KAVN500000152019

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C., AT HARAPANAHALLI.

Present:-

Smt.Usharani R, B.A.L., LL.M.,

Senior Civil Judge & JMFC, Harapanahalli.

Original Suit No.03/2019

Dated this the 1st day of April 2026

Plaintiffs : 1. Sri T.G.M.Veeraiah S/o Shekaraiah, aged about 45 years,

2. Sri.K.G.M. Kotraiah S/o Shekaraiah, aged about 50 years,

Both are agriculturist, R/o Kyarakatte village, Harapanahalli taluk.

(By Sri.K.B.R., Advocate)

-VS-

Defendants: 1.Sri. T.M.Ajjaiah S/o T.Mruthunjaya, aged about 45 years,

2. Sri.T.M. Kotraiah S/o T.M. Mruthunjaya, aged about 45 years,

both are agriculturist, R/o Kyarakatte village, Harapanahalli taluk.

(D1 and 2 by Sri. P.J.G., Advocate)

Date of institution of the suit	: 04.01.2019
Nature of the suit	: Declaration and permanent injunction
Date of commencement of Recording the evidence	: 18.10.2022
Date of pronouncement of Judgment	: 01.04.2026

Duration:	Years	Months	Days
	07	02	28

(Smt. Usharani.R)
Senior Civil Judge & JMFC
Harapanahalli.

-: J U D G M E N T :-

The suit is filed for the relief of declaration that plaintiffs are the owners of the suit schedule properties and for consequential injunction.

2. **The brief facts of the case:-**

It is averred that the maternal family of the plaintiff was represented by the maternal grandfather of the plaintiffs Matada Kotrapaiah S/o Matada Rudraiah who died in 1965. His wife was Deveeramma who died in 1989. They had two daughters Channveeramma and Soubhagyamma. Channaveeramma was married to Shekaraiah and she died on 04.3.1994 leaving behind plaintiff no 1 and 2 K.G.M.Veeraiah and K.G.M.Kotraiah The second daughter Soubhagyamma was married to T.M.Gurubasaiah. She died testate on 10-01-2010.

3. The defendants belongs to the family represented by the propositus T.M. Kotraiah who died in 1975. His wife is Channamma who died in 1985. They had children T.M.Shambhulingaih, T.M.Channabasaiah, T.M.Prabhulingaiah T.M.Jnaneshwaraiah, T.M. Gurubasaiah T.M.Mruthunjaya T.M.Gowramma and T.M.Gangamma. Among them Gurubasaiah died issueless on 08.02.2016. Mruthunjaya had left behind defendant No.1 and 2 T.M.Ajjaiah and T.M.Kotraiah as his legal heirs.

4. Genealogy of the parties being so it is specifically averred by the plaintiff that after the death of Matada Kotrapaiah S/o Matada Rudraiah and his wife Deveeramma there was a partition in between Veeraiah and Channabasaiah under a palupatti dated 10.02.1980 wherein they divided the joint family properties. In the said partition Sy.No.113/H measuring 0.94 cents, Sy no 128 measuring 3 acres 35 cents, Sy.No.67/A 68/A 69 and 70 totally measuring 4.26 acres, sy no.42

E,F,G measuring 0.68 cents, Sy no 42H measuring 0.72, Sy no 113Z measuring 11 cents, sy no 60/B measuring 1.51 cents, sy no.113/Y measuring 6 cents and a house at Kyarakatte village were allotted to the share of Smt. Deveeramma and her daughters. Revenue records were accordingly mutated as per the said partition. Deveeramma along with her daughters were living in the house allotted to her share and was cultivating the said properties. Two daughters were got married by Deveeramma. Channaveeramma was residing with the mother in the suit B schedule item No.4 property. Soubhagyamma was married to Gurubasaiah who was a teacher and she was residing at the place of service.

5. Deveeramma, Channaveeramma and Soubhagyamma effected a division on 19.01.1984 in respect of properties allotted to Deveeramma as per palupatti dated 10.02.1980. To evidence this fact a written palupatti was executed on 19.01.1984. A schedule properties were allotted to Soubhagyamma and B schedule properties were allotted to Deveeramma. There is no dispute regarding allotted to the share of Channaveeramma, the mother of the plaintiffs. Therefore those properties are not included in the suit schedule. As per the palupatti dated

19.01.1984 revenue records have been mutated. But inspite of it Channaveeramma continued living with the Deveeramma along with her husband Shekaraiah and plaintiffs. The husband of Soubhagyamma was a teacher serving at various places and therefore Soubhagyamma was forced to live with the husband. Therefore the plaintiffs and their mother were cultivating the properties allotted the share of Soubhagyamma also. Channaveeramma died on 04.03.1994. Soubhagyamma and Gurubasaiah had no issues. Therefore plaintiffs were treated as own sons of Soubhagyamma. Soubhagyamma had taken responsibility of the plaintiffs and also performed their marriage.

6. Plaintiffs specifically aver that Soubhagyamma during her lifetime during her sound disposing state of mind executed a registered Will dated 17.02.2006 bequeathing A schedule properties and also half share in B schedule properties to the plaintiffs. Soubhagyamma died on 10.01.2010. Plaintiffs as legatees under the Will have succeeded to the suit properties. The A schedule properties had fallen to the share of Soubhagyamma as Class-I legal heirs of her father Matada Kotrapaiah. B schedule properties had fallen to the share of Deveeramma

and Deveeramma died intestate during 1989. Channaveeramma and Soubhagyamma are the class -I heirs of Deveeramma and therefore after the death of Deveeamma both Channaveeramma and Soubhagyamma inherited the properties and they were entitled for half shares. Therefore Soubhagyamma become the absolute owner of the A schedule properties and half share in B schedule properties. The plaintiffs have become the absolute owners of the suit schedule properties.

7. Subsequent to the death of Soubhagyamma her husband T.M.Gurubasaiah S/o T.M.Kotraiah got transferred the records of the A schedule properties behind the back of the plaintiffs by colluding with the revenue authorities. Plaintiff preferred an appeal before the Assistant Commissioner in RA/CR/07/2016-17 which came to be allowed. Subsequently Gurubasaiah started to interfere in the possession of the plaintiffs over the suit property. Plaintiffs thereafter filed O.S No. 75/2013 before Honble Civil Judge Harapanahalli. Gurubasaiah died on 08.02.2016 without any issues. Plaintiffs who are the legatees under the Will dated 17.06.2006 did not take any steps in the suit and the suit was dismissed as abated. Subsequently T.M. Gurubasaiah filed an appeal before the Deputy Commissioner in RA/CR

69/2017 -18 challenging the order of assistant commissioner and the appeal was allowed and they were directed to get their rights adjudicated by the civil court. Plaintiffs had agitated their claim under the registered Will dated 17.02.2006 executed by Soubhagyamma. The defendants agitated title under the Will dated 28.12.2011 executed by T.M.Gurubasaiah.

8. In the appeal defendant No.1 is shown as T.M.Gurubasaiah which is not tenable. Defendant No.1 and 2 are actually the children of Mruthunjaya T.M. The alleged parentage of defendant No.1 is concocted for the purpose of filing the appeal. T.M.Gurubasaiah was not the heir of Soubhagyamma. Since Soubhagyamma executed the Will dated 17.02.2006 her property was not available to be succeeded by T.M.Gurubasaiah. T.M.Gurubasaiha had personal knowledge about the Will executed by Soubhagyamma and he was not entitled to further bequeath suit properties under the Will. The alleged Will does not confer any right title or interest on the defendants over the A schedule properties. Thus the plaintiffs filed the present suit for the declaration that the suit properties are the absolute properties of the plaintiffs and for consequential injunction.

9. Defendant No.1 and 2 appeared in pursuance of suit summons and contested the case by filing written statement. Defendant No.1 has filed written statement categorically denying the plaint averments. The suit is barred by limitation. The suit filed in OS No.75/2013 was dismissed for default and therefore plaintiffs are precluded from bringing a fresh suit in respect of same cause of action under Order 9 Rule 9 and under Order 2 Rule 2 of CPC. Suit is barred under section 12 of CPC.

10. According to defendant No.1, item No.1 property Sy.No. 128 measuring 2-15 acres, item No.2 property Sy.No.60 and 61 measuring 1.51 acres and item No.4 house property in door no 51 was allotted to the share of Soubhagyamma in the partition between her sister Channaveeramma and her mother Deveeramma. There was no cordial relationship between Soubhagyamma, Channaveeramma and Deveeramma. After partition Soubhagyamma and T.M.Gurubasaiah were jointly enjoying the properties. Soubhagyamma died on 10.01.2010 leaving behind her husband T.M.Gurubasaiah as her legal heir. Soubhagyamma died intestate and husband is the the only legal heir. Therefore as per the Section 15

of Hindu succession Act T.M.Gurubasaiah succeeded to the entire estate of Soubhagyamma.

