

KACD610002312016



Presented on : 08-03-2016
Registered on : 08-03-2016
Decided on : 05-06-2026
Duration : 27D-02M-10Y

IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
AT: MOLAKALMURU

Present: **Smt. HEMA H.R.**

B.A.L., L.L.B.,
Civil Judge and JMFC., Molakalmuru

Dated on the 05th day of June 2026

O.S. No.31/2016

PLAINTIFF:

1. Smt. Lakshmidevi w/o late Ramanna, aged about 32 years.
2. R.Girishkumar s/o late Ramanna, aged about 12 years.
3. R.Jeevan s/o late Ramanna, aged about 10 years.
4. Venkatesh s/o late Dasappa, aged about 28 years.

All are Agriculturists and residents of Gundluru village,
Molakalmuru Taluk, Chitradurga District.

Plaintiffs No.2 and 3 are minors and represented by plaintiff No.1
as minor guardian.

(By Sri T.Chandrashekharappa, Advocate)

-V/s-

DEFENDANTS:

1. Dasappa s/o late Kurithimmaiah,
(dead) by L.rs
2. Eramma w/o Dasappa,
(dead) by L.rs

3. Thimmanna s/o Dasappa,
aged about 40 years.

4. Yashodamma d/o Dasappa,
w/o Thimmanna, aged about 38 years.

5. Govinda s/o Dasappa, aged about 26 years.

6. Nethravathi w/o Govinda,
aged about 23 years, r/o Gollarahatti,
Talavarahatti Majire, Molakalmuru Taluk.

7. Sharadamma w/o Govinda,
aged about 22 years.

8. H.E.Gurukirana s/o Poojari Eranna,
aged about 49 years, Agriculturist,
r/o Hosagollarahatti, Talavarahatti Majire,
Molakalmuru Taluk.

Defendants No.1 to 5 and 7 are Agriculturists
and residents of Gundluru village, Molakalmuru Taluk.

9. Manjunatha s/o Thimmanna,
aged about 22 years, Agriculturist,
Gundluru village, Molakalmuru Taluk.

10. Rathnamma w/o Thimmanna,
aged about 38 years, Agriculturist,
R/o Gundluru village, Molakalmuru Taluk.

(D.1 to 5 & 7 by Sri A.B.Umapathy, Advocate)
(D.6 by Sri M.Channabasavareddy, Advocate)
(D.8 by Sri T.Shivarama, Advocate)
(D.9 & 10 by Sri D.Jayaseela Reddy, Advocate)

Date of Institution of suit	:	08.03.2016
Nature of suit	:	Partition and separate possession

Date of commencement of recording of Evidence	:	13.11.2018		
Date of pronouncement of Judgment	:	05.06.2026		
TOTAL DURATION	:	Days	Months	Years
		27	02	10

: J U D G M E N T :

The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession of 2/6 share in the suit schedule properties and for declaration that the sale deed dated:07.01.2016 executed by defendants No.1 & 3 in favour of defendant No.8 is not binding on the right of plaintiffs over item No.3 of suit schedule 'A' property and for such other reliefs.

2. The brief facts of the plaintiff's case is as follows

The defendants No.1 and 2 are husband and wife and that, defendants No.3 to 5, husband of plaintiff No.1 by name Ramanna and plaintiff No.4 are children of defendant No.1 and 2. Plaintiffs No.2 and 3 are children of plaintiff No.1. Defendants No.6 and 7 are wives of defendant No.5. Defendant No.8 is stranger to the family of plaintiff and defendants No.1 to 7. Plaintiff and defendants No.1 to 7 being blood relatives are the members of Hindu Joint family. Suit schedule properties are acquired from the income of joint family of plaintiffs and defendants No.1 to 7 and hence, they are joint family properties of plaintiffs and defendants No.1 to 7. The defendant No.1 has acquired the item No.1 and 2 of suit schedule properties in a partition entered between the

