

**IN THE COURT OF THE II ADDL. DISTRICT & SESSION'S
JUDGE AT TUMAKURU**

PRESENT :

Sri. TARAKESHWARGOUDA PATIL, B.A. LL. B (Hon's) LL.M.
II Addl. District & Sessions Judge, Tumakuru.

Dated this: 1st day of December 2018

R. A. No: 400/2009

APPELLANT : Surappa @ Chandrappa,
[Plaintiff] S/o. Late Doddarangaiah @ Doddaiiah,

Since dead by L.Rs.

1. Bheemakka,
W/o. Late Surappa @ Chandrappa,
Aged about 60 years.
2. Ranganatha
Dead by L.Rs.
 - a) Meenakshamma,
W/o. Late C. Ranganath,
Aged about 38 years.
 - b) Ravi Kiran R,
S/o. Late C. Ranganath,
Aged about 20 years.
3. Narayana S.
S/o. Late Surappa @ Chandrappa.

All are r/o. Venkateshpura,
Sira Gate, Tumakuru Town,
Tumakuru.

(By Sri. R.V.D. Adv)

-V/s-

- RESPONDENTS :**
1. Thammaiah,
S/o. Late Doddarangaiah @ Doddaiiah,

Since Dead by L.Rs.
 - a) Chikkahanumakka
W/o. Late Thammaiah,
Aged about 62 years,
 - b) Yogish
S/o. Late Thammaiah,
Aged about 38 years,
 - c) Dakshayanamma
D/o. Late Thammaiah,
Aged about 42 years,
 - d) Yashodhamma
S/o. Late Thammaiah,

All are R/at: Kundur,
Devarayapatna,
Belagumba Post, Tumakuru.
 2. Chikkanna,
S/o. Late Doddarangaiah @ Doddaiiah,
Aged about 35 years.
 3. Thimmaiah,
S/o. Late Doddarangaiah @ Doddaiiah,
Aged about 35 years.

All are r/o. Venkateshpura,
Sira Gate, Tumakuru Town,
Tumakuru.

4. Banadarangappa,
S/o. Late Doddarangaiah @ Doddaiiah,
Since Dead by L.Rs.
 - a) Nirmala,
W/o. Sanjeevaiah,
Aged about 42 years,
C/o. Hanumanthaiah,
Durgadahalli,
Urdigere Hobli,
Tumakuru Taluk.
 - b) Kamalamma,
W/o. Sreenivasaiah,
D/o. Bangarappa,
Aged about 44 years,
R/o. Banadarangappa,
Guruvinaiahna Palya,
Siragate,
Tumakuru Town.
5. R. Rangaswamaiah,
S/o. Rangappa,
Since Dead by L.Rs.
 - e) Jayamma,
W/o. Late Aruvanna,
Aged about 68 years,
R/o. Siragate, Tumakuru.
 - f) Rukmangada,
S/o. Late Rangaswamaiah,
Aged about 60 years,
R/o. Venkateshapura,
Tumakuru.

- g) Sumithramma,
W/o. Lingappa,
Aged about 58 years,
R/o. Badavanahalli,
Madhugiri Taluk.
- h) R. Rangaswamy,
S/o. Late Rangaswamaiah,
Aged about 59 years,
Sub-Inspector,
Madhugiri.
- i) Cheluvarajamma,
W/o. Sadashivaiah,
Aged about 54 years,
R/o. I.D.Halli,
Beside Basavanagudi,
Madhugiri.
- j) Manjunatha,
S/o. Late Rangaswamaiah,
Aged about 52 years,
By the side of garden,
Tumakuru.
- k) Sumangalamma,
W/o. Sanjeevappa,
Aged about 50 years,
R/o. Rajamahar,
Guttahalli,
Bengaluru.
- l) Vijayalakshamma,
W/o. Haridas,
Doddakadathur,
Aged about 48 years,
R/o. Malur,
Kolar District.

(R1 (a) to (d) : By Sri.BSY Adv.)
(R2 : By Sri.RJ Adv.)
(R3 c,d : By Sri.BK Adv.)
(R4 a,b : By Sri.TRR Adv.)
(R5 b : By Sri.SVR Adv.)
(R5 f : By Sri.JR Adv.)

JUDGMENT

That, this **Regular Appeal** U/Sec.96 of C.P.C. is directed against the **Judgment and Decree** passed by the **Prl. Civil Judge & JMFC Tumakuru** in **O. S. No: 451/1989** dated: **17/08/2007**, preferred by the **plaintiff**.

2. That, originally, this appeal came to be preferred by the original plaintiff on the file of Prl. Senior Civil Judge, Tumakuru in R. A. No: 159/2007. Thereafter, the same came to be transferred to III Fast Track Court, Tumakuru and re-numbered as R. A. No.400/2009 On: 10/09/2009. That, even thereafter, as per the Order in NO.ADMN-I-140-10 Tumakuru dated: 27/09/2010, once again, the appeal came to be further transferred to this Court for disposal in accordance with law.

3. That, the appellant has assailed the impugned judgment and decree on the various grounds, and thereby attacked the findings of the Court below on all issues Nos.1 to 5 as perverse, illegal and capricious. It is his specific case that, in fact, the plaintiff is entitled to get 1/4th share in all the suit schedule properties and he, therefore, calls in question the impugned judgment and decree partly decreeing the suit of the plaintiff, that too, in respect of suit item No.12 and 14 properties only by allotting 1/7th share.
4. That, in response to the notice, all the respondents have appeared through their respective counsels.
5. That, the respondent No.5 has filed a Cross Appeal U/Order. 41 Rule. 23 CPC On: 20/03/2008 by assailing the impugned judgement and decree passed by the Court below in respect of suit item No.12 and 14 properties. And it is his case that suit item No.14 property being included in the suit Item No.12 property, and the branch of plaintiff and defendants 1 to 3 having right in the southern half extent only, the Court below, however, erroneously, allotted the share including the northern half share of this

defendant No.5. He, therefore, calls in question the impugned judgement and decree to the said extent of matter.

