

KAUK020003412011



O.S.15/2011

**IN THE COURT OF**  
**PRL. SNR. CIVIL JUDGE AND CJM COURT, KARWAR AT**  
**KARWAR,UTTARA KANNADA**

**Present: Smt. Kavita S. Undodi,**  
**B.A.LL.B.(Spl)**  
**Prl. Senior Civil Judge and**  
**CJM, Karwar.**

**DATED: THIS THE 7<sup>th</sup> DAY OF MARCH 2026.**

**O.S.No.15/2011**

**PLAINTIFFS:**

Shaikh Ummer Hasan Haji Shaikh Ahamad  
Since deceased by his LRs.

1. Smt. Naseemabi W/o Shaikh Ummar Hasan,  
Age: 53 years,  
R/o: HIG-I-3, Road No.-D-4,  
New KHB Colony, Karwar.
2. Smt Latifa W/o Mohammad Afzal Khan,  
D/o Shaikh Ummar Hasan,  
Age: 32 Years, R/o: Jheelwada,  
Kajubhag, Karwar
3. Sri. Mohamad Arshad S/o Shaikh Ummar Hasan,  
Age: 31 years, R/o: HIG-I-3,  
Road No- D-4 New KHB Colony,  
Karwar
4. Smt Gulshan W/o Mohamad Arif Mulla,  
D/o Shaikh Ummar Hassan,  
Age: 28 years, R/o: HIG-1-3,  
Road No- D-4. New KHB Colony,  
Karwar

5. Smt Massodjahan D/o Shaikh Ummar Hassan,  
Age: 24 years, R/o HIG-I-3,  
Road No- D-4. New KHB Colony,  
Karwar
6. Sri. Abrar Ahmed S/o Shaikh Ummar Hassan,  
Age: 23 years, R/o: HIG-I-3,  
Road No- D-4. New KHB Colony,  
Karwar

(The plaintiff No 2 to 6 are represented by their GPA holder  
Plaintiff No-1 Smt. Naseemabi W/o Shaikh Ummar Hasan.)

**(By Sri.D.N.G.– Advocate)**

**V/s.**

**DEFENDANTS:**

1. Sri. Mohammed Abdul Latif Shaikh,  
Age: 70 years, Occ: retired,  
R/o: A/3/43 Sector B,  
CIDCO Colony, New Panvil,  
Raigad, Maharastra.
2. Smt. Maryambi Yakub Momim  
W/o Late Yakub Momim,  
Age: 77 years, Occ: Agriculturist
3. Smt Sharifabi Abdulla Shaikh,  
Age:74 years, Occ: Household,  
R/o:Rabbani Manzil,  
H.No.1435/1 High Church Road,  
Karwar

(Defendant No. 2 and 3 being died their LRs  
are brought on record as per order on IA No.9 to 11)

- a. Shri. Salim Yaqub Momim,  
Age: about 45 years,  
R/o. High Church Road, Karwar.
- b. Shri. Asif Yaqub Momim,  
Age: about 42 years,  
R/o. High Church Road, Karwar.

- c. Smt. Hafizabi D/o Yaqub Momim,  
Age: about 40 years,  
R/o. High Church Road, Karwar.

(Amendment carried out as per order on  
IA No. 9 to 11 dated: 31/07/2020)

4. Sri. Satish Krishna Sail,  
Age: 43 years, Occ: Business,  
R/o Sadashivgad, Karwar.
5. Smt. Hawabi W/o Mohammed Siddiki,  
Age: 68 years, Occ: House Hold,  
R/o: Siddique Manjil, Near Bapuji College,  
Sadashivgad, Karwar
6. Wahida W/o Fazal Mohammed Shaikh,  
Age: 46 years, Occ:House Wife,  
R/o: opp. HESCOM (KEB), Kone Karwar.
7. Imtiyaz Sayyed Haroon,  
Age: 50 years, Occ: Business,
8. Shri Abubakkar Sayyed Haroon,  
Age: 48 years, Occ: Business,
9. Shri Abdul Karim Sayyed Haroon,  
Age: 46 years, Occ: Business,
10. Shri Husain Sayyed Haroon,  
Age: 45 years, Occ: Business
11. Salimabi Sayyed Mustakh,  
Age: 52 years, Occ: House Wife,  
No. 7 to 11 R/o: C/o K.R. Mohmin House,  
Near Indian Oil Depot, Opp: HESCOME (KEB),  
Karwar.

(Defendant No. 5 to 11 impleaded/added as per the  
order on I.A.).

**(D-1 by Sri.K.B.N., Advocate)**  
**(D-2(a) to 2(c) by Sri. A.K.D., Advocate)**  
**(D-3 by Sri.L.M.P., Advocate)**  
**(D-4 by Sri.K.R.D., Advocate)**

**(D-6 by Sri.H.S.S., Advocate)  
(D-5, 7, 8, 9, 10, 11-- Exparte)**

Date of Institution of the suit	06-06-2011
Nature of the suit	Partition and Declaration
Date of commencement of recording of evidence	19-03-2019
Date of the judgment	<b>07-03-2026</b>
Total Duration	<b><u>Year/s Month/s Day/s</u></b>
	<b>- 14 - - 09 - - 01 -</b>

**Pri. Senior Civil Judge &  
CJM, Karwar.**

**:: JUDGMENT ::**

The plaintiffs have filed suit for partition, declaration that the sale deed dated 12-06-2008 executed by the defendant No.1 to 3 infavour of defendant No.4 is not binding on the plaintiff and for permanent injunction.

**2. The case of the plaintiffs is that;**

The suit schedule property is non agricultural land bearing Sy.No.28A 1A1A1/14B measuring 0.05.5 and Sy.No.28A1A1A1/18 measuring 0.13.0 and both lands situated at Baad-I village. The suit schedule property belongs to one Shaik Mohammad Shaik Hasan, he had 3 sons and 6 daughters. The Shaik Mohammad Shaik Hassan has executed gift deed and gifted the suit schedule property in favour of his eldest son by name Mohammad Hussain

on 12-09-1927. The said Mohammad Hussain died in the year 1945. The brother of the Mohammad Hussain by name Abdul Latif predeceased Mohammad Hussain in the year 1940. As per the Muslim Law the suit schedule property transferred in the name of third son of Shaikh Mohammad Shaik Hussain by name Abdulla. The said Abdulla became absolute owner of the said property, after death of Mohammad Hussain, Abdulla has executed gift deed on 20-01-1956 infavour of Abdul Karim and son of his brother late Abdul Latif by name Mohammad S/o Abdul Latif. Mohammad S/o Abdul Latif was minor as on the date of the said gift deed, hence Abdulla Karim s/o Abdulla has accepted the gift on his behalf as well as on behalf of Mohammad as minor guardian. The Abdul Karim has executed sale deed in the year 1978 and sold the suit schedule property in favour of father of plaintiff by name late Shaikh Ummar Hasan Hazi Shaikh Ahmad. The father of plaintiff became absolute owner of the suit schedule property by virtue of sale deed.

**3.** Further averred in the plaint that in the year 1979 wife of Abdulla by name Ameenabi Abdulla Shaikh and the daughters of Abdulla from first wife as well as second wife all together along with daughters of Abdulla Latif by name Kulsumbi and Khateejabi filed suit before Civil Court in O.S.No.70/1979. In the said suit the suit schedule properties were the same properties of this suit. The plaintiffs in that suit had sought for declaration that the plaintiffs right in the suit schedule property is not destroyed and also

sought for injunction against the father of the plaintiffs. The father of the plaintiffs shown as defendant No.6 in that suit. The father of plaintiffs has filed written statement with counter claim seeking possession of house No.507 as he was forcibly dispossessed during the pendency of the suit. After trial the suit in O.S.No.70/1979 came to be dismissed on 04-04-1998 and counter claim filed by the defendant No.6 came to be decreed.

**4.** Further averred in the plaint that being aggrieved by the judgment and decree passed in O.S.No.70/1979, the plaintiff No.2 to 5 of that suit preferred an appeal in R.A.No.29/1988 and defendant No.2 preferred an appeal in R.A.No.30/1988 on the file of Senior Civil Judge Court, Karwar. The both R.A.s clubbed together and were disposed of by common judgment dated 23-08-2003. In the appeal i.e. in R.A.No.29/1988 partly allowed the appeal and partly set aside the judgment and in R.A.No.30/1988 came to be allowed and it was declared that the defendant No.2 is having  $\frac{1}{2}$  share in the suit schedule properties and father of plaintiff by name Shaikh Umar Hasan has half share in the suit schedule property. It was observed in the judgment that the gift deed dated 20-01-1956 executed by the Abdulla Shaikh in favour of Mohammad S/o Abdul Latif and Abdul Karim S/o Abdulla was valid and legal and hence both together are having half right each in the suit schedule properties. Hence father of the plaintiff who has purchased the property from Abdul Karim will get right only to the extent of half share held

by Abdul Karim and further that the father of the plaintiff Shaikh Ummer Hasan has to file the suit for partition and get his share separated.

**5.** Further averred in the plaint that during the pendency of R.A.No.29/1988 and R.A.No.30/1988 the father of the plaintiffs Shaikh Ummer Hasan died in the month of January 2001. After his death, the plaintiff No.1 to 6 brought on record as legal heir. Thereafter in the year 2003 the said appeal came to be disposed off. However the plaintiff No.1 is a Paradanasina lady and she has not come out of the house at any time and she is totally ignorant about the outside world particularly about the court and court matters. The plaintiff No.2 to 6 were minors and they were studying in the year 2003 when the appeal was disposed off. Due to financial bad conditions of the plaintiffs they could not preferred any appeal against the judgment of appeal. In the appeal court has declared that the defendant No.1 and the plaintiffs father Shaikh Ummer Hasan are having half right each, they will satisfy themselves with the said order. By that time the houses situated in the suit land were all collapsed and there was no question of taking possession of any suit house. The said land was open land. After death of the father the plaintiff No.1 to 6 being the legal heirs of deceased Shaikh Ummer Hasan stepped into his shoes and continued the vahivat of the suit land. The plaintiffs are in joint possession of the suit land along with defendant No.1. The defendant No.2 and 3 are not having right in the suit

land, but they are shown as parties to the suit because their name is shown in the sale deed.

