(CRP67) Govt. of Karnataka Form No. (9) Civil Title sheet for Judgement in suits.

IN THE COURT OF THE CIVIL JUDGE & JMFC, AT BANGARPET

RESENT:- A.C.DAYANANDAMURTHY, B.A.,LL.M.
Addl. Civil Judge & JMFC: Bangarpet.

Dated this the 1st day of March 2018

O.S.182/2009

Plaintiff:- N. Yadhavan, 56 years,
S/o. late Narayanaswamy,
R/at. New FCI Godown,
Dooravani Nagar,
Bangalore.
(By SRI.KMV.-Adv.)

V/s

Defendants:- 1. N. Venugopal,
S/o. late Narayanaswamy,
Aged about 72 years,
R/at. No. 407, Cellappa line,
A. Narayanapuram,
Dooravani Nagar,
Bangalore.

2. N. Pandurangan,
   S/o late Narayanaswamy,
   Aged about 69 years,
   R/at. No.48, Kennady 3rd Line,
   Oorgam post, KGF,
3. N. Padmanabhan,
   S/o. late Narayanaswamy,
   Aged about 67 years,
   R/at. Near
   K.R. Puram Railway Station,
   Viginapura,
   Dooravani nagar,
   Bangalore,
4. N. Kodhandapani,
   S/o. late Narayanaswamy,
   Aged about 64 years,
   No.1818, 7th Cross,
   2nd Main, HAL 3rd Stage,
   Bangalore.
5. Saraswathi,
   W/o. N.Pandurangan,

Aged about 65 years,
No.48, Kennady's 3rd Line,
Oorgam, KGF.
(D1, 3 & 4 Sri. KCP Adv.
D2 & D5 by Sri KVP Adv.)

Date of institution of the suit	03-09-2009		
Nature of the suit	PARTITION		
Date of commencement of recovering of evidence	14-02-2012		
Date on which the Judgment was pronounced	01-03-2018		
Total ratio	Year	Month	Days
	08	05	29

J U D G E M E N T

The plaintiff has filed this suit against the defendants for the relief of partition of the suit schedule property by metes and bounds and to allot separate possession and enjoyment in favour of the plaintiff to the extent of 1/5th share in the suit schedule property with court costs and such other reliefs.

SCHEDULE

Agricultural land to the extent of 13 acres 17 guntas including karab land to the extent of 2 acres 15 guntas cultivated land is only 11 acres 2 guntas bearing sy no.102, accessed at Rs.21.99 situated at Kasaba Hobli, Bangarpet Taluk, consisting of 2 open wells, one pump set, one small watch man house along with 3 tamarind trees, being bounded on east Drainage, west- private land, north- Grave yard and south- big drainage with about Rs.5 lakhs.

2. The brief facts of the plaintiff's case is that:

The plaintiff and defendants no.1 to 4 are the sons of late Narayanaswamy, defendant no.5 is the daughter-in-law of late Narayanaswamy and wife of defendant no.2. The plaintiff and defendants no.1 to 4 are the joint family members constituted under Hindu law and in joint possession and enjoyment of the suit schedule property, the said property is the ancestral property purchased by their father late

Narayanaswmay and made sale deed in the name of defendant sno.1 & 2 as per Regd. sale deed dated. 27-3-1965. Father of plaintiff and defendant no.1 to 4 was working in GEML, KGF and retired in the year 1965 and he purchased the suit schedule property from his retirement benefits and made registered sale deed in the name of defendants no.1 & 2, due to his ill health he died on 2-6-1969 and mother of plaintiff and defendants no.1 to 4 died on 20-6-1994. The plaintiff and defendants contributed their respective proportionate amount for the improvement of suit schedule property and they have jointly cultivating the suit schedule property. Without the knowledge of plaintiff and other defendants no.3 and 4 have entered in to the collusion document i.e. release deed executed by the defendant no.1 on 18-5-1984 in favour of defendant no.2 with respect of suit schedule property. The defendant no.2 made a registered sale deed on 27-6-1984 portion of land to the extent of 4 acres in suit schedule property in favour of defendant no.5. During April 2009 his elder brother defendant no.1

and he further informed to the plaintiff and he has executed release deed as stated above in favour of defendant no.2. The defendants No. 2 and 5 had no issues, they have taken the son of defendant no.4 by name Yamuna in adoption in the year 1981, when immediately child born to the first wife of defendant no.4 by name Shantha, who died after the birth of said child Yamuna. The adoption taken place as per the Hindu rites and customs in the temple and the temple authority also issued certificate of adoption to the defendant no.2 in the year 1981 the said Yamuna became the adopted son of defendant No.2 and 5 and now he is aged 27 years and he is residing with them.

