

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT : HIRIYUR

PRESENT: SMT.TATTANDA DAMAYANTI SOMAYYA,
B.A.,LL.B.,

Senior Civil Judge & JMFC.,
Hiriyur

Dated on this 12th day of March 2020

O.S. No.79/2014

PLAINTIFF : **G. Hemareddy**
S/o. Late Ugrappa,
Aged about 75 years,
C/o. S.L.R. store, door No.69,
2nd main, 4th cross,
Near Shanthinikethan School,
Bhadrapa layout,Nagashetty hally,
Bengaluru-94.

[Rep.By Sri. K.V.Dayanand,
Advocate]

-V/s-

DEFENDANTS : **1. Lakshmipathiyappa**
S/o Late.Ugrappa, **dead by L.Rs.**

1(a). Rangamma
W/o Lakshmipathy,
Aged about 65 years,

1(b). Dhanalakshmi
D/o Lakshmipathy,
Aged about 29 years,

1(c). Nagaveni
D/o Lakshmipathy,
Aged about 27 years,
Gorladaku village, K.R. Hally post,

J.G.hally hobli, Hiriya taluk.
 1(a) to 1(c) now residing at
 D.No.6, 4th cross, near Manjunatha
 Flour mill and Deepak rice corner,
 Laggere, Byraveshwaranagaram,
 Bengaluru.

1(d). Sujatha

W/o.Kariyanna,
 Aged about 38 years,
 R/o Near Santhepet,Aralikatte,
 Sira town, Tumkur District.

2. Kenchamma

W/o Karanagappa,
 Aged about 55 years,K.R.hally post,
 J.G.hally Hobli, Hiriya Taluk.

3. Nagaveni

D/o. Lakshmi pathy,
 Aged about 27 years,
 Gorladaku village, K.R.Hally post,
 J.G.Hally Hobli, Hiriya taluk.

[Def. No.1 (a to c) Rep.By
 Sri. S.Prakash, Def.No.2 Rep.By
 Sri. S.Jayanna, Advocates,
 Def.No. 1(d)placed exparte]

Date of institution of suit	10.10.2017
Nature of suit	Partition & separate possession & declaration
Date of commencement of recording of evidence	20.12.2018

Date of pronouncement of judgment	12.03.2020		
Total duration	<u>Year/s</u> 02	<u>Month/s</u> 05	<u>Day/s</u> 02

J U D G M E N T

The plaintiff has filed this suit against the defendants seeking the relief of partition and separate possession of his ½ share in the suit schedule properties by metes and bounds and for declaration that, any documents executed by defendant No. 1 in favour of 2nd and 3rd defendants are not binding on his title and interest over the suit schedule properties.

2. Brief facts of plaintiff's case is that, himself and defendant No. 1 are the sons of Late. Ugrappa. The defendant No. 3 is the daughter of defendant No.1. The land measuring 4 acres 8 guntas in Sy.No.16/1, land measuring 2 acres 33 guntas in Sy.No.16/2 and the land measuring 6 acres 14 guntas in Sy.No.16/3 of Gorladaku village are the suit schedule properties. They are the ancestral and joint family properties of Ugrappa, who had got 3 sons namely G.Hemareddy/plaintiff, Krishnappa and G.Lakshmipathiyappa

/defendant No.1. After the death of Ugrappa, his 3 sons inherited the suit schedule properties. Subsequently, the 2nd son of Ugrappa namely Krishnappa and his wife died issueless leaving behind himself and defendant No. 1 as their sole legal heirs to succeed to item No. 1 & 3 schedule properties. Item No. 2 schedule property belonged to one Hotte Kariyappa, who was the brother of Ugrappa. The said Hotte Kariyappa had also no issues. After his death, himself and defendant No. 1 jointly inherited the said property and as such they became the sole owners of the suit schedule properties. Ever since, the date of acquisition of the suit schedule properties, they are in peaceful possession and enjoyment of the suit schedule properties. In the meanwhile the defendant No. 1 fraudulently and behind his back, by colluding with revenue officials got changed the entries in his name with respect to suit schedule properties with a mala fide intention to make wrongful gain. In the year 1992, he noticed the change in the behavior of defendant No. 1. By suspicion, he got verified the documents and revenue records of the suit schedule properties. He was

