

KABR020022672017



Presented on : 11.10.2017
Registered on : 11.10.2017

IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE,
BENGALURU RURAL DISTRICT, BENGALURU.

PRESENT

Smt.MAMATHA SHIVAPUJI B.A.L., LL.M.,
IV Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.

Dated this the 14th Day of July 2026

ORIGINAL SUIT NO.1382/2017

PLAINTIFF/S : 1. Kum : Swathi Reddy S
D/o M. Santhosh Reddy
Aged about 22 Years,
2. Kum : Sandhya Reddy S
D/o M. Santhosh Reddy
Aged about 19 Years,
3. Kum : Spoorthi Reddy S
D/o M. Santhosh Reddy
Aged about 11 Years,

Sl. No.3 is minor,
Rep. By her natural
guardian, mother
Smt. B.L. Sujatha
W/o M. Santhosh Reddy,
Aged about 42 Years,

All are r/at No.77,
'A' Type BDA Flats,
Dommalur,
Bengaluru – 560 071.

(By Sri.M.L.P., Adv)

V/s

- DEFENDANT/S:** 1. Sri. M. Mohan @ M. Ashok
S/o late B.V. Munireddy
Aged about 56 Years,
2. Kum : Sahana
D/o Sri. M. Mohan @ M. Ashok,
Aged about 20 Years,
3. Sri. M. Santhosh Reddy
S/o late B.V. Munireddy,
Aged about 45 Years,

All are r/at No.153,
Munireddy Building,
Anjaneya Temple Road,
Dommalur,
Bengaluru – 560 071.

4. M/s. Sreyas Samskruthi
A Reg. Partnership Firm having
its Office at Flat No.309,
Amrutha Residency,
Katha No.14, Post Office Road,
Doddanekundi,
Bengaluru – 560 037,
Rep. By its Partners.
5. Mr. Siva Prasad G
S/o Mr. Reddeppa G,
Aged about 33 Years,
One of the partners of
M/s. Sreyas Samskruthi,
6. Mrs. Shwetha A.N.
W/o Mr. Shashidhar S.K.,
Aged about 34 Years,
One of the partners of
M/s. Sreyas Samskruthi,
7. Mrs. Nagaramya Krishna Kunala
W/o Mr. P.V. Umamahesh,
Aged about 32 Years,
One of the partners of
M/s. Sreyas Samskruthi,
8. Mrs. Mallidi Varalakshmi
W/o Mr. Mallidi Rami Reddy,
Aged about 60 Years,
One of the partners of
M/s. Sreyas Samskruthi,

9. Mr. Sambangi Kiran,
S/o Mr. Sambangi, Arjunarao,
Aged about 38 Years,
One of the partners of
M/s. Sreyas Samskruthi,
10. M/s. Sai Purvi Infra Structures
A Registered partnership Firm
Office at No.245/4,
Gunjur Main Raod,
Gunjur Village, Varthur Hobli,
Bengaluru – 560 087

Represented by its Partners :

- a) Sri. Krishna. P
Aged about 43 Years,
S/o Sri. P. Muniswamy Naidu,
- b) P. Prabhakar Naidu
Aged about 39 Years,
S/o Sri. P. Yathirajulu Naidu,
- c) Sri. G. Siva Yogeswara Reddy
Aged about 43 Years,
S/o Sri. G. Kamalakara Reddy.

**(By Sri. R.K.S., Adv for D1 to 3, Sri.
B.V.N., Adv for D4 to 9)**

Date of institution of the suit	11.10.2017
Nature of the suit	Partition and Separate Possession

Date f the commencement of recording evidence	11.12.2023
Date on which the Judgment was pronounced	14.07.2026
Total duration	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 08 09 03

(MAMATHA SHIVAPUJI)
IV Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru

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J U D G M E N T

The plaintiffs have filed above suit against the defendants seeking for the relief of partition and separate possession of suit schedule properties and to declare the sale deed dated 28.09.2013 in respect of suit schedule property item no.1 as not binding on the plaintiffs and for Permanent Injunction against defendants no. 4 to 9 and for cost.

2. The plaint averments in brief are as under:

It is the case of plaintiffs that, plaintiff no.1 to 3 are the sisters and they are daughters of defendant no.3. defendant no.1 is the brother of defendant no.3, defendant no.2 is the daughter of defendant no.1. Plaintiffs and defendant no.1 to 3 are the members of Hindu Undivided Family. defendant no.4 is the partnership firm. Defendant no.5 to 9 are the partners of defendant no.4 and they are the subsequent purchasers of the suit schedule property item no.1. It is submitted that, the land in Sy.No. 11/1, new Sy.No. 11/3 which is a converted land, measuring 1 acre 5 guntas, land in Sy.No.12/1 measuring 16 guntas, land in Sy.No.12/2, measuring 7 guntas, land in Sy.No.15/2, new Sy.No. 15/2B measuring 1 gunta, land in Sy.No. 15/3, new no.15/3B totally measuring 1 acre 23 guntas, all the above properties are situated at Balagere Village, Varthur Hobli, Bengaluru East Taluk, which are the suit schedule properties herein. It is

submitted that, the suit schedule properties are the ancestral properties of plaintiffs and defendant no.1 to 3, originally belongs to one late Papamma W/o late Venkatareddy who is the grand mother of defendant no.1 and 3. It is submitted that, one B. V. Nanjareddy S/o late Venkatareddy who is the uncle of defendant no.1 and 3 had filed suit in OS.No. 2078/2005 for partition before II Addl. Senior Civil Judge, Bengaluru Rural District, against his brothers in respect of joint family properties along with the suit schedule properties of late Papamma W/o late Venkatareddy. Said suit was compromised and the suit schedule properties are fallen to the share of father of defendant no.1 and 3 namely late B. V. Munireddy and his family. Ever-since the date of said partition decree, the plaintiffs, defendant no.1 and 3 and sisters of defendant no.1 and 3 are in joint possession and enjoyment of the suit schedule properties. Subsequently, the plaintiffs, defendant no.1 and 3 and their sisters entered into registered

family Partition Deed dated 21.03.2013. Under the said partition deed, the plaintiffs, defendant no.1 and 3 and their sisters are the absolute owners in possession and enjoyment of their respective shares. The plaintiffs, defendant no.1 to 3 have paid up to date tax to their properties. Thereafter, the plaintiffs, defendant no.1 to 3 are cultivating the suit schedule properties as a joint family members constituted under Hindu Joint Family. All the revenue records of the suit schedule properties stands in the name of plaintiffs and defendant no.1 to 3.

3. It is further submitted that, on the basis of RTC and mutation, defendant no.1 to 3 have sold suit schedule property item no.1 in favour of defendant no.4 to 9 under sale deed dated 28.09.2013. The defendant no.4 to 9 have changed the revenue records and converted item no.1 of the suit schedule property. However, there was no partition

effected in the joint family of plaintiffs and defendant no.1 to 3 till today. There were some difference of opinion among the joint family, hence the plaintiffs demanded to effect the partition of the suit schedule properties for their share. But the defendant no.1 to 3 colluded in the act of selling the suit schedule property item no.1 in favour of defendant no.4 to 9 with malafide intention to deprive the plaintiffs legitimate rights over the suit schedule properties. The alleged transaction by defendant no.1 and 3 and defendant no.4 to 9 came to the knowledge of plaintiffs in the month of August 2017, they protested the said act of defendant no.1 and 3 and demanded the partition of suit schedule properties. But defendant no.1 to 3 declined the same. The plaintiffs are entitled for their share over the suit schedule property. Plaintiffs got issued legal notice dated 03.09.2017 to defendant no.3 seeking for Partition and separate possession in respect of the suit schedule properties. Said legal notice

was received by defendant no.3, but he has not replied for the same and nor effected the partition. The cause of action for the above suit arose on the date of sale deed dated 28.09.2013, but the said fact came to the knowledge of plaintiffs in the month of august 2017. The legal notice notice issued on 03.09.2017 calling to effect the partition. Hence, the plaintiffs have filed the present suit.

