

KAUP020014092020



*IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE  
AND CJM., UDUPI*

**Present: Sri.M.Purushothama,  
B.B.M, M.S.W., L.L.M.,P.G.D.H.R.M.**

Prl. Senior Civil Judge & CJM., Udupi.

**Dated this the 1<sup>st</sup> day of August, 2026.**

**O.S.No.123/2020**

**Between:**

1. Shivarama Shetty,  
(since deceased)  
R/at MAA House, Opp. Nejar Masjid,  
Kelarkalbettu Village and Post,  
Udupi Taluk and District.

1(a). Dinesh Shetty,  
(since deceased)

1(a) (i). Lalitha  
1(a) (ii).Rithesh  
1(a) (iii).Nikesh

1(b). Mallika  
1(c). Prashanth Shetty

1(a) (i) to 1(a) (iii), 1(b)  
1 (c) are R/at MAA House, Opp. Nejar Masjid,  
Kelarkalbettu Village and Post,  
Udupi Taluk and District.

2. Smt. Susheela Shedthi,

Aged about 65 years,  
D/o. Kitti Shedthi,  
W/o. Late Narayana Shetty,  
R/at Herga Doddamane,  
Herga Village and Post,  
Udupi Taluk and District

: Plaintiffs

**[Rep. by Sri. D.M.S., Advocate]**

**-Vs-**

1. Smt. Vanaja Shedthi,  
(since deceased)  
Aged about 75 years,  
D/o. Late Kitti Shedthi,  
Bijantala Padumane,  
Subhas Nagar, Kurkal Village and Post,  
Udupi Taluk and District.

1(a). Pushpa R. Shetty,  
Aged about 68 years,

1(b). Harish Narayan Shetty,  
Aged about 57 years,

1(c). Shakunthala Sudhakar Shetty,  
Aged about 52 years,

All are children of Late  
Vanaja Shedthi  
Permanently R/at Padumane, Bijantla,  
Kurkal Village, Kaup Taluk.

2. Smt. Ganga Shedthi,  
(since deceased)  
Aged about 73 years,  
D/o. Late Kitti Shedthi,  
R/at Bijantla Padumane House,  
Subhas Nagar, Kurkal Village and Post,  
Udupi Taluk and District.

2 (a). Sudhakara G. Shetty,  
Aged about 55 years,

S/o. Ganga Shedthi,  
R/at C/o. Parvathi Nivas,  
Opp: BMC School, Asalpha village,  
Ghatkoppar West, Mumbai.

2(b). Kusuma M. Shetty,  
Aged about 62 years,  
D/o. Late Ganga Shedthi,  
and W/o. Mahabala Shetty,

2(c). Yashoda J. Shetty,  
Aged about 62 years,  
D/o. Late Ganga Shedthi,  
and W/o. Jagadish Shetty,

2(d). Vijayalaxmi S. Shetty,  
Aged about 50 years,  
D/o. Late Ganga Shedthi,  
and W/o. Shivaram Shetty,

2(e). Usha S. Shetty,  
Aged about 42 years,  
D/o. Late Ganga Shedthi,  
and W/o. Santhosh Shetty,

2(b) to 2(e) are R/at Yuvaraj  
Place R.No.15, 3<sup>rd</sup> floor,  
Thane Belapur Road,  
Digha, Nevi, Mumbai.

3. Smt. Radhu Shedthi,  
Aged about 70 years,  
D/o. Late Kittu Shedthi,  
R/at Radha Nivas, Subhas Nagar,  
Kurkal Village and Post,  
Udupi Taluk and District.

4. Ramesh Shetty,  
Aged about 45 years,  
S/o. Late Girija Shedthi,

5. Smt. Asha Shetty,  
Aged about 40 years,  
D/o. Late Girija Shedthi,

6. Smt. Jyothi Shetty,  
Aged about 38 years,  
D/o. Late Girija Shedthi,

7. Smt. Sabitha Shetty,  
Aged about 35 years,  
D/o. Late Girija Shedthi,

8. Anusha,  
Aged about 21 years,  
D/o. Late Shobha Shetty,

9. Apeksha,  
Aged about 19 years,  
D/o. Late Shobha Shetty,

10. Jayakar Shetty,  
Aged about 56 years,  
H/o. Late Shobha Shetty,

No.4 to 10 are R/at  
Sabitha Nivas, Subhas Nagar,  
Kurkal village and post,  
Udupi Taluk and District.

11. Pushpavathi Shedthi,  
Aged about 60 years,  
W/o. Ravindra Shetty,  
R/at Mama Vijetha Sadana,  
Innanje village and post,  
Kaup Taluk, Udupi District.

12. George Kutti,  
Aged about 52 years,

13. Keshava Achary,  
(since deceased)

13(a). Shubhavathi K. Acharya,  
Aged about 65 years,  
W/o. Late Keshava Achari,

13(b). Krishna K. Acharya,  
Aged about 46 years,  
S/o. Late Keshava Achari,

13(c). Vani,  
Aged about 44 years,  
D/o. Late Keshava Achari,

13(d). Veena  
Aged about 41 years,  
D/o. Late Keshava Achari,  
13(e). Kiran K. Acharya,  
Aged about 39 years,  
S/o. Late Keshava Achari,

14. Ganapathi Acharya,  
Aged about 60 years,  
S/o. Vadiraja Acharya,

15. Ramakrishna Bhat,

16. Suresh R. Shetty,  
S/o. Radhu Shedthi,

17. Harish Shetty,  
S/o. Vanaja Shedthi,  
defendant No.12 to 17 are R/at  
Bijantla, Kurkal village,  
Subhasnagara post, Udupi Taluk,  
and District.

18. Sadananda Moolya,  
Aged about 57 years,  
S/o. Baba Moolya,

19. Walter Crasta,

Aged about 50 years,  
S/o. Benedict Crasta,  
Crasta Villa.

20. Udaya Acharya,  
Aged about 50 years,

Defendant No.18 to 20 are  
R/at Kurkal Village,  
Shankarpura Post,  
Udupi Taluk and District.

**: Defendants**

**[D3, 5 to 9, 11, 17 - Rep. by Sri. V.S.,  
Advocate]**

**[D12 - Rep. by Sri. B.M.V., Advocate]**

**[D18, 20 - Rep. by Sri. V.M.S.U., Advocate]**

**[D13 - Rep. by Sri. D.V.S., Advocate]**

**[D2 - Dead]**

**[D4, 14, 15, 16 – Exparte]**

**[D2(a) to (c) - Exparte]**

**[D1 (a) - Rep. by Sri. A.N., Advocate]**

Date of Institution of the suit : 24.11.2020

Nature of the suit : Partition

Date of the commencement of

recording of the Evidence : 10.08.2023

Date of closure of evidence : 11.02.2025

Date of Judgment : 01.08.2026

Years Months Days

Total duration : 05 08 08

**(M.Purushothama)**

Prl. Sr. Civil Judge and CJM.,  
Udupi.

## **J U D G M E N T**

The plaintiffs filed the suit for partition and for separate possession and they have claimed 2/6th share in the suit schedule properties.

