

KABC010192532019



IN THE COURT OF THE XXXVII ADDL. CITY CIVIL &
SESSIONS JUDGE (CCH-38), BANGALORE CITY.

:PRESENT:

Smt. Nirmala Devi. S. B.Sc., LL.B.,
LI ADDL.CITY CIVIL & SESSIONS JUDGE
C/c. XXXVII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU CITY.

DATED This the 23rd day of April 2026

O.S.NO. 4348/2019

PLAINTIFF/S

SRI. SOMANATH M
S/O. LATE K. MUNISWAMAPPA @
MUNISWAMY,
AGED ABOUT 48 YEARS,
R.AT. NO. 48, NEAR OM SHAKTHI
TEMPLE, KAGGADASAPURA
C V RAMAN NAGAR POST
BANGALORE-93

(Pl By Sri. GV., Advocate)

Versus

DEFENDANT/S

1. SRI. RAJAGOPAL M
S/O. LATE K. MUNISWAMAPPA @
MUNISWAMY,
AGED ABOUT 54 YEARS,
R/AT. NO.37, SAMBHRAMA NILAYA
12TH A CROSS S N R COMPLEX,
KAGGADASAPURA
BANGALORE-93

2:SRI. NARAYANASWAMY M
S/O. LATE K. MUNISWAMAPPA @
MUNISWAMY,
AGED ABOUT 51 YEARS,
NO50/A1, 12TH A CROSS
S N R COMPLEX
KAGGADASAPURA
BANGALORE-93

3:SRI. SOMASHEKHAR
S/O. M. RAJAGOPAL,
AGED ABOUT 51 YEARS,
R/AT. NO. 37, SAMBHRAMA
NILAYA 12TH A CROSS
S N R COMPLEX
KAGGADASAPURA
BANGALORE-93

4:SRI. VASANTHAPPA N
S/O. LATE NARAYANAPPA,
AGED ABOUT 62 YEARS,

5:SRI. KODANDAREDDY N
S/O. LATE NARAYANAPPA,
AGED ABOUT 60 YEARS,
SINCE DEAD BY LRS.

5.(A) SMT. PADAMAMMA,
W/O. LATE N. KODANDAREDDY,
AGED ABOUT 50 YEARS,

5(B) SRI. MADHUREDDY,
S/O. LATE N. KODANDAREDDY,
AGED ABOUT 32 YEARS,

5(C) SMT. MALA
D/O. LATE N. KODANDAREDDY,
AGED ABOUT 28 YEARS,

6:SRI. RAMAKRISHNA REDDY,
S/O. LATE NARAYANAPPA
AGED ABOUT 58 YEARS,

DEFENDANTS No.4 TO 6 &
LRS ARE R/AT NO 222
A NARYANAPURA,
DOORAVANI NAGAR POST
BANGALORE-1

(Df No.1 By Sri. KN, Adv.)
(Df No. 2 & 3 By Sri.KHN, Adv.)
(Df No.4 & 6 By Sri.SMR, Adv.)
(Df No.5 dead)
(Df No.5(a) to 5(c) By Sri. SMR,
Adv.)

Date of Institution of the suit 18.6.2019

Nature of suit Partition

Date of commencement
of recording of evidence. 18.4.2024

Date on which judgment
was pronounced. 23.4.2026

Total Duration.	Years	Months	Days
	06	09	30

LI ADDL. CITY CIVIL & SESSIONS JUDGE
C/c. XXXVII ACCJ, BANGALORE

J U D G M E N T

This suit is filed for partition and separate possession and for declaring that the Gift deed dt: 13.11.2012 is not binding on the plaintiff.

2. The brief case of the plaintiffs are as follows:-

The plaintiff and the defendants No.1 and 2 are brothers and defendant No.3 is the son of the Ist defendant. The plaintiff and defendants No. 1 to 3 constitute Hindu undivided Joint family governed by Hindu Mithakshara school of law. The plaintiff and defendants No.1 and 2 are the sons of K. Muniswamappa @ Muniswamy and the father of the plaintiff acquired immovable property from the ancestors and the same is partitioned by the plaintiff and defendants vide partition deed dt: 15.12.2001. At the time of partition, second defendant has not included the properties bearing Old No. 35/2, New No. 25/2, measuring 0-20 guntas situated at B. Narayanapura village, Krishnarajapura hobli, Bengaluru East Taluk, which is described as the suit schedule property. It is the ancestral and joint family property of plaintiff and defendants No.1 to 3. The defendants No.2 and 3 played fraud on the plaintiff and the first

defendant to defeat the right, title and interest of the plaintiff executed the Gift deed.

