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IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Smt.Aishwarya Chidanand Pattanshetti, B.COM, LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 30th day of January 2023.

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Plaintiff/s : O.D. Ramanna, S/o Late. Duggappa
Gowda, Aged about 60 years,
Agriculturist, R/o Oni Thota, Marithotlu
Village, Andagaru Post, Koppa Taluk.

(Represented by Sri. B.S.Naveen Rao, Adv.,)

V/S

Defendant/s : 1. Sri. Laxamanna, S/o Late. Duggappa
Gowda, Aged about 58 years,
Agriculturist, R/o Oni Thota,
Marithotlu Village, Andagaru Post,
Koppa Taluk.

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2. Sri. Ratanakar, S/o Late. Duggappa Gowda, Aged about 54 years, R/o Bharath Rice Mill Road, Koppa Post, Koppa.
3. Sri. Mohana, S/o Late. Duggappa Gowda, Aged about 52 years, Agriculturist, R/o Oni Thota, Marithotlu Village, Andagaru Post, Koppa Taluk.

(Represented by Sri. G.M. Vishwanatha, Adv.,)

Date of institution of the suit	:	14.7.2015		
Nature of the suit	:	Declaration, Partition, Permanent Injunction & Mesne Profits.		
Date of commencement of recording evidence	:	2.8.2021		
Date on which the judgment pronounced	:	30.1.2023		
Total duration	:	Year/s	Month/s	Days
		7	6	16



J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of declaration that the plaintiff is entitled for $\frac{1}{2}$ share in ‘A’ to ‘C’ suit schedule properties, partition of his $\frac{1}{4}$ th share in the ‘D’ suit schedule property, permanent injunction restraining the defendants, their men, agents, workmen or any other persons claiming through them from trespassing upon the suit ‘E’ to ‘H’ schedule properties or causing damage in any manner, for mesne profits, Court costs with such other reliefs fit to grant under the facts and circumstances of the case.

2. The brief facts of the plaintiff’s case are as follows:

It is averred that the plaintiff and the defendants are brothers and they are the sons of Late Duggappa Gowda and Late Smt Venkamma. The father of the plaintiff and defendants Duggappa

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Gowda died intestate on 23.9.1993 leaving behind the plaintiff and defendants and his wife Smt Venkamma as legal heirs. Their mother Smt. Venkamma also died intestate on 10.10.2014 by leaving behind the plaintiff and defendants as her legal heirs. It is stated that the plaintiff and the defendants have 6 sisters who are married and living separately.

It is stated that the joint family properties owned and acquired by Duggappa Gowda as Kartha of the family, was partitioned between the plaintiff, defendants and Duggappa Gowda through a registered partition deed bearing S.R. No 296/1982-83 registered at the office of the Sub-Registrar, Koppa. After the said partition deed, the father of the plaintiff retained an extent of 26 guntas of land situated in Sy.No. 31 of Marithotlu Village, Kasaba Hobli, Koppa Taluk. Further their father Duggappa Gowda has also retained khatha of the residential house property with two sheds in his share situated in Sy.No. 25 of Marithotlu Village, Kasaba

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Hobli, Koppa Taluk. The house property is described as suit schedule 'A' property and the two sheds are described as 'C' and 'D' properties and 26 guntas of garden land as 'D' schedule property. After the partition the khatha of the 'A' to 'D' schedule properties is mutated into the name of the father of the plaintiff as per the partition deed.

It is stated that after the partition though the plaintiff, defendants and their parents were enjoying their respective shares, but they all were jointly residing in a house i.e., 'A' suit schedule property and using the 'B' and 'C' schedule properties. That house was very old and a thatched house at the time of partition and was renovated by the plaintiff with his father in 1989 in the same place. It is stated that after the marriage of the plaintiff, the plaintiff, defendants and their parents used to have a common kitchen in the 'A' suit schedule property. It is stated that after 1½ years of the plaintiff's marriage due to some differences



between the family members, he started to live separately in the shed raised by him on the northern side of the house 'A' schedule property and also using the upstairs of 'A' schedule property and 'A' suit schedule property with 'B' and 'C' schedule properties. It is further alleged that in addition to the extended portion of the house, which was constructed by him, the plaintiff had also constructed two other sheds separately in Sy.No. 96 of the Marithotlu Village, which is situated in Government land and same is situated on the Northern side of the 'A' schedule property. The said two sheds are described as suit schedule 'E' and 'F' property. It is also alleged that except the plaintiff no one has the right over the suit schedule 'E' and 'F' properties. The plaintiff has carved out a kana in Sy No.25 in an extent of 4 guntas which is situated in the northern side of the suit schedule 'A' property and it is in exclusive possession and enjoyment of the plaintiff and the same is within the 'A' schedule property. It is stated that the Angala which forms the part of the 'A' schedule

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property is in joint enjoyment of the plaintiff and the defendants as from the date of partition, which is situated in the Eastern side of the 'A' schedule property, which is described as the 'G' and 'H' suit schedule properties.

The plaintiff has stated that in the said partition it is very specifically mentioned that the house retained by the father of the plaintiff for himself and after his death, his wife Smt.Venkamma was permitted to live in the house and it is specifically agreed between the parties that after the death of their parents the 'A' suit schedule property shall be retained by the plaintiff and the defendant No.3.

It is stated that the khatha of 'A' to 'C' suit schedule properties was standing in the name of the father of the plaintiff and the defendants till his death and after his death the khatha of the said properties was mutated into the name of Smt.Venkamma

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under the Pouthi Thakthe and was in joint enjoyment of the plaintiff and the defendant No.3.

The plaintiff has stated that their father Duggappa Gowda had narrated the Will clause in the partition deed, that the 'A' to 'C' suit schedule properties is to be divided by the plaintiff and the defendant No.3 only, leaving behind the plaintiff and the defendant No.3 as his heirs to succeed the 'A' to 'C' suit schedule properties.

The plaintiff has averred that their father died intestate with regard to 'D' suit schedule property, leaving behind the plaintiff and the defendants as his legal heirs and the said property is divisible between them equally. After the death of their mother Smt.Venkamma, the plaintiff made an application to the Marithotlu Grama Panchayath for change of khatha of 'A' , 'B' and 'C' schedule properties to an extent of ½ share to his name

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on the strength of the Will clause incorporated in the partition deed and the said recital was agreed by all of them. At that time the defendant No.3 has raised an objection and claimed that the khatha is to be mutated into his name only contending that their mother Smt.Venkamma has executed a Will and therefore the khatha has to be changed in his favour. On the basis of the said objections filed by the defendant No.3, the Marithotlu Grama Panchayath has rejected the application of the plaintiff. Thereafter, the defendant No.3 filed an application before the Tahasildar, Koppa Taluk to change the khatha of 'D' suit schedule property in his favour on the strength of the Will executed by their mother in his favour. And noticing the same immediately the plaintiff has filed his objections.

The plaintiff has stated that their mother had no such intention to dispose the property in any manner to anybody and she has not executed any such document. It is stated that after the death of

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their father, their mother was of feeble mind and she has succumbed to the defendant No.3 and executed a Will in his favour. It is stated that their mother had no right to execute a Will in favour of the defendant No.3 and the defendant No.3 did not derive any right over the suit schedule properties and the said Will is a created one. It is stated that it is only the plaintiff and the defendant No.3 are entitled to ½ share equally in the ‘A’ to ‘C’ properties by virtue of the clause in the partition deed. Further the plaintiff has stated that he has 1/4th share in the ‘D’ suit schedule property and he has claimed injunctive relief in respect of ‘E’ to ‘F’ suit schedule properties as he is in the exclusive possession of the same.

The cause of action arose on 26th June 2015 when the plaintiff received the notice from the office of Tahasildar, Koppa Taluk regarding the change of the khatha and rejection of the khatha by

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the Marithotlu Grama Panchayath within the jurisdiction of this Court.

3. After service of summons, the defendants appeared through their counsel and the defendant No.3 filed his written statement and the defendant No.1 and 2 filed a memo submitting to adopt the written statement of the defendant No.3.

4. In the written statement the defendants denied the averments made by the plaintiff except by admitting the relationship and also the execution of the registered partition deed amongst the family members of Duggappa Gowda and the retention of the properties as mentioned in the partition deed in the name of Duggappa Gowda till his death. It is contended that the 'A' schedule is a Thatched house, 'B' schedule is a Thatched kottige and 'C' schedule is a Thatched Cow Shed.

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5. The defendant No.3 has contended that the suit schedule 'A' to 'C' properties belong to him. It is contended that at the time of partition, 'A' to 'C' schedule properties were old thatched sheds which were in dilapidated condition and worth about Rs.5,000/- only. After the partition, the plaintiff and the defendant No. 1 and 2 started to live separately by looking after their properties which had fallen to their respective shares. But, the father and mother of the plaintiff and defendants were residing with the defendant No. 3 till their death and the defendant No. 3 was taking care of them. The defendant No.3 has contended that neither the plaintiff nor the defendant No. 1 and 2 ever looked after the father and mother of the plaintiff and defendants. The defendant No.3 has stated that as per the Will clause, all the schedule properties were got mutated to the name of Smt. Venkamma after the death of Sri Duggappa Gowda.

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6. The defendant No.3 has further contended that even though in the partition deed the properties were given to Smt. Venkamma as life interest, but she has got the absolute right after the death of her husband. The defendant No.3 has contended that Smt. Venkamma with great love and affection for him as he had taken care of her in her last days and since, her daughter by name Smt. Nagarathna who had come to her maternal home as her husband died and also since she had no source of income for her livelihood, their mother Smt.Venkamma has bequeathed the schedule properties in favour of the defendant No. 3 and Smt Nagarathna.

7. It is contended that Smt. Venkamma has bequeathed the schedule properties in favour of the defendant No. 3 and her daughter Smt. Nagarathna under Will which is registered on 8/11/2000 in S.R. No. 29/2000-01. Further, as per the Will dated 21/10/2005, Smt. Venkamma has changed her will and

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bequeathed the entire 'B' schedule property and 1/3rd portion of the 'C' schedule property in favour of the plaintiff and she had given the 2/3rd of the schedule property in favour of her other son i.e. defendant No. 1. In the said Will another Kottige is also being allotted to the defendant No. 1 which is measuring 3.64 x 2.43 meters, bearing assessment No. 35, SI. No. 36 of Marithotlu village. In the said will, Smt. Venkamma has allotted the property measuring 5.47 x 3.64 meter kottige bearing SL. No.34, assessment No.33, Khatha No.34 of Marithotlu Village Panchayath in favour of the defendant No.3. It is contended that Smt.Venkamma has also bequeathed the property bearing Khatha No. 32, Assessment No.31, SI.No. 32, measuring 11.24 x 10.94 meter new residential house with the upstairs in favour of the defendant No. 3 and her daughter Smt. Nagarathna jointly. All these sheds/kottige and residential house are situated in Sy.No.25 of Marithotlu village.

