HC-KAR

NC: 2026:KHC:64563
RSA No. 550 of 2020

CNR: KAHC010559072019

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. 550 OF 2020 (PAR)

BETWEEN:

SMT. SUSHEELAMMA
W/O. K. V. PARAMESHWARAPPA,
AGED ABOUT 67 YEARS,
R/O. YALAVATTI, HOSUDI POST,
SHIMOGA TALUK-577 222,
SHIMOGA DISTRICT.

…APPELLANT

(BY SRI. ROOPESHA B, ADVOCATE)

AND:

1. SMT. CHANDRAMMA
W/O. K. V. PALAKSHAPPA,
AGED ABOUT 53 YEARS,
R/O. BELALAKATTE VILLAGE,
MELINA HANASAVADI POST,
SHIMOGA TALUK-577 412,
SHIMOGA DISTRICT.

2. SMT. Y. P. SHARADAMMA
W/O. H. S. RANGAPPA,
AGED ABOUT 63 YEARS,
R/O. KALPANA HOSAHALLI VILLAGE,
THALLIKATTE POST,
KUDLIGERE CIRCLE,
BHADRAVATHI TALUK,
SHIMOGA DISTRICT-577 227.

3. SMT. Y. P. YASHODHA
W/O. SURESH,
AGED ABOUT 52 YEARS,
R/O. BILUGUNI VILLAGE,
SIRIGERE POST,
AYANOOR CIRCLE,
SHIMOGA TALUK-577 211.

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Location: High Court of Karnataka

4. SMT. Y. P. GEETHA
D/O. LATE Y. PARAMESHARAPPA,
AGED ABOUT 44 YEARS,
R/O. YALAVATTI VILLAGE,
HOSUDI POST,
SHIMOGA TALUK,
SHIMOGA DISTRICT-577 222.

5. SMT. Y. P. SHOBHA
W/O. PRABHU,
AGED ABOUT 37 YEARS,
R/O. HUNASEGHATTA VILLAGE,
KYASINAKERE POST,
HONNALI TALUK-577 224,
DAVANAGERE DISTRICT.

6. SMT. NAGARATHNA
W/O. LATE Y. P. SOMASHEKHAR,
AGED ABOUT 54 YEARS,
R/O. KYATHINAKOPPA VILLAGE,
SUGUR POST,
HOLALUR HOBLI,
SHIMOGA TALUK-577 216,
SHIMOGA DISTRICT.

7. SMT. PARVATHAMMA
W/O. LATE Y. PARAMESHWARAPPA,
AGED ABOUT 77 YEARS,
R/O. YALAVATTI VILLAGE,
HOSUDI POST,
SHIMOGA TALUK-577 222,
SHIMOGA DISTRICT.

8. SHANTHAVEERAPPA
S/O. LATE RUDRAPPA,
AGED ABOUT 70 YEARS,
C/O. SMT. RATHNAMMA,
W/O. C. K. PALAKSHAPPA,
NEAR POLICE CHOWKI,
VINOBANAGAR,
SHIMOGA CITY-577 204.

9. SMT. RATHNAMMA
W/O. C. K. PALAKSHAPPA,
AGED ABOUT 58 YEARS,
R/O. YALAVATTI VILLAGE,

HOSUDI POST,
SHIMOGA TALUK-577 222,
SHIMOGA DISTRICT.

10. S. PARAMESHWARAPPA
S/O. Y. SHEKHARAPPA,
AGED ABOUT 50 YEARS,
R/O. YALAVATTI VILLAGE,
HOSUDI POST,
SHIMOGA TALUK-577 222,
SHIMOGA DISTRICT.

11. CHI. VARUN
S/O. LATE Y. P. SOMASHEKHAR,
AGED ABOUT 13 YEARS,
MINOR,
REPTD BY THE GUARDIAN MOTHER
C/O. SMT. NAGARATHNA
W/O. LATE Y. P. SOMASHEKHAR,
R/O. KYATHINAKOPPA VILLAGE,
SUGUR POST, HOLALUR HOBLI,
SHIMOGA TALUK-577 216,
SHIMOGA DISTRICT.

…RESPONDENTS

(BY SRI. S V PRAKASH, ADVOCATE FOR R-1 TO R-7 & R-10
SRI. M.V. MAHESHWRAPPA, ADVOCATE FOR R-8
MISS. SHARANYA KASHYAP, FOR
SRI. KALYAN BASAVARAJ.S, ADVOCATES FOR R-9
(R-11 IS MINOR & REPRESENTED BY R-6)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 11.09.2019 PASSED IN RA.No.44/2014 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE, SHIVAMOGGA PARTLY ALLOWING THE APPEAL AND PARTLY SETTING ASIDE THE JUDGMENT AND DECREE DATED 24.07.2014 PASSED IN OS.No.11/2010 ON THE FILE OF THE IST ADDITIONAL SENIOR CIVIL JUDGE AND CJM, SHIMOGA.

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 plaintiff was the appellant in O.S. No. 11/2010 filed by her against the respondents for partition and separate possession of her alleged share in the suit schedule immobile properties.

2. According to the plaint, the suit schedule properties comprised of 'A' schedule properties, 'B' schedule properties which were landed properties and 'C' schedule properties which were house properties. The plaintiff contended that she was the daughter of late Parameshwarappa and Parvathamma (defendant No. 7) while the defendants No. 1, 2, 3, 4 and 5 were her sisters. It is also contended that the plaintiff and defendants No. 1 to 5 had a brother-Somashekhar who expired leaving behind his wife and son who were arrayed as defendants no. 6 and 12 respectively.

3. As stated supra, the mother of the parties, Smt.Parvathamma was arrayed as defendant No. 7 while defendants No.8 to 11 were the alienees in respect of some of the suit schedule properties. The said suit was contested by the defendants and culminated in the impugned judgment and decree dated 24.07.2014 whereby the trial Court proceeded to decree the suit of the plaintiff in part by declaring that the plaintiff was entitled to 9/64 share in items No. 2 to 8, 10 and 11 of 'A' schedule properties and items No. 2, 3 and 5 of the 'B' schedule properties and further declared that the sale deed dated 25.04.2005 executed by defendants No. 1 to 7 in favour of the 10th defendant was not binding upon the plaintiffs. However, the trial Court proceeded to dismiss the suit of the plaintiff in relation to the other suit schedule properties. While arriving at the said conclusion, the trial Court held as under:

> *"11. In order to prove her case, the plaintiff has got examined herself as PW1 and got marked the documents at Ex.P1 to P64 and closed her side.*

12. On behalf of the defendants, the defendants no.7 and 10 have got examined themselves as DW1 and DW3 respectively and have got examined one independent witness as DW2 and have got marked the documents at Ex.D1 to D14 and closed their side.

13. Heard Sri H.S.A., learned advocate appearing for the plaintiff, Sri K.P.O., learned counsel for the defendants no.1 to 7, 10 and 12, Sri M.S.V., learned counsel for the defendant no.8 and Sri J.S.S., learned counsel for the defendants no.9. Perused the oral and documentary evidence on record and also the decisions relied upon by both the parties.

14. It was contended by the defendants that the suit is bad for non-joinder of the son of Y.P. Somashekhar. But, he is made as a party subsequently as defendant no.12. Therefore, the issue no.7 hereby stands deleted.

15. During the pendency of the suit, the plaintiff filed a memo on 3-4-2012 of not pressing the suit against the defendant no.11 abandoning her claim against the defendant no.11 with respect to item no.1 of the suit 'A' schedule and item no.1 of 'B' schedule properties. In view of the same, 11 OS.11 / 10 Judgt. the suit against the defendant no.11 has to be dismissed and the issue no.8 also is hereby deleted.

16. As regards issue no.8, in para no.3 of the cross-examination at page no.6, PW1 admits as under:

> *" llನೇ ಪ್ರತಿವಾದಿ ಸಕ್ಕೂಬಾಯಿ ಜಮೀನು ಖರೀದಿಸಿದ್ದು ಸರಿಯಿಲ್ಲ ಎಂದು ಈ ದಾವೆಯನ್ನು ಹಾಕಿದ್ದೆ. ಆಕೆಯಿಂದ ನಾಲ್ಕು ಲಕ್ಷ ರೂ. ಪಡೆದುಕೊಂಡ ನಂತರ ದಾವಾ ವಜಾ ಮಾಡಿಸಿಕೊಂಡಿದ್ದೇನೆ."*

This clearly indicates that she has given up her right over the item no.1 of 'A' schedule and the item no.1 of 'B' schedule properties and the relief no.16(a) hereby stands deleted by virtue of the above said memo.

17. The issue no.9 is framed covering the defendant no.9 and the suit 'B' schedule item no.4 only. Whereas, the 10th defendant also has contended that he is a bonafide purchaser for valuable consideration. 11th defendant also has taken up such contention. Therefore, this issue had to cover the defendants no.10 and 11 and the item no.6 of 'A' schedule, item no.3 of 'B' schedule, item no.1 of 'A' schedule and item no.1 of 'B' schedule properties. But, as the plaintiff had abandoned her claim against the 11th defendant, there is no need to include the 11th defendant and the properties purchased by her in that issue. Therefore, exercising the powers

conferred under Order 14 Rule 5 of CPC., an additional issue is framed as under:

> *'Whether the 10th defendant proves that he is a bonafide purchaser of the suit 'A' schedule item no.6 and the 'B' schedule item no.3 properties for valuable consideration?'*

As the defendant no.10 has already led evidence on this very issue knowing the contentions of plaintiff and the defendants, there is no need to post the matter again for further evidence on this additional issue.

