HC-KAR

NC: 2026:KHC:64565
RSA No. 1766 of 2019

CNR: KAHC010552912019

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. 1766 OF 2019 (PAR)

BETWEEN:

SMT. JAVARAMMA
W/O LATE RAMAIAH
R/AT SHIRADHANAHALLI VILLAGE,
RAMANATHAPURA HOBLI
ARKALGUD TQ
HASAN DIST-573 102
ARKALGUD TALUK.

...APPELLANT

(BY SRI. R S RAJESH, ADVOCATE)

AND:

1. SRI GIRIYAIAH
S/O LATE DODDAIAH,
AGED 63 YEARS,
SHRIADANAHALLI
RAMANATHAPURA HOBLI
ARKALGUD TALUK,
HASSAN DISTRICT-573 133.

2. SAVITHRAMMA
W/O LATE JAVAREGOWDA
SINCE DEAD BY HIS LRS.

A) NAGARAJA
S/O LATE JAVAREGOWDA
SINCE DEATH BY HIS LRS.

A-1) MANJULA
W/O LATE NGARAJA
AGED ABOUT 45 YEARS.

A-2) POOJA
D/O LATE JAVAREGOWDA
AGED ABOUT 20 YEARS.

Digitally signed by VANDANA S
Location: High Court of Karnataka

A-3) ISHWARYA
D/O LATE JAVAREGOWDA
AGED ABOUT 18 YEARS.

A-1 TO A-3 ARE
R/O RAGHUVAPTHIKOPPALU VILLAGE
BEHIND MOSQUE
RAMANATHAPURA VILLAGE AND HOBLI
ARKALGUD TALUK – 573 133.

2(B) MAHESHA S/O CHIKKEGOWDA
AGED ABOUT 40 YEARS.

2(C) ASHA W/O HONNEGOWDA
AGED ABOUT 40 YEARS.

2(D) DEEPIKA D/O HONNEGOWDA
AGED ABOUT 14 YEARS.

2(E) DARSHAN S/O HONNEGOWDA
AGED ABOUT 13 YEARS

SINCE 2(B) AND 2(E) ARE MINORS
THEIR MOTHER 2(C) ASHA IS
REPRESENTED AS THEIR MINOR GUARDIAN.

1,2(B) (C) (D) ARE R/O
SHIRADANAHALLI VILLAGE
RAMANATHAPURA HOBLI,
ARKALGUD TALUK
HASSAN DISTRICT – 573 133.

…RESPONDENTS

(VIDE ORDER DATED: 21.10.2024, NOTICE TO R-1 IS H/S
VIDE ORDER DATED: 18.09.2025, NOTICE TO R-2 (A) (I TO III)
R-2 (B TO E) ARE D/W)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 16.09.2019 PASSED IN RA NO.59/2017 ON THE FILE OF THE III ADDL.DISTRICT AND SESSIONS JUDGE, AT HASSAN PARTLY ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 18.01.2017 PASSED IN OS NO.21/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., AT ARKALGUD.

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. 21/2015 filed by respondent no. 1-plaintiff against the appellant-defendant no. 1 and Smt. Savithramma for declaration, partition and separate possession of his alleged share in the suit schedule removal properties and for other reliefs.

2. Before the trial Court, neither the appellant-defendant no.1 nor the defendant no. 2 contested the matter and the trial Court permitted the plaintiff to examine himself as PW1 and mark documentary evidence at Exhibits P1 to P16 while the appellant defendant no. 1 and defendant no. 2 did not adduce any oral or documentary evidence in this regard. However, the trial Court proceeded to dismiss the suit of the plaintiff by holding that the plaintiff had not established that the suit schedule properties were ancestral or joint family properties by holding as under:

> *"6. The following points arise for my consideration;*
>
> *: P O I N T S :*
>
> *1. Whether the plaintiff is entitled for suit claimed reliefs?*
>
> *2. What order or decree?*

7. My findings to the above points are as follows:

Point No.1 :- In the Negative.

