

KAMS010002692025

R.A./12/2025

**IN THE COURT OF THE IV ADDL. DISTRICT AND
SESSIONS JUDGE, MYSURU**

Dated this the 26th day of March 2026

:PRESENT:

**Sri. P.J.Somashekar, B.A. LL.M.,
IV Addl. District & Sessions Judge
Mysuru**

R.A./12/2025

**Appellant/
Plaintiff**

Sri R Mohammed Aslam
S/o K.Abdul Rahim,
Aged about 50 years,
Residing at
No.27/1, S.P.Road,
Bengaluru 560 002

(By Sri A.S.Nataraj -Adv.,)

V/s

**Respondents/ 1.
Defendants**

Smt.Gowramma
D/o Late Dasaiah,
W/o Sri Venkatappa,
Aged about 57 years,
Residing at
Melapura Village,
Mysuru.

2. Smt.Lekamma

D/o Dasaiah,
W/o Sri Ankaiah,
Aged about 55 years,
Residing at
Mellahalli Village,
Varuna Hobli,
Mysuru Taluk.

3. Smt.Chandramma
D/o Late Dasaiah,
W/o Sri Tiruvanesha(Kuppa)
Aged about 44 years,
Residing at
No.4479, 14th Cross,
Behind Huliyaammanna Temple,
Kyathamaraiahalli,
Mysuru.
4. Smt. Sakamma
D/o Late Dasaiah,
W/o Late Dasaiah
Aged about 79 years,
5. Sri D.Chikkanna dead by LRs
- 5(a) **Smt.Bhagya**
W/o Late D.Chikkanna
Aged about 55 years,
- 5(b) Sri Sanjay Kumar C
S/o Late D.Chikkanna
Aged about 37 years,
- 5(c) Sri Pradeep Kumar C
S/o Late D.Chikkanna,
Aged about 35 years,

Respondent No.4,5(a) to (c)

are Residing at
No.1423,
Rammanahalli, Kasaba Hobli,
Mysuru Taluk.

6. Sri D.Mariswamy
S/o Late Dasaiah,
Aged about 57 years,
7. Sri D.Prakash
S/o Late Dasaiah,
Aged about 49 years,

Respondent No.6 and 7
are Residing at
No.1438, Mahadevapura Main Road,
Rammanahalli, Kasaba Hobli,
Mysuru Taluk.

8. Sri Amanulla Shariff
S/o Mahboob Shariff,
Aged about 57 years,
Residing at
No.17, Behind
Sanitary Board Office.,
4th Cross, Robertsonpet,
Kolar Gold Fields.

**(R1 to 3 By Sri O.Sham
Bhat
R4,6 to 8-Absent,
R5(a) to (c) Exparte)**

::JUDGMENT::

This is memorandum of civil Appeal filed under Sec.96
R/w. Order 41 Rule 1 of CPC., by the Appellant / 6th Defendant

and sought for to set-aside the Judgment and Decree passed by the III Addl.Senior Civil Judge and CJM., at Mysuru dated 30.10.2024 in O.S.No.383/2013, in consequence dismissed the suit.

2. For the sake of convenience, the rank of the parties to the instant appeal will be referred to their original ranks as they stood before the Trial Court.

3. **Nutshell of the plaint are as under:-**

The Appellant and the Respondent No.4 to 7 are being the Defendant No.1 to 5 and the Appellant being the Defendant No.6. The Respondent No.1 to 3 are being the Plaintiffs filed the suit in O.S.No.383/2013 for declaration and for partition of their 1/7 th share in the suit schedule property by metes and bounds by declaring that the Sale Deed which executed by the Defendant Nos.1 to 4 through the Defendant No.5 in favour of Defendant No.6 in respect of the plaint schedule property is illegal and not binding on their share, on the ground that they are the daughters of one Dasaiah and 1st

Defendant, the 1st Defendant is the wife of said Dasaiah and Defendant Nos.2 to 4 are their sons. The property described in the plaint schedule is the ancestral property of said Dasaiah who passed away on 03.05.2001 leaving behind themselves and Defendant Nos.1 to 4 as his only legal-heirs and they have acquired 1/7th share each in the plaint schedule property immediately after the death of Dasaiah they became the co-owners of the plaint schedule property, are in joint possession and enjoyment of the same. The Defendant Nos.1 to 4 have no right to deal with plaint schedule property which is agricultural land, in fact, after the death of their father since the Defendant No.1 is the eldest member khata of the schedule property was mutated in the name of the 1st Defendant, the 1st Defendant taking undue advantage of the khata standing in her name without their knowledge, in collusion with the Defendant Nos.2 to 5 concocted the Sale Deed in the name of Defendant No.6 by showing sale consideration of amount of Rs.9,70,000/-. It is also learnt prior to getting the said Sale Deed on 02.11.2006 the

Defendant No.1 to 4 had executed the sale agreement dated 12.06.2006 in the name of one Fayaz Ahamed by showing sale consideration of Rs.17,75,000/-, there was no occasion for the Defendant Nos.1 to 4 to sell the plaint schedule property of Rs.9,27,000/- with a few months from the said agreement and they reliabaly learnt the said documents were made only to deprive their legitimate share and said transactions are not made with their consent.

