



Presented on : 17-06-2022

Registered on : 17-06-2022

Decided on : 30-07-2026

Duration : 4 years, 1 months, 13 days

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE
& JMFC, AT:HAVERI.**

:: Present ::

SMT. SHOBHA B.G., M.A. LL.B

Addl. Senior Civil Judge & JMFC, Haveri.

Dated this 30th day of July- 2026

O.S.No.97/2022

- Plaintiff/s:**
- 1.** Smt Akkamma W/o Siddanagouda Karegoudar, Age: 48 years, Occ: Household, R/o Devagiri-Yallapur, Tq: & Dist: Haveri.
 - 2.** Malatesh S/o Siddanagouda Karegoudar, Age: 29 years, Occ: Agri, R/o Devagiri-Yallapur, Tq: & Dist: Haveri.
 - 3.** Smt Laxmi W/o Siddappa Kote, Age: 25 years, Occ: Household, R/o Nidagundi, Tq: Shiggaon, Dist: Haveri.
 - 4.** Santosh S/o Siddanagouda Karegoudar, Age: 24 years, Occ: Agri, R/o Devagiri-Yallapur, Tq: & Dist: Haveri.
 - 5.** Smt Geeta W/o Basanagouda Karegoudar, Age: 33 years, Occ: Household, R/o Devagiri-Yallapur, Tq: & Dist: Haveri.
 - 6.** Kumari Kavya D/o Basanagouda Karegoudar, Age: 19 years, Occ: Student, R/o Devagiri-Yallapur, Tq: & Dist: Haveri.



(By Sri.S.R.H., Adv.,)

VS

- Defendant/s:**
- 1.** Siddanagouda S/o Kotragouda
Karegoudar, Age: 54 years, Occ:
Agri, R/o Devagiri-Yallapur, Tq:
& Dist: Haveri.
 - 2.** Basanagouda S/o Kotragouda
Karegoudar, Age: 45 years, Occ:
Agri, R/o Devagiri-Yallapur, Tq:
& Dist: Haveri.
 - 3.** Smt Sarojavva W/o Ninagappa
Ichchangi Age: 52 years, Occu:
Household R/o Agadi, Tq: & Dist:
Haveri.
 - 4.** Smt Iramma W/o Shivamurtappa
Ichchangi Age: 50 years, Occu:
Household R/o Agadi, Tq: & Dist:
Haveri.
 - 5.** Smt Jayavva W/o Mallkarjun
Shirahatti, Age: 48 years, Occu:
Household R/o Balalkoppa, Tq:
Shiggaon, Dist: Haveri.
 - 6.** Smt Neelavva W/o Kotragouda
Karegoudar Age: 75 years, Occu:
Household R/o Devagiri-
Yallapur, Tq: & Dist: Haveri.
 - 7.** Rudrappa S/o Chidambarappa
Kudari, Age: 44 years, Occ: Agri,
R/o Haveri, Tq: & Dist: Haveri.
 - 8.** Gopal S/o Chidambarappa
Kudari, Age: 40 years, Occ: Agri,
R/o Haveri, Tq: & Dist: Haveri.

(D1,2, 4, 6 By Sri.B.S.J.,Adv.,)



**(D7 & 8 By Sri.G.G.G.,Adv.,)
(D3 & 5 Exparte)**

Date of institution of suit : 17.06.2022
Nature of suit : Partition and separate possession and declaration
Date of recording of evidence : 18.09.2024
Date on which Judgment was pronounced : 30.07.2026
Duration of suit : Years Month Day/s
01 01 13

J U D G M E N T

This is a suit filed seeking partition and separate possession of his 4/30th share of plaintiff No.1 to 4 and 2/18th share to the plaintiff No.5 and 6 in the suit schedule properties and Declaration to declare that sale deed dated:22.12.2003 executed by the deceased Kotragouda Karegoudra and consented by the defendant No.1 to 6 are not binding on the share of the plaintiffs.

SCHEDULE 'A'

1) The agricultural land bearing R.S.No.81/4 measuring 2.00 acre 03 guntas, situated at Devagiri-Yallapur Village, Tq Haveri.



2) The agricultural land bearing R.S.No.83/1A/1 measuring 1.00 acre 05 guntas, situated at Devagiri-Yallapur Village, Tq Haveri.

Both properties are adjoining with each other and having common boundaries as under:

East: Property of Neelanagouda Karegoudar

West: Property of Basavaraj Malagi

North: Property of V G Hiregoudar

South:Property of Mahantappa Masur

SCHEDULE 'B'

1) The Non agricultural land bearing Devagiri VPC No.45/1, consisting house and open space situated at Devagiri-Yallapur Village in Haveri Taluk, which is bounded as under:

East: Property of Neelanagouda Karegoudar

West: Govt school

North: Govt Road

South:Property of Kotragouda Karegoudar.