astonished to note that, the defendant No.1 got transferred the whole properties to his name as per CR No.3/91-92 vide the order of Deputy Tahasildar, Nada Office, Javanagondanahally. Immediately, he preferred an appeal before the Assistant Commissioner, Chitradurga in R.A. No. 63/1992-93. Assistant commissioner has set aside the order passed in CR.No.3/91-92 on 09.10.1992 and further directed to Tahasildar, Hiriyyur to dispose of the matter within 3 months. Subsequently, he demanded the defendant No. 1 to effect partition. The defendant No.1 went on post-phoning the execution of the partition by giving one or the other reasons. In the Month of August 2014, he grossly refused to execute the registered partition deed and hence, he went to the office of Tahasildar office, Hiriyyur, to collect the revenue records. At that time, he came to know that, the defendant No. 1 and his son Narasimhamurthy have sold 3 acres 14 guntas of land in Sy.No. 16/3 in favour of defendant No.2 and he came to know that, defendant No. 1 has executed a registered gift deed in favour of 3rd defendant with respect to item No. 1 schedule

property, which is highly illegal. Any transactions and alienations made by defendant No. 1 in favour of 2nd and 3rd defendants are not binding on his share and hence, he prayed the court to decree his suit.

3. After filing of this suit by the plaintiff, this Court issued suit summons to the defendants. The defendant No. 1 reported to be dead and hence, his legal heirs are brought on record. The defendant No. 1(a) to 1(c) and defendant No. 2 appeared through their counsels. The defendant No. 1(c) and defendant No. 3 are one and the same persons. In spite of service of summons, the defendant No. 1(d) did not appear before the Court and hence, she was placed *exparte*.

4. The defendant No.1(a) to 1(c) filed their written statement, wherein they admit that, the plaintiff and defendant No.1 are the children of deceased Ugrappa and the defendant No. 3 is the daughter of defendant No. 1. But, they deny that, the suit schedule properties are the ancestral and joint family properties of Ugrappa. He admits that, Ugrappa had 3 sons namely, Hemareddy, Lakshmipathiyappa and Krishnappa.

They admit that, item No. 2 schedule property belonged to Hottekariyappa. But, they deny that, the plaintiff and defendant No. 1 inherited item No. 2 schedule property after the death of Hottekariyappa. They deny that the plaintiff and defendant No. 1 became the sole owners of item No. 1 to 3 schedule properties. As per the partition deed dated 15.01.1978, the katha and pahani was transferred to the name of defendant No. 1 vide CR No. 3/91-92 and this aspect is very well known to the plaintiff. Subsequently, the plaintiff filed his objections before the Deputy commissioner, Hiriya. On enquiry the matter was disposed off on 09.10.1992 holding the objections of the plaintiff is not proper. The transfer of katha in the name of Lakshmi pathiyappa was in accordance with law as per the documents. After that, the plaintiff filed an appeal before Assistant Commissioner, Chitradurga against the orders passed by the Tahasildar, Hiriya, Nadakacheri, Javanagondanahally in RA No. 16/1992-93. On 30.06.1995 the said matter came to be disposed off, wherein the Assistant Commissioner gave directions to the Tahasildar, Hiriya to

hold enquiry and dispose of the matter within 3 months. As per the directions issued by the Assistant Commissioner, the plaintiff filed the petition before the Tahasildar, Hiriya in RRT[CR]:17/1995-96. The Tahasildar granted sufficient opportunity to the plaintiff. But, the plaintiff did not come forward to prove his alleged right. He was made known about the partition deed dated 15.01.1978. The Tahasildar disposed off the matter on 30.05.1996 and issued direction to continue the katha and pahani in the name of defendant No.1/ Lakshmi pathiyappa. But, the plaintiff did not speak the truth before the Hon'ble Court and has suppressed the material facts about the proceedings held in RRT(CR):17/1995-96. Subsequently, Lakshmi pathiyappa was in peaceful possession and enjoyment of the lands as absolute owner and paid revenue to the authority. He was cultivating the lands along with his family members. On 16.03.1998 Lakshmi pathiyappa and his son Narasimhamurthy executed a registered sale agreement in favour of one Venkatachalashetty of Hiriya with respect to the portion of item No. 3 schedule property.

