



**IN THE COURT OF THE CIVIL JUDGE & JMFC., AT
DEVADURGA**

:: PRESENT ::

Sri. RAFEEQ AHMED., B.A., L.L.B

Civil Judge & J.M.F.C., Devadurga

DATED THIS 01ST DAY OF JULY-2026.

O.S.No.61/2022

PLAINTIFFS:

1. Giridhar S/o Timmappayya Devaru, age 42 years, Occ:Agri, R/o: H.No.3-2-14, Gopalaswamy Street, Devadruga, Tq: Devadruga, Dist: Raichur.
2. Smt. Soumya W/o Ramesh Kadrapur(D/o Timmappayya Devaru, age 40 years, Occ:Household, R/o: H.No.3-2-14, Gopalaswamy Street, Devadruga, Tq: Devadruga, Dist: Raichur.
3. Smt. Latha W/o Timmappayya Devaru, age 60 years, Occ: Household, R/o: H.No.3-2-14, Gopalaswamy Street, Devadruga, Tq: Devadruga, Dist: Raichur.

(Rep. by Sri.B.S., Adv)

// VERSUS //

DEFENDANTS:

1. Timmappayya S/o Venkatavarapayya Devaru, age 68 years, Occ:Agri, R/o: H.No.3-2-14, Gopalaswamy Street, Devadruga, Tq: Devadruga, Dist: Raichur.
2. Sri. Srihari S/o Timmappayya Devaru, age 38 years, Occ: Software Engineer, R/o: H.No.3-2-14, Gopalaswamy Street, Devadruga, Tq: Devadruga, Dist: Raichur.
3. Mallikarjuna S/o Ranganatha, age 37 years,



Occ: Agriculture, R/o: H.No.3-2-14,
Gopalaswamy Street, Devadruga,
Tq: Devadruga, Dist: Raichur.

(D1 & 2 By Sri V.M.M.,Adv.,)
(D.3 By Sri B.S.D.,Adv.,)

Nature of the suit : Declaration and Permanent Injunction.
Date of Institution of suit : 02-09-2022
Date of Commencement of
Evidence : 22-11-2024
Date of Judgment
Pronounced. : 01.07.2026

Duration of the Suit : Year/s Month/s Day/s
03 09 29

-:: JUDGMENT ::-

The plaintiffs have filed this suit against the defendants for the following relief:

- a) The plaintiffs be declared as absolute joint owners and joint possessors of the suit land along with defendants No. 1 and 2.
- b) The sale deed Doc. No. 2135/2022-2023 dated: 22-07-2022 be declared as illegal, null and void and not binding on the plaintiffs.
- c) The defendant No.3 or his agents, servants or assignee or any other person claiming on behalf of the defendant No.3 be restrained permanently from interfering in the peaceful possession of the plaintiffs over the suit land.
- d) Issue directions to the revenue department for mutation of the suit land in the name of the plaintiffs and defendants No. 1 and 2.
- e) Cost of the suit be awarded.



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

That, one Timmappayya Devaru (late) was the common ancestor of the family, he died leaving behind his four sons namely 1) Gireppayya (dead), 2) Venkatavarappayya (dead), 3) Sheenappayya (dead), 4) Acchappayya (dead). The said Venkatavarappayya Devaru died in the year 2006 leaving behind him his wife by name Aachibai (late) and a son by name Timmappayya Devaru (deft-1), the said Aachibai died in year 2008. The defendant No. 1 has a wife by name Latha Devaru (pltf-3) and three children namely 1) Giridhar (pltf-1), 2) Soumya (pltf-2) and 3) Srihari (deft-2). That, the suit land is the ancestral property of the plaintiffs and defendants No.1 and 2. Previously the suit land bearing Sy. No.435/3/1 measuring 01 acre 08 guntas situated at Deodurga, Tq: Deodurga Dist: Raichur was standing in the name of younger brother of grandfather of plaintiffs No.1 and 2 and defendant No.2 by name Sheenappayya S/o Timmappayya and his name was shown in Khasra pahani for the year 1954-55 and continued up to 1992 as the owner and possessor of the suit land. In the year 1992, there was family oral partition took place between the said Sheenappayya and father of defendant No.1 by name Venkatavarappayya Devaru, and their two brothers, in that partition the suit land has allotted to the share of grandfather of plaintiffs No. 1 and 2 and



defendant No.2 by name Venkatavarappayya Devaru, accordingly the suit land has mutated in his name through mutation order No. 51 dated: 16-05-1992. After death of said Venkatavarappayya, the defendant No.1 has got mutated the suit land in his name through mutation order No.54/2010-11 dated: 30-09-2010.

2(a). It is further stated that, the suit land is the ancestral and joint family property of plaintiffs No.1 and 2 and defendant No.2, they are the coparceners and they are having joint ownership and joint possession over the suit land along with the defendant No.1. Still the partition is not taken place between the plaintiffs No.1 and 2 with defendants No.1 and 2 by metes and bounds. Nominally the suit land is standing in the name of defendant No.1 as he is the elder of family. That, the defendant No.1 is not the absolute owner and possessor of the suit land and he has no any rights to sale or alienate the suit land without consent or knowledge to the plaintiffs as they are having equal ownership and possession rights over the suit land. There is no family necessity to sale or mortgage or alienate the suit land as the plaintiff No.1 and defendant No.2 are earning members of the family and they only looking after the family.

2(b). It is further stated that, the defendant No.1 illegally sold the suit land to defendant No.3 though sale deed Doc. No. 2135/2022-2023 dated:



22-07-2022 without knowledge or consent of plaintiffs and defendant No.2, without any family necessity and now the matter pending before the Tahsildar Deodurga for mutation proceedings. That, the plaintiffs No.1 to 3 and defendant No.2 are joint owners and joint possessors of the suit land along with defendant No.1. still they are personally cultivating and enjoying the fruits of the suit land without interference from anybody. That, the defendant No.3 is not acquired valid title and possession over the suit land and he is not owner and possessor of the suit land. That, recently on 05-08-2022 when the plaintiffs involved in the agriculture works over the suit land, at that time the defendant No. 3 illegally interfered in the suit land and he denied the very title of the plaintiffs over the suit land and he threatened that he will dispossess the plaintiffs from the suit land. At that time the elders of the village intervened and advised to the both parties to settle the matter before the competent court of law. Then the defendant No. 3 went away by stating that he will come again with more force and will dispossess the plaintiffs from the suit land. So the plaintiffs filed this suit for protecting their lawful rights.

2(c). It is further stated that, the defendant No.3 is highly politically influenced person and having mescal power and he will not hesitate to do any illegal acts at any point of time, if the illegal interference and



obstruction of the defendant No.3 over the suit property is not restrained, the plaintiffs will suffer irreparable loss and injury to their legal rights, which cannot be compensated in terms of money. Being absolute owners and possessors the plaintiffs having all types of lawful rights to protect the suit property from interference of defendant No.3. That, after illegal interference and denial of title of plaintiffs by the defendant No.3, the plaintiffs have obtained the certified copies of RORs and sale deed, then only they came know about illegal execution of sale deed by defendant No.1 in favour of defendant No.3 over the suit land. That, the defendant No.2 is not interested to join as a plaintiff. So he is made as defendant No.2 in this suit. That, the cause of action was arose on 05-08-2022, when the defendant No.3 obstructed and denied the title and tried to disposes the plaintiffs over the suit property. Hence, prays to decree the suit.

3. After the service of summons defendants have appeared through their counsel. The defendant no.2 and 3 have filed their separate written statement. The defendant no.1 has not filed the written statement. Hence, written statement of defendant no.1 is taken as not filed.

