

**IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.,
AT: HOSADURGA**

Dated this, the 13th day of December, 2019

**PRESENT :-SRI. DINESH B.G. B.COM.,LLB
SENIOR CIVIL, JUDGE & JMFC**

**O.S. No. 7/2018
(Old No. 24/2002)**

1. Smt. Indhiramma,
W/o Kariyappa,
D/o Late Bogappa,
Aged about 47 years,
Agriculturist,
& House hold work,
R/o Machenahally village,
Kasaba Hobli,
Hosadurga Taluk.

2. Smt. Basamma,
W/o Revanasideshwara Swamy,
D/o Late. Bogappa,
Aged about 45 years,
Agriculturist,
& House hold work,
Presently Residing at Bapuji Nagara,
Sidartha School,
Mysore road, Bengaluru – 26.

---- Plaintiffs,

(By Sri. D.N.M./ M.S.S., Advocate)

V/S

1) Hanumanthappa,
S/o Late. Bhogappa,
Aged about 70 years,

2. Sannathimmappa,
S/o Late. Bhogappa,
Aged about 65 years,
Dead by LR's

2a) T. Krishnamurthy,
S/o Late. Sannathimmappa,
Aged about 40 years,
Assistant Engineer,
Water- Resource Department,
(Major irrigation),
Channagiri Road,
Davanagere City.

2b) Smt. Girijamma,
W/o Kanchauahara Anjinappa,
D/o Late. Sannathimmappa,
Aged about 36 years,
House hold work,
R/o Karehally village,
Mathodu Hobli,
Hosadurga Taluk.

2c) Smt. Honnamma,
W/o T. Krishnamurthy,
(Police Department)
(D/o Late Sannathimmappa)
Aged about 32 years,
House hold work,

R/o Holalkere Town.

2d) Smt. Kamalamma Teacher,
W/o T. Shekharappa,
(D/o Late. Sannathimmappa,
Aged about 29 years,
Residing at Vinayaka Extension,
Hosadurga Town.

2e) T. Manjunatha,
S/o Late. Sannathimmappa,
Aged about 27 years,
Agriculturist,
R/o Kunatakenhaianahatty,
Kasaba Hobli,
Hosadurga Taluk.

3. Ramappa, S/o Hanumanthappa,
Aged about 35 years,
No.1 and 3 are Agriculturists,
Residing at Kuntakenchaiahnahatty,
Kasaba Hobli,
Hosadurga Taluk,
Chitradurga District.

4. Smt. Vinodamma,
W/o Late. Kariyappa,
Aged about 40 years,
Agriculturists,
Residing at No.198,
Nanneshwaraswamy temple road,
Enakal, Mysore – 17.

5. K. Kavitha, D/o Late. Kariyappa,
Aged about 37 years,

BAMS Doctor,

6. K. Prathima, D/o Late. Kariyappa,
Aged about 35 years,

7. K. Nayana, D/o Late. Kariyappa,
Aged about 33 years,

8. K. Mukunda, S/o Late. Kariyappa,
Aged about 31 years,

All are residing
C/o D/o Vinodamma,
First Division clerk,
Mahanagarapalike,
Mysore Corporation Office,
Kuvempunagara Mysore,
Mysore District.

9. Thippeshappa, S/o Thimmappa,
Aged about 75 years,

10. Bheerappa, S/o Thimmappa,
Aged about 60 years,

11. Venkateshwappa, S/o Thimmappa,
Aged about 45 years,

All are Agriculturists,
R/o Kunta Kenchaiahnahatti village,
Kasaba Hobli, Hosadurga Taluk.

----Defendants.

**(D1, 2(a) (c to e), D3 to 8 by N.G., D9 to 10 By K.N.B., D11
By H.B.R., Advocates)
D2(b) absent**

Date of Institution of petition	:	11/04/2002
Nature of Petition	:	Declaration and Partition and separate possession
Date of commencement of Recording of evidence	:	13/11/2018
Date of pronouncement of the Judgment	:	13/12/2019
Total Duration	:	Year/s Month/s Day/s 17 08 01

**Senior Civil Judge & J.M.F.C.
Hosadurga.**

J U D G M E N T

The suit is filed for the relief of declaration that suit schedule properties are joint family properties, and for partition and separate possession of plaintiff's father's 1/3 share in the suit schedule properties and for declaring registered will dated 30/12/1974 as null and void and other allied reliefs.

2. Plaintiff averments in brief are as under:

Deceased Bhogappa had two wives by name Kariyamma – first wife and Kengajji – 2nd wife; deceased

Bhogappa had a son by name Thimmappa through his first wife Kariyamma – father of defendant No.9 to 11. Said Bhogappa had 3 sons through his 2nd wife Kengajji namely Bhogappa- father of plaintiff No.1 and 2, Hanumanthappa – defendant No.1 and Sanna Thimmappa – defendant No.2. Defendant No.3 by name Ramappa and deceased Kariyappa are sons of defendant No.1. Defendant No.4 namely Vinodamma is wife of said deceased Kariyappa. Deceased Bhogappa and his brothers i.e defendant No.1 and 2 constituted Hindu undivided joint family and suit schedule properties are joint family properties of plaintiffs and defendants. Father of plaintiffs - deceased Bhogappa died in 1975. Son of Bhogappa namely Thimmappa through first wife – Kariyamma got separated from joint family after taking his share in the joint family properties and accordingly he started to enjoy his share independently and exclusively. Thereafter, deceased Bhogappa and defendant No.1 and 2 continued to be in joint possession and enjoyment of joint family properties till demise of Bhogappa.

3. It is further submitted that, Deceased Bogappa and defendant No.1 and 2 were residing separately on

account of domestic misunderstanding among woman folk, but they continued to be members of joint family by enjoying the suit schedule properties jointly. Bogappa had performed the marriages of his 2 daughters i.e plaintiffs and he had no male issue. He died leaving behind plaintiffs as his only legal heirs. After his demise plaintiffs and defendant No.1 and 2 continued to be in joint possession and enjoyment of suit schedule properties. Deceased Bhogappa had $\frac{1}{3}$ legitimate share in the suit schedule properties and as such plaintiffs are entitled for $\frac{1}{3}$ share of their father in the suit schedule properties. Defendant No.1 to 4 got the katha of the joint family properties mutated illegally and tried to alienate the same. So, plaintiffs approached the defendant No.1 and 2 and demanded them to allot their share, but they flatly refused to allot their share. Hence, they are constrained to file the suit.