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8. The defendant No. 3 further contended that the property in Sy.No.31 of Marithotlu village measuring 26 guntas of garden land was already given to the Smt. Nagarathna and defendant No. 3 under the earlier will, dated 7/11/2000 bearing S.R. No.29/2000-01 which is alleged to be stated as 'D' schedule property in the plaint. Hence, the said property was not allotted in the second Will. Hence, to the extent of said 'D' schedule property, the earlier will holds good. The defendant No.3 further submits that, the old house allotted to the father of the plaintiff and defendants have collapsed long ago and the foundation is still existing in front of the present house. The alleged 'G' and 'H' properties are belonged to the defendant No. 3 and Smt. Nagarathna.

9. The defendant No.3 has contended that in the partition deed it is clearly stated that the old house and kottige are situated in Sy.No. 25 of Marithotlu Village. The defendant No.3 has

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contended that the other buildings which are constructed by him with his own efforts, are also included in the suit with an intention to grab the same.

10. The defendant No. 3 has stated that the plaintiff was previously residing at Narasipura village panchayath, wherein he has got a house which was granted to him under the Indira Awas Yojana. The defendant No.3 has contended that recently about one year back, at the time of repair of said house situated at Narasipura village, the plaintiff asked the defendant No.3 to give permission to reside in the upstairs portion of the house belonging to the defendant No. 3 and Smt. Nagarathna. On his request the defendant No. 3 has permitted the plaintiff to reside in a portion of said building. After the repair of his house at Narasipura Village, the defendant No. 3 has asked the plaintiff to vacate the upstairs portion, but he has dragged the matter on one

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or other pretext and now with malafide intention to have unlawful gain has filed this false suit.

11. The defendant No. 3 contended that, the defendant No. 1 has encroached about 6 acres of government land in Sy.No. 96 of Marithotlu Village and he has planted areca garden therein. The defendant No. 1 has invested his hard earned money for the development of the said encroached land and to knock off the said property the plaintiff has intentionally stated that he has constructed the house in the Sy.No. 96 which is absolutely false. The plaintiff intentionally stated that the schedule 'E' and 'F' properties are situated in Sy.No. 96 and he has constructed the said properties which are false and incorrect. The defendant No.3 has contended that deceased Duggappa Gowda and Smt.Venkamma had begotten total 10 children, 4 sons and 6 daughters. Hence, the daughters of Duggappa Gowda are also the necessary parties to this suit. If the properties left by the

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deceased Duggappa Gowda are to be partitioned, then all the sisters of the plaintiff and defendants have also got their equal right over the same. The defendant No. 3 contended that the two wills executed by Smt. Venkamma are valid and accordingly as per the will, the plaintiff and defendants and Smt.Nagarathna are allotted the properties and they have got right to change the khatha of the respective properties allotted in the will and also to enjoy their respective properties. The defendant No. 3 submits that, since the Wills are executed subsequent to the partition and also on the rights conferred in the partition, Smt. Venkamma has bequeathed the properties in favour of the plaintiff and defendants, accordingly the Wills executed by Smt. Venkamma are genuine and in accordance with law. Hence, neither the plaintiff nor the other defendants have got no manner of right, title or interest over the properties allotted to the defendant No. 3 and Smt. Nagarathna. It is further contended that the plaintiff has not given correct boundaries to the suit schedule properties and

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the suit is undervalued. Hence, by stating all these grounds the defendants have prayed to dismiss the suit with costs.

12. On the basis of above pleadings, my learned Predecessor has framed the following issues:

- 1) Whether the plaintiff proves that the suit schedule 'A' to 'D' properties are the joint family properties of the plaintiff and defendants?
- 2) Whether the plaintiff further proves that the plaintiff has acquired the right on suit schedule 'A' to 'C' properties as per the partition deed bearing S.R. No. 296/1982-83 ?
- 3) Whether the plaintiff is entitled for the relief of partition in the suit schedule 'D' property?
- 4) Whether the plaintiff further proves that he is in peaceful possession and enjoyment of suit schedule 'E' to 'H' properties?



- 5) Whether the plaintiff further proves that the defendants having no right, title or interest over the suit schedule 'E' to 'H' properties trying to interfere with the plaintiff's possession over the suit schedule 'E' to 'H' properties?
- 6) Whether the plaintiff is entitled for the relief of declaration?
- 7) Whether the plaintiff is entitled for the relief of demarcation of suit schedule 'A' to 'D' properties by the court commissioner as prayed in the plaint?
- 8) Whether the plaintiff is entitled for the relief of partition?
- 9) Whether the plaintiff is entitled for the relief of permanent injunction?
- 10) Whether the plaintiff is entitled for the reliefs as claimed in the plaint?
- 11) What order or decree?

13. In order to prove the case of the plaintiff, the plaintiff by name O.D. Ramanna has filed affidavit in lieu of chief examination U/O XVIII Rule 4 of CPC as PW 1 and reiterated

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the entire averments of the plaint and got marked the documents at Ex.P1 to P20. PW 1 was fully cross examined by the learned counsel for the defendants and at the time of cross examination of PW 1, Ex.D1 was marked on confrontation. On the other hand, the defendant No.3 by name Mohana has filed affidavit in lieu of chief examination U/O XVIII Rule 4 of CPC as DW 1 and reiterated the entire contentions of the written statement and documents Ex.D2 to 6 were marked. DW 1 was fully cross examined by the learned counsel for the plaintiff. The defendant No.2 by name O.D. Rathnakara has filed affidavit in lieu of chief examination U/O XVIII Rule 4 of CPC as DW 2 and reiterated the entire contentions of the written statement and identified his signatures on Ex.D4 to D6 which were marked as Ex.D4(a) to Ex.D6(a). DW 2 was fully cross examined by the learned counsel for the plaintiff.

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14. The defendants got examined one witness by name Vijendra S/o Chandrashekhar who has filed affidavit in lieu of chief examination U/O XVIII Rule 4 of CPC as DW 3 and reiterated the entire contentions of the written statement and identified his signature on Ex.D6 which was marked as Ex.D6(b). DW 3 was fully cross examined by the learned counsel for the plaintiff. On the completion of evidence on both sides the matter was posted for arguments.

15. Heard the arguments on both sides. Perused the documents on record.

16. My findings to the above issues are as under:

Issue No. 1 : In the negative.

Issue No. 2 :In the negative.

Issue No. 3 :In the negative.

Issue No. 4 : In the negative.

Issue No. 5 : In the negative.

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Issue No. 6 : In the negative.
Issue No. 7 : In the negative.
Issue No. 8 : In the negative.
Issue No. 9 : In the negative.
Issue No. 10 : In the negative.
Issue No. 11 : As per the final order
for the following;

REASONS

17. **Issue No. 1 to 3, 6 and 8** :- These issues are interconnected with each other, hence, they are taken up together for common discussion in order to avoid the repetition of same facts. In a suit for partition and separate possession, burden is heavily casted upon the plaintiff to prove the existence of joint family and that of the joint family properties. It is true that always presumption lies with Hindu family that it remains as joint unless the contrary is proved. The said presumption is a rebuttable presumption. But this presumption does not extend to the existence of the joint family properties. In view of this, the

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person who asserts about the existence of the joint family, he has to prove the same before this Court. They can rebut the said presumption by relying upon the materials placed on record or by relying upon his own evidence.

18. It is the specific case of the plaintiff that, the plaintiff and the defendants have constituted as Hindu Undivided joint family and that the joint family properties owned and acquired by Duggappa Gowda as Kartha of the family, was partitioned between the plaintiff, defendants and Duggappa Gowda through a registered partition deed bearing S.R. No 296/1982-83 registered at the office of the Sub-Registrar, Koppa. After the said partition deed, the father of the plaintiff retained an extent of 26 guntas of land situated in Sy.No. 31 of Marithotlu Village, Kasaba Hobli, Koppa Taluk. Further their father Duggappa Gowda has also retained khatha of the residential house property with two sheds in his share situated in Sy.No. 25 of Marithotlu Village, Kasaba

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Hobli, Koppa Taluk. The house property is described as suit schedule 'A' property and the two sheds are described as 'C' and 'D' properties and 26 guntas of garden land as 'D' schedule property. After the partition the khatha of the 'A' to 'D' schedule properties is mutated into the name of the father of the plaintiff as per the partition deed.

19. It is pertinent to note that the defendants have admitted the execution of the partition deed. As per Hon'ble Apex Court in **NAGINDAS RAMDAS V/s DALPATRAM ICHHARAM @ BRIJARAM AND ORS, 1974 AIR 471**, it is held that Admissions in pleadings or judicial admissions, admissible under Sec.58 of Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. Hence, admissions in the written statement by the defendants are considered as judicial admissions.



20. It is stated that after the partition though the plaintiff, defendants and their parents were enjoying their respective shares, but they all were jointly residing in a house i.e., 'A' suit schedule property and using the 'B' and 'C' schedule properties. That house was very old and a thatched house at the time of partition and was renovated by the plaintiff with his father in 1989 in the same place. It is stated that after the marriage of the plaintiff, the plaintiff, defendants and their parents used to have a common kitchen in the 'A' suit schedule property. It is stated that after 1½ years of the plaintiff's marriage due to some differences between the family members, he started to live separately in the shed raised by him on the northern side of the house 'A' schedule property and also using the upstairs of 'A' suit schedule property and 'A' suit schedule property with 'B' and 'C' schedule properties. It is further alleged that in addition to the extended portion of the house, which was constructed by him, the plaintiff had also constructed two other sheds separately in Sy.No. 96 of

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the Marithotlu Village, which is situated in Government land and same is situated on the Northern side of the 'A' schedule property. The said two sheds are described as suit schedule 'E' and 'F' property. It is also alleged that except the plaintiff no one has the right over the suit schedule 'E' and 'F' properties. The plaintiff has carved out a kana in Sy No.25 in an extent of 4 guntas which is situated in the northern side of the suit schedule 'A' property and it is in exclusive possession and enjoyment of the plaintiff and the same is within the 'A' schedule property. It is stated that the Angala which forms the part of the 'A' schedule property is in joint enjoyment of the plaintiff and the defendants as from the date of partition, which is situated in the Eastern side of the 'A' schedule property, which is described as the 'G' and 'H' suit schedule properties.

21. The plaintiff has stated that in the said partition it is very specifically mentioned that the house retained by the father of the

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plaintiff for himself and after his death his wife Smt.Venkamma was permitted to live in the house and it is specifically agreed between the parties that after the death of their parents the 'A' suit schedule property shall be retained by the plaintiff and the defendant No.3.

22. It is stated that the khatha of 'A' to 'C' suit schedule properties was standing in the name of the father of the plaintiff and the defendants till his death and after his death the khatha of the said properties was mutated into the name of Smt.Venkamma under the Pouthi Thakthe and was in joint enjoyment of the plaintiff and the defendant No.3.

