

KAMD300001542020



**IN THE COURT OF THE I-ADDITIONAL SENIOR
CIVIL JUDGE AND JMFC, MADDUR**

PRESENT : *MOHANAKUMARI N.B., L.L.M.*
 I-ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
 MADDUR, MANDYA DISTRICT

DATED: THIS THE 2nd DAY OF APRIL 2026

RA No.17 of 2020 &
 R.A. No.21/2020

RA No.17 of 2020

1	Vasu, S/o Late Ramanna, Aged about 30 years.
2	Prabha, S/o Late Ramanna, Aged about 45 years.
3	Chandu, S/o Late Ramanna, Aged about 43 years.

	Appellants No.1 to 3 are R/o Thyluru village, Athaguru Hobli, Maddur Taluk, Mandya District.
4	Siddappa, S/o Biligirigowda, Aged about 60 years, Agriculturist.
5	Mallesha S/o Late Mallanna, Aged about 40 years.
	Appellants No.4 and 5 are R/o Thyluru village, Athaguru Hobli, Maddur Taluk, Mandya District.
	APPELLANTS
	(Defendants No.6 and 7 before the Trial Court)
	(Represented by Sri. HM., Adv.,)

V/s.

1	Rajeeva S/o T.C. Raju, Aged about 35 years,
2	T.C. Raju,

	S/o Chikkanegowda, Aged about 60 years,
	Respondent No.1 and 2 are R/o Thyluru village, Athaguru Hobli, Maddur Taluk, Mandya District.
	R-1 Plaintiff, R-2 defendant No.1 before the Trial Court
3	Basavaraju, S/o Mallu, Aged about 45 years
4	B.L. Ramakrishna, S/o Lingegowda Aged about 55 years,
	R-3 and 4 defendant No.2 and 3 before the Trial Court
5	Honnappa S/o Subbegowda Aged about 70 years.
6	Shanthamma W/o Siddappaaged, Aged about 50 years.
7	Suchitra W/o soma

	D/o late Siddappa, Aged about 35 years.
8	Yogesh S/o late Siddappa, Agea about 35 years.
9	Madhu (Dead by L.Rs.) S/o late Doddaputtegowda
9(a)	Jayamma W/o late Madhu Aged about 67 years.
9(b)	Ramesha S/o late Madhu, Aged about 46 years.
	Both are R/o Thylur village, Athagur Hobli, Maddur Taluk.
9(c)	Shantha D/o Madhu, Aged about 33 years, R/o Ajjahalli village, Maddur Taluk,
9(d)	Radha D/o late Madhu Aged about 40 years. R/o Borapura village, Maddur Taluk,
	Respondent No. 5, 8 to 11 are

	R/o Thyluru village, Athagur hooli, Maddur Taluk.
	RESPONDENTS
	(R-5 to 9 defendant No.5 and 8 to 11 before the Trial Court)
	(R-2, 6 to 8, 9(a to d) are placed exparte, R-3 and 4 are Represented by Sri. BAG., Adv.,R-5 is Represented by Sri. HR., Adv.,R-1 is Represented by Sri. PH., Adv.,)

KAMD300001772020



R.A. No.21/2020

1	Basavaraju S/o Mallajah, Aged about 50 Years,
2	B.L.Ramakrishna S/o Muddana Lingaiah. Aged about 65 years Both are residents of Boodaguppe, Athagur Hobli, Maddur Taluk.
	APPELLANTS

	(Defendants No.2 and 7 before the Trial Court)
	(Represented by Sri. BAG., Adv.,)

V/s.

