

KABR010037082020



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, BENGALURU RURAL DISTRICT,
BENGALURU.**

Present:

Smt. B.S.REKHA B.A(LAW)., LL.M.,
Prl. District & Sessions Judge,
Bengaluru Rural District,
Bengaluru.

Dated this the 27th day of March, 2026

R.A.No.262/2020

- Appellant/s:-**
1. Sri Ramachandra,
S/o Late Poovanna,
Aged about 66 years,
R/at Kodi Huskur Village,
Bidarahalli Hobli,
Bengaluru East Taluk 560 067.
 2. Sri. Manjunatha,
S/o Late Poovanna,
Aged about 57 years,
R/at Kodi Huskur Village,
Bidarahalli Hobli,
Bengaluru East Taluk 560 067.

(By Sri P.M.S-Advocate)

-VERSUS-

- Respondent:-**
1. Smt. Yellamma,
Wife of Late Poovanna,

Aged about 85 years,
R/at Kodi Huskur Village,
Bidarahalli Hobli,
Bangalore East Taluk-560 067.

2. Smt.Jayamma,
D/o Late Poovanna,
Aged about 63 years,
Residing at Kodi Huskur Village,
Bidarahalli Hobli,
Bangalore East Taluk 560 067.
3. Smt.Saraswathamma,
D/o Late Poovanna,
Aged about 61 years,
R/at Kodi Huskur Village,
Bidarahalli Hobli,
Bangalore East Taluk 560 067.
4. Smt.Shanthamma,
D/of Late Poovanna,
Aged about 59 years,
R/at Kodi Huskur Village,
Bidarahalli Hobli,
Bangalore East Taluk 560 067.
5. Sri. Yellappa,
Son of Late Poovanna,
Aged about 55 years,
R/at Kodi Huskur Village,
Bidarahalli Hobli,
Bangalore East Taluk 560 067.
6. Sri.Krishna Murthy,
S/o Late Poovanna,
Aged about 50 years,
Residing at Kodi Huskur Village,

Bidarahalli Hobli,
Bangalore East Taluk 560 067.

7. Sri.K. V.Rajagopala Reddy,
Son of Late Venugopala Reddy,
Aged about 58 years,
R/at No.665, Ist "D" Main,
Near Domalur High School,
Domalur Layout,
Bangalore-560 079.
8. Sri.Basavanagouda Mallanagouda
Salavadagi,
Son of Late Mallanagouda,
Aged about 36 years,
R/at Basavanagar,
Tangadagi Road,
Muddebihal,
Bijapura District-586 212.
9. M/s Shobha Ltd.,
Registered Office at 'Shobha'
No.51/5,
Sarjapura-Marathahalli
Outer Ring Road (ORR),
Devarabisanahalli,
Bellandoor Post,
Bangalore-560 103.

(Respondent by Sri P.P.K-Advocate)

Date and nature of the decree or order appealed against.	Judgment and decree dated 23.10.2019 passed in O.S.No.480/2006 on the file of III Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru for partition and other reliefs against
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	defendants.		
Date of institution of the Appeal.	05.10.2020		
Duration of Appeal.	Year/s	Month/s	Day/s
	05	05	22

J U D G M E N T

Appellants/plaintiffs have filed this appeal Under Order XLI Rule 1 read with Section 96 of CPC and prayed to allow the appeal by setting aside the judgment and decree passed in O.S.No.480/2006, dated 23.10.2019 on the file of III Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru and for other reliefs.

2. Parties would be referred with their ranks, as they were before trial Court for sake of convenience and clarity.

3. The plaintiffs filed the suit before trial Court for partition and separate possession.

4.1. The case of the plaintiffs before trial Court is that the suit schedule property is the ancestral property inherited by joint family consisting of Poovanna and his sons and daughters namely Ramachandra, Smt.Jayamma, Smt. Saraswathamma, Smt.Shanthamma, Manjunatha, Yellappa and Krishna Murthy. Among them, defendant No.2 to 4 are married daughters. During the life time of their father they constituted Hindu Undivided Joint family consisting of himself and his 4 sons and they are the coparceners of the joint family and that the suit schedule property is their joint family property. Their father died about 8 years back and thereafter, his wife Yellamma and his 4 sons have continued in the joint family and that there was no partition in the family at no point of time.

4.2. Recently the plaintiffs came to know about the registered sale deed dated 27.10.1997 executed by their father in favour of defendant No.7, which is

neither for the family necessities nor for their benefits or other members of the joint family. The suit schedule property earlier was tenanted land and was cultivating by the joint family as a tenant and the tenancy right was confirmed by the Land Reforms Tribunal in its order dated 24.06.1981 and the RTC was in the name of their father who continued to maintain till 2005. The defendant No.7 in collusion with the Revenue Authorities, behind the back of other family members manipulated entries in his name in the RTC in respect of suit schedule property. On the basis of said illegal entries, he came along with his supporters and made hectic efforts to disposses them and other family members to take a possession and tried to put up compound with stone pillars and barbed wire. His attempts were resisted with great difficulty. Hence, the suit.