2. The plaint 'A' schedule properties are immovable properties situated at Kurkal village, Udupi Taluk and District held on mooli right bearing;

| Sl.No. | Sy.No.                                                       | Kissam   | Extent     | Assessment     |
|--------|--------------------------------------------------------------|----------|------------|----------------|
|        |                                                              |          | <u>A-C</u> | <u>Rs – Ps</u> |
| 1.     | 87/2B2                                                       | Nanja    | 1-41       | 11-24          |
|        | (as per comp. R.T.C. 87/2B2P1)                               |          |            |                |
| 2.     | 91/2A                                                        | Nanja    | 0-82       | 6.54           |
|        | (as per comp. R.T.C. 91/2P1)                                 |          |            |                |
| 3.     | 87/3A                                                        | Nanja    | 0-80       | 5.14           |
|        | (as per comp. R.T.C. 87/3P1)                                 |          |            |                |
| 4.     | 87/5A                                                        | Nanja    | 3-45       | 13.97          |
|        | (as per comp. R.T.C. 87/5P1)                                 |          |            |                |
| 5.     | 87/6                                                         | Bagayath | 0-14       | 1-75           |
|        | (This appears to have been illegally sold by the defendants) |          |            |                |
| 6.     | 181/2B                                                       | Punja    | 1-35       | 1.08           |
|        | (as per comp. R.T.C. 181/2P6)                                |          |            |                |
| 7.     | 82/3                                                         | Punja    | 0-21       | 0.17           |
| 8.     | 82/6                                                         | Punja    | 0-11       | 0.09           |
| 9.     | 82/1                                                         | Punja    | 3.08       | 2-46           |

Along with a tiled residential building with electrification, a well fitted with an electric pump-set, 15

yielding coconut trees, trees with other trees and wild growth, with mamool rights of water and pathways attached thereto.

3. The plaint 'B' schedule properties are immovable properties situated in Kurkal village, Udupi taluk and district held on mooli right bearing;

| Sl.No. | Sy.No.                         | Kissam | Extent     | Assessment     |
|--------|--------------------------------|--------|------------|----------------|
|        |                                |        | <u>A-C</u> | <u>Rs – Ps</u> |
| 1.     | 87/2B                          | Nanja  | 0-04       | 0-32           |
|        | (as per comp. R.T.C. 87/2B2P3) |        |            |                |
| 2.     | 91/3                           | Nanja  | 0-16       | 1.19           |
| 3.     | 180/7B                         | Punja  | 0-31       | 0.25           |
| 4.     | 181/2C                         | Punja  | 0-22       | 0.17           |
|        | (as per comp. R.T.C. 181/2P7)  |        |            |                |

(extent shown in some of the R.T.C. is less than actual extent since the same are sold by the defendant)

Along with a tiled residential building with electrification, a well fitted with an electric pump-set, 15 yielding coconut trees, trees with other trees and wild growth, with mamool rights of water and pathways attached thereto. (The plaintiffs are not claiming any share in the house situated in this schedule).

4. The plaint 'C' schedule properties are immovable properties situated at Kurkal village, Udupi taluk and district held on mooli right bearing;

| Sl.No. | Sy.No.  | Kissam | Extent     | Assessment     |
|--------|---------|--------|------------|----------------|
|        |         |        | <u>A-C</u> | <u>Rs – Ps</u> |
| 1.     | 91/2P2  | Nanja  | 0-24       | 1-91           |
| 2.     | 87/3P2  | Nanja  | 0-18       | 1.16           |
| 3.     | 87/5P2  | Nanja  | 0-29       | 1.18           |
| 4.     | 181/2P5 | Punja  | 0-53       | 0.42           |

(extent shown in some of the R.T.C. is less than actual extent since the same are sold by the defendant)

Along with a tiled residential building with electrification, a well fitted with an electric pump-set, 15 yielding coconut trees, trees with other trees and wild growth, with mamool rights of water and pathways attached thereto. (The plaintiffs are not claiming any share in the house situated in this schedule).

##### **5. The case of the plaintiffs in brief is as follows:**

The plaintiffs, defendant No.1 to 3 and one deceased Girija Shedthi are the children of late Kittu Shedthi and late Loku Shetty. Defendant No.4 to 7 and one deceased Shobha Shetty are the children of late Girija Shedthi and defendant No.8 and 9 are children and defendant No.10 is the husband of Shobha Shetty. The mother of the plaintiffs and defendant No.1 to 3 by name Kittu Shedthi died intestate on 27.07.1999 leaving behind plaintiffs and defendants as her legal heirs. Therefore, the plaintiffs and defendants became the co-owners of the estate left behind by the said Kittu Shedthi.

The plaintiffs and defendants are the co-owners in possession and enjoyment of the suit schedule properties by virtue of succession and inheritance being only legal heirs of said Kitty Shedthi. That the original plaint properties were the tenancy right properties of the said Kitty Shedthi and her mother who obtained the same on chalageni from K. Ranganna Bhat and K. Krishnaraja Bhat. On advent of the Karnataka Land Reforms Act, the said Kitty Shedthi claimed occupancy right over some of her tenancy right by filing the application in Form No. 7 before the Land Tribunal, Udupi. The Land Tribunal, Udupi enquired the said application filed by Kitty Shedthi in its proceedings No.LRY88/461/194-TRI-3040/81-82 and on completion of the enquiry, she was conferred with the occupancy right as per the orders of the Land Tribunal dated 29.08.1981. In pursuance of the said order of the Land Tribunal, the Special Tahsildar, Land Reforms, Udupi was pleased to issue occupancy right certificate to the Kitty Shedthi on 19.08.1982 in respect of the plaint 'A' schedule properties. In the same manner, Kitty Shedthi had arranged to file 2 other applications in Form No.7 before the Land Tribunal, Udupi in the names of her 2 daughters namely Radhu Shedthi, 3<sup>rd</sup> defendant herein and Girija Shedthi, deceased daughter of Kitty Shethi claiming occupancy right in respect of her tenancy holding properties other than the plaint 'A' schedule property and Land Tribunal enquired the applications in separate proceedings bearing No.LRY-88/462-TRI-3043/81-82 and LRY-88-586-TRI-304/81-82

respectively and on completion of the enquiry, the said Tribunal was pleased to confer the occupancy right in favour of the said Radhu Shedthi and Girija Shedthi respectively as per its orders dated 29.08.1981. In pursuance of the said orders of the Land Tribunal, the Special Tahsildar Land Reforms, Udupi was pleased to issue 2 separate occupancy right certificate to the said Radhu Shedthi and Girija Shedthi on 03.03.1992 and 04.01.2003 respectively and those properties are shown as 'B' and 'C' schedule properties in the plaint. Accordingly, R.T.C. pertaining to the said properties were also mutated to the names of the respective persons in terms of above said occupancy right certificates. After the death of the Kitty Shedthi and Girija Shedthi, the plaintiffs and defendants became co-owners in respect of the suit schedule properties. It is further stated that even though the occupancy right was claimed in the names of 3 persons separately, fact remains that all the properties mentioned in the said form No.7 are from out of the same chalageni tenancy of the said Kitti Shedthi and her mother. The above said Radhu Shedthi and Girija Shedthi had no separate chalageni properties of their own.