4. In response to suit summons defendant No.1, 3 and 4 appeared through advocate. Defendant No.2 was reported dead and his LRs were brought on record. They appeared through advocate. The written statement filed by defendant No.2(a) and defendant No.3 was adopted by defendant No.1, other LRs of defendant No.2 and

defendant No.4. Subsequently defendant No.5 to 8 being children of defendant No.4 and late Kariyappa were impleaded. Defendant No.5 to 8 appeared through advocate and they have adopted the written statement filed by defendant No.1 and LRs of defendant No.2. When the matter was posted for arguments defendant No.9 to 11 were impleaded. They have appeared through advocate and filed their common written statement.

5. Defendant No.1 to 8 have admitted the relationship of parties and they have denied the fact that suit schedule properties are joint family properties of plaintiffs and defendants. They have admitted that father of plaintiffs died in 1975. They have denied the fact that plaintiffs being joint family members have been in possession and enjoyment of suit schedule properties along with them. It is the case of defendants that father of plaintiffs namely Bhogappa and defendant No.1 and 2 had got their family properties partitioned long ago. After the partition, father of plaintiff had bequeathed his properties infavour of defendant No.1 and 2 under registered will dated 30/12/1974. Plaintiffs have also signed the said will as consenting witnesses along with their husbands. After

demise of Bhogappa defendant No.1 and 2 became owners in possession and enjoyment of item No.1, 2, 4, 5, 9 to 12, 18, 20, 23, 41, 42, 44, 45, 48 to 53 by virtue of said registered will.

6. Further it is specifically contended that item No. 26 and 47 do not belong to the family of defendants. Item No. 3, 6, 7, 8, 27, 30, 36, 38, 55, 61 are self acquired properties of defendant No.2 and item No.13, 28, 31, 32, 54, 56 to 59 are self acquired properties of defendant No.1 and item No. 56, 64 and 65 are separate properties of defendant No.1 and 2. Item No.14, 24, 29, 34, 35, 39, 40 and 62 are self acquired properties of defendant No.3. The above said properties do not belong to the joint family of plaintiffs. The properties bequeathed under will and the properties purchased under sale deeds were divided by defendant No.3 and 4. After demise of defendant No.2, his LRs have been in possession and enjoyment of his properties.

7. It is further contended that item No. 25 was given to plaintiff No.1 and 30 guntas in item No. 7 and 8 was given to plaintiff No.2 with the consent of defendant No.2

towards Harishina-Kunkuma and accordingly they are enjoying the said properties. It is further contended that, the suit is barred by law of limitation. Hence, it is prayed to dismiss the suit with costs.

8. Defendant No.9 to 11 have admitted the relationship of parties and they have denied other material averments of the plaint. According to defendant No.9 to 11 suit schedule item No.1 to 14 and 21 to 66 properties are joint family properties of their father Thimmappa and his brothers Bhogappa, Hanumanthappa and Sannathimmappa. The land bearing Sy.No. 79/1 measuring 10 acres 17 guntas situated at Bokikere village originally belonged to one Siddamma W/o Thimmaiah, who acquired the same by inheritance after demise of her husband. Said Siddamma was distant relative of Bhogappa, who had no issue and hence, she gifted the said property infavour of their father Thimmappa during 1968-69 and as such she gave consent before revenue authority for change of katha in the name of Thimmappa and accordingly katha of said property came to be mutated in the name of Thimmappa, Since then Thimmappa became absolute owner in possession of 10 acres 17 guntas in

Sy.No. 79/1. However, said Thimmappa, Bhogappa and defendant No.1 and 2 continued in the joint family by enjoying suit schedule item No.1 to 14, 21 to 66 properties. After their demise plaintiffs and defendants have continued to be in joint possession and enjoyment of the same. Defendant No.9 to 11 being legal heirs of Thimmappa have got legitimate $\frac{1}{2}$ share in item No.1 to 14 and 21 to 66 properties. Hence, it is prayed to decree the suit by allotting their $\frac{1}{2}$ share in item No.1 to 14 and 21 to 66 properties.

9. *The following issues have been framed on the basis of rival pleadings.*

1) Whether the plaintiffs prove that themselves and defendants are joint family members and suit properties are their ancestral and joint family properties?

2) Whether plaintiffs prove that they have got 1/3rd share in the suit properties?

3) Whether suit is bad for non joinder of necessary parties?

4) Whether the suit is properly valued?

5) Whether Court fee paid is sufficient?

6) Whether plaintiffs are entitled to the relief of partition, separate possession and mesne profits as prayed?

7) What order or decree?

Additional issues framed on 28/7/2018

1) Whether defendant No.1, 2, 3, 5 to 8 prove that, the father of plaintiff had executed a registered will dated 30/12/1974 in favour of defendant No.1 and 2 in respect of his properties acquired under partition?

2) Whether defendant No.1, 2, 3, 5 to 8 prove that, item No. 3, 6, 7, 8, 27, 30, 36, 38, 55 and 61 are self acquired properties of defendant No.2 and item No.13, 28, 31, 32, 54, 56, 57, 58 and 59 are the self acquired properties of defendant No.1 and item No. 56, 64 and 65 are self acquired properties of

defendant No.1 and 2 and item No. 14, 24, 29, 34, 35, 39, 40 and 62 are self acquired properties of defendant No.3?

Additional issues framed on 18/10/2019

3) Whether defendant No.9 to 11 prove that, item No.1 to 14 and 21 to 66 properties are joint family properties of themselves, plaintiff and other defendants?

4) Whether defendant No.9 to 11 prove that, item No.15 to 20 suit properties are self acquired properties of their father Thimmappa as averred in para No.13 and 17 of the written statement?

