IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

R.S.A.No.422/2010
C/W.
R.S.A.No.421/2010

IN RSA NO.422/2010

BETWEEN:

D.O.HANUMANTHARAYAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 64 YEARS,
RESIDING AT SY.No.6,
VEERABHADRANAPALYA
KASABA HOBLI,
DODDABALLAPUR TALUK,
BANGALORE DISTRICT.

…APPELLANT

(BY MS. S.K.NAGARATNA AND MS. VIJAYA N.A, ADVOCATES)

AND:

1. D.C.SRINIVASA MURTHY
   SINCE DEAD BY LRS.

1a. SAROJAMMA
   W/O D.C.SRINIVASA MURTHY
   AGED ABOUT 60 YEARS.

1b. D.S.PADMA
D/O D.C.SRINIVASA MURTHY
AGED ABOUT 42 YEARS.

1c. D.S.PRABHA
D/O D.C.SRINIVASA MURTHY
AGED ABOUT 40 YEARS.

ALL RESIDING AT #1216,
KUTCHAPPANAPETE,
DODDABALLAPUR TOWN,
BANGALORE RURAL
DISTRICT-561 203.

2. D.O.CHOWDAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 87 YEARS.

3. D.O.MUNIYAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 82 YEARS,
SINCE DECEASED BY LR.

3a. D.M.MUNIRAJU
S/O LATE MUNIYAPPA
AGED ABOUT 35 YEARS

4. D.O.NARASIMHA MURTHY
S/O LATE PATEL OBALAPPA
AGED ABOUT 77 YEARS.

5. D.O.RAMAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 72 YEARS.

6. D.O.CHIKKA APPAIAH
S/O LATE PATEL OBALAPPA
AGED ABOUT 66 YEARS.

7. D.O.NAGARAJU
S/O LATE PATEL OBALAPPA
AGED ABOUT 60 YEARS.
SINCE DEAD BY HIS LRS.

7a. SHANTHAMMA
W/O LATE D.O.NAGARAJA
AGED ABOUT 35 YEARS.

7b. N.MANJUNATHA
S/O LATE D.O.NAGARAJA
AGED ABOUT 27 YEARS.

7c. SHOBHA
D/O LATE D.O.NAGARAJA
AGED ABOUT 24 YEARS.

7d. N.SOUMYA
D/O LATE D.O.NAGARAJA
AGED ABOUT 19 YEARS.

ALL RESIDING AT KUMBARA BEEDI,
KUCHCHAPPANAPETE,
DODDABALLAPUR TOWN-561 203.
RESPONDENTS 2 TO 7 RESIDING AT
GOWDARA MANE, KUMBARA BEEDI,
KUCHCHAPPANAPETE,
DODDABALLAPUR TOWN-561203.

8. LAKSHMAMMA @ CHOWDAMMA
D/O LATE PATEL OBALAPPA
W/O B.S.LAKSHMAIAH
AGED ABOUT 70 YEARS.
RESIDING AT SHILAVARA VILLAGE
ANTHRAHALLI POST.
TUBGERE HOBLI,
DODDABALLAPUR TALUK.

9. K.H.RANGARAJU

S/O K.M.HANUMANTHARAYAPPA
AGED ABOUT 43 YEARS
RESIDING AT No.2058
DEVARAJANAGAR, 2ND WARD,
DODDABALLAPUR TOWN,
BANGALORE RURAL DISTRICT.

…RESPONDENTS

(BY MR. S.RUDRARADHYA, ADV. FOR R1(a-c)
MR. V.F.KUMBAR, ADV. FOR C/R-9,
R2,R3(a),R4,R5,R6 AND R7(a,b,c,d) ARE SERVED,
R8 - SERVED.)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED:31.10.2009 PASSED IN R.A.No.16/2007 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, DODDABALLAPUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED:25.1.2007 PASSED IN O.S.No.232/1994 ON THE FILE OF THE ADDL. CIVIL JUDGE (JR.DN.) AND JMFC., DODDABALLAPURA.

IN RSA NO.421/2010

BETWEEN:

D.O.HANUMANTHARAYAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 64 YEARS,
RESIDING AT SY.NO.6,
VEERABHADRANAPALYA
KASABA HOBLI,
DODDABALLAPUR TALUK,
BANGALORE DISTRICT- 561 203.

