

**IN THE COURT OF CIVIL JUDGE AND JMFC
AT HOLENARASIPURA**

Present:- **Sri. R.Mahesha, B.A.L., L.L.B,**
Civil Judge and J.M.F.C,
Holenarasipura.

Dated this the 15th day of October, 2019

O.S.No.99/2013

Plaintiff / s : 1. B.S.Puttamani
D/o Shanthappa,
Aged about 23 years,

2. B.S.Manjula D/o Shanthappa,
W/o Shanmuka
Aged 25 years,

3. Kalavathi D/o Shanthappa,
Aged 28 years.

All are R/o
Badakyathanahalli village,
Hallmysore Hobli,
Holenarasipura Taluk.

(By Sri.K.J.T., Adv.,)
V/s

Defendants: 1. Shivamma W/o Devappa,
Aged about 76 years,

2. Shantappa S/o Devappa,
Aged about 58 years,

3. Channabasappa S/o Devappa,
Aged about 55 years,

4. Chandrappa S/o Devappa,
Aged 52 years,

Defendant No.1 to 4 are residing at
Badakyathanahalli village,
Hallmysore Hobli,
Holenarasipura Taluk.

5. Sundaramma
W/o Late Shivananjappa,
Aged about 40 years,
Elemuddanahalli village,
Saligrama Hobli,
K.R.Nagara Taluk,
Mysore District.

6. G.S.Anitha W/o Kumara,
Aged about 30 years,
Kallahalli village,
Hallymysore Hobli,
Holenarasipura Taluk.

7. T.C.Kumaraswamy
S/o Late T.A.Chandrashekaraiiah,
Aged about 30 years,
Hallymysore village and Hobli,
Holenarasipura Taluk.

8. Revanna.
Aged about 70 years,
Guddenahalli village,
Hallymysore Hobli,
Holenarasipura Taluk,
Hassan Taluk.

9. Mahesha S/o Revanna,
Aged 35 years,
Guddenahalli village,
Hallymysore Hobli,

Holenarasipura Taluk,
Hassan District.

10. Thayamma W/o Appajappa,
D/o Late Devappa,
Aged 75 years,
Gejjenahalli Village,
Hallymysore Hobli,
Holenarasipura Taluk.

**(D1, 5 to 7 - Exparte,
D2 By Sri.N.V., Adv.,
D3 By Sri.Y.D.P., Adv.,
D4 By Sri.G.N., Adv.,
D8 & 9 By Sri. B.M., Adv.,
D10 By Sri. M.V.S., Adv.,)**

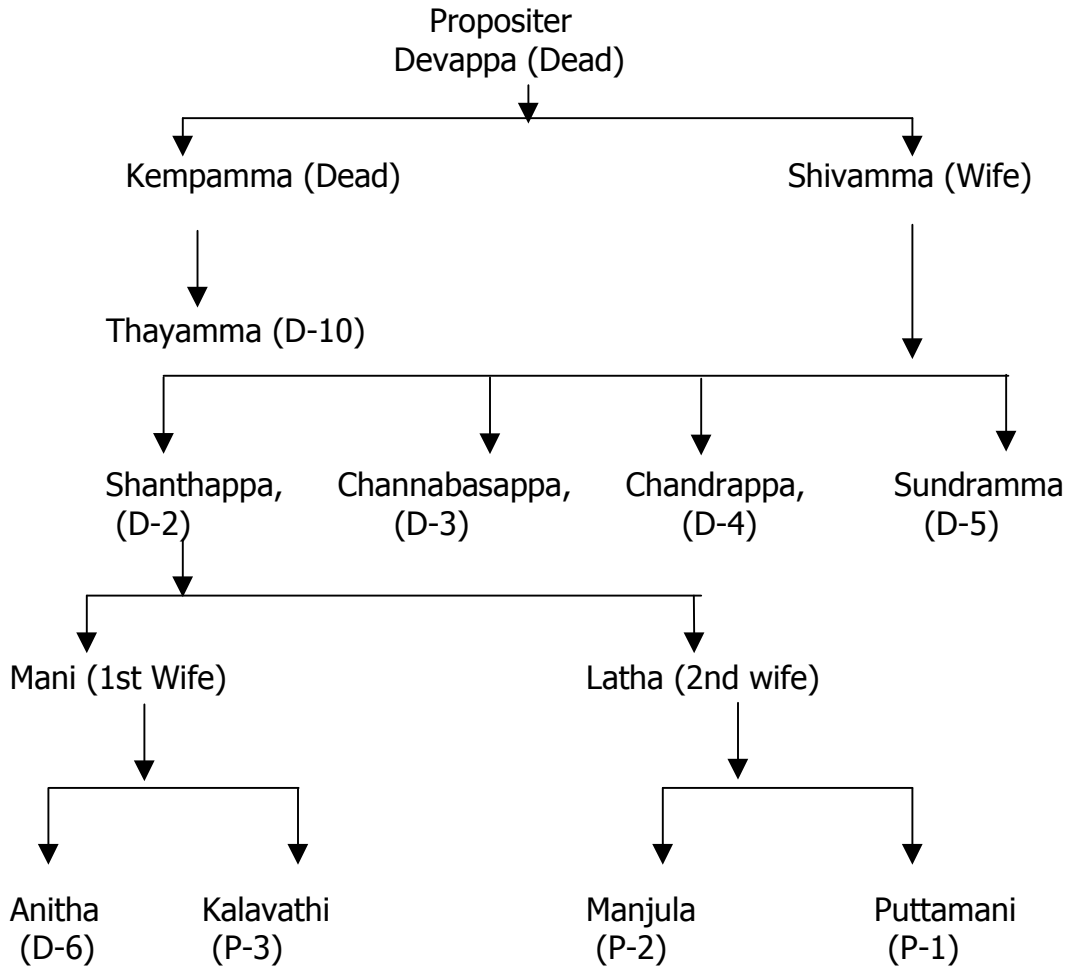
Date of filing of suit	:	23/03/2013
Nature of Suit	:	Partition and separate possession.
Date of Commencement Of recording evidence	:	24/07/2015
Date of Judgement	:	15/10/2019
Total Duration	:	Year/s Month/s Day/s
		06 06 22

J U D G E M E N T

The present suit filed for partition and separate possession in respect of suit schedule properties.

2. The brief facts of the plaintiff's case are as under:

For clarity it is necessary to refer to the Genealogy of the parties.



The defendant No.2 is the father of plaintiffs. He has two wives, 1st wife by name Mani, she has 2 daughters, who are the defendant No.5 and plaintiff No.3. Another wife of defendant No.2 by name Latha, she is having 2 daughters who are the plaintiffs No.1 and 2. The defendant No.3 and 4 are the brothers of the defendant No.2. The defendant No.5 is the sister of defendant No.2.

The defendant No.2 to 5 and defendant No.1 are the children of original propositer of the family i.e. Devappa. The defendant No.6 who is the daughter of 2nd defendant and the plaintiffs are the children of the defendant No.2. The defendant No.8 and 9 are the purchaser of the joint family properties. Certain properties stand in the name of defendant No.2 Shanthappa, some properties stand in the name of defendant No.4 Chandrappa. The defendant No.5 is married and living with her husband. The suit schedule properties are in the joint possession of the plaintiffs and defendants. There is no partition of the properties but the khatha has been changed on the death of propositer Devappa. The change of the said khatha does not bind the plaintiffs. When the plaintiffs requested for the partition of the properties, the defendants refused the same. On verification of the documents it came to the knowledge of the plaintiffs that the defendant No.2 has alienated 'B' schedule property which are the joint family properties in favour of the defendant No.6 and 7. The defendant No.7 has changed the khatha in favour of defendant No.8. Hence, plaintiff constrained to file this suit.

3. After issuance of summons, defendants No.2, 3, 4 and 8 and 9 appeared before the court through their counsel. The defendant No.2, 4 and 8 and 9 filed their

written statement. The defendant No.3 appeared before the court and filed his written statement. In spite of issuance of summons, the defendant No.1, 5 to 7 remained absent, hence they placed ex parte. When case posted for arguments, the plaintiff filed impleadment application to bring proposed defendant No.10, same is considered and the defendant No.10 taken on record. Thereafter, when case posted for argument, filed necessary application to file written statement, same is considered on cost and written statement taken on record.

The brief facts of written statement of defendant No.2 is as follows:

In the written statement, defendants No.2 denied some facts and admitted the some plaint pleadings. He further contends that the defendant No.7 and 8 have not purchased any property and he denied lease, mortgage, sale in respect of suit properties. Further he admitted that there is no objection to allot share to the plaintiff. The defendant No.4 illegally executed the sale deed in favour of defendant No.4, 7 and 8 without knowledge of defendant No.2. Hence, they pray for dismissal of suit with exemplary cost.

4. The brief facts of written statement of defendant No.3 is as follows:

In the written statement, defendants No.3 denied entire plaint pleadings. The defendant further contends that, the defendant No.1 is the wife of original propositior Late Devappa, defendant No.2 to 5 are the childrens'. The suit properties are ancestral properties. There is no partition took place in respect of suit properties. The defendant No.2 and 4 are without the knowledge of defendant No.3, colluding with each other and execute sale deed in favour of defendant No.7 and 8. Hence the said sale deed are not binding on him. The defendant No.3 also having right over the ancestral properties allotted to his share over the suit properties. Hence they pray for dismissal of suit with exemplary cost.

5. The brief facts of written statement of defendant No.4 is as follows:

In the written statement, defendants No.4 denied entire plaint pleadings. He further contends that family of Devappa has divided prior to the year 1986. He died in the year 1985-86. The division of the property was reduced to writing and a plaupatii was prepared on 10/05/1986. The defendant No.2being the elder of the family members is having original palupatti and the xerox copy was given to the defendant No.4. He has

stated about the properties fallen to the share of the each shares. He contends that defendant No.4 is a government employee, working as a teacher and he is having independent income and savings. The item No.1 of the suit schedule property i.e. Sy.No.92/1 measuring 18 guntas was purchased by the defendant No.4 from the defendant No.2 through sale deed dated 17/05/2001 for sale consideration of rs.26,000/-. It was executed by the defendant No.2 for himself and for his children including the properties. The properties sold was the share allotted to defendant No as such the plaintiffs cannot question the validity of sale deed and they have the knowledge of the sale deed and cannot question the same. The suit item No.2 bearing Sy.No.92/2 absolutely belongs to defendant No.4 as per the division in the family. Hence, they pray for dismissal of suit with exemplary cost.

