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**IN THE COURT OF THE III ADDITIONAL SENIOR
CIVIL JUDGE AND J.M.F.C. HUBBALLI**

Present:- Sri. Ramesh S. Ganiger,
B.Com., L.L.M.,
III Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated: 23rd day of June 2026

:: OS No.110/2022 ::

PLAINTIFF		Sri Ningappa A/f Ningappa Morabad @ Dummad, Age about: 32 years, Occupation: Agriculture, R/o Byahatti, Tq: Hubballi.
		(By Sri K.C.P Advocate)
V/s		
DEFENDANTS	01.	Smt. Manjula W/O Praveen Kalavad, Age about: 30 years, Occupation: Agriculturist & Household Work, R/o Byahatti, Tq: Hubballi.
	02.	Smt. Laxmi D/o Shankrappa

		Morabad @ Dummad, Age about: 26 years, Occupation: Household Work, R/o Dum mavad, Tq: Kalaghatagi
	03.	Smt Mahadevi W/O Shankrappa Morabad @ Dummad, Age about: 52 years, Occ:Agriclture & Household work, R/o Dum mavad, Tq: Kalaghatagi.
	04.	Sri Shankrappa S/O Mahadevappa Morabad @ Dummad, Age about: 60 years, Occupation: Agriculturist, R/o Jadgeri Oni, Byahatti, Tq: Hubballi.
	05.	Smt Anasuya W/O Basavanneppa Dum mavada, Age about: 52 years. Occ: Household Work, R/o Asundi, Tq: Gadag.
	06.	Sri Manjunath S/O Basavanneppa Dum mavada Age about: 27 years, Occ: Agriculturist, R/o Asundi, Tq: Gadag.
	07.	Smt Geeta W/O Gurunath Kanavi, Age about: 26 years, Occ: Household Work, R/o Dum mawada Taluka Kalaghatagi.
	08.	Sri Kalmesh S/O

		Basavanneppa Dummavada, Age about: 23 years, Occ: Household Work, R/o Asundi, Tq: Gadag.
	09.	Smt. Adivemma D/O Basavanneppa Dummavada, Age about: 20 years, Occ: Household Work, R/o Asundi, Tq: Gadag.
	10.	Sri Virupaxappa S/O Kallappa Morabad @ Dummavada, Age about: 59 years, Occupation: Agriculture, R/o Asundi, Tq: Gadag.
	11.	Sri Shivappa S/O Kallappa Morabad @ Dummavada , Age about. 59 years, Occupation Agriculture, R/o Asundi, Tq: Gadag.
	12.	Smt Mahadevi W/O Ramappa Morabad, Age: 60 years, Occupation: Agriculture, R/o Bhayatti, Tq: Hubballi.
	13.	Smt Gangamma D/O Ramappa Morabad, Age about: years. Occupation: Agriculture, R/o Byahatti, Tq: Hubballi.
	14.	Smt Sudha D/O Ramappa Morabad, Age about: 30

		years, Occupation: Agriculture, R/o Byahatti, Tq: Hubballi.
	15.	Sri Kallappa S/O Ramappa Morabad @ Dummad, Age about: 30 years, Occupation: Agriculture, R/o Byahatti, Tq:Hubballi.
		(Defendant No.1 to 3 by Sri. R.G.K Advocate, Defendant No.4 by Sri. I.M.H Advocate, Defendant No.12 to 15 by Sri A.S.U Advocate, Defendant No. 5 to 11, 13, 14 are place exparte)

Date of institution of the Suit	:	25.02.2022
Nature of the Suit	:	Partition and Separate possession
Date of commencement of recording evidence	:	08.01.2024
Date on which the judgment was pronounced	:	23.06.2026
Total duration		<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 04 03 29

(Ramesh S. Ganiger,)

III Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

:: JUDGMENT ::

It is the suit for partition and separate possession of plaintiff's 1/3rd share in the suit schedule properties and further to declare that the preliminary decree passed in OS No.801/2012 dated 28.02.2015 and final decree passed in FDP No.5/2015 dated 08.08.2018 passed by the learned Vth Addl. Civil Judge Hubballi are not binding on the legal share of plaintiff and for appropriate reliefs.

2. Suit schedule properties are as follows;

The suit schedule A is the agricultural land bearing RS/Block No.1231/1 measuring 02 acres situated at Byahatti village.

Suit schedule B is the agricultural land bearing RS/Block No.1286 measuring 5 acres 01 gunta of land situated at Byahatti village.

Suit schedule C is the residential property bearing VPC No.1, situated at Jadageri Oni, Byahatti, Tq:Hubballi.

Suit schedule D is the residential property bearing VPC No.2 is situated at Byahatti Village.

All the properties are situated at Byahatti Village of Hubballi Taluk, Dharwad District.

3. The brief facts of the plaintiffs case are as under;

The plaintiff has submitted genealogy which shows that the proposita is deceased Ramappa S/o Kallappa Morabad and he has four children namely Kallappa, Ningappa, Mahadevappa and Neelavva. The said Kallappa was dead leaving behind Mallavva his wife and said Mallava was also died. The said Kallappa and Mallavva had three children namely Basavanneppa dead, Virupakshappa defendant no. 6, Shivappa defendant No.7. The said Basavanneppa has wife Anasuyya defendant No. 5 and children Manjunatha defendant No. 6, Geeta defendant No.7, Kalmesh defendant No.8,

Adivamma defendant No.9. It is the genealogy of first son Kallappa.

