



IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT MAGADI.

Present:

Sri. Sandeep S. Reddy, B.A.L., LL.B.,
Sr. Civil Judge & JMFC., Magadi.

Dated This the 26th Day of March, 2026

R.A. No. 241/2014

Appellants:

1. Smt.Narasamma
W/o Late Thimmaiah,
Since dead by Lrs.
Appellant No.2 to 4.
2. Kemparangaiah
S/o Late Thimmaiah.
3. Puttaiah
S/o Late Thimmaiah.
4. Narasimha Murthy
S/o late Thimmaiah
Since dead by Lrs.
- 4a. Smt.Shashikala
W/o Late Narasimhamurthy,
Aged about 45 years.
- 4b. Padmashree
D/o Late Narasimhamurthy,
Aged about 22 years.
- 4c. N.Jeevan
S/o Late Narasimhamurthy,



R/at Laxmipura
Andhrahalli Viswaneedam
Post, Bangalore-91.

All are R/at
Nayakanapalya,
Madabal Hobli,
Magadi Taluk,
Ramanagara District.

(By **Sri. N.N.**, Advocate)

-- V/s --

- Respondents** :
1. Mallaiah
S/o Late Thimmaiah,
Since dead by Lrs.
1(a, b, c, d, e, f & g).
 1. Mudda Mallaiah
S/o Mallaiah,
R/at Nayakanapalya,
Madabal Hobli,
Magadi Taluk,
Ramanagaram District.
 2. Ranganarasimhaiah
S/o Late Mallaiah,
Since dead by Lrs.
1(b))(i) to 1(b) (iv).
 2. Smt. Kempeeramma
W/o Ranganarasimhaiah.
 3. Puttaiah
S/o Ranganarasimhaiah.



4. Mallesha
S/o Ranganarasimhaiah.

R2 to 4 are R/at
Nayakanapalya,
Madabal Hobli,
Magadi Taluk,
Ramanagaram District.

5. Kemparangamma
D/o Ranganarasimhaiah,
W/o Late Kempahanumaiah,
R/at Managanahalli,
Magadi Taluk,
Ramanagaram District.

6. Doddamma
W/o Late Kempeeraiah,
Major.
Since dead by Lrs.
1(c) by respondents
No.6 to 10.

- 6(a) Puttaveeramma
W/o Kempaiah,
Aged 50 years.

- 6(b) Kendarudriah
S/o Late Kempeeriah,
Aged 48 years.

- 6(c) Dodda Eraiah
S/o Late Kempeeriah,
Aged 46 years.



6(d) Putta S/o Late Kempeeriah,
Aged 44 years.

6(e) Kempa S/o Kempeeriah,
Aged 48 years.

R6 to 10 are LRs of
deceased Lrs. 1(c)
R/at Pemmanahalli,
Urdigere Hobli,
Hirehalli Post,
Tumkur Taluk.

7. Gangamallamma
W/o Thimmiah,
Major, Deganahalli,
Boodalapura Post,
Nelamangala Taluk.
Since dead by respondents
No.11(a) & 11(b).

11(a) Narasimharaja
S/o Thimmiah,
Aged 45 years.

11(b) Chikkanarasamma
D/o Late Thimmiah,
Aged about 42 years,
Deganahalli,
Boodalapura Post,
Nelamangala Taluk.

Kempaiah
Since dead by Lrs.1(e)
Respondents No.12 to 16.



8. Smt. Nagamma
W/o Late Kempaiah,
Major.
9. Lokesh
S/o Late Kempaiah,
Major.
10. Manjamma
D/o Late Kempaiah,
Major.
11. Smt.Rathnamma
D/o Late Kempaiah,
Major.
12. Smt Dhanalakshamma
D/o Late Kempaiah,
Major.
13. Smt. Kemparangamma
W/o Narasimhaiah
Major,
Lrs. 1(f) by respondents
No.17(a) to 17(h).
- 17(a) Gangamarakka
W/o Tirumalaih.
- 17(b) Kempamma
W/o Lakkanna.
- 17(c) Kemparaju N.
S/o Narasimhaiah,
Baleranahalli,
Sondekuppa Post,
Nelamangala Taluk.