6. The brief facts of written statement of defendant No.8 and 9 is as follows:

In the written statement, defendants No.8 and 9 denied some facts and admitted the some plaint pleadings. They specifically contended that the father and mother of plaintiff all are living together and having good relationship with plaintiff. The defendants came to know about suit properties are ancestral properties. The item No.2 in suit B schedule property bearing

Sy.No.83/1B2 to an extent of 25 guntas is the self acquired property of defendants. The said property has been purchased through sale deed dated 11/02/2003 from plaintiffs and their parents. On the basis of sale, the defendant No.8 got changed the khatha in respect of item No.2 in suit B schedule property and has been in possession of the same. While execution of sale deed, the plaintiff being the minor, their parties executed the sale deed on their behalf. The suit is barred by law of limitation. The present suit filed only to grab the defendants' property. Hence, they pray for dismissal of suit with exemplary cost.

7. The brief facts of written statement of defendant No.10 is as follows:

In the written statement, defendants No.10 denied entire plaint pleadings. Further contends that the suit schedule properties are ancestral properties. The defendant No.1 is the mother, defendant No.2 to 5 are the sister and brother. The defendant No.2 and 4 illegally got khatha in their favour with an intention to effect partition to plaintiff and defendant No.10 and defendant No.1 to 6. The defendant No.10 also having right over the joint family properties. The defendant had not gave any consent to obtain khatha to the defendant No.2 and 4, hence the sale deed executed them is not

binding on him. Without get consent of defendant No.10, sale deed executed in respect of 'B' schedule property in not binding on him. The defendant No.8 illegal got document and khatha has been transferred in favour of the defendant No.9. Further contended that the defendant No.10 is illiterate person. In order to grab the property the defendant No.10, the defendant No.4 not to effect partition. The suit filed by the plaintiff is not maintainable. The plaintiff is not come to the court with clean hands. Hence, prays to dismissal of the suit.

8. On the basis of the above pleadings, my predecessor has been framed the following issues:

1. Whether the plaintiffs prove that the suit properties are the joint family properties?
2. Whether the plaintiffs prove that they are entitled for 1/5th share each in the share of the 2nd defendant?
3. Whether the plaintiffs prove that the sale in favour of the defendant No.7 to 9 in respect of B schedule property is not binding on them?
4. Whether the defendant No.4 proves that there was already a partition in the family?
5. Whether the plaintiffs prove that they are entitled for the reliefs sought for?

6. To what order or Decree?

**Additional issues casted on
03/03/3015**

1. Whether defendant No.8 proves that plaintiff father and mother on behalf of minor plaintiffs executed sale deed in his favour in respect of item No.2 of 'B' schedule property?

Additional issues casted on 24/11/2016

2. Whether the defendant No.3 proves that the sale deed executed by the defendant No.2 in favour of the defendant No.7 and 8 are not binding on him?

Additional issues casted on 19/02/2019

1. Whether the defendant No.10 proves that the sale deed executed by the defendant No.2 and 4 in respect of 'B' schedule property is not binding on defendant No.10 share as contended in her written statement?
2. Whether the defendant No.10 further prove that she has also entitled to get share in the suit schedule?

9. In order to prove the case, the plaintiff examined as P.W.1. Ex.P1 to P32 got marked. On the other hand, the defendant No.4 and 8 himself examined as DW.1 DW.2 and produced Ex.D1 to D49 got marked.

10. Heard argument of defendant No.4 counsel. Despite providing sufficient opportunity, the plaintiff counsel and other defendants counsel not addressed argument, hence argument of plaintiff side and other defendants taken as not addressed. Perused the record.

Ex.P1- Genealogical tree, it clear that the family members of plaintiffs and defendants.

Ex.P2 : Old hand written RTC, it belongs to in the year 1971-72 to 1976-77 in 1977-78 to 1980-81, 1981-82 to 1985-86 of Badakyathanahalli village, bearing Sy.No.92/1 in column 9 and 12 Channegowda S/o Chaluvegwda name appears to an extent of 18 guntas, as possessor and cultivator and in the year 1986-87 to 1989-90, 1990-91 to 1994-95, 1996-97 to 1999-20000 Shanthappa S/o Devappa name appears to an extent of 18 guntas as per vide M.R.No.31/1987-88.

Ex.P3 : Old hand written RTC, it disclose that bearing Sy.No.92/2 of Badakyathanahalli village, in the year 1971-72 to 1976-77, 1977-78 to 1980-81 in column 9 and 12 Dyavappa name appears to an extent of 14 guntas, in the year 1981-82 to 1983-84, 1981-82 to 1985-86 Dyavappa and his sons name appears to an extent of 14 guntas vide M.R.No.5/1982-83, in the year 1986-87 to 1989-90, 1991-92 to 1995-96 Shanthappa, Channabasappa, Chandrappa name appear to an extent of 14 guntas vide M.R.no.5/1982-83. In the year 1996-97 to 1998-99 Chandrappa S/o Devappa name appears vide M.R N.7/2000-01.

Ex.P4 : Old hand written RTC, it disclose that bearing Sy.No.3/1 of Badakyathanahalli village, in the year 1977-78 to 1979-80 in column 9 and 12 Dyavappa

S/o Kalappa name appears to an extent of 1 acre 14 guntas, in the year 1998-87 to 1988-89, 1990-91 to 1995-96, in the year 1996-97 to 1998-99 Chandrappa S/o Devappa name appears vide M.R N.7/2000-01.

Ex.P5 : Old hand written RTC, it disclose that bearing Sy.No.39/1 of Nanjalapura village, in the year 1986-87 to 1988-89 in column 9 and 12 Dyavappa S/o Kalappa name appears to an extent of 1 acre 14 guntas, in the year 1998-87 to 1988-89, 1990-91 to 1995-96, in the year 1996-97 to 1998-99 Chandrappa S/o Devappa name appears vide M.R No.7/2000-01.

Ex.P6 : Old hand written RTC, it disclose that bearing Sy.No.49/3 of Badakyathanahalli village, in the year 1971-72 to 1976-77, 1977-78 to 1979-80 in column 9 and 12 Erappa name appears to an extent of 10 guntas, in the year 1981-82 to 1985-86 Channappa S/o Nanjappa name appears on the basis of sale to an extent of 10 gutnas, in the year 1986-87 to 1989-90, 1991-92 to 1993-94 stands in name of Devappa S/o Kalappa to an extent of 10 guntas, in the year 1996-97 to 1999-2000 Shanthappa S/o Devappa name appears vide M.R on the basis of sale.

Ex.P7: Old hand written RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 1971-72 to 1976-77, in column 9 and 12 Kalappa name appears to an extent of 02 guntas, in the year 1977-78 to 1979-80, 1981-82 to 1983-84 Dyavppa S/o Kalappa name appears to an extent of 02 gutnas, in the year 1986-87 Dyavappa S/o Kalappa, Kalappa S/o Dyavappa name rounded off and khatha made as Shanthappa S/o Dyavappa as mutation order M.R.31/1987-88. The some katheddar name continued till 2000-01. Then the khatheddar name was removed or rounded off and khatha mutated in the name of Shanthappa S/o Dyavappa, Chandrappa S/o Devappa as per mutation order 7/2000-01.

Ex.P8 Old hand written RTC, it disclose that bearing Sy.No.49/19 to an extent of 04 guntas stands in the name of Dyavappa in the year 1971-72 to 1976-77.

Ex.P9: Old the hand written RTC, it disclose that bearing Sy.No.83/1B to an extent of 1 acre 16 guntas stands in the name of Dyavappa in the year 1971-72 to 1976-77.

Ex.P10 : Computerized RTC, it disclose that bearing Sy.No.92 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 18 guntas vide MR. No.29/2000-01 on the basis of sale.

Ex.P11 : Computerized RTC, it disclose that bearing Sy.No.92 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 14 guntas vide MR. No.5/1982-83.

Ex.P12 : Computerized RTC, it disclose that bearing Sy.No.3/1 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 10 guntas vide MR. No.7/2000-01.

Ex.P13 : Computerized RTC, it disclose that bearing Sy.No.49 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 B.D. Chandrappa S/o Devappa name appears to an extent of 10 guntas vide MR. No.4/2003-04 on the basis of sale.

Ex.P14 : Computerized RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Shanthappa S/o Dyavappa and Chandrappa S/o Devappa name appears

to an extent of each 01 guntas vide MR. No.31/1987-88 and M.R. No.7/2000-01.

Ex.P15 : Computerized RTC, it disclose that bearing Sy.No.49/13A of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 06 guntas vide MR. No.7/2000-01.

Ex.P16 : Computerized RTC, it disclose that bearing Sy.No.49/14 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa and Shanthappa S/o Devappa name appears to an extent of each 03 guntas vide MR. No.7/2000-01.

Ex.P17 : Computerized RTC, it disclose that bearing Sy.No.49/15 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Shanthappa S/o Devappa name appear to an extent of 03 guntas and Chandrappa S/o Devappa name appears to an extent of 04 guntas and vide MR. No.7/2000-01.

Ex.P18 : Computerized RTC, it disclose that bearing Sy.No.39 of Badakyathanahalli village, in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 15 guntas vide MR. No.17/2004-05 on the basis of sale.

Ex.P19: Computerized RTC, it disclose that bearing Sy.No.83/1B1 of Badakyathanahalli village, in the year 2012-13 in column 9 and 12 T.C.Kumaraswamy S/o Late T.A.Chandrashekaraiyah name appears to an extent of 12 guntas vide MR.HNo.40/2011-01.

Ex.P20 : Mutation extract, it disclose that M.R No.5/1982-83 bearing Sy.No.3/1 to an extent of 1 acre 14, in Sy.no.92/1 14 guntas, in Sy.No.49/19 to an extent of 02 guntas, 49/1A to an extent of 02 guntas, in Sy.No.49/1B 02 guntas, in Sy.no.83/1B to an extent 1

acre 16 guntas, and in Sy.No.49/13B of Badakyathanahalli village, khata has been transferred from Devaappa to his children Shanthappa, Channabasappa, Chandrappa on the basis of pavathi.

