

**WITNESS RECALLED AND DULY SWORN ON
20/11/2015****FURTHER EXAMINATION-IN-CHIEF BY SRI.VBS
ADVOCATE FOR PLAINTIFF:-**

I have filed my affidavit evidence by way of examination-in-chief before this Court. It bears my signature. The contents of the same are true and correct. In support of my contention, I have produced the original GPA executed by 2nd plaintiff in favour of 1st plaintiff on 1.10.2013 and the same is marked as Ex.P.1. I have produced the certified copy of the General Power of Attorney executed by 2nd plaintiff in favour of the deceased 1st defendant and the same is marked as Ex.P.2. I am not in possession of original Partition Deed dt.26/2/1960 and the same was in the possession of one of my uncle by name G. Raghavan, who died 2 months back, as such, I have produced the certified copy of the Partition Deed and the same is marked as Ex.P.3 and I have produced the typed copy of Ex.P.3 for the sake of convenience. I have produced the certified copy of the Sale deed dt.8.2.1972, which has been executed by G. Parthasarathy and others in favour of one Sri. Ramaswamy Naidu in respect of land in Survey No.33 of Yelachenahalli village and the same is marked as Ex.P.4. I have produced the certified copy of the Sale deed dt. 11.12.1986 , which has been executed by Sri. Bopanna in favour of 3rd defendant in respect of C schedule property and the same is marked as Ex.P.5. I have produced the typed copy of Ex.P.5

for the sake of convenience. I have produced 2 RTC extract pertaining to 'C' schedule property , which are now marked as Ex.P.6 and Ex.P.7 and I have also produced 2 MR extracts pertaining to same property and those 2 documents are marked as Ex.P.8 and Ex.P.9. I have produced the original GPA executed by 3rd defendant in favour of deceased 1st defendant on 3.9.1970, which has been revoked on 7.5.2010 and the same is marked as Ex.P.10. I have produced the income tax returns of my father (G. Parthasarathy) for the assessment year 2001-02, 2002-03 and for the assessment year 2010-2011, which are now marked as Ex.P.11 and Ex.P.13. I have produced 3 Acknowledgements issued by income tax department for the year 2008, 2009 and for the year 2011, which are marked as Ex.P.14, Ex.P.15 and Ex.P.16 respectively. I have produced the Bank account ledger extract of 3rd defendant issued by the State Bank of Mysore, Bangalore-1 and the same is marked as Ex.P.17. I have produced the Ledger extract pertaining to the current account of M/s. KSG Farm and Nursery issued by State Bank of Mysore, Bangalore and the same is marked as Ex.P.18. I have produced 5 certificates issued by State Bank of Mysore, Chamarajpet, Bangalore and all those 5 certificates are marked as Ex.P.19, Ex.P.20, Ex.P.21 and Ex.P.23. I have produced the certified copy of the Writ petition.No.20904/2012 and Write appeal No. 3961/2012, which are marked as Ex.P.24 and Ex.P.25.

I have produced the original letter written by 3rd defendant to me on 18.3.1975 and the same is marked as Ex.P.26 (contains 4 pages). I have produced the Acknowledgement issued by 3rd defendant , acknowledging the receipt of some amount from my father (deceased 1st defendant) and the same is marked as Ex.P.27. Ex.P.27 is marked subject to objection raised by 3rd defendant Counsel on the point of relevancy. I have produced the pamphlet published by my father, on behalf of M/s. G. Parthasarathy and son and the same is marked as Ex.P.28. Ex.P.28 is marked subject to objection raised by 3rd defendant Counsel on the point of relevancy. I have produced the counter foil of Panjab National Bank pertaining to Pay Order for Rs. 1,50,000/- and the same is marked as Ex.P.29. Ex.P.29 is marked subject to objection raised by 3rd defendant Counsel on the point of relevancy. I have produced the Death certificate of my grand father namely Sri. K.S. Gopalaswamy Iyengar and the same is marked as Ex.P.30. I have produced the Death certificate of my grand father namely Sri. K.R. Sreenivasa Iyengar and the same is marked as Ex.P.31. I have produced the Estate Duty certificate issued in favour of my father and the same is marked as Ex.P.32. I have produced the pamphlet of M/s.KSG Form & Nursery and one photograph and these 2 documents are marked as Ex.P.33 and Ex.P.34. I have produced the Award certificate issued by Agri-Horticultural society, Delhi in favour of my