6. That, during pendency of an appeal, the appellant is reported to be dead On: 3/11/2007 and his legal heirs have come on record as per the order on application under Order. 22 Rule. 3 r/w. Sec.151 of C.P.C. dated: 22/01/2008.
7. That, during pendency of an appeal, the respondent No.1 is reported to be dead and his legal heirs were being brought on record as per the order on I.A.No. VII dated: 16/11/2018.
8. That, during pendency of an appeal, the respondent No.2 is also reported to be dead on 17/06/2011, and his legal heirs are brought on record as per the order on I.A.No.II dated: 08/08/2011.
9. That, the plaintiff has also moved an application U/Order.1 Rule.10 r/w. Sec.151 of C.P.C. seeking to implead the daughter of propositous : Doddarangaiah by name Chinnamma as proposed respondent No.6. Same came to be numbered as I.A.No.VIII.

In spite of notice, the proposed R6 has remained absent. But however, the said application came to be opposed by the contesting respondents No. 2 and 3 by filing the detailed written objection. And since the said application was pertaining to impleadment of parties, same was ordered to be heard and considered along with the main appeal.

10. That, the lower Court records were secured.
11. That, I have heard the oral arguments submitted by both sides, and perused the entire material on record, including the written arguments and decisions, submitted by both sides.
12. It is the serious contention of the appellants that as long as the original plaintiff Surappa was not a party to the alleged registered settlement deed marked at EX.D3, and as long as all the properties of the family including suit item No.12 and 14 were not being included in the same, and all the daughters have not been duly represented and no equal shares were being proposed or effected,

the alleged settlement deed never acted upon or intended to be acted upon is totally bad in law. But however, the trial Court has explicitly committed a grave error by accepting such an illegal document to show the partition in between the parties. It is his further case that the Court below has failed to appreciate the factual matrix as well the law relating to partition in the light of presumption available under the Hindu Law, and therefore, the impugned judgment and decree under appeal is highly erroneous and illegal, liable to be interfered by this Court.

13. That, the learned counsel appearing for the appellants has relied upon the following decisions in support of his case:

1. 2013(1) KCCR 672 (DB)
S.K. Lakshminarasappa since deceased by his LRs. Vs. B. Rudraiah & others.
2. 2013(2) KCCR 1277
Puttakkaiah Vs. Basamma since dead by LRs & others
3. 2015(5) KCCR S N 117
D. Ramakrishna Vs. D.Balakrishna since dead by his LRs and others.

4. 2015(5) KCCR 1411
Lakshmamma Vs. Manju
5. AIR 2006 S C 2488
Hari Shankar Singhania & others Vs. Gaur Hari Singhania & others.
6. KCCR 2015(2) 1437 (DB)
Nanjamma V. Akkayamma since dead by her LRs. & others
7. 2006 AIR SCW 3768
Ramesh B, Desai & others Vs. Bipin Vadilal Mehtha and others.
8. 2006 AIR S C 2488
Harishankar Singhania and others Vs. Gaurhari Singhania and others.
9. 2015(4) KCCR 3432
Kallappa Vs. Mallamma & others
10. 2008(2) KCCR 619
Veerayya Mahanthayya Koppad and others vs. Geetha & others.

11. 2011(4) KCCR 2930 (DB)
Makuoatuk Vasavarajappa Vs. Sarvamangalamma & others.
 12. 2913(4) KCCR 3170 (DB)
Gopalaiah & others vs. Jayakumari and others
 13. 2010(2) KCCR 1089 S C
Narendra Kante Vs. Anuradha Kante & others
 14. 2014(4) KCCR S N 380 S C
Kesharbai @ Pushpabai Eknahrao Nalawade (D) by LRs
and another vs. Tarabai Prabhakarrao Nalawade & others.
14. Per contra, it is the specific stand of contesting respondents that although the plaintiff was well aware of the registered settlement deed effected by the father in the year 1965 marked as per Ex. D.3, he has not chosen to challenge the same before any forum within the stipulated time in accordance with law. And even there are no pleadings to challenge the said settlement marked at Ex. D.3 in the instant suit. But to the contrary, the very plaintiff by filing an application for change of khatha to the Tahsildar as per the documents marked at Ex. D47 and D48 acted upon the terms of

the settlement, and therefore, now, he cannot **approve or reprobate**. It is also the serious contention taken up by the contesting respondents that the father has an absolute right to effect the partition, whether equal or unequal, even without the consent of sons under the Hindu Law. And the same is binding on all the sons and daughters under the principle of “**partria protesta**” which is legally recognized under Hindu Law. And it is their further stand that suit of the plaintiff is **barred by time**. Therefore, it is their submission that the Court below has rightly appreciated the material on record in the right perspective and came to the right conclusion, which does not call for any interference by this Court.

15. *That, the learned counsel appearing for the contesting respondents 2 and 3 has relied upon the following decisions in support of his case.*

1. ILR 2009 KAR 1524
Shanthappa & others Vs. Channabasavaiah & others
2. ILR 2006 KAR 27 (SN)
Dundappa & others vs. State of Karnataka.

3. 2009 (1) PROPERTY LAW DECISIONS 17 (S C)
Ranganayakamma & another vs. K.S.Prakash (dead) by
L.Rs and others
 4. 2007(1) SRJ 439
Yuvraj Ambar Mohite Vs. State of Maharashtra
 5. 2012 (4) KCCR 3393 (D B)
Adivveppagounda Vs. Manjula & others.
16. It is the strong submission of the learned counsel appearing for respondent No. 5 (d) that the southern half portion of suit item No.14 property was being allotted to the legitimate share of original defendant No. 5 in the partition in between the father of plaintiff and defendants 1 to 4 and the original defendant No. 5 in a decree for partition in O. S. No. 460/1949-50. And therefore, the impugned judgment and decree to the extent of including the legitimate share that has been so allotted to respondent No.5 calls for interference by this Court.

