HC-KAR

NC: 2026:KHC:59759
RSA No. 973 of 2014

CNR: KAHC010276642014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 973 OF 2014 (PAR)

BETWEEN:

SRI RANGANATHA REDDY
AGED ABOUT 42 YEARS,
S/O CHIKKA NARASAPPA,
R/O ARIKUNTE VILLAGE,
RONNUR HOBLI,
SRINIVASPUR TALUK - 562 123.

…APPELLANT

(BY SRI. SHANKAR REDDY C., ADVOCATE)

AND:

1. SMT C V VANI
   AGED ABOUT 35 YEARS,
   W/O T.C.SHANTHE GOWDA,
   R/O THIMMASANDRA VILLAGE,
   LAKKANDAHALLI HALLI POST,
   HOSAKOTE TALUK - 571 232.
   BENGALURU RURAL DISTRICT.

2. SMT. NANDINI @ BHARATHI
   AGED ABOUT 37 YEARS,
   W/O SRI.R.RAVINDRA,
   MANAGER, SANSESHRA ENGINEERING PVT LTD.,
   PLOT NO.18, SECTOR 9, 11 E,
   PANTHNAGAR, UDHAM,
   SINGH NAGAR DISTRICT- 263 153.

3. SMT. SUNANDAMMA
   AGED ABOUT 60 YEARS,
   W/O LATE VENKATAPATHY,

4. SRI.C.V. MANJUNATHA
   AGED ABOUT 35 YEARS,
   S/O LATE VENKATAPATHY,

Digitally signed by VANDANA S
Location: High Court of Karnataka

THE R-3 AND R-4 ARE
RESIDING AT CHOWDAREDDY PALYA,
CHINTAMANI TOWN,
CHIKKABALLAPURA DISTRICT-562 123.

...RESPONDENTS

(BY SRI. PRITHVIRAJ SHASTRY.G, ADVOCATE FOR C/R-1
R-2 & R-3-SERVED
VIDE ORDER DATED: 07.08.2024, NOTICE TO R-4 IS H/S)

THIS RSA IS FILED UNDER SEC.100 R/W ORDER XLI RULE 1 OF THE CPC., AGAINST THE JUDGMENT AND DECREE DATED 04.06.2014 PASSED IN R.A.NO.101/2012 ON THE FILE OF III ADDL. SENIOR CIVIL JUDGE, KOLAR, ALLOWING THE JUDGMENT AND DECREE DATED 13.04.2012 PASSED IN O.S.NO.236/2008 ON THE FILE OF PRL. CIVIL JUDGE & JMRC., SRINIVASPUR.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

The appellant was defendant No.1 in O.S.No.236/2008 filed by respondent Nos.1 and 2-plaintiffs against the appellant-defendant No.1 and respondent Nos.3 and 4 - defendant Nos.2 and 3 for partition and separate possession of their alleged share in the suit schedule properties and for other reliefs. The said suit having been contested by the defendants including the appellant-defendant No.1, the Trial Court proceeded to pass the impugned judgment and decree dated 13.04.2012 dismissing the suit in O.S.No.236/2008 filed by respondent Nos.1 and 2-plaintiffs, who

preferred an appeal in R.A.No.101/2012, which was allowed by the First Appellate Court vide impugned judgment and decree dated 04.06.2014, whereby the First Appellate Court set aside the judgment of the Trial Court and decreed the suit filed by respondent Nos.1 and 2 -plaintiff against the appellant -defendant No.1 and other defendants. Aggrieved by the impugned judgment and decree dated 04.062014 passed by the First Appellate Court, the appellant-defendant No.1 is before this Court by way of the present appeal.

2. The present appeal was admitted on 12.02.2017 to consider the following substantial questions of law:

"(i) Whether the lower appellate Court is justified in reversing the judgment and decree of the Trial Court, when the trial Court recorded a specific finding that the suit filed by the plaintiff for partial partition is not maintainable?

(ii) Whether the lower appellate Court is justified in reversing the judgment and decree of the Trial Court assuming that all other properties held in the name of 2nd defendant/mother of the plaintiffs are self acquired properties in the absence of any material on record?

(iii) Whether the lower appellate Court is justified in reversing the judgment and decree of the Trial Court in the facts and circumstances of the present case?"

3. Heard learned counsel for the appellant and learned counsel for respondent No.1 and perused the perused the material on record.

4. Respondent No.2-plaintiff No.2 as well as respondent No.3-defendant No.2 have been served with notice of the present appeal and have chosen to remain unrepresented. So also, respondent No.4-defendant No.3 has refused to receive Court notice and hence, service of notice to respondent No.4-defendant No.3 has been held to be sufficient. Under these circumstances, with the consent of the learned counsel for the appellant and learned counsel for respondent No.1, the matter is taken up for final disposal.

Re. Substantial Questions of Law No.1 to 3:

5. A perusal of the material on record will indicate that the plaintiffs are the children of late Venkatapathi, whose wife is defendant No.2, Sunandamma and her son is defendant No.3, C.V. Manjunatha. The appellant-defendant No.1 claims to be the purchaser of the suit schedule property from defendants Nos.2 and

3. Pursuant to the pleadings of the parties, the Trial Court framed the following issues and additional issues:

> *"(i) Whether the plaintiffs prove that the properties mentioned in the schedule of the suit are the ancestral properties of plaintiffs and defendant No.2 and 3? And are available for partition?*
>
> *(ii) Whether plaintiffs prove that the registered Gift Deed dated 1.7.2006 executed by 2nd defendant is null and void? And not binds up on the plaintiffs?*
>
> *(iii) Whether the plaintiffs further prove that the 1st defendant had no right to purchase the suit schedule property by defendant No.2?*
>
> *(iv) Whether the plaintiffs are entitled to get 1/4th each share in all the suit properties?*
>
> *(v) Whether the plaintiffs are entitled for the relief as claimed in the prayer column of the suit?*
>
> *(vi) To what order or decree the parties are entitle?*
>
> ***Addl. Issue No.1:***
>
> *Whether the suit of the plaintiff is bad for partial partition?"*

6. Plaintiff No.1 examined herself as PW-1 and two witnesses as PWs-2 and 3 were examined on her behalf and documentary evidence at Exs.P-1 to P-4 were marked. Defendant No.1 was examined as DW-1 and three witnesses as DWs-2 to 4

were examined on his behalf and documentary evidence at Exs.D-1 to D29 were marked.

7. After hearing the parties, the Trial Court came to the conclusion that the suit schedule properties were not joint family properties as alleged by the plaintiffs and that the Gift Deed dated 01.07.2006 executed by defendant No.2 in favour of defendant No.3 was a valid and legal document and consequently, the sale deed dated 23.05.2007 executed by defendant No.3 in favour of the appellant-defendant No.1 was also a valid document and proceeded to reject the claim of the plaintiffs. The Trial Court also came to the conclusion that having regard to the material on record which indicated that there were other alleged joint family properties, which had not been included as properties to the suit, a suit for partial partition without including all alleged joint family properties was not maintainable and the suit was liable to be dismissed and accordingly the, Trial Court proceeded to dismiss the suit of the plaintiffs by holding as under:

> *""The plaintiffs have filed this suit against the defendants No.1 to 3 for Partition and Separate Possession*

for plaintiffs' 1/4 the share in the suit schedule properties by meets and bounds and court cost.