Point No.2 :- As per final order, for the following:-

: R E A S O N S :

8. Point No.1:- In order to establish his case, the plaintiff has filed his Affidavit in lieu of examination in chief as PW-1, wherein he had reiterated the averments made in the plaint. In his further examination in chief P.W.1 had got marked EX.P.1 to P.16. EX.P.1 to P.4 are 4 certified copies of computerised Record of Rights pertaining to suit schedule properties. EX.P.5 to P.9 are 5 certified copy of hand written Record of Rights pertaining to suit schedule properties, EX.P.10 to P.12 are 3 certified copy of mutation register extracts pertaining to suit schedule properties, EX.P.13 is the certified copy of Form No.5 and 6 Record of Rights pertaining to suit schedule properties, EX.P.14 is the certified copy of Index of Land, EX.P.15 is the registration copy of Sale Deed dated 28.03.1975 executed by the father of plaintiff in favour of 2nd defendant, EX.P.16 is the Genealogical Tree issued by Village Accountant, Ramanathapura Circle, Arkalgud Taluk pertaining to the family of the plaintiff.

9. The question that arises for consideration is whether the plaintiff is entitled for the reliefs on the basis of plaint documents. Simply because the 1st defendant had not contested the case and 2nd defendant had remained exparte, the Court cannot blindly accept the contention of the plaintiff. Duty is cast on the Court to verify whether the suit claimed reliefs are sustainable or not under law.

10. The plaintiff has claimed the reliefs of partition and separated possession of his share in the plaint schedule properties and the Sale Deed executed in favour of 2nd defendant is not binding on him. The parties are governed by the provisions contained on Hindu Succession Act. The fate of this suit depends on whether plaintiff proves that the plaint schedule properties are the ancestral joint family properties of plaintiff and 1st defendant and they are in possession of the same.

Plaint schedule properties consist of the following 6 items of properties.

a) Item No.1 Sy.No.39/11 : 7 guntas of Shiradanahally Village, Ramanathapura Hobli, Arkalgud Taluk, Hassan District.

b) Item No.2 Sy.No.39/18 : 3 guntas of Shiradanahally Village, Ramanathapura Hobli, Arkalgud Taluk, Hassan District.

c) Item No.1 Sy.No.39/13 : 12.08 guntas out of 25 guntas of Shiradanahally Village, Ramanathapura Hobli, Arkalgud Taluk, Hassan District.

d) Item No.1 Sy.No.39/13 : 12.08 guntas out of 25 guntas of Shiradanahally Village, Ramanathapura Hobli, Arkalgud Taluk, Hassan District.

e) Item No.1 Sy.No.39/6 : 26 guntas out of 1 acre 12 guntas of Shiradanahally Village, Ramanathapura Hobli, Arkalgud Taluk, Hassan District.

d) Item No.1 Sy.No.39/6 : 26 guntas out of 1 acre 12 guntas of Shiradanahally Village, Ramanathapura Hobli, Arkalgud Taluk, Hassan District.

11. No title deed is produced by the plaintiff to prove that the plaint schedule properties are the ancestral joint family properties of plaintiff and 1st defendant. The certified copy of Record of Rights, Mutation Register, Form No.5 and 6 Record of Rights, Index of Lands are not title deeds.

12. Plaintiff has produced Genealogical Tree as per EX.P.16 which discloses that Sattayya was the grandfather of plaintiff and he had 4 children, 2 male children i.e., 1) Doddaiah, 2) Ramaiah and 2 female children 1) Dyavamma (married) and 2) Doddamma (married). The 1st defendant is the wife of Ramaiah.

13. Plaintiff claims that no partition had taken place between plaintiff and 1st defendant. Plaintiff further claims that suit schedule

properties are in the possession of plaintiff and 1st defendant and 2nd defendant had on 28.03.1975 obtained Registered Sale Deed in respect of some of suit schedule properties for consideration of Rs.1,500/-. Plaintiff further contends that since the plaintiff and 1st defendant are uneducated and illiterates, the 2nd defendant misusing the same obtained mortgage and Sale Deed and plaintiff was shown as minor in the sale deed even though the plaintiff was major and in order to cheat got registered the Sale Deed. Plaintiff further contends that the husband of the 1st defendant did not give any share to the father of the plaintiff and sold the properties which the plaintiff's father is entitled and made wrongful gain.

14. The plaintiff has produced Registration copy of Sale Deed dated 28.03.1975 at Ex.P.15. Ex.P.15 reveals that the father of the plaintiff Doddayya as guardian of minor plaintiff had executed the said Registered Sale Deed in favour of 2nd defendant in order to clear the mortgage amount of Rs.700/- dated 31.03.1966 and mortgage amount of Rs.400/- dated 01.04.1969 and obtained remaining consideration amount of Rs.1,400/- in the presence of witnesses.

