

KARN220007312009



FORM No.9 (Civil)
(R.P.91)

TITLE SHEET FOR JUDGMENT IN SUIT
IN THE COURT OF ADDITIONAL CIVIL JUDGE AND
JMFC, CHANNAPATNA

PRESENT

Sri.SURESHA.S.N, B.A. LL.B.
Addl. Civil Judge and JMFC.,
Channapatna.

Dated: 22nd Day of April 2026

O.S. No.88/2009

Plaintiffs :

1. Sri.Shivarajegowda,
Dead by his LR's,
- 1(a). Smt.Chikkolamma,
W/o Late Shivarajegowda,
Aged about 65 years,
- 1(b). Sri.Yogalinga,
S/o Late Shivarajegowda,
Aged about 44 years,

P1(a) & (b) R/at Kannamangala Village,
Kasaba Hobli,
Channapatna Taluk,
Bangalore South District.
- 1(c). Smt.Shivalingamma(Rathnamma),
D/o Late Shivarajegowda,
W/o Raju,
Aged about 50 years,

R/at Bhyrapatna Village,
Kasaba Hobli,
Channapatna Taluk,
Bangalore South District.

1(d). Smt.Savitha,
D/o Late Shivarajegowda,
W/o Channegowda,
Aged about 43 years,

R/at Kadanakuppe Village,
Kylanchna Hobli,
Ramanagara Taluk,
Bangalore South District.

1(e). Smt.Baby,
D/o Late Shivarajegowda,
W/o Krishnamurthy,
Aged about 46 years,

R/at Brahmanipura Village,
Kasaba Hobli,
Channapatna Taluk,
Bangalore District.

(By Sri.H.S.H., Advocate)

- V/s -

Defendant/s:

1. Sri.Ramesh,
S/o Late Lakkegowda,
Aged about 21 years,

R/at Tagachagere Village,
Kasaba Hobli,
Channapatna Taluk,
2. Sri.Lakkegowda,
Dead by his LR's,
- 2(a). Smt.Jayamma,
W/o Late Lakkegowda,
Aged about 55 years,

R/at Tagachagere Village,
Kasaba Hobli,
Channapatna Taluk,

3. Sri.Lakkaraju,
S/o Lakkegowda,
Aged about 32 years,
4. Sri.Suresh,
S/o Lakkegowda,
Aged about 32 years,

D3 and 4 are R/at Tagachagere Village,
Kasaba Hobli,
Channapatna Taluk.
5. Smt.Sudha,
W/o Ramakrishnegowda,
Aged about 35 years,

R/at Kodipura Village,
Channapatna Taluk.
6. Smt.Shobha,
S/o Suresh,
Aged about 29 years,

R/at Chikkanadoddi Village,
Channapatna Taluk,

(By Sri.A.K.M, advo., for D1)
(By Sri.H.S.H., advo., for D2(a), D5 & D6)
(D3 and D4 placed Exparte)

Date of Institution of the Suit	10.07.2009		
Nature of the Suit	Declaration and Injunction		
Date of Commencement of Recording of Evidence	24.05.2010		
Date on which the Judgment was pronounced	22.04.2026		
Duration	<u>Years</u> 16	<u>Months</u> 09	<u>Days</u> 12

(Suresha.S.N.)
Addl. Civil Judge and JMFC.,
Channapatna.

JUDGMENT

The plaintiff has filed the suit against the defendants for seeking the relief of declaration declaring that the judgment and decree dated 10.01.2008 in OS No.137/2004 is not binding to the plaintiffs and also seeking consequential relief of permanent injunction over the suit schedule property.

2. The plaintiffs submits that, the plaintiff / plaintiffs is/are absolute owner / owners and is/are in peaceful possession and enjoyment of the suit schedule property. Plaintiff/ shivarajegowda purchased it through registered deed sale dated 11.08.2004, from defendant No.1 to 4, for valid consideration. The 1st plaintiff (defendant No.1) was a minor, and was represented by 2nd defendant as guardian. Pursuant to sale the Khatha has been made out in the name of plaintiff vide mutation in MR 11/2004-2006. RTC for 2008-09 showing plaintiff as Khathedar and person in possession of the suit schedule property. The plaintiff is personally cultivating and growing crops and has been paying Kandayam regularly.

3. The defendants No.1, 3 to 6 are children of defendant No.2. The defendants having sold the suit property in favour of the plaintiff, have no manner of right, title or interest nor possession over any portion of the same. But, on 20.06.2009, all of a sudden the defendant No.1 came near the suit schedule property and asked the plaintiff to quit and deliver possession. When this was resisted, the defendant revealed that he had filed a suit against the other defendants, and said suit has been decreed, and he has filed final decree proceedings filed by him is pending. The plaintiff thereafter made enquiries in the office of the court, and to his shock and surprise learn that the defendants have colluded and got filed a suit in OS No.137/2004 filed through defendant No.1 allegedly for partition etc., and without contesting the same have allowed it to be decreed on 10.01.2008, and filed FDP No.4/2009 for final decree.

