



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

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M.,
Senior Civil Judge & J.M.F.C.
SINDHANUR.

: REGULAR APPEAL No : 08/2019:

DATED: 1st day of July 2026

APPELLANTS :- 1. M.Ramakrishna S/o Subba Rao,
Age: 51 years, Occ: Agri,
th
R/o 7 Mile Camp, Tq: Sindhanur,

(By Sri.NRG., Advocate)

-V/s-

- RESPONDENTS:-1. Samrajayam @ Priyakumari
D/o Ram Mohan Rao W/o Sambashiva
Rao Age: 53 years, Occ: Household and
Agriculture, R/o Mucchal Camp, Tq:
Sindhanur.
2. M.Rani D/o V.Rama Mohan Rao
W/o M Sudarshan Rao, Age: 58 yrs,
R/o Near Bharat Gas Godown,
Ahambhavi Ballari, Tq: Ballari.
3. Krishnakumari D/o V Rama Mohan Rao
W/o Prasad Rao, Age: 57 yrs,
Occ: Household, R/o LIG 304 RC Puram
Hyderabad.
4. V Venkateshwara Rao S/o V Rama Mohan
Rao, Age: 43yrs, Occ: Employee,
R/o LIG 304 RC Puram Hyderabad



5. Rajeshwari W/o Rama Rao,
Age: 71 yrs, Occ: Household,
R/o Ballari now at Sindhanur.

(Vemluri Rama Mohan Rao S/o
Venkataramana died and his LRs on
record who was the plaintiff No.1 in
the original suit.)

(By: Sri.GVJ Advocate)

Date of Institution of Appeal : 25.01.2019

Nature of Appeal : Appeal against the
Judgment and decree
dated 24.11.2018
in O.S.No. 226/2011
passed by the I Addl. Civil
Judge, Sindhanur.

Date on which the Judgment
was pronounced : 01.07.2026

Total duration : year/ s month/s Day/s
07 05 06

: J U D G M E N T :

This appeal filed by the appellant/defendant No.6
being aggrieved by the Judgment and decree dated
24.11.2018 in O.S.No.226/2011 passed by the I Addl. Civil
Judge, Sindhanur in decreed the suit filed for partition and
separate possession.



2. For the sake of convenience, the parties are referred in this Judgment as per their ranks before this court.

3. The case of the plaintiffs, as set out in the plaint, is as below:-

As per the case of the plaintiff, the defendant No.1 is the father and defendant no.7 is the mother of the plaintiff and defendant No.2 to 4 are the sisters and brother. The defendant No.5 and 6 are the purchasers of the suit property. The father of plaintiff purchased the suit property through register document No.968/77-78 dated 10.08.1977 from the sale price of ancestral property. That the suit property is an ancestral Hindu undivided joint family property. The plaintiff and defendant No.1 to 4 are in constructive possession over the suit property. The plaintiff is having $1/5^{\text{th}}$ share in the suit schedule property. The Plaintiff was demanded for partition in



the suit schedule property from defendant No1, but he has been postponed and again lastly on 25.06.2011 she demanded the partition, but the defendant No.1 flatly refused to effect the partition. Hence the Plaintiff immediately obtained ROR and mutation copies, but defendant No.1 executed sale deed of the suit land in favour of defendant No.5 without any legal necessity or any family benefit. The Sale deed was executed only with an intention to deprive the share of the plaintiff. The defendant No.5 is also sold the suit property in favour of defendant No.6 illegally. The sale deed executed by defendant No.1 is illegal and null and void and are not binding on the plaintiff share. Hence filed this suit.

4. In response of service of suit summons the defendant No.2 to 7 were appeared through their counsel, but defendant No.2 to 4 were not filed their written statement. During the pendency of the suit



defendant no 1 died and his Lrs are already on record. The defendant No.5 to 6 were filed their separate written statement by denying the plaint averments put forth by the plaintiff in the suit. The defendant No.7 also filed her written statement and admitted the plaint averments and she claimed counter claim by declaring her share in the suit schedule property by declaring the sale deeds are null and void. The written statement of the defendant No. 5 and 6 very briefly the defence was this; the defendant No.1 was an absolute and exclusive owner and possessor of suit land having acquired the same under purchase right through the registered sale deed and there is no any ancestral property to the defendants family. The defendant No.1 was sold the suit property for his family and legal necessity in favour of defendant No.5 for a valid consideration through the registered document. The defendant No.1 had sold the suit land prior to the coming into force of Hindu Succession