15. Now the question is whether the plaintiff was minor at the time of execution of Registered Sale Deed Ex.P.15. Plaintiff has shown his age as 60 years on the date of filing this suit on 19.11.2015. Plaintiff has produced Genealogical Tree at Ex.P.16 which is dated 19.02.2014. In Ex.P.16 the age of the plaintiff is shown as 55 years in 2014. That means plaintiff was aged 16 years at the time of execution of Registered Sale Deed Ex.P.15. Hence at the time of execution of Ex.P.15, the plaintiff was minor and he was not major as contended by him. If the plaintiff was minor at the time of execution of Registered Sale Deed Ex.P.15 he ought to have challenged the legality and validity of execution of Registered Sale Deed Ex.P.15, within 3 years on his attaining majority. The plaintiff is falsely contending that he was major at the time of execution of Sale Deed Ex.P.15 in order to make wrongful gain if possible.

16. The recitals in Ex.P.15 do not disclose as to how the vendor had acquired the right, title and interest over the subject matter of the Sale Deed. The vendor does not say in Ex.P.15 that the subject matter of said Sale Deed Ex.P.15 was the ancestral joint family properties allotted to him in partition. Admittedly the plaintiff was a minor and the question of obtaining his consent for executing Ex.P.15 does not arise.

17. It is seen from the recitals in Ex.P.15 Registration copy of Sale Deed that the father of plaintiff Doddayya had sold 0-26 guntas in Sy.No.39/6, 0-12½ guntas in Sy.No.39/13 and 3½ guntas in Sy.No.39/11 in favour of 2nd defendant by means of Sale Deed Ex.P.15 and the name of 2nd defendant was mutated in the revenue records as could be seen from certified copy of mutation register Ex.P.12. The entries in the certified copy of mutation proceedings as per Ex.P.12 disclose that some of the suit schedule properties were mutated in the name of 2nd defendant on the basis of the said Sale Deed Ex.P.15.

18. It is incumbent on the part of the plaintiff to establish that the suit schedule properties are the ancestral properties of himself and defendant No.1 in order to claim plaint reliefs. No document is produced by the plaintiff to prove that the said properties are the ancestral properties. When the plaintiff has approached the Court seeking the relief of partition and separate possession, it is for him the prove that the suit schedule properties are the undivided ancestral joint family properties.

19. Ex.P.1, P.3 and P.4 certified copy of Record of Rights also disclose that the 2nd defendant is in possession of the above properties. Ex.P.1 and P.3 also disclose that the 1st defendant Smt.Javaramma W/o Ramayya is in possession of remaining 3½ guntas of land in Sy.No.39/11, 12½ guntas in Sy. No.39/13. No doubt some of the properties are still standing in the name of grandfather of plaintiff, Satta S/o Sanna Hyda, as could be seen from Ex.P.2 and P.4. However the grandfather of plaintiff Satta S/o Sanna

Hyda is no more as could be seen from Ex.P.16 Genealogical Tree. Even though the plaintiff claimed that the husband of the 1st defendant had deceived the father of the plaintiff Doddayya without giving any share to him in the properties, the plaintiff has not established the said fact by producing cogent evidence.

20. The documents produced by the plaintiff and marked as Ex.P.1 to P.16 do not help the plaintiff to establish his case.

Ex.P.1 to P.4 are the certified copy of Record of Rights pertaining to suit schedule properties. The entries therein disclose that defendant Nos.1 and 2 are in possession of some of the suit schedule properties. It is true that, it is settled position of law that Record of Rights is not a title deed. The certified copy of Record of Rights may be looked into for the purpose of ascertaining the possession of the property. Ex.P.1 to P.4 do not help the plaintiff to prove that the suit schedule properties are the ancestral properties. If the 1st defendant and her husband had illegally mutated their names, in revenue records the plaintiff ought to have questioned legality and validity of the order of mutation, by preferring appeal before proper forum.

Simply because Ex.P.2 Record of Rights stand in the name of Sattayya it is not possible to infer that the said properties are ancestral joint family properties.

21. Plaintiff has failed to establish that the suit schedule properties are undivided ancestral properties. The evidence on record both documentary and oral is insufficient to prove that the suit schedule properties are the ancestral properties and plaintiff and defendant No.1 are in joint possession of joint family properties. When the plaintiff has failed to establish that the suit schedule properties are ancestral joint family properties, he is not entitled to claim any share in the said properties.

