

KADK010001552009



Presented on : 16-09-2009

Registered on : 16-09-2009

Decided on : 09-07-2026

Duration : 16 years 9 months 23 days

**IN THE COURT OF THE II ADDL. DISTRICT &
SESSIONS JUDGE, D.K., MANGALURU**

Present:

SRI. JAGADEESH V.N.

B.A., M.L.,

II Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru

Dated this the 9th day of July 2026

R.A./100/2009

Appellants:

1. Susheela, aged 48 years
 2. Ganesh, aged 28 years
 3. Nagaraja, aged 27 years
 4. Vathsala, aged 24 years,
 5. Ravishankar, aged 23 years
- No.1 is the widow and Nos.2 to 5 are

the children of late Umesh Vaidya,
All are r/at Miyala House,
Badakabailu, Kariyangala village,
Polali Post, Bantwal Taluk.

(By Sri Yashavanth Maroli, Advocate)

VERSUS

Respondents:

1. Ramappa Poojary, aged 67 years
S/o. Thyampa Poojary
2. Kishore, aged 31 years
3. Kishori, aged 29 years

Nos.2 and 3 are children of No.1,
All are r/at Badakabailu House,
Kariyangala village, Polali post,
Bantwal Taluk.

4. Smt. Bhavani, Adult (since dead)
W/o. Lakhamana Poojary,
R/at Ananthakodi House,
Permanki village and post,
Mangaluru Taluk.
 - 4 (a) Sarojini, aged 56 years
 - (b) Sridhar Poojary, aged 54 years
 - (c) Kamalaksha Poojary, aged 53 years
 - (d) Kanthappa Poojary, aged 51 years
 - (e) Madhava Poojary, aged 49 years
 - (f) Ananda Poojary, aged 48 years
 - (g) Gangadhar Poojary, aged 45 years
 - (h) Lingappa Poojary, aged 44 years
 - (i) Latha, aged 41 years

R.A./100/2009

All are children of late Bhavani,
R/at Ananthakodi House,
Permanki village and post,
Mangaluru Taluk.

5. K. Ahamad Bava, Adult
S/o. Isubu,
R/at Kariyangala village,
Bantwal Taluk.
6. Abdul Rahiman, Adult
S/o. Kadri Beary,
R/at Kariyangala village,
Bantwal Taluk.

(R1- Smt. Shobhalatha Suvarna, Advocate,
R2, 3, 4 (a) to (i)- Sri Vasanth Kumar, Advocate,
R4-dead
R5, 6 -exparte)

Date and nature of the Judgment and Decree dated
decree or order 27.07.2009 passed in O.S.
appealed against : No.284/2004 (re-numbered
as O.S. No.36/2007) on the
file of Civil Judge (Sr.Dn.)
and J.M.F.C., Bantwal, D.K.,
for partition.

JUDGMENT

The present appeal challenges the judgment and decree dated 27.07.2009 in O.S. No.284/2004 (re-numbered as O.S. No.36/2007) passed by Civil Judge (Sr.Dn.) and J.M.F.C., Bantwal, D.K., wherein the trial court decreed the suit filed by the plaintiff for partition and granted 1/3rd share in the schedule properties in favour of the plaintiff.

2. A suit for partition, separate possession and for mesne profit was filed by the plaintiff seeking 1/3rd share in the schedule properties. According to the plaintiff, suit schedule properties are the joint family properties. Originally, suit schedule properties were tenanted lands. Venkappa Vaidya was the tenant in respect of schedule properties. After his death, his wife Kamala Hengasu and children continued to be the tenants. On coming into force of Karnataka Land Reforms Act, 1961, Kamala Hengsu filed a Form No.7 before the Land Tribunal seeking Occupancy Rights in respect of suit schedule properties. Along with Kamala Hengsu, other persons

have also filed Form No. in respect of other properties. Venkappa Vaidya was the tenant under Krishna Nayak. The Land Tribunal clubbed all the applications filed by Kamala Hengsu and others. After holding detail enquiry, the Land Tribunal granted Occupancy Rights in respect of suit schedule properties in the name of Kamala Hengsu. The Occupancy Rights were granted in the name of Kamala Hengsu in the family capacity and not in the individual capacity. Kamala Hengsu became owner and continued with the possession along with her children. Venkappa Vaidya and Kamala Hengsu have four children viz. Janardhana, Bhavani, Umesh and Indira. Janardhana was unmarried. Before Kamala Hengsu filed Form No.7 before the Land Tribunal the whereabouts of Janardhana was not known. He left the village and did not come back. Even today, whereabouts of Janardhana is not known to the family members. Bhavani is the 1st daughter, Umesh is the son and Indira is the 2nd daughter. Kamala Hengsu continued to be in possession of the schedule properties along with her children. On 1996 Kamala Hengsu died. Thereafter, Bhavani, Umesh and Indira continued to be in joint possession of the

schedule properties, however, Umesh who was only the son in the family, he mutated all the revenue records in his name. But the properties were continued to be joint in the name of all the three children of Venkappa Vaidya and Kamala Hengsu. The plaintiff Indira demanded her share from Umesh defendant No.1. When there was no response from Umesh, she issued a legal notice to the defendant No.1 seeking 1/3rd share over the schedule properties. The defendant No.1 sent reply contending that Kamala Hengsu had already executed a Will in his favour and based on the Will, he became absolute owner of the schedule properties. Hence, the plaintiff filed a suit seeking partition and separate possession over the schedule properties. According to the plaintiff, Kamala Hengsu had no right and interest over the properties to execute the Will in favour of defendant No.1. The schedule properties were tenanted lands and Kamala Hengsu had filed Form No.7 in the capacity of family and not individual capacity. Kamala Hengsu was not the tenant in respect of the schedule properties. Originally Venkappa Vaidya was the tenant and after his death, his wife and children continued to be the tenants, on coming to force

of Land Reforms Act, Kamala Hengsu filed Form No.7 in the capacity of family and not individual capacity, therefore Kamala Hengsu had no right to bequeath schedule properties in favour of defendant No.1 her son.