The defendant No.3 has filed written statement as follow:

That the plaint averment para no.4 and 5 are about the description of land, and the burden of proof lies with the plaintiffs. Defendant No.3 further states that the land sold by Defendant No.1 to Defendant No.3 is



Sy.No. 435/4/1, measuring 1 acre 8 gunta, of Devdurga, Tq: Devdurga, Dist: Raichur, has only been shown, and intentionally the plaintiffs have not shown the remaining lands. Defendant No.1 is the Kartha of the family of the plaintiffs and Defendant No.2, and the remaining lands in the name of Defendant No.1 and the sold lands have not been shown in this suit. Also, which lands have come to the share of Defendant No.1. In whose name are they the suit does not show which lands were sold to whom. The defendant no. 1, after purchase of the suit property through registered sale deed, has given application for change of mutation to the revenue authorities. Later, the plaintiffs have filed objection before the revenue authorities for change of mutation. Therefore, this suit, which is filed only on the land sold to defendant No.3 with malafide intention it is liable to be dismissed.

3(a). That the plaint averment para no.6 of the pleading are false. This is denied by the defendant no.3. The burden of proof lies on the plaintiffs. The defendant no.1 is the Kartha of the family of the plaintiffs and the defendant no.2, the suit land is in the name of the defendant no.1, he is the owner and the possessor, and he has the right to sell it for the legal needs of the family and for the maintenance of the family. That the plaint averment para no.7 of the pleading are false. This is denied by the



defendant no.3. The burden of proof lies on the plaintiffs. The defendant no.3 further states that the defendant no.1 and the plaintiff no.1 and 3 need money to build their house and for the hospital expenses of the plaintiff no.3. They talked to the defendant no.3 about the sale of the land Sy.No.138/*/* measuring 19 acres 00 gunta of Ganadinni village, Taluk: Sirwara, District: Raichur and a total agreement was reached for the sale of Rs.45,00,000/- (forty-five lakhs). Therefore, on behalf of defendant No.3, on date:19-01-2021, the land in the name of defendant No.1, S.No.138/*/* 19 acres 00 gunte, Ganadinni village, Taluk: Sirwara, District: Raichur, was sold to defendant No.3 for a total of Rs.45,00,000/-(forty-five lakhs) and received an advance of Rs.25,00,000/-(twenty-five lakhs) on the same day and registered the sale agreement. It was agreed to pay the remaining 20 lakhs at the time of registration and a condition was imposed in the registered sale agreement. Later, the said defendant No.1 was asking for the said land for a higher amount, and if the sale agreement is cancelled, the suit land Sy.No.435/*/*1 measuring 01 acre 08 gunta, of Devadurga village, Tq: Devdurga, District: Raichur will be regestred in is favor and He has obtained the signature of the defendant No.3 for cancellation of the registration of the sale agreement deed by promising to pay the remaining amount of Rs.25,00,000/-(Twenty-five lakhs) received in advance after



registering the suit land. On the assurance of the defendant No.1 and the plaintiff No.1 and 3, he has cancelled the registration of the sale agreement deed and sold the suit land to the defendant No.3 for Rs.3.45,000/- (Three lakh forty-five thousand) and registered the land in legal form with the defendant No.1 and returned the remaining amount.

1. **3(b).** Therefore, the defendant No.1 sold the suit land to the defendant No.3 on 22-07-2022 It has been registered, and its registration Doc.no. 2135/2021-22. and handed over the possession of the suit land to defendant no.3. Only defendant no.1 signed the said registered sale deed, while the rest of them verbally stated that they had no dispute. Therefore, defendant no.1 has executed registered sale deed of the suit land to defendant no.3. One month after the purchase of the suit land, out of the advance payment of Rs. 25,00,000/-(twenty-five lakhs), Rs. 3.45,000/-(three lakh forty-five thousand) out of which Rs. 21,55,000/-(twenty-one lakh fifty-five thousand) was paid in the sale deed, and when defendant no.1 and plaintiff no.1 and 03 were asked to return the money, The plaintiffs and defendants no.1 and 2 have colluded with each other and filed this suit with the intention of defrauding defendant No.3. Moreover, defendant no.2 has been abroad and has made him defendant no.2



and has intentionally shown false address. Moreover, defendant no.:01 is the Kartha of the plaintiffs' family and he has the right to sell it for the needs of the family and to get a share in the family assets. But the plaintiffs have filed this suit only on the suit land leaving aside the other family properties in the name of defendant no.1 and the sold assets, and with the intention of defrauding defendant no.3, which is not legally binding. That the plaint averment para no.8 and 09 are false. This is denied by the defendant no.3. The plaintiffs and the defendants no. 01 and 02 are not the owners and possessors of the suit land. The defendant no. 03 is the owner of the suit land.

3(c). That the plaint averment para no.10 to 12 are false. This is denied by the Defendant no.: 03. The plaintiffs are not the owners and possessors of the suit land. Therefore, the plaintiffs did not come to the suit land on date: 05-08-2022. Therefore, there is no reason to file this suit. This suit is liable to be dismissed. That the plaint averment para no.13 of the pleadings are not true. Defendant No.:02 has been made a defendant since he is abroad, and with the malicious intention of deliberately causing injustice to Defendant No.3 and delaying this suit, the address of



Defendant No.2 has been known abroad and the local address has been wrongly shown. Therefore, this suit is liable to be dismissed.

4(a). The defendant No.2, has filed written statement:

That, the Plaintiffs have filed this suit against the Defendants in respect of the suit property bearing sy no. 435/3/1 measuring 01 acre 08 guntas, which is situated in the limits of Devadurga Town, Tq: Devadurga Dist: Raichur. The above said suit property is the ancestral and joint family property of the Plaintiffs and Defendants no.1 and 2. The Plaintiffs and Defendants no.1 and 2 have got rights, title, interest and share over the suit land. The Defendant no. 3 have no any rights, title, interest and share over the suit property and he is no way concern to the suit land. In fact the Defendant no.1 who is the father of the Defendant no.2 and he has no any rights to alienate the suit land without the knowledge and consent of the Plaintiffs and Defendant no.2. The Plaintiffs and Defendant no.2 are co-owners and joint possessor of the suit property along with Defendant no.1. Therefore the alienation of the suit land in favor of Defendant no.3 is illegal one and against the law and same is not binding upon the Defendant no.2.

4(b). That, the contents of the para no.2 and 3 of the plaint are in respect of the suit property and family pedigree of plaintiffs and defendants no.1 and 2. It is true and correct hence admitted. That, the contents of the



para no. 4 and 5 of the plaint are in respect of the suit property and same are ancestral and joint family property of the plaintiffs and defendants no.1 and 2 it is true and correct. Hence admitted. That, the contents of the para no. 6 and 7 of the plaint are in respect of the alienation of the suit property and sale deed etc. in respect of the alienation is illegal one against the law and same is not binding up on the defendant no.2. That, the contents of the para no.8 and 9 of the plaint are true and correct hence admitted. That, the contents of the para no.10 to 12 of the plaint are burden lies upon the plaintiffs. That, the contents of the para no.13 of the plaint in respect of filing of suit but during the filing of the suit at that time defendant no.2 is residing in Abroad i.e. in Australia country since two years. Therefore he is not able to join along with Plaintiffs for filing of the this suit. Therefore question of dis interest is not arise. That, the contents of the para no.14 to 18 of the plaint are in respect of the cause of action, residence of the parties, valuation of the suit property, court fee and limitation filing of this suit. It is true and correct hence needs no reply. Hence prays to decree the suit.

5. Heard both side, Perused material on record. Based on the above pleadings, this court has framed following Issues.

**ISSUES :**

1. Whether the plaintiffs prove that they are an absolute joint owners of the suit land along with defendant No.1 and 2?
2. Whether the plaintiffs prove that they are in joint possession over the suit land along with defendant No.1 and 2?
3. Whether the plaintiffs prove that the sale deed document bearing No.2135/22-23 dated 22-07-2022 is null and void and not binding on them?
4. Whether the plaintiffs prove that the defendant No.3 is causing interference in their peaceful possession and enjoyment of the suit property?
5. Whether the defendant No.3 proves that the contents of para No.7 of the written statement?
6. Whether the defendant No.3 proves that the sufficient court fee does not paid by the plaintiffs?
7. Whether the plaintiff is entitled the relief sought in the plaint?
8. What order or decree ?