(Herein after called as suit A and B schedule properties)



2. The brief facts of the case are as under:-

The plaintiffs stated that one Kotragouda Karegoudar is the propositus of the family of plaintiffs and defendant No.1 to 6. Said Kotragouda died in the year 2007 leaving behind defendant No.1 to 6 as his legal heirs. The defendant No.1 is the father of plaintiff No.2 to 4 and husband of plaintiff No.1. The defendant No.2 is the father of plaintiff No.6 and husband of plaintiff No.5. The plaintiffs and defendant No.1 to 6 are constituted Hindu Mitakshara joint family. There is no partition and separate possession between plaintiffs and defendant No.1 to 6. The plaintiffs and defendants are in joint possession and vahivat of the suit properties. Defendant No.7 & 8 are claiming that they are purchaser of suit Schedule-A properties. The propositus Kotragouda succeeded the suit property from his ancestors and accordingly Devagiri Yallapur ME No 3152 was certified in the year 1980. After his death defendant No 1 to 6 succeeded the suit properties as his legal



heirs. Hence suit properties are ancestral properties of plaintiffs and defendant No. 1 to 6.

3. It is further stated that defendant No.1 and 2 and deceased Kotrappa were addicted in bad habit like drinking alcohol and playing cards and wasted the joint family income. Defendant No. 6 and 7 by misusing their habits, created nominal sale deed behind the back of the plaintiffs. All these days plaintiffs and defendants No 1 to 6 are in joint possession and vahivat of the suit properties but on 25-03-2022 defendant No 7 and 8 are came to the suit properties and told that they have purchased the suit properties from deceased Kotragouda and defendant No.1 and 2 and permitted the defendant No.1 and 2 only cultivate the suit properties till conversion of suit schedule-A properties into non agricultural land, after hearing the said words plaintiffs shocked and obtained the records and came to know that defendant No.1 to 6 are in collusion with defendant No.7 and 8, created the nominal sale deed in their name



without any family necessities. The defendant No.7 and 8 very well aware that suit properties are ancestral properties and defendant No.1 to 6 are not absolute owners. Even then they purchased the said properties without any consideration amount. Hence, said sale deed is illegal and unlawful and not binding on the shares of the plaintiffs. Except suit schedule-A property the family of the plaintiffs and defendants No 1 to 6 have no other property. Suit schedule-A property is only source of their livelihood. The plaintiffs demanded their legitimate shares in the suit properties on 02.06.2022 but defendants declined the same. Hence this suit.

4. In response to the summons, the defendant No. 1,2,4 and appeared through their counsel, but they have not filed written statement. In spite of service of summons. The defendant No.3 and 5 remained absent. Hence they were placed exparte.

5. The defendant No.7 and 8 appeared through counsel and filed written statement, wherein they have



denied averments of the plaint. Further contended that apart from items No.1 and 2 of the suit Schedule 'A' properties, the land in R.S. No. 47/1 of the said village is also came to Kotregouda's father Siddangouda Ganganagouda Karegouda in a partition effected with his brothers. The father of Kotregouda died on 10-09-1957 leaving behind his legal heirs i.e., 1) Kotregouda, 2)Ganganagouda, 3)Neelanagouda and 4) Chikkanagouda. Since Chikkanagouda was a minor under the guardianship of his mother Gauravva w/o Siddangouda Karegouda names of the legal heirs were entered in ME No.1299 in respect of property situated at Devagiri Yellapura village. The said Chikkanagouda also died on 07.11.1964 as unmarried. Thus his name was removed as per ME No.2034. Thereafter the joint owners of above said properties i.e., Kotragouda, Ganganagouda and Neelanagouda divided properties through apsat vatni and as per vardi given by them ME No.3152 was entered. As per said apsat vatni item No.1 and 2 of A-



schedule properties were allotted to the share of Kotragouda.

6. Further contended that the item No.1 and 2 of A-schedule properties have been in joint ownership and in possession of Kotragouda and defendant No.1 to 6. The original propositus Kotragouda offered to sell those two properties for the purpose of his family necessity and to clear the bank and other debt. The defendant No.7 and 8 proposed to purchase said properties for Rs.1,28,000/-, for which said Kotragouda agreed to sell the said properties. However, subsequently, the 1st defendant of this suit, having filed a suit OS No.84/2003 before the vacation Court i.e., the District and Sessions Judge, Haveri on 07-05-2003 seeking partition in the above properties against defendants No.2 to 6 of this suit. After vacation said suit was transferred to Civil Judge Court Haveri and registered as OS No.84/2003. During the pendency of said suit on the intervention of elders of village and well wishers, compromised the



dispute. Accordingly Kotragouda and the defendant No.1 to 6 of this suit executed registered sale deed on 22.12.2003 in favour of defendant No.7 and 8 with respect to the A-schedule properties for Rs.1,28,000/-. Since then the defendant No.7 and 8 become owners of said properties and they have been in possession and enjoyment over the said properties.

7. The original propositus Kotragouda repaid the entire loan with interest on 26.12.2003 to Malaprabha Grameena Bank, Devagiri branch from the money received from the sale. The defendants 1 to 6 have used their respective shares of money for their family expenses. Thereafter the defendant No.1 who is the plaintiff in OS No.84/2003 filed memo on 02.01.2004 stating that matter was compromised out of the court. Moreover, while O.S. No. 84/2003 was pending, the defendant No.1 to 6 sold the suit properties to defendant No.7 and 8. The defendants 1 to 6 and their original propositus Kotragouda executed a consent deed



on 14-01-2014 agreeing that they will not file any suit, claim, or objections in any manner against the purchasers of the two properties and will not demand shares, will not give trouble to the purchasers. Hence, the suit is barred by estoppel. Moreover defendants No.7 and 8 have purchased suit A-schedule properties for valuable consideration. Hence they are the bonafide purchasers of said properties. The defendant No.1 to 6 are the consenting witnesses to the sale deed dated 22-12-2003 and they have signed the said sale deed before the Sub-Registrar Haveri. Hence this suit is a collusive suit between defendant No.1 to 6 and plaintiffs only to cause loss to the Defendant no. 7 and 8.