3. The plaintiff and defendants No.1 to 3 have been in joint possession and enjoyment of the suit schedule property and they continued in joint possession and enjoyment of the same. The first defendant being the eldest son in the joint family has been managing the joint family and also the suit schedule property as Khartha of the same. The first defendant has not been maintaining the joint family and the suit schedule property and not at all maintaining any accounts and income derived from the joint family property and has spent for his whimsical purposes and on seeing the attitude of first defendant, the plaintiff requested and demanded to render mesne profits. But the first defendant postponing the same on one or the other pretext. The first defendant has failed to render accounts. The plaintiff requested and demanded the first defendant to effect partition and separate possession of the suit schedule property by convening a panchayath on 10.12.2018 and to allot 1/3rd share in the suit schedule property, but the defendants have refused to effect partition of the suit schedule property and informed that the mother of first defendant executed a Gift deed

in favour of defendants No.2 and 3 on 13.11.2012. On the basis of the alleged Gift deed, defendant No.2 and 3 sold out the same in favour of defendants No.4 to 6 on 11.6.2015. Immediately the plaintiff had applied the alleged sale deed on 11.12.2018 and found that the mother of first defendant has no exclusive right, title and interest to execute plaintiffs share i.e., the alleged Gift deed. It was further found out that defendants No.2 and 3 alleged to have been executed Sale deed in favour of defendant No.4 to 6 on 11.6.2014 in order to deprive the legal share of plaintiff. The plaintiff got surprised and shocked that the name of defendants No.4 to 6 have been entered in the records of rights. The plaintiff is not at all affixed his signature or consented and as such the alleged Gift deed dt: 13.11.2012 and the sale deed dt: 11.6.2014 are not binding on the plaintiff. As the first defendant refused to effect partition, the plaintiff constrained to file the present suit. Based on the said averments prayed to decree the suit.

4. The defendants No. 1 to 6 appeared through advocate. The defendants No. 2 and 3 and defendants No. 4 and 6 have filed separate written statement.

5. The defendants No.2 and 3 have admitted the relationship with the plaintiff and the plaint averments that there was partition of the ancestral and joint family properties, but denied the rest of plaint averments. These defendants have contended that there is no Hindu undivided joint family consisting of plaintiff and defendants No. 1 to 3 exists. Further they contended that since the ancestral and joint family properties are already partitioned vide partition deed dt: 5.12.2001, the present suit is not maintainable. They contended that every joint family members were aware of the suit schedule property was self acquired property of their mother Smt. Rathnamma, who is also a party to the said partition deed and the plaintiff is also a party. It is an individual property of Smt. Rathnamma and the same was not included in the partition deed. Accordingly she had every right to deal with the same.

6. Smt. Rathnamma acquired the suit schedule property for valuable sale consideration under a registered sale deed dt: 20.7.1972 from the erstwhile owner Smt. Muniyamma and her son. Ever since then the said Smt. Rathnamma exercise her rights of ownership as a absolute owner and thereafter she gifted it in favour of defendants under a valid registered Gift deed dt:

13.11.2012, which is duly accepted by this defendants being donees. The plaintiff is aware of these facts, therefore he is not justified to file the present suit, as the suit schedule property is not the ancestral or joint family property. That the plaintiff being party to the partition deed has consciously, voluntarily made and accepted statement by way of recitals in the said partition deed to the effect that partition effected is equitable and there is no other properties liable for division. Such being the case the plaintiff has legally and morally estopped to come up with this suit alleging that the suit schedule property are the ancestral and joint family properties. That since the erstwhile joint family is disintegrated vide the partition deed dt: 5.12.2001 and as such there is no alleged joint family existing and there is no joint possession of the suit schedule property. Since the suit schedule property is not joint family property nor first defendant maintaining it, the question of maintaining any account and rendering accounts in respect of mesne profit does not arise.

7. These defendants have sold out the suit schedule property to defendants No. 4 to 6 and therefore the plaintiff is not in possession of the suit schedule property and the valuation of the suit is not proper and Court fee paid is insufficient. That there

is no cause of action for the present suit and the alleged one is created and concocted and on this ground plaint is liable to be rejected.

8. These defendants have further contended that the suit schedule property was the individual property of their mother Smt. Rathnamma and her right over the same is recognized and protected under Sec. 14 of the Hindu Succession Act 1956. Ever since from the date of purchase, she owned and possessed the suit schedule property till same is dealt with by her. That the said Smt. Rathnamma had love and affection towards defendants and hence she executed Gift deed dt: 13.11.2012, which is within the knowledge of the plaintiff and other family members. The said Gift came to be duly accepted by these defendants and it is acted upon. Thereafter these defendants have secured mutation and RTC and paid land revenue. These defendants by exercising their absolute ownership over the suit schedule property have alienated the same in favour of defendant No.4 to 6 through registered sale deed dt: 11.6.2014 for consideration and the said sale deed is acted upon, which is within the knowledge of plaintiff from day one. Therefore the plaintiff has filed the present false suit with an intention to

harass and cause serious loss, damages and mental agony to defendants. Hence, suit is liable to be dismissed with exemplary costs.