4. The Plaintiffs in their plaint they further alleged that they recently noticed some activity near the plaint schedule property and on enquiry it was revealed that the Defendant Nos.1 to 4 in collusion with Defendant No.5 and 6 concocted the Sale Deed relating to the plaint schedule property and they have not consented for the said sale and they are not party to the said transaction and so called Sale Deed dated 02.11.2006 in relation to the plaint schedule property is not binding on them nor 3/7th share in the schedule property, after coming to know the said aspect during February 2013 obtained certified copy of the sale deed

and demanded the Defendants to effect the partition and to allot their legitimate share in the suit schedule properties by metes and bounds, but the Defendants have turned hostile, and the Defendant No.6 is making secrete arrangement to sell the plaint schedule property, thereby, they have constrained to file the instant suit against the Defendants. The cause of action for the suit which arose on and from 1st week of February 2013, when they came to know about the sale of the plaint schedule property and subsequently on and from 10.03.2013 when they were demanded the partition within the jurisdiction of this Court and prays for decree the suit.

5. In response of the suit summons, the Defendant Nos.1 to 5 did not appear nor filed their written statement as they were placed exparte, the Defendant No.6 alone has been appeared and filed the written statement stating that the suit which filed is not maintainable in law or on facts which is deserved for dismissal and admitted the para No.2 of the plaint that the schedule property is the ancestral property of Dasaiah and Dasaiah was passed away on 03.05.2001 and

rest of the facts which alleged in same para are not within his knowledge, the Plaintiff has to strict proof of the same and the fact which alleged in para No.3 of the plaint are far away from truth and Defendant Nos.1 to 4 have furnished the documents namely mutation, genealogical tree and RTC and after getting the opinion from the Advocate purchased the schedule property for sale consideration and Defendant Nos.1 to 4 have executed general power of attorney in favour of the Defendant No.5 and he has purchased the schedule property from the Defendant No.5 for sale consideration and he is the bonafide purchaser of the schedule property and the Plaintiff s have to prove that they are the children of one Dasaiah and the Plaintiffs have created the fact as alleged in para No.3 of the plaint for the purpose of filing the suit against him and he has purchased the schedule property as a bonafide purchaser and Plaintiffs have created the fact in colluding with other Defendants and filed the instant suit which is not maintainable in law or on facts which is deserved for dismissal.

6. The Defendant No.6 in the written statement has further alleged the Defendant Nos.1 to 4 have executed the General Power of Attorney in favour of Defendant No.5 on 09.10.2006 by virtue of the General Power of Attorney, the Defendant No.5 has executed the registered Sale Deed in his favour by receiving sale consideration amount of Rs.9,20,000/- and the Defendant Nos.1 to 4 have sold the suit property for family and legal necessity and at the time of execution of the Sale Deed except Defendant Nos.1 to 4 there was no other legal-heirs as the Defendant Nos.1 to 4 have informed except themselves there were no other legal-heirs to Dasaiah, even in the Sale Deed reflects the same and the Defendant Nos.1 to 4 have sold the schedule property for the family and other necessity, therefore, the Sale Deed is binding on them and it is far away from truth that the Plaintiffs are the daughters of late Dasaiah and the relief which sought by the Plaintiffs for declaration is barred by limitation as per article 58 of the Limitation Act and denied the Plaintiffs have got 1/7th share in the schedule property and the Sale Deed

which executed in his favour on 02.11.2006 is binding on the Plaintiff and the Defendant Nos.1 to 4 and denied the para No.5 of the plaint and the Plaintiffs have to strict proof of the same and the Plaintiffs in the plaint itself they have admitted that the plaint schedule property is in his possession and enjoyment, on this ground alone the suit which filed is deserved for dismissal and the Plaintiffs have to strict proof of the para No.6 of the plaint and the Plaintiffs have not paid proper court fee and after verifying all the documents relating to the suit schedule property and after getting the opinion from the Advocate purchased the schedule property for sale consideration and the Plaintiffs have filed the instant suit for wrongful gain and there is no cause of action to file the suit against him and prays for dismiss the suit.

7. The Plaintiffs have filed the rejoinder to the written statement of the 6th Defendant stating that the contention which urged by the Defendant No.6 in the written statement are all false and concocted story and the 6th Defendant being stranger to the family has got no right to dispute their

relationship with Defendant Nos.1 to 4 and they never authorized Defendant Nos.1 to 4 to execute any General Power of Attorney to the 5th Defendant i.e. Amanulla Shariff and he was not competent to execute the Sale Deed dated 02.11.2006 and regarding the family necessity is also false and there is no proof regarding the payment to the Defendant Nos.1 to 4 and there was no legal necessity in the family to still sell the property and denied the Defendant No.6 has enquired the document and taken the opinion and purchased the schedule property from the Defendant No.5 who is the General Power of Attorney holder of Defendant Nos.1 to 4 and they are the family members acquired the undivided right over the schedule property therefore, Sale Deed dated 02.11.2006 is not binding on them and the suit has been filed within the limitation and article 109 of the Limitation Act which applicable and the property has not been sold for the legal necessity or the family benefit and Sale Deed and the General Power of Attorney are not binding on them and prays for dismiss the suit.

8. So, based on the pleadings of the parties the court below framed the following issues and additional issues :-

::ISSUES ::

1. whether the Plaintiffs proves that suit schedule property is their ancestral property?
2. Whether the Plaintiffs prove that, Sale Deed dtd:02.11.2006 is not binding upon them?
3. Whether the Plaintiffs are entitle for the relief of partition and separate possession of the plaint schedule property as prayed?
4. What order or decree?