4. The said suit is collusive, behind back of the plaintiff intended only to defeat the plaintiffs right in the suit schedule property under the sale deed. It may be noted that the sale in favour of the plaintiff is on 11.08.2004, and as on

that date the plaintiff (defendant No.1) is shown to be minor being aged 16 years, and the suit is that suit, have not deliberately and intentionally contested the suit, or disclosed about the sale in favour of the plaintiff, and have very conveniently allowed it to be decreed. The plaintiff is not party to the said suit, the suit itself is collusive, and consequently the decree has obtained collusive and does not bind or affect the plaintiff. The decree is null and void and does not bind the plaintiff.

5. The defendants have colluded, and by virtue of the decree, are trying to dispossess the plaintiff from his lawful possession of the suit schedule property and are interfering with his peaceful possession and enjoyment. The defendants are very powerful and influential persons in both politically and financially. The plaintiff is a helpless and innocent person and cannot resist or restrain the defendants. If the defendants were to in anyway interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property, the plaintiff would suffer irreparably. Hence this suit for permanent injunction.

6. The defendants by virtue of the collusive decree dated 10.01.2008 in OS No.137/2004, have been asserting false title, prejudicial to the plaintiffs right and title and are trying to create documents also. Hence, the suit is filed for declaration also. The cause of action for the suit has arisen on 20.06.2009 when the plaintiff learn about the decree in OS No.137/2004, subsequently since when the defendants have been interfere with the plaintiffs peaceful possession and enjoyment of the suit schedule property, at Brahmanipura Village, Kasaba Hobli, Channapatna Taluk, within the jurisdiction of this court. **On the said reasons the plaintiff constrained the suit.**

7. After service of suit summons the defendants appeared through counsel and the defendant No.1 has filed his written statement. In the written statement stated that, the instant suit filed by the plaintiff for the relief of declaration that "the judgment and decree dated 10.01.2008 in OS No.137/2004 on the file of this court, is null and void and does not bind on the plaintiff herein and permanent injunction thereby restraining the defendants

pertaining to the suit schedule property and thus instant suit is not maintainable one and devoid of merits. The plea urged in para No.2 of the plaint is totally false and not correct and the plaintiff is put to strict proof of the same. Because, the alleged that he is the absolute owner and in peaceful possession and enjoyment of the suit land bearing Sy No.73/3 measuring 2.12 acres of land situated at Brahmanipura Village, Kasaba Hobli, Channapatna Taluk, wherein the plaintiff had purchased the suit land as per the sale deed dated 11.08.2004 from the defendant No.1 to 4, is totally false. Further, to the said sale deed dated 11.08.2004, this defendant is not executant to the sale deed as this defendant is not party to the said sale deed. Thus the plaintiff herein has suppressed the facts and thus strict proof of the same.

8. The defendant No.1 further submits that, the plea urged in para No.3 of the plaint is totally false and not correct and the plaintiff is put to strict proof of the same. Because as the defendant No.2 expired on 02.05.2016 and further now the above suit after remand from the high court

in RSA No.364/2013, the plaintiff herein sought to bring all the legal representatives of the deceased defendant No.2 and thus instant suit is not maintainable in the eye of law as not including the all the parties to the suit land and further the suit land is ancestral properties of this defendants. Further alleged fact about the interference is totally false and the plaintiff urged this plea for filing this suit, without any material and documentary evidence.

9. The defendant No.1 further submits that, the plea urged in para No.4 of the plaint is totally false and not correct and the plaintiff is put to strict proof of the same. It is true that this defendant has filed OS No.137/2004, in respect of the suit land herein, for the relief of partition and same was decreed.

10. The defendant No.1 further submits that, the plea urged in para No.5 of the plaint is totally false and not correct and the plaintiff is put to strict proof of the same. As on the date of the alleged sale deed dated 11.08.2004, this defendant was minor is totally false and same is strict proof

of the same, because the date of birth of this defendant is 02.07.1978. Thus the plea of the plaintiff totally false.

11. The defendant No.1 further submits that, the plea urged in para No.6, 7 and 8 of the plaint are totally false and not correct and the plaintiffs are put to strict proof of the same.

12. The defendant No.1 further submits that, the plea urged in para No.9 of the plaint is totally false and not correct and the plaintiffs are put to strict proof of the same. Because there is no cause of action to file this suit as this defendant is not party to the sale deed dated 11.08.2024, wherein illegally got the alleged sale deed and thus no cause of action against this defendant.

13. The defendant No.1 further submits that, the plea urged in para No.10 of the plaint is totally false and not correct and the plaintiffs are put to strict proof of the same. Because, the plaintiff has not paid sufficient and correct fee, as the suit land value more than five lakhs rupees and thus further this court has not pecuniary jurisdiction try the suit

over the suit schedule property and further the plaintiff has not filed proper valuation slip.

14. The defendant No.1 further submits that, the prayer sought by the plaintiff in the plaint, is not entitle, as this defendant is not party to the alleged sale deed and thus instant suit liable to be, dismissed with exemplary costs. Thus it evident that, it is after thought of the plaintiff only to defraud the right of this defendant over the schedule land property and same is ancestral property of this defendant. Hence the plaintiff's suit in respect of the schedule land property should be dismissed. Hence the plaintiff has not come to the court with clean hands to get the reliefs from this court and thus above suit is liable to be dismissed with costs. On the said grounds the defendants prays to dismiss the suit of the plaintiffs with exemplary costs.