father and the same is marked as Ex.P.35. I have produced the medal given to my father by the aforesaid society and the same is marked as Ex.P.35(a). I have produced 'Agriculture Today' magazine issued in the month of February 2002 containing information about the Farm house maintained by my father and the same is marked as ExP.36. The relevant page covering the information pertaining to the Farm house maintained by my father is marked as Ex.P.36(a). I have produced 'Agriculture Today' magazine issued in the month of April to 1999 containing information about the Farm house maintained by my father and the same is marked as ExP.37. The relevant page covering the information pertaining to the Farm house maintained by my father is marked as Ex.P.37(a). I have produced 'Front Line' magazine issued in the month of April 1999 containing information about the Farm house maintained by my father and the same is marked as ExP.38. The relevant page covering the information pertaining to the Farm house maintained by my father is marked as Ex.P.38(a).

Learned Counsel representing 3rd defendant has insisting the court to mark the documents produced by the 3rd defendant at the instance of plaintiff, has contemplated u/s. 163 of the Indian Evidence Act., Accordingly, court has directed the plaintiff Counsel to mark those documents which ahs produced by the 3rd defendant in pursuance of the direction given by the

court. Plaintiffs' Counsel has submitted that plaintiffs are reluctant to mark those documents. At this stage, court is of the opinion that it is not fair on the part of court to insist the plaintiff to mark the documents, which plaintiffs do not intended to mark.

Cross-examination on behalf of LR's of deceased 1st defendant:-

Lr's of deceased 1st defendant is absent. Hence, it is treated that LR's of 1st defendant have no cross-examination against PW-1.

Cross-examination on behalf of 2nd defendant:-

During the pendency of the proceedings, 2nd defendant has been transposed as 2nd plaintiff.

Cross-examination on behalf of 3rd defendant by Sri. RS advocate:-

Sri. RS advocate prays time for cross-examination. Prayer is allowed for cross-examination of this witness.

(Typed to my dictation in the open Court.)

R.O.I. & A.C.,

**(A. GURUMURTHY)
XV Addl. City Civil & Sessions
Judge, Bangalore.**

Witness recalled and duly sworn on
10-12-2015

Cross-examination on behalf of 3rd defendant by
Sri. RS advocate:-

I was born on 15.8.1950. My sister Padmini was born on 12.12.1951. I got married on 29.1.1975. My sister Padmini has got married on 21.1.1980. My sister Sangeetha has got married on 1.6.1984. It is true that myself and my 2 sisters are graduate in English medium. It is true that I myself and my sisters will not put our signatures on any document, unless we go through the document. It is true that the document now shown to me is the certified copy of the Plaint pertaining to O.S.No.5561/2013. It is true that in O.S.No.5561/2013, I was one of the plaintiff. The said document is marked as Ex.D.1. I have not produced any false or fabricated document in support of averments made in my plaint. It is true that , the document now shown to me is the certified copy of the list of documents which I have filed in O.S.No. 5561/2013 and the same is marked as Ex.D.2. It is true that the document now shown to me is the certified copy of the Appeal which I have preferred before the Hon'ble High Court of Karnataka against Judgement and Decree passed by this court in O.S.No.25875/2010 in RFA.No.1878/2012 and the same is marked as Ex.D.3. It is true that the document now shown to me is the certified copy of the Plaint filed by 3rd defendant Sri.Mukunda in