defendant No.1 and his brothers. After that, only for namesake, the said propertis were sold to P.S.Venkateshalu represented by his minor guardian Siddarathnamma for repayment of loan. Subsequently, the properties were purchased by brother of defendant No.1 by name T.Chinnaiah and his wife Nagamma. Again the defendant No.1 in order to take back his share in ancestral property has purchased the suit schedule item No.1 and 2 properties in the name of defendant No.2 from the income of joint family on 27.01.1992. From the date of purchase, the properties are in joint possession and enjoyment of plaintiffs and defendants No.1 to 7. Item No.3 of suit schedule 'A' properties are purchased in the name of defendant No.1 from the income of joint family through sale deed dated:06.08.1986 and accordingly, plaintiffs and defendants No.1 to 7 are having joint rights and possession over it. Plaintiffs and defendants have not partitioned the suit schedule properties till today. On 19.02.2016, when plaintiff No.4 submitted application for E.C., it came to know that the defendants No.1 and 3 have created sale deed in favour of defendant No.8 in respect of item No.3 of suit 'A' schedule property on 07.01.2016. No consent is taken from the plaintiffs for the alleged sale transaction. Hence, it is not binding on them. When the plaintiffs enquired the defendants No.1 to 3 about the said sale transaction, they gave evasive reply and refused to give share in the suit schedule properties. Hence, the present suit is filed. On these grounds, plaintiffs pray to decree the suit.

3. After registering the suit, summons was issued to the defendants. Defendants have appeared through their counsel. Defendants No.1 to 5, 7 & 8 have filed their written statement.

4. The defendant No.1 to 5 and 7 in their written statement have admitted their relationship with the plaintiff and denied all other averments of plaint. They have taken contention that father of defendant No.1 did not own any landed properties. Defendant No.1 was working a grazer of sheep and after his marriage with defendant No.2, they continued the same work for their livelihood and saved some money for their hard work and collected sheeps. They became large in number. Hence, from the income of defendant No.1, they purchased suit schedule item No.3 property through registered sale deed dated:06.08.1986 from one Obaiah. From the income of said property, defendants No.1 and 2 purchased the suit schedule item No.1 and 2 property in the name of defendant No.2 through sale deed dated:27.01.1992. Plaintiffs and defendants No.3 to 7 do not have any right in the suit schedule properties. The said properties are not ancestral and joint family properties of plaintiffs and defendants No.3 to 7. Defendants No.1 and 2 are absolute owners in possession and enjoyment of suit schedule properties. Defendants No.1 and 2 are suffering from old age ailments and hence, for their convenience and need of incurring medical expenses, they sold out the suit schedule item No.3 property to defendant No.8 through sale deed dated:07.01.2016. Accordingly, the defendant No.8 is in possession of it. On these grounds, defendants No.1 to 5 and 7 prays to dismiss the suit.

5. Defendant No.8 in his written statement has denied the averments of plaint and taken contention that the defendant No.1 had purchased the suit scheudle item No.3 property from his self earnings through sale deed dated:06.08.1986 and accordingly, he

was the absolute owner in possession and enjoyment of it. Defendants No.1 and 3 sold out the said property to defendant No.8 through sale deed dated:07.01.2016 for their family necessities and to repay loans for sale consideration of Rs.2,13,000/-. From the date of purchase, the defendant No.8 is the owner in possession and enjoyment of suit schedule item No.3 property. Except the defendant No.8, no one else including the plaintiffs and defendants have got any right over the suit schedule item No.3 property. Though the plaintiffs are having knowledge that it is the self acquired property of defendant No.1, they have filed this suit only to harass the defendant No.8. Defendant No.8 is bonafide purchaser of suit schedule item No.3 property. On these grounds, defendants No.8 prays to dismiss the suit.

6. Based on the pleadings of both the parties, the following issues have been framed:

- 1) Whether the plaintiffs proves that suit schedule properties are the ancestral and joint family properties of plaintiff and defendants No.1 to 7 and they are in joint possession with defendants?
- 2) Whether the plaintiffs further proves that the registered sale deed executed by defendant No.1 and 3 in respect of suit schedule item No.3 in favour of defendant No.8 dated:07.01.2016 is not binding upon their share?
- 3) Whether the plaintiffs are entitled the share in the suit schedule properties, if yes? To what extent?