::ADDITIONAL ISSUES ::

Dated 01.08.2023:

1. Whether Defendant No.6 proves that he is the bonafide-purchaser of suit- property?

Dated 29.10.2024:

1. Whether the defendant No.6 proves that the suit is not maintainable in the eyes of law, is barred under law of limitation?
9. The plaintiff in order to prove the plaint averments

Plaintiff No.3 has examined herself as PW1 and examined 4 more witnesses on their behalf as PW2 to 5 and got marked the documents as Ex.P1 to 7. The Defendants No.6 in order to prove his defence has examined himself as DW1 and got marked the documents as Ex.D1 to Ex.D7 and he has not examined any witness on his behalf.

10. The court below heard the arguments on both side, and recorded its findings on the above Issues as stated below:-

Issue No.1	: In the Affirmative.
Issue No.2	: In the Affirmative.
Issue No.3	: In the Affirmative.
Addl.Issue No.1	: In the Negative.
Addl.Issue No.2	: In the Negative.
Issue No.4	: As per final order

11. In consequence decreed the suit of the Plaintiffs declaring that the Plaintiffs are entitled for their legitimate 1/7th each share in the suit schedule property by metes and bound. So, feeling aggrieved by the said Judgment and Decree the Defendant No.6 being the Appellant has filed the instant appeal on the following:-

::GROUNDS::

1. The court below is erred in coming to the wrong conclusion, and decreed the suit as sought for without appreciating the oral and documentary evidence in a prospective manner nor the Sale Deed which executed by the General Power of Attorney holder of the Defendant No.1 to 4 in favour of the Appellant.
2. The court below erred in coming to the wrong conclusion and decreed the suit which is nothing but miscarriage of justice and probabilities of the case and the findings which recorded are erroneous and not based on the sound reasons and logic and amounts to traversing of justice.
3. The court below erred in coming to the wrong conclusion and decreed the suit which is nothing but miscarriage of justice and lost the sight of the fact that the alienation in respect of the schedule property is for legal and for family necessity especially when the property was sold in favour of the Appellant on 02.11.2006 through their power of attorney

holder Amanulla Shariff which not taken into consideration by the court below.

4. The court below erred in coming to the wrong conclusion though the Plaintiff s have no right over the schedule property and the schedule property has been sold for the family necessity which not taken into consideration by the court below and the Sale Deed which executed is binding on the Plaintiffs which not taken into consideration by the court below.
5. The court below erred in coming to the wrong conclusion and made an observation in page No.20 of the impugned Judgment that the law of limitation is not applicable to the case on hand without recording proper reasoning for the said finding.
6. The court below erred in coming to the wrong conclusion without considering the plaint averments which is a fatal omission on the part of the Court ought to have held that the Plaintiffs had actual knowledge of the sale in favour of the Appellant, consequently the court below ought to have held that the relief of declaration is barred by time.

7. The court below erred in coming to the wrong conclusion without considering the admission given by the PW1 during the cross-examination nor the evidence of PW2 to 5 and failed to apply the ratio of the Judgment of Hon'ble Supreme Court of India passed in Civil Appeal No.2567/2017 and the Judgment of Hon'ble High Court passed in 2023(4) KCCR 2902.

8. The court below erred in coming to the wrong conclusion without appreciating the materials on record in a prospective manner. Though, the suit which filed is deserved for dismissal even then decreed the suit which is not in accordance with law and prays for allow the Appeal and set-aside the Judgment and Decree passed by the court below.

12. Heard the arguments of Appellant and Respondent No.1 to 3.

13. The points that arise for court consideration are as under:

1. Whether the Appellant has made out the

grounds that the court below without appreciating oral and documentary evidence and the settled principles of law has come to the wrong conclusion and decreed the suit which is not in accordance with law?

2. Whether the Appellant has made out the grounds that the court below has not appreciated the legal necessity of the family to alienate the suit schedule property through power of attorney holder on 02.11.2006 which is binding on the Plaintiffs which not taken into consideration by the court below?
 3. Whether the Appellant has made out the grounds that the Judgment and Decree which passed by the court below is illegal, perverse and capricious and interference of this Court is warranted?
 4. What Order?
14. My answer to the above points are as under:

Point No.1 : In the ***Negative.***

Point No.2 : In the ***Negative.***

*Point No.3 : In the **Negative.***

Point No.4 : As per final order for the following:

::REASONS::

15. **Points 1 to 3:** These points are inter-related to each other, hence, in order to avoid the repetition of facts and materials on record these points are discussed together, before embarking on these points it is just and necessary to narrate the gist of the case for the proper appreciation. The Respondent Nos.1 to 3 are being the Plaintiffs in O.S.No.383/2013 have approached the court below on the ground that they are the daughters of one Dasaiah and 1st Defendant and the Defendant Nos.2 to 4 are the sons of Dasaiah and 1st Defendant, the schedule property is the ancestral property of said Dasaiah who passed away on 03.05.2001 leaving behind themselves and the Defendant Nos.1 to 4 as his legal-heirs, thereby, they have acquired 1/7th share each in the plaint schedule property, but the Defendant Nos.2 to 5 without their knowledge taking advantage of the khata standing in the name of Defendant No.1 created the Sale Deed dated 02.11.2006 in favour of Defendant No.6 which is not binding on them, after coming to

know the said Sale Deed approached the Defendant Nos.1 to 4 and requested them to allot their legitimate share in the suit schedule property for which they denied the same, thereby, filed the suit against the Defendants.

16. In response of the suit summons, the Defendant Nos.1 to 5 did not appear nor filed their written statement as they were placed exparte and Defendant No.6 alone has appeared and filed the written statement, after full fledged trial the court below decreed the suit declaring that the Plaintiffs are entitled for their legitimate $1/7^{\text{th}}$ share each in the suit schedule property. So, feeling aggrieved by the said Judgment and Decree the Defendant No.6 being the Appellant has filed the instant appeal.