17. That, the plaintiff has also moved an application U/Order.1 Rule.10 r/w. Sec.151 of CPC seeking to implead a daughter of Doddarangaiah by name Chinnamma as proposed respondent No.6. Same came to be numbered as I.A.No.VIII. It is urged in an accompanying affidavit filed in support of IA.No.VIII moved by the appellant that the proposed respondent No.6 being a daughter of late Doddarangaiah is also necessary party to the suit. But, as against the said contention, the contesting respondents 2 and 3 have filed a detailed objections contending that since the father alone has executed the settlement deed dated: 20/5/1965, no succession would be open as on the relevant date with regard to the daughter is concerned, and hence she is neither a necessary nor a proper party. Therefore, they pray for rejection of the application.
18. **That, in view of the rival submissions made by both sides and also keeping in view the grounds urged in the appeal memo and the written arguments filed by both sides, the following points would arise for my consideration:-**

1. Whether the trial Court erred in holding the partition as per the settlement deed effected by the father Doddarangaiah as per the document marked at Ex.D3 dated: 20/5/1965 as legal and binding on the parties to the suit ?
2. Whether the trial Court erred in partly dismissing the suit and partly decreeing the suit?
3. Whether the impugned judgment and decree under appeal calls for interference by this Court?
4. Whether the appellant has made out grounds to allow an application for impleading respondent No.6 ?
5. What shares each of the parties to the suit are entitled to, and in which of the suit properties ?
6. What order ?

19. My findings to the above points are as under :-

Point No. 1 : In the affirmative.

Point No. 2 : In the affirmative.

Point No. 3 : In the affirmative.

- Point No. 4 : In the affirmative.
- Point No. 5 : As per final Order,
- Point No. 6 : As per final Order,
for the following :-

REASONS

20. **Points No.1 to 3 :** That, since these points are inter-linked with each other, they are taken up together for common discussion to avoid repeatation and to maintain the brevity.
21. For better appreciation, the parties are referred to with their rank before the trial Court.

Originally, the plaintiff has filed a suit for partition and separate possession of his legitimate 1/4th share in the suit schedule properties. It is the case of the plaintiff that the suit properties are the undivided joint family properties, fallen to the legitimate share of his father viz., Doddarangaiah, who died about 15 years back, pursuant to a partition under the judgment and decree passed by the then Munsiff Court in O.S.No.460/49-50, instituted by the

brother : 5th defendant. It is his further case that the said judgment and decree in O.S.No.460/49-50 had been confirmed in R.A. No: 176/1951-52 and RSA No.423/1953. It is his further case that 4th defendant, who is also a brother of plaintiff, has released his share in the suit properties under the registered release deed dated: 27/11/1956 and therefore, he has seized to be the member of joint family. Hence, he is arrayed as a formal party without claiming any relief. It is his further case that the 5th defendant, who was the plaintiff in O.S.No.460/1949-50 is impleaded only as a formal party since some of the entries of the RTC and house extracts continued in his name even after the said proceedings. It is the further case of plaintiff that the plaintiff and defendants No.1 to 3 have inherited the suit properties from the father : Dodda-rangaiah, and continued to be in joint possession and enjoyment of the suit properties, and he has got 1/4th share legitimate share therein, which one, denied and postponed by the defendants inspite of demand for partition and separate possession by the plaintiff. And hence, the present suit.

22. That, in response to the suit summons, all the defendants have appeared through the respective counsels and filed independent written statements.
23. Defendant No.1 has filed the written statement, and thereby, admitted the relationship in between the parties, the partition as per the decree passed in O. S. No: 460/49-50, and the due execution of released deed by the 4th defendant. But however, he has took up the specific defense that the father Doddarangaiah, during his lifetime, has divided all the properties under the registered settlement deed dated 20/05/1965, whereby, the plaintiff is allotted Suit Item No. 8 Property towards full and final settlement of his share., and rest of the properties have been divided among his sons namely: defendants 1 to 3 and the unmarried daughters namely: Jayamma and Chinamma. It is his further defence that the Suit Item No. 4, 6, 11 and 14 properties retained by the late Dodda-rangaiah were being divided in between the defendants 1 to 3 as per the desire of karta. It is his further defence that Suit Item No. 1 Property bearing Sy.No. 18/3 had been acquired by NH-4, Suit Item No.10 property is an exclusive property of 1st defendant

and 3rd defendant as the Occupancy rights in respect thereof were being granted by the Land Tribunal, Tumakuru. So also, item No.5 and 7 of the suit properties have been wrongly described with respect to extent, and same were allotted to the unmarried daughters under the settlement deed effected by late father. It is also his defence that the daughters of Doddarangaiah are also necessary parties to the suit.

24. Defendant No.1 has also filed an additional written statement, wherein also, he has reiterated the very contentions taken up in the written statement, and further contended that the plaintiff being well aware of the settlement deed dated 20/5/1965 has filed the present suit in suppression of the material fact and therefore, prayed for dismissal of suit.
25. Defendant No.2 has also filed an independent written statement, wherein, he has also set up the very defense of partition effected by the father : Doddarangaiah under the registered settlement deed dated 20/5/1965. It is his further defence that the very plaintiff has got the khatha of the lands to his share as per M. R. No:

20/75-76. It is his further defence that the plaintiff has filed Form No.7 with respect to some of the properties belonging to the defendants before the Land Tribunal Tumkur in KLRM. 1180/76-77, which one, ended up in dismissal. It is his further defence that the schedule of Item No.1 property is vague and misleading. Item No.2 property was declared as the property of Gangamma in O. S. No. 658/21957, and assigned to 5th defendant. And out of the southern half portion, the eastern half portion fell to the share of 5th defendant in O. S. No. 460/49-50 and the remaining half portion fell to the share of 2nd defendant under the settlement deed detailed above. It is his further defence that eastern half portion in Suit Item No.3 Property had fallen to the share of Dodda-rangaiah, which one, further allotted to the legitimate share of 3rd defendant under the settlement deed. It is his further defence that the northern 1/2 portion in Suit Item No.4 property has fallen to the share of 5th defendant, and the southern 1/2 portion has fallen to the share of Doddarangaiah, which one, thus inherited by the defendants 1 to 3. It is his further defence that the boundaries given to item No.5 of the schedule is false, and the southern half portion under decree in O.S.No.460/1949-50 fell to the share of late Doddarangaiah. And