(Amendment) Act 2015. On the basis of sale deed the defendant No.5 acquired the title and came in possession of suit land. Neither plaintiff nor defendant No.1 to 4 have been in possession in the suit land. There was an agreement prior to sale deed in between the defendant No.1 and 5, on the said agreement plaintiff also put her signature by consenting for sale of suit land. Hence the plaintiff and defendant No.1 to 4 are not entitled to share in the suit schedule property. Further suit is barred by law of limitation. Hence prays for dismissal suit with exemplary cost. Counsel for plaintiff argued that, the issue No.2 casted burden on plaintiff to prove the constructive possession over the suit schedule property, but in the said issue by typographical error it has to be amended as; Whether the plaintiff proves that the defendant No.1 to 4 and plaintiff are in constructive possession over the suit schedule property?. But it was negatively issue framed against the plaintiff. Further both the counsels argued



that, both the parties have admitted regarding execution of sale deed by defendant No.1 through registered sale deed in favour of defendant No.5, but issue No.4 was wrongly casted burden on plaintiff to prove the execution of the sale deed bearing reg. document No.7116/04-05 dated 09.02.2005. This issue is no necessary to frame to adjudicate the dispute controversy in between the parties as both parties have already admitted regarding the execution of sale deed in favour of defendant No.5 by the defendant No.1. Therefore, it has to be re-casted and burden has to be cast on defendant No.5 who asserts the things that, the defendant No.1 had sold out the suit schedule property for his family legal necessities and this issue is very essential to adjudicate the question controversy in between the parties. Hence issue No.4 re casted as; Whether the defendant No.5 proves that, defendant No.1 has executed the sale deed bearing document No.7116/04-05 dated



09.02.2005 for his family and legal necessities?. As per order 14 rule 5 of CPC the court may at any time before passing a decree have empowered to frame additional issue or delete issue or amend issue or strike out the issues to adjudicate the case and to decide the real question controversy in between the parties. In view of order 14 rule 5 of CPC issue No.2 amended by deleting word “not” and inserted word “in” and further issue No.4 is strike out and re casted.

5. On the basis of contentions urged by the respective parties to the suit, following issues have been framed.

ISSUES

1. Whether the plaintiffs proves that, the suit schedule property is an ancestral and undivided joint family property of herself and defendants?
2. Whether the plaintiff proves that the defendant No.1 to 4 and plaintiff are **in** constructive possession over the suit schedule property?



3. Whether the plaintiff proves that she is entitled for 1/5th share in the suit schedule property?
4. Whether the defendant No.5 proves that, defendant No.1 has executed the sale deed bearing document No.7116/04-05 dated 09.02.2005 for his family legal necessities?
5. Whether the plaintiff proves that the sale deed executed by the defendant No.1 is illegal and null and void and not binding on him?.
6. Whether the plaintiff for entitled in mense profit?
7. Whether the defendant No.5 and 6 proves that the suit of the plaintiff is barred by limitation?.
8. Whether the defendant No.5 and 6 proves that the plaintiff has knowledge of execution of suit registered sale deed in favour of defendant No.5 and 6 by defendant No.1?.
9. Whether the defendant No.5 and 6 proves that the suit property is exclusive property of the defendant No.1?
10. What order or decree?

ADDITIONAL ISSUES

- 1) Whether the defendant No.7 prove that she is entitled for the relief as claimed in counter claim?



6. The plaintiff in support of her case, got herself examined as PW 1 and got marked documents Ex.P.1 to 14. On the other hand defendants in order to prove the defence, defendant No.5 got himself examined as D.W.1 and got marked as Ex.D.1 to 4, the defendant no. 6 got himself examined as DW-2 and got marked documents as Ex.D.5 to 18 and defendant no. 7 got herself examined as DW.3.