15. The defendant No.5 & 6 have filed their written statement. In the written statement stated that, the instant suit filed by the plaintiff for the relief of declaration that "the judgment and decree dated 10.01.2008 in OS No.137/2004 on the file of this court, is null and void and does not bind on

the plaintiff herein and permanent injunction thereby restraining the defendants pertaining to the suit schedule property and thus instant suit is not maintainable one and devoid of merits. The defendant No.5 and 6 submits that, the plea urged in para No.2 of the plaint is totally false and not correct and the plaintiff is put to strict proof of the same. Because, the alleged that he is the absolute owner and in peaceful possession and enjoyment of the suit land bearing Sy No.73/3 measuring 2.12 acres of land situated at Brahmanipura Village, Kasaba Hobli, Channapatna Taluk, wherein the plaintiff had purchased the suit land as per the sale deed dated 11.08.2004 from the defendant No.1 to 4, is totally false. Further, to the said sale deed dated 11.08.2004, this defendant is not executant to the sale deed as this defendant is not party to the said sale deed. Thus the plaintiff herein has suppressed the facts and thus strict proof of the same.

16. The defendant No.5 & 6 further submits that, the plea urged in para No.3 of the plaint is totally false and not correct and the plaintiff is put to strict proof of the same.

Because as the defendant No.2 expired as on 02.05.2016 and further now the above suit after remand from the high court in RSA No.364/2013, the plaintiff herein sought to bring all the legal representatives of the deceased defendant No.2 and thus instant suit is not maintainable in the eye of law as not including the all the parties to the suit land and further the suit land is ancestral properties of this defendants. Further alleged fact about the interference is totally false and the plaintiff urged this plea for filing this suit, without any material and documentary evidence.

17. The defendant No.5 & 6 further submits that, the plea urged in para No.4 of the plaint is totally false and not correct and the plaintiff are put to strict proof of the same. It is true that this defendants have filed OS No.137/2004, in respect of the suit land herein, for the relief of partition and same was decreed.

18. The defendant No.5 & 6 further submits that, the plea urged in para No.5 of the plaint is totally false and not correct and the plaintiffs are put to strict proof of the same. As on the date of the alleged sale deed dated 11.08.2004,

this defendant was minor is totally false and same is strict proof of the same, because the date of birth of this defendant is 02.07.1978. Thus the plea of the plaintiff totally false.

19. The defendant No.5 & 6 further submits that, the plea urged in para No.6, 7 and 8 of the plaint are totally false and not correct and the plaintiffs are put to strict proof of the same.

20. The defendant No.5 & 6 further submits that, the plea urged in para No.9 of the plaint is totally false and not correct and the plaintiffs are put to strict proof of the same. Because there is no cause of action to file this suit as this defendant is not party to the sale deed dated 11.08.2024, (wrong), wherein illegally got the alleged sale deed and thus no cause of action against this defendants.

21. The defendant No.5 & 6 further submits that, the plea urged in para No.10 of the plaint is totally false and not correct and the plaintiffs are put to strict proof of the same. Because, the plaintiff has not paid sufficient and correct fee, as the suit land value more than five lakhs rupees and thus

further this court has not pecuniary jurisdiction try the suit over the suit and further the plaintiff has not filed proper valuation slip.

22. The defendant No.5 & 6 further submits that, they are the daughters of one Lakkegowda and Smt.Jayamma, Lakkegowda is non other than defendant No.2, the suit schedule property belongs to late Channegowda the defendants No.5 and 6 are the grand-daughters of the said Chennegowda. The suit schedule property is the ancestral property hence the defendant No.5 and 6 have got equal share in the suit schedule property. The prayer sought by the plaintiff in the plaint, is not entitle, as these defendants are not parties to the alleged sale deed and thus instant suit liable to be, dismissed with exemplary costs. Thus it evident that, it is after thought of the plaintiff only to defraud the right of this defendant over the schedule land property and same is ancestral property of this defendant. Hence the plaintiff's suit in respect of the schedule land property should be dismissed. Hence the plaintiff has not come to the court with clean hands to get

the reliefs from this court and thus above suit is liable to be dismissed with limine with costs. On the said grounds the defendant No.5 & 6 prays to dismiss the suit of the plaintiffs with exemplary costs.

23. On the basis of the pleadings of parties as afore-stated, the following issues were framed by my learned predecessor;

ISSUES

- 1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property purchased under registered sale deed dated 11.08.2004 from defendant No.1 to 4 for valid sale consideration?**
- 2. Whether the plaintiff proves that he is the bona-fide purchaser of the suit schedule property?**
- 3. Whether the plaintiff further proves that the judgment and decree passed in OS No.137/2004 filed by defendant No.1 along with his family members is not binding to the plaintiff?**
- 4. Whether the plaintiff further proves the alleged interference by the defendants in respect of the suit property?**

- 5. Whether the defendants prove that the sale deed executed on 11.08.2004 in favour of the plaintiff is not binding to these defendants, since the defendant No.1 was major, his date of birth in 02.07.1978 at the time of sale deed?**
- 6. Whether the plaintiff is entitled for relief of declaration as sought for?**
- 7. Whether the plaintiff is entitled for relief of permanent injunction as sought for?**
- 8. What Order or Decree?**