Subsequently, the said Venkatachalashetty cancelled the sale agreement on 15.10.1998. On the same day Lakshmipathiyappa and his son Narasimhamurthy sold the said land to defendant No.2. Subsequently, the son of defendant No. 1 died on 09.11.1998 leaving behind his wife Sunandamma. Thereafter, Lakshmipathiyappa gifted item No.1 schedule property to his daughter Nagaveni through a registered gift deed dated 17.01.2003. Thereafter, the daughters of Lakshmipathiyappa filed a partition suit against Lakshmipathiyappa, his daughter-in-law and present defendant No. 2 before the Prl. Civil Judge &JMFC, Hiriyyur in O.S.No.33/2012. During the pendency of that suit, Sri. Lakshmipathiyappa died on 18.06.2015. The said suit came to be decreed partly. The plaintiff was silently watching the proceedings of the court regularly and subsequently he filed this suit to make illegal gain. In fact, the plaintiff is the resident of Bangalore and by colluding with some other persons who are enmity with them got filed this suit and he is blackmailing them to grab the valuable properties. The suit

is bad for non joinder of necessary parties. The wife of Narasimhamurthy and another daughter of Lakshmi pathiyappa have not made as parties. The suit is barred by limitation and the suit is not properly valued for the purpose of payment of court fee. The court fee paid by the plaintiff is insufficient. The plaintiff is not in possession and enjoyment of the suit schedule properties. Hence, the plaintiff has to pay the court fee on the market value. Accordingly, the defendant No. 1(a) to 1(c) prayed the Court to dismiss the suit.

5. The defendant No. 2 filed her written statement, wherein she admits the relationship of Ugrappa with plaintiff and defendant No.1. She also admits that, the defendant No. 3 is the daughter of defendant No.1. She denies all other plaintiff averments and she contends that, the suit of the plaintiff is barred by law of limitation. The plaintiff has the knowledge that, the defendant No. 1 has executed a sale deed in her favour with respect to item No. 3 of the suit schedule property. He is aware of that fact from the date of execution of the sale deed itself. She is a bona fide purchaser of item No 3 schedule

property, who had verified all the revenue records before purchasing item No. 3 schedule property. The defendant No. 1 sold item No. 3 schedule property in her favour to discharge the debt of the family. Hence, the sale deed is binding on the plaintiff also. The plaintiff is residing at Bengaluru since 30-40 years. He never resided at Gorladaku village. The plaintiff never enjoyed the suit schedule properties along with 1st defendant at any point of time. The daughters of 1st defendant had filed a suit against her in O.S. No.33/2012 which is pending for consideration. The 1st defendant, his daughters have filed another suit against her, to knock off the property purchased by her. Therefore, the defendant No. 2 prayed the court to dismiss the suit with exemplary costs.

6. On the basis of the pleadings of both the parties, this Court has framed the following:

ISSUES

1. Whether the plaintiff proves that, the suit schedule properties are ancestral and joint family properties of himself and defendant No.1 ?

2. Whether the plaintiff proves that, the sale deed executed by defendant No. 1 and his son in favour of defendant No. 2 with respect to 3 acres 14 guntas of land in Sy.No.16/3 is illegal and hence, the same is not binding on him?

3. Whether the plaintiff proves that, the gift deed executed by defendant No. 1 in favour of 3rd defendant with respect to item No.1 of the suit property is illegal and hence the same is not binding on him?

4. Whether the defendant No. 1(a) to 1(c) prove that, there was a partition in the joint family on 15.01.1978?

5. Whether the plaintiff is entitled to the relief of declaration and partition as sought in the suit?

6. What decree or order?

7. In order to prove his case, the plaintiff got examined himself as PW.1 and got marked Ex.P.1 to 13 documents. On the other hand, the defendants have not entered into the

witness box. Hence, the evidence of the defendants is taken as nil.

8. I have heard the arguments of Sri.KVD and Sri.SJ Advocates, appearing for the plaintiff and defendant No.2. In spite of giving opportunities, the counsel appearing for the defendant No.1[a] to 1[c] has not canvassed his arguments. Hence, the arguments of defendant No.1[a] to 1[c] is taken as not canvassed.

9. On the basis of the pleadings, oral and documentary evidence placed before the Court, my findings to the above issues are as under:

Issue No. 1 : In negative

Issue No. 2 : In negative

Issue No. 3 : In negative

Issue No. 4 : In affirmative

Issue No. 5 : In negative

Issue No. 6 : As per final orders for the following:

REASONS

Issue No.1 .

10. The plaintiff has approached this Court seeking the relief of partition and separate possession of his ½ share in the suit

schedule properties by metes and bounds and for declaration that, the documents executed by defendant No. 1 in favour of 2nd and 3rd defendants are not binding on his title and interest over the suit schedule properties.