18. On the basis of the oral and documentary evidence available on record, the findings of this Court on the above said issues are as under:

Issue No.1	*:*	*In Affirmative;*
Issue No.2	*:*	*In Negative;*
Issue No.3	*:*	*Sale of A-1, B-1, A-9 & B-4 properties is binding upon the plaintiff and the sale of A-6 & B-3 properties is not binding upon the plaintiff.*
Issue No.4	*:*	*In Partly Affirmative and Partly Negative;*
Issue No.5	*:*	*In Negative;*
Issue No.6	*:*	*In Affirmative;*
Issue No.7	*:*	*Deleted.*
Issue No.8	*:*	*Deleted.*
Issue No.9	*:*	*In Negative;*
Issue No.10	*:*	*In Partly Affirmative and Partly Negative;*
Additional Issue:		*In Negative.*
Issue No.11	*:*	*As per final order, for the following:*

REASONS:

19. Issue No.1: It is the contention of the plaintiff that herself and defendants 1 to 5 constitute Hindu Undivided Family and schedule A properties are her ancestral joint family properties. In order to prove this issue the petitioner in her examination-in-chief has stated that schedule A properties are the ancestral joint family properties. In para No.6 of the cross-examination P.W.1 re-iterates that all the suit schedule properties including A schedule properties are the joint family properties. It is important to note that only there is a suggestion with regard to B schedule properties that they were the self-acquired properties of defendant No.7. In para No.2 at page No.3 of the cross-examination D.W.1 has admitted that originally all the properties were belongs to Channabasappa. In para No.1 of the cross-examination she has admitted that her father-in-law's name is Channabasappa. Therefore, the collective effect of these two admissions is that she admits that originally all the properties, more specially schedule A properties are the ancestral properties as

regards the parties to the suit are concerned. In para No.3. at page No.3 of the cross-examination again the witness admits that after the death of her father-in-law, all the properties standing in his name were transferred to name of her husband and after the death of her husband they were mutated in the name of her son, deceased Somashekara and after the death of her son they are standing in the name of defendant No.6 i.e. her daughter-in-law. Further she clearly admits that these properties are the joint family properties of her husband. P.W.1 also in the cross-examination admits that Sy.No.63/3 (item No.A-6) was the property of Channabasappa, (father-in-law of the defendant No.7) and after his death it was mutated in the name of Y. Parameshwarappa. All these aspects collectively and in clear terms establishes that the suit schedule A properties are the ancestral properties of the parties. Further, the relation between the parties is admitted. Though it is orally contended that the plaintiff Nos. 1 to 5 were given their shares of the properties at the time of their respective marriages, there is no specific assertion in the written statement that there was any earlier partition of the entire suit schedule properties and partition deed was effected to. Here the defense of the D.Ws 1 to 5 and 7 is that at the time of their respective marriages, their shares were given. But, absolutely there is no record placed before the Court by the defendants, in this regard. D.W.1 in page No.4 of the cross-examination, clearly admits as under;

> *" 1 ರಿಂದ 5ನೇ ಪ್ರತಿವಾದಿಗಳಿಂದ ನಾನಾಗಲಿ ಅಥವಾ ನನ್ನ ಮಗನಾಗಲಿ ಯಾವುದೇ ಹಕ್ಕು ಬಿಡುಗಡೆ ಪತ್ರ ಬರೆಸಿಕೊಂಡಿಲ್ಲ ಎನ್ನುವುದು ಸರಿ. ವಾದಿಯಿಂದ ಸಹ ಹಕ್ಕು ಬಿಡುಗೆ ಪತ್ರ ಬರೆಸಿಕೊಂಡಿಲ್ಲ."*

This clearly goes to show that the defendant Nos. 6 and 7 have not obtained any relinquishment deed either from the plaintiff or defendants 1 to 5. This clearly manifests that there was no partition in the joint family properties. Admittedly, the parties are Hindus. The initial presumption is that the family is joint or undivided. Therefore, if at all there is a severance of the joint family, the burden is on the person who asserts the same. After these admissions, the onus shifted on to the defendants to establish that there was severance of the joint family. But, there is no clear evidence, in the chief examination of D.W.1 to believe that there was an earlier partition and there was severance of Undivided Hindu Family before the suit. In the examination-in-chief itself in page No.2 she clearly admits that the suit schedule A properties are the ancestral properties. Therefore, there is clear evidence on record to show that the suit schedule A properties are the ancestral properties of the joint family and plaintiff and defendants 1 to 5 and got constituted a Undivided Joint Hindu Family. Hence, issue No.1 is answered in the affirmative.

20. Issue No.2: It is the contention of the plaintiff in para no.7 of her plaint that the schedule B properties are purchased out of the income derived from the joint family properties in the name of defendant No.7 and therefore, it is claimed that they are also the joint family properties. It is the specific case of the plaintiff that the defendant No.7 had no independent source of income to acquire the suit schedule properties and that it was purchased out of the income of the other admitted joint family properties by her husband. In page no.3 of the examination-in-chief, the plaintiff has stated that 'B' schedule properties are purchased out of the income of the other joint family properties and therefore they are the joint family properties. In the same page, she reiterates that the schedule 'B' property was purchased by the husband of 7th defendant out of the income of other admitted joint family properties. In para no.2 of the cross-examination dated: 7-8-2012, the witness admits that the father of defendant no.7 had purchased the properties from one Channabasappa for a consideration. The sale deed by Channabasappa, in favour of Erappa is dated 20-2-1956 when the plaintiff was not yet born. Therefore, she is not expected to have any knowledge and therefore, her evidence in this regard is of no much importance.

21. DW1, in para No.2. of the cross-examination she admits as under:

" ನಾನು ಯಾವುದೇ ಉದ್ಯೋಗ ಮಾಡುತ್ತಿಲ್ಲ, ನಾನು ಗೃಹಿಣಿ ಮಾತ್ರ ಇದ್ದೇನೆ. ನನಗೆ ಯಾವುದೇ ಸ್ವಂತ ಆದಾಯ ಇಲ್ಲ ಎನ್ನುವುದು ಸರಿ. 1980 ರಲ್ಲಿ ಬಿ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು ನನ್ನ ತಂದೆ ನನ್ನ ಹೆಸರಿಗೆ ಮಾಡಿದ್ದಾರೆ ಎನ್ನುವುದು ಸರಿ. ಸದರಿ ಪತ್ರದ ಪ್ರಕಾರ ಯಾವುದೇ ದುಡ್ಡು ವಗೈರೆ ಕೊಟ್ಟಿಲ್ಲ. ಸದರಿ ಪತ್ರದಲ್ಲಿ ಹತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳನ್ನು ಕೊಟ್ಟಿದೆ ಎಂದು ಬರೆದಿದೆ ಎಂದರೆ ಸುಳ್ಳು. ಎ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳ ಉತ್ಪನ್ನದಿಂದ ಬಿ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು ಕೊಂಡುಕೊಂಡಿಲ್ಲ....."

This assertion shows that no amount whatsoever was paid to her father at the time of sale deeds in her favour. The learned counsel for the plaintiff himself has suggested to this witness that the sale deed is nominal one which means that there is no sale as such for consideration. There is no specific evidence from PW1 that she was present at the time of sale and she has seen the amount paid to the said Veerappa. Her specific assertion that no amount is paid to her father has not been denied in the further cross-examination. All these pieces of evidence clearly go to show that in all the probability, no amount was paid to the father of the defendant no.7 at all. When there is no amount is paid for purchase of these schedule 'B' items , there is no question of purchasing them from the funds of other admitted joint family properties. The plaintiff cannot blow hot and cold at once. Though the plaintiff can take alternative pleas, she has to stick on to one assertion at least at the time of evidence. When it was her specific contention that the suit properties were purchased out of the joint family funds, it was her bounden duty to prove the

same. But, when the evidence is carefully analyzed, the plaintiff has failed to show that the sale consideration was passed on to the father of defendant no.7 while purchasing schedule 'B' properties and that the said consideration was paid out of the funds derived from the joint family properties.

22. In this regard, The learned counsel for the plaintiff he has relied upon a ruling in 'Virupakshappa Malleshappa Sanklapur and others -vs- Akka Mahadevi and others' reported in 2002 (1) Karn.L.J.394 (DB) wherein at Head Note 'C' the Division Bench of Hon'ble High Court has held as under:

> *'(C) Hindu Law-- Joint family -- Property purchased in the name of member of - When it is not shown in evidence that member in whose name property is purchased, has any income of his own other than income from joint family business, property so purchased is to be held joint family property'.*

In the present case, as the evidence does not establish that any amount was paid as consideration under the Sale Deed pertaining to 'B' schedule properties, the plaintiff is not entitled for the benefit of this ruling.

23. The learned counsel for the plaintiff has also relied upon another ruling in ' Appa Saheb Peerappa Chandgadde -vs- Devendra Peerappa Chandgadde and others' reported in 2007 (1) Karn.L.J. 177 (S.C.) wherein it is observed as under:

> *' HINDU LAW -- Joint family property -- Suit for partition instituted alleging existence of -- There is no presumption that property held by member of joint family is joint property -- Initial burden is on party asserting that any item of property is joint to establish assertion -- Enough if party establishes that family possessed some joint property which from its nature and relative value might have formed nucleus from which property in question might have been acquired -- Once this initial burden is discharged by party, it shifts on to other party alleging self-acquisition to establish that property was acquired without aid of joint family property -- Where parties asserting self acquisition have not been able to establish that they had sufficient funds and that consideration for disputed properties was paid from out of their separate funds, properties cannot be said to be self acquired.*

As there is no evidence on record to show that the consideration is really passed and as it was a nominal sale deed executed by the father of defendant no.7, this ruling also does not come to the aid of the plaintiff in any way. Under these circumstances, it has to be held

that the plaintiff has failed to prove the issue no.2 and hence, this issue is answered in negative.

24. Issue No.6: This is a suit for partition and the plaintiff has valued her suit and paid the court fee under Section 35(2) of the K.C.F. & S.V.Act fixing the value as per Section 7(2) of the said Act. The defendants, though have taken up such contention, have not agitated it seriously and not shown that the suit was not properly valued. It is an established law that the plaintiff is having right to value the suit property in a particular way as provided under the K.C.F. & S.V. Act. Therefore, the valuation made by the plaintiff has to be accepted. Hence, this issue is answered in affirmative.