1	Rajeeva S/o T.C. Raju, Aged about 35 years
2	T.C. Raju, S/o Chikkanegowda, Aged about 60 years,
3	Smt. Baby (Dead by LR's)
3(a)	Vasu S/o Late Ramanna, Aged about 55 years,
3(b)	Prabha, S/o Late Ramanna, Aged about 52 years
3(c)	Chandu S/o Late Ramanna, Aged about 50 years.
4	Honnappa, S/o Late Subbegowda, Aged about 77 years.
5	Siddappa, S/o Late Biligirigowda,

	Aged about 62 years,
6	Mallesha, S/o Late Mallanna, Aged about 45 years.
7	Shanthamma W/o Siddappa, Aged about 60 years.
8	Suchithra W/o Soma D/o late Siddappa Aged about 60 years.
9	Yogesh S/o Late Siddappa Aged about 38 years,
10	Madu Dead by LR's
10(a)	Jayamma W/o Late Madu, Aged about 72 years.
10(b)	Ramesha, S/o Late Madu, Aged about 51 years.
10(c)	Shantha, D/o Late Madu, Aged about 48 years R/o Ajjahalli, Maddur Taluk.
10(d)	Radha

	D/o Late Madu, Aged about 45 years, R/o Borapura, Maddur Taluk
	Respondents 1 to 10(a) &(b) are R/o Tyluru, Athagur Hobli, Maddur Taluk.
	RESPONDENTS
	(Plaintiff and defendants before the Trial Court)
	(R-3 (a to c), 5 and 6 are Represented by Sri. HM., Adv., R-1 is Represented by Sri. HM., Adv.,R-2, 4, 7 to 9, R10(a to d) are placed exparte)

Date of institution of Appeal	Filed on 20.02.2020
Date and nature of impugned Judgment and Decree.	Judgment and decree dated 21.12.2019 in OS No.316/2008 passed by learned Ist Addl. Civil Judge and JMFC, Maddur, decreed the suit of plaintiff.
Date of pronouncement of Judgment	02.04.2026
Total Duration	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 06 01 11

COMMON JUDGMENT

As both appeals are filed against the Judgment and decree passed by the learned I Addl. Civil Judge and JMFC, Maddur, in OS No.316/2008, both Appeals are disposed of through common Judgment. The defendants No.4 (a) to (court), 6 and 7 in OS No.316/2008 have filed R.A.No.17/2020. The defendants No.2 and 3 in OS No.316/2008 have filed R.A.No.21/2020. They challenged the Judgment and Decree dated 21.12.2019 passed by the learned IV Addl. Civil Judge and JMFC, Maddur, wherein the suit of the plaintiffs filed for partition and separate possession is decreed with cost. It is prayed to set aside the impugned Judgment and decree and to dismiss the suit of the plaintiffs.

2. For the sake of convenience, the parties are referred herein as per their ranks before the

Trial Court.

3. It is the case of the plaintiff before the Trial court that he and the defendant No.1 are members of Hind Undivided joint family, they are coparcenars and they are governed by Mitakshara school of Hindu law. The suit schedule properties are ancestral and joint family properties. They are in joint possession and enjoyment of the same. The suit schedule properties are wet lands having perennial source of water. They yield good income. The annual income from the suit schedule properties is more than sufficient to meet both ends of the joint family. There used to be surplus income. The Defendant No.1 is very greedy person. He addicted to all sorts of vices. He created documents in favour of defendant No.2 to 7 and 11 in respect of suit schedule item No. 1 to 6, 8 and 10 properties. He also created documents in favour of the husband of the

defendant No.8 and the father of the defendant No.9 and 10 in respect of suit schedule item No.7 property. The documents are not genuine documents. There was no legal necessity to the defendant No.1 to create such documents in favour of defendant No.2 to 11. Therefore, the plaintiff filed the suit before the trial court for partition and separate possession of his 1/2 share in the suit schedule properties.

4. In response to the suit summons, the defendant No.1 contested the suit by filing his written statement and contended that he sold suit schedule item No.1 to 11 properties in favour of the defendant No.2 to 11 for legal necessity. Therefore, he prayed to dismiss the suit.