5) Whether defendant No.9 to 11 are entitled for partition and separate possession of their half share in item No.1 to 14 and 21 to 66 properties?

10. Plaintiff No.1 has examined herself as PW-1 and got marked Ex.P1 to 92 and examined 2 witnesses as PW-2 and 3. On the other hand defendant No.3 has examined himself as DW-1 and got marked Ex.D1 to D59

and examined one witness as DW-2. Defendant No.9 to 11 have examined their PA holder as DW-3 and got marked Ex.D 60 to 63.

11. Heard both side.

12. My answer to the above issues are as under:

Issue No.1 : Partly in the Affirmative

Issue No.2 : Partly in the Affirmative

Issue No.3 : Does not survive for consideration

Issue No.4 : In the Affirmative

Issue No.5 : In the Affirmative

Issue No.6 : Partly in the Affirmative

Additional issues

Issue No.1 : In the Negative

Issue No.2 : In the Affirmative

Issue No.3 : Partly in the Affirmative

Issue No.4 : In the Negative

Issue No.5 : Partly in the Affirmative

Issue No.7 : As per the final order for the following:

REASONS

13. **Issue No. 1, Additional issue No. 1 to 4:** It is not in dispute that Deceased Bhogappa had two wives by name Kariyamma – first wife and Kengajji – 2nd wife; deceased Bhogappa had a son by name Thimmappa through his first wife Kariyamma – father of defendant

No.9 to 11. Said Bhogappa had 3 sons through his 2nd wife Kengajji namely Bhogappa- father of plaintiff No.1 and 2, Hanumanthappa – defendant No.1 and Sanna Thimmappa – defendant No.2. Defendant No.3 by name Ramappa and deceased Kariyappa are sons of defendant No.1. Defendant No.4 namely Vinodamma is wife of said deceased Kariyappa. Defendant No.2(a) to (e) are sons and daughters of deceased defendant No.2; and defendant No.5 to 8 are daughters and son of deceased Kariyappa and defendant No.4 i.e grand children of defendant No.1. The relationship of parties as narrated in the genealogical tree of the plaint and genealogical tree of the written statement submitted by defendants is not in dispute. It is not in dispute that father of plaintiff namely Bogappa had no male issue and plaintiffs are his only daughters and said Bogappa died in 1975. According to plaintiffs, suit schedule properties are coparcenary properties of plaintiffs and defendants. So, initial burden lies upon the plaintiffs to prove that suit schedule properties are joint family properties / coparcenary properties. If initial burden gets discharged the onus will stand shifted upon defendants to prove their contentions, which are taken in their respective written statement.

14. PW-1 has reproduced the averments of petition in her examination in chief in respect of relationship of the parties, status of members and nature of suit schedule properties. PW-2 and 3 have supported the version of PW-1 that item No.1 to 65 properties are joint family properties of plaintiffs and defendants and they have been in joint possession and enjoyment of the same. In cross-examination PW-2 states that he is not aware of the fact as to when children of propositior Bogappa acquired the property and he does not know the property numbers and extent of the suit schedule properties and he does not know which are the properties given to plaintiffs and defendants and he is not aware of partition in the year 1953 and registered will of the year 1974 and further he states that he is not having any properties nearby the suit properties and as such he cannot say that plaintiffs and defendants are enjoying the properties separately and the fact that they got the properties divided. PW-3 is also ignorant of details of properties, possession of those properties and facts of the suit. Looking to the versions of PW-2 and PW-3 made in cross examination it can be said that they are not conversant with the facts and circumstances of the case and as such their testimonies that suit schedule properties

are joint family properties of plaintiffs and defendants and other facts as deposed to in their examination in chief can not be believed.

15. Item No.1 to 53 and 66 are landed properties, of them item No.1 to 39 are situated at Bokikere village, Kasaba Hobli, Hosadurga; Item No. 40 to 46 and 66 are situated at Malali village, Hosadurga Taluk; item No. 47 is situated at Peelapura village; item No. 48 to 58 are situated at Kyadigere village; item No. 51 to 53 are situated at Channasamudra village, Kasaba Hobli, Hosadurga Taluk; Item No. 54 to 57 are black tiled roofed houses situated at K.K. Hatty village; item No. 58 and 59 are site properties situated at Bokikere village, Kasaba Hobli, Hosadurga Taluk; Item No. 60 to 62 are RCC houses situated at Vinayaka extension, Hosadurga Town; Item No. 63 to 65 are black tiled roofed houses situated at NES extension, Hosadurga Town. Plaintiffs have relied upon 92 documents in support of oral testimonies of PW-1 to 3. Ex.P1 to 53, 66 to 73 and 76 to 92 are RTCs of landed properties. Ex.P 54 to 59 are house list register extracts, Ex.P60 to 65 are assessment extracts, Ex.P 56 to 73 are RTCs, Ex.P.74 is certified copy of sale deed 12/6/1961 and

Ex.P 75 is certified copy of registered sale deed dated 13/5/1963, Ex.P 76 to 92 are RTCs.

16. Item No.1, 4, 6, 12, 20, 21, 32, 35, 36, 42, 49, 52, 54, 59, 62, 64 are standing in the name of son of defendant No.1 namely Kariyappa; Item No. 43 stands in the name of defendant No.1; item No.2, 3, 7, 8, 9, 10, 13, 14, 15, 18, 25, 26, 27, 45, 48, 51, 57, 60, 61 are standing in the name of deceased defendant No.2; Item No. 5, 11, 16, 17, 19, 22, 23, 24, 28, 29, 30, 31, 33, 34, 37 to 41, 50, 53, 56, 58, 65 are standing in the name of defendant No.3. Item No. 47 is standing in the name of one Ramappa S/o Thimmappa, who is not related to the family of plaintiffs and defendants. It is pertinent to note that item No. 34 is land bearing Sy.No. 53/7EP8 measuring 8 guntas, whereas RTC at Ex.P 34 discloses the extent in the said survey number as 3 guntas as against the extent being 8 guntas in the schedule of the plaint. No other revenue records or other materials are placed on record to show that item No. 34 measures 8 guntas.