9. The defendants No.4 and 5 who has filed written statement have reiterated the contentions of defendants No.1 to 3 claiming that the suit schedule property is the self acquired property of Smt. Rathnamma and that she gifted it to defendants No.1 to 3, in turn they executed Registered Sale deed in their favour. These defendants have vehemently contended that the present suit is barred by limitation and it is vexatious, speculative and collusive in nature. Further these defendants have disputed the identity and description of the suit schedule property and contended that plaintiff has deliberately suppressed true facts about the suit schedule property with an oblique motive. That actually the suit schedule property is well developed with construction of residential buildings and the same is conveniently concealed by the plaintiff. That several sites were formed in the suit schedule property and the same is sold out and the purchasers have constructed houses and residing therein. The boundaries shown to the schedule in the plaint are incorrect. Therefore the plaintiff has given wrong description of the suit schedule property with

incorrect boundaries. That the plaintiff is guilty of suppression of material facts relating to the suit property and not approached the court with clean hands. He is abusing the legal process by laying unrighteous claim over the properties belonging to defendants No. 4 to 6 and others.

10. That the plaintiff's mother Smt. Rathnamma had sold the land measuring 20 guntas in Sy. No. 25/2 of B. Narayanapura village in favour of father of defendants No.4 to 6 namely Billikere Narayanappa and executed a sale agreement on 17.5.1976, taking part of the sale consideration and delivering the possession of the land and handed over original documents. Subsequently on 9.2.1978 she received full consideration and executed a sale agreement in favour of father of these defendants. The execution of sale agreement was followed by execution of GPA and affidavit on 20.2.1978 in favour of their father. Thus their father had acquired valid title over the suit property. He constructed a house and got a bore well drilled in a portion of land measuring 20 guntas and he obtained No objection certificate from B. Narayanapura village Panchayath for obtaining power connection to the pump set installed for the borewell on 21.8.1987. He along with his family members were

residing in the said house and he was in exclusive possession and enjoyment of the entire 20 guntas of land together with house constructed thereon.

11. That the father of these defendants have divided the said property covering an area of 20 guntas into three shares and allotted them to his 3 sons, namely Vasanthappa, Kodanda Reddy and Ramakrishna reddy, who are defendants No.4 to 6 herein by executing 3 separate power of attorney on 5.1.1995 and got them registered in their favour. Out of the said 20 guntas, he has given an area measuring East to West $138+130/2$ feet and North to South $61\frac{1}{2}$ ft together with a house constructed by him in favour of defendant No.4 Vasanthappa. Accordingly other 2 portions measuring East to west $130+124/2$ ft and North to South $58\frac{1}{2}$ feet in favour of defendant No.5 Kodanda Reddy and another plot measuring East to west $124+117/2$ ft and North to South 62 feet in favour of defendant No.6 Ramakrishna reddy. Out of the property allotted to the share of defendant No.5, he sold 3 sites in favour of Chinnappa, Gambhir and Bhanumathi in the year 1999-2000. The said purchasers have constructed residential buildings in their respective sites and are in possession and enjoyment of the said

properties. The said purchasers are not made as parties to the suit and the construction of said residential buildings has not been disclosed in the plaint. That the father of defendants No.4 to 6 had earmarked separate portions in the suit property covering an area of 20 guntas as a private burial ground to serve as the last resting place for the dear and departed members of his family. The father of this defendant died on 21.7.2002 and he has been buried in the portion of the suit property. In addition to the Samadhies of father, their paternal grand mother and a brother who passed away also exist in a portion of the suit property ear-marked as burial ground.

12. Subsequent to the death of Billekere Narayanappa a registered release deed dt: 25.4.2003 has been executed in favour of defendant No.4 by the latter's mother, two brothers and two sisters in respect of the property allotted to their father. Similarly registered release deeds have been executed by rest of the family members in favour of defendants No. 5 and 6 relinquishing their rights in respect of the property allotted to them. The defendants No.4 to 6 are in exclusive possession and enjoyment of their respective portions of the property from out

of extent of 20 guntas. Therefore the claim of plaintiff over the said property is unjust, without any legal basis.