25. Issue No.5: The defendant no.7 has contended that the plaintiff has already received a house-site, gold and cash of One Lakh rupees towards her share. In this regard, the defendant no.7, who is examined DW1, has stated that 3 acres 20 guntas of agricultural land and 8 guntas of land was purchased in her name for building a house, they have deposited Rs.20,000/- to her bank account and also gave away the gold and silver ornaments during her marriage and therefore, she cannot again claim any property. But, however, even in her examination-in-chief, she has not stated anything to believe that they were given as her share in the joint family properties. In para no.4 of the cross-examination, DW1 has, in unequivocal terms, stated that she has not got executed any relinquishment deed in her favour by the plaintiff. If at all any property was given to her as share in the joint family properties, then there must have been a relinquishment deed. It is not the contention of the defendant at all that there was any earlier partition and in that partition these properties were given to her. The defendant has produced two Agreements of sale dated 17-12-1975 which were subsequently purchased in the name of the plaintiff. It is contended that these properties were subsequently purchased by the defendant no.7 and her husband in the name of plaintiff. Ex.D4 and D4(a) and Ex.P5 and P5(a) are quoted which are the alleged diary entries of the husband of the defendant no.7. Ex.D5 speaks about the agreement being executed on that day by one Kariyappa. Ex.D4 speaks about the purchase of 8 guntas of land from one Bellada Shekharappa and they have produced Ex.D1 and D2 to show that they possess the agreements of sale in favour of the plaintiff executed by one Parameshwarappa. Ex.P36, P37 and P38 are the original sale deeds with respect to these two documents. It is an admitted fact that the plaintiff and her husband lived with defendant no.7 for some time and therefore, mere possession under Ex.D1 and D2 will not in any way establish that they were given in lieu of their share in the suit property. It is seen from Ex.P36, 37 and 38 that the plaintiff was major and was married and therefore, it cannot be said that the plaintiff had no income to purchase them and the defendant no.7 and her husband purchased them in her name in lieu of giving her share

in joint family properties. Even on going through these records, no such recital is there. Even if it is believed that the defendant no.7 and her husband have purchased this property in the name of the plaintiff, they become the properties of plaintiff only in her independent right by virtue of Section 3 of Benami Transactions (Prohibition) Act and Section 14(1) of the Hindu Succession Act, as there is no clear and clinching evidence to show that they were purchased not for herself or in lieu of her share. Unless there is a relinquishment deed or partition deed in respect of the right over the joint family properties, it cannot be said that these properties are purchased in the name of plaintiff in lieu of her share in the suit properties. Coming to the cross-examination of PW1, nothing is extracted from the mouth of PW1 to believe that these properties were given in lieu of her share in the suit properties. Except the bare assertion that the plaintiff was given some properties, gold and cash in lieu of her share, there is nothing available on record to believe this version. As detailed above, in the absence of relinquishment deed or partition deed, they cannot be believed to be given to her in lieu of her share in the joint family properties. Under these circumstances, it has to be held that the 7th defendant has failed to establish that the plaintiff was given a house-site, gold and cash of One Lakh rupees towards her share in the joint family properties. Hence, the issue no.5 is answered in negative.

26. Issue No.9: Though the defendant no.9 has contended that the bonafide purchaser of the suit 'A' schedule item no.9 property and the 'B' schedule item no.4 property for valuable consideration from the defendant no.8. But, the defendant no.9 has not led any evidence in this case and even she has not cross-examined PW1. Nothing is elicited from the mouth of PW1 to believe that Ex.D9 is a bonafide purchaser for valuable consideration. Therefore, the defendant no.9 has failed to discharge the burden cast upon her. Hence, the issue no.9 is answered in negative.

27. Additional Issue No.1: The 10th defendant has got examined himself as DW3 to prove his contention that he is a bonafide purchaser for value. In his chief examination, he has stated that he is a bonafide purchaser for value. He is the purchaser of the suit 'A' schedule item no.6 and the 'B' schedule item no.3 properties. He says that the sale was made for repayment of family debts and also to meet the expenditure of the marriage of the daughters of defendant no.7. In the cross-examination, this witness says that he knows the defendant no.7 and her husband and before the purchase, he has verified the family tree, RTC., and the mutation entries. He admitted in the cross-examination that the property was the ancestral property of Channabasappa. He admits that after the death of Channabasappa, the property was mutated in the name of Y. Parameshwarappa, it was mutated in the name of Someshekharappa and after the death of Somashekharappa, the property was mutated

in the name of 6th defendant. In para-2 of the cross-examination, he admits as under:

" ನಾನು ಸಾಲ ಎಷ್ಟು ಇದೆ ಎಂದು ತಿಳಿದುಕೊಳ್ಳಲು ಬ್ಯಾಂಕಿಗೆ ಹೋಗಲಿಲ್ಲ, ಸಾಲ ಎಷ್ಟು ಇದೆ ಮತ್ತು ಮದುವೆಗೆ ಎಷ್ಟು ಸಾಲ ಬೇಕಿತ್ತು ಎನ್ನುವುದನ್ನು ನಾನು ವಿಚಾರಿಸಲಿಲ್ಲ."

He admits that except 7th defendant and her son and two daughters, no other heirs have signed Ex.P33 sale deed with regard to item no.6 of 'A schedule properties. He also admits that even to Ex.P32 - item no.3 of suit 'B' schedule, he has not obtained the signature of the remaining female heirs. This piece of evidence clearly goes to show that despite of knowing the fact that they were the joint family properties, the defendant no.10 has not shown sufficient diligence to know or to make sufficient inquiry to know the right and title of the persons with regard to the said lands and about the existence of legal necessity to sell them. His above referred admission with regard to his inaction to know the legal necessity clearly indicates that he has not made any bonafide inquiry about the title of the parties and legal necessity to sell the said land.

28. In this connection, the learned advocate for the plaintiff has relied upon a ruling in 'Ningegowda and others -vs- K.B. Doddegowda and others' reported in AIR 1986 Karnataka 90 wherein it was held that when the alienee has not enquired into the existence of legal necessity for kartha/manager to sell the joint family property, then the alienee has failed to discharge the onus that he made reasonable and bonafide enquiry as to existence of necessity for alienation. So, in this case also, the 10th defendant admits that he has not made any enquiry about the existence of legal necessity to sell the joint family property. Therefore, it has to be held that he failed to establish that he is a bonafide purchaser for value. Hence, the additional issue no.1 is answered in negative.

29. Issue No.4: The defendant no.7 has contended that she and some of her children have sold the item no.6 of suit 'A' schedule, item no.3 of 'B' schedule, item no.9 of 'A' schedule, item no.4 of 'B' schedule, item no.1 of 'A' schedule and item no.1 of 'B' schedule properties to the defendants no.8, 10 and 11 for legal necessity of paying back the debts incurred due to the marriage of plaintiff and the defendants no.1 to 5. In order to prove this issue, the 7th defendant has got examined herself as DW1. As per the records, item no. 9 of 'A schedule and the item no.4 of 'B' schedule properties were sold on 10-7-1996 and the item no.6 of 'A' and item no.3 of 'B' schedule properties were sold to the defendant no.10 on 25-4-2005. Ex.P32 and P33 are those sale deeds. The item no.6 of 'A' schedule is sold for Rs.1,60,000/- and the reason shown is that there were hand loans for repayment of loans of the societies and some amount was required for the expenses of marriage of Geetha and Shobha (defendants no.4 and 5). Ex.P33 is with regard to the item no.3 of 'B'

schedule which is sold for Rs.1,01,000/-. The averment in Ex.P33 shows that the loan of the bank was cleared on 21-1-1991 itself and the reason for the sale is shown as to repay the loans of private parties and of the bank and for the expenses of the marriage of defendant no.4 and 5. In Ex.P33, it is also shown that the loan of the Co-Operative Society was completely repaid. Generally, compared to the private parties, the interest charged by the banks and the Co-Operative Societies will be much less. Therefore, usually when the persons are burdened with loans, they would like to clear off the loans of private persons and then to clear off the loans of the banks and the Co-Operative Societies mainly to save interest. Here, the witness says that she cleared off the loans in the year 1991 itself. There are no documents produced by the defendants to show that further loans were availed again. It is improbable that a person likes to pay back the loans of Co-Operative Society and the bank by availing loan from individual persons. It is impossible to believe that if at all any loan was availed from any private persons in the year 1991 to pay back the said loans, those persons would wait upto the year 2005 to get back their amount. Moreover, in the cross examination at page no.4, the witness clearly admits as under:

" ನಿಶಾನೆ ಪಿ.32 ಹಾಗೂ ಪಿ. 33 ರಂತೆ ಮಾರಾಟ ಮಾಡಿರುವ ಸ್ವತ್ತುಗಳನ್ನು ಹೆಣ್ಣು ಮಕ್ಕಳ ಮದುವೆ ಖರ್ಚಿಗೆ ಮಾರಾಟ ಮಾಡಿಲ್ಲ. ಆದರೆ, ಮಗನ ಚಿಕಿತ್ಸೆಗೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತೇನೆ."

This is quite contrary to her pleadings and her own examination-in-chief. This makes her evidence difficult to believe with regard to sell the item no.6 of 'A' schedule and item no.3 of 'B' schedule properties.

30. Further, she states that she sold the properties to 11th defendant and performed the marriage of the defendants no.4 and 5. If at all she had got any loans in the banks and co-operative societies as contended by her, then definitely there would be sufficient records and if at all there were loans as contended by her, she could have produced the documents. If at all she had sold them to pay back the loans of any individual persons, then she could have produced some documents or at least examined the persons from whom she availed the loans. But, the defendant has not produced any such piece of evidence before the Court. Under these circumstances, it has to be held that the defendant no.7 has failed to establish that as on the date of sale of item no.6 of 'A' schedule and item no.3 of 'B' schedule properties in favour of 10th defendant, there were any earlier loans of banks or co-operative societies or of any individual persons. Further, she has also failed to establish that she sold those items for the purpose of performing the marriage of her daughter.

31. Now coming to the item no.9 of 'A' schedule and item no.4 of 'B' schedule properties, they are sold on 10-7-1996 to the defendant

no.8. The relevant sale deeds are marked at Ex.P30 and P31. In Ex.P30, the reason for sale is shown as the accumulated loans raised during the marriage of her daughters and for development of other properties and in Ex.P1, it is shown as overdue amount of the loans taken at the time of marriage of her daughters. DW1 has stated in para no.4 of the cross examination that she performed the marriage of defendant no.2 in the year 1992 and spent around Rs.50,000/- and gave 10 tholas of gold. She has specifically denied that there was no loan in the year 1996. The evidence of DW1 with regard to the performance of marriage of Sharadamma (2nd defendant) by spending of Rs.50,000/- and giving 10 tholas of gold has not been seriously challenged. Ex.P30 shows that an amount of Rs.1,28,000/- was the sale consideration under it. Ex.P31 shows that the sale consideration was Rs.29,000/-. So, the total amount comes out to Rs.1,57,000/-. The marriage expenses as revelled by the witness appears to be reasonable looking to the status of the parties and the period of time in which it was performed. The Court can take judicial notice of the fact that at that time the cost of one thola of gold was approximately Rs.2800/-. Therefore, the approximate cost of the marriage comes out around Rs.70,000/-. Nothing is extracted from the mouth of PW1 to believe that the reasons shown in Ex.P30 and P31 are false. The bank rate of interest for the loan at that time was between 10 to 12% p.a. So, the interest for four years, the interest comes around Rs.40,000/-. That means, the total amount ought to have been repaid by DW1 comes around Rs.1,20,000/-. When this aspect is collectively seen, it appears that there was a corelation between the amount she might have spent for the marriage of 2nd defendant - Sharadamma, and the sale consideration received by her. Under these circumstances, this Court is of the considered opinion that the evidence of DW1 in this regard is believable and therefore, there was legal necessity for defendant no.7 to sell the item no.9 of 'A' schedule and the item no.4 of 'B' schedule properties.