The plaintiffs further stated that the defendant no.1 to 4 are colluded with each other along with defendant no.5 and trying to create secrete documents in respect of suit schedule property in order to alienate the suit schedule property for their wrongful gain with an intention to infringe the legal and legitimate right of the plaintiff over the suit schedule property. After knowing the said illegal acts the plaintiff demanded and requested the defendants for partition of the schedule properties and allot for share with separate possession in the suit schedule property as the plaintiff is entitled for 1/5th share each in the suit schedule property, the defendant no.2 has promised to allot his share to the plaintiff to allot his respective share in the suit schedule property, but he failed to do so. He has also convened panchayath but they refused to allot the share. The plaintiff further submits that if any length of continuation of the joint family either to diminish or extinguish the legal and legitimate share of the plaintiff in the suit schedule property as the plaintiff is strongly approached that there is collusion among the defendant to cause loss and prejudice to the plaintiff. Hence this suit.

4. After institution of suit, the suit summons, issued to the defendants, after receiving the summons the defendant No.1 to 5 appeared before

the court through their counsels and filed their written statement.

The brief facts of the written statement is as under:-

The defendants No.2 & 5 filed their written statement by denying plaint averments and further submits that the second defendant who was employed in BGML, KGF and lead the life with great difficulty and 2nd defendant has managed the family and his father was getting meagre salary at the time the mother of and defendants no.1 to 4 have informed defendant Venugopal to look after the family by the said women, at that time, the plaintiff's father has no funds for which the mother of the plaintiff and defendants 1 to 4 directed her husband to get VRS and to celebrate the marriage. At the time the first defendant was working in Hussain Cycle shop and his salary is Rs.8-00 per month, the 2nd defendant was only looking after the entire family and also celebrate the marriage of sister Varamani who is also died after the marriage.

After the marriage of first defendant he shifted his family to Bangalore, the father of plaintiff and defendants no.1 to 4 have opted VRS in the year 1965 and died in the year 1969. The sale deed dated 18-5-1984 which is an exclusive property of the defendant no.1 & 2, the suit schedule property was purchased by their father in the name of defendants no.1 & 2 is unbelievable one. The second defendant require a sum of Rs.60,000-00 and he went to relinquish his entire right over the schedule property. Accordingly the 2nd defendant has paid a sum of Rs.60,000-00 to the first defendant, accordingly the first defendant has given undertaking letter to the 2nd defendant that katha of the property shall be changed in to the name of 2nd defendant with respect of the suit schedule property. The plaintiff has left the joint family about 25 years back and settled at Bangalore. The plaintiff not included the properties acquired by him in the present suit. The suit schedule property is the self acquired property of defendant no.5; she is not at all joint family member or co-parcener to the plaintiff's family. After the lapse of considerable period the plaintiff has come to the court to get share in the property of 5th defendant and the plaintiff has not at all disclosed what are the joint family properties acquired by his father during his lifetime. No panchayath was convened to effect partition of the schedule property as alleged in the plaint and only to get cause of action for filing the suit the plaintiff has created a false story to grab the property. Hence he prayed to dismiss the suit.

It is submitted that defendants no. 1, 3 and 4 are also full pledged coparceners and contributed their income for the improvement of suit schedule property which is the joint family property of plaintiffs and defendants and they are entitled for 1/5th share with separate possession in the suit schedule property and they are ready to pay court fee for their respective shares in the schedule property. Hence he has prayed to decree the suit of plaintiff and directed the defendants no.2 and 5 to effect partition of the suit schedule property by metes and bounds in favour of the defendants no.1, 3 and 4 to an extent of 1/5th share each with separate possession and the regd. Sale deed dated 27-6-1964 executed by the defendant no.2 in favour of defendant no.5 in respect of 4 acres in the suit schedule property is not binding on these defendants and pass such other reliefs if the defendants no.2 and 5 refused for the partition as contemplated under law with court costs and for mesne profits after due enquiry as contemplated under law., in the interest of justice and equity.

