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

Dated this the 14th day of July 2022

: PRESENT:

Sri Prabhakara Rao. B. Sc., LL.B.,(Spl.)
Senior Civil Judge and JMFC.,
Soraba.

ORIGINAL SUIT 01 / 2015

- Plaintiffs:
1. Smt. Shailaja K. Patil w/o.Kallana Gowda,
aged about 38 Years, r/o. D.No.95/A,
1st Main Road, Badami Nagara, Hubli,'
Dharwad District.
 2. Smt. Rajeshwari w/o. Rajashekhar Hegde,
aged about 40 Years, C/o. Rajashekhar Hegde,
Hotel Pallavi, Koppa Circle, Thirthalli,
Shivamogga District.
 3. Smt. Anitha S. w/o. Siddarajau,
aged about 50 Years, D.No.1/2,
Sree Shaila Nialay"
Vidya Nagar, Davanagere City.
 4. Smt. Gowramma w/o. Vijayakumar,
aged about 44 Years, c/o .
Vijayakumar Shettar, Gonemmanavar,
Kanchigar Oni, Devara Gudda Road,
Ranebennur, Haveri District.

(By Sri. E.N. Adv.)

VS.

- Defendants:
1. Smt. Lalithamma w/o. R.C. Patil,
aged about 68 Years,
R/o. Dwarahalli Village,

Soraba Taluk, Shivamogga District.

2. Channabasavana Gowda s/o. R.C Patil, aged about 46 Yars, r/o. Dwarahalli Village, Soraba Taluk, Shivamogga District.
3. Smt. Kavitha M. Patil w/o. Late Mallanagowda, aged about 35 Years, r/o. Agasanahalli Village, Soraba Taluk, Shivamogga District
4. Kum. Maheshwarai D/o. Late Mallanagowda, aged about 8 Years, r/o. Agasanahalli Village, Soraba Taluk, Shivamogga District.
5. Kum. Anushree d/o. Late Mallanagowda, aged about 6 Years, r/o. Agasanahalli Village, Soraba Taluk, Shivamogga District.

The defendant No.4 and 5 are minors, they are represented by their natural mother, 3rd defendant, (Smt. Kavitha M. Patil.).

6. Kusuma w/o. Shrinivasa Rao, aged about 56 Years, R/o. Agasanahalli Village, Soraba Taluk, Shivamogga District.
7. T.H. Basavaraappa s/o. Prabappa, aged about 54 Years, r/o. Talluru Village, Soraba Taluk, Shivamogga District.
8. Rudrappa s/o. Late Ningappa, aged about 45 Years, r/o. Agasanahalli Village, Soraba Taluk, Shivamogga District.

(D1, & D2 by Sri. N.K.Adv.)
(D3 by Sri. M.R.P. Adv.)
(D4, D5- KSP. Adv.)
(D6 to D8 by Sri. M.N., Adv.)

Date of institution of the suit : 05-01-2015

Nature of the suit :	For partition Declaration		
Date of recording of the evidence:	24.08.2016		
Date of closing of recording of evidence	05.08.2021		
Date on which the judgment was pronounced :	14-07-2022		
	Years	Months	Days
Total duration:	07	06	09

JUDGMENT

The plaintiffs have filed the suit for partition and separate possession of their 4/7th share in the suit schedule properties and for mesne profits as per the Order 20, Rule 2 of C.P.C. from the date of the suit till actual possession of their share in the suit schedule properties.

2. The brief facts of the case are that, Rudre Gowda s/o. Channabasappa Gowda (herein after referred as R.C. Patil) was the Manager of the joint family. He has been died at Nanjapa Hospital, Shivamogga on 31.01.2012, leaving behind his wife and children. The plaintiff No.1 to 4 are the daughters of him. The defendant No.1 is his wife, Defendant No.2 is his son. Defendant No.3 is the wife of his second son late Mallanagowda. Defendant No.4 and 5 are the daughters of said late Mallanagowda. Defendant No. 6 is the beneficiary of "gift deed" executed by late R.C.Patil. Further, the defendant

No.7 and 8 are the purchasers of joint family properties. As per the genealogy of the family, Basappa Gowda was the head of the family. He had a son by name Mallappa Gowda. Mallappa Gowda had three daughters by name Channabasamma, Veerabasamma and Eramma. In order to continue the progeny of the family, Mallappagowda adopted Channappagowda as his son. Channappa Gowda had two wives by name Sali Basamma and Savamma. Sali Basamma did not had issues from Channappa Gowda. The second wife- Savamma had a son by name Basavanagowda. The said Basavanagowda passed away at his early age. Thereafter, Savamma adopted Channabasappa Gowda to continue the progeny of her husbands family and the said Channappagowda had two wives, namely, Parvatamma and Gowramma. The said Channabasppa Gowda had one son and two daughters from Parvatamma. Out of them, one daughter and son passed away before attaining majority. Another daughter got married with Veerappa Gowda of Ginivala village of Soraba Taluk. She died at the time of delivery of a male child. Subsequently, that child also passed away. Further, the second wife of Channabasappa Gowda gave birth to three sons and three daughters. Out of three sons, Mallana Gowda passed away much earlier. Out of these

daughters, Bangaramma and Savithramma are no more and remaining two sons by name Rudrappa Gowda and Channappa Gowda had issues. Both of them passed away leaving behind their wives and children. The defendant No.1 is the wife of said Rudrappa Gowda. The plaintiffs, defendant No.2 and late Mallanagowda are the children of Rudrappagowda. Mallanagowda died leaving behind his wife and children, who have been arrayed as defendant No.3 to 5 herein. The branch of Channappagowda is not concerned with this suit. The suit schedule properties inherited to the family of the plaintiffs Channabasappa Gowda. In the family partition, the suit schedule properties fallen to the share of Rudra Gowda or R.C. Patil. The said family partition has been taken place in the year 1965-66 in between RC.Patil and Channappa Gowda as per the partition deed duly registered bearing S.R.No.519/65-66 dated 03.07.1965. At the time of said partition, some of the ancestral properties have been left out from the partition and remained as joint family properties. Thereafter, the properties left out have been partitioned as per the jubani hissa or jubani partition deed dated 10.10.2002. As per this jubani partition, katha No.31, katha No.33 katha No. 19, katha No. 59 and Khatha No. 52 of Dwarahalli village of Agasanahalli panchayath are fallen

to the share of late R.C. Patil. The plaintiffs and the defendant No.1 to 5 are in joint possession and enjoyment of the suit properties. In the year 1972, there was a partition between R.C. Patil and his sons-Channabasavanagowda and late Mallanagowda as per registered partition deed bearing S.R. No. 231/72-73 dated 29.4.1972. At the time of said partition, two sons of R.C. Patil by name Channabasavana Gowda, the defendant No.2 herein, and late Mallanagowda were minors and represented by their natural mother-Lalithamma who is defendant No.1 herein. At the time of the said partition, the plaintiff No.1 and 2 were not yet born. The plaintiff No. 3 and 4 were minors and they were not the parties to the said partition deed. R.C. Patil was suffering from various diseases like, diabetes, hypertension, chronic kidney disease etc., from the year 2003. He has taken treatment at Sri. Vigneshwara Hospital, Sagar. Some times, he had taken treatment as an in patient. Further, he has also taken treatment at Nanjappa Hospital, Shivamogga during the month of November, December 2011 and in January 2012. At that point of time, R.C. Patil was not in a position to take the rational decisions. Further, during his life time, R.C. Patil was addicted to bad vices like, drinking, gambling and also having the habit of immoral attitude. Further, he has alienated

some of the properties without consent of the other major co-owners without any legal necessity. Even though, the defendant No.6 is not the legally wedded wife of late R.C. Patil., Late R.C. Patil has described her in some of the documents as his second wife. She has created some documents in collusion with R.C. Patil without knowledge and consent of other coparceners in her favour without the knowledge or consent of the other coparceners of the joint family. Defendant No.6 created some of the documents in her favour relating to Sy.No.4/1 and 4/2 of Agasanahalli village of Soraba Taluk bearing S.R.B.No.1/00681-2006-07 dated 25.09.2006, which is not sustainable in the eye of law. The suit schedule properties are undivided joint family properties. Further, late R.C. Patil has no right, title or independent possession to execute the the said gift deed in favour of defendant No.6. Further, the defendant No.6 has also not acquired any right, title or interest over the said properties through the "gift deed". Further, the defendant No.6 has got changed the katha in her favour in collusion with revenue officials based on the gift deed. But, the said documents are not at all extinguished the right of the plaintiffs. Further, the late R.C. Patil executed the gift deed in favour of defendant No.3 in respect of Sy. No.60 of Dwarahalli village, Soraba

Taluk bearing S.R.B.No. 1/02179-2011-12 dated 09.01.2012. This document is created by the defendant No.3 in collusion with R.C. Patil and also change of katha taken place in collusion with the revenue officials. These revenue records also not extinguished the rights of the plaintiffs. As the said property in Sy.No.60 of Dwarahalli village is an ancestral joint family property, R.C. Patil has no right or interest or independent possession to execute the gift deed in favour of defendant No.3 without the consent of plaintiffs and other coparceners. Further, the sale deed executed by R.C. Patil bearing S.R.B. No.1/0214/2011-12 dated 04.01.2012 in respect of Sy.No.66 of Dwarahalli village measuring 6.07 acre of wet land in favour of defendant No.7, T.H. Basavarajappa is also not binding upon the plaintiffs as it is an ancestral property and defendant No.7 has also not acquired any sort of right over the said land through sale deed. Further, the R.C. Patil has executed the sale deed bearing S.R.No. 1-0069-2008-09 dated 19.1.2008 of Sy.No.89/2 of Dwarahalli village of Soraba Taluk measuring 1 acre of wet land in favour of defendant No. 8, Rudrappa, is also not binding upon the plaintiffs as it is the ancestral property and also R.C. Patil has no independent right to alienate the said property. When the plaintiffs have sought share in the suit schedule properties,

late R.C Patil was suffering from ailment and breathed his last on 31.01.2012. After his death, the plaintiffs had asked for their legitimate share with defendant No.1 to 3 and also the panchayath was held before the well wishers of the family in the first week of September 2014. But, the defendants did not agree to give share to the plaintiffs. Therefore, this suit has been filed for the partition and also for the relief of declaration as sought in the plaint.

