HC-KAR

NC: 2026:KHC:61774
RSA No. 2124 of 2018

CNR: KAHC010300412018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

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

REGULAR SECOND APPEAL NO.2124 OF 2018 (PAR)

BETWEEN:

SRI. GANGADHARAIAH
AGED ABOUT 49 YEARS,
S/O SHIVANANDAIAH,
R/AT RAMNAHALLI VILLAGE,
KANDIKERE HOBLI,
C N HOBLI TLAUK,
TUMKUR DISTRICT – 572 201

…APPELLANT

(BY SRI. S. RAJESH FOR
SRI. MUKKANNAPPA S.B., ADVOCATES)

AND:

1. GURUSHANTHAIAH
S/O R S SHIVANANDIAH,
AGED ABOUT 53 YEARS,
HIGH SCHOOL TEACHER,
BALAVUNESALU VILLAGE,
HONNAVALI HOBLI,
TIPTUR TALUK,
TUMKUR DISTRICT – 572 201

2. SRI MARULASIDDAIAH
S/O R S SHIVANANDIAH,
AGED ABOUT 49 YEARS,
RAMANAHALLI VILLAGE,
KANDEKERE HOBLI,
C N HALLI TALUK,
TUMKUR DISTRICT – 572 201

3. MOHAN KUMAR
S/O R.S. SHIVANANDIAH,

Digitally signed by VANDANA S
Location: High Court of Karnataka

AGED ABOUT 41 YEARS,
RESIDENTS OF RAMANAHALLI VILLAGE,
KANDEKERE HOBLI,
C N HALLI TALUK,
TUMKUR DISTRICT – 572 201

4. GOWRAMMA
W/O R S SHIVANANDIAH,
AGED ABOUT 79 YEARS,
RAMANAHALLI VILLAGE,
KANDEKERE HOBLI,
C N HALLI TALUK,
TUMKUR DISTRICT – 572 201

RESPONDENTS

(BY SRI. B.C. CHETHAN, ADVOCATE FOR R1, R3 & R4;
R2 – SERVED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 18.11.2017 PASSED IN R.A.NO.129/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., AT CHIKKANAYAKANAHALLI DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED 18.11.2013 PASSED IN OS NO.157/2005 ON THE FILE OF THE PRL.CIVIL JUDGE AND JMFC., AT CHIKKANAYAKANAHALLI.

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

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

ORAL JUDGMENT

Appellant was plaintiff in O.S.No.157/2005 filed by him against respondent Nos.1 to 4 – defendant Nos.2 to 5 for partition and separate possession of his alleged share in the suit schedule immovable properties and for other reliefs.

2. Heard learned counsel for the appellant and learned counsel for the respondents and perused the material on record.

3. It is a matter of record and an undisputed fact that the appellant – plaintiff and respondent Nos.1 to 4 – defendant Nos.2 to 5 are the sons of original defendant No.1 – Shivanandaiah, who died during pendency of the suit before the Trial Court. According to the plaintiff, he instituted the suit for partition *interalia* contending that the suit schedule properties comprising of seven items of immovable properties were joint family properties and that the appellant – plaintiff was entitled to his legitimate share in all the properties including Item No.7 of the suit schedule properties. The said suit was contested by the defendants, who disputed and denied the various allegations and claim made by the plaintiff. It was contended by the defendants that while Item Nos.1 to 6 were undisputedly the joint family properties, in which the plaintiff was entitled to his legitimate share, Item No.7 was the separate and self acquired property of defendant No.2, who was working as a High School Teacher, who subsequently became a Lecturer in a Government School / College and as such, he purchased Item

No.7 in the year 1992 out of his own earnings and not with the aid of joint family income or nucleus. Based on the pleadings of the parties, the Trial Court framed the following issues:

"ISSUES

1. *Whether the plaintiff proves that, plaintiff and defendants constitute members of joint family and the suit schedule properties are the ancestral and joint family properties?*