11. In order to prove his case, the plaintiff got examined himself as PW.1 and got marked certified copy of the RTC extracts of suit schedule properties as Ex.P.1 to P.3, mutation register extract as Ex.P.4, RTC extracts as Ex.P.5 to 7, certified copy of sale deed as Ex.P.8, certified copy of gift deed as Ex.P.9, mutation register extracts as Ex.P.10 to 12 and the certified copy of the orders passed by Assistant Commissioner, Chitradurga as Ex.P.13. The chief examination of PW.1 is nothing but, the reiteration of plaint averments.

12. In order to claim the relief of partition, the plaintiff has to prove that, the suit schedule properties are ancestral and joint family properties, they are still in existence and they are available for partition. The plaintiff in his pleadings at para No. 2 has pleaded that, the suit schedule properties are the ancestral and joint family properties of Ugrappa, his father. In

continuation of his pleadings, he has stated that, Ugrappa had 3 sons namely Hemareddy /himself, Krishnappa and Lakshmi pathiyappa / defendant No. 1. After the death of their father, all the 3 brothers inherited the suit schedule properties. Again he says that, the 2nd son of Ugrappa namely Krishnappa and his wife died issueless and hence, himself and defendant No. 1 have succeeded to the estate of Ugrappa with respect to item No. 1 & 3 properties. According to the plaintiff, item No. 2 schedule property belonged to Hottekariyappa, who was the brother of Ugrappa. The plaintiff contends that, Hottekariyappa had no issues and hence, after his death, himself and defendant No. 1 have jointly inherited the properties and became the sole owners of item No. 1 to 3 schedule properties.

13. Except an oral assertion that, the suit schedule properties are the ancestral and joint family properties, the plaintiff has not pleaded anything about the mode of acquisition of item No. 1 & 3 schedule properties by their father Ugrappa and item No. 2 schedule property by their

uncle Hottekariyappa. As per Hindu law, all the properties inherited by a male Hindu from his father, father's father or father's father's father are ancestral properties. The essential feature of ancestral properties according to Mithakshara law is that, the sons, grandsons and great grand sons of the person who inherits it, acquire an interest and the rights attached to such property at the movement of their birth.

14. In order to say that, the suit schedule properties are their ancestral joint family properties, the plaintiff has to establish that, the suit schedule properties were acquired by his father from his great grandfather. But, in the present case, the plaintiff has not pleaded anything about the mode of acquisition of the suit schedule properties.

15. In the present case, the defendants have not entered in to the witness box to substantiate their defense. Hence, the plaintiff has relied on a reported decision of **AIR 1999 Supreme Court 1441- Vidhyadhar-vs- Manikrao and another**, wherein the Hon'ble Supreme Court has held that

where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. The observation made by the Hon'ble apex Court cannot be made applicable to all the case. Because, in the present case, the burden is casted on the plaintiff to prove that suit schedule properties are ancestral and joint family properties of himself and defendant No.1.

16. Merely on the ground that, the defendants have not entered into the witness box, the case of the plaintiff cannot be accepted as gospel truth. The plaintiff cannot take the benefit of the weakness of the defendants. He has to prove his case independently by leading oral and documentary evidence.

17. The PW.1 has produced the certified copies of the RTC extracts of the year 1970-71. It is with respect to item No. 1 to 3 schedule properties. They are marked as Ex.P.1 to 3 respectively. By perusing the Ex.P.1, it appears that, item No. 1 schedule property was standing in the name of Ugrappa S/o

Dasappa. As per Ex.P.3, item No. 2 schedule property stands in the name of Hottekariyappa S/o Kambanna. As per Ex.P.2 item No. 3 schedule property was standing in the name of Ugrappa S/o Dasappa.

18. In Ex.P.1 and Ex.P.2, deceased Ugrappa has been named as the son of Dasappa. In Ex.P.3 Hottekariyappa has been named as the son of Kambanna and hence, a doubt arises in the mind of the court as to why the name of the father of Ugrappa and Hottekariyappa differs in these RTC extracts, if they are true brothers.

19. The PW.1 in his pleadings has pleaded that, Hottekariyappa is the brother of Ugrappa. But, contrary to his pleadings, the PW.1 in his cross-examination has stated that, Hottekariyappa is the elder brother of his grandfather. He too admits that, his grandfather and Hottekariyappa had partitioned the properties. Though, the PW.1 contends that, Hottekariyappa had allotted with property in Sy.No. 16/1, 16/2 and 16/3 and his grandfather Dasappa was allotted with the property in Sy.No.16/1 ,16/2 and 16/3, he has not

produced any documents before the court to substantiate that aspect.

