

KAMS500031812022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC,
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 1st day of August 2026

O.S./210/2022

Plaintiffs

1. D.Basavanna S/o late Dundappa
and Puttathayamma,
aged about 65 years,
2. Ambuja D/o late Dundappa
and Puttathayamma,
aged about 58 years,
3. Nagendra S/o late Dundappa
and Puttathayamma,
aged about 56 years,
4. Nandeesh S/o late Dundappa and
Puttathayamma,
aged about 51 years,
5. Nirmala D/o late Dundappa
and Puttathayamma,
aged about 50 years,

Plaintiffs No.1 to 5 are
residing at Thottavadi Village,
T.Narasipura Taluk.

6. H.K.Shivananda
S/o late H.M.Kempadevanna and
late Rathnamma,
aged about 66 years,
residing at Huskuru Village,
Hullahalli Hobli,
Nanjangud Taluk.
7. B.Manjunath S/o late P.Basavanna
and late Mangalamma,
aged about 61 years,
8. B.Shashi S/o late P.Basavanna
and late Mangalamma,
aged about 58 years,
9. B.Mahesha S/o late P.Basavanna
and late Mangalamma,
aged about 57 years,
10. B.Chandramouli S/o late
P.Basavanna and late Mangalamma
aged about 53 years,
11. B.Uma D/o late P.Basavanna and
late Mangalamma,
aged about 46 years,
12. B.Sathish S/o late P.Basavanna
and late Mangalamma,
aged about 45 years,

Defendants No.7 to 12 are
residing at Bagali Village,
Santhemarahalli Hobli,
Chamarajanagara Taluk and
District.

13. Shivamma W/o K.C.Basavanna
D/o late Doddakempanna
Marappa,
aged about 75 years,
residing at Kesthuru Village,
Agara Hobli, Chamarajanagar Taluk
and District.

(By Sri. B.Nanjundaswamy, Adv.)

-V/s-

Defendants

1. Neelamma W/o Basavaraju,
aged about 65 years,
 2. B.Umesha S/o Basavaraju,
aged about 48 years,
- Both are residing at
Hadinaru Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.
3. Girija Shankaramurthy
W/o late S.Shankaramurthy,
aged about 79 years,
 4. Umashankaramurthy
S/o late S.Shankaramurthy,

defendants No.3 and 4 are
residing at House No.11,
16th Block, J.S.S.Layout,
Mysuru-570011.

5. Basappa – dead by L.Rs.

5a) Mahadevamma W/o late Basappa,
aged about 80 years,

5b) Uma W/o Mallanna
(Goolaiahna Doddaiahna Hatti)
D/o late Basappa,
aged about 58 years,
residing at Hadinaru Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.

5c) Chidambara S/o late Basappa,
aged about 56 years,

5d) Mahesha S/o late Basappa,
aged about 54 years,

5e) Suma W/o Shivapadu
D/o late Basappa,
aged about 52 years,
residing at Yadahalli Village,
Jayapura Hobli,
Mysuru Taluk.

5f) Palaksha S/o late Basappa,
aged about 50 years,

5a, 5c, 5d and 5f are
residing at
Mosambayanahalli Village,

Varuna Hobli,
Mysuru Taluk.

6. Shivapadu S/o Puttabasamma,
residing at Yadahalli Village,
Jayapura Hobli,
Mysuru Taluk.

(By Sri.Rajashekharamurthy R.– Adv. for D.1 &
2, Sri. B.L.Srikantamurthy – Adv. for D.3 and 4,
Sri. K.S.Nagaraju – Adv. for D.5(a to f) and 6)

Date of institution of the suit	17.08.2022		
Nature of suit	Partition and separate possession		
Date of commencement of Trial	19.04.2023		
Date on which the judgment was pronounced	01.08.2026		
Duration of suit	Years 03	Months 11	Days 15