4. From the above pleadings of both the parties the following issues were framed by this court from my pre-deceaser :-

ISSUES

1) Whether the plaintiff proves that the suit schedule property is the joint family property of plaintiff and defendants no.1 to 4 and got purchased by their father in the name of defendant no.1 & 2?

2) Whether the plaintiff further proves that the sale deed dated 27-3-1984 executed by the 2nd defendant in favour of defendant no.5 is not binds on their right?

3) Whether the defendant no.2 & 5 proves that the suit schedule property is the self acquired property of defendant no.1 acquired under regd. Sale deed dated. 18-5-1984 as stated in the written statement?

4) Whether the plaintiff is entitled for the relief sought for?

5) What order or decree?

5. The plaintiff in order to prove the plaint averments, himself examined as PW-1 and got marked documents as Ex.P1 and P2 and examined one witness PW-2 to support of his version. Per contra, the defendant No. 2 examined himself as DW-1 and produced 9 documents and same have been marked as Ex.D1 to D9 and closed their side.

6. Heard arguments on both side.

7. My findings on the above said issues are as under:

Issue No.1: in the Affirmative

Issue No.2: in the Affirmative

Issue No.3: in the Negative

Issue No.4: in the Affirmative

Issue No.5: As per final order

for the following:

REASONS

8. **ISSUE NO. 1 TO 4** :- These issues are interconnected with each other, hence they have been taken up together for discussion in order to avoid repetition of facts. As already I have discussed about what the case of the plaintiff is and what the case of the defendants is. In a nutshell the case of the plaintiff is that, the plaintiff and defendants no.1 to 4 are the sons of late Narayanaswamy, defendant no.5 is the daughter-in-law of late Narayanaswamy and wife of defendant no.2. The plaintiff and defendants no.1 to 4 are the joint family members constituted under Hindu law and in joint possession

and enjoyment of the suit schedule property, the said property is the ancestral property purchased by their father late Narayanasway and made sale deed in the name of defendants no.1 & 2 as per regd. sale deed dated. 27-3-1965. Father of plaintiff and defendant no.1 to 4 was working in BGML, KGF and retired in the year 1965 and he purchased the suit schedule property from his retirement benefits and made registered sale deed in the name of defendants no.1 & 2, due to his ill health he died on 2-6-1969 and mother of plaintiff and defendants no.1 to 4 died on 20-6-1994. The plaintiff and defendants contributed their respective proportionate amount for the improvement of suit schedule property and they have jointly cultivating the suit schedule property. Without the knowledge of plaintiff and other defendants no.3 and 4 have entered in to the collusion document i.e. release deed executed by the defendant no.1 on 18-5-1984 in favour of defendant no.2 with respect of suit schedule property. The defendant no.2 made a registered sale deed on 27-6-1984 portion of land to the extent of 4 acres in suit schedule property in favour of defendant no.5. During April 2009 his elder brother defendant no.1 and he further informed to the plaintiff and executed release deed as stated above in favour of defendant no.2. The defendants No. 2 and 5 had no issues, they have taken the son of defendant no.4 by name Yamuna in adoption in the year 1981, when immediately child born to the first wife of defendant no.4 by name Shantha, who died after the birth of said child Yamuna. The adoption taken place as per the Hindu rites and customs in the temple and the temple authority also issued certificate of adoption to the defendant no.2 in the year 1981 the said Yamuna became the adopted son of defendant No.2 and 5 and now he is aged 27 years and he is residing with them.

The plaintiffs further stated that the defendant no.1 to 4 are colluded with each other along with defendant no.5 and trying to create secrete documents in respect of suit schedule property in order to alienate the suit schedule property for their wrongful gain with an intention to infringe the legal and legitimate right of the plaintiff over the suit schedule property. After knowing the said illegal acts the plaintiff demanded and requested the defendants for partition of the schedule properties and allot for share with separate possession in the suit schedule property as the plaintiff is entitled for 1/5th share each in the suit schedule property, the defendant no.2 has promised to allot his share to the plaintiff to allot his respective share in the suit schedule property, but he failed to do so. He has also convened panchayath but they refused to allot the share. The plaintiff further submits that if any length of continuation of the joint family either to diminish or extinguish the legal and legitimate share of the plaintiff in the suit schedule property as the plaintiff is strongly approached that there is collusion among the defendant to cause loss and prejudice to the plaintiff.