17(d) Ramamurthy
S/o Narasimhaiah,
R/at Nayakanapalya,
Magadi Taluk.

17(e) Ramakrishnaiah
S/o Narasimhaiah,
R/at Nayakanapalya,
Magadi Taluk.

17(f) Muniyamma
W/o Durgaiyah,
R/at Sankighatha,
Tippasandra Hobli,
Magadi Taluk.

17(g) Narasamma
W/o Mani,
R/at Nayakanapalya,
Magadi Taluk.

17(h) Shivakumar N.
S/o Narasimhaiah,
R/at Nayakanapalya,
Magadi Taluk.

R17(a) to 17(h) are R/at
Nayakanapalya,
Madabal Hobli,
Magadi Taluk,
Ramanagaram District.

14. Puttiah S/o Late Malliah,
Since dead by Lrs.
Respondents No.18(a) to 18(c).



- 18(a) Shankamma
W/o Late Putta,
Working as Supervisor,
Karnataka Agro Corporation
Hebbal Post, Opp: Police
Station, Bengaluru.
- 18(b) Suhas S/o Late Puttiah,
Aged about 30 years.
- 18(c) Sahana
D/o Late Puttiah,
Aged about 27 years,
R/at 248, Vasanthamma
Layout, Herohalli,
Viswaneedam Post,
Yeshavantapura,
Bengaluru North Taluk.
2. Smt Kempamma
W/o Malliah,
Since dead by Lrs.
by Respondent No. 2 to 18.
3. Danamma
D/o Muddamallaiah,
Major,
R/at Vajarahalli,
Kasaba Hobli,
Magadi Taluk.
4. Puttamma
D/o Muddamallaiah,
W/o Banaswadiah,
Nayakanapalya.



5. Annamma
W/o Not Known
Koratagere,
Nelamangala Taluk.
6. Lakshamma
Since dead
by LRs already on records
as Lrs 20 to 22 and
respondents No.2 to 4.

(R4, 5, 8, 9, 11, 12, P/R2 & 3, 16 By **Sri. G.P.**, Advocate)
(R13(a) By **Sri. R.K.**, Advocate)
(R1, 1(a), 2, 13 & 18 dead)
(R2, 6, 7, 10, 15 to 17, 19 to 23 dismissed)
(P/R1 & 4 absent)

Date of institution of appeal	09.01.2014		
Nature of the appeal	The appellant prays to set-aside the impugned judgment & decree passed by the Hon'ble Court of Addl. Civil Judge (Jr. Dvn.) and JMFC, Magadi in O.S. No. 77/1985, dated: 20.09.2013.		
Date of Judgment	26.03.2026		
Total Duration	Years	Months	Days
	12	02	17

**Senior Civil Judge & JMFC.,
Magadi.**



J U D G E M E N T

In the present appeal, the plaintiff/appellant assails the judgment dated: 20.09.2013 passed by the Hon'ble Court of Addl. Civil Judge & JMFC, Magadi in the suit bearing O.S. No. 77/1985, whereby the Hon'ble trial court dismissed the suit.

2. In the case at hand the parties to the appeal are hereinafter referred to in terms of their status before the Hon'ble trial court.

3. **Brief facts leading to the present appeal are as follows:**

(3.1) It is the case of the plaintiff that one Puttegowda had two sons by name Thimmaiah and Mallaiah. That the defendant No.1 is Mallaiah and plaintiff No.1 is the wife of Thimmaiah and plaintiff No.2 to 4 are Thimmaiah's children. That the plaintiffs and defendant No.1 are coparceners and they together inherit the Hindu undivided joint family property of Puttegowda. That the defendant No.1 used to manage the affairs of joint family as kartha after death of late Puttegowda.