J U D G M E N T

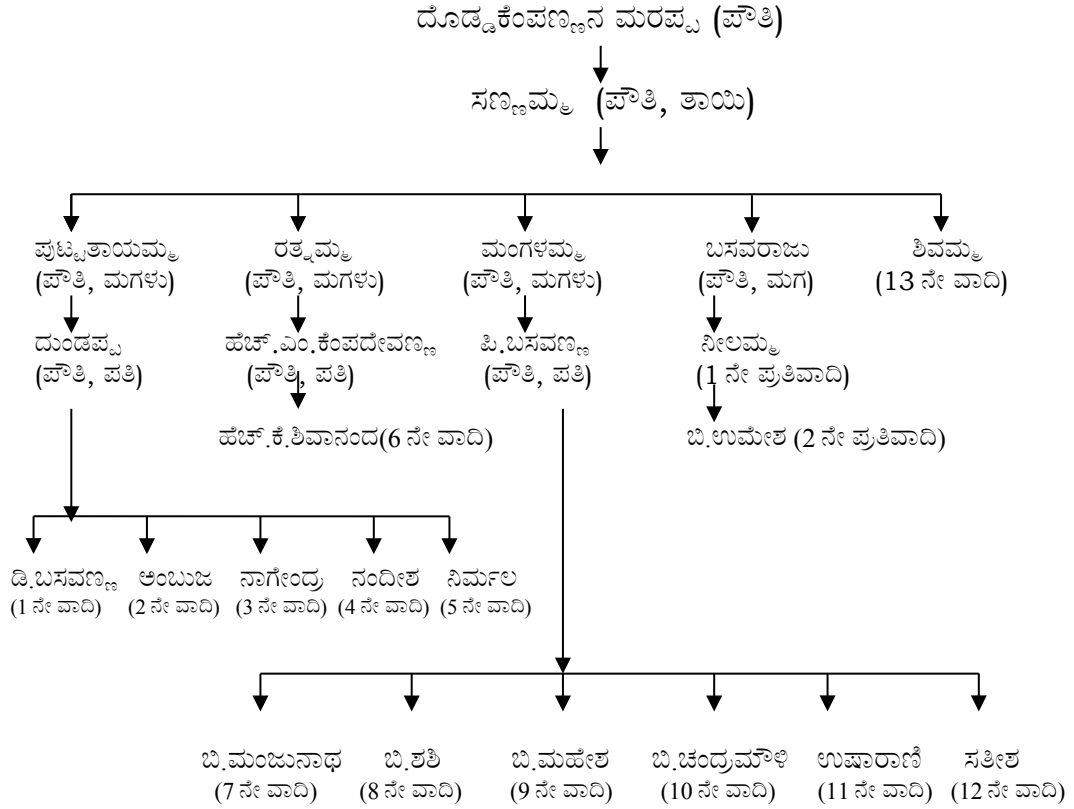
The plaintiffs filed the suit for partition and separate possession of their 4/5th share in the suit schedule properties bearing Sy.No.13/4 measures 21 guntas, Sy.No.13/8 measures 18 guntas, Sy.No.13/7 measures 7 guntas, Sy.No.463/2 measures 1 acre 12 guntas, Sy.No.27

measures 1 acre 36 guntas, Sy.No.801/2 measures 36 guntas including kharab 1 gunta and property No.505 in Sy.No.396/1, situated at Hadinaru Village of Nanjangud Taluk.

2. Brief facts of the case of the plaintiffs are as follows:-

The contention of the plaintiffs that the plaintiffs and defendants No.1 and 2 are the members of the joint family, so the suit schedule properties are the ancestral and joint family properties. Originally the said property belonged to forefather of plaintiffs and defendants No.1 and 2 by name Marappa. Marappa and Sannamma had five children i.e., Puttathayamma, Rathnamma, Mangalamma, Basavaraju and Shivamma. Except the 13th defendant Shivamma other children of Marappa and Sannamma died long back. The 1st defendant is the widow wife of Basavaraju, 2nd defendant is his son. Similarly the plaintiffs No.1 to 5 are the children of Puttathayamma. 6th plaintiff is the son of Rathnamma. Plaintiffs No.7 to 12 are the children of deceased Mangalamma. So, the plaintiffs and defendants are the legal

heirs of deceased Marappa. There was no partition of the suit schedule properties during the lifetime of Marappa. The family pedigree of the plaintiffs runs as below:



It is further submitted that the plaintiffs and defendants No.1 and 2 have been jointly cultivating the schedule properties and also distributing its income. The plaintiffs and defendants are the joint family members. The 1st and 2nd defendants maintaining the affairs of the suit

schedule properties jointly on behalf of the family members i.e., plaintiffs and other defendants. The plaintiffs and defendants were cordially living together by looking into the affairs of the joint family. Recently the 1st and 2nd defendants started to act adverse to the interest of other family members and started to use the income of the joint family properties for their own purpose. It is further submitted that, so far the suit schedule properties are not divided inspite of the demand by the plaintiffs. Such being the case, the defendants No.1 and 2 without the knowledge of the plaintiffs sold item No.5 property to an extension of 1 acre 36 guntas in favour of 5th defendant through registered sale deed dated 27.08.2011. Similarly item No.6 property measures 35 guntas was also sold out through registered sale deed dated 05.12.2005. Subsequently the 5th defendant and his children sold out the said item No.5 property in favour of the 6th defendant Shivapadu S/o Puttabasamma through registered sale deed dated 21.03.2007. The above said sale transaction was without the knowledge of the plaintiffs and other family members. Knowing the same, the

plaintiffs requested the defendants to make partition of the schedule properties, but the defendants neglected to divide the said properties. The plaintiffs got suspicion about the activities of the defendants No.1 and 2 and again requested for partition of the schedule properties, but the defendants simply prolonging the process of partition, thereafter the plaintiffs requested for partition of the suit schedule properties with defendants No.1 and 2 through panchayathdars and the panchayathdars have advised for partition of the schedule properties, but the defendants No.1 and 2 have not heeded the advised words. Without having other alternative the plaintiffs filed the suit for partition and separate possession.

3. Summons were duly served. All the defendants appeared before the court through their respective counsel. Defendants No.5 and 6 filed common written statement by denying the allegation of the plaint. It is further taken defence that there is no cause of action to file the suit. The 5th defendant has purchased item No.6 of the schedule property from defendants No.1 and 2 through a registered

sale deed dated 05.12.2005. The said sale deed was registered before the Sub-Registrar of Nanjangud. The defendants No.1 and 2 have sold the said property to clear the mortgage loan and other family legal necessities. When such being the case, it gives very serious doubt about the plaintiffs because they filed the suit only to harass them. The 5th defendant is the bonafide purchaser of item No.6 property, then he changed the khatha of the schedule properties to his name through M.R.No.57/2006-07 and he became the owner and in possession of the purchased property. The 5th defendant and his children have sold the item No.6 property to 6th defendant through registered sale deed dated 21.03.2007. The 6th defendant also changed the khatha of the schedule property to his name, because he is in lawful possession of the purchased property. It is further submitted that, the defendant No.5 is the bonafide purchaser from the defendants No.1 and 2 and defendant No.6 is the bonafide purchaser from defendant No.5 and his children with respect to item No.6 property. The defendants No.1 and 2 have executed the sale deed for