4. Ningappa second son of proposita Ramappa was died issue-less and he adopted the present plaintiff as adopted son. The said plaintiff is nothing but the son of Ramappa and Mahadevi. The third son Mahadevappa was died leaving behind two children namely Shankarappa defendant no. 4 and deceased Ramappa. The defendant no. 3 is the wife of defendant no. 4. Defendant no. 1 and 2 are the children of defendant No.4 and 3. Defendant No.8 is the wife of deceased Ramappa. Defendant No.9, 10, 11 are the children of said Ramappa and Mahadevi. The Neelavva is another daughter of proposita Ramappa. But she could not arrayed as a party to the suit.

5. The plaintiff has submitted that the suit schedule properties are the ancestral Hindu undivided joint family properties. After the demise of their proposita, his legal heirs, who are plaintiff and defendants, got inherited and jointly cultivating and enjoying the same. He submitted

that Ningappa S/o Ramappa Morabad had no issues. So, as per prevailing customs and usage in the society, Ningappa was taken him as an adoptive son on 03.05.2007, with performing all necessary customs, regulations and functions. The adoption deed was registered on 04.05.2007. After the process of adoption taken place, he became the adopted son of Ningappa S/o Ramappa Morabad @ Dummad. His adopted father Ningappa was bachelor. He was also residing in the son of his younger brother by name Ramappa. After the demise of said Ningappa S/o Ramappa Morabad, he gets 1/3rd share in the joint family properties.

6. The plaintiff has submitted that very recently he received the notice of Ex. Petition. No.4/2022 of learned IV Addl.Civil Judge & JMFC, Hubballi. He enquired the defendants, they replied evasively. Then he verified the records and found that the present defendants, colluded with each other, have managed to get fraudulent decree in OS No.801/2012 and FDP No.5/2015. The records

reveals that the defendants were managed and got obtained his signature on vakkalathanama and further managed to dupe his vested share on the suit properties. The defendants have obtained the said fraudulent preliminary decree as well as final decree, with getting vested share on the suit properties. The alleged preliminary and final decree are not binding on his share. So he called meeting with the elders and same is went into vain. Then he constrained to file the suit.

7. Brief defense of the defendants

In response to the suit summons, the defendant no. 1 to 3 were appeared through the counsel. Defendant no. 4 was appeared through separate counsel. The remaining defendants No.5 to 11,13, 14 are placed exparte. Defendants no. 12 and 15 are engaged the counsel but could not contest the suit. The defendant no. 3 has filed the written statement. The defendant No. 1 and 2 have adopted the written statement filed by the defendant no. 3. They contended that the plaintiff has

filed this false and frivolous and vexatious suit against them. There is no actual cause of action arose to file the suit. It is contented that already they have filed OS No. 801/2012 before the learned IV Addl.Civil Judge Court, Hubballi. The present plaintiff was defendant no. 6 in the said suit. The suit summons of the said suit was served to the plaintiff and he was placed ex parte. In the said suit, his name was shown as Ningappa S/o Ramappa Morabad, His brothers, sisters and mother were placed absent in the said suit. On 28.02.2015 in the said suit, preliminary decree was passed. Then they initiated FDP proceedings in FDP No.5/2015 and same was allowed and allotted their separate shares in the suit properties. Already court commissioners have separated the portions of their properties. In the said suit and final decree proceedings, these plaintiff and his family members could not file any kind of objections to the commissioner's report. Already they have got their shares in the suit properties. When already partition taken place and same was effected in final decree proceedings in FDP

No.5/2015, the present suit does not survive for consideration and plaintiff is estopped to seek partition in the said properties. The subject matters of said OS No. 801/2012 are same in this suit. Already the rights of the parties have been decided and concluded in OS No.801/2012 and FDP No.5/2015. So, the present suit is hit by principle of res judicata as per Section 11 of Civil Procedure Code. They further contended that the alleged adoption deed as stated by the plaintiff is not acted upon and it is no way concerned to them. Even though plaintiff is knowing all the facts, in order to harass them filed this false and frivolous suit and same is not maintainable. The suit of the plaintiff is barred by law of limitation. Hence prays to dismiss the suit with imposing compensatory cost of ₹3,000/-.

8. The defendant No.4 Shankarappa S/o Mahadevappa Morabad @ Dummad was filed written statement with denying some portion of plaint averments and by virtue of counter claim he sought the

same relief of partition and separate possession of his 1/36th share and also declaration regarding alleged original suit and final decree proceedings are not binding on his vested share. He also sought similar prayers and also his pleadings in the said counter claim are similar to the plaint averments. Namely Adivevva W/o Siddappa Kanavi and Nagavva W/o Rudrappa Chawadannavar as additional parties to the counter claim proceedings and sought partition in respect of the suit properties.

9. Thereafter, the defendant No.3 was filed the written statement and denied all the averments and allegations made against them by the defendant No.4. Defendant No.3 submits that defendant No.4 counter claimant is her husband and was neglected to maintain her and her two daughters defendant no. 1 and 2. So whatever allegations made by the defendant no. 4 against them are false. The alleged preliminary decree in original suit and final decree proceedings are binding to the defendant no. 4. He could not question the same. Hence, prays to

dismiss the counter claim with compensatory cost of ₹50,000/-.