23. The plaintiff has stated that their father Dugappa Gowda had narrated the Will clause in the partition deed, that the 'A' to 'C' suit schedule properties is to be divided by the plaintiff and the defendant No.3 only, leaving behind the plaintiff and the

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defendant No.3 as his heirs to succeed the 'A' to 'C' suit schedule properties. The plaintiff has averred that their father dies intestate with regard to 'D' suit schedule property, leaving behind the plaintiff and the defendants as his legal heirs and the said property is divisible between them equally. After the death of their mother Smt.Venkamma, the plaintiff made an application to the Marithotlu Grama Panchayath for change of khatha of 'A' , 'B' and 'C' schedule properties to an extent of ½ share to his name on the strength of the Will clause incorporated in the partition deed and the said recital was agreed by all of them. At that time the defendant No.3 has raised an objection and claimed that the khatha is to be mutated into his name only contending that their mother Smt.Venkamma has executed a Will and therefore the khatha has to be changed in his favour. On the basis of the said objections filed by the defendant No.3, the Marithotlu Grama Panchayath has rejected the application of the plaintiff. Thereafter, the defendant No.3 filed an application before the

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Thahasildar, Koppa Taluk to change the khatha of 'D' suit schedule property in his favour on the strength of the Will executed by their mother in his favour. And noticing the same immediately the plaintiff has filed his objections.

24. Ex.P1 is the certified copy of the partition deed dated 16.12.1982. Ex.P2 is the RTC of the year 2014-2015 pertaining to Sy. No.31 measuring 26 guntas standing in the name of Smt.Venkamma W/o Duggappa Gowda which is the 'D' suit schedule property. The mode of possession is mentioned as MR-11/2000-01 on basis of Pouthi. Ex.P3 is the certified copy of the Assessment. Ex.P4 is the Electricity Bill. Ex.P5 is the true copy of the objections given to the Marithotlu Grama Panchayath given by the defendant No.3 in respect of the Khatha change in favour of the plaintiff. Ex.P6 is the notice dated 30.5.2015 given by the Thahasildar, Koppa Taluk to the plaintiff to appear before them and produce documents as the objections have been filed by

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Smt.Nagarathamma and Sri.Mohana. Ex.P7 is the photograph of 'B' suit schedule property. Ex.P8 is the photograph of 'G' suit schedule property. Ex.P9 is the photograph of 'C' suit schedule property. Ex.P10 is another photograph of 'G' suit schedule property. Ex.P11 is another photograph of 'B' suit schedule property. Ex.P12 is the photograph of 'G' suit schedule property. Ex.P13 is the photograph of 'A' suit house schedule property. Ex.P14 is the photograph of 'A' and 'B' suit schedule properties. Ex.P15 is the photograph of 'E' suit schedule property. Ex.P16 and P17 are the photographs of 'F' suit schedule property and Ex.P18 is the CD. Ex.P19 is the endorsement, dated 9.2.2015 given by the Marithotlu Grama Panchayath to the plaintiff in respect of the objections dated 25.1.2015 filed by the defendant No.3. Ex.P20 is the true copy of the Resolution of the Marithotlu Grama Panchayath.

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25. PW 1 in his cross examination has stated that as per the Hissa pathra his survey number comes in Sy. No. 32. PW 1 has admitted that apart from it no other Survey number has come to him. PW 1 has stated that he has filed this suit in respect of Sy. No.25. PW 1 has stated that Ramanna and Mohana have got hissa/share in Sy. No.25. PW 1 has admitted that no share came to his father in Sy. No.25 . PW 1 has admitted that the house and kottige made by his father in Sy. No.25 is the land which came to the share of Mohana. PW 1 has admitted that the Grass Shed is having mud floor/ground and walls made of mud. PW 1 has admitted that there is no Government land adjacent to the house constructed by him in Sy. No.25. PW 1 has admitted that he was given more property than the others in the family. PW 1 has admitted that as per Sy. No.32 there are no Government lands around it. PW 1 has admitted that in Sy. No.25 E,F,D,H suit schedule properties are not his. PW 1 has stated that he has no documents to show the boundaries of those kind. PW 1 has

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admitted that the Grama Panchayath has not given Assessment of that kind. PW 1 has admitted that Ex.P8 to P17 photographs are related to Mohana.

26. PW 1 in the relevant portion of his cross examination has stated;

"ನರಸೀಪುರದಲ್ಲಿ ಸರ್ವೆ ನಂಬರ್ 21 ರಲ್ಲಿ ನಿಮಗೆ ಮನೆ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಮನೆ ನಿಮಗೆ ಸರ್ಕಾರದಿಂದ ಹಿಸ್ಸೆ ಪತ್ರವಾದ ನಂತರ ಮಂಜೂರಾದ ಮನೆ ಎಂದರೆ ಸರಿ. ನಿಮಗೆ ಹಿಸ್ಸೆಯಾಗಿರುವುದು 1982-83 ನೇ ಸಾಲಿನಲ್ಲಿ ಎಂದರೆ ಸರಿ. ಸದರಿ ಹಿಸ್ಸೆಯಾದ ನಂತರ ನಿಮಗೆ ವಾಸಕ್ಕೆ ಮನೆಯಿರುವುದಿಲ್ಲ ಎಂದು ನೀವು ಆಶ್ರಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ಅರ್ಜಿಯನ್ನು ಕೊಟ್ಟು ಮನೆಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೀರಿ ಎಂದರೆ ಸರಿ, ಸದರಿ ಆಶ್ರಯ ಯೋಜನೆಯ ಹಕ್ಕುಪತ್ರವನ್ನು ಸಾಕ್ಷಿಗೆ ತೋರಿಸಲಾಗಿದ್ದು ಸಾಕ್ಷಿಯು ಅದನ್ನು ನೋಡಿ ಒಪ್ಪಿಕೊಂಡಿದ್ದರಿಂದ ಅದನ್ನು ನಿಡಿ.1 ಎಂದು ಗುರುತಿಸಲಾಯಿತು".

27. PW1 has stated that he has taken loan from the Grama Panchayath to construct a house. PW 1 has admitted that he has given the original copy to the Grama Panchayath. But he has

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denied that he has written and given that he is residing in that house itself. PW 1 has admitted that the house sanctioned by the Government cannot be given on rent or mortgage. To the suggestion that as per the Government Rules, the persons having a house cannot construct another house, PW 1 has answered that they are allowed to construct a shed/ಕೊಟ್ಟಿಗೆ . PW 1 has admitted that his ration card and the ration card of his brothers has become different. To the suggestion that his voter list is in Narasipura, PW 1 has answered that earlier it was in Narasipura but now it is in the Marithotlu Grama Panchayath. PW 1 has denied that he is residing in Narasipura Village and not in Marithotlu.

28. PW 1 has admitted that he is not having any documents to show that he and his father had constructed the said house. PW 1 has denied that he went to Narasipura in 1992-93 and has constructed a new house and resided over there. PW 1 has stated

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that he has constructed the house in Narasipura when the construction of houses under the Indira Awas Yojane was introduced. PW 1 has admitted that the Indira Awas Yojane was introduced in the year 1992-93. PW 1 has stated that his father passed away in the year 1993. PW 1 has admitted that after his father died, he had given an application that the house should come to his name as per the Hissa. PW 1 has stated that an endorsement was given that the house cannot be made into his name as the land was in the name of Mohana and to pursue the matter in the Court. PW 1 has admitted that after such information he has filed this suit after 13-14 years. PW 1 has stated that his elder sister's name is Nagarathnamma. PW 1 has admitted that a Will has been made in her name and in the name of her son. PW 1 has stated that he has filed objections to the Will made by his mother.



29. PW 1 has admitted that he has filed objections that the said Will is not correct. PW 1 has admitted that Nagarathnamma was married and her husband passed away. PW 1 has admitted that no property is given to her from their house. PW 1 has admitted that as per the Will, Sy. No 31 measuring 26 guntas has come to Mohana. But he has denied that it is written in the partition that the said property should go to his wife after his death. PW 1 has admitted that as per the Partition deed after the death of Duggappa Gowda it should go to his wife and afterwards it should go to Mohana and Ramanna. PW 1 has admitted that after the death of Duggappa Gowda the khatha of that house was made into the name of his wife. PW 1 has stated that it is false that afterwards she executed the Will in favour of Mohana and Nagarathnamma.

30. PW 1 has admitted that he has obtained an order from the Panchayath to go to the Court. PW 1 has admitted that his

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father and mother were illiterates. PW 1 has stated that he does not know Sunkurdi Jagadeesh of the Somalapur Village. PW 1 has stated that he knows Kagalagodu Chandrashekhara of Narasipura. PW 1 has admitted that his mother Venkamma has given Sy. No.32 measuring 26 guntas and house in Sy. No.25 standing in her name to Mohana and Nagarathamma through a Will. PW 1 has denied that though he knew all these facts, he did not make any objections before filing of this suit. PW 1 has denied that as per the another Will of the year 2005-06, another house was written in favour of Mohana.

31. PW 1 has stated that he has filed an application in respect of his Khatha land to the Tahasildar and the order is passed in his favour and he has produced the same before the Court. PW 1 has admitted that the suit schedule 'G' and 'H' properties are together. PW 1 has denied that the said properties are completely related to Mohana and he has no right in the said property. To the

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suggestion that the house seen in the Partition deed/ಹಿಸ್ಸಾ ಪತ್ರ had collapsed and even today it is in the same state, PW 1 has answered that he is residing in the same house. To the suggestion that Sy.No.96 is completely in the possession of the defendant No.1 and he has put Arecanut and Coffee, PW 1 has answered that he is very far from his Kottige. To the suggestion that the defendant No.1 has 3 guntas of land in Sy. No.96, PW 1 has answered that he has it at a different place. To the suggestion that a house is there adjacent to the land encroached by the defendant No.1, PW 1 has answered that it is far.

32. PW 1 has denied that he was not sanctioned any land by the Government in Sy. No.96 and he has not given any application. PW 1 has admitted that there is no khatha in his name in respect of Sy. No. 96, but he has it for the Kottige. PW 1 has stated that O.D.Rathankara is his younger brother. PW 1 has stated that he does not know that O.D.Rathankara has signed two Wills. PW 1



has admitted that apart from him no one has asked for share in his father's property. PW 1 has denied all the other formal suggestions put forth by the learned counsel for the defendants.

33. Ex.D1 is the Niveshana Hakku Pathra marked on confrontation at the time of cross examination of PW 1. The defendants have produced documents from Ex.D2 to Ex.D6. ExD2 is the RTC of the year 2014-2015 pertaining to Sy.No.31 measuring 26 guntas standing in the name of Smt. Venkamma W/o Duggappa Gowda and the mode of possession is mentioned as MR-11/2000-01 on the basis of pouthi. Ex.D3 is the RTC of the year 2014-2015 pertaining to Sy.No.25 P1 measuring 1 acre 19 guntas standing in the name of Mohana S/o Duggappa Gowda and the mode of possession is mentioned as MR-85/KLR. Ex.D4 is the Partition Deed dated 16.12.1982 which was executed in between the plaintiff and the defendants and their father late Duggappa Gowda. Ex.D5 is the original Registered Will dated

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7.11.2000 and Ex.D6 is the original unregistered Will dated 21.10.2005 which are alleged to have been executed by Smt.Venkamma.