17. The learned Counsel for the Appellant in his arguments has submitted the Respondent Nos.1 to 3 are being the Plaintiffs in O.S.No.383/2013 filed the suit for partition and separate possession of their $1/7^{\text{th}}$ share each in the suit schedule property and to declare that the Sale Deed which executed by the Defendant Nos.1 to 4 through the

Defendant No.5 in favour of the Defendant No.6 is illegal and not binding on them, but the suit which filed is not maintainable which is barred by limitation in view of article 58,59 and 106 of the Limitation Act, on this ground alone the suit which filed is not maintainable, even then the court below come to the wrong conclusion and decreed the suit declaring that the Plaintiffs are entitled 1/7th share each in the suit schedule property on the ground the Plaintiffs who are the daughters of one Dasaiah and the Defendant No.1, though the Plaintiffs have not proved their relationship through oral and documentary evidence when the Plaintiffs have approached the Court on the ground that they are the legal-heirs of Dasaiah the burden on them to prove that they are the legal-heirs of deceased Dasaiah, but Plaintiffs were failed to prove their relationship with the Dasaiah through oral and documentary evidence, even then the court below accepted the case of the Plaintiffs and held that they are the legal-heirs of deceased Dasaiah which is not in accordance with law and the schedule property has been sold by the

Defendant Nos.1 to 4 through the Defendant No.5 being the Power of Attorney holder in favour of the Defendant No.6 for sale consideration and the Defendant No.6 is the bonafide purchaser which not taken into consideration by the court below and Ex.P 6 and 7 will not help the Plaintiffs to prove their relationship with deceased Dasaiah, even the PW1 in the cross-examination has admitted that they have not produced any document to show their relationship with deceased Dasaiah when the Plaintiffs are not the legal-heirs of deceased Dasaiah question of allotting their legitimate share in the schedule property does not arise and the Sale Deed which executed by the power of attorney holder of Defendant Nos.1 to 4 in favour of the Defendant No.6 is binding on the Plaintiffs, even the Plaintiffs have not placed any materials on record to show how the sale deed which executed by the power of attorney holder of Defendant Nos.1 to 4 in favour of the Defendant No.6 is not binding on the Plaintiffs, even the Plaintiffs have not placed any materials on record to show how the Sale Deed which executed by the power of attorney

holder of Defendant Nos.1 to 4 in favour of the Defendant No.6 is not binding on their share, when the Sale Deed has been executed for legal necessity which is binding on them. Merely, on the ground that the Agreement of Sale deed has been executed in which an amount of Rs.17,75,000/- has been shown and Defendant No.5 has sold the schedule property in favour of Defendant No.6 by showing sale consideration amount of Rs.9,27,000/-within a few months will not created any doubt, when the rate of the immovable property has been reduced because of that reason the Sale Deed reveals the sale consideration amount, on that ground alone the Plaintiffs are not entitled the relief as sought for and the Plaintiffs are not the co-owners of the schedule property, but the court below without considering the oral and documentary evidence in a prospective manner has come to the wrong conclusion and decreed the suit, therefore, this Court interference is warranted to set-aside the Judgment and Decree which passed by the court below, in consequence dismiss the suit.

18. Per contra, the learned Counsel for the Respondent Nos.1 to 3 in his arguments has submitted that though the learned Counsel for the Appellant has drawn the Court attention on article 58, 59 and 106 of the Limitation Act, but article 109 of the Limitation Act is applicable and the article 58 of Limitation Act is not applicable, therefore, question of barred by limitation as addressed by the learned Counsel for the Appellant is not applicable to the case on hand, instead article 109 of Limitation Act is applicable and the Plaintiffs and Defendant Nos.1 to 4 have not sold the schedule property in favour of the Defendant No.6 and the Plaintiffs are not parties to the Sale Deed, therefore, the Sale Deed which executed in favour of the Defendant No.6 is not binding on the share of the Plaintiffs and the court below after considering the oral and documentary evidence on record rightly decreed the suit and the suit schedule property is the ancestral property of the Plaintiffs and Defendant Nos.1 to 4 and after death of Dasaiah the Plaintiffs and Defendant Nos.1 to 4 became the legal-heirs, are entitled equal share and the Agreement of

Sale reveals Rs.17,75,000/- and within few months Sale Deed has been executed in favour of Defendant No.6 by showing less amount that itself is clear the Sale Deed has been created only with an intention to defeat the legal right of the Plaintiff and the Sale Deed which executed in favour of Defendant No.6 is illegal which is not binding on the Plaintiffs, therefore, the question of interference of this Court does not arise and prays for dismiss the appeal.

19. The Appellants being the Plaintiffs in order to prove the plaint averments the Plaintiff No.3 has filed her affidavit as her chief-examination by reiterating the plaint averment stating that herself ad other Plaintiffs are the daughters of one Dasaiah and 1st Defendant and Defendant Nos.2 to 4 are the sons of Dasaiah and 1st Defendant. The schedule property is the ancestral property of Dasaiah who passed away on 03.05.2001 leaving behind themselves and Defendant Nos.1 to 4 as his legal-heirs and after the death of Dasaiah themselves and Defendant Nos.1 to 4 are became co-owners of the schedule property which is in their joint possession

and enjoyment and khata has been standing in the name of 1st Defendant being eldest member of the family, but Defendant Nos.1 to 4 taking advantage of the khata standing in the name of Defendant No.1 concocted the Sale Deed in favour of the Defendant No.6 which is not binding on them and they have created the Sale Deed only with an intention to deprive their legitimate share in the schedule property.