6. The plaintiffs and defendants are the Hindus by religion and belong to Bunt Cast and plaint properties are liable to divide amongst the plaintiffs and defendants into 6 equal shares along with improvements made therein. Plaint properties consist of a family tiled residential building, a well

fitted with an electric pump – set, about 15 yielding coconut trees and other timber and wild trees with the forest growth. Apart from that there are movables like 5 big copper charige, gurike, steel items of house hold utensils in the house belonging to the family. The 1<sup>st</sup> and 3<sup>rd</sup> defendants are using the same since said defendants are residing in the family house. The worth of the movables is more than Rs.50,000/-. However, the plaintiffs have decided not to claim any share in the said movables. The defendant No.1 and 3 misappropriating the whole of the income of the plaint properties without giving legitimate share to the plaintiffs. The net annual income is more than Rs.50,000/-. Hence, defendants are liable to pay the legitimate share in the income of the plaintiffs for a period of last 3 years. Inspite of repeated requests, the defendants refuse to divide the plaint properties. Therefore, the plaintiffs are constrained to get the certified copies of the revenue documents and they came to know that the defendant No.1, 2 and 3 have already sold some portion of the plaint properties to some 3<sup>rd</sup> parties with an intention to make unlawful gain for themselves and also to use wrongful loss to the plaintiffs and the other defendants if possible without the consent and knowledge of the plaintiffs. Further the 3<sup>rd</sup> defendant has already transferred some portion of the plaint properties to her son Suresh Shetty by executing a settlement deed without any right or authority since the said 3<sup>rd</sup> defendant has no exclusive independent right over the properties in question. It is further stated that the first

defendant Vanaja Shedthi has already got some of the properties transferred to her name on the strength of a documents styled or purported to be the Will executed by her mother Kitty Shedthi. Plaintiffs deny the execution, truth, validity, genuineness and binding nature of the said Will since the same has not been executed by Kitty Shedthi out of her free Will and consent as she was not physically and mentally in a sound disposing state of mind. Further she also had no exclusive right over the properties. Hence, the execution of the Will is denied and it is created. The cause of action for the suit arose on 1<sup>st</sup> week of August 2013 at Kurkal village, Udupi Taluk and plaint properties are situated within the jurisdiction of this court. Accordingly, the plaintiffs pray to decree the suit.

7. The defendant No.1, 2, 3, 5 to 9, 11, 12, 13, 17, 18 and 20 appear before the court through their counsel, wherein, the defendant No.3 filed written statement which is adopted by the defendant No.1, 5 to 9, 11 and 17.

8. The Defendant No.12 filed separate written statement. During the pendency of the suit, the defendant No.2 died and her LR's remained absent and they were placed exparte. The Defendant No.1 died and defendant No.1(a) appear before the court and filed separate written statement. Defendant No.4, 14 to 16 remained absent, inspite of service of summons. Hence, they were placed exparte.

9. Defendant No.3 in her written statement denied the entire plaint averments including the relationship. It is stated that the plaint schedule properties were being enjoyed originally by her mother Kitti Shedthi and during the continuation of tenancy, this Defendant Radhu Shedthi and her sister Girija Shedthi the children of Kitti Shedthi had insisted the landlord to lease out them separate portions in the very same holding of Kitti Shedthi and accordingly the landlord taken back considerable portion of the holding and leased out certain portion in favour of this Defendant and another portion in favour of Girija Shedthi which are fully described in the schedule 'B' and 'C' of the plaint. Ever since then they were enjoying their holdings separately on lease hold right under the landlord. For remaining portion i.e., plaint 'A' schedule properties. Kitti Shedthi continued her tenancy under the landlord.

10. The Defendant No.3 further submits that, at the advent of the Karnataka Land Reforms Act, this Defendant and Girija Shedthi have filed separate form 7 claim applications in respect of their separate holdings and Kitti Shedthi filed separate form 7 application in respect of her leasehold. Consequently, the Land Tribunal registered them as occupants in respect of their separate holdings by separate orders. Thus, the properties granted by the Land Tribunal in favour of this Defendant and in favour of Girija Shedthi was

for their individual holding. These holdings were never considered as family holding at any point of time. The Defendant further stated that, Kitti Shedthi being in sound disposing state of mind and health made a Will dated 15-07-1989 bequeathing her properties in favour of her children Vanaja Shedthi, Ganga Shedthi, Shivarama Shetty and grand daughter Pushpavathi Shedthi. In the said Will, she has made clear by assigning proper reason as to why her other children were not bequeathed with any property. The said Will has been registered before the Registrar of Udupi. The said Will is a genuine and made by Kitti Shedthi voluntarily on her own accord and wish. Further, the said Will was acted upon by the respective beneficiaries by changing the revenue khata pertaining to the properties bequeathed there under.

11. It is further stated that, the Plaintiffs with dishonest intention to take undue advantage of error crept in the form 7 application as to the year of cultivation, they have filed the above false suit. The 2<sup>nd</sup> Plaintiff having found that, she has not been bequeathed with any properties under the Will of mother Kitti Shedthi for the reason stated therein, she colluding with the 1<sup>st</sup> Plaintiff filed the above false suit to make unlawful gain if possible.

12. It is further stated that, without prejudice to her contentions, she submits that, if the plaint properties originally belonged to their ancestors they should have

sought for partition of those properties as per the Madras Aliyasanthana Law of Succession. In other words, the Plaintiffs are not entitled for any share in the plaint schedule properties as per the Hindu Succession Act, since this succession law is not at all applicable to the plaint schedule properties.

13. The 2<sup>nd</sup> Plaintiff has been residing with her husband ever since the date of her marriage and she never participated in cultivation any portion of the plaint schedule properties. It is further stated that, the 1<sup>st</sup> Plaintiff owns and possess lands else where and he too never participated in the cultivation of plaint schedule properties. In fact, he had obtained a house site from the government by misleading revenue officials and in a fictitious name. In other words, he has obtained the said grant fraudulently and by misrepresentation. Hence, this Defendant reserves the right of filing a criminal complaint against the 1<sup>st</sup> Plaintiff for his aforesaid mischievous Act. The suit is barred by Limitation. The 2<sup>nd</sup> Plaintiff is in possession and enjoyment of separate family properties in Herga Village of Udupi Taluk, in which this Defendant and other Defendants also having their legitimate share. The 1<sup>st</sup> defendant Vanaja Shedthi has already filed the partition suit O.S. No.510/2015 seeking partition of said properties and the suit is now pending before the Hon'ble III Additional Civil Judge, Udupi. The valuation made by the Plaintiff for the purpose of court fee is not

correct. Accordingly, pray for dismissal of the suit of the plaintiff.

14. Defendant No.1(a) filed separate written statement. In the said written statement, the defendant No.1(a) denied the entire plaint averments. It is submitted that originally the plaint schedule properties belonged to aforesaid Kitti Shedthi on chalageni right and she had submitted form 7 application dated 27-08-1974 for being registered as an occupant of her tenanted properties as stated above in the plaint. Subsequent to the said form 7, her daughters Girija Shedthi and Radhu Shedthi had insisted the landlord to leaseout them separate portions in the very same holding of their mother Kitti Shedthi and as such the landlord had divided the said holding amongst Kitti Shedthi and her children through an Oral Partition in the presence of one Shyama Shetty brother of Kitti Shedthi. Accordingly, the plaint schedule properties came to be divided between Kitti Shedthi and all her children. Thereafter Girija Shedthi, another daughter of Kitti Shedthi, Radhu Shedthi also filed form 7 application dated 22-11-1976 claiming occupancy right of the properties allotted to their share under the said oral partition.