meeting of family necessities including the plaintiffs' need which facts have been suppressed by the plaintiffs. The plaintiffs if at all established any right, the share of the plaintiffs including item No.6 of the schedule property can be carved out from other suit schedule properties and the plaintiffs' share can be allocated. The said properties are standing in the name of defendant No.1. The defendants No.5 and 6 are the bonafide purchasers of item No.6 property. The 6th defendant has acquired the right, title, interest over the said property under law. The 6th defendant in no manner can be depriving of his right over item No.6 of schedule property. It is further submitted that, the plaintiffs nowhere in the suit has made any specific allegation against the defendants No.1 and 2 that they executing the sale deed of item No.6 of schedule property without any right or authority. The plaintiffs have knowledge about the alleged sale deed and only on the instigation of defendants No.1 and 2 the plaintiffs have filed this suit. It is further submitted that, the defendant No.1 had several other properties in and around of

Hadinaru Village of Nanjangud Taluk, those properties have not been disclosed, which also gives a serious doubt about the very suit claim. The court fee paid by the plaintiffs is not proper. Hence, the defendants No.5 and 6 prayed to dismiss the suit.

4. The defendants No.3 and 4 filed written statement by denying the facts except the relationship. They further taken defence that, the family sketch did not give information regarding the sale made by the defendants No.1 and 2 dated 27.08.2011 in favour of father of defendant No.4 and husband of 3rd defendant i.e., S.Shankaramurthy. So, Shankaramurthy purchased item No.5 as per the market value, hence he is the bonafide purchaser of schedule property. The defendants No.3 and 4 have no knowledge about the family relationship of the defendants and the plaintiffs till service of summons in the suit. Therefore, the suit of the plaintiffs for division of item No.5 property is not maintainable. The defendants never in the joint possession of the schedule properties with the

defendants. The defendants No.1 and 2 sold out item No.5 property for bonafide reasons. Hence, the defendants No.3 and 4 prayed to dismiss the suit.

5. The defendants No.1 and 2 have filed common written statement. They have denied the contention of the plaintiffs. It is further taken defence that, the 1st and 2nd defendants have sold items No.5 and 6 properties to accumulate the amount for medical expenses of parents of the husband of the 1st defendant by name Marappa and Sannamma and later the husband of the 1st defendant was suffering with Colon cancer, therefore, items No.5 and 6 properties were sold in favour of 5th defendant for bonafide reason and also repaid the mortgage amount. They also sold out the said property for construction of the residential house. The defendants No.1 and 2 did not mis-utilize the consideration amount and the said amount was not invested for bad vices of defendants No.1 and 2. The plaintiffs are not in joint possession of item No.5 property from the date of sale transaction dated 27.08.2011. It is

also taken contention that suit of the plaintiffs is time barred one. Hence, the defendants No.1 and 2 prayed to dismiss the suit.

6. Based on the above pleadings the following issues have been framed:

- 1 Whether the plaintiffs prove that the suit schedule properties are the ancestral joint family properties as alleged ?
- 2 Whether the plaintiffs prove that the plaintiffs and the defendants 1 and 2 are in joint possession and enjoyment of the suit schedule properties?
- 3 Whether the plaintiffs prove that the sale deeds dated 27.08.2011 , 05.12.2005 and 21.03.2007 are not binding on the plaintiffs?
- 4 Whether the defendants 5 and 6 prove that the defendants 1 and 2 have sold item No.6 property for the family necessities?
- 5 Whether the defendants 5 and 6 prove that they are the bonafide purchasers of item No.6 suit schedule property?
- 6 Whether the suit is bad for non-joinder of necessary parties?
- 7 Whether the plaintiffs are entitled for partition of suit schedule properties?
- 8 Whether the plaintiffs are entitled for 4/5th share in the suit schedule properties?

- 9 Whether the plaintiffs are entitled for declaration as sought for?
- 10 Whether the plaintiffs are entitled for mesne profits as sought for?
- 11 What order or decree?

Addl. Issues framed on 30.08.2023

1. Whether the defendants No.3 and 4 prove that S.Shankaramurthy was a bonafide purchaser of item No.5 of suit schedule properties as alleged?
2. Whether the suit is properly valued?
3. Whether the court fee paid is sufficient
4. Whether the suit is barred by limitation?

Addl. Issue framed on 14.02.2024

Whether the defendants No.1 and 2 prove that they have sold the items No.5 and 6 of suit schedule properties for the legal necessities?

7. In order to get the relief, the 6th plaintiff is examined as P.W.1 and got marked 14 documents as Exs.P.1 to P.14. On the other hand, the defendant No.6 and G.P.A. holder of defendants No.3 and 4 are examined as D.Ws.1 and 2 and got marked 13 documents as Exs.D.1 to 13.