2. In brief case of the plaintiffs are as follows:

The plaintiffs are the daughters of the 2nd defendant, the 3rd defendant is the son of 2nd defendant. The plaintiffs, defendants No.2 and 3 have constitute Hindu undivided joint family. The father of the plaintiffs died on 10-12-1994 leaving behind him the plaintiffs and the defendants No.2 and 3 as his legal heirs who are entitled to succeed the plaint schedule properties. The suit properties and other properties were the joint family properties of husband of 2nd defendant and other his brothers. In a family partition, the suit properties fell to the share of plaintiffs and the defendant No.2 and 3. The said partition was effected under registered partition deed dated 1-9-2005. The 2nd defendant being the eldest member of the family obtained to the said properties under the registered partition deed on behalf of her children. From the said registered partition deed the plaintiffs are in joint possession and enjoyment of the suit properties along with defendants No.2 and 3. The 3rd defendant had filed a suit before the Civil Judge (Sr.Dn.) Chinthamani which was numbered as O.S.No.119/2006 for the relief of partition in respect of the self acquired properties of the 2nd defendant against the plaintiffs and others without including the suit properties. The plaintiffs learnt that the defendants No.2 and 3 without consent and knowledge of the plaintiffs' created one gift deed dated 1-7-2006 in respect of suit properties. The 2nd defendant had gifted the suit properties in favour of

the 3rd defendant by misusing the said invalid void gift deed the 3rd defendant executed a nominal sale deed in favour of the 1st defendant. The gift deed and the sale deed is void ab-initio under law and no rights will be flown under the said invalid documents either in favour of 3rd defendant or in favour of the 1st defendant. The plaintiffs approached and requested them for their share in the suit properties but they have protracted the time. But ultimately refused to they give any share to the plaintiffs. The suit properties are the ancestral and joint family properties of the plaintiffs and defendants No.2 and 3. The 1st defendant has no right to purchase the suit the suit properties from the 3rd defendant. The 3rd defendant who is vagabond and drunkard addicted to all sorts of bad habits. The sale deed of the plaintiffs has no value in the eye of law and not binding on the share of the plaintiffs. Hence, the cause of action was arose for the plaintiffs to file the suit. Accordingly, prayed to decree the suit with costs.

3. ***On service of suit summons to the defendants, defendants No.2 & 3 have not appeared, hence they have placed ex-parte, the defendant No.1 has appeared through his counsel and filed written statement as hereunder:-***

The plaint averments have been denied by the defendants. It is stated that the 1st defendant is the absolute owner in peaceful possession and enjoyment over the suit property. He has acquired the same under registered sale deed dated 18-9-2006. After purchase the suit properties he

made an application before the Tahsildar of Srinivaspur for change of katha and change accordingly. The 1st defendant is paying taxes to the Government up to date. Prior to registered sale deed the suit properties were belonging to the ancestors of 1st defendant. The 1st defendant's father and plaintiffs' father along with other two brothers have divided their ancestral properties and also joint family properties including the suit properties under the registered partition deed dated 1-9-2005 on the same day the A-schedule properties was fallen to the share of the father of defendants, B-schedule properties was fallen to the share of Laxminarayanappa, C schedule properties was fallen to the share of 2nd defendant on behalf of the plaintiffs and 3rd defendant and D-schedule properties was fallen to the share of one Narayanaswamy. After registered partition deed, the 1st defendant's father and other co-owners were enjoying the respective shares. On the basis of the registered partition deed, the suit properties were enjoyed the 3rd defendant with consent of the 2nd defendant. After the registered partition deed the 2nd defendant executed a registered gift deed in favour of 3rd defendant on 1-7-2006 with consent of the plaintiffs. After the registered gift deed executed by the 2nd defendant, she lost right, title and much less possession over the suit properties. As per the gift deed, the katha and pahani were changed in the name of the 3rd defendant. He became the absolute owner and he was in peaceful possession and enjoyment over the same. As such he has executed a registered sale deed in favour of 1st defendant on 18-9-2006. The 3rd defendant had every right to sell the

suit property in favour of the 1st defendant. The plaintiffs nor the 2nd defendant have not questioned the registered gift deed dated 1-7-2006 at any point of time till today. The plaintiffs and defendants No.2 and 3 have colluded with each other and the present suit to the knock off the valuable properties. The plaintiff No.2 was married 10 yeas back i.e., prior to registered partition deed dated 1-9-2005. After her marriage she resided permanently at her husband's house at Punjab. This shows that the plaintiffs is not the joint family members and she is not in joint possession of the suit properties. The 2nd defendant had executed a registered gift deed in favour of plaintiffs No.1 and 2 dated 27-3-2006 in respect of the properties situated at Chinthamani town. The 2nd defendant had executed another registered gift deed in favour of 1st plaintiff dated 27-3- 2006 in respect of the properties situated at Chinthamani. The 2nd defendant had got some other properties bearing katha No.1307/A measuring East-West 30 feet at Chowdareddy Palya, 1st Division, Chinthamani town including four houses, the above said respective property was not included in this suit and also the above said house properties are katha and Demand Register Extract was standing in the name of 2nd defendant till today in this regard clearly shows that the plaintiffs intentionally to left the above properties. The same is acquired by the 2nd defendant under registered sale deed dated 12-12-1989 out of joint family funds. Those properties are also joint family properties of the 2nd defendant's family. The 2nd defendant is got another property bearing MLK No.old 4589 site No.11, New No.5877/5451, Site No.11

measuring East-West towards northern side 42 feet towards southern side 40 feet the property is situated at Ooo. To KSRTC bus depo, Bangalaore Road, Chinthamani town, the same is acquired by the 2nd defendant under registered sale deed dated 30-5-1992 out of the joint family funds. The same is sold the 2nd defendant in favour of one SriG.Krishnegowda S/o.Gopal Gowda of Velagalburri village. At the time of registered sale deed the 3rd defendant is not party registered sale deed. The 2nd defendant is also obtained another properties bearing Municipal Katha No.5876/5450, Site No.10 measuring East-West 40 feet and North-South 45 feet the same is acquired by the 2nd defendant under registered sale deed dated 30- 5-1992 for valuable sale consideration out of the joint family funds, the same is sold by the 2nd defendant in favour of one Nagarathnamma W/o.V.Chowdareddy of Mindigal Magara Nallarallahalli, Chinthamani town and one Rathnamma W/o.V.Narayanaswamy of Mandigal Majara Nallarallahalli, Chinthamani Taluk. The above said property was not included in this suit and 3rd defendant is not included in the above said registered sale deed the sale deed is not binding on 3rd defendant

4. The 2nd defendant has got another more property land bearing sy.No.47/1 measuring 1 acre 19 guntas out of which 35 guntas of Gopasandra village, Kasaba Hobli, Chinthamani taluk, the same is acquired by the 2nd defendant under registered sale deed dated 23-5-2007 out of the joint family funds. Again the 2nd defenatn is sold the

above property in favour of one G.v.Srinivasaiah Setty S/o.Girinatha settee of R.K.Extension, Chinthamani Town in this regard the 3rd defendant is not party to the above registered sale deed, those properties are not included in this suit. The 2nd defendant is got another property Town Municipal katha No.3225/78 and new katha No.238/227 measuring East-West 58 feet and North-South 12 ¾ feet, vacant site and building the same is situated at Chowdareddy Palya, 2nd Ward, Chinthamani town is acquired by the 2nd defendant under registered sale deed dated 23-5-2007 for valuable sale consideration out of the joint family funds. The same is sold by the 1st plaintiff and 2nd defendant in favour of one N.Venkataravanaswamy S/o.Lakshminarayanappa and one K.G.Varalakshmi W/o.N.Venkataravanaswamy of Chowdareddy Palya, 2nd Ward, Chinthamani town under registered sale deed dated 7-11-2007. In this regard the 3rd defendant is not party above registered sale deed. The above said properties were not included in this suit for reference. The 2nd defendant is got another property bearing Sy.No.92 measuring 2 acres 9 guntas out of which 1 acre, situated at Kurutapalli village, Chinthamani taluk, the same is acquired by the 2nd defendant under registered sale deed dated 18-8-2008 for valuable sale consideration of joint family funds. The same is enjoying the plaintiffs and 2nd defendant till today. The above said property was not included in this suit.

