

IN THE COURT OF PRL.SENIOR CIVIL JUDGE AND JMFC
SRIRANGAPATANA

This 30th day of January 2019.

Present: SRI.VEERANNA SOMASEKHARA
B.Com, LL.B.,
PRL. SENIOR CIVIL JUDGE & JMFC.
SRIRANGAPATANA

O.S.No.7/2011

Plaintiff: Smt. Manjula wife of
Gangadhara, aged about 35
years, resident of Koratgere
Village, Kunigal taluk, Tumkur
district.

**(By Sri. N.Kumaraswamy,
Adv.)**

-Vs-

Defendants: 1. Smt. Sannamma wife of late
Siddaiah @ Ukkada Siddaiah,
aged about 76 years.

2. Smt. Lolakshi wife of late
Pariswamy, aged about 36
years.

3.Ramu s/o late Siddaiah @
Ukkada Siddaiah, aged about
48 years.

4.Kumara son of late Siddaiah, @
Ukkada Siddaiah, aged about
43 years.

5.K. Raju son of Kumara, major.

All are resident of Palahally Village, Belagola hobli, Srirangapatna taluk.

6.Shankara son of Manchiaiah major.

7. Smt. Saraswathi wife of Shankara, major.

Both are resident of D.No. 3605, 2nd cross, Laxmi-devamma temple street, Lashkar Mohalla, Mysore.

8.Zacharios Varikamakil dead by his legal representatives

8(a) Fernandez Sebastian Jeerkassary S.J.

8(b) Fernandez Sebastian Assarikerely.

Both are resident of Saint Xavier's School No.4, Rajnivas Marg, Delhi – 110054.

(Case against Defendants 8(a) and (b) is deleted as per order dated:08.06.2017)

9.Ravi M. Reddy son of C.M. Reddy, major, residing at No.42, Nanjappa road, Shanthinagar, Bangalore.

10.Smt. Kousalya wife of Shivanna, aged about 38 years, resident of Mahadevapura village, Arakere hobli, Sriranga-patna taluk.

11.Smt. Hemavathy wife of Jayaramu, aged about 32 years, resident of Srinivasa Agrahara Village, K. Shettihally hobli, Srirangapatna taluk.

(D1, 3 to 5 by N.K.Mahadeva, adv.
D2 by Sri.G.Narayana, adv.
D6 & 7 by K.L.Lakshmi narayana, adv.
D8(a)&(b) by Sri.M.Puttegowda, adv.
D9 by Sri.Nagaraju adv.,
D10 & 11 by L.Krupashankar adv.

Date of institution of the suit : 19.02.2011

Nature of the suit (suit on Pronote, suit for Declaration and possession Suit for Injunction, etc.)

: Partition and separate possession

Date of the commencement of Recording of the evidence : 30.01.2015

Date on which the Judgment was Pronounced : 30.01.2019

Total duration : Year/s Months Day/s
: 07 11 11

(VEERANNA SOMASEKHARA)
PRL. SENIOR CIVIL JUDGE & JMFC
SRIRANGAPATANA

J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of declaration, partition and separate possession in respect of the suit schedule properties. At the first instance, the three persons i.e., plaintiff and defendant no.10 and 11 herein have filed this suit and later the plaintiff no.2 and 3 are transposed as defendant no.10 and 11 in this suit.

2. **The brief contents of the plaint are as under:**

The suit schedule properties are the land bearing Sy.No.164/2A measuring 0.32 guntas and Sy.No.164/2B measuring 33 guntas situated at Bhramapura village, Srirangapatana taluk.