7. After hearing the arguments and considering the oral and documentary evidence let in before it, the learned trial Judge has decreed the suit of the plaintiff by giving following findings on the above issues:

Issue No.1	:- In the Affirmative
Issue No. 2.	: In the Affirmative
Issue No. 3.	: In the Partly Affirmative
Issue No. 4.	: In the Negative.
Issue No. 5.	: In the Affirmative
Issue No.6	: In the Negative
Issue No.7	: In the Negative
Issue No.8	: In the Negative
Issue No.9	: In the Negative
Issue No.10	: As per final order, for the following;
Issue No.11	: In the Affirmative



8. Being aggrieved by dismissed the suit the appellant/defendant No.6 has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) The impugned judgment and decree dtd: 24-11-2018 passed by First Addl. Civil Judge Sindhanur in O.S. No. 226/2011 is illegal, erroneous and same is contrary to law, against the materials on record, on this ground the impugned judgment and decree is fit to be set aside.
- 2) That, trial court has not completely, properly read and assess the evidence of P.W. 1 and D.W.4 and the D.W. 1 to 3 and failed to assess the facts, reasons and admissions. The trial court has not considered the admissions given by the plaintiff and her consent signatures made by her upon the agreement of sale, upon which she has agreed and admitted, thereby given consent for sale of suit land by her father (defendant No. 1) sold in favour of the appellant and defendant No. 5, thereby the consent signatures of the plaintiff upon the agreement of sales marked as exhibit D.1,D-2 in spite of consent and admissions given by the plaintiff has not been assessed by the trial court.
- 3) That, the appellant has filed his Reg. sale deed and other material documents against



the plaintiff and other respondents. But the Hon'ble court has not properly assessed and considered the same.

- 4) That, in fact on the date of filing of the suit the defendant No. 1 the father of the plaintiff was not alive. This fact admitted by the wife of defendant No.1 and mother of the plaintiff during the course of cross (D.W.4) examination at page No. 3 at 3rd para in first line, admitted that, her husband was died about 8 years back. So on the day of filing of the suit D.1 made a party, but he was not alive. By knowing it suit was filed against the deceased father. Thereby the plaintiff and the defendant No.7 are misleded the court and to grab the valuable property of the appellant. Further the plaintiff and D.W. 4 are admitted in their cross examination with regard to their family financial problems the same are meet out by late defendant No.1 during course of his life time, he has performed the marriages of plaintiff and respondent 2 to 4. Further the defendant No.1 was maintained all family expenses. When he was suffering from financial problems, ultimately he has sold the suit land in favor of defendant No. 5 and inturn he has sold said land in favour of defendant No. 6 who is appellant herein. While entering the agreement of sale the plaintiff has put her consent signatures for the sale of suit property and her consent signatures are marked as D.1 D.2. Under the circumstances the Hon'ble court has not properly assessed, the evidence, the consent



D series exhibits the admissions during the course of cross examination.

- 5) Apart from this the D.W. 4 being the mother of the plaintiff stated that, their family converted from Hindu religion to Christian religion past about 40 years back and they are following said religion, comes under the customs rituals. Their marriages also performed as per the customs of Christian religion. But in the plaint, plaintiff stated that she has living in Hindu joint family status. So this evidence is very well available on record, but the trail court has not properly assessed the same.
- 6) That, by plain reading the judgment it has not properly assessed and simply passed the judgment without considering material admissions, evidence, the factum of death of father of the plaintiff, without considering their Christian religion the Hon'ble court has passed the judgment and decree in favour of the plaintiff. It has not deserve and sustain much long, for which the interference of this Hon'ble court is warranted to set aside the judgment and decree of the trail court.

9. I have heard the arguments addressed by the learned counsels appearing for the appellant and respondents.



10. From the grounds made out in the appeal, materials placed before this court and the arguments addressed by both sides the following points would arise for my consideration.

1. Whether the appellant/defendant No.6 prove that the impugned judgment and decree dated, 24.11.2018 passed in O.S. No.226/2011 by the trial court in decreed the suit, is contrary to law, facts, evidence and probabilities of the case and as such, it is liable to be interfered with?

2. What order?

11. My findings to the above points are as follows, as per the reasons discussed below: -

POINT NO.1 :- In the Affirmative

POINT NO.2 :- As per final the final order

:: R E A S O N S ::

12. **POINT No.1 :-** This court perused the contents of the un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land where in the plaintiff herself has affixed



signatures as attesting witness over them. When the of PW-1-plaintiff has admitted her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land this court marked them. Further the of PW-1-plaintiff herself admitted of having affixed her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land. Thus it is clear that the of PW-1-plaintiff has consented for alienation of the suit land in favour of the defendant No.5 through agreement for sale.