**6.** Further averred in the plaint that after death of the father of the plaintiffs, the plaintiffs are in joint possession of the suit schedule property along with defendant No.1. The defendant No.2 and 3 are having no right, title interest in the suit schedule property. In fact the father of the plaintiff is sole owner of the suit schedule property as per the sale deed executed in the year 1978. However there is a judgment in R.A.No.29/1988 and R.A.No.30/1988 and since the plaintiffs have not preferred any appeal challenging the judgment and decree caused in the appeal, now they are restricting their right to the extent of half share as declared by the court. However recently the plaintiffs came to know that the suit schedule property is sold by the defendant No.1 to 3 infavour of defendant No.4. The plaintiffs have enquired about the same and came to know that behind the back of plaintiffs the defendant No.1 to 3 have executed sale deed on 12-06-2008 and alienated suit schedule property in favour of defendant No.4. In the said sale deed nowhere the defendants have made any reference in respect of judgment and decree passed in regular appeals. The defendant No.1 to 4 fully aware about the judgment and decree, but inspite of the same just to dupe the plaintiffs right created false and sham document styled as sale deed infavour of defendant No.4. The defendant No.4 has no right to purchase the full extent of the suit schedule property. The defendant No.1 to

3 are not having right to execute the sale deed to full extent. The defendants have played fraud upon them by executing the sale deed.

7. Further averred in the plaint that the plaintiffs have enquired about the same with the defendant No.1 and in turn told that he has sold only half share of him and he has received only amount of half share. Thereafter the plaintiffs met the defendant No.4 and enquired about the same for which he told that he has purchased the full right from the defendant No.1. However on enquiry the plaintiffs came to know that the defendant No.4 has paid only amount of half share to the defendant No.1. However while drafting the sale deed intentionally and knowing fully well that other half share belongs to the plaintiffs they have shown the full extent just to dupe the plaintiffs and to take the disadvantage of their innocence. Though the sale deed is executed in respect of suit schedule property the same is not binding on the plaintiffs to the extent of their half share in the suit schedule property. The right of the plaintiffs is already declared by the Civil Court in R.A.No.29/1988 and R.A.No.30/1988 and it is clearly stated that the defendant No.1 is having only half right in the suit schedule property and he has seek for partition. There is no reason for the defendant No.1 to alienate the full extent of the suit schedule property behind the back of these plaintiffs. Hence the sale deed executed is not binding on these plaintiffs. The defendant No.4 is businessman and is a shrewd person. He is of the habit of purchasing the property in and around the Karwar to convert his black money into white.

Though the sale deed was executed on 12-06-2008 the plaintiffs were not aware of the same and they came to know about the same in the of January 2010 and they have obtained the certified copy of the sale deed and other records and they have filed the suit. The defendant No.4 now trying to dispose of the property to somebody.

**8.** The cause of action to file the suit arose on 12-06-2008, when the sale deed came to be executed and on the date of knowledge of the said sale deed to these plaintiffs i.e. in the month of January 2010 and prayed to decree the suit.

**9.** In pursuance of suit summons, the defendant No.1 to 4 appeared through their counsels before the court.

**10.** The defendant No.1 has filed written statement denying the averments of the plaint and stated that the suit of the plaintiffs is barred by limitation. The plaintiffs have paid Rs.200/- as a court fee and seeking declaration that they are entitled for partition and to declare that the registration of sale deed executed by the defendant No.1 to 3 in favour of defendant No.4 is not binding. Hence the plaintiffs have liable to pay court fee on the consideration of the sale transaction, hence suit of the plaintiff is not maintainable and liable to be dismissed for non payment of proper court fee. The genealogical tree shown by the plaintiffs is nothing to do with the claim of the plaintiffs. The plaintiffs are not in a position to give correct status of the relationship of the parties to the suit, which itself suffice to

conclude that their conduct is surrounded by suspicious circumstances and suit is not filed by the plaintiffs in the manner it was done. The so called alleged sale deed of the year 1978 allegedly executed by the Abdul Karim was a sham transaction and for the said transaction this defendant is not party at all. Even though he was attained the age of majority and recitals of the sale deed it is fraudulently alleged that this defendant was minor and represented by the said Abdul Karim and in view of the decree passed in Civil Judge Court Karwar it is clearly held that this defendant has got half right in the suit schedule property by allowing counter claim filed by this defendant in R.A.No.29/1998 and in R.A.No.30/1998 and injunction was granted against the defendant No.6 in O.S.No.70/1979 and the present plaintiffs have restrained from interference or eviction of the plaintiffs in O.S.No.70/1979 without due process of law. It is observed in the judgment that only remedy available for the purchaser late Shaikh Ummer Shaikh Hassan Haji Shaikh Ahammed to seek partition of his half share in accordance with law. At no point of time purchaser late Shaikh Ummer Shaikh Hassan Haji Shaikh Ahammed was in actual possession or occupation of the suit property as the sale transaction itself being outcome of fraud has no legal sanctity to consider regarding the alleged possession based on the said sale, as the court has already granted permanent injunction against the plaintiffs in R.A.No.29/1988 and refused to grant relief in favour of plaintiffs in R.A.No.29/1988 seeking permanent injunction in the form of counter claim filed in O.S.No.70/1979. Even otherwise as per the law a stranger purchaser

has absolutely no right to allege about the possession based on the sale transaction.

**11.** Further averred in the written statement that either under the Hindu Law or under the Mohammedn Law the only course left for the purchaser to file suit for partition to the extent of the area or share purchased in joint property of strangers before the court of law within the limitation prescribed under the law of limitation. The alleged sale transaction dated 23-02-1978 was strongly objected in revenue proceedings and in the appeal before the Assistant Commissioner, Kwar in RTS/AP/SR/0436. The Assistant Commissioner cancelled the mutation entry which was effected on the basis of the sale transaction and the name of the purchaser has been deleted from the revenue records and thereafter the name of late Abdul Kareem and name of this defendant only continued as owners in possession cultivation and occupation of the suit lands. The husband of plaintiff No.1 preferred an appeal before the Deputy Commissioner Karwar in RB/RTR/SR/2/1984 and same came to be dismissed. Thereafter the husband of plaintiff No.1 nor the plaintiffs have taken any steps for getting their names entered in record of rights or getting their whatever right seeking partition in the competent court of law within the limitation.

**12.** Further averred in the written statement that it is pertinent to note that said Abdul Kareem expired on 31-12-1984 and this defendant submitted varadi to the Village Accountant Baad-I village for entering his name by

taking consent of defendant No.2 and 3 as surviving legal heirs of late Abdul Kareem and on the basis of the said application the name of defendant is entered in the record of rights of the suit lands as undivided family manager consisting of himself and defendant No.2 and 3 as said Abdul Kareem expired unmarried and without leaving any other legal heirs except the defendant No.1 to 3 in this case.

**13.** Further averred in the written statement that at that time also the husband of plaintiff No.1 or plaintiffs have not filed their objections to the said mutation entry or the continuation of only name of defendant No.1 in records of rights as actual owner in possession of the suit schedule properties till it was sold by the defendant No.1 to defendant No.4. As per Law the husband of plaintiff No.1 or the plaintiffs ought to have filed the suit for partition immediately after getting the said land purchased for at least after the order passed by the learned Assistant Commissioner Karwar deleting the name of Shaikh Ummer Hassan Haji Shaikh Ahammad. The husband of plaintiff No.1 would have claimed partition when the name of Abdul Kareem was deleted on 02-03-1995 by the revenue authorities.

**14.** Further averred in the written statement that the husband of the plaintiff No.1 or the plaintiffs have not taken any steps to file suit for partition from the date of purchase of the property or last day from the date of deletion of name of vendor from the record of rights by entering the name of defendant. Even after counter claim also the husband of plaintiff No.1 nor

plaintiffs have claimed relief of partition. Thus they are legally estopped under law by their own conduct to claim any share in the suit property by way of partition with the husband of plaintiff No.1 who has purchased the property in the year 1978. Therefore there is no life available for extension of limitation under any circumstances. The right of the husband of the plaintiff No.1 and after his death, the plaintiffs extinguish and no court of law can help the parties who are not vigilant or alert about their own rights, to seek from the court of law within the law of limitation. Hence there is no merits existing in the suit as the husband of plaintiff No.1 and plaintiffs have considered the adverse possession and occupation of the suit schedule properties by this defendant by getting his name entered in the record of rights as owner and in actual possession with the full knowledge of the husband of the plaintiff No.1 and plaintiff and with the full knowledge to the whole world. The defendant has perfected the rights over the suit schedule properties, towards the half share claimed by the plaintiffs in this suit by virtue of the adverse possession and the suit is not at all enforceable after lapse of more than 32 years, as the husband of plaintiff No.1 and plaintiffs have not at all objected against the hostile and exclusive exercise of right of possession and enjoyment of half right purchased by the husband of the plaintiff No.1 without any interference from them and this defendant is enjoying suit schedule properties as exclusive owner as of right in possession has legally sold the suit schedule properties to the defendant No.4 for valuable consideration by receiving Rs.42,30,000/- and as such the plaintiffs

have no right, title, interest to challenge the sale deed executed by this defendant in favour of defendant No.4. The suit of the plaintiff is capricious and perverse. The plaintiffs have lost their right to claim the partition and prayed to dismiss the suit with heavy cost and exemplary cost of Rs.50,000/-.

**15.** The defendant No.1 has filed additional written statement stating that the plaintiffs are seeking for independent relief which are contrary to law and true facts of the case and as such the same is deserves to be dismissed with costs. As per the judgment passed in R.S.No.29/1988 it is held that the husband of the plaintiff No.1 was not at all in possession of the suit schedule property under registered sale deed or otherwise he is bound to take possession from competent court of law. The plaintiffs in O.S.No.70/1979 have filed suit for claiming ownership and possession against the Shaikh Ummer Hassan Haji and others and denied the title, interest and possession of the husband of the plaintiff No.1 and said facts was upheld in R.A.No.29/1988. As the dispute was arose in respect of said property involved in this suit, it is binding on the successor in interest of Shaikh Ummer Hasan Haji as they are claiming through him in the suit property. Shaikh Ummer Hassan Haji has not preferred any RSA before Hon'ble High Court of Karnataka challenging the permanent injunction granted by this court. The counter claim, claimed by Shaikh Ummer Hassan Haji under alleged sale deed of 1978. In view of non challenge of judgment and decree passed in

R.A.No.29/1988 of this court by Shaikh Ummer Hassan Haji, the said findings and decision of the court became final, but also on plaintiffs who are claiming through the same person, therefore suit is hit by the rule of Res Judicata on the same findings given by this court in R.A.No.29/1988 against the husband of the plaintiff No.1. This fact has been suppressed by the plaintiffs in this suit. The plaintiffs are aware that they have no right, title interest over the suit schedule properties. This suit is barred by limitation without seeking the relief of possession from the plaintiffs in O.S.No.70/1979.