same was reserved for performance of marriage of the daughters viz., Jayamma and Chinnamma, and thereafter to the defendants 1 and 3 under the settlement deed. It is his further defence that the suit item No.6 property belongs to 5th defendant, and the remaining half portion was divided among the defendants 2 and 3 equally under the settlement deed after the marriage of Jayamma and Chinnamma. It is his further defence that out of Suit Item No. 7 property half portion 0.91/2 guntas of land belonged to Giriyamma, and she has gifted the same to her grand children i.e, to say : in favour of Gangamma, plaintiff and defendant 4 under a registered gift deed dated: 22.8.1940. And the said property is declared as the property of Giriyamma in O. S. No. 658/57. It is his further defense that out of the Suit Item No.8 property only an extent of 36 guntas had fallen to the share of Doddarangaiah, which is, allotted to the legitimate share of plaintiff under the settlement deed. It is his further defence that suit item No. 9 property was sold to one Prabha under the registered sale deed dated: 23.10.66 by late Doddarangaiah. It is his further defence that suit item No. 10 property belongs to one Byrappa, and now in possession of defendants 1 to 3 as tenants under Byrappa, and the case is

pending before the Land Tribunal, Tumakur. It is his further defense that the northern half portion measuring 1 acre 39 guntas of land out of Suit Item No. 11 and 13 Survey numbers are in possession of 1st defendant as a tenant under Lingappa and his occupancy rights have been declared in LRA (W) 647/86 on the file of Land Reforms Appellate Authority Tumkur, and the southern 1 acre 4 $\frac{3}{4}$ guntas of land belonged to the 5th defendant, and the remaining 1 acre and 16 $\frac{1}{4}$ guntas of land has fallen to the share of defendants 1 to 3 after the death of Doddarangaiah. It is his further defence that the property in suit Item No14 is within the description of suit item No.12 property. Therefore, his defense could be summed as the one set-up on the basis of registered settlement deed and subsequent developments.

26. Defendant No. 4 is reported to be dead, and his legal heirs have filed an independent written statement, whereby, they have admitted the relationship in between the parties and the factum of execution of release deed by the late 4th defendant under the registered release deed dated 27/11/1956. But however, it is their specific defence that the defendant No. 4 has purchased the share

of Gangamma in Suit Item No.6 and 8 Properties under the registered sale deed dated: 10.02.1964, which are described in Schedule of their Written Statement. And further, the defendants No. 1 to 3 have put the defendant No. 4 in actual possession of other properties as morefully detailed in the schedule B of the written statement by agreeing to sell the same in his favour. Therefore, it is their specific defence that neither the plaintiff nor other defendants have got any sort of right, title or interest whatsoever over the written statement schedule properties detailed therein, under the registered sale deed and agreement of sale.

27. Defendant No.5 has also filed his written statement, wherein, he has admitted the factum of filing of a suit in O.S.No.460/1949-50 on the file of Munsiff at Tumakuru by himself for partition and separate possession. He has also admitted the factum of filing of the appeal and regular second appeal, wherein, the decree in O. S. No: 460/49-50 was confirmed. He has pleaded ignorance to the execution of release deed by the 4th defendant under the registered release deed dated 27/11/1956. It is his specific defense that, out of suit schedule item No.1 property, an extent of 1 acre

35 ½ guntas fell to the share of 5th defendant and the remaining same extent of land has fallen to the share of Doddarangaiah under the partition decree in O.S.No.460/1949-50. It is his further defence that the suit item No.2 was declared as the property of Gangamma in O.S.No.658/1957 against the plaintiff and his father, and he took the possession of the said property as an assignee decree holder in Execution No.313/1962 on the file of Munsiff. And therefore, neither the plaintiff nor other defendants have any sort of right, title or interest over the same. It is further contended that the suit item No.3 property is wrongly described with regard to boundaries and in fact, the same has been divided east to west and the 5th defendant has got western half portion measuring 37 guntas therein. It is also contended that the suit item No.4 property has fallen to his share under the said partition decree. So also, the 5th defendant got northern half land measuring 1 acre 8 ½ guntas in the said decree, and the same was being sold to one D.M. Rangappa, owner of Nataraja Oil Mills, Tumakuru. It is also contended that the suit item No.6 property is wrong and in fact, the plaintiff and his father have sold the said property to one carpenter Thimmaiah's daughter. And again, it was sold to One Chikkamma

W/o. Ramanarasaiah and she is in possession of the same as an absolute owner. It is also contended that in suit item No.11 property, the 5th defendant has got 1 acre 4 $\frac{3}{4}$ guntas of land on the southern side of property. So also, he has got northern portion measuring east to west: 100 feet and north to south: 40 feet including a dilapidated red tile roofed house and two coconut trees out of suit item No.12 property and the suit item No.14 property comes within the description of suit item No.12 property. His total defence is that of disputing the description of the suit properties, detailing the allotment of shares under the decree, and prayer for dismissal of suit on the grounds morefully urged therein.

28. That, in view of the rival pleadings of the parties, the Court below framed the following issues :-

1. Whether plaintiff proves suit schedule properties are joint family properties of plaintiff and defendants 1 to 3?
2. Whether the description of the properties belonging to plaintiff, defendants 1 to 3 given in plaint schedule is not correct?

3. Whether the suit is bad for non-joinder of daughters of Doddarangaiah as parties as claimed in written statement of defendants?
 4. Whether there is any cause of action for the suit?
 5. Whether the plaintiff is entitled for a share in schedule properties? If so, what is the share of plaintiff and ddfs 1 to 3 thereon?
 6. What decree or order?
29. That, the plaintiff in order to establish his case before the Court below adduced his evidence as PW.1 and got marked EX.P1 to P39 and closed his side. Per contra, defendant No.1 has adduced his evidence as DW.1 and got marked Ex.D1 to D28. Defendant No.2 is examined as DW.2 and got marked Ex.D29 to D69.
30. That, thereafter, the lower Court after hearing both the sides, returned to the findings by answering the above issues as under :-

Issue No.1 : Partly in negative & partly in affirmative

Issue No.2 : Partly in negative & partly in affirmative

Issue No.3 : In negative

Issue No.4 : Partly in negative & partly in affirmative

Issue No.5 : Plaintiff is entitled for 1/7th share along
with defendants 1 to 3 and daughters of
4th wife of deceased Doddarangaiah i.e.,
Lakshamma, Jayamma & Chinnamma

Issue No.6 : As per final order.