4. After service of suit summons, defendant No.1 to 3, 4 to 9 have appeared through their counsel and filed separate written statements. Subsequently, defendant no.10 got impleaded in the above suit and he has filed separate written statement.

5. The defendant no.1 to 3 in their written statement have contended that, the suit filed by the plaintiffs is not maintainable either under law or on facts. However, the

defendant no.1 to 3 have admitted the relationship of plaintiffs with them and also admitted that, the plaintiffs and defendant no.1 to 3 are the members of Hindu Undivided Joint Family. They also admitted that, defendant no.4 is the partnership firm, represented by its partners who are defendant no.5 to 9. The defendant no.1 to 3 have also admitted that, the suit schedule properties are the ancestral properties of plaintiffs and defendant no.1 to 3 originally belong to the grand mother of defendant no.1 and 3 namely Papamma W/o Venkatareddy. They have also admitted that, one B.V. Nanjappareddy had filed suit for partition in OS.No. 2078/2005 against his brothers and sisters. It is also admitted that, said suit ended up in compromise petition under which the suit schedule properties are fallen to the share of father of defendant no.1 and 3 namely B.V. Munireddy. It is not disputed by defendant no.1 to 3 that, the plaintiffs, defendant no.1 and 3 and their sisters are joint

owners in possession and enjoyment of the suit schedule properties. It is also not disputed by the defendant no.1 to 3 that, plaintiffs, defendant no.1 and 2 and their sisters entered in to registered family partition dated 21.03.2013 in which the plaintiffs and defendant no.1 and 3 and their sisters became absolute owners of their respective shares. They have up to date tax to the suit schedule properties. They have admitted that, after said partition, the revenue records mutated in the name of plaintiffs, defendant no.1 to 3 and they are cultivating the same. It is admitted that, the plaintiffs and defendant no.1 to 3 are entitled for equal right over the suit schedule properties. The defendant no.1 to 3 also admitted that, they have sold item no.1 of the suit schedule property in favour of defendant no.4 to 9 under registered sale deed dated 28.09.2013 in favour of defendant no.4 to 9. It is submitted that, defendant no.1 to 3 have sold item no.1 of the suit schedule property as absolute owners and the

plaintiffs, defendant no.1 to 3 have jointly given their consent to the sale of the above said land in favour of defendant no.4 to 9. Hence, the plaintiffs who are fully aware of the sale transaction cannot file the above suit. The defendant no.1 to 3 have denied the other allegations of plaintiffs in the plaint. They have submitted that, plaintiffs are very well aware of the fact of registered sale deed dated 28.09.2013. They have also admitted the issuance of legal notice by plaintiffs dated 03.09.2017. The cause of action mentioned in the plaint is imaginary, since the plaintiffs were very much aware of the transaction in favour of defendant no.4 to 9. Hence, the defendant no.1 to 3 have prayed to dismiss the suit filed by the plaintiffs.

6. The defendant no. 4 to 9 in their written statement contended that, the suit filed by the plaintiffs is not maintainable either under law or on facts. The plaintiffs have under valued the suit and Court Fee paid by plaintiffs is

insufficient. The suit is barred by law of limitation. It is submitted that, the defendants have purchased under developed converted property in Sy.No.11/3 situated at Balagere Village, Varthur Hobli, Bengaluru East Taluk, measuring 1 acre 5 guntas from M. Mohan @ M Ashok, Kum : Sahana D/o M. Mohan @ M Ashok, Santhoshreddy father of plaintiffs who represented himself and plaintiffs. Hence, the contention of plaintiffs that, property is joint family property is far from truth. The defendant no.4 to 9 are lawful owners of the suit schedule property item no.1 since the date of sale deed on 28.09.2013. Since it is the plaint averments that, the suit schedule properties were acquired by the plaintiffs, defendant no.1 and 3 on the basis of compromise decree in O.S.No. 2078/2005 and the registered Partition Deed dated 21.03.2013, the suit schedule properties are not ancestral properties. The plaintiffs are not members of Hindu Undivided Joint Family of late Papamma, they have no right in

respect of the suit schedule properties which are not co-parcenary properties. The sale of defendants property was well within the knowledge of the plaintiffs and the suit is filed only to take undue advantage of due process of law. The suit is a collusive suit filed by plaintiffs and defendant no.1 to 3 against the defendant no.4 to 9. The defendant no.4 to 9 have admitted the relationship of plaintiffs and defendant no.1 to 3. However, they have denied that, the plaintiffs and defendant no.1 to 3 are the members of Hindu Undivided Joint Family. Defendant no.4 to 9 admitted that, defendant no.4 is the partnership firm represented by its partner who are the defendant no.5 to 9. The defendant no.4 to 9 submitted that, the origin of the suit schedule property in the name of late Papamma is not known to them. Further, they have also stated that, they do not know about the proceedings held in OS.No. 2078/2005. The defendant no.4 to 9 have denied the other plaint averments and allegations

made by plaintiffs in the plaint and prayed to dismiss the suit of the plaintiffs. Subsequently, the defendant no.4 to 9 have amended their written statement and inserted para no.6 (a) and 6 (b) in the written statement in which, they have contended that, plaintiff no.1 to 3 represented by their mother B. L. Sujatha who is the wife of defendant no.3. The plaintiffs are residing with defendant no.3, but they have given wrong address in the plaint cause title. Defendant no.3 is in collusion with plaintiffs in filing the present suit. The suit schedule property was exclusive property of late Papamma and it is mother's property and it was not joint family property, as such the property was succeeded by her son as heir in successor and not as a member of the joint family. Therefore, property rights were conferred upon him. Late Papamma's property is available for alienation by defendant no.3 and his brothers who are plaintiffs in the OS.No. 2078/2005 seeking for partition which came to be

compromised. It is submitted that, merely because the names of plaintiffs are indicated as defendant no.19, 20 and 21 represented by natural guardian, the defendant no.1, plaintiffs have no right to claim property of late Papamma which succeeded by defendant no.1 on a sole contention raised with regard to partition document. There were other properties also in the terms of the settlement. The property of Papamma is available for it being alienated also. The plaintiffs cannot rely on the document of partition. Therefore, document of partition merely including the names of plaintiffs represented by defendant no.1, plaintiffs cannot exercise their independent exclusive right to maintain the suit for Partition and separate possession in respect of the immovable properties. It is submitted that, the plaintiffs are dis-entitled to file a suit against their father during his life time. The succession rights cannot be derived on the basis of cause of action. There is no cause of action to maintain the

suit during the life time of defendant no.3. In sale deed dated 28.09.2013, all the plaintiffs are represented by defendant no.1 and as joined in execution of registered sale deed, not only in his individual capacity but also as a branch himself along with plaintiffs. The suit schedule properties is acquired in a family partition dated 21.03.2013. The sale has been made to meet the legal necessities and also to acquire suitable alternative property. The sale consideration which is received has been benefited to the plaintiffs and it remained unchallenged. The father of plaintiffs has right to alienate the joint family property. The father has represented his minor children to sell the joint family property. The children have no right to question alienation. Hence, the plaintiffs are dis-entitled to maintain a suit for Partition and separate possession. Hence, the defendant no.4 to 9 have prayed to dismiss the suit filed by the plaintiffs.