Ex.P21: Mutation extract- it disclose that M.R No.7/2000-01 of Badakyathanahalli village bearing Sy.No.49/12, 3/1, 49/13A, 49/13B,. 49/13A, 49/13B, 92/2 katha has been accepted.

Ex.P22: Mutation Extract- it disclose that as per M.R.No.29/2000-01 khatha has been transferred from Shanthappa to Chandrappa in respect of Sy.No.92/1 of Badakyathanahalli village.

Ex.P23: Mutation Extract- it disclose that as per M.R.No.17/2004-05 khatha has been transferred from Shanthappa to Chandrappa in respect of Sy.No.39/1 to an extent of 15 guntas of Badakyathanahalli village on the basis of sale.

Ex.P24: Mutation Extract- it disclose that as per M.R.No.4/2003-04 khatha has been transferred from Shanthappa, Channabasappa, Chandrappa to B.D.Chandrappa S/o Devappa in respect of Sy.No.49/19 and 49/3 of Badakyathanahalli village.

Ex.P25: Mutation Extract- it disclose that as per M.R.No.13/2008-09 khatha has been accepted in favour of Mahesh S/o Revanna in respect of Sy.No.83/1B2 of Badakyathanahalli village.

Ex.P26: Mutation Extract- it disclose that as per M.R.No.6/2005-06 khatha has been transferred from Shanthappa to B.D.Chandrashekaraiiah S/o Annajappa in respect of Sy.No.83/1B to an extent of 19 guntas of Badakyathanahalli village.

Ex.P27: Mutation Extract- it disclose that as per M.R.H.No.40/2011-12 khatha has been accepted in respect of Sy.No.84/7, 83/181, 40/3 of Badakyathanahalli village.

Ex.P28: Record of rights it belongs to suit schedule properties.

Ex.P29: Index of land, it disclose that bearing Sy.No.3/1, 49/12, 49/13, 49/13A, 49/13B, 49/14, 49/15, 92/2 of Badakyathanahalli village.

Ex.P30: Sale deed, it disclose that on 14/07/2005 one Shanthara S/o Devappa R/o of Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one T.A.Chandrashekaraiah S/o Annajappa for his legal necessities.

Ex.P31: Sale deed, it disclose that on 11/02/2003 one Shanthara S/o Devappa his 1st wife Mani and 2nd wife Latha and his minor daughters R/o of Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Reveanna S/o Late Cahnnabasappa R/o Badakyathanahalli village for his legal necessities.

Ex.P32: Computerized RTC, it disclose that bearing Sy.No.83/1B2 of Badakyathanahalli village, in the year 2014-15 in column 9 and 12 Mahesha S/o Revanna name appears to an extent of 25 guntas vide MR.No.12/2007-08 on the basis of partition.

Defendants documents

Ex.D1: Computerized RTC, it disclose that bearing Sy.No.92/1 of Badakyathanahalli village, in the year

2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 18 guntas vide MR.No.29/2000-01 on the basis of sale.

Ex.D2: Computerized RTC, it disclose that bearing Sy.No.92/2 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 14 guntas vide MR.No.5/1982-83.

Ex.D3: Computerized RTC, it disclose that bearing Sy.No.3/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 10 guntas vide MR.No.7/2000-01.

Ex.D4: Computerized RTC, it disclose that bearing Sy.No.49/14 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa and Shanthappa S/o Devappa name appears to an extent of 3 guntas each vide MR.No.7/2000-01.

Ex.D5: Computerized RTC, it disclose that bearing Sy.No.49/1A of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 02 guntas vide MR.No.5/2002-03 on the basis of sale.

Ex.D6: Computerized RTC, it disclose that bearing Sy.No.49/1B of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 02 guntas vide MR.No.5/2002-03 on the basis of sale.

Ex.D7: Computerized RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Dyavappa and Chandrappa S/o Devappa name appears to an

extent of 01 guntas each vide M.R.31/1987-88 and MR.No.7/2002-03.

Ex.D8: Computerized RTC, it disclose that bearing Sy.No.49/13A of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 06 guntas vide MR.No.7/2000-01.

Ex.D9: Computerized RTC, it disclose that bearing Sy.No.49/13B of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 06 guntas vide MR.No.7/2000-01 as per partition.

Ex.D10: Computerized RTC, it disclose that bearing Sy.No.49/15 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 03 guntas and Chandrappa S/o Devappa name appears to an extent of 04 guntas vide MR.No.7/2000-01.

Ex.D11: Computerized RTC, it disclose that bearing Sy.No.39/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 13.08 guntas vide MR.No.4/1987-88 and Chandrappa S/o Devappa name appears 15 guntas vide M.R. No.17/2004-05 on the basis of sale.

Ex.D12: Computerized RTC, it disclose that bearing Sy.No.40/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 38 guntas vide MR.No.2/2003-04 on the basis of sale.

Ex.D13: Mutation Extract- it disclose that as per M.R.No.4/2003-04 khatha has been transferred from

Shanthappa S/o Devappa and his wife Mani and Latha to B.D. Chandrappa S/o Devappa in respect of Sy.No.49/3 and 49/4 of Badakyathanahalli village on the basis of sale.

Ex.D14 : Mutation extract, it disclose that M.R No.7/2000-01 bearing Sy.No.49/13, to an extent of 10 guntas, 49/12 to an extent of 01 guntas, in Sy.No.49/14 03 guntas, in Sy.no.49/15 to an extent 3-1/2 guntas, and in Sy.No.83/1B to an extent of 1 acre 04 guntas, in Sy.No.92/1 to an extent of 18 guntas, 49/19 to an extent of 04 guntas, in Sy.No.49/14 to an extent of 35 guntas of Badakyathanahalli village, khata has been transferred from Shanthappa S/o Devappa to Chandrappa S/o Devappa.

Ex.D15: Mutation extract, it disclose that MR No.17/2004-05 bearing Sy.No.39/1 to an extent of 15 guntas khatha has been transferred from Shanthha and Channabasappa to Chandrappa S/o Devappa on the basis of sale.

Ex.D16: Mutation extract, it disclose that MR No.2/2003-04 bearing Sy.No.40/1 to an extent of 38 guntas khatha has been transferred in favour Chandrappa S/o Devappa from Thayamma S/o Devappa on the basis of sale.

Ex.D17: Mutation extract, it disclose that MR No.4/2003-04 bearing Sy.No.49/19 04 guntas and 49/3 to an extent of 10 guntas khatha has been accepted in favour of B.D.Chandrappa S/o Devappa on the basis of sale.

Ex.D18 and 19: Mutation extract, it disclose that MR No.5/2002-03 bearing Sy.No.49/1B to an extent of 2 guntas and Sy.No.49/1B to an extent of 02 guntas

khatha has been accepted in favour of B.D.Chanrappa S/o Devappa on the basis of sale.

Ex.D20: Mutation extract- it disclose that M.R.N. No.40/2011-12 of Badakyathanahalli village bearing Sy.No.84/7, 83/1B1, 40/3 katha has been accepted in favour of T.C.Kumaraswamy on basis of pavathi.

Ex.D21: Mutation extract, it disclose that MR No.12/2007-08 bearing Sy.No.83/1B to an extent of 25 guntas khatha has been accepted in favour of Mahesha S/o Revanna on the basis of partition.

Ex.D22: Affidavit, it disclose that one Chandrappa S/o Devappa filed affidavit for Hiduvali Dara certificate in respect of his properties before competent authority.

Ex.D23: Mutation extract, it disclose that M.R.No.3/2000-01 bearing Sy.No.39/1 to an extent of 1 acre khata has been accepted in favour of Annajappa S/o Devappa.

Ex.D24: Sale deed, it disclose that on 17/05/2001 one Shanthappaa S/o Devappa and on behalf of his minor daughters R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.39/1 to an extent of 18 guntas for his legal necessities.

Ex.D25: Sale deed, it disclose that on 31/07/2002 one Gurappa S/o Chikkadyavanna R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.49/1A 02 guntas, 49/1B 02 guntas for his legal necessities.

Ex.D26: Sale deed, it disclose that on 22/05/1999 one Shanthappa S/o Devappa and on behalf of his minor daughters R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Gurappa S/o Late Chikka Dyavanna, R/o Badakyathanahalli village in respect of Sy.No.92/1 to an extent of 02 guntas for his legal necessities.

Ex.D27: Sale deed, it disclose that on 17/05/2001 one Shanthappa S/o Devappa and his wife Mani and Latha R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.49/3 10 guntas, 49/19 to an extent of 04 guntas, for his legal necessities.

Ex.D28: Sale deed, it disclose that on 20/05/2005 one Shanthappa S/o Devappa and his wife and on behalf of his minor daughters R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.39/1 to an extent of 28-1/2 guntas for his legal necessities.

Ex.D29: Sale deed, it disclose that on 11/02/2003 one Thayamma D/o Devappa and on behalf of her minor daughters R/o of Gajjenahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Shanathappa S/o Devappa R/o Badakyathanahalli village for his legal necessities.

Ex.D30 to 32: Patta book pertaining to Thayamma W/o Devappa

Ex.D33: Sale deed- it disclose that on 14/07/2005 one Shanthappa S/o Devappa R/o of Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one

T.A.Chandrashekaraiyah S/o Annajappa in respect of Sy.No.83/1B to an extent of 19 guntas for his legal necessities.

Ex.P34: Notice issued by Kaveri Grameen Bank in favour of Chandrappa S/o Devappa to calling upon to repay the loan.

Ex.D35: Appointment letter issued by the concern authority.

Ex.D36: Computerized RTC, it disclose that bearing Sy.No.92/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 18 guntas vide MR.No.29/2000-01 on the basis of sale.

Ex.D37: Computerized RTC, it disclose that bearing Sy.No.92/2 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 14 guntas vide MR.No.5/1982-83.

Ex.D38: Computerized RTC, it disclose that bearing Sy.No.49/1A of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 02 guntas vide MR.No.5/2002-03 on the basis of sale.