22. The suit of the plaintiff is misconceived under law and on facts. The plaintiff is not entitled to the reliefs claimed in the suit. The case of the plaintiff is suffering from incurable infirmities. The plaintiff

has not come to the Court with clean hands. The evidence both documentary and oral adduced by the plaintiff is insufficient to prove the case of the plaintiff. Viewed from any angle the plaintiff is not entitled to claim the plaint reliefs. Accordingly point No.1 is answered in the Negative.

23. Point No.2:- In view of the above discussions and findings given to point No.1, I proceed to pass the following:-

ORDER

The suit of the plaintiff is hereby dismissed.

Under the circumstances of the case, no order as to costs.

Draw decree accordingly"

3. Aggrieved by the said judgment and decree of the trial Court, the plaintiff approached the first appellate Court in R.A. No. 59/2017 which was partly allowed by the first appellate Court which set aside the judgment and decree of the trial Court and decreed the suit filed by the plaintiff and also declared that the Smt. Danamma and Doddamma, sisters of the original propositus Doddaiah, were also entitled to a share in the suit schedule immovable properties. Aggrieved by the impugned judgment and decree of the first appellate Court, the defendant No. 1 is before this Court by way of the present appeal which was admitted on 12.10.2026 to consider the following substantial questions of law:

"i) Whether both the Courts were justified in upholding the claim of the respondents?

ii) Whether the First the First Appellate Court was justified in partly allowing the claim of the respondents based on the record of rights which does not stand in the name of the plaintiff by relying upon inadmissible evidence and by drawing presumption in favour of the plaintiff which was not available in law?

iii) Whether the impugned judgment and decree of the First Appellate Court is in conformity/consonance with the principles laid down in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others – (2020) 9 SCC 1****?*

4. Learned counsel for the appellant submits that notwithstanding the fact that the appellant had remained exparte before the trial Court and had not contested the suit, the trial Court has come to the correct conclusion that the plaintiff had not placed any material to show that the suit schedule properties were ancestral or joint family properties and in the absence of the same, the trial Court correctly proceeded to dismiss the suit filed by the plaintiff. However the first appellate Court has proceeded to set aside the well considered judgment and decree of the trial Court only on the ground that the appellant-defendant no. 1 had not contested the suit which is contrary to well settled principles of law governing Order VIII Rule 5 and Order VIII Rule 10 CPC and in the

light of the Judgment of the Apex Court in the case of ***Asma Lateef and another Vs. Shabbir Ahmad and others (AIR 2024 SC 602)*** mere non filing of written statement and non contest by the defendant will not result in decree to be passed and as such the impugned judgment and decree of the first appellate Court deserves to be set aside and the judgment and decree of the trial Court deserves to be restored.

5. Respondent no. 1 having been served with notice of the appeal has not chosen to be represented and has not contested the appeal.

6. A perusal of the material on record will indicate that as stated supra, the trial Court has correctly came to the correct conclusion that in the absence of any material to show that the suit schedule properties were the ancestral/joint family properties in the hands of Doddaiah, the father of the plaintiff, the plaintiff could not claim a share in the suit schedule properties. However, the first appellate Court has proceeded to set aside the judgment and decree of the trial Court only on the ground that the plaint averments and evidence of the plaintiff had not been controverted, impeached or

challenged by the appellant-defendant no. 1 in the suit. In this context, the first appellate Court held as under:

> *"12. The Advocate for the appellant has vehemently argued that, the Trial Court has dismissed the suit by passing impugned judgment and decree, which is not tenable in the eye of law and no partition has been effected in the family, the question of defendant No.1 to execute the Sale deed in favour of defendant No.2 does not arise at all. The learned Trial judge has failed to appreciate the material on record i.e., Exs.P.5 to 9 R.T.C. Hence, sought to set aside the impugned order that passed by the learned Sr.Civil Judge and JMFC, Arkalgud and to allow the appeal.*
>
> *13. The suit O.S.No.21/2015 filed by one Sattaiah, who is son of Doddaiah for the relief of 'Partition and Separate Possession' in respect of suit items No.1 to 6 properties, but suit items No.3 and 4 are in respect of same property, but the boundaries to the said suit properties are shown different and similarly the suit items No.5 and 6 properties are also in respect of same survey number but the boundaries are shown different. According to the plaintiff, the said suit properties are joint family ancestral properties and no partition have been effected in the said family and in order to substantiate the said contention he has produced the geneology vide Ex.P.16, which reveals that, one Sattaiah, is the original propositus, who is having 4 children namely Doddaiah i.e., plaintiff's branch and Ramaiah, the defendant No.1 is the wife of the said Ramaiah and two daughters namely Danamma and Doddamma, they were not been arrayed as parties to the said suit. There is a presumption that the family is in joint, the person who asserts*

