HC-KAR

NC: 2026:KHC:64692
RSA No. 1852 of 2013

CNR: KAHC010358672013

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

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

REGULAR SECOND APPEAL NO. 1852 OF 2013 (DEC)

BETWEEN:

SRI J.L.KEMPAIAH
S/O NINGEGOWDA
AGED ABOUT 62 YEARS,
S/O NINGEGOWDA,
JAVANEGOWDANADODDI VILLAGE,
KANNALI DAKHALE,
KASABA HOBLI,
MANDYA – 571 401.

…APPELLANT

(BY SRI. VASANTHA KUMAR.M, FOR
SRI. SRIKANTH PATIL K, ADVOCATES)

AND:

1. SMT. B.H PADMA
AGED ABOUT 44 YEARS,
D/O HONNEGOWDA,

2. SMT. SWETHA
D/O SMT. B.H. PADMA,
AGED ABOUT 25 YEARS

BOTH ARE RESIDING AT
JAVAREGOWDADODDI VILLAGE
MANDYA TALUK – 571 401.

3. SMT. CHOWDAMMA
W/O JAVANAIAH,
MAJOR,
JAVANEGOWDANADODDI VILLAGE,
KASABA HOBLI,
MANDYA TALUK – 571 401.

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Location: High Court of Karnataka

4. SRI. SHIVAMADA
S/O CHIKKAHYDEGOWDA,
MAJOR,
R/O AMBARAHALLI VILLAGE,
C.A. KERE HOBLI,
MADDUR TALUK – 571 401.

5. SRI. H.T. SHANKAREGOWDA
S/O CHIKKEGOWDA @ THAMMEGOWDA,
MAJOR,
HUCHALAGERE VILLAGE,
HAMLET OF KANNALIVILLAGE,
KASABA HOBLI,
MANDYA TALUK – 571 401.

6. CHANDRASHEKAR A.M
S/O LATE MADEGOWDA,
MAJOR,
HUTCHALAGERE,
HAMLET OF KANNALIVILLAGE,
KASABA HOBLI,
MANDYA TALUK – 571 401.

7. SMT. NINGAMMA
W/O SRI NINGEGOWDA,
AGED ABOUT 82 YEARS,
JAVANEGOWDANADODDI VILLAGE,
KASABA HOBLI,
MANDYA TALUK – 571 401.

8. J.L. KALEGOWDA
S/O NINGEGOWDA
AGED ABOUT 54 YEARS
R/AT JAVANEGWODANADODDI VILLAGE
KASABA HOBLI
MANDYA TALUK – 571 401.

(RESPONDENT NO.8, DELETED AS PER THE ORDER DATED: 01.04.2015 AND CAUSE TITLE IS AMENDED AS PER THE ORDER BY THIS HON'BLE COURT ON 01.04.2015)

…RESPONDENTS

(BY SRI. K. MURTHY, ADVOCATE FOR R-1 & R-2
VIDE ORDER DATED: 06.12.2022, THE APPEAL
AGAINST R-3, R-4, R-5, R-7 & R-8 IS DISMISSED AS ABATED
R-6 – SERVED)

CNR: KAHC010358672013

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT & DECREE DTD 19.6.2013 PASSED IN R.A.NO.13/2010 ON THE FILE OF THE 2ND ADDL. DISTRICT & SESSIONS JUDGE & C.C. OF FAST TRACK COURT, MANDYA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD 16.9.1997 PASSED IN O.S.NO.542/1992 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN) MANDYA.

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

The appellant was defendant No.7 in O.S.No.542/1992 instituted by respondent Nos.1 and 2 against the appellant-defendant No.7 and other defendants before the Trial Court. It is an undisputed fact and a matter of record that respondent Nos.1 and 2 are the wife and daughter of defendant No.1, J.K. Kalegowda and that the plaintiff No.2 was a minor when she instituted the aforesaid suit in O.S.No.542/1992 along with her mother against defendant No.1, Kalegowda for maintenance of Rs.500/- per month to plaintiff No.1 and Rs.300/- per month to plaintiff No.2 and for other reliefs. Prior to institution of the suit, the suit schedule properties comprised of seven items of immovable properties, amongst which item No.1 had been by defendant No.1 in favour of defendant No.2 and item No.2 in favour of defendant No.3 and it was contended

that the right of maintenance which had accrued in favour of the plaintiffs was to be made a charge on the suit schedule properties.

2. Defendant Nos.1, 5 and 6 filed a common written statement admitting the relationship of the plaintiffs with defendant No.1, but disputed and denied the allegations and claim made against them and sought for dismissal of the suit. So also, the defendant Nos.2 and 4 also filed separate written statement seeking dismissal of the suit. During the pendency of the suit, defendant No.1, the husband of plaintiff No.1 and father of plaintiff No. 2 and sold item No.5 in favour of the appellant. who was impleaded as Defendant No.7 in the suit and he filed his written statement claiming to be a bonafide purchaser for value without notice of the suit or the claim of the plaintiffs.