…APPELLANT

(BY MRS. S.K.NAGARATHNA AND
MS. VIJAYA N.A, ADVOCATES)

AND:

1. D.C.SRINIVASA MURTHY
SINCE DEAD BY LR'S

1a. SAROJAMMA
W/O D.C.SRINIVASA MURTHY
AGED ABOUT 60 YEARS,

1b. D.S.PADMA
D/O D.C.SRINIVASA MURTHY
AGED ABOUT 42 YEARS,

1c. D.S.PRABHA
D/O D.C.SRINIVASA MURTHY
AGED ABOUT 40 YEARS,

ALL RESIDING AT #1216,
KUTCHAPPANAPETE,
DODDABALLAPUR TOWN,
BANGALORE RURAL
DISTRICT-561 203.

2. H. CHOWDAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 87 YEARS,

3. NARASIMHA MURTHY
S/O LATE PATEL OBALAPPA
AGED ABOUT 77 YEARS,

4. D.O.RAMAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 72 YEARS

5. D.O.MUNIYAPPA
S/O LATE PATEL OBALAPPA
AGED ABOUT 82 YEARS,

SINCE DEAD BY LR.

5a. D.M.MUNIRAJU @ MUNIRAJAPPA
S/O LATE MUNIYAPPA
AGED ABOUT 35 YEARS

6. CHIKKA APPAIAH
S/O LATE PATEL OBALAPPA
AGED ABOUT 66 YEARS

RESPONDENTS 2 TO 6 RESIDING AT
GOWDARA MANE, KUMBARA BEEDI,
KUCHCHAPPANAPETE,
DODDABALLAPUR TOWN-561 203.

7 K.H.RANGARAJU
S/O K.M.HANUMANTHARAYAPPA
AGED ABOUT 43 YEARS,
RESIDING AT NO.2058
DEVARAJANAGAR, 2ND WARD,
DODDABALLAPUR TOWN,
BANGALORE RURAL DISTRICT- 561 203.

…RESPONDENTS

(BY MR. S.RUDRARADHYA, ADV. FOR R1(a-c)
MR. V.F.KUMBAR, ADV. FOR C/R-7
R2,R3,R4,R5(a) AND R6 ARE SERVED).

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED:31.10.2009 PASSED IN R.A.47/2007 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, DODDABALLAPUR, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED:18.08.2007 PASSED IN O.S.No.279/1993 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JR.DN.) AND JMFC., DODDABALLAPUR.

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, THE COURT **THROUGH VIDEO CONFERENCE AT BENGALURU** DELIVERED THE FOLLOWING:

JUDGMENT

RSA No.422/2010 is filed by the plaintiff-D.O.Hanumantharayappa against the judgment and decree dated 31-10-2009 passed in R.A.No.16/2007 by the Presiding Officer, Fast track Court, Doddaballapura, wherein, the appeal came to be dismissed, confirming the judgment and decree dated 25-01-2007 passed in O.S.No.232/1994 by the learned Additional Civil Judge (Jr.Dn) and JMFC, Doddaballapur.

2. RSA No.421/2010 is filed by the 6th defendant-D.O.Hanumantharayappa against the judgment and decree dated 31-10-2009 passed in R.A.No.47/2007 by the Presiding Officer, Fast track Court, Doddaballapura, wherein, the appeal came to

be dismissed, confirming the judgment and decree dated 18-08-2007 passed in O.S.No.279/1993 by the learned Principal Civil Judge (Jr.Dn), Doddaballapur.

3. The present appeals are filed by one D.O.Hanumantharayappa against the concurrent finding of both the trial court and the appellate court.