20. The PW1 in her cross-examination has admitted the Defendant Nos.1 to 4 have executed the Sale Deed through the Defendant No.5 and stated they were also having the right over the schedule property and her marriage was taken place in the year 1997 and her father Dasaiah was passed away in the year 2006 and denied that her parents and brothers were spent amount for her marriage purpose, but stated her parents were performed her marriage and her parents and themselves were leading the life out of the income of the schedule property, but she has stated her father was also doing coolie work and denied that her parents in order to discharge loan which availed for their marriage

purpose have sold the property in favour of Defendant No.6 and they have no right over the schedule property and she has pleaded ignorance the value of the property has been increased than in the year 2006 and false suit has been filed only with an intention to harass the Defendant No.6 and admitted the land bearing resurvey No.201/2 originally belongs to her grand father Hombalammana Chikkaiah and admitted Hanumaiah and Gowramma have sold 37 guntas in favour of the Government and she has not produced any document to show 37 guntas has been fallen to her father and admitted that they have no right in 37 gunta which sold by Hanumaiah and Gowramma and denied the Defendant Nos.1 to 4 for the family necessity and to maintain the family have sold the property in favour of the Defendant No.6.

21. The Plaintiffs have examined one Marichikkaiah and Ankaiah who filed their affidavits as their chief-examination stating that they know Plaintiff and Defendant Nos.1 to 4 and the Plaintiffs are the family members of Dasaiah and 1st Defendant and no partition was taken place in

between them during the life time of Dasaiah but the reasons best known to the Defendant No.6 has not cross-examined the PW2 and 3 which remained unchallenged

22. The Plaintiffs apart from examination of PW2 and 3 have also examined two more witnesses as PW4 and 5 namely Chikkanna and Javaraiah and they have also filed their affidavit stating that the Plaintiffs are the family members of Dasaiah and 1st Defendant and during the life time of Dasaiah no partition was taken place between the Plaintiff and the Defendant Nos.1 to 4. The PW4 in the cross-examination has admitted Dasaiah was passed away when he was aged about 60 years and the suit has been filed in respect of the land bearing resurvey No.101/2 of Rammanahalli Village and except the said property Dasaiah had no other property and during his life time was managing the family as the kartha of the family and denied after the death of Dasaiah the Defendants were facing the financial problem because of that reason have sold the property. The PW5 in his cross-examination has pleaded ignorance that the

Defendants have executed the power of attorney in favour of Defendant No.5 intern Defendant No.5 executed the Sale Deed in favour of Defendant No.6 and denied after the death of Dasaiah the Defendants were facing the financial problem.

23. The Defendant No.6 in order to prove his defence has filed his affidavit as his chief-examination by reiterating the contents of the written statement stating that he is not aware that the Plaintiffs are the daughters of Dasaiah and the Plaintiffs have to strict proof of the same. The Plaintiffs have not made the sister of the Dasaiah as party to the suit, on this ground alone the suit is not maintainable for none joinder of necessary parties and there was an Agreement of Sale which executed by Smt.Sakamma W/o Dasaiah and children in favour of one Fayaz Ahamed for their family necessity and the agreement was came to be revoked and cancelled on the ground the sale consideration which shown in the agreement was exorbitant and very high and he has purchased the schedule property through the Registered Sale Deed dated 02.11.2006, through the power of attorney

holder of the Defendant No.1 to 4 and who is the bonafide purchaser of the suit schedule property and the Plaintiffs are not entitled any share over the schedule property and Amendment to the Hindu Succession Act 1956 was came into force with effect from 05.09.2005 and on the death of Dasaiah the Plaintiff did not have right by birth, therefore, the Plaintiffs are not entitled any share but entitled only for the share in undivided share of late Dasaiah and entitled to claim only $1/28^{\text{th}}$ share and Plaintiffs and Defendant No.1 to 4 will be entitled to equal share U/Sec.8 of Hindu Succession Act , the undivided $\frac{1}{4}^{\text{th}}$ share of Dasaiah will be split into 7 shares in that manner each one of the Plaintiffs are entitled to $1/28^{\text{th}}$ share in the suit schedule property. therefore, the Plaintiffs are not entitled to claim $1/7^{\text{th}}$ share in the suit schedule property.

24. The DW1 in his cross-examination pleaded ignorance that the land bearing resurvey 201/2 measuring 1 acre 35 guntas, but admitted the suit schedule property originally belongs to Dasaiah and admitted 37 and $\frac{1}{2}$ guntas

fallen to the Dasaiah and remaining 37 and ½ funtas fallen to one Hanumaiah and pleaded ignorance Hanumaiah sold his 37 and ½ guntas in favour of the Government and admitted that he has purchased the schedule property from Amanulla Sharif under a Registered Sale Deed dated 02.11.2006 for sale consideration amount of Rs.9,27,000/- and denied as on 02.11.2006 the value of the immovable property has been reduced and Ex.D1 is the power of attorney holder which came to be effected on 09.10.2006 and denied as on the date of execution of the power of attorney holder and Sale Deed he was aware that the Sakamma having 3 daughter and denied in order to defeat the right of the Plaintiffs created the power of attorney holder and the Sale Deed and admitted still khata standing in the name of Plaintiff's mother and denied the Plaintiffs were also having 1/7th share in the suit schedule property.