15. Thereafter the said oral partition has been reduced into writing by an agreement dated 10.12.1975 in the presence of Kitti Shedthi and her children and land lord K.

Ranganna Bhat, Shyama Shetty brother of Kitty Shedthi. The said document was written by document writer T. Shesha Holla. Thereafter, Girija Shedthi being daughter of Kitty Shedthi also filed form 7 on 22.11.1976 claiming occupancy right in respect of the properties allotted to her share. The Land Tribunal had conducted the enquiry on the aforesaid Form No. 7 and granted properties to Kitty Shedthi, Girija Shedthi and Radhu Shedthi separately. All the children of Kitty Shedthi were granted with separate properties as described in the agreement which was the culmination of the oral partition stated above. It is pertinent to note that, the Plaintiffs Susheela Shedthi and Shivarama Shetty children of late Kitti Shedthi were allotted with separate properties under the schedule 7 and 8 of the said oral partition as evident from the agreement/Kararu dated 10-12-1975. The 1<sup>st</sup> Plaintiff Shivarama Shetty was allotted with Sy.No. 87/2B Nanja measuring 22 cents, 87/3 Nanja measuring 60 cents and 82/1 Punja measuring 59 cents of Kurkal Village, Kaup Taluk. Similarly, the 2<sup>nd</sup> Plaintiff Susheela Shedthi was allotted with the Sy.Nos. 91/2 Nanja measuring 24 cents, 87/3 Nanja measuring 14 cents, 87/5 nanja measuring 60 cents and 82/1 Punja measuring 59 cents of Kurkal Village, Kaup Taluk. It is further stated that 2<sup>nd</sup> Plaintiff Susheela Shedthi, had agreed to sell the immovable properties bearing Sy.Nos. 181/2 measuring 70 cents and 82/1 measuring 60 cents in favour of this Defendant Pushpa Shedthi, D/o Vanaja Shedthi by executing an agreement

dated 15-01-1981, which was duly signed by the 2<sup>nd</sup> Plaintiff Susheela Shedthi. On the very same day Susheela Shedthi had executed a Deed of general power of attorney in favour of this Defendant Pushpa Shedthi authorizing her to do all the acts mentioned therein including the development of the said properties. Thus, this Defendant came into possession of the said properties on 15-01-1981 as per the said agreement and GPA. It is further stated that as per the aforesaid partition, the 2<sup>nd</sup> Plaintiff Susheela Shedthi had agreed to sell the immovable properties bearing Sy. Nos. 87/5 measuring 60 cents, 87/3 measuring 14 cents and 91/2 measuring 24 cents in favour of Vanaja Shedthi another daughter of Kittu Shedthi by executing an agreement dated 15-01-1981, which was duly signed by the 2<sup>nd</sup> Plaintiff Susheela Shedthi and on the very same day Susheela Shedthi had also executed a Deed of general power of attorney in favour of Vanaja Shedthi authorizing her to do all the acts mentioned therein including the development of the said properties. Thus, the 2<sup>nd</sup> Plaintiff had transferred all the properties allotted to her share in the oral partition in favour of the above said two persons.

16. That, the Defendant No.1(a) further submits that, since the Plaintiffs had taken their legitimate share in the oral partition stated supra, the above suit for partition is not at all maintainable under law. The plaintiffs by suppressing the oral partition, filed the suit. The suit is barred by limitation. Accordingly, pray for dismissal of the suit of the plaintiffs.

17. The defendant No.12 in his written statement has stated that the suit is false, frivolous and not maintainable. The immovable property bearing Sy.No.87/5B measuring 29 cents belong to Girija Shedthi and he purchased the said property through a registered sale deed dated 15.05.2002 which is shown as written statement schedule property. It is further stated that the above said Girija Shedthi had claimed occupancy right by filing form No.7 under Karnataka Land Reforms Act. Thereafter the Land Tribunal granted the said property along with other properties. Neither the plaintiffs nor other defendants had no right, title and interest over any portion of same. She enjoyed the said property along with her children as all of them are residing together at that time. Hence, by considering the said fact, the Land Tribunal might had passed an order in her name on behalf of family by considering the definition of family as defined under Karnataka Land reforms Act. Therefore the suit is not maintainable. After the purchase, this defendant is enjoying the said property without any objection by anybody including the plaintiffs. This defendant had constructed a compound wall to the written statement schedule property during the year 2002-03 by obtaining the license and by spending a sum of Rs.50,000/-. Neither plaintiffs nor any of the persons have not raised objections at the time of construction. This defendant converted 8 cents and 15 cents out of 29 cents of the land. It is further stated that he obtained license to construct the house and also

availed a loan of Rs.5,00,000/- from Canara Bank to construct the house. In total, he had spend an amount of Rs.30,00,000/- for construction of the house in the year 2014. He and his family members are residing in the said house without there being any obstruction by anybody. The R.T.C. in respect of the property mutated in the year 2002-03 and he is paying land revenue and house tax. The suit is not properly valued, the suit is barred by limitation, the court fee paid is insufficient. Without prejudice to the above said contention, it is submitted that this defendant is a bonafide purchaser for valuable consideration. Among other grounds pray for dismissal of the suit of the plaintiffs.

18. My predecessor in office framed the issues. Thereafter this court recasted the issues with the consent of the learned counsels, since my Predecessor in office left out so many issues.

The recasted issues are as follows:

1. Whether the plaintiffs prove that the plaint properties were the tenancy properties of their mother Kitty Shedthy and her mother?
2. Whether the plaintiffs further prove that Tahasildar issued occupancy certificate in favour of Kitty Shedthy in respect of plaint 'A' schedule properties?
3. Whether the plaintiffs prove that Kitty Shedthy arranged to file two further applications under Sec.7

through her daughters by name Radhu Shedthy and Girija Shedthy in respect of 'B' and 'C' schedule properties and occupancy certificate was issued in their favour for the benefit of the family of Kitty Shedthy?

4. Whether the plaintiffs further prove that themselves and defendants are co-owners in respect of suit schedule properties after the death of Kitty Shedthy?

5. Whether the plaintiffs prove that they follow the custom of Hindu Succession?

6. Whether the defendant No.12 proves that he has bonafidely purchased Sy. No.87/5B measuring 29 cents of Kurkalu village from Girija Shedthy?

7. Whether the defendant No.1(a) proves that the Landlord divided tenancy holding properties to Kitty Shedthy and her children by name Radhu Shedthy and Girija Shedthy through oral partition as stated in the written statement?

8. Whether the defendant No.1(a) proves that the said oral partition has been reduced into writing by an agreement dated 10-12-1975?

9. Whether the defendant No.1(a) proves that the suit 'B' and 'C' schedule properties were granted by the Land Tribunal to Radhu Shedthy and Girija Shedthy on their individual capacity?