- 4) Whether the defendants No.1 and 2 proves that item No.1 to 3 of suit properties have been purchased out of their own income and the suit properties are self acquired properties of defendants No.1 and 2?
- 5) Whether the defendant No.1 and 2 further proves that the court fee paid in the suit is in-sufficient?
- 6) Whether the defendant No.8 proves that he is the bona-fide purchaser for valuable consideration with notice?
- 7) Whether the plaintiffs are entitled the relief as sought for?
- 8) What Order or decree?

7. In order to prove the case of plaintiffs, they got examined plaintiff No.1 as P.W.1 and got examined one K.Krishnappa as P.W.2 and got marked 32 documents as Ex.P.1 to 32. On the other hand, defendants No.1 to 8 in support of their written statements got examined defendant No.3 as D.W.1 and defendant No.8 as D.W.2 and got marked 30 documents as Ex.D.1 to 30.

8. Heard arguments by learned counsel for plaintiffs and defendants. Perused the materials placed on record.

9. My findings to the above issues are as follows:

Issue No.1 : In partly affirmative

Issue No.2 : In negative

Issue No.3 : In partly affirmative

Issue No.4 : In partly affirmative

Issue No.5 : In negative

Issue No.6 : In affirmative

Issue No.7 : In partly affirmative

Issue No.8 : As per final order for the
following;

: REASONS :

10. **Issue No.1, 2, 4 & 6:** Since these issues are interrelated to each other, in order to avoid repetition of facts and discussion, they are taken up together for consideration.

11. It is the case of plaintiffs that the Plaintiffs and defendant No.1 to 7 were members of a Hindu undivided joint family and that the suit schedule properties were acquired from the income and nucleus of the joint family. According to the plaintiffs, the suit schedule properties are therefore joint family properties. It is further contended that Item No. 1 and 2 of suit schedule property were originally allotted to defendant No.1 under a partition entered into between defendant No.1 and his his brother. Thereafter, for the purpose of discharging certain loans, the said properties were nominally sold in favour of P. S. Venkateshalu represented by his minor guardian Siddharathnamma. Subsequently, the brother of defendant No.1 namely T. Chinnaya and his wife Nagamma allegedly purchased the said properties on behalf of defendant No.1 with an intention to preserve and restore share in ancestral property. Thereafter, item No.1 and 2 of the property were purchased in the name of defendant No.2 out of the income of the joint family. Plaintiffs further asserts that Item No.3 of the suit

schedule Property was purchased in the name of defendant No.1 through sale deed dated 06.08.1986 from and out of income of joint family. Therefore, according to the plaintiffs, they have joint right, title, interest and possession over the said property. It is also alleged that Defendant No.1 and 3 have subsequently created a sale deed in favour of defendant No.8 in respect of Item No. 3 of suit schedule property without obtaining the consent of the plaintiffs. Hence, plaintiffs contended that the said sale transaction is not binding on their alleged share in the suit schedule properties. As such, the plaintiffs claim that they are entitled to a legitimate share in the suit schedule properties.

12. As per Section 101 to 103 of Indian Evidence Act, it is the burden bestowed on the plaintiffs to prove their case. Even the legal maxim which reads as “*actori incumbit onus probandi*” also sheds more light in this aspect. It is settled preposition of Law that the plaintiff has to prove his case on his own strength and he cannot take advantage of weakness of the defendant’s case to succeed.

13. In order to substantiate the case of the plaintiffs, plaintiff No.1 herself stepped into the witness box and examined as P.W.1 by filing affidavit in lieu of oral examination in chief and in the affidavit of chief examination, he reiterated the averments of plaint. In support of oral evidence, he has produced 31 documents and marked them as Ex.P.1 to P.31 and one independent witness has been examined as PW2.