5. The plaintiffs have not questioned the registered sale deeds above shows that the plaintiffs and the

defendants No.2 and 3 are not in joint possession of the suit property. O.S.No.119/2006 filed by the 2nd defendant at Chinthamani court was with drawn the suit. The plaintiffs have not approached this court with clean hands. Hence, prayed for dismissal of the suit with costs.

6. On the basis of the above pleadings my predecessor in Office has framed the following issues and this court has framed the Addl. Issue;

(i) Whether the plaintiffs prove that the properties mentioned in the schedule of the suit are the ancestral properties of plaintiffs and defendant No.2 and 3? and are available for partition?

(ii) Whether plaintiffs prove that the registered Gift Deed dated 1-7-2006 executed by 2nd defendant is null and void? And not binds up on the plaintiffs?

(iii) Whether the plaintiffs further prove that the 1st defendant had no right to purchase the suit schedule property by defendant No.2?

(iv) Whether the plaintiffs are entitle to get 1/4 th each share in all the suit properties?

(v) Whether the plaintiffs are entitled for the relief as claimed in the prayer column of the suit?

Addl.Issue No.1: Whether the suit of the plaintiff is bad for partial partition?

(vi) To What order or decree the parties are entitle?

7. On the side of the plaintiffs, the plaintiff No.1 examined herself as PW.1 and 2 witnesses as PW.2 & 3 and got marked Ex.P.1 to P.4 documents. On the side of the defendants, the defendant No.1 examined himself as DW.1 and 3 witnesses as Dw.2 to 4 got marked Ex.D.1 to 29 documents and closed their side.

8. Heard arguments on both sides.

9. On the basis of the evidence available on record, my findings on the above issues are as follows:

Issue No.1 : In the NEGATIVE

Issue No.2 : In the NEGATIVE

Issue No.3 : In the NEGATIVE

Issue No.4 : In the NEGATIVE

Issue No.5 : In the NEGATIVE

Addl. Issue No.1: In the AFFIRMATIVE

Issue No.6 : As per the final order, for the following:

R E A S O N S

10. ***Issue No.1 to 5 & Addl. Issue No.1:-*** *As all the issues require discussion about the facts and circumstances of the case, in order to avoid repetition and facts, all the issues are taken up together for discussion.*

The plaintiffs and the defendant No.3 are the children of 2nd defendant is not in dispute. The plaintiffs have filed this suit for seeking 1/4 th share each contending that the suit properties are the ancestral properties and joint family properties amongst the plaintiffs and defendants No.2 and 3.

According to the plaintiffs in registered partition deed dated 1-9-2005 the suit property was allotted to the share of 2nd defendant. The 2nd defendant has represented the plaintiffs and 3rd defendant as their father died prior to the said partition deed. The said registered partition deed is marked as Ex.P.1. As per this partition, Lakshminarayanappa, Narayanaswamy, Chikka Nareppa and defendant No.2 were parties. The husband of the 2nd defendant was direct brother of Chikka Nareppa, Lakshminarayanappa and Narayanaswamy. The 1st defendant is the son of Chikka Nareppa. As per Ex.P.1 the suit properties were fallen to the share of 2nd defendant. According to the plaintiffs, the 3rd defendant was addicted to bad habits and alcohol. According to the plaintiffs, their mother had no right to execute the gift deed dated 1-7-2006. Similarly, the 3rd defendant had no right to execute the sale deed in favour of the 1st defendant on 18-9-2006. The certified copy of the same is marked as Ex.D.1 originally marked as Ex.D.17. Based on the said registered sale deed, Mutation was accepted in the name of the 1st defendant as per Ex.D.18. As per Ex.D.19 i.e., RTC is standing in the name of the 1st defendant. In the plaint, the plaintiffs have pleaded that both the gift deed dated 1-7-2006 and

registered sale deed dated 18-9-2006 is not binding on them. Accordingly, sought for 1/4th share.

11. The defendants No.2 and 3 have not appeared before this court and not have filed any written statement. The 1st defendant has filed written statement and contended that in view of registered gift deed executed by the 2nd defendant in favour of 3rd defendant, the 3rd defendant become the absolute owner of the suit property. Accordingly, he had executed Ex.D.17 for his necessity. According to the 1st defendant, defendant No.2 had sold several properties situated at Chinthamani and they are not questioned by the plaintiffs. In fact 2nd defendant had also two registered gift deeds in favour of the plaintiffs. The said properties are not included in the present suit. Therefore, the suit is bad for partial partition.

12. The start with except contending that the registered gift deed dated 1-7-2006 and the registered sale deed dated 18-9-2006 are not binding on them, but they have not produced the said documents in their evidence. They have simply contended that the said deeds are not binding on the m. It is true that in a suit for partition and separate possession, there is no necessity to seek for cancel of the above documents. But the plaintiffs are expected to produce the said documents. The 1st plaintiff is examined as PW.1. She admits that after the death of her father it was 2nd defendant who was managing the suit properties. She admits that her father died in the year 1994. She admits that she is residing at Chinthamani. She admits that there are

number of properties belong to her family at Chinthamani. She further stated that they are good number of sites at Chinthamani and they are not included in the present suit. According to PW.1 all those properties are self- acquired properties of 2nd defendant. She admits that the various execution made by her mother in favour of 3rd parties. She further admits that her mother had executed a registered gift deed in respect of site properties. Further she admits that her mother executed a registered gift deed in favour of 2nd plaintiff. The only answer of PW.1 is that they are all the self-acquired properties of her mother and she had right to deal with the same. She admits that property was purchased in the name of her mother on 30-5- 1992. She further admits that her mother had also purchased some properties on 22-5-2007. But she claims ignorance about her mother selling properties in favour of 3rd parties. Admittedly, the husband of 2nd defendant died in the year 1994. As per Ex.P.1 the registered partition deed it is recited that the parties to the said deed have divided their family properties orally 30 years back and in the memorandum of such an oral partition deed was registered on 1-9- 2005. Therefore, it can be inferred that the husband of 2nd defendant had acquired some properties in the name of 2nd defendant.