3. On service of summons, the defendant No.1 and 2 appeared through one counsel. The defendant No.3 to 5 appeared through one counsel and defendant No.6 to 8 appeared through another counsel. The defendant No.1 and 2 have not filed the written statement. They have not contested the suit. The defendant No.3 has filed the written statement and the same has been adapted by defendant No.4 and 5. The defendant No.6 to 8 together have filed their written statement. In the written statement, the defendant No.3 has denied that the R.C. Patil was the Manager of the family. However, he has admitted the relationship of the plaintiffs and defendant No.1 to 5 as narrated in the plaint Further, she has denied the genealogical tree given by the plaintiffs. It is stated that the name of some of the members of the family had

been left out from the genealogical tree. Further, this defendant has not agreed that Channabasappa Gowda was the propositus of the family. She stated that Gangamma is mother of Channabasappa Gowda and the suit schedule properties has been came to Channabasappa Gowda from Gangamma. Further, it is stated that the suit schedule properties are not the ancestral properties of the plaintiff. But, they came to R.C.Patil in the family partition, they are not the ancestral properties of him. Further, it is denied that in the year 1965-66, there was a partition between R.C. Patil and his brother -Channappa Gowda. It is stated that on 03.07.1965, they partitioned the properties as per the document bearing S.R No.519/95-96. Further, this defendant has denied that some of the properties were left out from the said partition. Thereafter, jubani hissa was made in respect of these properties and khaneshumari 31, 33, 19, 59 and 52 had been allotted to R.C. Patil in the said jubani hissa. Further, this defendant has specifically denied the contention of the plaintiffs that the suit schedule properties are the ancestral properties and they are having the joint possession and enjoyment along with defendant No.1 to 5. However, this defendant has admitted the partition between R.C. Patil and his two sons, Channabasavanagowda and Mallanagowda as

per partition deed dated 29.4.1972. Further, again this defendant has specifically denied that all the suit schedule properties are the ancestral properties. Further, it is denied that late R.C. Patil was suffering from ailment, having diseases of diabetes, hyper tension, kidney problem etc. Further, it is also denied that he was taking treatment at Vigneshwara Hospital, Sagar, Nanjappa hospital, Shivamogga. Further, it is also denied that during the period of November to December 2011, and in the month of January, 2012, R.C. Patil was suffering from ailments and he was not in position to take rational decision. Further, she denied that the defendant No.6 is not the legally wedded wife of R.C.Patil and defendant No.6 has created some documents of R.C. Patil in collusion with her. Further, it is specifically denied that the defendant No.6 has created the gift deed dated 25.09.2006 in respect of Sy.No. 4/1 and 4/2 of Agasanahalli village. It is also denied that R.C Patil has no right to execute the said gift deed. Further, it is also denied that the defendant No. 7 has created the sale deed dated 04.01.2012 in respect of Sy.No.66 of Dwarahalli village in collusion with R.C. Patil. It is also denied that the defendant No.8 has created the sale deed in respect of Sy.No.89/2 dated 19.11.2008 in collusion with R.C.Patil. In addition, this defendant has narrated that

the suit "A" and "B" schedule properties are the self acquired properties of late R.C. Patil. It is stated that originally, the suit schedule properties were belonged to the family of Malleshappa. Malleshappa had two sisters by Eramma and Gangamma. Malleshappa died unmarried. Eramma got married with Kotrappa of Gangolli and Gangamma got married with Channappa of Jogihalli village. Gangamma and Channappa begotten one son by name Channabasappa. The said Channabsappa is the father of R.C. Patil. He has also another son by name C.C. Patil. The said Channabasappa predeceased to Gangamma. Therefore, all suit schedule properties are the properties of Gangamma as "stridhan" properties. In this property of Gangamma, R.C. Patil and C.C.Patil made partitioned in "stridhan" properties of Gangamma through partition deed dated 03.07.1965. In the said partition, the suit schedule properties came to the share of R.C. Patil. Therefore, the suit schedule properties become the self acquired properties of R.C.Patil and they cannot be claimed as ancestral properties as claimed by the plaintiffs.

4. Further. this defendant No.3 has stated that R.C. Patil has gifted the land in Sy.No.4/1 and 4/2 which had been to his share in the family partition held in between him and

his brothers in the year 1965-1966 to the defendant No.6 through the gift deed duly registered bearing S.R.No.681/2006-07 dated 25.09.2006. Further, it is stated that the R.C. Patil was looking the defendant No.6 as she is his wife with all love and affection upon her. Therefore, she gifted these two properties in her favour and the plaintiffs are not having any sort of right to question this "gift deed". Further, during his life time, R.C. Patil has sold Sy.No.66 land measuring 6 acre 7 gunte in Sy.No.66 of Dwarahalli village to the defendant No.7 through the sale deed dated 04.01.2012 duly registered bearing SR.No. 214/2011-12 for the purpose of discharging the loan availed by him from co-operative society and the banks and also to end the litigation with TAPCMCS, Soraba, this sale transaction has been made in the interest of the family and it is a lawful transaction. The defendant No.7 is a bonafide purchaser of the property. It is stated that the plaintiffs are not having any sort of right to question the sale transaction. Further, R.C. Patil has sold 1 acre land in Sy.No. 89/2 of Dwarahalli village to defendant No.8 under sale deed dated 19.11.2008 bearing S.R.No. 69/2008-09 was also made in the interest of the family and also to discharge the family loan. It is stated that the sale transaction is also lawful one and the defendant No.8 is the bonafide purchaser. Further, it

is specifically stated that the plaintiffs have no right to question the alienation of land in Sy.No.4/1, 4/2 of Agasananahalli village and Sy.No.66 and 89/2 of Dwaraalli village as stated above by the R.C. Patil in the interest of the family. It is stated that no alleged fraud was taken place during the aforesaid transaction. Further, it is specifically contended that these properties are not the joint family properties. R.C. Patil has succeeded these properties from his grand mother-Gangamma inherited by her from her father. It is specifically contended that the suit schedule properties are stridhan properties of Gangamma and they are not the ancestral properties of the family. Further, it is stated that while giving Sy.No.4/1, 4/2 to defendant No.6, R.C. Patil has also given Sy.No. 60 of Dwarahalli village to this defendant through that gift deed. Further, in order to avoid future litigation during his life time, R.C. Patil has executed the "Will" dated 09.01.2012 which has been duly registered in S.R.No.68/2011-12 in respect of the other suit schedule properties and bequeathed in favour of defendant No.1 to 6. Accordingly, after his death, the defendant No.1 to 6 have become the owners and enjoying the properties. The plaintiffs have no right to question said "Will", "gift deed" and the sale deeds made by the deceased R.C.Patil. Further, this defendant

has also contended that the suit is totally time barred. It is further stated that R.C. Patil has gifted 6 acre 2 gunte in Sy.No.60 of Dwarahalli village in favour of defendant No.3 having love and affection upon her and the grand children. Accordingly, the mutation has been effected. With all these contentions, this defendant No.3 has requested to dismiss the suit.

5. In her additional written statement as well, this defendant has denied the contentions of the plaintiff at para No.5(a) of the plaint. However, she has admitted that Channbasappa Gowda had two wives by name Parvathamma and Gowramma and first wife Parvathamma begotten one son and two daughters and out of them, one son and one daughter died prior to attaining majority and another daughter has been given in marriage to Veerappagowda. Further, it is admitted that she also died after giving birth to son and subsequently, that son also died. Further, this defendant has admitted that the second wife of Channabasappagowda i.e., Gowramma had given birth to three sons and six daughters. Out of them, Bangaramma, Savithamma had been died. Out of three sons, Mallappagowda has been died and other two sons are R.C.

Patil and Channappagowda. Further, this defendant has not disputed with regard to wife and children of R.C. Patil. It is also stated that the defendant No.6 is the second wife of R.C.Patil.

6. In the written statement, the defendant No. 6 to 8 have admitted the relationship mentioned at para No.3 of the plaint. It is denied that the properties given to defendant No.6 to 8 through gift deeds and sale deeds are the ancestral properties. It is contended that these properties are the self acquired properties of R.C. Patil. Further, these defendants have disputed genealogical tree given by the plaintiffs. Further, these defendants have also denied that in the year 1965-66, R.C.Patil and his brother-Channappagowda had partitioned the ancestral properties. But, they made partition in the self acquired properties as per the partition deed dated 03.7.1965. duly registered in S.R. No.519/1965-66. Further, these defendants have denied that R.C. Patil and his brother left certain properties in the said partition and were enjoying jointly. However, they admitted that in the oral partition taken place on 10.10.2002, the properties at khaneshumari No.31, 33, 19, 59 and 52 of Dwarahalli village had come to the share of R.C.Patil. It is contended that they are the self

acquired properties and not the ancestral properties of R.C.Patil. It is specifically contended that the suit schedule properties are not the ancestral properties of the family. Further, these defendants have denied that the plaintiffs are the coparceners to the suit schedule properties and R.C.Patil was suffering from ailments having diseases of diabetic, B.P., kidney related and heart diseases and taken treatment at Vigneshwara hospital and Nanjappa hospital, Shivamogga. Further, they also denied that in the year 2011 and January 2012. R.C. Patil was not feeling well and addicted to bad vices. Further, it is also denied that the RC.Patil has alienated the properties without there being any legal necessity. Further, denied that the defendants created the documents and Kusuma is not the legally wedded wife of R.C. Patil. Further, these defendants also submitted that the suit schedule properties are originally belonged to Gouramma. It is contended that she had been given in marriage to Channppagowda of Jogihalli village. But, he was residing with her at her parents house only and died prior to the death of Gouramma. It is specifically contended that Gouramma had not received any properties from Jogihalli Channappagowda and she received the properties from her mother. It is further submitted that Gourtamma had only one

son by name Channabasappa Gowda and the suit schedule properties came to Channabasappagowda from his mother-Gouramma.. R.C. Patil and his brothers -Channapagowda are only two sons to Gouramma. R.C. Patil and C.C. Patil have got these properties from her mother and made partition in the year 1965-66 through partition deed dated 03.07.1965. In the said partition, the suit schedule properties have been allotted to R.C. Patil as the suit schedule properties are the self acquired properties of R.C. Patil. Further, it is also contended that the plaintiffs are not having any rights to claim share in the suit schedule properties. Further, it is stated that defendant No.6 led the marital life with R.C. Patil for thirty years and residing with him at Agasanahalli village. It is stated that R.C. Patil has gifted the land in Sy.No.4/1 and 4/2 to defendant No.6 through gift deed dated 25.09.2006 having love and affection and the plaintiff have no right or interest to question this gift deed. Further, these defendants also stated in respect of the alienation of the properties in Sy.No.66 to defendant No.7 through the sale deed dated 4.01.2012, 1 acre land in Sy.No.89/2 through sale deed dated 19.11.2008. Further, these defendants have specifically contended that the plaintiffs have no right to question the alienation made by their father R.C. Patil. It is contended that R.C. Patil has

executed "Will" on 09.1.2012 being duly registered having S.R. No. No.68/2011-12 in respect of other properties of the family to avoid future disputes. Accordingly the defendant No. 1 to 6 are get the properties and enjoying the same. With all these contentions, these defendants prayed to dismiss the suit. In the additional written statement filed by defendant No.6, she has denied the contentions of the plaintiff at para No.5A of the plaint.