8. Heard and perused the pleadings, evidence and materials placed on record.

9. The answer to the above issues is as follows:

Issues No.1 & 2	:	In the affirmative
Issues No.3 to 5	:	In the negative
Issue No.6	:	In the negative
Addl. Issue No.1 framed on 30.08.2023	:	In the negative
Addl. Issues No.2 and 3 framed on 30.08.2023	:	In the affirmative
Addl. Issue No.4 framed on 30.08.2023	:	In the negative
Addl. Issue framed on 14.02.2024	:	In the negative
Issues No.7 & 9	:	In the affirmative
Issue No.8	:	As per reason
Issue No.10	:	In the negative
Issue No.11	:	As per final order for the following

REASONS

10. **Issues No.1 & 2**: These issues are taken together for discussion to avoid repetition. The suit is filed for the relief of partition and separate possession. The plaintiffs claim shares in total seven items of properties.

Ex.P.1 is the R.T.C. of Sy.No.13/4 measures 21 guntas standing in the name of Neelamma W/o Basavaraju, she is none other than the wife of the 1st defendant. Ex.P.2 is the R.T.C. of Sy.No.13/8 i.e., item No.2 property to an extension of 18 guntas, Ex.P.3 is the R.T.C. of item No.3 property in Sy.No.13/7 measures 7 guntas again standing in the name of 1st defendant. Ex.P.4 is the R.T.C. of Sy.No.463/2 i.e., item No.4 property, it is also standing in the name of 1st defendant Neelamma. Ex.P.5 is the R.T.C. of Sy.No.27/3 measures 1 acre 36 guntas pertaining to item No.5 property. Ex.P.6 is the R.T.C. of Sy.No.801/2 i.e., item No.6 property standing in the name of Shivapadu S/o Puttabasamma. Item No.7 property is the property No.505 in Sy.No.396/1. Ex.P.14 is the certified copy of assessment document of property No.505 pertaining to item No.7 property standing in the name of Marappa. According to the plaintiffs Marappa is their forefather. The plaintiffs have furnished the documents of schedule properties items No.1 to 7. The 6th plaintiff examined as

P.W.1 on behalf of himself and other plaintiffs. The chief-examination is the repetition of the facts of the plaint.

11. The trustworthy of P.W.1 is questioned in the cross-examination. It is suggested to P.W.1 that he is the son of Rathnamma D/o Marappa. The said suggestion is admitted. Moreover the defendants have not denied the relationship. The mother of P.W.1 died in the year 1962. P.W.1 says that his grand parents were died long back. Puttathayamma the sister of Rathnamma was died in the year of 2013. Her younger sister Mangalamma also died in the year of 2021. The younger brother of Rathnamma died in the year of 2004. The 13th plaintiff is surviving daughter of Marappa and Sannamma, now she is aged about 75-80 years. Shivamma was married one. Marappa had performed the marriage of his all daughters. It is admitted by P.W.1 that, the marriage of daughter of Marappa was performed by Marappa and husband of 1st defendant. The marriage of Puttathayamma was performed about 40 years back. The marriages of all the daughters were performed

about 45-50 years back. It is suggested to P.W.1 that Marappa had given all the materials what should have been given to them during his lifetime. Therefore, it is suggested that, the daughters of Marappa were given materials instead of share in the schedule properties. Hence, it is admitted by the defendants that the plaintiffs are also the family members, but their contention that Marappa during his lifetime had given materials to his daughters instead of share in the schedule properties. Basavaraju is the sole son of Marappa. It is suggested to P.W.1 as below:

ಮರಪ್ಪನವರಿಗೆ ಒಬ್ಬನೇ ಗಂಡು ಮಗ ಬಸವರಾಜು ಎಂದರೆ ಸರಿ. ಉಳಿದವರೆಲ್ಲರೂ ಹೆಣ್ಣು ಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ಎಲ್ಲಾ ಹೆಣ್ಣು ಮಕ್ಕಳಿಗೂ ಕೊಡಬೇಕಾದ ಎಲ್ಲವನ್ನೂ ಕೊಟ್ಟು ಮದುವೆಯನ್ನು ಮರಪ್ಪ ಮತ್ತು ಬಸವರಾಜು ಮಾಡಿದ್ದ ಕಾರಣ ಹೆಣ್ಣು ಮಕ್ಕಳು ಖಾತೆ ಬದಲಾವಣೆಗೆ ಸಮ್ಮತಿ ನೀಡಿದ್ದರು ಎಂದರೆ ಇಲ್ಲ ಎಂದು ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ.

12. So, the suggestion shows that Marappa had given materials to his children instead of share in the schedule properties, but P.W.1 denies it. It is also suggested to P.W.1 that Basavaraju changed the khatha of the schedule property to his name and he took the possession of the

schedule property, but P.W.1 denies it. It is further suggested to P.W.1 that, the 1st and 2nd defendants sold item No.6 property in favour of the 5th defendant through registered sale deed dated 05.12.2005, but P.W.1 does not know the said transaction as per his evidence. Remaining suggestion questions asked are denied as not known to P.W.1. It is further suggested to P.W.1 that, plaintiffs had no right in the suit schedule properties, because khatha of the schedule properties were changed to the name of Basavaraju with the consent of daughters of Marappa, but P.W.1 denies it. It is also suggested by the defendants that, Puttathayamma, Rathnamma and Mangalamma would have no right to get share in the schedule properties, because they died long back. It is also suggested to P.W.1 that, the defendants No.1 and 2 sold out the item No.6 property to consolidate the amount for legal necessity that is to repay the mortgage amount, medical expenditure as he was suffering with Colon cancer, but P.W.1 does not know the said fact as per his evidence. It is suggested to P.W.1 that, the defendants No.1 and 2 never acted against

the common interest of the joint family property, but P.W.1 denies it. It is further suggested to P.W.1 that items No.5 and 6 properties were sold for the family necessities, but P.W.1 denies its. Rest of the cross-questions are not required to prove the relationship and nature of the schedule properties.