Ex.D39: Computerized RTC, it disclose that bearing Sy.No.49/1B of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Chandrappa S/o Devappa and Shanthappa S/o Devappa name appears to an extent of 3 guntas each vide MR.No.7/2000-01.

Ex.D40: Computerized RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Shanthappa S/o Dyavappa and Chandrappa S/o Devappa name appears

to an extent of 01 guntas each vide M.R.31/1987-88 and MR.No.7/2002-03.

Ex.D41: Computerized RTC, it disclose that bearing Sy.No.49/14 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Shanthappa S/o Deavappa and Chandrappa S/o Devappa name appears to an extent of each 03 guntas each vide MR.No.7/2002-03.

Ex.D42: Computerized RTC, it disclose that bearing Sy.No.49/15 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Shanthappa S/o Deavappa to an extent of 03 guntas and Chandrappa S/o Devappa name appears to an extent of 04 guntas each vide MR.No.7/2000-01.

Ex.D43: Computerized RTC, it disclose that bearing Sy.No.49/19 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 04 guntas each vide MR.No.4/2003-04 on the basis of sale.

Ex.D44 and 45: Computerized RTC, it disclose that bearing Sy.No.39/1 of Badakyathanahalli village, in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 1 acre vide MR.No.3/2000-01 and Chandrappa S/o Devappa name appears vide M.R.No.17/2004-05.

Ex.D46 and 47: Computerized RTC, it disclose that bearing Sy.No.40/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 38 guntas vide MR.No.2/2003-04 on the basis of sale.

Ex.D48: Sale deed, it disclose that on 11/02/2003 one Shanathappa S/o Devappa and his wives and on behalf of his minor daughters R/o Badakyathanahalli village had executed the sale deed in favour of Revanna

S/o Late Channabasappa R/o of Guddenahalli village, Hallymysore Hobli, Holenarasipura Taluk, for his legal necessities.

Ex.D49: Patta book pertaining to one Mahesha.

11. My answers to the above issues are as under:

Issue No.1 : In the Affirmative
Issue No.2 : Partly in the Affirmative
Issue No.3 : In the Affirmative.
Issue No.4 : In the Negative
Issue No.5 : Partly in the Negative

Addl. Issue No.1 (3/3/2015) : In the Negative

Addl. Issue No.2 (24/11/2016) : In the Affirmative

Addl. Issue No.3 (19/02/2019): In the Affirmative.

Addl. Issue No.40 (19/02/2019): In the Affirmative.

**Issue No.6 : As per the final order,
for the following:**

REASONS

12. **Issue No.1 to 5:** All the issues are interrelated one hence taken for together for discussion to avoid repetition of facts and evidence.

13. It is an admitted fact that the original propositor is by name Devappa, he had two wives i.e. 1st wife Kempamma and 2nd wife is Shivamma. He had one

daughter through Kempamma by name Thayamma. The said Devappa had 3 sons and one daughter through his 2nd wife Shivamma i.e. 1st son Shanthappa, 2nd son Channabasappa, 3rd son Chandrappa, 4th daughter Sundaramma. The defendant No.2 also two wives i.e. 1st wife is Mani and 2nd wife is Latha. Plaintiff No.1 and 2 are the daughters of defendant No.2 through Latha. Plaintiff No.3 and defendant No.6 are the daughters of defendant No.2 through his wife by name Mani.

14. It is pertinent here note that sum and substance of plaintiff case that the suit properties are the ancestral and Hindu Undivided joint family properties of plaintiff and defendants. Out of suit properties, some of properties of khath stands in the name of defendant No.2 and some of properties of khatha stands in the name of defendant No.4. The defendant No.5 married and she had residing in her husband house. All suit properties has been in joint possession and enjoyment, but khatha was get changed by way of 'pavathi takte' (ಪಾವತಿ ತಕೆ).

After the death of Devappa, the defendant No.2 and defendant No.4 colluding with each other and created false revenue records on the basis of fabricated khatha. The defendant No.2 alienated joint family properties in favour of the defendant No.7 and 8. The defendant No.8 alienated suit 'B' property in favour of defendant No.9.

Therefore such a alienation is not binding over the plaintiff share. Hence pray for their legal share.

15. On the other hand defendant No.4, defendant No.7 and 8 have totally denied the plaint averments. The defendant No.4 took specific contention that family original propositior by name Devappa has divided prior to the year 1986. He died in the year 1985-86. The division of the property was reduced to writing and a plaupatii was prepared on 10/05/1986. The defendant No.2 being the elder of the family members is having original palupatti and the xerox copy was given to the defendant No.4. He has stated about the properties fallen to the share of the each shares. He contends that defendant No.4 is a government employee, working as a teacher and he is having independent income and savings. The item No.1 of the suit schedule property i.e. Sy.No.92/1 measuring to an extent of 8 guntas was purchased by the defendant No.4 from the defendant No.2 through sale deed dated 17/05/2001 for sale consideration of rs.26,000/-. It was executed by the defendant No.2 for himself and for his children including the properties. The properties sold was the share allotted to defendant No.2 as such the plaintiffs cannot question the validity of sale deed and they have the knowledge of the sale deed and cannot question the same. The suit item No.2

bearing Sy.No.92/2 absolutely belongs to defendant No.4 as per the division in the family.

16. The defendant No.7 to 9 specifically contending that plaintiff and their father Shanthappa and his two wives have been residing in common house with good manner. The suit property Sy.No.82/1B2 extent 25 guntas is self acquired property of defendants. On 11/02/2003 the defendant No.8 had purchased the above property from plaintiff and their father and mother i.e. (Shantappa and his two wives Mani and Latha) for value of consideration. On the basis of sale deed suit property got changed in the name of defendant No.8. After the purchase he has been in possession and enjoyment of 'B' suit property. After that the khatha of above property changed in favour of his son i.e. defendant No.9 on 11/02/2003. The defendant No.2 and his wives and on behalf of his minor children executed the sale deed 11 year back. After the lapse of 11 year the said suit filed. Therefore present suit is not maintainable.

17. In order to prove their case, the plaintiff No.1 herself got examined as PW.1 and Ex.P1 to 37 got marked. On perusal of document produced by the plaintiff it disclose that Ex.P1 is the GT of plaintiff and defendant No.1 to 6. In the said document Thayamma

was left out defendant No.2 is signatory to that document. Ex.P2 is the hand written RTC of Sy.No.92/1 of Badakyathanahalli village extent of 18 guntas stands in the name of Channegowda S/o Chaluvegowda, it belongs to in the year 1971-72 to 1976-77. Sy.No.90/1 of Badakyathanahalli village 18 guntas stands in the name of Puttaswamy gowda, in the year 1977-78 to 1980-81. Sy.No.92/1 of Badakyathanahalli village 18 guntas stands in the name of Puttaswamy gowda, in the year 1981-82 to 1985-86. Sy.No.92/1 of Badakyathanahalli village 18 guntas stands in the name of Shanthappa S/o Devappa, in the year 1986-87 to 1999-2001. Sy.No.92/1 of Badakyathanahalli village 18 guntas stands in the name of Shanthappa S/o Devappa, in the year 1991-92 to 1994-95. Sy.No.92/1 of Badakyathanahalli village 18 guntas stands in the name of shanthappa S/o Devappa, in the year 1996-97 to 2001-02, Ex.P3 is the RTC of Sy.No.92/02 of Badakyathanahalli village to an extent of 14 guntas katha stands in the name of Dyavappa S/o Kalappa in the year 1971-72 to 1976-77, 1981-82 to 1983-84, Dyavappa S/o Kalappa name appears 1977-78 to 1980-81 Dyavappa S/o Kalappa name appears in the year 1981-82 to 1985-86, the name of Shanthappa rounded up and mention name of Shanthappa, Channabasappa, Chandrappa as per MR 5/1982-83, 1986-87 to 1995-96 same name appears Shanthappa,

Channabasappa, Chandrappa in the year 2000-01. All names of Shanthappa, Channabasappa, Chandrappa rounded of and mentioned the name of Chandrappa S/o Devappa as per MR 7/2000-01. Ex.P4 is the hand written RTC, of Badakyathanahalli village bearing Sy.No.03/01 extent of 1 acre 14 guntas in the year 1977-78 to 1980-81 and stands in the name of Dyavappa S/o Kalappa in the year 1986-87 to 1988-89, it disclose that the name of Chandrappa, Channabasappa, Chandrappa S/o Devappa as per M.R No.5/1982-83, 1991 to upto 2000-01 same name continued in the year 2000-01. Three names rounded of then inserted Chandrappa name as per M.R. No.7/2000-01. Ex.P5 is the hand written RTC of Sy.No.39/01 of Badakyathanahalli village total extent of 4.33 guntas, earlier stands in the name of Kalappa S/o Dyavappa as per M.R. No.1/1971-72, then Changed as Basavarajappa S/o Kuntabasappa as per sale deed and mutation changed M.R.No.11/1984-85 for an extent of 2 acre 13-1/2 guntas and renaming extent of land was mutated in the name of Shanthappa S/o Devappa for extent of 2 acre 19-1/2 guntas stands in the name of Shanthappa S/o Devappa bearing Sy.No.39/01 stands in the name of Kalappa S/o Dyavamma and Basavarajappa S/o Kuntabasappa from 1981-82 to 1985-86. Ex.P6 hand written RTC of Sy.No.49/03 of Badakyathanahalli village extent of 10 guntas khatha

stands in the name of Channappa S/o Nanjamma, from 1971 to 1976-77 cultivator and possessor column shown the name of Erappa, Sy.No.49/03 of Badakyathanahalli village extent of 10 guntas khatha stands in the name of Channappa S/o Nanjamma, from 1977-78 to 1979-80 cultivator and possessor column shown the name of Channappa S/o Nanjanna, Sy.No.49/03 of Badakyathanahalli village extent of 10 guntas khatha stands in the name of Channappa S/o Nanjamma rounded of and inserted the name of Devappa S/o Kalappa as per sale. From 1981-82 to 1985-86 Sy.No.49/03 of Badakyathanahalli village extent of 10 guntas 10 guntas of land stands in the name of Devappa S/o Kalappa as per sale and from 1991-92 to 1993-94 Sy.No.49/03 of Badakyathanahalli village extent of 10 guntas 10 guntas of land stands in the name of Devappa S/o Kalappa as per sale. From 1996-97 to 2000-01 Sy.No.49/03 of Badakyathanahalli village extent of 10 guntas 10 guntas of land stands in the name of Devappa S/o Kalappa as per sale. In the year 2000 khatedar name of Devappa S/o Kalappa removed and inserted the name of Shanthappa S/o Devappa as per MR No.7/2000-01. Ex.P7 discloses that Sy.No.49/12 of Badakythanahalli village to extent of 02 guntas stands in the name of Kalappa S/o Dyavanna from 1971-72 to 1976-77,m 1977-78 to 1986-87 khatedar name was shown as