3. Notices were issued to the defendants. Defendant No.1 appeared through his counsel and filed written statement. It was admitted by defendant No.1 suit schedule properties were tenanted lands and Tribunal granted Occupancy Rights in the name of Kamala Hengsu. But it was denied by defendant No.1 that Venkappa Vaidya was the tenant under Krishna Nayak. According to defendant No.1, Kamala Hengsu was the tenant under Krishna Nayak, on coming to force of Karnataka Land Reforms Act, she filed Form No.7 in her individual capacity and Land Tribunal granted Occupancy Rights in her individual capacity and not in the capacity of family. Till 1995, Kamala Hengsu was in possession and enjoyment of the schedule properties, before her death, she executed a registered Will in his name bequeathing all the schedule properties to the defendant No.1. Except Kamala Hengsu, no other persons

had right and interest over the schedule properties, accordingly Kamala Hengsu had every right to bequeath the properties and executed a Will in favour of defendant No.1 by bequeathing the properties. By virtue of Will executed by Kamala Hengsu, he became absolute owner and revenue records were transferred in his name. He is absolute owner and in possession of the properties. The plaintiff and defendant No.2 have no claim over the schedule properties. It was also contended by defendant No.1 that marriage of plaintiff and defendant No.2 was taken place before 1974 and at the time of marriage, Kamala Hengsu had given sufficient gold articles, cash etc. and performed the marriage. Since defendant No.1 was the sole son alive and had taken care of Kamala Hengsu, she executed a will in his favour by excluding the plaintiff and defendant No.2. Therefore, the plaintiff and defendant No.2 are not entitled any share in the schedule properties and sought for dismissal of the suit.

4. The defendant No.2 has not filed written statement.

5. Based on the aforesaid pleadings, the trial Court framed following issues;

1. Whether plaintiff proves that their father Venkappa Vaidya was enjoying plaint 'A' schedule properties as a chalageni tenant?
2. Whether the plaintiff proves that herself and defendant Nos.1 and 2 are in joint and constructive possession of plaint schedule property?
3. Whether the plaintiff proves that she is entitled for 1/3rd share in plaint schedule properties?
4. Whether the plaintiff proves that she is entitled for income as prayed for?
5. Whether the LRs. of the 1st defendant proves that Kamala Hengsu bequeathed and her occupancy holdings in favour of deceased Umesh Vaidya by way of her last Will dated 08.12.1995?
6. Whether the plaintiff is entitled for relief's as prayed for?
7. What order or decree?

6. In order to prove her case, the plaintiff No.1 (c) got examined himself as PW.1 and produced in all 34

documents as Ex.P.1 to Ex.P.34. On behalf of the defendants, defendant No.1 (a) got examined himself as DW.1 and one more witness is examined as DW.2 and got marked one document at Ex.D.1.

7. After considering the oral and documentary evidence placed on record, the trial court decreed the suit holding that the plaintiff has proved that suit schedule properties were tenanted lands and Venkappa Vaidya was the tenant, after the death of Venkappa Vaidya, Kamala Hengsu filed Form No.7 on coming to force of Karnataka Land Reforms Act, the Land Tribunal granted Occupancy Rights in the name of Kamala Hengsu in the family capacity and not an individual capacity. Once the properties granted in the family capacity, other family members are entitled partition over the properties granted by the Tribunal. It was further held by the trial court since the properties were tenanted lands of Venkappa Vaidya, Kamala Hengsu had no right to execute the Will bequeathing the properties in the name of defendant No.1, even if Will was proved by defendant No.1. Being

aggrieved by the said judgment and decree, the defendant No.1 preferred the present appeal on 16.09.2009.

8. The Predecessor of this Court after hearing both the parties, rendered the judgment and decree on 06.06.2013 whereby allowed the appeal filed by the defendant No.1 by setting aside the judgment and decree passed by the trial court. The Predecessor of this court held Venkappa Vaidya was not the original tenant of the schedule properties. Kamala Hengsu was the original tenant under Krishna Nayak and on coming into force of Karnataka Land Reforms Act, she filed Form No.7 and the Land Tribunal granted Occupancy Rights in her favour in an individual capacity. This court further held Kamala Hengsu had executed a registered Will in favour of defendant No.1 bequeathing all the schedule properties and defendant No.1 proved the Will executed by Kamala Hengsu, thereby defendant No.1 became absolute owner of the schedule properties and plaintiff and defendant No.2 have no right and interest in the schedule properties. Being aggrieved by the said judgment and decree, dated 06.06.2013, the LRs. of plaintiff and Lrs. of

defendant No.2 have approached Hon'ble High Court of Karnataka in RSA No.1646 of 2013 (PAR). Before the Hon'ble High Court of Karnataka, an application under Order 41 Rule 31 of CPC was filed seeking for additional evidence. The Hon'ble High Court of Karnataka allowed the appeal and remanded the matter to this court to frame proper points for consideration and further permitted the plaintiff to adduce additional evidence and consider the case in accordance with law. After remand, the Lrs. of plaintiff have adduced additional evidence and plaintiff No.1 (a) was examined as PW.2 and produced in all 8 documents, which were marked as Ex.P.35 to Ex.P.42.

9. Heard learned counsel for the 1st defendant, learned counsel for the plaintiff and learned counsel for the defendant No.2. Despite service of notice, defendant Nos.3 and 4 did not represent. Even from the pleadings, it is not forthcoming, how the defendant Nos.3 and 4 have been made as parties to the suit and appeal.

10. This court secured records.

11. It is strongly contended by learned counsel for the defendant No.1 that Venkappa Vaidya was never tenant of schedule properties under Krishna Nayak. Kamala Hengsu was the tenant under Krishna Nayak. Venkappa Vaidya died even prior to Karnataka Land Reforms Act coming into force. On coming into force of Karnataka Land Reforms Act, 1961, Kamala Hengsu filed Form No.7 in her individual capacity and not in the family capacity. In the Form No.7 filed by her, it was clearly stated she was in possession and her ancestors have been cultivating lands since 60 years. It was also stated in the application her ancestors were cultivating the land and she continued to cultivate the land thereafter. It is submitted by learned counsel for the defendant No.1 ancestors mean father and forefather and does not include husband. It was clearly mentioned in the Form No.7 her ancestors were cultivating the property and she continued to cultivate the property thereafter. That clearly indicates the property was cultivated by her parents and thereafter she continued to cultivate the land. Before the Land Tribunal, she gave evidence and it was clearly stated by her she was a tenant under Krishna Nayak and was

giving geny by way of food-grains. She never gave any geny by way of cash. As could be seen from the order of Tribunal itself, in the order of Tribunal it is clearly mentioned she gave rent through food-grains. After holding enquiry, the Tribunal granted Occupancy Rights in her individual capacity and not in the family capacity. She continued to be in possession and enjoyment of the property and became absolute owner. The plaintiff has not produced any single document to show Venkappa Vaidya was the tenant under Krishna Nayak before his death. Not even a single document is produced to show he was the tenant in respect of the schedule properties. Therefore, the schedule properties are not the tenanted lands of Venkappa Vaidya, on the other hand they are the tenanted lands of Kamala Hengsu. The trial court without considering the said evidence decreed the suit of the plaintiff.