13. The 6th defendant by name Shivapadu examined himself as D.W.1. His evidence that, the defendants No.1 and 2 sold out item No.5 property for family necessities and not for illegal purpose. After purchase of schedule item No.5 property he changed the khatha of the schedule property to his name. The trustworthiness of D.W.1 is questioned in the cross-examination. It is certainly necessary to explain the evidence of D.W.1 though he claims to be the bonafide purchaser of item No.5 property, but in the cross-examination he typically deposed that Basappa is the father of his wife. Chidambara, Mahesh and Palaksha are his grand children. He further stated that his father-in-law purchased item No.5 from the

defendants No.1 and 2. The mother-in-law of D.W.1 and plaintiffs are relatives each other. D.W.1 in the cross-examination has deposed as below:

ಮರಪ್ಪನ ಮೊಮ್ಮಕ್ಕಳೇ ವಾದಿಗಳು ಎಂದರೆ ಸರಿ. ನನಗೆ ಜಮೀನು ಕೊಟ್ಟವರು ಮರಪ್ಪನ ಸೊಸೆ ಮತ್ತು ಮೊಮ್ಮಗ ಎಂದರೆ ಸರಿ. ಈ ಸಂಬಂಧಗಳು ನನ್ನ ಮಾವ ಬಸಪ್ಪನಿಗೆ ಗೊತ್ತಿತ್ತು. ಮರಪ್ಪನಿಗೆ 4 ಹೆಣ್ಣು ಮಕ್ಕಳು ಮತ್ತು ಒಬ್ಬ ಮಗ ಎನ್ನುವುದು ನನ್ನ ಮಾವನಿಗೆ ಗೊತ್ತಿತ್ತು. ಮರಪ್ಪ ತನ್ನ ಜೀವತಾವಧಿಯಲ್ಲಿ ಅವರ ಆಸ್ತಿಯನ್ನು ವಿಭಾಗ ಮಾಡಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಈ ವಿಚಾರ ತಿಳಿದಿದ್ದರೂ ಸಹ 1 ಮತ್ತು 2 ನೇ ಪ್ರತಿವಾದಿ ಹಾಗೂ ನನ್ನ ಮಾವ ವಾದಿಗಳಿಗೆ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಜಮೀನು ಮಾರಾಟ ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ.

14. The above referred cross-examination of D.W.1 definitely dilutes the defence, because he admits the relationship of the plaintiffs with Marappa. The evidence of D.W.1 further shows that Basappa had knowledge of said relationship of the plaintiffs with Marappa. It has also come in the evidence that father-in-law of D.W.1 had knowledge of four daughters of Marappa. D.W.1 also admitted that Marappa did not make partition of the

schedule properties during his lifetime. Further D.W.1 has very typically deposed as below:

ಈ ವಿಚಾರ ತಿಳಿದಿದ್ದರೂ ಸಹ 1 ಮತ್ತು 2 ನೇ ಪ್ರತಿವಾದಿ ಹಾಗೂ ನನ್ನ ಮಾವ ವಾದಿಗಳಿಗೆ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಜಮೀನು ಮಾರಾಟ ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ.

So, DW.1 says that the defendants No.1 and 2 deliberately sold out item No.5 property in favour of his father-in-law to cheat the plaintiffs. The nature of schedule properties is admitted fact. The documents produced by the plaintiffs i.e., R.T.Cs. of the various schedule properties demonstrated the nature of the schedule properties as ancestral and joint family properties.

15. The following cross-examination needs to be referred as it is to know the nature of the schedule properties and right of the plaintiffs, which reads as follows:

ಬಸಪ್ಪನವರು ದಿ.05.12.2005 ರಲ್ಲಿ ಖರೀದಿ ಮಾಡಿ ನಂತರ ಕ್ರಯಪತ್ರದ ಮೂಲಕ 5 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮಾರಾಟ ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ನಂತರ ದಿ.21.03.2007 ರಲ್ಲಿ ನನಗೆ ಮಾರಾಟ

ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಖರೀದಿಸಿದ ಆಸ್ತಿಯು ಯಾರಿಗೆ ಬಂತು, ಅದರಲ್ಲಿ ಯಾರಿಗೆ ಹಕ್ಕು ಇದೆ ಎಂದು ತಿಳಿದುಕೊಳ್ಳಲು ತೊಂದರೆ ಇತ್ತೇ ಎಂದರೆ ಯಾರೂ ಇಲ್ಲ ಎಂದು ಉಮೇಶ್ ರವರು ಹೇಳಿದ್ದರು. ನಾನು, ನನ್ನ ಮಾವ ಹಾಗೂ ಉಮೇಶ್ ಮತ್ತು ನನ್ನ ತಾಯಿ ಸೇರಿ ವಾದಿಗಳಿಗೆ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಆಸ್ತಿ ಮಾರಾಟ ಮಾಡಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ವಾದಿಗಳಿಗೆ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಸಾಮಾನ್ಯ ಹಕ್ಕು ಇದೆ ಎಂದರೆ 6 ನೇ ಆಸ್ತಿ ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಆಸ್ತಿಯಲ್ಲಿ ತೆಗೆದುಕೊಳ್ಳಲಿ ಎನ್ನುತ್ತಾರೆ.