7. On the basis of the pleadings, this Court has framed the following Issues and additional issues, which reads as below:

ISSUES

1. Whether the plaintiff proves that she and defendants are members of joint family and suit schedule properties are ancestral joint family properties liable for partition?
2. Whether the plaintiff proves that the sale deed dated 04.01.2012 between late RC Patil and defendant No. 7 is not binding on the plaintiffs?
3. Whether the plaintiff proves that the sale deed dated 19.11.2008 between late RC Patil and defendant No. 8 is not binding on the plaintiffs?

4. Whether the plaintiff proves that the gift deed dated 25.09.2006 executed by late RC Patil in favour of defendant No. 6 is not binding on the plaintiffs?

5. Whether the plaintiff proves that the gift deed dated 09.01.2012 executed by late RC Patil in favour of defendant No. 3 is not binding on the plaintiffs?

6. What relief are the parties entitled to?

7. What Order or Decree?

Additional Issue framed on 20.09.2018

1. Whether suit is barred by the limitation?

Additional Issues framed on 31.05.2018

1. Whether the plaintiff proves that the propositus of the family was Mr. Basappa Gowda and Genealogy mentioned in Para No. 5A of the plaint?

Additional Issues framed on 30.01.2020

1. Whether the defendant No. 3 proves that item No. 7 of the suit property was self acquired property of RC Patil and it was validly gifted to defendant No. 3 under gift deed dated 09.01.2012?

8. Having heard the arguments of both sides counsel, I have carefully perused the pleadings and evidence on record.

I have answered the aforesaid Issues are as below:

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: Partly in the Affirmative.
Issue No.7: As per the final Order

Addl. Issue dated 20.09.2018: In the Negative.

Addl. Issue dated 31.05.2018: In the affirmative.

Addl. Issue dated 30.01.2020: In the affirmative.

for following;

REASONS

9. Issue no.1 and Addl. Issue No.1 dated 31.5.2018:

In order to avoid repetition of facts and evidence on record, and as both issues have interlinked, I have taken both issues together for consideration.

10. It is the specific case of the plaintiffs that the suit schedule properties are the ancestral joint family properties, comprising of them and the defendant No.1 to 5 herein. According to the plaintiffs, the suit schedule properties were originally belonged to Basappagowda. Thereafter they had been inherited by his only son Mallappagowda. It is further case of the plaintiffs that said Mallappagowda had only three daughters (1) Channabasamma (2) Veerabasamma and (3) Eramma. Therefore, Mallappagowda had adopted Channappagowda. Further, the plaintiffs have pleaded that

said Channappagowda had two wives by name Sali Basamma and savamma. Further, it is stated that Salibasamma had no issues, but Savamma had one son by name Basangowda. It is stated that said Basangowda had died at his early age. Thereafter, Savamma had adopted Channabasappagowda to continue progeny of her husband's family. Further, it is stated that said Channabasappagowda has two wives by name Parvatamma and Gouramma. It is stated that one son of Parvatamma died at early age and daughter has been died after marriage with one Veearappagowda of Ginivala after giving birth to a male child. Thereafter said child also passed away. Second wife Gouramma had given birth to three sons and six daughters. It is stated that out of said three sons, one son Mallanagowda died at his early age. It is stated that other two sons are R.C.Patil and C.C.Patil. It is stated that suit properties are inherited from Channabasappagowda. The defendant No.3 has differed with geneology of the family given by the plaintiffs. As per the defence set out by the defendants, the suit schedule properties are inherited from Gowramma, who is said to be the mother of Channabasappa Gowda, who is father of R.C.Patil and C.C.Patil and it is contended that the suit schedule properties are the self acquired properties of R.C. Patil, allotted to him in the family

partition held on 03.07.1965. The plaintiffs have narrated the details of genealogical tree at para No.5 of the plaint as stated above. Further, in the written statement, the defendant No.3 has pleaded in detail as to how the suit schedule properties are inherited by R.C. Patil, in the family partition.

11. In order to prove their respective contentions, the plaintiff No.1 had given her evidence by filing affidavit in lieu of examination in chief, reiterating the contentions taken in the plaint. During the course of her evidence, the documents at Ex.P1 to Ex.P92 are marked. Further, the defendant No.3 has given her evidence as D.W.1 by filing affidavit in lieu of examination in chief, reiterating the contentions taken in her written statement, which has been adapted by the defendant No.4 and 5. Further, in this case, the defendant No.6 has given evidence as D.W.2, by filing her affidavit in lieu of examination in chief reiterating the contentions taken in the written statement of her, along with defendant No.7 and 8. Further, the defendant No.7 who is the purchaser of Sy.No.66, purchaser of the land measuring 6 acre 7 gunte in Sy.No.66 of Dwarahalli village, has given his evidence by filing affidavit in lieu of examination in chief, contending that he is the bonafide purchaser of the property. Further, in this case, the defendant No.8 being another purchaser of the land

measuring 1 acre in Sy.No.89/2, which has been shown as item No.13 in the plaint schedule has given his evidence as D.W.4 by filing affidavit in lieu of examination in chief, reiterating the contentions that he is the bonafide purchaser of the property. D.W.3 and 4 have denied the case of the plaintiffs and contended that they are the owners and in possession of the properties purchased by them from R.C. Patil, who is the father of the plaintiffs herein.

12. In order to decide these issues, it is necessary to keep in mind certain principles of the Hindu Law. There is presumption to existence of joint family. This presumption is stronger in case of brothers than in case of cousins. When there is existence of joint family, unless and until contrary that disruption or separation is proved, it shall be presumed that the family is joint. But at the same time there is no presumption that a family, because it is joint, possesses joint property or any property. When any member has claimed any property as his separate property, there must be strong evidence to show that said property is joint as there is no presumption to joint family property, unless it is shown that the family was possessed some property which from its very nature and relative value may have formed the nucleus from which the property claimed as self acquired property, by a

member of the family, may have acquired. Further, with reference to earlier judgments, in ***Bhagwat Sharan v. Purushottam, (2020) 6 SCC 387***, the Hon'ble Apex court has held that "the law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same".

13. It is the case of the plaintiffs that the suit schedule properties are the ancestral properties and fallen to the share of their father, late R.C. Patil in the family partition held between him and his brother-Channappa Gowda or C.C. Patil. It is contended that on 03.07.1965, R.C. Patil and Channappa Gowda made partition in the properties through partition deed dated 03.07.1965, duly registered having S.R. No.519/65-66. It is contended that in this partition, some of the ancestral properties are left out and remained as joint family properties. Thereafter, the properties left out in this partition have been divided as per jubani hissa patra dated 10.10.2002. As per this jubani partition, the properties in katha No.31, 33, 19, 59, and 52 of Dwarahalli village are fallen to the share of R.C. Patil. The plaintiffs have not stated as to whether khaneshumari No. 40 which has been shown as item No.6 in "B" schedule has been allotted to R.C. Patil, when this jubani hissa between him and his brother. Further, it is also

not stated how this property has come to R.C. Patil. The plaintiffs are silent in this regard. Further, it is the case of the plaintiffs that during the life time, R.C. Patil has made partition in the properties between him and his two sons Channabasavanagowda and Mallanagowda. Channabasavanagowda who is the defendant No.2 in the case. Mallanagowda has been died and the defendant No. 3 to 5 are the legal heirs of Mallanagowda. It is the case of the plaintiffs that they are not the parties to this partition between R.C. Patil, Channabasavanagowda and Mallanagowda, as per the partition deed dated 29.04.1972. It is contended that at that point of time, the plaintiff No. 1 and 2 were not yet born and plaintiff No.3 and 4 were minors. The plaintiffs have not questioned the said partition deed dated 29.04.1972. but, contended that they are in joint possession and enjoyment of the suit properties along with defendants. It is pertinent to notice that the defendant No.1 and 2 being the mother and brother have not contested the suit. The plaintiffs have not made it clear as to whether the suit schedule properties have been allotted to the share of their late father – R.C. Patil in the partition held on 29.04.1972. On the other hand, the defendants have taken up the contention that the R.C. Patil was the absolute owner of the suit schedule properties and

contended that the plaintiffs have no right to question the alienation made by R.C. Patil and his "Will" in which he has distributed the properties in his name.

14. Before appreciating the oral evidence, I have gone through the documents relied upon by the plaintiffs and defendants. Ex.P1 is the copy of the partition deed dated 03.07.1965. I have carefully perused this document. It has been taken place between R.C.Patil and his brother-Channappagowda or C.C. Patil. The recitals of the documents discloses that this document has been executed in respect of the partition of the properties already made in the year 1960 and in respect of some of the properties which had been kept joint during the life time of the mother of R.C. Patil and C.C.Patil. It is stated that this partition deed was not executed in the year 1960, as their mother forced them not to make partition in the properties during her life. Further, in this document, it is clearly stated that both R.C. Patil and C.C. Patil has already separated their movable properties belonged to them and there was no question to make again partition in that regard. In this partition deed, the details of the properties allotted to R.C. Patil and C.C. Patil have been given. Further, in this document, it is made it clear that if any

property left out in this partition deed, that property or properties shall be treated as the properties belonged to R.C. Patil. In this document, it is not at all stated as to whether the properties partitioned are the ancestral properties or how they came to the family. As per this partition deed, Sy.No.89 measuring 13 acre 28 gunte, Sy.No.92/2 measuring 4 acre 20 gunte, Sy.No.112, measuring 4 acre 31 gunte, Sy.No. 66, measuring 5 acre 16 gunte wet land and 3 acre 17 gunte dry land, Sy. No. 60 measuring 12 acre 3 gunte wet land, Sy.No. 61, measuring 5 acre 2 gunte wet land, Sy.No.62 measuring 10 acre 12 gunte wet land Sy.No. 64 measuring 12 acre 23 gunte wet land and Sy.No.65 measuring 8 acre 6 gutne dry land and 3 acre 15 gutne wet land of Dwarahalli village and Sy.No.34 measuring 9 acre 19 gunte of wet land of Mallapura village, Sy.No. 43 measuring 17 acre 4 gunte of dry land, Sy.No. 34 measuring 15 acre 28 gunte dry land, Sy.No. 38 measuring 4 acre 13 gunte dry land, Sy. No.121 measuring 1 acre 8 gunte dry land, Sy.No. 5 measuring 1 acre 27 gunte dry land, Sy.No.58 measuring 2 acre 14 gunte dry land, Sy.No.1 measuring 10 acre 39 gunte wet land, Sy.No. 27 measuring 11 acre 1 gunte of wet land of Agasanahalli village had been allotted to R.C. Patil along with these lands. The residential house in khaneshumari No.33 of Dwarahalli village