34. DW 1 has admitted that there was a partition between his father and Lakshmana. DW 1 has stated that he knows the contents of Ex.D4. DW 1 has admitted that as per Ex.D4 the house has come to the share of Duggapa Gowda. DW 1 has admitted that the number of the said house is 37 and Assessment Number is 32. DW 1 has admitted that on its Eastern side the land belonging to Mohana in Sy.No.25 is there. DW 1 has admitted that in the same way a Government land is there in the Western portion. DW 1 has denied that on the Northern side the land of Ramanna is there and volunteered and stated that there is land of T.S Ramesh, Sy. No.24. DW 1 has stated that the land of Ramesh is 10 feet away from the said house and there is no kana/ಕಣ in the western side of the said house. DW 1 has admitted

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that the said house is having a length of 45 feet and width of 12-13 feet. DW 1 has admitted that no sheet is put in the front portion of the said house and the said house is a Mangalore tiled house/ಹೆಂಚಿನ ಮನೆ and it is having a top house/ ಉಪ್ಪರಿಗೆ ಮನೆಯಾಗಿರುತ್ತದೆ.

35. DW 1 has denied that Ramanna is residing in the half portion of the said house after his marriage. DW 1 has admitted that the plaintiff is the elder than all of them. DW 1 has admitted that after marriage the plaintiff was living separately. DW 1 has denied that after Ramanna started to live separately and their father and Ramanna were residing in the same house after dividing it into two portions. To the suggestion that it was written in the Partition deed that one portion must be given to Ramanna, as the plaintiff and their father were residing in the same house in two portions, DW 1 has answered no.



36. DW 1 has admitted that after the death of their father the khatha of Sy. No.31 was changed into the name of their mother. DW 1 has admitted that after the death of their mother, they went to the Tahasildar's Office and produced the Will and gave an application to change the khatha into their name. DW 1 has admitted that when they gave an application of that kind, Ramanna filed objections stating that their mother had not executed any Will and that the khatha should not be changed.

37. DW 1 has admitted that the Tahasildar told that the matter should be decided in the Civil Court and continued the said khatha in the name of their mother. DW 1 has admitted that they have not filed any suit before the Civil Court challenging the said order of the Tahasildar or the Will. DW 1 has admitted that in the same way, they produced another Will before the Marithotlu Grama Panchayath and filed an application to make the khatha. DW 1 has admitted that even at that time Ramanna filed



objections stating that their mother had not executed any Will and that the khatha should not be changed.

38. In the relevant portion of cross examination of DW1:

"ರಾಮಣ್ಣನವರು ತಕರಾರನ್ನು ಸಲ್ಲಿಸಿದ ದಿನದಿಂದಲೂ ನಾನು ವಿಲ್ ನ ಆಧಾರದ ಮೇಲೆ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ರುಜುವಾತು ಪಡಿಸಲು ಹಾಗೂ ಹಕ್ಕು ಮಂಡಿಸಲು ಯಾವುದೇ ದಾವೆಯನ್ನು ಸಲ್ಲಿಸಿರುವ ಬಗ್ಗೆ ನನಗೆ ಏನೂ ಗೊತ್ತಿಲ್ಲ.

ನಿಡಿ.1 ನಾನು ಹಾಜರುಪಡಿಸಿರುವ ದಾಖಲೆ ಕಲರ್ ಚೆರಾಕ್ಸಿನಲ್ಲಿದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ದಾಖಲೆಯ ಮೂಲಪ್ರತಿ, ವಾದಿ ರಾಮಣ್ಣನವರ ಹತ್ತಿರ ಇದೆ. ಸದರಿ ದಾಖಲೆಯನ್ನು ಪಂಚಾಯಿತಿಯವರು ನನಗೆ ನೀಡಿರುತ್ತಾರೆ. ಸದರಿ ದಾಖಲೆ ಪಡೆದುಕೊಳ್ಳಲು ನಾನು ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೇನೆ , ಆದರೆ ದಿನಾಂಕ ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ದಾಖಲೆ ಮೇಲೆ ಪಂಚಾಯಿತಿಯವರ ಸೀಲ್ ಹಾಗೂ ಸಹಿ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ದಾಖಲೆಯನ್ನು ನಾನು ಖುದ್ದಾಗಿ ತಯಾರಿಸಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.



ನಿಡಿ.1 ಅನ್ನು ನಾನು ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡು ವಾದಿಯವರ ಹಕ್ಕನ್ನು ಚ್ಯುತಿ ಮಾಡಲು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ಪಂಚಾಯಿತಿಯವರು ಸದರಿ ನಿಡಿ. 1 ಅನ್ನು ಕಲರ್ ಜೆರಾಕ್ಸ್‌ನ್ನು ಕೊಟ್ಟಿರುವ ಬಗ್ಗೆ ನೀವೇನಾದರೂ ನಿಮ್ಮ ವಕೀಲರಿಗೆ ಮಾಹಿತಿ ನೀಡಿರುತ್ತೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ನನಗೆ ಗೊತ್ತಿರಲಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಸದರಿ ದಾಖಲೆಯನ್ನು ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡು ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಮೂಲ ಪ್ರತಿ ಎಂದು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ನಿಮ್ಮ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಗ್ರಾಮ ಪಂಚಾಯಿತಿಯವರು ಪ್ರಮಾಣೀಕರಿಸಿ ನೀಡಿರುವ ದಾಖಲೆಯನ್ನು ನೀಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ.

ಸರ್ವೆ ನಂಬರ್ 31 ಈಗಲೂ ಸಹ ನನ್ನ ತಾಯಿಯ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ತಾಯಿಯವರು ಪೌತಿಯಾದ ನಂತರ ಸರ್ವೆ ನಂಬರ್ 31 ಹಾಗೂ ಮನೆಗಳು ನನಗೆ ಹಾಗೂ ರಾಮಣ್ಣನವರಿಗೆ ಸಮಾನವಾಗಿ ಹಂಚಿಕೆಯಾಗಬೇಕು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಮ್ಮ ತಂದೆಯವರು ಪೌತಿಯಾದ ನಂತರ ಹಿಸ್ಸಾ ಪತ್ರದ ಪ್ರಕಾರ ದಾವಾ ಸ್ವತ್ತಿನ ಮನೆಯಲ್ಲಿ ರಾಮಣ್ಣನವರಿಗೆ ಒಂದು ಭಾಗ ಕೊಟ್ಟಿರುತ್ತಾರೆ ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿ ಹಳೆಯ ಮನೆಯಲ್ಲಿ ಕೊಟ್ಟಿರುತ್ತಾರೆ ಎನ್ನುತ್ತಾರೆ.



ಹಿನ್ನಾ ಪತ್ರದಲ್ಲಿ ಹಳೆ ಮನೆ ಎಂದು ಬರೆದಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಮನೆ ಎಂದು ಮಾತ್ರ ಬರೆದಿರುತ್ತಾರೆ ಎನ್ನುತ್ತಾರೆ. ಹೊಸ ಮನೆಯನ್ನು ನಾನು 2000 ದ ಇಸವಿಯಲ್ಲಿ ಕಟ್ಟಿರುತ್ತೇನೆ. ಸದರಿ ಹೊಸ ಮನೆಯ ಖಾತೆಯು ನನ್ನ ತಾಯಿಯ ಹೆಸರಿನಲ್ಲಿತ್ತು. ಸದರಿ ಮನೆಯನ್ನು ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಕಟ್ಟಿರುತ್ತೇನೆ. ನಾನು ಪಂಚಾಯತಿಯಿಂದ ಪರವಾನಿಗೆಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ , ನ್ಯಾಯಾಲಯಕ್ಕೆ ಸದರಿ ಪರವಾನಿಗೆಯನ್ನು ಹಾಜರುಪಡಿಸಲು ನನಗೆ ಯಾವುದೇ ತೊಂದರೆಯಿಲ್ಲ. ಸದರಿ ಪರವಾನಿಗೆಯನ್ನು ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಕೊಟ್ಟಿರುತ್ತಾರೆಯೇ ಅಥವಾ ನಮ್ಮ ತಾಯಿಯ ಹೆಸರಿನಲ್ಲಿ ಕೊಟ್ಟಿರುತ್ತಾರೆಯೇ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಗ್ರಾಮ ಪಂಚಾಯತಿಯವರಿಗೆ ಲೈಸೆನ್ಸ್ ಶುಲ್ಕವನ್ನು ಹಾಗೂ approved plan ಗೋಸ್ಕರ ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಕೊಟ್ಟಿರುತ್ತೇನೆ.

ನಾನು ಪಂಚಾಯತಿಯವರಿಗೆ ಕಟ್ಟಿರುವ ಲೈಸೆನ್ಸ್ ಶುಲ್ಕ, ಲೈಸೆನ್ಸ್ ಹಾಗೂ approved plan ಅನ್ನು ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರುಪಡಿಸಬಹುದು”.

39. DW 1 in his further cross examination has admitted that the Partition Deed was done with consent in between his father and the remaining family members in the year 1982. DW 1 has

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admitted that the boundaries of the properties taken by them were mentioned in the Partition Deed. DW 1 has admitted that all are in the possession and enjoyment of their shares as per the boundaries mentioned in the said Partition Deed.

40. DW 1 has stated that his father died within the year 2000. DW 1 has admitted that his father before his death had not executed any kind of documents to transfer the properties which had come to his share. DW 1 has denied that Ramanna is in possession and enjoyment of one portion and upper portion/ಮಹಡಿ ಭಾಗ in the 'A' suit schedule property from the time of his father. DW 1 has denied that in the left side of the front portion of the house his father had done a Kana/ಕಣ. DW 1 has denied it is mentioned about the said Kana/ಕಣ in the Partition Deed. DW 1 has denied that there are total 7 Kottige/ಕೊಟ್ಟಿಗೆಗಳು around the said house. DW 1 has volunteered and stated that 3 Kottige/ಕೊಟ್ಟಿಗೆಗಳು. DW 1 has admitted that they have no

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objections to the Kana/ಕಣ done by Ramanna. DW 1 has admitted that he has done survey of his Sy. No.25, measured it and fixed the boundaries. DW 1 has admitted that no khatha is done on his name any other land apart from Sy.No.25 measuring 1 acre 19 guntas. DW 1 has stated that he does not know if a whitener has been put and corrections are done on the date in Ex.D6. DW 1 has denied all the other formal suggestions put forth by the learned counsel for the plaintiff.

41. DW 2 in his cross examination has stated that he was told by his mother to sign as a witness. DW 2 has stated that he was residing together with his mother till the year 2005. DW 2 has stated that there is no ration card to show that he and his mother were residing together. DW 2 has stated that he is living in Koppa since 15-18 years. DW 2 has stated that he is staying in his own house and it is constructed since 16-17 years back. DW

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2 has admitted that he has started to reside at Koppa after the said house was constructed.