32. As regards the item no.1 of suit 'A' schedule and the item no.1 of 'B' schedule properties, they have been sold in the year 2009 i.e., on 30-9-2009. She states that for performing the marriage of 5th defendant, she expended around Six Lakh rupees and for performing the marriage of 4 th defendant, she spent around Fifty Thousand rupees. She has stated that Ex.P34 and P35 are the deeds under which she has sold the item no.1 of 'A' schedule and the item no.1 of 'B' schedule properties to 11th defendant. Exhibit P34 discloses that there was a loan taken from Syndicate Bank and the property was mortgaged and also refers to the loan of Canara Bank and Hasudi Co-Operative Society. This very sale deed further shows that the defendant no.7 received Rs.2,50,000/- and Rs.2,34,775/- was paid to Canara Bank and Rs.4000/- was paid to Hasudi Co-Operative Society. This clearly indicates that there was a loan of and repayment of the loan. Ex.P35 also shows the same thing. The sale consideration was Rs.7,60,000/- and out of that, Rs.20,540/- was paid directly to

Canara Bank and Rs.62,215/- was paid to the Co-Operative Society, Hasudi. It also shows payment of Rs.3,77,245/- to 6th defendant which clearly indicates that there was a loan for the family and they were sold to clear off those dues. Therefore, under both the sale deeds, the total amount comes to Rs.12,50,000/-. She specifically states that after the sale, she performed the marriage of defendants no.4 and 5. According to her evidence, she has spent around Rs.6,50,000/- for these two marriages. The records show that around Four Lakh rupees under Ex.P34 was distributed to different creditors and under Ex.P35, around Rs.83000/- was given away to the creditors. Therefore, the total amount spent for discharge of the debts comes out approximately to Rs.5,00,000/- which was paid to the creditors. The total of debts and the marriage expenses come out around Rs.12,50,000/- and odd and therefore, the debts and marriage expenses collectively nearly co-relate to the amount received under these two sale deeds.

33. Nothing is placed before this Court to believe that the defendant no.7 was having abundant money with her or had credit balance in the bank so as to believe that she performed the marriage of her daughters without availing the loan. There is also evidence to show that the defendant no.7 lost her son because of ailments and there is evidence to show that operation was conducted to him. Though there are no documents with regard to that, it can be safely inferred that she might have spent some amount for her son's operation and for follow-up treatment. In the absence of evidence to show that she was well-off and the family had sufficient surplus income so as to meet out all these exigencies without availing loan, it has to be believed that there was legal necessity for defendant no.7 to sell the lands item no.1 of 'A' schedule, item no.1 of 'B' schedule, item no.9 'A' schedule and item no.4 of 'B' schedule properties. As discussed above, the same cannot be said as regards item no.6 of 'A' schedule and item no.3 of 'B' schedule properties. Therefore, the defendant no.7 has established that she has sold the item no.1 of 'A' schedule, item no.1 of 'B' schedule, item no.9 of 'A' schedule and item no.4 of 'B' schedule properties for the purpose of performing the marriage of her daughters and to discharge the family debts. But, not proved that she has sold the item no.6 of 'A' schedule and item no.3 of 'B' schedule properties for discharge of the family debts or to perform the marriage of her daughters. Hence, the issue no.4 is answered partly in affirmative and partly in negative.

34. Issue No.3: The learned counsel for the plaintiff has argued that the sale of coparcenary property by one of the coparceners exceeding his own interest does not bind the interest of other coparceners, if the sale is not for legal necessity. In this regard, he has relied upon a ruling in 'Babu Mother Savavva Navalgund and others -vs- Gopinath' reported in ILR 1999 Karn. 3129 wherein at Head Note 'B', the Hon'ble High Court has observed that the sale of

coparcenary property by one of the coparceners exceeding his own inteest does not bind the other coparceners, if the sale is not for legal necessity or benefit of estate and they are entitled to have the alienation set aside to the extent of their own interest therein.

35. In this case, the plaintiff has contended that as she is not a signatory to the sale of schedule A-1, B-1, A-6, B-3, A-9 and B-4 items properties, the sale in respect of those properties is not binding upon her share. It is observed above that the 11th defendant has purchased the schedule A-1 and B-1 items properties and the plaintiff filed a memo of not pressing the suit against 11th defendant and also she has prayed to delete the relief claimed in para no.16(b) of the plaint. Moreover, the sale is proved to be for legal necessity in issue no.4. In view of the same, the sale of schedule A-1 and B-1 items of properties binds upon her. It is also held while answering the issue no.4 that as regards the schedule A-9 and B-4 item properties, there was legal necessity for defendant no.7 to alienate those properties. The alienation is made by the kartha of the joint family for legal necessity and therefore, the sale of schedule A-9 and B-4 items properties is binding upon the plaintiff. As far as the schedule A-6 and B-3 items properties are concerned, they are sold in favour of 10th defendant. It is held while answering the issue no.4 that the defendant no.7 has failed to establish that the sale of these properties in favour of 10th defendant was for legal necessity. Further, it is held while answering the additional issue no.1 that the defendant no.10 has not made any reasonable inquiry about the existence of debts and legal necessity to sell them. He has also failed to establish that he is a bonafide purchaser. It is an admitted fact that the plaintiff has not given consent whatsoever for sale of these two properties. Therefore, the sale of schedule A-6 and B-3 items properties cannot bind the plaintiff. Thus, the issue no.3 is answered as the sale of schedule A-1, B-1, A-9 and B-4 items properties is binding on the plaintiff and the sale of schedule A-6 and B-3 properties is not binding upon her.

36. Issue No.10: The plaintiff has contended that she is entitled for 1/7 share in 'A' and 'B' schedule properties. As stated above, the plaintiff has abandoned her claim with regard to schedule A-1 and B-1 items properties. It is held while answering the issues no.3 and 4 that alienation of schedule A-1, B-1, A-9 and B-4 items properties in favour of 11th and 8th defendant was for legal necessity of the family and therefore, the sale is binding on the plaintiff. Therefore, she is not entitled for any share in those properties. Now the remaining properties are, the schedule A-2 to A-8, A-10 and A-11 items properties and the schedule B-2, B-3 and B-5 properties. It is held while answering the issue no.3 that the sale of schedule A-6 and B-3 items properties is not binding upon the plaintiff. Therefore, now the Court has to see whether the plaintiff has got 1/7 share in all these properties.

37. Surprisingly, there are three items properties shown in suit 'C' schedule. But, the entire plaint is silent about the nature of 'C' schedule properties. There is no specific contention in the entire plaint or written statement about the nature of 'C' schedule properties and even in the relief column, no relief is claimed with regard to 'C' schedule properties. Therefore, the plaintiff is not entitled for any relief with regard to 'C' schedule properties.

38. It is specifically contended by the plaintiff that the 'B' schedule properties also are the joint family properties under two different modes. Firstly, she claims them to be the properties purchased with the aid of funds of the joint family i.e., 'A' schedule properties. But, she has failed to prove this as recorded while answering the issue no.2. The 2nd line of argument advanced by the learned counsel for the plaintiff in this regard is that, originally the 'B' schedule properties were belonging to the ancestors of the plaintiff and defendants and in the division, there were four brothers viz., Nandyappa, Channabasappa, Ujjanappa, Basappa and Puttappa. The suit 'B' schedule properties have fallen to the share of Puttappa and even after the division, Puttappa and Channabasappa resided jointly and as Puttappa, died issuless, Channabasappa succeeded to his property. To avoid the claim of other brothers of Puttappa, Channabasappa sold the suit 'B' schedule properties to Veerappa, who is father of 7th defednant, under a nominal sale deed on 20-2-1956 and further contends that the 7th defendant was given in marriage to Y. Parameshwarappa, S/o Channabasappa and then Veerappa, sold it in favour of 7th defendant under a nominal sale deed. Contending thus, the plaintiff claims that the suit 'B' schedule properties also are the joint family properties.

39. At this juncture, the learned counsel for the plaintiff has relied upon a ruling in 'Smt. Akkayyamma -vs- State of Karnataka and others' reported in 2006 (6) Karn.L.J. 416 wherein the Hon'ble High Court at Head Note 'C', has held as under:

> *' Hindu Succession Act, 1956, Section 14 -- Property in possession of female Hindu - Enlargement of her limited interest into absolute ownership of - Only if she has right to possession which may be either actual or constructive - where possession is without any right or title, provision is not attracted.'*

40. Sri K.P.O., learned counsel for the defendants, has relied upon a ruling in 'Jayasri Guha Nee Ghosh -vs- Smt. Shukla Ghosh & Anr.' reported in AIR 2008 Calcutta 179 wherein the Hon'ble Calcutta High Court has held that the explanation to Sectoin 14(1) makes it abundantly clear that the property may be acquired by a female Hindu by any mode. The term "property" would also included both movable as well as immovable property. Sub-section (2) of S.14

recognizes that the property may be received by a female, subject to the limitations contained in the instrument, decree, order or award under which she receives the property. Section 14(2), therefore, cannot in any manner, limit the definition of 'property' as contained in Explanation to Section 14(1).

41. The learned counsel for the defendants has also relied upon another ruling in 'Gangamma Etc., -vs- G. Nagarathnamma & Or. Etc.' reported in 2009 SAR (Civil) 728 (S.C) wherein the Hon'ble Supreme Court has, at Head Note, held as under:

> *' (A) Hindu Succession Act, 1956 -- Sec. 14(1) and (2) -- Sec. covers every kind of acquisition of property by a female Hindu -- Properties are recorded in the name Hindu female -- In the absence of any evidence 29 OS.11 / 10 Judgt. to the contrary -- Female by operation of Sec.14(1) is the full owner -- Suit for partition -- First defendant is the mother-in-law of plaintiff -- plaint case is though some of the properties stand in the name of 1st def., they were bought benami in her name -- Trial court decreed the suit in part -- First appeal -- High Court found that no evidence was adduced by appellant to show that she had any independent sources of income and held properties are joint family property -- Legality of --Whether the judgment of High Court is sustainable -- Held : No.'*

The Hon'ble Apex Court has held that Section 14(1) of Hindu Succession Act covers every kind of acquisition of property by a female Hindu and when the properties are recorded in the name of a Hindu female, in the absence of any evidence to the contrary, a female Hindu, by operation of Section 14(1) of Hindu Succession Act, is full owner of properties.