7. The defendant no.10 in his written statement has submitted that, the suit filed by the plaintiffs is not maintainable either under law or on facts. Defendant no.10 further contended that, the land in Sy.No. 11/1 measuring 1 acre 30 guntas was owned by Papamma who had acquired the same under Partition Deed dated 25.02.1939. She has sold 25 guntas out of 1 acre 30 guntas in favour of Narayanareddy under sale deed dated 17.02.1960 and retained 1 acre 5 guntas which is the absolute property of Papamma. Said Papamma died on 30.10.1987 leaving behind her children as legal heirs. One of the son of Papamma namely B.V. Nanjareddy filed OS.No. 2078/2005 against his brothers and sisters in respect of 1 acre 5 guntas in Sy.No. 11/1 and also other properties. Said suit has been compromised by filing a compromise petition on 27.10.2009. Under the said compromise, 1 acre 5 guntas in Sy.No. 11/1 and land in Sy.No.12/1, Sy.No.12/2, Sy.No.12/3, Sy.No.15/2,

Sy.No. 9/1, Sy.No.9/2 and Sy.No.9/3 of Balagere Village jointly allotted to the share of B.V. Munireddy's family members. Mutation has been effected as per the said partition decree. Subsequently, the Munireddy family members including plaintiffs and defendant no.1 to 3 have entered in to registered Partition Deed dated 21.03.2013 under which, the land in Sy.No. 9/1 measuring 16 guntas, Sy.No. 9/2 measuring 25 guntas, Sy.No.9/3 measuring 4 guntas, totally measuring 1 acre 5 guntas, land in Sy.No. 11/3 measuring 1 acre 5 guntas, Sy.No.12 / 1 measuring 16 guntas, Sy.No.15/2B measuring 1 gunta, Sy.No. 15 / 3B measuring 1 gunta, totally measuring 1 acre 23 guntas, situated at Balagere Village, Varthur Hobli, Bengaluru East Taluk, were allotted to the share of defendant no.1 to 3 and plaintiff herein. The plaintiffs and defendant no.2 have no right, title or interest over the said property. However, it appears that, they have been made as parties in order to avoid future complications.

It is further submitted that, land in Sy.No.11/3 measuring 1 acre 5 guntas converted into non agricultural residential purpose. The defendant no.1 to 3 and plaintiffs sold the said converted land measuring 1 acre 5 guntas in Sy.No. 11/3 in favour of defendant no.4 under sale deed dated 28.09.2013. At the time of registration of sale deed, the plaintiffs were minors and the defendant no.3 represented the plaintiffs as father and guardian. The katha has been effected in the name of defendant no.4 and he is peaceful possession and enjoyment of the said property by paying tax to the concerned authority. Subsequently, defendant no.4 entered into Joint Development Agreement dated 16.04.2021 with defendant no.10 for construction of multi-storied apartment in Sy.No. 11/3 measuring 1 acre 5 guntas. Defendant no.4 executed GPA dated 16.04.2021 and put the defendant no.10 in possession of the above property. The plaintiffs and defendant no.1 to 3 have sold 1 acre 5 guntas in Sy.No. 11/3

to defendant no.4 for their legal and family necessities and also to purchase the alternative land. Plaintiffs were parties to the sale deed dated 28.09.2013 in favour of defendant no.4. hence, the said sale deed is binding on the plaintiffs and plaintiffs have no right and interest over the property purchased by defendant no.4. it is submitted that, prior to execution of sale deed in favour of defendant no.4, the defendant no.1 to 3 and plaintiffs have entered into Joint Development Agreement with one builder for construction of residential Villa in Sy.No. 9/1, 9/2 and 9/3 totally measuring 1 acre 5 guntas. In the said Joint Development Agreement also defendant no.3 has signed on behalf of plaintiffs, since they were minors at the time of execution of Joint Development Agreement. Subsequently, plaintiffs and defendant no.1 to 3 entered into Partition Deed dated 18.09.2021 in respect of partition of Villa houses constructed on the Sy.No. 9/1, 9/2 and 9/3. In the said partition, plaintiffs have acknowledged

the sale of converted land in Sy.No. 11/3 and same is not available for partition. They have also declared that, they would not make any claim over the schedule properties and other properties belonging to each of the parties. The plaintiffs have accepted and confirm the act of defendant no.3 by entering into Joint Development Agreement. Plaintiffs cannot pick and choose the act of defendant no.3 by accepting in one transaction and disputing in another transaction. The plaintiffs have not included Sy.No. 9/1, 9/2 and 9/3 in the present suit, but they have filed present suit in respect of property purchased by defendant no.4 and some other properties. The defendant no.3 and plaintiffs are residing together. Defendant no.3 has performed the marriage of plaintiff no.1 by incurring all expenses. Hence, the present suit is a collusive suit only to defeat right of defendant no.4 and harass him. Plaintiffs were parties in sale deed dated 28.09.2013 executed in favour of defendant no.4, possession

was delivered to him. Hence, the plaintiffs have to seek relief of cancellation of sale deed. Hence, the suit is barred under law. There is no cause of action against defendant no.4 to 10. It is submitted that, defendant no.1 is the owner of item no.1 of the suit schedule property who has entered into Joint Development Agreement with defendant no.10 for construction of apartment. Plaintiffs are not in possession of item no.1 of the suit schedule property. The property purchased by defendant no.10 is already converted into non agricultural residential purpose and coming under BBMP. Katha has been issued by the BBMP. The plaintiffs have not valued the suit properly and not paid the proper Court Fee. The plaintiffs have suppressed the material facts before this court. Plaintiffs have not included the other properties which are owned and possessed by plaintiffs and defendant no.1 to 3. The plaintiffs have filed the suit for illegal gains and harass the purchasers of the property. The defendant no.4 has

purchased the item no.1 of the suit schedule property from plaintiffs and defendant no.1 to 3 under sale deed dated 28.09.2013 for the family and legal necessities to perform the marriage of plaintiff no.1 and for the benefit of minor plaintiffs and to purchase alternative property hence the said sale deed is binding on the plaintiffs. Defendant no.3 has head of the family has every right to sell the properties for legal and family necessities and the said sale shall be binding on them. Plaintiffs are bound by the act of the defendant no.3. hence defendant no.10 has prayed to dismiss the suit filed by the plaintiffs.

8. Based on the above pleadings, my predecessor in office has framed the following :

ISSUES

1. Whether plaintiffs prove that themselves and defendant no.1 to 3 are in joint and constructive possession of suit property and no division is taken place, in the

result registered sale deed dated 28.09.2013 of second defendant does not bind that 1/6th share ?

2. Whether plaintiffs further prove the succession is open to them to seek partition from the property of their grand mother Papamma W/o late Venkatareddy that too when the third defendant father is alive ?
3. Whether plaintiffs prove that they paid proper Court Fee ?
4. Whether plaintiffs are entitled each 1/6th share as sought in the suit ?

Addl. Issues dated 20.06.2024 :

1. Whether the defendant no.10 proves that the suit of the plaintiffs is bad for non inclusion of other properties and other persons ?
2. Whether the defendant no.10 proves that the suit of the plaintiffs is not maintainable as pleaded in para no.30 of written statement ?

3. Whether the defendant no.10 proves that the suit of the plaintiffs is barred by law of limitation ?

9. In order to prove the plaintiffs case, plaintiff no.2 has filed chief-examination by way of affidavit and examined herself as PW.1 and got marked the documents at Exs.P1 to 41 documents. On the other hand, Managing Partner of defendant no.4 has filed chief examination by way of affidavit and examined himself as DW.1 and marked for defendants at Ex.D-15 to Ex.D21. Ex.D1 to Ex.D-14 are confronted and marked through P.W-1.