12. It was further contended by learned counsel for the defendant No.1 that the Predecessor of this court had considered all the aspects of the matter including Form No.7 filed by Kamala Hengsu and geny receipts produced

by plaintiff before this court. This court had considered the very same geny receipts produced were not correct documents and original or certified copies of the said geny receipts were not produced. This court also considered serial numbers of the geny receipts are continuous one, that indicates geny receipts were created one. This court further held plaintiff has failed to produce any documents in the name of Venkappa Vaidya to show he was the tenant before his death.

13. It was further contended by learned counsel for the defendant No.1 that after the grant of Occupancy Rights, Kamala Hengsu continued to be in possession and cultivating the lands. During her lifetime she executed a registered Will bequeathing the schedule properties in the name of 1st defendant. The 1st defendant proved execution of Will in accordance with Evidence Act and Indian Succession Act. In the Will, it was clearly mentioned by Kamala Hengsu that she had performed marriage of plaintiff and defendant No.2 and gave necessary things to them including gold and cash at the time of marriage, defendant No.1 is her only son looking after her and

bequeathed schedule properties to him by excluding the daughters. Under the Will, she has clearly mentioned the reason for exclusion of plaintiff and defendant No.2. DW.2 is the attesting witness to the Will. His oral testimony is in tune with Section 63 of the Indian Succession Act. The Will has been proved in accordance with Section 63 of Indian Succession Act. Therefore, except defendant No.1, no one has share in the schedule properties. The trial court also did not consider the said aspect of the matter while recording findings. Though the trial court held Will was proved, since the property were tenanted lands of Venkappa Vaidya, the trial Court held Kamala Hengsu had no right to execute the Will. Since the plaintiff failed to prove Venkappa Vaidya was the tenant in respect of all the properties and Land Tribunal granted Occupancy Rights in the name of Kamala Hengsu, she was the tenant and granted Occupancy Rights. The Trial court without considering the entire evidence placed on record, erroneously decreed the suit in favour of the plaintiff and ordered for 1/3rd share. The same is not correct and liable to be set aside. Hence, seeks to allow the appeal.

14. On the other hand, learned counsel for the plaintiff and defendant No.2 has vehemently contended Kamala Hengsu was not original tenant in respect of the schedule properties. Venkappa Vaidya was the original tenant in respect of the schedule properties. Venkappa Vaidya died before the Act coming into force. After the death of Venkappa Vaidya, his wife Kamala Hengsu continued to be tenant and cultivating the lands along with her children including her first son Janardhana. The revenue records placed on record clearly indicate name of Janardhana is also forthcoming at column No.12 in cultivator column. After the death of Venkappa Vaidya, name of Janardhana was continued in the revenue records and not in the name of Kamala Hengsu. If Kamala Hengsu was original tenant, the name of Janardhana could not have been entered in the revenue records, on the other hand her name could have been entered in the revenue records. The question of entering the name of Janardhana in the revenue records itself did not arise, if Kamala Hengsu was the original tenant in respect of the schedule properties. The above clearly indicates Venkappa Vaidya was the original tenant, after his death

his son Janardhana name was entered in the revenue records immediately on coming into effect of Karnataka Land Reforms Act, 1961. Even as per the admission given by the witnesses, Janardhana was also not available when Form No.7 was filed by Kamala Hengsu. He had left the village and whereabouts of him was not known to any of the family members. Therefore, Kamala Hengsu who was the eldest member of the family had filed Form No.7 in the capacity of family and not in individual capacity. The Tribunal granted Occupancy Rights in the name of Kamala Hengsu. Even after granting of Occupancy Rights, Kamala Hengsu and her children continued to be in possession and enjoyment of the schedule properties. Before the Tribunal, during enquiry geny receipts were produced. Geny receipts indicate Venkappa Vaidya was paying geny to Krishna Nayak in respect of the schedule properties. The said geny receipts clearly indicate Venkappa Vaidya was the tenant and not Kamala Hengsu. This court cannot assess whether the said geny receipts are correct or not. The said geny receipts were produced before the Land Tribunal during enquiry and the said geny receipts were considered by the Land

Tribunal. The certified copies of the said geny receipts are produced before this court. Whether the geny receipts are correct or not or created, it is for the landlord or any other aggrieved person to challenge the said order including the geny receipts. The geny receipts clearly indicate Venkappa Vaidya was paying rent to Krishna Nayak. Therefore, the schedule properties are family properties and not exclusive property of Kamala Hengsu. The trial court has considered the aforesaid aspect of the matter in detail while recording findings.

15. It is further contended by learned counsel for the plaintiff that in so far as execution of Will by the Kamala Hengsu in favour of defendant No.1 is concerned, when the Kamala Hengsu had no right to execute the Will even if the Will was proved, the defendant No.1 will not confer any right under the Will. DW.2 is the attesting witness to the Will. He knows Kamala Hengsu and also schedule properties. In the evidence, he has clearly deposed Venkappa Vaidya was the tenant in respect of the schedule properties. When such being the evidence, it is very clear Venkappa Vaidya was the tenant and not

Kamala Hengsu. The trial court by considering the aforesaid aspect of the matter decreed the suit granting 1/3rd share. It is further contended by learned counsel for the plaintiff and defendant No.2 that in the cross-examination, it was clearly admitted the plaintiff and defendant No.2 also visiting the village regularly and assisting for cultivating the lands. It was also admitted by the witnesses Kamala Hengsu was not having good health. By taking advantage of health condition, defendant No.1 created Will. It is admitted by attesting witness defendant No.1 was very much present when the Will was executed. The above clearly indicates only to deprive the right of plaintiff and defendant No.2, the defendant No.1 created Will from Kamala Hengsu.

16. It is further contended by learned counsel for the plaintiff that after remand, the Lrs. of plaintiff have produced certified copies of geny receipts which were obtained from the Land Tribunal, that clearly indicate Venkappa Vaidya was paying rent to Krishna Nayak. The plaintiffs have also produced RTC which clearly indicate name of Kamala Hengsu is not forthcoming in any of the

RTCs. If Kamala Hengsu was the tenant, her name could have been entered in the revenue records. The revenue records further indicate name of Janardhana is forthcoming and he is none other than the eldest son of Venkappa Vaidya and Kamala Hengsu. The above clearly indicates schedule properties were tenanted lands of Venkappa Vaidya. Therefore, the judgment and decree passed by the trial court is correct and no interference is called for. Hence, he seeks to dismiss the appeal.