**16.** Further averred in the additional written statement that earlier litigation was not only related to title and possession, but also pending before the revenue courts regarding the cancellation of mutation made on the basis of alleged sale deed. As per the order dated 27-08-1983 A.C. Karwar has ordered for cancellation of mutation entry No.A447 of Baad village. The husband of plaintiff No.1 preferred revision petition before the D.C. Karwar and said petition came to be dismissed on 07-02-1987 and the name of the husband of the plaintiff No.1 deleted from the revenue records. Thereafter husband of plaintiff No.1 has not preferred any suit within three years. Hence right of the plaintiffs being lost in earlier litigations. The plaintiffs have claimed independent reliefs but not paid proper court fees on the basis of actual market value , hence suit is not maintainable and prayed to dismiss the suit with costs.

**17.** The defendant No.4 has filed written statement denying the averments of the plaint and stated that the registered sale deed executed in his favour by the defendant No.1. The conduct of the plaintiffs is clear that the plaintiffs have simply gambling the litigation. The suit of the plaintiffs is barred by limitation. There is no cause of action to file the suit. The defendant No.4 is not concerned and there is no relationship between the parties. The defendant No.4 has purchased the suit schedule property under registered sale deed dated 12-06-2008. The defendant No.4 has verified the record of rights of the suit schedule properties from 1991-1992 which discloses that the suit schedule properties were owned and possessed by the defendant No.1 as a family member consisting himself and defendant No.2 and 3. The defendant No.4 has purchased the property for Rs.42,30,000/- from the defendant No.1. Therefore he is bonafide purchaser. On the basis of the sale deed the mutation has been effected as per MR No.11/2008-2009. The defendant No.4 is exclusive owner of the suit schedule property.

**18.** Further averred in the written statement that this defendant is unconcerned with the alleged litigation now existing or created by the plaintiffs between defendant No.1 to 3. The title and possession of the suit schedule property stands unaffected and cannot be defeated by the plaintiffs by filing this vexicious suit. The plaintiffs have filed this suit only with malafide intention to knock of the property. If the plaintiffs are having any interest in the suit schedule property they would have taken steps against

the defendant No.1. Mere observation of the court stating that the husband of plaintiff No.1 was entitled to seek partition does not create any fresh right which was already hopelessly time barred. The conduct of the plaintiffs is suspicious. The plaintiffs have sought declaration of sale deed, therefore they are liable to pay the court fee on the total consideration amount of sale transaction. Hence suit of the plaintiffs deserves to be dismissed. The plaintiffs have no prima facie case against the defendants. The suit of the plaintiffs suffers from inordinate delay and laches and they are estopped from claiming any kind of discretionary interim reliefs. The plaintiffs have suppressed the true facts. This court is not having pecuniary jurisdiction to try the suit for the reason of under valuation of the suit schedule property and prayed to dismiss the suit with exemplary cost of Rs.50,000/-.

**19.** The plaintiff got amended the prayer portion in the plaint, the defendant No.4 filed additional written statement denying the averments of the amended portion and stated that the plaintiff playing tactics to cause loss to exchequer of the state, by way of deceptive and irrelevant amendment in the relief column of the plaint by deleting the word that the sale deed is null and void to the extent etc. will not relieve the plaintiffs from paying ad-valorem court fee on the actual market value of the suit schedule non agricultural land as on the date of filing of the suit. Even though the plaintiffs have put up their alleged claim which their predecessor in interest has lost in 1979, when the suit was filed by the plaintiffs in O.S.No.70/1979

on the file of Civil Court Karwar seeking half share in suit lands, then also they are liable to pay the court fee on the total consideration amount or on the actual market value on the date of filing of the suit in respect of entire land and not at all entitled to bifurcate to the property as half share and avoid the sale deed legally executed in favour of defendant No.4 by defendant No.1 to 3. The defendant No.4 while purchasing the entire suit schedule property has verified revenue records and orders passed by the Assistant Commissioner Karwar and Deputy Commissioner Karwar by taking opinion from the legal advisor with bonafide valuable consideration purchased the suit schedule property. In R.A.No.29/1988 and R.A.No.30/1988 this court held that right from the date of purchase the predecessor in interest of plaintiffs was not at all in possession of the suit schedule properties and suit was filed by the plaintiffs in the above suit with a specific claim that they are in actual possession against the interest of earlier owner of Shaikh Ummer Hassan Haji Shaikh Shaikh Ahammad under their independent right and the appellate court clearly upheld the plea of possession taken by the plaintiffs in O.S.No.70/1979.

**20.** Further averred in the additional written statement that when there is clear finding in R.A.No.29/1988 that the predecessor in interest of plaintiffs was not at all in possession and plaintiffs in the above suit are actual possession even for seeking for relief of partition, the plaintiffs are bound to pay court fee under section 35(1) of KCF and SV Act. The conduct of the

plaintiffs clearly proves that they have not approached the court with clean hands and suppressed the findings given by this court in R.A.No.29/1988 regarding possession of the property right from 1979. The plaintiffs ought to have filed the suit for declaration and possession and without seeking possession from the plaintiffs in O.S.No.70/1979 as held by this court in R.A.No.29/1988 this suit is not maintainable and if the possession is claimed at this juncture of the case on the date of filing of the suit the same is time barred. The plaintiffs ought to have filed the suit within three years from the date of order passed by the D.C. Karwar in Revision Petition filed by him, as provided under section 135 of Karnataka Land Revenue Act, or at least within 12 years from the said order seeking possession of the suit property under any circumstances on the face of it the instant suit is hopelessly time barred and the conduct of the plaintiffs and their predecessors in interest clearly proves beyond reasonable doubts that they have accepted the above facts and they have lost their right to pursue within the stipulated time of limitation under law and prayed to dismiss the suit with costs.

**21.** The defendant No.4 filed additional written statement denying the averments of the plaint and stated that without impleading surviving plaintiffs in O.S.No.70/1979, the defendant No.3 to 5 or their legal heirs in O.S.No.70/1979 is not maintainable. The plaintiffs have lost their right due to the bar imposed under limitation act. The suit of the plaintiffs is not maintainable and they cannot institute a suit in the manner and from against

the defendants. The defendant No.4 stepped into the shoes of defendant No.1 to 3 who have sold the suit land under register sale deed and handed over the possession to the defendant No.4 and without seeking relief of declaration and cancel the sale deed executed in favour of defendant No.4 without seeking relief of possession filed this suit. The defendant No.2 and 3 and defendant No.4 are not coparceners of plaintiffs, hence no suit for partition can be filed against the defendant No.2 to 4, as the husband of plaintiff No.1 who was defendant No.6 in O.S.No.70/1979 clearly pleaded in his counter claim that plaintiffs in O.S.No.70/1979 and defendant No.3 to 5 have committed criminal trespass, having no right, title and interest over the suit land. In O.S.No.70/1979, the DW-1 deposed that the plaintiffs in O.S.No.70/1979 unauthorizedly trespassed into the suit land on 16-08-1979 i.e. after filing O.S.No.70/1979. In view of the said admission it is clear that the plaintiffs in OS.No.70/1979 and defendant No.3 to 5 were not co-owners of the suit lands nor having any title or interest over the suit land. Hence suit for partition is not maintainable.

**22.** Further averred in the additional written statement that as per the gift deed of 1956, defendant No.1 is title holder of half right in the suit schedule property and rest of half right of his paternal uncle who had also acquired right under same gift deed of 1956, who being the paternal uncle of defendant No.1 in this suit and arrayed as defendant No.1 in O.S.No.70/1979 by name Shaik Abdul Karim Abdul Shaik was occupied and possessed by the

plaintiff No.1 to 5 and defendant No.3 to 5 in O.S.No.70/1979 and they are enjoying the property as of right by showing hostile attitude and conduct with full knowledge of the defendant No.1 in O.S.No.70/1979 and also husband of plaintiff No.1 after so called purchaser of half right from defendant No.1 in O.S.No.70/1979 till execution of registered sale deed in favour of defendant No.4 without interruption, peacefully, unobstructed with full knowledge of defendant No.1 and 6 in O.S.No.70/1979 with adequate continuity, adequate publicity and adverse possession. Even in the judgment and decree passed in R.A.No.29/1988 by this court clearly ordered against the plaintiffs and their predecessors in interest to get the possession of half share purchased in the sale deed from defendant No.1 in O.S.No.70/1979 only under due process of law, till this date no steps were taken to file the suit for possession against the plaintiff in O.S.No.70/1979 by the plaintiffs. The plaintiffs with malafide intention filed suit for partition against defendant No.2 and 3 who are not co-owners but trespassers of suit land as per the own case made out by the husband of plaintiff No.1 in this suit in counter claim filed by him in O.S.No.70/1979 against the plaintiffs in O.S.No.70/1979. There is no cause of action to file the suit and prayed to dismiss the suit with exemplary costs.

**23.** The defendant No.2 and 3 are reported to dead and LRs of defendant No.2 are brought on record.

The defendant No.2(a) filed written statement cum additional written statement stating that the suit for partition is not maintainable as it is ill

conceived and deceptive in nature filed against the late defendant No.2 and 3 or their legal heirs, as they are not co-owners of suit land with the alleged purchaser of half share from Abdul Karim i.e. husband of plaintiff No.1, as the husband of the plaintiff No.1 and defendant No.6 in O.S.No.70/1979 on the file of then Munsif Court Karwar (Civil Judge Court), admitted that they are trespassers who have entered forcibly in suit property on 16-08-1979. As per the law no suit for partition is maintainable against trespasser like plaintiff in O.S.No.70/1979 and without seeking relief of exclusive possession right from 16-08-1979 from the date of admitted trespass by the husband of plaintiff No.1 in his written statement and deposition, from the date of period of limitation 12 years from the trespass. The defendant No.4 stepped into the shoe of defendant No.1 to 3 in view of purchase of exclusive right interest over the suit lands under registered sale deed executed by the defendant No.1 to 3 based on the acquisition of right by adverse possession, so far half share of defendant No.1 in O.S.No.70/1979 on the file of Munsif Court Karwar, which alleged to be purchased by the husband of plaintiff No.1 and based on name entered in R of R of suit land by deleting the name of defendant No.6 in O.S.No.70/1979 as per order of D.C. and based on entry of name of original defendant No.1 to 3 in this suit on the death of defendant No.1 in O.S.No.70/1979, as full and exclusive owners of full extent of suit lands in 1995, which stands unchallenged as per section 135 of KLR Act, till today the plaintiffs or husband of plaintiff No.1 in this suit lost all

right, title, interest by virtue of limitation Act, hence suit deserves to be dismissed.