10. Heard arguments by the plaintiffs counsel. The plaintiffs counsel has relied upon the following citations :

- 1) (2020) 9 SCC 1 - (Vineeta Sharma Vs. Rakesh Sharma & Others)
- 2) (2018) 3 SCC 343 - (Danamma @ Suman Surpur Vs. Amar)

3) (2002) 1 SCC 178 - (Madhegowda (dead) by Lrs
Vs. Ankegowda (dead) by Lrs.

11. Heard arguments by the defendants counsel.

Defendant No.4 to 9 Counsel relied upon following Citations ;

1) AIR 1996 SC 2371 - (Sri. Narayanbal Vs. Sridhar
Sutar)

2) AIR 2018 KAR 119 - (Basavanthappa Vs.
Basavanneppa)

3) AIR 2022 SC 2596 - (Munnidevi Vs. Rajendra @
Lallu Lal)

4) (2021) 19 SCC 263 - (Beereddy Dasarathrami
Reddy Vs. M. Manjunath)

5) (1977) 3 SCC 99 - (V.Tulasamma Vs. Sesha Reddy)

6) RFA No.100017/2018 - (Puttavva Vs. Reshma &
Others)

7) AIR 1966 SCC 405 - (Bharat Singh & Others Vs. Mst.
Bhagirathi)

8) AIR 1986 SC 1753 - (Commissioner of Wealth Tax,
Kanpur Vs. Chander Sen Etc)

9) AIR 1987 SC 558 - (Yudhister Vs. Ashok Kumar)

10) 2017 (2) AKR 209 - (Shakunthala Mallikarjuna
Balikai Vs. Basavaraj Basavanannepa Sirigeri)

- 11) RFA No.1768 /2025 -(Smt. Kasthuri Vs. Sri. R. Devaraj & Others)
- 12) Civil Revision Petition No.470/2023 - (Sri. B.S. Jayaram Vs. Smt. B.R. Swetha & Others)
- 13) ILR 2007 Kar 339 - (Aralappa Vs. Jagannath & Others)
- 14) ILR 1998 Kar 681 - (Tukaram Vs. Samhaji & Others)
- 15) 2011 (4) KCCR 2461 - (G.M. Mahendra Vs. G.M.Mohan)
- 16) RSA No.466/2009 - (Elizabeth Vs. Mariyamma)
- 17) AIR 1996 SC 2371 - (Narayan Bal &Others Vs. Sridhar Sutar & Others)
- 18) 2021 (19) SCC 263 -(Beereddy Dasaratharami Reddy Vs. M. Manjunath)
- 19) RSA No.1846/2016 - (Vasanthmma & Others Vs. G. R. Mohan & Others)
- 20)(2012) 12 SCC 133, Civil Appeal No.6342/2012 (V. Chandrashekar Vs. The Administrative Officer & Others)
- 21) 2005(5) KLJ (Srinivas Jagidar Vs. The Commissioner, BDA
- 22) AIR 1958 Mad 287 (K.P.M. Aboobkar Vs. K. Kunhamoo & Others)
- 23) AIR 1977 Kar 99 - (Chikkatharaiah Vs. Chikkahuchaiah)

24) (1986) 3 SCC 567 (Commissioner of Wealth Tax, Kanpur & Others Vs. Chander Sen & Others)

25) (1980) 4 SCC 22 (Shri. Manik Chand & Another Vs. Shri. Ramchandra S/o Chawiraj)

26) (1987) 1 SCC 204 (Yudhishter Vs. Ashok Kumar)

12. Perused the materials placed on record. My findings on the above Issues are as follows :

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

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

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

Issue No.4 : In the **Negative**

Addl. Issues dated 20.06.2024 :

Issue No.1 : In the **Affirmative**

Issue No.2 : In the **Affirmative**

Issue No.3 : In the **Affirmative**

Issue No.5 : As per the final

Order for the following;

REASONS

13. Issue Nos.1 and 2 :- All these Issues are taken together for discussion in order to avoid repetition of facts and reasons. In order to prove the plaintiffs case, plaintiff no.2 has filed chief examination by way of affidavit and examined herself as PW.1, re-iterating the plaint averments and got marked Exs.P-1 to Ex.P-41 documents. Ex.P.1 is the Death Certificate of Papamma. Ex.P.2 is the Birth Certificate of plaintiff no.1. Ex.P.3 is the Birth Certificate of PW.1 Ex.P.4 is the Birth Certificate of plaintiff no.3. Ex.P.5 is the Certified copy of registered partition deed dated 21.03.2013. Ex.P.6 is the Mutation register extract. Ex.P.7 is the Aakar Bandh. Ex.P.8 is the G - Tree. Ex.P.9 is the Copy of the legal notice dated 03.09.2017. Ex.P.10 is the Postal acknowledgment. Ex.P.11 to 38 are the RTC extracts. Ex.P.39 is the CC of sale deed dated 29.09.2013. Ex.P-40 is the Final decree in

O.S.No.2078/2005, Ex.P-41 is the Online copy of Joint development Agreement dated 16.04.2021

14. During cross-examination PW.1 deposed that, Munireddy is her grand father. Her father has acquired suit schedule property under partition in the year 2009. Munireddy has five children namely Mohan, Bhanumathi, Kanthamma, Santhosh and Balachandra. Said Balachandra has expired without marriage. She stated that, under the partition, her grand father was allotted with six schedule items. She stated that, her father was doing cement business and admitted that, he is also doing real estate business. PW.1 stated that, her father and mother are not in cordial relationship. But there is no divorce between her parents and her mother has not filed any civil suit against father of PW.1. PW.1 stated that, the residential address of her mother is house no.77, BDA Flat A Type, Dommalur. Said property has

been acquired by her mother from her grand mother. PW.1 admitted that, at the time of filing the suit, the plaintiffs are residing in the address shown in Ex.P.39. She stated that, at the time of filing the above suit, she was minor, hence her sister has given information to the counsel. PW.1 stated that, her sister is married in the year 2018 and residing at America. PW.1 admitted the photographs of marriage of her elder sister and they are marked as Exs.D.1 and 2. She deposed that, said marriage was performed by the elders along with her parents. She stated that, her mother has less knowledge about the suit schedule property. She admitted that, in the marriage invitation card, the name of her parents is mentioned and she identified the marriage invitation card which marked as Ex.P.3. PW.1 admitted that, Munireddy building is the name of her grand father. There are three floors in the said Munireddy building which belongs to father of plaintiffs, but she does not know that said building was

acquired by her father under partition. PW.1 admitted that, she is not claiming share in the said Munireddy building property. She also admitted that, there are some other properties belongs to the family and she cannot state the details of the properties. PW.1 admitted that, her father has informed her that, he has acquired the properties under partition. But there was quarrel about 1 year ago and at that time she had attained majority. PW.1 does not know that, site no.18 has been purchased by her parents jointly. PW.1 identified the name and photos of her parents in the sale deed and the same is marked as Ex.D4. PW.1 admitted that, Sy.No. 9/1, 9/2 and 9/3 are situated towards the western side of suit schedule property. She is not definite whether said properties were ancestral properties. She does not know that, the above three items of properties belong to Papamma, they are not ancestral properties. She admitted that, herself and her elders sister are parties to the Joint