17. Item No. 46 stands in the name of father of defendant No.9 to 11 namely Thimmappa. Item No. 44

stands in the joint names of defendant No.1 and 2. Item No. 54 previously stood in the name of defendant No.1 and subsequently name of son of defendant No.1 namely Kariyappa has been mutated. It is pertinent to note that item No. 55 described in the schedule would show that it is black tiled house bearing old No. 195 new No. 67 measuring 30X40 feet bounded by East – Sannathimmappa, West - Sanna Bhogappa, North and South- road. Whereas Ex.P55 though tallies as regards old property number, does not tally with that of new number, extent and boundaries, since in Ex.P 55 the new number is shown as 68 as against 67 and measurement is shown as 25X40 feet, as against 30X40 feet and boundaries are shown as East- Hanumanthappa, West- Hanumanthappa, North and South -Street, as against to the boundaries mentioned in the schedul of the plaint. No other documents showing existence of item No. 55 property as described in the schedule is placed on record. Item No. 56 previously stood in the name of defendant No.1 and subsequently it came to be mutated in the name of defendant No.3.

18. Ex.P66 to 72 are the RTCs for the year 2018 – 2019 pertaining to item No. 8, 25, 51 to 53. Names of LR's of defendant No.2 and the names of defendant No. 3, 4, 9 to

11 could be seen in the RTCs having been mutated by inheritance. Since, the suit is of the year 2002 the RTCs at Ex.P 66 to 73 being the records of current year being not relevant cannot be taken into consideration.

18. Ex.P74 being certified copy of the registered sale deed dated 12/6/1961 would show that father of plaintiffs had purchased land in Sy.No. 257 measuring 1 acre 20 guntas. Said property could not be seen in the schedule of the plaint. So it has to be held that the property which is referred in Ex.P 74 is not subject matter of the suit. It is evident from Ex.P75 – certified copy of the sale deed dated 13/5/1963 that father of plaintiffs had purchased the land in Sy.No. 231/5 measuring 1 acre 6 guntas, which is also not seen in the schedule of the plaint and as such it can be said that said property is not subject matter of the suit.

19. Ex.P 76 to 83 being RTCs do not pertain to suit schedule properties and they are not subject matter of the suit and said properties are belonging to other persons who are not parties to the suit. Ex.P84 being RTC of Sy.No. 79/1 measuring 10 acres 9 guntas previously stood in the name of Thimmappa S/o Bogappa–father of defendant No.9 to 11.

Admittedly said survey number seems to have been phoded long ago and several phode numbers are given with separate extent, which are nothing but item No.15 to 20 properties. Ex.P 85 to 87 being RTCs do not pertain to suit schedule properties and they are not subject matter of the suit. Ex.P88 being RTC of item No. 25 would show that the land bearing Sy.No. 86/2 measuring 2 acres stood in the name of Kariyavva W/o Bogappa and later name of defendant No.2 came to be mutated during 1973-74. Ex.P 89 to 91 being RTCs do not pertain to suit properties and said properties are not subject matter of the suit. Ex.P92 is RTC of land bearing Sy.No. 257 measuring 1 acre 20 guntas, which stands in the name of father of plaintiff, whose name came to be mutated on the basis of registered sale deed – Ex.P 74. It is relevant to note that plaintiffs have not placed any records pertaining to item No. 66 showing very existence of that property.

20. As a matter of fact, in a suit for partition, what is required to be proved is that suit properties are joint family properties. In order to prove the same, in this suit, plaintiffs are under obligation to prove that suit properties are ancestral properties of deceased propositor Bogappa i.e

grand-father of plaintiff and suit properties were inherited by his 4 sons and some of the suit properties were purchased out of income derived from other ancestral properties and as such those properties have acquired the characteristic of coparcenary property. Plaintiffs have simply pleaded that suit schedule properties are joint family properties, without disclosing the fact as to how those properties were acquired by their father Bhogappa and their brothers.

21. Admittedly, Thimmappa- father of defendant No.9 to 11 is son of propositior Bhogappa through his wife Kariyamma and defendant No.1 and 2 and father of plaintiffs are sons of Bhogappa through his 2nd wife Kengajji. According to plaintiffs, Thimmappa got separated from the joint family by taking his hare from the joint family properties and he started to enjoy his share independently. It is important to note that plaintiffs have not disclosed as to when said Thimmappa got separated from joint family; what were the properties available to joint family when Thimmappa got separated; and what are the properties which were allotted to the share of Thimmappa. Absolutely, no pleadings and evidence are forth coming to show that Thimmappa got separated from

joint family by taking his share except self serving statement of PW-1. Unless it is specifically pleaded and proved showing severance of Thimmappa from joint family by taking his share, mere pleadings and assertion of PW-1 that Thimmappa got separated from the joint family being not sufficient cannot be accepted to hold that Thimmappa got separated and was allotted share in the joint family property.

22. Percontra, defendant No.9 to 11 have contended that their father Thimmappa and his 3 brothers were in joint possession and enjoyment of item No.1 to 14 and 21 to 66 suit properties and said properties are joint family properties of their father Thimmappa and his brothers. DW-3 has deposed the same in his examination in chief. Although DW-3 has been subjected to cross-examination in sufficient length there elicited nothing to show that Thimmappa got separated from the joint family by taking his share. Of course, DW-3, in cross-examination, has stated that Thimmappa and his brothers were enjoying the properties separately by taking the fruits of the lands, which were being cultivated by them. No doubt, DW-3 has admitted that defendant No.9 to 11 have been living

separately for 20 years by constructing separate houses. But that evidence is not sufficient to prove the case of plaintiffs that Thimmappa went out of joint family by taking his share when pleadings and evidence are absent to show as to when he got separated and which were the properties allotted to the share of Thimmappa. The plaintiffs have failed to prove that deceased Thimmappa got separated from the joint family by taking his share.