3. In view of the aforesaid pleadings, the Trial Court framed the following issues:

> *"1. Whether the plaintiff proves that the first defendant has treated her cruelly and also deserted and neglected to maintain her and second plaintiff without providing food and shelter?*
> *2. Whether the plaintiffs are entitled to maintenance? If so, at what rate?*

3. *Whether all the suit properties are liable for creation of charge towards maintenance at the plaintiffs?*
4. *What decree or order?*

Addl. Issues:

1. *Whether defendant No.7 proves that the suit is bad for mis-joinder of parties?*
2. *Whether the second defendant proves that the first defendant had sold the suit item No.1 in favour of the fourth defendant for his legal necessity and family benefit?*
3. *Whether the second defendant further proves that she is the bonafide purchaser of suit item No.1 from defendant No.4 for valuable consideration"*

4. Plaintiff examined herself as PW.1 and three other witnesses as PWs.2 to 4 and got marked documentary evidence as Exs.P-1 to 17 on her behalf. On behalf of the defendants, defendant Nos.1, 2 and 7 were examined as DWs.1, 3 and 5 and two other witnesses as DWs.2, and 4 and got marked documentary evidence as Exs.D-1 to 8.

5. After hearing both sides, the Trial Court came to the conclusion that the plaintiff had established that defendant No.1 treated the plaintiffs cruelly and deserted them and neglected to

maintain them without providing any food and shelter and consequently, the Trial Court partly allowed and decreed the suit by directing defendant No.1 to pay maintenance in a sum of Rs.250/- per month in favour of plaintiff No.1 from the date of the suit till her lifetime and also pay Rs.200 per month in favour of plaintiff No.2 during her minority and till she attained majority. The Trial Court also directed that in view of the direction to pay maintenance ordered in favour of the plaintiffs, a charge was to be created over item Nos.3, 4, 5 and 7 for maintenance of the plaintiffs by holding as under:

> *"The plaintiff filed suit for judgment and decree in their favour against the defendants for maintenance and creation of charge over the suit schedule properties, for declaration that the sales effected by the first defendant in favour of the defendants 2 and 3 in respect of suit schedule items 1 and 2 is void and not binding on the plaintiffs, court costs and such other reliefs.*
>
> *2. Brief facts of the case of the plaintiffs are that:-*
>
> *The first plaintiff is the wife of the first defendant. Out of their wedlock, second plaintiff was born and another child by name Smitha was also born, who is with first defendant. At the time of marriage, the first plaintiff's father had given four tholas of 2 line avalakki gold mangalya chain to the first plaintiff. He had also given two tolas of gold chain to first*

defendant; he had spent huge amount for the purpose of marriage. The first defendant was looking after the first plaintiff with love and affection till the first child was born. Thereafter, he started hostile attitude against the first plaintiff. All the jewels that were given to the plaintiff No.1 by her father were snatched away by the first defendant and he sold all of them for his extravagances. Then sent first plaintiff along with second plaintiff to her father's house. Then a panchayat was convened and she was again sent to the house of first defendant. Even then, the first defendant was not looking after the first plaintiff and her child with love and affection. However, the first plaintiff continued to live with the first defendant. During this period, another female child by name Smitha was born. He is addicted to bad habits like drinking, gambling, etc. He never used to stay in the house. He used to be out of station. Whenever he used to come to the house, he used to pick up quarrel with the first plaintiff and used to assault brutally without any reason. On 21.04.1990, the first defendant assaulted the first plaintiff brutally and snatched her gold chain and drove her out of the house, holding a threat that if she was to return to the house, he will put an end to her life. The first plaintiff was pregnant by four months. She went to the house of her father. The first defendant by instigation of their family members demanding the first plaintiff to get money from her parents' house and the first plaintiff also given police complaint.

3. The suit schedule properties are all family properties of first defendant. The first defendant had no necessity to sell the family properties. In spite of it the first

defendant sold item No.1 in favour of the second defendant, item No.2 in favour of 3rd defendant fraudulently, nominally with intention to defeating the right of the plaintiffs. The second plaintiff still is a child, she is to be educated and has to be married. The first defendant is bound to maintain them in all respects. The purchasers viz., defendants 2 and 3 are the close relatives of first defendant. Further after plaintiffs driven out from the house of first defendant, the first defendant is making hasty preparations to alienate the suit schedule properties. Hence, this suit.

4. The third defendant not filed written statement.

5. The defendants 1, 5 and 6 have filed common written statement admitting the relationship of plaintiffs and first defendant. Further admitted that the first plaintiff lived along with first defendant after their marriage in the first defendant's house. Further contended that the first plaintiff is an arrogant lady, never behaved as a wife with the first defendant, never respected the first defendant. The first defendant along with his brothers and mother were residing in the joint family. The first plaintiff misbehaved with the sixth defendant and also assaulted the sixth defendant and first plaintiff caused division between the first defendant, his brothers and mother. After the division first defendant living with first plaintiff separately. Then after also the first plaintiff started abusing the sixth defendant with filthy language and not preparing the food; the plaintiff No.1 voluntarily left the matrimonial house of first defendant without intimation.

Further contended that the first plaintiff is a puppet of their parents. The first plaintiff not joining the first defendant and then first defendant met her parents and requested the parents to send the first plaintiff along with first defendant. The first plaintiff refused to come along with the first defendant. The first defendant prepared to take back the first plaintiff to lead amicable life. The plaintiffs' maintenance amount prayed is exorbitant. The first defendant has sold the properties for his legal necessity and family benefit. Suit item No.1 sold in favour of fourth defendant and suit item No.2 in favour of fifth defendant. Further contended that first defendant has not sold the suit item No.1 to the second defendant. Further contended that the plaintiffs included the properties of first defendant's brother and properties not belonging to the first defendant for showing bulk of the properties and getting huge maintenance. The first defendant is not getting sufficient income for meeting his life. On the above grounds prays for dismissal of the suit.