14. Per contra, Defendant No.1 to 7 have admitted the relationship between the plaintiffs and defendant No.1 to 7. However, they have specifically denied that the suit schedule

properties are not joint family properties. It is their contention that defendant No.1 was independently engaged in the occupation of grazing and rearing sheep. By his hard work and personal earning, he accumulated substantial savings and acquired a large number of sheep. According to the defendants, defendant No.1 purchased Item No. 3 of suit schedule property out of his self-earned income under a registered sale deed. Thereafter from the income generated from the said property and his independent earning, defendant No.1 and 2 purchased Item No.1 and 2 of suit schedule properties in the name of defendant No.2 under a registered sale deed dated 27.01.1992. The defendants further contended that the plaintiffs and defendant No.3 to 7 have got neither right, title nor interest in the suit schedule properties as the same are self-applied properties of defendant No.1 and 2. It is also their case that owing to old age and personal necessity defendant No.1 subsequently alienated Item No.3 of suit schedule property in favour of defendant No.8 under registered sale deed for valuable consideration. Hence, the plaintiffs and defendants No. 3 to 7 have no right and title in the suit schedule properties.

15. In order to substantiate the defence of defendants, defendant No.3 and 8 themselves stepped into the witness box and examined as D.W.1 and D.W.2 by filing affidavit in lieu of oral examination in chief and in the affidavit of chief examination, they reiterated the averments of written statement. In support of oral evidence, they have produced 30 documents and marked them as Ex.D.1 to D.30.

16. In the present case on hand, the documents produced by the plaintiffs namely the E.C which are marked at Ex.P2 and

P3 and the sale deed dated 26.09.1983 i.e. Ex.19 and the sale deed dated 07.02.1989 i.e., Ex.D20 and the sale deed dated 27.01.1992 i.e., Ex.P. 31, discloses that the defendant No.1 and his brothers had executed a sale deed in respect of Item No. 1 and Item No.2 of the suit schedule properties in favour of P. S. Venkateshalu represented by his minor guardian Siddarathnamma. Subsequently the very same properties were purchased by the defendant No.1's brother and his wife. Thereafter further sale deeds came to be executed in favour of defendant No.2 in respect of Item No.1 and 2 of the suit schedule properties. On the face of the documents, the properties appears to have been transferred for valuable consideration.

17. However, the evidence on record reveals a different picture. During the course of cross-examination, DW1 made material admission to the effect that Item No.1 and 2 originally belonged to the family of defendant No.1 and his brother and that the properties were conveyed in favour of P. S. Venkateshalu represented by his minor guardian Siddaratnamma, only for the purpose of discharging a loan. They further admitted that notwithstanding the execution of such document, defendant no.1 and his brother continued to cultivate and enjoy the properties. Their evidence further indicates that the properties were subsequently purchased in the name of defendant No.1's brother and his wife and later transferred to defendant No.2 only with an intention to preserve the family interest in the properties. The admission elicited from the defendants' witnesses Create a strong probability that the subsequent transactions were nominal in nature and that no real transfer of beneficial ownership was

intended.

18. It is pertinent to mention the relevant portion of deposition of DW1. It reads as follows:

“ನಮ್ಮ ೩ ಜನ ತಾತಂದಿರು ದಾವಾ ಆಸ್ತಿಗಳಾದ ೧೨೩, ೫೩ ರ ಆಸ್ತಿಗಳನ್ನು ಪಾಲು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ”