11. In respect of item No.3 property Sy.No. 42H measuring 0.72 cents it belonged to one Lessi Kalamma. It was purchased by T.M.Gurubasaiah under the registered sale deed dated 19.07.2011 for consideration of Rs 65,000/-. Item No.3 was not belonging to Deveeramma Channaveeramma and Soubhagyamma. It was actually belonging to T.M.Gurubasaiah as he had purchased it under the registered sale deed. T.M.Gurubsaiah and Soubhagyamma had treated defendant No.1 as their own son. Defendant no 1 was under the care and custody of Gurubasaiah and Soubhagyamma. Therefore Gurubasaiah during his lifetime bequeathed his properties in favour of defendants under the registered Will dated 28.12.2011 wherein he had bequeathed Sy.No.42H, Sy.No.128 and house door No. 51 under the registered Will dated 05.07.2011. Therefore two registered Wills are executed by T.M. Gurubasaiah on 28.12.2011 and 05.7.2011. T.M.Gurubasaiah died on 08.02.2016. Both Wills are last Will of T.M.Gurubasaiah and both defendant No.1 and 2 have become absolute owners of these properties as legatees under the Will. Since the defendants were looking after the welfare of Soubhaghaymma

and T.M.Gurubasaiah. Defendants have discharged the obsequies of late Soubhagyamma and T.M.Gurubasaiah. Soubhagyamma never executed the Will dated 17.02.2006 as alleged in favor of the plaintiffs.

12. Defendants learnt about the order passed by the Assistant Commissioner and defendants were not parties to the said proceedings and after learning about the order they filed appeal before the Deputy commissioner and the appeal was allowed and parties were directed to approach Civil court.

13. Defendants specifically contended that they are the absolute owners of the Sy.No. 128, Sy.No.42H and door No. 51 as per the Will dated 28.12.2011 and 05.07.2011. Hence suit is liable to be dismissed with exemplary costs.

14. Defendant No. 2 filed a memo and adopted the written statement filed by defendant No. 1.

15. Based on the above pleadings my learned predecessor in office had framed following :-

ISSUES

1. Whether plaintiffs proves that they are the owners of the suit schedule properties?

2. Whether plaintiffs proves that they are in possession of suit schedule properties as on the date of filing the suit?
3. Whether plaintiffs proves that the alleged interference by the defendants ?
4. Whether defendants proves that the plaintiff has no cause of action to file the present suit?
5. Whether defendants proves that the suit of plaintiff is barred U/s 12 of CPC?
6. Whether defendants proves that the suit of the plaintiff is barred by law of limitation?
7. Whether plaintiff is entitled for the reliefs as sought for in the plaint?
8. What order or decree?

16. In order to prove the case plaintiffs examined PW 1 to 5 and got marked Ex P1 to 22. Per contra, defendants examined DW 1 to 5 and got marked Ex.D1 to 49.

17. Heard the arguments canvassed on both sides and perused the documents on record.

18. My findings on the above issues are as follows:

Issue No.1 : Partly in the affirmative

Issue No.2 : Partly in the affirmative

Issue No.3 : Partly in the affirmative

Issue No.4 : In the negative

Issue No.5 : In the negative

Issue No.6 : In the negative

Issue No.7 : Partly in the affirmative

Issue No.8 : As per final order for the following:-

REASONS

19. **Issue No. 5:** Defendants contended that the suit is hit under Section 12 of CPC. According to the defendants the plaintiffs had earlier filed OS No. 75/2013 which was dismissed for default on 09.11.2016 and therefore no fresh suit is permitted to be filed on the same cause of action and therefore suit is hit under section 12 of COC and under Order 2 Rule 2 and under Order 9 Rule 9 of CPC. The defendants have produced copies of the plaint and the order sheet of the said OS no 75/2013 as Ex D 1 to 3 which shows that suit was dismissed as abated. There is no findings given on the merits and as such this suit is not hit by res judicata or constructive res judicata. Therefore the defendants failed to prove that suit is hit by res judicata. Hence this issue no 5 is answered in the negative.

20. **Issue No.1 to 3** :- These issues are taken together for common discussion to avoid repetition of facts and evidence as these issues are inter related. The plaintiffs have specifically claimed that they are the absolute owners of the suit schedule properties. The relationship of the parties are not disputed by the defendants. The genealogy shown in the plaint consists of two genealogies one of the maternal family of the plaintiffs and the second genealogy pertains to the family of the defendants and defendants have not disputed the relationship of the parties interse. It is not the dispute that there was a partition in between Deveeramma and Soubhagyamma. The plaintiffs claim is based on the Will executed by Soubhagyamma dated 17.02.2006 wherein she had bequeathed A schedule properties and half share in B schedule properties to the plaintiffs. Therefore the plaintiff claim as legatees under the Will dated 17.02.2006. On the other had defendants claimed that they have become the owners of the suit schedule properties particularly Sy.No.128 measuring 2.15 acres. Sy.No. 42H measuring 0.72 cents and house door No. 51 on the basis of the Will executed by T.M Gurubasaiah on 28.12.2011 and 05.07.2011. Defendant No.1 has specifically put up a plea that TM. Gurubasaiah and Soubhagyamma were treating defendant no 1 as their own son therefore

the two wills are executed in favor of the defendants.

21. Revenue proceedings are also admitted by the both the parties. It is admitted and also proved in evidence that plaintiffs had obtained an order in their favour by the Assistant Commissioner in RACR No. 7/20169-17 and subsequently an appeal was preferred by the defendants before the deputy commissioner and wherein order was passed to get their rights agitated before the Civil court.

22. During the course of arguments it was pointed out by the learned counsel for the plaintiffs that before the revenue courts defendant No.1 claimed to be the son of the biological father whereas the before this court he claims himself to be the adopted son of Gurubasaiah and he has taken two stands and his conduct is to be considered. Since the suit properties were the absolute properties of the Soubhagyamma she had already bequeathed the properties in favour of the plaintiffs under the resisted Will dated 17.12.2006 and since Will was executed the husband no more remained as an heir to succeeded to the properties of Souhbagyamma and therefore T.M.Gurubasaiah had no authority to execute the Will bequeathing the properties that

were already bequeathed by the Soubhagyamma under the Will. Since the plaintiffs proved the due execution of the Will by Soubhagyamma suit is liable to be decreed.

23. In order to prove the title to the suit schedule properties the plaintiffs have relied on the evidence of plaintiff No.1 K.G.M. Veeraiah who examined himself as PW1. He deposed about the execution of the Will by Soubhagyamma and that they have become owners to the suit schedule properties. The plaintiff K. G. M. Veeraya examined himself as PW1 and he reiterated that there was a partition and also deposed about the Will executed by Soubhagyamma and that he has succeeded to the suit properties. He has relied on the Will dated 17.02.2006 and claims that he is the absolute owner of the A schedule properties and also half share in the B schedule property. He got marked Ex P1 to Ex P22 in support of his examination in chief affidavit.

24. Ex.P.1 is the RTC extract of Sy.No. 128 measuring 6.70 acres situated at Kyarakatte village, out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in

the name of Kotraiah S/o Shekaraiah and Veeraiah S/o Shekaraiah for the year 2018-19. Ex.P.2 is the RTC extract of Sy.no. 60/B measuring 14.39 acres situated at Kyarakatte village, standing in the names of T.M.Annapurnamma W/o Late Channabasaiah, Mahadeamma W/o Veeraiah, Horagalamani Gowramma W/o Basappa, Horalgalamani Ningappa S/o Basappa, Horagalamani Kotreshappa S/o Basappa and Maheshwaragouda Kotraiah S/o Shekaraiah for the year 2018-19.

25. Ex.P.3 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the names of T.M.Gurubasaiah S/o T.M. Kotraiah Kyarakatte village during 2018-19. Ex.P.4 is the RTC extract of Sy.No. 67A measuring 8.26 acres situated at Kyarakatte village, out of which an extent of 3.30 acres is standing in the name of K.Bheemanna S/o Gurusiddappa, an extent of 3.24 acres is standing in the name of K.M.Channabasappa S/o Late Mahadevappa and an extent of 1.72 acres is jointly standing in the names of Mahadevamma W/o Veeraiah, Kotraiah S/o Shekaraiah and Veeraiah S/o Shekaraiah for the year 2018-19.

26. Ex.P.5 is the is the RTC extract of Sy.No.69 measuring 2.68 acres which is jointly standing in the names of Mahdevamma W/o Veeraiah, Kotraiah S/o Shekaraiah and Veeraiah S/o Shekaraiah for the year 2018-19. Ex.P.6 is the RTC extract of Sy.No.70 measuring 6.70 acres situated at Kyarakatte village, out of which an extent of 3.84 acres is standing in the name of Kadakollada Ravidranatha S/o Channabasappa and an extent of 2.86 acres is standing in the joint names of K.G.M.Kotraiah S/o Shekaraiah, K.G.M.Veeraiah S/o Shekaraiah and Mahadevamma W/o Veeraiah for the year 2018-19.

27. Ex.P.7 is the RTC extract of Sy.No.42EFG measuring 2.03 acres situated at Kyarakatte village standing in the joint names of Mahadevamma D/o Veeraiah, K.G.M. Kotraiah S/o Shekaraiah, K.G.M. Veeraiah S/o Shekaraiah for the year 2018-19. Ex.P.8 is the RTC extract of Sy.no.113/2 measuring 0.28 acres situated at Kyarakatte village, out of which an extent of 0.11 cents is standing in the name of Deveeramma W/o Kotraiah and an extent of 0.17 cents is standing in the names of Channabasaiah S/o Rudraiah for the year 2018-19

28. Ex.P.9 is the RTC extract of Sy.No. 113/Y measuring 0.19 cents situated at Kyarakatte village standing in the joint names of Matada Kotrayya Matada Mallaiah, Thippeswamy K.G.M. Kotraiah S/o Shekaraiah, K.G.M. Veeraiah S/o Shekaraiah, K.U.Shanthaveeraiah, Mahadevamma W/o Veeraiah for the year 2018-19. Ex.P. 10 is the RTC extract of Sy.No. 68A measuring 1.25 acres situated at Kyarakatte village standing in the names of Mahadevamma w/o Veeraiah, Kotraiah S/o Shekaraiah, Veeraiah S/o Shekaraiah for the year 2018-19.