5. The fourth defendant filed written statement contending that he has purchased the suit item No.1 from the first defendant and sold in favour of 2nd defendant and he is not necessary party and prays for dismissal of the suit.

6. The second defendant filed written statement contending that the first defendant sold item No.1 for his legal necessity and family benefit in favour of fourth defendant. The fourth defendant in turn sold in favour of the second defendant for valuable consideration. The suit item

No.1 purchased by the second defendant without notice of the proceedings. The plaintiffs filed suit against mis-joinder of unnecessary parties. On the above grounds, prays for dismissal of the suit.

7. The seventh defendant filed written statement contending that first defendant sold item No.5 in favour of this defendant for valuable consideration and this defendant is bonafide purchaser; the first defendant sold this land for his legal necessity and family benefit and discharging of loan. On the above grounds, prays for dismissal of the suit.

8. On the above pleadings, following issues have been framed.

1) Whether the plaintiff proved that the first defendant has treated her cruelly and also deserted and neglected to maintain her and second plaintiff without providing food and shelter?

2) Whether the plaintiffs are entitled to maintenance? If so, at what rate?

3) Whether all the suit properties are liable for creation of charge towards maintenance of the plaintiffs?

4) What decree or order?

Addl. Issues:-

1) Whether deft. No.7 proves that the suit is bad for mis-joinder of parties?

2) Whether the second defendant proves that the first defendant had sold the suit item No.1 in

favour of the fourth defendant for his legal necessity and family benefit?

3) Whether the second defendant further proves that she is the bonafide purchaser of suit item No.1 from the fourth defendant for valuable consideration?

4) Whether the seventh defendant proves that the first defendant had sold the suit item No.5 in favour of him, for first defendant's legal necessity and family benefit?

9. On behalf of the plaintiffs, P.Ws. 1 to 4 examined and Ex.Ps.1 to 17 marked. On behalf of defendants, D.Ws.1 to 5 examined and Ex.Ds. 1 to 8 marked.

10. Heard arguments.

11. My findings on the above issues are:-

1) Affirmatively,

2) The 1st Plff. is entitled for Rs.250/- p.m. and 2nd Plff. is entitled for Rs.200/- p.m.

3) Partly affirmatively,

4) As per final order,

Addl. Issues:-

1) Negatively,

2) Affirmatively,

3) Affirmatively,

4) Affirmatively, for the following:-

REASONS

Issue No.1

12. The relationship of plaintiffs and first defendant, the first defendant and his brothers were divided the family properties under the partition, the Ex.P.1 properties fell into the share of first defendant and plaintiffs residing with the first plaintiff's parents' house are all not disputed facts. In order to prove this issue, the plaintiffs relied documents. Ex.P.12 complaint lodged by the first plaintiff to the concerned police discloses that the first defendant and his brothers and mother caused cruelty to the first plaintiff. On the basis of Ex.P.12 the concerned police has registered the case and submitted charge sheet. After trial the learned JMFC, Mandya convicted the first defendant and his brother Shivamadhu and his mother – Ningamma and released on Probation of Offenders Act by taking surety by the first defendant and his mother. Ex.P.12 and Ex.P.13 disclose that first defendant and his brother and mother caused cruelty to the first plaintiff and demanded dowry.

13. Further the first plaintiff examined as P.W.1 has stated that at the time of marriage of first plaintiff and first defendant, first plaintiff's father given four tolas of gold chain to the first defendant. Further she has stated that while first plaintiff living along with the defendant's house, her mother-in-law, her brother-in-law demanded the first plaintiff for bring the dowry from her parents' house and caused cruelty to the first plaintiff. In cross-examination, the learned counsel for the contesting defendants nothing elicited to P.W.1 for disbelieving the evidence of P.W.1. Further P.W.3 stated that

he has given two tolas of mangalya chain, two tolas of gold bangles, four tolas of Avalakki gold chain to the first plaintiff at the time of marriage of first defendant and first plaintiff and two tolas of gold chain to the first defendant and incurred the expenditure of Rs.80,000/- to the marriage. The learned counsel for the contesting defendants nothing elicited to P.W.3 for disbelieving the evidence of P.W.3. The above evidence of P.Ws.1 to 3 is cogent and corroborative evidence in order to believe that the first plaintiff's father given jewels to the first plaintiff and gold chain to the first defendant and incurred marriage expenses at the time of marriage of first plaintiff and first defendant.

14. P.W.1 further stated that up to the second plaintiff was born, the first plaintiff and first defendant were in good terms. After birth of second plaintiff, the first defendant by addicting to alcoholic and demanded dowry to the first plaintiff from her parent's house and assaulted the first plaintiff and not providing food, clothes to the plaintiffs. Further she has stated that on 21.04.1990, the first defendant assaulted the first plaintiff mercilessly. The learned counsel for the contesting defendants nothing elicited to P.W.1 to disbelieve the evidence of P.W.1.

15. P.W.2 has stated that after birth of second plaintiff, the quarrels were started between first plaintiff and first defendant due to reason of first plaintiff not brought the dowry from her parent's house. Further he has stated that the first defendant by intoxicating alcoholic used to assault

the first plaintiff. Further, he has stated that after panchayat the first plaintiff sent along with the first defendant then after some days the first defendant assaulted the first plaintiff in order to bring the dowry by the first plaintiff from her parents' house. The learned counsel for the contesting defendants nothing elicited to P.W.2 for disbelieving the evidence of P.W.2.

