

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,  
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,  
Senior Civil Judge & J.M.F.C.,  
H.D.Kote

Dated, this 10<sup>th</sup> day of December, 2021

**O.S.NO. 74/2020**

- Plaintiff/s :
1. Lakshamma  
W/o Late. Shivannegowda,  
Aged about 70 years,
  2. Jayamma  
W/o Sh. Puttegowda,  
Aged about 65 years,  
P1 and P2 are R/at S.Kallahalli Village,  
Jayapura Hobli, Mysuru District.
  3. Honnamma  
W/o Sh. Siddegowda,  
Aged about 68 years,  
  
R/at G.B.Sargur village,  
Hampapura Hobli,  
H.D.Kote Taluk, Mysuru District.
  4. Mangalamma  
W/o Somegowda,  
Aged about 55 years,  
R/at Door no. 2266/10, 6<sup>th</sup> Main,  
4<sup>th</sup> Cross, Paduvarahalli  
[Vinayakanagara]  
Mysuru-12

(By Sh. J. Siddegowda., Advocate)

- Defendant/s :
1. Thimmamma

- W/o Late. Thirumallegowda,  
Aged about 85 years,
2. Manjunatha.T @ Manju.T.S  
S/o Late. Thirumallegowda,  
Aged about 51 years,
  3. Jayaram.T.S  
S/o Late. Thirumallegowda,  
Aged about 48 years,
  4. Puttaningamma  
W/o Late. Govindgowda,  
Aged about 70 years,
  5. Thirumalegowda  
S/o Late. Govindgowda,  
Aged about 40 years,
  6. Shoba  
W/o Late. Devaraju  
Aged about 30 years,
  7. Spoorthi  
D/o Late. Devaraju  
Aged about 16 years,
  8. Preethi  
D/o Late. Devaraju  
Aged about 13 years,  
D7 & D8 are minors.  
Hence they represented  
by their natural guardian  
their mother Smt.Shobha.
  9. Nagegowda  
S/o Kuriningegowda,  
Aged about 55 years,
  10. Swamy Gowda

S/o Kullegowda @ Govindegowda,  
Aged about 50 years,

D1 to D10 are R/at J.B.Sargur Village,  
Hampapura Hobli,  
H.D.Kote Taluk, Mysuru District.

11. Kumari  
W/o Sh. Nagegowda  
D/o Late. Govindegowda,  
Aged about 45 years.  
R/at Muddaiahna Hundi,  
Village, Hampapura Hobli,  
H.D.Kote Taluk, Mysuru District.

(D1 to D3 by Sh. B.Venkataswamy.,  
Advocate, D4 to D11 by  
Sh.D.R.Mahesha., Advocate)

### **ORDERS**

Vide this order, this court shall decide the following preliminary issue framed vide order dt.29.09.21.

Is the suit barred by law in terms of the proviso to section 6(1) (C) of the Hindu Succession Act, 1956 as amended by Act 39 of 2005 in respect of item no.1 to 5 of the suit properties?

2. It is the case of the plaintiffs that suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants no.1 to 3. It is stated that in the month of July 2020 the plaintiffs were surprised to see the sale deeds for the year 1994 to 2003 wherein the defendant no.1 to 3 had alienated the item no.1 to 5 of suit schedule properties to the defendant no.9, 10 and late Govindegowda i.e., husband of defendant no.4 and father of defendant no.5 and 11. It is stated that

the defendant no.1 to 3 have no right or title to sell the suit schedule properties without the consent of the plaintiffs and as such the sale deeds effected by the defendant no.1 to 3 in favor of the no.9, 10 and late Govindgowda are not binding on the plaintiffs. Hence, the suit.

3. Defendant no.4 to 11 have filed the WS on the common grounds contending that the plaintiffs have no locus to file the suit and the item no.1 to 5 of the suit schedule properties were sold by the defendant no.1 to 3 for the legal necessities and it is binding on the plaintiffs and they are bonofide purchasers for valuable consideration. The alienation was made before the 20th day of December, 2004 and as such it shall not affect the sale, the plaintiffs are not entitled for partition and separate possession in the item no.1 to 5 of suit schedule properties.