9. Per contra, the defendants No.2 & 5 submit that the second defendant who was employed in BGML, KGF and lead the life with great difficulty and 2nd defendant has managed the family and his father was getting meagre salary at the time the mother of and defendants no.1 to 4 have informed defendant Venugopal to look after the family by the said women, at that time, the plaintiff's father has no funds for which the mother of the plaintiff and defendants 1 to 4 directed her husband to get VRS and to celebrate the marriage. At the time the first defendant was working in Hussain Cycle shop and his salary is Rs.8-00 per month, the 2nd defendant was only looking after the entire family and also celebrate the marriage of sister Varamani who is also died after the marriage. After the marriage of first defendant he shifted his family to Bangalore, the father of plaintiff and defendants no.1 to 4 have opted VRS in the year 1965 and died in the year 1969. The sale deed dated 18-5-1984 which is an exclusive property of the defendant no.1 & 2, the suit schedule property was purchased by their

father in the name of defendants no.1 & 2 is unbelievable one. The second defendant require a sum of Rs.60,000-00 and he went to relinquish his entire right over the schedule property. Accordingly the 2nd defendant has paid a sum of Rs.60,000-00 to the first defendant, accordingly the first defendant has given undertaking letter to the 2nd defendant that katha of the property shall be changed in to the name of 2nd defendant with respect of the suit schedule property. The plaintiff has left the joint family about 25 years back and settled at Bangalore. The plaintiff not included the properties acquired by him in the present suit. The suit schedule property is the self acquired property of defendant no.5; she is not at all joint family member or co-parcener to the plaintiff's family. After the lapse of considerable period the plaintiff has come to the court to get share in the property of 5th defendant and the plaintiff has not at all disclosed what are the joint family properties acquired by his father during his lifetime. No panchayath was convened to effect partition of the schedule property as alleged in the plaint and only to get cause of action for filing the suit the plaintiff has created a false story to grab the property. Hence he prayed to dismiss the suit.

It is submitted that defendants no. 1, 3 and 4 are also full pledged coparceners and contributed their income for the improvement of suit schedule property which is the joint family property of plaintiffs and defendants and they are entitled for 1/5th share with separate possession in the suit schedule property and they are ready to pay court fee for their respective shares in the schedule property. Hence he has prayed to decree the suit of plaintiff and directed the defendants no.2 and 5 to effect partition of the suit schedule property by metes and bounds in favour of the defendants no.1, 3 and 4 to an extent of 1/5th share each with separate possession and the regd. Sale deed dated 27-6-1964 executed by the defendant no.2 in favour of defendant no.5 in respect of 4 acres in the suit schedule property is not binding on these defendants and pass such other reliefs if the defendants no.2 and 5 refused for the partition as contemplated under law with court costs and for mesne profits after due enquiry as contemplated under law., in the interest of justice and equity.

10. It is pertinent to note that, it is general principle is that, the Hindu family is presumed to be joint unless the contrary is proved this general principle laid down by the Hon'ble Supreme Court in Bhagwati Prasad Sah and others Vs. Dulhin Rameshwari Juerand and another which is reported in 1952 AIR page No.72.

11. It is pertinent to note that, Hindu Joint Family system with restrictive joint ownership is one of the great contributions of India Civilization to the humankind. A family of a group of natural or adoptive descendants held together by subjection to eldest living ascendant. A Hindu Joint Family consists of male members descended lineally from common ancestor, together with their mothers, wives or widows and the unmarried daughters. The