ADDITIONAL ISSUES :

1. Whether the defendant no.2 proves that, defendant no.1 has no right to alienate the suit property without consent of plaintiff and defendant no.2 ?



6. The plaintiffs in order to prove their case the plaintiff no.1 examined himself as P.W.1 as produced 15 documents which are marked as Ex.P.1 to Ex.P.15.

7. To disprove the case of the plaintiffs, the defendant No.3 examined as DW.1 and produced 30 documents as marked as Ex-D.1 to 30.

8. I have heard both sides and perused the records, thereafter my findings to the above issues are as under for the following reasons;

Issue No.1	: In the Affirmative.
Issue No.2	: In the Affirmative.
Issue No.3	: In the Affirmative.
Issue No.4	: In the Affirmative.
Issue No.5	: In the Negative.
Issue No.6	: In the Negative.
Issue No.7	: In the Affirmative.
Addl Issue No.1	: In the Affirmative.
Issue No.8	: As per final order for the following:

REASONS

9. **Issue No.1 and 2 :-** The above issues are interlinked with each other. Hence, to avoid repetition of facts, they are answered together. The burden is casted upon the plaintiffs as per Section 105 and 106 of the Bharatiya Sakshya Adhiniyam to prove that they are the



joint owners and possessors along with Defendant number 1 and 2. The relationship between the parties are not in dispute that the defendant no.1 is the father, the plaintiff no.3 is the mother of plaintiff no.1 and defendant no.2 and originally the suit property is the ancestral property.

10. The plaintiff in the chief examination affidavit has reiterated the plaint averments. Hence again repeating the same does not arise. That the suit property was previously belonged to the common ancestor by name Thimmappaya Devaru. He had four sons namely deceased Giriappa, deceased Venkatavarappaya, deceased Sheenappaya and deceased Achappaya. The said Venkatappaya Devaru died in the year 2006 leaving behind him his wife by name Smt. Achibai, who died in the year 2008 and a son by name Timappaya Devaru, who is the defendant no.1. The said defendant no.1 is having wife by name Lata Devaru, who is the plaintiff no.3 and both have 3 children. They are the plaintiff no.1 and 2 and the defendant no.2.

11. To prove the contention that the suit property is the ancestral property, the plaintiff has produced the following document. Exhibit P-1 is the Khasarapahani during year 1955/1956 in respect of the suit land Survey No.435 it was previously entered in the name of Sheenappaya, S/o Thimmappaya . Further plaintiff has produced 5 handwritten RTC's



in respect of the suit land from the year 1963 till the year 1988 which are marked as Exhibit P-2 to Exhibit P-6. On careful perusal of the 5 handwritten RTC Exhibit P-2 to Exhibit P-6 clearly goes to show that the suit property was entered in the name of Sheenapayya, S/o Thimmapayya, and later his name was rounded off and the name of Venkataarapayya S/o Timmapayya Devaru was entered in the column number 9 of the RTC. As per mutation Order number 51, On the basis of the family partition, The said mutation order is produced and marked as Exhibit P-10. On careful perusal of Exhibit P-10, the hand written mutation order, it clearly goes to show, as per partition, the said Sinappaya, S/o Timappaya Devaru and his own younger brother by name Venkatarappaya, he has got the suit property. During the family partition and accordingly his name is entered from the year 1992. As per the handwritten RTC Exhibit P-7 to Exhibit P-9, the name of Venkatavarapayya Devaru has been entered.

12. Further plaintiff has produced the Computerized Mutation Order number 54/2010-11 which is marked as Exhibit P-11. On careful perusal of Exhibit P-11, it clearly goes to show that the name of Venkatavarapayya, S/o Thimmapayya has been rounded off and the name of defendant no.1, Thimappayya Devaru, S/o Venkatavarapayya



Devaru as per the relationship of son has been transferred. Accordingly, the name of Defendant no.1 is entered in the computerized RTC from the year 2010. The relevant computerized RTCs from the year 2020 till the year 2023 have been produced and marked as Exhibit P-12, Exhibit P-14.

13. Therefore, on careful perusal of Exhibit P-1 to Exhibit P-14, the Kasarapahani Exhibit P-1 was previously entered in the name of Sheenapayya S/o Thimapayya, and later his name is rounded off as per the mutation order number 51 Which is marked as Exhibit P-10 and the name of Venkatavarappaya was entered in the RTC and later in the year 2010 his name was rounded off and his son's name i.e. defendant no. 1 was entered in the RTC. Therefore from the revenue documents it clearly goes to show that the suit property is the ancestral property of the plaintiff no.1 to 3 and defendant no.1 and 2.

14. But it is the contention of the defendant counsel that the defendant no.1 is the kartha of the joint family of plaintiffs and defendant no.2 and there was partition taken place between the plaintiffs and defendant no.1 and 2 in respect of the suit property and also in the other non-suit properties. Hence, the plaintiffs and defendant no.1 and 2 are in divided status and not in the joint family status. To



prove the said contention, The defendant counsel has confronted the Revenue Records RTC, which was entered in the name of defendant no.1, which has been sold to the other person. Therefore, the suit property Exhibit D-1 to Exhibit D-14 were previously standing in the name of defendant no.1 and later he has sold some portion of the non-suit properties to others. It is the contention of the defendant counsel that all the joint family properties have not been included in the suit and the plaintiff has suppressed the material fact that other non-suit properties are entered and standing in the name of defendant no.1 which have been intentionally not included in this present suit. Only the plaintiffs have filed the present suit in respect of the suit schedule property, which was particularly sold to defendant no.3 by the defendant no.1. Only to harass the defendant no. 3.

15. Further, the defendant no.3 has produced the relevant document of the compromise decree passed in OS.22/2025 dated 03.05.2025. The certified copy of the compromise petition, decree, order sheet and plaint are produced and marked as Exhibit D-27 to Exhibit D-30. On careful perusal of the pleadings, the defendant no.1 and 2 and the plaintiff no.1 to 3 are the parties to that compromise suit before this court and at Sl.No.9, the present suit property has been



included and showed as joint family property. But during the enquiry, defendant no.3 counsel had orally objected and submitted his objection to the compromise decree including the suit property. Therefore, on the oral objection made by the counsel for defendant no.3, the suit schedule property at serial number 9 was given up and in the rest of the suit schedule property, serial numbers 1 to 8 and 10 to 11 were compromised between the plaintiffs and defendant no. 1 and 2.

16. Further on careful perusal of revenue records, it clearly goes to show that suit schedule property is the ancestral and joint family property of the plaintiff no.1 to 3 and defendant no.1 and 2. It is not the self-acquired property of defendant no.1. Though it is the contention of the defendant counsel that the defendant no.1 is the Kartha /Manager of the joint family property and as per the Hindu law he has the right to sell the suit property for the legal and family necessity. But it is the contention of the plaintiff counsel that there was no necessity for selling the suit property to the defendant no.3. Therefore, when the suit schedule property is the ancestral property of both plaintiff no. 1 to 3 and defendant no. 1and 2, the defendant no. 1, without the consent and knowledge of the plaintiff no. 1 to 3 and defendant no. 1and 2, has sold



the suit schedule property in favour of defendant no.3. The said fact has been admitted by the defendant no.3 in the cross-examination.