4. During the course of arguments, the Ld.Counsel for the plaintiffs submits that the registered sale deeds executed from the year 1994 to 2003 by defendant no.1 to 3 in favor of defendant no.5 no.9, 10 and late Govindgowda are not binding on plaintiffs as the sale deed came to be executed prior to 20th December, 2014, as the amendment to [Section 6](#) of the Hindu Succession Act (hereinafter referred to as 'the Act'), came into force and in view of the said amendment, the plaintiffs are entitled for their share in the joint family properties of their father as a coparcener. The learned counsel for the plaintiffs further submits that, the item no.1 to 5 of suit schedule properties were inherited by their father from his father and as such the suit schedule properties are ancestral properties of the plaintiffs and in view of the same, they being the legal heirs of the Hindu Mitakshara joint family and as such the share of the plaintiffs are crystalised as that of the son of the family. The

learned counsel further submits that in view of [Section 6](#) of the Hindu Succession (Amendment) Act, 2005, the plaintiffs became the coparcener and they have equal right with that of the son in the joint family of their father and thereby the alienation even before the date of amendment Act came into force and all such transactions are void to the extent of their share in the item no.1 to 5 of the suit schedule properties.

5. Per contra, the learned counsel appearing for the defendants submitted that the sale deeds were executed before 20<sup>th</sup> December, 2004 i.e., in between the year 1994 to 2003. The amendment to [Section 6](#) of the Hindu Succession Act, came into force after the execution of sale deeds and in view of the law declared by the Hon'ble High court of Karnataka in Regular First Appeal No.1507 of 2012 disposed of on April, 8 2014 in the case of ANJANAMMA AND OTHERS v. G. GOPALAPPA AND OTHERS, suit is liable to be rejected. They further pointed out that, [Section 6](#) of the Hindu Succession Act, came into effect from 9th September 2005 and it has been held to be retrospective in operation, however, proviso to said provision has saved or shall not affect any dispossession of the property which had taken place before 20th December, 2004. The purpose of the proviso added to [Section 6](#) of the Hindu Succession (Amendment) Act, is to protect the interest of third parties who have purchased the property from joint family members for valuable consideration and who are bonafide purchasers and in view of the same, the learned counsel for the defendants submitted that in the present case the item no.1 to 5 of the suit properties are sold admittedly prior to 20.12.2004 hence, said alienation is saved. Therefore, plaintiffs

are not entitled to claim share in the item no.1 to 5 of the suit schedule properties and contention of the plaintiffs that Sale Deeds executed by their mother and brothers in respect of item no.1 to 5 of the suit properties in favor of defendant no.9, 10 and late Govindegowda are not binding on her is not sustainable under law and at the time of institution of the suit there was no cause of action arising in favor of the plaintiffs to seek for partition of the said properties. Hence, the plaintiffs are not entitled for any share in it.

6. In the light of the arguments advanced at Bar and further considering the plaint allegations, the preliminary issue is being answered in the Affirmative with following reasons:-

7. The interpretation to proviso to Sub-Section (5) of [Section 6](#) of the Act came up before the Hon'ble Supreme Court in the case of [PRAKASH AND OTHERS v. PHULVATI AND OTHERS](#) reported in (2016)2 SCC 36 wherein the Hon'ble Supreme Court has held as follows:

18. ...the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main

provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of [Section 6\(5\)](#) by being limited to a transaction of partition affected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under sub-[section 5](#) or under the Explanation.

19. Interpretation of a provision depends on the text and the context. Normal rule is to read the words of a statute in ordinary sense. In case of ambiguity, rational meaning has to be given. In case of apparent conflict, harmonious meaning to advance the object and intention of legislature has to be given.

20. There have been number of occasions when a proviso or an explanation came up for interpretation. Depending on the text, context and the purpose, different rules of interpretation have been applied.

21. Normal rule is that a proviso accepts something out of the enactment which would otherwise be within the purview of the enactment but if the text, context or purpose so require a different rule may apply. Similarly, an explanation is to explain the meaning of words of the section but if the language or purpose so require, the explanation can be so interpreted. Rules of interpretation of statutes are useful servants but difficult masters.. Object of interpretation is to discover the intention of legislature.

22. In this background, we find that the proviso to [Section 6\(1\)](#) and sub-section (5) of [Section 6](#) clearly intend to exclude the transactions referred to therein which may have taken place prior to 20th December, 2004 on which date the Bill was introduced. Explanation

cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to 20th December, 2004 is not to make the main provision retrospective in any manner. The object is that by fake transactions available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced. Main provision of the Amendment in [Section 6\(1\)](#) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the appellants are not intended to be done away with for period prior to 20th December, 2004. In no case statutory notional partition even after 20th December, 2004 could be covered by the Explanation or the proviso in question.

23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said Civil Appeal No.7217 of 2013 etc. date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation."

8. It is also notable to have the benefit of the law declared by the Hon'ble Supreme Court in the case of [DANAMMA @ SUMAN SURPUR AND ANOTHER v. AMAR AND OTHERS](#) reported in (2018)3 SCC 343 wherein the Hon'ble Supreme Court has reiterated about disposition of properties of the joint family property pursuant to amendment to [Section 6](#) of the Act.