partition must establish the severance, but in the instant case on hand, the defendant No.1 who hailed from the branch of Ramaiah i.e., wife of said Ramaiah, even though has put her appearance through her Counsel before the trial Court, but has not chosen to file the written statement and has not participated in the proceedings. Therefore, the averments that made by the plaintiffs are not traversed by filing the written statement i.e., denying the averments that made in the plaint and also not chosen to test the veracity of the plaintiff by subjecting the plaintiff to Cross-Examination, in that event, the Court has to believe the version of the plaintiff in toto, but if the plaintiff has averred in his pleadings inconsistent, in that event, the Court has to disbelieve the version of the plaintiff.

14. According to the plaintiff, himself along with the defendant No.1 consists of joint family, the suit properties are the ancestral properties that inherited from original propositus Sattaiah. No partition has been made in respect of the suit properties. Said Ramaiah, who is the husband of defendant No.1 was the manager of the joint family and the father of plaintiff namely Doddaiah is an illiterate. The said Ramaiah has alienated suit properties in favour of defendant No.2, during 1975 even though plaintiff was manager by showing the said Doddaiah as minor gaurdian of the plaintiff, therefore, the said Sale deed is not binding on the plaintiff and the said Sale deed is an outcome of fraud and no sale consideration has been passed.

15. The learned Sr.Civil Judge has not appreciated the materials placed before the Court namely, the computerised R.T.C.s vide Exs.P.1 to 4 pertaining to suit properties, which are standing in the name of defendants No.1 and 2 in respect

of Item No.1,3, but Items No.2 and 5 are still standing in the name of original propositus Sattaiah. The R.T.C. in which hand written of the year 1974 in respect of the suit properties vide Exs.P.5 to 10 discloses the name of the defendant No.2 in Column No.11 earlier standing in the name of original propositus and they further revealed that Items No.1 and 3 were granted in favour of defendant No.2. The mutation Register extract vide Exs.P.10 and 11 discloses about mortgaging of Items No.1 and 3 record of rights vide Exs.P.12 and 13 in respect of the suit properties discloses about mortgaging of Items No.1 and 3 and remaining Item No.2 and 5 were standing in the name of original propositus Sattaiah. The I.L.R. vide Ex.P.14 also reveals about mortgage of Items No.1 and 3 and Items No.2 and 5 are standing in the name of original propositus Sattaiah, still the learned Sr.Civil Judge has insisted the plaintiff to produce the title deeds, but it is not the suit for declaration to insist the plaintiff to produce the title documents, this is a suit for mere 'Partition and Separate possession' in respect of suit properties, it is not necessary for the plaintiff to produce the title documents. If he establish that the suit properties have been mutated in the name of original propositus from lineal descendants that will suffice to come to the conclusion that the said suit properties are joint family properties. If the suit is one filed for the relief of declaration that the original propositus Sattaiah is the absolute owner of the suit properties, in that event, the plaintiff has to produce the title deeds in respect of the suit properties. Therefore, this Court is of the considered view that the said suit properties are ancestral joint family properties, the learned Sr.Civil Judge has erred in coming to the conclusion in dismissing the suit of the

plaintiff that the suit properties are not the ancestral joint family properties. Hence, interference of this Court in that respect is warranted.

14. It is further contention of the plaintiff that, the defendant No.1 has alienated the suit properties in favour of defendant No.2 under the Regd.Sale deed dtd:28-03-1975 vide Ex.P.15. Even though the plaintiff was major on the said date of alienation, but falsely construed that he was minor and represented by his minor guardian his father and no sale consideration amount was passed. The husband of the defendant No.1 was manager of the joint family and he has transferred some of the suit properties in the name of the defendant No.1 clandestinely, hence, the said Sale deed is not binding on the plaintiff. The learned Sr.Civil Judge has rightly arrived to correct conclusion that the said Sale deed was executed in the year 1975, but the instant suit was filed in the year 2015 after elapse of 40 years and further observed that, the plaintiff was minor at the time of execution of said Sale deed and he has not challenged the said alienation within 3 years from attaining majority. Hence, the claim of the plaintiff is rejected in respect of the said Sale deed. The Ex.P.15 depicts about alienation of Item No.1 to an extent of 3 ½ guntas and 00-12 guntas in Item No.3 and 00-26 guntas in item No.5 of the suit property by the defendant No.1 and plaintiffs father namely Doddaiah as minor guardian of the plaintiff in order to redeem the mortgage. Therefore, the alienation of the said suit properties seems to be legal necessity, and moreover, the plaintiff has not challenged the said alienation within a period of 3 years from the date of he attaining majority. The cause title of the plaintiff reveals that