16. P.W.3 has stated that after birth of second plaintiff first defendant used to first plaintiff in order to get dowry from her parents' house. Further he has stated that after panchayat first plaintiff went to first defendant's house and then after some days first defendant assaulted first plaintiff by snatching the mangalya chain and driven out from his house. The learned counsel for the contesting defendants nothing elicited to P.W.3 for disbelieving the evidence of P.W.3.

17. P.W.4 has stated that first defendant given troubles to the first plaintiff after birth of second plaintiff. The learned counsel for the contesting defendants nothing elicited to P.W.4 for disbelieving the evidence of P.W.4. This evidence of P.W.1 to 4 in respect of first defendant caused cruelty to the first plaintiff is cogent and corroborative.

18. The P.W.1 has stated in respect of first defendant causing cruelty to the first plaintiff that the panchayat was took place. In that panchayat the first defendant's people were present and including panchayats viz., J.K. Madaiah, Chandrahasa, Ramanna. After that panchayat, some days

first defendant looking after the welfare of plaintiffs then used to assault the first plaintiff. The learned counsel for the contesting defendants nothing elicited to P.W.1 for disbelieving the evidence of P.W.1.

19. P.W.2 has also stated that in respect of cruelty caused by the first defendant to the first plaintiff, the panchayat was convened. In that panchayat, P.W.2, one Ramanna, Chandrahasa, first defendant and his brothers and mother were present and first defendant and their family members assured to the panchayat to look after the welfare of the plaintiffs. The learned counsel for the contesting defendants nothing elicited to P.W.2 for disbelieving the evidence of P.W.2.

20. P.W.3 also stated that first defendant caused cruelty to the first plaintiff regarding panchayat was convened in the temple. For that panchayat the first defendant and his family members and P.W.3's villagers viz., Ramanna, Mahadev, P.W.3's wife were present. In that panchayat the first defendant and his family members undertaken to look after the welfare of the plaintiffs. The learned counsel for the contesting defendants nothing elicited to P.W.3 for disbelieving the evidence of P.W.3.

21. Further P.W.4 has stated that the first defendant caused cruelty to the first plaintiff in respect of that matter, the panchayat was convened. In that panchayat on behalf first defendant, P.W.4, J.K. Madaiah, Chowdaiah and Chandrahasa on behalf of first plaintiff, her father and other

persons were present. In that panchayat, first defendant and his family members undertaken to look after the welfare of the plaintiffs. In the cross examination, nothing elicited to P.W.4 for disbelieving the evidence of P.W.4. Thus the above evidence of P.Ws. 1 to 4 in respect of first defendant caused cruelty to the first Plaintiff and convened panchayat and in that panchayat the first defendant undertaken to look after the welfare of the plaintiffs is clearly goes to show that the first defendant and his family members caused cruelty to the first plaintiff and for that cruelty the panchayat was convened.

22. The D.W.1, who is husband of first plaintiff, himself admitted that the panchayat was convened in the temple of Ramamandir. In that panchayat, he was also present and also P.W.2 to P.W.4 were present. This admission of D.W.1 corroborates the evidence of P.Ws.1 to 4 and proved the alleged panchayat as narrated by the plaintiffs in the plaint and in view of the above admission of D.W.1 further goes to show that D.W.1 caused cruelty to the first plaintiff, thus panchayat was convened. For the above reasons, the plaintiffs proved that the first defendant has treated the first plaintiff with cruelty and also deserted and neglected to maintain her and second plaintiff without providing food and shelter. Accordingly, I answer this issue in favour of the plaintiffs against the first defendant in the affirmative.

Issue No.2

23. On issue No.1 the court held and also it is admitted fact that the plaintiffs are residing along with first plaintiff's parents' house and also held that the first defendant caused cruelty to the first plaintiff and deserted the plaintiff without providing food and shelter and also neglected. Further in order to prove this issue the plaintiffs produced Ex.P.17. Ex.P.17 clearly discloses that the first defendant married along with one Prabha. In other words Ex.P.17 discloses that Prabha wife of J.L. Kalegowda. That J.L. Kalegowda is none other than the first defendant. Further Ex.P.17 discloses that the first defendant and his family members mentioned. Under Hindu law it is duty bound on the husband to maintain the wife and further provided that the maintenance of a wife by her husband is of course, a matter of personal obligation, which attaches from the moment of marriage. She is entitled to be maintained by the husband whether he is possessed of any property or not. Further section 18 of Hindu Adoptions and Maintenance Act provided that:

"Maintenance of wife:- (1) Subject to the provision of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance—

(a) If he is guilty of desertion

(b) Treated with cruelty

(c) Living with other wife."

The plain reading of the above provision of law clearly discloses that the first plaintiff is entitled for maintenance from the first defendant and live separately on the ground that the first defendant / husband living with another wife. In this case, according to Ex.P.17 the first plaintiff proved that the first defendant living with another wife viz., Prabha and also proved the guilty of desertion. As such, in view of the provision of law also, the plaintiffs are entitled for maintenance from the defendant.