24. In order to prove the case, the plaintiff Shivarajegowda examined himself as PW.1 and filed chief affidavit in lieu of examination in chief and got marked the documents at Exh.P1 to P13. During the pendency of the suit this Shivarajegowda / plaintiff was died leaving behind his legal heirs i.e., plaintiff No.1(a) to 1(e). Then the son of Shivarajegowda by name of Yogalinga S/o Shivarajegowda being a plaintiff No.1(b) examined as PW.2 and got marked the documents at Exh.P14 to 17. The documents got marked through PW.1 are carried to the evidence of PW.2. Therefore on behalf of the plaintiffs 17 documents got

marked as Exh.P1 to 17. The plaintiff No.1(b) also filed chief affidavit in lieu of examination of chief and re-averred the same facts of plaint in his affidavit and closed their side evidence. On the other hand, the defendant No.1 and 6 have examined themselves as DW.1 and 2 and filed their chief affidavit in lieu of examination in chief and re-averred the same facts of their written statement and got marked the documents at Exh.D1 to 19 and closed their side defense evidence.

25. Heard the learned counsel for plaintiff and defendants.

26. On considering the evidence on record, my findings to the above issues are as under.

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 Affirmative

Issue No.7 - In the Affirmative

**Issue No.8 - As per final order
for the following.**

REASONS

27. ISSUE NO.1 & 2:- These issues are interconnected with each, hence taken up together for common discussion to avoid the repetition of same facts.

28. The plaintiff Shivarajegowda filed the present suit against these defendants for seeking relief of declaration and consequential relief of injunction over the suit schedule property. The said Shivarajegowda died during the pendency of the suit leaving behind his legal heirs i.e., plaintiff No.1(a) to 1(e). In the plaint stated that, the plaintiff has purchased the suit schedule property under registered sale deed on 11.08.2004 from defendants No.1 to 4 for valid sale consideration. The plaintiff has become the absolute owner over the suit property and he has been possession and enjoyment in the suit property. The defendant No.1 was minor and he was represented by his father 2nd defendant as guardian. On the basis of sale deed the Khatha of the suit property changed in the name of

plaintiff vide MR 11/2004-05. The defendants have sold the suit property in favour of the plaintiff even though have no manner of right, title and interest in the suit property, they are obstructing the possession of plaintiff and demanded to handed over the possession of suit property of plaintiff. The defendant No.1 revealed that he had filed a suit against the other defendants and the said suit decreed in favour of the of him and the final decree proceeding also pending. The plaintiff made enquiry in the office of court and surprise that, the defendants have colluded and got filed a suit in OS No.137/2004, the defendant No.1 allegedly filed the false suit without contesting the same and obtained the decree on 10.01.2008 and filed FDP 04/2009. The suit filed by the defendants is collusive in order to defeat the rights of the plaintiff in the suit schedule property. The sale deed executed in favour of plaintiff on 11.08.2004 and the suit filed on 29.10.2004. The defendants No.2 to 4 have not deliberately and intentionally contested the suit. On the said reasons the plaintiffs filed the suit for the said reliefs.

29. On the other hand the defendant No.1, 5 and 6 have filed written statement by denying entire averments of the plaint and contended that, as on the date of alleged sale deed on 11.08.2004, this defendant No.1 was a minor is denied, because the date of birth of defendant No.1 is 02.07.1978. There is no cause of action to file the suit, this defendant No.1 is not a party to the sale deed dated 11.08.2024, **(but the correct date of sale is 11.08.2004, but in the written statement the defendants wrongly mentioned the date of sale deed is 11.08.2024)**. The value of the suit property is more than 5 lakhs but this court having no pecuniary jurisdiction to try the suit. The suit schedule property is ancestral property of these defendants hence, the defendant No.1 is also having right to share in the suit property.

30. The defendant No.5 and 6 also file w/s and denied the entire plaint averments, it is admitted that the defendant No.1 has filed the suit in OS No.137/2004 in respect of the suit property for relief of partition and the

same has been decreed. As on the date of alleged sale deed dated 11.08.2004 this defendant No.1 was a minor. The defendant No.1 is not a party to the sale deed executed on 11.08.2024,**(but the correct date of sale is 11.08.2004, but in the written statement the defendant wrongly mentioned the date of sale deed is 11.08.2024)**. The value of the suit property is more than 5 lakhs but this court having no pecuniary jurisdiction to try the suit. The suit schedule property is ancestral property of these defendants hence, the defendant No.1 is also having right to share of in the suit property. The defendant No.5 and 6 further contended that, they are the daughters of one Lakkegowda and Smt.Jayamma is none other than defendant No.2. The suit property is belongs to Late Channegowda, who is the grand-father of defendants No.5 and 6. The suit schedule property is the ancestral property of defendants they have got equal share in the suit schedule property. The defendant No.1 is not party to the alleged sale deed and the suit has to be dismissed with exemplary cost.