29. Ex.P.11 is the DCB register extract of property No. 51 which shows that name of T.M.Gurubasaiah S/o Kotraiah Kyarakatte for the year 2012-13. Ex.P.12 is the tax payment register extract of property No. 316/2 which shows the name of Kadthi Kotreshi S/o Shekaraiah for the year 2012-13. Ex.P.13 is the death certificate of T.M.Gurubasaiah who died on 08.02.2016, Ex.P.14 is the death certificate of Soubhagyamma who died on 10.01.2010

30. Ex.P.15 is the certified copy of order passed by the assistant commissioner of Harapanahalli in RACR No. 07/2016-17 dated 22.12.2016 wherein

the appeal filed by the plaintiffs has been allowed and the name of TM Gurubasavayya S/O T M Kotraiah is directed to be removed.

31. Ex.P.16 is the certified copy of order passed by District Commissioner in RACR No. 69/2017-18 dated 05.10.2018 in the appeal filed by the defendants wherein direction is given to redress remedy before the civil court by obtaining probate.

32. Ex.P.17 is the original Will dated 17.02.2006 executed by Smt Soubhagyamma W/o T.M.Gurubasaiah in favor of Matada Veerayya @ KGM Veerayya and G M Kotraiah ie the present plaintiffs wherein she has bequeathed Sy no.128, measuring 2.15 acres, sy no 60 B measuring 1.15 acres, Sy no 42 H measuring 0.45 cents, house plot, and half share in Sy.No.67/A 68/A 69 and 70 totally measuring 4.26 acres, sy no.42 E,F,G measuring 0.68 cents, Sy no 42H measuring 0.72, Sy no 113Z measuring 11 cents, sy no.113 measuring 0.3 cents and a house at Kyarakatte village. ExP.17a and b are signatures

33. Ex.P.18 is the death certificate of Soubhgyamma who died on 10.01.2010 Ex.P.19 is

the letter issued by Gramapanchayath Towduru furnishing documents pertaining to plot no 51. Plot no 51 is standing in the name of KM Channabasaiah. Ex.P.20 is the unregistered palu patti dated 10.02.1980. Ex.P.21 is the letter issued by the Assistant Commissioner and Sub divisional Magistrate of Harapanahalli. Ex.P.22 is the genealogical tree.

34. In the cross-examination, PW1 admitted that Mattatha Kottarappaya had two daughters Channaveeramma and Soubhagyamma. Kottarappaya had five brothers Channabassaya, Hamppaya, Channaveeraswami and Gurusiddhaya. Kottarappaya, Channveeraya who is pontiff of Arsikere Kolashanteshwara Mutt. He was unmarried and a sanyasi. Gurusiddhaya had no children. Channabassaya had a son and two daughters. Ajjaya and Apoornama Virupaksamma. Hampaya had a son and a daughter. Veeraya and Gurubassamma. Kottrapaya had two daughters. Channaveeramma and Soubhagyamma. PW1 has admitted the suggestions regarding the genealogical tree. He stated that in the year 1982 there was a partition. He admitted that the second daughter of Kottarappa is Soubhagyamma. Soubhagyamma was married to TM Gurubasayya. Soubhagyamma

predeceased the husband TM Gurubasaya died thereafter. TM Gurubasayya was a teacher and he was working at various places. TM Gurubasaya had 6 brothers and sisters. Shambulingaya, Gurubasayya, Channabasaya, Prabhulingaya, Mruthunjaya and Gnaneshwara. Sisters were Gouramma, Gangamma and Kottaramma. PW1 stated that Soubhagyamma died in the year 2010. But he does not know when Gurubasayya died. But Soubhagyamma died first. He admitted that after the death of Soubhagyamma, all the properties were succeeded by Gurubasayya and his name was entered. She admitted that the heirs of the parents of Soubhagyamma and Channaveeramma are still alive.

35. PW 1 admitted about filing of OS no 75 / 2013 on the basis of the Will dated 17.02.2006. He admitted that he had sought for declaration and injunction and after the suit was filed Gurubasayya died. He admitted that heirs of Gurubasayya are alive. The brothers of Gurubasayya are alive. He said that the suit OS no 75/2013 was dismissed and he did not attempt to continue the suit. He specifically admitted that Item No. 1, 2 and 4 were allotted to the share of Soubhagyamma It is denied that since Soubhagyamma and Chanveeramma

were not in good terms, they divided the properties. He denied that Soubhagyamma was residing with the husband. He denied that Soubhagyamma and Gurubasayya were looking after Ajayya as his own son and they themselves got educated Ajjaya. He stated the parents name in all the school records of Ajjaya might have been entered as Gurubasaya and Soubhagyamma He specifically admitted that Soubhagyamma died on 10.01.2010. Gurubasayya died on 08.02.2016. He denied knowledge that after the death of Soubhagyamma, Gurubasaya became owner to the properties of Soubhagyamma. He denied that Soubhagyamma has not executed any document.

36. PW1 admitted that Item No. 3 property i.e. Survey No. 42H belonged to one lessi Kalamma. He also admitted that Gurubasayya purchased Item No. 3 property from Lessi Kalamma under the registered deed dated 19.07.2011. He admitted that he has not taken any steps on the Item No. 3 property. He denied that Item No. 3 property does not belong to Chenneveeramma, Deveeramma and Soubhagyamma. He denied knowledge about the Will dated 28.12.2011 executed by TM Gurubasaya in respect of Item No. 3 property and Survey No. 128 in the name of defendant. He also denied

knowledge that House No. 51 has been bequeathed under the Will in favour of defendants by Gurubasayya. He denied that on the basis of the Will, defendants have become absolute owners of the suit properties. He denied that Soubhagyamma had not executed any Will and he concocted the will. PW1 specifically admitted that Soubhagyamma was suffering from paralysis. He admitted that he filed RACR no 7 /2016-17 without impeding all the parties in the Assistant Commissioner Court. He admitted that defendants were not parties before the Assistant Commissioner Court and an order was obtained in his favour. He admitted that subsequently Ajjayya filed appeal before the District Commissioner and orders passed by Assistant Commissioner was nullified by District Commissioner. He admitted that after District Commissioner passed order he filed this suit. He denied that he has no right over Item No. 1, 3 and 4 properties.

37. Plaintiff has also examined Sri P Halesh as PW2. He has specifically deposed about the Will dated 17.02.2006 and he was also present at the time of executing the Will. He specifically stated that Soubhagyamma had signed on the Will and even he signed as an attesting witness. He

identified the signature of himself and also Soubhagyamma and Rudresh in Ex P17 Will.

38. In the cross-examination PW2 stated that they had come to the house at Kanchikere on 17.02.2006. He stated that he does not remember the properties which was bequeathed under the Will. But all properties stood in the name of Soubhagyamma. He denied that Soubhagyamma was paralyzed. According to him, Soubhagyamma was healthy. Gurubasayya and Soubhagyamma were on good terms. He stated that on the date of executing the Will, Soubhagyamma had come alone. He and his father were there. Soubhagyamma herself brought the scribe. He stated that firstly a draft was prepared on the white sheet and subsequently Will was executed. He denied that Soubhagyamma had no sound disposing state of mind. He denied knowledge that defendant no. 1 was looked after as a foster son by Soubhagyamma and her husband. He denied knowledge about the said relationship and also that in the school records of Ajjaya, name of parents is shown as Gurubasayya and Soubhagyamma. He specifically denied that when the Soubhagyamma was ill and suffering due to diseases, Will has been concocted.

39. Plaintiffs have also examined Veerudresh S/O Halappa as PW3. Even he deposed about execution of the Will dated 17.02.2006 by Soubhagyamma He stated that he has also signed as an attesting witness.

40. In the cross examination PW3 stated that he met Soubhagyamma in the Kanjikere Village. He has not seen documents furnished by Soubhagyamma He admitted that Soubhagyamma was paralyzed. But he denied that she had no mental capacity to execute the Will. Scribe was also called by Soubhagyamma A draft was prepared on a white sheet and subsequently Will was typed. Pranesh Rao typed the Will. Further, he denied that s Soubhagyamma had not at all executed the will and Will has been concocted to help the plaintiffs.

41. Another witness B. Siddhappa S/O late Bidri Virupakshappa is examined as PW4. He also stated that he has knowledge about the parties to the suit. Deviramma had two daughters Chanaveeramma and Soubhagyamma. There was a partition on 10.02.1980 He has seen partition deed which is marked as Ex P20.

42. In the cross-examination, PW4 was unable to state details of the suit properties and also the boundaries of the suit properties. He stated that partition was effected in the year 1980. He denied that without knowing about contents of Ex P20 he concocted the partition deed.