25. The learned Counsel for the Appellant while canvassing his arguments has submitted that the Appellants have not proved their relationship with Dasaiah and

Defendant No.6 is bonafide purchaser of the suit schedule property and Sale Deed which executed by the Defendant No.5 in favour of the Defendant No.6 is binding on the Plaintiffs, but where as the learned Counsel for the Respondent No.1 to 3 in his arguments has submitted that the Plaintiffs have established their relationship with Dasaiah by placing oral and documentary evidence, even the Defendant No.6 has not cross-examined the PW2 and 3 which remained unchallenged and the Sale Deed which executed is not binding on the Plaintiffs, so before considering the oral and documentary evidence and arguments which advanced by both parties let me know the legal aspect first for the proper appreciation. Admittedly the Plaintiffs were claiming that they are the daughters of Dasaiah and 1st Defendant, thus this Court drawn its attention on Sec.6 of the Hindu Succession Amended Act 2005 which reads like thus:-

6. Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act,

2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a)by birth become a coparcener in her own right in the same manner as the son;

(b)have the same rights in the coparcenary property as she would have had if she had been a son;

(c)be subject to the same liabilities in respect of the said coparcenary property as that of a son,and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

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.

26. The above provision is very much clear on and from the commencement of Hindu Succession Amendment Act 2005 in the Joint Hindu family governed by the

Mithakshara Law the daughter of a coparcener by birth became a coparcener in her own right in the same manner as the son provided that nothing contained in sub-Section shall effect or invalidate any disposition or alienation including any partition or testamentary disposition of the property which had taken place before 20.12.2004. Thus, it is clear the Hindu Succession Amended Act 2005 came into force on September 9th 2005 which amended the original Act of 1956, granted daughters equal right to a coparcenary property i.e. ancestral property like that of a son. The main object for amendment of Hindu Succession Act of 1956 on 09.09.2005 to remove entire discriminatory. So, under the amendment, the daughter of a coparcener shall by birth became a coparcener in her own right in the same manner as the son. The daughter shall now have the same right in the coparcenary property i.e. ancestral property of the Hindu undivided family as a son and said amendment also reveals Sec.23 of Hindu Succession Act which dis-entitled a female heir to ask for partition in respect of a dwelling house, only occupied by the joint family until the

male heir chose to divide their respective share. Sec.24 of the Act which denied the rights of the widow to inherit her husband property upon her re-marriage has been revealed and this act has brought about a central amendment which is applicable to all the state Government.

27. The learned Counsel for the Appellant while canvassing his arguments has submitted that the Plaintiffs have not established their relationship with dasaiah, therefore, this Court drawn its attention on Sec.50 of Indian Evidence Act which reads like thus:-

"50. Opinion on relationship, when relevant.

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act ([4 of 1869](#)), or

in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).Illustrations

(a)The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b)The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

28. The above provision is very much clear opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person as a member of the family or otherwise as a special means of knowledge on the subject is the relevant facts.

29. Now, let me know the oral and documentary evidence on record. It is an admitted fact, the Defendant Nos.1 to 4 are the legal-heirs of deceased Dasaiah, though the Defendant No.6 in the written statement has disputed the

relationship of the Plaintiffs with deceased Dasaiah, but in the written statement admitted that the schedule property is the ancestral property of Dasaiah. So, for the proper appreciation of the admission of the Defendant No.6 in written statement is necessary for reproduction which reads like thus:-

:ವಾದಿಯು ವಾದಪತ್ರದ ಖಂಡಿಕೆ -2 ರಲ್ಲಿ ತಿಳಿಸಿರುವ ಸಂಗತಿಗಳಲ್ಲಿ ಈ ಪ್ರತಿವಾದಿಯು ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತು ದಾಸಯ್ಯನ ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತು ಎಂಬುದನ್ನು ಹಾಗೂ ದಾಸಯ್ಯ ದಿನಾಂಕ **3.05.2001** ರಲ್ಲಿ ಕಾಲವಾದ ವಿಷಯವನ್ನು ಒಪ್ಪಿಕೊಂಡಿದ್ದು ಉಳಿಕೆ ವಿಷಯಗಳನ್ನು ವಾದಿಗಳೇ ಸಾಕ್ಷಿ ಸಹಿತ ರುಜುವಾತು ಪಡಿಸತಕ್ಕದ್ದಾಗಿರುತ್ತದೆ. ವಂಶವೃಕ್ಷಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸದರಿ ಹೇಳಿಕೆಯು ವಾದಿಯವರ ಸ್ವಯಂಪ್ರೇರಿತ ವಿವರಣೆಯಾಗಿದ್ದು ವಾದಿಗಳೇ ಸದರಿ ಅಂಶವನ್ನು ಸಾಬೀತುಪಡಿಸತಕ್ಕದ್ದಾಗಿರುತ್ತದೆ.

30. So, one thing is clear from the admission of the Defendant No.6 in the written statement as stated supra the Defendant No.6 has categorically admitted that the schedule property is the ancestral property of Dasaiah, but disputed the relationship of the Plaintiffs with the deceased Dasaiah, therefore, the burden on the Plaintiffs to establish their

relationship with Dasaiah, admittedly, the Plaintiffs in order to establish their relationship with the Dasaiah have examined the PW3 and 4, though PW3 and 4 were filed their affidavits as their chief-examination stating that the Plaintiffs are the daughters of Dasaiah and Defendant No.1, and no partition was taken place in between the Plaintiffs and the Defendant Nos.1 to 4 during the life time of Dasaiah, but the reasons best known to the Defendant No.6 has not cross-examined the PW2 and 3 which remained unchallenged. If the evidence of the PW2 and 3 are taken into consideration that they are the residents of Rammanahalli Village and they know the Plaintiffs that they are the daughters of Dasaiah and 1st Defendant that itself is clear that they were having special knowledge about their relationship with deceased Dasaiah which remained unchallenged, and moreover PW4 in the chief-examination has clearly stated that the Plaintiffs who are the legal-heirs of the Dasaiah and 1st Defendant during the cross-examination of the PW4 the Defendant No.6 has not disputed about his special knowledge relating to the