13. It has further come in the evidence that there a wine shop in the name of her mother. The plaintiffs have not produced any documents to show that their mother had individual income to purchase several properties. No evidence is adduced to show that her mother had income to

purchased properties. Therefore, it can be inferred that all the properties were joint family properties. But the plaintiffs have not challenged the said alienation at any point of time. The sale effected by her mother are not even questioned in the present suit. Therefore, the suit of the plaintiffs is not maintainable for partial partition.

14. PW.1 at page-7 has deposed as follows: " ... ನನ್ನ ತಾಯಿ ದಿ: 27.03.2026 ರಂದು 3ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು ನನ್ನ ಹೆಸರಿಗೆ ಒಂದು ದಾನ ಪತ್ರವನ್ನು ಬರೆಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ."

She further admits that her mother had also executed another gift deed in her name. She further admits that the gift deed executed in favour of 2nd plaintiff by her mother in the year 2006. But she claims ignorance about the gift deed executed by her mother in favour of 3rd defendant on 1-7-2006. This is the evidence given by PW.1 in cross-examination at page-7 8 th line has deposed as follows:

" ... ದಿ: 18.09.2006 ರಂದು ದಾವಾ ಆಸ್ತಿಗಳನ್ನು 1ನೇ ಪ್ರತಿವಾದಿಯು ಪ್ರತಿವಾದಿ 2 ಮತ್ತು 3 ರವರಿಂದ ನೊಂದಾಯಿತ ಕ್ರಯಪತ್ರದಡಿಯಲ್ಲಿ ಖರೀದಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯ ಆ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಈ ರೀತಿ ಖರೀದಿ ಮಾಡದ ನಂತರ ದಾವಾ ಆಸ್ತಿಗಳನ್ನು 1ನೇ ಪ್ರತಿವಾದಿಯವರು ಅನುಭವಿಸುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ...."

In the cross-examination of PW.1 she claims ignorance about the sale deed executed by the 3rd defendant in favour of 1st defendant. She further claims ignorance of possession of 1st defendant over the suit properties. She does not know that the katha is standing in the name of 1st defendant. She claims ignorance about her mother executing gift deed in favour of her brother on 1-7-

2006. PW.1 being the partition to the suit cannot claim ignorance about these facts. She ought to have denied those suggestion emphatically. The very PW.1 who is party to the suit claims ignorance about the gift deed and sale deed. The said documents were not marked on the side of the plaintiffs. In view of this evidence given by PW.1 this court is of opinion that the plaintiffs are not entitled for any relief in the present suit. Again she admits that the 3rd defendant filed in O.S.No.119/2006 against them and their mother for partition and separate possession at Chinthamani court. At page-8, 4 th line has deposed as follows:

" .. ನಂತರ ನಾವೆಲ್ಲಾ ಸೇರಿ ಇತ್ಯರ್ಥ ಮಾಡಿಕೊಂಡು ನಂತರ ನಮ್ಮ ಅಣ್ಣ ಸದರಿ ಕೇಸನ್ನು ವಾಪಸ್ಸು ಪಡೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ..."

Therefore, the contention of the plaintiffs in this plaint that in the said suit, the suit properties were intentionally left out by the 3rd defendant cannot be accepted. The plaintiffs were also parties to the said suit. They had very opportunity to implead the suit properties in the said suit. But she admits that the said suit was emphatically settled. Therefore, it appears to this court that the present suit is a conclusive suit between the plaintiffs and defendants No.2 and 3.

15. It may be for this reason the defendants No.2 and 3 have not filed their written statement and have not contested the suit. The plaintiffs have made serious allegation against the defendants No.2 and 3, but they have remained silent. It goes to show that with an intention to harass the 1st defendant the present suit filed. Again the 2nd

defendant being the manager of the family consists of the plaintiffs and 3rd defendant had thought of disposing of properties by way of gift deed. This court already opined that the suit properties and other properties none-included properties or joint family properties. Therefore, being the manager of 2nd defendant had executed a gift deed in favour of 3rd defendant on 1- 7-2006. She had not opposed the said gift. Therefore, the plaintiffs are not permitted to question Ex.D.17. PW.2 & 3 were examined to establish that the plaintiffs and defendants No.2 and 3 are in joint possession of the suit properties which is found to be false as could be seen from Ex.D.17 to 19. The 1st defendant examined as DW.1. The entire case of the plaintiffs was suggested and the same was denied. The 1st defendant examined witnesses to the sale deed which is marked as Ex.D.17 which is not required. Because according to the plaintiffs, 2nd defendant had no right to execute the registered the gift deed in favour of 3rd defendant and in turn the 3rd defendant had no right to execute the sale deed in favour of 1st defendant. Therefore, impliedly execution of those documents are admitted by the plaintiffs.

16. The counsel for the plaintiffs has relied upon the following citations:

1) *ILR 1988 KAR-2348 in between Shankarayya V/s.Champabai.*
2) *ILR 1999 KAR-3129 in between Babu Mother Savava Navalgund & others V/s. Gopinath.*

3) *ILR 1998 KAR-2127 in between Vadde Sanna Hulugappa & others V/s.Vadde Sanna Hulugappa & others.*

4) *AIR 1992 MADHYA PRADESH-208 in between Kanji S/o.Ganesh, Appellant V/s.Parmanand, Respondent.*

5) *2009 AIR SCW-4471 in between Gangamma etc. V/s. G.Nagarathnamma & others etc.*

6) *ILR 1994 KAR-1282 in between Mangala V/s. Jayabai.*

7) *AIR 1995 KAR- 35 in between The Vijaya College Trust, Appellant V/s. The Kumta Co-Operative Arecanut Sales Society Limited and another, Respondents.*

8) *AIR 1993 KAR- 12 in between Meenakshamma, petitioner V/s. M.C.Nanjundappa & others, respondents.*

This court has gone through all the above citations but the same are not applicable to the facts and circumstances of the case on hand. In the result, Issue No.1 to 5 are answered in NEGATIVE and Addl. Issue No.1 is answered in AFFIRMATIVE.

17. ***Issue No.6:-*** *For the aforesaid reason and discussion, I proceed to pass the following:*

O R D E R

1. Suit of the plaintiffs is hereby dismissed.

2. No order as to cost.

3. Draw up decree accordingly."

8. However, the First Appellate Court reversed the judgment and decree of the Trial Court by holding that the suit

schedule properties were joint family properties in which the plaintiffs were entitled to a share by answering the points for consideration in favour of the plaintiffs. The First Appellate Court also came to the conclusion that the additional properties which were not included as suit schedule properties were the separate and self-acquired properties of defendant No.2, who had not even filed a written statement nor contested the suit in this regard. Under these circumstances, the First Appellate Court proceeded to decree the suit by setting aside the judgment and decree of the Trial Court and decreed the suit of the plaintiffs by holding as under:

> *"11. The points that arise for consideration are;*
>
> > *1. Whether the finding of the trial Court that the properties acquired by the defendant No.2 are joint family properties is erroneous?*
> >
> > *2. Whether the suit is bad for partial partition?*
> >
> > *3. Whether the plaintiffs are entitled for share in the suit schedule properties as prayed?*
> >
> > *4. Whether the judgment and decree of the trial Court needs interference?*
> >
> > *5. To what relief and decree the parties are entitled for?*
>
> *12. The findings on the above Points are as follows:-*
>
> > *Points No.1, 3 & 4 - In the affirmative.*

Point No.2 - In the negative.