5. The defendant No.2 and 3 contested the suit by filing his written statement and contended that the defendant No.2 purchased suit schedule item No. 1 property and the defendant No.3

purchased suit schedule item No.2 property from the defendant No.1 through separate registered sale deeds dated 27.10.1989 for valuable consideration. The defendant No.1 sold the said properties for legal necessity and for the benefit of joint family. Therefore, it is prayed to dismiss the suit.

6. The defendant No.4 contested the suit by filing his written statement and contended that he purchased suit schedule item No.2 property from the defendant No.1 on 04.09.1987 and suit schedule item No.3 property on 29.08.1989 as a third party for valuable consideration. The defendant No.1 utilized the sale consideration for his business. Therefore, it is prayed to dismiss the suit.

7. The defendant No.5 contested the suit by filing his written statement and contended that he purchased suit schedule item No.4 property

from the defendant No.1. The same was sold for legal necessity. The same is in the hands of the defendant No.6. Therefore, it is prayed to dismiss the suit.

8. The defendant No.6 contested the suit by filing his written statement and contended that he purchased suit schedule item No.4 property on 03.06.1992 from the defendant No.5, who purchased the same from the defendant No.1 for valuable consideration. Therefore, he prayed to dismiss the suit.

9. The defendant No.7 contested the suit by filing his written statement and contended that his mother by name Smt. Late. Jayamma purchased suit schedule item No.5 and 6 properties from the defendant No.1 on 22.11.1990. The defendant No.1 sold the same for his legal necessity. Therefore, he prayed to dismiss the suit.

10. The defendant No.8 contested the suit by filing his written statement and contended that her husband purchased suit schedule item No.7 property on 04.09.1987 from the defendant No.1 for valuable consideration. The defendant No.1 sold the same for his legal necessity. Therefore, he prayed to dismiss the suit.

11. The defendant No.9 and 10 are the children of the defendant No.8 and they filed similar separate written statements and contended that their father purchased suit schedule item No. 7 property from the defendant No.1 on 04.09.1987 for valuable consideration. The defendant No.1 sold the same for their legal necessity. Therefore, it is prayed to dismiss the suit.

12. The defendant No.11 contested the suit by filing his written statement and contended that he purchased suit schedule item No.9 property

from the defendant No.1 on 04.01.1989 for valuable consideration. The defendant No.1 sold the same for his legal necessity. Therefore, he prayed to dismiss the suit.

13. In view of the above pleadings, the Trial Court framed the following;

ISSUES

- 1) *Whether the defendant No.1 proves that he has sold some of the suit schedule properties for the purpose of legal & family necessities in which the plaintiff has no right to claim any share?*
- 2) *Whether the defendant No.2 to 11 prove that, they are the bona-fide purchasers of some of the suit schedule properties at item No.1 to 5, 7, 8 &10?*
- 3) *Whether the defendants prove that, the suit of the plaintiff is barred by time?*
- 4) *Whether the plaintiff is entitled for schedule share in all the suit properties, if so what share?*
- 5) *What order or decree?*

14. During the course of trial, the plaintiff examined as PW1 and got marked 31 documents as Ex.P1 to P31. And also examined two witnesses as PW2 and 3. The defendant No.3 examined as DW1 and also examined Two witnesses as DW2 and 3 and they got marked Ex.D10 to 16 documents. The defendant No.6 got examined himself as Dw4 & also examined two witnesses as Dw5 & 6 and got marked Ex.D21 to 28. The defendant No.4(c) & 4(a) got examined themselves as Dw7 & 8 and got marked Ex.D29 to 59. The defendant No.7 got examined himself as Dw.9 & also examined two witnesses as Dw.10 & 11 and got marked Ex.D60 to 72. The defendant No.10 got examined himself as Dw12 & got marked Ex.D73 to 76 documents.

15. After considering and appreciating the evidence and materials on record, the Trial

Court decreed the suit of the plaintiffs with costs vide judgment and decree dated 21.12.2019 by answering Issue No.1 and 3 in the Negative, issue No.2 and 4 in the Affirmative by holding that the plaintiff has proved his case and he is entitled to share in the suit schedule properties.