24. In addition to above evidence P.W.1 stated that she has no any sources of income and she is unable to do coolie work. Further she has stated that first defendant has got 3 acres of wet land and 2 acres of dry land and earning income of Rs.25,000/- after incurring the expenditure. Further, she has stated that she has to require Rs.500/- per month and for Rs.300/- per month to the second plaintiff and Rs.2,000/- for clothes, Rs.2,000/- for rent, Rs.2,000/- for medicines and family expenditure of Rs.500/-. In the cross examination also she has admitted that the first defendant incurred the expenditure, saving Rs.30,000/- to Rs.40,000/- per annum from the agriculture. The learned counsel for the first defendant nothing elicited from the mouth of P.W.1. P.W.2 has stated that the first defendant growing agricultural crops like sugarcane, paddy in the first defendant's landed properties and earning Rs.20,000/- income per year. Further he has stated that first defendant married with one woman. In the cross examination, the learned counsel for the first

defendant nothing elicited to disbelieve the evidence of P.W.2. P.W.3 is the father of first plaintiff also stated that first defendant growing sugarcane and paddy in his family lands and getting income of Rs.20,000/- per year. The learned counsel for the contesting defendants nothing elicited to P.W.3 for disbelieving the evidence of P.W.3. P.W.4 also stated that the first defendant growing sugarcane, paddy crop in his family lands and getting income of Rs.25,000/- from the agriculture per year. The learned counsel for the contesting defendants nothing elicited to P.W.4 for disbelieving the evidence of P.W.4. In addition to that D.W.1 himself admitted in the cross examination that no property stands in the name of the first plaintiff. The first plaintiff is living in her father's house. Further the suit items 3 and 4 measuring 2½ guntas, suit items 6 and 7 are standing in the name of first defendant and also other properties. For the above reasons, the plaintiffs proved they are entitled to maintenance from the first defendant.

25. For fixing the quantum of the maintenance, the court has to consider position, rank and life of the plaintiffs. Here in this case, the first plaintiff and the first defendant are the agriculturists families and second plaintiff is the school going children. Taking into consideration of their position and income of the first defendant, the court has granted maintenance amount of Rs.250/- to the first plaintiff per month from the date of filing of the suit till her life time and for Rs.200/- to the second plaintiff from the date of filing of the suit till attaining majority. Accordingly, I answer the above

issue that the plaintiffs are entitled for maintenance at Rs.250/- p.m. for the first plaintiff and Rs.200/- p.m. for second plaintiff.

Addl. Issue No.1:

26. The seventh defendant contended that the suit is bad for mis-joinder of parties. But the seventh defendant not placed any oral or documentary evidence for believing that the suit is bad for mis-joinder of parties. Without placing oral and documentary evidence, mere taking contention in the written statement that itself is not sufficient to hold that the suit is bad for mis-joinder of parties. Accordingly I answer this issue in the negative.

Addl. Issue No.2:

27. In this issue, the second defendant has to prove the first defendant had sold the suit item No.1 in favour of the fourth defendant for his legal necessity and family benefit. In order to prove this fact, relied Ex.D.7. The Ex.D.7 clearly discloses that the first defendant has sold suit item No.1 in favour of the fourth defendant for valuable consideration of Rs.17,000/-. In other words, the Ex.D.7 is registered sale deed. According to recitals of Ex.D.7, the first defendant received Rs.17,000/- in the presence of its witnesses.

28. The D.W.1 has stated that he had sold the suit item No.1 in favour of this fourth defendant. The learned counsel for the plaintiff nothing elicited to D.W.1 for disbelieving the evidence of D.W.1. The evidence of D.W.1 is corroborates with Ex.D.7.

29. The D.W.4 stated that he has purchased the suit item No.1 from the first defendant. Further he has stated that first defendant has sold the suit item No.1 in favour of fourth defendant in order to discharge his hand loans. In the cross examination, the learned counsel for the plaintiffs nothing elicited to D.W.4 for disbelieving the evidence of D.W.4. For the above reasons, the second defendant proves that the first defendant has sold suit item No.1 in favour of fourth defendant for his legal necessity and family benefit. Accordingly I answer this issue in the affirmative.

Addl. Issue No.3:

30. In this issue, the second defendant has to prove that she is the bonafide purchaser of the suit item No.1 from the fourth defendant for valuable consideration. Ex.D.8 is the registered sale-deed executed by the fourth defendant in favour of the 2nd defendant. Ex.D.8 clearly discloses that the second defendant purchased the suit item No.1 from the 4th defendant for valuable consideration of Rs.20,000/- and further it is disclosed that in the presence of witnesses, the 4th defendant received consideration of Rs.20,000/- from the 2nd defendant. The D.W.1 has stated that he has sold the suit item No.1 in favour of the 4th defendant and 4th defendant sold the same in favour of the second defendant. In the cross examination, the learned counsel for the plaintiffs nothing elicited to D.W.1 for disbelieving the evidence of D.W.1. D.W.2 also stated that the 4th defendant has sold the suit item No.1 in favour of the 2nd defendant for

valuable consideration. In the cross examination, the learned counsel for the plaintiffs nothing elicited to D.W.2 for disbelieving the evidence of D.W.2. D.W.4 has stated that he has sold the suit item No.1 in favour of the second defendant for valuable consideration. The D.W.4 is the fourth defendant who is the seller of suit item No.1 in favour of the 2nd defendant. The learned counsel for the plaintiffs nothing elicited to D.W.4 for disbelieving the evidence of D.W.4. D.W.5 who is the purchaser of suit item No.1 from the fourth defendant has stated that the fourth defendant sold the suit item No.1 in favour of D.W.5 in order to discharge his loans for valuable consideration of Rs.20,000/-. The learned counsel for the plaintiffs nothing elicited to D.W.5 for disbelieving the evidence of D.W.5. For the above reasons, the second defendant further proves that she is the bonafide purchaser of suit item No.1 from the fourth defendant for valuable consideration. Accordingly, I answer this issue in the affirmative.