That Puttegowda had incurred some debts for the family necessities with one Gangadharappa who ran a fuel depot at Balepet, Bangalore. That Gangadharappa obtained a court decree against the said Puttegowda and satisfaction of his decree he became the auction purchaser of the suit schedule properties of the Hindu undivided joint family of late Puttegowda. The defendant No.1 being the kartha of the family of the plaintiffs discharged the family debts due to the said decree holder. That instead of reconveying the ancestral properties back to the name of kartha from the said auction purchaser Gangadharappa, the defendant No.1 got them conveyed benami in the name of defendant No.2 under a registered sale deed dt: 12.07.1950. That the schedule properties continued to be ancestral properties of Hindu undivided joint family Puttegowda of which defendant No.1 continued to be the kartha. That the schedule properties are jointly managed by defendant No.1. That the defendant No.2 is a benami purchaser and is also one of the joint family



members of the joint family. That the defendant No.2 holds Item No.1 to 3 as the trustee of Hindu undivided joint family. That Thimmaiah died about eight years before filing of the aforesaid suit and even after his death the said properties are the joint family properties. That the defendant No.1 has not given the share to the plaintiffs and hence, they had issued the legal notice on 24.01.1985 demanding partition and subsequently the aforesaid suit was filed seeking for partition of the suit schedule properties.

4. The defendant No.1 has filed the written statement contending that the averments stated in the plaint are not true and correct. That there was no joint family and joint family properties did not exist. The relationship is admitted by the parties, the purchase of properties by Gangadharappa during auction is also admitted by defendant No.1. But defendant No.1 denies that he had repurchased the properties from Gangadharappa out of joint family funds as a kartha. The defendant No.1 further states that suit schedule properties



absolutely belonged to defendant No.2, the plaintiffs have no manner of right, title or possession over suit schedule properties. That defendant No.2 is in peaceful possession and enjoyment of suit schedule properties. That the defendant No.2's father had financially assisted defendant No.2 to purchase the suit schedule properties. That the suit schedule properties are self acquired properties of defendant No.2. That father of defendant No.1 was in possession and enjoyment of Sy.No.2 of Matha Village which is Maramma Devara Inamti. That defendant No.1 had got right in respect of half portion of land in the aforesaid Sy.No.2. The plaintiffs have not included the said Sy.No.2 in the properties. That defendant No.2 is in peaceful possession and has perfected her title by way of adverse possession also.

5. The defendant No.2 has filed the written statement contending that the suit schedule property is her self acquired property and she had purchased the said properties from the auction purchaser Gangadharappa with the financial



assistance of her father. She asserts her right over the property. She further contends that she had been paying the tax and was having exclusive katha in her name. That she has denied the allegation regarding the transaction dated 12.07.1950 being benami in nature. She has contended that the suit schedule properties are her self acquired properties even otherwise she has perfected the title by way of adverse possession and hence, prays for dismissing the suit.

6. Having regard to the pleadings and the documents produced, the Hon'ble trial court framed following issues;

ISSUES

1. Whether the plaintiffs prove that the defendant No.1 and deceased Thimmaiah are the coparceners of Hindu Undivided joint family of Puttegowda and the 1st defendant is the kartha ?
2. Whether the plaintiffs further proves that the suit schedule properties are ancestral properties of deceased Puttegowda and defendant No.1?
3. Whether the suit is maintainable in law in view of the prohibition of Benami Act ?



4. Whether the plaintiffs prove that the 2nd defendant is the Benami Purchaser of the suit schedule properties ?
5. Whether the plaintiffs prove that the court auction and sale of the suit schedule properties for non payment of decree amount ?
6. Whether the plaintiffs prove that the court auction sale of the suit schedule properties is not binding on them ?
7. Whether the plaintiffs prove that they are entitled for share in the suit schedule properties ?
8. Whether plaintiffs further prove that the sale dated 12.07.1950 is not binding on the plaintiffs ?
9. Whether the plaintiffs prove that the suit schedule properties are joint family property ?
10. Whether the defendants prove that the defendant No.2 has perfected her rights over the suit schedule properties by adverse possession ?
11. Whether the suit is bad for mis-joinder and non-joinder of necessary parties ?
12. What order or decree?

Addl. ISSUE

1. Whether the plaintiffs prove that in the



alternative that the 2nd defendant is holding suit Items No.1 to 3 as trustee of the Hindu undivided joint family ?