3. The contention of the plaintiff is that, the defendant No.1 is her mother and herself and husband of defendant no.2 and defendant no.3, 4 and 10 and 11 are the children of late Siddaiah s/o Mirle Siddaiah. Further the contention of the plaintiff is that the suit schedule properties are lease hold properties of plaintiff and defendant no.1 to 4 and 10 and 11 and the occupancy right was confirmed in the name of 1st defendant as she is the elder member of the family. Further the contention of the plaintiff is that herself and the defendant no.1 to 4 and 10 and 11 are the joint family members and as such, the suit schedule properties are the joint family properties of them and till today they are in

joint possession as a owner of the said properties. Further the contention of the plaintiff is that the 1st defendant was continued as a manager of the joint family with the consent of plaintiff and the defendant no.1 to 4 and 10 and 11. Further the contention of the plaintiff is that recently the defendant no.1 to 4 were not properly treated her and as such, she has questioned the defendants, then the defendant no.1 to 4 have not given proper answer to it. Further the contention of the plaintiff is that recently she came to know that the defendant no.1, 4 and 5 have created a registered gift deed in respect of item no.2 of the property and then the defendant no.1 to 5 colluded with each other have alienated the suit schedule properties in favour of defendant no.6 and 7 with an intention to deprive the right of the plaintiff, defendant no.10 and 11 over the suit schedule properties. Further she contended that the defendant no.1 to 5 and the plaintiff no.2 and 3 (now they are defendant no.10 and 11) have falsely executed a registered general power of attorney dated: 05.01.2007 in favour of 6th defendant for selling the item no.1 of the suit schedule property. Further the said document is created only with an intention to deprive the right of the plaintiff over the suit schedule property. Further the contention of the plaintiff is that the 6th defendant has sold the suit property in favour of his wife i.e., 7th defendant without any consideration amount and as such, the said document is not binding on the plaintiff's legitimate share over the suit schedule property. Further the contention of the plaintiff is that on 25.06.2001, the

defendant no.1 without having any absolute right over the property and without any legal necessity to the family, she has sold the item no.2 of the property in favour of 8th defendant and as such, the said registered sale deed is also not binding on the legitimate share of the plaintiff over the suit schedule properties. Further she contended that recently she approached the defendant no.1 to 4 and requested them to effect partition in respect of the suit schedule properties, then the defendants did not heed the request of the plaintiff. Thereafter she has got issued legal notice to the defendant no.1 to 4 calling upon them to effect the partition of the suit schedule properties but in spite of service of notice, they have not complied the demand of the plaintiff and as such, cause of action arises for filing this suit. By alleging the above said cause of action, the plaintiff has filed this suit against the defendants for the above said relief.

4. After registration of the suit, the suit summons were issued to the defendant No.1 to 9 and the said summons were served to them. In response to the suit summons, the defendant No.1 to 9 have appeared before the court through their respective counsel and the defendant no.1, 3, 4, 8, 8(a) and (b) and 9 have filed their written statements.

5. Further at the first instance, this suit was filed by the plaintiff and the defendant No.10 and 11 herein and later the defendant no.10 and 11 have not interested to proceed the case

and as such, they were transposed as a defendant no.10 and 11 in this suit.

6. The brief contents of written statement of defendant No.1, 3 and 4 are as under:

The defendants have admitted the contents of para no.1 of the plaint with regard to the relationship of them and the plaintiff as contended in the plaint. Further the defendants have admitted that the suit schedule properties are the joint family properties of plaintiff and defendant no.1 to 4 as contended in the plaint. Further the contention of the defendants is that, the 1st defendant with an intention to provide self employment to her children she was intending to alienate the property to the extent of 30 guntas out of the suit schedule properties and as such, she has approached the defendant no.6 and expressed her intention, then the defendant no.6 has fraudulently obtained the signature of the defendant no.1 in number of documents and later created the documents. Further the defendant no.1, 3 and 4 have contended that the above said documents will not binding upon them to the extent of their legitimate share over the suit schedule property. Contending the above facts, they pray to decree the suit by allotting their share over the suit schedule properties.