42. DW 2 in the relevant portion of his cross examination has stated;

"ಕುಟುಂಬದಲ್ಲಿ ಆಗಿರುವ ಹಿಸ್ಸಾ ಪತ್ರದಲ್ಲಿರುವ ಅಂಶಗಳು ಹಾಗೂ ಒಕ್ಕಣೆ ನನಗೆ ಗೊತ್ತಿವೆ ಹಾಗೂ ಅವುಗಳನ್ನು ಓದಿ, ತಿಳಿದುಕೊಂಡು, ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಹಿಸ್ಸಾ ಪತ್ರದಲ್ಲಿ ಬರೆದಿರುವ ಒಕ್ಕಣೆ ಪ್ರಕಾರ ನಾವು ಹಿಸ್ಸಾ ಮಾಡಿಕೊಂಡು ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿ ಇದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ಯಾವ ಯಾವ ಸ್ವತ್ತುಗಳನ್ನು ಹಿಸ್ಸಾ ಮಾಡಿರುತ್ತಾರೆ ಅವುಗಳನ್ನು ಸದರಿ ಹಿಸ್ಸಾ ಪತ್ರದಲ್ಲಿ ನಮೂದು ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಹಿಸ್ಸಾ ಪತ್ರದಲ್ಲಿ ನನ್ನ ತಂದೆಯವರ ವಾಸದ ಮನೆ ಬಂತು ಎಂದರೆ ಸರಿ. ಅದನ್ನು ಈ ದಾವೆಯಲ್ಲಿ "ಎ" ಶೆಡ್ಯೂಲ್ ಆಸ್ತಿ ಎಂದು ನಮೂದಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಿಡಿ.4 , ಹಿಸ್ಸಾ ಪತ್ರದ ಪ್ರಕಾರ ದುಗ್ಗಪ್ಪ ಗೌಡರಿಗೆ ವಾಸದ ಮನೆ, ಕೊಟ್ಟಿಗೆ, ಅಂಗಳ ಬಂದಿರುತ್ತದೆಹಾಗೂ ಅವರ ಮರಣಾನಂತರ ಅದನ್ನು ಅವರ ಪತ್ನಿ , ಅವರ ಮರಣಾನಂತರ ಈ ಮನೆಯನ್ನು 5 ನೇ ಹಿಸ್ಸೆದಾರರಾದ ಮೋಹನ್ ಹಾಗೂ ರಾಮಣ್ಣ ಅವರಿಗೆ ಬರಬೇಕು ಎಂದು ನಮೂದಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಹಿಸ್ಸಾ ಪತ್ರಕ್ಕೆ ನಾನು, ನನ್ನ ತಂದೆ ಹಾಗೂ ನಾವೆಲ್ಲ ಗಂಡುಮಕ್ಕಳು ಸಹಿ ಮಾಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿ. ನಮ್ಮ ತಾಯಿಗೆ ಅವರ ಜೀವಿತ ಅವಧಿಯವರೆಗೂ



ಸದರಿ ಮನೆಯಲ್ಲಿ ವಾಸವಿರಲು ಹಕ್ಕು ಇತ್ತು ಎಂದರೆ ಸರಿ. ನನ್ನ ತಾಯಿಗೆ ಸದರಿ ಹಿನ್ನಾ ಪತ್ರದಲ್ಲಿ ಯಾವುದೇ ಸ್ವತ್ತು ಕೊಟ್ಟಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ತಂದೆ ತಾಯಿಯವರು ಮನೆ ಹಾಗೂ ಜಮೀನನ್ನು ಇಟ್ಟುಕೊಂಡು ಮಿಕ್ಕಿದ್ದನ್ನು ಮಕ್ಕಳಿಗೆ ಹಂಚಿರುತ್ತಾರೆ. ನನ್ನ ತಾಯಿಯವರು ಆಸ್ತಿಯನ್ನು ಇಟ್ಟುಕೊಂಡಿರುವ ಬಗ್ಗೆ ವಿಭಾಗ ಪತ್ರದಲ್ಲಿ ಬರೆದಿರುತ್ತದೆಯೇ ಎಂದರೆ ಗಂಡ-ಹೆಂಡತಿಯವರು ಸದರಿ ಆಸ್ತಿಯನ್ನು ಇಟ್ಟುಕೊಂಡಿರುತ್ತಾರೆ.

ನನ್ನ ತಂದೆ-ತಾಯಿಯವರು ಆಸ್ತಿಯನ್ನು ಇಟ್ಟುಕೊಂಡಿರುವ ಬಗ್ಗೆ ಹಿನ್ನಾ ಪತ್ರದಲ್ಲಿ ಬರೆದಿರುತ್ತದೆಯೇ ಎಂದರೆ ಅದನ್ನು ಬರೆದಿರುತ್ತಾರೆ. ನನ್ನ ತಂದೆಯವರ ಮರಣಾನಂತರ ನನ್ನ ತಾಯಿಯವರ ಹೆಸರಿನಲ್ಲಿ ಗ್ರಾಮ ಪಂಚಾಯತಿಯಲ್ಲಿ ಬದಲಾವಣೆಯಾಗಿರುತ್ತದೆ. ಈ ರೀತಿ ಬದಲಾವಣೆಯಾಗಿರುವ ಬಗ್ಗೆ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ. ನನ್ನ ತಂದೆಯ ನಂತರ ನನ್ನ ತಾಯಿಯವರಿಗೆ ಖಾತೆಯಾದ ಬಗ್ಗೆ ನನ್ನ ವಕೀಲರಿಗೆ ಮಾಹಿತಿಯನ್ನು ನೀಡಿರುತ್ತೇನೆ.

ನಿಡಿ.6, ವಿಲ್ ನಲ್ಲಿ ವೈಟ್‌ನರ್ ಹಾಕಿ ಮೇಲು ಬರವಣಿಗೆ ಮಾಡಿದಂತೆ ಇದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದೇ ರೀತಿ ದಿನಾಂಕದಲ್ಲೂ ಸಹ ವೈಟ್‌ನರ್ ಹಾಕಿ ಮೇಲು ಬರವಣಿಗೆ ಮಾಡಿದಂತೆ ಇದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ದಾಖಲೆಯಲ್ಲ ವೈಟ್‌ನರ್ ಹಾಕಿ ಮೇಲು ಬರವಣಿಗೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ವೈಟ್‌ನರ್ ಹಾಕಿ ಮೇಲು ಬರವಣಿಗೆ ಮಾಡಿರುವ ಬಗ್ಗೆ ಯಾವುದೇ ಹೆಚ್ಚಿಟ್ಟಿನ



ಗುರುತು ಹಾಗೂ ಸಹಿ ಇಲ್ಲ ಎಂದರೆ ಯಾವುದೇ ಮೇಲು ಬರವಣಿಗೆ ಮಾಡಿರುವುದಿಲ್ಲ. ನಿಡಿ.6 ಅನ್ನು ಎಷ್ಟು ಪುಟಗಳಲ್ಲಿ ಬರೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಬಹಳ ವರ್ಷಗಳಾದ್ದರಿಂದ ನನಗೆ ಈಗ ನೆನಪಿಲ್ಲ. ನನ್ನ ತಾಯಿಯವರು ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಹಾಕುತ್ತಿದ್ದರು. ನನ್ನ ತಾಯಿಯವರು ಒಂದು ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಹಾಕಿರುತ್ತಾರೆ. ನಿಡಿ.6 ರಲ್ಲಿ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಚಂದ್ರಶೇಖರ್ ಅಥವಾ ಜಗದೀಶ್ ಅವರು ಗುರುತಿಸಿರುತ್ತಾರೆ, ನನಗೆ ಸರಿಯಾಗಿ ನೆನಪಿಲ್ಲ. ನಿಡಿ.6 ಅನ್ನು ಬರೆಸಲು ನನ್ನ ತಾಯಿ ನನಗೆ ಹೇಳಿರುತ್ತಾರೆ. ಹಳೇ ಕೋರ್ಟ್ ಎದುರುಗಡೆಯಿದ್ದ ನವಿಲೇಕರ್ ಅವರ ಎದುರುಗಡೆ ವಿಲ್ಲನ್ನು ತಯಾರಿಸಿರುತ್ತೇವೆ.

ನಿಡಿ.6 ಅನ್ನು 2005 ರಲ್ಲಿ ತಯಾರಿಸಲಾಗಿರುತ್ತದೆ ಆದರೆ ತುಂಬಾ ವರ್ಷಗಳಾಗಿದ್ದರಿಂದ ನನಗೆ ದಿನಾಂಕ ನೆನಪಿಲ್ಲ. ಬಹುಶಃ ಡಿಸೆಂಬರ್ ತಿಂಗಳಲ್ಲಿ ಬರೆಸಿರುತ್ತಾರೆ. ತುಂಬಾ ವರ್ಷವಾಗಿದ್ದರಿಂದ ಅದು ಯಾವ ವಾರವಾಗಿತ್ತು ಎಂದು ನನಗೆ ನೆನಪಿಲ್ಲ.

ನನ್ನ ತಾಯಿಯವರು ಯಾವ ದಿನಾಂಕದಂದು ವಿಲ್ ಅನ್ನು ಬರೆಸಬೇಕೆಂದು ಹೇಳಿರುತ್ತಾರೆ ಎಂದರೆ ದಿನಾಂಕ ನನಗೆ ನೆನಪಿಲ್ಲ ಆದರೆ 2-3 ದಿನ ಮುಂಚೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಸದರಿ ವಿಲ್ಲನ್ನು ನವಿಲೇಕರ್ ಅವರು ತಯಾರಿಸಿರುತ್ತಾರೆ. ನಿಡಿ.5, ವಿಲ್ಲನ್ನು ಕೈಯಲ್ಲಿ ಬರೆದಿರುತ್ತಾರೆ. ನಿಡಿ.6 , ವಿಲ್ಲನ್ನು ಟೈಪ್ ಮಾಡಿರುತ್ತಾರೆ.