relationship of the Plaintiffs with deceased Dasaiah, that itself is clear the PW4 having the special knowledge being the resident of same Village that the Plaintiffs are the daughters of deceased Dasaiah and 1st Defendant. The PW5 is also stated that the Plaintiffs are the family members of Dasaiah and 1st Defendant and in his cross-examination nothing has been disputed not only the special knowledge of the PW5 but also the Plaintiffs relationship with deceased Dasaiah and 1st Defendant. Thus, one thing is clear the Defendant No.6 has not disputed about the relationship of the Plaintiffs with the deceased Dasaiah and PW1 and moreover the learned Counsel for the Defendant No.6 while cross-examination of PW1 has suggested themselves and the father were leading life out of the income of the schedule property and her parents in order to perform their marriage availed, the loan in order to discharge the said loan sold the property. So, for the proper appreciation of the suggestion of the learned Counsel for the Defendant No.6 to the PW1 and the answer which given by the PW1 is necessary for reproduction which reads

like thus:-

“ನಮ್ಮ ತಂದೆ ಹಾಗೂ ನಾವು ದಾವಾ ಆಸ್ತಿಯಿಂದ ಬಂದ ಆದಾಯದಲ್ಲಿ ಜೀವನ ಸಾಗಿಸುತ್ತಿದ್ದೆವು ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಮ್ಮ ತಂದೆ ಕೂಲಿ ಕೆಲಸ ಸಹ ಮಾಡುತ್ತಿದ್ದರು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ನಮ್ಮ ತಂದೆ ತಾಯಿಯವರು ನಮ್ಮ ಎಲ್ಲಾ ಸಹೋದರಿಯರ ಮದುವೆ ಸಲುವಾಗಿ ಸಾಲ ಮಾಡಿದ್ದರ ಕಾರಣ ಅದನ್ನು ತೀರಿಸುವ ಸಲುವಾಗಿ ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮಾರಾಟ ಮಾಡಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ.

31. So, if the suggestion as stated supra is taken into consideration it is clear the Defendant No.6 has admitted the relationship of the Plaintiffs with deceased Dasaiah and the 1st Defendant. Therefore, admitted facts need not be proved in view of Sec.58 of the Indian Evidence Act, thus one thing is clear from the evidence of PW1 to 5 and the admission of the Defendant No.6 in the written statement is clear that the schedule property is the ancestral property of Plaintiffs and Defendant Nos.1 to 4 and the Plaintiffs are the legal-heirs of deceased Dasaiah and 1st Defendant.

32. It is an admitted fact, the Defendant No.1 to 4 who are the legal-heirs of deceased Dasaiah as the Defendant No.1 is the wife, the Defendant Nos.2 to 4 are being the sons

of deceased Dasiah and Defendant No.1. The Defendant No.6 in the written statement has taken up the contention that the suit which filed by the Plaintiff is not maintainable in view of article 58, 59 and 106 of the Limitation Act. Admittedly, article 58 of the Limitation Act is very much clear to obtain any other declaration the limitation is 3 year when the right to sue first accrues, whereas article 59 of the Limitation Act reveals to cancel or set-aside an instrument or decree or for the rescission of a contract the limitation is 3 years, when the facts entered in the Plaintiff to have the instrument or decreed cancelled or set-aside or the contract rescinded first became to know to him and article 106 of the Limitation Act is also very much clear for a legacy or for a share of a residue bequeathed by a testator or for a distributive shared of the property of an intestate against an executor or an administrator or some other person legally charged with the duty of distributing the estate, limitation is 12 years when the legacy are share becomes payable or deliverable. So, one thing is clear, if the suit falls within the purview of article as

stated supra the limitation is 3 years when the right accrues. Admittedly, the Plaintiff in plaint para No.6 has stated the cause of action for the suit which arose on and from 1st week of February 2013 when came to know about the sale of the plaint schedule property, subsequently on and from 10.03.2013 when they were demanded the partition within the jurisdiction of this Court, therefore, if the month of February 2013 and March 2013 are taken into consideration it is clear that the right to sue first accrues to the Plaintiffs in the year 2013 when they came to know about the sale of the plaint schedule property and moreover the Plaintiffs have established through oral and documentary evidence that the schedule property is the ancestral property and they are the legal-heirs of deceased Dasaiah and Defendant No.1. Therefore, the arguments which advanced by the learned Counsel for the Appellant on this aspect holds no water.

33. It is an admitted fact, the learned Counsel for Respondent No.1 to 3 while canvassing his arguments has submitted the suit which filed by the Plaintiffs within the

limitation since article 109 of the Limitation Act is applicable, so, if the article 109 of the Limitation Act is taken into consideration it is clear by a Hindu governed by Mithakshara law to set-aside his father alienation of the ancestral property the limitation is 12 years when the alienee takes possession of the property. So as per the averments of the written statement the Defendant No.6 has purchased the schedule property from Defendant No.5 who is the power of attorney holder of the Defendant No.1 to 4 on 02.11.2006. Admittedly, the suit has been filed in the year 2013, thus even if the article which relied by the learned Counsel for the Respondent No.1 to 3 is taken into consideration the suit which filed by the Plaintiff is within the limitation.