31. That, thus, the plaintiff/appellant being highly aggrieved by the said findings of the Court below declining to allot the legitimate 1/4th share to the plaintiff in all the suit properties is before this Court.
32. It is the serious contention of the appellant that as long as the original plaintiff Surappa was not a party to the alleged registered settlement deed marked at EX.D3, and as long as all the properties of the family including suit item No.12 and 14 were not being included in the same, and all the daughters have not been duly represented and no equal shares were being proposed or effected, the alleged settlement deed never acted upon or intended to be acted upon is totally bad in law. But however, the trial Court has

explicitly committed a grave error by accepting such an illegal document to show the partition in between the parties. It is his further case that the Court below has failed to appreciate the factual matrix as well the law relating to partition in the light of presumption available under the Hindu Law, and therefore, the impugned judgment and decree under appeal is highly erroneous and illegal, liable to be interfered by this Court.

33. That, the learned counsel appearing for the appellant has relied upon the following decisions in support of his contention:-

1. 2013(1) KCCR 672 (DB)

S.K. Lakshminarasappa since deceased by his LRs. Vs. B. Rudraiah & others.

Cause of action in a suit for partition is a recurring one, and continues as long as the partition by metes and bounds is effected, and the legitimate share to which each of the sharer is entitled is put in actual possession of the same.

2. 2013(2) KCCR 1277

Puttakkaiah Vs. Basamma since dead by LRs & others

(A) HINDU LAW – Suit for partition between two daughters – plaintiff is the daughter of first wife – Defendant is the daughter of second wife – Trial Court decreed the suit granting equal share – Plaintiffs claim that Schedule properties are ancestral and by way of family arrangement cultivating land – Schedule property comprising of ten items out of which eight are landed properties and two are house properties – Defendant admitted relationship and nature of properties but claimed that there was already a partition and are in respective possession, mutation entries made and that one of the property is left out in plaint schedule, Court fee paid in sufficient – First Appeal Ex.D-16 described as partition deed is un-registered – Evidence showing three sales subsequent to alleged partition deed.

(B) HINDU LAW – Suit for partition – All the sharers to be made parties – partition suit should include all the joint family properties.

3. 2015(5) KCCR S N 117

D. Ramakrishna Vs. D.Balakrishna since dead by his LRs and others.

(B) HINDU LAW : Suit for general partition – Should encompass all joint family properties – Both movables and immovables should be brought into common hotchpot – Only

in exceptional cases any relaxation can be made and partial partition may be allowed.

4. 2015(5) KCCR 1411
Lakshamma Vs. Manju

(B) HINDU LAW : Suit for partition – Whether property was joint family property or self acquired, plaintiff/daughter of deceased has her share in it – Neither plaintiff mentioning about nor plaintiff speaking in regard to nature of property – Not a ground for declining share to plaintiff.

5. AIR 2006 S C 2488
Hari Shankar Singhania & others Vs. Gaur Hari Singhania & others.

HINDU LAW – Family settlement or arrangement – To be treated differently from any other formal commercial settlement – Technicalities of limitation etc., should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family.

6. KCCR 2015(2) 1437 (DB)
Nanjamma V. Akkayamma since dead by her LRs. & others

(D) SUIT FOR PARTITION – Limitation – Limitation Act – Prescribes no time limit for filing a suit for partition by a co-sharer or co-owner – However, under Article 110, 12 years is the period prescribed for filing a suit by person who is excluded from a joint family property to enforce a right to a share and the starting point for limitation is when the exclusion becomes known to the plaintiff.

(E) LIMITATION ACT, 1963 – Article 110 – Limitation of 12 years under the Article is for a suit by a person excluded from his joint family property whether movable or immovable to enforce the right to a share therein.

7. 2006 AIR SCW 3768 : In between : Ramesh B, Desai & others Vs. Bipin Vadilal Mehtha and others.

HELD : A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is mixed question of law and fact.

8. 2006 AIR S C 2488 : In between : Harishankar Singhania and others Vs. Gaurhari Singhania and others.

HELD : Family settlement : it is treated differently from any other formal commercial settlement. Technicalities of

limitation etc., should not be put at the risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family.

9. 2015(4) KCCR 3432

Kallappa Vs. Mallamma & others

HINDU LAW – Suit for partition – plaintiff not impleading all necessary parties and all properties – On that basis first appellate Court setting aside decree – Not proper – Appellate Court has trapping of trial Court – It ought to have directed parties to rectify mistake or remanded matter to trial Court – Judgment set aside – Matter remitted to first appellate Court.

10. 2008(2) KCCR 619

Veerayya Mahanthayya Koppad and others vs. Geetha & others.

LIMITATION ACT 1963 – Article 110 – In the absence of proper foundation regarding the plea of exclusion whether could be invoked in a suit for partition between the members of a joint family – NO.

11. 2011(4) KCCR 2930 (DB)

Malipati Basavarajappa Vs. Sarvamangalamma & others.

(C) HINDU LAW – Partial partition – Partial Partition – Nature of – Held, Partition may be general or partial. The general partition is that which is brought about in respect of the entire joint family property by all the members getting themselves separated from one another.

12. 2913(4) KCCR 3170 (DB)

Gopalaiah & others vs. Jayakumari and others

(D) LIMITATION ACT, 1963 – Article 110 – suit for partition – Limitation – Ouster of a member – Suit to be filed within 12 years from the date otherwise, no period of limitation is prescribed for a suit for partition.