8. In spite of knowledge about execution of sale deed dated:22.12.2003 and dividing of share through money derived from said sale, the plaintiffs filed this suit with an malafide intention to obtain wrongful gain from the defendant No.7 and 8. They have filed this suit after lapse of more than 19 years. Hence suit is hopelessly



barred by law limitation. After purchasing A-schedule properties, the defendant No.7 and 8 obtained order vide Office No.LNA/CR/139/2010-11, dated:04.03.2011 and LNA/CR/141/2010-11. As per final approval of Haveri City Development Authority dated:22.08.2016 plot No.1 to 20 in Sy No.81A out of 2.3 acres in Sy No.81/4 and plot No.1 to 12 in Sy No.83A out of 1 acre 5 guntas in Sy No.83/1A/1 were formed. The defendant No.7 and 8 invested huge money for developing A-schedule properties and converted for commercial purpose, thereby the valuation of properties become high. For that reason only the defendant No.1 to 6 filed this false suit through the plaintiffs. The valuation of the suit properties made by the plaintiffs under section 35(2) and 24(d) of the Karnataka Court Fees and Suits Valuation Act is incorrect and baseless. Therefore, prays for dismissal of suit with compensatory costs.

9. On the basis of above pleadings, the following issues have been framed by this Court:-



- 1. Whether the plaintiffs prove that suit schedule properties are their ancestral properties.?**
- 2. Whether the Defendant No. 7 and 8 prove that propositus Kotregouda sold Sy. No. 81/4 and 83/1A/1 for his family necessities.?**
- 3. Whether the Defendant No. 7 and 8 prove that Defendant No. 1 to 6 are estopped by record.?**
- 4. Whether the Defendant No. 7 and 8 prove that they are the Bonafide purchaser of Sy.No. 81/4 and 83/1A/1 for consideration without notice.?**
- 5. Whether the suit is Barred by limitation as mentioned in W.S. Para No.10.?**
- 6. Whether the plaintiff No. 1 to 4 are entitled for 4/30th and plaintiff No. 5 and 6 are entitled for 2/18th share in suit properties.?**
- 7. Whether the plaintiffs are entitled for the reliefs claimed for.?**
- 8. What Order or Decree?**

10. In order to prove the case of the plaintiffs, the plaintiff No.4 examined himself as P.W.1 and 5 documents got marked as Ex.P.1 to Ex.P.5. On the other hand in order to substantiate the contention of



defendant No.7 and 8, the defendant No.8 examined himself as DW-1 and 32 documents got marked as Ex.D.1 to 32.

11. Heard arguments on both side. Perused the material placed before the Court. Both counsels filed citations.

12. My answer on the above issues is as follows:-

Issue No.1 :	In the Negative
Issue No.2 :	In the Affirmative
Issue No.3 :	In the Affirmative
Issue No.4 :	In the Affirmative
Issue No.5 :	In the Negative
Issue No.6 :	In the Negative
Issue No.7 :	In the Negative
Issue No.8 :	As per the final order, for the following:-

REASONS

13. ISSUE NO.1, 2 AND 4: These issues are taken up together for discussion as they are interlinked with each other and required same set of pleadings and documents.

In order to prove the case of the plaintiffs, plaintiff No.4 examined himself as PW-1. He filed affidavit in lieu



of his examination in chief, in which he reiterated averments of plaint. In support of their case, they have produced documents which were marked as Ex.P.1 to 5. According to the plaintiffs the original propositus Kotragouda Karegoudar died in the year 2007 leaving behind defendant No.1 to 6 as his legal heirs. The defendant No.1 is father of plaintiff No.2 to 4 and husband of plaintiff No.1. The defendant No.2 is father of plaintiff No.6 and husband of plaintiff No.5. The plaintiffs and defendant No.1 to 6 are constituted Hindu Mithakshara Joint family. However as for as the relationship of plaintiffs and defendants No. 1 to 6 is concerned, the defendants No.7 and 8 denied the genealogy furnished by the plaintiffs in the plaint. However though the defendant No.7 and 8 denied the genealogy of plaintiffs' family, in order to substantiate their contention they have not produced any contrary document in that regard. Therefore mere denial is not sufficient to believe it. In the absence of evidence there is



no reason to disbelieve the genealogy furnished by the plaintiff. Hence it can be hold that the genealogy furnished by the plaintiffs attached to plaint is correct. Thus, more discussion regarding said aspect is not required.

14. In order to prove that suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 6, the plaintiffs have produced Ex.P.1 to Ex.P.5. On perusal of said documents Ex.P.1 reveals that the land measuring 2.03 acres in Sy No.81/4 i.e., item No.1 of A-schedule property stands in the name of Karegoudra Kotragouda who is father of defendant No.1 to 5 and husband of defendant No.6. Ex.P.2 reveals that the land measuring 1.05 acres in Sy No.83/1A/1 i.e., item No.2 of A-schedule property stands in the name of Karegoudra Kotragouda who is father of defendant No.1 to 5 and husband of defendant No.6 by virtue of partition during the year 2001-02. Ex.P.3 reveals that house property bearing No.45/1 situated at



Devagiri village stands in the name of Kotragouda Siddanagouda Karegoudra during the year 2022-23. Ex.P.4 reveals that the khata of item No.1 and 2 of suit A-schedule properties was mutated in the name of Kotragouda Siddanagouda Karegoudra bearing ME No.3152 dated 01-09-1980 by virtue of apsath vatni held between Kotragouda, Gangangouda and Neelanagouda . Ex.P.5 reveals that on 22.12.2003 Kotragouda S/o Siddanagouda Karegoudra has executed registered sale deed in favour of Rudrappa and Gopal who are defendant No.7 and 8 with respect to item No.1 and 2 of A-schedule properties.