23. According to defendant No.1 to 8, Bogappa and defendant No.1 and 2 got the family properties partitioned long ago. Item No. 3, 6, 7, 8, 27, 30, 36, 38, 55, 61 are self acquired properties of defendant No.2 and item No.13, 28, 31, 32, 54, 56 to 59 are self acquired properties of defendant No.1 and item No. 56, 64 and 65 are separate properties of defendant No.1 and 2. Item No.14, 24, 29, 34, 35, 39, 40 and 62 are self acquired properties of defendant No.3. In other words, it is the case of defendants that other suit properties other than the above said items were joint family properties of Bogappa and his brothers and they got the same divided in the partition. It is relevant to note that defendant No.1 to 8 have not disclosed as to when said Bhogappa and defendant No.1 and 2 got the family

properties partitioned; which were the properties allotted to the share of Bhogappa and what were the properties allotted to the share of defendant No.1 and 2 in the said alleged partition. In fact, no pleadings are forth coming to show as to whether said partition is oral or written.

24. Whereas, DW-1 has deposed that father of plaintiffs namely Bhogappa, defendant No.1 and defendant No.2 and their brother Thimmappa got the family properties divided under partition deed dated 24/8/1953. Item No.16, 17, 21 and 22 were allotted to the share of first defendant; item No.15 and 25 were allotted to the share of 2nd defendant and item No.18 and 20 were allotted to the share of father of plaintiffs in the said partition. It is interesting to note that said fact has not been stated in the written statement and same has seen day light for the first time in examination in chief of DW-1. It is well settled that no amount of evidence is admissible in the absence of pleadings. Nowhere it is pleaded in written statement that partition took place on 24/8/1953 under partition deed among Thimmappa, Bogappa and defendant No.1 and 2 and in the said partition the said properties had fallen to their share. Even otherwise, DW-1 has not disclosed as to

what are the properties which were allotted to the share of Thimmappa.

25. DW-2 has deposed that Bhogappa and his 3 brothers got the properties divided about 65 – 70 years ago and they were enjoying their respective shares and he is aware of alleged will made by father of plaintiffs. In cross-examination he pleads ignorance about the disease which deceased Bhogappa had during his last days and the fact that deceased Bhogappa was suffering from cancer and was bed ridden for 2-3 years. He pleads ignorance about the partition among Bhogappa and his brothers and properties having fallen to the share of said Bhogappa and his brothers. Further DW-2 states that he is not aware of will made by Bhogappa and the contents of affidavit filed by him in lieu of examination in chief. The above versions of DW-2 would clearly show that DW-2 is not conversant of the facts and circumstances of the case and as such testimony made in examination in chief being not credible has to be discarded.

26. DW-1 has produced unregistered parikath dated 24/8/1953, which was marked during examination in chief of DW-1 for collateral purpose since partition deed being

partition in presentee is not registered. Recitals of Ex.D56, are evident to show that it is not a record of past partition since through which some properties are shown to have been allotted to the share of defendant No.1 on the date on which said deed came into existence. Since Ex.D53 was intended to operate as partition deed to create right, it was required to be registered as per section 17 of registration Act 1908. Since it is not registered as required by section 17 it shall not be received in evidence. The defendants have relied upon Ex.D56 to prove that partition had taken place among Bhogappa and his brothers under said partition deed. In other words, Ex.D56 is relied upon not to prove collateral purpose but for proving main purpose. Since Ex.D56 is intended to be relied upon to prove the factum of partition among Bhogappa and his brothers it cannot be looked into for want of registration.

27. That apart, even assuming that Ex.D56 is admissible and can be received in evidence, it is relevant to note that no partition did take place among Bhogappa and his brothers as narrated by DW-1 in his examination in chief. Some properties, which are described by names, are shown to have been allotted to share of defendant No.1. Since survey numbers and extent are not described in

Ex.P56, it is difficult to identify the properties by its description, which are allegedly allotted under Ex.56 because such description and names of lands could not be seen either in written statement or in the evidence of DW-1 so as to identify those properties. That apart, no such properties are found to have been allotted to the share of Bhogappa and defendant No.1 and 2 as deposed to by DW-1. Admittedly, no mutation has been effected and no entries have appeared in the RTCs on the basis of Ex.D56. What it indicates is Ex.D56 has not been acted upon. Moreover, no explanation is coming forth as to why it has not been acted upon so far since 1953. It is also relevant to note that DW-1 states that item No.18 to 20 were allotted to the share of father of plaintiffs in the said partition. Whereas, PW-1 is suggested to the effect that item No. 7, 15 to 20, 25 and 52 schedule properties were allotted to the share of father of plaintiffs. Really had partition taken place, as contended, in terms of Ex.D56 defendants would have mutated their names on the basis of said partition deed. Therefore, there is no any substance in the contention of defendant No.1 to 8 that there was partition among Bhogappa and his brothers long ago in terms of Ex.D56.

28. Defendant No.1 to 8 have relied upon registered will dated 30/12/1974, certified copy of the sale deeds at Ex.P2 to 16, current year RTCs of the suit properties at Ex.P17 to 55, unregistered partition deed dated 24/8/1953- at Ex.D56 and RTCs – Ex.D57 to 59. The RTCs placed by the defendants are of the year 2018 – 2019 and as such there is no need to refer them. Moreover, RTCs placed by the plaintiffs having already been referred are appreciated. Ex.D2 is evident to show that defendant No.3 has purchased item No. 39 and land bearing Sy.No. 89/3BP1 measuring 20 guntas on 15/5/2001; Ex.D3 is evident to show that defendant No.3 has purchased item No. 32 on 15/4/1993; Ex.D4 shows that defendant No.3 has purchased item No. 40 on 31/10/1995; Ex.D5 would evidence that defendant No.2 and one Thimmappa S/o Kenchannna had purchased item No. 30, 33 to 38 on 26/6/1968, formerly it was 2 acres 20 guntas in Sy.No. 53; Ex.D6 is evident to show that defendant No.3 has purchased item No. 24 on 8/7/1996; Ex.D7 shows that defendant No.3 has purchased item No. 29 on 14/3/1986; Ex.D8 shows that defendant No.2 had purchased item No. 7 and land in Sy.No. 87/3, measuring 1 acre on 4/8/1969; Ex.D9 shows that defendant No.3 has purchased item