31. In support of the plaint pleadings the plaintiff Shivarajegowda examined himself as PW.1 and filed chief affidavit in lieu of examination in chief and got marked the documents at Exh.P1 to P13. During the pendency of the suit this Shivarajegowda / plaintiff was died leaving behind his legal heirs i.e., plaintiff No.1(a) to 1(e). Then the son of Shivarajegowda by name of Yogalinga S/o Shivarajegowda being a plaintiff No.1(b) examined as PW.2 and got marked the documents at Exh.P14 to 17. The documents got marked through PW.1 are carried to the evidence of PW.2. Therefore on behalf of the plaintiffs 17 documents got marked as Exh.P1 to 17. The plaintiff No.1(b) also filed chief affidavit in lieu of examination of chief and re-averred the same facts of plaint in his affidavit. Now the time has to discuss on the documents. Exh.P1 is the registered sale deed executed on 11.08.2004, on perusal of the said sale deed, it clearly founds that, Lakkegowda, who is the defendant No.2 and his sons Lakkaraju, who is the defendant No.3 and Suresha, who is the defendant No.4 and

the minor son of Lakkegowda, who is the defendant No.1 represented by his father executed a registered sale deed in favour of Shivarajegowda S/o Late Ningegowda for sale consideration of Rs.2,07,000/- dated 11.08.2004. In the sale deed the main propositor Lakkegowda and his two sons Lakkaraju and Suresha have executed the sale deed in favour of this Shivarajegowda. In the sale deed further narrated that, this defendant No.1 was a minor his age was 16 years. Therefore, his father defendant No.1 stood as minor guardian to his minor son i.e., the defendant No.1. In the sale deed it further narrated that, due to the clear of hand loans which was made for the marriage expenses of his daughters, himself and his sons have been selling the suit property to the said person for said sale consideration. The main propositor Lakkegowda and his two sons defendant No.3 and 4 have given the information to draft the sale deed. Accordingly the sale deed has been executed in favour of plaintiff Shivarajegowda. If the defendant No.1 was a major at the time of execution of sale deed, the

defendant No.2 to 4 could have implead him as party and obtain the signature of the sale deed. The vendors should disclose the particulars of property and also the particulars of family members while executing the sale deed. The purchaser could not able to receive the documents pertaining to their age of proof, but burden is on the vendors to disclose it. Therefore, there is no default occurred from the side of purchaser of suit schedule property. The said sale deed itself is registered one, the things narrated therein treated as true and correct.

32. On the basis of registered sale deed the Khatha of the suit schedule property changed in the name of Shivarajegowda vide MR 11/2004-05, who is the plaintiff (now he has died leaving behind plaintiff No.1(a) to 1(e)). On the basis of the said MR the name of plaintiff Shivarajegowda entered in the RTC for the year 2008-09. These documents are clearly shows that, the plaintiff has purchased the suit schedule property for sale consideration of Rs.2,07,000/- from the defendant No.1 to 4. Hence, the

plaintiff has become the bona-fide purchaser of the suit schedule property. **Therefore I answer Issue No.1 and 2 in the Affirmative.**

33. Issue No.3:- The plaintiff purchased the suit schedule property under registered sale deed dated 11.08.2004 for sale consideration of Rs.2,07,000/- from defendant No.2 Lakkegowda and his two sons defendant No.3 Lakkaraju and the defendant No.4 Suresha. The defendant No.1 filed the suit against the defendant No.2 to 6 for seeking partition and separate possession in the suit property and also other family properties bearing Sy No.132 measuring 0.30.08 guntas and house property bearing Katha No.321 measuring 40x120 feet in OS No.137/2004. This suit filed on 29.10.2004, after laps of two months from the date of execution of sale deed in favour of this plaintiff. In the said suit defendants have not made the plaintiff as a party. In the said suit, the plaintiff shall be impleaded as proper party, because he was purchased the suit property prior to filing the suit. On perusal of the judgment in OS

No.137/2004, it appears that, the defendant No.2 to 6 have colluded with defendant No.1 and filed the suit against the plaintiff in respect of the property which was already been sold in favour of the plaintiff. Why this court telling that, the defendant No.2 to 6 have colluded with defendant No.1 that, the defendants neither examined as themselves as witnesses nor produced single document to contest the case of defendant No.1 filed in OS No.137/2004. The attitude of this defendants clearly shows that, the defendant No.2 to 6 have colluded with the defendant No.1 to get back the suit property, which had already been sold in favour of the present plaintiff in the suit case in hand. The DW.1 in the cross-examination admitted the execution of the sale deed executed in favour of plaintiff, but his only contention is that, at the time of execution of sale deed he got majority, but in the sale deed the defendant No.1 shown as minor and his father is representing as his minor guardian. The father of the defendant No.1 himself given the information to draft the sale deed. The defendants stated in the written

statement and evidence in that, the suit property is the ancestral property of these defendants, accordingly the defendant No.1, 3 to 6 also having right over the suit property, but the defendants except the documents appearing in the name of defendant No.1 non of the document produced to show that, the suit property was either appearing in the name of grand-father or of the ancestors of defendant No.1 and defendant No.3 to 6. The counsel for plaintiff suggested to this DW.1 stating that, whether you have challenged the sale deed executed in favour of plaintiff, in reply the DW.1 said that, No. It is admitted the suggestion that, after death of their father they have divided the properties bearing Sy No.129/1 and 132. However, on the basis of registered sale deed the plaintiff has become the absolute owner upon the suit schedule property. The father and brothers of the defendant No.1 have sold the suit property for valuable sale consideration before filing the suit in OS No.137/2004. The

plaintiff is having every right over the suit property on the basis of sale deed.