members of the family bounded by sapinda relationship. The undivided status is the normal condition of the Hindu family, and is the result of birth. The joint property is only an incident of the family and the property is not needed to constitute a family. A daughter did not remain a member of the joint family after she got married. A joint family does not cease to exist even when the last male member dies leaving widows, as it is open to any of the widows to take adoption. Co-parcenary is a narrower body than the joint family. The Co-parcenary consists of those who have a interest in the property by birth and who can enforce a partition. It begins with a common ancestor and only those males in his male line who are not removed from him by more than three degrees. Thus only a grand father and grant son is a coparcener with holder of the property. Only males could be Co-parceners (the female has now being declared to entitle to right on part with the male member by amendment to Sec.6 of Hindu Succession Act of 1956). A common ancestor is necessary for origination of a Co-parcenary, but it can continue without him, consisting of collaterals. A joint Hindu family or Co-parcenary is not a justice personality capable of holding property, separate from member of the family. It cannot sue or be sued in the name of the joint family. But, assessment of income tax the Hindu Undivided family has a distinctive status. Property under the Hindu Law held by a member of a Hindu Joint Family are classified under 3 heads.

i. Joint Property,
ii. Joint Family Property,
iii. Ancestral Joint Family Property;

12. Joint property is a property that may be held by 2 or more Co-parceners, but this will not constitute a joint family property. The joint family property presupposes the existence of a Hindu undivided family with a nucleus with whose help property is acquired by the Co-parceners. Property acquired by the joint earnings of the members of a Co-parcenary also fall in this category. Where a property is proved to be a Joint family property.

Ancestral joint family property means property inherited from ancestors and a co-parceners will get a right in a property by birth, which cannot be defeated by either individual alienation or disposition except under certain circumstances. Co-parcenary property it means and includes -

1. Ancestral property
2. Acquisition made by Co-parceners with the help of ancestral property
3. Joint acquisition without help of family property and without intention to be treated as separate property
4. Separate property of Co-parceners thrown into common stock.

13. Ancestral property is property in which a person gets a right by birth from father, grand father and great grand father. It would immaterial whether the son was born before or after the property was inherited. The character of the ancestral property remains despite partition and share given to a Co-parcener will be his separate property for others but

as regards sons born either before or after partition it will be ancestral property. Property inherited from material ancestors has been held to be separate property of the inheritor without accrual of any interest to son by birth. Likewise the property inherited by the relations would also be separate property of the inheritor. Acquisition with aid of ancestral property would be regarded as ancestral asset. A son gets a right of birth. This includes property purchased by sale of ancestral property by a sole Co-parceners before the birth of a son. Where prima facie evidence shows that, numbers of the family carried business in various firms with joint family funds, the onus will be on such a member who claims the business to be separate. It is largely a question of fact and the person who alleges is required to prove the nucleus for acquisition. Joint acquisition without help of ancestral property, but with joint exertions should be presumed to be joint family property. A Co-parcenary cannot be created by act of parties. If some collateral's in a Co-parcenary, acquire property without aid of ancestral property, they cannot set up a sub- Co-parcenary. Separate property thrown without common stock (blending); a Co-parcener may acquired separate property and impress with the joint family property. This action presupposes a clear intention throw the property in common stock on the part of the Co-parcener. Blending is not inferred by mixing of the properties with joint family property or permitting other members to use the property but a clear intention should be established. A Hindu family is presumed to be joint, until partition is proved. Hence, the burden of proving separation is on the person alleging that family is separated. But the presumption does not extend to joint family property. A person asserting a property a joint family property should prove either it was inherited or that it was acquired with joint family funds. To show that a property was acquired with joint family funds, the person claiming must show nucleus and also that it was sufficient for acquisition of the property.

14. It is pertinent to note that, we have usefully remained ourselves of what Mulla's Hindu Law, 16th Edition by S.T. Desai, has to state in connection with "alienation by father" at paragraph 256 of said volume. It read here under -

> "256. Alienation by the father :- a Hindu father has such has special powers of alienating Co-parcenary property which no other Co-parcener has. In exercise of these powers –
>
> 1) He may make a gift of ancestral moveable property to the extent mentioned in paragraph 225, and even of ancestral immoveable property to the extent mentioned in paragraph 226;
> 2) He may sell or mortgage ancestral property, whether moveable or immovable including the interest of his son, grand sons and grate grand sons therein, for the payment of his own debt, provided the debt was an antecedent debt and was not incurred for immoral or illegal purpose (paragraph 295)
> 3) Except as a foreside a father has no grater power over Co-parcenary property then any other manager, that is to say, he cannot alienate Co-parcenary property except for legal necessity or for the benefit of the family (Paragraph 242)

This Section must be read with what is stated under paragraph 213-215 ante."