7. The plaintiffs in support of their case got examined the witnesses PW-1 and 2 and got marked Ex.P1 to 16 and closed their side. Defendants in support of their case got examined the witnesses as DW1 & 2 and got marked Ex.D1 to 34 documents and closed their side. The witnesses were fully cross examined by the plaintiffs and defendants.

8. On hearing the arguments of the learned counsel for the plaintiff, Hon'ble trial court dismissed the suit vide judgment dated: 20.09.2013. The said judgment has been challenged before this court on the following grounds:

1. The Hon'ble trial court erred in dismissing the suit for partition by holding that the suit schedule properties are not joint family properties ?
2. That the trial court erred in holding that the aforesaid suit and the facts does not come



within the purview of codified Hindu Law and it does not come within the Benami Transactions Act ?

3. That the trial court failed to notice that in view of facts of the present case the judgment of Hon'ble Supreme Court of India in Rajagopala Reddy Vs. Padmini AIR 1996 SC 238 is not hit by Benami Transactions (Prohibition) Act 1998. Therefore, the case has got to be viewed from Benami transactions and it has to be applied to the Hindu Law and trial court erred in applying the said principle ?
4. That the trial court erred in observing that the mere technicality should not take away the right of person. That the trial court failed to notice that the Lrs of defendant No.1(a to e) were brought on record and they cannot represented deceased defendants merely because defendant No.2 is wife of defendant No.1 and the court failed to notice that defendant No.1 & 2 were represented by different advocates and separate written statement filed by them which are inconsistent with each other.
5. That the written statement of defendant No.1 &



2 are having conflict of interest between them and DW1 during the evidence has admitted that he is giving evidence on behalf of defendant No.1 also.

6. That the trial court erred in answering Issue No.1 partly in the affirmative. That the trial court erred in holding that there was no material before the court to say that the plaintiffs and defendants are in joint family and deceased defendant No.1 was the kartha of the joint family.
7. That the trial court noticed that the relationship of plaintiffs and defendants are not in dispute and it had also noticed about the suit filed by Gangadharappa in the year 1927-28 and it had also noticed that the joint family was in existence having joint family property. The trial court also noticed that the properties were purchased in the name of Kempanna by defendant No.1. The said fraudulent act was not appreciated by trial court.
8. That the trial court failed to appreciate that the defendants had not pleaded the defence of stridhana in the written statement despite the



defence of Kempamma taking assistance from her father Doddaveeraiah is pleaded.

9. The trial court grossly and miserably erred in holding that the sale of suit Item No.4 itself is sufficient to show that there was no joint family and 1st defendant was not the kartha.
10. The trial court had erred in holding that suit Item No.4 was granted to Late Thimmaiah in his individual capacity and infact the grant is made in the name of plaintiff No.2 and it is cultivated by plaintiffs and defendants jointly.
11. That the trial court failed to notice the marriage invitation cards marked at Ex.P4 to 6 in the name of defendant No.1 and defendants had not disputed the said documents.
12. That the trial court should have noticed that the defendants had not denied the joint family and suit items were joint family properties. But the trial court failed to notice that defendants who have not specifically set up earlier partition in the written statement.
13. That the trial court also failed to notice that the evidence of defendant DW1 is inconsistent with the pleadings of defendant No.1 & 2.



14. That trial court failed to notice the nature of acquisition of property by defendant No.2 and it had also failed to notice the proof of financial help rendered by father of defendant No.2.
15. That the trial court erred in framing unnecessary issues and it had also failed to notice the pleadings in the written statement, the averments in the sale deed and it had failed to see the evidence of PW3 with respect to the oral evidence pertaining to sale deed dt: 12.07.1950.

9. Amongst other formal grounds, the appellant prays to set aside the judgment dated: 20.09.2013 passed by the Hon'ble court of Addl. Civil Judge (Jr. Dvn.) & JMFC, Magadi in O.S. No. 77/1985.