17. Having heard learned counsel for the parties and on perusal of material placed on record, the points that arise for my consideration are as under:

1. Whether the plaintiff proved schedule properties were the tenanted lands of Venkappa Vaidya and on coming into force of Karnataka Land Reforms Act, 1961 and after the death of Venkappa Vaidya, his wife Kamala Hengasu filed Form No.7 in the capacity of joint family?
2. Whether the defendant No.1 proved the schedule properties were not the tenanted lands of Venkappa Vaidya, on the other hand they were the tenanted lands of Kamala Hengsu and

Land Tribunal granted Occupancy Rights in the name of Kamala Hengsu in her individual capacity?

3. Whether the defendant No.1 proved Kamala Hengsu had executed valid Will bequeathing the schedule properties to the defendant No.1?
4. Whether married daughters can claim partition in the lands granted by the land tribunal?
5. Whether the judgment and decree passed by the trial court requires interference?
6. What order?

18. My findings to the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Affirmative

Point No.4: In the Negative

Point No.5: In the Affirmative

Point No.6: As per final order for the following:

REASONS

19. **Point Nos.1 and 2:-** In order to avoid repetition of facts and evidence, I have taken these points for my common discussion.

20. According to the plaintiff, schedule properties were the tenanted lands of the family, her father was cultivating lands as a tenant, after his death, her mother continued to be tenant along with her children, on coming into force of Karnataka Land Reforms Act, her mother filed Form No.7 and Land Tribunal granted Occupancy Rights in her mother's name in the family capacity, the plaintiff, defendant Nos.1 and 2 being the children are entitled equal share. It was the case of 1st defendant before the trial court, the schedule properties were not the tenanted lands of Venkappa Vaidya, on the other hand the schedule properties were the tenanted lands of Kamala Hengsu, she filed Form No.7 on coming into force of Karnataka Land Reforms Act and Land Tribunal granted Occupancy Rights in her name in individual capacity, thereafter Kamala Hengsu executed a registered Will by bequeathing the schedule properties in his name,

therefore, the plaintiff and defendant No.2 have no share in the schedule properties.

21. When the evidence was commenced, the plaintiff was no more. Her husband and children were brought on record. By that time, defendant No.1 and defendant No.2 were also dead. Their Lrs. were also brought on record. The husband of plaintiff examined as PW.1 and produced in all 34 documents at Ex.P.1 to Ex.P.34. After remand, plaintiff No.1 (a) examined as PW.2 and produced in all 8 documents which were got marked as Ex.P.35 to Ex.P.42.

22. Ex.P.1 is the Form No.10 issued by Land Tribunal in the name of Kamala w/o. Venkappa Vaidya in respect of land Sy.Nos.100.7A measuring 0.33 acre, 100.3 measuring 0.54 acre, 100.10C measuring 0.39 acre, 100.10D measuring 0.19 acre, 100.10G measuring 1.93 acre, 95.2 measuring 0.54 acre, 99A.3 measuring 0.54 acre, 101A.1B measuring 0.33 acre, 99A.2A measuring 0.10 acre, 100.12 measuring 0.57 acre, 100.13B measuring 0.02 acre, 100.15 measuring 0.06 acre, 150.1B measuring 3.50 acre, 188.1A measuring 3.14 acre, 189.2B measuring 3.30 acre and 100.13D

measuring 0.02 acre. Ex.P.2 is the RTC in respect of Sy.No.100/7P2 measuring 0.33 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya, the defendant No.1 for the year 2002-2003. Ex.P.3 is the RTC in respect of Sy.No.100/3 measuring 0.54 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2002-2003. Ex.P.4 is the RTC in respect of Sy.No.100/10.C measuring 0.39 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2002-2003. Ex.P.5 is the RTC in respect of Sy.No.100/10D measuring 0.19 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2002-2003. Ex.P.6 is the RTC in respect of Sy.No.100/10P9 measuring 1.93 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.7 is the RTC in respect of Sy.No.95/2 measuring 0.54 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.8 is the RTC in respect of Sy.No.99A/3 measuring 0.54 cents, out of which, 37.50 cents stands in the name of Umesh Vaidya defendant No.1 and land measuring 16.50 cents stands in the name of K. Shivarama

Karantha s/o. K. Lingappayya Karantha. However, as could be seen from plaint, the plaintiff sought for partition in respect of entire land measuring 54 cents. It is not forthcoming from the entire plaint averments, the plaintiff made Shivarama Karantha as a party, as the land measuring 16.50 cents stands in the name of Shivarama Karantha. A perusal of RTC, it stands in the name of defendant No.1, only to an extent of land measuring 37.50 cents. Ex.P.9 is the RTC in respect of Sy.No.101/1P2 measuring 0.33 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.10 is the RTC in respect of Sy.No.99/2P7 measuring 0.10 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.11 is the RTC in respect of Sy.No.100/12 measuring 0.57 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.12, Ex.P.15 and Ex.P.15 are the same RTC in respect of Sy.No.100/13 P4 measuring 0.02 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.13 is the RTC in respect of Sy.No.100/15 measuring 0.06 cents stands in

the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.14 is the RTC in respect of Sy.No.188/1P2 measuring 3.14 cents stands in the name of Umesh Vaidya s/o. Venkappa Vaidya for the year 2003-2004. Ex.P.17 is the postal acknowledgment with respect to notice sent by the plaintiff to the defendant No.1. Ex.P.18 is the Land Tribunal order dated 22.02.1979 which indicates schedule properties were granted in favour of Kamala Hengsu on the Form No.7 filed by her. Ex.P.19 is the Form No.7 filed by Kamala Hengsu on 26.12.1974. Ex.P.20 to Ex.P.26 are the sketches. Ex.P.27 is the legal notice issued by the plaintiff to defendant No.1 on 18.06.2004. Ex.P.28 is the GPA executed by Kamala Hengsu in favour of defendant No.1. Ex.P.29 to P.32 are the rent receipts. Ex.P.33 is the reply sent by defendant No.1 to the plaintiff. Ex.P.34 is the order passed by the Assistant Commissioner dated 28.02.2007 by setting aside the mutation entries in the name of defendant No.1. Ex.P.35 contains 4 geni receipts. Ex.P.36 is the Form No.II issued by Karnataka Food and Civil Supplies Corporation Ltd. Ex.P.37 is the deposition given by defendant No.1 before the Land Tribunal.