ನಿಡಿ.6 ಅನ್ನು ಮೊದಲು ಕೈಯಲ್ಲಿ ಬರೆದು ನಮಗೆ ಓದಿ ತಿಳಿಸಿದ ನಂತರ ಟೈಪ್ ಮಾಡಿರುತ್ತಾರೆ. ಸದರಿ ವಿಲ್ ನಲ್ಲಿ ಮೊದಲು ಕೈಯಲ್ಲಿ ಬರೆದು ನಮಗೆ ಓದಿ ತಿಳಿಸಿದ ನಂತರ ಟೈಪ್ ಮಾಡಿರುವ ಬಗ್ಗೆ ನಮೂದಿಸಿರುವುದಿಲ್ಲ. ಕೈಯಲ್ಲಿ ಬರೆದಿದ್ದ ವಿಲ್ ಕಾಪಿಯನ್ನು ನಮಗೆ ಓದಿ ತಿಳಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಕೈಯಲ್ಲಿ ಬರೆದ ವಿಲ್ಲನ್ನು ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ. ಸದರಿ ವಿಲ್ಲನ್ನು ನವಿಲೇಕರ್ ಅವರ ಕಚೇರಿಯಲ್ಲಿ ಟೈಪ್ ಮಾಡಿರುತ್ತಾರೆ,ಯಾರು ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಗೊತ್ತಿಲ್ಲ. ನವಿಲೇಕರ್ ಅವರು ಸದರಿ ವಿಲ್ ಗೆ ಸಹಿ ಮಾಡಿರುತ್ತಾರೆಯೇ ಎಂದರೆ ಅವರು ಅಥವಾ ಅವರ ಅಸಿಸ್ಟೆಂಟ್ ಮಾಡಿರುತ್ತಾರೆ ನನಗೆ ಸರಿಯಾಗಿ ನೆನಪಿಲ್ಲ. ಅವರ ಹತ್ತಿರ ಅಸಿಸ್ಟೆಂಟ್ ಆಗಿ ವಕೀಲರು ಇದ್ದರು,ಯಾರು ಎಂದು ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ವಿಲ್ಲನ್ನು ನವಿಲೇಕರ್ ಅವರು ಓದಿ ಹೇಳಿರುತ್ತಾರೆ. ಸದರಿ ವಿಲ್ಲನ್ನು ಅದೇ ದಿನ ನೋಟರೀ ಮಾಡಿರುತ್ತಾರೆ. ನನ್ನ ತಾಯಿಯವರು ನೋಟರಿ ರಿಜಿಸ್ಟ್ರಾರ್ ಗೆ ತನ್ನ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಮಾಡಿರಬಹುದು.

ನಿಡಿ.6 , ವಿಲ್ ನಲ್ಲಿ ನನ್ನ ತಾಯಿಯ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಚಂದ್ರಶೇಖರ್ ಅಥವಾ ಜಗದೀಶ್ ಅವರು ಗುರುತಿಸಿರಬಹುದು, ನನಗೆ ಸರಿಯಾಗಿ ನೆನಪಿಲ್ಲ.ಸದರಿ ದಾಖಲೆಯನ್ನು ನೋಡಿ ನನ್ನ ತಾಯಿಯ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಗುರುತಿಸಿರುವ ಬಗ್ಗೆ ಹೇಳಬಹುದು. ನನ್ನ ತಾಯಿಯ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಸಾಕ್ಷಿದಾರರು ಗುರುತಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ.

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ನನ್ನ ತಾಯಿಯ ಯಾವ ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರುತನ್ನು ಯಾರು ಗುರುತಿಸಿರುತ್ತಾರೆ ಎಂಬ ಬಗ್ಗೆ ಯಾರೂ ಸಹ ಸಹಿ ಹಾಕಿಲ್ಲ ಎಂದರೆ ಚಂದ್ರಶೇಖರ್ ಅಥವಾ ಜಗದೀಶ್ ಅವರು ಗುರುತಿಸಿರುತ್ತಾರೆ, ನನಗೆ ಸರಿಯಾಗಿ ನೆನಪಿಲ್ಲ. ಎರಡೂ ವಿಲ್ ಗಳಲ್ಲಿ ಚಂದ್ರಶೇಖರ್ ಅಥವಾ ಜಗದೀಶ್ ಇಬ್ಬರಲ್ಲಿ ಒಬ್ಬರು ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ.

ನಿಡಿ.6 , ವಿಲ್ ನಲ್ಲಿ ನಿಡಿ.5 ವಿಲ್ಲನ್ನು ರದ್ದುಪಡಿಸಿರುವ ಬಗ್ಗೆ ಅಥವಾ ಅದನ್ನು ಜೀವಂತವಾಗಿ ಇಟ್ಟಿರುವ ಬಗ್ಗೆ ಬರೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಮೊದಲನೇ ವಿಲ್ ನ ಬಗ್ಗೆ ಉಲ್ಲೇಖ ಮಾಡಿ ನಿಡಿ.6 ಬರೆದಿರುತ್ತಾರೆ.

ನಿಡಿ.6 ರಲ್ಲಿ ನನ್ನ ತಾಯಿ ("ಇದು ನನ್ನ ಮೊದಲನೇ ಹಾಗೂ ಅಂತಿಮ ವಿಲ್ ಆಗಿದ್ದು ನನ್ನ ಸ್ವಂತ ಬುದ್ಧಿ ಹಾಗೂ ಸ್ವ ಇಚ್ಛೆಯಿಂದ ಹೇಳಿ ಬೆರಳಚ್ಚು ಮಾಡಿಸಿದ ಈ ವಿಲ್ ಅನ್ನು ") ನಮೂದಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ.

ಮೊದಲನೇ ವಿಲ್ಲನ್ನು ನನ್ನ ತಾಯಿಯವರು 2000 ನೇ ಸಾಲಿನಲ್ಲಿ ಬರೆಸಿರುತ್ತಾರೆ, ದಿನಾಂಕ ನನಗೆ ನೆನಪಿಲ್ಲ.

2000 ದ ಇಸವಿಯಲ್ಲಿ ಬರೆಸಿರುವ ವಿಲ್ ಯಾರು ಬರೆದರು, ಎಲ್ಲಿ ಬರೆದಿರುತ್ತಾರೆ ಎಂದು ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ವಿಲ್ಲಿಗೆ ನನ್ನ ತಾಯಿ ಒಟ್ಟು ಎಷ್ಟು ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರುತನ್ನು ಹಾಕಿರುತ್ತಾರೆ ಎಂದು ನನಗೆ ನಿಖರವಾಗಿ ಹೇಳಲು

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ಬರುವುದಿಲ್ಲ. ನನ್ನ ತಾಯಿಯವರು ಎಲ್ಲಾ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಯಾರ ಸಮಕ್ಷಮ ಯಾರ ಮುಂದೆ ಹಾಕಿದರು ಎಂದರೆ ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ವಿಲ್ ಬರೆದಿರುವ ದಿನಾಂಕ ಹಾಗೂ ತಿಂಗಳು ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ವರ್ಷ ಗೊತ್ತಿದೆ. ಸದರಿ ವಿಲ್ಲನ್ನು ಹಳೆ ಕೊರ್ಟ್ ಎಂದು ಗಡೆ ನವಿಲೇಕರ್ ಕಚೇರಿಯಲ್ಲಿ ಬರೆದಿರುತ್ತಾರೆ. ಸದರಿ ವಿಲ್ಲನ್ನು ಬೆಳಿಗ್ಗೆ 10-30 ಯಿಂದ 11-30 ವರೆಗೂ ಬರೆದಿರಬಹುದು. ಸದರಿ ವಿಲ್ ಗೆ ಸಾಕ್ಷಿದಾರರಾಗಿ ಚಂದ್ರಶೇಖರ್ ಅಥವಾ ಜಗದೀಶ್ ಅವರು ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ, ನನಗೆ ಸರಿಯಾಗಿ ನೆನಪಿಲ್ಲ. ಚಂದ್ರಶೇಖರ್ ಅವರು ಒಂದು ಕಡೆ ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ. ಸದರಿ ಚಂದ್ರಶೇಖರ್ ಅವರು ಈ ಪ್ರಕರಣ ನಡೆಯುವ ಸಮಯದಲ್ಲಿ 2 ಬಾರಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಬಂದು ವಾಪಾಸು ಹೋಗಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಜಗದೀಶ್ ಅವರು ಒಂದೇ ಕಡೆ ಸಹಿ ಹಾಕಿರಬಹುದು. ಜಗದೀಶ್ ಅವರೂ ಕೂಡ ನವಿಲೇಕರ್ ಅವರ ಕಚೇರಿಯಲ್ಲಿ ಸಹಿ ಹಾಕಿರುತ್ತಾರೆ. ಜಗದೀಶ್ ಅವರು ನನಗೆ ಸಂಬಂಧಿಕರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅವರು ನಮ್ಮ ಊರುಮನೆಯವರು. ಜಗದೀಶ್ ಅವರು ನನಗೆ ಸ್ನೇಹಿತರಲ್ಲ. ಅವರೂ ಕೂಡಾ ನಮ್ಮ ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುತ್ತಾರೆ.

ನಾನು ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ಅಧ್ಯಕ್ಷ ಹಾಗೂ ಉಪ ಅಧ್ಯಕ್ಷನಾಗಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ, ನಾನು ಸದಸ್ಯನಾಗಿರುತ್ತೇನೆ. ನಾನು ಒಂದೇ ಬಾರಿ ಸದಸ್ಯನಾಗಿರುತ್ತೇನೆ. ಜಗದೀಶ್ ಅವರು ನಮ್ಮ ಗ್ರಾಮಪಂಚಾಯಿತಿಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವ ಮತದಾರ ಎಂದರೆ ಸರಿ. ನಾನು 2009 ರಲ್ಲಿ

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ಗ್ರಾಮಪಂಚಾಯತಿಯ ಸದಸ್ಯನಾಗಿರುತ್ತೇನೆ, ನನಗೆ ಸರಿಯಾಗಿ ನೆನಪಿಲ್ಲ. ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಚೇರಿಗೆ ನನ್ನ ತಾಯಿ 11-30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಹೋಗಿರುತ್ತಾರೆ. ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಚೇರಿಯಲ್ಲಿ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸುವಾಗ 12-45 ಆಗಿರುತ್ತದೆ. ಎಲ್ಲಾ ಪ್ರಕ್ರಿಯೆಗಳು ಮುಗಿಸಿಕೊಂಡು ದಾಖಲಾತಿಗಳನ್ನು ವಾಪಾಸು ಪಡೆದುಕೊಂಡು ಬರುವಾಗ 1-30 ಗಂಟೆ ಆಗಿರುತ್ತದೆ.

ನಿಡಿ.5 ರಲ್ಲಿರುವ ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರುತಿಗೂ ಹಾಗೂ ನಿಡಿ.6 ರಲ್ಲಿರುವ ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರುತಿಗೂ ವ್ಯತ್ಯಾಸವಿದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ, ಎರಡೂ ಒಂದೇ ತರಹ ಇದೆ. ಎರಡೂ ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರುತುಗಳನ್ನು ರಾಸಾಯನಿಕ ಪರೀಕ್ಷೆಗಾಗಿ ಕಳುಹಿಸಲು ನನಗೆ ಯಾವುದೇ ಅಭ್ಯಂತರವಿಲ್ಲ ಎಂದರೆ ಸರಿ.

ನಿಡಿ.6 ರಲ್ಲಿರುವ ಓವರ್ ರೈಟಿಂಗ್ ಅನ್ನು ರಾಸಾಯನಿಕ ಪರೀಕ್ಷೆಗಾಗಿ ಕಳುಹಿಸಲು ನನಗೆ ಯಾವುದೇ ಅಭ್ಯಂತರವಿಲ್ಲ ಎಂದರೆ ಸರಿ.

ಮೋಹನ ಹಾಗೂ ನಾನು ಅನ್ಯೋನ್ಯವಾಗಿ , ಚೆನ್ನಾಗಿ ಇದ್ದೇವೆ ಎಂದರೆ ಎಲ್ಲರ ಜೊತೆ ಚೆನ್ನಾಗಿ ಇದ್ದೇವೆ.