16. Aggrieved by the said judgment and decree dated 21.12.2019 passed by the learned I Addl. Civil Judge and JMFC, Maddur, the defendant No.2, 3, 4 (a) to (court), 6 and 7 have preferred the above appeals.

17. The Trial Court records have been secured. Perused the written arguments filed by the appellants.

18. **Grounds of Appeal in RA No.21/2020 of OS No.316/2008.**

The Appellants/ Defendant No.2 and 3

have urged in the grounds of appeal that the Trial court has erred in decreeing suit of the plaintiff by holding that the defendant No.1 and 2 are entitled $\frac{1}{2}$ share in the suit schedule properties. The suit schedule item No.1 to 8 and 10 properties should have been allotted to the defendant No.2 to 11 on equity basis as they are purchasers of the said properties. The Trial court erred in decreeing that the suit though the suit is barred by law of limitation. The Trial Court erred in not considering that the defendant No.1 has admitted in his written statement that property was sold in favour of the defendant No.2 and 11 for his legal necessities. The Trial court erred in not considering that the purchasers acted upon sale deeds executed in their favour by the defendant No.1 in respect of suit schedule item No.1 to 8 and 10 properties. The Trial court

erred in considering that the purchasers are banafide purchasers for valuable consideration. The Trial court failed to consider that the plaintiff was not even born at the time of selling of same of the suit schedule properties. The Trial court failed to consider that the suit filed by the plaintiff is colluded with the defendant No.1. Therefore, it is prayed to set aside the Judgment and decree in OS No.316/2008 passed by the Trial court dated 21.12.2019 and to dismiss the suit.

19. **Grounds of Appeal in RA No.17/2020 of OS No.316/2008.**

This appeal is filed by the defendant No.4 (a to c), 6 and 7 of OS No.316/2008. The Trial court erred in decreeing the suit even though the defendant No.1 has proved issue No.1. The Trial court erred in decreeing the suit even though the trial court held issue No.2 in the

affirmative. When the trial court held that the purchaser are bonafide purchasers, their interest has be looked into. The trial court should have been dismissed the suit against the purchasers. The decree passed by the Trial court is perverse and capricious. The Trial court erred in answering issue No.3 in the Negative. The Trial court erred in not looking into the provisions of the Limitation Act. The suit of the plaintiff is barred by law of limitation. The Trial court has not considered issue on limitation in proper manner. The Trial court erred in answering issue No.4 in the affirmative against the findings given on the issue No.2. The Trial court has not at all read the oral evidence let in by the both parties. The Trial court has not read the Issue No.1 properly. The Trial court has not considered the documentary evidence adduced by the both parties. The Trial court erred in

considering that the suit is not maintainable as no prayer or pleadings to avoid alienation made by the defendant No.1 is sought. Therefore, it is prayed to set aside the Judgment and decree in OS No.316/2008 passed by the Trial court dated 21.12.2019 and to dismiss the suit.

20. This court after hearing arguments on merits in both the appeals through its order dated 29.02.2024 recasted issue No.1 as follows:

- 1. Whether the defendant No.2 to 11 prove that the defendant No.1 has sold suit schedule item No.1 to 5, 7, 8 and 10 properties for family legal necessities of the defendant No1?**

21. This court after recasting issue No.1 has given sufficient opportunity to both the

parties to lead their evidence. The Appellants in RA No.17/2020 led additional evidence by examining Appellant No.4 as AW1, Appellant No.2 as AW2 and Respondent No.5 as AW3. No fresh evidence is led in RA No.21/2020. The AW1 to 3 are cross examine by the respondent No.1. The respondents did not lead their fresh evidence.