Addl. Issue No.4:

31. In this issue, the seventh defendant has to prove that the first defendant had sold the suit item No.5 in favour of him for first defendant's legal necessity and family benefit. To prove this fact, the 7th defendant produced Ex.D.6. Ex.D.5 discloses that the 1st defendant purchased the suit item No.5 as his self acquired property. Subsequently sold the same under Ex.D.6 in favour of 7th defendant. Ex.D.6 is the registered sale deed which discloses that the first defendant sold the item No.5 in favour of the 7th defendant

for valuable consideration of Rs.24,000/- in order to discharge first defendant's hand loans and family benefit.

32. Further P.W.1 herself admitted in the cross examination that the first defendant sold the suit item No.5 on 17.2.1993 for Rs.24,000/- in favour of 7th defendant. Further D.W.1 has stated that in order to discharge D.W.1's hand loans and benefit of family, he has sold suit item No.5 in favour of the 7th defendant. The learned counsel for the plaintiffs nothing elicited to D.W.1 for disbelieving the evidence of D.W.1. For the above reasons, the 7th defendant proves that the first defendant had sold the suit item No.5 in favour of him for first defendant's legal necessity and family benefit. Accordingly, I answer this issue in the affirmative.

Issue No.3

33. In this issue, the plaintiffs have to prove they are entitled for creation of charge over the suit schedule properties towards their maintenance. As I have already pointed out upon additional issues 2 to 4 that suit item No.1 and 5 sold by the 1st defendant for his legal necessity and family benefit and further held that the second defendant and seventh defendant purchased the suit item No.1 and 5 respectively for valuable consideration. The Section 39 of Transfer of Property Act provided that:

> *"Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred … The right may be enforced against the transferee, if he has notice*

thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

The above provision clearly discloses that the transfer made without consideration or gratuitous one or with notice of the maintenance right of the plaintiffs then only the plaintiffs are entitled to creation of charge over the properties which are in the hands of transferees. In this case, the plaintiffs not placed any material that defendants 2 and 5 purchased the lands with notice that the plaintiffs are entitled to maintenance from the first defendant. Moreover the suit item No.1 sold by the first defendant before filing of the suit by the plaintiffs. The same has been purchased by the fourth defendant before filing of the suit and sold the same in favour of 2nd defendant before filing of the suit.

34. The Ex.D.4 also discloses that the fifth defendant purchased the suit item No.2 before filing of the suit. The learned counsel for the plaintiffs relied the ruling reported in AIR 1991 Karnataka 24 (Siddegowda v/s Lakkamma and others). Their Lordships observed that "where a transaction of sale of immovable property was entered into by the husband after coming to know that the wife was going to present a suit for maintenance, the same could not be said to be bonafide transfer without notice and therefore the property could be charged for ensuring payment of maintenance without voiding the sale deed". The above facts and circumstances of the case are not applicable to present case on hand in respect of suit items 1 and 2. In other words,

the present case on hand the plaintiffs not proved that the husband of the first plaintiff coming to know that the first plaintiff was going to present suit for maintenance. In other words, even the first plaintiffs not issued any notice to the first defendant in order to plaintiffs going to institute the suit against the first defendant for claiming maintenance. In other words, the plaintiffs not placed any oral or documentary evidence for believing that the first defendant had noticed that the plaintiffs are going to file maintenance suit. Thus, the above ruling is not applicable to present case on hand in respect of creation of charge over the suit items 1 and 2.

35. Further, P.W.1 not whispered any single word that in order to deprive the right of maintenance of the plaintiffs, the first defendant sold the properties in favour of defendants 2 and 4. However, in this case, after institution of the suit first defendant sold suit item No.5 in the year 1993 in favour of seventh defendant. In other words, the order-sheet discloses that the plaintiffs by filing a misc. petition and taken temporary injunction order not to alienate suit properties and further order sheet dated 5.6.1993 discloses that the temporary injunction and notice and summons served to the first defendant. But inspite of it, he has sold that suit item No.5 in the year 1993 pending disposal of the suit. Thus, it is clear that the 1st defendant sold the suit item No.5 in favour of the 7th defendant with notice of plaintiffs' maintenance right. Thus, even though the 7th defendant purchased the same, the suit item No.5 is liable for creation of charge towards maintenance amount.

36. P.W.1 stated that the first defendant has got acres of land out of which 3 acres of wet land and 2 acres of dry land. In the cross-examination, she has admitted that she has given notice to the 7th defendant stating that the 7th defendant not to purchase the land of first defendant, but the plaintiffs not produced the notice before the Court. Hence, oral evidence of 1st plaintiff that she has given notice to the 7th defendant not to purchase of land is not probable / believable. Further she has admitted that the suit item No.1 sold by the first defendant before filing of the suit. Further she has stated that the first defendant in order to deprive maintenance right of plaintiffs sold the suit item No.1 in favour of the fourth defendant. This evidence of P.W.1 is not probable / believable because the plaintiffs as I have already pointed out that not issued any notice to the first defendant or fourth defendant not to purchase the suit item No.1 or not to sell the same by the first defendant in favour of the fourth defendant. Thus, the admission of P.W.1 is not probable to believe. Similarly the fifth defendant purchased the suit item No.2 before filing of the suit. At the time of fifth defendant purchasing the suit item No.2 there was no suit filed by the plaintiffs or plaintiffs not given notice to the 1st defendant or fifth defendant.