10. Whether the defendant No.1(a) further proves that the 2<sup>nd</sup> plaintiff Shivarama Shetty has agreed to sell the property bearing Sy. No.181/2 measuring 70 cents and 82/1 measuring 60 cents in her favour and executed sale agreement dated 15-01-1981 and also executed a General Power of Attorney and delivered the possession of those properties?

11. Whether the defendant No.1(a) further proves that 2<sup>nd</sup> plaintiff also agreed to sell the property bearing Sy. No.87/5 measuring 60 cents, 87/3 measuring 14 cents and 91/2 measuring 24 cents in favour of Vanaja Shedthy and executed sale agreement on 15-01-1981 and also executed power of attorney and delivered the possession?

12. Whether the defendant No.3 proves that Kitty Shedthy when she was in sound state of mind executed a Will dated 15-07-1989 in favour of her children Vanaja Shedthy, Ganga Shedthy, Shivarama Shedthy and grand daughter Pushpavathi Shedthy in respect of her properties?

13. Whether the defendant No.3 further proves that their ancestors have followed the Madras Aliyasanthana Law of Succession?

14. Whether the suit is barred by limitation?

15. What order or decree?

19. The 2<sup>nd</sup> plaintiff examined herself as P.W.1 and got marked 29 documents. On the side of defendants, the defendant No.1(a) is examined as D.W.1 and got marked 6 documents.

***Ex.D1 is the deposition of P.W.1 in O.S.No.437/2013 on the file of Civil Judge and JMFC, Udupi. After transfer of this case, my predecessor in office for the best reasons known to him marked the said deposition as Ex.D1 (so part of the deposition of P.W.1 is marked as Ex.D1 and remaining part is continued as deposition of P.W.1).***

20. Upon perusal of entire records, my answer to the above Issues are as follows:

|               |                    |
|---------------|--------------------|
| Issue No.1 :  | In the Affirmative |
| Issue No.2 :  | In the Affirmative |
| Issue No.3 :  | In the Affirmative |
| Issue No.4 :  | In the Affirmative |
| Issue No.5 :  | In the Affirmative |
| Issue No.6 :  | In the Affirmative |
| Issue No.7 :  | In the Negative    |
| Issue No.8 :  | In the Negative    |
| Issue No.9 :  | In the Negative    |
| Issue No.10 : | In the Negative    |
| Issue No.11 : | In the Negative    |
| Issue No.12 : | In the Negative    |

Issue No.13: In the Negative  
Issue No.14 : In the Negative  
Issue No.15 : As per final order  
for the following:

### **REASONS**

#### **Issue No.1 to 3, 7 to 9:-**

21. These issues are inter connected with each other, they are taken up together for common discussion in order to avoid repetition of facts of the case and appreciation of evidence.

22. The claim of the plaintiffs is that the the defendant No.1 to 3, deceased Girija Shedthi and themselves are the children of late Kitty Shedthi and late Loku Shetty. The defendant No.4 to 7 and one deceased Shobha Shetty are the children of late Girija Shedthi. The defendant No.8 and 9 are the children and defendant No.10 is the husband of Shobha Shetty. The above said Kitti Shedthi died on 27.07.1999. The suit properties were the tenancy properties of Kitti Shedthi and her mother who obtained the same on chalageni from K. Ranganna Bhat and K. Krishnaraja Bhat. On advent of the Karnatka Land Reforms Act, the above said Kitti Shedthi claimed occupancy right in respect of 'A' schedule property by filing Form No.7 before the Land Tribunal, Udipi. The Land Tribunal enquired the said application filed by Kitti Shedthi in its proceedings bearing No.LRY88/461/194 TRI 3040 /81-82 and by its orders

occupancy right was conferred on 29.08.2021 and subsequently Form No.10 was issued in respect of the plaint 'A' schedule properties.

23. It is further claim of the plaintiffs that the said Kitti Shedthi had arranged to file two other applications in Form No.7 before the Land Tribunal, Udupi in the name of 2 daughters by name Radhu Shedhti who is the defendant No.3 and Girija Shedthi. After enquiry, the Land Tribunal pleased to pass an order in their favour and occupancy right was conferred and Form No.10 was issued in their favour in respect of 'B' schedule properties and 'C' schedule properties. Accordingly, R.T.C. pertaining to the suit properties stands in the names of respective parties based on the Form No.10 issued by the Tahsildar. According to the plaintiffs, though 'B' schedule properties and 'C' schedule properties granted in favour of Radhu Shedthi and Girija Shedthi, but they are granted for the benefit of the entire family and they are not individual grant.

24. Per contra, the defendant No.1(a) contended that the land lord divided the tenancy holding properties among Kitti Shedthi and her children by name Radhu Shedhti and Girija Shedthi through oral partition and subsequently it was reduced into writing by way of an agreement dated

10.12.1975 and subsequently they filed Form No.7 before the Land Tribunal and accordingly after due enquiry, the Land Tribunal granted and conferred the occupancy right in favour of respective parties. The grant was individual grant and not for the benefit of the joint family.

25. The plaintiff No.2 filed affidavit as her examination in chief. In order to substantiate her oral evidence, she produced 29 documents which were marked as Ex.P1 to P29. Ex.P1 is the Certified copy of Form 7, Ex.P2 is the Certified copy of statement of Kitti Shedthi, Ex.P3 is the Certified copy of order of Land Tribunal, Ex.P4 is the Certified copy of Form No.10, Ex.P5 to 13 are the R.T.C.'s, Ex.P14 is the Death certificate of Kitti Shedthi, Ex.P15 to 18 are the R.T.C.'s, Ex.P19 is the Certified copy of Form No.7, Ex.P20 is the Certified copy of statement of Girija Shedthi, Ex.P21 is the Certified copy of order of Land Tribunal, Ex.P22 is the Certified copy of Form No.10, Ex.P23 to 26 are the R.T.C.'s, Ex.P27 is the Certified copy of Form 7, Ex.P28 is the Certified copy of order of Land Tribunal, Ex.P29 is the Certified copy of Form 10.

26. On the other hand, the defendant No.1(a) examined herself as D.W.1 and produced 5 documents which are marked as Ex.D2 to D6. Ex.D2 is the partition agreement dated 10.12.1975, Ex.D3 is the sale agreement dated 15.01.1981, Ex.D4 is the GPA dated 15.01.1981,

Ex.D5 is the sale agreement dated 15.01.1981, Ex.D6 is the GPA.

**Ex.D1 is the deposition of P.W.1 in O.S.No.437/2013 on the file of Civil Judge and JMFC, Udupi. After transfer of this case, my predecessor in office for the best reasons known to him marked the said deposition as Ex.D1 (so part of the deposition of P.W.1 is marked as Ex.D1 and remaining part is continued as deposition of P.W.1).**

27. At the outset, the relationship between the parties is not in dispute. The grant made by the Land Tribunal in favour of the Kittu Shedthi in respect of 'A' schedule properties is also not in dispute. The D.W.1 in her cross-examination at page No.10 para No.6 deposed that prior to Ex.D2 Kittu Shedthi filed Form No.7 and occupancy right was conferred to Kittu Shedthi in respect of 'A' schedule properties. She further admits that the orders passed by the Land Tribunal in favour of the Kittu Shedthi.