No.14 on 11/8/1982; Ex.D.10 shows that defendant No.2 has purchased item No. 8 on 30/4/2013. Ex.D11 shows that defendant No.2 has purchased item No. 27 on 9/3/1990. Ex.D12 would show that defendant No.3 has purchased item No. 57 to 59 on 26/10/1978. It has come in evidence that said land measuring 10 guntas purchased under Ex.D12 was converted and sites were formed i.e item No. 57 to 59. Ex.D13 shows that defendant No.1 has purchased item No. 28 on 17/5/1980; Ex.D14 shows that defendant No.1 has purchased item No. 31 on 16/3/1989. Ex.D15 and Ex.D12 are one and the same. Ex.D16 shows that defendant No.2 and 3 had purchased item No. 61 and 62 on 29/7/1985. Thus, Ex.D2 to 16 would show that item No. 7, 8, 14, 24, 27 to 40, 57, 58, 59, 61 and 62 were purchased by defendant No.1, 2 and 3 under said sale deeds from various persons.

29. According to defendant No.1 to 8, deceased Bhogappa had bequeathed item No. 1, 2, 4, 5, 9 to 12, 18, 20, 23, 41, 42, 44, 45, 48 to 53. Whereas, Ex.D1 would show that the properties, which were allegedly bequeathed under registered will, are Sy.No.85/2 measuring 3 acres 18 guntas, Sy.No. 39/1 measuring 1 acre 27 guntas, Sy.No. 39/5 measuring 1 acre 23 guntas, Sy.No. 50/5 measuring 2

acre 25 guntas, Sy.No. 45/13 measuring 1 acres, Sy.No. 78/15A measuring 12 guntas, Sy.No. 79/1 measuring 2 acres 20 guntas, Sy.No. 256/3 measuring 4 acres 12 guntas, Sy.No. 279 measuring 3 acres 29 guntas, Sy.No. 239/5 measuring 1 acre 06 guntas, Sy.No. 260 measuring 1 acre 39 guntas, Sy.No. 20/2 measuring 1 acre 29 guntas, Sy.No. 36/12 measuring 2 acre 05 guntas and Sy.No. 25 measuring 1 acre 20 guntas. Item No. 1, 3, 4 to 6, 9, 10 to 12, 23, 47, to 50 are among the properties which are allegedly bequeathed.

30. As rightly argued by learned counsel for plaintiffs Ex.D1 does contain many properties, which do not belong to family and there are other properties in the name of Bhogappa, which are not allegedly bequeathed under Ex.D1. Many of the properties allegedly bequeathed by deceased Bhogappa, as shown in para No.12 of the written statement, do not tally with that of properties which are shown in Ex.D1. According to plaintiffs, deceased Bhogappa never intended to bequeath properties and he never executed any such will bequeathing those properties in favour of defendant No.1 and 2 and said will has been created by the defendant No.1 and 2 to knock of the share of plaintiffs. It is also the case of plaintiffs that deceased

Bhogappa was suffering from cancer disease and he was bedridden for 2 years and he was not in a sound disposing state of mind to execute alleged will – Ex.D1. DW-1 has not denied the suggestion that Bhogappa died within six months of execution of alleged will.

31. It is well settled that a will has to be proved in accordance with Section 68 of Indian Evidence Act. In this regard section 63 of Indian Succession Act becomes relevant. Section 68 of Indian Evidence Act deals with the proof of the execution of document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution.

32. Section 63 of Indian Succession Act requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up

by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. No doubt will has to be proved like any other document except as to special requirements of attestation of will prescribed by Section 63 of Indian Succession Act. However, unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not. The propounder has to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document of his own free will.

33. Defendant No.1 and 2 being propounders of the will have not examined any of the attestors of the will to prove due execution of registered will. It is not the case of defendants that attesting witnesses are not alive or their presence could not be secured. Even assuming that the attesting witnesses of will are dead and could not be found, burden still lies upon them to prove that the attestation of one attesting witness atleast is in his hand writing, and

that the signature of the person executing the document is in the hand writing of that person as envisaged U/Sec 69 of Indian Evidence Act. Since defendants have not examined either any of the attesting witnesses or other witnesses to prove the hand writing of the attesting witnesses and signature of testator, therefore, Ex.D1- will cannot be looked into and cannot be used as evidence as contemplated U/ Section 68 of Indian Evidence Act. Wherefore, due execution of registered will – Ex.D1 has remained unproved.

34. It is the case of defendants that plaintiffs and their husbands have also signed the said will – Ex.D1 and as such they are estopped from claiming contrary and they have no right to dispute very execution of registered will- Ex.D1. It is relevant to note that one signature 'Indramma' is seen in Ex.D1, whereas signature of plaintiff No.2 cannot be found in Ex.D1. Moreover, plaintiff No.1 has disputed her signature found in Ex.D1. Therefore, burden lies upon defendants to prove that plaintiffs have signed the said will and the signature appearing in Ex.D1 belongs to plaintiff No.1. Defendants have not placed any iota of evidence to show that the signature "Indramma" appearing in Ex.D1 is of plaintiff No.1. Even assuming that said

signature belongs to plaintiff No.1, still will cannot be used as evidence since attesting witnesses are not examined. Therefore, defendants have failed to prove due execution of registered will dated 30/12/1974 by deceased Bhogappa in favour of defendant No.1 and 2 in respect of said properties.

35. In fact, defendants have not placed any evidence or materials to show that the properties described in Ex.D1 belonged to deceased Bhogappa or said properties were allotted to the share of deceased Bhogappa in the partition. Indeed, very partition among deceased Bhogappa and his brothers has not been proved. Even assuming that will is proved it is not proved that the properties allegedly bequeathed under Ex.D1 belonged to deceased Bhogappa and he had absolute right to have bequeathed the same. No doubt PW-1 admits that she is enjoying item No. 25 property, which is refereed in Ex.D1 will, but itself does not mean that item No. 25 was bequeathed infavour of plaintiff No.1 under Ex.D1 when Ex.D.1 has not been proved.