10. Heard learned counsel for the appellants and respondents on appeal.

11. In view of the contentions raised by the appellants and respondents following points arise for my consideration;

POINTS



1. Whether the learned trial judge has rightly held that the plaintiffs and deceased defendant No.1 are not coparceners and that the suit schedule property is not the coparcenary property ?
2. Whether the trial court was right in holding that the suit was not maintainable under the prohibition of Benami Act and defendant No.2 was wrongly held to be not a benami ?
3. Whether the trial court was right in holding that the plaintiffs were bound by the auction sale of suit schedule properties and they were bound by sale deed dt: 12.07.1950?
4. Whether the trial court was right in holding that the suit was bad for non joinder and mis-joinder of necessary parties ?
5. Whether the trial court was wrong in holding that the defendant NO.2 was not holding suit Item No.1 to 3 as trustee of Hindu undivided joint family ?
6. What order or decree?

12. My findings for the above points are as under:

Point No.1 : In the negative

Point No.2 : In the negative



- Point No.3 : In the negative
Point No.4 : In the negative
Point No.5 : In the negative
Point No.6 : As per final order

for the following;

REASONS

13. **Point No.1, 3 :-** The plaintiffs have filed the aforesaid suit seeking for partition and separate possession of suit schedule properties by claiming that one Puttegowda was the propositus who had two sons by name Mallaiah and Thimmaiah. That Mallaiah is deceased defendant No.1 and plaintiffs are claiming rights through Thimmaiah.

14. The plaintiffs are claiming rights through the said Thimmaiah. The plaintiffs contend that the propositus Late Puttegowda had incurred debt from one Gangadharappa of Balepete and became a defaulter. That the said Gangadharappa had obtained the court decree and Item No.1 to 3 were auctioned in execution of the said court decree. It is



the case of the plaintiffs that after purchase of suit schedule properties by Late Gangadharappa the 1st defendant being the kartha of the joint family had purchased suit schedule Item No.1 to 3 in the name of his wife. The said purchase was with an intention to defraud his brother Thimmaiah. That defendant No.1 being the kartha of the joint family had discharged the debt incurred by Puttegowda out of the income derived from joint family funds. That the said transaction was a benami transaction and it was purchased for the benefit of joint family. Hence, the plaintiff has claimed for partition in the said suit.

15. The defendants No.1 & 2 on the other hand have contended that with the assistance of the father of defendant No.2, defendant No.2 had purchased suit item No.1 to 3 and she became the absolute owner in possession of the suit schedule Item No.1 to 3. That it is her self acquired property.

16. The plaintiffs and defendants in order to prove their case have got examined the witnesses PW1 & 2, DW1 & 2 and



got marked the documents Ex.P1 to 16 and Ex.D1 to 34 in support of their case.

17. The trial court while examining the Issus No. 1 & 2 had carefully perused the documents produced by plaintiffs especially Ex.P4 to 6 and had held that the said properties were not ancestral and joint family properties.

18. The suit Item No.1 to 3 has been standing in the name of defendant No.2 since the date of purchase of the said properties in the said sale deed produced as per Ex.P3 and Ex.D5. The said name of defendant No.2 is reflected since 12.07.1950. It is the settled principle of law that a property standing in the name of the female member of the coparcenary property cannot be presumed to be a joint family property even though joint family has sufficient joint family nucleus. The Hon'ble Supreme court of India in ***Santanu Kumar Das v. Bairagi Charan Das***, 1995 SCC OnLine Ori 23 : AIR 1995 Ori 300 : (1995) 79 CLT 808 : (1996) 1 HLR 110 : (1996) 1 HLR 351 : (1995) 2 DMC 227 at page 302 has stated as under:



“.....8. It would be apposite to point at this stage that both the Courts were under the misconception of law that when a property is purchased in the name of a female member of the joint family and there is sufficient nucleus, the said property should be presumed to be joint family property. **Such a presumption would be available only in the case of a male member of the family, but not a female member** as has been held in the case of Manahari Devi v. Choudhury Sibanova Das reported in AIR 1983 Orissa 135, where this Court after referring to various decisions held that the presumptive doctrine available in respect of the property in the name of a male is not available as in the case of a female member. The party pleading a contrary case should establish the same adducing necessary evidence that the property so purchased was from the joint fund.....”