17. During the cross-examination DW-1 has admitted as follow:-

ದಾವಾ ಆಸ್ತಿ ಸರ್ವೆ ನಂಬರ 435/3/1 ಪೂರ್ವದಲ್ಲಿ ವಾದಿಯರ ತಾತನ ತಮ್ಮನಾದ ವೆಂಕಟಗಿರಿ ಸಿನಪ್ಪಯ್ಯನವರ ಹೆಸರಿನಲ್ಲಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿ ನನಗೆ ನೆನಪಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. 1992 ನೇ ಇಸವಿಯಲ್ಲಿ ವಾದಿಯರ ತಾತ ವೆಂಕಟ ವರಪ್ಪಯ್ಯ ಮತ್ತು ಅವರ ಸಹೋದರರು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಾಗ ದಾವಾ ಆಸ್ತಿ ವೆಂಕಟ ವರಪ್ಪಯ್ಯ ರವರ ಭಾಗಕ್ಕೆ ಬಂದಿರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಬಂದಿರಬಹುದು ಎಂದು ಹೇಳುತ್ತಾರೆ. ವೆಂಕಟವರಪ್ಪಯ್ಯ ರವರು ತೀರಿಕೊಂಡ ಮೇಲೆ 2010 ರಲ್ಲಿ ಅವರ ಮಗ ತಿಮ್ಮಪ್ಪಯ್ಯ ದೇವರು ವಾರಸಾ ಆಧಾರದ ಮೇಲೆ ಮುಟೇಶನ್ ಮಾಡಿಸಿಕೊಂಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಆಸ್ತಿ ವಾದಿಯರ ಮತ್ತು 2 ನೇ ಪ್ರತಿವಾದಿಯ ಕುಟುಂಬದ ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಯಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇರಬಹುದು ಎಂದು ಹೇಳುತ್ತಾರೆ. ದಾವಾ ಆಸ್ತಿ ಖರೀದಿ ಮಾಡುವ ಪೂರ್ವದಲ್ಲಿ 1ನೇ ಪ್ರತಿವಾದಿಗೆ ಎಷ್ಟು ಜನ ಮಕ್ಕಳು ಇದ್ದಾರೆ ಎಂಬುದು ವಿಚಾರ ಮಾಡಿದ್ದೇವೆ. ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ವಾದಿಯರ ಮತ್ತು 2 ನೇ ಪ್ರತಿವಾದಿಯ ಒಪ್ಪಿಗೆ ಸಹಿಯನ್ನು ಪಡೆದುಕೊಂಡಿರುವುದಿಲ್ಲ.

18. Admittedly, the certified copy of the registered sale deed produced by the plaintiff as per Exhibit P-15 and the original Registered sale deed produced by the defendant as per Exhibit D-16 are same, in which the signature of plaintiff no.1 to 3 and defendant no.2 are clearly not obtained and this fact has been admitted by the defendant no.3 in the cross-examination. It is the contention of the defendant counsel that the plaintiff no.1 to 3 and the defendant no. 3 have orally consented and



they had knowledge about the suit property sold to the defendant no. 3. The said pleadings have been taken by the defendant no. 3 in the written statement and also in the chief examination affidavit. But during the cross examination the PW-1 has not given any admission that he was having knowledge or they have given consent to defendant no. 3 for selling the suit property.

19. Therefore, on careful perusal of the revenue records produced by the plaintiff as per Exhibit P-1 to Exhibit P-14, it clearly goes to show that the suit property is the ancestral property of the plaintiff no.1 to 3 and defendant no.1 and 2. The defendant no.1 without the knowledge and consent of the plaintiff has sold the suit property in favour of defendant no.3 which is not at all having any validity in the eye of law. The undivided share of the plaintiff no.1 to 3 and the defendant no.2 cannot be sold to the defendant no.3 without the consent and knowledge of the plaintiff no. 1 to 3.

20. Therefore the said after knowing the said fact of suit property sold to defendant no.3, the plaintiff no.1 to 3 have given objection for change of mutation order before the Tahsildar Devudurga. Till today the revenue records have not been changed in the name of defendant no. 3. Hence the plaintiffs no.1 to 3 and defendant no.1 and 2 are in joint



family status and they have not taken any partition in respect of the suit schedule property. Hence, I answer Issue No.1 and 2 are in the Affirmative.

21. Issue No.3 and Addl Issue No.1. The above issues are interlinked with each other. Hence, to avoid repetition of facts, they are answered together. The burden is cast upon the plaintiffs to prove that the registered sale deed dated 22.07.2022 is null and void and not binding upon them. To prove the said contention, the plaintiff has produced the certified copy of registered sale deed which is marked as Exhibit P-15 and the defendant has produced the original registered sale deed which is marked as Exhibit D-16. Both the document Exhibit P-15 and Exhibit D-16 are one and the same. On careful perusal of the recitals of the original document Exhibit D-16, it clearly goes to show that on 22.06.2022, the defendant no.1 by name Timappaya Devaru S/o Venkatavarappaya Devaru has executed registered sale deed in respect of the suit land No.435/3/1 measuring 1 acre 8 guntas of Devadurga Village has sold in favour of defendant no. 3 by name Mallikarjuna S/o Ranganatha for consideration amount of ₹ 3,45,000.

22. It is the contention of the plaintiffs that the suit property is their ancestral property. Previously belonged to the common ancestor



by name Sheenappaya Devaru and after his death it was transferred in the name of Venkatavarappaya Devaru and after later into the name of his son, defendant no.1 Thimmappaya Devaru. Therefore, the suit schedule property is the ancestral property and not the self-acquired property of defendant no.1 and he had no any absolute right to sell the suit schedule property in favour of defendant no. 3 without the consent and knowledge of the plaintiffs no.1 to 3 and defendant no. 2.

23. Therefore, on careful perusal of the certified copy of the registered sale deed Exhibit P-15 and the original registered sale deed Exhibit D-16, only the signature of defendant no.1 and defendant no.3 are there and the signature of consenting witness of plaintiff no.1 to 3 and defendant no.2 are not at all there. The said fact during the cross-examination to the DW-1 has been admitted in the cross examination.

ಖರೀದಿ ನೋಂದಣಿ ಮಾಡಿಸುವ ಕಾಲಕ್ಕೆ ದಾವಾ ಆಸ್ತಿ ಸರ್ವೆ ನಂಬರ 435 ರಲ್ಲಿ ಕುಟುಂಬದ ವಿಭಾಗ ಆಗಿರಲಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಆಗಿತ್ತು ಎಂದು ಹೇಳುತ್ತಾರೆ. ಮೊದಲು ಅವರು ವಿಭಾಗವನ್ನು ಯಾವಾಗ ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನನಗೆ ನೆನಪಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಭಾಗ ಆಗುವದನ್ನು ನೀವು ನೋಡಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾನು ನೋಡಿರುವುದಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನಿಮ್ಮ ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಾಗಲೀ ಮತ್ತು ನಿಮ್ಮ ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಾಗಲೀ ವಾದಿಯರು ಮತ್ತು ಪ್ರತಿವಾದಿ 1 ಮತ್ತು 2 ರವರು ಮೊದಲೇ ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿದ್ದಾರಾ ಎಂದು ಬರೆಸಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನಿಮ್ಮ ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರ ಮತ್ತು ನಿಮ್ಮ ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಿ ತಿಮ್ಮಪ್ಪಯ್ಯ ದೇವರು ಇವರು



ಕಟುಂಬದ ಕರ್ತನಾಗಿದ್ದಾರೆ ಅವರಿಗೆ ಮಾರಾಟ ಮಾಡುವ ಅಧಿಕಾರ ಇತ್ತು ಮತ್ತು ವಿಭಾಗದ ಬಗ್ಗೆ ಏನು ಹೇಳಿಲ್ಲ ಎಂದರೆ ಸರಿ. Therefore from the above admissions given by the defendant no. DW-1 in the cross examination clearly goes to show that the consent of the plaintiff no. 1 to 3 and defendant no.2 was not obtained at the time of execution of the registered sale deed and previously there was no family partition taken place in respect of the suit property between the plaintiff and defendant no. 1 and 2.

24. Therefore when the fact has been admitted by the DW-1 in the cross examination that the consent of plaintiffs and Defendant no.2 were not taken at the time of execution of the registered sale deed. The said execution of the registered sale deed without the consent of the plaintiffs is null and void and bad in the eye of law. Defendant no.1 though is the head of the family and being in the position of kartha and he had the managing the family. But without the consent and knowledge of the plaintiffs and defendant no.2, the defendant no.1 alone did not have the power to sell the suit property which is the ancestral property.