along with back yard and khaneshumari No.40, 76, 19 are allotted to him. Further, his shares in Anavatti Contracting Company also allotted to him. All these properties allotted to R.C. Patil are not the suit properties in the case. Ex.P2 is the copy of another partition deed dated 29.04.1972, taken place between R.C. Patil and his two sons-Channabsappa Gowda who is defendant No.2 herein and Mallappa Gowda, who has been died left behind the legal heirs who are defendant No. 3 to 5 herein. The original of this document has been marked as Ex.D1, during the cross of P.W.1. I have carefully perused these documents. In these documents, it is stated that the properties put in for the partition are the ancestral properties of R.C. Patil and R.C. Patil made partition in the ancestral property, inherited by him among him and his two sons. It reveals that at the time of this partition, the defendant No.2 herein and Mallappa Gowda were minors and represented by the minor guardian -Lalithamma, who is defendant No.1 herein. This partition is also duly registered bearing S.R.No. 231/72-73. In this partition, R.C. Patil had taken the properties to his share as well. Sy.No.5 measuring 1 acre 27 gunte, Sy.No.38/1 measuring 1 acre 39 gunte, Sy.No.121/1 measuring 36 gunte, Sy. No.4/2 measuring 36 gunte of Agasanahalli village and Sy.No.60 measuring 12

acre 3 gunte wet land, Sy.No.62 measuring 10 acre 12 gunte wet land, Sy.No.64, measuring 12 acre 23 gunte wet land, Sy.No.65 having 8 acre 6 gunte dry land and 3 acre 15 gunte wet land, Sy.No.66 having 5 acre 16 gunte dry land and 3 acre 27 gunte wet land, Sy.No.89, having 13 acre 28 gunte dry land, Sy.No.112 having 4 acre 31 gunte dry land and Sy.No. 126 measuring 35 gunte wet land of Dwarahalli village had been allotted to the share of R.C. Patil, along with the properties at khaneshumari No.33 with residential house and khaneshumari No.40, 51 and 30 had also been allotted to R.C.Patil. Further, in this case, Sy.No.61 measuring 5 acre 2 gunte of wet land of Dwarahalli village, Sy.No.10 having 1 acre 6 gunte dry land, 10 acre 7 gunte of wet land and Sy.No. 34 having 15 acre 26 gunte dry land of Agasanahalli village allotted to the share of defendant No.2 herein, along with khanehsumari No.29 of Dwarahalli village. Further, as per this partition deed, Sy.No. 22 measuring 1 acre 25 gunte dry land and 9 acre 16 gunte wet land of Agasanahalli village, Sy.No. 34 measuring 9 acre 19 gunte wet land of Mallapura village along with khaneshumari No. 31 of Dwarahalli village had been allotted to another son Mallappa Gowda.

15. Ex.P1 is certified copy of partition deed dated 03.07.1965 as per MR NO. 519/1965-66. Ex.P2 is certified copy

partition deed dated 29.04.1972. Ex.P3 is certified copy of gift deed dated 25.09.2006, wherein, R.C. Patil has gifted 36 gunte in Sy. 4/2 and 2 acre 2 gunte in Sy. No. 4/1 in the name of Smt. Kusuma W/o. Rudrappa Gouda. Ex.P4 is certified copy of gift deed dated 09.01.2012, wherein, R.C. Patil S/o. Channabasappa Gouda has gifted 6 acre 2 gunte of wet land in Sy. No. 60 of Dwarahalli village of Anavatti Hobali to Smt. Kavitha W/o. Late Mallana Gouda. Ex.P5 is certified copy of 11E sketch of Dwarahalli village. Ex.P6 is certified copy of sale deed dated 19.11.2008. It discloses that R.C. Patil S/o. Channabasappa Gouda has sold land in Sy. No. 89 totally measuring 13 acre 28 gunte of dry land of Dwarahalli village to Rudrappa S/o. Ningappa. Ex.P7 is record of rights of Sy. No. 127 of Dwarahalli village. Ex.P8 is record of rights of Dwarahalli village in respect of Sy. No. 89, Sy. No. 60, Sy. No. 64 and 65. Ex.P9 is Record of rights of Dwarahalli village in respect of Sy. No.60, 64,89 and 65. Ex.P10 is another record of rights of Dwarahalli village. Ex.P11 is another record of rights of Dwarahalli village. Ex.P12 is the index of land of Dwarahalli village. Ex.P13 is another index of land of Dwarahalli village. Ex.P14 is also index of land of Dwarahalli village. Ex.P15 is another index of land of Dwarahalli village. Ex.P16 is RTC extract of Sy. No. 5 of Dwarahalli village for the year 2013-14,

wherein, Smt. Kusuma R. Patil W/o. R.C. Patil and Smt. Kavitha R. Patil W/o. Mallana Gouda are shown as owners to the extent 1 acre 27 gunte. Ex.P17 is RTC extract of Sy. No. 5 of Dwarahalli village for the year 2012-13, wherein, Smt. Kusuma R. Patil W/o. R.C. Patil and Smt. Kavitha R. Patil W/o. Mallana Gouda are shown as owners to the extent 1 acre 04 gunte. Ex.P18 is RTC extract of Sy. No. 4/1, measuring 2 acre 2 gunte of Agasanahalli village for the year 2012-13, wherein, the name of Smt. Kusuma W/o. Rudrappa Gouda is shown as owner of the property. Ex.P19 is RTC extract of Sy. No. 4/2, measuring 36 gunte of Agasanahalli village for the year 2010-11, wherein, the name of Smt. Kusuma W/o. Rudrappa Gouda is shown as owner of the property. Ex.P20 is RTC extract of Sy. No. 60 of Dwarahalli village for the year 2013-14, wherein, the name of Sri. Channabasappa K., Channappa K., Devaraja K. and Kavitha K., are shown as jointly to the extent 6 acre 2 gunte as per MR NO. 18/2011-12 dated 16.02.2012 and name of K. Veerappa S/o. Mallappa has been shown to the extent 2 acre as per MR H5/2012-13 dated 24.01.2013. Ex.P21 is RTC extract of Sy. No. 64/P of Dwarahalli village to the extent 8 acre 3 gunte for the year 2013-14, wherein, the name of Sri. Veerana Gouda S/o. Basavanyappa is shown as owner and possessor of 2 acre 5 gunte as per MR No. 5/82-83 as per partition deed. Further, 38

gunte is in possession of Chandra Gouda S/o. Basavanthappa as per MR No. 3/1996-97 and Kusuma patil shown as owner to acre. Ex.P22 is RTC extract of Sy. No. 66 of Dwarahalli village measuring 9 acre 7 gunte for the year 2013-14, wherein, the name of Smt. Nagamma, Channabasappa K., Channappa K., Devaraja K jointly shown as possessor to the extent of 2 acre 20 gunte as per MR. H14-2011-12 dated 29.12.2011 and 6 acre 7 gunte is shown in the name of and T.H. Basavarajappa as per MR No. 17/2011-12. Ex.P23 is RTC of Sy. No. 89/1, measuring 12 acre 28 gunte of Dwarahalli village for the year 2013-14, wherein, the name of Smt. Kusuma R. Patil W/o. R.C. Patil is shown as owner of the property to the extent of 7 acre 28 gunte as per MR No. H11/2012-13 and name of Channabasappagowda is shown to the extent of 5 acre. Ex.P24 is RTC of Sy. No. 89/2, measuring 1 acre of Dwarahalli village for the year 2013-14, wherein, the name of Sri. Rudrappa S/o. Ningappa is in possession to the extent of 1 acre as per MR No. 20/2008-09 dated 19.06.2009. Ex.P25 is RTC of Sy. No. 34, measuring 9 acre 19 gunte of Mallapura village for the year 2013-14, wherein, the name of Smt. Kavitha W/o. Mallappa Gouda Patil is shown as owner of the property to the extent of 9 acre 19 gunte as per MR No. 3/2009-10 dated 31.01.2010. Ex.P26 to Ex.P29 are the demand register

extracts of Agasanahalli village related suit house properties. Ex.P30 is the death certificate of R.C. Patil. Ex.P31 is the mutation register extract in respect of M.R.No.10/96-97. Ex.P32 is the mutation register extract in respect of MR No. 17/2011-12 dated 04.01.2012. Ex.P33 is the mutation register in respect of MR No. 18/2011-12 dated 09.01.2012. Ex.P34 is the mutation register extract in respect of MR No. H14/2012-13 dated 16.05.2013. Ex.P35 to Ex.P37 are the endorsements given by the Tahsildar, Soraba as per the application dated 19.07.2013. Ex.P38 is the RTC of Sy. No. 65/1 of Dwarahalli village. Ex.P39 is a certificate by Sri. Vigneshwara Hospital certificate in respect of treatment of R.C.Patil. Ex.P40 is a document of Nanjappa Hospital pertaining to R.C. Patil. Ex.P41 is the death summary of R.C. Patil. Ex.P42 is the detailed bill of Nanjappa Hospital pertaining to R.C. Patil. Ex.P43 is the sale deed dated 04.01.2012. Ex.P44 is the Copy of genealogical tree of the family of Basappa Gouda. Ex.P45 to Ex.P54 are the khetuvara copies in respect of the plaint schedule properties. Ex.P55 to Ex.P65 are the preliminary copies. Ex.P66 to 79 are the records of rights. Ex.P80 to Ex.P90 are the index of lands. Ex.P91 and Ex.P92 are the marriage invitation cards.