42. The learned counsel for the plaintiff refers to an admission of DW1 which reads as under:

> *" 1956 ರಲ್ಲಿ ಚನ್ನಬಸಪ್ಪ ನನ್ನ ತಂದೆಯ ಹೆಸರಿಗೆ ಮಾಡಿದ ಪತ್ರ ನೆಪ ಮಾತ್ರ ಎನ್ನುವುದು ಸರಿ. ನಾನು ಚನ್ನಬಸಪ್ಪ ಇವರ ಕುಟುಂಬಕ್ಕೆ ಹೋಗಿರುವುದರಿಂದ. ನನ್ನ ತಂದೆ ಪುನಃ ನನ್ನ ಹೆಸರಿಗೆ ನೆಪ ಮಾತ್ರಕ್ಕೆ ಪತ್ರ ಮಾಡಿದ್ದಾರೆ ಎನ್ನುವುದು ಸರಿ. ಮೊದಲು ಎಲ್ಲಾ ಆಸ್ತಿಗಳು ಚನ್ನಬಸಪ್ಪ ಇವರಿಗೆ ಸೇರಿದ್ದವು ಎಂದರೆ ಸರಿ."*

and contends that as DW1 herself has admitted that there was an intention to transfer the property to the joint family, a nominal sale deed was done. Whether this admission can be read as an admission that the property was given to the family or to the defendant no.7 individually will become an important aspect in this case. The sentence ' ನಾನು ಚನ್ನಬಸಪ್ಪ ಇವರ ಕುಟುಂಬಕ್ಕೆ ಹೋಗಿರುವುದರಿಂದ. ನನ್ನ ತಂದೆ ಪುನಃ ನನ್ನ ಹರಸರಿಗೆ ನೆಪ ಮಾತ್ರಕ್ಕೆ ಪತ್ರ ಮಾಡಿದ್ದಾರೆ ಎನ್ನುವುದು ಸರಿ.' clearly indicates that the properties were intended to be given to the family of

Channabasappa, who was the original owner and not to the defendant no.7 individually.

43. Further more the defendants 1 to 7 have sold B-1 schedule property in the name of defendant No.11 and B-4 property in the name of defendant No.8 and B-3 properties in the name of defendant No.11. It should be remembered that these B schedule properties are contended to be self acquired properties of defendant No.7. Ex.P.34 is the certified copy of the sale deed executed in favour of defendant No.11 by the defendants 1 to 7, pertaining to schedule B-1 property i.e. SyNo.32/2 measuring 1 acre 8 guntas. In page No.4 of the said sale deed i.e. Ex.P.34 it is clearly recited as under:

" ಒಂದನೇಯವರಾದ ಶ್ರೀಮತಿ ಪಾರ್ವತಮ್ಮ ಕೋಂ. ವೈ ಪರಮೇಶ್ವರಪ್ಪ ಇವರ ಹೆಸರಿಗೆ ಖಾತೆ ಹಕ್ಕು ದಾಖಲೆಗಳಿರುವ ಸಂಪೂರ್ಣ ನಮ್ಮ ಒಟ್ಟು, ಮಾಲೀಕತ್ವದ ಹಕ್ಕಿಗೊಳಪಟ್ಟು, ಸ್ವಾಧೀನಾನುಭವದ ಹಿಡುವಳಿಯಲ್ಲಿರುವ ಖಾಲಿ ಪ್ರದೇಶವಾಗಿರುವ ಬತ್ತದ ಬೆಳೆಯನ್ನು ಬೆಳೆಯುವಂತಹ 1 ಎಕರೆ 8 ಗುಂಟೆ."

This clearly shows that even the defendant No.7 along with other family members believed it and held to be as a joint family property. Ex.P.33 is a sale deed executed in favour of defendant No.10, wherein item No. B-3 property is sold by defendant No.7 and her son Somashekarappa (husband of defendant no.6 and father of defendant No.12) and defendant No.4 and defendant No.5 wherein it is stated that the said B-3 property belongs to them and possessed by them collectively. If at all the defendant No.7 was the absolute owner of B-1 and B-3 properties, then certainly there was no need for the other children of defendant No.7 to sign the document as a vendor of the schedule property. These are the recitals in the sale deeds of the defendant No.7 and her other children and clearly show that those items in schedule B-3 and B-1 properties were believed to be the joint family properties of Parvathamma and her children. This clearly goes against the assertion of the defendant No.7 that the suit schedule properties are her self acquired properties.

44. It is an admitted fact that the sale deed in favour of Veerappa - father of defendant no.7 itself was a nominal is a clear indication that the intention while conveying the property was to give back the properties to the same family. The subsequent conduct of the defendant no.7 and her other children clearly indicates that they held it as joint family property. These pieces of evidence coupled with admission made by DW1 establish unambiguously that the suit schedule 'B' properties were given to the joint family consisting of the plaintiff and defendants no.1 to 7. It cannot be said that the defendant no.7 had acquired any limited interest in the property. The evidence indicate that the family possessed and held it and not the defendant no.7 alone. Under these circumstances, the defendant no.7 is not entitled for the benefit of the above said rulings.

45. On careful analysis of all these aspects, it is clear that the suit 'B' schedule properties were given to the joint family and therefore, they also become the joint family properties consisting of plaintiff and the defendants. Therefore, except the properties which are sold for legal necessity, the plaintiff will be entitled for equal share along with other daughters of the 7th defendant. In suit 'A' schedule properties which are admitted to be the ancestral properties, the sale of suit schedule A-1 and A-9 properties is held to be binding upon the plaintiff and therefore, she cannot have right over them and the suit schedule A-6 property is sold subsequent to coming into force of newly amended Section 6 of the Hindu Succession Act. Therefore, for suit schedule A-6 item property the sale is not saved. Therefore, among the suit 'A' schedule properties, for the properties at items no.2 to 8, 10 and 11, she becomes a coparcener. Ex.P2 is the study certificate of the plaintiff. This has not been seriously disputed. This shows that the date of birth of the plaintiff is 9-11-1958. It is held by the Division Bench of Hon'ble High Court of Karnataka in a ruling 'Pushpalatha N.V. -vs- V. Padma' reported in AIR 2010 Karn. 124 to the effect that the amended Section 6 of the Hindu Succession Act confers right on the daughter by birth, but the date of birth should be after the act came into force i.e., 17-6-1956. Further, at Head Note 'F', the Hon'ble High Court has held that devolution of survivorship of a male Hindu is by dying intestate to succession and not by survivorship. The concept of "survival" is given go-bye once for all. Therefore, both suit 'A' and 'B' schedule properties which are expressly excepted above, they shall devolve upon the plaintiff and defendants no.1 to 7 equally. Except the plaintiff, no other defendants have made any counter-claim. Therefore, only the plaintiff's share has to be carved out. Including the propositus, there are 8 coparceners. Therefore, in nominal partition, the plaintiff gets 1/8 share. To the father, again there are 8 heirs including the 7th defendant and therefore, his 1/8 share has to be divided to the sharers equally which comes out to 1/64 share in the entire property. Therefore, 1/8 + 1/64 comes out to 9/64 share. Therefore, the plaintiff is entitled for 9/64 share in the suit schedule A-2 to A-8, A-10 and A-11 and the suit schedule B-2, B-3 and B-5 items properties. The plaintiff is entitled for the relief as stated in para no.16(c), (f) and (g). It is further declared that the sale deeds executed by the defendants no.1 to 7 in favour of 10th defendant through two sale deeds on 25-4-2005, are not binding on the share of plaintiff and there shall be a separate enquiry into future mesne profits under Order XX Rule XII of CPC.

46. Issue No.11: In view of the findings given on the above issues and the additional issue, this Court proceeds to pass the following:

ORDER

The Suit of the plaintiff is hereby decreed in part with costs.

The plaintiff is entitled to receive 9/64 share in the suit 'A' schedule items no.2 to 8, 10 and 11 properties and 'B' schedule items no.2, 3 and 5 properties.

Further, it is declared that the Sale Deeds dated 25- 4-2005 in favour of 10th defendant executed by the defendants no.1 to 7 are not binding upon the share of the plaintiff.

The other relieves which are not granted expressly are hereby rejected.

The partition in respect of the landed properties be carried out as per Section 54 of CPC.

There shall be a separate enquiry about the mesne profits as contemplated under Order XX Rule 12(1)(b a) of CPC.

Draw up preliminary decree in terms of Order XX Rule 18 and 19 of CPC."