10. Go through the pleadings, learned predecessor was framed issues and this court was framed the additional issue as follows.

ISSUES

1) Whether plaintiff proves that he is adopted son of Ningappa S/o Ramappa Morabad @ Dummada?

2) Whether plaintiff proves that the suit properties are ancestral and joint family property of plaintiff and defendant?

3) Whether plaintiff proves that judgment and decree passed in O.S.No.801/2012 dated 28.02.2015 and final decree passed in FPD No.5/2015 dated 08.08.2018 is not binding on him?

4) Whether plaintiff proves that he is entitle for 1/3rd share in the suit schedule properties?

5) Whether defendant No.3 proves that the suit of the plaintiff is hit by Section 11 of CPC?

6) Whether plaintiff is entitle for the relief as he prayed in the plaint?

7) What order or decree?

Additional issue

1) Whether the defendant No.4 is entitled for the reliefs as prayed in the counter claim?

11. In order to prove the case on behalf of plaintiff, the plaintiff was examined as PW.1 and one attesting witness of adoption Deed by name Shivanand S/o Takappa Navalur was examined as PW.2 and they got marked Ex.P.1 to 13 documents. On the other hand, on behalf of defendants, the defendant No.3 was examined as DW.1 and they got marked Ex.D. 1 to 10 documents.

12. Herein the defendant No.4 was filed written statement along with Counter claim seeking partition and separate possession and challenging the judgment and decree passed by the Learned IV Addl.Civil Judge Court Hubballi in OS No. 801/2012 and FDP No.5/2015

passed by the Learned I Addl. Civil Judge and JMFC court Hubballi. He also sought similar prayer as of the plaintiff. To substantiate the same, the defendant no. 4 could not enter the witness box and lead the evidence.

13. Learned counsel for the plaintiff was argued.

14. Learned counsel for the defendant No.1 to 3 and learned counsel for the defendant no. 4 were argued.

15. Learned counsel for the defendant no. 1 to 3 was relied on the following reported judgments.

1. HCR 2017 Kant 448
2. HCR 2023 Kant 995
3. KCCR 2018 (2) page 1292
4. KCCR 2025 (2) SN 82 (SC)

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

Issue No.1	: In the affirmative
Issue No.2	: In the negative
Issue No.3	: In the negative
Issue No.4	: In the negative

Issue No.5 : In the affirmative

Issue No.6 : In the negative

Addl.issue No.1: In the negative

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

REASONS

17. **ISSUE NO.1:** Herein the plaintiff has sought the relief of partition and separate possession of his 1/3rd share and also to declare that preliminary decree passed in OS No.801/2012 on 28.02.2015 and final decree passed in FDP No.5/2015 on 08.08.2018 are not binding on his legal vested share on the suit properties. Before proceeding further, it is necessary to appreciate the undisputed facts herein.

18. Herein, the plaintiff sought the relief of partition in respect of suit properties. Out of that, suit A and B properties are landed properties. C and D consists of residential house properties. As the prayers are concerned, herein the plaintiff has challenged the judgment and decree passed by the learned IV Addl Civil

Judge and JMFC Hubballi in OS No.801/2012 passed on 28.02.2015 and final decree passed on FDP No.5/2015 dated 08.08.2018. Go through the said Judgment and Decree Exp5 and Exp.6, in the said suit, the present defendant No.1 to 3 have filed the said suit against the present plaintiff and other defendants seeking partition and separate possession of their share. In the said suit, the present plaintiff is defendant No.6 and shown his name as Ningappa S/o Ramappa Morabad. So firstly herein we necessary to discuss about the genealogy as submitted by both the parties in pleadings. Admittedly, the proposita of plaintiff and defendants is Ramappa S/o Kallappa Morabad. Now he is dead. His legal heirs are Kallappa, Ningappa, Mahadevappa and daughter Neelavva. The first son Kallappa has wife by name Mallavva. Both Kallappa and Mallavva were dead and they have son by name Basavanneppa who is also dead. The defendant No.5 Anasuya is the wife of Basavanneppa, defendant No.6 Manjunath, defendant No.7 Geeta, defendant No.8 Kalmesh, Adivemma

defendant No. 9 are the children of said Basavanneppa and Anasuya. The said deceased Basavanneppa is defendant No.2 in OS No.801/2012. Further, Kallappa had another son by name Virupaxappa who is defendant no. 6 and another son Shivappa who is defendant No.7. So these Virupaxappa and Shivappa are also defendant No.3 and 4 in OS No.801/2012. Further, the proposita has another son namely Ningappa. The said Ningappa was died. Herein, the plaintiff urged that he is the adopted son of Ningappa. Further, proposita has another son by name Mahadevappa. The said Mahadevappa was died leaving behind two children namely Shankarappa defendant no. 4 and deceased Ramappa. The first son Shankarappa has wife Mahadevi defendant No. 3 and two daughters Manjula defendant no. 1 and Lakshmi defendant No. 2. Further second son Ramappa has wife Mahadevi defendant no. 12, son Ningappa who is present plaintiff and Gangamma Defendant No.13, Sudha defendant No.14, Kalappa defendant No.15. The proposita has another daughter by name Neelavva, but

herein the plaintiff could not arrayed said Neelavva as a party. In the counter claim, defendant No.4 also could not arrayed Neelavva as party. But he arrayed the daughters of Mahadevappa by name Adivevva and Nagavva as parties to the said counter claim. So pleadings are concerned, the one daughter of proposita Ramappa by name Neelavva and grand daughters of Ramappa by name Adivevva and Nagavva are not made as parties to the suit. Herein, the parties have not disputed their relationship.