5. On the other hand, the defendants have appeared before the Court, wherein, the defendant No.7, 8 & 9 have contested the case. The defendant No.7 has denied the case of plaintiffs and stated that the suit is bad for partial partition and it is not maintainable. According to him, he is put in actual physical possession of the suit schedule property, in view of registered sale deed dated 27.10.1997 executed by Poovanna and based on it, the khatha is mutated in his name and therefore, the plaintiffs have been excluded from the possession. Though other properties were also standing in the name of Late Poovanna, but those properties are not included in the suit and it establishes the plaintiffs has not approached the court with clean hands. Hence, prayed to dismiss the suit.

6. The 8th defendant also filed his written statement stating that plaintiffs suit is false and there is no cause of action and it is liable to be dismissed for

non-joinder of necessary parties. Poovanna acquired the suit schedule property by virtue of orders passed by the Land Tribunal Hoskote on his individual capacity and thus, it is his self-acquired property. During his life time, he sold the suit schedule property for a valuable consideration, for his legal necessities, in favour of defendant No.7. Subsequently, the defendant No.7 sold the suit schedule property in his favour for a valuable consideration and that he got khatha mutated in his name. There was a dispute by plaintiff No.2 before the Tahasildar, Hoskote and after hearing both parties, it passed an order on 13.03.2007 in proceedings RRT DIS 79/2006 07 and accordingly, the khatha is transferred in his name, thus he became the absolute owner of the suit schedule property and is in peaceful possession and enjoyment of the same as absolute owner and got converted the same and sold it in favour of M/s Shobha Ltd, who is in peaceful

possession and enjoyment of the suit schedule property. According to him, the suit of the plaintiff is barred by limitation. Therefore, he prayed for dismissal of the suit with exemplary cost.

7. The defendant No.9 also filed its written statement contending that they got purchased the suit schedule property for a valuable consideration from defendant No.8 and thus, became the absolute owner of the suit schedule property and that it is in peaceful possession and enjoyment of the same from the date of sale deed. The suit of the plaintiff is not maintainable and that there is no cause of action, because the defendant No.7 purchased the property during the year 1997 itself and after a lapse of 10 years the plaintiffs filed this suit. As such, suit is hopelessly barred by limitation. Therefore, prayed for dismissal of the suit with exemplary cost.

8. Based on the above pleadings, the learned trial

Judge has framed the following issues:

1. ವಾದಿಯವರು ವಾದಿ ಪ್ರತಿವಾದಿರವರು ಒಟ್ಟು ಕುಟುಂಬದ ಸದಸ್ಯರಾಗಿದ್ದು ಸ್ವತ್ತಿನ ಸಾಮಾಹಿಕ ಸ್ವಾಧೀನ ಹಾಗೂ ಅನುಭೋಗ ಹೊಂದಿರುವುದಾಗಿ ರುಜುವಾತು ಪಡಿಸಿದ್ದಾರೆಯೇ?
2. ವಾದಿಯವರು ಮುಂದುವರೆದು 7ನೇ ಪ್ರತಿವಾದಿಗೆ ಬರೆದುಕೊಟ್ಟಿರುವ ದಿ:27.10.1997ರ ಕ್ರಯಪತ್ರ ತಮಗೆ ಬಂಧನಕಾರಕವಿಲ್ಲವೆಂದು ರುಜುವಾತು ಪಡಿಸಿದ್ದಾರೆಯೇ?
3. 7ನೇ ಪ್ರತಿವಾದಿಯವರು ವಾದಿಯವರು ನೀಡಿರುವ ವ್ಯಾಜ್ಯ ಶುಲ್ಕ ಸಮಂಜಸ ಇಲ್ಲವೆಂದು ರುಜುವಾತು ಪಡಿಸಿದ್ದಾರೆಯೇ?
4. 7ನೇ ಪ್ರತಿವಾದಿಯವರು ಒಟ್ಟು ಕುಟುಂಬದ ಎಲ್ಲಾ ಆಸ್ತಿಗಳನ್ನೂ ಈ ದಾವೆಯಲ್ಲಿ ನಮೂದಿಸದೇ ಇರುವುದರಿಂದ ದಾವಾ ಊರ್ಜಿತವಾಗುವುದಿಲ್ಲವೆಂದು ರುಜುವಾತು ಪಡಿಸಿದ್ದಾರೆಯೇ?
5. ವಾದಿಯವರು ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ 1:5 ಹಿಸ್ಸೆ ಪಡೆಯಲು ಅರ್ಹರಾಗಿರುವರೇ?