2. *Whether the plaintiff proves that he has purchased Item No.1 of the schedule property under the registered sale deed dated 09.01.1967 from Siddaramakka and item No.2 also his purchased property?*

3. *Whether the 1st defendant proves that the suit schedule Item No.1 to 3 are his self-acquired properties?*

4. *Whether the 1st defendant prove that he has taken the suit schedule property item No.6 and has came out of the family and has constructed house in item No.7 of the schedule property by raising loan?*

5. *Whether the 2nd defendant proves that on 20.03.1982 he has taken share in S.No.93/3 and house measuring 10 x 15 feet in item No.6 and has came out from the joint family?*

6. *Whether the 3rd defendant prove that about 30 years back, there was partition and hence, plaintiff is not entitled for any relief?*

7. *Whether 5th defendant proves that on 23.05.2009 there was a panchayath palupatti and he has got written statement schedule properties?*

8. *Whether the 5th defendant is entitled for the counter claim?*

9. *Whether the plaintiff is entitled for the partition and separate possession of 1/5th share in the suit schedule properties by metes and bounds?*

10. *Whether the plaintiff is entitled for the relief of mesne profits?*

11. *What order or decree?*

4. Plaintiff examined himself as PW1 and two witnesses as PW2 and PW3 and documentary evidence at Ex.1 to Ex.P7 were marked on his behalf and defendant No.2 examined himself as DW1, defendant No.3 examined himself as DW2, defendant No.5 examined herself as DW3, defendant No.4 examined himself as DW4 and one witness as DW5 and documentary evidence at Ex.D1 to D132 were marked on their behalf.

5. After hearing the parties, the Trial Court came to the conclusion that Item Nos.1 to 6 of the suit schedule properties were joint family properties and that the plaintiff was entitled to a share therein and accordingly, decreed the suit in favour of the plaintiff in respect of Item Nos.1 to 6 of the suit schedule properties; however, the suit in respect of Item No.7 of suit schedule properties was dismissed by the Trial Court by recording a finding of fact that the said property was a separate and self acquired property of defendant No.2, son of defendant No.1, who was working as a High School Teacher / Lecturer in a Government High School / College and had separate source of income to acquire the said property without the aid of joint family funds or nucleus arising from the admitted joint family properties. While arriving at the said conclusion, the Trial Court held as under:

> *"11. **Issue No.1 to 6 & 9:** Since all these issues are interlinked with each other, in order to avoid repetition of facts and for the sake of convenience of the court, all these issues are taken up together for common discussion, as hereunder:*
>
> *12. The Learned Advocate for plaintiff argued that, the relationship between the parties is admitted. 1st defendant is the khartha of the family. Item No.1 to 6*

are the ancestral properties. Similarly Item No.7 was also purchased by 2nd defendant out of the joint family income and it is also his ancestral property. Therefore the plaintiff is entitled for the share. This fact is being admitted by defendants in their written statement. Even though 1st defendant has denied it, he admit that Item No.7 is the property of 2nd defendant and all the documents placed on record goes to show that suit schedule properties are the ancestral properties. Hence, he prays for decreeing the suit record goes to show that suit schedule properties are the ancestral properties. Hence, he prays for decreeing the suit.

13. *On the other hand, Learned counsel for the defendants argued that, suit schedule Item No. 1 to 3 was purchased by 1st defendant out of his own income and hence they are self-acquired properties. Similarly Item No.6 and 7 stands in the name of 2nd defendant, which was purchased out of his own income. He is a Government Teacher and raised loans and out of departmental savings, he has constructed house in Tiptur and residing there and therefore it is his self-acquired property and in which Plaintiff do not have any share. Advocate for 5th defendant has admitted that except Item No.7, the Court can pass orders in respect of other Properties. On these grounds, defendants pray for dismissal of the suit.*

14. *At the outset it is an admitted fact that, one late Siddaramaiah had two sons by name Shivanandaiah*

and Siddaramaiah. The said Siddaramaiah has taken his share long back and he is living separately. Shivanandaiah 1st defendant is having four sons i.e., defendant No.2 to 4 and plaintiff. So there is no dispute regarding Genealogical tree furnished by plaintiff.