34. The defendants in their written statement taken up a contention that, the defendant No.1 was filed the suit against his father and rest of his brothers and sisters for seeking partition and separate possession in the suit property and other family properties in OS No.137/2004. The said suit came to be decreed in favour of the defendant No.1. The plaintiff in the plaint averred that, he has purchased the suit property under registered sale deed dated 11.08.2004. On the basis of sale deed the Khatha of the suit property mutated in the name of plaintiff vide MR No.11/2004-05. The defendant No.1 filed the suit against his father and rest of his brothers and sisters on 29.10.2004, after laps of more than two months from the date of execution of sale deed in favour of the plaintiff. In the said suit the defendants did not made this plaintiff as necessary party even though he was purchased the suit property before filing the suit bearing OS No.137/2004. The

defendants did not challenged the sale deed either by filing the separate suit or did not seek declaration stating that, the sale deed executed in favour of plaintiff is null and void and not binding to the present defendants in the suit bearing O S No.137/2004. On perusal of the judgment and decree in OS No.137/2004 it gets clear that, the defendant No.1 has not be arrayed the plaintiff as party to the said suit. Since the plaintiff is not a party to the suit bearing OS No.137/2004, the judgment and decree in OS No.137/2004 is not binding upon the plaintiff. Further on perusal of the sale deed at Exh.P-1 executed in favour of plaintiff it gets clear that, the defendant No.1 was represented by his father and defendant No.2 to 4 executed the sale deed in favour of plaintiff for clearing the loan, which was obtained for need the marriage expenses of daughters of defendant No.2 and sisters of defendant No.1, 3 and 4. The object for which the sale deed was executed for family necessity and the defendant No.2 being the Kartha of undivided family was having right to alienate the family property. Accordingly the

defendant No.2 and his two sons the defendant No.3 and 4 have executed the sale deed in favour of the plaintiff as per Exh.P-1. The sale deed was perfectly valid in the eye of law.

35. On careful perusal of the Exh.P-1, it clear that, the sale deed was executed on 11.08.2004 and the suit bearing OS No.137/2004 was filed on 29.10.2004. It implies that, the suit for partition was filed within two and half months from the date of execution of sale deed as per Exh.P1. Though in the said suit bearing OS No.137/2004, the defendants No.2 to 6 have put their appearance, but they have not filed their written statement and thereby facilitated the defendant No.1 to get the decree in their favour in OS No.137/2004. When the defendants No.2 to 6 have put their appearance in the said suit, the defendant No.2 to 6 were the signatories to the Exh.P-1 / sale deed, which was executed prior to filing the suit, non filing of the written statement and not bringing the sale to the notice of the court shows that, the defendants have colluded among

themselves. The defendant No.5 and 6 though were not the signatories to the sale deed as per Exh.P-1, they have not challenged the sale deed on the said ground which implies that, they were aware of the truthfulness and correctness in the due execution of sale deed as per Exh.P1 in favour of plaintiff i.e., Shivarajegowda. Their silence in bringing the sale deed in favour of plaintiff as per Exh.P1 to the notice of the court in OS No.137/2004 also confirms the collusion between themselves and defendant No.1 to getting the decree in suit in OS No.137/2004. Since the judgment and decree in OS No.137/2004 was collusive and got obtained the decree without the notice of the plaintiff (the father of plaintiff No.1(a) to 1(e)) the same is not binding either Shivarajegowda or his legal representatives plaintiff No.1(a) to 1(e). Further observed in the suit bearing OS No.137/2004 that, the defendants No.1 has not sought for declaration that, the sale deed as per Exh.P1 was not binding upon him. Further no court has declared Exh.P1 is null and void or is not binding on either the defendant No.1

and rest of the defendants No.2 to 6. Under such circumstances the Exh.P1 is valid and binding upon the defendants. As per Exh.P1 the possession of the suit property already handed over in favour of plaintiff as per Exh.P2 and 3. As discussed above the plaintiff Shivarajegowda purchased the suit property for sale consideration of Rs.2,07,000/- on 11.08.2004, subsequently the defendant No.1 colluded with the rest of the defendants and filed the suit for relief of partition and separate possession upon the suit property and other family properties against the rest of the defendants after laps of more than two months in OS No.137/2004, wherein this plaintiff or the legal representatives of the plaintiff not a parties. Hence, the decree passed in OS No.137/2004 is not binding to the present plaintiffs. **Therefore Issue No.3 in the Affirmative.**

36. Issue No.4:- The defendant No.2 to 4 have executed the registered sale deed in favour of father of plaintiff No.1(a) to 1(e) dated 11.08.2004 for sale

consideration of Rs.2,07,000/-. As per the recitals of the sale deed the possession of the suit property handed over to the plaintiff as on the date of execution of sale deed. On the basis of the sale deed the Khatha of the suit property changed in the name of father of plaintiff No.1(a) to 1(e) vide MR No.11/2004-05, accordingly the name of father of these plaintiffs entered in the RTC as per Exh.P3. These documents clearly goes to show that, the father of the plaintiff Shivarajegowda was in possession in the suit property till his death and after his demise these plaintiffs have been possession in the suit property. The defendant No.1 filed the suit against the plaintiff and rest of his brothers, sisters and his father seeking relief of partition and separate possession in the suit property and also other family properties in O S No.137/2004. The said attitude and the very contention of these defendants shows that, they are by way of hook or crook they retain the suit property from the hands of plaintiffs, even though sold by executing the sale deed. The defendants in their pleadings stated

that, they have been possession in the suit property even though they have not possession in the suit property, this also shows that the defendants are interfering in the suit property of these plaintiffs. **Therefore I answer Issue No.4 in the Affirmative.**