13. The defendants No. 2 and 3 had filed O.S. No. 8978/2012 seeking a decree of injunction against defendants No.4 to 6. After service of summons to defendants No. 4 to 6, they appeared and filed their written statement. On the intervention of the elders and well-wishers of both the parties, they agreed for compromise and filed joint memo in the said suit. The said suit was referred before Lok-adalath and came to be settled by filing compromise petition. The defendants No. 2 and 3 have agreed to execute sale deeds in the names of defendants No.4 to 6 by receiving consideration of Rs. 54 lakhs. As per the said compromise a registered sale deed dt: 11.6.2014 executed in favour of defendants No. 4 to 6 in respect of the suit schedule property. Thereafter the khatha has been transferred in their names. After execution of sale deed, the defendants No.4 to 6 have entered into a registered partition deed amongst themselves on 27.3.2015 and divided the suit property equally amongst them leaving $\frac{1}{2}$ guntas for Samadhies of their ancestors. Based on the said partition deed the revenue entries were mutated and phodi was conducted. The land allotted to

defendant No.4 along with $\frac{1}{2}$ guntas of land left for Samadhies assigned Sy. No. 25/2 and land allotted by defendant No.5 assigned as Sy. No. 25/5 and 1 and allotted to defendant No.6 assigned as Sy. No. 25/6. The plaintiff has deliberately concealed the said facts and compromise entered in O.S. No. 8978/2012. That the suit schedule property is the absolute property of their mother Smt. Rathnamma. She sold it in favour of father of defendants No. 4 to 6 namely Billikere Narayanappa by executing the sale agreement dt: 17.5.1976 and delivering the possession. He handed over the original documents. Subsequently on 90.2.1978, Smt. Rathnamma had received full sale consideration and executed sale agreement in favour of defendants No. 4 to 6.

14. That the suit is not properly instituted and the same suffered from fundamental flaws and liable to be dismissed. Based on the above contentions, prayed to dismiss the suit with costs.

15. On the basis of the above pleadings of the parties, the following issues have been framed by my learned predecessor in office;

1. Whether the plaintiff proves that the suit property is an ancestral and joint family property of plaintiff and defendant no.1 and 2 ?
2. Whether the plaintiff proves that the gift deed dated 13.11.2012 obtained by defendant no.2 and 3 in respect of the suit property is not binding on him ?
3. Whether the plaintiff proves that the sale deed dated 11.06.2014 obtained by defendant no.4 to 6 in respect of the suit property is not binding on him ?
4. Whether the suit is barred by limitation ?
5. Whether the plaintiff is entitle of the reliefs claimed in the suit?
6. What order or decree?

16. In order to prove his case, the plaintiff got examined as PW 1 and got examined other 2 witnesses as Pw-2 and Pw-3 and got marked 6 documents at Ex.P1 and P-6. The defendant No. 6 got examined as DW 1 and got marked documents at Ex.D1 and D-51.

17. The learned counsel for the plaintiff filed written arguments and heard the counsel for defendants No. 4 and 6 and perused the records.

18. My answer to the above Issues are as under:

Issue No.1 : In the Negative,
Issue No.2 : In the Negative,
Issue No.3 : In the Negative,

Issue No.4 : In the Negative,
Issue No.5 : In the Negative,
Issue No.6 : As per the final order,
for the following.

REASONS

19. **Issues No.1 to 3:-** Since these issues are inter-related with each other, to avoid repetition, these issues are discussed together.

20. In support of the plaint averments the plaintiff got examined as Pw-1 and got examined other two witnesses by name Sri. R. Kittiah and Sri. D. Muniraju as Pws- 2 and 3 and relied on documentary evidence at Ex. P-1 to P-6. In order to rebut the plaintiffs evidence, the defendants No.4 to 6 got examined defendant No.6 as Dw-1 and got marked documents at Ex. D-1 to D- 51.

21. It is the specific case of plaintiff that the suit schedule property is the joint family property of himself and defendants No.1 to 3 who constitute Hindu undivided joint family and are governed by Hindu Mithakshara School of law. But in the plaint itself the plaintiff has averred that the ancestral and joint family properties were partitioned through partition deed dt:

5.12.2001. Therefore the defendants No.2 and 3 have contended that there is no joint family status in existence as the same disrupted long back through partition deed 5.12.2001 and therefore the plaintiff and defendants are no more joint family members. However both the parties have not produced the said partition deed dt: 5.12.2001 and there is no clarity whether it is a registered partition deed or not. Therefore admittedly even according to the plaintiff all the ancestral and joint family properties were partitioned through partition deed dt: 5.12.2001. Therefore admittedly the joint family status has been disrupted and there is no existence of joint family and plaintiff and defendants No.1 to 3 are not the members of joint family.

22. According to the plaintiff, the suit schedule property bearing Old No. 35/2, New No. 25/2 measuring 20 guntas of land in B Narayanapura village, K.R. Puram hobli, Bengaluru East Taluk. It is an ancestral and joint family property of plaintiff and defendants No.1 to 3. Further it is alleged that defendants No.1 to 3 played fraud on the plaintiff and in order to defeat his right, title and interest in the suit schedule property, was not included in the partition deed dt: 5.12.2001. Further in order to prove that the said partition deed is a fraud

and not valid, there is no specific pleading in the plaint nor the plaintiff has produced the said document and no declaratory relief has been claimed in respect of the said document.