the plaintiff has filed the suit when he was 60 years during 2015. The Geneology Vide Ex.P.15 reveals that he was 55 years, when it was prepared during 2014. The learned Trial judge has correctly come to the conclusion that the plaintiff cannot challenge the said Sale deed and has rightly rejected the prayer the plaintiff hat the said Sale deed is not binding on him. The Advocate for the Respondent No.1 who has filed the written argument has and contended that, the suit of the plaintiff is barred by limitation under the provisions of Sec.58 and 109 of Limitation Act. Therefore, impugned judgment of the Trial Court does not warrants interference in respect of the second prayer that made by the plaintiff that Sale deed vide Ex.P.15 dtd:28-03-1975 is not binding on the plaintiff in respect of the Items No.1,3 and 5 to an extent of 00-03 guntas and 00-12 guntas and 00-26 guntas respectively.

15. The plaintiff , who being the member of the joint family which consists of defendant No.1, but the defendant No.1, hails from the branch of Ramaiah and also 2 daughters namely Danamma and Doddamma, but they have not been arrayed as parties to the suit, but still they do reserve their right in claiming their respective shares in the suit properties i.e, in Item No.1 to an extent of 00-03 guntas, entire extent in respect of item No.2, to an extent of 00-12 guntas in Item No.3 and 00-26 guntas in Item No.5. But the plaintiff has not averred in the plaint that when the said original propositus Sattaiah has died , this suit is filed in the year 2015, therefore, he must have died prior to 2005 i.e., prior to coming into force of Hindu Succession Amendment Act i.e., 9-09-2005, the said Danamma and Doddamma are entitled to claim share as per notional partition. Accordingly, Doddaiah's branch and

Ramaiah's branch and Sattaiah will get 1/3rd share each and out of 1/3rd share of Sattaiah, the said Danamma, Doddamma, Doddaiah and Ramaiah's branch will get 1/12th share each. Therefore, the said Danamma and Doddamma will get 1/12th share each in Item No.1 to an extent of 00-03 guntas and Item No.2 to an extent of 00-12 guntas and Item No.3 to an extent of 00-26 guntas in Item No.5. Similarly, the plaintiff who hailed from Doddaiah's branch will get 5/12th share and the defendant No.1, who is the wife of Ramaiah, the said branch will get 5/12th share. Hence, the impugned judgment and decree that passed by the learned Sr.Civil Judge and JMFC, Arkalgud in O.S.No.21/2015 requires modification. With all these observations that made supra, the above point No.1 is answered n the 'Partly Affirmative'.

POINT No. 2:-

16. In the result, and in view of my findings on the above points, this Court proceed to pass the following:-

:O R D E R:

The appeal filed by the plaintiff/appellant is partly allowed.

The impugned judgment and decree passed by the Senior Civil Judge and JMFC, Arkalgud , in O.S.No.21/2015 dated 18.01.2017 is set aside in respect of the first relief only with necessary modification that the both the plaintiff and defendant No.1 are entitled 5/12th share each. It is further ordered that the daughters of original propositus viz; Danamma and Doddamma are entitled 1/12th share each in 00-03 guntas of Item No.1, 00-12 guntas in Item No.3 and 00-26 guntas in Item No.5 and entire extent in item No.2.

The impugned order that passed by the learned Senior Civil Judge and JMFC Arkalgud in O.S.No.21/2015 dtd:18-01-107 in respect of the second relief viz; with regard to Sale deed dtd:28-03-1975 executed in favour of defendant No.2 by defendant No.1 remains undisturbed.

Draw preliminary decree accordingly.

Parties shall bear their own costs.

Send back the LCR along with the copy of this Judgment to the Trial Court."

7. As can be seen from the judgment and decree of the first appellate Court, the material on record discloses that the plaintiff is none other than the son of late Doddaiah whose father was one Sattaiah and the suit schedule properties stood in the name of late Sattaiah who expired after 1956 when the Hindu Succession Act, 1956 came into force. It follows therefrom that if the suit schedule properties belonged to Sattaiah, who expired after 1956, the suit schedule properties would devolve upon Doddiaiah and the grandson i.e. the plaintiff Giriyaiah could not put forth a claim in the suit schedule properties which were not ancestral or joint family properties as rightly held by the trial Court.