Development Agreement dated 31.05.2013. She also admitted that, the property situated towards the western side of Sy.No. 9/1, 9/2, 9/3 has been given to Ovel Builders. She does not know that, in the said Joint Development Agreement, it is stated that, the properties belongs to Papamma. PW.1 admitted that, as per the Joint Development Agreement, her father has taken Villas on behalf of his minor children. PW.1 stated that, they have not objected for the land in Sy.No. 9/1, 9/2 and 9/3 belongs to Papamma, since they have got whatever they have right over the properties. The said Villas have not been transferred in the name of plaintiffs, but they are in the name of plaintiff's father. She does not know that, as per the Joint Development Agreement, 40 % of the Villas have been given to them. She admitted that, her father was doing all the money transactions. PW.1 admitted that, she has cordial relationship with her father and stated that, only for the reason of property she cannot make her father away from

her. She does not know that, her father is taking care of the properties belongs to Munireddy and Papamma. She stated that, her father had bad habits. PW.1 stated that, she does not know about the joint bank account of her parents at Federal Bank. She does not know that, amount has been transferred to the account of her mother. PW.1 admitted the Partition Deed which is marked as Ex.D.5. She admitted that, her address is mentioned as Munireddy building No.53, Anjaneya Temple road. PW.1 admitted that, properties of her grand mother Papamma have been partitioned in OS.No. 2078/2005. She stated that, the plaintiffs are shown as minors represented by guardian who is the father of plaintiffs to avoid future litigation. PW.1 stated that, plaintiffs have no objection for the properties allotted under Ex.D.5. She stated that, she has given two Villas for rent. She admitted that, the suit schedule properties were sold in order to purchase another properties. She stated that, she does not know that,

her father invested Rs.70,00,000/-. PW.1 stated that, she does not know how much amount has been allotted to the parties in Ex.P.39. PW.1 admitted that, Ex.P.6 is pertaining to several properties. She has not included all the properties since the plaintiffs have received their share in the said properties. She stated that, share in the suit schedule property has not been given to them. She stated that, there is no partition between plaintiffs and their father. She stated that, her father has bad habits and he has lost his properties. She does not know, whether her father had sold the properties for his personal use. PW.1 stated that, plaintiffs have sought share in the property allotted to their father. Her father has not given any reply notice. She admitted that, as on the date of Ex.P.39, the plaintiffs and their father were shown as residing Balagere Village, wherein the ancestral house belongs to Papamma is situated. PW.1 admitted that, the marriage of plaintiff no.3 is performed and in the marriage invitation card the address of

Muniredy building is mentioned. PW.1 identified Ex.D.6 marriage invitation card.

15. PW.1 during cross-examination by defendant no.10 counsel admitted that, there was a Joint Development Agreement between themselves and Global Developers and identified the Joint Development Agreement which is marked as Ex.D.7. She admitted that, as per Ex.D.5, they have entered into Partition Deed. She stated that, plaintiffs have not challenged the said Partition Deed, since plaintiffs and her father have effected partition orally. PW.1 identified her father signature in Ex.P.39 and marked as Ex.P.39(a). She stated that, on 11.02.2008 there was a Release Deed in favour of her father. She does not know that, her parents has three sites at Rainbow Layout. She does not know that, her parents have purchased site no.17 in Rainbow Layout. PW.1 identified the photo and signature of her mother in the sale

deed and same is marked as Ex.D.8 subject to objection by the plaintiff counsel. PW.1 further stated that, she does not know about the purchase of site no.9, site no.18 by her parents but she identified the name and address of her father. Hence, said sale deed are marked as Ex.D.9 to 14. She does not know about the house constructed and rented out by her parents. She does not know that, there is no income from the agricultural property of her father. She stated that, she does not know the reason for giving the property for Joint Development. She does not know that, suit schedule property was given for Joint Development in order to purchase the property in some other places. PW.1 denied other suggestions made by the defendants counsel.

16. On the other hand, defendant no.4 has filed chief examination by way of affidavit and examined himself as DW.1, re-iterating the contention taken in written statement

and got marked Exs.D-15 to Ex.D-21 documents. Ex.D.1 to Ex.D-14 are confronted and marked through P.W-1. Ex.D-1 & Ex.D-2 are the marriage photographs, Ex.D-3 is the Marriage Invitation Card. Ex.D-4 is the certified Copy of Sale deed dated 30.01.2015, Ex.D-5 is the certified Copy of Partition deed dated 18.09.2021, Ex.D-6 is marriage Invitation Card , Ex.D-7 is the certified Copy of Joint development Agreement dated 31.05.2013, Ex.D-8 is the Certified Copy of Sale deed dated 30.01.2015, Ex.D-9 is the Certified Copy of Sale deed dated 30.01.2015, Ex.D-10 is the Certified Copy of Sale deed dated 30.01.2015, Ex.D-11 is the certified Copy of release deed dated 11.02.2008,, Ex.D-12 is the certified Copy of Sale deed dated 02.07.2018, Ex.D-13 is the certified Copy of Sale deed dated 29.06.2019, Ex.D-14 is the certified Copy of Sale deed dated 10.02.2023, Ex.D-15 is the Letter issued by Public Information Officer & District register, Shivaji Nagar, Sub-Registrar Office, Bangalore with attachments, Ex.D-16 and 17

are the Building license, Ex.D-18 is the Payment Receipt, Ex.D-19 and 20 is the BBMP Tax paid receipts and Ex.P-21 is the Building Plan.

17. During cross-examination D.W-1 has deposed that he is working as a builder. In 2013, he started M/s. Sreyas Samskruthi Partnership to form a layout. He admitted that, on 16.04.2021, when the present suit is pending for consideration he has executed Joint Development Agreement in favour of defendant no.10. He admitted that, defendant no.10 is constructing apartment. He stated that, he knows defendant no.1 and 3. He does not know Papamma and Venkatappa had seven children. He admitted that, B. V. Munireddy had four children. The plaintiffs are the children of defendant no.3. DW.1 admitted that, suit schedule property originally belongs to Papamma. The plaintiffs and defendant no.1 to 3 are the legal heirs of Venkatappa. He

admitted that, OS.No.2078/2005 was filed by B.V.Nanjareddy son of Papamma, the suit schedule property was included in the said suit and compromise between the parties as per Ex.P.40. The allottees in the compromise petition have got revenue records in their names. The suit schedule property was in the joint name of Munireddy and his legal heirs. He does not that, suit schedule property is converted land and it is in the joint name of Munireddy and his legal heirs. DW.1 admitted that, at the time of compromise petition plaintiffs were minors. He knows about the Partition Deed dated 21.03.2013. He admitted that, the plaintiffs were given right in the suit schedule property in the said partition. The plaintiffs were minors as on the date of said partition. DW.1 stated that, he has not obtained permission for sale of suit schedule property on behalf of the minor plaintiffs but they have obtained legal opinion and same is not produced before this court. He stated that, no amount has been deposited

separately in the name of plaintiffs. DW.1 stated that, he does not know that, defendant no.1 and 3 are getting Rs.50,00,000/- rent from several buildings at Dommalur. DW.1 stated that, defendant no.1 and 3 had family necessity at the time of execution of sale deed. DW.1 stated that, he does not know that the property mentioned in sale deed dated 30.01.2015 is the self acquired property of the mother of plaintiffs. He stated that, defendant no.3 and his wife have purchased the properties out of the sale consideration received by him. He stated that, at the time of execution of sale deed in his favour, no rent was being received by the defendant no.3 and his wife. DW.1 denied all other suggestions put by the plaintiff counsel.