“೧ ಮತ್ತು ೨ ರ ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ದಾಸಪ್ಪ, ಸಣ್ಣಪ್ಪ, ಚಿನ್ನಪ್ಪ, ಕರಿಯಣ್ಣ ಮತ್ತು ನನ್ನ ೩ನೇ ತಾತ ಸಣ್ಣ ತಿಮ್ಮಣ್ಣ ರವರು ಪಿಎಸ್ ವೆಂಕಟೇಶಲು ತಂದೆ ಪಿ.ಟಿ.ಶ್ರೀರಾಮಲು ಮತ್ತು ಮೈನರ್ ಗಾರ್ಡಿಯನ್ ತಾಯಿ ಸಿದ್ದರಕ್ಕಮ್ಮ ರವರಿಗೆ ಅಡಮಾನ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಂತರ ಅವರುಗಳು ನಾಮಕಾವಸ್ತೆ ಕ್ರಯ ಪತ್ರ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಆದರೆ ನಮ್ಮ ಚಿಕ್ಕಪ್ಪ ನವರು ಮತ್ತು ನಮ್ಮ ತಂದೆಯವರು ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ಸಾಗುವಳಿ ಮಾಡಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿ. ಅದರಂತೆ ನಿಪಿ.೨ ರಂತೆ ಮುಟೇಶನ್ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸಾಲ ತೀರುವಳಿ ಮಾಡಿದ ನಂತರ ಟಿ. ಚಿನ್ನಯ್ಯ ತಂದೆ ಲೇಟ್ ಕುರಿ ತಿಮ್ಮಯ್ಯ ಮತ್ತು ಟಿ.ಚಿನ್ನಯ್ಯ ನ ಹೆಂಡತಿ ನಾಗಮ್ಮ ರವರು ಆಸ್ತಿಯನ್ನು ಹಿಂತಿರುಗಿ ಪಡೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಪಿಎಸ್. ವೆಂಕಟೇಶಲು ತಂದೆ ಪಿ.ಟಿ. ಶ್ರೀರಾಮಲು ಮತ್ತು ಮೈನರ್ ಗಾರ್ಡಿಯನ್ ತಾಯಿ ಸಿದ್ದ ರಕ್ಕಮ್ಮ ರವರಿಗೆ ಅಡಮಾನ ಮಾಡಿದ್ದರೂ ಸಹ ಆಸ್ತಿಗಳನ್ನು ನಾವು ಉಳುಮೆ ಮಾಡುತ್ತಿದ್ದೆವು ಎಂದರೆ ಸರಿ. ಟಿ. ಚಿನ್ನಯ್ಯ ರವರು ೧ನೇ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಒಟ್ಟು ೬ ಎಕರೆ ೪ ಗುಂಟೆಯಲ್ಲಿ ಖರಾಬು ತೆಗೆದು ಸಾಗುವಳಿ ಜಮೀನಿನ ವಿಸ್ತೀರ್ಣ ೫ ಎಕರೆ ೩೫ ಗುಂಟೆಯಲ್ಲಿ ಪಿಎಸ್. ವೆಂಕಟೇಶಲು ತಂದೆ ಪಿ.ಟಿ. ಶ್ರೀರಾಮಲು ಮತ್ತು ಮೈನರ್ ಗಾರ್ಡಿಯನ್ ತಾಯಿ ಸಿದ್ದರಕ್ಕಮ್ಮ ರವರಿಂದ ಟಿ. ಚಿನ್ನಯ್ಯ ನವರು ಖರೀದಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಟಿ.ಚಿನ್ನಯ್ಯ ರವರು ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಎಂದರೆ ಸರಿ. ದಾವಾ ೨ ನೇ ಆಸ್ತಿಯಲ್ಲಿ ೩ ಎಕರೆ ೧೦ ಗುಂಟೆ ಜಮೀನಿನಲ್ಲಿ ನಾಗಮ್ಮನ ಹೆಸರಿಗೆ ನಾಮಕಾವಸ್ತೆ ಕ್ರಯ ಪತ್ರ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ನಮ್ಮ ಚಿಕ್ಕಪ್ಪ ಮತ್ತು ಚಿಕ್ಕಮ್ಮ ನಾಗಮ್ಮ ಖರೀದಿಗೆ ಹಿಂತಿರುಗಿ ಪಡೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ”

“ದಾವಾ ೨ನೇ ಆಸ್ತಿಯು ೧ ಎಕರೆ ೨೫ ಗುಂಟೆ ಚಿನ್ನಪ್ಪ ನವರಿಗೆ ಮತ್ತು ೧ ಎಕರೆ ೨೫ ಗುಂಟೆ ದಾಸಪ್ಪನವರಿಗೆ ಭಾಗ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಆಸ್ತಿಗಳು ಮೂಲತಃ ವಾಗಿ ನನ್ನ ತಾತ ಕುರಿತಿಮ್ಮಯ್ಯ ನ ಹೆಸರಿಗೆ ಇರುತ್ತವೆ. ದಾವಾ ಆಸ್ತಿಗಳು ಎಲ್ಲರೂ ಪಾಲು ವಿಭಾಗ ಮಾಡಿಕೊಳ್ಳಲು ಆಗುವುದಿಲ್ಲ ಎಂದು ಟಿ. ಚಿನ್ನಯ್ಯ ಮತ್ತು ನಾಗಮ್ಮ ನವರು ಯಾವುದೇ ಪ್ರತಿಪಲವಿಲ್ಲದೇ ಈರಮ್ಮ ನವರ ಹೆಸರಿಗೆ ನಾಮಕಾವಸ್ತೆ ಕ್ರಯ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ”.