13. Thus the of PW-1-plaintiff is a person who has consented for alienation of the suit land in favour of the defendant No.5 by affixing her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-



06-2004 marked at exhibit D-2. When the of PW-1-plaintiff has admitted in her cross-examination dated-17-06-2015 that she has acted as an attesting witness to un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of the suit property by identifying her signature over them consenting for alienation of the said the suit property she is estopped from questing subsequent sale deeds.

14. It is settled principle of law that evidentiary admission in were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, Further such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. It is equally settled law that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted. In a decision reported in AIR 1979 SC 861



= [1979 (4) SCC 790] in between Avadh Kishore Dass VS. Ram Gopal the Hon'ble Supreme Court of India held that that evidentiary admissions were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, the Hon'ble Supreme Court India held that such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. the Hon'ble Supreme Court also observed that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted.

15. The evidentiary admissions were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, Further such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. It is equally settled law that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts



admitted. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in reported in AIR 1979 SC 861 = [1979 (4) SCC 790] in between Avadh Kishore Dass Vs. Ram Gopal the para No.23 reads as under.

Civil Appeal No. 1103 of 1969.

Dated-15.12.1978.

23. Further, what is more important, in cross-examination, the defendant was confronted with this declaration in the will. He unreservedly admitted that what was stated in the will, was correct. It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-



interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. Here, the defendant, far from explaining the admission or declaration made by the deceased Mahant, under whom he (defendant) claims, has affirmed it, that the entire property in suit is the absolute property of the God, Thakurji as a juristic person. It is, therefore, too late in the day for the defendant to wriggle out of the same. It cannot be said that the defendant had inadvertently affirmed the correctness of the admission/declaration made in the aforesaid will by the deceased Mahant. It was a conscious admission. The defendant himself repeatedly admitted this position with regard to the ownership of the



land being exclusively of the idol, Thakurji Maharaj, in the applications filed for receiving annuity under the provisions of the U. P. Zamindari, Abolition and Land Reforms Act, 1952, which was granted to the idol, in respect of the Trust property.

The ratio laid down by the Hon'ble Supreme Court of India reported in reported in AIR 1979 SC 861 = [1979 (4) SCC 790] in between Avadh Kishore Dass Vs. Ram Gopal is that evidentiary admissions were not conclusive proof of facts admitted and that such admissions could be explained or shown to be wrong, Further the Hon'ble the Supreme Court held that such admissions would raise an estoppel shifting the burden of proof on to the person making the admissions. Further Hon'ble Supreme Court of India held that that unless it is shown that the admissions are wrong, the admissions are tantamount to efficacious proof of the facts admitted.



16. This court is of the opinion that the admission is a piece of evidence and can be explained it to be wrong. It does not conclusively bind a party unless it amounts to an estoppel. Value of an admission has to be determined by keeping in view the circumstances in which it was made and to whom. An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. In this regard it is beneficial to refer to the Hon'ble three Judges Bench decision of the Hon'ble Supreme Court of India reported in AIR 1960 SC 100 in between Narayan Bhagwantrao Gosavi Balajiwale, Appellant vs. Gopal Vinayak Gosavi the para No.11 reads as under.

Civil Appeal No. 261 of 1955,,
decided on 22/09/1959

11. In the present case, the burden of proof need not detain us for another reason. It has



been proved that the appellant and his predecessors in the title which he claims, had admitted on numerous occasions that the public had a right to worship the deity, and that the properties were held as Devasthan inams. To the same effect are the records of the revenue authorities, where these grants have been described as Devasthan, except in a few cases, to which reference will be made subsequently. In view of all these admissions and the revenue records, it was necessary for the appellant to prove that the admissions were erroneous, and did not bind him. An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or



proved erroneous. We shall now examine these admissions in brief and the extent to which they went and the number of times they were repeated.

The ratio (underline emphasized by me) laid down in the Hon'ble three Judges Bench decision of the Hon'ble Supreme Court of India reported in AIR 1960 SC 100 in between Narayan Bhagwantrao Gosavi Balajiwale, Appellant vs. Gopal Vinayak Gosavi in An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.

17. It is no doubt true that this court in deciding the dispute should not place reliance on a stray sentence, but it does not mean that a categorical admission made by the parties during the cross-examination should not be considered to test the veracity of the evidence of the witnesses. If an admission in respect of a material fact is



excluded from consideration on the ground that it is a stray admission contrary to his earlier statement in the evidence, this court is of the view that that the very object of cross-examination would stand defeated. Thus a categorical admission made by the party shall be relied upon by this court. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in ILR 1996 KAR 1853, =[1996 (2) KarLJ 726] in between Smt. S.V. Kunhima vs B.N. Viswanath the para NO.13 of the order of the Hon'ble High Court of Karnataka read as under.