15. On the other hand, the contention of defendant No.7 and 8 is that Kotragouda acquired item No.1 and 2 of suit schedule properties through partition held among his brothers. His father died on 10.09.1957 leaving behind Kotragouda, Gangangouda, Neelanagouda and Chikkanagouda. Said Chikkanagouda died unmarried on 07.11.1964. As per Apsat vatni the khata was mutated in



the name of Kotragouda, Gangangouda and Neelanagouda bearing ME No.3152. The said Kotragouda agreed to sell item No.1 and 2 of suit schedule properties to defendant No.7 and 8 for his family necessities and for clearing his bank loan and hand loan. Subsequently the defendant No.1 of this suit filed OS No.84/2003 seeking partition and separate possession of suit schedule properties before vacation court on 07.05.2003. During the pendency of suit on the intervention of elders of village and well wishers, the plaintiff and defendants of said suit compromised the matter. Accordingly Kotragouda and the defendant No.1 to 6 of present suit have executed registered sale deed in favour of defendant No.7 and 8 on 22.12.2003 with respect to A-schedule properties and also executed consent deed on 14.01.2014. Since then the defendant No.7 and 8 become owners in possession of said properties. In order to substantiate the contention of defendant No.7 and 8, the defendant No.8 examined himself as DW-1 and he filed affidavit in lieu of his examination in chief, in which he



reiterated contention taken in written statement. In support of their contention they have produced documents which were marked as Ex.D.1 to 32. I have considered only relevant documents which required to give findings to the above issues.

16. Ex.D.4 is registered sale deed which reveals that Kotragouda had sold item No.1 and 2 of A-schedule properties in favour of defendant No.7 and 8 on 22.12.2003. The defendant No.1 to 6 are signatories of said sale deed as witnesses. Ex.D.5 reveals that Kotragouda and defendant No.1 to 6 of the present suit executed consent deed, wherein it is mentioned that they have agreed that they will not file any suit claiming the suit property and they will not object and also not to interfere the said properties. Ex.D.6 to 12 reveal that item No.1 of A-schedule property jointly stands in the name of defendant No.7 and 8 by virtue of sale bearing MR No.93/2003-04 from the year 2003-2009. Ex.D.13 to 18 reveal that item No.2 of A-schedule property jointly stands in the name of defendant



No.7 and 8 by virtue of sale bearing MR No.93/2003-04 from the year 2003-2009. Ex.D.19 reveals that in view of death of Siddanagouda Ganganagoudra Karegoudra, the khata of property bearing Sy No.47/1B, 81/4 and 83/1A was mutated jointly in the name of his children namely Kotragouda, Ganganagouda, Neelanagouda and Chikkanagouda bearing ME No.1299 dated: 09.12.1957. Ex.D.20 reveals that in view of death of Chikkanagouda S/o Siddanagouda, his name was deleted in the mutation and entered the remaining 3 brothers bearing ME No.2034 dated:26.05.1975. Ex.D.21 is mutation extract bearing ME No.3152. Ex.D.21 and Ex.P.4 are one and the same. Ex.D.22 reveals that Kotragouda had given application to Tahasildar to remove charge created in revenue records with respect to property in Sy NO.81/4 and 83/1A i.e., item No.1 and 2 of suit A-schedule properties. Ex.D.30 reveals that the defendant No.1 of present suit had filed suit against Kotragouda and defendant No.1 to 5 of present suit seeking partition with respect to suit schedule properties



which are the item No.1 and 2 of present suit schedule properties. Ex.D.31 reveals that the plaintiff of said suit filed memo stating that both parties have settled the matter out of the court, hence suit may be dismissed as settled. Ex.D.32 reveals that in view of memo filed by the plaintiff in said suit on 02.01.2004 the suit was dismissed as settled out of the court.

17. The aforesaid documents clearly disclose that item No.1 and 2 of A-schedule properties stands in the name of defendant No. 7 and 8 by virtue of sale. The issue whether the sale deed/ Ex.D.4 was executed by the Kotragouda in favour of defendant No. 7 and 8 is nominal one or it was executed by him for his family necessity has to be examined. In order to decide the said issue, it is necessary to consider the evidence adduced by both parties. During the cross-examination of PW-1 at page No.4 in para No.2 he admitted that:"Sy No.81/4 and 83/1A/1 properties came from his grand father through inheritance. He admitted that his grandfather's father had 4 children



and the said properties came to the 4 persons by inheritance. Subsequently in the year 1975 his grandfather's younger brother Chikkanagouda died and thereafter the khata came into the names of 3 persons. Further he admitted that all the 3 persons together had partitioned the properties in the year 1980. Accordingly the A-schedule properties came to the share of his grandfather. He admitted that his grandfather, father and uncle altogether were residing in the house mentioned in the plaint schedule-B. Further admitted that the wife and children of defendant No.1 and 2 and defendant No.6 were all residing in the same house. They are residing in the same house even now."