Ex.P.38 is the RTC in respect of Sy.No.100/10 totally measuring 4.61 cents stands in the name of Krishna Naika for the year 1968-69. A perusal of RTC at column No.12 in the cultivators column names of Janardhana, Devu Poojary and Monta Poojary are forthcoming. Ex.P.39 is the certified copy of RTC in respect of Sy.No.100/3 measuring 0.54 cents for the year 1968-69 stands in the name of Krishna Naik and in col.No.12 of cultivators column, name of Janardhan is forthcoming. Ex.P.40 is the RTC in respect of land in Sy.No.100/13 stands in the name of Krishna Naik measuring 0.10 cents for the year 1968-69 and in the cultivators column, the name of Janardhana is seen. Ex.P.41 is the RTC in respect of land in Sy.No.100/12 stands in the name of Krishna Naik measuring 0.57 cents for the year 1968-69 and in the cultivators column, the name of Janardhana, Devu Poojary and Monta Poojary are seen. Ex.P.42 is the RTC in respect of land in Sy.No.100/7 stands in the name of Krishna Naik measuring 0.53 cents for the year 1967-68 and in the cultivators column, the name of Janardhana and Monta Poojary are seen.

23. The wife of defendant No.1 was examined as DW.1. She also examined an attesting witness to the Will as DW.2. Defendant No.1 produced a registered Will dated 08.12.1995 as Ex.D.1 executed by Kamala Hengsu in favour of defendant No.1.

24. It is the specific claim of the LRs. of plaintiff that originally Venkappa Vaidya was the tenant in respect of schedule properties, he died before the Karnataka Land Reforms act came into effect. Immediately on coming into force of Karnataka Land Reforms Act, his wife Kamala Hengsu filed Form No.7 for grant of Occupancy Rights, the Land Tribunal granted Occupancy Rights in the name of Kamala Hengsu on behalf of the family, therefore, the plaintiff and defendant Nos.1 and 2 who are the children of Venkappa Vaidya and Kamala Hengsu are entitled equal share in the schedule properties. It was the specific defence taken by the defendant No.1 before the trial court that the plaintiff and 2nd defendant marriage was performed before the Kamala Hengsu filing Form No.7 and at the time of marriage, sufficient gold and money was given to the plaintiff and 2nd defendant. During the

lifetime of Kamala Hengsu she executed a registered Will in favour of defendant No.1 as he had taken care of Kamala Hengsu and bequeathed schedule properties in favour of 1st defendant, therefore the plaintiff and 1st defendant have no right and interest over the property.

25. This is a second round of litigation before this court. In an earlier occasion, this court had set aside the judgment and decree of the trial court holding that schedule properties were granted to Kamala Hengsu on her individual capacity and not in the capacity of family, against which an appeal was preferred before the Hon'ble High Court of Karnataka, the Hon'ble High Court of Karnataka allowed the appeal and remanded the matter to consider fresh. While remanding the matter, the Hon'ble High Court of Karnataka also allowed the application filed under Order 41 Rule 27 of CPC by the plaintiff and permitted the plaintiff to lead additional evidence to consider whether Venkappa Vaidya or Kamala Hengsu was the tenant in respect of schedule properties. After remand, the Lrs. of plaintiff i.e. plaintiff No.1 (a) is

examined as PW2 and produced 8 documents which were marked at Ex.P.35 to Ex.P.42.

26. From the evidence referred above, it is evident originally suit properties were tenanted properties. A perusal of the entire evidence placed on record it indicates originally suit properties belong to one Krishna Nayak. According to the plaintiff Venkappa Vaidya was the tenant under Krishna Nayak, after his death, his wife Kamala Hengsu continued to be the tenant along with children and immediately oncoming into force of Karnataka Land Reforms Act, she filed Form No.7 in the family capacity and Occupancy Rights were granted. Ex.P.19 is the Form No.7 filed by Kamala Hengsu. Ex.P.19 Form No.7 was filed on 26.12.1974 by Kamala Hengsu. The relationship between the parties is not in dispute. The plaintiff, defendant Nos.1 and 2 are the children of Venkappa Vaidya and Kamala Hengsu. A perusal of Ex.P.19 Form No.7, Kamala Hengsu filed Form No.7 in respect of land in Sy.No.100-8, 100-7, 100-3, 100-5, 100-7, 100-10, 95-2, 99-A3, 101-A1, measuring 0-18, 0-08, 0-29, 0-60, 1-25, 0-54, 0-65 totally 3.50 cents.

Ex.P.18 is the order dated 22.02.1979 passed by the Land Tribunal. Ex.P.18 indicates Land Tribunal considered several applications filed by the tenants and granted Occupancy Rights. Ex.P.18 Land Tribunal order indicates Form No.7 filed by Kamala Hengsu was registered as LRT No.13362/74-5 and granted Occupancy Rights. Ex.P.18 Land Tribunal order indicates Land Tribunal granted Occupancy Rights in respect of all the properties mentioned in Ex.P.19 Form No.7. Ex.P.20 to P.26 are the sketch pertaining to the lands. Ex.P.1 is the Form No.10 issued by Tahasildar cum Secretary of the Land Tribunal pursuant to the order passed by Land Tribunal. Ex.P.1 Form No.10 indicates Kamala Hengsu was granted Occupancy in respect of the lands as mentioned in Ex.P.10, thereby Kamala Hengsu became owner of the properties. Ex.P.2 to 14 are the RTCs pertaining to schedule properties. Ex.P.2 to P.14 stands in the name of 1st defendant. Ex.P.38 to P.42 are the RTCs for the year 1968-69. RTCs indicate originally lands stands in the name of Krishna Nayak. RTCs also indicate name of Janardhan is forthcoming in the cultivator's column. In the evidence it has come on record Janardhana is none

other than the son of Venkappa Vaidya and Kamala Hengsu. The RTCs do not indicate name of Kamala Hengsu. It has also come in the evidence Janardhan left the village even before Kamala Hengsu filing Form No.7 and whereabouts of Janardhan is not forthcoming. No doubt, once the Occupancy Rights are granted, the lease hold right stand converted into freehold rights without affecting the rights of other members of the joint family which the person to whom Occupancy Rights are granted to its member and it is always open for the other family member to claim their share in the Civil Court. It was the categorical defence taken by the defendant No.1 before the trial court that Kamala Hengsu was the original tenant and not Venkappa Vaidya. Venkappa Vaidya was never tenant in respect of schedule properties. According to 1st defendant, Kamala Hengsu was the tenant and Form No.7 was filed by her. But the RTCs indicate name of Kamala Hengsu is not forthcoming in the RTCs.. If really, Kamala Hengsu was the original tenant in respect of the schedule properties, her name should have been mentioned in the RTC. On the other hand, name of Janardhana is forthcoming. That indicates after the death

of Venkappa Vaidya, name of Janardhana was mutated in the revenue records as he was the first son of Venkappa Vaidya. From the evidence, it is further clear Form No.7 was filed by Kamala Hengsu on coming into force of Karnataka Land Reforms Act. If Kamala Hengasu was the original tenant, the question of mutating the name of Janaradhana after death of Venkappa Viadya did not have arisen. Therefore, it is clear Venkappa Vaidya was the original tenant and after his death the name of first was mutated in the revenue records. Hence, I answer Point No.1 in the 'affirmative' and Point No.2 in the 'negative'.