So, the above referred cross-examination of D.W.1 further demonstrates the relationship of the plaintiffs with Marappa. D.W.1 repeatedly deposed that 1st and 2nd defendants sold out item No.5 property in favour of his father-in-law to cheat the plaintiffs. The said repetition definitely shows that the admission is not a stray admission, but the answer given by D.W.1 is deliberate one. However, D.W.1 says that there is no objection by the other defendants to take share of the plaintiffs from the schedule properties except item No.6 property. However, the above referred cross-examination of D.W.1 clearly dilutes the contention and possession of his father-in-law as bonafide purchaser. Suppose the father-in-law of D.W.1 is the bonafide purchaser, sufficient document might have

been produced by the attempt of the defendants. But D.W.1 categorically admits that the plaintiffs are the relatives of Marappa and suit schedule properties were not divided during the lifetime of Marappa and shares were not given. The said admission of D.W.1 so much enough to know the nature of schedule properties as ancestral and joint family properties.

16. D.W.2 is the General Power of Attorney holder of defendants No.3 and 4. In the chief-examination he deposed that, it is the burden of the plaintiffs to prove the nature of the schedule properties as joint family and ancestral properties. He also deposed in the chief-examination that, defendants No.1 and 2 sold item No.5 property in favour of the 5th defendant for bonafide reason, thereafter 6th defendant purchased it. The trustworthy of D.W.2 is also questioned in the cross-examination. D.W.2 in the cross-examination deposed as below:

3 ಮತ್ತು 4 ನೇ ಪ್ರತಿವಾದಿ ಪರ ನಾನು ಸಾಮಾನ್ಯ ಅಧಿಕಾರ ಪತ್ರ ಪಡೆದುಕೊಂಡಿದ್ದೇನೆ. ಈ ದಾವೆಯ ಬಗ್ಗೆ ನನಗೆ ಚೆನ್ನಾಗಿ ಗೊತ್ತು. 3 ಮತ್ತು 4 ನೇ ಪ್ರತಿವಾದಿ ಪರವಾಗಿ ನಾನು ಸಲ್ಲಿಸಿರುವ ಲಿಖಿತ

ಹೇಳಿಕೆಯನ್ನು ಈ ಪ್ರಮಾಣ ಪತ್ರದ ಭಾಗವಾಗಿ ಪರಿಗಣಿಸಬೇಕೆಂದು ಕೇಳಿಕೊಂಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಲಿಖಿತ ಹೇಳಿಕೆಗೆ ನಾನೇ ಸಹಿ ಮಾಡಿದ್ದೇನೆ. ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣಾ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ದಾವಾ ಆಸ್ತಿಗಳು ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳು ಎಂದು ಹೇಳಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಅದೇ ರೀತಿ ಮರಪ್ಪನ ಮಕ್ಕಳು ಎಂದು ಲಿಖಿತ ಹೇಳಿಕೆಯಲ್ಲಿ ಹೇಳಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಿ ವಾದಿ ಪ್ರತಿವಾದಿಗಳು ಮೃತ ಮರಪ್ಪರವರ ಕಾನೂನು ಬದ್ಧ ವಾರಸುದಾರಾಗಿರುತ್ತಾರೆ, ಅವರ ಜೀವಿತ ಕಾಲದಲ್ಲಿ ದಾವಾ ಸ್ವತ್ತುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ವಾದಿ, 1 ಮತ್ತು 2 ನೇ ಪ್ರತಿವಾದಿಗಳ ನಡುವೆ ಯಾವುದೇ ವಿಭಾಗ ಮಾಡಿಲ್ಲ ಎಂದು ಹೇಳಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ವಾದ ಪತ್ರದಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ ವಂಶವೃಕ್ಷ ಸರಿಯಾಗಿದೆ ಎಂದು ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಿ ಹೇಳಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ.

ನಾನು ಹಾಜರುಪಡಿಸಿರುವ ಕ್ರಯ ಪತ್ರದಲ್ಲಿ ತೋರಿಸಿರುವ ಆಸ್ತಿ ಪಿತ್ರಾರ್ಜಿತವಾಗಿ ಖರೀದಿಸಿದ ಆಸ್ತಿ ಎಂದು ನಮೂದು ಇದೆ ಎಂದರೆ ಸರಿ. ಅವರಿಗೆ ಪಿತ್ರಾರ್ಜಿತವಾಗಿ ಹೇಗೆ ಆಸ್ತಿ ಬಂತು ಎಂದು ತಿಳಿದುಕೊಳ್ಳಲು ನನಗೆ ತೊಂದರೆ ಇರಲಿಲ್ಲ. ವಾದಿಗಳು ಮತ್ತು ಪ್ರತಿವಾದಿ 1 ಮತ್ತು 2 ರವರ ಯಾವುದೇ ಭಾಗವಾಗಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಆ ಕಾರಣ ನಾನು ಖರೀದಿಸಿರುವ ಆಸ್ತಿಯಲ್ಲೂ ಸಹ ವಾದಿಗಳಿಗೂ ಸಹ ವಿಭಾಗದ ಹಕ್ಕು ಇದೆ ಎಂದರೆ ಸರಿ.