8. In the case of ***Asma Lateef and another Vs. Shabbir Ahmad and others (AIR 2024 SC 02)***, while dealing with a situation where merely because the defendant remained exparte and did not contest the suit, the suit cannot straight away be decreed without calling upon the plaintiff to prove his claim independently, the Apex Court held as under:

> *"40. Turning to the facts of the present case, Kazmi had challenged the maintainability of the Suit in the written statement filed by him before the Trial Court contending inter alia that the suit property was bhoomidhari land owing to which the Suit was barred by section 331 of UPZA & LR Act as well as it was barred under section 41(h) of the Specific Relief Act and, thus, not maintainable before the civil court. What was required of the Trial Court in such situation was to record a satisfaction, at least prima facie, that the Suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances. A glance at the order dated 5th August, 1991, is sufficient to inform us that the Trial Court, in no words whatsoever, made any decision on whether it was entitled in law to decide the plea before it, prior to decreeing the Suit against Samiullah under Rule 10 of Order VIII, CPC. The question of competence to try the Suit, we have found, was the first of several issues arising for decision in the Suit and despite such looming presence of an important issue before the Trial Court which, if examined and answered in favour of Kazmi, would have ousted jurisdiction, it preferred not to wait and proceeded to decree the same against Samiullah without a whisper on its competency to do the same.*
>
> *41. The legal and factual position of the present case having been noted above, we hold that a decision rendered by a court on the merits of a controversy in favour of the plaintiff without first*

adjudicating on its competence to decide such controversy would amount to a decision being rendered on an illegal and erroneous assumption of jurisdiction and, thus, be assailable as lacking in inherent jurisdiction and be treated as a nullity in the eye of law; as a logical corollary, the order dated 5th August, 1991 is held to be ab initio void and the decree drawn up based thereon is inexecutable.

42. There is one other reason which we wish to assign as a ground for upholding the order of the Executing Court and the High Court.

43. Reference may once again be made to Balram Taneja (supra) where the law has been reiterated succinctly, as follows:

> *"41. There is yet another infirmity in the case which relates to the 'judgment' passed by the Single Judge and upheld by the Division Bench.*
>
> *42. 'Judgment' as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment 'shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision'. It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.*
>
> *43. ****
>
> *44. ****
>
> *45. Learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that 'the points for determination' as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree.*

Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

*46. *** Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say 'suit decreed' or 'suit dismissed'. The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained." (underlining ours, for emphasis) We concur with the observation that a judgment, as envisaged in section 2(9), CPC, should contain the process of reasoning by which the court arrived at its conclusion to resolve the controversy and consequently to decree the suit.*

44. It is indubitable that a "judgment", if pronounced by a court under Rule 10 of Order VIII, CPC, must satisfy the requirements of Rule 4(2) of Order XX, CPC, and thereby conform to its definition provided in section 2(9) thereof.

45. Further, even a cursory reading of Rule 10 of Order VIII, CPC impresses upon us the fundamental mandate that a "decree" shall follow a "judgment" in a case where the court invokes power upon failure of a defendant to file its written statement. It is, therefore, only a "judgment" conforming to the provisions of the CPC that could lead to a "decree" being drawn up. As is manifest on the face of the record of the present case, apart from the ipse dixit of the Trial Court that the case is fit for being proceeded against under Rule 10 of Order VIII and that the suit qua Samiullah ought to be decreed with

the injunctive order, no ingredients that a "judgment" should contain as per the CPC appear in the order dated 5th August, 1991.

46. We deem it fit to advert to the fine words of wisdom imparted to us by Hon'ble P.B. Mukharji, CJ., in 'The New Jurisprudence: The Grammar of Modern Law' where the learned author says:

"The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reason. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reason. Reason, therefore, is the soul and spirit of a good judgment."

47. It is one of the cardinal principles of the justice delivery system that any verdict of a competent judicial forum in the form of a judgment/order, that determines the rights and liabilities of the parties to the proceedings, must inform the parties what is the outcome and why one party has succeeded and not the other - the 'why' constituting the reasons and 'what' the conclusion. Apart from anything else, insistence of the requirement for the reason(s) to support the conclusion guarantees application of mind by the adjudicator to the materials before it as well as provides an avenue to the unsuccessful party to test the reasons before a higher court.