43. Another witness K. M. Basavaraja S/O late K. M. Veeraiah is examined as PW5. He stated that he has signed on the partition deed dated 10.02.1980. He has signed on Ex P20. He identified his signature on Ex P20. However in the cross-examination PW5 stated that he was not present at the time of executing the Will by Soubhagyamma He stated that he has no knowledge about the Will.

44. Per contra, defendant no 1 TM Ajjaya got himself examined as DW 1 and specifically stated that the plaintiffs have come up with a false case. D.W.1 and he has reiterated that T.M. Gurubasayya during his lifetime had executed two Will dated 28-12-2011 and 05-07-2011 and he has become the absolute owner of the properties bequeathed under the will. Plaintiffs were never in possession of the said properties, i.e., survey No. 128, 42H and 51, door No.51 of Karakatti village. Therefore, prays for dismissing the suit with

exemplary cost. He has relied on documents marked as Exhibit D-1 to D-49.

45. Ex.D1 to 3 are the certified copies of order sheet, plaint and written statement filed in OS No. 75/2013 before the Civil Judge and JMFC Harapanahalli Ex.D.4 is the certified copy of order passed by the District Commissioner of Davanagere in RACR No. 69/2017-18 dated 05.10.2018.

46. Ex.D.5 is the original registered sale deed dated 19.07.2011 executed by Smt. Naykara Kalavva W/o Kampalavva in favour of Sri T.M.Gurubasaiah S/o T.M.Kotraiah in respect of Sy.No. 42/H measuring 0.72 cents for consideration amount of Rs. 65,000/-.

47. Ex.D.6 is the original registered Will dated 28.12.2011 executed by T.M.Gurubasaiah S/o T.M.Kotraiah in respect of Sy.No. 42H measuring 0.72 cents and Sy no 128 measuring 2.15 acres respectively in favor of defendant no 1 and 2. Ex.D.6a to d are the signatures. Ex.D7 is the Original registered Will dated 05.07.2011 executed by T.M.Gurubasaiah S/o T.M.Kotraiah in respect of Sy.No. 52/A measuring 4.53 acres and Sy no

113/2D4B measuring 23 cents. Ex.D.7a to e are the signatures.

48. Ex.D.8 is the online copy of orders passed by the District Commissioner Ex.D.9 is the birth date certificate of Telagi Matada Ajjaiah S/o T.M.Gurubasaiah who born on 25.12.1976 Ex.D.10 and 11 are the study certificates of Telagi Matada Ajjaiah S/o T.M.Gurubasaiah Ex.D.12 and 13 are the school certificates of Telagi Matada Ajjaiah S/o T.M.Gurubasaiah Ex.D.14 and 15 are the Kannada medium study certificates of Telagi Matada Ajjaiah S/o T.M.Gurubasaiah Ex.D.16 and 17 are the Rural study certificate of Telagi Matada Ajjaiah S/o T.M.Gurubasaiah wherein the parents name is shown as Soubhagyamma and TM Gurubasayya. Ex.D.18 is the wedding invitation card.

49. Ex.D.19 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36 ie equally entered in the names of T.M. Ajjaiha S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2025-26. Ex.D.20 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36

each is entered in the names of T.M. Ajjaiah S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2024-25 on the basis of Will. Ex.D.21 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36 each is entered in the names of T.M. Ajjaiha S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2023-24

50. Ex.P.22 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36 each is entered in the names of T.M. Ajjaiah S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2022-23 Ex.D.23 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36 each enterd in the names of T.M. Ajjaiha S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2021-22 Ex.D.24 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36 each is entered in the names of T.M. Ajjaiha S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2020-21.

51. Ex.D.25 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, out of which an extent of 0.36 each stands in the names of T.M. Ajjaiha S/o Gurubasaiah and T.M. Kotresh S/o Mruthunjaya for the year 2019-20 Ex.D.26 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, standing in the names of T.M.Gurubasaiah S/o T.M.Kotraiah Kyarakate village for the year 2018-19

52. Ex.D.27 is the RTC extract of Sy.No. 42/H measuring 0.72 acres situated at Kyarakatte village, standing in the name of T.M.Gurubasaiah S/o T.M.Kotraiah Kyarakate village for the year 2017-18 Ex.D.28 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the name of T.M.Gurubasaiah S/o T.M.Kotraiah Kyarakate village for the year 2016-17 Ex.D.29 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the names of T.M.Gurubasaiha S/o T.M.Kotraiah Kyarakate village for the year 2015-16 Ex.D.30 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the names of T.M.Gurubasaiah

S/o T.M.Kotraiah Kyarakate village for the year 2013-14

53. Ex.D.31 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the names of T.M.Gurubasaiah S/o T.M.Kotraiah Kyarakate village for the year 2012-13 Ex.D.32 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the names of T.M.Gurubasaiah S/o T.M.Kotraiah Kyarakate village for the year 2011-12. Ex.D.33 is the RTC extract of Sy.No. 42/H measuring 0.72 cents situated at Kyarakatte village, standing in the names of Naykara Kalavva D/o Kempaplavva Arasapura for the year 2010-11

54. Ex.D.34 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of K.G.M Veeraiah S/o Shekaraiah for the year 2025-26 Ex.D.35 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of K.G.M Veeraiah S/o Shekaraiah for the year 2024-25 Ex.D.36 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of K.G.M Veeraiah S/o Shekaraiah for the year 2023-24. Ex.D.37 is the

RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of K.G.M Veeraiah S/o Shekaraiah for the year 2022-23

55. Ex.D.38 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of K.G.M Veeraiah S/o Shekaraiah for the year 2021-22 Ex.D.39 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the joint name of Kotraiah S/o Shekaraiah and Veeraiah S/o Shekaraiah for the year 2020-21 Ex.D.40 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of Kotraiah S/o Shekaraiah and Veeraiah S/o Shekaraiah for the year 2019-20 Ex.D.41 is the RTC extract of Sy.No. 128/2 measuring 3.35 acres situated at Kyarakatte village standing in the name of Kotraiah S/o Shekaraiah and Veeraiah S/o Shekaraiah for the year 2018-19 Ex.D.42 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiah S/o Shekaraiah for the year 2017-18 Ex.D.43 is the

RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiah S/o Shekaraiah for the year 2016-17

56. Ex.D.44 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiha S/o Shekaraiah for the year 2015-16 Ex.D.45 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiha S/o Shekaraiah for the year 2014-15 Ex.D.46 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the names of Kotraiah S/o Shekaraiah, Veeraiah S/o Shekaraiah, T.M.Gurubasavaiah S/o Late T.M. Kotraiah for the year 2013-14

57. Ex.D.47 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiha S/o Shekaraiah, Veeraiah S/o Shekaraiah, T.M.Gurubasavaiah S/o Late T.M. Kotraiah for the year 2012-13 Ex.D.48 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiha S/o Shekaraiah, Veeraiah S/o Shekaraiah, T.M.Gurubasavaiah S/o Late T.M. Kotraiah for the year 2011-12 Ex.D.49 is the RTC extract of Sy.No. 128/2 measuring 6.70 acres situated at Kyarakatte village out of which an extent of 3.35 acres is standing in the name of Mahadevamma W/o Veeraiah and an extent of 3.35 acres is standing in the name of Kotraiha S/o Shekaraiah, Veeraiah S/o Shekaraiah, Soubhagyamma W/o Gurubasaiah for the year 2010-11.

58. D.W.1 has been subjected to cross-examination, wherein he admitted that T.M.

Gurubasaya is shown to be his adopted father, but he has no documents to show that he was the adopted son of T.M. Gurubasaya, but he has produced school documents. It is admitted that Kottrapaya is the maternal grandfather of Veeraya and Kottraya. Kottraya died in the year 1965. Deviramma was the wife of Kottrappayya and they had only two daughters, Chanveeramma and Soubhagyamm. Genology has been admitted. It is also admitted that Soubhagyamma was married to T.M. Gurubasayya and they had no issues.

59. DW 1 specifically admitted that his biological father is Mruthynjaya who is the younger brother of Gurubasayya. His actual father is T.M. Kottraya. Kottraya had a wife by name Channamma and they had eight children Shambulingaya, Channabasaya, Prabulingaya, Gnaneshwaraya, Gurubasaya, Mruthunjaya, Gauramma and Gangamma. It is admitted that Kottrabasamma was another daughter. He admitted that originally the suit properties belonged to the maternal grandfather Kottrapaya. Kottrapaya had a son Veeraya and Channabasaya.

60. He admitted that there was a division on 10-2-1981. It is admitted that Kottrapaya, Veeraya, Channabasaya entered into a partition on 10-2-

1981. He has specifically admitted the said suggestion. It is also admitted that in the said partition, survey no13H measuring 94 cents, survey no 128 survey no 67A, 68A, 70 totally measuring 4 acres 26 cents, survey no 42EFG measuring 68 cents, survey no42H measuring 72 cents, survey no 113Z measuring mearuing 11 cents, survey no 60B measuring 1 acre 51 cents, survey no 60B1 measuring 1 acre 51 cents, survey no 113Y measuring 6 acres 6 cents and one house went to the share of Deviramma. He denied that Chennaviramma and Soubhagyamma were jointly enjoying the properties that were allotted to Deviramma.

61. It is admitted that after the death of her husband, Deviramma was residing in the house of Chennamma. But he denied that Soubhagyamma, Deviramma and Chennaviramma were together enjoying the properties. DW1 admitted that Gurubasayya was working as a teacher and Soubhagyamma was going to reside along with him at the places of service. He also admitted about the partition dated 19-1-1984 and in the partition A schedule properties went to the share of Soubhagyamma. It is also admitted that B schedule property went to the share of Deviramma.