15. From a close reading of a said provision, it is made out clear that, Hindu father can very well sell or mortgage ancestral property whether moveable or immovable including interest of his sons, grand sons, and great grandsons for the payment of his own debts provided, the debts an antecedents debt and the same has not been incurred for immoral or illegal purpose. Further, he can make such kind of disposal for the benefit of family. Further, power of alienation conferred upon father, manager under Hindu Law cannot be meddled nor meddled by the Court.

16. At this juncture, it would be more useful to look into the decision reported in AIR 1992 Madras 203 (Sarangapani V.K. Vs. Parthiba and others), wherein the Hon'ble High Court of Madaras has held that, Hindu law in case of alienation of Hindu undivided family properties for payment of debts, no

doubt the debts incurred by brother manger will stand on the different footing from the debts incurred by a father manager, but only to this limited extent, namely, in the case of brother manger, the debts have to be for a benefits of family before they are said to be binding on the other members of the family. In case of a father manager, even if the debts are not for the benefit of the family they are binding on the members of the family, if they are antecedents debts, which are not tainted by illegality or immorality. But, for that, there is no other difference between the 2 sets of debts. By keeping in mind the above referred position of law, now we shall turn our attention to scan of the evidence adduced by the parties in view of the provisions of Evidence Act.

In Kashibai and Ors. Vs. Smt. Putalabai, AlR 1987 Karnataka 156'. In that case, it is found that the plaint averment made it clear that,

“what was pleaded was partial partition on an earlier occasion and not general partition of all the properties of the family. That partial partition is valid and what remains is joint family property held by the persons who hold such property as tenants in common. Where there is evidence to show that the parties intended to sever, then the joint family status is put an end to and with regard to any portion of the property which remained undivided the presumption would be that the members of the family would hold it as tenants-in-common unless and until a special agreement to hold as joint tenants is proved. In the facts and circumstances of that case, it was held that partial partition of the properties is permissible and the partition of the remaining properties can be sought and the family can be deemed to have continued in a joint status in so far as the properties are concerned and as such the presumption was never rebutted by the defendants. Similar is the situation in the instant case."

17. It is pertinent to note that, In Rajendra Kumar Bose AIR 1923 Calcutta 5017, cited supra it has been laid down by the Division Bench of the Calcutta High Court that, "The rule that a partition suit should embrace all the joint property is neither arbitrary nor technical; it is founded on sound and weighty reasons. If the rule were not recognized and firmly applied, multiplicity of litigation would be the inevitable result. If suit for partition were allowed to be instituted in fragments, the jurisdiction of the trial Court and the forum of appeal might be altered; it might be of paramount importance to a party litigant whether he should have a first appeal or a second appeal to the High Court, and whether he should at all be permitted to seek the Judgment of the judicial committee with regard to the matters in controversy. The rule further ensures a just partition; parties might otherwise be greatly pre-juiced as regards equitable distribution, retention of possession, liability for improvements, and adjustment of accounts. It need not be disputed that

there may be a very special cases where the application of the rule may be justly relaxed".

18. In order to prove his case, the plaintiff examined himself as PW-1; he has reiterated the entire plaint averments in his chief-examination. In support of his oral evidence he has produced documents at Ex.P1 & 2. Ex.P1 is the RTC extract and Ex.P2 is the MR extract.

19. During his cross-examination, the defendants' counsel nothing is elicited by the defendants to prove the version of the defendants as the suit schedule property is the self acquired property of the defendant no.1 and the said property has sold in favour of defendant no.5 through the defendant no.2. Further, the defendants counsel got failure to prove that the plaintiff and defendants are not the Hindu undivided joint family members and also they got failure to show that the suit property is not the joint family property, it is the self

acquired property of defendants. Hence, the evidence of PW-1 become unchallenged.

20. Further the plaintiff examined another witness by name R.Vishwanathareddy as PW-2. In the said deposition PW-2 deposed before the court he has not known the document which is pertaining to the father of the plaintiff. There is no document available in their office regarding the employment of the father of the plaintiff. Therefore he has not produced any documents before the court.