7. The brief contents of written statement of defendant No.8(a) and (b) are as under:

The contention of the defendants is that the suit filed by

the plaintiff is not maintainable either in law or on facts. Further the defendants have denied the part contents of para no.2 of the plaint. On the other hand, they have admitted that the land bearing sy.no.164/2B is only a tenanted land as contended in the plaint. Further the defendants have denied the relationship of the plaintiff and defendant no.1 to 4 and also contended that the suit schedule properties are not the joint family properties of plaintiff and defendant no.1 to 4 as contended in para no.3 of the plaint. Further the defendants have denied the contents of para no.4 and 5 of the plaint in toto. Further the defendants have admitted the contents of para no.6 of the plaint that, the 1st defendant has sold the item no.2 of the suit property in favour of 8th defendant under registered sale deed dated: 25.06.2001. Further he contended that the 1st defendant has sold the item no.2 of the suit property in favour of 8th defendant for her family legal necessities and on the same day, she has handed over the possession of the item no.2 of the property to the defendant no.8. Further the defendants have denied the contents of para no.7 of the plaint. Further they have contended that there is no cause of action arose for the plaintiff to file this suit. Further they have contended that the plaintiffs have filed this suit with collusion of the defendant no.1 to 5 by suppressing the real facts and as such, the plaintiffs are not entitle for any relief as sought for in the suit. Contending the above facts, they pray to dismiss the suit filed by the plaintiff.

8. The brief contents of written statement of defendant No.9 are as under:

The contention of the defendant no.9 is that the suit filed by the plaintiff is not maintainable either in law or on facts. Further the defendant no.9 has denied the relationship of the plaintiff and the defendant no.1 to 4 as contended in the plaint. Further the defendant no.9 contended that the sy.no.164/2B measuring 0.32 guntas only a tenanted land. Further the defendant has denied the contents of para no.3 of the plaint that the suit schedule properties are the jointly family properties of plaintiff and defendant no.1 to 4 as contended in the plaint. Further the defendant no.9 has denied the contents of para no.4 to 8 of the plaint in toto. Further the defendant no.9 contended that there is no cause of action arose for filing this suit and the cause of action mentioned in the plaint is a imaginary one. Further he contended that the plaintiff has sought the relief of declaration with respect to the registered sale deed and as such, the plaintiff has to pay the court fee on the market value of the property. Further the defendant no.9 contended that land bearing sy.no.164/2A measuring 0.32 guntas of land was originally belonging to one Smt. Laxamma and she has acquired the said land under the partition deed dated: 07.06.1963 and since then she was in possession of the said property. Further he contended that on 06.03.1972, the said Laxamma was sold the said land to one Siddesh s/o Siddaiah

under registered sale deed for valuable consideration and put him in possession of the land on the same day. Later the said Siddaiah has mortgaged the above said land to one Sri.Ramanath for Rs.1,500/- and Rs.2,000/- and after the death of Siddaiah, the khatha of the said land was transferred to the name of 1st defendant and then, 1st defendant discharged the mortgage created by her husband Siddaiah in favour of Ramanath. Further the land bearing sy.no.164/2B measuring 0.33 guntas was acquired by the 1st defendant under tenancy Act and Occupancy rights was granted to the 1st defendant by the land Tribunal, Srirangapatana. Further he contended that defendant no.1 to 5 and defendant no.10 and 11 have jointly executed a registered power of attorney dated: 05.01.2007 in favour of 6th defendant giving all rights and power to him including sale of the item no.1 of the suit property. Further by virtue of the said power of attorney, the 6th defendant sold the item no.1 of the property to the 7th defendant under registered sale deed dated: 17.01.2007 for valuable consideration and put her in possession of the item no.1 of the suit land on the same day. Further he contended that the 5th defendant is a minor and his father has executed the power of attorney in favour of 6th defendant and after he attained the age of majority, the 5th defendant has executed consent registered deed dated:14.01.2011 in favour of 7th defendant acknowledging and accepting sale of the item no.1 of the suit property in favour of 7th defendant by their general