Dyavappa S/o Kalappa, in the year 1986-87 Dyavappa S/o Kalappa, Kalappa S/o Dyavappa name rounded off and khatha made as Shanthappa S/o Dyavappa as mutation order M.R.31/1987-88. The some kathedar name continued till 2000-01. Then the khathedar name was removed or rounded off and khatha mutated in the name of Shanthappa S/o Dyavappa, Chandrappa S/o Devappa as per mutation order 7/2000-01. Ex.P8 disclose that bearing Sy.No.49/19 to an extent of 04 guntas stands in the name of Dyavappa in the year 1971-72 to 1976-77, Ex.P9 is the hand written RTC, it disclose that bearing Sy.No.83/1B to an extent of 1 acre 16 guntas stands in the name of Dyavappa in the year 1971-72 to 1976-77. Ex.P10 : Computerized RTC, it disclose that bearing Sy.No.92 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 18 guntas vide MR. No.29/2000-01 on the basis of sale. Ex.P11 : Computerized RTC, it disclose that bearing Sy.No.92 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 14 guntas vide MR. No.5/1982-83. Ex.P12 : Computerized RTC, it disclose that bearing Sy.No.3/1 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 10 guntas vide MR. No.7/2000-01. Ex.P13 :

Computerized RTC, it disclose that bearing Sy.No.49 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 B.D. Chandrappa S/o Devappa name appears to an extent of 10 guntas vide MR. No.4/2003-04 on the basis of sale. Ex.P14 : Computerized RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Shanthappa S/o Dyavappa and Chandrappa S/o Devappa name appears to an extent of each 01 guntas vide MR. No.31/1987-88 and M.R. No.7/2000-01. Ex.P15 : Computerized RTC, it disclose that bearing Sy.No.49/13A of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 06 guntas vide MR. No.7/2000-01. Ex.P16 : Computerized RTC, it disclose that bearing Sy.No.49/14 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Chandrappa S/o Devappa and Shanthappa S/o Devappa name appears to an extent of each 03 guntas vide MR. No.7/2000-01. Ex.P17 : Computerized RTC, it disclose that bearing Sy.No.49/15 of Badakyathanahalli village, in the year 2011-12 in column 9 and 12 Shanthappa S/o Devappa name appear to an extent of 03 guntas and Chandrappa S/o Devappa name appears to an extent of 04 guntas and vide MR. No.7/2000-01. Ex.P18: Computerized RTC, it disclose that bearing Sy.No.39 of Badakyathanahalli village, in

column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 15 guntas vide MR. No.17/2004-05 on the basis of sale. Ex.P19: Computerized RTC, it disclose that bearing Sy.No.83/1B1 of Badakyathanahalli village, in the year 2012-13 in column 9 and 12 T.C.Kumaraswamy S/o Late T.A.Chandrashekaraiiah name appears to an extent of 12 guntas vide MR.HNo.40/2011-01. Ex.P20: Mutation extract, it disclose that M.R No.5/1982-83 bearing Sy.No.3/1 to an extent of 1 acre 14, in Sy.no.92/1 14 guntas, in Sy.No.49/19 to an extent of 02 guntas, 49/1A to an extent of 02 guntas, in Sy.No.49/1B 02 guntas, in Sy.no.83/1B to an extent 1 acre 16 guntas, and in Sy.No.49/13B of Badakyathanahalli village, khata has been transferred from Devaappa to his children Shanthappa, Channabasappa, Chandrappa on the basis of pavathi. Ex.P21: Mutation extract- it disclose that M.R No.7/2000-01 of Badakyathanahalli village bearing Sy.No.49/12, 3/1, 49/13A, 49/13B,. 49/13A, 49/13B, 92/2 katha has been accepted. Ex.P22: Mutation Extract- it disclose that as per M.R.No.29/2000-01 khatha has been transferred from Shanthappa to Chandrappa in respect of Sy.No.92/1 of Badakyathanahalli village. Ex.P23: Mutation Extract- it disclose that as per M.R.No.17/2004-05 khatha has been transferred from Shanthappa to Chandrappa in respect

of Sy.No.39/1 to an extent of 15 guntas of Badakyathanahalli village on the basis of sale. Ex.P24: Mutation Extract- it disclose that as per M.R.No.4/2003-04 khatha has been transferred from Shanthappa, Channabasappa, Chandrappa to B.D.Chandrappa S/o Devappa in respect of Sy.No.49/19 and 49/3 of Badakyathanahalli village. Ex.P25: Mutation Extract- it disclose that as per M.R.No.13/2008-09 khatha has been accepted in favour of Mahesh S/o Revanna in respect of Sy.No.83/1B2 of Badakyathanahalli village. Ex.P26: Mutation Extract- it disclose that as per M.R.No.6/2005-06 khatha has been transferred from Shanthappa to B.D.Chandrashekaraiah S/o Annajappa in respect of Sy.No.83/1B to an extent of 19 guntas of Badakyathanahalli village. Ex.P27: Mutation Extract- it disclose that as per M.R.H.No.40/2011-12 khatha has been accepted in respect of Sy.No.84/7, 83/181, 40/3 of Badakyathanahalli village. Ex.P28: Record of rights it belongs to suit schedule properties. Ex.P29: Index of land, it disclose that bearing Sy.No.3/1, 49/12, 49/13, 49/13A, 49/13B, 49/14, 49/15, 92/2 of Badakyathanahalli village. Ex.P30: Sale deed, it disclose that on 14/07/2005 one Shanthara S/o Devappa R/o of Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one T.A.Chandrashekaraiah S/o Annajappa for his legal

necessities. Ex.P31: Sale deed, it disclose that on 11/02/2003 one Shanthara S/o Devappa his 1st wife Mani and 2nd wife Latha and his minor daughters R/o of Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Reveanna S/o Late Cahnnabasappa R/o Badakyathanahalli village for his legal necessities. Ex.P32: Computerized RTC, it disclose that bearing Sy.No.83/1B2 of Badakyathanahalli village, in the year 2014-15 in column 9 and 12 Mahesha S/o Revanna name appears to an extent of 25 guntas vide MR.No.12/2007-08 on the basis of partition.

18. In other hand, defendant No.4 has produced some documents. Upon perusal of those documents it reveals that Ex.D1: Computerized RTC, it disclose that bearing Sy.No.92/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 18 guntas vide MR.No.29/2000-01 on the basis of sale. Ex.D2: Computerized RTC, it disclose that bearing Sy.No.92/2 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 14 guntas vide MR.No.5/1982-83. Ex.D3: Computerized RTC, it disclose that bearing Sy.No.3/1 of Badakyathanahalli village, in the year 2016-17 in column

9 and 12 Chandrappa S/o Devappa name appears to an extent of 10 guntas vide MR.No.7/2000-01. Ex.D4: Computerized RTC, it disclose that bearing Sy.No.49/14 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa and Shanthappa S/o Devappa name appears to an extent of 3 guntas each vide MR.No.7/2000-01. Ex.D5: Computerized RTC, it disclose that bearing Sy.No.49/1A of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 02 guntas vide MR.No.5/2002-03 on the basis of sale. Ex.D6: Computerized RTC, it disclose that bearing Sy.No.49/1B of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 02 guntas vide MR.No.5/2002-03 on the basis of sale. Ex.D7: Computerized RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Dyavappa and Chandrappa S/o Devappa name appears to an extent of 01 guntas each vide M.R.31/1987-88 and MR.No.7/2002-03. Ex.D8: Computerized RTC, it disclose that bearing Sy.No.49/13A of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 06 guntas vide MR.No.7/2000-01. Ex.D9: Computerized RTC, it disclose

that bearing Sy.No.49/13B of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 06 guntas vide MR.No.7/2000-01 as per partition. Ex.D10: Computerized RTC, it disclose that bearing Sy.No.49/15 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 03 guntas and Chandrappa S/o Devappa name appears to an extent of 04 guntas vide MR.No.7/2000-01. Ex.D11: Computerized RTC, it disclose that bearing Sy.No.39/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 13.08 guntas vide MR.No.4/1987-88 and Chandrappa S/o Devappa name appears 15 guntas vide M.R. No.17/2004-05 on the basis of sale. Ex.D12: Computerized RTC, it disclose that bearing Sy.No.40/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 38 guntas vide MR.No.2/2003-04 on the basis of sale. Ex.D13: Mutation Extract- it disclose that as per M.R.No.4/2003-04 khatha has been transferred from Shanthappa S/o Devappa and his wife Mani and Latha to B.D. Chandrappa S/o Devappa in respect of Sy.No.49/3 and 49/4 of Badakyathanahalli village on the basis of sale. Ex.D14 : Mutation extract, it disclose that

M.R No.7/2000-01 bearing Sy.No.49/13, to an extent of 10 guntas, 49/12 to an extent of 01 guntas, in Sy.No.49/14 03 guntas, in Sy.no.49/15 to an extent 3-1/2 guntas, and in Sy.No.83/1B to an extent of 1 acre 04 guntas, in Sy.No.92/1 to an extent of 18 guntas, 49/19 to an extent of 04 guntas, in Sy.No.49/14 to an extent of 35 guntas of Badakyathanahalli village, khata has been transferred from Shanthappa S/o Devappa to Chandrappa S/o Devappa. Ex.D15: Mutation extract, it disclose that MR No.17/2004-05 bearing Sy.No.39/1 to an extent of 15 guntas khatha has been transferred from Shanthha and Channabasappa to Chandrappa S/o Devappa on the basis of sale. Ex.D16: Mutation extract, it disclose that MR No.2/2003-04 bearing Sy.No.40/1 to an extent of 38 guntas khatha has been transferred in favour Chandrappa S/o Devappa from Thayamma S/o Devappa on the basis of sale. Ex.D17: Mutation extract, it disclose that MR No.4/2003-04 bearing Sy.No.49/19 04 guntas and 49/3 to an extent of 10 guntas khatha has been accepted in favour of B.D.Chanrappa S/o Devappa on the basis of sale. Ex.D18 and 19: Mutation extract, it disclose that MR No.5/2002-03 bearing Sy.No.49/1B to an extent of 2 guntas and Sy.No.49/1B to an extent of 02 guntas khatha has been accepted in favour of B.D.Chanrappa S/o Devappa on the basis of sale. Ex.D20: Mutation extract- it disclose that M.R.N.