ನನ್ನ ತಾಯಿಯವರು ಯಾವುದೇ ವಿಲ್ಲನ್ನು ಬರೆದಿರುವುದಿಲ್ಲ, ಹಾಗೂ ಅವರಿಗೆ ಯಾವುದೇ ವಿಲ್ಲನ್ನು ಬರೆಯಲು ಚೈತನ್ಯ ಹಾಗೂ ಉದ್ದೇಶ ಇರಲಿಲ್ಲ

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ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದೇ ರೀತಿ ಅವರಿಗೆ ವಿಲ್ಲನ್ನು ಬರೆಯಲು ಯಾವುದೇ ಅಧಿಕಾರ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ನಾನು , ಮೋಹನ ಹಾಗೂ ವಿಜೇಂದ್ರ ಅವರು ನಿಡಿ.5 ಮತ್ತು 6 ಗಳು ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡಿರುವ ದಾಖಲಾತಿಗಳು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಡಿ.5 ಮತ್ತು 6 ರಲ್ಲಿರುವ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತುಗಳು ನನ್ನ ತಾಯಿಯದಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಾಯಿಯವರಿಗೆ ವಿಲ್ಲನ್ನು ಬರೆಯಲು ಚೈತನ್ಯ ಹಾಗೂ ಅಧಿಕಾರ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ನಾನು ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ನನ್ನ ತಮ್ಮನಿಗೆ ಅನುಕೂಲವಾಗಬೇಕೆಂದು ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡಿರುವ ದಾಖಲಾತಿಗಳನ್ನು ಆಧರಿಸಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯವನ್ನು ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ನಿಡಿ.5 ಹಾಗೂ 6 ನಾವು ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡಿರುವ ದಾಖಲಾತಿಗಳು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಸುಳ್ಳು ಪ್ರಮಾಣಪತ್ರವನ್ನು ಸಲ್ಲಿಸಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ”.

43. DW 3 in his cross examination has stated that Rathnakara, Mohana and Ramanna are not his relatives but neighbours

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belonging to one village. DW 3 has stated that he knows Rathnakara and Mohana and they are his close friends since birth.

44. DW 3 in the relevant portion of his cross examination has stated;

"ವೆಂಕಮ್ಮನವರು ನನಗೆ ನಾನು ಸಣ್ಣವನು ಇದ್ದಾಗಿನಿಂದಲೂ ನನಗೆ ಪರಿಚಯವಿರುತ್ತಾರೆ. ವೆಂಕಮ್ಮನವರ ಹೆಸರಿನಲ್ಲಿ ವಿಭಾಗ ಪ್ರಕಾರ ಆಸ್ತಿ ಬಂದಿರುತ್ತದೆ ಎಂದರೆ ನನಗೆ ವಿಭಾಗದ ಬಗ್ಗೆ ಏನೂ ಗೊತ್ತಿಲ್ಲ. ಅವರ ಹೆಸರಿನಲ್ಲಿ ಯಾವುದಾದರೂ ಆಸ್ತಿ ಇತ್ತೇ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

ಇದೆ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಚಂದ್ರಶೇಖರ್ ಅವರು ನನ್ನ ಜೊತೆ ಸಾಕ್ಷಿದಾರರಾಗಿ 2 ಬಾರಿ ಹಾಜರಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ನನ್ನ ಜೊತೆಯಲ್ಲಿ ಅವರು ಬಂದಿರುವುದಿಲ್ಲ.

ರತ್ನಾಕರ್ ಅವರು ವಿಲ್ ಗೆ ಸಹಿ ಮಾಡಬೇಕೆಂದು ಹೇಳಿರುತ್ತಾರೆ, ಬೇರೆ ಯಾವುದೇ ವಿಷಯಗಳು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಸದರಿ ವಿಲ್ ಗೆ ಸಹಿ ಹಾಕಬೇಕೆಂದು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಯಾವುದೇ ವಿಚಾರಗಳು ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದರೆ ಸರಿ.

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ಒಂದು ದಿನ ಮುಂಚೆ ವಿಲ್ ಗೆ ಸಾಕ್ಷಿದಾರರಾಗಿ ಸಹಿ ಮಾಡಬೇಕೆಂದು ರತ್ನಾಕರ್ ಅವರು ನನಗೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಅದರೆ ನನಗೆ ದಿನಾಂಕ ನೆನಪಿಲ್ಲ. ಸದರಿ ವಿಲ್ ನಾನು ಎಲ್ಲಿ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ ಎಂದರೆ ತುಂಬಾ ಸಮಯವಾಗಿದ್ದರಿಂದ ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ವಿಲ್ ಅನ್ನು ಯಾವ ಆಧಾರದ ಮೇಲೆ ಬರೆಸಿರುತ್ತಾರೆ ಹಾಗೂ ಯಾರು ಹೇಳಿದ ಮೇರೆಗೆ ಬರೆಸಿರುತ್ತಾರೆ ಎಂದರೆ ಅವರ ತಾಯಿ ವೆಂಕಮ್ಮ ನವರು ಹೇಳಿರಬಹುದು.

ವೆಂಕಮ್ಮನವರು ಎಲ್ಲಿ ಬರವಣಿಗೆ ಮಾಡಬೇಕು ಹಾಗೂ ಎಷ್ಟು ಹೊತ್ತಿಗೆ ಮಾಡಬೇಕೆಂದು ತಿಳಿಸಿರುತ್ತಾರೆಯೇ ಎಂದರೆ ಅವರು ಆ ವಿಚಾರವನ್ನು ಹೇಳಿರುವುದಿಲ್ಲ.

ಸದರಿ ವಿಲ್ ನಲ್ಲಿ ಬರೆದಿರುವ ವಿಚಾರಗಳು ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ವಿಲ್ ಕೈಯಲ್ಲಿ ಬರೆದಿರುವ ವಿಲ್ಲೋ ಅಥವಾ ಟೈಪ್ ಮಾಡಿರುತ್ತಾರೋ ಎಂದರೆ ನನಗೆ ಅಷ್ಟೊಂದು ಗೊತ್ತಿಲ್ಲ. ನಾನು ಹೋದಾಗ ಸದರಿ ವಿಲ್ಲನ್ನು ಬರವಣಿಗೆ ಮಾಡುತ್ತಿದ್ದರು, ನಾನು ನಂತರ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ. ನಾನು ಹೋಗುವಷ್ಟರಲ್ಲಿ ವಿಲ್ಲನ್ನು ಬರವಣಿಗೆ ಮಾಡಿ ಆಗಿರುತ್ತದೆ. ಸದರಿ ವಿಲ್ಲಿಗೆ ಸಹಿಯನ್ನು ಮಾಡಿದ್ದು ಬಿಟ್ಟರೆ ಬೇರೆ ಯಾವುದೇ ವಿಚಾರಗಳು ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದರೆ ಸರಿ.

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ನನಗೆ ರತ್ನಾಕರ್ ಅವರು ಸದರಿ ವಿಲ್ ಗೆ ಸಾಕ್ಷಿದಾರರಾಗಿ ಸಹಿ ಮಾಡಬೇಕೆಂದು ತಿಳಿಸಿದ ಮೇರೆಗೆ ನಾನು ಸದರಿ ವಿಲ್ ಗೆ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ.

ನಿಡಿ.6, ವಿಲ್ ನಲ್ಲಿ ವೈಟ್‌ನರ್ ಹಾಕಿ ಮೇಲು ಬರವಣಿಗೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಿಡಿ. 6 ರಲ್ಲಿ ವೈಟ್‌ನರ್ ಹಾಕಿ ಮೇಲು ಬರವಣಿಗೆ ಯಾವಾಗ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

ತುಂಬಾ ಸಮಯವಾಗಿದದರಿಂದ ವೆಂಕಮ್ಮನವರು ಎಷ್ಟು ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತು ಮಾಡಿರುತ್ತಾರೆ ಹಾಗೂ ಎಲ್ಲೆಲ್ಲಿ ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತು ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ವಿಲ್ ಎಷ್ಟು ಪುಟಗಳಲ್ಲಿತ್ತು ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

ವೆಂಕಮ್ಮನವರು ಹೆಚ್ಚಿಟ್ಟಿನ ಗುರುತನ್ನು ಯಾರು ಗುರುತಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ನಾನು ಹಾಗೂ ರತ್ನಾಕರ ಅವರು ಸೇರಿ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ಸಹಿ ಹಾಕಬೇಕೆಂದು ಹೇಳಿರುತ್ತಾರೆ, ನಾನು ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ, ಅದು ನಿಜ ಅಥವಾ ಸುಳ್ಳೋ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ.



ರತ್ನಾಕರ್ ಅವರು ಹೇಳಿದ ಮೇರೆಗೆ ನಾನು ಸದರಿ ವಿಲ್ ನ ಮೇಲೆ ವಿಶ್ವಾಸದ ಮೇಲೆ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ ಎಂದರೆ ಅವರೂ ಕೂಡಾ ನನಗೆ ಬೇಕಾದಾಗ ಬ್ಯಾಂಕ್ ನ ಅಥವಾ ಇತರ ವ್ಯವಹಾರಗಳಲ್ಲಿ ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ. ರತ್ನಾಕರ ಅವರು ನಮ್ಮ ಭಾಗದ ಗ್ರಾಮ ಪಂಚಾಯತಿಯ ಈ ಹಿಂದಿನ ಸದಸ್ಯರಾಗಿದ್ದರು ಎಂದರೆ ಅವರು ಬೇರೇ ಗ್ರಾಮ ಪಂಚಾಯತಿಯ ಸದಸ್ಯನಾಗಿರುತ್ತಾರೆ. ನಾನು ಹಾಗೂ ರತ್ನಾಕರ ಅವರು ಸೇರಿ ತಯಾರಿಸಿರುವ ಸುಳ್ಳು ವಿಲ್ ಗೆ ಪೂರಕವಾಗಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಹಾಗೂ ವೆಂಕಮ್ಮನವರು ಯಾವುದೆ ವಿಲ್ಲನ್ನು ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ”.

45. On perusal of the entire cross examination of DW 3, it shows that he does not know anything about the partition between the parties nor about the contents of the Will at Ex.D6. It is the case of the plaintiff that the suit schedule 'A' to 'D' properties are the joint family properties and suit schedule 'E' to 'H' properties are his own properties. The plaintiff has sought for partition in the suit schedule 'A' to 'C' and 'D' suit schedule properties and has also sought for the order of injunction by

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restraining the defendants from trespassing in the suit schedule 'E' to 'H' properties. On the other hand, the defendants have admitted the relationship with the plaintiff, but denied the nature of the properties as alleged by the plaintiff. The plaintiff has produced Ex.P1 the certified copy of the partition deed dated 16.12.1982, Ex.P2 the RTC of the year 2014-2015 pertaining to Sy. No.31 measuring 26 guntas standing in the name of Smt.Venkamma W/o Duggappa Gowda which is the 'D' suit schedule property. The mode of possession is mentioned as MR-11/2000-01 on basis of Pouthi. Ex.P3 is the certified copy of the Assessment. Ex.P4 is the Electricity Bill. Ex.P5 is the true copy of the objections given to the Marithotlu Grama Panchayath given by the defendant No.3 in respect of the Khatha change in favour of the plaintiff. Ex.P6 is the notice dated 30.5.2015 given by the Thahasildar, Koppa Taluk to the plaintiff to appear before them and produce documents as the objections have been filed by Smt.Nagarathna and Sri.Mohana. Ex.P7 to P17 are the

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photographs of the suit schedule properties. Ex.P19 is the endorsement, dated 9.2.2015 given by the Marithotlu Grama Panchayath to the plaintiff in respect of the objections dated 25.1.2015 filed by the defendant No.3. Ex.P20 is the true copy of the Resolution of the Marithotlu Grama Panchayath.