15. *It is the case of the plaintiff that, Item No.1, 3 to 6 are the ancestral and joint family properties. Item No.2 was purchased in the name of 1st defendant and Item No.7 was purchased in the name of 2nd defendant out of the joint family income. 1st defendant is the khartha of the joint family and therefore he state that suit schedule properties are the joint family and ancestral properties.*

16. *It is pertinent to note here that, 1st defendant admit in his written statement that – "ಒಂದು ವೇಳೆ ಘನ ನ್ಯಾಯಾಲಯವು ಒಟ್ಟು ಕುಟುಂಬವೂ ಭಾಗವಾಗಿಲ್ಲವೆಂದು ತೀರ್ಮಾನಕ್ಕೆ ಬಂದಲ್ಲಿ ಮೇಲೆ ಹೇಳಿದ ಎರಡು ಐಟಂ ಸ್ವತ್ತುಗಳನ್ನು ತಕರಾರಿನ ಷೆಡ್ಯೂಲ್ ನಂ.1 ಮತ್ತು 2 ಎಂದು ನಮೂದಿಸಿದ್ದು, ಸದರಿ ಆಸ್ತಿಗಳೂ ಸಹ ಕುಟುಂಬದ ಆಸ್ತಿಗಳೆಂದು ತೀರ್ಮಾನಿಸಿ ಪಾಲು ಮಾಡಬೇಕಾಗಿರುತ್ತದೆ."*

Similarly, "ಒಂದು ವೇಳೆ ಕೊರ್ಟಿನವರು ಈ ಪ್ರತಿವಾದಿಯು ಹೇಳುವ ಭಾಗವಾಗಿಲ್ಲವೆಂದು ತೀರ್ಮಾನಕ್ಕೆ ಬಂದಲ್ಲಿ ಉಳಿದ ದಾವಾ ಆಸ್ತಿಗಳಲ್ಲಿ ಅಂದರೆ 3ನೇ ಐಟಂನಲ್ಲಿ ಉತ್ತರದ 0–35 ಗುಂಟೆ 4, 5, 6ನೇ ಪೂರಾ ಐಟಂಗಳು ಮತ್ತು ಈ ಪ್ರತಿವಾದಿಯ ತಕರಾರಿನ ಎರಡು ಐಟಂ ಸ್ವತ್ತುಗಳಲ್ಲಿ 1/5 ಭಾಗಕ್ಕೆ ಪಾಲು ಮಾಡಲು ಡಿಕ್ರಿ ಕೊಡಬೇಕಾಗಿರುತ್ತದೆ."

17. 3rd defendant admit in his written statement that – *"ವಾದ ಪತ್ರದಲ್ಲಿ 2ನೇ ಪ್ಯಾರಾದಲ್ಲಿ ಹೇಳಿರುವಂತೆ ವಂಶವೃಕ್ಷ ಸರಿ ಇರುತ್ತದೆ. ಮೊದಲನೆ ಪ್ರತಿವಾದಿ ಮತ್ತು 2 ರಿಂದ 4ನೇ ಪ್ರತಿವಾದಿಯರ ತಂದೆಯೆಂಬುದು ಸಹ ನಿಜವಿರುತ್ತದೆ. ಮೊದಲನೇ ಪ್ರತಿವಾದಿ ಅವರ ಅಣ್ಣತಮ್ಮಂದಿರು ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿ ಈಗ್ಗೆ 30 ವರ್ಷಗಳ ಹಿಂದೆ ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆ ಎಂಬುದು ಸಹ ನಿಜವಿರುತ್ತದೆ. ದಾವಾದ 1 ರಿಂದ 3 ಮತ್ತು 6ನೇ ದಾವಾ ಸ್ವತ್ತು ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತು ಎಂಬುದು ಸರಿ ಇರುತ್ತದೆ.*