48. All civil courts in the country have to regulate their judicial work in accordance with the terms of the provisions of the CPC. Any egregious breach or violation of such provisions, including the one noticed here, would be ultra vires.

49. Let us now examine whether there is a 'decree' within the scope of section 2(2), CPC. Section 2(2) is reproduced hereunder:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

(underlining ours, for emphasis)

50. The decree signed by the Trial Court on 11th November, 1991 is not on record. Nevertheless, at the cost of repetition, we record that examination of the order dated 5th August, 1991 does not reveal any adjudication leading to determination of the rights of the parties in relation to any of the matters in controversy in the suit and, therefore, the decree since drawn up is not a formal expression of an adjudication/determination since there has been no adjudication/determination so as to conform to the requirements of a decree within the meaning of section 2(2). In this regard, we express our concurrence with both the High Court and the Executing Court that there is no decree at all in the eye of law.

51. We, therefore, hold that a decree that follows a judgment or an order (of the present nature) would be inexecutable in the eyes of law and execution thereof, if sought for, would be open to objection in an application under section 47, CPC.

Conclusion

52. For the reasons mentioned above, we conclude that the Trial Court had no authority to decree the suit against Samiullah in exercise of its power under Rule 10 of Order VIII, CPC.

53. There is no reason to interfere with the judgment and order of the High Court under challenge. It is upheld and the appeal, accompanied by any pending applications, stands dismissed. Parties shall bear their own costs.

54. It is, however, made clear that no part of the observations of this Court, or of the High Court or of those below, be treated as an expression of opinion in any particular matter or on any factual aspect whatsoever. Determination of the title to the suit property, adjudication on the validity of the sale deed in favour of the Purchasers, or decision on any other contentious issue are left open

for a forum of competent jurisdiction to embark upon, if approached by any of the parties.

55. We are aware that pursuant to Interim Application No. 4 of 2013 moved by the appellants, this Court had appointed one Mr. Suryanarayana Singh as the Court Receiver in respect of the property ("Court Receiver", hereafter) on 14th March, 2014. The Court Receiver already appointed shall stand discharged forthwith. Unpaid remuneration, if any, shall be borne by the appellants.

56. However, the Court Receiver shall provide accounts of income and expenditure in respect of the suit property to the appellants as well as the respondents 1 to 3 within two months and any claim of either of the parties would be open to be raised and addressed in accordance with law."

9. In the case of ***Vineeta Sharma Vs. Rakesh Sharma and Others*** reported in ***(2020) 9 SCC 1***, the Apex Court has held as under:

137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The

fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

138. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] and Mangammal v. T.B. Raju [Mangammal v. T.B. Raju, (2018) 15 SCC 662 : (2019) 1 SCC (Civ) 300] . The opinion expressed in Danamma v. Amar [Danamma v. Amar, (2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385] is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits.

10. In the instant case, the trial Court has come to the correct conclusion that notwithstanding the fact that the appellant-defendant no. 1 did not contest the suit. The material on record clearly established that the plaintiff had failed to prove that the suit schedule properties were ancestral/joint family properties and the plaintiff was not entitled to a share in the suit schedule properties. However, the first appellate Court proceeded to reverse the judgment and decree of the trial Court and decreed the suit of the plaintiff only on the primary ground that the pleadings and evidence of the plaintiff had remained unimpeached, unchallenged and uncontroverted in the suit which is clearly erroneous and unsound in the light of the principles laid down by the Apex Court in the aforestated judgment. Under these circumstances, I am of the considered opinion that the impugned judgment and decree passed by the first appellate Court deserves to be set aside.

11. A perusal of the material on record will also indicate that before the trial Court it was a specific contention of the plaintiff that the suit schedule properties were sold by defendant no. 1 who was none other than the sister of the plaintiff in favour of defendant no.2

and as such the said sale deed was null and void and not binding upon the plaintiff's share. In this context it is also pertinent to note that the claim of the plaintiff is contrary to the principles laid down by the Apex Court the case of ***Vineeta Sharma*** (supra) and on this ground also, the impugned judgment and decree of the first appellate Court deserves to be set aside.

12. Accordingly, the substantial question of law are answered in favour of the appellant.

13. In the result, I pass the following order:

ORDER

The appeal is allowed.

Judgment and decree passed by the first appellate Court is set aside. Consequently, the judgment and decree of the trial Court is hereby restored. Suit of the plaintiff stands dismissed.

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

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List No.: 1 Sl No.: 17