46. On the other hand, Ex.D1 the Niveshana Hakku Pathra was marked on confrontation at the time of cross examination of PW 1. Ex. D2 is the RTC of the year 2014-2015 pertaining to Sy. No.31 measuring 26 guntas standing in the name of Smt. Venkamma W/o Duggappa Gowda and the mode of possession is mentioned as MR-11/2000-01 on the basis of pouthi. Ex.D3 is the RTC of the year 2014-2015 pertaining to Sy. No.25 P1 measuring 1 acre 19 guntas standing in the name of Mohana S/o Duggappa Gowda and the mode of possession is mentioned as MR-85/KLR. Ex.D4 is the Partition Deed dated 16.12.1982 which was executed in between the plaintiff and the defendants and their

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father late Duggappa Gowda. Ex.D5 is the original Registered Will dated 7.11.2000 and Ex.D6 is the original unregistered Will dated 21.10.2005 which are alleged to have been executed by Smt.Venkamma. At this stage the two facts arise for the consideration. When the suit for partition is filed seeking partition in the properties of Duggappa Gowda or in the joint family properties of Duggappa Gowda, all the legal heirs of Duggappa Gowda are the necessary and proper parties for adjudication of the suit. In this suit admittedly, the 6 daughters of the Duggappa Gowda are not made as a parties in the suit and the plaintiff not averred anything about the share of the daughters of Duggappa Gowda. Further there is no averment in the plaint to show whether the share of the daughters of Duggappa Gowda was relinquished or already allotted to the said 6 daughters of Duggappa Gowda. The plaintiff has sought for the relief of permanent injunction in respect of the properties which are described as suit schedule 'E' to 'G' properties. But, admittedly

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the suit schedule 'E' to 'G' properties are in the government land in Sy.No. 96 of Marithotlu Village and the plaintiff has not placed any evidence or explanation whether these properties are granted to the plaintiff or not. Further the plaintiff has not produced any documents to show that these properties are in his exclusive possession. On the other hand, the defendants who are the brothers of the plaintiff have denied the nature of the properties as alleged by the plaintiff.

47. On one hand the plaintiff has averred in the plaint that his father died intestate with respect to suit 'D' schedule property leaving behind the defendants and the plaintiff as his legal heirs and the said 'D' schedule property is liable to be divided equally between the plaintiff and the defendants. It is pertinent to note that in a suit for partition it is necessary to join all the necessary parties to the suit. The plaintiff has not produced the Genealogical tree. In this suit as per admissions of the parties, it

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is quite clear that the 6 daughters of Duggappa Gowda are not made as parties to the suit nor Smt.Nagarathna is brought before this Court who is one of the beneficiary under the Will executed by Late Smt.Venkamma. Without making the daughters of Duggappa Gowda as parties to the suit, the claim of partition on the properties of Duggappa Gowda cannot be adjudicated. It is pertinent to note that even after filing of the written statement by the defendants the plaintiff has not put any effort to bring the daughters of Duggappa Gowda on record. The plaintiff has amended the plaint but not chosen to make the daughters of Duggappa Gowda as necessary parties to the suit. At the time of arguments the learned counsel for the plaintiff has argued that the defendants have not brought Smt.Nagarathnamma before the Court. The defendants have tried to rely upon Ex.D5 and Ex.D6 which are two Wills alleged to have been executed by Late Venkamma at different point of time.



48. A Will is the legal declaration of a person's intention which he/she wishes to be performed after his/her death and once the Will is made by the testator it can only be revoke during his/her lifetime. A person can not make a Will of his/her ancestral property but, he/she can make a Will only of his/her self acquired property. A testator who is having power to make the Will during his/her life time, but it will take effect only after his/her death. A Will may also be revoked by the execution of new Will. The Hon'ble Supreme Court in its various decisions it is held that, when the property devolved upon the divided sons and daughters per capita and not per stripes, each one of them was entitled to alienate their shares, particularly were allotted in their favour and in a case of this nature, the joint co-parcenary does not come.

49. The Hon'ble Apex Court in **(1986) 3 SCC 567-**
COMMISSIONER OF WEALTH TAX, KANPUR AND

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OTHERS V/s CHANDER SEN AND OTHERS, it is held that, Class I heirs listed in the schedule under Section 8 of the Hindu Succession Act, 1956 makes the son of an intestate to become an absolute owner of the property which he derives from his father and constitutes the property as absolute one and his son has no right by birth over such properties. Hence, it is settled principle of law that, when a divided son or daughter has got the property belonging to their father in a partition, whether it is ancestral or self acquired property of the father, they become absolute owners of their respective shares and they can deal with the properties exclusively excluding their sons. In this case the khatha of the suit 'A' to 'C' schedule properties was standing in the name of Duggappa Gowda till his death and after his death the khatha was mutated in the name of Smt. Venkamma under the Pouthi khatha. That does not make Smt. Venkamma the absolute owner of the said properties unless and until the said properties were given to her by her husband by execution of documents during his

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lifetime. Only on the basis of Pouthi khatha it cannot be said that Smt.Venkamma had give right to execute a Will and bequeath the said properties in favour of Mohana and Nagarathnamma.

50. The defendants have relied upon two Wills but there is no specification in the latest Will, if the earlier Will stands good or is continued or kept intact or that it holds good in respect of suit 'D' schedule property. As I stated supra, Will is a legal document which come into existence after the death of testator. The testator has power to make declaration of Will unnumberable times, but it is always the last Will of testator which will prevail. But in this case the plaintiff has not resorted to relief in respect of the alleged Wills executed by Smt.Venkamma, even if the plaintiff has acquired right over the suit 'A' to 'C' properties as per partition deed bearing S.R.No.296/1982-83. Further there is no explanation why the 6 daughters of late Duggappa Gowda and late Smt.Venkamma were not made as parties in this suit.

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Hence, for the reasons and discussion made above, Issue No. 1 to 3, 6 and 8 are answered in the Negative.

51. **Issue No. 4, 5 and 9** : - These issues are interconnected with each other, hence, they are taken up together for common discussion in order to avoid the repetition of same facts. Before giving any order of injunction on suit schedule 'E' to 'G' properties, the nature of the properties has to be adjudicated. The injunction order cannot be granted on the government land without any proper documents as the plaintiff has not placed any documents before the Court to show that if 'E' to 'G' were granted to him. Further on perusal of the documents and the evidence on record it reveals that the plaintiff is not in the exclusive possession of the suit 'E' to 'H' schedule properties.

52. It is pertinent to note that, Hon'ble Supreme Court in **AIR 2008 SUPREME COURT 2033-ANATHULA SUDHAKAR V/s P.BUCHI REDDY (DEAD) BY LRs AND OTHERS-** highlighted the

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position in regard to suits for prohibitory injunction relating to immovable property. It is held that, as a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. Admittedly the plaintiff is not in possession and enjoyment of the suit 'E' to 'H' schedule properties as no documents are produced by the plaintiff. Hence, Issue No.4, 5 and 9 are answered in the Negative.

53. **Issue No. 7:** - This issue is framed in respect of the entitlement of the plaintiff for the relief of demarcation of suit schedule 'A' to 'D' properties by the Court Commissioner. This is suit for declaration, partition, permanent injunction and other reliefs, at this stage this issue does not call any discussion. Hence, issue No.7 is answered in the Negative.



54. **Issue No. 10:** - The plaintiff has also sought for the relief of mesne profits along with the other reliefs of declaration, partition, permanent injunction, etc. As per Section 2(12) of CPC, mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. In this case the plaintiff has not pleaded that the defendants are in wrongful possession of the suit schedule properties. Further, the plaintiff has not at all placed any evidence in this regard. It is well settled that in a suit for partition the plaintiff is not entitled for mesne profits, but entitled for accounts. This view of this Court receives support from the law declared by the Hon'ble High Court of Karnataka in the decision reported in **ILR 1991 KAR 4506-THAMMEGOWDA V/s SIDDEGOWDA**. Therefore, the plaintiff is not entitled to any mesne profits as

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claimed. Further the plaintiff has not placed any documentary evidence to show that the defendants have tried to sell, or create any charge or encumbrance over the suit schedule properties. In view of the findings given on Issue No.1 to 9, the plaintiff is not entitled for the relief as sought for. Looking to the relationship between the parties there is no order as to costs. Hence, Issue No.10 is answered in the Negative.

55. **Issue No. 11:** In view of the above findings on Issue No. 1 to 10, I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby dismissed.

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No order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 30th day of January, 2023)

Sd/-xxxx 30/1/2023
(Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,Koppa.

ANNEXURE

List of witnesses examined for the plaintiff:

PW 1 : O.D Ramanna - 2.8.2021

List of witnesses examined for the defendants:

DW 1 : Mohana - 11.3.2022

DW 2 : O.D Rathnakara - 17.9.2022

DW 3 : Vijendra - 16.12.2022

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List of documents marked for the plaintiff:

- Ex.P1 : Certified copy of the partition deed dated 16.12.1982.
- Ex.P2 : RTC
- Ex.P3 : Certified copy of the Assessment extract.
- Ex.P4 : Electricity Bill
- Ex.P5 : True copy of the objections given to the Marithotlu Grama Panchayath
- Ex.P6 : Notice dated 30.5.2015 given by the Thahasildar, Koppa Taluk
- Ex.P7 to P17 : Photographs of the suit schedule properties
- Ex.P18 : CD
- Ex.P19 : Endorsement dated 9.2.2015 given by the Marithotlu Grama Panchayath
- Ex.P20 : True copy of the Resolution of the Marithotlu Grama Panchayath

List of documents marked for the defendants:

- Ex.D 1 : Niveshana Hakku Pathra
- ExD 2 : RTC
- Ex.D3 : RTC
- Ex.D4 : Partition Deed dated 16.12.1982
- Ex.D4(a) : Signature of DW 2

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- Ex.D5 : Original Registered Will dated 7.11.2000
- Ex.D5(a) : Signature of DW 2
- Ex.D6 : Original unregistered Will dated 21.10.2005
- Ex.D6(a) : Signature of DW 2
- Ex.D6(b) : Signature of DW 3

Sd/-xxxx 30/1/2023
(Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,Koppa.