4. Aggrieved by the judgment and decree of the trial Court, the defendants No. 6, 7, 10 and 12 have filed R.A. No. 42/2014 while the plaintiff filed the connected R.A. No. 44/2014, which culminated in the impugned judgment and decree whereby the first appellate Court partly allowed both R.A. No. 42/2014 and R.A. No. 44/2014 and modified the judgment and decree of the trial Court by declaring that the plaintiff and defendants No. 1 to 5 and defendant No. 7 are entitled to 1/16 share each and the defendants No. 6 and 12 together entitled to 9/16 share in items No.2 to 8, 10 and 11 of 'A' schedule properties and items No.2 and 3 of the suit schedule 'C' properties. The claim of the plaintiff for partition and separate possession in respect of

suit 'B' schedule properties was rejected by the first appellate Court by holding as under:

> *16. On the basis of the arguments advanced by both sides, the following points arise for my determination in both the appeals;*
>
> *1) Whether the suit 'A', 'B' and 'C' schedule properties are the joint family properties of plaintiff and defendants No.1 to 7?*
> *2) Whether the 'B' schedule properties are self acquired properties of defendant No.7?*
> *3) Whether the sale deeds executed in favour of defendants No.8, 10 and 11 and sale deed executed by defendant No.8 in favour of defendant No.9 are not binding on the share of plaintiff?*
> *4) Whether the judgment and decree under appeal is contrary to law, facts and evidence on record and liable to be interfered by this court?*
> *5) What order or decree?*
>
> *17. My findings on the above points are as follows:*
> *Point No.1 : Partly in the affirmative*
> *Point No.2 : In the affirmative*
> *Point No.3 : Partly in the affirmative*
> *Point No.4 : Partly in the affirmative*
> *Point No.5 : As per final order*
>
> ***R E A S O N S***
>
> *18. **POINTS NO.1 TO 3**: These points are taken up together for common discussion in order to avoid repetition. The plaintiff has contended that the plaintiff and defendants No.1 to 5 constitute a Hindu Undivided Family and suit 'A' schedule properties are her ancestral joint family properties and suit 'B' schedule properties are also joint family properties which were purchased by defendant No.7 out of the income of the joint family properties. The plaintiff has contended that the suit 'B' schedule properties originally belonged to their family and in the partition took place between the ancestors between Nandyappa, Channabasappa, Ujjanappa, Basappa and Puttappa, the suit 'B' schedule property went to the share of Puttappa. She has contended that Nandyappa, Ujjanappa and Bassappa went out of the family and though the partition took place, Puttappa and Channabasappa were resided together in the joint family house, Puttappa died issueless and*

Puttappa was residing with his brother Channabasappa till his death since his wife Smt.Gangamma predeceased the husband Puttappa. She has contended that after the death of Puttappa, his elder brother Channabasappa had inherited the above said suit 'B' schedule properties under registered Sale Deed dated 20.02.1956 in favour of Veerappa S/o Nandyappa, Belalakatte village, Shivamogga Taluk and the said sale deed is only nominal to avoid the other brothers of Channabasappa from claiming any share in the properties allotted to the share of Puttappa and said Veerappa who is none other than the father of defendant No.7 again sold the 'B' schedule properties in favour of defendant No.7 as she happened to have gone to the family of Channabasappa after the marriage. The defendant No.7 has given in marriage to Sri. Y. Parameshwarappa son of late Channabasappa. The plaintiff has contended that the defendants No.1 to 7 have sold some of the properties of 'A' and 'B' schedule properties in favour of defendants No.8, 10 and 11 under different sale deeds dated, 10.07.1996, 25.04.2005 and 30.09.2009. The defendant No.8 sold the properties i.e., item No.9 of suit 'A' schedule property and item No.4 of 'B' schedule property in favour of defendant No.9 under the sale deed dated 04.03.2009. So, the plaintiff in the relief column sought for partition of 'A' and 'B' schedule properties and for declaration that the sale deeds executed by defendant No.1 to 7 in favour of defendant No.8, 10 and 11 and sale deed executed by defendant No.8 in favour of defendant No.9 are not binding on her share.

19. The defendants No.1 to 7 in the written statement have contended that suit 'B' schedule properties are the self-acquired properties of defendant No.7 and suit 'A' schedule properties are their ancestral properties. Further the defendant No.7 has contended that she had performed the marriage of plaintiff on 10.05.1975, the marriage of defendant No.1 on 31.05.1981 and marriage of defendant No.2 on 24.06.1992 and marriage of defendant No.3 on 22.06.1999 and marriage of defendant No.5 on 21.05.2009 and marriage of defendant No.4 on 05.07.2010 and at the time of marriage, the plaintiff and defendants No.1 to 5 got their shares out of ancestral properties in terms of gold and cash and hence, the plaintiff and defendants No.1 to 5 are not entitled for share. She has further contended that to discharge the debts, she sold the property in favour of defendants No.8, 10 and 11 and hence, the plaintiff cannot claim any share in suit 'B' schedule properties.

20. The learned counsel for the defendant No.6, 7, 10 and 12 has argued that the suit 'B' schedule properties belonged to defendant No.7 and defendants No.8, 10 and 11 are the

purchasers of the property from defendant No.7 for legal necessity and the defendant No.7 has also purchased properties in the name of plaintiff on the condition that the plaintiff should not claim any share in suit 'A' and 'B' schedule properties. He has further argued that the plaintiff is not a co-parcener and defendants No.1 to 5 have not claimed any share in the suit schedule properties. In support of his argument, he has relied upon the decisions reported in 2007(3) Kar.L.J.28 (DB) (Puttanna Shetty (deceased) by Lrs Vs. Smt. Padma Shetty (deceased) By Lrs and others) and 2015(4) KCCR 3265 (SC) (Prakash and others Vs. Phulavathi and others). He has also relied upon a decision reported in 2009 SAR (Civil) 728 (SC) (Gangamma etc., Vs. G. Nagarathnamma and others).

21. The learned counsel for the plaintiff has argued that the suit properties stood in the name of deceased Channabasappa and 'B' schedule property was sold by late Channabasappa in favour of Veerappa, the father of defendant No.7 without consideration and thereafter Veerappa re-transferred the property in favour of defendant No.7 after the marriage of defendant No.7 with the son of late Chennabasappa. He has argued that the defendant No.7 has not sold the property for the marriages of Geetha and Somashekar and not sold the properties as kartha of the family and no other daughters of defendant No.7 entered into witness box to support the case of defendant No.7 and sale considerations of sale deeds Ex.P.32 and 33 were not utilized for the marriage expenses of daughters. He has argued that in Ex.P.34 and P.35 sale deeds, Y.P.Somashekar is not a party and there was no impending necessities to sell the properties. Mother and wife cannot act as Kartha and existing of legal necessity is not established by the defendant No.7 and suit is dismissed against defendant No.11 after receipt of Rs.2 lakhs and the trial court has not considered the memo and hence, prayed for decreeing the suit in entirety.

22. Before discussing the oral evidence, it is better to have a glance on the documents produced by the parties. Ex.P.1 is the genealogy. Ex.P.2 is the school certificate of plaintiff. Ex.P.3 to P.22 are the RTCs. Ex.P.23 to P.28 are the mutation entries. Ex.P.29 is the Sale deed dated 24.03.1980 executed by late Channabasappa in favour of Veerappa, the father of defendant No.7 in respect of properties in Sy.No.32/2 measuring 1.08 acres (item No.1 of suit 'B' schedule), Sy.No.59/4 measuring 1.02 acres (item No.2 of suit 'B' schedule), Sy.No.59/4 measuring 1.01 acres, Sy.No.63/2 measuring 0.21 acres (item No.3 of suit 'B' schedule), Sy.No.26 measuring 0.39 acres (item No.4 of suit 'B'

schedule), house property bearing Kaneshmari No.25 (item No.1 of suit 'C' schedule), Sy.No.59/3 measuring 0.14 acres (item No.5 of suit 'B' schedule). Ex.P.30 is the sale deed dated 10.07.1996 executed by defendant No.7 Smt.Parwathamma in favour of defendant No.8 in respect of item No.4 of suit 'B' schedule property. Ex.P.31 is the sale deed dated 10.07.1996 executed by late Y.Parameshwarappa and late Y.P.Somashekar, the husband and son of defendant No.7 in favour of defendant No.8 in respect of item No.9 of suit 'A' schedule property. Ex.P.32 is the Sale deed dated 25.04.2005 executed by late Y.P.Somashekarappa, his mother Smt.Parwathamma, the defendant No.7, Smt.Geetha, the defendant No.4 and Smt.Shobha, the defendant No.5 in favour of defendant No.10 in respect of item No.6 of suit 'A' schedule property. Ex.P.33 is the sale deed dated 25.04.2015 executed by late Y.P.Somashekarappa, his mother Smt.Parwathamma, the defendant No.7, Smt.Geetha, the defendant No.4 and Smt.Shobha, the defendant No.5 in favour of defendant No.10 in respect of item No.3 of suit 'B' schedule property. Ex.P.34 is the Sale Deed dated 30.09.2009 executed by defendant No.1 to 7 and 12 in favour of defendant No.11 in respect of item No.1 of suit 'B' schedule property and Ex.P.35 is the sale deed dated 30.09.2009 executed by defendant No.1 to 7 and 12 in favour of defendant No.11 in respect of item No.1 of suit 'A' schedule. Ex.P.36 is the sale deed dated 06.02.1995 executed by Govindegowda and Devamma in favour of Smt.Susheelamma, the plaintiff. Ex.P.37 is the sale deed executed by L.G. Nagaraj in favour of plaintiff Smt.Susheelamma. Ex.P.38 is the Sale deed executed by Devamma in favour of plaintiff Smt.Susheelamma dated 04.04.1979. Ex.P.39 is the Sale Deed executed by V.G.Chandrashekarappa in favour of plaintiff Smt.Susheelamma. Ex.P.40 is the certified copy of deposition of defendant No.7 Smt.Parvathamma in O.S.No.11/2002. Ex.P.41 is the certified copy of written statement filed by the defendant No.7 and 8 in O.S.No.11/2002. Ex.P.42 is the certified copy of written statement filed by defendants No.1, 2 and 5 in O.S.No.11/2002. Ex.P.43 is the certified copy of written statement filed by defendant No.6 in O.S.No.11/2002. Ex.P.44 is the certified copy of written statement filed by defendant No.3 in O.S.No11/2002. Ex.P.45 is the certified copy of plaint filed in O.S.No.11/2002. Ex.P.46 is the certified copy of issues framed in O.S.No.11/2002. Ex.P.47 is the certified copy of sale deed. Ex.P.48 is the certified copy of sale deed executed by defendant No.8 in favour of defendant No.9. Ex.P.49 is the certified copy of sale deed dated 03.08.1989. Ex.P.50 to 52 are the RTCs. Ex.P.53 is the Mutation extract. Ex.P.54 to 62

are the katha extracts of suit 'C' schedule properties. Ex.P.63 and 64 are the tax paid receipts.

23. Ex.D.1 and D.2 are the agreements entered into between L.G.Nagaraja and Smt.Susheelamma. Ex.D.3 is the affidavit. Ex.D.4 and 5 are the diaries. Ex.D.6 is the Mutation Register Extract. Ex.D.7 and 8 are the RTC extracts. Ex.D.9 is the Tax Demand Register Extract. Ex.D.10 is the receipt for payment of money. Ex.D.11 to 14 are the RTC extracts.