23. According to the plaintiff since the suit schedule property is not included in the partition, he and defendants No.1 to 3 are in joint possession and enjoyment of the said property and first defendant being eldest person in the joint family has been managing it as “Khartha” of the family. Further he has averred that the first defendant is not managing the said property and not giving accounts. Therefore, he constrained to convey panchayath on 10.12.2018 and demanded to allot 1/3rd share in the suit schedule property, which is refused by the defendants No.1 to 3 and they disclosed about Gift deed executed in favour of defendants No.2 and 3 on 13.11.2012 by the mother of first defendant and plaintiff. Per contra the defendants No.2 and 3 have denied that the suit schedule property is the ancestral and joint family property. They have contended that it is the exclusive, self acquired property of Smt. Rathnamma, their mother and she purchased it through registered sale deed dt: 20.7.1972 for valuable consideration from its erstwhile owner Muniyamma and her son. Since then

said Rathnamma exercised rights of ownership till it was gifted in favour of defendants through valid registered gift deed dt: 13.11.2012 and the same is accepted by the donees. In order to prove the said contention the defendants No.2 and 3 have not stepped into the witness box nor produced documentary evidence. Further they have not cross-examined Pw-1. Both the parties have not produced registered sale deed dt: 20.7.1972. But the defendant No.6 has produced it and marked as Ex. D-1. As per the said document Rathnamma purchased 30 Guntas of land in Sy. No. 35/2. This document substantiate the contention of defendants No.1 to 3.

24. Since the plaintiff has filed the present suit for partition and separate possession, the burden of proof is on the plaintiff to prove the existence of suit schedule property and also its descriptions when defendants have disputed the descriptions and identity of the suit schedule property. But the plaintiff has not produced neither the title deed of suit schedule property nor the revenue records to prove that the suit schedule property was in existence and it was standing in the name of Smt. Rathnamma. The RTCs produced by the plaintiffs at Exs P-1 and 2 does not prove about existence of the suit schedule

property. But the plaintiff has produced Ex. P-3 which is RTC pertaining to the year 2012-13. As per the said document, an extent of 20 guntas standing in the name of Smt. Rathnamma W/o. K. Muniswamappa. Except he said document, there is no supporting documentary evidence to show about the existence and description of the suit schedule property. On the other hand, the defendants No.4 to 6 have contended that description of suit schedule property is wrong as there is already construction of residential buildings and these defendants are residing in the said buildings and they have also sold out sites in favour of purchasers, who have constructed buildings and residing therein. Further they have contended that after purchasing the land in Sy. No. 35/2, their father effected partition by executing GPA and it is phoded and separate survey number given. The defendant No.6 has produced the original sale deed dt: 20.7.1972 at Ex. D-1. On perusal of the said document, an extent of 30 guntas in Sy. No. 35/2 of B. Narayanapura village has been purchased by Smt. Rathnamma for a sale consideration of Rs. 3,000/-. As said document is a original registered sale deed and it is more than 30 years old, it has presumptive evidentiary value, Therefore in view of Ex. D-1

documentary evidence the defendants have proved that Smt. Rathnamma had purchased the suit schedule property measuring 30 guntas in Sy. No. 35/2 which is admittedly renumbered as Sy. No. 25/2. But the present suit is in respect of 20 guntas of land in the said survey number. On perusal of plaint averments as well as the written statement of defendants No.1 to 3 there is no explanation as to what happened to other 10 guntas of land in the said survey number as the suit schedule property is described as only 20 guntas.

25. The defendants No. 4 to 6 have contended that B. Narayanappa and his family members sold out the Sy. No. 35/2, new Sy. No. 25/2 in their favour by executing GPA. In order to substantiate the said contention the defendant No. 6 has produced Ex. D-2 and D-3, which are original registered GPA executed by B. Narayanappa and others in favour of defendants No.5 and 6. On perusal of said documents, the said defendants were appointed as GPA Holders in respect of land measuring 130ft + 124/2ft X 58 ½ ft and 124ft + 117ft/2 and 62 fts in Sy. No. 35/2, out of 30 guntas of land in favour of defendants No.5 and 6. But the said GPA discloses that defendants No.5 and 6 are none other than the children of Billikere Narayanappa. In

addition to the said documentary evidence, the defendants have produced the release deed dt: 25.4.2003 at Ex. D-4 and 5 executed by Munithayamma and others in favour of defendants. According to the defendants No.5 and 6, they have dug borewells and also taken electricity connection and have put up construction in the said property. The defendants have relied on Ex. D-14 to D-51. It is the specific case of said defendants that Sy. no. 35/2, New No. 25/2 has been phoded and given separate survey numbers as Sy. No. 25/3,4,5 and 6. Out of the said documentary evidence Ex. D-45 is not pertaining to Sy. No. 35/2 or Sy. No. 25/2. Accordingly, Ex. D-47 to D-51 does not disclose that said documents are pertaining to Sy. No. 35/2 i.e, suit schedule property.