22. On perusal of the evidence available on record and on hearing arguments this court answered **issue No.1 is in the Affirmative** for the following;

: REASONS :

23. **Issue No.1:-** It is the case of the plaintiff that there was no legal necessity to the defendant No.1 to sell suit schedule item No.1 to 8 and 10 properties in favour of defendant No.2 to 11 . The defendant No.1 in his written statement has admitted that he sold suit schedule item No.1 to 8

and 10 properties in favour of defendant No.2 to 11 for maintenance of his family and to start Automobile spare parts business. The defendant No.2 to 11 in their respective written statements contended that they purchased suit schedule item No.1 to 8 and 10 properties for valuable consideration and the defendant No.1 sold the same for family legal necessities. The defendant No.3, 6, 4(c) and 4(a), 7 and 10 led their evidence before the Trial court and got marked the sale deeds executed in their favour and also revenue record standing in their names as exhibits. The defendant No.4(c) and 7 examined before this court also after recasting issue No.1.

24. On perusal of the materials available on record, it is forthcoming that in the sale deeds executed by the defendant No.1 in respect of suit schedule item No.1 to 8 and 10 properties, the purpose of sale deed is mentioned as for

repayment of hand loan, family expenditure, maintenance of minor children and to start business. The sale deeds executed by the defendant No.1 in favour of the defendant No.2 to 11 are registered sale deeds. Therefore, the reasons stated in the sale deeds for sale of properties have to be presumed to be true. It is an ordinary prudence that the purchasers will believe the seller's statement about the purpose for which the property is proposed to be sold. We cannot expect the purchasers to go and inquire as to whether the seller utilized the sale consideration amount for the same purpose for which he sold the properties. It is left for the seller to utilize the sale consideration amount as per his will and wish.

25. The plaintiff in the plaint has pleaded that the defendant No.1 was addicted to vices and he created sale deeds in respect of suit schedule

item No.1 to 8 and 10 properties in favour of the defendant No.2 to 11. It is not the case of the plaintiff that the defendant No.1 sold the properties to meet his vices. The plaintiff has not pleaded in the plaint as to what was the reason for the defendant No.1 to create sale deeds in favour of the defendant No.2 to 11. The defendant No.1 in his written statement categorically stated that he sold suit schedule item No.1 to 8 and 10 properties in favour of the defendant No.2 to 11 for family legal necessities. He has also stated that it was for the purpose of maintenance of family and for establishment of his spare parts business. Therefore, the best evidence in respect of legal necessity to sell suit schedule item No.1 to 8 and 10 properties in favour of the defendant No.2 to 11 is pleadings of the defendant No.1. The facts admitted in the pleadings need not be proved. The defendant

No.2 to 11, who are the purchasers, in their written statement stated that properties were sold by the defendant No.1 for family legal necessities. The defendant No.1 admitted the same in his written statement. Therefore, it is held that the defendant No.2 to 11 have proved that the defendant No.1 sold the suit schedule item No.1 to 9 and 10 properties for family legal necessities. **Accordingly, the issue No.1 is answered in the Affirmative.**

26. Having considered the pleadings, evidence on record, the impugned judgment and decree, the grounds urged in the appeal and written arguments filed by the appellants, the following point has been formulated for consideration:

- 1) *Whether the impugned judgment and decree is perverse, capricious and it warrants interference by this court?*

27. Having perused the written arguments filed by appellants and having considered the materials on record, the aforementioned point is answered ***Partly in the Affirmative for the following;***

: REASONS :

28. It is the one of the grounds of appeal that the Trial court framed issue No.1 wrongly by casting burden on the defendant No.2 to 11. This court through its order dated 29.02.2024 recasted issue No.1 by casting burden on the defendant No.2 to 11. It is a settled principle of law that legal necessity has to prove by the purchases. In spite of it, the Trial court casted burden on the defendant No.1 who is the seller. Therefore, it is clear that wrong framing of issue No.1 has led the Trial court to decree the suit of the plaintiff.