**24.** Further averred in the written statement that as per the gift deed of 1956 the defendant No.1 is title holder of half right in the suit schedule property and remaining half right of his paternal uncle who has acquired half right under the same gift deed. The defendant No.1 to 3 in this case and their successors have challenged the mutation entry made in the name of husband of plaintiff No.1 before the assistant Commissioner Karwar and the Assistant Commissioner cancelled mutation entry in the name of husband of plaintiff No.1 on the basis of the sale deed. The appeal filed by the husband of plaintiff No.1 before D.C. Karwar also dismissed and in the year 1988 the names of defendant entered in revenue records by deleting the name of husband of plaintiff No.1 and same was not challenged by the husband of plaintiff No.1 or plaintiffs in this suit before the competent forum within the period of limitation.

**25.** Further averred in the written statement that when the defendant No.1 in O.S.No.70/1979 expired, the defendant No.1 to 3 in this case moved an application and got their name entered in R of R showing utter hostile conduct against the plaintiffs and their predecessors in interest and enjoyed the property as of right with the full knowledge of the plaintiff and their predecessors in interest and said right exercised by defendant No.1 to 3 relating to half share of defendant No.1 in O.S.No.70/1979 which was

purchased by defendant No.6 was continued adequately with the knowledge of plaintiffs and their predecessors in interest until same was purchased by defendant No.4. Even in the judgment and decree passed in R.A.No.29/1988 by this court has clearly ordered against the plaintiffs and their predecessors in interest to get the possession of half share purchased in registered sale deed from defendant No.1 in O.S.No.70/1979 only under due process of law and granted permanent injunction, the plaintiffs and their predecessor in interest in disposed by the plaintiffs and defendant No.3 to 5 in O.S.No.70/1979 till this date no steps were taken to file the suit for possession against the plaintiffs in O.S.No.70/1979. Therefore suit is barred by limitation.

**26.** Further averred in the written statement that, there is no cause of action to file the suit for partition against defendant No.2 and 3 who are not co-owners or joint owners of the suit schedule property with the plaintiffs. If at all the plaintiffs and their predecessors are in interest should have filed suit for possession, when the cause of action accrued to them. The plaintiffs ought to have filed suit for possession. The admission of the husband of plaintiff No.1 in the suit can be noted by the court, as per his pleadings and deposition the defendant No.2 and 3 in this suit and other plaintiffs and defendant No.3 to 5 in O.S.No.70/1979 are trespassers of half share of defendant No.1 in the suit. In the judgment in R.A.No.29/1988 and R.A.No. 30/1988 the court has held that keeping in view of the above principle of

Mohhamaddan Law, and the clear view that the defendant No.6 being the purchaser of the property from the first defendant, he has no alternative, except to seek a partition by filing the suit and get the properties to his possession. Without that, whatever his right, possession over the properties is not legally accepted one. Until and otherwise the plaintiffs and defendant No 3 to 5 are ousted from the possession of the property by due process of law, mere claiming that plaintiffs have voluntarily given possession to him is not holds any water.

**27.** Further averred in the written statement that the defendant No.2 in this suit is defendant No.1(f) in O.S.No.70/1979 and late defendant No.3 is plaintiff No.2 in O.S.No.70/1979, the plaintiffs have not added the legal heirs of late son of defendant No.2. Further plaintiff No.3 in O.S.No.70/1979 is still alive and permanent injunction granted against the husband of plaintiff No.1 in O.S.No.70/1979 is still in force and without filing suit for possession by aiding Hawabi Mohammad Siddique and defendant No.3 to 5 or their legal heirs in O.s.No.70/1979 this suit is not maintainable for non joinder of necessary parties. The permanent injunction passed against the plaintiffs and their predecessors in interest is still is in existence. The defendant No.1 has sold his right and acquired by rule of adverse possession to the defendant No.4 under registered sale deed dated 12-06-2008, hence the defendant No.4 became owner of the suit schedule property. The plaintiffs instead of filing the suit for declaration possession, but filed this suit to grab the

property of defendant No.4. The suit is under valued and no proper court fee has been paid by the plaintiffs. The husband of plaintiff No.1 has filed counter claim in O.S.No.70/1979 for seeking possession that the plaintiffs and defendant No.3 to 5 in that suit taken contention that the plaintiffs have trespassed into the suit property after filing of O.s.No.70/1979 on 16-08-1979 and the said suit was filed on 04-07-1979. The court has rejected the relief claimed by the plaintiff. In O.S.No.70/1979 and in present suit the suit schedule properties are one and the same. Hence suit is hit by Rule 2 of Order 2 and Principles of Res Judicata and prayed to dismiss the suit.

**28.** The defendant No.2(b) and (c) have filed memo stating that they adopts written statement filed by defendant No.2(a).

The plaintiffs have filed IA under Order 1 Rule 10 of C.P.C. to implead defendant No.5 to 11 and said IA came to be allowed and defendant No.5 to 11 are impleaded in this case. The defendant No.5, 7 to 11 not appeared before the court, hence they are placed exparte. The defendant No.6 appeared through his counsel and filed written statement.

**29.** The defendant No.6 filed written statement denying the averments of the plaint and stated that the present suit is not maintainable as there is no cause of action against this defendant. The suit is liable to be dismissed for mis-joinder of parties to the suit. The defendant No.6 is not necessary party to the present suit. The suit of the plaintiff is barred by limitation. The

plaintiff has no locus standi to file the present suit against this defendant and prayed to dismiss the suit.

The defendant No.6 has also filed memo stating that he adopts written statement filed by the defendant No.4.

**30.** The plaintiffs have got amended the plaint by filing IA No.16 and got inserted para No.16(a) stating that the defendant No.5 to 11 are impleaded in this case later point of time by filing application under Order 1 Rule 10 of CPC, however the said defendant No.5 to 11 are only formal parties to this suit. There is no prayer of plaintiffs against the defendant No.5 to 11. They are impleaded only to avoid technicalities as defendant No.1 to 4 have unnecessarily made much on not showing them as parties to this suit. However it is made clear that the said defendants No.5 to 11 do not have any right, title or interest in the suit schedule property. Further it is made clear that the earlier house standing in the suit land is collapsed much before filing of the suit and said fact is already stated in this plaint. Therefore the said defendant No.5 to 11 are not in possession or enjoyment of any portion of the suit schedule property. As on the date of filing of the suit the suit land is vacate land and even in the sale deed executed in favour of defendant No.4 the same is shown as vacate land.

**31.** The defendant No.4 has filed additional written statement stating that the plea advanced by the plaintiffs that defendant No.4 to 6 are added in this case only because other defendants have taken contention that they are

necessary parties is meaningless. The plaintiffs have admitted that they have not claimed any kind of relief against them and they are made as formal parties even though earlier suit in O.S.No.70/1979. In earlier suit and in RA clearly held that as on the date of filing of the earlier suit by the plaintiffs they are in actual possession of suit schedule properties involved in the suit and husband of plaintiff No.1 and the plaintiffs who were brought as LRs of original defendant No.6 in said suit are not at all in possession and they are stranger. It is settled position of law that suit for partition can be filed only against co-owners, if the plaintiffs are in actual possession to get their share separated from the share of co-owner. In this case the plaintiffs in O.S.No.70/1979 are not having any kind of right and title over the suit schedule properties and hence they are not stranger. The husband of plaintiff No.1 taken definite stand that they are trespasser and sought eviction order and possession against them by filing counter claim which was rejected in appeals and granted permanent injunction against the defendant No.6. In the said proceedings the present plaintiffs brought on records as LRs of defendant No.6, hence suit for partition is not maintainable against the defendant No.3 to 6. This defendant being the purchaser steps into the shoes of defendant No.3 to 6 and 2 who is LRs of the one of the plaintiff in O.S.No.70/1979 and prayed to dismiss the suit.

**32.** The defendant No.1, defendant No.2(a) to (c) have filed memo stating that they adopts written statement filed by the defendant No.4.

**33.** On the basis of the above pleadings, the following issues were framed;

**ISSUES**

- 1. Whether the plaintiffs prove that after the death of their father the plaintiffs were all in joint possession of the suit schedule properties along with defendant No.1?**
- 2. Whether the defendant No.1 proves that he is in actual possession of the suit schedule properties to the knowledge of husband of plaintiff No.1 and other plaintiffs and he perfected his title over the half share claimed by the plaintiff, by way of adverse possession? (This issue has been deleted as per order dated 24-10-2024)**
- 3. Whether the defendant No.4 proves that he is bona-fide purchaser of suit schedule property under a registered sale deed dtd:12.6.2008 executed by the defendant No.1 to 3?**
- 4. Whether the plaintiffs further prove that the said sale deed dtd:12-06-2008 executed by defendant No.1 to 3 in favour of defendant No.4 is not binding on the share of the plaintiffs?**
- 5. Whether the plaintiffs are entitled for half share in the suit schedule properties?**
- 6. What order or decree?**

**: ADDL ISSUES DATED : 01-06-2021 :**

- 1. Whether the defendants proves that the suit of the plaintiff is not maintainable for want of relief of possession as against the plaintiff in O.S.No.70/1979 on the file of then Munsiff Court, Karwar?**

2. Whether the defendants prove that the suit of the plaintiff is hit by the Rule of "Res-judicata" in view of judgment and decree passed in O.S.No.70/1979 which was modified in RA No.29/1988 and RA No.30/1988?
3. Whether the defendants prove that the suit of the plaintiffs is barred under the provisions of Order II Rule 2 of CPC?
4. Whether the defendants prove that the suit of the plaintiff is barred by law of limitation?
5. Whether the defendants prove that the suit of the plaintiff is barred under the provisions of Sec. 135 of the Karnataka Land Revenue Act in view of order passed by the Deputy Commissioner, U.K. Karwar dated 07-02-1987 vide case No.RB/RTC/SR/84?

**ADDITIONAL ISSUES DATED: 17-09-2022**

6. Whether the defendant No.6 proves that the plaintiffs have unnecessarily made defendant No.6 as party without any cause of action against defendant No.6?
7. Whether the defendant No.6 proves that the suit is bad for mis-joinder of parties?
8. Whether the defendant No.6 proves that the suit filed by the plaintiffs is barred by law of limitation?

**ADDITIONAL ISSUES DATED:24-10-2024**

9. Whether the defendant No.2(a) and 4 prove that the Court fee paid by the plaintiff is improper and insufficient in view of the provision of Karnataka Court Fees and suit valuation Act?