16. Ex.D1 is the register partition deed dated 29.04.1972. Ex.D2 is the gift Deed dated 25.09.2006. It reveals that

Sy.No. 4/2 to the extent of 36 gunte and Sy.No.4/1 to the extent of 2 acre 2 gunte of Agasanahalli village has been gifted by Sri. Rudrappagowda s/o. Channabasappagowda in favour of Kusuma w/o Rudrppagowda. Ex.D3 is the sale deed dated 19.11.2008. It reveals that R.C. Patil has executed sale deed in favour of Rudrappa s/o. Ningappa Huller in respect of the land to the extent of 1 acre dry land, out of total extent of 13 acre 28 gunte in Sy.No.89 of Dwarahalli village for consideration of ₹57,000/-, due to his domestic problems. Ex.D4 is the "Will", dated 09.01.2012, executed by R.C. Patil. Ex.D.5 and Ex.D6 are given to Gift deed dated 09.01.2012. Ex.D7 is sale deed dated 04.05.1973. Ex.D8 is copy of partition deed dated 03.07.1965. Ex.D.9 is Ration card n the name of Kusuma Patil. Ex.D10 is ration card of R.C.Patil. Ex.D11 is obituary reference of R.C.Patil. Ex.D12 is sale notice to R.C.Patil. Ex.D13 to Ex.D25 are receipts in the name of R.C.Patil for payment of loan due. ExD26 is notice to R.C.Patil asking for discharge of loan. Ex.D27 is a suit notice to R.C.Patil. Ex.D28 is another notice in respect of case before Registrar of Co-Operative Societies. Ex.D29 is a certificate for discharging loan. Ex.D30 is possession Notice. Ex.D31 is copy of the application under Order 21 rule 2 in O.S.34/82 for record of satisfaction of decree amount. ExD32 is another certificate

for discharging loan by R.C.Patil. Ex.D33 is an agreement for sale of partnership right. Ex.D34 and Ex.D35 are reports of village accountant. Ex.D.36 is a certificate of Village accountant. Ex.D37 is relinquishment deed dated 27.02.2006. EX.D38 to Ex.D40 are DCB Thakte. Ex.D41 to Ex.D49 are RtCs of R.S.No. 4/1, 4/2, 5, 13,64/p, 89/1 and 60. ExD50 to Ex.D56 are the extracts of mutation register in respect of M.R.No.20/2008-09, M.R.No. H14/2012-13, M.R.No. H6/2012-13, H11/2012-13, M.R.No. H8/2012-13 and M.R.No.15/2006-07. Ex.D57 is record of right of land in Sy No.39 and 41. Ex.D58 is Thakte from 1957-58 to 1978-79. Ex.D59 is a document of Sagara Sri. Ganapathi Adike Mandi. Ex.D66 is genealogical tree certified by village accountant Agasanahalli. Ex.D61 is copy of sale deed dated 04.01.2012. Ex.D62 is mutation register extract in respect of M.R.No.17/2011-12. Ex.D63 is RTC of Sy.No.66.

17. I have carefully perused the oral evidence of PW1. In her affidavit in lieu of examination in chief, she has reiterated the plaint averments. The advocate for the defendant No.3 to 5 has cross examined P.w.1 in detail in respect of inheritance of the suit schedule properties to the R.C. Patil and C.C. Patil. The learned counsel for the defendant No.3 to 5 has specifically contended that Ex.P44 - the family tree is not

correct. In her cross examination, P.W.1 has stood by her contentions taken in the plaint averments and also her view is firm in respect of Ex.P44-the genealogical tree of the family and specifically contended that the suit schedule properties are the ancestral properties inherited by her father – R.C. Patil from his forefather. However, P.W.1 has stated that she is not having any other documents to prove this genealogical tree. She stated that she has got prepared Ex.P44-genealogical tree as per the genealogical tree prepared by her mother's father -Shivanagowda Patil. She has admitted that the documents have not been produced. Further, she has admitted that she has not verified the original genealogical tree found in the house with Ex.P44. She has stated that Ex.P44 has been prepared as per the genealogical tree prepared by her grand mother's father- Channappagowda. Further, P.W.1 has admitted that there is no documents to prove the adoption of Channappa Gowda by Mallappa Gowda and grand father—Channabasappa Gowda by Channappagowda. She has denied the suggestion that Channappa Gowda came to Dwarahalli village as “manealiya” and the properties were belonged to Gangamma, who is said to be the wife of Channappagowda. P.W.1 has specifically denied the suggestion that the suit schedule properties were

the self acquired properties of Channabasappa Gowda, who is the father of R.C.Patil and C.C. Patil. In the further cross examination, P.W.1 has admitted the earlier partition in the year 1965 between her father and his brother - C.C. Patil, in the name of her father and her father's brother -C.C.Patil. Further, she has also admitted the partition between her father and his two sons in the year 1972. Further, she has admitted that in the partition held in the year 1972, R.C. Patil had retained one share to him. She has also admitted that the property allotted to R.C. Patil in the said partition are his self acquired property. Further, she has admitted that item No.14 bearing Sy.No.34, measuring 9 acre 19 gunte has been allotted to Mallanagowda in the said partition. She has stated that this property has not been included in the suit, but, it has been included at item No. 14. She has clearly stated that she and other plaintiffs are seeking share in the father's share. Further, she has admitted that in Sy.No.60, shown as item No.7, her father is having only 6 acre and he was not having 12 acre 3 gunte land to him in said survey number. But, in item No.7, Sy.No.60 of Dwarahalli village shown as measuring 12 acre 3 gunte. She has clearly stated that the measurement has been wrongly shown in the plaint schedule. Further, she has admitted that she has not given any records in respect

of item No.8, i.e., Sy.No. 62 of Dwarahalli village. Further, she has not answered, on being suggested that she has given wrong description of item No.9 in respect of measurement. She stated that she has mentioned the measurement of Sy.No.65 as 8 acre 6 gunte, including the property lies in Sy.No.64. However, she has admitted that there is only 4 acre in Sy.No.65. She had denied the suggestion that she has claimed more property than the property allotted to her father. She has admitted that she is not having detail information with regard to the properties allotted to her father. Therefore, she had given wrong measurement of them in the plaint schedule. Further, she has admitted that 1 acre land in Sy.No. 89/1 has been sold. In the further cross examination, she has clearly admitted that she is not having correct information of the suit schedule properties mentioned in the plaint schedule. Further, she had denied the suggestion that others are in possession and enjoyment of the land in Sy.No.62, 64 and 65. In the further cross examination, she has admitted that her father had gifted 6 acre land in Sy.No.60 to the defendant No.3, who is the wife of Mallanagowda. Further, she had pleaded ignorance in respect of the loan availed by her father in Taluka Marketing Society and Arbitration award for ₹10,00,000/- against her father. Further,

she has pleaded ignorance if that matter has been settled for ₹7,05,000/-, at the intervention of the Mediators. She has admitted that her father has sold 6 acre 7 gunte land to the defendant No.7-Basavarajappa. Further, she has not disputed the sale of item No.13, i.e., Sy.No.89/22 of Dwarahalli village in favour of defendant No.8. She has contended that the property was sold by his father for his enjoyment. She has denied the suggestion that the property has been sold by her father for discharge of loan. Further, she has admitted that her father used to tell that he had given the business of rice mill to her uncle. In the further cross examination by the counsel for the defendant No.13 and 14, P.W.1 has admitted that Sy.No.4/1 and 4/2 of Agasanahalli village, which are shown as item no.5 and 6 of "A" schedule has gifted to defendant No.6. Further, she has admitted that her father - R.C. Patil and the defendant No. 6-Kusuma Patil were living at Agasanahalli village, as husband and wife and they led their life for thirty years. However, she has stated that the gift deed executed by her father in favour of Kusuma Patil is tainted with fraud. However, she has admitted that Kusuma Patil was in possession and enjoyment of the said property in Sy.No.4/1, and 4/2. Further, she has clearly admitted that her father has sold 6 acre 7 gunte of land in Sy.No..66 to the

defendant No.7. In the further cross examination she has admitted that her father had availed loan in the banks and Co-operative Societies and also availed loan by T.A.M.C. Society. Further, she has admitted that the Court cases were also conducted in respect of recovery of these loans. Further, she has admitted that their father has also made loan in "*adike mandi*". Further, she has admitted that her father has also made the loan in TAMC., Society. She had denied the suggestion that a Court case was pending in respect of said loan for 30 to 40 years. She has admitted that her father has mortgaged the property for availing the said loan. She has denied the suggestion that her father has not made any illegal transaction. She has pleaded ignorance if the said TAMC. Society had gone to the extent of auction the properties, mortgaged for recovery of loan. Further, she pleaded ignorance if that case was settled subsequently. She has pleaded ignorance if R.C.Patil has discharged that loan after sale of property to Basavarajappa and defendant No.7- Basavarajappa is the bonafide purchaser of the property. Further, she had also contended that the sale of item No.3, i.e., Sy.No.89/2 of Dwarahalli village to defendant No.8 is also tainted with fraud. But, she has not disputed that sale transaction. Further, she pleaded ignorance, about how much

property of his father has gone as per the law of tenancy. However, she pleaded ignorance, if her father made lot of efforts to save the property of the family. Further, she has denied the suggestion that R.C. Patil has executed the "Will" and given the properties to her brothers and mother. She has admitted that she has included the properties allotted to her brothers and mother in the suit. She has denied the suggestion that R.C. Patil has executed the "Will" when he was in sound disposing state of mind. She had admitted that her father was intelligent and giving advice to many people. She stated that her father has committed wrong, even though, he was advising many people. In the further cross examination, she has admitted the "Will" of her father. But, she has contended that, that has been made without the consent of other heirs of him. However, she has admitted that her mother is enjoying the property given to her in the said "Will". Further, she has admitted that she and other daughters of her father had received the ornaments of grand father at the time of marriage. In the further cross examination, she had admitted the documents marked at Ex.D1 to D6. She has stated that her father has made all these documents by force and not voluntarily. Further, she has denied the suggestion that her father had every right to alienate the properties mentioned

in the documents at Ex.D1 to D6. In the further cross examination, she had denied the suggestion that her mother had sold the land in Sy.No.29, as minor guardian of Mallanagowda. Further, she has denied the suggestion that her father - R.C. Patil has bequeathed the property remained to him after sale of some of the properties in favour of defendant No.3 and 6 through the gift deed and "Will" deed. In the further cross examination, she has denied the suggestion that at the time of death in the year 2012, her father - R.C. Patil was physically and mentally sound. However, she admitted that R.C. Patil has died in Nanjappa Hospital, after heart operation. She has contended that her father had taken treatment from the Psychiatrist. In the further cross examination, she has admitted that the defendant No.2 has not questioned the "Gift Deed" and the "Will" deed of R.C. Patil. In the further cross examination, she has denied the suggestion that she has filed a false suit only with an intention to give harassment to the defendants.