No.40/2011-12 of Badakyathanahalli village bearing Sy.No.84/7, 83/1B1, 40/3 katha has been accepted in favour of T.C.Kumaraswamy on basis of pavathi. Ex.D21: Mutation extract, it disclose that MR No.12/2007-08 bearing Sy.No.83/1B to an extent of 25 guntas khatha has been accepted in favour of Mahesha S/o Revanna on the basis of partition. Ex.D22: Affidavit, it disclose that one Chandrappa S/o Devappa filed affidavit for Hiduvali Dara certificate in respect of his properties before competent authority. Ex.D23: Mutation extract, it disclose that M.RNo.3/2000-01 bearing Sy.No.39/1 to an extent of 1 acre khata has been accepted in favour of Annajappa S/o Devappa. Ex.D24: Sale deed, it disclose that on 17/05/2001 one Shanthappaa S/o Devappa and on behalf of his minor daughters R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.39/1 to an extent of 18 guntas for his legal necessities. Ex.D25: Sale deed, it disclose that on 31/07/2002 one Gurappa S/o Chikkadyavanna R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.49/1A 02 guntas, 49/1B 02 guntas for his legal necessities.

Ex.D26: Sale deed, it disclose that on 22/05/1999 one Shanthappa S/o Devappa and on behalf of his minor daughters R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Gurappa S/o Late Chikka Dyavanna, R/o Badakyathanahalli village in respect of Sy.No.92/1 to an extent of 02 guntas for his legal necessities. Ex.D27: Sale deed, it disclose that on 17/05/2001 one Shanthappa S/o Devappa and his wife Mani and Latha R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.49/3 10 guntas, 49/19 to an extent of 04 guntas, for his legal necessities. Ex.D28: Sale deed, it disclose that on 20/05/2005 one Shanthappa S/o Devappa and his wife and on behalf of his minor daughters R/o Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Chandrappa S/o Devappa R/o Badakyathanahalli village in respect of Sy.No.39/1 to an extent of 28-1/2 guntas for his legal necessities. Ex.D29: Sale deed, it disclose that on 11/02/2003 one Tyamma D/o Devappa and on behalf of her minor daughters R/o of Gajjenahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one Shanathappa S/o Devappa R/o Badakyathanahalli

village for his legal necessities. Ex.D30 to 32: Patta book pertaining to Thayamma W/o Devappa, Ex.D33: Sale deed- it disclose that on 14/07/2005 one Shanthara S/o Devappa R/o of Badakyathanahalli village, Hallymysore Hobli, Holenarasipura Taluk, executed the sale deed in favour of one T.A.Chandrashekaraiyah S/o Annajappa in respect of Sy.No.83/1B to an extent of 19 guntas for his legal necessities. Ex.P34: Notice issued by Kaveri Grameen Bank in favour of Chandrappa S/o Devappa to calling upon to repay the loan. Ex.D35: Appointment letter issued by the concern authority. Ex.D36: Computerized RTC, it disclose that bearing Sy.No.92/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 18 guntas vide MR.No.29/2000-01 on the basis of sale. Ex.D37: Computerized RTC, it disclose that bearing Sy.No.92/2 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 14 guntas vide MR.No.5/1982-83. Ex.D38: Computerized RTC, it disclose that bearing Sy.No.49/1A of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 02 guntas vide MR.No.5/2002-03 on the basis of sale. Ex.D39: Computerized RTC, it disclose that bearing Sy.No.49/1B of Badakyathanahalli village, in the year

2017-18 in column 9 and 12 Chandrappa S/o Devappa and Shanthappa S/o Devappa name appears to an extent of 3 guntas each vide MR.No.7/2000-01. Ex.D40: Computerized RTC, it disclose that bearing Sy.No.49/12 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Shanthappa S/o Dyavappa and Chandrappa S/o Devappa name appears to an extent of 01 guntas each vide M.R.31/1987-88 and MR.No.7/2002-03. Ex.D41: Computerized RTC, it disclose that bearing Sy.No.49/14 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Shanthappa S/o Deavappa and Chandrappa S/o Devappa name appears to an extent of each 03 guntas each vide MR.No.7/2002-03. Ex.D42: Computerized RTC, it disclose that bearing Sy.No.49/15 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Shanthappa S/o Deavappa to an extent of 03 guntas and Chandrappa S/o Devappa name appears to an extent of 04 guntas each vide MR.No.7/2000-01. Ex.D43: Computerized RTC, it disclose that bearing Sy.No.49/19 of Badakyathanahalli village, in the year 2017-18 in column 9 and 12 Chandrappa S/o Devappa name appears to an extent of 04 guntas each vide MR.No.4/2003-04 on the basis of sale. Ex.D44 and 45: Computerized RTC, it disclose that bearing Sy.No.39/1 of Badakyathanahalli village, in column 9 and 12

Chandrappa S/o Devappa name appears to an extent of 1 acre vide MR.No.3/2000-01 and Chandrappa S/o Devappa name appears vide M.R.No.17/2004-05. Ex.D46 and 47: Computerized RTC, it disclose that bearing Sy.No.40/1 of Badakyathanahalli village, in the year 2016-17 in column 9 and 12 Shanthappa S/o Devappa name appears to an extent of 38 guntas vide MR.No.2/2003-04 on the basis of sale. Ex.D48: Sale deed, it disclose that on 11/02/2003 one Shanathappa S/o Devappa and his wives and on behalf of his minor daughter R/o Badakyathanahalli village executed the sale deed in favour of Revanna S/o Late Channabasappa R/o of Guddenahalli village, Hallymysore Hobli, Holenarasipura Taluk, for his legal necessities. Ex.D49: Patta book pertaining to one Mahesha.

19. From perusal of oral and documentary evidence it disclose that as per Ex.P20 the original propositor Dyavappa had all properties in his name. During his life time, he had properties in Badakyathanahalli village in Sy.No.3/01 to an extent of 1 acre 14 guntas, Sy.No.92/02 to an extent of 14 guntas, Sy.No.49/19 to an extent of 0.24 guntas, Sy.No.49/1A to an extent of 02 guntas, Sy.No.40/1B 0.24 guntas, Sy.No.83/1B to an extent of 1 acre 16 guntas, Sy.No.49/13B to an extent of 06 guntas. After the death of Devappa S/o Kalappa, on

the basis of pavathi khatha changed and all properties kept in the joint name of Shanthappa, Chandrappa, Channabasappa in the year 1982-83. As per mutation order M.R.No.5/1982-83. Then as per the Ex.D14, Ex.P21 defendant No.2 and 4 and elder daughter of Smt.Thayamma partitioned all Hindu Undivided joint family properties without get the consent from Channabasappa and Sundramma i.e. defendant No.5. Defendant No.3 and 5 are not party to said "paluparikath". Admittedly both parties have not produced original panchayath paluparikathu, but it can be seen from revenue records as per paluparikattu, as per M.R No.7/2990-01 khatha was changed in favour of defendant No.2 and 4. All the properties mentioned in Ex.P20 are all ancestral and joint family properties of plaintiff and defendant No.1 to 6. But defendant No.1, 3 and 5 are not a party to alleged paluparikath.

20. The Specific averments of plaintiff para is that there is no partition between the defendant No.1 to 5. Due to get benefit of khatha stands in the name of defendant No.2 to 4, both have colluded each other and both have dispose of properties as their well and wish. In other hand defendant No.4 took specific contention that the plaint averments para No.3 are false and he took that partition had taken place in the year 10/05/1986. But

he did not produce the same before court. Under such circumstances it can be clear, that the defendant No.4 failed to establish before this court that after the death of his father, Devappa, Shanthappa, Chandrappa, Thayamma had divided the ancestral joint family properties and said division was acted upon and subsequently reduced into writing and palupatti was prepared on 10/05/1986. Therefore it can be clearly held that the defendant No.4 prove that there is valid partition between defendant No.1 to 5. Because defendant No.1, 3 and 5 are not a parties to said document. There is no share allotted to defendant No.1, 3 and 5, the defendant No.2 and 4 only colluding with each other and dispose some properties in the name of defendant No.4, it is perverse under law.