**RECASTE ISSUE DATED:17-12-2025**

**1. Whether the defendant No.1 and 2(a) proves that they are in actual possession of the suit schedule properties to the knowledge of the husband of plaintiff No.1 and other plaintiffs and they have perfected their title over the half share claimed by the plaintiff by way of adverse possession?**

**34.** To prove the case, the plaintiff No.6 got examined as PW-1 and got marked Ex.P-1 to Ex.P-13. On the other hand the GPA holder of defendant No.1 got examined as DW-1 and got marked Ex.D-1 to Ex.D-5 and the defendant No.4 got examined as DW-2 and got marked Ex.D-6 to Ex.D-20.

**35.** Heard the arguments of learned counsel for the plaintiffs and the learned counsel for the defendant No.4. The learned counsel for plaintiffs and defendant No.4 submitted that they have filed written arguments long back.

**36.** My answer to the above issues are as under;

<b>Issue No.1</b>	<b>:</b>	<b>In the Affirmative</b>
<b>Issue No.2</b>	<b>:</b>	<b>deleted</b>
<b>Issue No.3</b>	<b>:</b>	<b>In the Negative</b>
<b>Issue No.4</b>	<b>:</b>	<b>In the Affirmative</b>
<b>Issue No.5</b>	<b>:</b>	<b>In the Affirmative</b>
<b>Addl. Issue No.1</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.2</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.3</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.4</b>	<b>:</b>	<b>In the Negative</b>

<b>Addl. Issue No.5</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.6</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.7</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.8</b>	<b>:</b>	<b>In the Negative</b>
<b>Addl. Issue No.9</b>	<b>:</b>	<b>In the Negative</b>
<b>Recasted Issue</b>	<b>:</b>	<b>In the Negative</b>
<b>Issue No.6</b>	<b>:</b>	<b>Is as per final order for the following;</b>

### REASONS

#### **37. Issue No.1, Recasted issue, Issue No.3 and Issue No.4 :-**

These issues are interrelated to each other to avoid repetition of facts, these issues are taken for common discussion.

It is specific case of the plaintiffs is that the suit schedule property originally belongs to one Shaikh Mohammad Shaikh Hassan and he had three sons and six daughters. The said Shaikh Mohammad Shaikha Hassan executed gift deed infavour of his elder son on 12-09-1927 , the said Mohammad Hussain became owner of the suit schedule property. The said gift deed was challenged by the daughter of Shaikh Mohammad Shaikh Hassan in O.S.NO.161/1947 and said suit came to be withdrawn since matter was compromised. The Mohammad Hussain died in the year 1945. The brother of Mohammad Hussain by name Abdul Latif predeceased Mohammad Hussain 1940, as per the Muslim Law the suit schedule property came to be transferred in the name of third son of Shaik Mohammad Shaik Hussan by name Abdulla. The said Abdulla has executed gift deed on 20-01-1956

infavour of his son by name Abdul Karim and son of his brother late Abdul Latif by name Mohammad Abdul Latif. Mohammad Abdul Latif was minor on the date of the said gift deed, hence Abdul Karim S/o Abdul had accepted the gift on his behalf as well as on behalf of Mohammad as minor guardian.

**38.** The said Abdul Karim has further executed sale deed in the year 1978 and sold the suit schedule property infavour of father of the plaintiffs by name late Shaikh Uman Hasan Haji Shaikh Ahammad, accordingly the father of the plaintiffs became owner of the suit schedule property. In the year 1979 wife of Abdulla by name Ameenabi Abdulla shaikh and daughters of Abdula from first wife as well as from second wife altogether along with daughters of Abdul Latif by name Kusumbi and Khateejabi filed a suit before the Munsif Court Karwar in O.S.No.70/1979 for declaration and injunction against the father of the plaintiffs who was defendant No.6 in that suit. The father of plaintiff has filed written statement and counter claim seeking possession of house No.507 as he was forcibly disposed during the pendency of the suit and said suit came to be dismissed on 04-04-1988 in counter claim of the defendant No.6 came to be allowed. The plaintiff No.2 to 5 in O.S.No.70/1979 have filed R.A.No.29/1988 and defendant No.2 preferred in appeal in R.A.N.30/1988 before the Senior Civil Judge, Karwar and said regular appeals clubbed together and disposed on 23-08-2003. The R.A.No.29/1988 came to be allowed partly and further counter appeal No.30/1988 filed by defendant No.2 was allowed and declared that the

defendant No.2 by name Mohammad Abdul Latif is having half share in the suit schedule properties and the father of these plaintiffs by name Shaikh Umar Hassan has half right in the suit schedule property. Further court has made an observation that the gift deed dated 20-01-1956 executed by the Abdul Shaikh infavour of Mohammad S/o Abdul Latif and Abdul Karim S/o Abdul was valid and legal. Hence both together are having half right each in the suit schedule property. During the pendency of the suit father of the plaintiffs died in the month of January 2001 and after his death plaintiffs brought on record and appeals came to be disposed off. The plaintiff No.1 is paradasin lady and not come out of the house at any time and she is totally ignorant about the outside word, the plaintiff No.2 to 6 were minors in the year 2003 and due to bad financial conditions the plaintiffs have not challenged the judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988. Further the appellate court has declared that the defendant No.1 and plaintiffs father Shaikh Umar Hasan are having half right each in the suit schedule property. The houses situated in suit land were collapsed. Hence question of taking possession of suit house does not arise. The plaintiff No.1 to 6 being the legal heirs of Shaikh Ummer Hassan stepped into his shoes. The defendant No.2 and 3 are not having right in the suit schedule property. The judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988 they are restricting their right to the extent of half share as declared by the court and recently they came to know that the defendant No.1 to 3 have sold the suit schedule property to the defendant No.4. The

plaintiffs were not aware that the defendant No.1 to 3 have executed sale deed on 12-06-2008. The defendant No.4 now trying to dispose of the property.

**39.** The plaintiff No.6 has filed evidence on affidavit and reiterated the averments of the plaint and relied upon Ex.P-1 to Ex.P-13. In the cross examination of PW-1 stated that he is having knowledge about the judgment passed in O.S.No.70/1979 and in the year 2003 he was aged about 14 years and plaintiff No.2 was aged about 22 years, plaintiff No.3 was aged about 21 years. The PW-1 admitted that they have filed this suit for partition and not for possession and PW-1 admitted that in R.A.No.29/1988 and R.A.No.30/1988 they were impleaded as plaintiffs. Further PW-1 admitted that his father was defendant No.6 in O.S.No.79/1979 and there were five plaintiffs in that suit and the said plaintiffs have filed suit for declaration and permanent injunction and in that suit his father has filed counter claim. If the cross examination of PW-1 is taken into consideration it shows that O.S.No.79/1979 has been filed by the five plaintiffs for declaration and permanent injunction and his father was defendant No.6 in that suit and his father has filed counter claim in the written statement.

**40.** Further PW-1 admitted that the suit schedule property in O.S.No.70/1979 and suit schedule property of this suit are one and the same. The PW-1 shown his ignorance that the suit in O.S.No.70/1979 has been dismissed and counter claim filed by his father came to be decreed and

direction has been given to give possession of house No.507 to his father. Further PW-1 admitted that the plaintiffs in O.S.No.70/1979 have preferred R.A. No.29/1988 and the defendants have preferred R.A.No.30/1988 and PW-1 shown ignorance that the R.A. No.29/1988 came to be decreed. Further PW-1 admitted that on the basis of the judgment passed in R.A. No.29/1988 they have not filed suit for possession and he denied that in view of judgment passed in R.A.No.30/1988 and O.S. No.70/1979 they are not entitled for the possession of the property. Further PW-1 admitted that they have not challenged the judgment passed in R.A.No.29/1988 and R.A.No.30/1988, therefore the judgment and decree passed in both appeals attained its finality. If the cross examination of PW-1 is taken into consideration it shows that R.A. No.29/1988 came to be allowed and they have not challenged the judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988.

**41.** The GPA holder of defendant No.1 filed evidence on affidavit and reiterated the averments of the written statement. In the cross examination he admitted that he has not visited the suit schedule property and he had no personal knowledge about the suit schedule property and his chief examination has been prepared by defendant No.1. Therefore if this piece of evidence is taken into consideration it shows that he had no knowledge about the suit schedule property and he had not given instructions to

prepare his chief examination and he clearly stated that the defendant No.1 had given information to prepare the chief examination.

**42.** Further DW-1 admitted that he is not party to R.A. No.29/1988 and he shown ignorance that in R.A. No.29/1988, it is ordered to file separate suit for partition and further he stated that he do not know the documents produced by the parties to the suit in earlier suit. Further DW-1 stated that the defendant No.1 to 3 have sold the suit schedule property to the defendant No.4 and at the time of execution of sale deed the defendant No.1 was having half right in the suit schedule property and he was not present at the time of sale deed. If the cross examination of DW-1 is taken into consideration it shows that he had no knowledge about the earlier proceedings and he had clearly admitted that defendant No.1 was having half right in the suit schedule property. If the defendant No.1 was having full right in the suit schedule property, the DW-1 would have denied the same.

**43.** The defendant No.4 has filed evidence on affidavit and reiterated the averments of the written statement and additional written statements.

In the cross examination he admitted that he has purchased more than 100 properties in his name and in the name of his family members in and around the Karwar and Ankola. Further DW-2 admitted that before purchase of property he had not given public notice in the news paper. Further DW-2 stated that at the time of purchase of the property he has given all the documents to advocate and also he had given documents in

respect of judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988. Further DW-2 admitted that the judgment and decree in RA No.29/1988 and RA No.30/1988 were passed in the year 2003 and within five years of the decree passed in the said appeals he has purchased the property. Further DW-2 admitted that the suit schedule property is open space and the defendants who were in the possession had given possession to him. If the cross examination of DW-2 is taken into consideration it shows that before purchase of the property he had not issued public notice in the paper publication and at the time of purchase of the property he had knowledge about the judgment and decree passed in R.A. No.29/1988 and R.A.No.30/1988.

**44.** Further DW-2 admitted that Shaikh Ummer Hassan has purchased the suit schedule property under registered sale deed dated 07-02-1978 and as per the said sale deed he has purchased house No.504 to 507 and 13 guntas, five and half anas of the land and he clearly admitted that he has not verified the documents in respect of suit schedule property. Further DW-2 admitted that as per judgment and decree passed in O.S.No.70/1979 and RA No.29/1988 and RA No.30/1988 the Umar Hassan i.e. plaintiff No.1 to 6 and Mohammad Abdul Latif are owners of half share in the suit schedule property and he shown ignorance that the preliminary decree has been passed in RA No.29/1988 and RA No.30/1988. Therefore it shows that the DW-2 had knowledge that Mohammad Umar Hassan was owner to the extent of half

share in the suit schedule property and DW-2 denied that he is not bonafide purchaser of the suit schedule property since he had not issued public notice in paper publication.