19. Further, PW2 is the brother of the defendant No.1 and also party to the transaction reflected in Ex.P19 and connected

sale deeds. He has adduced oral evidence regarding the true nature of the transaction. Being a participant in the transaction, he possesses direct knowledge of the circumstances under which the documents came to be executed. He has consistently deposed that the transactions were accepted only as a part of family arrangements and financial necessity and that no actual sale consideration passed under the subsequent sale deeds. Significantly nothing worthwhile has been elicited in his cross-examination to discredit his testimony or to establish that the transactions were genuine transfers supported by actual payment of consideration.

20. It is true that Section 91 and 92 of the Indian Evidence Act bar oral evidence to contradict the terms of a written document. However, it is equally well settled that oral and circumstantial evidence is admissible to prove that a document was never intended to be acted upon and was only a nominal or sham document. Though Sections 91 and 92 of Indian Evidence Act generally bar oral evidence against the contents of a written document, nevertheless where the issue relates to the real nature of the transaction and where surrounding circumstances, conduct of the parties and admission of the person having direct knowledge of the transaction indicate that document was merely a nominal or sham, the court is entitled to consider such evidence for determining the true character of the transaction. The present case squarely falls within the recognized exception, where oral and circumstantial evidence can be considered to determine the true nature and intention behind the document. In the present case, the defendants are not trying to vary the terms of the

document rather they are trying to prove that the real nature of the transaction was loan security and family arrangements and not a sale. This falls well within the exception to Section 91 and 92 of Evidence Act. The preponderance of probability strongly indicates that the document was executed only as a security of loan and family arrangements.

21. In the present case, the admission made by DW1 coupled with the cognate and consistent testimony of PW2 assumes considerable significance. The principal parties to the transactions namely defendant no.1 and 2 did not enter the witness box to explain the circumstances under which the sale deeds claim to be executed and during pendency of the proceedings both of them passed away. Consequently the evidence of PW2 and the admission of the defence witnesses remain unrebutted on material particulars. Therefore, upon an oral appreciation of the oral and documentary evidence on record, this Court is of the considered opinion that the subsequent sale deeds relating to Item No. 1 and 2 of suit schedule properties were only nominal transactions executed as part of the family arrangements and financial necessity. The evidence establishes that the properties did not lose their character as ancestral and joint family properties. Accordingly, item No. 1 and 2 of the suit schedule properties are held to be the ancestral and joint family properties of plaintiffs and defendant no. 1 to 7.

22. Insofar as Item No.3 of the suit schedule property is concerned, the plaintiffs have contended that the said property was purchased by the defendant No.1 from the income derived from the ancestral and joint family properties namely Item No.1

and 2 of the suit schedule property and therefore, it also partakes the character of the joint family property. However, the evidence available on record does not support such contentions.

23. It is significant to note that age of the children of defendant No.1 as disclosed in the cause title of the plaint, shows that at the time of acquisition of Item No.3 of the suit schedule property, the plaintiff No.4 and defendant No.5 had not even been born and defendant No.3 and 4 were minors. Therefore, it cannot be presumed that they had any independent source of income or had made any contribution towards the acquisition of the said property. Further, there is no material on record to establish that the joint family possessed a sufficient nucleus capable of generating income adequate for the purchase of Item No.3.