62. It is admitted that they have not shown properties that went to Chennaviramma and Deviramma as suit properties. It is admitted that as per the partition dated 19-1-1984 all the properties are mutated in the specific names. It is admitted that Chennaviramma died on 4-3-1994. It is admitted that suit properties were maternal properties of Soubhagyamma and not the properties that came from Gurubasayya. She denied that Soubhagyamma had no issues and therefore plaintiffs were being treated as her children. He denied that Soubhagyamma executed Will on 17-2-2006 wherein she has bequeathed her share of properties in favor of the plaintiffs.

63. DW 1 denied that Soubhagyamm died on 10-1-2010 leaving behind the plaintiffs as absolute legal heirs. It is admitted that Soubhagyamma and Chennaviramma were the class I heirs of the mother. He admitted about filing of OS no 75/ 2013 and in that suit there was a claim on the basis of the Will dated 17-2-2006. He admitted that Gurubasayya had appeared before the court and filed written statement and in the said written statement he had pleaded that all the suit properties were the maternal properties of Soubhagyamma.

64. It is admitted that on 19-1-1984 there was a partition and properties fell to the share of Soubhagyamma. He denied about the written statement filed by Gurubasayya in the year 2013 as per Ex D3. DW1 further stated that after death of Gurubasayya OS no 75/2013 came to be dismissed. It is admitted that there was no decree or judgment passed. He denied about the execution of the Will dated 17-2-2016 by Soubhagyamma. It is denied that after the death of Soubhagyamma Gurubasayya never received the properties and never succeeded to the suit properties.

65. DW1 denied that survey no 42H measuring 0.72 cents was purchased property purchased by Kotrapaya and in the said partition of 1984 survey no 42H measuring 72 cents was also divided. It is denied that Gurubasayya concocted false sale deed in respect of survey no 42H measuring 0.72 cents. He denied that Gurubasayya during his lifetime had never disclosed about the Will dated 28-12-2011 and 5-7-2011. It is denied that TM Gurubasayya had no authority to execute both the wills. It is denied that in the written statement in OS no 75 /2013 since Gurubasayya had not spoken of about the Will it is concocted documents. It is also denied that during

the ill health and when the Gurubasayya was 80 years old they concocted two Wills and Gurubasayya had no volition to execute the will and wills are concocted documents. DW1 has been subjected to lengthy cross examination. He denied knowledge about the revenue proceedings. He also denied knowledge about the written statement filed by Gurubasayya. He admitted about the revenue proceedings and a final order was passed to agitate their rights before the civil court.

66. DW2 P Siddhalingana Gowda S/O late P Revanasiddhana Gowda is one of the witness who specifically stated that he knows the parties to the suit. His father Revanasiddhana Gowda died in the year 2013. His father used to affix his signature in both English and Kannada and he identifies the signature. He stated that in Ex D6 there is signature of his father. Even in Ex D7 his father has signed as Ex D6a and Ex D7a.

67. In the cross examination DW1 stated that his father used to sign in English and Kannada but he has not seen other documents. He denied that signature is not belonging to his father and he was deposing falsely.

68. Defendants have also examined K Ravindrachari S/O late Chennavirachari another witness who also stated that he has signed on Ex D7 Will. He also identified signature of Gurubasaiah. TM Gurubasaiah signed on the said Will. He was present at the time of execution of the Will. He is an attesting witness to the Will and he spoke of due execution of Ex D7 Will.

69. In the cross examination DW3 stated that he does not know who are the siblings of Veerayya and Kotrayya. He does not know whether Gurubasayya has mentioned in the Will as to how he received the said properties. He stated that in the will the Gurubasayya has had bequeathed properties to his adopted son but he has not seen any document of adoption. He has not taken any pain to see whether Gurubasayya had right to execute the Will or not. He stated that by the time he went to the sign at the sub-registrar's office two pages was written. After others signed he has signed. He signed before the sub-registrar. He was asked by Gurubasayya to sign. He denied that Adjaya was present at the time of executing the Will. He stated that he does not know about the dispute in between children of Channaveerama and Gurubasaiah. He stated that at the time of

executing the Will Gurubasayya was aged eighty years.

70. DW 3 denied that he had no worldly knowledge and Will is concocted. He has withstood the tenor of cross examination. He denied that since properties bequeathed are Soubhayamma's Streedhana properties and it was already bequeathed in favor of the plaintiffs, Gurubasayya had no authority to execute the Will and he himself had taken an active role in concoction of the will.

71. DW. 4, K. M. Ajjaya son of late Channabasaiah is another witness who also deposed about the due execution of the Will marked as ExD. 7. Evidence of DW 4 has been discarded.

72. DW.5, B. Channakenchappa S/O Fakirappa another witness also deposed about the execution of the Will marked as ExD. 6.

73. DW. 5 has been also subjected to lengthy cross examination wherein he stated that he does not know whether Veeraya and Kottaraya have been executed any Will. He was unable to state details of the property bequeathed under the Will. He denied knowledge that properties of

Soubhagyamma has been executed under the Will. He denied knowledge that Soubhagyamma had executed a Will earlier to Gurubasaiah. He denied knowledge about the nature of the suit properties. He stated that Gurubasaiah gave instructions to draft the will. He has signed before the sub-registrar's office, but Will was not read over to him by the sub-registrar and he also not taken pain to read it. He denied that Gurubasayya was not healthy at the time of executing the will and he was not mentally fit to execute the will. He was unable to state the exact date, month and year of executing of the Will. He denied that he has concocted the Will only to help the defendants.

74. From the aforesaid evidence on record, it is apparent that the plaintiffs have proved the genealogy. The plaintiffs have proved that they are the heirs and are the children of Chennaveeramma, who is none other than the daughter of Deviramma. It is also established in evidence that Matada Kottarappaya had a wife by name Deviramma and they had only two daughters Chennaveeramma and Soubhagyamma. Chennaveeramma was married to Shekharaya and PW1 and PW2 are their children. Thus Sobhagyamma is admittedly the sister of Chanaviramma. Plaintiffs also succeeded in

showing that all the suit properties were originally belonging to Deviramma.

75. It is apparent from the admissions given by the parties that there was an earlier partition on 10.02.1980 in between the family members of Deviramma and the suit properties were allotted to the share of Deviramma. Further even defendants have admitted that the earlier suit A and B schedule properties belonged to Deviramma. It is also relevant to note that even in the written statement the defendants have admitted about the antecedent title of the Deviramma over the suit schedule properties. Both the plaintiffs and defendants claim right over the suit schedule property from Deviramma.

76. Further the plaintiffs have also got marked Ex P20 which is the original partition deed dated 10.02.1980 which goes to show that Item No. 1, 3 and 4 in B schedule properties and A schedule properties were earlier allotted to the share of Deviramma. Ex P20 is also marked in evidence and it is admitted by the defendants The said partition is also duly proved by the evidence of PW4 and PW5. PW4 and PW5 have specifically deposed that they have knowledge about Ex P20.

77. PW4 is son of the witness to Ex P20 and he deposed that his father had signed on Ex P20. But he had no personal knowledge about the facts because he was not present at the time of the said document. But he has identified the signature of his father.

78. Another witness K. M. Basavaraj, PW5 also deposed about the partition deed which is marked as Ex P20 and even his father had signed on Ex P20. It is relevant to note that Ex P20 is dated 10.02.1980. PW4 and PW5 stated that their respective fathers' have signed as an attesting witnesses. But they have no personal knowledge. Even otherwise in the absence of evidence of PW 4 and 5, there is admission of TM Guruvasayya in his written statement in OS no 75-2013 which is sufficient to hold about the palupatti dated 10.02.1980. It is relevant to note that admission is the best piece of evidence and since there is an admission the palupatti dated 10.02.1980 has been proved.

79. Ex P20 is the mother document on which both plaintiffs and defendants are claiming title over the suit schedule properties. It is apparent that on the basis of Ex P20 Palupatti dated

10.02.1980, Deviramma received the suit schedule properties as her share. In the said partition lands in Survey No. 113H measuring 94 cents, Survey No. 128 measuring 3 acre 35 cents, Survey No. 67A, 68A, 69 and 70 totally measuring 4 acre 26 cents, Survey No. 42EFG measuring 68 cents, 42H measuring 72 cents, Survey No. 113Z measuring 11 cents, Survey No. 60 /B measuring 1 acre 51 cents, Sy no 113Y measuring 6 cents and house situated at Karikatte Village is allotted to the share of Deviramma. Therefore these properties were the female properties that belonged to Deviramma.

80. Apparently Deviramma had only two daughters namely Channaveeramma and Soubhagyamma. Chennaveeramma died on 04.03.1990 whereas Soubhagyamma died on 10.01.2010. On marshalling the entire evidence on record, it is apparent that the plaintiffs have proved about the antecedent title of Deviramma over the suit schedule properties. Ex P20 palupatti dated 10.02.1980 is also proved by leading evidence.