Point No.5 - As per the final order, for the following:-

R E A S O N S

13. Points No.1 to 4 :- These points taken up together for discussion in order to avoid the repetition of facts.

14. Admitted facts are that the plaintiffs and defendant No.3 are the children of Sunandamma the defendant No.2. Father of the plaintiffs and the defendant No.3 Venkatapathy died on 10.12.1994. There was partition amongst the brothers of Venkatapathy and the defendant No.2 and the joint family properties were divided under registered partition deed dated 01.09.2005. The suit schedule properties are the properties allotted to the share of defendant No.2 for and on behalf of the plaintiffs and defendant No.3 being the share of deceased Venkatapathy. The defendant No.1 is the purchaser of suit schedule properties from the defendant No.3, who is the son of Chikka Nareppa the brother of Venkatapathy.

15. The plaintiff No.1 has been examined as PW-1. The plaintiffs have produced the certified copy of the partition deed as per Ex.P.1. Ex.P.1 discloses that the division has taken place in between Chikka Nareppa, Lakshminarayanappa, Sunandamma the defendant No.2 who is the wife of Late.Venkatapathy and Narayanaswamy and the family properties are divided into 4 shares as per A, B, C and D schedules. 'C' Schedule is the property allotted

to the defendant No.2. 3 items of properties are allotted to defendant No.2 which are the suit schedule properties. The plaintiffs have also produced the RTC extracts as per Exs.P.2 to 4 and the properties stands in the name of the sharers under Ex.P.1. According to the plaintiffs after the partition as per Ex.P.1, the defendant No.2 executed gift deed in favour of defendant No.3 in respect of the suit schedule properties dated 01.07.2006. The plaintiffs have not produced the copy of the said gift deed. However, the defendant No.1 has produced the certified copy of the gift deed as per Ex.D.2. Based on the gift deed executed by defendant No.2, the defendant No.3 has sold the suit schedule properties in favour of defendant No.1 by registered sale deed dated 18.09.2006 as per Ex.D.1. The plaintiffs contend that these documents are executed by defendants No.2 and 3 without the consent of the plaintiffs and the suit properties being the joint family properties they are entitled for a share in the schedule properties. It is the contention of the defendant No.1 that, defendant No.2 owned several other properties at Chintamani and has also gifted some of the properties in favour of the plaintiffs and without including those properties, the suit has been filed by the plaintiffs and hence, the suit is bad for partial partition. Further defendant No.2 acquired the said properties out of the joint family funds. Therefore, those properties mentioned in the written statement are also joint family properties.

16. Defendant No.1 has produced the gift deed executed by the defendant No.2 in favour of plaintiff No.1 as

per Ex.D.3 and rectification deed as per Ex.D.4 in respect of property bearing Municipal katha bearing No.2999/1/2827/7 measuring 8.6 X 27 feet. Defendant No.2 has also executed gift deed dated 27.03.2006 in favour of plaintiff No.2 as per Ex.D.5 in respect of property bearing Municipal katha No.3001/2828/1 measuring 11.8 X 30 feet situate at Chintamani. Ex.D.6 is the certified copy of the sale deed executed by defendant No.2 in favour of G.Krishnegowda in respect of vacant site situate at Chintamani. Ex.D.7 is the certified copy of the sale deed executed by defendant No.2 and plaintiff No.1 in favour of Venkatamuniswamy and K.G.Varalakshmi in respect of site with house building situate at Chintamani. Ex.D.8 is the certified copy of the sale deed executed by defendant No.2 in favour of G.V.Srinivasashetty in respect of Sy.No.47/1 measuring 1 acre 22 guntas situate at Chintamani. Ex.D.9 is the sale deed in favour of defendant No.2 executed by K.Shanthamma and Srinivasa Reddy in respect of Sy.No.92 measuring 1 acre situate in Chintamani. Ex.D.10 is the certified copy of the sale deed in favour of defendant No.2 executed by V.Jayaramappa dated 12.10.1999. Ex.D.11 is the certified copy of the sale deed executed by defendant No.2 in favour of Nagarathnamma. Ex.D.13 is the certified copy of the sale agreement executed by defendant No.2 in favour of K.R.Rama Reddy. None of these documents disclose that the properties mentioned under those documents are the joint family properties of defendants No.2 and 3 and the plaintiffs or that the same are acquired by defendant No.2 out of the joint family funds. Sale deeds

disclose that those properties alienated by defendant No.2 are the properties purchased by her. Defendant No.1 having contended that the defendant No.2 purchased the properties under various sale deeds and sold the same to various persons as contended in the written statement has not produced any documents to prove the income out of the suit schedule properties or the source of income for purchase of the properties. PW-1 has categorically stated that the properties situate at Chintamani are the self acquired properties of defendant No.2. The suit filed by the defendant No.3 in O.S.No.119/2006 on the file of Senior Civil Judge, Chintamani for partition was in respect of self acquired properties of defendant No.2. The plaintiffs have not stated about the source of income for purchase of properties at Chintamani by defendant No.2 except stating that those properties are self acquired properties of defendant No.2. But, the suggestion in the cross examination of PW-1 would indicate that the defendant No.2 is doing business in liquor in the name of Vasavi wines and the licence for doing the said business stands in the name of defendant No.2 right from 1986. DW-1 the 1st defendant admits that the licence stands in the name of defendant No.2, but according to DW-1, Venkatapathy the husband of defendant No.2 had obtained licence in the name of defendant No.2 and he was doing business in the name of defendant No.2 and the properties were purchased in the name of defendant No.2. When there is prohibition for benami transactions the defendant No.1 cannot contend that the properties were purchased in the name of defendant No.2 by her husband without proving the

source of income. Both the plaintiffs and the defendant No.1 have not produced the copy of the licence nor the accounts pertaining to the wine shop or income from the suit schedule properties. When defendant No.1 has taken the specific contention that the properties are purchased by the husband of defendant No.2 in the name of defendant No.2 out of the joint family nucleus, the burden is on the defendant No.1 to prove that defendant No.2 has purchased the properties out of the joint family nucleus. In the absence of any such material, the contention of the 1st defendant that the properties situate at Chintamani purchased and alienated by defendant No.2 are joint family properties cannot be accepted.

17. In the cross-examination of DW-1 it was suggested that defendant No.3 has withdrawn the suit in O.S.No.119/2006 as it was in respect of the self acquired properties of the defendant No.2 and he states that he does not know the reason for withdrawal of the suit. It was also suggested to him that since the defendant No.3 is addicted to alcohol, under the influence of alcohol he has got executed the sale deed dated 18.09.2006 in his favour in respect of the suit schedule properties and he has denied the said suggestion. DW-1states that defendant No.2 is having licence in respect of Vasavi wines since 1986. Under the said licence till date defendant No.2 is running Vasavi wine shop. It was suggested to him that the properties purchased and alienated by the defendant No.2 are her self acquired properties and he denies the same and further

stated that Venkatapathy had income and he has purchased the properties in the name of defendant No.2 and even the licence was obtained in the name of defendant No.2 by Venkatapathy. Defendant No.1 has not examined any witnesses nor produce any documents to prove that Venkatapathy the husband of defendant No.1 had any income to purchase the properties in the name of defendant No.2 and the joint family properties had sufficient nucleus to purchase the properties at Chintamani in the name of defendant No.2. It was also suggested to him that Venkatapathy was also addicted to alcohol and he was not looking after the family and he was spending all the money towards his bad habits which has been denied by him. Defendant No.1 has also produced the partition deed between Venkatapathy and his 2nd wife Narayanamma as per Ex.D.27. This document would also indicate that in view of the 2nd marriage of Venkatapathy, defendant No.2 and her husband were not in cordial terms and defendant No.2 was doing business of Vasavi wines and had income of her own for acquisition of the properties at Chintamani. Even assuming that Venkatapathy and defendant No.2 were in cordial terms, it is not explained by the defendant No.1 as to why all the properties have been acquired in the name of defendant No.2 alone. Venkatapathy could have acquired properties in his name or in the name of his children, but all the properties were purchased in the name of Sunandamma the defendant No.2. Hence, an inference could be drawn that defendant No.2 had her own income to purchase the properties situate at Chintamani and she has alienated the

same by way of gift deeds and sale deeds. Therefore, the properties situate at Chintamani cannot be held to be joint family properties and inclusion of those properties in the present suit is not necessary and defendant No.1 cannot contend that suit is bad for partial partition.