The said admission is not occasional and stray admission, because continuously D.W.2 has deposed evidence regarding the relationship of the plaintiffs with Marappa, non-division of the schedule properties during the lifetime of Marappa etc. D.W.1 also not denied the relationship.

17. On behalf of the defendants, 13 documents were marked. Ex.D.1 is the registered original sale deed dated 05.12.2005. Ex.D.2 is the registered sale deed dated 21.03.2007. The contention of the defendants that, the said properties were sold by the defendants No.1 and 2 in favour of the defendant No.5, subsequently in favour of 6th defendant for bonafide intention, that is to accumulate the amount for medical expenses of Basavaraju. Ex.D.3 is the R.T.C. of Sy.No.801/2. The said property is the item No.6 of schedule property. The name of Shivapadu means the 6th defendant can be seen in the R.T.C. D.Ws.1 and 2 especially D.W.1 has deposed the adverse evidence to his own defence. Therefore, the contents of Exs.D.1 to 3 and oral evidence create inconsistent and such inconsistency shall not be allowed to believe as true. Suppose the defendants No.1 and 2 sold items No.5 and 6 properties, definitely they would have deposed such evidence. Ex.D.4 is the tax paid receipt. Exs.D.5 and 6 two patta books standing in the name of Basappa S/o Patel Lingaiah and Shivapadu S/o Puttabasamma, pertaining to the property

of Sy.No.801/2. Therefore, the materials on record show that the schedule properties are undivided family properties of the plaintiffs and defendants and no partition took place during the lifetime of Marappa. Though the plaintiffs are not in possession of the schedule properties, but their possession has to be presumed as joint possession till division of the schedule properties, because they are the joint family members. Hence, **issues No.1 and 2** are answered **in the affirmative**.

18. **Issues No.3 to 5, Addl. Issue No.1 framed on 30.08.2023 & Addl. Issue framed on 14.02.2024:** These issues are taken together for discussion. Issue No.3 puts burden upon the plaintiffs to prove that the sale deeds dated 27.08.2011, 05.12.2005 and 21.03.2007 are not binding on them. The defendants No.5 and 6 have been asked to prove that the defendants No.1 and 2 have sold out the item No.6 property for family necessities and they are the bonafide purchasers of the schedule properties. Under a Hindu Law a bonafide purchaser is an individual

who buys joint family property in good faith for valuable consideration and without any notice, actual or constructive notice of existing claims or disputes over the property. To qualify and retain the property against the challenges from other family members, the purchaser must make several rigorous legal criteria. The buyer must make reasonable enquiries into the sale and the authority of the seller. The purchaser must verify that the sale was necessary for the family's survival to clear debts or for the benefit of the estate, such as funding of daughters marriage or essential property maintenance etc. While buyers are not required to track exactly how every rupee of sale proceed was spent, he must establish that a clear link exists between the sale and a recognized valid legal necessity. If the purchaser acts in good faith and satisfies these conditions, his position may be considered as bonafide purchase of property of joint family. However, buyer is aware of existing dispute, fails to perform due diligence or purchases the property without a legal family necessity, he will not be considered as a "bonafide

purchaser” and other coparcener can invalidate the same. But in the present matter though defendant No.5 claims to be a bonafide purchaser, but the evidence of D.Ws.1 and 2 definitely dilutes their contention. The contested defendants means the purchasers of items No.5 and 6 have failed to prove that the buyer complied all the necessary and legal necessities before purchase of the property. There is no evidence on record to show that there is no knowledge of dispute and existing right of the plaintiffs over the schedule properties at the time of sale transaction. Apart from that, the defendants have clearly admitted the right of the plaintiffs over the schedule properties including sold out properties. Hence, purchasers cannot be treated as bonafide purchasers of the schedule properties.

19. The burden of proof whether transaction is for legal necessity, benefit or indispensable duty is on the alienee. However, what is the alienee is required to prove is either there was an actual need or that he made proper and reasonable enquiries as to the existence of needs and

acted honestly. It is not necessary for him to show that every bit of consideration which he advanced was actually applied for meet legal necessities. As per Hindu Law, kartha can alienate the joint family properties for legal necessities, but such alienation shall not be for illegal purpose. Suppose one of the coparceners being the head of the family means kartha alienated the property such alienation can be protected, if it is proved for bonafide purchase, then other coparcener cannot claim partition over the sold out property, if it is for bonafide purpose. But in the present matter the defendants have failed to prove the same. Hence, **issues No.3 to 5, additional issue No.1 framed on 30.08.2023 and additional issue framed on 14.02.2024** are answered **in the negative**.

20. **Issue No.6:** The contention of the defendants that the suit of the plaintiffs has to be dismissed for non-joinder of necessary parties. But the plaintiffs have impleaded and brought suit against all the legal heirs of Marappa and his children. More than that the defendants

have not shown the list of missed persons in the suit saying that those persons must be impleaded as necessary parties. Therefore, suit of the plaintiffs cannot be dismissed for the reason of non-joinder of necessary parties. Hence, **issue No.6** is answered **in the negative**.

21. **Addl. Issues No.2 and 3:** The contention of the defendants that the plaintiffs have not properly valued the suit and court fee paid is insufficient. However, the valuation slip clearly goes to show that the plaintiffs paid sufficient court fee as per Section 35(2) of Karnataka Court Fees and suit Valuation Act. Therefore, without much discussion, it may be held that the said contention of the defendants on this question is not proper. Therefore, **additional issues No.2 and 3** are answered **in the affirmative**.