4. Insofar as pattern of parties in OS No.232/1994 connected to RSA No.422/2010 and RA No.16/2007 are concerned, the plaintiffs and defendants are as under:

"Plaintiff: Sri D.O.Hanumanthappa

Defendants: 1. Sri D.C.Srinivasa Murthy
2. Sri D.O.Chowdappa
3. Sri D.O.Muniyappa
Since dead by his LRs:
3a. Sri D.M.Muniraju
4. Sri D.O.Narasimha Murthy
5. Sri D.O.Ramappa
6. Sri D.O.Chikka Appaiah
7. Sri Sri D.O.Nagaraju
8. Smt. Lakshmamma

5. The relief sought by the plaintiff is for declaration that the sale deed executed on 18-04-1972 by Chowdappa, Narasimhamurthy and Ramappa brothers of plaintiff in favour of 1st defendant in respect of the suit schedule land as null and void/void abinitio for costs and other suitable reliefs.

6. The schedule property is as under:

All the piece and parcel of land bearing Sy.No.60/1, measuring 1 acre 19 guntas situated at Veerabhadranapalya, Kasaba Hobli, Doddaballapur taluk, Bangalore District, bounded on:-

East by : Gulabi papanna's land,
West by: Palanakere Muniyappa's land,
North by: H.Chowdappa and brother's land,
South by: Gulabi Papanna's land.

7. The claim of the plaintiff-D.O.Hanumanthappa in O.S.No.232/1994 in brief is that, the suit schedule land bearing Sy.No.60/1 measuring 1 acre 19 guntas was purchased by one Patel Obalappa, father of the plaintiff, defendant No.2, deceased defendant No.3, defendant Nos. 4 to 8 on

30-03-1947. Patel Obalappa died intestate in the year 1969-70. Immediately after his death suit schedule land was given to the plaintiff till effecting partition by the brothers of plaintiff in a family arrangement. Since then plaintiff was cultivating the schedule land and growing crops.

8. It is the further case of the plaintiff that in the month of August 1994 defendant No.1-D.C.Srinivasa Murthy, tress passed and interfered with the peaceful possession and enjoyment of the schedule property. When the plaintiff questioned defendant No.1 he told defendant Nos. 2, 4 and 5 brothers of the plaintiff have sold the schedule property to defendant No.1. The plaintiff enquired defendant Nos. 2,4 and 5 and came to know that they sold the suit schedule land to defendant No.1 it is stated that plaintiff, deceased defendant No.3 and defendant Nos. 6 to 8 being the legal heirs of Patel

Obalappa have not relinquished their right, title or interest or their possession in favour of said brothers who have alienated the property.

9. After issuance of summons, defendant No.1, defendant No.3(a) have appeared and filed their written statement. Though defendants 2,4 and 5 appeared, they have not filed their written statement.

10. It is the contention of defendant No.1 the schedule land was purchased on 30-03-1947 by Patel Obalappa, father of plaintiff, defendant Nos.2, deceased defendant No.3, defendants 4 to 8. It is stated that after the death of Patle Obalappa, Chowdappa who was the elder son of Patel Obalappa was managing the affairs and the joint family along with Hanumakka wife of Patel Obalappa. But, Chowdappa who was the kartha of the joint family sold the schedule property in favour of defendant No.1

to discharge heavy loan borrowed by Patel Obalappa. It is contended that after the execution of the sale deed, the possession of the schedule property was handed over to defendant No.1 and since then he is in possession of the same and growing seasonal crops and all the revenue documents were mutated in his favour. It is also contended that the suit is barred by limitation and bad for non joinder of necessary parties.

11. Defendant No.3(a) admitted the averments of the plaint and submits that he has no objections to decree the suit.

12. On the basis of the pleadings and contentions of both the parties, learned trial judge framed the following issues covering the property of Patel Obalappa and lawful possession of joint possession and share of the plaintiff as under:

1. Whether the plaintiff proves that the suit property was held by his father Patel Obalappa?

2. Whether the plaintiff proves that his brothers allowed him to enjoy the suit property as absolute owner thereof?

3. Whether the alienation made by the plaintiff's brother is illegal?

4. Whether the plaintiff proves that the sale deed dated 18-4-1972 is void abinitio?

5. Whether the suit relief is barred by limitation?

6. Whether the defendant proves his lawful possession over the suit property?

7. Whether the defendant proves that sale of suit property into his name by vendors is for their family necessity?

8. Whether the suit is bad for non joinder of necessary parties?

9. Whether the plaintiff is entitled for suit relief?

10. What order or decree?

13. Learned trial judge was accommodated with the following oral and documentary evidence on behalf of both the parties.

Plaintiff:

PW1 D.O.Hanumanthappa
PW2 Hanumantharayappa
PW3 D.C.Vishwanath
PW4 Balegere Chikkanna.