21. On careful perusal of defendant side document, it reveals that suit property item No.1 in Sy.No.92/01 extent of 18 guntas allotted to share of defendant No.2, item No.2 suit property of Sy.No.92/02 to an extent of 14 guntas allotted to share of defendant No.4, item No.3 property Sy.No.3/01, extent of 10 guntas stands in the name of defendant No.4 remaining extent of 1 acre 04 guntas acquired by Government, same was divided between defendant No.2 and 4 in OS No.51/2005. But defendant No.4 did not produce compromise decree of OS

No.51/2005. Item No.4 suit property of Sy.No.49/03 to an extent of 10 guntas allotted to share of Shanthappa, item No.5 suit property Sy.No.49/12 to an extent of 2 guntas, out of 2 guntas Shanthappa and Chandrappa partitioned and each get 1 guntas. In item No.6 Sy.No.40/13A, 6 guntas allotted to share of defendant No.4 item No.7 Sy.No.49/14 total extent 6 guntas out of 6 guntas. The defendant No.4 and 2 get each 3 guntas in item No.8 of Sy.No.49/15 total extent of 7 guntas, defendant No.2 and 4 equally partitioned 3-1/2 guntas each. Item No.9 in Sy.No.39/01 to an extent of 1 acre 15 guntas 'B' suit schedule item No.2 property and 'C' schedule property are one and the same. Item 'B' schedule in Sy.No.83/1B to an extent of 1 acre 04 guntas allotted to share of Shanthappa i.e. defendant No.2. As per the above partition the defendant No.2 sold the property of Sy.No.92/01 to an extent of 18 guntas was executed registered sale deed dated 17/05/2001 in favour of defendant No.4 as per Ex.D24 and on 17/04/2003 defendant No.2 and his wives executed sale deed in respect of Sy.No.49/3B to extent of 10 guntas, Sy.No.49/19 to an extent of 0.04 guntas was executed in favour of defendant No.4 as per Ex.D27. On 20/05/2005 the defendant No.2 and wives and their children minor guardian Puttamani daughter of defendant No.2 by name Kalavathi, 28 years Manjula 25 years, and on behalf of

minor daughter Puttamma, the defendant No.2 executed sale deed in favour of defendant No.4 of Sy.No.39/01 Nanjalapura village, out of extent 28-1/2, 15 guntas. On perusal of Ex.P29 it reveals that on 11/02/2009 Smt.Thayamma D/o Late Devappa and on behalf of minor Guardian daughters name Nagamma 16 years, Suma, 12 years executed sale deed in favour of Shanthappa S/o Devappa of Sy.No.40/01 to an extent of 38 guntas. Ex.D33 it reveals that on 14/07/2005 R/o Badakyathanahalli village Sri.Shanthappa S/o Devappa executed sale deed in favour of T.A.Chandrashekara S/o Late Annajappa R/o of Hallymysore village, Holenarasipura Taluk in respect of Sy.No.83/1B Badakyathanahalli village measuring extent of 19 guntas executed registered sale deed in favour of Chandrashekaiah S/o Late Annajappa. On perusal of Ex.D48 it reveals that on 11/02/2003, absolute sale deed executed by Shanthappa S/o Devappa and his elder wife Mani and minor daughter Anitha and Kalavathi, 2nd wife daughters by name Manjula, 13 years, Puttamani 11 years, as minor gaurdian Shanthappa in favour of REvanna S/o Late Chanabasappa R/o of Gaddenahally village, Hallymysore Hobli, Holenarasipura Taluk in respect of Sy.No.83/1B to an extent of 1 acre 04 guntas, sale deed was executed only 25 guntas.

22. It is pertinent here note that admittedly there is no valid partition deed between defendant No.1 to 5 and 10 as defendant No.4 contended in his written statement. The revenue records and sale deed disclose that defendant No.2 and 4 themselves partitioned the properties without allot share to the defendant No.1, 3 to 5 and they are not signatory or parties to said paluparikat. It is not valid document. It is pertinent to know about **what is partition document under law?**

"Partition deed for a property is executed to divide the property among different people usually among the family members. A partition is a division of a property held jointly by several persons. So that each person got a share and become the owner of the share allotted to him. In case a partition is by mutual consent, a partition deed is executed by the co-owners, the partition deed is required to be registered at the office of the sub registrar of the place where the property is situated as in the case of any other, registration the stamp duty payable. In such case is Rs.No.1000/- for each share of the property. Further the registration fee will be Rs.500/-. More than one person may jointly own a property.

23. The present case on hand as discussed supra there is no valid partition deed among all legal heir of late Devappa, no share allotted Channabasappa, Sundramma

and Shivanna. The genealogical tree discloses that Shivanna is 2nd wife of original proposer of Late Devappa. After the death of Late Devappa, 2nd wife Shivanna would not become class I heir. During cross examination of DW.1 He clearly admitted that Shivanna is 2nd wife, but nothing forth coming regarding whether Devappa married 2nd wife after the death of Kempamma. But documents itself speaks about after the death of Kempamma, (1st wife of Devappa) he married 2nd wife Shivamma who is the mother of defendant No.2 to 5. Now she is widow, still alive hence, she also class I heir therefore she also entitled to get equal share in suit properties but no share allotted to defendant no.1, 3 and 5. The defendant No.4 took specific contention that all joint family properties of late Devappa partitioned in the year 1985. As per partition deed, revenue records changed, but he did not substantiate above facts by producing documentary evidence. The DW.1 in his cross examination clearly denied the suggestion put forth by the plaintiff. But it can be clear that there is no partition took place between defendant No.1 to 5 and 10. The suit schedule properties succeeded by original proposer Devappa. Defendant No.1 to 4 being class I heir of deceased Devappa they are all entitled to get equal share in all suit schedule properties. Defendant No.5, defendant No.10 being the daughters of late Devappa,

they are not entitled to get equal share as sons. But they have notional share in their father share.

24. At this juncture it is relevant to here the decision of Honb'le Apex court in the matter of **N.Padmamma and others Vs. S.Ramakrishna reddy and others reported in 2015(1) SCC 417** where in Hon'ble Supreme court clearly held that possession of a co-heir is to be treated as possession of other co-heir and same cannot be adverse to other. Co-heir not in a possession mere by any secret, hostile, animus, on his own part in derogation co-heirs title, the said possession of law also been followed by Hon'ble High Court of Karnataka in the matter of **Rudramma dead by LRs Vs. Nagaraja dead by LRs. in RAS NO.630/2018.**

If the above said principle law is applying to the present case in hand as there was partition taken place in the family of original propositor in respect of all suit properties. **"It is settled principle of law that the possession of co-heir is in law treated as possession of all the co-heir and if one of the co-heir has come in possession of the property"**,

25. It is pertinent to note that there is no dispute regarding relationship between defendant No.1 to 5 and

10 and plaintiff No.1 to 3 and 6. The father of defendant No.2 to 5 and 10 and husband of defendant No.1 was died before 1986. It is also admitted facts all the suit schedule properties are ancestral and joint family properties of plaintiff and defendant No.1 to 6 and 10. As per Hindu Succession Amendment Act 2005, the daughter are not co-parcener because their father was dead in the year 1986. Original propositer Devappa was not alive in the year 09/09/2005. So plaintiff and defendant No.5, 10 being the daughters of late Devappa, they are not entitled for equal share as co-parcener with that of the sons (defendant No.1 to 4). By availing the benefit of Hindu Succession Amendment Act 2005 in view of ratio laid down by Hon'ble Supreme court in the matter of **Prakasha and other Vs Pulavathi and other reported in, 2015 AIR SCW 6160. As per the said decision of Hon'ble Supreme court, a daughter to claim partition as that of son, the necessary condition is that the daughter should be living and co-parcener should be living, to put into precise, only living daughters of co-parcener would be entitled to claim a share in the ancestral property.**

26. It is pertinent to note and refer Hon'ble Supreme court decision in the matter of

Mangammal @ Tulasi and others Vs. T.B.Raju and others reported in 2018(1) Karnataka Law reports 598 (SC) and in the matter of Dhanamma @ Suman Surpur and others Vs. Amar and others 2018(1) KCCR 481 (SC). The Hon'ble Supreme court took different opinion it was held that

although the commencement of the act signifies its applicability so does the preliminary decree in this case the male sons how are the plaintiff claimed that the daughter of the male co-parcener are not entitled to the estate of the father since he died before commencement of the act. Only living daughter of living co-parcener would entitle to claim share in joint family ancestral properties.

27. From the above discussion it is clear that the defendant No.5 and 10 are not a co-parcener. After the death of original proposer i.e. Devappa the defendant No.2 to 4 are co-parceners. The defendant No.5 and 10 are entitled to only notional share. The share of the defendant No.1 to 5 and 10 to be worked out as per above stated legal position if the share are worked out on the above discussed principle of law first in all properties

divided between Devappa and Shanthappa, Chandrappa and Channabasappa equally. The defendant No.5 and 10 are only entitled to get share allotted to their father Devappa. Accordingly partition would be made from assuming Devappa was alive, first equal partition between Devappa and Shanthappa, Chandrappa, Channabasappa all of gets $1/4^{\text{th}}$ share in all suit schedule properties. Again notional share allotted to the defendant No.5 and 10, the share which is allotted to the Devappa, again divided between defendant No.2 to 5 and 10, $1/4^{\text{th}}/5 = 1/20$. The notional share of defendant No.5 and 10 is $1/20$, $1/4^{\text{th}} + 1/20 = 5/20$, the defendant No.1 to 4 entitled to get in all suit schedule properties each $5/20$. After the death of late Devappa, his wife Smt.Shivamma still alive she is now widow she is also class I heir she is equally entitled to get share along with her sons. Therefore defendant No.1 to 4 are equally entitled to get share $5/20$. The defendant 5 and 10 are entitled to get share $1/20$. Plaintiff No.1 to 3 and defendant No.6 are daughters of defendant No.2, they are entitled to get share allotted to their father i.e. Shantappa S/o Devappa. All are entitled to get equal share in $5/20$. Therefore, **Issue No.1 answered in the Affirmative, Issue No.2 answered in the Partly affirmative, Issue No.3 answered in the Affirmative, Issue No.4**

answered Negative, Issue No.5 answered Partly Affirmative.