25. Therefore, the burden of proof lies on the defendant no.3 to prove that the defendant no.1 had sold the suit schedule property for the family and legal necessity. To prove the said contention, the



defendant has not produced any document. The defendant has orally submitted that for the medical expenditure of family, the defendant no.1 had executed the registered sale deed in favour of defendant no.3. But admittedly, no medical records have been produced before the court. During the cross-examination, PW-1 has clearly denied the suggestion put forth by the defendant counsel that the suit property was sold for legal and family necessity. During cross-examination, PW-1 has stated as follows.

3ನೇ ಪ್ರತಿವಾದಿಗೆ ದಾವಾ ಆಸ್ತಿ ಮಾರಾಟ ಮಾಡಿದ 2-3 ದಿನದಲ್ಲಿ, ಬೇರೆಯವರಿಂದ ಮಾಹಿತಿ ನನಗೆ ಗೊತ್ತಾಯಿತು. ದಿನಾಂಕ: 22-07-2022 ರಂದು ದಾವಾ ಜಮೀನು 3ನೇ ಪ್ರತಿವಾದಿಗೆ ಮಾರಾಟ ಮಾಡಿರುವುದು ನಿಮಗೆ ಗೊತ್ತಾಯಿತು ಎಂದರೆ ಸಾಕ್ಷಿಯು 1 ವಾರದೊಳಗೆ ಗೊತ್ತಾಯಿತು ನಂತರ ತಹಶೀಲ್ದಾರ ಕಚೇರಿಗೆ ತಕರಾರು ಅರ್ಜಿಯನ್ನು ಕೊಟ್ಟಿರುತ್ತೇವೆ ಎನ್ನುತ್ತಾರೆ. ತಹಶೀಲ್ದಾರ ಕಚೇರಿಗೆ ನನ್ನ ತಾಯಿ ತಕರಾರು ಅರ್ಜಿ ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಖರೀದಿ ಪತ್ರದಂತೆ ದಾವಾ ಆಸ್ತಿಯು 3ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿಗೆ ಮುಟೇಶನ್ ಆಗಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಈ ದಾವೆಯಲ್ಲಿ ದಾವಾ ಆಸ್ತಿಯನ್ನು 3ನೇ ಪ್ರತಿವಾದಿ ಬೇರೆ ಯಾರಿಗೂ ಮಾರಾಟ ಮಾಡಬಾರದು ಎಂದು ಮದ್ಯತರ್ ತಡೆಯಾಜ್ಞೆ ತೆಗೆದುಕೊಂಡಿದ್ದೀರಿ ಎಂದರೆ ಸರಿ. ನೀವು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ತಡೆಯಾಜ್ಞೆ ಆದೇಶ ಪಡೆದುಕೊಳ್ಳುವಷ್ಟರಲ್ಲಿ 3ನೇ ಪ್ರತಿವಾದಿಗೆ ಮಾರಾಟ ಆಗಿತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಮದ್ಯಂತರ ಅರ್ಜಿಯಲ್ಲಿ ನಿಮಗೆ ಗೊತ್ತಿಲ್ಲದಂತೆ 3ನೇ ಪ್ರತಿವಾದಿ ಖರೀದಿ ನೋಂದಣಿ ಮಾಡಿಸಿಕೊಂಡಿದ್ದಾರೆಂದು ಬರೆಸಿದ್ದೀರಿ ಎಂದರೆ ಸರಿ. ನೀವು ತಹಶೀಲ್ದಾರ ರವರೊಂದಿಗೆ ಮಿಲಾಪೆಯಾಗಿ ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮಾರಾಟ ಮಾಡಬಾರದೆಂದು ತಡೆಯಾಜ್ಞೆ ಇದ್ದರೂ ಅದನ್ನು 3ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿಗೆ ಮುಟೇಶನ್ ಮಾಡಬಾರದೆಂದು ಹೇಳಿ 3ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿಗೆ ಮುಟೇಶನ್ ಮಾಡಲು ತಕರಾರು ಮಾಡಿದ್ದೀರಿ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಆಸ್ತಿಯನ್ನು ಖರೀದಿ



ಮಾಡಿದ ದಿನಾಂಕದಿಂದ 3ನೇ ಪ್ರತಿವಾದಿಯೇ ಮಾಲೀಕ ಮತ್ತು ಕಬ್ಬಾಡಾರನಾಗಿದ್ದಾನೆಂದರೆ ಸರಿಯಲ್ಲ. ನಿಮ್ಮ ತಂದೆ ತಾಯಿ ಅನಾರೋಗ್ಯದಿಂದ ಇರುವುದರಿಂದ ಅವರನ್ನು ಆಸ್ಪತ್ರೆಗೆ ತೋರಿಸುತ್ತಿದ್ದೀರಿ ಎಂದರೆ ಸರಿ. ನಿಮ್ಮ ತಂದೆಯ ಕುಟುಂಬದ ಹಿರಿತನ ಮತ್ತು ಯಜಮಾನ ಆಗಿದ್ದಾನೆ ಎಂದರೆ ಸರಿ. ನಿಮ್ಮ ತಂದೆಗೆ ಕುಟುಂಬದ ಅವಶ್ಯಕತೆ ಇದ್ದರೆ ಆಸ್ತಿಯನ್ನು ಮಾರಾಟ ಮಾಡುವ ಹಕ್ಕು ಇದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇಲ್ಲ ಎನ್ನುತ್ತಾರೆ.

26. Therefore, in the absence of documentary evidence and in the absence of the particular recitals, In the registered sale deed, this Court cannot come to the conclusion that the suit property was sold by the defendant no.1 for the legal and family necessity. Therefore, from the oral evidence adduced by the parties and the documentary evidence produced by the parties Exhibit P-15 and Exhibit D-16, it clearly goes to show that the consent of plaintiff no.1 to 3 and defendant no.2 was not obtained at the time of execution of the registered sale deed. Therefore, The registered sale deed is not binding on the plaintiffs and defendant no.2. Hence, I answer Issue No.3 is in the Affirmative.

27. Issue No. 4: The burden is casted upon the plaintiff to prove that defendant no.3 is causing interference over the peaceful possession and enjoyment of the plaintiff in the suit property. The plaintiff in the chief examination affidavit has clearly stated that the defendant no.1 without the consent and knowledge of the plaintiff no.1



to 3 and defendant no.2 executed the registered sale deed dated 22.07.2022 in favour of defendant no.3. On the basis of the said registered sale deed, defendant no.3 has given application before the Tahsildar Devadurga for mutation order into his name. When the said fact came to the knowledge of the plaintiffs, they have approached the Tahsildar Devadurga and filed their objection for mutation entry in the name of defendant no.3. Therefore, the said fact has not been denied by the defendant no.3 in the cross-examination and further with respect to the taking written consent of the plaintiff no.1 to 3 and defendant no.2 in the registered sale deed by the defendant no.3 has been clearly admitted that they have not given consent.

28. The contention of the defendant no.3 is that the plaintiffs and defendant no.2 have orally consented and they had knowledge about the execution of the registered sale deed in his favour. But during the cross examination the plaintiff has not given any admission that they were having knowledge and they have given oral consent in respect of the registered sale deed in favour of defendant no.3. Therefore The plaintiff by producing the certified copy of the registered sale deed as per Exhibit P-15 and the defendant has produced the same original registered sale deed as Exhibit D-15 are one and the same. Both have



produced the same document in which clearly goes to show that the written consent of plaintiff no.1 to 3 and defendant no.2 were not obtained. Only the signature of defendant no.1 was obtained. Since the suit schedule property is the ancestral property, without the consent and knowledge of the plaintiff no.1 to 3 and defendant no. 2, the defendant no.1 alone cannot have right to execute the registered sale deed in favour of the defendant no.3 in respect of the suit schedule ancestral property. Hence, the filing of the application before the Tahsildar for change of mutation by the defendant no.3 itself constitute the interference over the suit schedule property. Hence, I answer Issue No. 4 is in the Affirmative.