Ex.P1 Genealogy
Ex.P2 Original sale-deed
Ex.P3 Certified copy of sale-deed.
Ex.P4 valuation Slip.
Ex.P5 Tenancy certificate
Ex.P6 Encumbrance certificate

Defendants:

DW1 D.C.Srinivasamurthy
DW2 Munirajappa
DW3 Lakshminarayana
DW4 Muniraju
DW5 Chikka Appaiah
DW6 Nagaraju
DW7 Lakshmamma

Ex.D1 Certified copy of Judgement and Decree passed in OS No.279-1993.
Ex.D2 Certified copy of Sale-deed.
Ex.D3 to D.13 Pahanies.
Ex.D14 Index of land.
Ex.D15 Records of Rights.
Ex.D16 Mutation Register
Ex.D17 & 18 Encumbrance certificates
Ex.D.19 to D.25 Revenue receipts

14. Insofar as pattern of parties in OS No.279/1993 connected to RSA No.421/2010 and RA

No.47/2007 are concerned, the plaintiff and defendants are as under:

Plaintiff: Sri D.C.Srinivasa Murthy

Defendants:1. H.Chowdappa
2. Narasimhamurthy
3. Ramappa
4. Muniyappa
(Since deceased by his L.R.s)
4a. Munirajappa
5. Chikkappaiah
6. D.O.Hanumanthappa

15. The relief sought by the plaintiff-D.C. Srinivasa Murthy in O.S.No.279/1993 is for permanent injunction restraining the defendants, their agents or anybody claiming under them from interfering the possession and enjoyment of the plaintiff over the suit schedule property which is as under:

"Land bearing Sy No.60/1, measuring 1.19 acres situated at Veerabhadranapalya, Kasaba Hobli, Doddaballapura Taluk, bounded on:

East : Gulabi papanna's land,
West : Palanakere Muniyappa's land,

North : H.Chowdappa and brother's land,
South : Gulabi Papanna's land".

16. The brief facts of the case in OS No.279/1993 are, plaintiff is the absolute owner and in exclusive possession and enjoyment of the suit schedule property as he has purchased the same from the defendants under the absolute sale deed dated 18-04-1972 and cultivating the same by raising seasonal crops. It is further contended that plaintiff has fenced the property. Since the defendants have sold the said property in his favour, defendants have no manner of right, title or possession over the same. It is further contended that all the revenue records have been effected in his name after the purchase. Inspite of it, they try to interfere with the possession of the plaintiff over the same.

17. After service of summons, defendants 1 to 3 entered appearance and 6th defendant was impleaded subsequently and filed written statement.

18. 6th defendant has denied all the averments made in the plaint with regard to possession, ownership and also sale of the suit property in favour of plaintiff. In addition, defendant has taken a contention that suit property was purchased by father of 6th defendant Obalappa on 30-03-1946 under registered sale deed from one Thimmaiah and as such suit schedule property becomes self acquired proerty of Obalappa. After the purchase Obalappa was in possession and enjoyment of the property. It is further contended that said Obalappa died intestate in the year 1969-70 leaving behind his wife Hanumakka and daughter Laxmamma as his heirs. After the death of Obalappa, 6th defendant looked after the affairs of the family. It is further contended that in

the month of 1994 plaintiff tried to sell the suit schedule property in favour of others and at that time, 6th defendant came to know about the sale deed executed by Defendants 1 to 3 in favour of plaintiff in respect of suit property on 18.4.1972. Defendants 1 to 3 have sold the suit property to the plaintiff without consent and knowledge of other children of Obalappa including the 6th defendant. Therefore, 6th defendant filed OS 232/1994 against the plaintiff for cancellation of sale deed. But the said suit was dismissed on the ground of limitation and the same is challenged in RA No.16/2007. It is further contended that though defendants 1 to 3 have sold the suit property in favour of plaintiff, the possession has not been handed over to him and he is in possession and enjoyment of the same. It is also contended that defendants 1 to 3 have no exclusive right to sell the same, because

either defendants have also equal share in the said property.