18. In this background and on perusal of evidence and documents produced by plaintiffs and defendants it is found that there is no dispute with regard to relationship of

plaintiffs and defendant No.1 to 3. Plaintiff no.1 to 3 are the sisters and they are daughters of defendant no.3. defendant no.1 is the brother of defendant no.3, defendant no.2 is the daughter of defendant no.1. It is not in dispute that the land in Sy.No. 11/1, new Sy.No. 11/3 which is a converted land, measuring 1 acre 5 guntas, land in Sy.No.12/1 measuring 16 guntas, land in Sy.No.12/2 measuring 7 guntas, land in Sy.No.15/2, new Sy.No. 15/2B measuring 1 gunta, land in Sy.No. 15/3, new no.15/3B measuring 01 guntas totally measuring 1 acre 30 guntas, all the above properties are situated at Balagere Village, Varthur Hobli, Bengaluru East Taluk, which are the suit schedule properties herein originally belongs to one late Papamma W/o late Ventkatareddy who is the grand mother of defendant no.1 and 3. P.W-1 has produced Ex.P-8 which is family tree of Papamma which reveals the details of legal heirs of said Papamma. As per Ex.P-1 said Papamma has expired on 16.10.1987. Ex.P-2 is the

Birth Certificate which reveals the date of birth of plaintiff No.1 on 27.10.1995, Ex.P-2 reveals the date of birth of plaintiff No.2 on 06.09.1999 and Ex.P-3 reveals the date of birth of plaintiff No.2 on 06.02.2006. Further P.W-1 has produced the Ex.P-11 to Ex.P-17 are the RTC extracts of Sy No.11/1 measuring 1 Acre 30 guntas in stood in the Papamma W/o Venkatappa and Narayana Reddy, Muniyappa. Ex.P18 to Ex.P-23 RTC extracts are in the name of Papamma and Shivareddy. Ex.P-24 to Ex.P-26 RTC extracts are in the name of Papamma and B.R.Shankar Reddy and Others. However the plaintiffs have not produced the title deeds and Mutation register in the name of Papamma in respect of the suit schedule properties.

19. It is not in dispute that one B. V. Nanjareddy S/o late Venkatareddy and Papamma who is the uncle of defendant no.1 and 3 had filed suit in OS.No. 2078/2005 for partition

before II Addl. Senior Civil Judge, Bengaluru Rural District, against his brothers in respect of joint family properties including the suit schedule properties of late Papamma W/o late Venkatareddy which came to be compromised and the suit schedule properties are fallen to the share of father of defendant no.1 and 3 namely late B. V. Munireddy and his family. In this regard P.W-1 has produced Ex.P-40 which is the Final Decree in O.S.No.2078/2005 which reveals that the said suit was filed by one Nanja Reddy S/o late Venkatareddy and Papamma against his brothers and sisters including the legal heirs of Late B.V.Munireddy who are defendant No.1 to 3 and plaintiffs herein under which Schedule B has been allotted jointly to legal heirs of Late B.V.Munireddy. In Ex.P-40 it is noticed that in the schedule B property allotted to legal heirs of B.V.Munireddy there are 03 Items of properties including the suit schedule properties.

20. According to plaintiffs, ever-since the date of said partition decree, the plaintiffs, defendant no.1 and 3 and sisters of defendant no.1 and 3 are in joint possession and enjoyment of the suit schedule properties. Subsequently, the plaintiffs, defendant no.1 and 3 and their sisters entered into registered family Partition Deed dated 21.03.2013. Under the said partition deed, the plaintiffs, defendant no.1 and 3 and their sisters became the absolute owners in possession and enjoyment of their respective shares and cultivating the suit schedule properties as a joint family members constituted under Hindu Joint Family. P.W-1 has produced Ex.P-5 which is the certified copy of the registered Partition deed dated 21.03.2013 entered between the legal heirs of Late B.V.Munireddy including the plaintiffs and defendant No.1 to 3 herein under which the C schedule properties with Item No.1 & 2 allotted jointly to plaintiffs and defendant No.1 to 3 herein. Item No.2 in the said C schedule of the Ex.P-5 partition

deed is the suit schedule property herein. However the plaintiffs have not included Item No.1 of the said C schedule of the Ex.P-5 partition deed in the present suit. It is noticed that the plaintiff were minors as on the date of Ex.P-5 partition deed dated 21.03.2013 and they were represented by their father/ natural guardian defendant No.3 herein. Ex.P-27 to Ex.P-38 are the RTC extracts standing jointly in the name of Defendant No.1 to 3, their sisters and plaintiffs in respect of Sy No.11//1 measuring 1 Acre 05 guntas. Plaintiffs have not produced the revenue records in respect of suit schedule properties land in Sy.No.12/1 measuring 16 guntas, land in Sy.No.12/2 measuring 7 guntas, land in Sy.No.15/2, new Sy.No. 15/2B measuring 1 gunta, land in Sy.No. 15/3, new no.15/3B measuring 01 guntas situated at Balagere Village, Varthur Hobli, Bengaluru East Taluk which are also part of suit schedule properties.

21. Plaintiffs claimed that they are the members of Hindu Undivided Family and the suit schedule properties are the ancestral properties of plaintiffs and defendant no.1 to 3. It is alleged by the plaintiffs that on the basis of RTC and mutation, defendant no.1 to 3 have sold suit schedule property item no.1 in favour of defendant no.4 to 9 under sale deed dated 28.09.2013. The defendant no.4 to 9 have changed the revenue records and converted item no.1 of the suit schedule property. However, there was no partition effected in the joint family of plaintiffs and defendant no.1 to 3 till today. There were some difference of opinion among the joint family, hence the plaintiffs demanded to effect the partition of the suit schedule properties for their share. But the defendant no.1 to 3 colluded in the act of selling the suit schedule property item no.1 in favour of defendant no.4 to 9 with malafide intention to deprive the plaintiffs legitimate rights over the suit schedule properties. The alleged

transaction by defendant no.1 and 3 and defendant no.4 to 9 came to the knowledge of plaintiffs in the month of August 2017, they protested the said act of defendant no.1 and 3 and demanded the partition of suit schedule properties. But defendant no.1 to 3 declined the same. Plaintiffs got issued legal notice dated 03.09.2017 to defendant no.3 seeking for Partition and separate possession in respect of the suit schedule properties. Said legal notice was received by defendant no.3, but he has not replied for the same and nor effected the partition. Ex.P-9 is the legal Notice dated 03.09.2012 issued to defendant No.3 by the plaintiff calling upon him to effect the partition over the notice schedule properties. Said notice has been served to defendant No.3 as per Ex.P-10 postal acknowledgment.

22. However, it is pertinent to note that admittedly plaintiff have not included in this suit, the Item No.1 of the C schedule

in Ex.P-5 partition deed, and they are not claiming share in the said properties. P.W-1 during cross-examination deposed that since the plaintiffs have received their share over the said Item No.1 of the C schedule in Ex.P-5 partition deed, they have not included said property in the suit. However plaintiffs have not whispered any thing about how and in what mode they took their share in the Item No.1 of the C schedule in Ex.P-5 partition deed. Plaintiffs have not produced any documents to establish above stand. Moreover P.W-1 admitted that there are other properties standing in the name of her father but plaintiffs have not claimed share in those properties.

23. On the other hand, the contention of defendant No.4 to 9 is that they have purchased the suit schedule property Item No.1 under sale deed dated 28.09.2013 defendant No.1 to 3, plaintiffs represented by their father/ natural guardian

defendant No.3 and they have become lawful owners of the suit schedule property item no.1 since the date of purchase. Defendants say that suit schedule properties are not ancestral properties and co-parcenary properties. The plaintiffs and defendant no.1 to 3 are not the members of Hindu Undivided Joint Family. Plaintiff no.1 to 3 represented by their mother B. L. Sujatha who is the wife of defendant no.3. The plaintiffs are residing with defendant no.3. Defendant no.3 is in collusion with plaintiffs in filing the present suit.