House Rent Revision Petition. No. 1157 of 1995.

Dated-07.03.1996.

13]. It is contended by Sri S. Shekhar Shetty, the learned Counsel appearing for the revision petitioner-respondent that, the respondent has not removed the steel grill window and installed a Beeda shop in its



place on the Southern side of the petition schedule premises facing Subedar Chatram Road and on the other hand the said shop has been in existence right from 1966, the date on which the petition premises was taken on lease. Sri Shekhar Shetty, learned Counsel appearing for the revision petitioner/respondent has further contended that the petitioner has failed to establish the existence of bunk shop on the Northern side of the building which was surrendered to him but admitted the existence of a Beeda shop in the petition schedule premises and therefore the Beeda shop admitted by the petitioner is the Beeda shop on the Southern side of the premises as seen in the photograph. Sri Shekhar Shetty, learned Counsel appearing for



the revision
petitioner/respondent relying on
the decision of this Court
in SMT PARAMESHWARI BAI v.
MUTHOJIRAO SCINDIA, , that
stray sentences elicited in cross-
examination can hardly be
construed as an admission, has
contended that in order to
decide whether, the respondent
has put up any beeda shop on
the Southern side of the petition
premises, this Court should read
and scrutinise the entire
evidence of R.W.1 and placing
reliance on a stray sentence in
the evidence of RW-1 would be
against the principle of
appreciation of evidence. He has
further contended that the
petitioner has failed to produce
the sanctioned plan which is a
material piece of evidence and
on account of non-production of
the same, the learned Judge



ought to have drawn an adverse inference against the petitioner in view of the judgment of the Supreme Court in DEVIDAS AND ORS. v. SHRISHAILAPPA AND ORS. 1961 AIR SC 1277 , .

It is no doubt true that the Courts in deciding the dispute should not place reliance on a stray sentence, but it does not mean that a categorical admission made by the parties during the cross-examination should not be considered to test the veracity of the evidence of the witnesses. If an admission in respect of a material fact is excluded from consideration on the ground that it is a stray admission contrary to his earlier statement in the evidence, I am of the considered view that the very object of cross-



**examination would stand
defeated.**

The ratio (underline emphasized by me) laid down by the Hon'ble High Court of Karnataka reported in ILR 1996 KAR 1853, =[1996 (2) KarLJ 726] in between Smt. S.V. Kunhima vs B.N. Viswanath is that admission made by a party in the cross-examination cannot be excluded.

18. It is not that the of PW-1-plaintiff explained subsequently that admission made in the cross-examination dated-17-06-2015 regarding her acting as an attesting witness over defendant No.1 and 2 is wrong. It is not also that cross-examination dated-17-06-2015 of the of PW-1-plaintiff is a stray sentence thus it cannot be relied. On the contrary in the considered opinion that the admission made in the cross-examination dated-17-06-2015 is clear and categorical about her acting as an attesting witness over the un-registered agreement for sale



dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of the suit property. Thus admission made in the cross-examination dated-17-06-2015 cannot be termed as a stray sentence. The admission made in the cross-examination dated-17-06-2015 is clear and categorical thus it cannot be brushed aside at all.

19. Thus the admission made by the of PW-1-plaintiff in cross-examination dated-17-06-2015 regarding her acting as an attesting witness over defendant No.1 and 2 it is clear that it is conclusive and binding on her as she herself has consented for alienation of the suit property in favour of the defendant No.5. When such being the case, the plaintiff is estopped from contending that without family and legal necessities alienated the suit property cannot be accepted.



20. As discussed above when the of PW-1-plaintiff has admitted her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land this court marked them. Further the of PW-1-plaintiff herself admitted of having affixed her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land. Thus In the considered opinion of this court it is proved beyond doubt that the PW-1-plaintiff has consented for alienation of the suit land in favour of the defendant No.5 by acting as an attesting to un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of the suit property. The trial court did not consider these crucial material on record and erroneously held that the defendant No.1 without family and legal necessity has



alienated the suit property in favour of the defendant No.5.