O.S.No.6800/2011 and the same is marked as Ex.D.4. It is true that the document now shown to me is the certified copy of the Written Statement which I have filed in O.S.No.6800/2011 and the same is marked as Ex.D.5. It is true that the document now shown to me is the certified copy of the interim order passed by the City Civil Court, Bangalore in O.S.No.6800/2011 and the same is marked as Ex.D.6. It is true that the document now shown to me is the certified copy of the appeal which I have preferred before Hon'ble High Court of Karnataka against interim order passed by this court in O.S.No.6800/2011 and the same is marked as Ex.D.7 (MFA.No.2496/2012). It is true that 'A' and 'B' schedule properties are adjacent properties. It is true that earlier 'A' and 'B' schedule properties were single composite property bearing No.237/46. It is true that 'B' schedule property is presently bearing No.237/46A. It is true that 'A' and 'B' schedule properties are having separate Khatha numbers and having separate assessments. Witness volunteers that 'A' schedule property is consisting of old house and 'B' schedule property is consisting of new house. It may be true that there is a fence in between 'A' and 'B' schedule property. It is true that 'B' schedule property is in the possession of my brother Muralidhar. It is true that presently, my brother Mukunda is in possession of 'A' schedule property. It is true that my brother Mukunda has locked 'A' schedule property and is not allowing me , my other brothers, my 2 other sisters to enter into

the 'A' schedule property. I do not know my brother Mukunda is making use of 'A' schedule property to do Horticultural business. It is true that originally 'A' schedule , 'B' schedule property and other properties situated on the rear side of 'A' and 'B' schedule properties were owned by Sri. K.R. Sreenivasa Iyengar. It is true that Sri. K.R. Sreenivasa Iyengar has gifted away all those properties in favour of his son K.S. Gopalaswamy Iyengar. It is true that Sri. K.S. Gopalaswamy Iyengar was died in the year 1955. It is true that Sri.K.S. Gopalaswamy Iyengar had 4 sons and 2 daughters. It is also true to suggest that in the year 1960, there was a Registered Partition among 4 sons of deceased K.S. Gopalaswamy Iyengar in respect of properties left by K.S. Gopalaswamy Iyengar. It is true that in that partition, 'A' and 'B' schedule properties were fallen to the share of Parthasarathy. I do not know on what basis, I have mentioned 'A' and 'B' properties are as 2 different properties. The Agreement which I have referred mentioned in plaint at para 11 with reference to 11.6.1986 is not the document which I have referred in my previous suit (O.S.No.5561/2013) at para 12 of that plaint.

Question:- On what basis , I can say that the Agreement which I have referred in para 12 of the plaint is different from the Agreement which I have referred in my previous suit at para 12 ?

Answer:- I am not sure whether those 2 Agreements are one and the same.

I have not seen the Agreement, which I have referred at para 12 of the plaint. I have other defences, apart from the defence which I have taken at para 12 of the plaint in O.S.No. 5561/2013.

Question:- Now, I cannot say why? I have not mentioned other defences in my plaint in O.S.No.5561/2013 ?

Answer:- I have not seen any document in support of my contention taken at para 12 of my plaint.

I have not gone through the Memorandum of Agreement , which I have referred in my plaint at para 12 as such I have not taken any defence. Prior to filing of this suit, myself, my other brother and 2 sisters have approached my father and we have requested him to effect partition in the family property and at that time, 3rd defendant has informed that there was already partition, in that context, I referred the Memorandum of Agreement at para 12 of the plaint. It is not true to suggest that I have no other defence except the defence which I have referred in para 12 of the plaint in O.S.No. 5561/2013 as such, I have not mentioned any defence in the plaint. It is true that after filing of this suit, 3rd defendant has taken a defence that there was already a partition in form of Memorandum of Agreement among Parthasarathy and his 2 sons on 11.6.1986. It is not true to suggest that the Agreement which I have referred at para 5 of my Memorandum of Appeal