29. Issue No.5 The burden is casted upon defendant no.3 to prove that the contents of the written statement para No.7 is on the defendant no.3. The defendant no.3 in the written statement at para No.7 has specifically contention that previously on 19.01.2021 the defendant no.1, for his family necessity, had entered into agreement of sale in respect of the non suit land survey No.138/*/* measuring 19 acres of Ganadhinni Village, Taluk-Sirwar, District Raichur, for consideration amount of ₹ 45,00,000 and out of which ₹ 25,00,000 advanced amount has been paid to the defendant no.1 and he had



executed the registered agreement of sale dated 19.01.2021. The remaining Rs.20,00,000 was agreed to be paid within 1 year and at the during time of registration of the sale deed. But later the defendant no.1 asked for the higher price and he had requested to cancel the registered agreement of sale and he had agreed to execute registered sale deed in respect of the suit land No. 435/*/1 measuring 1 acre 8 guntas and by taking the remaining consideration amount ₹ 25,00,000 when the defendant no.3 demanded for refund of the amount and later he had executed the registered sale deed in favour of defendant no.3 through registered sale deed dated 22.07.2022.

30. To prove the said contention, the defendant has produced the following documents. The defendant has produced the original registered agreement of sale dated 19.01.2021 which is marked as Exhibit D-25. On careful perusal of the recitals it clearly goes to show that the defendant no.1 by name Thimmappaya S/o Venkatavarappaya, had agreed to sell the suit, non-suit property measuring bearing Land Survey No.138/*/ total measuring 19 acres of Ganadhinni Village in favour of defendant no.3 by name Mallikarjuna S/o Ranganatha for total consideration amount of ₹ 45,00,000 out of which the advance amount of ₹ 25,00,000 was received and the remaining ₹ 20,00,000 amount is



to be paid within 1 year and at the time of registered sale deed on this condition the said agreement of sale was executed. But later on, Due to some difference of opinion and due to demand of higher price, the defendant no.1 agreement entered was cancelled. The cancellation of agreement document was produced and confronted during the cross-examination of DW-1 which is marked as Exhibit D-26.

31. On careful perusal of the contents of Exhibit D-26, it is the cancellation of the registered agreement of sale without possession which was executed by the defendant no.3 by name Malikarjuna S/o Ranganatha in favour of defendant no.1 Thimmappaya son of Venkatavarappaya clearly stated that at page no. 2 that due to some reasons the Agreement of sale amount of ₹ 25,00,000 has been returned and the registered sale deed Exhibit D-15 was cancelled. During the cross examination DW-1 with respect to the above

contention has clearly given admission as follows. ಸರ್ವೆ ನಂಬರ 138 ವಿಸ್ತೀರ್ಣ

19 ಎಕರೆ ಜಮೀನು ಸಿರವಾರ ತಾಲೂಕು ಗಣದಿನಿ ಗ್ರಾಮದಲ್ಲಿ ಇರುತ್ತದೆ. ಈ ಆಸ್ತಿಯನ್ನು

ದಿನಾಂಕ 19-01-2019 ರಂದು ಖರೀದಿ ಕರಾರು ಪತ್ರವನ್ನು ಮಾಡಿಸಿರುತ್ತೇವೆ. ಮೇಲ್ಕಂಡ

ಆಸ್ತಿಯನ್ನು ಖರೀದಿ ಮಾಡಲು ರೂ.45,00,000/- ಕ್ಕೆ ಮಾತುಕತೆ ಆಗಿತ್ತು ಅದರಲ್ಲಿ ನಗದು

ರೂಪದಲ್ಲಿ ರೂ.25,00,000/- ಮಾನವಿ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಯಲ್ಲಿ ಪಾವತಿ

ಮಾಡಿರುತ್ತೇವೆ. ಆ ದಿನ ಮಾನವಿ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಗೆ ಬೆಳಿಗ್ಗೆ 10-00 ಗಂಟೆಗೆ



ಹೋಗಿದ್ದೇನೆ ಹಣ ಪಾವತಿ ಮಾಡಿದಾಗ ಸಮಯ ಮಧ್ಯಾಹ್ನ 12-00 ಗಂಟೆ ಆಗಿತ್ತು. ಅವತ್ತು ಮಧ್ಯಾಹ್ನ 2-30 ಗಂಟೆಯವರೆಗೆ ಮಾನವಿ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಯಲ್ಲಿ ಇದ್ದೆವು. ದಿನಾಂಕ 19-01-2019 ರಂದು ಮಾನವಿ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಯಲ್ಲಿ ರೂ.25,00,000/- ಗಣದಿನಿ ಗ್ರಾಮದಲ್ಲಿರುವ ಆಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಿದ್ದು ಬೇರೆ ಆಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ದಿನಾಂಕ 19-01-2019 ರಂದು ತಿಮ್ಮಪ್ಪಯ್ಯ ದೇವರು ರವರಿಗೆ ರೂ.25,00,000/- ಹಣವನ್ನು ಕೊಟ್ಟಿರುವುದನ್ನು ಬಿಟ್ಟು ನೀವು ಬೇರೆ ಹಣ ಪಾವತಿ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ.

5. ದಿನಾಂಕ 14-06-2021 ರಂದು ಗಣದಿನಿ ಗ್ರಾಮದಲ್ಲಿರುವ ಆಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಖರೀದಿ ಕರಾರು ಪತ್ರ ರದ್ದಾಗಿರುತ್ತದೆ. ಖರೀದಿ ಕರಾರು ಪತ್ರ ರದ್ದತಿ ಆಗಿರುವುದನ್ನು ನೋಂದಣಿ ಮಾಡಿಸಿರುತ್ತಿರಿ. ಖರೀದಿ ಕರಾರು ಪತ್ರ ರದ್ದತಿ ಪತ್ರದಲ್ಲಿ ತಿಮ್ಮಪ್ಪಯ್ಯ ದೇವರು ರವರಿಂದ ರೂ.25,00,000/- ವಾಪಸ್ಸು ಮುಟ್ಟಿರುತ್ತದೆ ಎಂದು ಬರೆಸಿರುತ್ತಾರೆ. ಖರೀದಿ ಕರಾರು ಪತ್ರ ರದ್ದತಿ ಪತ್ರವನ್ನು ನೀವೇ ಬರೆಸಿಕೊಂಡಿದ್ದಿರಾ ಎಂದರೆ ಸರಿ. ಗಣದಿನಿ ಗ್ರಾಮದ ಆಸ್ತಿಯನ್ನು ತಿಮ್ಮಪ್ಪಯ್ಯ ದೇವರು ಮಾರಾಟ ಮಾಡುವಾಗ ಅವರ ಮಕ್ಕಳಿಗೆ ಕೇಳಿಕೊಂಡು ಮಾರಾಟ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಕೇಳಿದ್ದಾರೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಅವರ ಮಕ್ಕಳಿಗೆ ಮಾರಾಟದ ವಿಷಯ ಗೊತ್ತಾದ ಮೇಲೆ ಅವರು ಮಾರಾಟ ಮಾಡುವುದು ಬೇಡ ಎಂದು ಹೇಳಿರುವುದರಿಂದ ನೀವು ಖರೀದಿ ಕರಾರು ರದ್ದತಿ ಪತ್ರ ಮಾಡಿಕೊಂಡಿದ್ದಿರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇಲ್ಲ ಅವರು ಬೇರೆಯವರಿಗೆ ಹೆಚ್ಚಿ ನ ಬೆಲೆಗೆ ಮಾರಾಟ ಮಾಡುತ್ತೇವೆ ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಖರೀದಿ ಕರಾರು ರದ್ದತಿ ಪತ್ರದಲ್ಲಿ ಬೇರೆಯವರಿಗೆ ಹೆಚ್ಚಿ ನ ಬೆಲೆಗೆ ಮಾರಾಟ ಮಾಡುತ್ತೇವೆ ಎಂದು ವಿಷಯ ಹೇಳಿ ಬರೆಸಿದ್ದಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. Therefore from the above admission given by DW-1 it clearly

goes to show that he had received ₹ 25,00,000 from the defendant no. 1 and cancelled the said registered agreement of sale.