28. The burden lies upon the plaintiffs to establish that the suit schedule properties were originally tenancy properties cultivated by late Kittu Shedthi and Loku Shedthi and that the occupancy right granted by the Land Tribunal enure to the benefit of the entire family. The P.W.1 has relied upon Ex.P1, the Form No.7 filed by late Kittu Shedthi.

29. On perusal of Ex.P1, it goes to show that Kitti Shedthi, W/o Loku Shedthi filed Form No.7. The original landlord to those properties shown as Ranganna Bhat, Krishnaraja of Alevoor village. In the last column of the Form No.7 the question is, the period for which the applicant has been cultivating the land as tenant for which Kitti Shedthi stated as 100 years. At the time of filing of the application, the age of Kitti Shedthi is only 55 years. So from the lifetime of her ancestors, she cultivated the properties. The Ex.P2 is the statement given by Kitti Shedthi before the Land Tribunal. Wherein she has stated that she and ancestors cultivated the lands and they have given 80Rupees and 30 bags of rice to the landlord. The statement is not disputed by the defendants. The Land Tribunal based on the statement given by Kitti Shedthi and in view of the Form No.7, passed an orders in her favour and occupancy rights in respect of the lands shown in the application are conferred which is marked as Ex.P3. Accordingly, Form No.10 was issued by the Special Tahsildar, Udupi. There is no dispute by any of the parties in respect of 'A' schedule properties. According to the defendant No.1(a), prior to the date of application filed by Kitti Shedthi, the properties were partitioned. However, the orders passed by the Land Tribunal and Form No.10 issued by the Special Tahsildar in favour of Kitti Shedthi is not disputed. Hence, this court is of the opinion that the plaint 'A' schedule properties were the tenancy properties of Kitti Shedthi and Tahsildar issued

occupancy certificate in favour of Kitti Shedthi in respect of 'A' schedule properties.

30. The plaintiffs contended that the Kitti Shedthi arranged to file two more applications under Form No.7 through her daughters by name Radhu Shedthi and Girija Shedthi in respect of 'B' schedule properties and 'C' schedule properties. The defendant No.1(a) seriously disputed the version of the plaintiffs. According to her the properties were already partitioned prior to the filing of the Form No.7, the landlord Ranganna Bhat withdrawn the tenancy right from Kitti Shedthi and given to Radhu Shedthi and Girija Shedthi separately and accordingly Radhu Shedthi and Girija Shedthi have filed Form No.7 separately.

31. The D.W.1 mainly relied on Ex.D2 the agreement. On perusal of the said document the nomenclature of the said document is agreement. It is writtended that the properties were partitioned among the family members of the Kitti Shedthi but it did not contain the signatures of the plaintiff No.1. Moreover, the P.W.1 did not admit the said agreement. The defendants are not taken pain to prove the execution of the said agreement by the parties to prove the oral partition. When the P.W.1 did not admit the due execution and oral partition then the burden is on the person who asserts, but here the defendant No.1(a) failed to prove the execution of said document as well as oral

partition. Hence, the Ex.D2 agreement cannot be reliable. Apart from this, the D.W.1 has not placed any materials to establish that properties were already partitioned and they enjoyed the properties as per the oral partition. Even the defendant No.1(a) failed to obtain favorable answer from the mouth of P.W.1 regarding the oral partition. On the other hand, the plaintiff relied upon Ex.P19, the Form No.7 filed by Girija Shedthi. On careful perusal of Ex.P19 in column No.1 at name of the landlord Kitti Shedthi name is mentioned. In the last column it is shown that from 1975, she cultivated the property. Kitti Shedthi is the mother of Girija Shedthi, the original landlord is Ranganna Bhat and not Kitti Shedthi. But for the best reasons known to the Girija Shedthi, the name of landlord is shown as Kitti Shedthi. The said Girija Shedthi gave statement before the Land Tribunal marked as Ex.P20. On careful perusal of the said statement/ document she has stated before the Land Tribunal that she and her ancestors possessed and cultivated the properties. On the date of filing of the Form No.7, the age of the Girija Shedthi is 26 years. She has stated that her ancestors cultivated the properties mentioned in the Form No.7. Her ancestors are Loku Shetty and Kitti Shedthi. Accordingly, the Land Tribunal passed an orders in favour of Girija Shedthi marked as Ex.P21. Subsequently, the Special Tahsildar issued occupancy certificate in favour of Girija Shedthi in respect of the properties mentioned in the Form No.7. Likewise, Radhu Shedthi filed Form No.7 marked as

Ex.P27. In the first column, the landlord name is shown as Ranganna Bhat and Krishnaraja Bhat. In the last column she has stated that the properties are held by her family on chalageni rights and from last 6 years, she cultivated the property. Accordingly, the Land Tribunal passed an order marked as Ex.P28 and subsequently, the Special Tahsildar issued form No.10 marked as Ex.P29.

32. Girija Shedthi, D/o. Kitti Shedthi in her statement given before the Land Tribunal has stated that ‘ಸದಿ ಭೂಮಿಯನ್ನು ನನ್ನ ಹಿರಿಯರ ಕಾಲದಿಂದ ಅನುಭವಿಸಿಕೊಂಡು ಬಂದಿರುತ್ತೇವೆ’.

Radhu Shedthi filed form No.7 marked as Ex.P27 wherein in the last column she has stated that ‘ಕಾಣಿಸಿದ ಭೂಮಿಯು ಸುಮಾರು 50 ವರ್ಷಗಳ ಹಿಂದಿನಿಂದಲೂ ನಮ್ಮ ಕುಟುಂಬದ ಚಾಲಗೇಣಿ ಹಕ್ಕಿನದ್ದಾಗಿದ್ದು ಈಗ 6 ವರ್ಷಗಳಿಂದ ನಾನು ಸ್ವತಃ ಸಾಗುವಳಿ ಮಾಡಿಕೊಂಡು ಬರುವಂತಹದಾಗಿದೆ’.

33. As stated above, the age of the Girija Shedthi and Radhu Shedthi at the time of filing Form No.7 is 26 years and 26 years. Therefore, the evidence of D.W.1 that Girija Shedthi and Radhu Shedthi cultivated the lands independently cannot be accepted literally. The only reasonable inference is that the cultivation was by their predecessor in interest, mainly Kitti Shedthi, Loku Shetty and their ancestors and the above said recitals and statements refers to the cultivation of the family over generation and not to their individual cultivation.

34. The evidence on record further indicates that the tenancy was originally that of Kitti Shedthi and family. Merely because separate Form No.7 were subsequently filed by Kitti Shedthi, Girija Shedthi and Radhu Shedthi in respect of different portions of the lands, it cannot be inferred that they were separate tenants cultivating independent holdings. The circumstances probabalized the plaintiffs contentions that the applications were filed separately only for convenience and for securing occupancy right in respect of different portions of the tenancy lands. Such separate grants by themselves do not establish prior partition or exclusive ownership. Radhu Shedhti and Girija Shedhti being one of the legal heirs of their ancestors and daughters of Kitti Shedhti. The tenancy being heritable, it devolves not only on one of the heirs, but it devolved on all the heirs. May be the other heirs might not have filed an application for grant of occupancy right, but it being the estate of their ancestors who died intestate, by succession, by survivor ship it devolves on the heirs of the deceased ancestors. The plaintiffs being the one of the class- I legal heirs of Loku Shedthi or his father or mother or the mother of Kitti Shedhti they are also entitled to a share. No doubt, the Radhu Shedhti and Girija Shedhti filed separate applications but they are failed to prove that they cultivated the land on separate tenancy. No documents are produced to establish that the original landlord has taken possession of the tenant

land and subsequently leased the 'B' schedule properties and 'C' schedule properties to Radhu Shedhti and Girija Shedhti.