37. P.W.2 has stated that the first defendant has got 5 acres of land. In the cross examination, nothing elicited to P.W.2 for disbelieving the evidence of P.W.2. P.W.3 also stated that first defendant has got 5 acres of land. In the

cross examination, nothing elicited to P.W.3 for disbelieving the evidence of P.W.3. D.W.1 stated that he has sold away all the properties. But this evidence of D.W.1 is not probable to believable because some more properties are standing in the name of first defendant. In other words the first defendant sold away the suit item 1, 2 and 5 but other suit items 3, item No.4 measuring 2½ guntas and 6 and 7 are standing in the name of first defendant. Further, he has admitted that Ex.D.1 properties fell into the share of D.W.1 i.e., first defendant. For the above reasons, the plaintiffs are entitled for creation of charge over the suit item No.3, item No.4 measuring 2½ guntas, and 5 to 7. Accordingly I answer the above issue partly in the affirmative.

ORDER

The suit is partly decreed with costs. The first plaintiff is entitled for maintenance of Rs.250/- per month from the first defendant from the date of filing of the suit during her life time and second plaintiff is entitled for maintenance of Rs.200/- per month from the defendant No.1 from the date of filing of the suit till attaining her majority. Further ordered that the charge is created over the suit schedule items 3, item No.4 measuring 2½ guntas and 5 to 7 for maintenance of plaintiffs.

Further office is directed to send decree copy to the learned Deputy Commissioner for recovery of Court Fee from the defendant."

6. It is an undisputed fact and a matter of record that defendant Nos.1 to 6 did not challenge the judgment and decree of the Trial Court and the same attained finality and became conclusive and binding upon defendant Nos.1 to 6. However, the defendant No.7 - appellant herein filed an appeal in R.A.No.13/2010, which was dismissed by the First Appellate Court by holding as under:

> *"13. The points for my considerations are:*
>
> *1. Whether the judgment and decree in OS 542/92 is illegal, erroneous in respect of creating a charge on item No.5 of the suit property and thereby liable to be interfered with?*
>
> *2. What order?*
>
> *14. My findings on the above points are as under:-*
>
> *Point No.1: In the negative.*
>
> *Point No.2: As per final order below,*
>
> *for the following:*
>
> ***REASONS***
>
> *15. **Point No.1**: I have examined the materials on record and records received from the court below and submissions filed by the parties. The plaintiff has filed the suit for declaration and maintenance and creation of charge over the suit property and it was partly decreed and the maintenance amount of Rs.250/- for the 1st plaintiff and Rs.200/- for the 2nd plaintiff is ordered from the date of the suit by creating a charge over item No.3 and 4 and 5 to 7 of*

the suit property. It is urged by the learned counsel for the appellant that trial judge has reached to the conclusion that the suit property item No.5 is self acquired property of the 1st defendant as per Ex.P.5 and the appellant has purchased the same under the registered sale deed dated 17.12.1993 for consideration of Rs.24,000/- which is marked as Ex.D.6 and after considering the evidence, it is clear that the 1st defendant has sold it for his legal necessity and benefit and it is also admitted by the 1st defendant of this case. But the court below has failed to take note of the same and it ought not to have created charge on the said property when it is a self acquired property and there are no additional pleading filed by the parties though the defendant 7 / appellant is the bonafide purchaser of the property and he has no notice of the court proceedings and PW1 has admitted the same in his evidence as she has not taken any public notice in the newspaper and trial court has failed to appreciate the facts and thereby the judgment and decree passed by the court below is illegal and liable to be modified. The respondents have urged before the court that during the pendency of the suit in order to defeat and defraud the rights of the plaintiff, the 1st defendant has sold the item No.5 to the 7th defendant who is none other than his own brother and thereby in this case sec. 39 of the T.P. Act is applicable and there is no illegality or error committed by the trial judge.

16. Now I intend to examine the evidence of the parties as the only contention of the appellant is that the charge created by the court below in respect of item No.5 of

the suit property is incorrect as the appellant is the bonafide purchaser. It is also an admitted fact that the item No.5 sold to the 7th defendant by the 1st defendant in the year 1993 though the suit is filed in the year 1992. It is found from the records that the plaintiff has obtained temporary injunction against the 1st defendant not to alienate the suit property and it has been served upon the 1st defendant on 5.6.1993. But inspite of it, he has sold item No.5 in the year 1993 to the 7th defendant though he is prohibited from alienating any of the suit property and the 7th defendant who is the appellant is none other than the brother of the 1st defendant, though he has purchased the item No.5 for consideration and the 1st defendant is not expected to sell the said property as it amounts to lis pendens when there is a prohibitory order. No doubt DW1 has also admitted that he has sold the property in the pendency of the suit and documents produced in this case also disclosing the same. There is no cogent and convincing evidence that the 7th defendant is the bonafide purchaser of the property being a brother of the 1st defendant. No other respondent have challenged the judgment passed by the court below. Under sec. 39 of the Transfer of Property Act says that where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property is transferred the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

17. From the above, it is clear that a charge can be created if it is transferred to a third person when other person having right to receive maintenance.