18. Further in cross examination of PW-1 at page No.5 in para No.3 he deposed that " When their grandfather was alive, his grandfather, his father and his paternal uncle used to cultivate the suit properties. The khata was not made in the name of their grand father according to inheritance." The aforesaid testimony of PW-1 discloses that



he was well aware about how item No.1 and 2 of A suit schedule properties came to his grandfather, he also aware about partition said to be held between brothers of his grandfather in the year 1980 and in said partition item No.1 and 2 of A schedule properties fallen to the share of his grandfather. His testimony clearly discloses that his grandfather, his father and uncles are residing together in B-schedule house. It clearly discloses that the plaintiffs and defendant No.1 to 6 are residing together in B-schedule house. Further at page No.6 in para No.5 he admitted that "He received the summons sent to his father and paternal uncle. When suggested that defendants No.1 to 6 have not appeared before the court, he deposed that he has come on behalf. He admitted that his father cleared the loan taken in the bank from the money obtained by selling his lands to defendants No. 7 and 8." This version of testimony creates suspicious about collusion between plaintiffs and defendant No.1 to 6. If they are not colluded with each, they would have contested the suit as they have knowledge



about institution of this suit. Therefore, circumstances raises a strong suspicion of collusion between plaintiffs and defendant No. 1 to 6. Hence it could be inferred that plaintiffs filed this suit by colluding with defendant No. 1 to 6. Mere residence together does not create ownership rights and joint possession over the suit schedule properties. When the PW-1 admitted that item No.1 and 2 of A-schedule properties came to his grand father in the partition, said properties become his grand father's separate properties. On the other hand during the cross-examination of DW.1 at page No.11 in para No.1 he deposed that “he knows about Kotragowda’s family. Suit schedule properties came to them through partition in the year 1980. Whe asked whom the said properties came to the Kotragowda for partition, he deposed that they came from their elders in 1957.”

19. The oral evidence placed by both parties, it disclose that admittedly item No.1 and 2 of suit schedule properties belongs to Kotragouda who is father of defendant



No.1 to 5 and husband of defendant No.6 and it is also admitted fact that said Kotragouda acquired item No.1 and 2 of suit A-schedule properties through partition. As per Ex.P.4 and Ex.D.21 the khata of item No.1 and 2 of A-schedule properties was mutated in the name of Kotragouda and his brothers bearing ME No.3152 dated 01.09.1980 by virtue of Apsat Vatni. Standing revenue entries do not by themselves create title, but they are relevant corroborative evidence of separate enjoyment and an acted upon partition. When the PW.1 admitted that A-schedule properties came to his grand father in the partition, long standing mutation in the name of Kotragouda as per Ex.P.4, supports the inference that A-schedule properties are his separate properties after partition. Under such circumstances, the suit schedule properties cannot be considered as ancestral and the plaintiffs and defendant no. 1 to 6 are in joint possession of said properties.



20. As for as sale deed/Ex.D.4 is concerned, according to the plaintiffs the defendant No.1 and 2 and Kotragouda were addicted in bad habits. The defendant No.6 and 7 misused their bad habits and created nominal sale deed in favour of defendant No.7 and 8. On the other hand according to the defendant No.7 and 8 the Kotragouda sold item No.1 and 2 of suit A-schedule properties for his family necessities and to clear the debts. The Ex.D.1 reveals that there was an encumbrance of Rs.5,000/- in favour of the Malaprabha Grameena Bank Devagiri over the A- schedule properties during the period from 01.04.1980 to 31.03-1994. Ex.D.2 reveals that no registered encumbrance was found over A-schedule properties during the period from 01.04.2002 to 31.03.2004. Ex.D.3 reveals that no registered encumbrance was found over A-schedule properties during the period from 01.04.2004 to 14.07.2022. Apart from that they have not produced any documents to show that existence of any outstanding loan balance. They have not



produced proof of any larger necessity. Therefore, the sale appears unsupported by adequate legal necessity and is liable to be treated as suspicious, unless the defendants No. 7 and 8 prove the otherwise. However in this regard during the cross-examination of DW-1 at page No.3 in para No.3 he deposed that “He has produced the document before the court regarding the payment of Rs.75,000/-. He has produced a No due certificate. It is suggested that there is no mention in the said certificate that he paid Rs. 75,000, he states that there is no mention of paying Rs.75,000/-, but it states there is no loan.”

21. Further at page No.3 in para No. 4 of cross examination of DW.1, it is suggested that “at the time when he said to have purchased the property, there was only a loan of Rs.11,000/- on the property, he deposed that Rs. 11,000/- was there and adding interest to it Kotragowda asked for Rs.75,000/- and took it. He has not produced document regarding payment of Rs.75,000/-.” Further at Page No.5 in para No. 6 his cross examination



he deposed that it is suggested that the plaintiffs have no financial necessity at the the time of purchase, he deposed that they were minors. It is suggested that the property was not sold for the benefit of the plaintiffs, he deposed that it was sold for the benefit of Kotragowda's family. To the question of what is meant by the benefit of the family, the witness deposed that it was for clearing other hand loans of Kotragowda and due to domestic constraints. When asked what is meant by domestic constraints, he deposed that he does not know about his domestic constraints. He does not know from whom the other mutual hand loans were taken."