19. On the basis of the pleadings and contentions of both the parties, the trial judge framed the following issues:

> *(i) Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of the suit?*
>
> *(ii) Whether the plaintiff proves the alleged interference by the defendant?*
>
> *(iii) What order and decree?*

20. The learned trial judge was accommodated with the following oral and documentary evidence on behalf of plaintiff and defendants:

Plaintiff:

PW1 *Srinivasamurthy*

Ex.P1 *C.C.of Sale deed*
Ex.P2 & P3 *Encumbrance Certificate*
Ex.P4 *Mutation*
Ex.P5 to 13 *RTC Extracts*

Ex.P14 to 18	*Kandayam Receipts*
Ex.P19 & 20	*Index of Lands*

<u>Defendants</u>:-

DW1	*Hanumanthappa*

Ex.D1	*Death Certificate*
Ex.D2	*CC of Judgment & Decree in OS.232/94*
Ex.D3	*Valuation Certificate*

21. The learned trial judge upon conclusion of the trial, dismissed the suit of the plaintiff D.O. Hanumanthappa in O.S.No.232/1994 on 25-01-2007 and decreed the suit of the plaintiff-D.C. Srinivasa Murthy in O.S.No.279/1993 on 18-08-2007 and restrained the defendants, their men, agents or anybody claiming under them permanently from interfering with the plaintiff's possession and enjoyment of the suit property.

22. Being aggrieved by the said judgment and decree passed by the trial court in O.S.No.232/1994

and O.S.No.279/1993, plaintiff-D.O.Hanumanthappa, in O.S.No.232/1994 who is the 6th defendant in O.S.No.279/1993 has preferred regular appeals in R.A.No.16/2007 (O.S.No.232/1994) and R.A.No.47/2007 (OS..No.279/1993) before the appellate court.

23. The appellate court dismissed both the regular appeals, confirming the judgment and decree passed by the trial judge in respective suits. Against the said judgments and decree, D.O.Hanumanthappa who is the plaintiff in OS No.232/1994 and 6th defendant in OS No.279/1993 respectively, has preferred these regular second appeals before this court.

24. This court while admitting the appeals on 4-11-2010 framed the following substantial question of law in both the appeals.

(i) Whether both the courts below were justified in holding that Article 58 of the Limitation Act, 1963 would apply in the facts of the case, when it was the categorical plea of the appellant that the suit was filed immediately upon notice of the sale transaction, to which the appellant was not a party and which was sought to be stayed in the suit?

25. Learned counsel Smt.S.K.Nagarathna appearing for appellant-D.O.Hanumanthappa in both the appeals would submit that in all most all the angles, the learned trial judge accepts that sale deed could not have been effected by only three legal heirs of Patel Obalappa i.e. defendant Nos. 2,4 and 5. The learned trial judge in the course of assigning reasons holds the suit is barred by limitation, even though there is no discussion on issues individually and applying legal aspects the reasons does not apply straight way to the facts involved.

26. Mr.S Rudraradhya for R1(a-c) and Sri V.F.Kumbar for R-9. K.H.Rangaraju in RSA

No.422/2010 submits that they are the Bonafide purchaser and subsequent purchaser and have purchased the proportion being legitimate share of the respective parties. It is further contended that R-9. K.H.Rangaraju is in possession of the same.

27. The question of limitation should have been calculated from two angles. Here the plaintiff-D.O.Hanumanthappa asserts that being the son of Obalappa he has inherited the right, title and interest with possession over the schedule property. As a matter of fact, it is a suit simplicitor seeking partition of the property treating the schedule property as the self acquired property of Obalappa and the admitted fact is, Obalappa during his life time on 30-03-1947 purchased the property as per Ex.P1 and hold that the suit was barred by limitation considering the date of

sale of the schedule property by defendant Nos. 2,4 and 5 on 18-04-1972.

28. The learned trial judge in O.S.No.232/1994 applies the law of limitation as under:

> "Date of sale deed is 18-04-1972 (Ex.P2);
>
> Date of suit filed is: 7-10-1994 after 22 years from the date of sale deed;
>
> As per Article 58 of Limitation Act, 1963, the suit to obtain any other declaration is to be instituted within 3 years and as per the said Article, plaintiff ought to have field the suit within 17-04-1975."