“.....10. The contention of Mr. Murty that a female can also be a member of the joint family is not disputed. What we are concerned presently is about drawing of a presumption in respect of the property purchased by a female member. A **female may continue to be a member of the joint family, but the point as decided above is, if any property purchased in her name even though there may be sufficient nucleus, there can be no presumption that the property is joint family property.....**”



19. In view of the aforesaid judgment the presumption regarding the Item No.1 to 3 being the joint family property does not arise. Hence it is necessary for the plaintiff to show that the said properties are joint family properties. The plaintiff has not produced any documents whatsoever to show that the said property was purchased from the joint family nucleus. From the plaint averments it can be seen that the joint family had only Item No.1 to 3 properties in their name. There were no other properties belonging to joint family. When the said properties were auctioned then the onus will be on plaintiff to show that even after the auction of properties the joint family has the joint family nucleus and the properties through which the joint family had sufficient income to purchase the said Item No.1 to 3.

20. Before proceedings further it is necessary to refer to the judgement of Hon'ble Supreme Court of India in ***Dandappa Rudrappa Hampali v. Renukappa***, 1992 SCC OnLine Kar 350 : ILR 1993 Kar 1182 : (1993) 1 Kant LJ 138 : AIR 1993 Kar 148 : (1993) 2 HLR 1 at page 1193 wherein Hon'ble Supreme Court of India has stated as under:



“.....17.1: Therefore the initial burden is to establish the existence of some joint family property, capable of being the nucleus from which new property or asset could have been acquired; it is not sufficient to show that the joint family possessed some assets; it is necessary to prove that the assets of the joint family may have formed the nucleus from which the disputed assets may have been acquired. Whether joint family assets could have formed the nucleus, again, depends upon their nature and relative value. Existence of such joint family property which could have formed the nucleus for the acquisition of new assets, by itself would not lead that the new assets acquired by any member of the family would be joint family property, because, such a member may not have control or command over the joint family assets. The idea is that the member who acquired the new assets may have utilised the joint family assets to acquire further assets; this is possible only if the said member was in a position to utilize the joint family asset to acquire further asset or assets.

17.2: In the case of the manager of the joint family or any other member who was in management of the family affairs or in possession of sufficient joint family assets, it is likely that the joint family property or part thereof, formed the nucleus from which he acquired other assets and in such a case,



burden will be on him to prove that the acquisition by him was without the aid of the joint family property.....”

21. It is clear from the aforesaid judgement that the person claiming rights over the property as the joint family property should initially establish the existence of joint family property. Admittedly the Item No.1 to 3 stands in the name of defendant No.2. The plaintiff has taken the contention that the said property was purchased from the joint family funds. The pleadings of the plaintiff does not speak anything about the existence of joint family funds. The joint family properties as per the undisputed facts was auctioned and sold as the joint family could not repay the debts. If the joint family had the money or corpus or nucleus then it would have paid the said money to the mortgagor. However, the joint family it seems did not have the money due to which the said property was sold in the auction after the court decree. There is no pleadings in the plaint to show that after the joint family properties were auctioned the joint family continued to be in existence and it earned the joint family money through other joint family properties



or through joint family business. There is no evidence to this effect. The plaintiff has not given details about the said joint family funds in the evidence. The plaintiff has also not given the evidence to the effect that the joint family had earned sufficient money after the auction for repurchasing the said lands.

22. The Hon'ble Supreme court of India in **Gangaiah v. Hosalaiah, 1990 SCC OnLine Kar 248 : (1990) 2 Kant LJ 147 at page 148** has stated as follows:

*“.....6. In the instant case there is no other evidence except the self-serving testimony of defendant-1 that other properties which they claimed to be self-acquired properties were acquired by trade and business. They have not exactly stated from where they had acquired the capital or how they acquired capital to trade and it was not even their case that they used to work as manual labourers and earned wages from which they raised funds which constituted the capital for the trade and business. **If they had no other source of income at all except from the joint family properties, then acquisitions made by defendant-1 the kartha of the family must be presumed to be out of the surplus funds in his hands out of the joint family income. If he claimed that the other properties were self-***



acquired properties, the burden was on him to prove the manner and the source by which he acquired such properties. *The nature of the properties or the size of the nucleus itself will be sufficient to absolve the plaintiffs from proving the joint nature of the property being joint family property.”*