18. Defendant No.1 has contended that partition between his father and brothers were about 30 years back and it was reduced to writing in the year 2005 as per Ex.D.1, but no such recitals are found in partition deed. In support of this contention he has produced the sale deed executed by Venkatapathy the husband of defendant No.2 in favour of Lakshmi Narayanappa as per Ex.D.28, wherein there is mention of partition between Venkatapathy and his brothers. Defendant No.1 has also examined Lakshmi Narayanappa as DW-4, but in the chief examination he does not state about the sale of the property by Venkatapathy in his favour except stating that the suit schedule properties are the properties allotted to his deceased brother Venkatapathy and Venkatapathy had acquired several properties in the name of his wife defendant No.2. It is after examination of DW-4, the defendant No.1 has produced the sale deed in favour of DW-4 as per Ex.D.28. Even assuming that there was a partition between Venkatapathy and his brothers about 30 years back, the defendant No.1 has not produced any documents to show as to what are the properties allotted to the share of Venkatapathy about 30 years back except the property mentioned in Ex.D.1 i.e., suit schedule properties. Item No.1 of the suit schedule property measures 1 acre 19 guntas,

item No.2 measures 17 guntas and item No.3 measures 10 guntas situate at Arakunte Village, Ronur Hobli, Srinivaspur Taluk and considering the lesser extent of the suit schedule properties, defendant No.1 cannot contend that there was surplus income from the suit schedule properties for purchase of properties in the name of 2nd defendant.

19. The learned counsel for the plaintiffs has referred to the decision reported in ILR 1994 Karnataka, page 1282, Mangala Vs. Jayabai, wherein at para 10 it has been held that

> *"Hindu joint family can exist with one male member. While dealing with the powers of mother as natural guardian regarding the joint family properties one thing is evident that 24 RA No.101/2012 existence of male member is contemplated. Further, there are instances where male member is a minor even then he can be construed as karta of the joint Hindu family and mother can as natural guardian of the Manager minor karta of joint Hindu family can meddle with the family properties for family necessity so as to bind all the members of joint Hindu family."*

20. In the present case since defendant No.3 being the son of Venkatapathy, the suit schedule properties ought to be treated as joint family properties. The plaintiffs and the defendants No.2 and 3 constitute a joint Hindu family. Defendant No.2 being the mother of plaintiffs and defendant No.3 had no right to gift the joint family properties in favour of defendant No.3 without the consent of the plaintiffs. Defendant No.1 has not produced any documents to show that the consent of the plaintiffs was taken to execute the gift deed in favour of defendant No.3 or for the defendant No.3 to execute sale deed in favour of defendant No.1 in respect

of suit schedule properties. The alienation made by defendant No.2 in respect of properties situate at Chintamani are not in respect of joint family properties and it is in respect of self acquired properties as discussed earlier.

21. The learned counsel for the plaintiffs has also referred to another decision reported in AIR 1992 Madhya Pradesh, page 208, Kanji S/o. Ganesh Vs. Parmanand, wherein it has been held that:

> *"A widow is not a coparcener she cannot therefore be a karta of the joint Hindu family. Therefore, alienation made by widow of deceased owner of property would not be binding on her son and daughters. The alienation made by widow would bind herself in respect of her own share and share of another daughter who had gifted her share to mother."*

22. In the present case also defendant No.2 had no right to execute gift deed in favour of defendant No.3 in respect of entire extent of suit schedule properties except her share and not the share of the plaintiffs. Defendant No.2 had right to gift only her share in the schedule properties in favour of defendant No.3. Therefore, the gift deed executed by defendant No.2 and the sale deed executed by defendant No.3 in favour of defendant No.1 could be considered as valid only to the extent of the share of the defendants No.2 and 3 and not the share of the plaintiffs.

23. It is the contention of the defendant No.1 that the plaintiffs have not sought for cancellation of gift deed and sale deed and in this regard the learned counsel for the plaintiffs has referred to decision reported in ILR 1998 Karnataka, page 2127, Vadde Sanna Hulugappa & others

Vs. Vadde Sanna Hulugappa & others, wherein it has been held that:

> *"Plaintiffs are not parties to any of the alienations made by the 1st defendant and others. So there was no legal obligation on their part to specifically pray that the alienations were not binding on them"*

24. In the present case also the plaintiffs are not parties to the alienation made by the defendants No.2 and 3 and therefore, there is no necessity to seek for cancellation of the sale deed or gift deed or to seek that the alienation made by defendants No.2 and 3 are not binding on the plaintiffs.

25. The learned counsel for the plaintiff also referred to decision reported in 2009 AIR SCW, page 4471 (Supreme Court), Gangamma etc Vs. G.Nagarathnamma & others, wherein it has been held that,

> *"Sub-Section (1) of Section 14 is very large in its amplitude and covers every kind of acquisition of property by a female Hindu. Regardless of whether such property was possession by a female Hindu on the date of commencement of the Act or was subsequently acquired or possessed, she would be the full owner of the property."*

26. Defendant No.1 though contended that the husband of defendant No.2 acquired the property in the name of defendant No.2 out of the income from joint family properties, and in the absence of any proof of surplus income from joint family properties, the properties acquired by defendant No.2 is to be treated as her self acquired property. In view of the principles laid down in the decision referred by the counsel for the plaintiffs the properties situate

at Chintamani has to be considered as self acquired properties of defendant No.2 and there is no necessity to include those properties in the present suit. Defendant No.1 has not placed any other materials to show that other than the suit schedule properties there are other joint family properties to the joint family of the plaintiffs and the defendants No.2 and 3. Therefore, the alienation made by the defendants No.2 and 3 is valid to the extent of their share only and the plaintiffs are entitled for 1/4th share each in the schedule properties.

27. The trial Court appears to have erred in holding that the properties situate at Chintamani are also the joint family properties of the plaintiffs and the defendants No.2 and 3 and those properties are not included in the plaint schedule and therefore, the plaintiff are not entitled for share in the schedule properties. Therefore, the judgment and decree of the trial Court is liable to be set aside and the suit is liable to be decreed and the plaintiffs are entitled for 1/4th share in the suit schedule properties. Accordingly, points No.1, 3 and 4 are answered in the affirmative and point No.2 is answered in the negative.