power of attorney holder. Thereafter, the defendant no.1 to 4 and plaintiff and defendant no.10 and 11 who are earlier plaintiff no.2 and 3 have accepted the sale of the item no.1 of the property by the defendant no.6 in favour of defendant no.7. Further he contended that all the transaction taken place in respect of the suit schedule properties are well within the knowledge of plaintiff and defendant no.1 to 5 and 10 and 11 and as such, the plaintiff is estopped from saying that the above documents are created, sham and nominal and the said documents are not binding upon her to the extent of her legitimate share over the suit schedule properties. Further he contended that before purchasing the suit schedule properties, he has verified all the documents in respect of the suit schedule properties and also published the same in newspaper calling for any objection from interested parties and later he has legally purchased the suit schedule properties and as such, he is a bonafide purchaser of the suit schedule properties. Further he contended that sale deeds dated: 17.01.2007 and 27.02.2012 executed by the respective persons for their family legal necessities and benefit. Further he contended that as per the registered sale deed dated:27.02.2012, the Sub-Registrar, Srirangapatana sent the J slip for change of khatha in favour of the defendant and at that time, the 1st and 4th defendant have given objection to the Tahasildar not to change the khatha in respect of item no.1 of the suit schedule property and then the Tahasildar has held

the summary enquiry and passed the order dated: 01.08.2012 by rejecting the objection filed by the defendant no.1 and 4 and khatha of the item no.1 of the property was changed in favour of 9th defendant. Further he contended that he has purchased the item no.1 of the suit schedule property for the purpose of establishment of workshop and obtained permission from the concerned authority and he has invested huge amount for conversion of the land from agriculture to non-agriculture purpose. Contending the above facts, he prays to dismiss the suit filed by the plaintiff.

9. On the basis of pleadings of the parties and also on perusal of the contents of documents, my predecessor has framed the following issues.

:ISSUES:

1. Whether the plaintiff proves, the suit schedule properties are the joint family properties of defendant no.1 to 4 and herself?

2. Whether the plaintiff proves, defendant no.1, 4 and 5 have created a registered gift deed dated: 15-1-2005 with respect to suit item no.1 bearing sy.no.164/2B in collusion with each other?

3. Whether the plaintiff proves, defendant no.1 to 5 have created the registered general power of attorney in favour of 6th defendant on 5-1-2007 with respect to suit item no.1. Thereafter he has sold to his wife defendant

no.7 without consideration on 17-1-2007 and the said sale deed is not binding to the share of the plaintiffs?

4. Whether the plaintiff proves, defendant no.1 has sold the suit item no.2 in favour of defendant no.8 on 25-6-2001 without the legal necessity for the very least price. The said sale deed is not binding to the share of the plaintiffs?

5. Whether the defendant no.9 proves, the contention taken in para no.10 to 13 in the written statement and he is the bonafide purchaser of the suit item no.1?

6. Whether the plaintiff is entitled for the relief of partition and separate possession over the suit schedule properties?

7.What order or decree?

:ADDL.ISSUES:

1. Whether the suit of the plaintiff is properly valued for the purpose of payment of court fee?

2. Whether the suit of the plaintiff is hit by doctrine of estoppel u/sec. 115 of Evidence Act?

3. Whether the suit is barred by limitation?

10. In order to prove the case, the plaintiff has examined herself as PW.1 and got marked the documents as Ex.P.1 to 20.

11. Heard the arguments and perused the records.

12. My answers to the above issues are as follows:

Issue No.1 : In the affirmative

Issue No.2 : Does not survival for consideration

Issue No.3 : In the affirmative

Issue No.4 : Does not survival for consideration

Issue No.5 : In the Negative

Addl.Issue No.1 : In the affirmative as per order dated:17.10.2016

Addl.Issue No.2 : In the Negative

Addl.Issue No.3 : In the Negative

Issue No.6 : In the affirmative

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

REASONS.

13. **ISSUE NO.1:** On perusal of the evidence available on record, it reveals that to prove the case, the plaintiff has examined herself as PW.1 and she has stated in her evidence by reiterating the contents of plaint. Further in support of her evidence, the PW.1 has produced the documents and the same are marked as Ex.P.1 to 20. Thereafter in spite of granting sufficient time, the defendants have not chosen to cross-examine the PW.1 and as such cross of PW.1 by defendants taken as no cross.

14. Further to prove the relationship of the plaintiff and defendant no.1 to 5 and 10 and 11, the PW.1 has relied upon the

document at Ex.P.1 i.e., genealogical tree. On perusal of the evidence of PW.1 coupled with contents of Ex.P.1, it reveals that the plaintiff, the husband of defendant no.2, defendant no.3 and 4 and defendant no.10 and 11 are the children of defendant no.1 and defendant no.5 is the son of defendant no.4. Considering the above facts, I am of the opinion that the plaintiff has proved the relationship of her and defendant no.1 to 5 and 10 and 11 as contended in the plaint by producing proper documents and proved that they are the joint family members as contended in the plaint.