35. On the other hand, the agreement marked as Ex.D2 produced by the D.W.1 is not proved. In the absence of signatures in each and every page and proof of execution in the manner known to Law, the said agreement cannot be treated as valid or reliable evidence/ document. Therefore the said document produced by the D.W.1 suffer from serious defect and remain unproved. Consequently, the defence taken by the defendant No.1(a) regarding oral partition, exclusive tenancy of Girija Shedthi and Radhu Shedthi cannot be accepted.

36. Thus, the documentary evidence produced by the plaintiffs is supported by contemporaneous records of the Land Tribunal, whereas the document relied upon by the defendants suffer from serious defects and remain unproved. Accordingly, the plaintiffs have succeed in proving that the tenancy originated with Kitti Shedthi and her ancestors and that the occupancy right granted pursuant to the proceedings before the Land Tribunal enure for the benefit of their family. Accordingly, **I answered the Issue No.1 to 3 in the Affirmative, 7 to 9 in the Negative.**

**Issue No.4 and 12:**

37. The plaintiffs contended that the defendants and themselves are co-owners in respect of suit schedule

properties after the death of Kitti Shedthi. On the other hand, the defendant No.3 contended that Kitti Shedthi executed a Will dated 15.07.1989 in favour of her children Vanaja Shedthi, Ganga Shedthi, Shivaram Shetty and grand daughter Pushpavathi Shedthi in respect of her properties.

38. The defendant No.3 has not produced the Will before this court to establish that Kitti Shedthi executed a Will. The Kitti Shedthi died on 27.07.1999. The said fact is not in dispute. The Kitti Shedthi in her statement given before the Land Tribunal has stated that her ancestors are cultivated the properties mentioned in Form No.7 and such being the case, the Kitti Shedthi is not the absolute owner of the 'A' schedule properties. She can bequeath only her share in those properties. Unfortunately, the defendant No.3 has not produced the Will though contended in the written statement. As per Sec.68 of Indian Evidence Act and Sec.63 of the Indian Succession Act, the Will is required to be proved by producing the document and one attesting witness shall be examined before the court to prove the due execution of the Will apart from the suspicious circumstances. The defendant No.1(a) though contended that failed to produce the Will. On perusal of the R.T.C.'s marked as Ex.P5 to P13, Ex.P15 to P18 and P23 to P26 some of the R.T.C.'s i.e. in Ex.P5, 6, 7, 8 and 9, 11, 12 the name of Vanaja Shedthi is found place in column No.9 and khata was mutated based on the Will. But the Will is not produced before the court to

prove the said Will. Hence, mere entry in column No.11 in the R.T.C.'s does not amount to proof of the Will.

39. The moment when Kitti Shedthi died intestate, then the plaintiffs not only has legal heirs of Kitti Shedthi but also as survivorship became the co-owners along with the defendant No.1 to 3 and with legal heirs of Girija Shedthi. Accordingly, **I answered the Issue No.4 in the Affirmative, Issue No.12 in the Negative.**

**Issue No.5 and 13 :**

40. The plaintiff contended that they follow the Hindu Succession Act. Per contra, the defendant No.3 in the written statement contended that their ancestors have followed the Madras Aliyasanthana Law of Succession. The burden of proving the issue squarely lies upon the defendants. It is their specific contention that the parties are governed by Aliyasanathana system of inheritance and therefore, the provisions of Hindu Succession Act are not applicable to the suit properties.

41. Except taking such a plea in the written statement, neither the defendant No.3 nor any of the defendants have not produced any documentary or oral evidence to establish that the parties belong to a community governed by the aliyasanthana Law or that the suit properties constitute aliyasanthana family properties. No genealogy,

family custom, community records or any other acceptable evidence has been placed before the court to substantiate the said plea. The defendants have not examine any of the witness or the family members competent to prove the existence and applicability of such customs. It is well settled that a custom of a special mode of succession, being in derogation of the general Law, must be specifically pleaded and strictly proved. A mere assertion in the written statement is not sufficient to establish the existence of such customs. The counsel for defendants during the course of cross-examination asked about the customs followed by P.W.1 for which she deposed that she and her family members never followed the custom of Madras Aliyasanthana Law of inheritance. Except the suggestions, put to P.W.1 nothing was placed before the court by the defendant No.2. Accordingly, **I answered the Issue No.5 in the Affirmative, Issue No.13 in the Negative.**

**Issue No.6 :**

42. The burden of proving this issue squarely rest upon defendant No.12. It is his specific case that he purchased Sy.No.87/5B measuring 29 cents at Kurkalu village from Girija Shedthi under the registered sale deed from the valuable consideration and that he is a bonafide purchaser without notice of the plaintiffs share.

43. It is true that the defendant had purchased the above said property. The vendor Girija Shedthi could convey only such right, title and interest as she lawfully possessed. If the property formed part of the joint family properties and Girija Shedthi was only a co sharer, the purchaser would merely step into the shoes of the vendor and acquired only her undivided share in the property.

44. As already discussed while considering the earlier issues, the evidence on record establishes that the tenancy was originally that of late Kitti Shedthi and her ancestors. The separate filing of Form No.7 application by Girija Shedthi and Radhu Shedthi does not establish exclusive ownership in their favour. Consequently, the defendant No.12 cannot claim better title than that of his vendor. Further the defendant No.12 has not produced any satisfactory evidence to establish that he made due enquires prior to the purchase of the above said property regarding the title of the said property or that he had no notice actual or constructed the rights of the other co-sharers. Therefore, this court holds that the defendant No.12 is entitled to claim only the rights if any which is vendor possessed and such rights shall remained subject to the result of the partition. In other words, the share and property allotted to the Girija Shedthi is to be allotted to defendant No.12 since he purchased the said property from her. Accordingly, **I answered the Issue No.6 in the Affirmative.**

**Issue No.10 and 11:**

45. The defendant No.1(a) contended that the plaintiff No.2 Shivaram Shetty has agreed to sell the property bearing Sy.No.181/2 measuring 70 cents and Sy.No.81/1 measuring 60 cents in her favour and he also agreed to sell the property bearing Sy.No.87/5 measuring 60 cents, Sy.No.87/3 measuring 14 cents and Sy.No.91/2 measuring 24 cents in favour of Vanaja Shedthi and executed sale agreement and GPA in their favour on 15.01.1981.