24. Regarding oral evidence is concerned, the plaintiff Smt. Susheelamma examined herself as PW.1. In her evidence, she has deposed that the suit schedule properties are her joint family properties. In her evidence, she has deposed that the defendant No.7 had purchased suit 'B' schedule property out of joint family fund. During the course of cross-examination, she has deposed that her sister, the defendant No.4 is mentally retarded person. She has admitted that her mother has performed the marriages of her sisters Chandramma, Sharadamma, Yashodamma and Shobha and her mother gave gold ornaments and also spent money for the marriages. She has further admitted that her brother Somashekar was suffering from ill health and he was admitted to Manipal hospital as in-patient for 2 months. She has further admitted that the defendant No.7 has spent Rs.4 lakhs for the medical expenses of his brother Somashekar. She has denied that the suit 'B' schedule property is the self-acquired property of her mother. She has stated that though she has challenged the Sale Deed executed in favour of defendant No.11 Sakkubai, she has got dismissed this suit against her after receiving Rs.4,00,000/- lakhs. She has admitted that her husband has filed suit O.S.No.11/2002 against his brothers and the said suit came to be decreed and the appeal is pending before the Hon'ble High Court of Karnataka.

25. The defendant No.7 examined herself as DW.1. She has deposed that suit 'B' schedule properties are her self acquired properties. She has deposed that suit 'A' schedule properties are the ancestral properties. She has deposed that she had borrowed loan from Syndicate Bank, Canara Bank, V.S.S.N. Hasudi to perform the marriage of her daughters. She has further deposed that she spent Rs.6 lakhs for the medical treatment of her son. During the course of cross-examination, she has deposed that she is not doing any avocation, she is a home maker and she has no income of her own. She has deposed that she has not purchased suit 'B' schedule property out of the income of suit 'A' schedule property. She has admitted that in the year 1956, Channabasappa had executed a nominal sale deed in favour

of her father. She has admitted the suggestion that her father had executed a nominal sale deed in her favour. She has further admitted that she and her son did not get executed a relinquishment deed from defendants No.1 to 5. One Kariyappa @ Govindagowda himself examined as DW.2. He has deposed that late Parameshwarappa has paid the sale consideration amount to them at the time of executing sale deed in the name of plaintiff. The defendant No.10-Parameshwarappa himself examined as DW.3.

26. The plaintiff has described the suit schedule properties as suit 'A', suit 'B' and suit 'C' properties. It is the case of the plaintiff that suit 'A' schedule property is her ancestral properties and suit 'B' schedule property is purchased by her mother, the defendant No.7 out of the income derived from suit 'A' schedule property, therefore, the suit 'B' schedule properties are also joint family properties.

27. Let me discuss about the nature of suit 'B' schedule properties. The defendant No.7 has stated that suit 'B' schedule properties are her self acquired properties. As per the sale deed-Ex.P.29 dated 20.02.1956, the suit item No. 1, 2, 3, 4 and 5 of suit 'B' Schedule and item No.1 of suit 'C' schedule properties were sold by late Channabasappa in favour of Veerappa alias Erappa. Said Veerappa alias Erappa is none other than the father of defendant No.7. The plaintiff has not challenged the Sale Deed dated 20.02.1956. Since the plaintiff has not challenged the Sale Deed dated 20.02.1956, she cannot contend that suit 'B' schedule properties and item No.1 of suit 'C' schedule property are her ancestral and joint family properties. Said Veerappa alias Erappa had executed a Sale Deed dated 24.03.1980 in favour of defendant No.7-Smt.Parvathamma after her marriage with Y. Parameshwarappa. Therefore, suit 'B' schedule property and suit item No.1 of 'C' schedule property became the self-acquired properties of defendant No.7-Smt.Parvathamma. Further it is the definite case of the plaintiff that the defendant No.7 has purchased suit 'B' schedule property out of the income derived from suit 'A' schedule properties. But in the cross-examination of DW.1, a suggestion was put to DW.1 that Sale Deed of suit 'B' schedule property is a nominal Sale Deed. If it is a nominal sale deed, question of payment of sale consideration amount out of the income derived from family properties to purchase suit 'B' schedule properties does not arise. As already said, the plaintiff has not challenged the Sale Deed dated 20.02.1956 executed by Channabasappa in favour of Veerappa alias Erappa. Therefore, the plaintiff has failed to prove that suit 'B' schedule properties and item No.1 of suit 'C' schedule property are her joint family properties. Hence,

she is not entitled to claim share in the suit 'B' schedule properties and item No.1 of suit 'C' schedule property.

28. Let me discuss about the nature of suit 'A' schedule properties. The defendant No.7 has stated that suit 'A' schedule properties are the ancestral properties. But it is the contention of the defendant No.7 that she sold suit 'A' and 'B' schedule properties for her legal necessity, as she had borrowed loan from the banks to perform the marriages of her daughters and for the medical treatment of her son Y.P.Somashekara. PW.1 has also admitted during the course of cross-examination that it is the defendant No.7 who performed her marriage and the marriages of defendant No.1 to 5 and also spent Rs. 4 lakhs for the medical treatment of deceased brother Y.P. Somashekara. DW.1 has stated that she spent Rs.6 lakhs for the treatment of her son Y.P. Somashekara. Late Y.Parameshwarappa and late Y.P.Somashekar had executed a sale deed in favour of defendant No.8 Shanthaveerappa in respect of item No.9 of suit 'A' schedule property. The deceased Y.P.Somashekarappa, defendant No.7, defendant No.4 and defendant No.5 had executed a Sale Deed in favour of defendant No.10 Parameshwarappa in respect of item No.6 of suit 'A' schedule properties. The defendant No.1 to 7 and 12 had executed a Sale deed in favour of B.R.Sakku Bai in respect of item No.1 of suit A' schedule properties. The plaintiff has not pressed the suit against defendant No.11 by receiving Rs.4 lakhs. Therefore, the sale deeds executed in favour of B.R. Sakku Bai are binding on the plaintiff. So far as the Sale deed executed in favour of defendant No.8 is concerned, it is executed on 10.07.1996 prior to the coming into force of Hindu Succession (Amendment) Act, 2005. Therefore, as per Sec.6 of the Hindu Succession Act, the plaintiff was not coparcener during the life time of her father and said disposition or alienation will not affect or invalidate the sale deed which had taken place before 20.12.2004. Therefore, the sale deed executed in favour of defendant No.8 dated 10.07.1996 is binding on the plaintiff. The sale deeds executed in favour of defendant No.6 Parameshwarappa dated 25.04.2005 are marked as Ex.P.32 and P.33. Ex.P.33 is pertaining to suit item No.3 of suit 'B' schedule property and it is self acquired property of defendant No.7. Ex.P.32 is pertaining to suit item No.6 of suit 'A' schedule property. DW.1 in her cross-examination has admitted that she has not spent the sale consideration amount to the marriage expenses of her daughter, but she has spent amount for medical expenses of her son. Therefore, it cannot be said that suit item No.6 of suit 'A' schedule property was sold by defendant No.7, her son and daughters for legal necessity. The plaintiff

is not party to said sale deed. Therefore, the sale deed executed in favour of defendant No.10 in respect of item No.6 of suit 'A' schedule property is not binding on the share of the plaintiff. Therefore, the plaintiff is entitled for share in suit item No.6 of suit 'A' schedule properties.

29. Though the lower court has observed in the judgment that suit 'B' schedule properties are not acquired out of family funds and it is a nominal sale deed executed by Veerappa in favour of defendant No.7, awarded share in item No.2, 3 and 5 of suit 'B' schedule properties to the plaintiff. Therefore, the lower court has committed an error in awarding shares to the plaintiff in item No.2, 3 and 5 of suit 'B' schedule properties. The plaintiff is entitled for share in item No.2 to 8, 10 and 11 of suit 'A' schedule properties.

30. There is no pleading so far as the suit 'C' schedule property is concerned. The nature of acquisition of suit 'C' schedule properties are not pleaded in the plaint and plaintiff has not claimed partition in respect of suit 'C' schedule properties. However, the plaintiff in her evidence has claimed shares in all suit schedule properties. She has produced khata extracts. Therefore, item No.2 and 3 of suit 'C' schedule properties are joint family properties of plaintiff, defendant No.1 to 7 and 12 and plaintiff is entitled for share.

31. The lower court has awarded 9/64th share to the plaintiff in the suit item No.2 to 8, 10 and 11 of suit 'A' schedule properties and item No.2, 3 and 5 of 'B' schedule properties. Sec. 6 of the Hindu Succession Act, 1956 came to be amended and Sec. 6 was substituted w.e.f., 09.09.2005. At this juncture, it would be worthwhile to refer to Sec.6 of the Hindu Succession Act, which reads as under:

> *6. Devolution of interest in coparcenary property.- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall -*
>
> *(a) by birth become a coparcener in her own right in the same manner as the son;*
>
> *(b) have the same rights in the coparcenary property as she would have had if she had been a son;*
>
> *(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*
>
> *Provided that nothing contained in this sub-section shall affect or invalidated any disposition or alienation*

including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken placae and, -

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child or such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation: For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no Court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under Hindu Law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in the sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation – For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation-.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908), partition effected by a decree of a Court.

32. In this case, the ancestor of plaintiff and defendant No.1 to 7 i.e., Y. Parameshwarappa died on 12.07.1997. Sec.6 of Hindu Succession Act, 2005 came into force on 09.09.2005. Y.Parameshwarappa died prior to the coming into force of Hindu Succession Act, 2005. Therefore, plaintiff was not coparcener as on the date of death of Y.Parameshwarappa i.e., on 12.07.1997 on which date, the succession opened. So, as on the date of death of Y. Parameshwarappa, Y. P. Somashekara was alive and he was alone coparcener. Therefore, on notional partition, deceased Y.Parameshwarappa and deceased Y.P. Somashekara got equal share in suit 'A' schedule property. The plaintiff and defendants No.1 to 5 and defendant No.7 are entitled equal shares as Class-I heirs of late Y. Parameshwarappa in the ½ share of late Y.Parameshwarappa. The defendant No.6 and defendant No.12 are the wife and son of late Y.P.Somashekara. Therefore, the plaintiff, the defendant No.1 to 5 and defendant No.7 are entitled 1/16th share each and defendant No.6 and defendant No.12 who is a minor son of defendant No.6 and late Y.P.Somashekara are together entitled for 9/16th share (i.e. ½ share plus 1/8th share) in suit item No.2 to 8, 10 and 11 of suit 'A' schedule properties and item No.2 and 3 of suit 'C' schedule properties. With these observations, I hold point No.1 partly in the affirmative,

point No.2 in the affirmative and point No.3 partly in the affirmative.