22. The aforesaid testimony of DW-1 discloses that he has obtained no due certificate from the Kotragouda with regard to clearance of loan in the bank. In sale deed Ex.D.4 there was a recital that due to family necessities and clearance of other hand loans, item No.1 and 2 of suit A-schedule properties have been sold. The arguments of plaintiffs' Counsel that the EC shows only an Rs.11,000 loan does not fully answer the recital of family necessity in



the sale deed. The legal necessity need not be limited to a registered encumbrance amount as mentioned in Ex.D.1, it can be include family debts, expenses or other genuine needs. Ex.D.4 itself recites that the alienation was for family legal necessity. Therefore, the plaintiffs cannot merely rely on the EC/Ex.D.1 showing a small loan amount, they must disprove the documentary recital with cogent evidence. The plaintiffs have failed to prove that the recital was false and Kotragouda was not acting for family necessity. On careful perusal of Ex.D.4 it discloses that the defendant No.1 to 6 put their signature in said sale deed as witnesses. On comparison of the signatures appearing on Ex.D.4 with those signatures appearing on Ex.P.5/consent deed, certain similarities are found.

23. The consent deed is concerned, the counsel for plaintiffs vehemently argued that it is unregistered deed, consent deed must be registered as per The Registration Act. Since it was not registered it cannot be looked into for any purpose. However, said arguments cannot be accepted,



as recital of consent deed/Ex.D.5 discloses that said consent deed has been executed by the Kotragouda and his children stating that they have no objection to sale in favour of defendant No. 7 and 8 they will not file any suit in future with respect to said properties against defendant No.7 and 8, it can be treated as an admission or supporting circumstances, but it may not by itself amount to a conveyance requiring stamp duty. If consent deed states relinquishment of rights of properties, then only it may attract stamp duty and registration consequences. As for as *lis pendens* is concerned, it is true that the earlier O.S.No.84/2003 was a suit for partition relating to the same properties. The sale deed/Ex.D.4 was executed during the pendency of that suit. Therefore, the transferees take the property subject to the final outcome of the pending suit. But *lis pendens* does not by itself invalidate the sale deed. It only means the purchaser cannot claim a better title than the transferor had at the time of transfer and the eventual decree in the pending suit can bind the



transferee. In the instant suit as per Ex.D.32 the earlier O.S.No.84/2003 came to be dismissed as settled out of the court, then the practical prejudice from lis pendens becomes less significant because there was no partition decree against the transferees i.e., defendant No.7 and 8. However, though the plaintiffs stated that the said sale deed dated:22.12.2003 is nominal and created sale deed, they have failed to prove the same as I have discussed above.

24. The counsel for plaintiffs relied up on following citations:

1) **2020(3) KCCR SN 157 (DB) (Padmavathi and another Vs. Smt. Jayamma and others)**: wherein it is held that:“C. HINDU SUCCESSION ACT, 1956 (Karnataka Amendment)-Sections 6A and 6C-Whether would apply from 30.7.1994 to 8.9.2005 in view of ratio laid down in Prakash Vs. Phulavathi, 2015 (4) KCCR 3265 (SC): (2016) 2 SCC 36 and amendment of 2005 is prospective and would apply from 9.9.2005?- We are concerned in the present case with the Karnataka amendment, which came into force on 30.07.1994. In the event of a female Hindu, i.e. daughter of a coparcener if were to be married prior to the coming into force



of the amendment i.e., 30.07.1994, she has been excluded from being given the status of a coparcener, i.e. to say if a female Hindu were not married as on 1990, then she would have equal right in the coparcenary property as that of a son. There was, therefore, a limited right granted to an unmarried daughter and did not extend to married daughters, on account of the Karnataka Legislature amending the HSA by inserting Sections 6-A to Section 6-C providing for unmarried daughters to get an equal share in the coparcenary property. This, as stated, was done in order to eliminate existing inherent discrimination and in order to cater to the requirements of Articles 14 and 15 of the Constitution of India viz., gender equality. This was and is, however, subject to the availability of the property for partition, i.e., subject to the property not already partitioned or sold, before the coming into force of the amendment."

"The amendment by way of Karnataka Act came into force with effect from 30.07.1994, as such, any succession post 30.07.1994 in the State of Karnataka would be governed by HSA as amended by Karnataka Amendment:"

2) 2004(3) KCCR 1637 (U.G.Srinivasa Rao Vs. Vinaykumar and others): wherein it is held that: "A. HINDU LAW-Alienation—Alienation made by one co-sharer without consent of other co-sharer is void in so far as the co-sharers who have not consented to the said



alienation. But the said transaction cannot be said to be void as against the alienating co-sharer and it binds his undivided interest."

25. The counsel for defendant No.7 and 8 relied upon following citations:

1) **(2018)7 SCC 646 (Shyam Naryan Prasad Vs. Krishna Prasad)**: wherein it is held that: "*Hindu Law-Partition-Mitakshara Law-Essential feature of ancestral ancestral property is that sons, grandsons, and great grandsons of person who inherits it, acquire an interest and rights attached to such property at the moment of their birth-Share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue-After partition, property in hands of son will continue to be ancestral property and natural or adopted son of that son will take interest in it and is entitled to it by survivorship."*

2) **(2018) 6 Kant LJ 109 (Kehar Singh (D) The Lrs & Ors Vs. Nachittar Kaur & Ors)**: wherein it is held that: "*Once the factum of existence of legal necessity stood proved, then in over view, no coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the coparceners along with his father Pritham Singh. He had*



no right to challenge such sale in light of the findings of legal necessity being recorded against him."