24. No doubt as discussed above Item No.1 and 2 of the suit suited properties have been held to be an ancestral and joint family properties. The oral evidence also discloses that the said properties were earlier mortgaged in connection with the loan transaction and that defendant no.1 and his brothers were jointly cultivating the same. However mere existence of an ancestor property does not automatically lead to a presumption that every property subsequently acquired by coparcener is a joint family property. The burden lies upon the plaintiffs to establish that the ancestral property constitutes a sufficient nucleus and that the income derived therefrom was capable of financing the acquisition in question. In the present case, no satisfactory evidence has been produced to show the extent of income generated from Item No.1 and 2 or that such income was sufficient to purchase Item No. 3.

25. On the contrary, in support of the contention of defendants, PW2 deposed that “ಅವರು ಕುರಿಗಳನ್ನು ಕಾಯ್ದು ಬಂದ ಹಣದಿಂದ ದಾವಾ ಸ್ವತ್ತುಗಳನ್ನು ಖರೀದಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ”

26. The evidence on record clearly establishes that defendant no.1 was independently engaged in the occupation of rearing and grazing sheep and was earning income from such avocation. The oral evidence consistently indicates that the defendant no.1 had accumulated savings through his independent earnings and possessed sufficient financial capacity to acquire property in his own. The defence evidence regarding the independent source of income of defendant no.1 has remained substantially unchallenged. Therefore, upon an oral appreciation of the oral and documentary evidence on record, this Court is of the considered opinion that the plaintiffs have failed to establish that Item No.3 of the suit schedule property was purchased from the income derived from the ancestral property or from any joint family nucleus. On the other hand, the evidence of PW2 satisfactorily establishes that the defendant no.1 had an independent source of income and sufficient means to acquire the property. Accordingly, item No.3 of the suit schedule property is held to be the self-acquired property of defendant No.1.

27. As discussed herein above, this Court has held that Item No.3 of suit schedule property is the self-acquired property of defendant no.1. Once the property is held to be the self-acquired property of defendant no.1, he had absolute right, title and interest over the same and was fully competent to deal with transfer or alienate the property in any manner recognized by law. It is not seriously disputed by the parties that during the lifetime of

defendant no.1 he has executed the registered sale deed in favour of defendant no. 8 in respect of Item No.3 of the suit property. The plaintiffs have challenged the said alienation and contended that the sale deed is not binding on their share in the property. However in view of the finding that Item No.3 is the self acquired property of defendant no.1, the plaintiffs cannot claim any right, title or interest therein. Consequently the question of title and transaction not being binding on the plaintiffs' share does not arise. Accordingly sale deed executed by the defendant no.1 in favour of defendant No.8 is held to be valid, legal and binding and defendant No.8 has acquired the valid right, title and interest under the said sale deed. Hence, this Court answers the **issue No.1 and 4 in partly affirmative, point No.2 in negative and point No.6 in affirmative.**

28. **Issue No.5:** The defendants have contended that the court fee paid by the plaintiffs is insufficient and that the suit has not been properly valued. The suit is filed for the reliefs of partition and separate possession by claiming joint possession over the suit schedule property. The valuation slip furnished by the plaintiffs discloses that the suit has been valued under the relevant provision of the Karnataka Court fee and Suit Valuation Act. The plaintiffs have specifically asserted that they are in joint possession of the suit schedule properties along with the defendants and has accordingly valued the suit under Section 35(2) of the Act. Pursuant thereto, the plaintiffs have paid a fixed court fee of Rs.15/- as prescribed under the said provision. Therefore, this court is of the considered opinion that the plaintiffs have properly valued the suit and have paid the requisite court fee

in accordance with law. The contention of the defendants regarding insufficient court fee and improper valuation is liable to be rejected. Hence, this court answers **issue No.5 in the negative.**

29. **Issue No.3 and 7:** Since these issues are interrelated to each other, in order to avoid repetition of facts and discussion, they are taken up together for consideration.

30. In view of the discussion made on the above issues, this Court is of the considered opinion that Item No.1 and 2 of the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendant No.1 to 5. The evidence on record established that the said properties retained their character as joint family properties and are therefore available for partition.