26. In order to prove the descriptions and identity of suit schedule property except Ex. P-3, the plaintiff has not produced documentary evidence. Therefore Ex. P-3 is RTC pertaining to the year 2012-13. The present suit is filed in the year 2019. Therefore, there is no substantial evidence placed on record to prove the description of the suit schedule property. Therefore, the plaintiff has failed to prove the description and identity of the suit schedule property.

27. In this case except Ex. P-3 and Ex. D-1 no documentary evidence placed on record to show that Smt. Rathnamma was the owner in peaceful possession of the suit schedule property till the year 2012-13 or in the year 2012 when registered Gift deed executed in favour of defendants No.2 and 3 and the present suit for partition has been filed. Since the plaintiff has alleged that defendant No.1 played fraud and not included the suit schedule property in the partition deed dt: 5.12.2001 and that the defendants No.1 to 3 have created registered Gift deed in order to defeat and deprive of the plaintiff's share in the suit schedule property, the plaintiff got examined 2 witnesses as Pws 2 and 3 in order to substantiate the said averment. These witnesses have deposed that as on the date of registered Gift deed on 13.11.2012 Smt. Rathnamma was suffering from serious illness and she was unable to understand and she was bedridden and was in a state of Coma and had no worldly knowledge and without her knowledge the defendants No.1 to 3 got the LTM in the Gift deed. According to Pw-3, is an attesting witness to the Gift deed produced at Ex. P-4 and he identified his signature and deposed that he is an attesting witnesses to the said document and he has signed it. In the cross-

examination, he has denied that there is a difference in the signature made by him in the Gift deed and in the affidavit evidence. While marking signatures of Pw-3, the signature of second attesting witness is marked wrongly even though the Pw-3 is signed as Ist witness. On perusal of plaint averments there is no specific pleading regarding health condition of Smt. Rathnamma and the plaintiff has not specifically pleaded that she was in Coma at that relevant point of time and bed ridden and was unable to understand things and without her knowledge, the defendants No.1 to 3 have created a registered Gift deed. Thus the oral evidence of Pws-2 and 3 regarding health condition of Smt. Rathnamma is without basis and without pleading. It is well settled law that any amount of evidence without pleading is of no use. Thus the testimony of Pws 2 and 3 is not going to prove that at that relevant point of time the plaintiff's mother Smt. Rathnamma was suffering from illness and she was bed ridden and in a Coma stage and without her knowledge defendants No.1 to 3 got executed registered Gift deed. Since the plaintiff has alleged that the said Gift deed is a fraudulent document and not binding on him, the initial burden of proof is on the plaintiff to lead and prove the said Gift deed is

invalid and not binding on him. But as already discussed there is no specific pleading and supporting evidence to prove that the Gift deed dt: 13.11.2012 is null and void and not binding on the plaintiff.

28. The plaintiff has alleged that based on the registered Gift deed dt: 13.11.2012, the defendants No.1 to 3 have executed registered sale deed dt: 11.6.2014 in favour of defendants No. 4 to 6 in respect of the suit schedule property and therefore it is not binding on him. The defendants No.2 and 3 have pleaded that out of love and affection Smt. Rathnamma gifted the suit schedule property in their favour and they in turn sold the property in favour of defendants No. 4 to 6. As already discussed the plaintiff has failed to prove that the suit schedule property is the ancestral and joint family property and that the registered Gift deed dt: 13.11.2012 has been fraudulently created by defendants No.2 and 3. Therefore, the execution of the sale deed by defendants No.2 and 3 based on said Gift deed does not become fraudulent and not binding on the plaintiff. Since the plaintiff has not able to prove that he is having undivided right, share and interest in the suit schedule property, he cannot

claim that the registered sale deed dt: 11.6.2014 is not binding on him.