20. Though, he contends that, he has produced the documents to prove the partition between his grandfather and Hottekariyappa, he has not placed any documents before the court to substantiate his contentions. Though, the PW.1 pleaded that, himself and defendant No. 1 are in peaceful possession and enjoyment of the suit schedule properties, contrary to his pleadings, the PW.1 in his cross examination stated that, his brother is enjoying the properties allotted to the share of Hottekariyappa and the properties allotted to the share of his grandfather Dasappa is being enjoyed by the daughters of his elder brother.

21. The plaintiff in his pleadings at para No. 2 has pleaded that, Hottekariyappa was not having any issues and hence, after his death himself and defendant No. 1 have inherited the item No. 2 schedule property. Contrary to which, the PW.1 in his cross-examination has stated that, Thimmakka and Halamma are the daughters of Hottekariyappa. When the

plaintiff contends that, item No. 2 schedule property was owned by Hottekariyappa, without impleading the legal heirs of the daughters of Hottekariyappa, he cannot say that suit schedule properties are their ancestral properties.

22. The plaintiff has spoken falsehood by saying that Hottekariyappa died issueless. The plaintiff is seeking partition in the properties. If item No.2 schedule property was allotted to the share of Hottekariyappa, and the legal heirs of his daughters are alive, how the plaintiff can say that, it is their ancestral joint family property.

23. The Ex.P.4 is the certified copy of the mutation register extract of item No.2 schedule property. By perusing Ex.P.4 it appears that, the mutation was effected in the year 1997 on an application given by defendant No.1. From the contents of this document, it appears that, item No.2 schedule property was standing in the name of Hottekariyappa. He died about 40 years ago and his wife died about 40-50 years ago. Hottekariyappa had no male issues. But, he had 2 daughters namely, Thimmakka and Halamma. Those two daughters also

died leaving behind their children. In this document it is stated that, the grand children of Hottekariyappa gave consent to effect mutation in the name of defendant No.1 and plaintiff and accordingly their name came to be entered in the revenue records.

24. Mere entering the name of a person in the revenue records will not be a title of the property. When the plaintiff contends that, item No. 2 schedule property belonged to Hottekariyappa and it was allotted to his share in the partition, without impleading the legal heirs of the daughters of Hottekariyappa, the plaintiff cannot say that, that property is their ancestral and joint family property.

25. Ex.P.11 is the certified copy of the mutation register extract of item No. 3 schedule property. By perusing the same, it appears that, the defendant No. 1 had purchased 3 acres of land in Sy.No. 16/3p through registered sale deed dated 05.09.1998 from V.Venkatachalashetty S/o Subbaiah shetty of Hiriyur and accordingly, the name of defendant No. 1 came to be mutated in the revenue records vide CR No. 3/1998-99.

Ex.P.8 is the certified copy of the sale deed of item No. 3 schedule property. By perusing the same, it appears that, the defendant No. 1 and his son Narasimhamurthy sold 3 acres 14 guntas of land in Sy.No. 16/3 in favour of defendant No. 2 through a registered sale deed dated 15.10.1998. It means in the year 1998 itself $\frac{1}{2}$ portion of item No. 3 property was alienated in favour of defendant No. 2.

26. As per Ex.P.7, 3 acres of land stands in the name of G.L. Narasimhamurthy S/o Lakshmi pathiyappa, the son of defendant No. 1 and 3 acres 14 guntas of land stands in the name of defendant No. 2. It means 3 acres of land in item No. 3 schedule property stands in the name of Narasimhamurthy, the son of defendant No. 1. But, the said Narasimhamurthy or his legal heirs have not been arrayed as the defendants in this suit.

27. Ex.P.5 is the RTC extract of item No. 1 schedule property it stands in the name of defendant No. 3/defendant No. 1(c). There is a corresponding entry in this document stating that, the defendant No. 3/1c came to be entered in the revenue

records on the basis of registered gift deed. Ex.P.9 is the certified copy of the gift deed executed by defendant No. 1 in favour of his daughter Nagaveni/ defendant No. 3/defendant No.1[c]. As per this document, the defendant No. 1 gifted item No. 1 schedule property in favour of his daughter Nagaveni. There is a recital in this document stating that, he acquired item No. 1 schedule property vide MR No. 3/ 1991-92.

28. Ex.P.13 is the certified copy orders passed by Assistant commissioner , Chitradurga. By passing the orders, Assistant Commissioner, Chitradurga has cancelled CR No. 3/1991-92 and directed the Tahasildar to hold an enquiry and dispose of the matter within three months. The said order was passed on 30.06.1995.