15. Further to prove the contention of the plaintiff is that the suit schedule properties are joint family properties of herself and defendant no.1 to 5 and defendant no.10 and 11, the plaintiff has relied upon the documents at Ex.P.4 and 5 i.e., RORs pertaining to the suit schedule properties. On perusal of the contents of Ex.P.5, wherein at col.no.9 and 12 of the said document the name of the defendant no.1 is appeared as owner of the property. Further on perusal of the contents of written statement filed by the defendant no.1, 3 and 4 and 8 (a) and (b), wherein they have clearly admitted that the suit schedule property bearing sy.no.164/2B is a tenanted land and the said land is granted in favour of defendant no.1 as she is the kartha of the family. Further on perusal of Ex.P.12 i.e., copy of registered sale deed dated: 27.02.2012, wherein it clearly mentioned that the husband of the defendant no.1 has purchased the land

bearing sy.no.164/2A measuring 0.32 guntas from one Laxmamma under registered sale deed. Further in the said document, it clearly mentioned that the land bearing sy.no.164/2B measuring 0.33 guntas is a granted land and the same was granted in the name of defendant no.1. Considering the above facts, I am of the opinion that after the death of propositor namely Sri.Siddaiah i.e., husband of defendant no.1, both the suit schedule properties are the joint family properties of plaintiff and defendant no.1 to 4 and defendant no.10 and 11. Further as stated above that, in spite of granting sufficient time, the defendants have not chosen to cross-examine the PW.1 and as such, evidence of PW.1 is unchallenged one.

16. Considering the above facts and circumstances of the case and for the above reason, I am of the opinion that the plaintiff has proved that the suit schedule properties are the joint family properties of her and defendant no.1 to 4 and defendant no.10 and 11 as contended in the plaint by producing proper documents. Accordingly, I answer this issue in the Affirmative.

17. **Issue no.2 and 3:** These issues are inter connected with each other, hence, in order to avoid the repetition of facts, they are taken together for common discussion.

18. The specific contention of the plaintiff is that, the defendant no.1, 4 and 5 colluded with each other and with an

intention to deprive the right of the plaintiff over the suit schedule properties, they have created registered gift deed in respect of land bearing sy.no.164/2B and also the defendant no.1 to 5 and plaintiff no.2 and 3 (now they are defendant no.10 and 11) colluded with each other have executed a general power of attorney in favour of defendant no.6 with an intention to deprive the rights of the plaintiff over the suit schedule properties.

19. To prove the said fact, the plaintiff has relied upon the document at Ex.P.12 i.e., true copy of registered sale deed dated:27.02.2012. On perusal of the contents of the said document, it clearly goes to show that the gift deed dated: 22.02.2004 executed in favour of one Raju was cancelled on 12.09.2006. Considering the above facts, I am of the opinion that the issue no.2 does not survive for consideration. Further to prove the contention of the plaintiff is that to deprive her right over the suit schedule properties, the defendant no.1 to 5 and 10 and 11 have executed a registered power of attorney in favour of defendant no.6 and taking advantage of the same, the defendant no.6 has sold the item no.1 of the property to defendant no.7 who is the wife of defendant no.6 without any consideration amount.

20. To prove the said fact, the PW.1 has relied upon the document at Ex.P.9 i.e., copy of registered general power of attorney dated:05.01.2007 and on perusal of the said document it