37. Issue No.5:- The burden is on the defendants to prove this issue. The defendants No.1, 5 and 6 have filed their separate written statement and contended that, the defendant No.2 to 4 have executed the sale deed in favour of plaintiff on 11.08.2004. At the time of execution of sale deed, this defendant No.1 got attained majority, his date of birth is 02.07.1978. Even though he is a major, in the sale deed shown him as a minor. The father of the plaintiff himself representing the defendant No.1 as his minor guardian to execute the sale deed in favour of plaintiffs. While executing the sale deed, the information given by the defendant No.2 to draft the sale deed. The defendants No.1 in support of his contention got produced 19 documents. Among those Exh.D-1 is the Marks card of defendant No.1

issued by head master Sharanabasappaswamy High School, Lalaghatta. Exh.D2 is the transfer certificate of defendant No.1 is issued by Head Master Sharanabasappaswamy High School, Lalaghatta. Exh.D-3 is the RTC bearing Sy No.73/3 for the year 2004-05 to an extent of 2.16 acre out of it 0.04 guntas is phod Karab and rest of 2.12 guntas is appearing in the name of Lakkegowda S/o Channegowda who is the defendant No.2 as well as father of defendant No.1 and rest of the defendants. Exh.D-4 is the death extract of defendant No.2 was died on 02.05.2016. Exh.D-5 and D6 are the certified copies of judgment and decree in OS No.137/2004, which was already been discussed in the above issues. Exh.D-7 is the petition in FDP 04/2009 filed by the defendant No.1 against the rest of the defendants on the basis of preliminary decree passed in OS No.137/2004. Exh.D-8 is the postal acknowledgments Nos.1 to 6. Exh.D9 is the certified copy of order sheet in FDP No.4/2009. Exh.D-10 to 13 are the certified copies of order sheet, petition, judgment and decree in RA No.13/2012 filed before

Hon'ble Prl. Civil Judge, Senior Division, Ramanagara. On careful perusal of the said document it appears that, this plaintiff had filed the present suit against these defendants, but the defendants did not contest the present suit, even though the summons duly served upon them. In earlier stage, this suit was exparte decree in favour of plaintiff. After decree the present defendants have preferred an appeal before the Senior Civil judge, in RA 13/2012. The said appeal filed by the defendant No.1 was dismissed on 18.08.2012. Exh.D14 to 19 are the certified copies of application filed in RA No.13/2012 (*old RA No.162/2010 pending at Ramanagara Court after establishment of Senior Civil Judge, Channapatna in RA No.162/2010 changed into RA No.13/2012*). As per the record, even though the defendant No.1 was major at the time of sale deed the family members of this defendants shown this defendant No.1 is the minor his aged about 16 years. As already said in Issue No.1, the defendant No.2 to 4 themselves have shown this defendant No.1 is the minor. The family

members of defendant No.1 are held responsible for showing the defendant No.1 was minor at the time of sale deed. As already discussed above the defendant No.1 had filed the suit against the rest of defendants in OS No.137/2004 with disguising the plaintiff in the suit, and obtain the decree. The decree obtained in the said suit is not binding upon the plaintiff, because the plaintiff was not a party in that suit even though purchased the suit schedule property prior to filing the suit. At the initial stage of the present suit the defendants were not contest the suit of the plaintiff, hence the present suit decreed in favour of this plaintiff. Thereafter, the defendant No.1 preferred an appeal before the Senior Civil Judge, Ramanagara in RA 162/2010. While the case was pending in Ramanagara the Senior Civil Judge, court established in Channapatna then the said RA transferred from Ramanagara to Channapatna then it renumbered as RA No.13/2012. The said appeal was dismissed. Then the defendants have preferred an appeal before the Hon'ble High court of Karnataka. The Hon'ble

High Court of Karnataka remanded the appeal to this court to give the opportunity to the defendants to contest the suit. Accordingly, the case has tried in this court. The defendants had really hungry to contest the suit of the plaintiff they could appear in the case at the earlier stage of the suit. However, even though the defendant No.1 got majority at the time of sale deed as per school document, it shall not be looked into, but only looked to recitals of the sale deed.

Therefore I answer Issue No.5 in the Negative.

38. Issue No.6 & 7:- These issues are interconnected with each, hence taken up together for common discussion to avoid the repetition of same facts.