29. The PW.1 has not produced any documents before the court to show that, the Tahasildar has complied with the orders passed by the Assistant Commissioner and held enquiry and passed orders. The defendant No. 1(a) to 1(c) in their pleadings at para No. 6 have pleaded that, the plaintiff filed an appeal before Assistant Commissioner, Chitradurga

against the orders passed by Deputy Tahasildar ,Nadakacheri, J.G.hally,Hiriyur in RA No. 63/1992-93. The Assistant Commissioner,Chitradurga disposed off the matter on 30.06.1995 and issued directions to the Tahasildar, Hiriyur to conduct an enquiry and to dispose off the matter within 3 months. As per the directions issued by the Assistant Commissioner, the plaintiff had filed a petition before the Tahasildar in RRT(CR):17/1995-96. The Tahasildar granted sufficient opportunities to the plaintiff to substantiate his case about his alleged right or share. At that time, he was made aware of the deed dated 15.01.1978. Thereafter, the Tahasildar, Hiriyur disposed of the matter on 30.05.1996 and issued directions to the Deputy Tahasildar for continuing the katha and pahani in the name of defendant No.1. But, the plaintiff without disclosing these aspects has interpreted the matter for his convenience.

30. These pleadings of the defendants has not been denied by the plaintiff. It means the Tahasildar, Hiriyur has followed the directions of the Assistant Commissioner,Chitradurga and held

enquiry and disposed off the matter. Without producing the copy of the orders passed by the Tahasildar in RRT(CR):17/95-96, the plaintiff by producing half documents i.e., the order of the Assistant Commissioner passed in the year 1995, he cannot say that, the orders passed by the Deputy Tahasildar, J.G.hally in CR No. 1991-92 stands cancelled and hence, he has got right over the properties.

31. In the absence of documentary evidence, it cannot be accepted that the orders passed by the Assistant commissioner, Chitradurga on 30.06.1995 as per Ex.P.13 has reached its finality. The PW.1 in his cross-examination admits that, 3rd defendant had filed a suit against himself and her father in O.S.No.33/12. The defendant No. 1[a] to 1[c] in their written statement at para No. 8 have pleaded that, the daughters of Lakshmipathiyappa had filed a partition suit against defendant No. 1, his daughter-in-law and present defendant No. 2 before the Prl.Civil Judge & JMFC., Hiriyur in OS.No. 33/2012 and that suit was partly decreed.

32. Whether the parties of that suit were allotted with any share or not has not been brought to the notice of this Court. The PW.1 in his cross-examination at page No. 6 has stated that his father had performed the funeral rites of Hottekariyappa and as such he was given 2 acres 30 guntas of land, as he had only daughters, he has not produced any documents or got examined any witnesses to substantiate that aspect. Though, the PW.1 contends that, his father had performed all the rituals at the time of the death of Hottekariyappa and hence, he had right over item No. 2 schedule property, he has not placed any such documents before the Court to substantiate his contentions.

33. It is the specific case of the defendants that, the defendant No. 1 and his son Narasimhamurthy executed sale deed with respect to 3 acres 14 guntas of land in item No. 3 schedule property in favour of defendant No. 2 to repay the loan amount to PLD Bank. The PW.1 contends that, he himself had repaid the loan of PLD bank. But, he has not

produced any documents before the court to substantiate his contentions.

34. By going through the oral and documentary evidence placed before the Court, it appears that the portion of item No. 3 schedule property stands in the name of defendant No. 2 and remaining property in item No.3 schedule property stands in the name of Narasimhamurthy. But, the said Narasimhamurthy or his legal heirs have not been arrayed as parties to this suit. Item No. 1 schedule property stands in the name of defendant No. 3 through a registered gift deed, who has accepted the gift executed by her father.

35. Item No. 2 schedule property was owned by Hottekariyappa. Without impleading the legal heirs of the daughter of Hottekariyappa, the present suit has been filed. Moreover, the PW.1 admits that, the properties were partitioned between Hottekariyappa and their grandfather long back. When such being the case, it cannot be accepted that the suit schedule properties are the ancestral joint family properties of the plaintiff and defendant No.1.

36. Moreover PW.1 himself admits that, he is residing at Bengaluru from the last 28 years. There are no materials on record to show the existence of joint family between the plaintiff and defendant No.1. As on the date of filing of the suit, the suit schedule properties were not available for partition and hence, they are not ancestral and joint family properties as pleaded by the plaintiff. Thus the plaintiff has failed to prove that the suit schedule properties are ancestral joint family properties. Accordingly, I answer Issue No. 1 in negative.