22. **Addl. Issue No.4:** The defendants have taken contention that the suit of the plaintiffs is barred by limitation. The question of limitation does not arise for

consideration to answer against the plaintiffs, because the plaintiffs are not parties in Exs.D.1 and 2 sale deeds. Therefore, the said sale deeds shall not be used against them to count the time limitation saying that the plaintiffs have to file the suit well within the stipulated period from the date of knowledge of existence of Exs.D.1 and D.2 sale deeds. But as mentioned supra, the plaintiffs are not the parties of the sale deeds. Hence, the question of limitation does not arise. It may be further explained that they requested defendants No.1 and 2 for partition in the year of 2022 and suit was filed well within time. Hence, the question of limitation does not arise to decide the rights of the plaintiffs. Hence, **additional issue No.4** is answered **in the negative**.

23. **Issues No.7 to 9:** The plaintiffs and defendants No.1 and 2 are the members of the joint family. The learned counsel for the plaintiffs argued to decree the suit by ordering 4/5th share in the schedule properties. The plaintiffs No.1 to 4 are the legal heirs of Puttathayamma,

plaintiffs No.7 to 12 are the children of Mangamma, 13th defendant is the daughter of Doddakempanna. Rest of the children of Doddakempanna and Sannamma died long back. The plaintiffs are the legal heirs of children of Doddakempanna, then the legal heirs of deceased children of Doddakempanna will have not get equal share along with surviving daughter by name Shivamma. The schedule properties are to be divided into five shares among the children of Doddakempanna, Shivamma will have get one share out of five shares and other deceased children by name Puttathayamma, Rathnamma, Mangamma and Basavaraju are also entitled to get 1/5th share. The legal heirs of the deceased children of Doddakempanna may claim share from the share of their respective mother or father. Hence, the direct surviving member Smt. Shivamma - 13th plaintiff will have 1/5th share, remaining legal heirs of deceased children of Doddakempanna will have get share from their deceased father or mother (from the children of Doddakempanna). Hence, **issue No.7 and**

9 are answered **in the affirmative** and **issue No.8** is answered accordingly.

24. **Issue No.10:** The plaintiffs also prayed to grant mesne profits. “Mesne” is an old French word that meant “intermediate”. The underlying principle based on which the Code of Civil Procedure, 1908 functions is “Ubi Jus Ibi Remedium” that signifies “where there is a right, there is a remedy” The concept of Mesne Profits has been developed from this principle because it is the law of nature to provide the right to compensation where there has been an infringement or breach of a legal right. When this claim arises, the law acts as a shield to protect the original owner of the property. Mesne Profits of property has been defined under Section 2 (12) of C.P.C., as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. The scope of Mesne Profits

is very wide in its own circle. Until now it is clear that Mesne Profits are granted on property but are restricted only to those profits which are derived by a person in wrongful possession of property belonging to another. The possession of the defendants over the suit schedule properties shall not be termed as unlawful possession, because they are also family members of the plaintiffs. Therefore, their possession over the suit schedule properties cannot be called as unlawful or illegal possession. The question of grant of mesne profits arises only when possession of the one person is defined illegal or unlawful possession. As discussed above, the possession of the defendant in the suit schedule properties is not illegal or unlawful. Hence, the plaintiffs are not entitled to get mesne profits. Hence, **issue No.10** is answered **in the negative**.

25. **Issue No.11:** In view of findings on above issues, this Court proceeds to pass the following:-

ORDER

Suit of the plaintiffs is decreed. The son and daughters of Doddakempanna and Sannamma are entitled to get 1/5th share each in the suit schedule properties.

No order as to costs.

Draw preliminary decree accordingly.

In view of the judgment of the Hon'ble Supreme Court reported in 2022 SCC Online SC 737 office to list the matter for taking steps under Order XX Rule 18 of C.P.C. on 16.09.2026.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 1st day of August 2026)

(Kamalaksha D.)

Senior Civil Judge, Nanjangud.

ANNEXURE

List of witnesses examined for the plaintiff :-

P.W.1 - H.K.Shivananda

List of documents marked for the plaintiff :-

Exs.P.1 to 6-	Computerized R.T.Cs.
Ex.P.7	- Genealogy tree
Ex.P.8	- Copy of legal notice
Ex.P.9	- 2 postal receipts
Ex.P.10	- Postal acknowledgment
Ex.P.11	- Track consignment
Ex.P.12	- Certified copy of order in RRT No.17/2005-06
Ex.P.13	- M.R.extract
Ex.P.14	- Assessment extract of property No.505

List of witnesses examined for the Defendants :-

D.W.1	- Shivapadu
D.W.2	- M.Umashankar

List of documents marked for the Defendants:-

Ex.D.1	- Registered sale deed dated 05.12.2005
Ex.D.2	- Registered sale deed dated 21.03.2007
Ex.D.3	- R.T.C. extract of Sy.No.801/2
Ex.D.4	- Tax paid receipt
Exs.D.5 & 6-	2 Patta books
Ex.D.7	- Digital copy of sale deed dated 27.08.2011
Ex.D.8	- Digital copy of M.R.No.14/2017-18
Ex.D.9	- R.T.C. extract of Sy.No.27/3
Ex.D.10	- Digital copy of M.R.H.28/2020-21
Exs.D.11 to 13-	Tax paid receipts

**Senior Civil Judge,
Nanjangud.**