28. Point No.5 :- In view of the findings on the above points, the following order is passed :-

ORDER

The appeal filed under Order 41 Rule 1 & 2 r/w Sec.96 of C.P.C. challenging the Judgment and Decree

passed in O.S. No.236/2008 on the file of Prl. Civil Judge, Srinivaspur is hereby allowed with costs through out.

The Judgment and Decree passed in O.S. No.236/2008 dated 13.04.2012 is set aside.

Consequently the suit of the plaintiffs is decreed with cost.

The plaintiffs are entitled for 1/4th share each in the suit schedule properties.

Draw preliminary decree accordingly."

9. In the present appeal, the appellant has filed an application I.A.No.2/2014 under Order XLI Rule 27 CPC for production of additional evidence comprising of 17 documents as can be seen from the list of documents as hereunder:

"1. Certified copy of the sale deed dated: 02.02.1988 executed by Muniyappa in favour of G. Venkatapa. M Venkatapathi and others in respect of land bearing Sy No.30/3A measuring 18 guntas of Chinthamani, Kasaba Hobli, Chikkaballapura District.

2. Certified copy of the sale deed dated: 03.02.1988 executed by M. Ananda in favour of G. Venkatappa.M, Venkatapathi and others in respect of land bearing Sy No.30/1A measuring 17 guntas and sy NO. 30/2A measuring 17 guntas of Chinthamani, Kasaba Hobli, Chikkaballapura District.

3. *Certified copy of the RTC extracts in respect of land bearing Sy No. 30/1A of Chinthamani, Kasaba Hobli, Chikkaballapura District [5 in number]*
4. *Certified copy of the RTC extracts in respect of land bearing Sy No. 30/2A of Chinthamani, Kasaba Hobli, Chikkaballapura District [5 in number]*
5. *Certified copy of the RTC extracts in respect of land bearing Sy No. 30/3A of Chinthamani, Kasaba Hobli, Chikkaballapura District [4 in number]*
6. *Certified copy of the mutation register extract pertaining to land bearing Sy No. 30/1A, Sy No.30/2A and Sy No.30/3A of Chinthamani, Kasaba Hobli, Chikkaballapura District. [1 in number].*
7. *Certified copy of the partition deed dated: 16.08.1995 amongst G. venakatappa. S. Sunandamma and others.*
8. *Certified copy of the sale deed dated: 03.08.2006 executed by Smt. Sunandamma and others in favour of K.Krishna Reddy in respct of pertaining to land bearing Sy No. 30/1A, Sy No. 30/2A and Sy No.30/3A of Chinthamani Kasaba Hobli, Chikkaballapura District.*
9. *Certified copy of the sale deed dated: 15.04.2014 executed by Smt. Ambuja Krishna Reddy and others in favour Out Lady of Mercy Province of the society of Sister pertaining to land bearing Sy No. 30/1A, Sy No. 30/2A and Sy No.30/3A of Chinthamani Kasaba Hobli, Chikkaballapura District.*
10. *Certified copy of the sale deed dated: 04.08.1992 executed by Devulam Venkataswamappa in favour of Smt. S.Sunandamma pertaining to the sites carved out of*

land bearing Sy No.67/2A of Malappahalli, Chinathamani Town, Kasaba Hobli, Chikkaballapura District.

11. *Certified copy of the sale deed dated: 23.05.2007 executed by Nanamma in favour of Smt. S.Sunandamma pertaining to land bearing Sy No.47/1 of measuring 1 acre 19 guntas of Gopasandra, Chinthamani Town, Kasaba Hobli, Chikkaballapura District.*
12. *Certified copy of the sale deed dated: 27.12.2007 executed by Smt. S. Sunandamma in favour of Jayalakshmamma pertaining of land bearing Sy No. 47/1 to the extent of 24 gutnas of Gopasandra, Chinthamani, Kasaba Hobli, Chikkaballapura District.*
13. *Certified copy of RTC extracts pertaining to land bearing Sy No. 47/1 to Sy no.47/14 of Gopasandra, Chinthamani, Kasaba Hobli, Chikkaballapura District.[13 in number]*
14. *Copy of encumbrance certificate pertaining to land bearing Sy No. 47/1 to Sy nO. 47/14 of Gopasandra, Chinthamani, Kasaba Hobli, Chikkaballapura District [11 pages]*
15. *Certified copy of the voter list pertaining to Sonnashettihalli, Chinthamani, Chikkaballapura Dsitrct. [1 in number]*
16. *Certified copy of the voters list pertaining to chowdareddypalya, chinthamani, Chikkaballapura District [1 in number]*
17. *Positive photographs of the house property situated at Chowdareddypalya, Sonnanashettihally and N.R. extension [3 in number]"*

10. In addition thereto, the appellant has filed a memo dated 07.10.2026 enclosing a copy of a registered confirmation deed dated 07.06.2021 executed by respondent No.1-plaintiff No.1 in favour of the appellant during the pendency of the present appeal.

11. A perusal of the application I.A.No.2/2014 filed by the appellant along with the affidavit accompanying the affidavit and the documents produced along with the application will clearly indicate that the said documents are relevant and necessary for the purpose of adjudication of the issues in controversy between the parties. It is also relevant to state that in the absence of the said documents and without providing an opportunity to the parties to adduce additional oral and documentary evidence in relation to the additional documents, it is not possible to pass an effective decree in the suit and in the light of the unimpeached, uncontroverted and unchallenged averments made in the affidavit in support of I.A.No.2/2014, which clearly indicates that despite exercise of due diligence, the appellant-defendant No.1 was not in a position to produce the said documents earlier, I am of the considered opinion

that the application I.A.No.2/2014 deserves to be allowed and the documents produced along with the said application deserves to be received on record.

12. The next question that arises for consideration is the procedure to be followed after allowing I.A.No.2/2014 and receiving the additional documents on record. In this context, it is pertinent to extract the provisions contained in Order XLI Rule 27, which reads as under:

> "***Order XLI Rule 27. Production of Additional Evidence in Appellate Court.*** *- 1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-*
> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
> *(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the*

Appellate Court may allow such evidence or document to be produced, or witness to be examined.
(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

13. As noticed supra, apart from the documents produced by the appellant along with I.A.No.2/2014 for permission to produce additional evidence, respondent No.1-plaintiff No.1 has executed a registered confirmation deed dated 07.06.2021 in favour of the appellant during the pendency of the present appeal, whereby the right, title, interest and possession of the appellant-defendant No.1 has been confirmed by respondent No.1- Plaintiff No.1. In addition thereto, respondent No.2-plaintiff no. 2 has been served with notice of the appeal and has chosen to remain unrepresented.

14. In its recent judgment in the case of ***Chowdappa Vs. Hanumantharayappa and others - 2026 INSC 816***, while reiterating the principles governing receipt of additional evidence under Order XLI Rule 27 CPC, the Apex Court held as under:

" 1. Delay condoned.
2. Leave granted.

3. We have heard Ms. Kiran Suri, Learned Senior Counsel for the Appellant, and Mrs. Prabha Swami, Learned Counsel for the Respondents.