The father of the plaintiffs Shivarajegowda purchased the suit schedule property under registered sale deed dated 11.08.2004 for valid sale consideration of Rs.2,07,000/-. These defendants No.2 to 4 are the vendors to the father of plaintiff No.1(a) to 1(e). In the sale deed the defendant No.2 to 4 have mentioned that, this defendant No.1 is the minor at the time of execution of sale deed. To prepare the

draft sale deed, the family members of defendant No.1 I.e., defendant No.2 to 4 have given the information. Accordingly, the sale deed executed in favour of the father of plaintiff No.1(a) to 1(e) on the basis of registered sale deed the Kahta of the suit property changed in the name of Shivarajegowda who is the father of plaintiff No.1(a) to 1(e) vide MR No.11/2004-05. On the basis of mutation the name of Shivarajegowda entered into the RTC at Exh.P3. The sale deed itself shows that, the plaintiff / plaintiff No.1(a) to 1(e) are the absolute owners by title. The Exh.P2 & 3 are clearly goes to show that, the plaintiffs have been possession in the suit property. It need not discussed much because the things already been discussed in the above issues.

Therefore I answer Issue No.6 and 7 are in the Affirmative.

39. ISSUE NO.8:- In the result for the foregoing reasons and findings on Issue No.1 to 7, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby **decreed** with cost.

It is declared that, the plaintiffs (plaintiff No.1(a) to 1(e)) are the absolute owners of suit schedule property.

It further declared that, the judgment and decree passed in OS No.137/2004 dated 10.01.2008 is not binding to the plaintiffs.

The defendants are hereby restrained from interfering with the peaceful possession and enjoyment of plaintiffs over the suit schedule property.

Draw decree accordingly.

*(Dictated to the Stenographer directly on computer, typed by her, the same is corrected, revised, signed and then pronounced in the open court on **22nd day of April 2026**).*

(Suresha.S.N.)
Addl. Civil Judge and JMFC.,
Channapatna.

ANNEXURE**List of witnesses examined on behalf of plaintiff/s:**

PW.1 : Sri.Shivarajegowda

PW.2 : Sri.Yogalinga

List of Exhibits marked on behalf of plaintiff/s:

Exh.P-1 : The original registered sale deed dated 11.08.2004

Exh.P-2 : Mutation Register Extracts

Exh.P-3 : Computerized RTC bearing Sy No.73/3

Exh.P-4 & 5: Certified copies of judgment and decree in
OS No.137/2004

Exh.P-6to11: Postal Acknowledgments

Exh.P-12&13: Certified copies of order sheet and application
in FDP No.4/2009

Exh.P-14 : Computerized RTC land bearing Sy No.73/3 for
the year 2025-26

Exh.P-15 : Computerized MR H.2/2014-15

Exh.P-16 : Computerized copy of MR T88/2019-20

Exh.P-17 : Tax Receipt

List of Witnesses examined on behalf of defendant/s :

DW.1 : Sri.Ramesh

DW.2 : Smt.Shobha

List of Exhibits marked on behalf of defendants :

Exh.D-1 : SSLC Marks card of defendant No.1 the Ramesh
prepared and issued by Head master Sri.
Sharana Channabasappa swamy high school,
Lalaghatta.

Exh.D-2 : TC of defendant No.1

- Exh.D-3 : RTC land bearing Sy No.73/3 for the year 2004-05
- Exh.D-4 : Death Extract of Lakkegowda S/o Channegowda
- Exh.D-5&6 : Certified copies of judgment and decree in OS No.137/2004
- Exh.D-7 : Certified copy of petition in FDP No.4/2009 filed before Honble Civil Judge and JMFC, Channapatna
- Exh.D-8 : Certified copies of postal acknowledgments Nos.1 to 6 in OS No.88/2009
- Exh.D-9 : Certified copy of order sheet in FDP 4/2009
- Exh.D-10 : Certified copy of order sheet in RA 162/2010 filed before Hon'ble Senior Civil Judge, Ramanagara.
- Exh.D-11 : Certified copy of petition U/Sec.96 of CPC in RA 162/2010 filed before Hon'ble Senior Civil Judge, Ramanagara.
- Exh.D-12&13: Certified copies of judgment and decree in RA 13/2012 filed before Honble Senior Civil Judge, Ramanagara.
- Exh.D-14 : Certified copy of application U/Sec.5 of Limitation Act, in RA No.162/2010
- Exh.D-15 : Certified copy of application U/o 41 Rule 5 of CPC in RA No.162/2010
- Exh.D-16 : Certified copy of application U/O 41 Rule 9 of CPC in RA No.88/2009

- Exh.D-17 : Certified copy of application U/O 6 Rule 14(A) of CPC in RA No.162/2010
- Exh.D-18 : Certified copy of application U/O 41 Rule 5 of CPC in RA No.162/2010
- Exh.D-19 : Certified copy of application U/Sec.5 of Limitation Act, in RA No.162/2010

(Suresha.S.N.)
Addl. Civil Judge and JMFC.,
Channapatna.

Judgment pronounced in open court**(Vide Separate Order sheet)****ORDER**

The suit of the plaintiffs is hereby **decreed** with cost.

It is declared that, the plaintiffs (plaintiff No.1(a) to 1(e)) are the absolute owners of suit schedule property.

It further declared that, the judgment and decree passed in OS No.137/2004 dated 10.01.2008 is not binding to the plaintiffs.

The defendants are hereby restrained from interfering with the peaceful possession and enjoyment of plaintiffs over the suit schedule property.

Draw decree accordingly.

**Addl. Civil Judge and JMFC.,
Channapatna.**