18. From the cross examination of P.W1, it is clearly proved that the plaintiffs have no claim over item No.14, which has been allotted to Mallangowda in the partition held in the year 1972. Further, it is clear that R.C. Patil was having only 6 acre in the land in Sy.No.60 of Dwarahalli village and not

having 12 acre 3 gunte as described in the plaint schedule, as item No.7. Further, P.W.1 herself has admitted that she has not given any documents in respect of item No.8. Further, it is clearly established that the measurement of Sy.No. 64 as item No. 9, is not correct as P.W.1 clearly admitted that only 6 acre land in Sy.No.64 is there and there is no 12 acre 23 gunte, as she written in the plaint. Further, it is also established that P.W.1 has not correctly given the measurement of item No.9 and 10. From the cross examination of P.W.1, it is clearly established that the contentions of plaintiffs that all the suit schedule properties are the ancestral joint family properties, comprising of them and defendant No.1 to 5 is not correct. Further, it is also clearly established that the plaintiffs are claiming only share in the properties, allotted to their father, R.C. Patil in the partition held in the year 1972.

19. As I have stated above, in the partition, as per partition deed dated 29.04.1972, item No. 1, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 and Sy.No.112 having 4 acre 31 .gunte and Sy.No.126 measuring 35 gunte of Dwarahalli village had been allotted to R.C. Patil Further, item No.1, and item No.6 of "B" schedule along with khameshumari No. 40, 51, 30 had been allotted to R.C.Patil. The plaintiffs have not claimed the share

in the properties bearing Sy.No. 112 and Sy.No.126 of Dwarahalli village and also not sought share in khaneshumari No. 51 and 30. There is no explanation from the plaintiffs for not claiming in these properties.

20. The plaintiff has produced the RTC of item No.1, 2 5 to 7, 9 to 14 of "A" schedule, which are marked at Ex.P16 to Ex.P24 and P38. The plaintiff has not produced the RTC. of item No.3, 4 and 8. The plaintiff has produced Ex.P79-Form No.V, record of rights in respect of item No.3 and also produced Ex.P 89-index of land. Based upon this document, it is not possible to believe the availability of these items to late R.C. Patil as on the date of suit to claim share in these properties by the plaintiffs. Further, the plaintiffs have produced the property extract of panchayath tax demand register of Agasanahalli village Panchayath, for the year 2013-2014 to prove the existence of item No.1, 2 of "B" schedule properties, which is marked at Ex.P26. The plaintiff has produced Ex.P27 to prove the existence of item No.3 of "B " schedule. But, the name of R.C. Patil or any family member of R.C. Patil has not shown in this property in this document. Further, the plaintiff has produced Ex.P29 to prove the existence of property No.4, which is standing in the name of Basavanthappa s/o. Mallappa. The plaintiff has not stated how this Basaanthappa

related. The plaintiff has not produced the property extract of item No. 2, 5 and 6 of "B" schedule. As per the partition deed, dated 29.04.1972, khameshumari No.33. 40, 51 of Dwarahalli village, has been allotted to R.C. Patil. Further, as reflected in the RTC and as per Ex.D2-gift deed, dated 25.09.2006, R.C. Patil has gifted item No.5 and 6 to the defendant No. 6. Further, as it is reflected in the RTC., and as it is shown in Ex.D4, "Will" of R.C. Patil, dated 09.01.2012, item No.1 and 2 have been bequeathed to defendant No.3 and 6 jointly, Further, as it is reflected in the RTC., and Ex.D6, item No.7 measuring 6 acre 2 gunte land in item No.7 has been gifted to the defendant No.3. As P.W.1 admitted in the cross examination, only there is 6 acre land was available to R.C. Patil. Further, as reflected in the RTC., and in Ex.D61-sale deed dated 04.01.2012, R.C. Patil has sold item No.11 measuring 6 acre 7 gunte to the defendant No.7. This fact has been admitted by the p.w.1 in the cross examination. Further, as reflected in the RTC and as per Ex.D3, sale deed dated 19.11.2008, R.C. Patil has sold item No.13 to the defendant No.8. As per Ex.D4-"Will" dated 09.01.2012, R.C. Patil has bequeathed 5 acre of land in Sy.No.89/1 to the defendant No.2. Further, he has bequeathed the remaining 7 acre 28 gunte land in the said survey No. 89/1 to the defendant No. 4,

5 and 6 together. Further, by this "Will", R.C. Patil has bequeathed 2 acre 20 gunte land to him in Sy.No.64/P of Dwarahalli village to the defendant No.6. Further, he has bequeathed 6 acre land in Sy.No. 65 of Dwarahalli village to the defendant no.2. Further, as admitted by P.W.1, and as it is reflected in Ex.D1-partition deed, item No.14 has been allotted to Mallanagowda and it is not the property given to R.C. Patil in the family partition Further, as per the "Will", R.C.Patil has given khaneshumari No.33 to the defendant No.1 and 2, which has been mentioned in item No.1 of "B" schedule property.

21. I have carefully perused the evidence of defendant No.3, defendant No.6, defendant No.7 and defendant No.8, who have given their evidence as D.W.1 to D.W.4. D.W.1 is the wife of Mallanagowda, the deceased son of R.C. Patil. In her evidence in lieu of examination in chief, she has reiterated the contentions taken in the written statement and specifically denied the genealogical tree given by the plaintiffs. In the cross examination, she has not disputed the suggestion of plaintiffs counsel in respect of the relationship of R.C. Patil and C.C. Patil, the plaintiffs and the defendant No.1 to 5 as given in the genealogical tree marked at Ex.44. In the further cross examination, she has admitted that her husband..

Mallanagowda has been died in the year 2009. After his death, she was residing with R.C. Patil along with her children. She has admitted that R.C. Patil was managing all suit properties and he has not purchased any new properties during his life time. Further, she has admitted that from the income of the properties allotted to his share, he has opened the rice mill. Further, she has admitted the partition between R.C. Patil and his brother - C.C. Patil on 03.07.1965 and subsequently, jubani hissa between them in the year 2002. Further, he has also admitted the partition between R.C. Patil and his two sons on 29.04.1972. She has admitted that at that point of time, the defendant No.2 and her husband Mallanagowda are present and the plaintiff No.1 and 2 were not yet born. She has specifically denied the suggestion that all the suit schedule properties are the ancestral properties Further, she has denied the suggestion that that there was no necessity for R.C. Patil to alienate item No.11 to the defendant No.7 on 04.01.2012. Further, she has admitted that R.C. Patil was economically sound. Further, she has denied the suggestion that the defendant No.8 was working in the house of R.C. Patil. She has denied the suggestion that there was no necessity for R.C. Patil to alienate item No.13 to defendant No.8. Further, she has denied the suggestion that the 'gift

deed” dated 09.11.2012 has been created with an intention to commit fraud. Further, she has specifically denied the suggestion that she has created this “gift deed” in collusion with defendant No.6 and 7. Further, she has denied the suggestion that the R.C. Patil was not ready to execute such deed. Further, she has denied the suggestion that she along with other defendants had created the “Will” of R.C. Patil. She further stated that at the time of execution of Ex.D4-gift deed, she had gone to the Sub Registrar Office at about 1.00 pm. She further stated that at that time, the defendant No.7 – T.H Basavarajappa and T. Veerabasappa were present. She has stated that her father has not put the signature to Ex.D4. She has denied the suggestion that at that point of time, the “Will” deed of R.C. Patil has been created by making undue influence upon R.C. Patil. She has not denied the suggestion that the witnesses to the “Gift Deed” have signed Ex.D4 and Ex.D4 and Ex.D6- “Wills” are the the same. Further, she has not denied the suggestion that Ex.D4 and Ex.D6 have been taken place on the same day. Further, she has denied the suggestion that in Ex.D4 and Ex.D6, it is not stated that the properties mentioned in these documents are self acquired properties of R.C.Patil. She has denied the suggestion that the R.C. Patil had no right to alienate any properties of the

family. Further, she has specifically denied the suggestion that two gift deeds and the “Wills” of R.C. Patil and two sale deeds have been created in collusion with defendant No.6, 7 and 8 and another witness T. Veerabasappa.

22. Further, in this case, in the affidavit in lieu of examination in chief, D.W.2- Smt. Kusuma Patil has deposed in consonance with the contentions in the written statement. In the cross examination, she has admitted that the plaintiffs are the daughters of R.C. Patil. The father of R.C. Patil is Channabasappagowda. She has admitted that the R.C. Patil was the President of Taluk Panchayath and also contested for M.L.A. election. She has also admitted the partition in the family in the year 1965 and the partition between R.C. Patil and his sons on 29.11.1972. She has denied the suggestion that in Ex.D1, there is mention that the partition has been made in the ancestral properties. She has denied the suggestion that the R.C. Patil has no right to execute Ex.D2. Further, she has also denied the suggestion that the properties mentioned in Ex.D2 are the joint family properties. She has admitted that item No.2, mentioned in Ex.D2 has come to R.C. Patil in exchange of the property of joint family. She has specifically denied the suggestion that all the suit schedule properties are the ancestral properties of R.C. Patil

and he had not assigned any properties during his life time. However, she has admitted that R.C. Patil has purchased the rice mill. Further, she has admitted that R.C. Patil was a big landlord. She has admitted that the defendant No.8 was working in the house of R.C. Patil for many years. She has denied the suggestion that Ex.D3 has been created in collusion with defendant No.8. Further, she has denied the suggestion that in Ex.D3, it is mentioned that the properties are the ancestral properties. She has admitted that R.C. Patil has been died on 31.01.2012. In the further cross examination, she has denied the suggestion that after 2005, the health condition of R.C. Patil was not good and he was suffering from high B.P. and diabetic. She has admitted the suggestion that he was also suffering from kidney problem. She has admitted that she was always with R.C. Patil in all his transactions. Again, she has made it clear that she was with R.C. Patil only in the house. and not participated in the business. She has admitted that she and the defendant No.3 are residing in the same house at Agasanahalli village. She has admitted that she and defendant No.3 have engaged different advocates. She has denied the suggestion that she along with defendant No.3 and defendant No. 7 had created Ex.D4-Will" and Ex.D5-"gift deed". She has also denied the

suggestion that R.C. Patil has no right to alienate the properties as mentioned in Ex.D4 and Ex.D5. In the further cross examination, she has admitted that originally, she belonged to Sagar and havayaka brahmin caste. She has admitted that R.C.Patil belonged to lingayath caste. Further, she had admitted that she has been introduced to R.C.Patil in the year 1976 and at that time, she was the Secretary of National Students' Union and R.C. Patil was the Vice President of District Congress Party. Further, she has admitted that the defendant No.1 is the first wife of R.C. Patil. However, she has denied the suggestion that she is not the legally wedded wife of R.C. Patil. Again, she has denied the suggestion that R.C. Patil has no right to gift away the properties. She has denied the suggestion that RC. Patil had not given any share to the plaintiffs. In the further cross extermination, she has admitted that she was not aware of the family tree of family before she arrived to house of R.C.Patil. She has denied the suggestion that she had led illegal life with R.C. Patil and also denied that she has created a false documents to extinguish the birth rights of plaintiffs in the properties. Further, she has denied the suggestion that the sale deeds and the "gift deeds" are not binding upon the plaintiffs rights.