13. 2010(2) KCCR 1089 S C

Narendra Kante Vs. Anuradha Kante & others

(E) ESTOPPEL – Theory – Partition arrived at but not signed by all but the parties acting upon the term of settlement – Can they be permitted to retract and say that they do not bind them – Held, such a plea cannot be allowed to be agitated a party cannot approbate and reprobate.

14. 2014(4) KCCR S N 380 S C

Kesharbai @ Pushpabai Eknahrao Nalawade (D) by LRs and another vs. Tarabai Prabhakar Rao Nalawade & others.

A. HINDU LAW – Partition – Prior family settlement – plaintiff pleading that suit property was left out – plaintiff to prove that property was joint family property and not self acquire.

B. HINDU LAW – Partition – Admission or proof of – Presumption is that all joint family property was partitioned.

C. HINDU LAW – Joint family – It is presumed, until contrary is proved, that every family is joint family and undivided and all its property is joint – This presumption cannot be made once a partition, general or partial, is shown to have taken place.

34. Per contra, it is the specific defense of contesting respondents that although the plaintiff was well aware of the registered settlement deed effected by the father in the year 1965 marked as per Ex. D.3, he has not chosen to challenge the same before any forum within the stipulated time in accordance with law. And even there are no pleadings to challenge the said settlement marked at Ex. D.3 in the instant suit. But to the contrary, the very plaintiff by filing an application for change of khatha to the Tahsildar as per the

documents marked at Ex. D47 and D48 has acted upon the terms of the settlement, and therefore, now, he cannot approbate or reprobate. It is also the serious contention taken up by the contesting respondents that the father has an absolute right to effect the partition, whether equal or unequal, even without the consent of sons under the Hindu Law. And the same is binding on all the sons and daughters under the principle of “**partria protesta**” which is legally recognized under Hindu Law. Therefore, it is their submission that the Court below has rightly appreciated the material on record in the right perspective and came to the right conclusion, which does not calls for any interference by this Court.

35. That, the learned counsel appearing for the contesting respondents has relied upon the following decisions :-

1. ILR 2009 KAR 1524

Shanthappa & others Vs. Channabasavaiah & others

(A) CODE OF CIVIL PROCEDURE, 1908 – SEC.100 – Regular Second Appeal – Suit for partition and separate possession – Declared of – Appealed against – Dismissal of suit, HELD, Courts below have come to the conclusion that the deceased original plaintiff is the grandson of Shankarappa and schedule properties are ancestral

properties. However, since a clear finding has been recorded by the Courts, that there was partition among Lingappa and Gangaiah during their lifetime about 50 years back before filing of the suit which was within the knowledge of Channabasavaiah and that the said partition has not been challenged by said Channabasavaiah and the suit came to be filed only during the year 1982. Therefore, the Courts below have rightly held that the suit of plaintiff is barred by limitation.

- 2.** ILR 2006 KAR 27 (SN) : In between : Dundappa & others vs. State of Karnataka.

Constitution of India – Article 226 and 227 – Writ Petition – Exercise of power by the High Court – Finding of the Joint Director of Land Records in respect of the partition, that the partition made was not in accordance with law and shares have not been properly calculated – challenge to – HELD, Revenue authorities cannot go into the legality of the partition deed and as to whether the share that has been allotted is inequitable – it is for the Civil Court to go in to the question of validity or legality of the partition deed.

- 3.** 2009 (1) PROPERTY LAW DECISIONS 17 (S C)
Ranganayakamma & another vs. K.S.Prakash (dead) by L.Rs and others, wherein it is held as under :-

(B) Partition – Indian Contract Act, 1872 – Sec.25 – Settlement – Consideration for – Shown as Rupee one in the deed – Is no consideration in eye of law – Document executed out of love and affection – When in writing and registered falls within exceptions U/Sec.25.

(C) – HINDU LAW – Family arrangement – If entered into to maintain peace or to bring about harmony in family - Would be upheld.

4. 2007(1) SRJ 439

Yuvraj Ambar Mohite Vs. State of Maharashtra

HINDU LAW – Joint Hindu Family Property – Assessment of – Held – Initial burden is on the person who claims that it was joint family property but after initial discharge of burden it shifts to the party who claims that the property has been purchased by him through his own source and not from the joint family nucleus.

5. 2012 (4) KCCR 3393 (D B)

Adivappagounda Vs. Manjula & others.

HINDU LAW – Joint family – Joint family property – person had his separate income – No iota of material placed by persons contending that the property acquired by the person is joint family property – No material is placed to show that