29. It is one of the grounds of appeal in both the appeals that the suit of the plaintiff is barred

by limitation. The Trial court framed issue No.3 in respect of the same. The Trial court after appreciating the evidence has answered issue no.3 in the Negative by holding that the period of limitation provided under Article 60 of the Limitation Act, 1963 would not apply to the suit. But the Trial court has failed to state that which provision of the Limitation Act is applicable to the suit and what is the period of limitation to file the suit. The present suit is filed by the son of the defendant No.1 challenging the alienation made by the defendant No.1. who is his father. Therefore, the applicable provision of the Limitation Act, 1963 to the suit is Article 109. As per Article of 109 of the Limitation Act, 1963, the period of limitation to challenge or to set aside father's alienation of ancestral property is 12 years from the date of alienee taking possession of the property.

30. On perusal of the materials available on record, it is evident that alienation made in favour of the defendant No.2 and 3 was on 27.10.1989. The alienation made in favour of defendant No.4 is on 04.09.1987. The alienation made in favour of defendant No.5 is on 15.06.1989. The alienation made in favour of mother of the defendant No.7 is on 22.11.1990. The alienation made in favour of the husband of the defendant No.8 and father of the defendant No.9 and 10 is on 04.09.1987. The alienation made in favour of defendant No.11 is on 04.01.1989. In the sale deeds executed in favour of the defendant No.2, 3, 4, 5, and the husband of the defendant No.7 in favour of the defendant No.11, it is mentioned that the possession of the properties purchased was handed over to the respective purchasers as on the date of sale deeds itself. Therefore, the plaintiff being son of the defendant No.1 should

have challenged alienation made by the defendant No.1 within 12 years from the date of purchase. The present suit is filed in the year 2008. Therefore, the suit of the plaintiff is barred by law of limitation in respect of suit schedule item No.1 to 8 and 10 properties.

31. In the cause title the age of the plaintiff is shown as 22 years as on the date of filing of the suit. The suit is filed on 17.11.2008. It is not the case of the plaintiff that he was a minor when the period of limitation was completed. Even if it is assumed that the plaintiff was minor when the period of limitation was completed, suit should have been filed within three years from the date of he attaining majority. The suit should have been filed when the plaintiff attained the age of 21 years. But the present suit is filed when the plaintiff attained the age of 22 years. Therefore, the present suit in respect of alienation made by

the defendant No.1 in respect of suit schedule item No.1 to 8 and 10 properties is barred by limitation. Therefore, the Trial court should have dismissed the suit of the plaintiff against the defendant No.2 to 11 in respect of suit schedule item No.1 to 8 and 10 properties. Hence, the Judgment and decree passed by the Trial court decreeing entire suit of the plaintiff is not in accordance with law. But, the plaintiff is entitled to 1/2 share in suit schedule item No.9 and 11 properties as they are not alienated by the defendant No.1. Accordingly, ***the above point is answered partly in the Affirmative.*** As a result, it is just and proper to pass the following ;

ORDER

The appeal filed by the Appellants/Defendants in OS No. 316/2008 under Order 41 Rule 1 of CPC is hereby allowed in part.

The suit of the plaintiff against the defendant No.2 to 11 in respect

of suit schedule item No.1 to 8 and 10 properties is hereby dismissed.

The Judgment and decree of the Trial court in respect of share of the plaintiff and defendant No.1 in suit schedule item No.9 and 11 properties is hereby confirmed.

Interim applications pending if any stand disposed.

Draw decree accordingly.

Return the Trial Court Records along with a copy of this Judgment.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 2nd day of April, 2026)

**(MOHANAKUMARI N.B.)
I-ADDITIONAL SENIOR CIVIL JUDGE
& JMFC, MADDUR.**

ANNEXURE

List of witnesses examined on behalf of Appellants:

AW.1	:	B.R. Chandru
AW.2	:	T.M. Mallesh
AW.3	:	Honnappa

List of documents exhibited on behalf of Appellants:

- NIL -

List of witnesses examined on behalf of Respondents:

- NIL -

List of documents exhibited on behalf of Respondents:

- NIL -

**I-ADDITIONAL SENIOR CIVIL JUDGE
& JMFC, MADDUR.**