*33. **POINT No.4**: Since the lower court has committed an error in awarding shares and since the trial court has committed an error in awarding share of the plaintiff in some of the items of suit 'A' and 'B' schedule properties and since the lower court has committed an error in not declaring the shares of defendant No.1 to 7 and 12, it is just and proper to allow these appeals partly and set aside the judgment and decree partly and modify the operative portion of the judgment. Therefore, I answer this point partly in the affirmative.*

*34. **POINT No.5**: In view of my findings on the above points, I proceed to pass the following:*

ORDER

R.A.No.42/2014 filed by the appellants/ defendants No.6, 7, 10 and 12 under Sec.96 R/w order 41 Rule 1 of the Code of Civil Procedure, 1908 is hereby partly allowed.

R.A.No.44/2014 filed by the appellant/plaintiff under Sec.96 R/w order 41 Rule 1 of the Code of Civil Procedure, 1908 is hereby partly allowed.

The judgment and decree passed in O.S.No.11/2010 by the learned I Addl. Senior Civil Judge and CJM., Shivamogga dated 24.07.2014 is hereby partly set aside.

The judgment and decree of the lower court is hereby modified as under;

The plaintiff and defendants No.1 to 5 and defendant No.7 are entitled for 1/16th share each and defendant No.6 and defendant No.12 together entitled for 9/16th share in item No.2 to 8, 10 and 11 of suit 'A' schedule properties and item No.2 and 3 of suit 'C' schedule properties.

It is declared that the Sale Deed dated 25.04.2005 executed in favour of defendant No.10 in respect of item No.6 of suit 'A' schedule property is not binding on the share of plaintiff.

If the defendants No.1 to 7 and 12 want their separate share, shall pay necessary court fees in the final decree proceedings, if not already paid.

Parties shall bear their own costs. Draw decree accordingly."

5. Aggrieved by the judgments and decrees of the trial Court and first appellate Court, appellant-plaintiff is before

this Court by way of the present appeal which was admitted to consider the following substantial question of law:

"Whether the impugned judgment and decree of the Trial Court and First Appellate Court insofar as they relate to quantification/allotment of shares to the parties in respect of the suit schedule properties is contrary to the judgment of the Apex Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others – (2020) 9 SCC 1?***"

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

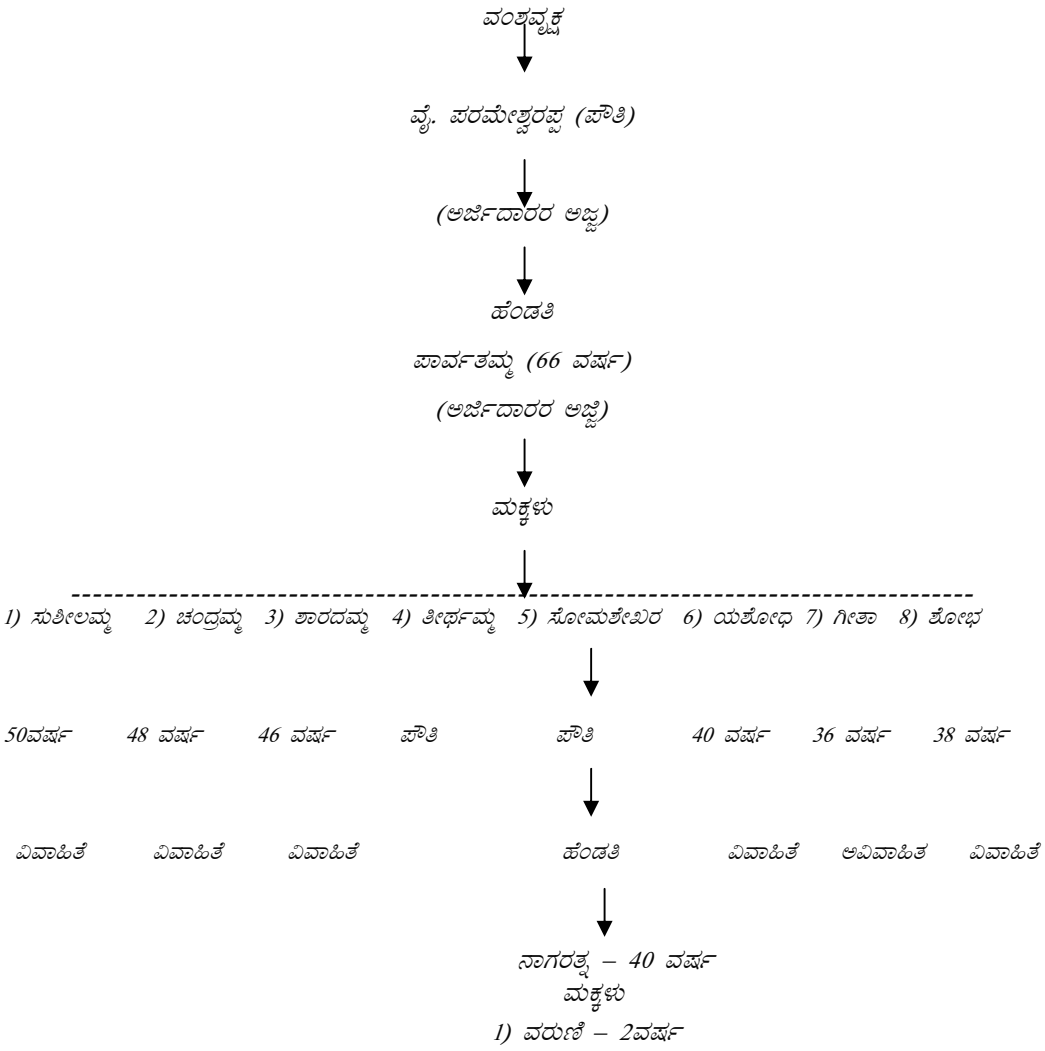
7. Re. Substantial questions of law:

A perusal of the material on record will clearly indicate that while the trial Court came to the conclusion that the plaintiff was entitled to partition and separate possession of 9/64 share in items No.2 to 8, 10 and 11 of

'A' schedule as well as items No.2, 3 and 5 of 'B' schedule, the first appellate Court came to the conclusion that all the suit 'B' schedule properties were the separate and self acquired properties of defendant no. 7-Parvathamma who was the mother of the parties and as such the same was a Streedhana property and in the light of Section 14(1) of the Hindu Succession Act the plaintiff was not entitled to a share in plaint 'B' schedule properties and consequently allowed the appeal filed by defendant no. 7-Parvathamma along with other appellants.

8. So also, the share of the parties was modified by the first appellate Court by coming to the conclusion that since Parameshwarappa expired prior to 09.09.2005, the plaintiff and remaining daughters would not be entitled to equal share in items No.1, 2 to 8, 10 and 11 of suit 'A' schedule properties and items No.2 and 3 of suit 'C' schedule properties. In this context, it is necessary to

extract the genealogical tree of the parties which is as under:



ಸಾಕ್ಷಿದಾರರು : – ಮೇಲ್ಕಂಡ ನಮ್ಮ ಕುಟುಂಬದ ವಂಶವೃಕ್ಷವು ಸತ್ಯವಾಗಿದ್ದು ನಾನೇ ಖುದ್ದು ಹೇಳಿ ಬೆರಳಚ್ಚು ಮಾಡಿಸಿ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ.

9. A perusal of the genealogical tree of the parties will indicate that the relationship between the parties is not in dispute. It is also not in dispute that Parameshwarappa

expired on 12.07.1997 and under identical circumstances, the Apex Court in Vineeta Sharma Vs. Rakesh Sharma and Others reported in ***(2020) 9 SCC 1*** 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. A perusal of the aforesaid principles laid down in Vineeta Sharma's case will clearly indicate that the plaintiff along with the defendants no. 1, 2, 3, 4, 5, 6 would be entitled to equal share along with their father Parameshwarappa in the suit schedule properties while their brother the deceased Somesheker would also be entitled to equal $1/8^{th}$ share in the suit schedule

properties. Consequently, the plaintiff and defendants No. 1 to 5 and defendants 6 and 12 (jointly) would be entitled to 1/8th share each in the suit schedule properties along with defendant No. 7 who would also be entitled to 1/8th share along with their father Parameshwarappa whose notional share would have to be quantified as 1/8th share in items No. 2 to 8, 10 and 11 of 'A' schedule and items No. 2 and 3 of 'C' schedule properties.

11. Having quantified the notional share of Parameshwarappa as 1/8th share in the aforesaid suit schedule properties, upon his demise in 1997, his 1/8th share would have to necessarily devolve upon plaintiffs-defendants No.1 to 5, defendants 6 and 12 (jointly) and defendant No. 7, the mother of the parties and consequently the shares of the parties in items No. 2 to 8, 10 and 11 of 'A' schedule and items No. 2 and 3 of 'C' schedule would have to be quantified as hereunder:

Plaintiff	:	1/8 + 1/64 = 9/64
Defendant No. 1	:	1/8 + 1/64 = 9/64
Defendant No. 2	:	1/8 + 1/64 = 9/64
Defendant No. 3	:	1/8 + 1/64 = 9/64
Defendant No. 4	:	1/8 + 1/64 = 9/64
Defendant No. 5	:	1/8 + 1/64 = 9/64
Defendants No. 6 and D12 jointly	:	1/8 + 1/64 = 9/64
Defendant No. 7	:	1/64

The impugned judgment and decree of the trial Court and first appellate Court would have to be modified accordingly. Substantial question/s of law is/are accordingly answered.

12. In the result, I proceed to pass the following:

ORDER

The appeal is hereby partly allowed.

The impugned judgment and decree of the trial Court and first appellate Court are hereby modified by declaring that the parties are entitled to a share only in items No. 2

to 8, 10 and 11 of suit 'A' schedule and items No. 2 and 3 of 'C' schedule as hereunder:

Plaintiff	:	1/8 + 1/64 = 9/64
Defendant No. 1	:	1/8 + 1/64 = 9/64
Defendant No. 2	:	1/8 + 1/64 = 9/64
Defendant No. 3	:	1/8 + 1/64 = 9/64
Defendant No. 4	:	1/8 + 1/64 = 9/64
Defendant No. 5	:	1/8 + 1/64 = 9/64
Defendants No. 6 and D12 jointly	:	1/8 + 1/64 = 9/64
Defendant No. 7	:	1/64

The suit of the plaintiff in relation to items No. 1 and 9 and 9 of 'A' schedule, items No. 1 to 5 of 'B' schedule and item No. 1 of 'C' schedule is hereby dismissed.

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

BVV
List No.: 1 Sl No.: 18