(Ex.D.3), which I have referred at para 12 of my plaint. The Agreement which I have referred at para 5 of my Memorandum of appeal (Ex.D.3) is not the Agreement which I referred in my plaint at para 12 in O.S.No.5561/2013. I do not know the basis on which I state that the Agreement which I have referred in my Memorandum of Appeal (Ex.D.3) at para 5, is different from the Agreement, which I have referred at para 12 of my plaint in O.S.No.5561/2013. The document which I have referred at sl.no.41 of the list of documents dated 8.7.2015 is in respect of the Will executed by my father. It is not true to suggest that my father Parthasarathy has not executed any Will. It is not true to suggest that I have not marked the Will, which I have referred in the sl.no.41 of the list of documents, as its contents discloses the earlier partition, which goes against my interest. I have seen the Xerox Copy of the un registered MOA, which I have referred at para 5 of the rejoinder. The abbreviation MOA, which I have referred at para 5 of the rejoinder refers to Memorandum of Agreement. I do not remember the date of that MOA. I am not in possession of the Xerox Copy of MOA. I do not know that the Moa, which I have referred at para 5 of my rejoinder is the same Agreement which I have referred at para 12 of my plaint. It is true that one Sri. VA.Mohanrangam is our family advocate for very long time. I can recognize the signatures of VA.Mohanrangam advocate. It is true that Sri.

VA.Mohanrangam advocate has filed Written Arguments in this case on behalf of my sister Sangeetha on 1.9.2012.

Further cross-examination :- Deferred at the request of defendant no3. counsel.

(Typed to my dictation in the open Court.)

R.O.I. & A.C.,

**(A. GURUMURTHY)
XV Addl. City Civil & Sessions
Judge, Bangalore.**

**Witness recalled and duly sworn on
18-1-2016**

**Cross-examination on behalf of 3rd defendant by
Sri. RS advocate:-**

Sri. VBS advocate, learned Counsel representing the plaintiff has submitted that PW-1 is ready and she has been tendered for cross-examination. PW-1 has entered the witness box and she has insisted the court to direct the other side counsel to proceed with the cross-examination on the ground that she is a senior citizen and she is coming to the court since last 5 years. Sri. RS advocate, learned Counsel representing 3rd defendant has sought one week time to proceed with the cross-examination of PW-1 on the ground that transfer application is pending before the Hon'ble Prl. City & Sessions Judge Court, Bangalore. It is brought to the notice of the court that plaintiff has filed transfer petition before the Hon'ble Prl. City & Sessions Judge Court, Bangalore. In that proceedings, learned Counsel

representing 3rd defendant has submitted that, he has no objection to allow the transfer petition. Considering the circumstances of the case, this court is of the opinion that it is better to defer the further cross-examination of PW-1 till the disposal of transfer petition pending before the Hon'ble Prl. City & Sessions Judge Court, Bangalore. Accordingly, further cross-examination of PW-1 is deferred.

FURTHER CROSS-EXAMINATION DEFERRED.

(Typed to my dictation in the open Court.)

R.O.I. & A.C.,

(A. GURUMURTHY)
XV Addl. City Civil & Sessions
Judge, Bangalore.

Witness recalled and duly sworn on
1-2-2016

Cross-examination on behalf of 3rd defendant by
Sri. RS advocate:-

As for as my knowledge is concern, I have not presented my affidavit (chief examination) before any person or authority before presenting the same before the court. I do not remember whether I have sworn before any authority before presenting my affidavit before the court. Witness volunteers that I have not personally presented my affidavit before any authority or person as the case may be, before presenting the same before the court. I know the difference between inheritance and succession and I have used the words with knowledge. I have filed this suit against my father for partition. Presently, ie., after the death of my father,