18. Here in the instant case that the 1st defendant has sold the property to the 7th defendant who is none other than his brother in respect of item No.5 of the suit property though there is a prohibitory order of injunction not to alienate the property. Hence, it is clear the act of the 1st defendant is only to defeat and defraud the right of maintenance of plaintiffs cannot be ruled out. The 7th defendant who is none other than the brother of the 1st defendant have knowledge of the pendency of the suit though there is a division between them and he knows the fact that the plaintiffs are the wife and children of the 1st defendant and there is matrimonial dispute between them pending before court and claim of maintenance by plaintiff.

19. Upon examining the entire facts and evidence available on record it cannot be said that 7th defendant is not having notice of the proceedings of the rights of maintenance of plaintiff. Considering the principles laid down under sec. 39 of the T.P. Act, the maintenance right can be enforced against transferee also though it is self acquired property of the 1st defendant, and the plaintiffs, being the wife and children are entitled to claim maintenance right and they are having a creation of charge over the said property i.e. item No.5 of the suit property. There are no cogent and convincing materials to show that the 7th defendant is not

having a notice of the proceedings as there is a prohibitory order passed by the court from alienating the item No.5 of the property which is a suit property. Having regard to the totality of the circumstances, the learned Magistrate has appreciated the matter in clear and cogent manner and reached to the conclusion and the court below has rightly created a charge in respect of item No.5 of the suit property. There are no error or illegality committed by the court below and on appreciating the rights of the plaintiff provided under sec. 39 of the T.P. Act and considering both oral and documentary evidence on record rightly the court below has created a charge in respect of item No.5 of the suit property as the defendant 1 alienates the same during the pendency of the proceedings though there is a temporary injunction against him not to alienate the property. Hence, there is no illegality or error committed by the court below. There are no grounds to interfere with the judgment and decree in respect of creation of charge over the property passed by the court below as the same is legal and correct on convincing evidence available on record, the court below has reached the correct conclusion by assigning the reason. Hence, judgment is sustainable in the eye of law. The appellant has failed to convince the court that the judgment is illegal and erroneous and unsustainable under law. Hence, I answer point No.1 accordingly.

20. ***Point No.2****: In view of the above findings and the reasons stated supra, I am of the opinion the judgment and decree passed by the court below in respect of creating a*

charge over item No.5 of the suit property is proper and correct and thereby the appeal filed by the appellant is liable to be dismissed as it has no merits. In the result, I proceed to pass the following:

ORDER

The appeal fails and the same is hereby dismissed. Consequently the judgment and decree passed by the Civil Judge (Jr. Dn.), Mandya in OS 542/92 dated 16.9.97 is hereby confirmed.

Under the circumstances, the parties are directed to bear their own costs."

7. A perusal of the material on record will indicate that the limited grievance of the appellant-defendant No.7 was in relation to the judgment and decree of the Trial Court in respect of creation of a charge in relation to item No.5 of the suit schedule property, which had been purchased by him during the pendency of the suit from defendant No.1. The said contention of the appellant-defendant No.7 was negatived by the First Appellate Court by placing reliance upon Section 39 of the Transfer of Property Act, which reads as under:

"39. Transfer where third person is entitled to maintenance.—

Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

8. As can be seen from the plain reading of the aforesaid provision will clearly indicate that so long as the plaintiffs were entitled to receive maintenance from defendant No.1, from the profits arising out of the properties out of item No.5 belonging to defendant No.1, if defendant No.1 were to transfer item No.5 in favour of defendant No.7, the plaintiffs would be entitled to enforce their claim against defendant No.7 also, who being a *pendente lite* purchaser that he cannot claim that he was a bonafide purchaser for value without notice of the claim of the plaintiffs or the pending *lis* between the plaintiff and defendant No.1. The undisputed fact and material on record indicate that there was an interim order passed in the suit which prohibited/restrained defendant No.1 from alienating, encumbering, disposing of or creating third party rights over the item No.5 of the suit schedule properties. So, it is under these circumstances that the First Appellate Court

rejected/negatived the claim of the appellant that the Trial Court could not have created a charge in respect of item No.5 of the suit schedule properties in relation to the maintenance claim of the plaintiffs and proceeded to dismiss the appeal filed by the appellant-defendant No.7.

9. In my considered opinion the categorical findings of fact recorded by the Trial Court and the First Appellate Court that the plaintiffs being the wife and daughter of the defendant No.1 and not being in a position to maintain themselves coupled with the fact that defendant No.1 had neglected and deserted them and did not pay any maintenance to them cannot give rise to any question of law, much less substantial question of law warranting interference by this Court in the present appeal. So also, the findings of fact recorded by the Trial Court and the First Appellate Court that the appellant-defendant No.7 being a *lis pendens / pendente lite* purchaser, in whose favour the sale was hit by not only Section 39 of the Transfer of Property Act, but also the principles of lis pendens embodied under Section 52 of the Transfer of Property Act, the appellant-defendant No.7 could not assail the judgment and decree of the Trial Court and the First Appellate Court for the

purpose of contending that a charge could not be created in respect of item No.5 of the suit Schedule property and even this categorical finding of fact does not give rise to any question of law, much less substantial question of law warranting interference by this Court in the present appeal.

Accordingly I do not find any merit in the appeal and the same is dismissed at the stage of Admission itself.

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

BMC
List No.: 1 Sl No.: 28