23. D.W.3 -T.H. Basavarajappa is defendant No.7 in the case. He has purchased 6 acre 7 gunte of land in Sy.No.66 of Dwarahalli village through sale deed bearing S.R. No.214/2011-12 dated 04.01.2012. He has deposed that he is a bonafide purchaser. Further, he has stated that late R.C. Patil has sold this property to him to discharge the family loan. Further, he has also stated that this property has come to the share of R.C. Patil in the family partition between him and his brother C.C. Patil and it was his self acquired property in view of partition between him and his sons on 29.04.1972. Further, he has stated that he had given full consideration amount to R.C. Patil to purchase the property in Sy.No.66 of Dwarahalli village measuring 6 acre 7 gunte. In the cross examination, he has admitted that he was having very good relationship with R.C. Patil and defendant No.3. He has admitted that he had filed joint written statement along with defendant No.6 and defendant No.8. He has denied the suggestion that R.C. Patil was financially sound. However, he has admitted that R.C. Patil was a big land lord. He has admitted the suggestion that defendant No.6 is the witness to Ex.D61-sale deed dated 04.01.2012. He has denied the suggestion that R.C. Pail has been died within one month from the date of execution of Ex.D6-sale deed. He has denied

the suggestion that he along with defendant No.3, 6 and Veerabhadrapa created the "Will" of R.C. Patil as per Ex.D4. Further, he had denied the suggestion that Ex.D5 has also been created by them on the same day. Further, he could not say where and when Ex.D6 has been executed. However, he stated that the said document has been made in Taluka Office. He stated that the said sale deed has been drafted by Channabasappa advocate. He has denied the suggestion that at that point of time, the health of R.C. Patil was not so good. He has admitted that the plaintiffs are the daughters of R.C. Patil. He has also admitted that the defendant No.2 and husband of defendant No.3 are the sons of R.C. Patil and defendant No.1 is his wife. He has admitted the suggestion that the suit schedule properties came to R.C. Patil in the family partition. He has denied the suggestion that the plaintiffs have got birth rights in the suit schedule properties.

24. D.W.4-Rudrappa s/o. Late Ningappa is defendant No.8 in the case. He is the purchaser of 1 acre land in Sy.No.89/2 of Dwarahalli village through sale deed dated 19.11.2008 bearing S.R. No. 639/2008-09. He has contended that he is the bonafide purchaser for valuable consideration. He stated that the R.C. Patil has sold the properties to discharge the family loan. He stated that the property sold to him is acquired

by him in the family partition held between him and his brothers in the year 1965-66 and the partition held between him and his two sons on 29.04.1972 bearing S.R. No.231/1972-73. He further stated that he has given full sale consideration amount to the R.C. Patil. He has identified Ex.D3-sale deed through which he has purchased the property. In the cross examination, he has admitted that he was working in the house of R.C.Patil and he knew his wife and the children. He has admitted that the plaintiffs are the children of R.C. Patil. Further, he has clearly admitted that he was working in the house of R.C. Patil for thirty years. He pleaded ignorance if R.C. Patil has not purchased any new property during his life time. However, he has admitted that the suit schedule properties are the properties of family of R.C. Patil. He has denied the suggestion that the plaintiffs have got share in the property purchased by him, He has stood by his contentions that he is the bonafide purchaser of 1 acre land in Sy.No.89/2 of Dwarahalli village.

25. In view of my aforesaid discussion and evaluation of the evidence on record, it is clearly established that the R.C. Patil has alienated the suit schedule properties at item No. 5, 6, 11 and 13 which have been acquired by him in the family partition held by him and his two sons. Further, it goes

to show that he has alienated the suit schedule properties at item No.1, 2, 6 acre in item No.9, item No.10 and 12 through Will dated 09.01.2012, which has been marked at Ex.D4. It clearly established that the suit schedule properties were the self acquired properties of R.C. Patil given to his share in the family partition held between him and his two sons as per the partition deed dated 29.04.1972. Further, in my considered view, there is no reason to disbelieve genealogical tree given by the plaintiffs as per Ex.P44 as the defendants have failed to prove their contentions regarding flow of properties to R.C. Patil as contended by them in the written statements. Therefore, I have answered issue No.1 in the negative and additional issue No'1 dated 31.05.2018 in the affirmative.

26. Issue No.2 to 5 and addl. Issue dated 30.01.2020 : In order to avoid repetition of facts and evidence on record, I have taken these issues together for discussion.

27. From the evidence on record and in view of my aforesaid discussion, it has clearly established that the R.C. Patil has executed the sale deed dated 04.01.2012 and sold 6 acre 7 gunte of land in Sy.No.66 of Dwarahall village in favour of defendant No.7-D.H. Basavarajappa. In the cross examination,, P.W.1 has admitted the execution of this sale

deed. Further, she has admitted that the measurement of Sy.No.66 of Dwarahalli village as mentioned at item No.11 of 'A' schedule is not correct. Even though, P.W.1 has stated that this sale deed tainted with fraud, the plaintiffs have not made any such claims in the plaint and given evidence to prove that the alleged fraud. Late R.C. Patil had every right to alienate this property in favour of the defendant No.7. Therefore, in my considered view, the plaintiffs had no right to question that the sale deed and to seek for share in R.S. No.66 of Dwarahalli village, which has been sold to the defendant No.7 through the sale deed dated 04.01.2012.

28. It is the case of the plaintiffs that late R.C. Patil has no right to alienate 1 acre land in Sy.No.89/2, which has been shown as item No.13 in the "A" schedule in favour of defendant No.8 herein. In the cross examination, P.W.1 has admitted that the sale deed marked at Ex.D3. However, P.W.1 has contended that it is tainted with fraud. But, as I have already stated, when the plaintiffs have not made out any such case in the plaint to appreciate the contentions of P.W.1 in the cross examination, as I have already held, this property was the self acquired property of R.C. Patil and he has right to alienate this property. The defendant No.8 has specifically contended that he is the bonafide purchaser of

this property for valuable consideration. I did not find any grounds to doubt the genuineness of the sale deed. In my considered view, the plaintiffs are not having any right to claim the share in item No.13 as it was sold by their father-late R.C. Patil in favour of defendant No.8 and defendant No.8 has acquired the title over this property through this sale deed dated 19.11.2008.

29. The plaintiffs have also contended that the "gift deed" dated 25.09.2006 and the gift deed dated 09.01.2012 are not binding upon them. The said gift deed dated 25.09.2006 has been marked at Ex.D2 during the cross examination of P.w.1. P.W.1 has admitted this document. Similarly, another gift deed dated 09.01.2012 has been also admitted by P.W.1 in her cross examination and marked at Ex.D6. R.C. Patil had gifted item No.5 and 6 of "A" schedule to the defendant No.6 through Ex.D2-gift deed dated 25.09.2006, which has been duly registered. The plaintiffs have not made out any case to doubt the genuineness of this document. It is duly registered document and admitted by P.W.1 herself in the cross examination. Similarly, late R.C. Patil has gifted 6 acre 2 gunte in Sy.No. 16 of Dwarahalli village to the defendant No.3 as per Ex.D6, out of love and affection. This is also duly registered document and admitted by P.W.1 in her cross

examination, I did not find any reason to doubt the genuineness of this document. R.C Pail had every right to gift this property to defendant No.3. Further, in the cross examination, P.W.1 has clearly admitted that item No.7 is only measuring 6 acre 6 gunte and not 12 acre 3 gunte as stated in the schedule. Therefore, in my considered view, the plaintiffs are not having any right to claim share in the properties alienated through the sale deed dated 04.01.2012 , sale deed dated 19.11.2008, gift deed dated 25.09.2006 and the gift deed dated 09.01.2012. Accordingly, I have answered issue No.2 to 5 in the negative and addl. Issue dated 30.01.2020 in the affirmative.

30. Addl. Issue dated 20.09.2018: The defendants have contended that the suit is barred by limitation. The plaintiffs have filed this suit for partition and separate possession of their share contending that the suit schedule properties are the ancestral properties comprising of them and defendant No.1 to 5 herein. The defendants have not set up a case of ouster of plaintiffs to claim their share in the family properties. There is recurring of cause of action to file the suit for partition, till the partition of properties by metes and bounds. Therefore, I did not find any merits in the contentions of the defendants that the suit is barred by limitation. Accordingly, I

have answered this additional issue dated 20.09.2018 in the negative.

31. **Issue No.6 and 7:** In view of the aforesaid discussions of pleadings, oral and the documentary evidence on record, it is clearly established that the suit properties had been allotted to late R.C. Patil in the family partition held between him and his two sons as per partition deed dated 29.04.1972. This fact has also been admitted by P.W.1. As I have already held that the plaintiffs cannot seek share in the properties alienated through the sale deed dated 04.01.2012, sale deed dated. 19.11.2008, gift deed dated 25.09.2006 and gift deed dated 09.01.2012. The plaintiffs have specifically contended that at the time of execution of Ex.D4-sale deed dated 09.01.2012, late R.C. Patil was not having good health, both physically and mentally. It is stated that he was suffering from ailments and taking treatment. It is specifically contended that R.C. Patil was not in sound disposing state of mind, while execution of this alleged "Will". The plaintiffs have specifically contended that Ex.D4- Will dated 09.01.2012 is a created document, by making undue influence upon them. R.C. Patil while creation of Ex.D4-gift deed on 09.01.2012.