19. Firstly, herein it is necessary to appreciate that whether the plaintiff is the legally adopted son of deceased Ningappa S/o Ramappa Morabad. Admittedly the said Ningappa S/o Ramappa Morabad was dead leaving behind no any family members. As the version of plaintiff, he is the adopted son of said Ningappa S/o Ramappa Morabad. To substantiate said things, plaintiff was produced Ex.P.9 original registered adoption deed which reflects that 1) Ramappa S/o Mahadevappa

Marabad @ Dummad and his wife Mahadevi W/o Ramappa Marabad @ Dummad are the first party and Ningappa S/o Ramappa Marabad @ Dummad is second party. Further, the third party is Kumar Ningappa S/o Ramappa Marabad @ Dummad who is present plaintiff. Go through the said averments, the second party could not have any children and his wife was dead. So he got adopted third party who is the son of Ramappa and Mahadevi on 03.05.2007 before the elders and said adoption deed was registered on 04.05.2007. So for the said adoption deed is concerned the present plaintiff during his minority adopted to the one Ningappa S/o Ramappa Marabad who is the second son of proposita. Further, PW.2 Shivanand S/o Takappa Navalur has put his signature as an attesting witness. On plain reading of this document, which reveals that the said second son of proposita Ningappa S/o Ramappa Marabad @ Dummad was adopted the present plaintiff as his son. No doubt the said Ningappa S/o Ramappa Marabad @ Dummad was already dead and it is not disputed fact herein. To

disbelieve this Ex.P9, the defendants could not produce any counter documents. No doubt, in the course of cross-examination of PW.1, learned counsel for the defendant no. 1 to 3 would elicit that this plaintiff arrayed as defendant no.6 in OS No. 801/2012 and his name is shown as Ningappa S/o Ramappa Marabad. The said aspect has not been denied by the present plaintiff. Further, go through the said judgment as per Ex.P5, in page No.5 in para No.3, the learned Civil Judge categorically mentioned that the present plaintiff and other defendants were placed ex parte. So in the said suit, the present plaintiff could not put forth his defence. But as discussed above ExP9 registered adoption deed and while cross-examination of PW2 learned counsel for the defendants, nothing could be elucidated to disprove that the deceased Ningappa S/o Ramappa Marabad @ Dummad could not adopted the present plaintiff as his adopted son. So under these circumstances, even though the present plaintiff being a defendant no. 6 in OS No.801/2012 could not set his defence and could not

shown his name that Ningappa adopted son of Ningappa Dummad, but available Ex.P.9 original adoption deed and oral evidence of PW.1 and 2 are sufficient to prove that during the lifetime, the second son of proposita Ningappa was adopted the present plaintiff. So the plaintiff proved issue No.1 and **I answered issue No.1 in the affirmative.**

20. ISSUE NO.2,3,4,5, 6 & ADDL.ISSUE NO.1: The factual circumstances of the suit is concerned, these issues are interconnected and they are taken together for common discussion.

In the course of arguments, learned counsel for the plaintiff vehemently argued that the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. The alleged suit bearing OS No. 801/2012 and F.D.P.No.5/2015 were meritoriously not disposed. The present plaintiff could not get an opportunity to put forth his defence and not furnished

his adoption deed. There was no proper partition taken place in the said suit. In final decree proceedings, there was no allotment of shares to the legal heirs of deceased Ningappa S/o Ramappa Marabad @ Dummad. The present plaintiff is the adopted son of Ningappa and he is having 1/3rd share in the suit schedule properties.

21. Learned counsel for the defendant No.1 to 3 vehemently argued that already the defendant No.1 to 3 have filed suit for partition and separate possession bearing OS No.801/2012 against the present plaintiff and other defendants. The said suit was decreed on 28.02.2015 and final decree proceedings are taken in FDP No.5/2015. Already the separate shares are allotted to the defendant No.1 to 3 and shares of the both parties are determined. He further argued that suit schedule properties are ancestral and joint family properties, but by virtue of Judgment and decree passed in OS No.801/2012 and FDP No. 5/2015, the rights of the parties are severed and now the suit schedule properties

not remains as ancestral and joint family properties. Already rights and shares determined in OS No. 801/2012. So the present suit filed by the plaintiff again seeking partition and separate possession is hit by Section 11 of CPC which is the law of res-judicata. So present suit of the plaintiff is not maintainable and liable to be dismissed.

22. As the arguments canvassed by both the learned counsels and as per Ex.P5 and P.6 certified copy of judgment and decree of OS No.801/2012. Ex.P.7 certified copy of order passed in FDP No. 5/2015 and Ex.P.8 certified copy of final decree shows that admittedly the present plaintiff is also party to the said suit and final decree proceedings. Already shares of the parties are determined and court has allotted 3/4th share to the present defendant No.1 to 3 in the suit properties. Further, the present suit schedule item No.1 to 4 are the suit properties of above said suit and final decree proceedings.

23. In the course of cross-examination, PW.1 has categorically deposed certain evidence and same has been extracted as follows.