**45.** In the cross examination DW-2 stated that at the time of purchase of the property there was house, but it was collapsed in the year 2009 and 2010 and he admitted that the Shaikh Umar Hassan has purchased house No.504 to 507 and 13 guntas, five and half anas in the suit survey number. In further cross examination DW-2 denied that there were old house and those houses were collapsed and he stated that there were no houses in the suit schedule property. If the cross examination of DW-2 is taken into consideration at one stretch he stated that there was house in the suit schedule property and it was collapsed and in further cross examination he stated that there were no houses. Therefore it shows that the DW-2 is not stick up with one version and his evidence is not trustworthy and if there were no houses seeking possession of house does not arise.

**46.** Ex.P-1 is RTC extract pertaining to Sy.No.28A1AA1A1/18 to the extent of 00-13-00, the name of defendant No.4 is appearing in column No.9 and 12. Ex.P-2 is RTC extract pertaining to Sy.No.28A1A1A1/14 to the extent of 00-00-05, the name of defendant No.4 is appearing in column No.9 and 12. Ex.P-3 is certified copy of village Form No.6, the name of Umar Hassan has been mutated in revenue records on the basis of agreement of sale dated 16-01-1978. Ex.P-4 is certified copy of plaint in O.S.No.70/1979, it shows

that Smt. Aminabi W/o Abdul Shaikh and four others have filed suit against Shaikh Abdul Karim Abdul Shaikh and six others for declaration and permanent injunction. Ex.P-5 is certified copy of judgment passed in O.S. No.70/1979. In that suit the husband of plaintiff No.1 was defendant No.6 and he has filed counter claim and said suit came to be dismissed with costs and counter claim of defendant No.6 came to be decreed. Ex.P-6 is certified copy of decree passed in O.S.No.70/1979.

Ex.P-7 is certified copy of judgment passed in R.A.No.29/1988 and R.A.No.30/1988, on perusal of the same it shows that R.A.No.29/1988 is came to be partly allowed and counter appeal in RA No.30/1988 filed by the defendant No.2 in O.S.No.70/1979 came to be allowed and declared that defendant No.2 is having half share in the suit schedule properties. Ex.P-8 is certified copy of sale deed dated 12-06-2008, on perusal of the same it shows that the defendant No.1 to 3 have executed sale deed infavour of defendant No.4 under registered sale deed in respect of suit schedule property. Ex.P-9 is M.R. extract, on perusal of the same it shows that on the basis of the sale deed, the name of defendant No.4 mutated in revenue records. Ex.P-10 is notice issued through paper publication on 01-12-2007. Ex.P-11 is notice issued through paper publication on 11-06-2008. Ex.P-12 and Ex.P-13 are General Power of Attorneys.

**47.** Ex.D-1 is notice issued by the D.C. Karwar in RB-RTR-SR. Ex.D-2 is General Power of Attorney executed by defendant No.1 infavour of DW-1.

Ex.D-3 is mutation extract, on perusal of the same it shows that on the basis of inheritance, the name of Shaikh Mohammad Abdul Latif has been mutated in the revenue records. Ex.D-4 is mutation extract. Ex.D-5 is M.R. extract, the said document is not legible to read the contents of the document. Ex.D-6 is certified copy of written statement filed by the plaintiffs to the counter claim filed by the defendant No.6 in O.S.No.70/1979. Ex.D-7 is certified copy of written statement filed by the defendant No.2 in O.S.No.70/1979. Ex.D-8 is certified copy of written statement filed by the defendant No.6 in O.S.No.70/1979. Ex.D-9 is certified copy of issues framed in O.S.No.70/1979. Ex.D-10 is certified copy of Order passed by the A.C. Ex.D-11 is notice issued by the office of the D.C.

**48.** Ex.D-12 is certified copy of plaint in O.S.No.70/1979. Ex.D-13 is certified copy of deposition of Shaikh Ummer Hassan in O.S.No.70/1979. Ex.D-14 is certified copy of voter list pertaining to the year 1977. Ex.D-15 is M.R. Extract. Ex.D-16 is RTC extract pertaining to Sy.No.28A/A/A/18. Ex.D-17 is RTC extract pertaining to Sy.No.28A1A1A1/18, the name of Mohammad S/o Abdul Latif Shaikh is appearing in column No.9 and 12 as a manager of the family. Ex.D-18 is RTC extract pertaining to Sy.No.28A1A1A1/14B, the name of Shaikh Mohammad Abdul Latif has been entered in column No.9 and 12. Ex.D-19 M.R. extract. Ex.D-20 is Extract from the property registered card.

**49.** In O.S.No.70/1979 and judgment passed in RA No.29/1988 and RA No.30/1988 it is held that the husband of plaintiff No.1 has purchased the suit schedule property. Further the defendants have not disputed the origin of the suit schedule property or property purchased by the husband of plaintiff No.1. Though in O.S.No.70/1979, the court has decreed the counter claim filed by the defendant No.6 i.e. husband of plaintiff No.1 against the plaintiffs in that suit and directed the plaintiffs in that suit to hand over the vacate possession of house No.507 to the defendant No.6 and they shall pay mesne profits at the rate of Rs.20/- per month from 16-08-1979 till handing over the possession of the suit house No.507 to the defendant No.6 or till such of the three events occurs as enumerated under order 20 Rule 12 1 C of C.P.C. and 3 months time has been granted to the plaintiffs of that suit to hand over the vacant possession of the house No.507 to the defendant No.6.

**50.** Ex.P-7 is certified copy of judgment passed in RA No.29/1988 and RA No.30/1988. On perusal of the same it shows that Sharifabi Abdul Shaikh has preferred an appeal in RA No.29/1988 and Shaikh Ahmmad Abdul has filed RA No.30/1988. The court has passed the common judgment and partly allowed RA No.29/1988 and counter appeal RA No.30/1988 filed by the defendant No.2 is allowed and declared that the defendant No.2 in O.S.No.70/1979 is having half share and order to draw preliminary decree.

**51.** On perusal of the Ex.P-7 it shows that the court has granted injunction infavour of plaintiffs against defendant No.6 causing any

interference or eviction over the suit schedule properties without due process of law. In para No.30 of the judgment the court has made an observation that " So far as the claim of 6<sup>th</sup> defendant is concerned, he is not entitled for the possession of the suit schedule properties he is only entitled for half share under the 1978 sale deed as executed by the 1<sup>st</sup> defendant and the possession is to be given to the 6<sup>th</sup> defendant only by effecting division in the properties that means, there is no division between defendant No.1 and 2 in the suit schedule properties and 2<sup>nd</sup> defendant has not executed valid deed or authorized the 1<sup>st</sup> defendant to execute deed infavour of the 6<sup>th</sup> defendant, under these circumstances though the 6<sup>th</sup> defendant is entitled the share of the 1<sup>st</sup> defendant, it is only by effecting a partition. The learned trial judge not considered this aspect and held that the sale deed is valid and allowed the 6<sup>th</sup> defendant for putting possession of the property and mesne profits as rents of the properties." In RA No.30/1988 court has answered point No.2 that the defendant No.6 is entitled for half share by filing separate suit. The plaintiffs, defendant No.1 to 5 of O.S.No.70/1979 have not challenged the judgment and decree passed in RA No.29/1988 and R.A.No.30/1988. In the said appeals the court has given liberty to the husband of plaintiff No.1 to file separate suit for partition. None of the parties to the said appeals have preferred an appeal before the Appellate Court, hence judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988 reached its finality. Hence the plaintiffs are having ½ share in the suit schedule property.

**52.** The defendant No.1 and 2(a) have taken contention that they are in actual possession of the suit schedule property to the knowledge of the husband of plaintiff No.1 and other plaintiffs and they have perfected their title over the half share claimed by the plaintiffs by way of adverse possession.

**53.** In the written statement the defendant No.1 has taken contention that there is no merits existing in the suit as the husband of plaintiff No.1 and the plaintiffs have considered the adverse possession and occupation of the suit schedule property by this defendant by getting his name entered in the record of rights as owner and in actual possession with the full knowledge of husband of plaintiff No.1 and plaintiffs and with the full knowledge of the whole world, this defendant has perfected the rights over the suit properties towards the half share claimed by the plaintiffs in this suit by virtue of adverse possession and the suit is not at all enforceable after lapse of more than 32 years.

Admittedly the husband of plaintiff No.1 has purchased the property under registered sale deed. The defendants have not disputed the sale deed. The defendants have categorically relied upon counter claim filed by the husband of plaintiff No.1 in OS No.70/1979. Further in O.S.No.70/1979 none of the defendants have taken defence that they have perfected their title over the property purchased by the husband of the plaintiff No.1 by way of adverse possession. Mere taking contention is not sufficient. The defendants

have to specifically plead the date of possession and when it become adverse to the interest of real owner. The plaintiffs are claiming partition on the basis of findings given by the court in R.A.No.30/1988 and there is no any contention of the defendants that in O.S.No. 70/1979 they have taken defence that they have perfected their title over the suit schedule property by way of adverse possession. Let me discussed about the adverse possession.

**54.** A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by Supreme Court in Karnataka Board of Wakf v. Government of India and Others [(2004) 10 SCC 779] in the following terms: "Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law, but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.

**55.** A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse

possession" In Narne Rama Murthy v. Ravula Somasundaram and Others [(2005) 6 SCC 614], Supreme Court held: "However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation".

**56.** In Karnataka Wakf Board, the law was stated, thus: "In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their

possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law, but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

**57.** An observation has been made in this regard in S.M. Karim v. Mst. Bibi Sakina [AIR 1964 SC 1254]: "Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to

raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

**58.** Adverse possession -- Where possession is referable to a permissive possession, it cannot be said that person in possession has perfected title by adverse possession, even if he continued in possession for a long period. Adverse possession is commenced in wrong and is aimed against the right owner. A person is said to hold the property adversely to the real owner, when that person in denial of the owner's right excluded him from the enjoyment of the property. The requirement of adverse possession is *nec vi nec clam nec precario*, ie. the possession required must be adequate in continuity, in publicity and in extent. Where the possession is referable to a permissive possession, it cannot be said that the person in possession has perfected title by adverse possession, even if he continued in possession for a long period. Mere continuance of possession for twelve years or more is not enough to defeat the title of the real owner and to claim title by operation of S.27 of the Limitation Act. The exception to the General Rule that the limitation bars only the remedy and not the right is contained in S.27 of the Limitation Act.