27. **Point No.3:** Now, the another question for consideration is whether the Will set up by the defendant No.1 was proved before the trial court in compliance of Section 63 of Indian Succession Act and Sections 68 and 69 of Indian Evidence Act. DW.2 is the attesting witness. DW.2 in his deposition has clearly deposed he was present when the Will was executed by Kamala Hengsu. Kamala Hengsu affixed her LTM in his presence and in the presence of another witness. He identified LTM of

Kamala Hengasu and his signature. Ex.D.1 is the Will executed by Kamala Hengsu. The contents of Ex.D.1 reads thus:-

“ನನಗೆ ಎಂ. ಉಮೇಶ ಎಂಬ ಒಬ್ಬನೇ ಮಗನೂ, ಭವಾನಿ ಮತ್ತು ಇಂದಿರಾ ಕೂಡಾ ಎರಡು ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳೂ ಇರುತ್ತಾರೆ. ನನಗೆ ಇರುತ್ತಿದ್ದ ಇನ್ನೊಬ್ಬ ಮಗ ಜನಾರ್ದನ ಮದುವೆಯಾಗದೆ ನಿಸ್ಸಂತತಿಯಾಗಿ ಮೃತ ಪಟ್ಟಿರುತ್ತಾನೆ. ಹೆಣ್ಣು ಮಕ್ಕಳೆಲ್ಲರಿಗೆ ಮದುವೆಯಾಗಿರುತ್ತಿದ್ದು ಮದುವೆ ಕಾಲದಲ್ಲಿ ಸಾಕಷ್ಟು, ಚಿನ್ನಾಭರಣ ಹಾಕಿರುವುದಲ್ಲದೆ ನಗದಿ ಐವಜು ಸಹಾ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಸದ್ರಿ ಹೆಣ್ಣು ಮಕ್ಕಳು ಗಂಡಂದಿರೊಂದಿಗೆ ವಾಸ್ತವಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ನನ್ನ ಮಗ ಉಮೇಶನು ನನ್ನೊಂದಿಗೆ ಕೃಷಿ ಮಾಡಿಕೊಂಡು ನನ್ನ ಸೇವಾ ಸುಶ್ರೂಷೆ ಮಾಡಿಕೊಂಡು ನನಗೆ ಅನುವರ್ತನಾಗಿರುತ್ತಾನೆ ಹಾಗೂ ಜೀವನಕ್ಕೆ ನನ್ನನ್ನೇ ಹೊಂದಿಕೊಂಡಿರುತ್ತಾನೆ.”

28. Kamala Hengsu had clear vision to exclude plaintiff and defendant No.2 to bequeath the properties. It has been clearly stated in the Will since defendant No.2 and plaintiff were married and staying with their respective spouses and defendant No.1 was taking care of her and was only son alive, she excluded defendant No.2 and plaintiff and bequeathed all the properties in favour of defendant No.1.

29. The Hon'ble Apex Court in the case of **K. S. Dinachandran vs. Shyla Joseph & Ors.** in **C.A No.14825-826/2025** in para No.28 has held as under:

“28. We find that in the present case the only suspicion raised about the execution of the will is the testamentary capacity of the testator, relatable specifically to his physical disposition, questioned in the cross-examination of DW2; unequivocally affirmed as sound. We also reiterate, with respect, that the rule of prudence; of the caution required in upholding a will which divests the legal heirs as a whole, is not the situation existing in the instant case. But, the person excluded was one of the children of the plaintiff, the sole one excluded. The propounders of the will are the siblings of the one excluded. There is a reason stated for such exclusion, the acceptability of which to our minds, is not what the rule of prudence dictates. We cannot put the testator in our shoes, and we should step into his. We cannot substitute our opinions in place of that of the testator; his desire prompted by his own justifications. As is trite, we would only ensure that, sitting in the arm-chair of the testator the rule of prudence is satisfied for the exclusion; which on the facts of this case amply satisfies the judicial conscience.”

30. In view of the above evidence and principles laid down by the Hon'ble Apex court, the exclusion of other

heirs by Kamala Hengasu is valid. Proof of Will is not just an exercise to prove the signature of the testator on the Will and its attestation in terms on the Will and its attestation in terms of Section 63 of the Succession Act, rather it is an exercise to satisfy the court's conscience that the testator had signed the Will with free will being aware of its contents and after understanding the nature of the disposition. By looking into the evidence of DW.2 attesting witness, the Will has been proved in accordance with Section 63 of Indian Succession Act and Section 68 of Indian Evidence Act. Hence, I answered point No.3 in the 'Affirmative'.

31. Point Nos.4 and 5: It was the another defence taken by defendant No.1 before the trial court the plaintiff and defendant No.2 were given in marriage long back, the properties were held by Kamala Hengsu and defendant No.1 alone, therefore they are not entitled share in the properties. In the cross-examination, PW.1 deposes as under:-

“ವೆಂಕಪ್ಪ ವೈದ್ಯ ಅಂದರೆ ನನ್ನ ಮಾವ. ಅಂದರೆ ನನ್ನ ಹೆಂಡತಿಯ ತಂದೆ.
ದಾವೆಗೆ ನಮ್ಮ ವಕೀಲರಿಗೆ ಮಾಹಿತಿ ನಾನೇ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ನಾನು