23. The Hon’ble Supreme court of India in **Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh, (1969) 1 SCC 386 at page 390** has stated as follows:

“.....6. We pass on to consider the next question arising in this appeal viz. whether the High Court was right in holding that the 12 pieces of lands were joint family properties and were not the self-acquisition of Goudappa. The case of the appellants was that these lands were self-acquisition of Goudappa, but the respondents contended that they were joint family properties. **The law on this aspect of the case is well settled. Of course there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance, upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to**



be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate. In *Appallaswami v. Suryanarayanamurti* [ILR 1948 Mad 440] Sir John Beaumont observed as follows:

*“The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. See *Babubhai Girdharlal v. Ujamlal Hargoyandas* [ILR 1937 Bom 708] ; *Venkataramayya v. Seshamma* [ILR 1937 Mad 1012] and *Vythianatha v. Varadaraja* [ILR 1938 Mad 696].”*



24. Thus it can be seen from the aforesaid judgements of Hon'ble Supreme court that the plaintiff ought to have proved that the said properties were acquired by him through the income earned and saved by joint family. The plaintiff has not pleaded anything about this aspect of the case in the plaint. There is no pleadings whatsoever. The plaintiff has also not led any evidence to prove this fact. The plaintiff has failed to show that after the said properties were sold pursuant to court decree, the joint family still had joint family corpus. The evidence on record and pleadings does not speak about The plaintiff has failed to show that joint family had sufficient income and savings for purchasing the properties.

25. The learned advocate for defendant has contended during the arguments that the Ex.P4 to 6 marriage invitation cards would reflect the existence of joint family. In the present case even if the joint family exists still the plaintiffs have not proved the existence of joint family properties. Hence, the findings of trial court cannot be interfered with. Hence, ***I answer Point No.1 & 3 in the Negative.***



26. **Point No.2:** The trial court has relied upon the judgment of Hon'ble Supreme Court of India in Rajgopala Reddy's case by stating that Benami Transaction Act, Section 4 is not retrospective.

27. To prove the benami transaction the existence of Hindu joint family with joint family property and the joint family having sufficient nucleus would also have to be proved by plaintiffs. In the absence of plaintiffs not proving these facts the trial court has rightly answered the said in the negative and it cannot be interfered with. Hence, ***I answer Point No.2 in the Negative.***

28. **Point No.4 & 5:** For the reasons stated while answering Point No.1 & 2, ***I answer Point No.4 & 5 in the Negative.***

29. **Point No.6:** For the reasons stated on Point No.1 to 5 and in the interest of justice and equity, I proceed to pass the following;

ORDER

The appeal filed by the appellants questioning the correctness of the judgment & decree dated: 20.09.2013 passed by Hon'ble Court of Addl. Civil



Judge & JMFC, Magadi in O.S. No. 77/1985 is hereby dismissed.

The judgment and decree of the Hon'ble trial court passed in O.S. No. 77/1985 stands confirmed.

Draw decree accordingly.

Send back the records of the Hon'ble trial court along with the copy of this judgment forthwith.

*(Dictated to the Stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the **26th day of March, 2026.**)*

(Sandeep S. Reddy)
Sr. Civil Judge & JMFC.,
Magadi.

KARN410002792014





Separate judgment signed and pronounced in open court.

ORDER

The appeal filed by the appellants questioning the correctness of the judgment & decree dated: 20.09.2013 passed by Hon'ble Court of Addl. Civil Judge & JMFC, Magadi in O.S. No. 77/1985 is hereby dismissed.

The judgment and decree of the Hon'ble trial court passed in O.S. No. 77/1985 stands confirmed.

Draw decree accordingly.

Send back the records of the Hon'ble trial court along with the copy of this judgment forthwith.

**Sr. Civil Judge & JMFC.,
Magadi.**

KARN410002792014