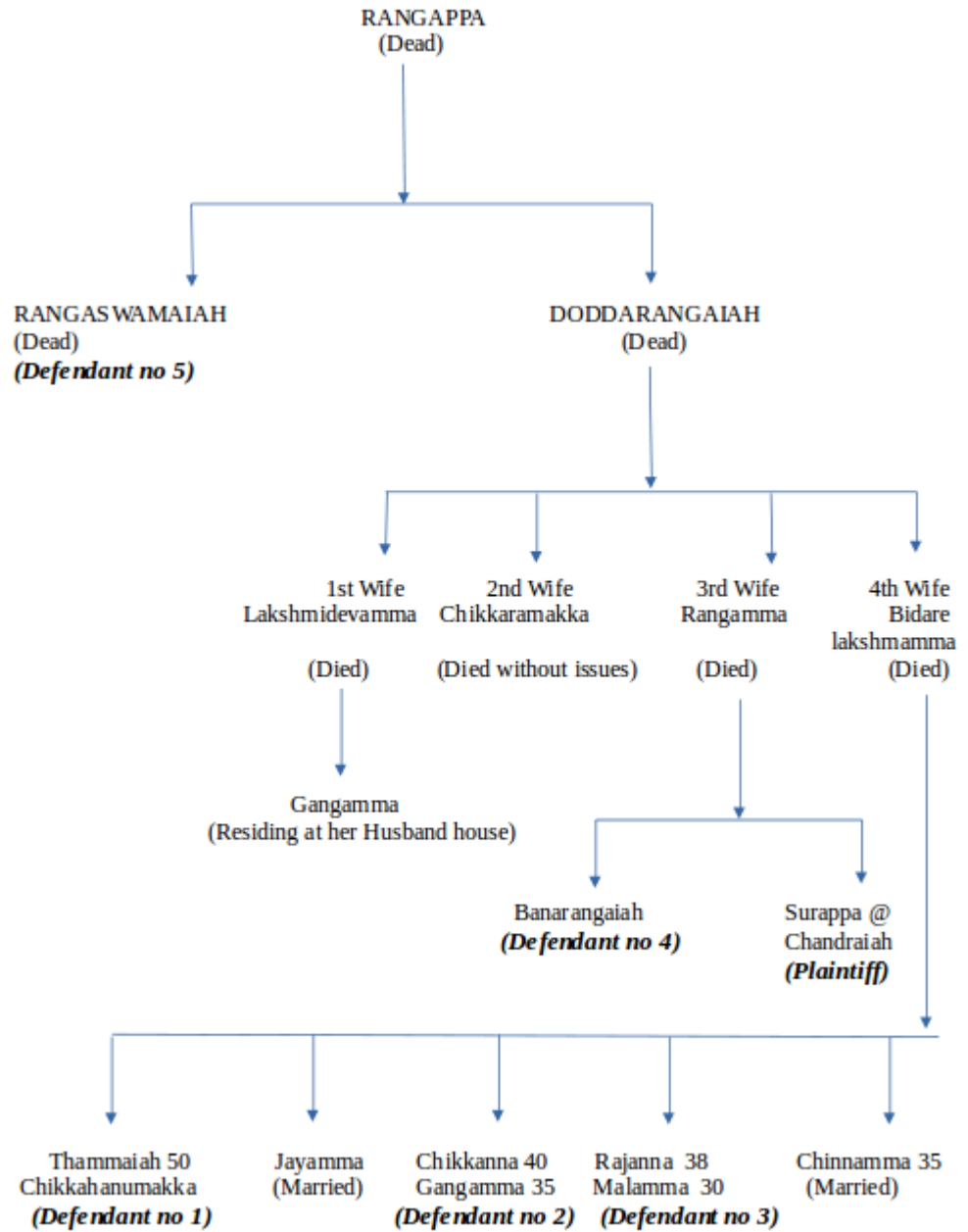
joint family had contributed to acquire property – The property cannot be considered as joint family property.

36. It is the strong submission of the learned counsel appearing for respondent No. 5(d) that the southern half portion of suit item No.14 property was being allotted to the legitimate share of original defendant No.5 in the partition in between the father of plaintiff and defendants 1 to 4 and the original defendant No.5 in a decree for partition in O. S. No. 460/1949-50. And therefore, the impugned judgment and decree to the extent of including the legitimate share that has been so allotted to respondent No.5 calls for interference by this Court.
37. That, the plaintiff has also moved an application U/Order.1 Rule.10 r/w. Sec.151 of CPC seeking to implead a daughter of Doddarangaiah by name Chinnamma as proposed respondent No.6. Same came to be numbered as I.A.No.VIII. It is urged in an accompanying affidavit filed in support of IA.No.VIII moved by an appellant that the proposed respondent No.6 being a daughter of late Doddarangaiah is also necessary party to the suit. But, as against the said contention, the contesting respondents 2 and 3

have filed a detailed objections contending that since the father alone has executed the settlement deed dated: 20/5/1965, no succession would be open as on the relevant date with regard to the daughter is concerned, and hence she is neither a necessary nor a proper party. Therefore, he prays for rejection of the application.

38. That, I have meticulously gone through the pleadings of the parties, the oral and documentary evidence on record including the impugned judgement and decree under appeal and the submission made by both sides.
39. That, I have also respectfully gone through the dictum laid down in the above referred decisions.
40. *That, at the outset, in order to ascertain and appreciate the relationship in between the parties to the suit, the family genealogical tree as per the document marked at Ex.D1 is re-produced hereunder :*

P.T.O



41. That, in order to establish the partition in between the joint family members, the contesting defendants have mainly relied upon the document styled as 'settlement deed' marked at Ex. D. 3.
42. That, upon the careful perusal of the distribution of properties under the settlement deed marked at Ex. D.3 would show an allotment of an extent of 36 guntas of land only out of Suit Item No. 8 Property in favour of plaintiff herein, and the major portion of properties have been retained by the father, with a rider to pass on to other sons from his 4th wife after the marriage of his daughters. It would further reflect from the contents of Ex. D. 3 that although the plaintiff was a major son and already married at the relevant point of time, when the settlement deed came to be registered, his signature is not obtained on the same, which would prima facie evidence the pre-judicial mind of the father against this son from 3rd wife. It further reflects from the contents of Ex. D. 3 that the present plaintiff was not in good terms with the father and propositious at the relevant point of time.

43. That, admittedly, all the properties inherited by the last full owner / father / Doddarangaiah as indicated in O. S. No. 460/1949-50 including the properties purchased by him and the lands taken by him for cultivation as an eldest male member and *karta* of the family are not included in the settlement deed marked at Ex. D.3 dated: 20/05/1965.
44. That, it further reflects from the entire oral and documentary evidence on record that although the said settlement deed marked at Ex.D3 came to be executed by way of registered deed in the year 1965 itself, but however, absolutely, there are no reasons or explanations forth-coming as to why the same was not acted upon by effecting the necessary change of khatha since from the year 1965 to the year 1989.
45. That, although the very father Doddarangaiah had other properties being purchased by him out of the joint family nucleus as discussed by the trial Court under the impugned judgement, obviously, no reason is forthcoming as to why the same were not included in the registered settlement deed.