21. Besides it, the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that his father has performed the marriages of his brother and sisters even without having house and land. Further the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that the defendant No.1 her father was managing the affairs of the family. Further the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that her fat her was suffering from disease and to meet his medial expenses huge money was spent. Further the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that her father the defendant No.1 has utilized the sale proceeds to meet the family expenses. Thus it is clear that the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that her father was managing the affairs of the



family and to meet the family and legal necessity he has alienated the suit land.

22. It is settled principle of law that the managing member or karta has not only the power to manage but also power to alienate family property. The alienation may be either for family necessity or for the benefit of the estate. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors. The power of disposition of joint family property has been conceded to the manager of joint family for the reasons aforesaid, the law raises no presumption as to the validity of his transactions. His acts could be questioned in the Court of law.

23. At the same time it is also equally settled that the other members of the family have a right to have the transaction declared void, if not justified. When an alienation is challenged as being unjustified or illegal it



would be for the alienee to prove that there was legal necessity in fact or that he made proper and bona fide enquiry as to the existence of such necessity. It would be for the alienees to prove that he did all that was reasonable to satisfy himself as to the existence of such necessity. If the alienation is found to be unjustified, then it would be declared void.

24. In adjudging whether the sale conveys the whole estate, the actual pressure on the estate, the danger to averted, and the benefit to be conferred upon the estate in the particular instance must be considered. Legal necessity does not mean actual compulsion. it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he



did all that was reasonable to satisfy himself as to the existence of the necessity.'

25. 'Legal necessity does not mean actual compulsion it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances.



26. The manager of the family has special powers of alienation of joint family property including the minor son's share either for legal necessity or for the benefit of the estate. He can even sell the joint family property including the minor son's share for the discharge of antecedent debts, which are not tainted by illegality or immorality.

27. It would be for the karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be fore him to examine as to how best the joint family estate could be beneficially put into use to sub-serve the interest of the family. Apart from that, a father - karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk



and the right and interest of coparcener will remain unimpaired in the alienated property. No doubt the law confers a right on the coparcener to challenge the alienation made by karta but that right is not inclusive of the right to obstructs alienation. Nor the right to obstruct alienation could be considered as incidental to the right to challenge the alienation.

28. Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and *bona fide* enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the



transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession

29. Legal necessity does not mean actual compulsion it means pressure upon the estate of the vendor to dispose it of to meet the compelling necessities prevailing at that relevant point of time. It is true that a coparcener takes by birth an interest in the ancestral property, but he is not



entitled to separate possession of the coparcenary estate. His rights are not independent of the control of the karta. It would be for the karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interest of the family. A coparcener cannot interfere in these acts of management. Apart from that, a father - karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right and interest of coparcener will remain unimpaired in the alienated property. No doubt the law confers a right on the coparcener to challenge the alienation made by karta but that right is not inclusive of the right to obstruct alienation. Nor the right to obstruct alienation could be considered as incidental to the right to



challenge the alienation. These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it.

30. Karta of the family, had every right to sell the suit land belonging to family to discharge the debt liability and spend some money to make improvement in agriculture land for the maintenance of his family. In other words, the defendants were able to discharge the burden that lay on them to prove the existence of legal necessity for sale of suit land to them. Once the factum of existence of legal necessity stood proved, then, in my view, no co-coparcener or the member of the joint family has a right to challenge the sale made by the Karta of his family. The plaintiff being a daughter was one of the co-coparceners. He had no right to challenge such sale in the light of findings of



legal necessity being recorded against her. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all. Hence trial court not justified in holding that the sale made by defendant karta in favor of defendants was not for legal necessity and not binding on plaintiff.

31. Karta of the family has every right to alienate the family property to meet family necessities. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in 2018 AIR (SC) 3907 in between Kehar Singh (D) Thr.L.Rs. v. Nachittar Kaur the para No.26 to para No.28 read as under.

Civil Appeal No. 3264 of 2011.

Dated-20.08.2018.



26]. It has come in evidence that firstly, the family owed two debts and secondly, the family also needed money to make improvement in agriculture land belonging to the family. **Pritam Singh, being a Karta of the family, had every right to sell the suit land belonging to family to discharge the debt liability and spend some money to make improvement in agriculture land for the maintenance of his family. These facts were also mentioned in the sale deed.**

27]. In our considered opinion, a case of legal necessity for sale of ancestral property by the Karta (Pritam Singh) was, therefore, made out on facts. **In other words, the defendants were able to discharge the burden that lay on them to prove the**



existence of legal necessity for sale of suit land to defendant Nos. 2 and 3. The defendants thus satisfied the test laid down in Hindu law as explained by Mulla in Article 254 (2) read with Article 241 (a) and (g) quoted above.