ಸಾಕ್ಷಿಗೆ ಈಗ ಅಸಲು ದಾವಾ ಸಂಖ್ಯೆ 801/12 ರಲ್ಲಿ ಹಾಜರುಪಡಿಸಿದ ಪಹಣಿ ಹಾಗೂ ಆಸ್ತಿ ತೆರಿಗೆ ಪಟ್ಟಿಯ ದೃಢೀಕೃತ ಪ್ರತಿಯನ್ನು ತೋರಿಸಲಾಗಿ ಸಾಕ್ಷಿ ಅವುಗಳನ್ನು ಒಪ್ಪಿದ್ದು ಅವುಗಳನ್ನು ನಿಡಿ.1 ರಿಂದ 5 ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಅಸಲು ದಾವಾ ಸಂಖ್ಯೆ 801/12 ತೀರ್ಪಾದ ನಂತರ ಎಫ್ ಡಿ ಪಿ ಸಂಖ್ಯೆ 5/2015 ಸಲ್ಲಿಸಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಸದರಿ ಎಫ್ ಡಿ ಪಿ ಪ್ರಕರಣದಲ್ಲಿ ನಾನು ನನ್ನ ಜನಕ ತಾಯಿ ಹಾಗೂ ಸಹೋದರ ಸಹೋದರಿಯರು ಹಾಜರಾಗಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ನಮ್ಮ ಪರವಾಗಿ ಎಸ್ ಟಿ ಬೆಂಗೆರಿ ಎಂಬ ವಕೀಲರು ಹಾಜರಾಗಿದ್ದರು ಎಂದರೆ ಸರಿ. ಸದರಿ ಎಫ್ ಡಿ ಪಿ ಪ್ರಕರಣದಲ್ಲಿ ನಾವು ನಮ್ಮ ಪರವಾಗಿ ತಕರಾರು ಸಲ್ಲಿಸಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಇರುವ ಆಸ್ತಿಯಲ್ಲಿ 1/3 ಹಿಸ್ಸೆ ಮಾಲಡು ತಹಶೀಲ್ದಾರ ಅವರನ್ನು ನ್ಯಾಯಾಲಯದ ನಿಯೋಗಿ ಎಂದು ನೇಮಕ ಮಾಡಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಆ ಪ್ರಕಾರ ಅವರು ಆಸ್ತಿ ಅಳತೆ ಮಾಡಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ವರದಿ ಸಹ ಸಲ್ಲಿಸಿದರು ಎಂದರೆ ಸರಿ. ಅಳತೆ ಮಾಡುವ ಪೂರ್ವದಲ್ಲಿ ಸದರಿ ನ್ಯಾಯಾಲಯದ ನಿಯೋಗಿ ನನಗೆ ಹಾಗೂ ನನ್ನ ಜನಕ ತಾಯಿ ಹಾಗೂ ಸಹೋದರ ಸಹೋದರಿಯರಿಗೆ ನೋಂದಾಯಿತ ಅಂಚೆ ಮುಖಾಂತರ ನೋಟಿಸು ನೀಡಿದ್ದರು ಹಾಗೂ ಅವುಗಳು ನಮಗೆ ಜಾರಿಯಾಗಿದ್ದವು ಎಂದರೆ ಸರಿ. ಅಳತೆ ಸಮಯದಲ್ಲಿ ನಾವು ಹೋಗಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಮನೆ ಅಳತೆ ಮಾಡಲು ಎ ಎಫ್ ರಾಯಪ್ಪನವರ ವಕೀಲರನ್ನು ನ್ಯಾಯಾಲಯದ ನಿಯೋಗಿಯಾಗಿ ನೇಮಕ ಮಾಡಲಾಗಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿ ಅವರು ಬರಲಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಅವರು ಮನೆ ಅಳತೆ ಮಾಡುತ್ತವೆ ಎಂದು ಹೇಳಿ ನಿಮಗೆ ನೋಂದಾಯಿತ ಅಂಚೆ ಮುಖಾಂತರ ನೋಟಿಸು ನೀಡಿದ್ದರೂ ಎಂದರೆ ಸಾಕ್ಷಿ ನೀಡಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ನೋಟಿಸು ನಮ್ಮ ಮೇಲೆ ಜಾರಿಯಾಗಿರುತ್ತವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನೋಟಿಸು ಜಾರಿಯಾಗಿದ್ದರೂ ಸಹ ನಾನು ಇಲ್ಲ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಹಾಗೂ ಮನೆ ಅಳತೆ ಸಮಯದಲ್ಲಿ ಗೈರು ಹಾಜರು ಉಳಿದಿರುತ್ತೇನೆ ಎಂದರೆ ಆದರೆ ನೋಟಿಸು ಜಾರಿಯಾಗಿಲ್ಲ. ಆದರೆ ಗೈರು ಹಾಜರು ಉಳಿದಿರುತ್ತೇವೆ. ಸದರಿ ಎಫ್ ಡಿ ಪಿ ಪ್ರಕರಣದಲ್ಲಿ ಇಬ್ಬರು ನಿಯೋಗಿಗಳು

ವರದಿ ಸಲ್ಲಿಸಿದ ನಂತರ ನಾವು ಸದರಿ ವರದಿಗೆ ತಕರಾರು ಸಲ್ಲಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ದಿ: 08.08.2014 ರಂದು ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಆದೇಶವಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ.