81. An important document that is relevant for consideration of this case is the written statement filed in the earlier suit by TM Gurubasaiah. It is also apparent from the records that earlier the

plaintiffs had themselves filed a suit in OS No. 75/2013. That suit was also filed by the present plaintiffs against the TM Gurubasaiah. Important document pertaining to this suit is Ex D3, which is the written statement filed by TM Gurubasaiah S/O TM Kottaraya. Apart from general denial of the plaint averments in the written statement, T M. Gurubasaiah has taken a specific contention that the suit properties were originally belonging to the mother i.e. Deviramma. It is apparent to note that in the written statement marked as Ex D3 which was filed by T. M. Gurubasaiah during his lifetime, he himself has admitted that there was a partition on 10.02.1980 in between Deviramma and her family members. In para 4 of the written statement there is a specific admission that as per the partition dated 10.02.1980 the suit properties were allotted to the share of Deviramma and also mutation was effected as per MR No. 26/1981-1982. T. M. Gurubasavaya has specifically admitted that Deviramma, Channaviramma and Soubhagyamma were the exclusive owners of the properties allotted in the partition. Further, T. M. Gurubasavaya has also admitted about the partition in between the Deviramma and her daughters Channaviramma and Soubhagiamma on 19.01.1984. In para 5 of the written statement filed in OS no 75 /2013, there is a clear admission that in the partition, Soubhagyamma received share in Survey No. 60B measuring 1.50, Survey No. 128 measuring 2.15 acres, Sy no 42H measuring 45 cents. Therefore, the contents of the written statement filed in OS no 75/ 2013 clearly goes to show that it is an unequivocal admission made by TM Gurubasaiah during his lifetime. It is relevant to note that though the suit in OS no 75 of 2013 came to be dismissed, the pleadings are not withdrawn. Unless and until the pleadings are withdrawn or explained otherwise, it is to be taken as true admissions and the admissions given by TM Gurubasaiah in OS no 75 /2013 is also to be taken into consideration. It amounts to an admission in writing. Therefore, the plaintiffs have been successful in proving about the earlier partition dated 10.02.1980 and also about the subsequent partition in between Deviramma and her daughters on 19.01.1984. Therefore, plaintiffs have been successfully established that all the suit properties were originally belonging to Deviramma and in the petition dated 19.01.1984, Soubhagyamma received A schedule properties.

82. The plaintiffs claim that they are the absolute owners of the A schedule properties and half of B schedule properties on the basis of the Will dated 17.02.2006, whereas the defendant no. 1

and no. 2 claim that they are the owners of the properties on the basis of the two Will executed by Gurubasayya. There are three wills relied by parties in this case.

83. As already discussed the revenue records and all the documents produced clearly goes to show that originally all the A schedule properties were allotted to the share of Soubhagyamma and originally it belonged to Deviramma.

84. There is a serious dispute with regard to item no 3 of A schedule property ie Survey No. 42H measuring 58.05 cents i.e. A schedule property. In the Will executed by Soubhagyamma on 17.02.2006 which is marked as Ex P17, she has also bequeathed Item No. 3 of the A schedule property ie Sy no 42H. There is a serious dispute regarding the title of Survey No. 42H. As apparent from the documents on record and also admissions as already discussed during his lifetime, TM Gurubasaya had apparently admitted that in the partition dated 10.02.1980, Survey No. 42H was allotted to Deviramma and subsequently it was allotted to Soubhagyama. It is an unequivocal admission by way of admission in writing in way of

written statement and it is to be taken as true and correct.

85. Further it is also relevant to note that though there is such an admission by TM Gurubasaya in the earlier suit OS no 75/2013, he has specifically contented that Survey No. 42H was not actually belonging to the family of Deviramma, but it was included in the partition list and subsequently on learning that the owner was one Kalavva he has purchased the said property. Apparent from Ex P20 which is the partition list which is the mother document dated 10.02.1980, Survey No. 42H measuring 0.72 cents was allotted to the share of Deviramma. Subsequently in the second partition dated 19.01.1984, Soubhagyamma had received Survey No. 42H measuring 0.45 cents. Though there is such an admission by TM Gurubasayya, he has specifically taken up contention that this property i.e. No. 42H was not at all belonging to the family of Deviramma, but it was belonging to one Lessi Kalavva and subsequently on learning that this property originally belonged to Lessi Kalavva he had purchased the same under a registered deed dated 19.07.2011 by paying consideration of Rs 65,000. Therefore there is a specific Plea taken by the TM

Guruvasaya in the earlier suit that Survey No. 42H was in fact belonging to Lessi Kalavva and he had purchased the said property. Therefore the moot question that arises is whether Survey No. 42H was the family property of Deviramma and was available for partition or whether it was the property which was purchased by TM Gurubasayya. Defendants also contend that Gurubasayya had bequeathed this property to them under the Will.

86. The defendants who had let evidence has relied on Ex D5 which is a registered sale deed dated 19.07.2011, which goes to show that, TM Guruvabasatya, S/O TM Kottaraya, had in fact purchased Item No. 3 of A schedule property i.e., Survey No. 42H, measuring 72 cents from the vendor, Kalavva D/O Kamplavva. This Exhibit D5 clearly goes to show that this property originally belonged to Kalavva and it was purchased by TM Gurubasaya under the registered sale deed dated 19.07.2011. Further, PW1 during the cross-examination has also admitted that this property was originally belonging to Kalavva and it was purchased by TM Gurubasaya.

87. Exhibit D5 clearly goes to show that this property though was allotted in the partition dated

10.02.1980 and also 19.01.1984 in fact the family of Deviramma had no right over the Item No. 3 of A schedule property and it was subsequently purchased by TM Guruvasaya. Therefore Item No. 3 property though was allotted to the share of Deviramma and subsequently to the share of Soubhagyamma under the Palupatti dated 10.02.1980 and 19.01.1984, it cannot become the property of Deviramma or even Soubhagymma because the family had no antecedent title over the said property which was subsequently purchased. Exhibit D5 is sufficient to hold that Item No. 3 of A schedule was purchased by TM Gurubasaya and therefore it was his absolute property. Therefore, it is apparent that Item No. 3 of A schedule property was the absolute property of TM Gurubasaya.

88. But as regards as Item No. 1, 2 and 4 of the A schedule property, it was exclusively allotted to the share of Soubhagyamma. So also B schedule properties had been allotted to the share of Deviramma and therefore Deviramma was the absolute owner of the B schedule properties. There is no testamentary disposition made by Deviramma during her lifetime and therefore after her death both her daughters Channaveeramma and Soubhagymma would be entitled for half shares

each in B schedule properties as her heirs. In the B schedule there are 4 properties and the plaintiffs claim that they have half share through Soubhagyamma on the basis of the Will executed on 17.02.2006. IT is claimed that the plaintiffs have become owners of A schedule properties and subsequently since Deviramma has died and Soubaymma was the class I heir, she under the Will bequeathed her half share. Thus under the Will dated 17.02.2006 the plaintiffs have become absolute owners of half share of the B schedule properties also.

89. Apparently B schedule properties were allotted to the share of Deviramma. Deviramma has died intestate. Channaveeramma and Soubhagyamma being the two daughters of Deviramma are class I legal heirs and therefore, after the death of Deviramma, both Channaveeramma and Soubhagyamma would be entitled for half shares each in the B schedule properties. Therefore since B schedule properties were fallen to the share of Deviramma, both her daughters by name Channaveeramma and Soubhagyamma were entitled for half shares each in Item No. 1 to 4 of B schedule properties.

90. The next relevant question that arises is about the testamentary disposition made by Soubagyamma on which the plaintiff's claim is based. The plaintiffs claim to be legatees under the Will dated 17.02.2006 and claim that they are entitled for all Item No. 1 to 4 of the A schedule properties and half share in Item No. 1 to 4 of B schedule properties.

91. In order to prove about the due execution of the Will, plaintiffs have got marked the said Will as Ex P17, which goes to show that, Soubhagyamma had executed a Will in favour of the plaintiff no. 1 and 2 on 17.02.2006, wherein she has bequeathed Item No. 1 to 4 of A schedule properties and half share in B schedule properties. The said will which is marked as Ex P17 dated 17.02.2006 shows that the properties bequeathed were Sy no.128, measuring 2.15 acres, sy no 60 B measuring 1.15 acres, Sy no 42 H measuring 0.45 cents, house plot, and half share in Sy.No.67/A 68/A 69 and 70 totally measuring 4.26 acres, sy no.42 E,F,G measuring 0.68 cents, Sy no 42H measuring 0.72, Sy no 113Z measuring 11 cents, sy no.113 measuring 0.3 cents and a house at Kyarakatte village.

92. Quite obviously the burden to prove the genuineness of the Ex.P 17 Will is heavily cast upon the plaintiffs since it is they who have propounded the execution of the 'Will' . In order to establish the proper execution of the will, the propounder has to adduce evidence to convince the Court that:

the testator was in sound and disposing state of mind;

the testator was free from the external influence;

the testator understood the nature and effect of disposition;

the testator put his signature on his own free will;

the testator signed the will in presence of two attesting witnesses;

the will was signed by the attesting witnesses in presence of the testator;

the will was the last will of the testator.

93. The Will should be executed in accordance with the provisions of the act as incorporated under Section 63 of the Indian Succession Act read with Sections 67 and 68 of the Evidence Act. In other words, the testator should have signed or affixed his mark to the Will in the presence of the two witnesses who are required to see the testator/testatrix signing or affixing his/her mark

on the Will and each of the witnesses should sign the Will in the presence of the testator. vide Smt.Bhagya Wati Jain v.General Public, AIR 1995 P & H 201.