24. Defendants further contend that the suit schedule property was exclusive property of late Papamma, it is mother's property and it was not joint family property, as such the property was succeeded by her legal heirs and not as a member of the joint family. Suit in O.S.No. 2078/2005 seeking for partition by the son of Papamma which came to be compromised. Merely because the names of plaintiffs are

indicated as defendant no.19, 20 and 21 represented by natural guardian, plaintiffs have no right to claim property of late Papamma which succeeded by defendant no.3 under partition. The plaintiffs are dis-entitled to file a suit against their father during his life time. In sale deed dated 28.09.2013, all the plaintiffs are represented by defendant no.3 and joined in execution of registered sale deed, not only in his individual capacity but also as a branch himself along with plaintiffs. The suit schedule properties is acquired in a family partition dated 21.03.2013. The sale has been made to meet the legal necessities and also to acquire suitable alternative property. The sale consideration which is received has been benefited to the plaintiffs.

25. Defendant no.10 has contended that, defendant no.4 entered into Joint Development Agreement dated 16.04.2021 with defendant no.10 for construction of multi-storied

apartment in the suit schedule property and executed GPA dated 16.04.2021 and put the defendant no.10 in possession of the above property. Prior to execution of sale deed in favour of defendant no.4, the defendant no.1 to 3 and plaintiffs represented by their father have entered into Joint Development Agreement with one builder for construction of residential Villa in Sy.No. 9/1, 9/2 and 9/3 totally measuring 1 acre 5 guntas. Subsequently, plaintiffs and defendant no.1 to 3 entered into Partition Deed dated 18.09.2021 in respect of partition of Villa houses constructed on the Sy.No. 9/1, 9/2 and 9/3 which are not included in the present suit, but plaintiffs have filed present suit in respect of property purchased by defendant no.4 and some other properties. Plaintiffs are not in possession of item no.1 of the suit schedule property. The property purchased by defendant no.10 is already converted into non agricultural residential purpose and coming under BBMP. Katha has been issued by

the BBMP. D.W-1 has produced the building license marked at Ex.D-16, tax paid receipts Ex.D-19 & 20 in the name of defendant No.4. Ex.P-21 is the building Sketch in the name of defendant No.4 represented by GPA holder defendant No.10.

26. Now, the Issue for determination by this court is that whether succession is open to plaintiffs to seek for partition over the property of their grand mother Papamma when their father is alive?. In this regard it is appropriate to refer Section 14, Section 15 and Section 16 of the Hindu Succession Act 1956 which reads as under;

Section 14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu

by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Section 15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub section (1) in the order specified therein, but upon the heirs of the husband.

Section 16. Order of succession and manner of distribution among heirs of a female Hindu.—

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

27. Admittedly the suit schedule properties were originally belongs to Papamma as her absolute properties. Papamma died intestate on 16.10.1987 as per Ex.P-1 leaving behind her 07 children. Thereafter one of the son of Papamma namely

Nanjunda Reddy has filed suit for partition and separate possession over the properties left by Papamma including the suit schedule properties in O.S.No.2078/2008 against his brothers and sisters wherein the said suit is compromised between the children of Papamma. It is noticed that as on the date of compromise one of the son of Papamma namely Munireddy was no more. Hence the wife of Munireddy namely Saraswathamma and his 04 children including defendant No.1 and 3 were made as parties to the suit. However for the reason best known to the parties to the said suit the plaintiffs who were minors represented by their father defendant No.3 and the defendant No.2 who was also minor represented by her father defendant No.1 are also shown as parties in the said compromise petition. As per Section 15 of Hindu Succession Act as referred above the General rules of succession in the case of female Hindus dying intestate shall devolve firstly, upon the sons and

daughters (including the children of any pre-deceased son or daughter) and the husband. There is no reference of grand children of predeceased son or daughter. Therefore as one of son of Papamma namely Munireddy was no more at the time of compromise petition, his share has been devolved upon all his children including defendant No.1 & 3. Admittedly under the said compromise Final decree the suit schedule property and other two Items of property jointly allotted to the share of legal heirs of Late Munireddy. Since the Provision of Section 16 does not provide share to the grand children of predeceased son or daughter, that too when the son of predeceased son is alive, the plaintiffs and defendant No.2 have no role under the said Compromise Final decree. When the plaintiffs' great grandmother Papamma died intestate, succession opened in favour of her legal heirs as provided under Section 15(a). Defendant No.1 & 3 being sons of deceased Munireddy, inherited the suit schedule properties

and other items under Section 15 (a) and such inheritance is in their individual capacity. Properties inherited by defendant No.1 & 3 does not retain the character of joint family or coparcenary property to the plaintiffs.

28. The property which devolved upon the father on the demise of grandfather cannot be said to be Hindu Undivided Family property in the hands of father or his children. The plaintiffs being daughters of defendant No.3 did not acquire any right by birth in the suit schedule properties. Though the plaintiffs were made as parties to the compromise Final decree no share has been devolved to them since the succession will not be opened to the plaintiffs during the life time of their father. Hence no share has been devolved to plaintiffs under Ex.P-41 Compromise Final decree. When such being the case even in Ex.P-5 registered Partition deed dated 21.03.2013 entered between all children of Munireddy, no

share has been devolved to plaintiffs over any properties left by Papamma. Merely because names of plaintiffs is mentioned in the Ex.P-5 Partition deed, plaintiffs cannot be held to have acquired share over the properties left by Papamma which is not joint family property. The father of plaintiff during his life time has got absolute right to deal with the properties allotted to him under the said Ex.P-5 partition deed. As such defendant No.3 father of plaintiffs has executed sale deed in favour of defendant No.4 as per Ex.P-39. Mentioning of names of plaintiffs who were minors does not confer any right over the property sold by their father to defendant No.4. During the life time of father/defendant No.3 no portion of suit schedule property been devolved upon the plaintiffs. Hence the plaintiffs have no right to seek share over the suit schedule properties during the life time of their father, which has been already sold by defendant No.3 in favour of defendant No.4. The plaintiffs rights if any would

arise only upon succession opening to the estate of their father. The plaintiffs cannot invoke Section 6 of the Act to claim coparcenary rights or seek partition during the lifetime of the defendant No.3.

29. Further it is pertinent to note that even if plaintiffs said to have acquired right and share over the suit schedule properties under the Ex.P-40 Compromise Final Decree and Ex.P-5 Partition deed, the father of plaintiffs has sold item No.1 of suit schedule properties for the benefit of family and to purchase some other properties. Now the question is whether alienation by plaintiffs father without the permission of the court is valid?. In this regard it is appropriate to refer Section 8 of the Hindu Minority and Guardians Act which reads as follows.

Section 8. Powers of natural guardian.—

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

30. However, in the present case the father of plaintiffs was not required, to obtain permission from the court to sell the Item No.1 of the suit schedule property only for the reason of mentioning the names of plaintiffs in the Ex.P-40 and Ex.P-5. The permission of the court is necessary only when the natural guardian wants to sell the definite property of minor. Under Ex.P-40 and Ex.P-5 the properties are shown as allotted jointly to the defendant No.1 to 3 and plaintiffs, though succession is not opened to the plaintiffs. Plaintiffs so allotted share is indefinite. Previous permission of the court under Section 8 for disposing of the undivided interest of minor plaintiffs in the so called joint family property is not required. Hence the alienation made by defendant No.3 is not illegal and not opposed to Section 8 of Hindu Minority and guardians Act. Further when no right has been devolved to plaintiffs over the suit schedule property, then question of

seeking permission from the court as minor guardian to sell the property does not arise at all.