**59.** Limitation Act 1963, S. 27 -- The starting point of period of limitation is the point at which possession of defendant becomes adverse to plaintiff. By the expiry of the period for instituting a suit for possession, the right of the owner of the property shall stand extinguished and the person in adverse

possession would get a legal right to be in possession. A person who has perfected title by adverse possession could even maintain a suit on the basis of the prescriptive title he has acquired. S.27 operates as an extinguishment of the right of the real owner and a vesting of the right in the trespasser or a person in unlawful possession. Art.65 of the Limitation Act provides for a period of limitation of twelve years for filing a suit for possession of immovable property; and the time from which the period begins to run is provided as "when the possession of the defendant becomes adverse to the plaintiff". Therefore, the starting point of the period of limitation is the point at which the possession of the defendant becomes adverse to the plaintiff. That is a question of fact and it is to be pleaded and proved by the person who claims adverse possession. A person in permissive possession can claim that his possession was adverse to the real owner only if he proves that he had shed his character as the permissive occupier and started his possession adverse to the real owner. The animus possendendi is the important aspect to be proved to claim adverse possession. A secret hostile animus is not sufficient to constitute adverse possession. In the case of permissive possession, the possession by itself is not material or relevant, since the person who was permitted could possess the property on the basis of such permission. The nature of the possession is attributable to the permission in such cases. The possession becomes adverse only when it becomes irreconcilable or contrary to the permission granted. Such intention should be

made known or at least manifested in the acts of the person who claims adverse possession.

**60. 1. 2008(1) APEX COURT JUDGEMENTS 580(S.C.),Annakili V/s Vedanayagam & Others;- it is held that - "Adverse possession-Proof-Two elements of advrse possession are:(1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant possidendi is a requisite ingredient of adverse possession – Not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of possession – Mere long possession for a period of more than 12 years without anything more do not ripen into a title."**

**61.** 2019(8) SCC page 729 in between Ravinder Kaur Grewal and others Vs Manjeet Kaur and others, the para No.60 of the said judgment reiterated herewith;

"60. The adverse possession requires all the three classic requirements to coexist at the same time, namely, necvi i.e. adequate in continuity, necclam i.e., adequate in publicity and necprecario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required.

Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various states confers rights based on possession."

**62.** The learned counsel for the plaintiffs relied upon decision reported in **(2020) 15 Supreme Court Cases page 218 – It is held that claim of independent title and adverse possession simultaneously and from the same date – Amounts to taking contradictory pleas – Principles clarified – Reiterated, when a plea of adverse possession is projected, it is inherent in the nature of it that some one else is the owner of the property – Thus, the pleas on the title and adverse possession are mutually inconsistent and the later does not begin to operate until the former is renounced.**

**63.** The learned counsel for the defendant No.4 relied upon citation reported in **ILR 2003 KAR 2253 – It is held that-(A) LIMITATION ACT, 1963 (CENTRAL ACT NO. 36/1963) -ARTICLE 65 Adverse possession Predecessor-in-interest of plaintiffs coming into possession of the land by virtue of an unstamped and unregistered**

**sale deed executed by predecessor-in-interest of defendants in 1931 Plaintiffs in continuous possession till 1956 when defendants by issuing a notice calling upon plaintiffs as trespassers to hand over possession of the land to them Plaintiffs Held, the unstamped and unregistered sale deed can at least be looked into for the collateral purpose of nature of possession of the plaintiffs over the land Accordingly, the sale deed shows that possession of plaintiffs was not illegal and unauthorised being in continuous and uninterrupted possession since 1931 and they having set up hostile title thereto against defendants who started asserting their title only from 1956, plea of adverse possession of plaintiffs established.**

**(B) REGISTRATION ACT, 1908 (16 of 1908) SECTION 17 Unstamped and unregistered sale deed Though does not convey title to the vendee and not admissible in evidence, can be looked into for collateral purposes.**

In that case the plaintiff has relied upon unstamped and unregistered sale deed and also claimed adverse possession. But in present case since 1979 the litigations between the parties are going on, therefore the question of adverse possession does not arise.

**64.** The learned counsel for the defendant No.4 relied upon citation reported in **AIR 1995 Orissa page 70- it is held that- Adverse possession – Possession of defendant of disputed land noted in**

**record of rights- Establishes possession of defendant – Parcha issued in the name of plaintiff during settlement of operations- Losses value in view of entry of defendant's name in record of rights possession of defendants for about 16 years – Right of plaintiff on the basis of title is lost by adverse possession.**

**65.** The learned counsel for the defendant No.4 relied upon citation reported in **ILR 2001 KAR 5270 – It is held that – LIMITATION ACT, 1963 (CENTRAL ACT NO.36 OF 1963)-ARTICLES 64 AND 65** The contention of plaintiff was that the defendant was inducted in to possession gratuitously by his father and as such his possession was permissible possession. The defendant pleaded adverse possession. High Court on facts found that though the plaintiff's categorical case was of permissible Possession, the same was not proved but on the other hand continued possession of the defendant was admitted and the attendant circumstances corroborate the theory of adverse possession.

**66.** In RA No.29/1988 and R.A.No.30/1988 it is held that the defendant No.6 is entitled for half share i.e. the property sold by the defendant No.1 in O.S.No.70/1979 and given liberty to the husband of plaintiff No.1 to file separate suit for partition and it is clearly held that the defendant No.6 is only entitled for half share under the 1978 sale deed as executed by 1<sup>st</sup>

defendant and the possession to be given to the 6<sup>th</sup> defendant only by effecting division in properties that means there is no division between the defendant No.1 and 2 in suit schedule properties. The none of the parties to the R.A.No.29/1988 and R.A.No.30/1988 challenged the findings given in point No.2 of R.A.No.30/1988. Therefore it is opinion of the court that the defendant No.1 and defendant No.2(a) have not proved that they have perfected their title over the suit schedule property by way of adverse possession.

**67.** The defendant No.4 in the written statement taken contention that he is bonafide purchaser of the suit schedule property under registered sale deed dated 12-06-2008 executed by the defendant No.1 to 3. On the other hand the plaintiffs have taken contention that the said sale deed executed by the defendant No.1 to 3 is not binding on the share of the plaintiffs. In the evidence the defendant No.4 reiterated the averments of the written statement and in cross examination DW-2 admitted that before purchase of the suit schedule property he has not given public notice through paper publication. Further he admitted that he had given copies of judgment passed in R.A.No.29/1988 and R.A.No.30/1988 to his counsel for legal opinion. The DW-2 stated that he had information that the judgment passed in appeals are not correct. If this piece of evidence is taken into consideration it shows the conduct of the DW-2 since he has commented on the judgment and decree passed in appeals. Further DW-2 admitted that Shaikh Ummar Hassan was

defendant No.6 in O.S.No.70/1979 and also admitted the counter claim filed by the defendant No.6 in that suit and further he clearly admitted that he had knowledge about the judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988 before purchase of the property. Hence the admission given by the DW-2 itself shows that he had knowledge about the judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988 and he has purchased the property. In R.A.No.30/1988 the court has given liberty to the husband of plaintiff No.1 to file separate suit for partition. There is no any pleadings in the written statement that before purchase of the property from defendant No.1 to 3 he has approached the present plaintiffs and requested them to execute the sale deed, but without knowledge of the plaintiffs he has purchased the suit schedule property. The defendant No.4 nowhere pleaded and proved that the defendant No.1 to 3 were exclusive owners of the suit schedule property and he has purchased the property and in cross examination he clearly admitted that he had knowledge about the findings given by the court in R.A.No.29/1988 and R.A.No.30/1988. Therefore it is opinion of the court that the defendant No.4 is not bonafide purchaser.

**68.** Admittedly the husband of the plaintiff No.1 has purchased the suit schedule property under registered sale deed and in RA No.30/1988 court has given liberty to the husband of plaintiff No.1 to file separate suit for partition and also it held that the defendant No.6 is entitled for half share under sale deed of the 1978 executed by the defendant No.1 in

O.S.No.70/1979 and the possession is to be given to the 6<sup>th</sup> defendant only by effecting division in the properties. Therefore the findings given in the said judgment reached its finality and it shows that during the life time of husband of plaintiff No.1 and after his death the plaintiffs are in constructive possession of the suit schedule property. Hence the sale deed executed by the defendant No.1 to 3 in favour of defendant No.4 is not binding on the share of the plaintiffs, accordingly **Issue No.1 answered in Affirmative, recasted Issue answered in Negative, Issue No.3 answered in Negative, Issue No.4 answered in Affirmative.**

**69. Addl. Issue No.1 and Addl. Issue No.3 dated 01-06-2021:-** The defendants have taken contention that the suit of the plaintiffs is not maintainable for want of relief of possession as against the plaintiff in O.S.No.70/1979 and also taken contention that the suit of the plaintiff is barred under the provisions of Order II Rule 2 of CPC. In the written statement the defendant No.2(a) stated that the plaintiffs or their predecessor in interest have full opportunity to claim reliefs in O.S.No.70/1979 itself in the counter claim advanced by the husband of plaintiff No.1 in this suit, hence this suit is hit by Rule 2 of Order II of CPC.

**70.** On perusal of the Ex.P-7, i.e. judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988 it shows that the judgment and decree passed in O.S.No.70/1979 has been modified and liberty has been given to the husband of the plaintiff No.1 i.e. defendant No.6 in O.S.No.70/1979 to

file separate partition suit and possession is to be given to the defendant No.6 i.e. husband of plaintiff No.1 in present suit only by effecting the division in the properties that means there is no division between the defendant No.1 and 2 in the suit schedule properties. Therefore the contention taken by the defendants in written statement does not arise for consideration. Further as already discussed in issue No.1 to 4 that the plaintiffs are in constructive possession of the suit schedule property to the extent of half share of the defendant No.1 in O.S.No.70/1979 who has executed registered sale deed in favour of husband of plaintiff No.1, accordingly **Addl. Issue No.1 and Addl. Issue No.3 are answered in Negative.**

**71. Addl. Issue No.2 dated 01-06-2021:-** The defendants have taken contention in written statement that the suit of the plaintiffs is hit by rule of res-judicata in view of judgment and decree passed in O.S.No.70/1979 which was modified in RA No.29/1988 and RA No.30/1988.