46. Therefore, on over all appreciation of the pleadings of the parties, the oral and documentary evidence on record, keeping in view the facts and circumstances of the case as morefully setout above, I do not find sufficient force in the reliance placed upon by the learned counsel for respondents as the Hon'ble High Court of Karnataka had held in number of decisions that have relied upon by the counsel for appellants, in the instant case, to the effect “ the right to enforce partition is recurring one, and it continues as long as partition by metes and bounds is not effected, and each of the sharer is put in separate possession of his legitimate share, in all the joint family properties”. It is also held that actual possession of one member is a deemed possession of all the members, and the question of limitation to enforce the partition commences to run only from the date of exclusion. But in the instant case, obviously, no such exclusion from the joint family is being *either* pleaded *or* proved by the defendants. And furthermore, as discussed above, since the plaintiff was not a party to the said settlement deed marked at Ex. D. 3, the question of challenging the same in time, as vehemently argued by the counsel for contesting respondents within the stipulated time prescribed under the Law of Limitation

would not arise at all. Under the circumstances, viewed from all the angles, the settlement deed marked at Ex. D. 3 is not legal and valid. It doesn't bind the vested share of the plaintiff to seek the legitimate share in the suit schedule properties as the joint status continues till effecting the partition by metes and bounds, as birth right is recognized among the Hindus and every Hindu by birth acquires interest over the ancestral and joint family's properties. To that extent of the matter, the impugned judgement and decree passed by the Court below is erroneous and illegal, calls for interference by this Court. Accordingly, the Points No. 1 to 3 are answered in the affirmative.

47. **Points No. 4 and 5 :** That, during pendency of an appeal, the plaintiff has moved an application U/Order.1 Rule.10 r/w. Sec.151 of C.P.C. seeking to implead the daughter of Doddarangaiah by name Chinamma as proposed respondent No.6. Same came to be numbered as I.A.No.VIII. It is urged in an accompanying affidavit filed in support of IA.No. VIII moved by the appellant that the proposed respondent No.6 being a daughter of late Doddarangaiah is also necessary party to the suit. But, as against

the said contention, the contesting respondents 2 and 3 have filed a detailed objections contending that since the father alone had executed the settlement deed dated: 20/5/1965, no succession was opened as on the relevant date with regard to the right of daughter is concerned, and hence she is neither a necessary nor a proper party. Therefore, he prays for rejection of the application.

48. That, in view of the findings on the pre-deceding points for consideration, this Court has come to the conclusion that settlement deed executed by the father as per Ex. D. 3 is not legal and valid. Under the circumstances, all the daughters and / or heirs of pre-deceased daughters of the last full owner and propositus : Dodda-rangaiah would also be necessary parties to the suit. And therefore, I find sufficient force in the arguments advanced by the learned counsel appearing for the appellant to allow an application for impleadment of daughter, as prayed for under I. A. No. VIII. At the same time, plaintiff is hereby further directed to implead other daughters or their heirs, if any, before the trial Court, without any undue delay as the matter becomes more than 10 years old.

49. That, as regards the entitlement of shares in the suit properties concerned, there is no clear and convincing evidence as to existence or non existence of Suit Item No.1 property although there is a contention in the written statement to that effect by the defendants No. 1 to 3. So also, the Suit Item No.9 Property is alleged to have been sold out much prior to the suit, but the purchaser is not being arrayed as party to this suit, and the date of alienation is also not specifically forth-coming. And further, in view of addition of daughters, it becomes obligatory on the part the trial Court to ascertain the date of marriage of the daughters as they would not succeed to the tenanted lands, once they are married, prior to grant of Occupancy rights in respect of some of the suit lands. And further, the daughters would not be entitled for a share in the dwelling house in view of operation of Sec. 23 of Hindu Succession Act. Therefore, for the limited purpose of impleading the daughters and to ascertain the extent of shares to which each of the parties to the suit are entitled in the suit schedule properties, this Court is of the considered opinion that the ends of justice would be met if the matter is remitted back to the lower Court. And at the same time, the trial Court shall also consider the grievances

of defendant No.5 as to Suit Item No. 12 and 14 properties. But, however, it is made clear that in view of admission in the written statement, and the due execution of registered release deed in the year 1956 marked at Ex. D.39, the legal heirs of defendant No. 4 would not be entitled for any share in the suit properties as a son's heirs of Doddarangaiah. And upon the remand, since the matter becomes more than 10 years old, both the parties as well as counsels are directed to assist the lower Court for early disposal, at any rate not beyond six months from the date of receipt of this Judgement. With the above observations, I am inclined to answer the point No.4 in the affirmative, and Point No. 5 as per final Order.

50. **Point No.6** :- In view of the findings on the above points, I proceed to pass the following :-

ORDER

Regular Appeal U/Sec. 96 of CPC filed by the appellant is hereby allowed, in part.

Cross Appeal U/Order. 41 Rule. 23 C.P.C. filed by respondent No.5 on 20/3/2008 is hereby allowed in part.

I.A.No.VIII filed by the appellant under Order. 1 Rule .10 r/w. Sec.151 of C.P.C. to implead daughter of Doddarangaiah by name Chinnamma as proposed respondent No.6 is hereby allowed.

Impugned Judgment and Decree passed by the Prl. Civil Judge & JMFC Tumakuru in O.S.No: 451/1989 dated: 17/08/2007 is hereby set-aside.

Matter is remitted back to the trial Court with a direction to implead all the daughters / deceased daughter's heirs of the propositus : Doddarangaiah, and to consider the entitlement of shares of each of the parties to the suit in all the suit schedule properties, in the light of observations made while answering the above Point No. 4 and 5, and then to dispose off the matter strictly in accordance with law by providing an opportunity of impleadment to the parties, filing of written statement to the newly impleaded defendants, and to lead evidence, if any, at the instance of newly impleaded defendants. And all these proceedings to be completed within a further period of 6 months from the date of receipt of this Order.

Upon the remand, since the matter becomes more than 10 years old, both the parties to the suit are hereby directed to voluntarily appear before the Hon'ble Prl. Civil Judge & JMFC Tumakuru in O. S. No: 451/1989 On: 14-12-2018. And thereafter, the trial Court shall deal with the matter on day to day basis, and to dispose off the same as expeditiously as possible as aforesaid.

Parties to bear their own cost.

Send back LCR along with copy of this judgement to the trial court.

(Dictated to the Judgment writer, computerized and transcribed by her, and then corrected and pronounced by me in the open Court on this the 1st day of December 2018)

(Tarakeshwargouda Patil)
II ADDL. DISTRICT & SESSIONS JUDGE,
TUMAKURU.