31. Further, So far as legal necessity is concerned, first of all succession is not opened for the plaintiffs to seek share over the suit schedule properties during the life time of their father. Even if it is considered that plaintiffs have share, father of plaintiffs sold the Item No.1 of the suit property for legal necessity. Defendant No.3 as head of the family has right to alienate the family property for legal necessity and for the benefit of estate and the same would be valid and it would bind the interest of all so called undivided members of the family i.e., minor plaintiffs. Existence of of legal necessary depends upon condition and state of the family. Defendant No.3 as head of the family enjoys wide discretion in his decision over existence of legal necessity and as to what way such necessity can be fulfilled. As such defendant No.3 has

sold the Item No.1 of the suit schedule property in favour of defendant No.4 to meet his legal and family necessities. P.W-1 during cross-examination has categorically admitted the marriage ceremonies of her sisters performed by her parents. She has also admitted the purchase of other properties by her father and mother after alienation of the Item no.1 of the suit schedule property. Hence it is clear as the alienation made by defendant No.3 under Ex.P-39 in favour of defendant No.4 is for the benefit of family and legal necessity and the same is binding on the plaintiffs.

32. From the above discussion, it is clear that plaintiffs have failed to prove that themselves and defendant no.1 to 3 are in joint and constructive possession of suit property. They also failed to prove that registered sale deed dated 28.09.2013 in favour of defendant No.4 by defendant No.3 is not binding on the plaintiffs. Further, from the provision of

law as referred above it is clear that the succession is not opened to plaintiffs to seek partition over the suit property belonged to their great grand mother Papamma during the life time of their father. The Citations relied upon by the counsel for defendant No.4 to 9 are aptly applicable to the case on hand. Therefore **Issue No.1 and 2** are answered in the **negative**.

33. Issue No.3 and Additional Issue No.2: The plaintiffs have valued suit under Section 7(2) of KCF & SV Act at Rs.80,00,000/- and paid the court fee under Section 35(2) and Section 26(c), 24 (d) of KCF & SV Act and paid total court fee of Rs.650/-. However admittedly under Ex.P-39 sale deed, the plaintiffs are also shown as executants represented by their father. Plaintiffs ought to have sought for cancellation of the said sale deed dated 28.09.2013 under Section 38 of KCF & S.V. Act. But the plaintiffs have sought to declare the said sale

deed as not binding on them. Hence the court fee paid by the plaintiffs is not correct and the suit is not maintainable as per Section 34 of the Specific relief Act, where the plaintiffs, being able to seek further relief than a mere declaration, has omitted to do so. Therefore **Issue No.3 answered in the Negative and Additional Issue No.2** are answered in the **Affirmative.**

34. Additional Issue No.1: It is pertinent to note that P.W-1 has admitted that under Ex.P-40 and Ex.P-5 there are other Items of properties allotted to defendant No.1 & 3. P.W-1 also admitted that her father and mother have acquired several other properties in their names. But the plaintiffs have not included all those properties in the present suit. Further Plaintiffs have not made her mother and subsequent purchasers of other items of properties allotted to defendant No.1 & 3 under partition deed, as parties in the suit. Hence

the suit of plaintiffs is bad for non inclusion of other properties and other persons. Accordingly **Additional Issue no.1** is answered in the **Affirmative**.

35. Additional Issue No.3: It is observed that the plaintiffs have challenged Ex.P39 sale deed dated 28.09.2013 wherein they are shown as minors represented by their father as natural guardian. As per Ex.P-2 the Plaintiff No.1 is born on 27.10.1995 and she is shown as aged about 17 years as on the said sale deed. Plaintiff No.1 has attained majority on 27.10.2013. As per Article 60 of the Limitation Act, limitation is 03 years from the date of attaining majority by the minor, to set aside a transfer of property made by the guardian. The plaintiffs ought to have filed the suit before 27.10.2016, since plaintiff No.1 to 3 jointly filed the suit and time will run against all the plaintiffs. But the suit is filed on 11.10.2017 which is

barred under law of limitation. Therefore **Additional Issue No.3** is answered in the **Affirmative**.

36. Issue No.4: In the light of above discussion, and answers given to above issues, it is clear that plaintiffs have failed to prove their case. As such plaintiffs are not entitled for any share over the suit schedule properties. Hence, **Issue No.4** is answered in the **Negative**. Based on the answers to all the above issues, I proceed to pass the following:

ORDER

The Suit filed by the plaintiffs against defendants is hereby dismissed with cost.

Office is directed to draw decree accordingly.

(Dictated to the stenographer directly on computer, corrected and pronounced in open court on 14th Day of July 2026)

(MAMATHA SHIVAPUJI)
IV Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.

ANNEXURE

List of witnesses examined for plaintiffs:

P.W.1 : Sandya Reddy. S

List of documents exhibited for plaintiffs:

Ex.P.1 : Death Certificate of Papamma.
Ex.P.2 : Birth Certificate of plaintiff no.1.
Ex.P.3 : Birth Certificate of PW.1
Ex.P.4 : Birth Certificate of plaintiff no.3.
Ex.P.5 : Certified copy of registered partition deed
dated 21.03.2013.
Ex.P.6 : Mutation register extract.
Ex.P.7 : Aakar Bandh.
Ex.P.8 : G – Tree.
Ex.P.9 : Copy of the legal notice dated 03.09.2017.
Ex.P.10 : Postal acknowledgment.
Ex.P.11 to 38 : RTC extracts.
Ex.P.39 : CC of sale deed dated 29.09.2013.
Ex.P-40 : Final decree in O.S.No.2078/2005,
Ex.P-41 : Online copy of Joint development Agreement
dated 16.04.2021

List of witnesses examined for defendants:

DW.1 : G. Siva Yogeswara Reddy

List of documents exhibited for the defendants:

Ex.D.1 : Ex.D.1 to Ex.D-14 are confronted and marked through P.W-1.

Ex.D-1 & Ex.D-2 : Marriage photographs,

Ex.D-3 : Marriage Invitation Card.

Ex.D-4 : Certified Copy of Sale deed dated 30.01.2015,

Ex.D-5 : Certified Copy of Partition deed dated 18.09.2021,

Ex.D-6 : Marriage Invitation Card,

Ex.D-7 : Certified Copy of Joint development Agreement dated 31.05.2013,

Ex.D-8 : Certified Copy of Sale deed dated 30.01.2015,

Ex.D-9 : Certified Copy of Sale deed dated 30.01.2015,

Ex.D-10 : Certified Copy of Sale deed dated 30.01.2015,

Ex.D-11 : Certified Copy of release deed dated 11.02.2008,,

Ex.D-12 : Certified Copy of Sale deed dated 02.07.2018,

Ex.D-13 : Certified Copy of Sale deed dated 29.06.2019,

- Ex.D-14 : Certified Copy of Sale deed dated 10.02.2023,
Ex.D-15 : Letter issued by Public Information Officer &
District register, Shivaji Nagar, Sub- Registrar
Office, Bangalore with attachments,
Ex.D-16 and 17 : Building license,
Ex.D-18 : Payment Receipt,
Ex.D-19 and 20 : BBMP Tax paid receipts and
Ex.P-21 : Building Plan.

(MAMATHA SHIVAPUJI)
IV Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.

Judgment pronounced in the open court,
vide separate order
O R D E R

The Suit filed by the plaintiffs against defendants is hereby dismissed with cost.

Office is directed to draw decree accordingly.

(MAMATHA SHIVAPUJI)
IV Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.