36. According to defendant No.9 to 11, land bearing Sy.No. 79/1 measuring 10 acres 17 guntas belonged to

Siddamma W/o Thimmaiah, who acquired the same by inheritance after demise of her husband. Since Siddamma had no issue, she being distant relative gifted the said land in favour of their father Thimmappa and katha came to be mutated in the name of said Thimmappa after consent being given by Siddamma before revenue authority. It is the specific case of defendant No.9 to 11 that said property having split into item No.15 to 20 are self acquired property of their father Thimmappa. DW-3 has reiterated the same in his examination in chief having relied upon RTC, record of rights and preliminary record in Form No.1 at Ex.D61 to 63. It is evident from Ex.D63 that land bearing Sy.No. 79 measuring 9 acres 39 guntas originally belonged to husband of said Siddavva, who had acquired the same by inheritance. Ex.D62 shows that name of said Thimmappa i.e father of defendant No.9 to 11 came to be mutated during 1968-69 by inheritance and his name found place in RTC for the year 1970-71 to 1973-74 as seen from Ex.D61. Said Thimmappa is referred as elder grand son of Siddavva. The above documents would not disclose that said property was gifted in favour of Thimmappa and katha came to be mutated on the basis of alleged gift. In deed, no iota of evidence is made available to show that

Siddavva gifted said property in favour of Thimmappa. Perusal of oral evidence it seems Siddajji, who had no issue, fostered Bhogappa i.e. grand father of plaintiffs and as such said Bhogappa has been referred in some documents as 'Siddajjiayara Bhogappa' and therefore Thimmappa has been referred as grand son in Ex.D62. Therefore, it cannot be said that Thimmappa was absolute owner in possession of item No.15 to 20 schedule properties. When said Siddappa had acquired no independent right and title over said properties question of defendant No.9 to 11 acquiring exclusive right and title over the said properties does not arise. That apart, except oral testimony of DW-3, nothing has been placed on record in support of their pleadings that item No.1 to 14 and 21 to 66 are joint family properties of themselves, plaintiffs and other defendants.

37. Plaintiffs have not placed any documents to show that item No. 3, 6, 7, 8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65 are originally ancestral properties of their father Bhogappa and his brothers. Since defendants No.1 to 8 would claim that said properties are self acquired

properties of defendant No.1 to 3, initial burden lied upon the plaintiffs to prove that said properties are joint family properties. It is not the case of plaintiffs that the defendants have acquired those properties out of income derived from other ancestral properties or joint nucleus of the family. As a matter of fact, there are no pleadings and iota of evidence as to which are the ancestral properties; which are the properties purchased out of income derived from ancestral properties; what was the income available to the joint family and what was the saving available to joint family after meeting the family expenses. Mere assertion that suit schedule properties are joint family properties would not dispense with proof. As already stated supra, item No. 7, 8, 14, 24, 27 to 40, 57, 58, 59, 61 and 62 were purchased by defendant No.1, 2 and 3 under said sale deeds from various persons. In so far as other properties, which are claimed to be self acquired properties, are concerned, when plaintiffs have not been able to prove that said properties are joint family properties, it has to be held that said properties are separate properties of defendant No.1 to 3 because as on the date of suit said properties were standing in their names and there are no records to

show that said properties are ancestral properties of deceased Bhogappa and his brothers.

38. As far as item No. 43 is concerned, it is the case of defendant No.1 to 8 that it belonged to father of defendant No.9 to 11. Item No. 43 stands in the name of defendant No.1. No documents are placed to show that said property exclusively belonged to deceased Thimmappa. In fact, defendant No.9 to 11 have claimed that item No. 43 is joint family property of plaintiffs and defendants. Such being the case the contention of defendant No.1 to 8 that it does not belong to joint family cannot be accepted. As far as item No. 44 is concerned, it stands in the joint names of defendant No.1 and 2. According to defendant No.1 to 8, item No. 44 belongs to one A.K. Rangappa. No materials are placed to show that said property belongs to A.K. Rangappa. As regards item No. 26 is concerned, it is the case of defendant No.1 to 8 that it is given to Ramadevaru temple. Ex.P26 evidences that it stands in the name of defendant No.2. PW-1 has admitted that said property has been given to Ramadevaru temple and the Poojari of said temple is enjoying the said property. But no materials are placed on record to show that said property has been given

to the temple. In the absence of any title deed showing transfer of right and title over said property mere admission on the part of PW-1 is not sufficient to hold that it does not belong to the joint family.

39. It is the case of defendant No.1 to 8 that item No. 47 belongs to one P. Ramappa S/o Thimmappa. As already stated above, Ex.P47 evidences that said property belongs to Ramappa S/o Thimmappa. On the other hand, plaintiffs have not placed any materials to show that said property belongs to joint family. According to defendant No.1 to 8, item No. 46 belongs to one Gangamma W/o Hanumanthappa. Ex.P46 would show that said property stands in the name of father of defendant No.9 to 11. No materials are placed to show that said property belongs to said Gangamma. It is the case of defendants that item No. 63 belongs to one petrol bunk Thimmanna being not joint family property and same is unnecessarily included in the schedule. Item No. 63 being black tiled house situated at N.E.S Extension Hosadurga Town stands in the joint names of defendant No.1 and 2. No materials are placed to show that said property belongs to petrol bunk Thimmanna and his sons are in possession and enjoyment

of said property and said property does not belong to joint family.

40. The plaintiffs have failed prove that item No. 3, 6, 7, 8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 47, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66 are joint family properties of themselves and defendants. Since, description of item No. 55, as described in the schedule, does not tally with that of document at Ex.P55, identity of said property has remained unproved and as such it cannot be said that said property is joint family property. On the other hand, defendant No.1 to 8 have been able to show that item No. 3, 6, 7, 8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 54, 55, 56, 57, 58, 59, 61, 62, 64, 65 are their separate properties, however, have failed to prove that father of plaintiffs had bequeathed the properties acquired under partition through registered will dated 30/12/1974 in favour of defendant No.1 and 2. Defendant No.9 to 11 have failed to prove that item No.15 to 20 are self acquired properties of their father Thimmappa. Hence, I answer issue No. 1 and Additional issue No. 3 partly in the affirmative, additional issue No.1 and 4 in the Negative, Additional issue No.2 in the Affirmative.