show that the said document is come into existence between the defendant no.6 and defendant no.1 to 4 and 10 and 11. Further as stated above that the plaintiff is also one of the joint family members of defendant no.1 to 5 and 10 and 11 and the suit schedule properties are the joint family properties of plaintiff and defendant no.1 to 4 and 10 and 11. considering the above facts, I am of the opinion that if at all any transaction taken place between any parties in respect of the suit schedule properties, then the plaintiff is also necessary party in the said transaction. But on perusal of Ex.9 and 10 i.e., true copy of general power of attorney and true copy of registered sale deed, wherein the plaintiff is not a party to the said proceedings. Considering the above facts and for the above reason, I am of the opinion that the said documents are not binding upon the plaintiff to the extent of her share over the suit schedule properties. Further as stated above that, in spite of granting sufficient time, the defendants have not chosen to cross-examine the PW.1 and as such, evidence of PW.1 is unchallenged one. Considering the above facts and for the above reason, I am of the opinion that the plaintiff has proved her contention by producing oral and documentary evidence. Hence, I answer the issue no.2 accordingly and issue no.3 is in the Affirmative.

21. **Issue no:4:** The contention of the plaintiff is that the defendant no.1 has sold the item no.2 of the suit schedule property in favour of defendant no.8 without any legal necessity

and as such, the said sale deed is not binding upon her to the extent of her share. But on perusal of the records, it reveals that on 08.06.2017, the plaintiff has filed the I.A. U/O VI rule 17 of C.P.C, prays to permit her to not pressing the suit as against the defendant no.8(a) and 8(b) and after hearing the parties this court has passed the order by allowing the application and passed the order that case as against the Lrs of defendant no.8 is dismissed. Hence, in view of the above said order, this issue does not survival for consideration. Hence, I answer this issue accordingly.

22. **Issue No.5 and Addl. Issue No.2:** These issues are inter connected with each other, hence, in order to avoid the repetition of facts, they are taken together for common discussion.

23. The specific contention of the defendant no.9 is that the 1st defendant and her children have jointly executed a registered general power of attorney dated;05.01.2007 in favour of 6th defendant by giving all rights and powers to him including sale of item no.1 of the property and as such, the 6th defendant has sold the item no.1 of the property to the 7th defendant under registered sale deed. Further the contention of the defendant no.9 is that the plaintiff is having knowledge regarding all the transaction taken place in respect of the suit schedule properties between defendant no.1 to 5 and defendant no.6 to 9. Further contention

of the defendant no.9 is that he has purchased the suit schedule properties under registered sale deed dated:21.12.2012 by valuable consideration and further he contended that the respective persons have executed the registered sale deed for their family necessity and benefit and as such, he is a bonafide purchaser of the suit schedule properties. Further the contention of the defendant no.9 is that the plaintiff is having knowledge in respect of the above said transaction taken place between the defendant no.1 to 5 and defendant no.6 to 9 in respect of the suit schedule properties, and as such, the suit filed by the plaintiff is hit by doctrine of estoppel U/S 115 of Evidence Act. On the other hand, the contention of the plaintiff is that the suit schedule properties are the joint family properties of her and defendant no.1 to 4 and defendant no.10 and 11. Further the defendant no.1 to 4 have sold the suit schedule properties to the defendant no.7 to 9 without any legal necessities and benefit of the family.

24. To prove the above contention, the defendant no.9 has not entered into witness box and not led his evidence and also in spite of granting sufficient time, the defendant no.9 has not chosen to cross-examine the PW.1. Further when the defendant no.9 has taken the specific contention that the defendant no.1 to 4 have sold the suit schedule properties in favour of defendant no.7 through their power of attorney holder and in turn, the defendant no.7 has sold the suit schedule properties to defendant no.9, then

it is the duty of the defendant no.9 to prove that the defendant no.1 and other defendants have sold the suit schedule properties to the defendant no.7 through their power of attorney holder for their legal necessities and family benefit by producing proper evidence and documents. But as stated above that, though the defendant no.9 has appeared before the court through his counsel and filed the written statement, but he has not chosen to cross-examine the PW.1. Further while answering the issue no.1, it is opined that the suit schedule properties are the joint family properties of plaintiff and defendant no.1 to 4 and defendant no.10 and 11 and as such, all of them are entitled right over the suit schedule properties. Further on perusal of Ex.P.9 and 10 i.e., true copy of registered general power of attorney and true copy of registered sale deed, it reveals that the plaintiff is not a party to the said transaction taken place between the defendant no.1 to 4 and defendant no.7. Considering the above facts and for the above reason, I am of the opinion that the contention of the defendant no.9 is that the defendant no.1 to 4 have sold the suit schedule properties for their legal necessities and benefit of their family is not acceptable one. Considering the above facts and for the above reason, I am of the opinion that the defendant no.9 has failed to prove these issues by producing proper evidence and documents. Accordingly, I answer these issues in the Negative.