34. The learned Counsel for the Appellant while canvassing his arguments has submitted that the Defendant No.1 to 4 have sold the property through the power of attorney holder in favour of Defendant No.6 for the legal necessity and need of funds in order to meet their legal and other compelling necessities. Thereby, the Sale Deed binding

on the Plaintiffs. Now, the question arises whether the Defendant No.1 to 4 have sold the property through GPA holder in favour of Defendant No.6 is for the legal necessity and whether the Sale Deed is binding on the Plaintiffs, thus this Court drawn its attention on Mulla Hindu Law, Chapter 12, Joint Hindu Family coparcener etc. Article 241 which reads like thus:

241. What is legal necessity.-The following have been held to be family necessities within the meaning of Article 240:

(a) payment of government revenue and of debts which are payable out of the family property

(b) maintenance of coparceners and of the members of their families.

(c) marriage expenses of male coparceners, and of the daughters of coparcener

(d) performance of the necessary funeral or family ceremonies

(e) costs of necessary litigation in recovering or preserving the estate.

(f) costs of defending the head of the joint

family, or any other member against a serious criminal charge;

(g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a per-existing debt.

35. The above article is very much clear that if the Sale Deed falls within the purview of above article then only held that the sale was for family necessity. Now let me know the reasons mentioned in the Sale Deed as the Ex.P2 is the Sale Deed dated 02.11.2006 which executed by the GPA holder of the Defendant No.1 to 4 in favour of Defendant No.6 and the reasons mentioned in the sale is necessary for reproduce which stated below:-

whereas the vendors herein being in need of funds in order to meet their legal and other compelling necessities have offered to sell the schedule property to the purchaser.

36. So, one thing is clear from the above reasons

mentioned in the Sale Deed that the Defendant No.1 to 4 have brought the schedule property for sale for the purpose of meet their legal and other compelling necessities, but the same are not falls within the purview of above article. Therefore, it is clear the Sale Deed which executed by the Defendant No.1 to 4 through their power of attorney holder in favour of Defendant No.6 is not binding on the Plaintiffs and moreover the Sale Deed has been taken place on 02.11.2006. but whereas, the Hindu Succession Amended Act came into force from 09.09.2005 and Sec.6 of Hindu Succession Amended Act 2005 is also very much clear if the disposition, alienation, partition or testamentary disposition of the property which was taken place before 20.12.2004 shall not effect or invalidate any disposition. Admittedly Ex.D2 was came to be executed on 02.11.2006 therefore, the Sale Deed which executed is not binding on the Plaintiffs, since the Plaintiffs are not signatory to the either Ex.D1 nor Ex.D2. Therefore, the arguments which advanced by the learned Counsel for the Appellant on this aspect holds no water.

37. Now, question arises whether the Sale Deed which executed by the Defendant No.1 to 4 through the power of attorney holder in favour of Defendant No.6 is binding on them whether they are entitled the share in the schedule property. Admittedly, the summons has been served on Defendant No.1 to 4, but the reasons best known to them did not appear nor filed their written statement as they were placed exparte that itself is clear the Defendant No.1 to 4 have admitted about the execution of the Sale Deed through their power of attorney holder, therefore, the Sale Deed is binding on them which is not binding on the Plaintiffs, it is an admitted fact, the Plaintiff No.1 to 3 are the daughters of late Dasaiah, Defendant No.1 is none other than the wife of Dasaiah, Defendant No.2 to 4 are none other than the sons of late Dasaiah and pending of the suit the Defendant No.2 was passed away and his legal-heirs were brought on record. Thus, this Court drawn its attention on Mulla Hindu Law, Sec.8 of the Hindu Succession Act 1956 which reads like thus:-

8. General rules of succession in the case of males.—

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.

38. The above provision is very much clear the property of a male hindu dying intestate shall devolve on the clause I, in the absence clause II and in the absence of clause 1 and 2 shall devolve to the heirs as mentioned in the 3rd and lastly of the provision as stated supra, so after the death of male hindu dying intestate shall devolve to the class I legal-heirs as mentioned in the schedule, thus if the Plaintiffs and the Defendant No.1 to 4 are taken into consideration the Plaintiffs are entitled 1/7th share in the suit schedule

property, but the Defendant No.1 to 4 are not entitled any share in the suit schedule property since they have executed the Sale Deed in favour of the Defendant No.6 through their power of attorney holder which not disputed by themselves. But the court below while passing the Judgment has not stated anything regarding the Sale Deed which executed by the Defendant No.1 to 4 in favour of the Defendant No.6 and their share. However, come to the right conclusion that the Plaintiffs are entitled their 1/7 th share each in the suit schedule property. Hence, I am of the opinion that the ***Point No.1 to 3 are answered in the Negative***

39. **Point No.4:-** In view of my answer to the point No. 1 to 3 as stated above, I proceed to pass the following:

::ORDER::

The Regular Appeal filed under Sec.96 R/w.Sec. 41 Rule 1 of CPC., is hereby ***Dismissed***.

In consequence, the Judgment and decree passed by III Addl.Senior

Civil Judge and CJM., Mysuru in
O.S.No.383 of 2013 dated 30.10.2024 is
hereby **confirmed**.

Draw decree accordingly.

No order as to cost.

(Dictated to the Stenographer Grade-III, transcribed by her and then corrected by me,
signed and pronounced in the Open Court this the **26th day of March-2026**)

(P.J. SOMASHEKHAR)
IV Addl.District and Sessions
Judge, Mysuru.