Res Judicata is doctrine that prohibits courts from trying any suit or issue that has already been finally decided by a competent court between the same parties made the same title. It ensures finality, prevents double jeopardy and reduces frivolous litigation. In present case the plaintiffs have filed suit for partition and separate possession claiming 1/2 share in the suit schedule property and O.S.No.70/1979 has been filed by the plaintiffs in that suit for declaration and permanent injunction. The nature of suits are

different. Further in R.A.No.30/1988, the court has given liberty to the husband of of plaintiff No.1 to file fresh suit for partition. As already discussed that none of the parties to the above said suit and Regular Appeals have not challenged the judgment and decree passed in RA No.29/1988 and RA No.30/1988. Therefore it is opinion of the court that the suit is not hit by principles of res judicata, accordingly **Addl. Issue No.2 dated 01-06-2021 is answered in Negative.**

**72. Addl. Issue No.4 dated 01-06-2021, Addl. Issue No.8 dated 17-09-2022:-** The defendants have taken contention that the suit of the plaintiffs is barred by limitation.

The learned counsel for the defendant No.4 relied upon citation reported in **AIR 1993 Jammu and Kashmir page 14 – It is held that – Delay in filing of the suit – Burden of proof – defendants pleading bar of limitation- plaintiffs consciousness of their belated action – Onus is on plaintiffs to show that their suit was within time.**

**73.** The learned counsel for the defendant No.4 relied upon citation reported in **AIR 1991 Keral page 83- A- Mandatory and absolute - Suit barred by time on face of it – Court is duty bound to dismiss same even at appellate stage, though issue of limitation not raised.**

**74.** The learned counsel for the defendant No.4 relied upon citation reported in **1999 (1) KCCR SN 32 –It is held that –Revision – Defendants took a plea that the suit is barred by limitation.**

In RA No.29/1988 and RA No.30/1988 court has given liberty to the husband of plaintiff No.1 i.e. defendant No.6 in O.S.No.70/1979 to file partition suit. The RA No.29/1988 and 30/1988 came to be disposed on 23-08-2023. During the pendency of the said appeals the husband of plaintiff No.1 died. In the pleadings the plaintiffs have stated that the plaintiff No.1 is paradanasin lady and remaining plaintiffs were minors, therefore they have not filed suit immediately after judgment and decree passed in RA No.29/1988 and 30/1988. The plaintiffs have filed the suit within 12 years from the date of judgment and decree passed in judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988, hence suit is not barred by limitation, accordingly **Addl. Issue No.4 and Addl. Issue No.8 are answered in Negative.**

**75. Addl. Issue No.5 dated 01-06-2021:-** In the written statement the defendants have taken contention that the various litigation and the decisions given by the revenue courts in mutation cases clearly gives cause of action to file suit by the plaintiffs within three years from the date of order passed by the D.C. Karwar. The entry on the basis of sale deed was not approved by the revenue courts. The husband of the plaintiff No.1 ought to have filed the suit within three years of the final orders passed by the D.C. Karwar in Revision Petition filed by him as provided under section 135 of Karnataka Land Revenue Act. The proceedings of the Revenue Courts are earlier to the judgment and decree passed in R.A.No.29/1988 and

R.A.No.30/1988. On perusal of Ex.P-4 to Ex.P-7 it clear that Aminabi Abdul Shaikh and others have filed suit for declaration and permanent injunction and after judgment and decree passed in O.S.No.70/1979, the Regular Appeal came to be filed and in RA No.30/1988 the court has given liberty to the husband of plaintiff No.1 to file the suit for partition. Therefore this suit is not barred by limitation, as contention taken by the defendants in written statement accordingly **Addl. Issue No.5 answered in Negative.**

**76. Addl. Issue No.6 and Addl. Issue No.7 dated 17-09-2022:-** The defendant No.6 has taken contention that the plaintiffs have unnecessarily made defendant No.6 as party without any cause of action and suit is bad for misjoinder of parties. In the written statement the defendant No.1 and 2(a) and defendant No.4 have taken contention that the suit of the plaintiffs is bad for non joinder of necessary parties. The plaintiffs have filed IA under Order 1 Rule 10 of CPC and impleaded defendant No.5 to 11 as a party to the suit as they were parties to the suit in O.S.No.70/1979. Hence contention taken by the defendant No.6 not worth to be accepted, **accordingly Addl. Issue No.6 and Issue No.7 are answered in Negative.**

**77. Additional Issue No.9 dated 24-10-2024:-** The defendant No.2(a) and defendant No.4 have taken contention that the court fee paid by the plaintiffs is improper and insufficient and this court has framed the issue casting burden on the defendant No.2(a) and defendant No.4 to prove that the court fee paid by the plaintiff is improper and insufficient. The plaintiffs

have claiming the partition on the basis of liberty given by this court in R.A.No.30/1988. The plaintiffs have paid Rs.200/- as a court fee for partition of their half share in the suit schedule property. On perusal of the Ex.P-7 the court has made an observation in R.A.No.29/1988 and R.A.No.30/1988 that "so far as the claim of 6<sup>th</sup> defendant is concerned he is not entitled for the possession of the suit schedule properties he is only entitled half share under the 1978 sale deed as executed by the 1<sup>st</sup> defendant and the possession is to be given to the 6<sup>th</sup> defendant only by effecting division in the properties that means, there is no division between defendant No.1 and 2 in the suit schedule properties and the 2<sup>nd</sup> defendant has not executed valued deed or authorized the 1<sup>st</sup> defendant to execute deed infavour of 6<sup>th</sup> defendant, under these circumstances though 6<sup>th</sup> defendant is entitled the share of the 1<sup>st</sup> defendant, it is only by effecting a partition." On the basis of the observation made in the appeals the plaintiffs have filed this suit for partition. In the cross examination DW-2 admitted that the suit schedule property is open space and in further cross examination DW-2 stated that at the time of purchase of property there are no houses but house was collapsed in the year 2009-2010. Further he denied that there were old houses and those houses were collapsed and stated that there were no houses in the suit schedule property. Hence it is clearly shows that though the husband of plaintiff No.1 has claimed counter claim in O.S.No.70/1979 for recovery of possession, but the DW-2 has clearly admitted that there were no houses when he purchased the property. Hence the defendant No.2(a) and

defendant No.4 have failed to prove their contention. The plaintiffs have paid court fee of Rs.200/- for partition and on the other hand the defendant No.2(a) and defendant No.4 have not convinced the court in respect of contention taken by them in written statement, accordingly **Additional Issue No.9 dated 24-10-2024 is answered in Negative.**

**78. Issue No.5:-** As discussed in the above issues that the plaintiffs are entitled for half share in the suit schedule property as per the judgment and decree passed in R.A.No.29/1988 and R.A.No.30/1988 and the sale deed executed by the defendant No.1 to 3 in favour of defendant No.4 is not binding on the share of plaintiffs to the extent of half share. In the pleadings plaintiffs have stated that they learnt that the defendant No.4 who has purchased the suit schedule property is now inturn trying to dispose off the same to some one else if the same is done it will lead to multiplicity of proceedings and hardship will caused to the plaintiffs. In the evidence PW-1 reiterated the same. But the defendant No.4 not denied the same, hence there is no resistance to the claim of plaintiffs, therefore they are entitled for permanent injunction against the defendant No.4 from developing or alienating the suit schedule property till bifurcation of share of plaintiffs in the suit schedule property by effecting partition, accordingly **issue No.5 answered in Affirmative.**

**79. Issue No.6:-** In view of above discussion, I proceed to pass the following;

**ORDER**

**The suit filed by the plaintiffs is hereby decreed.**

**It is declared that the plaintiffs are entitled for 1/2 share in the suit schedule properties.**

**It is further declared that the sale deed executed by the defendant No.1 to 3 in favour of defendant No.4 in respect of suit schedule properties on 12-06-2008 is not binding on the 1/2 share of the plaintiffs.**

**The defendant No.4, is hereby restrained from developing or alienating the suit schedule properties till effecting the partition by metes and bounds.**

**Draw preliminary decree accordingly.**

(Directly dictated to Stenographer on Lap-tap, print out taken by her, corrected and then pronounced by me in Open-Court this the **7<sup>th</sup> day of March 2026**).

**(Kavita S. Undodi)  
Prl. Senior Civil Judge and CJM,  
Karwar.**

**: ANNEXURE:****List of witnesses examined on behalf of plaintiffs:**

P.W-1: Shri. Abrar Ahmed S/o Shaikh Ummar Hassan

**List of witnesses examined on behalf of Defendants:**

D.W-1: Shri. Sayed Iliyas Sayed Adam

D.W-2: Shri. Satish S/o Krishna Sail

**List of documents exhibited on behalf of plaintiffs:**

- Ex-P-1: RTC Extract in Sy.No.28A1A1A1/18  
Ex-P-2: RTC Extract in Sy.No.28A1A1A1/14B  
Ex-P-3: Certified copy of Mutation Entry dated 16-01-1978  
Ex-P-4: Certified copy of plaint in O.S.No.70/1979  
Ex-P-5: Certified copy of Judgment in O.S.No.70/1979  
Ex-P-6: Certified copy of Decree in O.S.No.70/1979  
Ex-P-7: Certified copy of Judgment in R.A.No.29/1988  
and R.A.No.30/1988  
Ex-P-8: Certified copy of Deed of Absolute Sale  
Ex-P-9: Copy of Mutation Register M.R.No.11/2008-2009  
Ex-P-10: Karavali Munjavu Daily News Paper dated: 11-12-2007  
Ex-P-11: Karavali Munjavu Daily News Paper dated: 11-06-2008  
Ex-P-12: Power of Attorney  
Ex-P-13: General Power of Attorney

**List of documents exhibited on behalf of Defendants:**

- Ex.D.1: Notice  
Ex.D.2: General Power of Attorney  
Ex.D.3: Certified copy of Mutation Register  
Ex.D.4: Mutation Extract  
Ex.D.5: M.R. Extract  
Ex.D.6: Certified copy of written statement in O.S.No.70/1979  
Ex.D.7: Certified copy of written statement in O.S.No.70/1979  
Ex.D.8: Certified copy of written statement in O.S.No.70/1979  
Ex.D.9: Certified copy of Issues in O.S.No.70/1979  
Ex.D.10: Certified copy of Order passed by the A.C.  
Ex.D.11: Notice  
Ex.D.12: Certified copy of plaint in O.S.No.70/1979  
Ex.D.13: Certified copy of Deposition in O.S.No.70/1979

- Ex.D.14: Certified copy of Voter list
- Ex.D.15: Copy of Mutation Register M.A.No.11/2008-2009
- Ex.D.16: Certified copy of RTC extract Sy.No.28A1A1A1/18
- Ex.D.17: RTC Extract Sy.No.28A1A1A1/18
- Ex.D.18: Certified copy of RTC extract Sy.No.28A1A1A1/14B
- Ex.D.19: M.R. Extracts
- Ex.D.20: Extract from the property registered card.