24. He further categorically deposed certain aspects in para No.4 of cross examination and same are extracted as follows:

4. ಎಫ್ ಡಿ ಪಿ ಅಲ್ಲಿ ಆದ ಆದೇಶದ ಪ್ರಕಾರ ಎಲ್ಲರೂ ಹಿಸ್ಸೆ ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ ಎಂಬ ಸೂಚನೆಗೆ ಸಾಕ್ಷಿ ಪಡೆದುಕೊಂಡಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಈ ಪ್ರಕಾರ ಜಮೀನು ಉತಾರಗಳಲ್ಲಿ ಬದಲಾವಣೆ ಆಗಿವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪ್ರತಿವಾದಿ ನಂ.1 ರಿಂದ 3 ಇವರು 1/3 ಹಿಸ್ಸೆ ಪಡೆಯಲು ನಾವು ಬಹಳಷ್ಟು ತಕರಾರು ಮಾಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿ. ಈ ಕಾರಣಕ್ಕಾಗಿ ಪ್ರತಿವಾದಿ ನಂ.1 ರಿಂದ 3 ಇವರು ನಮ್ಮ ವಿರುದ್ಧ ಇಪಿ ಸಂಖ್ಯೆ 4/2022 ಸಲ್ಲಿಸಿದ್ದರು ಎಂದರೆ ಸರಿ. ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ನಾನೊಬ್ಬನೇ ಹಾಜರಾಗಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಈ ಪ್ರಕರಣದಲ್ಲಿ ನನಗೆ ನಿಂಗಪ್ಪ ರಾಮಪ್ಪ ಮೊರಬದ ಎಂದು ಸಮನ್ಸ್ ಬಂದಿದ್ದು ಅದನ್ನು ನಾನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಅದೇ ಪ್ರಕಾರ ನನ್ನ ತಾಯಿ ಹಾಗೂ ಸಹೋದರ ಸಹೋದರಿಯರಿಗೆ ಕಳಿಸಲಾದ 5 ಸಮನ್ಸ್‌ಗಳನ್ನು ನಾನೇ ಅವರ ಪರವಾಗಿ ಸಹಿ ಮಾಡಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ನಂತರ ಈ ದಾವೆ ಸಲ್ಲಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಇದಲ್ಲದೆ ನಾನು ನಮ್ಮೂರಿನ ಶೆರೆಗಾರ ಇವರ ಮುಖಾಂತರ ಪ್ರತಿವಾದಿ ನಂ.1 ರಿಂದ 3 ಇವರ ವಿರುದ್ಧ ಅಸಲು ದಾವಾ ಸಂಖ್ಯೆ 381/2024 ಸಲ್ಲಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಆರ್ ಎ 26/2024 ರಲ್ಲಿ ಪ್ರಧಾನ ಹಿರಿಯ ಶ್ರೇಣಿ ಹುಬ್ಬಳ್ಳಿಯಲ್ಲಿ ಎಫ್ ಡಿ ಪಿ ಸಂಖ್ಯೆ 5/2015 ರಲ್ಲಿ ಆದೇಶವನ್ನು ಪ್ರಶ್ನಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಮೇಲ್ಮನವಿಯಲ್ಲಿ 5 ವರ್ಷ 7 ತಿಂಗಳು 10 ದಿವಸಗಳು ವಿಳಂಬ ಆಗಿದೆ ಎಂದು ಅದನ್ನು ಮನ್ನಿಸಲು ಮಧ್ಯಂತರ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ.

25. Go through the above deposition, PW.1 categorically admits that there was OS No.801/2012 filed against

them by the defendant No.1 to 3. In FDP No.5/2015, he knows about appointment of court commissioner's measurement work and he resisted while the said defendant No.1 to 3 have filed Execution case No.4/2022 against him and other defendants for recovery of possession of their share allotted in OS No.801/2012. That time the plaintiff was filed this suit and also he filed R.A.No.26/2024 challenging the FDP No.5/2015 before the learned Principal Senior Civil Judge Court, Hubballi. Moreover, there was delay of 5 years, 7 months, 10 days for entertaining the regular appeal. The evidence of PW1 categorically deposed in the cross-examination, it reveals that, counter to the OS No. 801/2015 and FDP No.5/2015, the present plaintiff has filed the suit. No doubt, As per Ex.P.9, he is the adopted son of deceased Ningappa and go through the judgment and decree in OS No. 801/2012, the learned trial court when there is no adoption deed before the said court, that time court categorically allotted the shares and no share allotted to the deceased Ningappa. But it is the duty of the present

plaintiff to put forth his defence in the said suit. So for, the rival pleadings and rival contentions and documents on hand are clear that admittedly, suit schedule properties are ancestral and joint family properties of both parties. Now, by virtue of passing the judgment and preliminary decree in OS No. 801/2012 and FDP No.5/2015, the shares of parties are determined. No doubt, the share of this plaintiff as an adoptive son of deceased Ningappa could not be determined. But herein it is necessary to appreciate that whether the present suit is hit by law of res-judicata or not, as per Section 11 of CPC. On that context learned counsel for the defendants has relied judgments, out of those judgments, the judgment of the Hon'ble High Court of Karnataka reported in **HCR 2023 Kant 995 parties between Venkatesh and others V/s the State of Karnataka and another**, para No.15, 17, 18 reads as follows:

15. The restoration order passed by respondent No. 3-Assistant Commissioner vide order dated 25.7.1986 declaring the alienation in favour of Bhoomi Reddy as null

*and void and confirmed by the Deputy Commissioner is reversed by the Co-Ordinate Bench of this Court in W.P.12518/1987 and confirmed by the Division Bench in W.A.2142/1992. It is a trite that law favours finality to binding judicial decisions pronounced by Courts that are competent to deal with the subject matter. The binding character of the judgments pronounced by the Courts of competent jurisdiction has always been treated as an essential part of the rule of law. This Court may gainfully refer to the decision of the Constitution Bench of the Apex Court rendered in the case of **Daryao vs. State of U.P.**, AIR 1061 SC 1457, wherein Apex Court summed up the law in the following words:*

*"It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.(***) The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis".*

17. That even erroneous decisions can operate as a *res judicata* is also fairly well settled by a long line of decisions rendered by Apex Court. In **Mohanlal Goenka vs. Benoy Kishna Mukherjee**, AIR 1953 SC 65. The Apex Court observed:

"There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'"

Similarly, in **State of West Bengal vs. Hemanth Kumar Bhattacharjee**, AIR 1966 SC 1061, Apex Court reiterated the above principles in the following words:

"A wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

The decision rendered by the Apex Court in **Kalinga Mining Corporation vs. Union of India**, (2013) 5 SCC 252 is a timely reminder of the very same principle. The following passage in this regard is apposite:

"In our opinion, if the parties are allowed to reagitate issues which have been decided by a Court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision."

18. Therefore, on reading the above said principles culled out supra, what emerges is that the Court is not concerned with the correctness or otherwise of the earlier judgment. It is equally trite that even in regard to mixed question of law and facts determined in the earlier

proceedings between the same parties, cannot be revived or reopened in a subsequent proceedings between the same parties. Having said that, I may add that the only exception to the doctrine of res judicata is fraud that vitiates the decision and renders it a nullity. The petitioner's father and petitioner herein having not chosen to take it further by assailing the order of the Co-Ordinate Bench in W.P.12518/1987 are definitely precluded from re-opening or re-contesting the issue that has been finally decided.

26. Another judgment of the Hon'ble High Court of Karnataka reported in **2018 (2) KCCR 1292 Parties between N.Jagannatha Reddy V/s Smt. Venkatamma and another** Headnote B reads as follows:

B. CIVIL PROCEDURE CODE, 1908-Section 11-Res judicata.

A plain reading of the provisions of Section 11 of the Code of Civil Procedure makes it clear that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties and in issue decided between the parties at two stage in the same litigation so that if an issue has been decided at an earlier stage against a party. it cannot be allowed to be re-

agitated by him at the subsequent proceedings... The principle of res judicata is conceived in the large public interest which requires that all litigation must, sooner than later, come to an end. The principle is also found on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.... Section 11 of the Code of Civil Procedure embodies the rule of conclusiveness as evidence, or bars the plea of an issue tried in a earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties or their privies in a competent Court to try such subsequent suit in which the issue has been directly and substantially raised and decided in the judgment and decree in the former suit, would operate as res judicata. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue which directly and substantially had arisen in the former suit between the same parties. It is based on public policy as well as private justice that would apply, therefore, to all judicial proceedings, whether civil or otherwise. It equally applies to quasi- judicial proceedings of the tribunals other than the Civil Courts... Doubtless the principle of res judicata is a fundamental

doctrine of law, that there must be an end to litigation. But the plea of res judicata has to be specifically and expressly raised. The foundation of the plea of res judicata must be laid in the pleadings. If this was not done, no party would be permitted to raise it for the first time at the stage of the appeal. The only exception to this requirement is when the issue of res judicata is in fact argued before the lower Court.

27. The judgment of the Hon'ble Apex Court reported in **2025-2-KCCR-82-SC-Parties between Ivan Rathinam V/s Milan Joseph** Headnote G reads as follows.

**G. CIVIL PROCEDURE CODE, 1908-Section 11-
Principle of res judicata-Scope and applicability.**

Held: The principle of res judicata is a salutary and pragmatic edict to reinforce the doctrine of finality. When a matter, whether on a question of fact or question of law, has been decided between two parties in a suit and the decision is final, neither party will be allowed to canvass the matter again in a future suit or proceeding. Without this bar, parties would be immobilized for all eternity, due to the uncertainty regarding their rights and entitlements. Res judicata infuses predictability in legal adjudication. The Courts are thus, under a bounden duty to enforce this statutory embargo where the facts of the case

overwhelmingly satisfy the ingredients of Section 11 of the CPC.

28. Go through the above proposition of law, moreover, the judgment of the Hon'ble High Court of Karnataka, parties between **Venkatesh and others V/s State of Karnataka and another**, as discussed supra relying the judgment of the Hon'ble Apex Court in **Mohanlal Goenka V/s Benoy Krishna Mukherjee reported in AIR 1953 SC 65**, clearly observed that the erroneous decision on a question of law operates as res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata.

29. Further another judgment of the Hon'ble Apex Court, **parties between State of West Bengal V/s Hemanth Kumar Bhattacharjee, AIR 1966 SC 1061**, the Hon'ble Court observed that a wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by

appeals to higher tribunals or other procedures like review which the law provides.

