

**IN THE COURT OF XXII ADDL. CITY CIVIL &
SESSIONS JUDGE
BANGALORE (C.C.H.No.7)**

Dated: This the 14th Day of October 2014

Present: Sri.**R.K.TALIKOTI**, B.Com., LL.B. (Spl.),
XXII Addl.City Civil & Sessions Judge.
Bangalore.

O. S. No. 5 3 5 2 / 2007

Plaintiffs	1. Smt.B.S.Lalitha, d/o late Sri.B.M.Seenappa, Aged about 62 years, R/a No.10, 8th Main, CHBS Layout,Vijayanagar, Bangalore – 560 040. 2. Smt.B.S.Vasanthi, d/o late Sri.B.M.Seenappa, Aged about 55 years, R/a No.672/A, 11th Cross, 7th Block West, Jayanagar, Bangalore. 3. Smt.B.S.Jayanthi, D/o late Sri.B.M.Seenappa, Aged about 50 years, R/a No.98/41, 11th Main, 15th Cross, Padmanabhanagar, Bangalore-70.
<u>Vs.</u>	
Defendants	1. Smt.Lakshmiddevamma, W/o late Sri.B.M.Seenappa, Aged about 81 years, R/a No.88/9, 19th Main, Padmanabhanagar, Bangalore – 560 070. 2. Sri.B.S.Subhas, S/o late Sri.B.M.Seenappa, Aged about 60 years, r/at No.117/2,

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	'Shri Nivas', Nagaraja Layout, Bull Temple Road, Chamarajpet, Bangalore – 560 018. 3. Sri.B.S.Jaiprakash, S/o late Sri.B.M.Seenappa, Aged about 57 years, R/at 88/9, 19th Main, Padmanabhanagr, Bangalore – 560 070. 4. Sri.B.S.Ramesh, S/o late Sri.B.M.Seenappa, Aged about 53 years, R/a No.415, 4th Cross, II Block, Jayanagar, Bangalore – 560 011. 5. Sri.B.S.Ravindranath, S/o late Sri.B.M.Seenappa, Aged about 65 years, R/a No.103, 10th Main, Basaveshwaranagar, Bangalore – 560 079.
And	
Proposed defendants	1. Smt.A.Nirmala, w/o.Sri.B.S.Subhas, Hindu, aged about 56 years, r/at No.117/2, Nagaraj layout, Bull Temple Road Cross, Bangalore-19. 2. Smt.Namitha V. Padman, w/o.Sri.J.Vijaya Padman, Hindu, aged about 51 years. 3. Sri.T.Vijaya Padman, Father's name not known, Hindu, Aged about 54 years. Both are r/at Vijaya Mahal, Kalpetta North, Wyanad District, Kerala-653122. 4. Deeksha Educational Trust, Rep. by its Trustees.

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- a. Sri.B.S.Jai Prakash,
s/o.late B.M.Seenappa, Hindu,
aged about 63 years, r/at No.88/9,
Nagdevi, 19th Main, 11th Cross,
Padmanabha Nagar, Bangalore-72.
- b. Sri.G.Sridhar,
s/o.late K.V.G.Subramanian, Hindu,
aged about 43 years, r/at No.201,
Kumar Paradise, No.3,
B.P.Wadia Road, Basavanagudi,
Bangalore-04.
- c. Smt.Indira Jai Prakash,
w/o. Sri.B.S.Jai Prakash, Hindu,
aged about 61 years, r/at No.88/9,
Nagdevi, 19th Main, 11th Cross,
Padmanabha Nagar, Bangalore-72.
- d. Smt.Lalit Sridhar,
w/o.Sri.G.Sridhar, Hindu,
aged about 39 years, r/at No.201,
Kumar Paradise, No.3, B.P.Wadia
Road, Basavanagudi, Bangalore-04.
- e. Sri.Dhandapani,
s/o. late Nagarajan, Hindu,
aged about 69 years, r/at No.303,
Mico Employees Layout,
BTM 2nd Stage, Bangalore-76.
- f. Smt.Shamala Dhandapani,
w/o.Sri.Dhandapani, Hindu,
aged about 61 years, r/at No.303,
Mico Employees Layout,
BTM 2nd Stage, Bangalore-76.
- g. Sri.Chinmaya J Prakash,
s/o. Sri.B.S.Jai Prakash, Hindu,
aged about 29 years, r/at No.88/9,

Nagdevi, 19th Main, 11th Cross,

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	Padmanabha Nagar, Bangalore-72. h. Sri.R.Venugopal, s/o.Ramaswamy Sastry, Hindu, aged about 70 years, r/at No.1311, Takshashila, 28th Main Road, 24th Cross, BSK II Stage, Bangalore-70. i. Smt.G.Lalitha, w/o. late K.V.G.Subramaniam, aged about 174 years, r/at No.201, Kumar Paradise, No.3, B.P.WadiaRoad, Basavanagudi, Bangalore-04.
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Order on I.A.No.5

u/O. I R. 10(2) r/w.S. 151 C.P.C dated 2-9-2013

This is an application filed on behalf of plaintiffs praying to implead the proposed defendants in this case.