28]. Once the factum of existence of legal necessity stood proved, then, in our view, no coparcener (son) has a right to challenge the sale made by the Karta of his family. The plaintiff being a son was one of the coparceners along with his father-Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. **It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the**



suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in 2018 AIR (SC) 3907 in between Kehar Singh (D) Thr.L.Rs. v. Nachittar Kau is that Karta of the family, had every right to sell the suit land belonging to family to discharge the debt liability and spend some money to make improvement in agriculture land for the maintenance of his family.

32. In this regard it is beneficial to refer to unreported decision of the Hon'ble High Court of Karnataka (DB) in RFA.NO.1309/2011 (DEC/PAR) in between Smt Sumana M Vs Lokesh [DB] dated 05-07-2013 the para No.23 reads as under.



RFA.NO.1309/2011 (DEC/PAR)

Dated 05-07-2013

23. In the instant case, the grandfather, father of the plaintiffs and the brother of plaintiffs 4 and 5 executed the sale deed in respect of 3 acres 10 guntas of land in Sy.No.2/2 in favour of 4th defendant for a sale consideration of Rs.17,00,000/-. Though the plaintiffs alleged that the value of the property is Rs.75,00,000/-, no document has been produced to show the value of the property is Rs.75.00 lakhs as on 2003. In the sale deed it was specifically mentioned that the sale is being made for the benefit of the joint family and also minor members of the family, hence, the minors have no right whatsoever in respect of the alienated property. It is also mentioned



that if there is any dispute, the alienee will settle the dispute. There is no allegation of fraud in the plaint except alleging that the alienation is not for the benefit of the minors. The specific case of the 4th defendant is that the alienation is for the benefit of the joint family. The plaintiffs have not produced any cogent evidence to disprove the said contention. After the death of Chikka Boyi- the grandfather, the plaintiffs filed the suit. The allegation of the 4th defendant is that at the instance of defendants 1 to 3, the plaintiffs have been set up for filing the present suit. However, defendants 1 to 3 have not entered appearance and denied the said averments. The defendants 1 and 3 have remained exparte and defendant No.2 has not defended the case.



Further, in view of amendment of the Hindu Succession Act in the year 2005, any alienation made prior to 20-10-2004 cannot be reopened. The Trial Court without considering all these aspects of the matter, decreed the suit in part and declared that the plaintiffs are entitled for the share in 3 acres 10 guntas of land in Sy.No.2/2. All the properties of the joint family are not included in the suit. The partial partition is not permissible under law. Though sufficient materials have been produced before the Trial Court, the Trial Court has not looked into the same. Admittedly, **alienation has been made by the Kartha of the joint family for the family necessities and it is binding on the other co-parceners.** The reasoning of the Trial Court is contrary to the law



laid down by the Hon'ble Supreme Court in the judgment referred to above. Hence, the judgment and decree passed by the Trial Court cannot be sustainable and the appeal filed by the appellants is required to be allowed by setting aside the judgment and decree passed by the Trial Court. Accordingly, we pass the following:

ORDER

The appeal is allowed in part. The judgment and decree passed by the Trial Court in O.S.No.183/2005 is set aside, insofar as the land bearing Sy.No.2/2 measuring 3 acres 10 guntas of land situated at Lingambudipalya village, Mysore Taluk is concerned.

The ratio (underline emphasized by me) laid down by the by the Hon'ble High Court of Karnataka in the ratio (underline emphasized by me) laid down by the



unreported decision of the Hon'ble High Court of Karnataka (DB) in RFA.NO.1309/2011 (DEC/PAR) in between Smt Sumana M Vs Lokesh [DB] dated 05-07-2013 is that if alienation has been made by the Kartha of the joint family for the family necessities and it is binding on the other co-parceners including that of the share of the minors.