9. The aforesaid two judgments of the Hon'ble Supreme Court was again followed by Hon'ble Supreme Court in the case of MANGAMMAL ALIAS HULASI AND ANOTHER v. T.B. RAJU and others reported in (2018)15 SCC 662 wherein the Hon'ble Supreme Court, at paragraphs 16 and 20 of the judgment has held as follows:

" 16. It is pertinent to note here that recently, this Court in Danamma @ Suman Surpur & Anr. Vs. Amar & Ors, 2018 (1) Scale 657 dealt, inter-alia, with the dispute of daughter's right in the ancestral property. In the above case, father of the daughter died in 2001, yet court permitted the daughter to claim the right in ancestral property in view of the amendment in 2005. On a perusal of the judgment and after having regard to the peculiar facts of the Danamma (supra), it is evident that the Division Bench of this Court primarily did not deal with the issue of death of the father rather it was mainly related to the question of law whether daughter who born prior to 2005 amendment would be entitled to claim a share in ancestral property or not? In such circumstances, in our view, Prakash & Ors. (supra), would still hold precedent on the issue of death of coparcener for the purpose of right of daughter in ancestral property. Shortly put, only living daughters of living coparceners would be entitled to claim a share in the ancestral property.

20. At this juncture, we would like to make it clear that any sale which made to Respondent Nos. 2 & 3 in pursuance of two sale deeds dated 03.04.1996 and 24.08.1998 respectively shall not be disturbed anymore. In lieu of the same, the appellants shall be entitled to their legitimate share, if any, which belonged to them in such properties and which had

been sold through sale deeds from Respondent No. 1 by way of money or some other property of the same amount."

10. The Division Bench of the Hon'ble High Court of Karnataka in the case of ANJANAMMA AND OTHERS v. G. GOPALAPPA AND OTHERS made in RFA No.1507 of 2012 disposed of on 08th April, 2014, at paragraph 11 of the judgment has held as follows:

"11. [Section 6\(1\)](#) of the Act for the first time confers status of a coparcener on a daughter and she is entitled to a right in coparcenary property as that of a son. However, the said amendment came into effect from 09.09.2005. It has been held to be retrospective in operation. But, the proviso to the said provision makes it clear that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20th day of December 2004. The proviso is introduced in order to protect the interest of third parties who have purchased the properties from the joint family members for valuable consideration and who are bonafide purchasers. Therefore, though a daughter is conferred a right of a coparcener by birth it dates back to her date of birth, the proviso takes away that right to the extent it is provided for, that is, if prior to 20.12.2004 a joint family property or coparcenary property is alienated by coparcener or joint family members under a registered deed, such alienation is not in any way affected by the right conferred on a daughter under sub-section (1) of [Section 6](#) of the act. In the instant case, defendant Nos.1 to 3 as coparceners have sold the schedule property in favour of defendant Nos.4 to 7 under a registered sale deed dated 23.03.1993, that is, prior to the coming into force of the

amended provision. On the date the amended provision came into force there was no joint family in existence and there was no coparcenery in existence. Therefore, though the daughter is conferred right of a coparcener there cannot be any coparcenery without a property. As there was no property in the joint family on the date when [Section 6](#) of the Act came into force the daughter has no right."

11. Having regard to the exposition of law made by the Hon'ble Supreme Court as well as the Division Bench of the Hon'ble High court of Karnataka in the matters stated supra and on application of said ratio to the present case, wherein the defendant no. 9, 10 and late Govindgowda have purchased the item no.1 to 5 of the suit schedule properties prior to 20th December, 2004 and as such, the alienation is made before 20<sup>th</sup> December, 2004 by the defendant no.1 to 3 herein in favor of defendant no.9, 10 and late Govindgowda are valid and as such, all the said registered deeds which took place between the year 1994 to 2003 are saved under the proviso to amended [Section 6](#) of the Act and in view of the same, the plaintiffs are not entitle to claim share in the suit schedule properties and at the time of institution of the suit there was no cause of action arising in favor of the plaintiffs to seek for partition in the said properties.

12. From the discussion, as adumbrated hereinabove, the aforesaid Preliminary issue is decided in favor of the defendants and against the Plaintiffs and in view thereof, the present suit is not maintainable in the eyes of law in respect of item no.1 to 5 of the suit properties and, I hereby pass the following:

**ORDER**

**The suit of the plaintiff is dismissed being not maintainable in respect of item no.1 to 5 of the suit properties.**

**It is needless to say that the suit is continued only with respect to item no.6 of the suit property.**

**Put up for P/E on 24.12.2021**

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 10<sup>th</sup> day of December, 2021)

(NATARAJ YADAV .S)  
Senior Civil Judge & J.M.F.C  
H.D.Kote