3) **2022(2) KCCR 1106 (DB) (H.C.Puttaraju and Another Vs. Smt.Harsha Rani and others)**: wherein it is held that: "Section 6 of the Act was amended with effect from 09.09.2005. Proviso to sub-section (1) of Section 6 makes it clear that no invalidation shall be made to any disposition or alienation including any partition or testamentary disposition of property which have taken place before 20.12.2004."

4) **ILR (Karnataka)3055 (Bhimappa Channappa Kapali(deceased) By Lrs and others Vs. Bhimappa Satyappa Kamagouda and others)**: wherein it is held that: "Karnataka Land Revenue Act, 1964 Possession of the land lawfully cultivating the land. The appellant does not trace his right of cultivation to the owner at all. His Whether the appellant is specific case is he took the land in question on lease from Smt. Shivawwa who admittedly had a limited right to enjoy possession during her lifetime."

I have gone through the aforesaid citations relied by both counsels. The principle laid down in said citations is not applicable to the case on hand as in the instant suit the plaintiffs failed to prove that sale deed dated:22.12.2003 is nominal and created sale deed. Moreover, the proviso of



Sec. 6(1)(c) of Hindu Succession (Amendment) Act 2005, reads as, follows:

“Provided that nothing contained in this Sub-Section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

Aforesaid provision makes it clear that if alienation has been made before 20th December 2004, daughters have no right to claim alienated property. In the instant suit the plaintiffs are not the daughters of original propositus, they are daughter in laws and grand children of Kotragowda. Therefore, they are not entitled for any right of share in A-schedule properties. The grandsons' right in coparcenary property continue to be governed by the general law of coparcenary and succession (including notional partition on death of a coparcener under section 6(3), not by any expansion through this proviso). Therefore this court is of the opinion that the plaintiffs have failed to prove that schedule properties are their ancestral properties. On the other hand defendant No.7 and 8 proved



that original propositus Kotragouda sold item No.1 and 2 of A-schedule properties for his family necessities and to clear the debts. The defendant No.7 and 8 proved that they are bona-fide purchasers of item No.1 and 2 of A-schedule properties. As for as B-schedule property is concerned there is no dispute between the parties. However, as per Ex.P.3 B-schedule property is belonging to Kotragouda. As such after his death definitely his wife and children succeeded said property as legal heirs. Therefore it cannot be considered as joint family property of plaintiffs and defendants. The plaintiffs have failed to prove that B-schedule property is ancestral property of themselves and defendant No. 1 to 6. **Accordingly issue No.1 is answered in the Negative and issue No.2 and 4 are answered in the Affirmative.**

26. ISSUE NO.3: The further contention of the defendant No.7 and 8 is that defendant No.1 to 6 are estopped by record. In order to prove the said contention they have produced documents. As Ex.D.4 and 5 the



defendant No.1 to 6 have put their signature on Ex.D.4 sale deed and Ex.D.5 consent deed as I have discussed in above issues. Therefore I am of the opinion that when they have put their signature on Ex.D.4 and 5, they cannot claim the suit A-schedule properties. The doctrine of estoppel is applicable to the defendant No.1 to 6. The counsel for defendant No.7 and 8 relied upon following citations:

1) **(2005) 1 KCCR 71(Smt.Govindamma and another Vs. Smt.Thimmakka and others)**: wherein it is held that: *"The Appellant argued that Ex.D.2 does not disclose that Gangappa signed Ex.D.2 with the knowledge of its contents and as a consenting witness for the sale - It is stated that on the strength of power of attorney Ex.D.1 the sale deed is executed - It is the commonest thing in this country for attestations to be obtained from persons having a possible interest, in the property - The suit of the Plaintiff is dismissed."*

2) **(1995) AIR (SC) 1205) (Mahboob Sahab Vs. Syed Ismail and others)**: wherein it is held that: *"Evidence Act, 1872 Section 115 Estoppel by conduct Sale of land by a muslim while his son attested sale deed. No objection raised by son though sale would go*



against his interest. Son is estopped from challenging sale subsequently."

The principle laid down in aforesaid citations is aptly applicable to the case on hand as in the instant suit the defendant No.1 to 6 are signatories to Ex.D.4 and 5 as witnesses. Hence they are estopped by record.

Accordingly issue No.3 is answered in the Affirmative.

27. ISSUE NO.5: The further contention of the defendant No.7 and 8 is that the suit is barred by law of limitation. The plaintiffs become aware about execution of Ex.D.4 and Ex.D.5. The Kotragouda sold item No.1 and 2 of A-schedule properties in favour of defendant No.7 and 8 in the year 2003, the plaintiffs filed the suit in the year 2022. Therefore the suit is barred by law of limitation. However in order to prove the same, during cross-examination of PW-1 nothing has been elicited by the the counsel for defendant No.7 and 8 that the plaintiffs have knowledge about sale deed/Ex.D.4 in the year 2003 itself. ***As per article 58 of Limitation Act*** *"the period of limitation to obtain any other declaration is*



three years. The period of limitation is commenced from when the right to sue first accrues.” In the instant suit the plaintiffs are seeking relief of declaration that sale deed is not binding on them, as such the right to sue arises when the plaintiffs become aware of the sale and its adverse effect on the claimed right. Though the PW.1 admitted that plaintiffs and defendants are residing together in one house and there was no dispute between them, it is not sufficient to believe that they had knowledge about sale deed in the year 2003 itself. They are not executants or signatories of said sale deed. The defendants No. 7 and 8 may establish inferred knowledge, but such inference must be based on specific circumstances and not merely on the relationship between the parties. Therefore, the evidence placed before the court does not satisfactorily prove the knowledge before the suit was filed.