31. Admittedly the defendant No.1 had 5 children i.e. the husband /father of the plaintiff No.1 to 3, plaintiff no.4 and defendant No.3 to 5. As such the defendant No.1, 3 to 5 and branch of the predeceased son i.e. plaintiff No.1 to 3 and plaintiff No.4 are being co-parceners, have equal share in the item No.1 and 2 of suit properties. During the pendency of the suit, defendant No.1 was died intestate and his wife i.e. defendant No.2 also died. As such, the surviving members entitled to succeed to their interest are the plaintiffs and defendant No.3 to 5. Accordingly, the plaintiff No.1 to 3 are together entitle for 1/5th share and plaintiff no.4 and defendant No.3 to 5 are entitle for 1/5th share each in the item No.1 and 2 of the suit property. Further as already held while answering the preceding issue, item No.3 of the property is the self acquired property of Defendant No.1 and he had validly alienated Item No. 3 property in favour of

the defendant No.8 during his life. Accordingly, the plaintiffs are not entitled to any share in respect of Item No.3 of the suit schedule property. Hence, this Court answers **issue No.3 and 7 in partly affirmative.**

32. **Issue No.8:-** In view of aforesaid discussion and reasons on issue No.1 to 3, court proceeds to pass the following:-

ORDER

The suit of plaintiffs is partly decreed.

It is hereby declared that, the plaintiff No.1 to 3 are together entitled for 1/5th share and plaintiff No.4 and defendants No.3 to 5 are entitled for 1/5th share each in suit schedule item No.1 and 2 properties.

The defendants are directed to pay necessary Court fee to engross their shares.

No Order as to cost.

Draw preliminary decree accordingly.

Office is hereby directed to register FDP proceedings suo moto and put up after 30 days in terms of decisions of the Hon'ble Supreme Court of India in the matter of Kattukandi Edathil Krishnan and another V/s Kattukandi Edathil Valsan and others in Civil Appeal No.(S).6406-6407/2010 decided on 13.06.2022.

The plaintiff is directed to take necessary steps under Order XX Rule 18 of the Code of

Civil Procedure, 1908 for final Decree in the Final Decree Proceedings and further directed to furnish copy of Judgment and Preliminary Decree and other necessary documents for the purpose of Final Decree Proceedings.

The parties are directed to appear on 21.07.2026 without waiting for further notice from the Court.

(Dictated to the stenographer directly on computer, typed by him and corrected by me, then pronounced in the open Court on this the 05th day of June 2026)

(Hema .H.R.)
C/c Civil Judge & JMFC.,
Molakalmuru

ANNEXURE

I. Witnesses examined on behalf of plaintiff/s:-

P.W.1 : Lakshmid devi
P.W.2 : K.Krishnappa

II. Witness examined on behalf of defendant/s:-

D.W.1 : Thimmanna
D.W.2 : Gurukiran

III. Documents marked on behalf of plaintiff/s:-

Ex.P.1 : Genealogy tree
Ex.P.2 to 6 : Copy of encumbrance certificate
Ex.P.7 to 9 : Copy of mutation register extracts
Ex.P10 to 14: Copy of RTCs

Ex.P15 : Copy of sale deed dated:07.01.2016

Ex.P16 to 18: RTCs

Ex.P19 : Copy of sale deed dated:26.09.1983

Ex.P20 : Copy of sale deed dated:07.02.1989

Ex.P21 : Copy of sale deed dated:06.08.1986

Ex.P22 to 24: RTCs

Ex.P25 & 26: Death certificates

Ex.P27 : Genealogy tree

Ex.P28 to 30: RTCs

Ex.P31 &32 : Copy of sale deeds dated:27.01.1992

III. Documents marked on behalf of defendant/s:-

Ex.D.1 : Copy of partition deed 03.02.1995

Ex.D.2 : Copy of mutation register extract

Ex.D.3 to 8 : RTCs

Ex.D.9 : Copy of mutation register extract

Ex.D.10 : RTC

Ex.D.11 : Copy of sale deed dated:07.01.2016

Ex.D.12 : Mutation register extract

Ex.D.13 : Copy of order of Assistant Commissioner

Ex.D.14 : Copy of Order of Land Acquisition Officer

Ex.D.15 to 30 : RTCs

**C/c Civil Judge & JMFC.,
Molakalmuru**