25. **Addl. Issue no.1:** On perusal of the records, it reveals that on 17.10.2016, this court has passed the order regarding this

issue and answered in the Affirmative.

26. Addl. Issue No.3: The defendant no.9 has contended in para no.14 of the written statement that the plaintiffs have got knowledge about the registered general power of attorney and subsequent sales in respect of suit schedule property and as such, the suit filed by the plaintiff is barred by law of limitation. But on perusal of evidence of PW.1, it reveals that the contention of the plaintiff is that she is not having any knowledge regarding the general power of attorney executed by the defendant no.1 to 4 in favour of defendant no.6 and also subsequent transactions taken place in respect of the suit schedule properties and the PW.1 has stated the same in her evidence. Further as stated above that, though the defendant no.9 has appeared before the court through his counsel, but he has not chosen to cross-examine the PW.1 and not produced any rebuttal documents to disbelieve the above version of the plaintiff. Considering the above facts, I am of the opinion that the evidence of PW.1 is unchallenged one. Considering the above facts and circumstances of the case, I am of the opinion that the defendant has failed to prove his contention by producing proper documents. Hence, I answer this issue accordingly.

27. Issue No.6: As far as this issue is concerned and as stated above that the plaintiff proves that the suit schedule

properties are the joint family properties of plaintiff and defendant no.1 to 4 and defendant no.10 and 11 by producing proper evidence and documents. Further while answering the issue no. 3 and 5 this court opined that the transactions taken place between defendant no.1 to 5 and defendant no.7 to 9 in respect of the suit schedule properties are not binding upon the plaintiff to the extent of her share over the suit schedule properties. Further as stated above that the suit schedule properties are the joint family properties of plaintiff and defendant no.1 to 4 and defendant no.10 and 11 and at present, the father of the plaintiff was passed away and as such, the plaintiff and the defendant no.1 to 4 and defendant no.10 and 11 are the clause I heirs. Hence, the plaintiff and defendant no.1 to 4 and defendant no.10 and 11 are entitled for equal share in the suit schedule properties. Considering the above facts and for the above reason, I am of the opinion that the plaintiff is entitled for 1/7th share in the suit schedule lands. For the above reason, I answer this issue in the Affirmative.

28. **Issue No.7:** In view of my findings on issue No.1 to 6 and Addl. Issues no.1 to 3, I proceed to pass the following;

ORDER

The suit filed by the plaintiff is hereby partly
decreed with cost.

The plaintiff is entitled for 1/7th share each in in the suit schedule properties and the plaintiff is entitled to get her share by metes and bounds through process of law.

Further it is ordered that the General Power of Attorney dated: 05.01.2007 and the sale deeds dated: 17.01.2007 and 27.02.2012 are not binding upon the plaintiff to the extent of her share over the suit schedule properties.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly online computer, typed by her, script taken out thereof, corrected, signed and then pronounced by me in open court on this 30th day of January 2019)

(VEERANNA SOMASEKHARA)
PRL. SENIOR CIVIL JUDGE & JMFC
SRIRANGAPATANA.

APPENDIX OF EVIDENCE

List of witnesses examined on plaintiff's side:

P.W.1. Manjula

List of documents exhibited on plaintiff's side:

Ex-P1 Genealogical tree
Ex-P2 to 8 7 RTC extracts

Ex-P9 True copy of General power of attorney
Ex-P10 to 12 3 True copies of Sale deeds
Ex-P13 to 16 4 mutation extracts
Ex-P17 & 18 2 Copies of notice
Ex-P19 & 20 2 Postal acknowledgements.

List of witnesses examined on defendants side:NIL.

List of documents exhibited on defendants side:NIL.

PRL. SENIOR CIVIL JUDGE & JMFC
SRIRANGAPATANA.