32. In the cross examination by the counsel for the defendant No.6 to 8 P.W.1 has admitted that Ex.D4-Will dated 09.01.2012, but, she has denied the suggestion that the said "Will", gift deeds and sale deeds have been executed by her father voluntarily. Even though she has stated that these documents are marked at Ex.D1 to D6 are tainted with fraud, no such case is made out in the plaint by specific pleadings as per Order VI Rule 4 of C.P.C. Further, there is no evidence to appreciate this contention of P.W.1 that these documents are marked at Ex.D1 to D6 are created by fraud or undue influence. Therefore, I have already held that the sale deeds dated 04.01.2012, 19.11.2008 are genuine documents and they cannot be doubted regarding execution of them by R.C. Patil voluntarily. Further, I have also held that the gift deed dated 25.09.2006 and 09.01.2012, also have been executed by late R.C. Patil and there is no reason to doubt the genuineness of these documents.

33. It is well settled law that the "Will" cannot be considered and received in evidence in proof of its execution, unless propounder of "Will" make efforts to examine at least one attesting witness in proof of execution of "Will" if the attesting witnesses are alive and subject to the process of court and capable of giving evidence. This position of law is

very clear from Section 68 of Indian Evidence Act. But, in this case, the defendants have not got examined any of the attesting witness to Ex.D4 dated 09.01.2012. The defendant No.2 to 6 are the beneficiaries under this "Will". The defendant No.7, T.H. Basavarajappa is one of the attesting witness to this "Will", along with another witness, T. Veerabasappa. In this case, D.W.3-T.H Basavarajappa has spoken only in respect of purchase of property in Sy. No.66 of Dwarahalli village, through sale deed dated 04.01.2012, but, he has not stated anything in respect of his act of attesting witness to Ex.D4-"Will." Further, as I have already stated, the defendants have not made any efforts to examine at least one of the attesting witness to the "Will" to receive it in evidence to prove bequeathing the properties mentioned in that "Will" by R.C Patil. It is not the case of the defendants that the other attested witness, T. Veerabasappa is no more and not capable to give evidence. Such being the fact, in my considered view, Ex.D4-Will relied upon by the defendants cannot be considered regarding bequeathing of properties mentioned in the "Will" by late R.C. Patil. Late R.C. Patil has bequeathed item No.1 2, 6 acre in item No.9, item No.10 and item No.12 and item No.1 in "B" schedule. These are all the properties acquired by R.C. Patil in the family partition held between him

and his two sons. In the absence of testamentary documents, the plaintiffs being his daughters are entitled for share in his properties. Therefore, in my considered view, the plaintiffs being the Class I heirs of late R.C. Patil are entitled for equal share on par with defendant No.1 to 5 herein, as per Section 8 of the Hindu Succession Act. Accordingly, in my considered view, the plaintiffs are entitled for 1/7th share in the properties of R.C. Patil.

34. As I have already stated above, item No.1, 3, 4, 6 to 13 of "A" schedule properties allotted to the share of R.C. Patil in the family partition, along with item No.1, 6 of "B" schedule properties and kharaneshumari No.30 and 51 of Dwarahalli village. Further, as it is disclosed from the evidence, item No.2 has come to R.C. Patil in exchange of ancestral property. The plaintiffs have not produced any documents regarding existence of item No.3, 4 and item No.8 of "A" scheduled and item No.2 to 5 of "B" schedule to prove the existence or availability of these properties as on the date of filing the suit. Further, in the cross examination, P.W.1 has admitted that the R.C. Patil has only 6 acre land at Dwarahalli village and it has been wrongly shown in the schedule as 12 acre 3 gunte wet land. Further, she has clearly admitted that in Sy.No. 68, R.C. Patil has only 4 acre

land and it has been wrongly mentioned in the schedule as 8 acre 6 gunte. But, in Ex.D4-"Will", the measurement of Sy.No.65 is shown as 6 acre 30 gunte. Considering the extent of land in Sy.No.65 as mentioned in Ex.D4 is correct, I am of the considered view that the plaintiffs are entitled for equal share in Sy.No.65/1 measuring 6 acre 30 gunte, Sy.No. 64/P measuring 2 acre 20 gunte, Sy.No.89/1 measuring 12 acre 20 gunte of Dwarahalli village and Sy.No.13 of Agasanahalli village measuring 1 acre 4 gunte along with khaneshumari No.33 and khaneshumari No.40 of Dwarahalli village. Accordingly, I have answered issue No.6 partly in the affirmative and proceed to pass the following:

ORDER

The suit of the plaintiffs is partly decreed with costs.

The plaintiffs are entitled for 1/7th share each in Sy.No 65/1 measuring 6 acre 30 gunte, Sy.No.89/1 measuring 12 acre 28 gunte and Sy.No. 64 measuring 4 acre of Dwarahalli village, Sy.No.13 measuring 1 acre 4 gunte of Agasanahalli village and in item No. 1 and 6 of "B" schedule properties by metes and bounds.

Draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed by her on the computer, corrected, signed and then pronounced by me in the open court on this the 14th day of July 2022)

(Sri. Prabhakara Rao)
Senior Civil Judge & JMFC.,
Soraba.

ANNEXURE

I. LIST OF WITNESSES EXAMINED FOR PLAINTIFFS:

P.W.1: Smt. Shailaja K. Patil w/o. Kallana Gowda.

II. LIST OF DOCUMENTS EXHIBITED ON PLAINTIFFS SIDE:

Ex.P1	Certified copy of partition deed dated 03.07.1965
Ex.P2	Certified copy partition deed dated 29.04.1972.
Ex.P3	Certified copy of gift deed dated 25.09.2006.
Ex.P4	Certified copy of gift deed dated 09.06.2012,
Ex.P5	Certified copy of 11E sketch of Dwarahalli village.
Ex.P6	Certified copy of sale deed dated 19.11.2008.
Ex.P7	Record of rights of Sy. No. 127 of Dwarahalli village.
Ex.P8	Record of rights of Dwarahalli village.
Ex.P9	Record of rights of Dwarahalli village.
Ex.P10	Records of rights of Dwarahalli village.
Ex.P11	Records of rights of Dwarahalli village.
Ex.P12	Index of land of Dwarahalli village.
Ex.P13	Index of land of Dwarahalli village.
Ex.P14	Index of land of Dwarahalli village.
Ex.P15	Index of land of Dwarahalli village of Sy. No. 4 and
5. Ex.P16	RTC extract of Sy. No. 5 of Dwarahalli village
Ex.P17	RTC extract of Sy. No. 5 of Dwarahalli village
Ex.P18	RTC extract of Sy. No. 4/1
Ex.P19	RTC extract of Sy. No. 4/2
Ex.P20	RTC extract of Sy. No. 60 of Dwarahalli village
Ex.P21	RTC extract of Sy. No. 64/P of Dwarahalli village
Ex.P22	RTC extract of Sy. No. 66 of Dwarahalli village .
Ex.P23	RTC extract of Sy. No. 89/1,
Ex.P24	RTC extract of Sy. No. 89/2

- Ex.P25 RTC extract of Sy. No. 34,
 Ex.P26
 to Ex.P29 Demand register extracts of Agasanahalli village.
 Ex.P30 Death certificate of R.C. Patil
 Ex.P31 Mutation register extract.
 Ex.P32 Mutation register extract
 Ex.P33 Mutation register extract
 Ex.P34 Mutation register extract
 Ex.P35
 to Ex.P37 Endorsement given by the Tahsildar, Soraba .
 Ex.P38 RTC extract of Sy. No. 65/1 of Dwarahalli village
 Ex.P39 Sri. Vigneshwara Hospital certificate.
 Ex.P40 Medical of Nanjappa Hospital of R.C. Patil.
 Ex.P41 Death summary of R.C. Patil.
 Ex.P42 Detailed bill of Nanjappa Hospital
 Ex.P43 Sale deed dated 04.01.2012.
 Ex.P44 Copy of genealogical tree of the family of
 Basappa Gouda.
 Ex.P45
 to Ex.P54 Khetuvar copies of plaint schedule properties.
 Ex.P55
 to Ex.P65 Preliminary copies.
 Ex.P66
 to 79 Records of rights.
 Ex.P80
 to Ex.P90 Index of lands.
 Ex.P91
 and Ex.P92 Marriage invitation cards.

III. LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:-

- D.W.1: Kavita M. Patil w/o. Late Mallanagowda
 D.W.2: Kusuma R. Patil w/o R.C. Patil.
 D.W.3: T.H. Basavarajappa s/o. Prabhappa
 D.W.4: Rudrappa s/o. Late Ningappa

IV. LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

- Ex.D1 Register partition deed dated 29.04.1972.
 Ex.D2 Gift Deed dated 25.09.2006.
 Ex.D3 Sale deed dated 19.11.2008.
 Ex.D4 "Will", dated 09.01.2012,
 Ex.D5 and ExD6: Gift dated 09.01.2012.

- Ex.D7: Sale deed dated 04.05.1973.
 Ex.D8: Partition deed and gift deed dated 29.04.1972 and 09.01.2012.
 Ex.D9: APL Ration Card.
 Ex.D10: Ration Card.
 Ex.D11: Invitation card of 11th day ceremony of R.C. Patil.
 Ex.D12: Form No.IX.
 Ex.D13
 to 25: Receipts of APM.C., Soraba.
 Ex.D26: Final notice of Grameen Bank Limited Soraba.
 Ex.Da27: Genealogical tree.
 Ex.D28: Judgment notice in case of 8/85-86.
 Ex.D29: Certificate of Primary & Cooperative agricultural and Village development Bank., Soraba.
 Ex.D30: Possession notice of Corporation Bank.
- Ex.D31: Copy stamp of 35paise.
 Ex.D32: Certificate of APMC. Society of Soraba.
 Ex.D33: Non judicial e-stamp paper of Rs.500/-.
 Ex.D34: Report of Village Accountant
 Ex.D35: Report of Village Accountant.
 Ex.D36: C.C. of letter of Village Accountant.
 Ex.D37: Security Document
 Ex.D38
 to 40: DCB. Thakthe of Agasanahalli & Dwarahalli.
 Ex.D41
 to 46: RTC extracts of Agasanahalli Village.
 Ex.D47
 to 49: RTC extracts of Dwrahalli Village.
 Ex.D50
 to D56: Mutation Register Extracts.
 Ex.D57 : Record of Rights.
 Ex.D58: Pahani Thakthe.
 Ex.D59: Receipt of Ganapathi Arecanut Mandi.
 Ex.D60: Genealogical tree of Channapasappagowda.
 Ex.D61: Copy of sale deed 04.01.2012..
 Ex.D62: Copy of mutation register of Dwarahalli.
 Ex.D63: RTC of Dwarahalli village.
 Ex.D64: RTC of Dwarahalli village.

(Sri. Prabhakara Rao)
 Senior Civil Judge & JMFC.,
 Soraba.