32. In lieu of the cancellation the defendant no.1 has executed the registered sale deed by receiving the consideration amount in 22.07.2022 by taking the amount of ₹ 3,45,000 out of the amount paid ₹ 25,00,000 and on that day itself the consideration amount was paid. But during the cross examination he has given totally different version that in front of the plaintiff no.1 to 3 the consideration amount was paid to the defendant no.1 at their house. Further, with respect to the consideration of amount paid to defendant no.1 in the presence of the family members of the defendant no.1 at his home, DW-1 has admitted as follows. ನೀವು ಖರೀದಿ ಪತ್ರವನ್ನು ಯಾವಾಗ ಮಾಡಿಸಿಕೊಂಡಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ದಿನಾಂಕ 22-07-2022 ರಂದು ಖರೀದಿ ಪತ್ರ ಆಗಿದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಖರೀದಿ ಪತ್ರವನ್ನು ಯಾರು ಬರೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಮೈನುದ್ದೀನ್ ಕಾಟಮಳ್ಳಿ ಗ್ರಾಮದವರು ಬರೆದಿರುತ್ತಾರೆ. ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ದಾವಾ ಆಸ್ತಿಯ ಮಾರುಕಟ್ಟೆಯ ಬೆಲೆ 3,45,000/- ಅಂತಾ ಬರೆದಿದ್ದಾರೆ. ಖರೀದಿ ಪತ್ರದ ಮೊತ್ತವನ್ನು ನಗದು ರೂಪದಲ್ಲಿ ಅವರ ಮನೆಯಲ್ಲಿ ಲತಾ, ಸೌಮ್ಯಶ್ರೀ ಮತ್ತು ಗಿರಿಧರ ಇವರ ಸಮ್ಮುಖದಲ್ಲಿ ಪಾವತಿಸಿರುತ್ತಾರೆ. ಖರೀದಿ ಮೊತ್ತವನ್ನು ಖರೀದಿ ಪತ್ರ ಆಗುವ ಮೊದಲು ದಿನಾಂಕ 16-01-2019 ರಂದು ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಹಣ ಪಾವತಿ ಮಾಡುವ ಕಾಲಕ್ಕೆ ಖರೀದಿ ಕರಾರು ಪತ್ರವನ್ನು ಮಾಡಿಸಿರುವುದಿಲ್ಲ. ತಿಮ್ಮಪ್ಪಯ್ಯ ದೇವರು ಯಾವ ಕಾರಣಕ್ಕಾಗಿ ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮಾರಾಟ ಮಾಡುತ್ತಿದ್ದಾರೆಂದು ಖರೀದಿ ಪತ್ರದಲ್ಲಿ ಬರೆಸಿರುವುದಿಲ್ಲ, ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನನಗೆ ಸಾಲ ಆಗಿದೆ ಮತ್ತು ಮನೆಯ ಸಲುವಾಗಿ ಮಾರಾಟ ಮಾಡುತ್ತಿದ್ದೇನೆ ಎಂದು ಬರೆಸಿರುತ್ತಾರೆ ಎನ್ನುತ್ತಾರೆ. ಖರೀದಿ ಮೊತ್ತವನ್ನು ವಾದಿಯರ ಸಮಕ್ಷಮದಲ್ಲಿ ಕೊಟ್ಟಿದ್ದೇನೆಂದು ಪ್ರತಿವಾದಪತ್ರದಲ್ಲಿ ಮತ್ತು ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ



ಬರೆಸಿರುವುದಿಲ್ಲ. ಈ ಖರೀದಿ ಪತ್ರಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಖರೀದಿ ಹಣ ಪಾವತಿ ಮಾಡಿದ ಬಗ್ಗೆ ನಿಮ್ಮ ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಾಗಲೀ ಮತ್ತು ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಾಗಲೀ ಬರೆಸಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಬರೆಸಿರುತ್ತೇನೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನಿಮ್ಮ ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಈ ವಿಷಯವನ್ನು ಬರೆಯಿಸದೇ ಇದ್ದರೂ ಬರೆಸಿದ್ದೇನೆ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದಿರಿ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಿನಾಂಕ 03-01-2019 ರಂದು ವಾದಿಯರ ಸಮಕ್ಷಮದಲ್ಲಿ ಖರೀದಿ ಹಣ ಪಾವತಿ ಮಾಡಿದಾಗ ದಾವಾ ಆಸ್ತಿಯ ಸಂಬಂಧಪಟ್ಟಂತೆ ಮಾತುಕತೆ ಆಗಿರಲಿಲ್ಲ ಆದರೆ ಇದೇ ಆಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಹಣ ಪಾವತಿ ಮಾಡಿರುತ್ತೇನೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ದಿನಾಂಕ 03-01-2019 ರಂದು ವಾದಿಯರ ಸಮಕ್ಷಮದಲ್ಲಿ ಖರೀದಿ ಹಣ 3,45,000/- ರೂ. ಗಳನ್ನು ಯಾವ ಕಾರಣಕ್ಕೆ ಕೊಟ್ಟಿದ್ದಿರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಖರೀದಿ ಮಾಡುವ ಕಾರಣಕ್ಕೆ ಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ದಿನಾಂಕ 03-01-2019 ರಂದು ಖರೀದಿ ಹಣ ರೂ.3,45,000/- ಗಳನ್ನು ವಾದಿಯರ ಸಮಕ್ಷಮದಲ್ಲಿ ಪಾವತಿ ಮಾಡಿದ್ದೇನೆ ಮತ್ತು ಖರೀದಿ ಮಾತುಕತೆ ಆಗಿತ್ತು ಎಂದು ನನ್ನ ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಹೇಳಿ ಬರೆಸಿದ್ದೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿ ಡಿ 26 ಖರೀದಿ ರದ್ದತಿ ಪತ್ರದ ಪ್ರಕಾರ ನೀವು ರೂ 25,00,000/- ಹಣವನ್ನು ಪಡೆದುಕೊಂಡು ಅದನ್ನು ಬರೆದುಕೊಟ್ಟಿದ್ದೀರಾ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಮ್ಮ ಹಿಂದೆ ಪಾಟೀಸವಾಲಿನಲ್ಲಿ ಪುಟ ನಂಬರ್ 8 ರಲ್ಲಿ ದಿನಾಂಕ: 03-01-2019 ರಂದು ಖರೀದಿ ಹಣ ರೂ 3,45,000/-ಗಳನ್ನು ವಾದಿಯ ರ ಸಮಕ್ಷಮದಲ್ಲಿ ಪಾವತಿ ಮಾಡಿದ್ದೇನೆ ಮತ್ತು ಖರೀದಿ ಮಾತುಕತೆ ಆಗಿತ್ತು ಎಂದು ನುಡಿದಿದ್ದು ನಿಮ್ಮ ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದ ಪೇಜ್ ನಂಬರ್ 2 ರಲ್ಲಿ ನೀವು ನಿಮ್ಮ ಸಾಕ್ಷಿ ಪ್ರಮಾಣ ಪತ್ರದ ಪ್ಯಾರಾ ನಂಬರ್ 5 ರಲ್ಲಿ, ದಾವಾ ಜಮೀನನ್ನು ಖರೀದಿ ಮಾಡಿದ ಒಂದು ತಿಂಗಳ ನಂತರ ಖರೀದಿ ಕರಾರು ಪತ್ರಕ್ಕೆ ನೀಡಿದ ಮುಂಗಡ ಹಣ ರೂ 25,00,000/- ಗಳ ಪೈಕಿ 3,45,000/- ಗಳು ಬಿಟ್ಟು ರೂ 21,55,000/- ಹಣ ವಾಪಸ್ಸು ನೀಡುವಂತೆ ಪ್ರತಿವಾದಿ ಸಂಖ್ಯೆ 1 ಮತ್ತು ವಾದಿ ನಂಬರ್ 1, 3 ರವರಿಗೆ ಕೇಳಿದಾಗ, ಅವರು ಶಾಮೀಲಾಗಿ ಈ ದಾವೆ ಹಾಕಿರುತ್ತಾರೆ ಎಂದು ಬರೆಸಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ದಿನಾಂಕ:



03-01-2019 ರಂದು ದಿನಾಂಕ ತಪ್ಪಾಗಿದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. The said contention has been admitted as false.