94. There are a catina of decisions which reiterates the above said requirements. In ILR 1985 KAR 1911 (Sumitrabi vs Madhavarao) it has been observed that:

95. It has been stated and reiterated that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed by Section 63 of the Indian Succession Act. Where there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court. The suspicious circumstances may be as to the genuineness of the will, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the context. In all such cases, the Court would naturally expect the propounder to remove completely such suspicious circumstances before the document is accepted as the last will of the testator. There is one other aspect which needs to be emphasised.

96. The propounder of the Will has to prove that the testator has made the will with his free will and volition. In view of Sec.63 of the Indian Succession Act and Proviso to Sec.68 of the evidence Act the requirement of law would be fully satisfied if any one of the attesting witnesses is examined to prove the will. This requirement has been fulfilled by examining the attesting witness DW 5 Thus Will is duly proved.

97. In order to prove about the due execution of the Will which is marked as Ex P17, the plaintiffs have relied on the evidence of attesting witnesses who deposed before this court as PW2 and PW3. PW2 and PW3 are the attesting witnesses Halesh and Rudresh, who have specifically deposed about the due execution of the Will by Soubhagyamma who died on 10.01.2010. The Will was executed on 17.02.2006. Though it is tried to elicit in evidence that the mental capacity of Soubhagyamma was not proper since she was paralyzed, the same is not established in the course of evidence. The evidence of PW2 and PW3 is not shaken even during the course of cross-examination. Rudresh, who is one of the attesting witnesses, has clearly stated that he had seen Soubhagyamma execute the said Will and subsequently he has signed along with Rudresh as

an attesting witness. Nothing is elicited in the cross examination to disbelieve or to doubt about the testamentary disposition of Soubhagyamma. Further the mental capacity of testatrix is not shaken and therefore it is not established that Will is surrounded by suspicious circumstances.

98. Even PW3 had deposed about the due execution of the Will by Soubhagyama. Therefore evidence of PW2 and PW3 is sufficient to hold that there is a testamentary disposition duly made by Soubhagyama and therefore the Will dated 17.02.2006 is proved by leading evidence of PW2 and PW3. Ex P17 has been duly proved in evidence.

99. But as already discussed, since Item No. 3 of the A schedule property, Survey No. 42H was purchased under Ex D5 by TM Gurubasaya, there was no antecedent title to either Deviramma and since Deviramma herself had no right, she could not have partitioned the said property in between herself and her two daughters Channaveeramma and Soubhagyamma. Further since it was the Kalavva who was the absolute owner, Deviramma had no title and as such the purchaser Gurubasaiah gets title and the Will in so far as Item No. 3 i.e. Survey No. 42H of A schedule

property is concerned is not valid and it will not convey any right, title and interest to the plaintiff no. 1 and 2 even though the Will marked as Ex P17 has been proved in evidence. Therefore to that extent the Will is not valid.

100. Ex D5 and admission of TM Guruvasavaya is sufficient to hold about the palupatti dated 10.02.1980. It is relevant to note that admission is the best piece of evidence and since there is an admission the palupatti dated 10.02.1980 has been proved. Even the partition deed dated 19.01.1984 has been proved by way of admission. Therefore since Soubhyamma had capacity to execute the Will she has duly executed the Will. There is no bar to execute Will in respect of undivided interest also and as such, the Will executed by Soubhagyamma even in respect of half shares in Item No. 1 to 4 of B schedule property is valid. Therefore the Will marked as Ex P17 has been duly proved by the plaintiffs.

101. Regarding the right of defendant no. 1 and 2 over the suit schedule properties, defendants have contended that they are the absolute owners of the properties bequeathed under the two Will

executed by TM Gurubasaiah. The defendants have relied on two wills, which is marked as Ex D6 and D7. TM Gurubasaiah was the absolute owner of the Item No. 3 of A schedule property i.e. Survey No. 42H and as such he was entitled to alienate, transfer, gift or Will away the said property.

102. It is also relevant to note that there is a specific contention taken by the defendant no 1 that he is the adopted child of Soubhagyamma and Gurubasaiah. Apparently, Soubhagyamma and TM Gurubasaiah had no biological issues. It is also proved in evidence that they had no issues. According to the case of the defendant no 1 he was taken care of by Sobhagyamma and they looked after him as their own son.

103. It is relevant to note that there no pleadings in the written statement of defendant no 1 T. M. Ajjaiah that he was the adopted son of Soubhagyamma and T. M. Guruvasaia. There is a specific plea taken up by the defendant no. 1 that since they had no biological issues, Sobhagyamma was treating the defendant no. 1 as their own son. Since suit properties were also being looked after by himself, Will was executed in his favour.

104. Further it is relevant to note that T. M. Gurubasaiah and Sobhagyamma were treating defendant no. 1 as their own son. In the para 18 of the written statement, defendant no. 1 has specifically taken a contention that he was being treated as own son of Sobhagyamma and T. M. Gurubasaya. But apparently he has not set up the plea of that he was the adopted son. But in the course of evidence he claims that he is the adopted son of T. M. Gurubasaya and Sobhagyamma. But admittedly there is no document produced to show that there was adoption validly taken by Saubhagyamma and T. M. Gurubasaya. Further Ajaya who is defendant no. 1 is not the biological son of T. M. Gurubasaya and Soubhagyamma. But he is the son of Mruthyunjaya brother of Gurubasiah.

105. There are two genealogical trees, one pertaining to the family of the plaintiffs and another belonging to the family of defendants. TM Kottaraya died in the year 1975. His wife is Channamma. Channamma had children namely Sambulingaya, Chanabasaya and T. M. Gurubasaya. Gurubasaya was in fact married to Sobhagyamma. Defendant no. 1 and defendant no. 2 are the children of T. M. Mruthyunjaya, who is the brother of T. M.

Gurubasayya. Therefore, defendant no. 1 and defendant no. 2 are the children of brother of T. M. Gurubasayya.

106. It is relevant to note that Defendant no. 1 claims that he was raised up as the son of TM Gurubasaya and Soubhagyamma. Apparently there is no adoption taken and there is no plea that he was adopted son. But it is a mere vague plea that defendant no. 1 was being taken care of as son of Saubhagyamma and TM Gurubasaya. In fact there are series of revenue proceedings that have taken place. But revenue proceedings have no bearing on the title of the propertes because it is the purview of the Civil Court decide about the title of the suit schedule properties.

107. Further it is relevant to note that the defendant no. 1 has produced certain documents to show that he was treated as son of TM Gurubasaya and Sobhagyamma. Defendant has relied on Ex D9, which is the certificate issued by the school authorities, confirming his date of birth. This document is issued by the school authorities and it was registered in the year 1984-1985 itself, which shows that defendant no. 1 Ajjaya is shown to be the son of TM Gurubasayya and TM

Sobhagyamma. This document came into existence at an undisputed point of time in the year 1984-1985, when the parties had not anticipated the dispute in between them. Ex D9 is marked subject to objections.

108. It is the argument of the learned counsel for the plaintiffs that though this document was marked subject to objections, it is not proved by examining the author and as such Ex D9 cannot be taken into consideration. Defendant no. 1 has also relied on the study certificate marked as Exhibit D10 and 11. Ex D12 and 13 are the school certificates. Ex D14 and 15 are Kannada Medium Certificates. Rural certificate which is marked as Ex D16 and D17 goes to show that defendant no. 1 Ajjayya is shown to be the son of TM Gurubasaiah. Apparently these documents came into existence during the year 1984-1985 when there was no anticipation of the dispute between the parties. Ex D9 to D16 are marked subject to objections and apparently the author of these certificates is not examined.

109. It is relevant to note that under Section 35 of the Evidence Act, these documents being public documents have a presumptive value in the

eyes of law. But these documents being marked subject to objections, the defendants ought to have examined the author to prove its contents. Further when there is an admission by DW1 that he is not the biological son of the TM Gurubasayya, and when there is no pleadings in the written statement that he was the adopted son only on the basis of the school entries which shows that defendant no. 1 was the son of TM Gurubsayya, it cannot be held that he was the adopted son of TM Gurubasayya.

110. It is needless to state that at the time of entering these school documents, Defendant no. 1 was a minor and he is not a proper person to say who gave information to enter the particulars of the parents. Only because the names of Soubhagyamma and Gurubasavaya are shown as parents of defendant no. 1 there can be no automatic conclusion that he is the adopted son. There is no supporting documents to show adoption. There is lack of material specific pleadings regarding adoption in the written statement of defendant no 1. Further the defendant in OS no 75 /2013 i.e. TM Gurubasiah had only taken a vague denial that Ajjaya might have been the son of TM Gurubasaya. He has not specifically denied that he is not at all the son and he has also

not denied about the same. Therefore these school documents are of no consequence.

111. Further another interesting document is Ex D18 which is the marriage invitation card which is produced which shows that the marriage of defendant no 1 was sought to be solemnized on 03.05.1999. In that document, which is the marriage invitation card of TM Ajjayya, that is defendant no. 1, he is shown to be the eldest son of Mruthunjaya, and invitation card shows name of TM Gurubasayya as host. Therefore, merely fostering a son will not make him an adoptive son and there is no automatic right that can be vested on the basis of fostering of a child. Therefore, the contention of defendant no. 1 that he was a adopted son or the foster son of TM Gurubasayya and Soubhagyama is falsified.