ನೋಟೀಸು ತಾರನಾಥ ಪೂಜಾರಿ ಇವರ ಮುಖಾಂತರ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ವೆಂಕಪ್ಪ ವೈದ್ಯರು ಯಾವಾಗ ತೀರಿಕೊಂಡಿದ್ದಾರೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನ್ನ ಮದುವೆ 1976 ನೇ ಇಸವಿಯಲ್ಲಿ ಆಗಿರುತ್ತದೆ. ನನ್ನ ಮದುವೆಯಾದಾಗ ನನ್ನ ಮಾವ ಇರಲಿಲ್ಲ. ನನ್ನ ಮಾವನನ್ನು ನಾನು ನೋಡಿಲ್ಲ. ನನ್ನ ಮದುವೆಯಾಗುವ ಪೂರ್ವದಲ್ಲಿ ನನ್ನ ಮಾವ ಎಷ್ಟು ವರ್ಷದ ಹಿಂದೆ ತೀರಿಕೊಂಡಿದ್ದನು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನ್ನ ಮದುವೆಯ ಪೂರ್ವದಲ್ಲಿ ನಾನು ಬಡಕ ಬಯಲು ಕರಿಯಂಗಲ ಗ್ರಾಮದಲ್ಲಿ ವಾಸವಾಗಿದ್ದೆ. ಮದುವೆಯಾದ ನಂತರವೂ ಕೂಡ ಈಗಲೂ ನಾನು ಅಲ್ಲಿ ವಾಸವಾಗಿದ್ದೇನೆ. 2 ನೇ ಪ್ರತಿವಾದಿ ಭವಾನಿ ಇವರ ಮದುವೆ ಯಾವಾಗ ಆಗಿರುತ್ತದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಆಕೆಯು ಗುರುಪುರ ಪೆರಮಂಕಿ ಎಂಬಲ್ಲಿ ವಾಸವಾಗಿದ್ದಾಳೆ. ನನ್ನ ಮದುವೆ 2 ನೇ ಪ್ರತಿವಾದಿಗಿಂತ ಮುಂಚೆ ಆಗಿರುತ್ತದೆ. ನನ್ನ ಮದುವೆ 2 ನೇ ಪ್ರತಿವಾದಿ ಮದುವೆಗಿಂತ ಎಷ್ಟು ವರ್ಷದ ಮುಂಚೆ ಆಗಿದೆ ಎಂದು ಗೊತ್ತಿಲ್ಲ. ವೆಂಕಪ್ಪ ವೈದ್ಯ ಇವರಿಗೆ ಒಟ್ಟು 4 ಜನ ಮಕ್ಕಳು ಅವರು 1) ಭವಾನಿ, 2) ಜನಾರ್ದನ, 3) ಉಮೇಶ್ ಮತ್ತು 4) ನನ್ನ ಹೆಂಡತಿ ಇಂದಿರಾ. ಜನಾರ್ದನ ತೀರಿಕೊಂಡಿದ್ದಾನೆ. ಆತನು ತೀರಿಕೊಂಡು ಎಷ್ಟು ವರ್ಷಗಳಾಗಿದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಜನಾರ್ದನ ಎಲ್ಲಿ ತೀರಿಕೊಂಡಿದ್ದಾನೆ ಎಂದು ಕೂಡ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಜನಾರ್ದನ ಈತನನ್ನು ನಾನು ಕೊನೆಯ ಬಾರಿಗೆ ಸುಮಾರು 35 ವರ್ಷಗಳ ಹಿಂದೆ ಊರಿನಲ್ಲಿ ನೋಡಿರುತ್ತೇನೆ. ಆತನನ್ನು ನಾನು ಕೊನೆಯ ಬಾರಿಗೆ ನೋಡಿದಾಗ ಆತನ ಮದುವೆಯಾಗಿರಲಿಲ್ಲ. ಕೊನೆಯ ಬಾರಿ ನೋಡಿದ ನಂತರ ಆತನು ಎಲ್ಲಿಗೆ ಯಾವಾಗ ಹೋದನು ಎಂದು ನನಗೆ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ನನ್ನ ಮದುವೆಯಾಗುವಾಗ ದಾವಾ ಮನೆಯಲ್ಲಿ ಜನಾರ್ದನ ಇರಲಿಲ್ಲ. ನನ್ನ ಮದುವೆಗಿಂತ 10 ವರ್ಷದ ಮುಂಚೆ ಆತನನ್ನು ನೋಡಿರುತ್ತೇನೆ. ನಾನು

ಕೊನೆಯ ಬಾರಿಗೆ ನೋಡಿದಾಗ ಜನಾರ್ಥನ ತನ್ನ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದನು. ನಾನು ಕೊನೆಯ ಬಾರಿ ನೋಡಿದ ನಂತರ ಜನಾರ್ಥನ ಕಾಣೆಯಾಗಿದ್ದನೋ ಅಥವಾ ತೀರಿಕೊಂಡಿದ್ದಾನೋ ಎಂದು ಗೊತ್ತಿಲ್ಲ. ಜನಾರ್ಥನ ಕುರಿತು ನನ್ನ ಹೆಂಡತಿ ಇಂದಿರಾ ಬಳಿ ನಾನು ವಿಚಾರಣೆ ಮಾಡಿಲ್ಲ.”

32. DW.1 in the cross-examination deposes as under:-

“ನನಗೆ ಮದುವೆಯಾಗಿ 35 ವರ್ಷವಾಗಿರುತ್ತದೆ. ನನ್ನ ಮದುವೆ ಕಾಲಕ್ಕೆ ನನ್ನ ಮಾವ ವೆಂಕಪ್ಪ ಪೂಜಾರಿ ಜೀವಂತವಾಗಿರುವುದಿಲ್ಲ. ನನ್ನ ಮದುವೆ ಸುಮಾರು 72 ನೇ ಇಸವಿಯಲ್ಲಿ ಆಗಿರುತ್ತದೆ”

"1 ನೇ ವಾದಿಗೆ ಯಾವಾಗ ಮದುವೆಯಾಗಿದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. 2 ನೇ ಪ್ರತಿವಾದಿ ಭವಾನಿಗೆ ಯಾವಾಗ ಮದುವೆಯಾಗಿದೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ ನನ್ನ ಮದುವೆಗಿಂತ ಮೊದಲು ಆಗಿರುತ್ತದೆ ಎಂದು. ವಾದಿಗೆ ಮತ್ತು 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ದಾವಾ ಜಮೀನಿನಲ್ಲಿ ಮದುವೆಯಾಗಿರುತ್ತದೆ ಅಂದರೆ ನಿಜ. ಮದುವೆಯಾದ ನಂತರವೂ ವಾದಿ ಹಾಗೂ 2 ನೇ ಪ್ರತಿವಾದಿ ದಾವಾ ಸೊತ್ತಿಗೆ ಬರುತ್ತಿದ್ದರು ಅಂದರೆ ನಿಜ. ವ್ಯವಸಾಯದ ಕೆಲಸದಲ್ಲಿ ಸಹಾಯ ಮಾಡುತ್ತಿದ್ದರು ಅಂದರೆ ಸರಿಯಲ್ಲ”

33. From the above, it is evident plaintiff and defendant No.2 marriages were performed before 1972. Though plaintiff was younger to defendant No.1, since she was the daughter, her marriage was performed and then

marriage of defendant No.1 was solemnized. In the cross-examination, PW.1 admitted marriage of Bhavani 1st daughter was performed much prior to her marriage. In the cross-examination of DW.1, it was admitted by DW.1 her marriage was performed in the year 1972. It was also admitted by her plaintiff marriage was performed before her marriage. That indicates marriage of plaintiff and defendant No.2 was performed before 1972. Ex.P.19 is the Form No.7 filed by Kamala Hengsu on 26.12.1974. In view of the Karnataka Land Reforms Act coming into force, the lands vested with the government on 01.03.1974. Even otherwise also Form No.7 was filed by Kamala Hengsu on 26.12.1974. Assuming for a moment, Venkappa Vaidya was cultivating the lands, after his death Form No.7 was filed by Kamala Hengsu. Even if Form No.7 was filed by Kamala Hengsu on behalf of family, she and her unmarried daughters and sons are only entitled for the tenanted lands. The married daughters are not entitled any share under the Karnataka Land Reforms Act. The 'family' has been defined under Section 2 (12) of Karnataka Land Reforms Act. Under the definition 'Family' married daughters are not included.

