proved by the person who heard it; and so on. The conduct must be of the person who fulfils the essential conditions of Section 50, and it must be proved in the manner laid down in the provisions relating to proof. It appears to us that that portion of Section 60 which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of Section 50 in the sense that opinion expressed by conduct must be proved only by the person whose conduct expresses the opinion. Conduct, as an external perceptible fact, may be proved either by the testimony of the person himself whose opinion is evidence under Section 50 or by some other person acquainted with the fact which express such opinion, and as the testimony must relate to external facts which constitute conduct and is given by persons personally acquainted with such facts, the testimony is in each case direct within the meaning of Section 60. This, in our opinion, is the true interrelation between Section 50 and Section 60 of the Evidence Act. In Queen Empress v. Subbarayan⁴ Hutchins, J. said:

"That proof of the opinion, as expressed by conduct, may be given, seems to imply that the person himself is not to be called to state his own opinion, but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to us to afford an exceptional way of proving a relationship, but by no means to prevent



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any person from stating a fact of which he or she has special means of knowledge."

While we agree that Section 50 affords an exceptional way of proving a relationship and by no means prevents any person from stating a fact of which he or she has special means of knowledge, we do not agree with Hutchins, J. when he says that the section seems to imply that the person whose opinion is a relevant fact cannot be called to state his own opinion as expressed by his conduct and that his conduct may be proved by others only when he is dead or cannot be called. We do not think that Section 50 puts any such limitation."

16. On careful perusal of the above principles of law and applying the same to the facts of the case, except the oral testimony of plaintiff, there is no other material on record to establish the relationship of plaintiff with the members of the family as is depicted in the genealogy marked at Ex.P.3.

17. If no documents are available, which would have probative value, plaintiff should have examined any elders in the family, neighbours in the family, school teacher or the religious guru or some such person who knew about the family and relationship thereof.



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18. No such attempt is made by the plaintiff and as such, Trial Court recording a categorical finding that plaintiff failed to prove that he is the member of the joint family and also First Appellate Court affirming the said finding, this Court is of the considered opinion that substantial questions of law raised in the appeal memorandum lack merit.

19. Accordingly, following:

ORDER

- i. Admission declined.
- ii. Appeal is ***dismissed***.

**SD/-
(V SRISHANANDA)
JUDGE**

KAV
List No.: 1 Sl No.: 71