"3ನೇ ಪ್ರತಿವಾದಿಗೂ ಸಹ ದಾವಾ ಸ್ವತ್ತುಗಳಲ್ಲಿ 1/5ನೇ ಭಾಗದ ಭಾಗಾಂಶದ ಹಕ್ಕು ಇದ್ದು, 3ನೇ ಪ್ರತಿವಾದಿ ಸದರಿ ಭಾಗದ ಹಕ್ಕುಗಳಿಗೆ ವಾದಿ ಕೊಟ್ಟಿರುವಂತ ನ್ಯಾಯಾಲಯ ಶುಲ್ಕ ಕೊಡಲು ತಯಾರಿರುತ್ತಾರೆ.

ಆದ್ದರಿಂದ ದಾವಾವನ್ನು ಡಿಕ್ರಿ ಮಾಡಬೇಕಾಗಿ ಹಾಗೂ 3ನೇ ಪ್ರತಿವಾದಿಗೆ ದಾವಾ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳಲ್ಲಿ 1/5 ಭಾಗದ ಆಸ್ತಿಗಳನ್ನು ಭಾಗ ಮಾಡಿಕೊಡಬೇಕಾಗಿ ಪ್ರಾರ್ಥನೆ."

So the admission made by defendants in their written statement clearly goes to show that suit schedule Item No.1, 3 to 6 are the ancestral properties. However, as far as Item No.2 and Item No.7 are concerned, it is necessary to consider the documents produced by defendants.

18. *Plaintiff has produced Ex.P1 to P3 RTCs, Ex.P6 and P7 are the Demand Register Extracts. These documents reveals that the properties stood in the name of father of plaintiff and some of the properties in the name of 1st defendant and other defendants. Merely because some of the revenue records stands in the name of defendants, it is not possible to come*

to the conclusion that they are self-acquired properties. It is necessary to consider the source of title to those properties.

19. *Plaintiff in support of his above case has got himself examined as PW1 and he has reiterated the above aspects in his evidence. Similarly, he has got examined other two witnesses as PW2 and PW3 who have reiterated the plaint averments in their evidence. However nothing is elicited from their cross-examination in order to discredit their version.*

20. *The contention of the defendants is that, Item No.1 to 3 properties was purchased by 1st defendant out of his own funds. Similarly, Item No.6 and 7 was also purchased by 2nd defendant out of his own income.*

21. *Defendants in support of their above case have produced Ex.D4 to D7 the Letter given by Government Pre-University College. Honnavalli, Tiptur taluk, stating that 2nd defendant is Lecturer in the said College, it shows that he is an Government employee. He has produced Ex.D7 to D75 to show that he has raised loan for purchase of Item No.6 and 7 of suit schedule property. Ex.D79 is the Sale deed, wherein which 2nd defendant has purchased Item No.7 of the schedule property. After the loan was cleared, the Bank authorities have issued notices as per Ex. D82 to D84. Ex.D85 and Ex. D86 are the Sale deeds standing in the name of 3rd defendant, but he do not*

state anything about it in his written statement. Therefore it is not possible to say that the properties which stands in the name of 3rd defendant is his self-acquired properties. The contention of the plaintiff that it was purchased in his name out of the joint family funds has to be accepted. Further defendant has produced some of the RTCs as per Ex.D87 and D92. Demand Register Extracts as per Ex.D96 to D98 and the Photographs as per Ex.D101 to D108 reveals that the khatha of some of the properties were changed in the name of father of plaintiff and other defendants.