21. Per contra, the defendants have examined 1 witness as DW-1 and got marked 9 documents as Ex.D1 to 9. Ex.D1 is the sale deed copy, Ex.D2 is the release deed, Ex.D3 is the sale deed copy, Ex.D4 & are the order sheet copies, Ex.D6 is the hand written statement copy, Ex.D7 & 8 are the RTCs and Ex.D9 is the MR extract.

22. Per contra, in the cross-examination the plaintiff denied the contention taken by the

defendants and the suit schedule property is a self acquired property of defendants. But, the same has denied by the defendants.

23. While perusing the evidence adduced by both parties the defendants have taken specific contention is that it is the self acquired property of the defendant no.1. The defendant no.1 has purchased the suit schedule property on 18-5-1984 through his earnings. But, the defendants have not produced any documents to show that the said property has purchased by the first defendant out of his own income. Therefore, the version taken by the defendants can not be accepted. Further it is pertinent to note that in the cross-examination DW-1 clearly admits that at the time of working of the father of plaintiff and defendants no.1 to 4 the first defendant also joined at BGML. On that moment the plaintiff and his brothers including defendants no.1 to 4 are residing with the parents i.e. father of plaintiff and defendants no.1 to 4. Therefore, it is very clear that the brothers of plaintiff and

defendants have been living in the Hindu undivided joint family members and the plaintiffs proved that there is no partition happened between the plaintiff and defendants no.1 to 4. When the defendants got failure to prove his own case as the suit schedule property is a self acquired property of the defendant no.1 under the registered sale deed dated 18-5-1984, the presumption drawn against the defendants as the suit schedule property is not the self squired property of first defendant Burden lies on the defendants as they have taken specific contention. When the defendants got failure to prove their own case the adverse inference drawn against the defendants and the presumption has taken in favour of the plaintiff as the plaintiff and defendants are the joint family members of Hindu undivided family. Further, the said property is belongs to the joint family property of plaintiff and defendants no.1 to 4. In view of the facts and circumstances and the above settled law of principle, I am of the opinion that the plaintiff proves that he is the joint family member of the

Hindu undivided family and the suit schedule property is the joint family property of plaintiff and defendants no.1 to 4. Further, the plaintiff proves that the sale deed executed by the 2nd defendant in favour of first defendant is not binding on the plaintiff. Further, the defendant no.2 to 5 got failure to prove that the suit schedule property is the self acquired property of defendant no.1 which acquired under registered sale deed dated 18-5-1984 as stated in the written statement. Further, I am of the opinion that plaintiff is entitled for the suit relief. **Hence I answer Issues No.1, 2 & 4 are in the Affirmative and Issue No.3 answered in the Negative.**

24. **ISSUE NO.5** : In view of my findings on issue No.1 to 4, I proceed to pass the following:-

O R D E R

The suit of the plaintiff is hereby decreed.

The plaintiff is entitled for $1/5^{th}$ share in the suit schedule property.

Further, it is ordered that, the sale deed executed by the 2^{nd} defendant in favour of 5^{th} defendant dated 27-6-1984 is not binding on the plaintiff.

Having regard to the relationship between the parties to the suit, no order as to costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer transcribed and typed by him, corrected by me and then pronounced by me in the open court on this the 1^{st} day of March 2018.)

(A.C.DAYAMANDA MURTHY)
Addl. Civil Judge & JMFC: Bangarpet.

A N N E X U R E

1. Witnesses examined for the plaintiff:

PW.1	:	Yadavan
PW.2	:	Vishwanathareddy

2. Document exhibited for the plaintiff:

Ex.P1	:	RTC
Ex.P2	:	MR extract

3. Witnesses examined for the defendants:

DW-1	:	Pandurangan

4. Documents exhibited for the defendants:

Ex.D1	:	Sale deed copy
Ex.D2	:	Release deed copy
Ex.D3	:	Sale deed copy
Ex.D4	:	Order copy
Ex.D5	:	Order copy
Ex.D6	:	Hand written statement
Ex.D7&8	:	RTCs
Ex.D9	:	MR Extract.

(A.C.DAYAMANDA MURTHY)
Addl. Civil Judge & JMFC: Bangarpet.