I am claiming right over the suit properties under the concept inheritance. Properties are mentioned in the suit schedule are all ancestral properties. My counsel has drafted my chief examination and I have furnished the information. I have seen the Xerox Copy of the Memorandum of Agreement, which I have referred in my objection statement filed to IA filed under Sec. 195 of CRPC. There is a variation in the extents of properties mentioned in the 'A' & 'B' Schedule properties as such I have used the sentence ' the allotment between the two brothers are in-equitable ', which I have referred in my objection statement filed to IA filed under Sec. 195 of CRPC. It is true that schedule 'A' is bigger than schedule 'B'. Under the Memorandum of Agreement, 'A' schedule property has been allotted to the share of my elder brother Sri. Mukunda and 'B' schedule property has been allotted to the share of my younger brother Sri. Muralidhar. Division mentioned above is as per the Memorandum of Agreement (Xerox Copy). I do not know from which source, I have obtained the Xerox Copy which has been mentioned in Ex.D.2 as Memorandum of Agreement dt. 11-6-1986. My sister is in possession of original Will written by my father and I will undertake to produce the same. It is true that the Xerox Copy now show to me is the Notarised copy of the Will written by my father and the same is marked as Ex.D.8. As on the date of filing the suit, some of the deposits mentioned in Ex.D.8 were matured and few of them were not matured for payment. I was not aware of the will, when I filed his suit , as such, I have not included the deposits in the

suit schedule which were mentioned in Ex.D.8. Witness volunteers that I came to about the existence of Will (Ex.D.8) only in the year 2011. As on the date of filing the suit, I was not aware of the existence of deposits mentioned in Ex.D.8. My father was having good health and sound state of mind when he has written the Will. I do not know the circumstances under which the influence, coercion or compulsion took place, while obtaining the signature of myself and my sister on the Memorandum of Agreement (MOA), which I have referred at para 12 of my Written Statement. I have not lodged any complaint against the person, who brought pressure, influence and coercion upon me to put signature on Memorandum of Agreement (MOA). Witness volunteers that I have not lodged any complaint against any person, who has brought pressure, influence, coercion and compulsion upon me to put signature on Memorandum of Agreement (MOA). Witness volunteers that I have not lodged complaint, because, the person who brought pressure on me was my family member.

Question:- I will put it to you that nobody has brought pressure, influence, coercion and compulsion upon you to put your signature on any of the document ?

Answer:- It is a long back matter, I do not remember now.

It is true that my sister has given Power of attorney to my father. It is not true to suggest that my sister Padmini has not withdrawn that Power of attorney,

before the death of my father. I do not remember the year in which my sister Padmini has withdrawn the Power of attorney given to my father. I do not know under what circumstances, my sister Padmini has withdrawn the Power of attorney to given to my father. It is true that K.S. Gopalaswamy Iyengar was died in the year 1955. It is true that in the year 1960, HUF of Sri. K.S. Gopalaswamy Iyengar has come to an end. It is not true to suggest that Sri. K.S. Gopalaswamy Iyengar – HUF was not existence in the year 2009. It is not true to suggest that Ex.P.15 is a fictitious document. I was unable to trace out the necessary annexure pertaining Ex.P.15, as such I was unable to produce the annexure of Ex.P.15. I do not know anything about Ex.P.15. It is true that Ex.P.14 is the income tax return submitted by my father and I do not know that suit schedule properties are not mentioned in Ex.P.14. It is not true to suggest that my elder brother Mukundan was the proprietor of M/s. KSC Farm & Nursery.

Question:- Why ? M/s. KSC Farm & Nursery Business has not been mentioned in the plaint schedule?

Answer:- I have included that business in the plaint schedule.

Ex.P.19 has been produced to show that the amount mentioned in Ex.P.19 is a family property. Interest mentioned in Ex.P.23 (accrued on FD's) stood in the name of M/s. KSC Farm & Nursery. It is true that amount mentioned in Ex.P.23 is not self acquired property of G. Parthasarathy alone. Witness volunteers

that the amount mentioned in Ex.P.23 is the joint family members amount. I have not included amount mentioned in Ex.P.23 in my plaint schedule, as I was not aware of the existence of that amount as on the date of filing of the suit.

Further cross-examination is deferred due to lunch break.

(Typed to my dictation in the open Court.)

R.O.I. & A.C.,

**(A. GURUMURTHY)
XV Addl. City Civil & Sessions
Judge, Bangalore.**