28. Additional issue No.1 casted on 3/03/2015, Additional issue No.2 casted on 24/11/2016, additional issue No.1 and 2 casted on 19/02/109:

29. All the issues are taken together for common discussion to avoid repetition.

30. The specific averment made by the plaintiff in the plaint that some suit schedule properties khatha has been stands in the name of defendant No.2 and 4. Both have disposed as there will and wish. The defendant No.2 executed registered sale deed in favour of defendant No.7 and 8. Subsequently defendant No.8 changed the khatha in favour of defendant No.9. Therefore the alleged sale deed are not binding to the plaintiff share. On the other hand, the defendant No.7 and 8 denied and specifically stated that they purchased 'B' schedule property from 2nd defendant, they did not know the said property is ancestral property of plaintiff and defendants family. The defendant No.7 father late T.A.Chandrashekaraiah S/o Annajaiah was purchased in Sy.No.83/1B of extent 19 guntas from 2nd defendant and his wife and on behalf of his minor children. The

defendant No.8 purchased in Sy.No.83/1B of extent 25 guntas from the 2nd defendant and his wife and on behalf of his minor childrens'. Both have in physical possession and enjoyment of above properties since purchased. The defendant No.8 changed khatha in favour of his son i.e. defendant No.9. Now the suit schedule property item 'C' schedule stands in the name of 9th defendant. Both have contended the properties are self acquired property of defendant No.8 and defendant No.7 father late Chandrashekaraiyah S/o Annajaiah. From the above rival pleadings additional issue No.1 and 2 are framed. For substantiate respective parties contention plaintiff No.1 examined as PW.1 and produced some documents and defendant No.8 examined as DW.2. and produced Ex.D48 and 49. The PW.1 herself produced Ex.P9 hand written RTC extracts from 1971 to 2001-02 and Ex.P20, 31, 32. While discussing issue No.1 to 5 this court already comes to conclusion that all the suit schedule properties are ancestral and Hindu Undivided Joint family properties of plaintiff and defendant No.1 to 5, 6 and 10. The partition deed referred by defendant No.2 and 4 is not valid document, all the legal heir of the family members respective share not allotted in alleged paluparikath. Therefore, this court come to conclusion all the properties shall partition between all the members of the family. Admittedly Ex.P30 executed by defendant No.2,

Ex.P31 executed by defendant No.2 and his wife on behalf of their minor children. Ex.P20 disclose that Sy.No.83/1B of Badakyathanahalli Village measuring extent 1 acre 16 guntas originally belongs to original propositor late Devappa S/o Kalappa. The defendant No.2 and 4 they themselves make partition as per the mutation extract Ex.P20, Sy.No.83/1B measuring extent 16 guntas and other properties of the family kept in the joint names of Shanthappa, Channabasappa and Chandrappa. As per Ex.P21 sy.No.83/1B measuring 1 acre 04 guntas allotted to the share of 2nd defendant. On the strength of Ex.P21 the 2nd defendant changed khatha in his name. Thereafter, he executed registered sale deed in favour of defendant No.7 father and defendant No.8. Other members of the family i.e. defendant No.1, 3, 4, 5, and 10 have not signatory to the Ex.P30 and 31. They have also equal share in item 'B' and 'C' schedule property. The defendant no.2 has no absolute right for alienating item 'B' and 'C' property. As per Ex.P27 the original purchaser of item 'B' schedule property Chandrashekaraiah s/o Annaiah dead his son changed khatha 'B' schedule property and rest of other properties belongs to his father on the basis of pavath takthe (ಪಾವತಿ ತಾಕೆ). As per item 'C' schedule property khatha was stands in the name of defendant No.9. Both 'B' and 'C' schedule properties are joint family properties of plaintiff and

defendant No.1 to 5, 6 and 10. Therefore the defendant No.2 and 4 have no absolute right for alienating to the third parties. Other co-sharers are not consented to the Ex.P30 and 31. Therefore other co-sharers have right over 'B' and 'C' schedule properties.

31. At the first instance plaintiff have filed suit against defendant No.1 to 9. After appearance of defendants, they pointed out, one of the legal heir was not included. After completion of both side evidence, and case posted for arguments on main, the plaintiff have filed application U/O 1 Rule 10(2) of CPC by impleading Smt.Thayamma W/o Appajappa. After enquiry the proposed defendant No.10 appeared and She also filed written statement contending that 2nd and 4th defendant colluding with each other they changed khatha their names. She having share over suit schedule properties. The sale deed taken place by defendant NO.2 and 4 are not binding to the share of the defendant No.10. She specifically denied other plaint averments of plaintiff. On the basis of defendant No.10 written statement this court framed on 19/02/2019, additional No.1 and 2. To substantiate her written statement contention she did not gave any evidence and document has not produced. The document itself speaks that the defendant No.2 and 4 colluding with each other created paluparikath and

Ex.D23 defendant No.10 also get share in Sy.No.40/1 extent of 34 guntas. As per Ex.P20, 30 and 31 all the members of the joint family are not signatory and share also not allotted to all the members. On perusal of plaint schedule properties the share allotted to the defendant No.10 in Sy.No.40/1 extent of 34 guntas is not included in the present suit. As per Ex.D23 the above survey number is also ancestral property of plaintiff and defendant No.1 to 5, 6 and 10 but it was not included. The said fact is not contended by any defendants. The 2nd defendant took the contention in his written statement that the defendant No.10 had sold her share to the plaintiff father as per the sale deed dated 11/02/2003. The said fact is in the knowledge of plaintiff, the said land was not included. Therefore, the present suit filed at the instigation of 2nd defendant and filed only get property belongs to defendant No.4. DW.1 produced Ex.D29 it discloses that on 11/02/2003 the defendant No.10 and her minor children's by name Nagamma, 16 years, Suma 12 years, have executed registered sale deed in favour of 2nd defendant. In the recital she clearly stated she get the property through her ancestors and in the possession, no other have right over this property. On perusal of schedule the survey No.40/1 of Nanjalapura village extent 38 guntas sold by defendant No.10 in favour of 2nd defendant. On careful

perusal of Ex.D12 khatha of Sy.No.40/1 Nanjalapura village stands in the name of 2nd defendant for the extent of 38 guntas. The plaintiff intentionally the above survey number was not included. It is also ancestral property of plaintiff and defendant No.1 to 5, 6 and 10. Even though the said survey number not include in plaint. The defendant No.1 to 5, 6 and 10 have right over said survey No.40/1. The defendant No.4 even though noticed that the said survey No.40/1 is not included because the said survey number was purchased by 2nd defendant from defendant No.10. From this act it can be held that the present suit collusive suit at the instigation of 2nd defendant his daughters filed this suit against defendant No.4. Although this court express clear opinion the survey number 40/1 Nanjalpura village to an extent of 38 guntas is also ancestral and joint family property of defendant No.1 to 5 and 10 and plaintiff and defendant No.6. The duty caste upon on the court the above said property is also making partition between all the members of the joint family. Therefore this court held that Sy.No.40/1 of Nanjalapura to an extent of 38 guntas is also ancestral and joint property of plaintiff, defendant No.1 to 6 and 10. It is not a case of defendant No.2, 4 and 10 that they get the their share and they release from Hindu Undivided family. They specifically contended prior to 1986 partition took place in their

family, there is no severance of joint family, joint status the defendant No.1 appointed as teacher in the year 1995, he get his own earned money and he purchased properties by paying his self earned money. But he did not produced original paluparikath. But Ex.P20 discloses all parties of joint family are not made as a parties and share are not allotted equally to all sharers. The defendant No.2 and 4 and 10 they themselves make partition of properties and then they disposed to third parties and within a family. It is not valid document because other co-sharers have not gave their consent and party to said document. The defendant No.2 executed sale deed in favour of defendant No.7 father in respect of 'B' schedule property and 'C' schedule property executed in favour of defendant No.8. The item 2 in 'B' schedule property and in 'C' schedule property are one and the same. Therefore the sale deed executed by defendant No.2, defendant No.10 and purchased by defendant No.4 and defendant No.7 father Late T.A.Chandrashekaraiah and defendant No.8 are not binding to the plaintiff share and defendant No.1, defendant No.3, defendant No.5, 6 and 10. All the properties are required for general partition between all the sons and daughters of late Devappa. Even though defendant No.3 filed his written statement but he did not adduce any evidence. He claiming to allot his share in his written statement. The

document produced by both parties are reveals, there is no equal partition effected between sons and late daughter of Devappa. Therefore this court can clearly held all the properties which was acquired by late Devappa is required to make general partition between all heir of Late Devappa. Hence **Additional Issue No.1 (3/3/2015) answered in the Negative, Additional issue No.2 (24/11/2016) answered in the Affirmative, Additional issue No.1 and 2 (19/02/2019) answered the Affirmative.**

32. **Issue No.6:** As per the aforesaid discussion, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby partly decreed.

Consequently, defendant No.1 to 4 are equally entitled to get share 5/20 in the all suit schedule properties.

Further defendant No.5 and 10 are equally entitled to get share 1/20 in all suit schedule properties.

Further it is ordered that the sale deed executed by the defendant No.2 in favour of defendant No.7 and 8 and subsequently khatha of 'B' schedule property changed by defendant No.8 to 9 are not binding to plaintiff and defendant No.6 and defendant No.1, 3 and 5.

Further it is ordered that the sale deed executed by the defendant No.10 in favour of defendant No.2 and then defendant No.2 of the Sy.No.40/1 Nanjalapura village extent of 38 guntas is also not binding to defendant No.1, 3, 4, 5, and 10.

If you want to share the defendant No.1 and 3, 5, 6 and 10 shall pay court fee for allotment of their share.

From looking into the facts and circumstances of the case, plaintiff shall bear cost of this suit.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and typed by her, the same is corrected and then pronounced by me in the open court on this the 15th day of October 2019)

(R.Mahesha)
Civil Judge & JMFC.,
Holenarasipura.

ANNEXURE

1. List of witnesses examined for the plaintiff/s side:

PW-1 : Puttamani

2. List of documents marked for the plaintiff/s side:

Ex.P1 : GT
Ex.P2 to 9 : Hand written RCT
Ex.P10 to 19 : RTC extracts
Ex.P20 to 27 : Mutation extract
Ex.P28 : Record of rights
Ex.P29 : Index of land

Ex.P30 : Sale deed dated 14/07/2005
Ex.P31 : Sale deed dated 11/02/2003
Ex.P32 : RTC extract

3. List of witnesses examined for the defendant/s side:

DW-1 : Chandrappa
DW-2 : Revanna

4. List of documents marked for the defendant/s side:

Ex.D1 to 12 : RTC extract
Ex.D13 to 21 : Mutation extracts
Ex.D22 : Affidavit
Ex.D23 : Mutation extract
Ex.D24 : Sale deed dated 17/05/2003
Ex.D25 : Sale deed dated 31/07/2002
Ex.D26 : Sale deed dated 22/05/1999
Ex.D27 : Sale deed dated 17/04f/2017
Ex.D28 : Sale deed dated 09/05/2005
Ex.D29 : Sale deed dated 11/02/2003
Ex.D30 to 32 : Patta book
Ex.D33 : Sale deed dated 14/07/2015
Ex.D34 : Sale deed dated 24/08/2017
Ex.D35 : Notification
Ex.D36 to 47 : RTC extracts
Ex.D48 : sale deed dated 11/02/2003
Ex.D49 : Patta book

(R.Mahesha)
Civil Judge & JMFC.,
Holenarasipura.