29. In this case the plaintiff has admitted about partition of the ancestral joint family properties through partition deed dt: 5.12.2001. Therefore, the burden of proof is on the plaintiff to plead and prove as to why the suit schedule property is not included in the partition deed. According to the plaintiff, the first defendant played fraud and not included it. On perusal of the plaint averments, the plaintiff not at all pleaded as to how the suit schedule property constituted an ancestral and joint family property. On the other hand, in view of Ex. D-1, which is a original registered Sale deed dt: 20.7.1972, the defendants have proved that the suit schedule property which was measuring 30 guntas was purchased by Smt. Rathnamma. Even though the partition deed is of the year 2001 till the date of filing of present suit the plaintiff has not raised objection. The defendants No. 2 to 6 has specifically pleaded that B. Narayanappa purchased the suit schedule property from Smt. Rathnamma through an agreement of sale and thereafter he executed GPA in favour of defendants and constructed building in the suit schedule property and he and his family members

were residing in the said property and it is well known to the plaintiff and he never raised objection. Therefore, in view of Ex. D-1, the defendants have proved the contentions taken in the written statement that the suit schedule property was standing in the name of Smt. Rathnamma. The defendant No.6 adduced evidence and produced documentary evidence purportedly pertaining to suit schedule property. They have also produced registered GPA dt: 5.1.1995 and receipts to show that they are in possession of suit schedule property even prior to the sale deed. But there is no explanation regarding why they secured registered sale deed dt: 11.6.2014 from defendants No.1 to 3, if B. Narayanappa already purchased it from Smt. Rathnamma through agreement of sale. But the said weakness in the defence is not going to help the plaintiff's case. On perusal of the plaintiff averments, the plaintiff is not disclosed about the said fact and thereby he has suppressed the material fact. Therefore the plaintiff has failed to prove that the registered sale deed dt: 11.6.2014 obtained by defendants No.4 to 6 is not binding on him. Hence, I answer Issues No.1 to 3 in the Negative.

30. **Issue No. 4:-** The defendants No. 2, 3 and 4 to 6 have vehemently contended that the present suit is barred by limitation as the father of defendants No.4 to 6 had purchased the suit schedule property and developed it. These defendants have contended that the mother of plaintiff Smt. Rathnamma sold the land measuring 20 guntas in Sy. No. 25/2 in favour of their father namely Billikere Naraynappa by executing the sale agreement dt: 17.5.1976 and delivered the actual possession and also the original documents. Further they have contended subsequently on 9.2.1978 Smt. Rathnamma had received full sale consideration and executed sale agreement in favour of their father. They also contended that subsequently she executed GPA and affidavits on 20.2.1978 in favour of their father. However the said defendants have not produced the said documents and not proved the said contentions. But they have produced the original registered GPA executed by their father in favour of defendants No.5 and 6, which are dt: 5.1.1995. In this regard Pws-2 and 3 have been cross-examined, they have stated that a portion of the suit schedule property is developed as residential houses are constructed and a portion of which is vacant. According to the plaintiff all the joint family and

ancestral properties were partitioned through a partition deed dt: 5.12.2001, but he has not specifically pleaded as on which date and under what circumstances, he came to know about the existence of the suit schedule property. Therefore except a vague and bald pleading, there is no specific pleading. Moreover he has not challenged the partition deed dt: 5.12.2001 as he pleaded that first defendant played fraud. On perusal of the plaint averments there is no specific pleading regarding when the plaintiff came to know about registered Gift deed and the registered sale deed dt: 13.11.2012 and 11.6.2014 respectively. He has pleaded that he convened a panchayath on 10.12.2018 and that defendant No.1 informed in the said panchayath about the Gift deed executed by their mother in favour of defendants No.1 to 3. In order to substantiate that the plaintiff convened a panchayath on 10.12.2018, he has not examined the witnesses. Hence the present suit which is filed beyond 12 years from the date of admitted partition on 5.12.2001 is clearly barred by limitation. Hence, I answer Issue No.4 in the Negative.

31. **Issue No. 5** : In view of findings given on Issues No.1 to 4, the plaintiff has failed to prove that the suit schedule property is the ancestral joint family property left out in the partition

deed dt: 5.12.2001. Accordingly, he failed to prove that the present suit is within limitation. Therefore the plaintiff has failed to prove that the Gift deed dt: 13.11.2012 in favour of defendants No.2 and 3 has been created by the defendants No.1 to 3 and hence it is not binding on the plaintiff. Accordingly he failed to prove that the sale deed dt: 11.6.2014 obtained by the defendants No. 4 to 6 is not binding on him. There is delay and latches in filing this suit. Also, there is suppression of true facts about the suit schedule property, which disentitle the plaintiff to claim the relief. Therefore, the plaintiff is not entitled for the relief of partition and separate possessed. Hence, I answer Issue No. 5 in the the Negative.

32. Issue No. 6 :- In view of my answer to above issues, I proceed to pass the following:

ORDER

The suit is dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer grade-I, computerized and typed by her, corrected and then pronounced by me in open court, on this the **23rd Day of April 2026**)

(NIRMALA DEVI S.)

LI ADDL.CITY CIVIL & SESSIONS JUDGE
C/c. XXXVII ADDL. CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY.