41. **Issue No.3:** Since plaintiffs have impleaded children of defendant No.4 and children of deceased Thimmappa this issue does not survive for consideration.

42. **Issue No.4 & 5:** This is a suit for partition and separate possession of plaintiffs share in the suit schedule properties and other allied reliefs. Plaintiffs have paid maximum Court fee of Rs.225/- prescribed for a suit for partition and separate possession irrespective of nature of properties. As per section 16 of Karnataka Civil Courts Act 1964 the jurisdiction of the Court of a Senior Civil Judge shall extend to all original suits and proceedings of a civil nature irrespective of value of the subject matter. Therefore, there is no any substance in the contention of defendants that suit is not properly valued and Court fee paid is insufficient. Hence, I answer issue No. 4 and 5 in the Affirmative.

43. **Issue No.2, 6 and additional issue No.5:** The plaintiffs have failed prove that item No. 3, 6, 7, 8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 47, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66 are joint family properties of themselves and defendants. On the other

hand, defendant No.1 to 8 have been able to show that item No. 3, 6, 7, 8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 54, 55, 56, 57, 58, 59, 61, 62, 64, 65 are their separate properties, however, have failed to prove that father of plaintiffs had bequeathed the properties acquired under partition through registered will dated 30/12/1974 in favour of defendant No.1 and 2. Defendant No.9 to 11 have failed to prove that item No.15 to 20 are self acquired properties of their father Thimmappa.

44. Plaintiffs have been able to prove that item No. 1, 2, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53 and 63 are joint family properties of themselves and defendants. Deceased Thimmappa, Bhogappa, defendant No.1 and 2 being coparcenars would have been entitled to $\frac{1}{4}$ share each had partition taken place during their life time. The $\frac{1}{4}$ share of deceased Bhogappa would devolve upon his class – I legal heirs as per Section 8 of Hindu Succession Act since plaintiffs are not coparceners as their father died before Hindu Succession (Amendment) Act 2005 came into force. Since, Bhogappa had no other legal heirs plaintiffs being class -I legal heirs are entitled to $\frac{1}{4}$ share of deceased

Bhogappa having succeeded to the same; Defendant No.1 is entitled to $\frac{1}{4}$ share and defendant No.2(a) to (e) are together entitled to $\frac{1}{4}$ share and defendant No.9 to 12 are together entitled to $\frac{1}{4}$ share in item No. 1, 2, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53 and 63. Hence, I answer issue No. 6 and additional issue No. 5 partly in the affirmative

45. **Issue No.7:** In view of the reasons and findings on Issue No.1 to 6 and additional issue No.1 to 5, I proceed to pass the following:

ORDER

The suit of plaintiffs is decreed in part with costs.

Plaintiffs together become entitled for partition and separate possession of $\frac{1}{4}^{th}$ share in item No.1, 2, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53 and 63 schedule properties.

Defendant No.9 to 11 together become entitled for partition and separate possession of $\frac{1}{4}^{th}$ share in item No.1, 2, 4, 5, 9, 10, 11, 12, 15,

**16, 17, 18, 19, 20, 21, 22, 23, 25, 26,
41, 42, 43, 44, 45, 46, 48, 49, 50, 51,
52, 53 and 63 schedule properties.**

***The registered will dated
30/12/1974 said to have been
executed by deceased Bhogappa in
favour of defendant No.1 and 2 is
declared as not binding the shares
of plaintiffs.***

***In so far as item No. 3, 6, 7,
8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33,
34, 35, 36, 37, 38, 39, 40, 47, 54, 55,
56, 57, 58, 59, 60, 61, 62, 64, 65 and
66 are concerned suit is dismissed.***

***Draw preliminary decree
accordingly.***

(Dictated to the Stenographer, typed by her on laptop and corrected by me, then pronounced in the Open Court on this the 13th of December, 2019)

**(DINESH B.G.)
SENIOR CIVIL JUDGE & JMFC,
HOSADURGA**

ANNEXURE

I. Witness examined on behalf of Plaintiff:

PW-1 : Indramma
PW-2 : Kariyappa
PW-3 : Thippeshappa

II. Witnesses Examined on behalf of defendants:

DW-1 : Ramappa

DW-2 : Bogappa

DW-3 : Kariyappa

III. Documents marked on behalf of the plaintiff.

Ex.P1 to 53 : 53 RTCs

Ex.P54 to 59 : 6 house list register extracts

Ex.P60 to 65 : 6 Assessment register extracts

Ex.P66 to 73 : RTCs

Ex.P74 : Registered sale deed dated 12/6/1961

Ex.P75 : Registered sale deed dated 15/5/1963

Ex.P76 to 92 : Certified copies of RTCs

IV. Documents marked on behalf of the Defendants.

Ex.D1 to 16: Certified copies of registered sale deeds

Ex.D17 to 55: RTCs

Ex.D56 : Registered Parikath dated 24/8/1953

Ex.D57 to 59 : RTCs

Ex.D60 : Power of attorney

Ex.D61 : RTC of Sy.No. 79/1

Ex.D62 : Records of rights

Ex.D63 : Preliminary records

(DINESH B.G.)
SENIOR CIVIL JUDGE & JMFC,
HOSADURGA

(Orders pronounced in open Court, vide separate order)

ORDER

The suit of plaintiffs is decreed in part with costs.

Plaintiffs together become entitled for partition and separate possession of $\frac{1}{4}^{th}$ share in item No.1, 2, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53 and 63 schedule properties.

Defendant No.9 to 11 together become entitled for partition and separate possession of $\frac{1}{4}^{th}$ share in item No.1, 2, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53 and 63 schedule properties.

The registered will dated 30/12/1974 said to have been executed by deceased Bhogappa in favour of defendant No.1 and 2 is declared as not binding the shares of plaintiffs.

In so far as item No. 3, 6, 7, 8, 13, 14, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 47, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65 and 66 are concerned suit is dismissed.

Draw preliminary decree accordingly.

HOSADURGA