2. The application is supported by affidavit of the 1st plaintiff-B.S.Lalitha, wherein she has stated that this case has been remanded by the Hon'ble High Court in RFA No.168/2009 for fresh disposal. Earlier to the disposal of the case, I.A. u/O.1 R.10 CPC was filed and same has to be considered now. Further it is learnt that defendant No.2 has gifted portion of item No.5 of the property in favour of his wife – proposed defendant No.1 under registered gift deed dated 9-8-2002. defendants No.2, 3 and 4 have sold portion of item No.5 in favour of proposed defendants No.2 and 3 under registered sale

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deed dated 29-6-2000 and 17-8-2002. Defendant No.34 and his wife and son have transferred portion of item No.5 in favour of defendant No.4-Deeksha Education Trust. These activities were not within the knowledge of the plaintiff and it came to their knowledge only when they obtained encumbrance certificate. Hence, prayed to allow the application.

3. The proposed defendants No1, 2, 3 and 4 have filed their objections to the application contending that the application is not tenable under law.

The proposed defendant No.1 has contended that he has become owner of portion of the property prior to 20-12-2004 and any disposition or alienation made prior to 20-12-2004 cannot be challenged by the plaintiffs in view of the provisions under Section 6 of the Hindu Succession Act. There is long delay in filing the application. Said delay is not explained. The proposed defendant No.1 is bonafide transferee. It is also averred that the transferees of the property have paid monies to plaintiff in the year 1986 and same is acknowledged by them and therefore they are not entitled to any relief of partition. The plaintiffs have not sought for cancellation of gift deed in order to avoid to court fee. Hence the application has to be dismissed.

4. Advocate for proposed defendant No.2 and 3 has filed objections contending that the application is not tenable under law and same is liable to be

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dismissed. Land Sy.No.31/1 of Talaghattapura village was converted from non-agricultural purpose on 30-5-1997. Subsequently brothers and their family members have partitioned the property under a partition deed dated 16-6-2000 and it is acted upon. The proposed defendants No.2 and 3 have verified the records prior to purchasing the property. Defendants No.2, 3 and 4 have sold portions for family legal necessities under separate registered sale deed dated 29-6-2000 for valuable consideration. The proposed defendants are in possession of the property. Plaintiffs are aware of the said fact and hence the application is sought to be dismissed.

5. The proposed defendant No.4 has filed objections contending that the application is not tenable under law. The gift deed is executed in favour of proposed defendant No.4 on 9-8-2000. Thus it has become owner of the portion of the property prior to 20-12-2004. Said alienation cannot be challenged under the provisions of Section 6 of the Hindu Succession Act. The plaintiffs ought to have sought for cancellation of the gift deed. Education Central is established by the proposed defendant and it has gained popularity. The plaintiffs ought to have sought for cancellation of transfer made under the deed of cancellation of trust in favour of propose defendant. That has not been done, only to avoid court fee. Therefore, the application is sought to be rejected.

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6. Heard arguments of both sides.
7. The Point that arises for consideration is:

"Whether the proposed defendants can be impleaded in this suit?"
8. My answer to the above Point is in the Affirmative, for the following:

Reasons

9. The suit of the plaintiffs is for partition and separate possession of their share in suit schedule property. The plaintiffs claim that they are daughters of B.M.Seenappa, who has died on 6-3-1985. The suit schedule properties are the joint family properties of plaintiffs and defendants and they were managed by their father Seenappa.
10. The proposed defendants No.1 to 4 are said to have come in possession of certain family properties by way of transfer, gift deed, as mentioned in the affidavit. The proposed defendants No.1 to 4 have taken up a contention that their alienation have taken place before 20-12-2004 and as per the Hindu Succession Act, these transactions cannot be challenged.
11. It may be noted that the plaintiffs have pleaded that their father has died on 6-3-1985. Under

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the circumstances, the plaintiffs can, at least, claim right through their father, if not under the Amended Act.

It is also contended that the application is filed after a long delay. In my view, the suit for partition is still pending and plaintiffs claim that they are joint family properties. These matters have to be decided only at the time of trial and at this stage, the proposed defendants No.1 to 4 being transferers of the suit schedule properties, have to be impleaded as parties in this suit. Hence, answering the above Point in the Affirmative, I pass the following:

Order

I.A. No.5. filed u/O.1 R.10(2) CPC dated 2-9-2013, by the plaintiffs, is allowed.

The proposed defendants are brought on record as defendants in this case.

Plaintiffs to carry out amendment to the cause title of the plaint.

(Dictated to the Judgment Writer, computerised print-out taken thereof is corrected, signed and then pronounced by me in Open Court on this the 14th day of October 2014.)

(R.K.TALIKOTI)
XXII Addl.City Civil & Sessions Judge.

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14-10-2014

*Orders on I.A. passed and pronounced in Open Court.
Operative portion thereof reads as under:*

I.A. No.5. filed u/O.1 R.10(2) CPC dated
2-9-2013, by the plaintiffs, is allowed.

The proposed defendants are brought on
record as defendants in this case.

Plaintiffs to carry out amendment to the
cause title of the plaint.

XXII A.C.C. & S.J., Bangalore.