Issue No. 2 & 3: As these two issues are inter related, I take both the issues together for common discussion to avoid repetition.

37. The plaintiff in his pleadings has pleaded that, the sale deed executed by the defendant No. 1 and his son in favour of defendant No. 2 with respect to 3 acres 14 guntas in Sy.No. 16/3 is illegal and hence the same is not binding on him. Further, he pleaded that the gift deed executed by the defendant No. 1 in favour of 3rd defendant with respect to item

No. 1 schedule property is illegal and hence, the same is not binding on him.

38. The plaintiff in his pleadings has pleaded that, in the year 1992, he noticed some changes in the behavior of defendant No. 1 and with suspicion, he got verified the documents with respect to the suit schedule properties and he was astonished to know that, the defendant No.1 got transferred the whole properties to his name as per CR No. 3/1991-92 vide the order of the Deputy Tahasildar and hence, he has filed an appeal before the Assistant commissioner, Chitradurga in RA No. 63/1992-93.

39. It means, the plaintiff was aware of the fact that, the revenue records of item No. 1 & 3 properties were changed to the name of defendant No. 1 in the year 1992 itself and hence, he had challenged the same before the Assistant Commissioner, Chitradurga by filing an appeal. The PW.1 has produced certified copy of the orders passed by the Assistant Commissioner in RA No. 63/ 1992-93, which is marked as Ex.P.13.

40. By passing orders on 30.06.1995, the Assistant Commissioner had allowed the appeal and thereby cancelled the orders passed by the Deputy Tahasildar, Nadakacheri, J.G.hally Hiriyyur on 09.10.1992 in CR No. 3/1991-92. Further, the Tahasildar of Hiriyyur was directed to hold an enquiry about the allegations and dispose of the matter within 3 months. It is pertinent to note here that, the PW.1 has not produced the orders passed by the Tahasildar, Hiriyyur in compliance of the directions given by the Assistant Commissioner, Chitradurga on 30.06.1995.

41. Merely on the ground that, the Assistant Commissioner had cancelled the order of CR.3/1991-92 as per Ex.P.13, it cannot be accepted that, the order passed by the Assistant Commissioner has reached its finality. As per Ex.P.11 mutation register extract, the defendant No. 1 had purchased 3 acres of land in Sy.No. 16/3p from B.Venkatachalashetty / Subbiah shetty. As per Ex.P.8 the defendant No. 1 and his son sold 3 acres 14 guntas of land in item No. 3 schedule property in favour of defendant No. 2 through a registered sale

deed dated 15.10.1998. On the basis of said sale deed, the name of defendant No. 2 came to be mutated in the revenue records, which can be seen from Ex.P.10.

42. The PW.1 has produced certified copy of the gift deed dated 17.01.2013, which is marked as Ex.P.9. As per this document, the defendant No. 1 gifted item No. 1 schedule property in favour of his daughter, the defendant No. 3. On the strength of Ex.P.9, the name of defendant No. 3 came to be mutated in the revenue records, which can be seen from Ex.P.12 and Ex.P.5. As per the documents, 3 acres 14 guntas of land in item No. 3 schedule property was sold in favour of defendant No. 2 in the year 1998 itself. In order to seek the relief of declaration about that document, the plaintiff ought to have filed this suit within 3 years when the right to sue first accrued to him as contemplated under article 58 of Limitation Act. But, the plaintiff did not do so.

43. Mere assertion that those two documents are not binding on his title, is not sufficient to hold that, those documents void documents. Neither the defendant No.1 nor his son

Narasimhamurthy question the validity of that document during their lifetime. The claim of the plaintiff with respect to the sale deed executed by defendant No. 1 and his son in favour of defendant No. 2 is barred by limitation. Moreover, the son of defendant No. 1 or his legal heirs are not arrayed as defendants to this suit. Without arraying necessary parties, the claim of the plaintiff is not maintainable.

44. Mere production of the copy of the gift deed itself is not a proof that, it is not a valid document. The plaintiff has not produced the orders passed by the Tahasildar, Hiriya in compliance of the directions given by the Assistant Commissioner Chitradurga as per Ex.P.13. In the absence of cogent documents, it cannot be accepted that, the orders passed by Assistant Commissioner vide Ex.P.13 has reached its finality.