28. The counsel for plaintiffs relied upon citation regarding limitation:



KCCR 2017(5) KAR 1068DB (Smt. Durgavva and others Vs. Annapoornavva and others): wherein it is held that: "*LIMITATION ACT, 1963-Article 110-Suit for share in joint family property-Plaintiff-Appellants filed Regular First Appeal-The defendant has to establish that plaintiffs have been excluded from joint possession of suit land twelve years prior to filing of suit-Defendants failed to establish partition and allotment of suit land-There was no convincing evidence to show that plaintiff were excluded from joint possessions-Bar of limitation applies if plaintiff filed suit after 12 years from date of exclusion-Suit of plaintiff is not barred under Article 110 of Limitation Act.*"

I have gone through the aforesaid citation. However, Article 110 of The Limitation Act applies only if the suit is substantially one by a person excluded from the joint family property to enforce a right to share. It prescribes 12 years from the date when exclusion becomes known. Said article is not applicable to this suit, as in the instant suit the plaintiffs are not claiming right as ouster of the joint family. The counsel for defendant No.7 and 8 relied upon citation:



(2023) 4 KCCR 3145 (R.Divya Vs. Raghu):

wherein it is held that: "*E. Court's Analysis of Evidence - Family Necessity and Plaintiff's Knowledge - The court noted evidence of the sale being for the marriage of a granddaughter and construction of a new house. Crucially, it found plaintiffs had knowledge of the sale since 2007 but filed the suit in 2018, indicating a delay. Plaintiff PW1 admitted knowledge of the house construction after the sale and did not question it.*"

The principle laid down in aforesaid citation is not applicable to the case on hand as in the instant suit the defendant No.7 and 8 failed to prove that the plaintiffs had knowledge of sale deed dated:22.12.2003 as I have already discussed above. In view of above reasons this court is of the opinion that the suit is not barred by law of limitation. **Accordingly issue No.5 is answered in the Negative.**

29. ISSUE NO.6 and 7: These issues are taken up together for discussion as they are interlinked with each other and required same set of pleadings and documents.

When the plaintiffs sought relief of partition stating that suit schedule properties are ancestral and joint family



properties of themselves and defendant No.1 to 6, the burden of proof lies on them to prove the same. In the instant suit the plaintiffs have failed to prove that suit A and B-schedule properties are ancestral and undivided joint family properties of themselves and defendants No.1 to 6 as I have discussed in above issues. Therefore they are not entitled for any share in the A and B-schedule properties. They have also failed to prove that registered sale deed dated 22-12 2003 is not binding on them. Hence they are not entitled for any relief. **Accordingly issue No.6 and 7 are answered in the Negative.**

30. ISSUE NO.8:- In view of above findings, I proceed to pass the following;-

ORDER

**The suit of the plaintiffs is hereby
dismissed with costs.**

Draw decree accordingly.

(Dictated to the Stenographer directly on to the computer, computerized by her, corrected, signed and then pronounced by me in the open Court on this the 30nd day of July-2026)

(Smt.Shobha B.G.)
I.Addl.Senior Civil Judge & JMFC,
Haveri.

**ANNEXURE****List of witnesses examined on behalf of plaintiff/s :-**

PW-1 : Santosh Karegouddra

List of documents marked on behalf of plaintiff/s :-

Ex.P1 : RTC extract pertaining to RS.No.81/4
Ex.P2 : RTC extract pertaining to RS.No.81/1A/1
Ex.P3 : VPC extract pertaining to MR H.No.45/1
Ex.P4 : Mutation extract pertaining to
ME.No.3152
Ex.P5 : C/o purchase deed

List of witnesses examined on behalf of Defendant/s :-

DW1 : Gopal Kudari

List of documents marked on behalf of Defendant/s :-

Ex.D.1 to 3: Copy of Encumbrance certificates
Ex.D.4 : c/c of registered sale deed
Ex.D.5 : C/c of consent deed
Ex.D.6 to 14: RTC extract pertaining to RS.No.81/4
Ex.D.13 to 18: RTC extract pertaining to RS.No.83/1A/1
Ex.D.19 : Mutation extract MR No.1299
Ex.D.20 : Mutation extract MR No.2034
Ex.D.21 : Mutation extract MR No.3152
Ex.D.22 : Copy of letter to Tahasildar
Ex.D.23 & 24: Copy of notification
Ex.D.25 & 26: Copy of plot map
Ex.D.27 & 28: Copy of approval
Ex.D.29 : Mutation extract MR No.29/2011-12
Ex.D.30 : C/c of plaint OS No.84/2003
Ex.D.31 : C/c of memo OS No.84/2003
Ex.D.32 : C/c of order sheet OS No.84/2003

(Smt.Shobha B.G.)
I.Addl.Senior Civil Judge & JMFC,
Haveri.