Section 24 of the Karnataka Land Reforms Act further deals with respect to rights of tenants to be heritable. In view of definition of Section 2 (12) r/w Section 24 of Karnataka Land Reforms Act, the married daughters are not entitled any share in the tenanted lands. The said aspect of the matter has been considered by the Hon'ble High Court in the case of **Nimbavva & others vs. Channaveerayya and others** reported in **ILR 2013 KAR 6202**, wherein it has been held as under:-

“15. According to them, the plaintiffs are the daughters of Gurushantayya, who died on 04/01/1974. It is also not in dispute that Gurushantaya was cultivating plaint "A" schedule properties as a tenant. After his death, in view of the provisions of the Karnataka Land Reforms Act, 1961, the eldest son of Gurushantayya filed an application for grant of tenancy rights in his favour for the benefit of his brothers and him. It is also not in dispute that occupancy right has been granted to him by the Land Tribunal. The nature of the plaint "B" schedule property is also not in dispute. It is a family dwelling house of the 3 sons of late Gurushantayya. The plaintiffs-who are married are living separately at different places along with their spouses.

16. The actual dispute is whether the married daughters are entitled to claim share after the death of their father in respect of the tenanted lands of their father and whether can they claim a share in respect of the family dwelling house in view of the Hindu Succession Act, 1956.

17. So far as the first point is concerned, Section 2(12) of the Karnataka Land Reforms Act defines "Family" as under:

2(12) "Family" means-

(a) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

(c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters."

By looking into the definition of family, it includes only the spouse, minor sons and un-married daughters. At no place, "married daughters" finds a place under the Karnataka Land Reforms Act.

18. Section 24 of the Karnataka Land Reforms Act reads as hereunder:

" 24. Rights of tenant to be heritable: Where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death."

19. On perusal of Section 24 of the Act read with the definition of family, it is clear that married daughter cannot claim share in respect of tenanted land. The question whether the married daughters can claim a share in respect of a tenanted land of their father is decided by this Court in Kamala vs. Lingamma Hengsu reported in 2002(2) K.L.J., 456, wherein it is held that only the family members as defined in the Karnataka Land Reforms Act are entitled for inheritance by way of succession after the death of their father. The legal position in regard to the right of a married daughter to claim a share in respect of a tenanted land of her father cannot be disputed by the plaintiff's counsel. We would have agreed with the contentions urged by Mr. Kini that the plaintiffs are entitled to equal share on par with the sons when the father died

intestate provided there is a heritable right to them under the Act. Karnataka Land Reforms Act is a special enactment which has been enacted for the benefit of cultivator, the same cannot be deviated by this Court by applying the provisions of Hindu Succession Act.

20. In the circumstances, we are of the view that when a married daughter is excluded under the definition of "family" under the Karnataka Land Reforms Act, and more particularly in the back ground of Section 24 of the Act, the trial Court has committed an error in considering the right that as per the notional partition, the plaintiffs are entitled to claim a share along with their brothers out of the share of their deceased father.

21. In view of the fore going discussions we are of the view that suit filed by the plaintiffs claiming share in the tenanted lands of the father is not maintainable and the judgment and decree of the trial court has to be set aside.

22. So far as second point is concerned, the contention of the learned counsel for the defendant that in view of Section 23 of the Hindu Succession Act, the plaintiffs are not entitled for a share in the family dwelling house has to be rejected because Section 23 of the Hindu Succession Act has been repealed with effect from 09.09.2005 under the Hindu Succession (Amendment) Act, 2005(39 of 2005) when there is no bar to claim a share after

the death of their father, the finding of the trial Court that plaintiffs are not entitled to a share has to be set aside. According to us, each of the plaintiffs are entitled to 1/7th share in schedule "B" property."

34. As admitted in the evidence, the marriage of plaintiff and defendant No.2 was performed before 1972. The marriage of 1st defendant was performed in the year 1972. Ex.P.19 Form No.7 filed by Kamala Hengsu on 26.12.1974. The date of vesting the lands with government is on 01.03.1974. As on 01.03.1974, the plaintiff and defendant No.2 were married daughters. Under the definition of Section 2 (12) and Section 24 of Karnataka Land Reforms Act, the married daughters have no share in the tenanted properties. Though there was specific stand taken by the defendant No.1 before the trial court that the marriage of plaintiff and defendant No.2 were held long back and necessary things were given to them, the trial court did not consider this aspect of the matter. In view of the above discussion, I answer Point No.4 in the 'negative' and Point No.5 in the 'affirmative'.

35. **Point No.6:** In view of my above said findings and discussions, I proceed to pass the following:-

O R D E R

Appeal filed under Section 96 Order XLI Rule 1 of CPC, is hereby allowed. The judgment and decree dated 27.07.2009 on the file of learned Civil Judge (Sr.Dn.) and J.M.F.C., Bantwal, D.K. in O.S. No.36/2007, is hereby set aside.

The suit of the plaintiff is dismissed.

Draw the decree, accordingly.

Transmit the records to Trial Court along with copy of judgment.

(Dictated to the SG-I, typed by her, corrected and then pronounced by me in the Open court, on this the 9th day of July 2026)

(JAGADEESH V.N.)

II Addl. District & Sessions Judge,
D.K., Mangaluru.

ANNEXURE**List of witnesses examined for the plaintiff:**

PW-2 Kishori

List of witnesses examined for the defendants:

- NIL -

List of documents exhibited for the plaintiff:

Ex.P.35 C.C. of geny receipts (4 in nos.)
Ex.P.36 Levy payment receipts (3 in nos.)
Ex.P.37 C.C. of deposition in LRT No.11670/74-75
Ex.P.38 RTC of Sy.No.100/10
Ex.P.39 RTC of Sy.No.100/3
Ex.P.40 RTC of Sy.No.100/13
Ex.P.41 RTC of Sy.No.100/12
Ex.P.42 RTC of Sy.No.100/7

List of documents exhibited for the defendants:

NIL

(JAGADEESH V.N.)

II Addl. District & Sessions Judge,
D.K., Mangaluru.