22. *Defendants have got examined 2nd defendant as DW1, who state in his cross-examination state that- "ನಾನು ಲೆಕ್ಚರರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. ನನ್ನ ವಿದ್ಯಾಭ್ಯಾಸ ಎಲ್ಲಾ ತಿಪಟೂರು ಆಗಿರುತ್ತದೆ. ನಾನು ಓದುವಾಗ ನನ್ನ ಅಣ್ಣ ತಮ್ಮಂದಿರು ಎಲ್ಲರೂ 2ನೇ ಪಿಯುಸಿ ಓದುವವರೆವಿಗೂ ಒಟ್ಟಿಗೆ ಇದ್ದೇವು.*

ತಿಪಟೂರಿನಲ್ಲಿ ಇರುವ ಮನೆಗೆ ಉಪಯೋಗಿಸಿರುವುದು ಹಲಸು, ಬೇವು, ತೇಗ ಮರದ್ದು ಎಂದರೆ ನನ್ನ ಸ್ವಂತ ಖರ್ಚಿನಿಂದ ಹಾಕಿಸಿಕೊಂಡಿರುತ್ತೇನೆ.

ನನ್ನ ತಂದೆಯೇ ಮನೆಯ ಮುಖ್ಯಸ್ಥರಾದ್ದರಿಂದ ಅವರೇ ಮನೆ ನಿವೇಶನವನ್ನು ಕೊಂಡಿದ್ದರು ಎಂದರೆ ನಾನೇ ನನ್ನ ಸ್ವಂತ ದುಡಿಮೆಯಿಂದ ಕೊಂಡಿರುತ್ತೇನೆ.

ನನ್ನನ್ನೂ ಬಿಟ್ಟರೆ ಬೇರೆ ಯಾರು ನಮ್ಮ ಮನೆತನದವರು ಸರ್ಕಾರಿ ಕೆಲಸಕ್ಕೆ ಹೋಗುತ್ತಿಲ್ಲ ಎಂದರೆ ಸರಿ.

ನಾನು ಬ್ಯಾಂಕಿನಿಂದ 2 ಕಾಲು ಲಕ್ಷ ಹಾಗೂ ಕೆಜಿಐಡಿಯಿಂದ 18 ಸಾವಿರ ಹಾಗೂ ಉಳಿತಾಯ ಹಣ ಎಲ್ಐಸಿ ಹಣ, ಆರ್.ಡಿ. ಉಳಿತಾಯ, ಇತರೆ ಸಂಬಳ ಎಫ್.ಡಿ. ಉಳಿತಾಯ, ಇತರೆ ನನ್ನ ಸ್ನೇಹಿತರಿಂದ ಕೈಸಾಲಪಡೆದು ಮನೆ ಕಟ್ಟಿರುತ್ತೇನೆ."

The above evidence discloses that Item No.7 of the schedule property is the self-acquired property of 2nd defendant. Similarly from the evidence of DW2 to DW4 it is not possible to say that suit schedule properties are the self-acquired properties of defendants. Especially in view of the categorical admission made by defendants in their written statement.

23. Therefore from the above discussion it is clear that, admittedly about 30 years back Siddaramaiah and brothers have partitioned the family properties and now plaintiff and defendants constituted members of Joint family. As admitted by defendants, Item No.1 to 6 are the joint family properties, in which both plaintiff and defendants are having equal 1/5th share. As far as Item No.7 is concerned, 2nd defendant has established that he has purchased it out of his own salary income. Hence, it is the self-acquired property of 2nd defendant. Accordingly, Issue No.1 is answered in the Affirmative, Issue No.2, 3 and Issue No.5 are answered in the Negative and Issue No.4 & 6 are answered in the Affirmative and Issue No.9 is answered partly in the Affirmative.