30. So for the above proposition of law of Hon'ble higher courts, herein even though there is no defence by the present plaintiff in OS No.801/2012 that he is the adoptive son of deceased Ningappa. Further, there is no notice regarding the present plaintiff is legal heir of deceased Ningappa and he is having legal share in the property as a lineal descendant of deceased Ningappa. All the parties of said suit are in the suit. Already rights of the parties are determined. As the above proposition of law, even though the right of this plaintiff not considered in the said suit, it is proper and appropriate to the plaintiff to approach the Hon'ble Appeal court for correctness of the said judgment. The plaintiff has to establish his defence by put forth thing before the said court that by virtue of adoption he became the legal heir of deceased Ningappa who is 2nd son of Ramappa and having his legal share.

31. As the above proposition of law and on plain reading of Section 11 of CPC, already rights of both plaintiff and defendants are determined by the learned IV Addl.Civil Judge and JMFC Court Hubballi in OS No.801/2012 which is similar to this Court irrespective of pecuniary jurisdiction. The said judgment and decree in OS No. 801/2012 and FDP No.5/2015 are concerned, the rights of the parties determined in the said suit and FDP. So the same are operate as res judicata to this suit. So under these circumstances, the plaintiff has to approach the Hon'ble appeal court to put forth his defence, obtain necessary share in the appeal and correct the judgment of the learned trial Court in OS No.801/2012 and FDP No.5/2015.

32. In another aspect, this Court observes that in the genealogy, the plaintiff has shown that deceased proposita Ramappa has four children, who are deceased Kallappa, deceased Ningappa, deceased Mahadevappa and one Neellavva. In plaint, he shows Nelavva is defendant no. 12. But in the case of title, he could not

impleaded Neelavva as a necessary party. By virtue of Section 6 of Hindu Succession Amendment Act, 2005, this Neelavva is one of the necessary party to the suit. Further, in the counter claim filed by the defendant no. 4, he established that one Adivevva and Nagavva are the children of his father Mahadevappa and the said Adivevva and Nagavva are the brothers of defendant no. 4 and they are the necessary parties to the suit. So under the partition suit, these Neelavva, Adivevva and Nagavva are also the necessary parties to the suit. So in order to bring these lacunas before the Hon'ble Appeal Court, the plaintiff has to make effort to get the relief in accordance with law. So the present suit of the plaintiff is hit by law of res judicata as discussed supra. So the plaintiff is not entitled any share in the suit properties. Herin, the defendant no. 4 could not enter the witness box and give the evidence. His counter claim prayers are similar to the plaintiff's prayer, so to the counter claim also the res-judicata applies. The defendnat No.4 could not also get the share in the suit properties. Both

plaintiff and defendant no. 4 have to approach the Hon'ble Appeal Court for corrections of judgment passed in OS No.801/2012 and FDP No.5 /2015 in accordance with law. So **I answered issue No.2, 3, 4, 6 and Addl. issue No.1 in the negative.** The defendant No. 3 established that suit of the plaintiff is hit by Section 11 CPC and **I answered Issue No. 5 in the Affirmative**

33. **ISSUE NO.7:-** For the foregoing reasons on above issues, I proceed to pass the following:-

ORDER

The suit of the plaintiff seeking the relief of partition and separate possession of his 1/3rd share in the suit schedule properties is hereby dismissed with cost.

The relief of declaration to declare that preliminary decree passed in O.S.No.801/2012 dated 28.05.2015 and FDP No.5/2015 by learned IV Addl. Civil Judge and JMFC Court Hubballi are not binding on his share is also dismissed.

The counter claim filed by defendant No.4 on similar relief of plaintiff is hereby dismissed with cost.

**Office to draw decree
accordingly.**

(Dictated directly to the Adalath, stenographer has paragraphed and typed, corrected and signed by me and then pronounced in the open Court on 23rd day of June 2026).

**(Ramesh S. Ganiger,
III Addl. Senior Civil Judge & JMFC,
Hubballi.**

:: ANNEXURE ::

Witnesses examined for the plaintiff/s:

PW-1 : Sri Ningappa A/f Ningappa
Morabad @ Dummad

PW-2 : Sri Shivanand S/o Takappa Navalur

Documents Exhibited for the plaintiff/s:

Ex.P1 & 2 : RTC extracts

Ex.P3 & 4 : Certificates given by Gram Panchayath
Byahatti

Ex.P5 & 6 : Certified copies of judgment and decree
in O.S.No.110/2022

Ex.P7 : Certified copy of order passed in FDP
No.5/2015

- Ex.P8 : Certified copy of final decree
- Ex.P9 : Original adoption deed
- Ex.P10 : Valuation certificate
- Ex.P11 : Property valuation report
- Ex.P12 & 13: Certified copies of deeds

Witnesses examined for the defendants:

- DW.1 : Smt Madevi W/o shankrappa Dummad @
Morabad

Documents Exhibited for the defendants:

- Ex. D1 to 5 : RTC extracted (confronted)
- Ex. D6 : Certified copy of ordersheet in FDP
No.5/2015
- Ex. D7 : Certified copy of application in FDP
No.5/2015
- Ex. D8 : Certified copy of report submitted
by court commissioner
- Ex. D9 : Certified copy of panchayathdast
submitted by court commissioner
- Ex. D10 : Certified copy of report submitted
by Court commissioner

(Ramesh S. Ganiger,)
III Addl. Senior Civil Judge & JMFC,
Hubballi.