46. The defendant No.1(a) in order to substantiate his contention, produced 2 sale agreements dated 15.01.1981 marked as Ex.D3 and D5 and GPA marked as Ex.D4 and D6. On the strength of these documents, the defendant No.1(a) contended that the plaintiffs are not entitled to seek partition. Though the defendant No.1(a) has produced the alleged agreement of sale and GPA, mere production of the documents is not sufficient to prove their execution and due attestation in accordance with Law. The defendant No.1(a) has not examined the notary or if the notary is no more then the person who acquainted the signature of the said notary and the signature of plaintiff No.2 Susheela Shedthi. In fact, the signature of the Susheela Shedthi is not found in each page of the power of attorney. The defendant No.1(a) has not taken pain either to summon the notary register to establish that the plaintiff No.2 herself executed power of attorney.

Anyone can go and executed the power of attorney by claiming that her name is Susheela Shedthi and as such the burden is on the defendant No.1(a) to establish that plaintiff No.2 herself executed the sale agreement and power of attorney.

47. Even assuming that an agreement of sale was executed, an agreement of sale by itself does not create or extinguish any right, title or interest in an immovable property. It merely confers a contractual right to seek enforcement of the agreement. If the defendant No.1(a) or the proposed purchaser intended to enforce the agreement, the proper remedy is to institute a suit for specific performance or to file counter claim in the suit for enforcement of the agreement. Admittedly, the defendant No.1(a) has not filed counter claim to enforce the agreement within the period prescribed under the Limitation Act. Admittedly, no such suit has been filed either by the D.W.1 i.e. defendant No.1(a) or by Vanaja Shedthi.

48. Likewise, the alleged delivery of possession pursuant to the agreement, even if assumed does not divest the plaintiff rights or ownership in the absence of a valid conveyance or a decree of specific performance. Therefore, the defendant No.1(a) cannot defeat the plaintiffs claim for partition on the strength of an unproved agreement of sale on GPA. Apart from all these, a khata was not entered in the

name of plaintiff No.2 and shares are not determined on the date of alleged sale agreement. It is also pertinent to note that the plaintiff No.1 is not a party to the partition deed. Then how, he agreed to sell the property is not explained. These documents are no where produced prior to the filing of the suit. The execution of these documents is doubtful. Moreover, by virtue of these documents, the rights of the plaintiffs in a suit for partition is not extinguished. What the best can do by the defendant No.1(a) is ought to have file the suit for specific performance. Accordingly, **I answered Issue No.10 and 11 in the negative.**

**Issue No.14:**

49. The defendants contended that the suit is barred by limitation. In a suit for partition, every co-owner is deemed to be in joint and constructive possession of the joint family property unless there is clear and cogent evidence of ouster or exclusion of the plaintiffs by the defendant No.1 to 3 to the knowledge of the plaintiffs. The defendants are required to prove that the knowledge of the plaintiffs they are excluded from possession. Mere mutation entries, change of R.T.C., grant of occupancy right, execution of sale deed by one co-owner i.e. Girija Shedthi in favour of defendant No.12 or long possession by one of the co-sharer do not by themselves, constitute ouster nor do they extinguish the rights of the plaintiffs.

50. As already discussed while answering the earlier issues, the defendants have failed to establish the oral partition or the exclusive ownership of Girija Shedthi and Radhu Shedthi over the suit property. The documents relied upon by the defendants including the alleged partition agreement, sale agreement and GPA have not been duly proved in accordance with Law. Consequently, the defence taken by the defendants that the plaintiffs rights should extinguished cannot be accepted. The defendants have also failed to place any convincing evidence to show that the plaintiffs were excluded from the joint family properties or that there was an unequivocal denial of their title to their knowledge from which limitation could commence. In the absence of the proof of ousters, the right of a co-sharer to seek partition is a continued right. Hence, **I answered the Issue No.14 in the negative.**

**Issue No.15 :**

51. The plaintiffs have claimed 2/6th share in the suit properties. Admittedly, the plaintiff No.1a and 2, defendant No.1 to 3 and one deceased Girija Shedthi are the children of late Kittu Shedthi. Hence, they are equally entitled 1/6th each share in the suit properties.

52. The plaintiffs claimed loss of income for the past 3 years, but there is no evidence before the court that the property yield income. Further the possession of the defendant No.1 to 3 or children of Girija Shedthi is not

unlawful. They are in possession by virtue of their rights as co-owner and they are not in illegal possession. Hence, the plaintiffs are not entitled for any loss of income for the past 3 years.

In view of the relationship between the parties, I declined to award cost and in view of the reasons stated to the Issue No.1 to 14, I proceed to pass the following:

### **ORDER**

The suit of the plaintiffs is partly decreed.

The plaintiffs No.1 and 2 are each entitled for 1/6th share in the suit properties i.e. plaintiff 1(a) to 1(c) together entitled for 1/6th share and plaintiff No.2 is entitled for 1/6th share in the suit schedule properties by metes and bounds.

The defendant No.1(a) to 1(c) entitled for 1/6th share. The defendant No.2(a) to 2(e) together entitled for 1/6th share. The defendant No.3 is entitled for 1/6th share. The defendant No.4 to 10 together entitled for 1/6th share.

The properties sold by Girija Shedthi in favour of defendant No.12 bearing Sy.No.87/5B measuring 29 cents is to be allotted to the share of branch of

Girija Shedthi and subsequently it should be allotted to the defendant No.12 in F.D.P.

As far as possible, the parties who sold the properties to the purchasers / other defendants shall be allotted to the respective parties and same will be considered in F.D.P. without affecting the rights of the plaintiffs.

The claim of the plaintiffs for loss of income is hereby rejected.

Parties to bear their own cost.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 1<sup>st</sup> day of August, 2026)

***(M.Purushothama)***  
Prl. Sr. Civil Judge and CJM.,  
Udupi.

### **ANNEXURE**

#### **List of witnesses examined for the plaintiffs:**

P.W.1 : Smt. Susheela Shedthi

#### **List of documents exhibited for the plaintiffs:**

Ex.P1 : Certified copy of Form 7

Ex.P2 : Certified copy of statement of Kittu Shedthi

- Ex.P3 : Certified copy of order of Land Tribunal
- Ex.P4 : Certified copy of Form 10
- Ex.P5 to 13 : R.T.C.'s
- Ex.P14 : Death certificate of Kitti Shedthi
- Ex.P15 to 18 : R.T.C.'s
- Ex.P19 : Certified copy of Form 7
- Ex.P20 : Certified copy of statement of Girija Shedthi
- Ex.P21 : Certified copy of order of Land Tribunal
- Ex.P22 : Certified copy of Form 10
- Ex.P23 to 26 : R.T.C.'s
- Ex.P27 : Certified copy of Form 7
- Ex.P28 : Certified copy of order of Land Tribunal
- Ex.P29 : Certified copy of Form 10.

**List of witnesses examined for the defendants:**

- D.W.1: Pushpa R. Shetty

**List of documents exhibited for the defendants:**

- Ex.D1 : Evidence in O.S.No.437/2013
- Ex.D2 : Agreement dated 10.12.1975
- Ex.D3 : Sale agreement dated 12.01.1981
- Ex.D4 : Power of attorney dated 15.01.1981
- Ex.D5 : Sale agreement dated 15.01.1981
- Ex.D6 : Power of attorney dated 15.01.1981.

Prl. Sr. Civil Judge and CJM.,  
Udupi.