33. Therefore the contention of the plaintiff counsel that the consideration amount of ₹ 3,45,000 was not paid to the defendant no.1 has to be agreed. It has been clearly established that the consideration amount of ₹ 3,45,000 was not paid to the defendant no.1 by the defendant no. 3 at the time of registration of the sale deed. Therefore, the defendant no. 3 has specifically failed to prove the contents of para number 7 of the written statement. Hence, I answer Issue number 5 is in the Negative.

34. Issue number 6: The burden is casted upon the defendant no.3 to prove the court fee paid on the plaint is insufficient. The plaintiff in this suit has sought the following relief of declaration of joint ownership and for declaring the registered sale deed dated 22.07.2022 is illegal, null and void and not binding upon them. Further defendant no.3 be restrained permanently from causing interference and Issue direction to revenue department to mutation of the suit land in the name of the plaintiff no.1 to 3 and defendant no.1 and 2. Accordingly the court fee of ₹ 100 has been paid. On the plaint. It is admitted fact that the suit schedule property is the agricultural property assessed to land revenue. The suit property is situated within the limits of Devadurga, Taluk, Devadurga, District Raichur



and it is land assessed property. The computerized RTC has been produced by both the plaintiff and defendant in this respect. Therefore, for the relief of declaration in respect of the agricultural property, the court fee assessed under Section 7 of THE KARNATAKA COURT-FEE AND SUITS VALUATION ACT, 1958. U/s 24D of ₹ 25 is sufficient and for the relief of cancellation of the registered document to which the plaintiff no.1 to 3 and defendant no.2 are not the parties. The relief of permanent injunction under Section 26 sought and the court fee paid of ₹ 25 is sufficient. Therefore the relief No. 1 to 4 sought by the plaintiff in the plaint by paying the court fee of ₹ 100 is held sufficient. Hence the defendant has failed to prove that the court fee paid on the plaint is insufficient. Hence I answer Issue No. 6 is in the Negative.

35. Issue number 7: As discussed above, the suit schedule property is the ancestral property of defendant no.1 and plaintiff no.1 to 3. The relationship has been specifically stated and admitted by the defendant no.3. Therefore, the Plaintiff no.1 and 2 and defendant no.2 are the children of defendant no.1 and plaintiff no.3. The defendant no.3 is the stranger and purchaser of the suit property. When the relationship of the plaintiff and defendant no.1 and defendant no.2 have been admitted by the defendant no.3 and the nature of the suit property clearly goes to show that it is the ancestral and joint family property of



the plaintiff no.1 to 3 and defendant no.2 and no partition has been taken place in respect of the suit property between the plaintiffs and defendant no.1 and 2. Therefore, without the consent and knowledge of the plaintiff, defendant no.1 has no any right to execute the registered sale deed in favour of defendant no.3 without any legal necessity. Further, with respect to the payment of consideration amount, DW-1 has not clearly stated on which date he has actually made payment of the suit's property sale consideration amount.

The Supreme Court's verdict in Kewal Krishan vs. Rajesh Kumar & Ors., CA No. 6989-6992/2021, Order dated 22nd November, 2021 is relevant on the subject of consideration. In this case, the appellant had executed a power of attorney in favour of his brother. The Power of Attorney holder executed two sale deeds for selling immovable properties of the appellant. One was for selling to his wife and the other to his son. The appellant objected to these sales on various grounds. One of them was that the entire sale consideration for acquiring suit properties was not paid by the purchasers. Accordingly, it was prayed that the sale deeds should be set aside.

36. The Honble Supreme Court held that there was no evidence adduced to show that the purchasers had indeed paid the consideration



as shown in the sale deeds. It examined section 54 of the Transfer of Property Act, 1882 in this respect. This section deals with the definition of sale of immovable property. It defines a sale (in respect of immovable property) to mean a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

In Samaratmal vs. Govind, (1901) ILB 25 Bom 696, the word 'price' as used in the sections relating to sales in the Transfer of Property Act was held to be in the sense of money. The Apex Court in Kewal's case (Supra) went on to hold that a sale of an immovable property had to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price was an essential part of a sale covered by section 54 of the Transfer of Property Act. If a sale deed in respect of an immovable property was executed without payment of price and if it did not provide for the payment of price at a future date, it was not a sale at all in the eyes of law. It was of no legal effect. Therefore, such a sale would be void. It would not impact the transfer of an immovable property. Therefore, I answer issue number 7 is in the Affirmative.

37. Issue No.8 :-Due to my findings to the above said issues and discussions made in the foregoing paragraphs. Hence, I pass the following:



// ORDER //

Plaintiff's suit is hereby decreed with costs.

The plaintiff no.1 to 3 and defendant no. 1 and 2 are declared as the joint owners and joint possessors of the suit land. Consequently, the registered sale deed Document No.2135/2022-2023 dated 22.07.2022 is declared as null and void and not binding upon the plaintiffs.

The defendant no.3 or his agent or servants or another person claiming under him are hereby permanently restrained from causing interference over the suit property.

Further the revenue department is hereby directed to effect mutation of the suit property in the name of plaintiffs and defendant no. 1 and 2 jointly.

Draw decree accordingly.

(Dictated to the Stenographer, typed by him and corrected, initialed and then pronounced by me in the Open Court, on this 1st day of July-2026).

(Sri Rafeeq Ahmed)
Civil Judge & JMFC
Devadurga.



ANNEXURE

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFFS:

PW-1 Sri. Giridhar.

LIST OF DOCUMENTS EXHIBITED FOR THE PLAINTIFFS:

- | | |
|---------------|--|
| Ex.P-1 | Certified copy of Kahasra Pahani. |
| Ex.P-2 to 9 | Certified copy of handwritten RTC's. |
| Ex.P-10 | Certified copy of handwritten mutation. |
| Ex.P-11 | Certified copy of Computerized mutation. |
| Ex.P-12 to 14 | Certified copy of Computerized RTC's. |
| Ex.P-15 | Certified copy of Sale Deed. |

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

DW.1 Sri. Mallikarjuna.

LIST OF DOCUMENTS EXHIBITED FOR THE DEFENDANTS:

- | | |
|---------------|---|
| Ex.D.1 to 3 | Certified copy of computerized RTC's. |
| Ex.D.4 to 6 | Certified copy of computerized mutations. |
| Ex.D.7 & 8 | Certified copy of computerized RTC's. |
| Ex.D.9 | Certified copy of computerized mutation Registrar copy. |
| Ex.D.10 & 11 | Certified copy of computerized mutations. |
| Ex.D.12 to 14 | Certified copy of computerized RTC's. |
| Ex.D.15 | Certified copy of computerized mutation. |
| Ex.D.16 | Original Sale deed. |
| Ex.D.17 | Akarabanda. |
| Ex.D.18 & 19 | Certified copy of computerized RTC's. |
| Ex.D.20 | Certified copy of handwritten RTC. |
| Ex.D.21 | Certified copy of handwritten mutation. |
| Ex.D.22 | Certified copy of computerized RTC. |



- Ex.D.23 Certified copy of computerized Mutation.
Ex.D.24 Certified copy of computerized RTC.
Ex.D.25 Original Sale deed.
Ex.D.26 Copy of Sale deed.
Ex.D.27 Order Sheet.
Ex.D.28 to 30 Certified copy of Decree's.

(Sri Rafeeq Ahmed)
Civil Judge & JMFC
Devadurga.