4. The Learned Counsel appearing for the parties have addressed this Court on the failure of the High Court in considering and disposing of I.A.No. 1/25 filed for receive additional evidence by the Appellant./

5. Respondent Nos. 5 and 6 before this Court filed O.S.No. 485 of 1999 in Court of the Senior Civil Judge, Devanahalli, which has been renumbered as O.S. No. 86/2006 for partition and separate possession of plaint Schedules 'A', 'B' and 'C'. On 12.09.2006, the said Suit was decreed by the Trial Court, resulting in Respondent Nos. 1 to 4 filing RFA No. 2076 of 2006 in the High Court of Karnataka, Bengaluru. C/W RFA Cross Objection No. 17 of 2012 was filed by the Appellant. The Appellant is arrayed as Defendant No. 1 in the Original Suit.

6. On 16.12.2025, the RFA as well as the cross-objections were dismissed by the High Court. Hence, the Civil Appeal at the instance of the Respondent No. 3 in RFA No. 2076 of 2006.

7. Ms. Kiran Suri argues that the Impugned Judgment, though the High Court has considered a few of the controversies between the parties and confirmed the view taken by the Trial Court, still, the Judgment under appeal is liable to be set aside on the short ground that the Additional Evidence Application in I.A. No. 1/25 has not been heard and decided. The learned Senior Counsel further argues that the Additional Evidence was filed in conformity with the

requirements of Order XLI Rule 27 of the Code of Civil Procedure, 1908 ("CPC"). The additional evidence establishes the infirmity in the case of the Plaintiffs. The Appellant was denied an opportunity by the High Court, and the Appellant cannot, by referring to those documents, assail the findings of the view taken by the Trial Court and the High Court. She places reliance on Jatinder Singh and another v. Mehar Singh and others,1 North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LRs., Namdeo v. Tukaram S/o Marotrao Jadhav,3 Iqbal Ahmed (Dead) by LRs. And another v. Abdul Shukoor,4 G. Shashikala (dead) Thr. LRs v. G. Kalawati Bai (dead) Thr. LRs and others,5 and pray for setting aside the Impugned Judgment.

8. Advocate Prabha Swami, appearing on caveat for the contesting Respondents, has taken time on 15.05.2026 to verify whether the objection now taken before this Court is factually tenable or not.

9. One of the Respondents, C. Muniraju, has filed an Affidavit. The Affidavit reads thus:

> *"2. It is submitted that the present Special Leave Petition was filed by the Petitioner challenging the impugned final judgment and order dated 16.12.2025 in RFA No. 2076/2006 and R.F.A CROB No. 17/2012 passed by the High Court of Karnataka at Bengaluru.*
>
> *3. I state that the Application to bring on record Additional documents/evidence was filed by the Petitioner on 28.10.2025 (ANNEXURE P-9 at Page 213 of the Special Leave Petition Paperbook). I further state that pursuant to the same, the matter was listed before the high Court on 04.11.2025 for final hearing along with applications filed for production of additional documents and for condonation of delay. The High Court by its order dated 04.11.2025 stated "Heard. Reserved for orders." I*

humbly state that the final judgment and order was passed thereafter on 16.12.2025. A copy of the extract of the cause list for 04.11.2025 is annexed hereto and marked as Document -1. A copy of the order dated 04.11.2025 passed by the High Court of Karnataka at Bengaluru in RFA No. 2076/2006 and R.F.A CROB No. 17/2012 is annexed hereto and marked as Document-2."

10. Therefore, it is argued that it is not a case where the Application for Additional Evidence has not been heard but a case where it is not actually disposed of.

11. In the above background, we refer to Order XLI, Rule 27 of the CPC hereunder:

"Order XLI Rule 27. Production of Additional Evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has
refused to admit evidence which ought to have been admitted, or
(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce
judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

12. The decisions relied on by the Appellant can be captured and summarised as follows:

12.1 An Appellate Court has a statutory duty to deal with an Application for Additional Evidence on its merits. The application cannot be ignored while the Court proceeds to pronounce the final Judgment.

12.2 The Application must be considered simultaneously with the hearing of the main Appeal on its merits to determine whether the Court "requires" the documents to pronounce Judgment or for any other substantial cause.

12.3 The Appellate Court must pass a specific order either allowing or rejecting the application. If the production of documents is allowed, the Court is obligated to record its reasons for admission.

12.4 Before undertaking the exercise of evaluating the additional evidence, the Appellate Court must first examine the party's pleadings to ensure that the foundational case set up supports the introduction of the proposed evidence.

12.5 Dismissing an appeal without deciding a pending application for additional evidence constitutes a jurisdictional error and results in a severe miscarriage of justice.

13. Leading to the conclusion that, in the present matter, the High Court of Karnataka dismissed the Cross-Objection without referring to, considering, or adjudicating the Application filed under Order XLI Rule 27 CPC for the production of crucial documents, including the Judgments from O.S. 369 of 1997, bank loan discharges, and surveyor

sketches. The High Court committed a direct jurisdictional error by completely ignoring the Application while disposing of the Appeal, directly contravening the principles laid out in the decisions supra. The High Court had a duty to evaluate the Application at the final hearing to determine whether the documents were necessary to pronounce Judgment in a more satisfactory manner. The failure to pass a reasoned order either allowing or rejecting this Application before sustaining the Trial Court's decree resulted in a procedural failure and a miscarriage of
justice.

14. In view of the above, the Impugned Judgment dated 16.12.2025 is set aside. The Civil Appeals are allowed. The RFA No. 2076 of 2006 is restored together with cross objections and remanded to the High Court for fresh disposal.

15. Pending Application(s), if any, shall stand disposed of accordingly."

15. Under these circumstances, in order to provide adequate and sufficient opportunity to both sides to putforth their respective contentions on merits as well as in relation to the additional documents produced by the appellant along with I.A.No.2/2014 and also the registered confirmation deed dated 07.06.2021, without expressing any opinion on the merits/demerits of the rival contentions, I deem it just and appropriate to set aside

the impugned judgment and decree dated 04.06.2014 passed in RA No.101/2012 by the First Appellate Court and remit the matter back to the First Appellate Court for reconsideration afresh and in accordance with law. The substantial questions of law are answered accordingly.

16. In the result, I pass the following:

ORDER

i. The appeal is allowed.

ii. The impugned judgment and decree dated 04.06.2014 passed in R.A.No.101/2012 by the III Additional Senior Civil Judge, Kolar, is hereby set aside.

iii. The matter is remitted back to the First Appellate Court for reconsideration of the appeal afresh and in accordance with law.

iv. I.A.No.2/2014 is hereby allowed and the Registry of this Court is directed to transmit I.A.No.2/2014 along with the documents to the First Appellate Court to enable the First Appellate Court to proceed further in the matter.

v. Both the appellant and respondents are hereby reserved liberty to adduce additional oral and documentary evidence in support of their respective claims before the First Appellate Court.

vi. The First Appellate Court shall reconsider the entire matter afresh and take into account the subsequent event of the respondent No.1-plaintiff No.1 executing the registered confirmation deed dated 07.06.2021 in favour of the appellant and pass appropriate orders in accordance with law, as expeditiously as possible.

vii. The appellant and respondent No.1 are directed to appear before the First Appellate Court on 30.11.2026 without awaiting further notice.

viii. The First Appellate Court shall issue court notice to respondent Nos.2 to 4 and provide sufficient and reasonable opportunity to all parties and dispose of the appeal as expeditiously as possible.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC: List No.: 1 Sl No.: 3