29. The question that arises from the entire pleadings and the contentions is that, Whether the property of Patel Obalappa was sold by defendant Nos. 2,4 and 5 for family purpose alone and without any hidden agenda for their benefit?

30. Learned counsel Smt. S.K.Nagarathna for appellant- D.O.Hanumanthappa would submit that in either way when the property is assessed or

evaluated, each and every children of Patel Obalappa has definite right and defendant Nos. 2,4 and 5 who are none other than the siblings of the D.O.Hanumanthappa do not have exclusive right over the property.

31. After hearing both the counsel other than the substantial question of law what was framed, it becomes necessary to frame one more substantial question of law as to, whether under intestate succession or as the member of the family plaintiff has made out a case?

32. The admitted facts that came up before the court are;

The suit schedule property bearing survey No.60/1, measuring 1 acre 19 guntas situated at Veerabhadranapalya, Kasaba Hobli, Doddaballapur Taluk originally belonged to one Patel Obalappa. He

purchased the same on 30-03-1947 and Patel Obalappa had eight children through wedlock. Out of them there are seven sons and one daughter. Now the question is, nodoubt the parties claim the undivided share in the schedule property. The operative legal effect for succession or inheritance is either Section 6 or 8 or 15 under the Hindu Succession Act. Insofar as coparcenery property or parity of treatment to female is concerned, Section 6 comes into force with respective riders and Section 8 operates regarding Rules of succession in case of male dying intestate. Insofar as Section 15 is concerned, it deals about the general rules of succession in case of female hindus.

33. In the present circumstances, there is no dispute as to the property belonging to Patel Obalappa, father of plaintiff and defendants 2 to 8, defendant No.1-D.C. Srinivasa Murthy is the purchaser

and defendant No.9-K.H.Rangaraju is the subsequent purchaser. When the matter is concluded in either of the way as intestate succession or self acquired property or as the joint hindu family property it does not make any difference in the light of existing legal position. Here, it is necessary to mention about the very recent verdict of the Hon'ble Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma** reported in **AIR 2020 SC 3717**.

34. Regard being had to the fact, in the circumstances of the case, defendant Nos. 2, 4 and 5 strongly finds that the property was sold to defendant No.1-Srinivasa Murthy for a valuable consideration of Rs.600/- under the sale deed stated above and the said document is marked as Ex.P3.

35. The sellers are the junior members of the family. Whether it is the joint family property of the

entire family or separate property of Patel Obalappa and junior members have responsibility to take care of the property and when the matter of disposal or sharing comes they are supposed to take into confidence of all the members. In this connection, except pleadings that there was huge debt or loan and property was sold in order to counter the loan, no documents are produced. Thus, in terms of succession, it is at par between the daughters and sons.

36. Learned counsel Sri.S.Rudraradhya appearing for respondent-1A to C would submit that after the death of Patel Obalappa the property was being managed by the mother and elder sons namely defendant Nos.2, 4 and 5 and all the family matters were known to the said defendants and there was no waste of property. This is nothing but glorification of the rights of defendant Nos. 2, 4 and 5. At any stretch

of imagination no family debt is involved nor legal necessity or benefit to the estate is mentioned and established.

37. So far as defendant No.1- Srinivasa Murthy and defendant No.9-Rangaraju in O.S.No.279/1993 are concerned, the relationship is just vendor and vendee as defendant No.1-Srinivas Murthy sold the schedule property and it was purchased by defendant No.9-Rangaraju.

38. Widow, daughter, sons are all Class I legal heirs. The plaintiff-D.O.Hanumanthappa and the defendants stand at neck to neck on the same footing. The question of this property being sold for resolving family debt appears to be a defence taken only for the sake of defence without there being any substance in it.

39. Here, it is a regular case of partition of the property whether it is called joint family or self acquired property of Patel Obalappa it does not make any difference. The sale deed executed by defendant Nos 2,4 and 5 can at the most bind the shares of the said respective defendants. When a member of the joint family sells a property that belongs to total joint family or total legal heirs, the purchaser will not get anything beyond the share of that legal heir. The maxim runs ***NEMO DAT QUOD NON*** habet no one can convey better than what he has. In a partition suit sale made by individual member or kartha without legal necessities or legal debt, it binds his particular undivided share and above that it can not bind the share of non alienating member.