ANNEXURE

List of witnesses examined on behalf of the plaintiff/s:

PW-1 - M. Somanath.
PW-2 - R. Kittiah
PW-3 - D. Muniraja

Documents marked on behalf of the plaintiff/s:

Ex.P-1	RTC Extract of Sy.No. 25/2 of B Narayanapura village.
Ex.P-2	RTC Extract of Sy.No.25/2 of B Narayanapura village.
Ex.P-3	RTC Extract of Sy.No.25/2 of B Narayanapura village.
Ex.P-4	Certified copy of the registered gift deed dated 13.11.2012.
Ex.P-5	Certified copy of the registered sale deed dated 11.06.2014.
Ex.P-6	Digitally signed copy of attestation of family tree.

List of witnesses examined on behalf of the Defendant/s:

DW-1 : Ramakrishna reddy

Documents marked on behalf of the Defendant/s:

Ex.D-1	Original registered sale deed dated 20.07.1972.
Ex.D-2	Registered GPA dated 05.01.1995 with document No.973.
Ex.D-3	Registered GPA dated 05.01.1995 with document No.974.
Ex.D-4	Registered release deed dated 25.04.2003 with document

	No.1555/2003-2004.
Ex.D-5	Registered release deed dated 25.04.2003 with document No.1554/2003-2004.
Ex.D-6	Certified copy of the registered gift deed dated 13.11.2012.
Ex.D-7	Certified copy of the decree in O.S.No.8978/2012.
Ex.D-7(a)	Certified copy of the compromise petition in O.S.No.8978/2012.
Ex.D-8	Certified copy of the order sheet in O.S.No.8978/2012.
Ex.D-9	Notice issued by Revenue inspector dated 08.07.2014.
Ex.D-10	Show cause notice issued by Assistant Commissioner dated 03.01.2015.
Ex.D-11	Order of Assistant Commissioner in LRF(83)(BE)165/2014-2015 dated 25.03.2015.
Ex.D-12	Certified copy of the order of Special Tahsildar in RRT(V)CR 36/2012-2013.
Ex.D-13	Original registered sale deed dated 11.06.2014.
Ex.D-14	Original registered partition deed dated 27.03.2015.
Ex.D-15	Certified copy of the Moola Tippani of Sy.No.25.
Ex.D-16	Certified copy of Hissa Tippani of Sy.No.25/2.
Ex.D-17	Certified copy of Mutation entry as per Hissa Mojini in Sy.No.25/2.
Ex.D-18	Certified copy of the Aakaar band of Sy.No.25/2.
Ex.D-19	RTC of Sy.No.25/2.
Ex.D-20	Certified copy of RTC of Sy.No.25/6.
Ex.D-21	Certified copy of Mutation Extract of Sy.No.25/2 (3 sheets).
Ex.D-22	Conversion order dated 14.10.2019 in respect of Sy.No.25/6.
Ex.D-23	Special notice of BBMP dated 13.03.2020.
Ex.D-24	Katha Certificate dated 13.03.2020.
Ex.D-25	House and vacant site register extract for the year 2019-2020.
Ex.D-26	Katha extract dated 27.10.2020.

Ex.D-27	House and vacant site register extract for the year 2020-2021.
Ex.D-28	Special notice dated 27.10.2020 issued by BBMP.
Ex.D-29 to Ex.D-31	Computer generated property tax receipts.
Ex.D-32	Endorsement of village accountant dated 02.12.1974.
Ex.D-33	No objection certificate dated 21.08.1987 issued by B.Narayanapura Village panchayath.
Ex.D-34 to Ex.D-39	Tax paid receipts
Ex.D-40 to Ex.D-48	Documents in respect of obtaining power supply to the suit property.
Ex.D-49	Computer generated copy of the Prorata and other charges paid to BWSSB.
Ex.D-50	Measurement document of BWSSB.
Ex.D-51	Customer card issued by BWSSB.
	<i>(I have produced unregistered GPA dated 20.02.1978 and affidavit dated 20.02.1978. I pray of marking those documents. It appears that the GPA and affidavit are in respect of the same transaction. Therefore, it appears that the GPA has been given for consideration and authority has been given to sell the property also. In view of the same the documents appears to be insufficiently stamped. Hence, further chief examination is deferred to hear regarding admissibility of those documents).</i>

(NIRMALA DEVI S.)
 LI ADDL.CITY CIVIL & SESSIONS JUDGE
 C/c. XXXVII ADDL. CITY CIVIL & SESSIONS JUDGE
 BENGALURU CITY.

Judgment pronounced in the open court
(vide separate Judgment)

ORDER

The suit is dismissed.

No order as to costs.

Draw decree accordingly.

(NIRMALA DEVI S.)
LI ADDL. CITY CIVIL & SESSIONS JUDGE
C/c. XXXVII ADDL. CITY CIVIL & SESSIONS
JUDGE; BENGALURU CITY.