Addl. Issue framed on 05.08.2016

1. Whether the defendant No.8 proves that he is a *bonafide* purchaser of property for value?

Addl. Issue:

1. Whether the defendant No.9 proves that suit schedule property is the self acquired property of Poovanna

and he has validly executed the sale deed dated 27.10.1997?

2. What decree or order?

9. On behalf of plaintiffs, plaintiff No.2 examined as P.W.1 and got marked documents at Ex.P.1 to 7.

10. After recording evidence and hearing arguments, the learned trial Judge held that the plaintiffs have failed to prove their case and thereby dismissed the suit of the plaintiffs.

11. Aggrieved by the said judgment and decree, the plaintiffs/appellants have preferred the present appeal on the ground that the impugned judgment and decree are opposed to law and facts of the case and liable to be set aside. The trial Court failed to appreciate the oral and documentary evidence placed on record on behalf of the appellants and it is not justified in dismissing the suit.

12. Heard arguments. Further, the counsel for the respondent No.9 has filed written arguments and relied upon the decisions as under:

- i) (1994) 4 SCC 294;
- ii) ILR 1998 Kar 681;
- iii) Copy of the judgment passed in Civil Appeal No(s).5340/2017, dated 16.09.2025.

13. From the above facts, the points that arise for consideration are:

1. *Whether the appellants prove that the judgment of the trial Court is not proper and erroneous?*
2. *Whether the interference of this Court on the above said judgment and decree is required?*
3. *What order or decree?*

14. Finding of this Court on the above points are as under:-

Point No.1 & 2 : In **Negative**;

Point No.3 : As per final order for the following:-

REASONS

15. **Point No.1 & 2:-** In order to prove the case of plaintiff, the plaintiff No.2 deposed before the Court as P.W.1 and reiterated the plaint averments and relied upon Ex.P.1 to Ex.P.7 documents.

16.1. In the cross-examination, he has stated that plaintiff No.1 and the 5th defendant are residing in the same house. The house came from their father. He is not aware to which survey number he has filed the suit. He does not aware through whom the suit property originally came to Poovanna and he is not aware of the year it came. He denied that Poovanna alone was cultivating the said property. Poovanna alone had filed the application for grant of the property and the property was granted in his name only. He admits that Poovanna had taken a loan on that property. He denied that Poovanna in order to discharge the loan had sold the property to 7th defendant, he has stated that he has

discharged the loan. He was doing coolie work prior to 1997. He denied that as there was no income from the suit property and their family had no other support, it was sold in the year 1997. He does not know about the said sale. He admits that according to the said purchase, the 'khata' was transferred to the 7th defendant. He denied that the 7th defendant sold it to the 8th defendant in the year 2006. he denied that the 8th defendant is in possession of the property. The 1st defendant is residing with them.

16.2. The 5th defendant is no more. He denied that the fact of the 5th defendant's death has not been informed to the court and that the 5th defendant's wife and children have not been included in this suit. He denied that now the Pahani of the suit property is being issued in the name of the 8th defendant. He admits that the 5th defendant obtained the Genealogical tree (Vamshavruksha) and that he signed Ex.P.1. he admits

that he obtained the sale deed-Ex.P5 on 15.07.2004. he also relied upon Ex.P.6 & Ex.P.6 relates to the sale made by 7th defendant in favour of 8th defendant. He is not aware that after the 8th defendant purchased the said property, he got the land converted. He does not know if the 8th defendant sold it to the 9th defendant on 27.04.2016.

16.3. He denied that his father-Poovanna, sold the suit property to the 7th defendant in the year 1997 to repay a debt. He denied that he has not produced any documents to support his statement that he repaid the debt incurred by his father-Poovanna. He has not question the sale deeds Ex.P.6 & 7. He admits that he has not mentioned anything about the said sale deeds anywhere in his suit. He admits that on 09.09.1981, his father-Poovanna sold the property to the 7th defendant in order to discharge the loan taken from the

PLD Bank. He admits that all the properties belonging to Poovanna have not been included in the suit.

17. Against to this, no evidence has been let in by the defendants.

18. However, in the judgment of the trial Court, it is contended that the burden is on the plaintiffs to prove that they are the members of the joint family and the suit schedule properties are their joint family properties, as there is a presumption in respect of relationship, but there is no presumption in respect of acquisition and existence of joint family properties. It is the contention of the plaintiffs that the suit schedule property was acquired by Poovanna who he died leaving behind his children and wife and after his death the plaintiffs and the children of Poovanna succeeded to the suit schedule property, but later they came to know that the revenue documents standing in the name of

defendant No.7 by virtue of the sale deed made by their father-Poovanna to the defendant No.7, which is not within their knowledge. The said stand has been denied by defendant No.7 to 9. According to them, defendant No.7 claiming that they are not disputing the relationship, but so far as acquisition of property is concerned, the father of plaintiffs acquired the suit schedule property by virtue of the orders passed by the Land Tribunal. Accordingly, it is the self acquired property of Poovanna and he sold it to the defendant No.7 through registered sale deed dated 27.10.1997 and that the khatha mutated in his name.