24. ***Issue No.7:*** *Defendant No.5 contend that on 23.5.2009, there was a Palu-patti entered between family members and they have partitioned the properties. Defendant No.5 has produced Ex.D132 and contend that there was partition on 23.5.2009. It is a known fact that mere production of document is not sufficient, it has to be proved in accordance with law. In this regard defendant has got examined only the Notary, who has notarized the said document i.e., DW5, who speak that he has notarized the said document, but mere by examining the said person, it is not possible to prove due execution of the said document. None of the attesters nor the scribe is being examined.*

25. *Further learned counsel for the plaintiff argued that, the said document is alleged to have been executed during the pendency of the suit. If at all if the said document is really executed, then nothing prevented the parties from getting the case compromised before the court, this has not happened. Therefore he state that only to deviate the court, the said document is produced. Since the arrangement is made subsequent to the suit, I feel the said argument can be believed. Moreover as said earlier, the due execution of the document is not proved by the defendant. Moreover there is catergorical admission made by the defendants in their written statement, which goes against the said document. Hence, the contention of*

the 5th defendant that there was partition on 23.5.2009 cannot be accepted. Accordingly, Issue No.7 is answered in the Negative.

26. ***Issue No.8:*** *5th defendant contend that as per Partition dated 23.5.2009, Item No.3 of written statement schedule property has fallen to her share and she is in possession of those properties and therefore, she claimed the relief of Permanent injunction. On perusal of the records defendants have produced some of the Complaint copies, Police notices, Statements, Endorsement, Medical certificates etc., as per Ex.D112 to D131, but the most important thing is 5th defendant should have produced some documents to show her possession over the schedule property. But no such document is being produced. Her oral evidence also do not come to the aid to establish her possession of those item of written statement schedule properties. When the execution of Palu-patti is not proved, the defendant cannot claim the said relief. Accordingly, Issue No.8 is answered in the Negative.*

27. ***Issue No.10:*** *On perusal of the records, it is noticed that the materials are not sufficient to come to the conclusion regarding mesne profits. Therefore, I am of the opinion that as provided U/o 20 Rule 12 of CPC, a separate enquiry can be ordered in respect of determining the quantum of mesne profits. Hence, this Issue is answered accordingly.*

28. ***Issue No.11:*** *In the result, this court proceeds to pass the following-*

ORDER

Suit filed by plaintiff is hereby partly decreed. No order as to costs.

Plaintiff and defendants 1 to 4 are entitled for 1/5 share in Item No.1 to 6 of schedule properties other than Item No.7.

To hold separate enquiry regarding mesne profits as provided U/o 20 Rule 12 CPC.

Draw preliminary decree accordingly."

6. Aggrieved by the judgment and decree of the Trial Court dismissing the suit in respect of Item No.7 of the suit schedule properties, the appellant-plaintiff filed R.A.No.129/2013 before the First Appellate Court. So also, aggrieved by the judgment and decree passed by the Trial Court declining to grant any share in favour of defendant No.5, Gowramma, she filed R.A.No.9/2014 before the First Appellate Court. Both the appeals were taken up together by the First Appellate Court, which dismissed R.A.No.129/2013 filed by the appellant – plaintiff and partly allowed R.A.No.9/2014 filed by defendant No.5 and

accordingly, declared that defendant No.5 was also entitled to her legitimate share in Item Nos.1 to 6 of the suit schedule properties. Aggrieved by the judgment and decree of the Trial Court and First Appellate Court rejecting the claim for partition put-forth by the appellant-plaintiff in respect of Item No.7 of the suit schedule properties, the appellant-plaintiff is before this Court by way of the present appeal.

7. A perusal of the material on record will indicate that as stated supra, the Trial Court considered and appreciated the entire material on record in order to record a finding of fact that Item No.7 of the suit schedule properties was separate and self-acquired property of defendant No.2 especially when the said property was undisputedly purchased by defendant No.2, the revenue records were changed to his name, he had obtained a loan in respect of this property not only from LIC but also from Vijaya Bank and had repaid the loan and also put-up construction over the suit schedule property by using his own funds. The said finding of fact recorded by the Trial Court was confirmed by the First Appellate Court,

which dismissed the appeal in R.A.No.129/2013 filed by the appellant-plaintiff by holding as under:

> *"15. The following common points that would arise for my consideration;*
>
> ***POINTS***
>
> 1. *Whether the Trail Court has justified in partly decreeing suit of the plaintiff?*
> 2. *Whether the appellant in RA.No.129/2013 has made out of sufficient grounds to allow the appeal?*
> 3. *Whether the appellant in RA No.9/14 has made out grounds to allow the appeal?*
> 4. *What order or decree?*
>
> 17. ***Point No.1 to 3:- These** Points are inter-linked with each other. Hence, in order to avoid repetition of facts and for the sake of convenience, these points are taken into consideration at one stretch.*
>
> 18. *As per the grounds urged by the appellants in both suits it shows that the appellant in RA.No.129/13 is claiming his share in the suit item No.7 also as the trail court has given findings that the suit item No.7 is the self acquired property of the defendant no.2 who is the respondent No.1 in this appeal. That the appellant in RA.No.9/14 is claiming her 1/5th share in all the suit properties and also she is relying on Ex.D132 which is the alleged pallu-patti which came*

into existence during the pendency of the suit. The defendant no.1 namely R.S.Shivanandaiah who is the father of the plaintiff and defendant no.2 to 4 and husband of the defendant no.5 was reported as dead. Therefore after his demise, the 5th defendant namely Gowramma came on records. That the trail court has held that the suit item no.1 to 6 are the joint family properties of plaintiff and defendants and accordingly 1/5th share was allotted to the plaintiff. Then it appears that the defendants are not challenging the said finding of the trail court. That the defendant no.5 who is the appellant in R.A.No. 9/14 has contended in her appeal memo that as per Ex.D132 she is having rights over the properties which were allotted in the alleged pallu-patti. Further she is having grievance that no share has been allotted in her favour.

19. *As per the pleadings of both parties to the suit the relationship between them is an admitted fact. As per the contention of the defendant no.1 if the court comes to the conclusion that no partition has been held in between them then he is having rights in all the suit properties and he is having 1/5th share and suit may be decreed. As per the contention of the 3rd defendant the suit item No.1 to 3 and 6 are the ancestral properties and he is entitled for his 1/5th share. That the trial court considering the admission made by the defendants in written statement which inferse that the suit item no.1 and 3 to 6 are the*

ancestral properties. So the trail court has rightly restricted to discuss only with regard to suit item No.2 and 7.

20. *That the plaintiff has produced RTC Extracts and demand register extracts which have been marked as per Ex.P1 to 3, P6 and P7 which are standing in the names of the defendant no.1. As per the said documents it can not be held that the suit item No.1 to 3 are the self acquired properties of the defendant no.1 as per the defendant No.1 has not produced any title deeds to establish the said contention.*

21. *The plaintiff and other two witness have been examined as PW.1 to 3 who have stated in their affidavits about the plaint averments. In their cross examination nothing has been elicited to disprove the trustworthy of their oral testimony.*

22. *That the defendant No.2 has been examined as DW.1 he has produced the documents as per Ex.D1 to D.111 which are the genealogical tree, certified copy of judgment and order sheet in OS.No.135/05 and documents pertaining to his service, RTC extracts and sale deeds, photograph and ID cards. As per Ex.D4 to 7 the 2nd defendant is working as lecturer in Honavalli pre University College and as per Ex.D7 to D75 it appears that he has obtained loan to purchase suit item No.7. Ex.D79 is the sale deed in respect of suit item No.7 purchased by him and as per Ex.D82 to*

84 the Bank authority have issued loan clearance notices to the 1st defendant. However as per Ex.D85 and 86 which are the sale deeds standing in the name of the defendant no.3 but he has not taken the contention that the said properties are his self acquired properties and accordingly those properties have been considered as joint family properties. In the cross examination of DW.1 he has specifically stated that on his own strength he purchased the suit item No.7 and he constructed a house from the loan obtained in the Bank and also saving amount from LIC, RD and also obtained loan from his friends. Even from the evidence of DW.2 to 4 there is no material evidence to show that the suit properties are the self acquired properties of the defendants. As for as suit item No.7 is concerned, the defendant No.2 has produced sufficient material oral and documentary evidence to show that it is his self acquired property. Moreover the appellant in RA.No.129/13 has not disputed with respect of other suit properties but in respect of suit item No.7 is concerned the defendant No.2 has produced sufficient materials to establish that it is his self acquired property. So the trail court has rightly held that the suit item No.1 to 6 are the joint family properties of the plaintiff and the defendants and suit item No.7 is the self acquired property of the defendant No.2