40. The question of considering the limitation or printing it as barred by limitation is nothing but an observation made without proper application of mind.

In the set of circumstances, I have no hesitation in holding that the learned trial judge erred seriously in understanding the legal provision and applying the same to the given situation. His findings to deny the rights of plaintiff D.O.Hnumanthappa is totally beyond the domain of legal concept and the established principles of succession.

41. Here, there is no question of bonafide purchaser for a value. Defendant Nos. 2,4 and 5 have sold their property and as such, their share, as they are entitled for the undivided share of 1/8th share and defendant Nos.2, 4 and 5 are entitled for undivided. In the circumstances, the equitable consideration would be to direct the allotment of the share of defendant Nos. 2,4 and 5 to defendant No.1 who has subsequently sold the same to one Rangaraju.

42. It is clear that when a kartha of the family sells the property belonging to joint family if once it is for the legal necessity and benefit to the estate there is no lack here and he exercised his duty managership as the kartha which is respectively identified and recognized by Hindu law. But when the same kartha or any other members were to dispose of a property for illegal purpose to satisfy their vices and wasting of properties, even if they alienate entire property with stamp paper it does not convey extra right more than the alienator is conveying. In this case, there are no allegations of being vagabond or men with vises against defendant Nos.2, 4 and 5. Accordingly, conveyance of share made by them in favour of defendant No.9 is nothing more than 3/8th share.

43. Insofar as plaintiff-D.O.Hanumanthappa and persons who are other defendants standing at equal footing also get 1/8th share.

44. Insofar as RSA No.421/2010 is concerned, it connects to OS No.279/1993 filed by D.C.Srinivasa Murthy for the relief of permanent injunction and RA No.47/2007 filed by D.O.Hanumanthappa, 6th defendant. The schedule property claimed is full 1.19 acres of land in survey No.60/1. The claim of the plaintiff D.C.Srinivasa Murthy is that, he purchased the schedule property to the extent of 1.19 guntas for a valuable consideration on 18-04-1972 from the sons of Patel Obalappa and he has been in possession and enjoyment of the property. Subsequently, he sold it to one Rangaraju.

45. Learned trial judge considering the claim and sale deed with possession decreed the suit of Srinivasa Murthy granting permanent injunction against the defendants therein. Thereafter 6th defendant–D.O.Hanumantahappa filed a regular

appeal which came to be dismissed against which, he has come in appeal before this court. To sum up, the entire legal position would be that OS No.279/1993 was filed by the purchaser Srinivasa Murthy for permanent injunction against the children of Obalappa that came to be decreed, it appears on the basis of the sale deed which he had obtained on 18.4.1972.

46. In the present circumstances, for the morefully assigned reasons, the sale deed executed by defendant Nos. 2,4 and 5 in OS No.232/1994 does not convey full title interest or possession over the schedule property. It is established that D.O.Hanumanthappa and other defendants who are the sons of Patel Obalappa are entitled for equal share i.e., 1/8th share. Thus the permanent injunction that was granted by the trial court and confirmed by the first appellate court cannot stand for the simple reason that there cannot be any injunction against the

transferor of a undivided interest against the co owners.

47. In the circumstances, appeal filed in RSA No.421/2010 against RA No.47/2007 and OS No.279/1993 does not stand and it is liable to be **disposed of.* The substantial questions of law are answered accordingly.

48. In the result, I proceed to pass the following

ORDER

R.S.A No.421/2010 is **disposed of.*

R.S.A.No.422/2010 filed by D.O.Hanumanthappa against Srinivasa Murthy in R.S.A.No.422/2010 which is connected to O.S.No.232/1994 and R.A.No.16/2007 disposed of. However, the off springs of Patel Obalappa/siblings of D.O.Hanumanthappa are assured of 1/8th share in the suit schedule property. This

*Substituted as per court order dated 25.2.2021.

guarantees 3/8th share to defendant No.9 Rangaraju who is the subsequent purchaser.

Sd/-
JUDGE

tsn*