45. Ex.P.8 & 9 documents are registered documents. Mere production of those documents itself will not suffice the contentions of the plaintiff. In these circumstances, the documents executed by defendant No. 1 & his son in favour of

defendant No. 2 i.e., Ex.P.8 and the gift deed executed by defendant No. 1 in favour of his daughter are valid documents. In these circumstances, it cannot be held that, those documents are illegal. Accordingly, the plaintiff has failed to prove that, the documents executed by defendant No.1 and his son are illegal. Accordingly, I answer issue No. 2 & 3 in negative.

Issue No.4:

46. The defendant No. 1 (a) to 1(c) in their written statement have taken a contention that, there was a partition in the joint family on 15.01.1978. But, the defendants have not entered into the witness box to substantiate their contentions. Though they contend that, the joint family property was partitioned on 15.01.1978 they have not produced any documents in support of their contentions and led their evidence. In view of the discussions made in issue No.1, it is held that, item No. 1 to 3 schedule properties are not in existence or available for partition and they are not ancestral joint family properties.

47. As per the directions issued by the Assistant Commissioner, the plaintiff had filed a petition before the Tahasildar, Hiriur in RRT[CR]:17/1995-96. According to the defendants, the Tahasildar granted sufficient opportunity to the plaintiff. But, he did not come forward to prove his alleged right. He was made known about the partition deed dated 15.01.1978 and Accordingly, the Tahasildar disposed off the matter on 30.05.1996 and issued directions to continue the katha and pahani in the name of defendant No.1/ Lakshmipathiyappa.

48. The plaintiff neither produced the copy of the orders passed by the Tahasildar, Hiriur in compliance of the directions given by the Assistant Commissioner, Chitradurga nor denied this aspect. This goes to show that the plaintiff admits this portion of the pleadings of the defendants and also admits the previous partition of 15.01.1978. In these circumstances, I answer issue No. 4 in affirmative.

Issue No. 5:

49. In the view of the discussions made in the above issues, the plaintiff has failed to prove that, the suit schedule properties are the ancestral and joint family properties of himself and defendant No. 1 and they are available for partition. From the oral and documentary evidence, it is proved that, item No. 1 schedule property is gifted to defendant No. 3 and she is in possession of the same. The defendant No. 2 is in possession of 3 acres 14 guntas of land in item No. 3 of schedule properties and remaining 3 acres of land stands in the name of Narasimhamurthy, the son of defendant No.1. He has not been made any party to the suit.

50. As admitted by the plaintiff, item No. 2 schedule property was owned by Hottekariyappa. The plaintiff in his pleadings falsely pleaded that, the said Hottekariyappa died issueless. But, he himself in his cross examination admits that, Hottekariyappa has got two daughters. Though, he contends that, his father had performed all the rituals at the time of the death of Hottekariyappa and hence, item No. 2 schedule property was given to his father, there are no materials on

record to substantiate that aspect and hence, the suit schedule properties cannot be held as ancestral properties. Moreover the mode of acquisition of the properties has not been pleaded in the plaint properly. In these circumstances, the plaintiff is not entitled to any share in the suit schedule properties nor he is entitled to the relief of declaration as sought in the suit. Accordingly, I answer issue no. 5 in negative.

Issue No. 6: For the aforesaid reasons, I proceed to pass the following:

ORDER

The suit filed by the plaintiff is
hereby dismissed with costs.

[Dictated to the stenographer, the same was typed by her, the transcript thereof is revised and corrected by me and then pronounced in the Open Court on this 12th day of March 2020]

**[SMT.TATTANDA DAMAYANTI SOMAYYA]
SENIOR CIVIL JUDGE & JMFC.,
HIRIYUR.**

ANNEXURE**WITNESSES EXAMINED FOR THE PLAINTIFFS:**

PW.1 : G.Hemareddy

DOCUMENTS MARKED FOR THE PLAINTIFFS:

Ex.P.1 to 3 : Certified copies of RTC extracts.

Ex.P.4 : Mutation register extract.

Ex.P.5 to 7 : R.T.C. extracts.

Ex.P.8 : Certified copy of Sale deed

Ex.P.9 : Certified copy of Gift deed

Ex.P.10 : Certified copy of Mutation register extract

Ex.P.11 : Certified copy of Mutation register extract

Ex.P.12 : Mutation register extract.

Ex.P.13. : Certified copy of the orders in RA 63/92-93.

WITNESSES EXAMINED FOR THE DEFENDANTS:

Nil

DOCUMENTS MARKED FOR THE DEFENDANTS:

Nil

**[SMT.TATTANDA DAMAYANTI SOMAYYA]
SENIOR CIVIL JUDGE & JMFC.,
HIRIYUR.**