33. As discussed above, the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that his father has performed the marriages of his brother and sisters even without having house and land. Further the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that the defendant No.1 her father was managing the affairs of the family. Further the of PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that her fat her was suffering from disease and to meet his medial expenses huge money was spent. Further the of PW-1-plaintiff herself admitted in her cross-



examination dated-17-06-2015 that her father the defendant No.1 has utilized the sale proceeds to meet the family expenses. . When the PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that there was a family and legal necessity upon her father to alienate the suit property, said alienation is binding upon her. When the PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that there was a family and legal necessity she is estopped from contending that the sale is not binding upon her. In spite of knowing all these facts the plaintiff filed the present suit.

34. As discussed above, the of PW-1-plaintiff herself admitted of having affixed her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land and she is none other than the daughter of vendee of the said deeds. It is made clear by this court that a person has



acted as an attesting witness to a deed he or she is estopped from challenging the said deed subsequently. In this regard it is beneficial to refer to the decision of the Hon'ble Supreme Court of India reported in 1995 AIR SC 1205, = [1995 SCC (3) 693] = [1996 ILR KAR 165] in between Mahboob Sahab Vs Syed Ismail & Ors para No.7 reads as under.

Civil Appeal No. 513 of 1979.

Dated - 23.03.1995.

7].Her 1/3rd undivided share was not subject matter of OS No. 3/1/1951. The Additional Civil Judge, therefore, was right in his findings that the gifts have not been proved. They were not complete. Admittedly, the father continued to be in possession and enjoyment of the lands as owner as evidenced by the revenue records until it was mutated in the name of the



appellants to the extent of 16 acres purchased by him as per the aforesaid sale deeds Ex. D-1 and Ex.D-3. Ibrahim has attested Ex.D- 1 when his father conveyed the lands as an owner. Though the sale was against his interest, he had not objected to the sale. He, thereby, is estopped by conduct and record to assail Ex.D-1 sale or to claim any interest in the lands.

The ratio (underline emphasized by me) laid down by the Hon'ble Supreme Court of India reported in 1995 AIR SC 1205, =[1995 SCC (3) 693] =[1996 ILR KAR 165] in between Mahboob Sahab vs Syed Ismail & Ors is that when a person has acted as an attesting witness to a deed he is estopped from challenging the said deed subsequently.



35. In the present case also exact situation has arisen. In the present case also As discussed above, the of PW-1-plaintiff herself admitted of having affixed her signatures over un-registered agreement for sale dated-29-06-2004 marked at exhibit D-1 and un-registered agreement for sale dated-29-06-2004 marked at exhibit D-2 in respect of suit land. When such being the case, in view of law laid down by the laid down by the Hon'ble Supreme Court of India reported in 1995 AIR SC 1205, =[1995 SCC (3) 693] =[1996 ILR KAR 165] in between Mahboob Sahab vs Syed Ismail & Ors the of PW-1-plaintiff is estopped from questing subsequent the registered sale deeds executed by her father the defendant No.1. The trial court did not consider these crucial material on record and erroneously held that the defendant No.1 without family and legal necessity has alienated the suit property in favour of the defendant No.5.



36. As discussed above, when the PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that there was a family and legal necessity upon her father to alienate the suit property, said alienation is binding upon her. When the PW-1-plaintiff herself admitted in her cross-examination dated-17-06-2015 that there was a family and legal necessity she is estopped from contending that the sale is not binding upon her. The trial court did not consider these crucial material on record and admission made in the cross-examination dated-17-06-2015 and erroneously held that the defendant No.1 without family and legal necessity has alienated the suit property in favour of the defendant No.5. Thus the alienation made by the defendant No.1 the father of the plaintiff is binding upon her. Hence Point No.1 is answered in affirmative.

37. **POINT NO.2:-** In view of my findings on the above points, the appeal filed by the appellant/defendant No.6 is



liable to be allowed. Accordingly, I proceed to pass the following order.

:: ORDER ::

The appeal filed by the appellant/defendant No.6 allowed.

Judgment and decree passed by the I Addl. Civil Judge and JMFC at Sindhanoor in OS No.226/2011 dated 24.11.2018 is set aside.

The suit of the plaintiff in OS No.226/2011 dated 24.11.2018 on the file of I Addl. Civil Judge and JMFC at Sindhanoor is dismissed.

Draw decree accordingly.

Sent back the entire file to the trial court along with copy of this Judgment, forthwith.

(Dictated to the stenographer directly on computer, typed by him, revised by me and after corrections pronounced in the open court on this the 1st day of July 2026)

(Lakshmikanth J. Miskin)
Senior Civil Judge & JMFC.
SINDHANUR