23. *That the defendant No.5 has contended that on*

23.05.2009 there was a pallu patti between the family members as per Ex.D132 and accordingly the properties have been devided in between them. In her support DW.5 who has notarized Ex.132 has been examined but she has not examined any of the attesting witnesses. Again the trail court has rightly observed that if at all there was a pallu patti then why the parties to the suit have not compromised the matter before the court. Moreover the said document came into existence during the pendency of the suit. Therefore the trail court has rightly not accepted the said contention of the defendant no.5 and also no importance has been given to pallu patti which has been marked as per Ex.D132.

24. *Admittedly during the pendency of the suit the defendant no.1 died and later defendant no.5 came on records. That trail court has partly decreed the suit but it is held that plaintiff and defendant No.1 to 4 are entitled for 1/5th share each in suit item No.1 to 6 but share has not been allotted to the defendant No.5. That the defendant No.5 came on records only after the death of her husband who is defendant No.1. That the learned counsel of the appellant in RA.No.9/14 has relied a decision reported in Civil Appeal No.1829/75 Gurupad Khandappa Magdum Versus Heerubai Khandappa and others. In para 8 of the said decision it is held that the son, daughter and a widow are mentioned as*

class I heirs and hence as per Section 6 of Hindu succession Act. So the widow will take equal share as the defendant No.1 died intestate and accordingly this defendant No.2 to 5 became the coparceners. Therefore the defendant no.5 who is the appellant in RA.No.9/14 will get equal share along with her sons. The trail court has erred in not allotting 1/5th share to the defendant No.5. Hence My findings to point No.1 is partly in the Affirmative, point No.2 is in the Negative and point No.3 is partly in the Affirmative.

25 ***Point No.4 -:*** *In the view of the reasons and findings given to Points No.1 to 3 the following is made.*

ORDER

The appeal filed by the appellant in RA.No.129/13 is hereby dismissed.

The appeal filed by appellant in RA.No.9/14 is hereby partly allowed.

The judgment and decree of the trail court passed in O.S.No.157/05 dated 18.11.2013 is hereby partly set aside.

The suit filed by the plaintiff is hereby partly decreed and plaintiff and defendant No.2

to 5 are entitled for 1/5th share in suit item No.1 to 6 other than item No.7.

To hold separate enquiry regarding mesne profits as provided under order 20 rule 12 CPC.

No order as to cost.

Draw decree accordingly."

8. A perusal of the impugned judgment and decree passed by the Trial Court and the First Appellate Court rejecting the claim of the appellant – plaintiff in relation to Item No.7 of the suit schedule properties will clearly indicate that both the Courts have recorded categorical findings of fact that defendant No.2 was working as a High School teacher / Lecturer in a Government High School / College and had sufficient separate source of income to acquire the said property as long back as in the year 1992; both Courts also took note of the fact that pursuant to the aforesaid Sale Deed, the defendant No.2 had treated the said property as his separate and self acquired property and got the Khatha mutated into his name and had obtained loan from Vijaya Bank and LIC and had repaid the same and had put-up construction on the said property by utilizing his own funds. The said findings of fact based

on legal and acceptable evidence, in the absence of any contra evidence produced by the appellant-plaintiff cannot be said to be capricious or perverse or suffer from any illegality or infirmity so as to give rise to any question of law, much less substantial question of law warranting interference by this Court in the present appeal, which is accordingly dismissed at the stage of admission itself.

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

SV
List No.: 1 Sl No.: 29