19. The plaintiffs nor the other children of Poovanna, after alienation made in his favour did not have any right, title, interest or possession over the suit schedule property as he sold the same in favour of defendant No.8. Thus, the defendant No.8 became the absolute owner of the suit schedule property and in

turn he alienated the same in favour of defendant No.9 and defendant No.9 acquired title and possession over the suit schedule property.

20. The burden is heavily on the plaintiffs to prove the existence as well as acquisition of joint family properties. In this regard, plaintiff No.2 got examined himself as PW.1 and relied upon Ex.P.1-genealogical tree, wherein there is no dispute in respect of relationship is concerned. Accordingly, Ex.P.1 remained unchallenged. Ex.P.2 is the mutation register extract, which reveals that as per the sale deed dated 21.01.1998 the khatha mutated in the name of defendant No.7 and mutation is in the name of defendant No.7. Ex.P.3 and Ex.P.4 are in the name of Poovanna and defendant No.7 respectively. Ex.P.5 is the register sale deed dated 27.10.1997 executed by Poovanna in favour of defendant No.7, under which defendant No.7 acquired title as well as possession over

the suit schedule property. Ex.P.1 got produced during 2016 and it was of the year 1997 and is a 30 years old document having presumption under section 90 of the Indian Evidence Act and Ex.P.5 under which defendant No.7 acquired the property got alienated the same in favour of defendant No.8. Ex.P.6 which is also a registered sale deed and defendant No.8 acquired the title over the suit schedule property and who in turn became the absolute owner of the suit schedule property by virtue of Ex.P.7 and defendant No.8 sold the same in favour of defendant No.9 under Ex.P.6.

21. The documents produced which probabilises the case of defendants No.7 to 8, rather than the case of the plaintiffs and plaintiffs. Even though the plaintiffs raised contention that suit schedule property is their joint family property, but nothing has been produced to prove the same. Whereas, the recitals of Ex.P.5 shows that suit schedule property was the self

acquired property of father of plaintiffs who sold the same in favour of defendant No.7. Even the P.W.1 admitted the loan raised by Poovanna, but stated that they have cleared the loan, but no documents are produced in this regard.

22. P.W.1 also admits that in the year 1997, the property was sold, but he does not know the same. However, in the cross-examination, it is admitted that Poovanna alone filed application and the property was granted in his name only. He has taken loan and in order to discharge the loan, he sold the property. However, P.W.1 shows ignorance about the sale. However, he admits that katha is changed to the name of defendant No.7, who in turn sold it to defendant No.8 and he in turn sold it to defendant No.9. Even the in the cross-examination, he admits that on 09.09.1981 his father sold the property to discharge the loan of PLD Bank.

23. This shows that the sale made is admitted. Even the defence is that in order to discharge the loan, the sale is made in favour of defendant No.7 who in turn sold to defendant No.8 and he sold the property to defendant No.9. The sale deed is dated 27.10.1997 during his life time. As such, the alienation made by Poovanna is binding in nature, the plaintiffs have no right to challenge the same after alienation made by the father of the plaintiffs for his legal necessity. Even the defendant No.8 got converted the suit schedule property, but plaintiffs stated that they do not know the alienation. But the documents produced by the plaintiffs themselves establishes the alienation made. Moreover, P.W.1 also admitted the katha standing in the name of defendant No.7 to 9, as well as their possession. Thus, the trial Court has come to the conclusion that plaintiffs failed to establish their contention that it is the joint family property, because

it is already alienated. Even in my opinion also, there is alienation made during the lifetime of the plaintiffs father, which is not questioned and now they come up with this appeal. Hence, there is no merits in the appeal, as the transaction is legal one. Therefore, in my opinion, there is no need to interfere with the judgment and decree of the trial Court. Accordingly, the point No.1 & 2 are answered in **Negative**.

24. **Point No.3:-** In view of findings on point No.1 & 2, this Court proceeds to pass the following:-

O R D E R

Appeal filed by the appellants Under Order XLI Rule 1 read with Section 96 of CPC is dismissed by confirming the judgment and decree passed in O.S.No.480/2006 dated 23.10.2019 by the III Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru.

Under facts and circumstances of the case, parties to bear their own costs.

Draw decree accordingly.

Send back the records of the Trial Court with copy of this judgment.

(Dictated to the Stenographer Grade-1. Transcribed and computerized by him. Script corrected, signed and pronounced by me in the open Court on this the 27th day of March, 2026)

(B.S.Rekha)

Prl. District & Sessions Judge,
Bengaluru Rural District,
Bengaluru.