112. That apart, as already discussed, Ex D5 clearly goes to show that Item No. 3 of A schedule was purchased by TM Gurubasaiah S/O TM Kottaraya and as such he was entitled to alienate, transfer gift or Will away to any person not necessarily his son or relatives.

113. In this case there are two Wills relied by the defendant no 1. One will is marked as Ex D6 and another will is marked as Ex D7. Ex D6 is the Will executed by TM Gurubasayya in favour of the defendant no. 1 and 2 on 28.12.2011 wherein, he has bequeathed Item No. 1 and 3 of the suit schedule “A” properties in favour of defendant no. 1 and 2. Item No. 1 and 3 of the suit properties have been bequeathed in favour of defendant no. 1 and 2 by TM Gurubasayya. As already discussed, Item No. 3 of the suit surety property was purchased by TM Gurubasayya under Ex D5 and as such he had authority to Will away the said property. But in so far as Item No. 1 property is concerned, Survey No. 128 measuring 2 acre 15 cents, it was not the absolute property of Gurubasayya but it was absolute property of Soubhagyamma. And as such he had no authority to execute the Will in respect of Item No. 1 property. Further it is apparent from records that it was Soubhagyamma who was the absolute owner of Item No. 1 property and as such she had executed a Will in favour of the plaintiffs on 17.02.2006 as per Ex P17 and as Exhibit P17 has been already duly proved in evidence, after the death of Soubhagyamma Will came into effect and plaintiffs had become the owners of the properties bequeathed as legatees under the Will in respect of Item No. 1, 2 and 4 properties. There was already a

testamentary disposition by Soubhagymma. As such the husband of Soubhagyamma ie Sri TM Gurubasaiah had not inherited the said property as an heir of the wife. Therefore since there was already a bequeathing of Item No. 1 property under the Will marked as Ex P17, T M Guru Basaiah had no authority to execute Will in respect of Item No. 1 property. Therefore only in respect of Item No. 3 property he could have executed the said Will. Thus Will dated 28-12-2011 is valid only in so far as item no 3 is concerned.

114. Further it is also relevant to note that in order to prove about due execution of the Will dated 28.12.2011 Defendants have examined DW2 and DW5, who are the attesting witnesses. These attesting witnesses have spoken about the due execution of the Will dated 28.12.2011 and nothing is elicited in the cross-examination to discredit their testimony. As such, the defendants have proved about the due execution of the Will by TM Gurubasavaya in respect of Item No. 3 property. Thus under Exhibit D6, defendant no. 1 and 2 have become legatees under the Will only in respect of Item No. 3 property. Therefore, the said will Exhibit D6 is to be given effect to only in respect of Item No. 3 property and it is to be invalidated in so far as

Item No. 1 property is concerned. Therefore, to the extent of bequeathing Item No. 3 property, the Will marked as Ex D6 is valid and has been duly proved.

115. Regarding the other Will marked as Ex D7 which is dated 05.07.2011, TM Gurubasayya has executed the said Will in favour of defendant no. 1 and 2 wherein he has bequeathed Survey No. 52 and Survey No. 113/2D and Door No. 51 i.e. Item No. 4 of A schedule property. Survey No. 52A and Survey No. 113/2D are not the subject matter of this suit and as such there is no dispute regarding these properties are concerned. But as regards to Item No. 4 of the suit property is concerned i.e. Door No. 51, since TM Gurubasavaya did not inherit the said property, he could not have executed Will in respect of Item No. 4 of the A schedule property because he had not suceeded to the estate of Soubhagamma. Since Ex P17 has been duly proved and under Ex P17 as already Item No. 4 property was bequeathed in favour of the plaintiffs TM Gurubasaya did not succeed to the A schedule properties as a heir and as such he had no testamentary capacity to execute Will in respect of Item No. 4 of the A schedule property.

116. In order to prove about the due execution of the will marked as Ex D7, the defendants have examined DW3 and DW4, who have spoken about the due execution of the Will. Nothing worthwhile has been elicited in their cross-examination to disprove about the said Will or that the will is surrounded by suspicious circumstances. Therefore, the will marked as Ex D7 is also proved. But it is to be invalidated only in so far as Item No. 4 of the suit property is concerned and it is valid as regards other properties. Therefore plaintiff succeeded in proving Ex P17 will dated 17.02.2006 and that the plaintiffs no 1 and 2 succeeded to the item no 1, 2 and 4 of the A schedule properties and half share in B schedule properties.

117. On the other hand defendants succeeded in proving about the due execution of the Will executed by TM Gurubasaiah as per Ex D6 and D7 only in respect of Item No. 3 of A schedule property i.e. Survey No. 42H measuring 0.72 cents and in respect of Survey No. 52A, Sy no 113/2D and to that extent Ex D6 and D7 is also proved.

118. It is the argument of the learned counsel for the plaintiff that, TM Guruvasaya had not at all whispered about the two wills dated 28.12.2011

and 05.07.2011 in the earlier suit and as such Will is surrounded by suspicious circumstances. It is apparent that as per Ex D3, the TM Gurubasayya has not disclosed about the wills marked as Ex D6 and D7. But only because there was an omission to mention about the Will, it cannot be held that will is surrounded by suspicious circumstances. Further at the time of filing written statement in OS No. 75 /2013, TM Gurubasaya was hale and healthy and he himself contested the case. Since his title to the properties were being defended, it was sufficient for him to contend that he was the owner of Item No. 3 property. Since Will would come into operation only after his death, merely because he did not mention about the wills marked as Ex D6 and D7, it cannot be held that Wills are surrounded by suspicious circumstances or that they were concocted. Therefore, the said argument is not tenable and is brushed aside. Preponderance of probabilities oscillates in favour of the present plaintiffs. Therefore this court is inclined to answer the issue no 1 partly in the affirmative accordingly.

119. Regarding the interference, the plaintiffs have proved that there is interference by the defendants. Denial of the right of the plaintiffs over the suit properties is itself an aspect of interference All along there is interference. There is also series

of revenue proceedings which goes to show that there was an interference by the defendants in the use of the suit schedule properties Therefore plaintiffs proved that there was interference by the defendants. Therefore this court is inclined to answer the issue no 2 and 3 partly in the affirmative accordingly.

120. **Issue no 4:** Regarding the cause of action it is contented by the defendants that there is no cause of action to file the present suit. But since there was a Will duly executed by Soubhagyamma on 17.02.2006 and there was denial of title and right of the plaintiffs there is cause of action to file the present suit. Therefore, Issue No. 4 is answered in the negative.

121. **Issue No. 6** : Defendants failed to prove how the suit is barred by limitation. Though there is a plea taken up that there is a bar of limitation, it is a vague plea and it is not proved. Since the suit is for declaration of title over A and B schedule properties there is no apparent bar of limitation. Therefore Issue No. 6 is answered in the negative.

122. **Issue no 7**: Since plaintiffs proved the case partly, they are entitled for reliefs in respect of

Item No. 1, 2 and 4 of A schedule and half share in B schedule properties. Therefore, Issue No. 7 is answered partly in the affirmative accordingly.

123. **Issue no 8** :- For the forgoing reasons and discussions, I proceed to pass the following:

O R D E R

The suit of the plaintiffs is hereby partly decreed with proportionate costs.

Plaintiffs are declared to be the absolute owners of Item No. 1, 2 and 4 of the A schedule properties and half share in the B schedule properties.

Defendants are also hereby restrained permanently from interfering in the possession of Item 1, 2 and 4 of A schedule properties.

Draw decree accordingly.

(Dictated via voice transcription software, transcribed and computerized via Adalath AI, revised, corrected, signed and then pronounced by me in the open court on this the 1st day of April 2026)

USHARANI R

Digitally signed by USHARANI R
Date: 2026.04.04 09:39:07 +0530

(Smt.USHARANI.R.)
Senior Civil Judge & JMFC.,
Harapanahalli.

ANNEXURE

LIST OF WITNESSES EXAMINED BY THE PLAINTIFFS:

PW.1 : Sri.K.G.M.Veeraiah

PW.2 : Sri.P.Halesha

PW.3 : Sri.Rudresh

PW.4 : Sri. Siddappa

PW.5 : Sri. K.M.Basavaraja

LIST OF DOCUMENTS MARKED BY THE PLAINTIFFS:

Ex.P1 to 10: RTC extracts

Ex.P.11&12: DCB register extracts

Ex.P.13 & 14: Death certificates

Ex.P.15& 16: Certified copy of orders passed by AC and DC

Ex.P.17 : Original Will

Ex.P.17a to d: Signatures

Ex.P.18: Death certificate

Ex.P.19: Document related to House

Ex.P.20: Unregistered palu patti

Ex.P.20a &b: Signatures

Ex.P.21: Certified copy of order passed by AC

Ex.P.22 : Genealogical tree

III. LIST OF WITNESS EXAMINED BY THE DEFENDANTS:-

DW 1: Sri. T.M.Ajjaiah

DW 2: Sri. P.Siddalinganagouda

DW 3: Sri. K.RAvindrachari

DW 4: Sri. K.M.Ajjaiah

DW 5: Sri. Sannakenchappa

IV. LIST OF DOCUMENTS MARKED BY THE DEFENDANTS:

Ex.D1 to 3 :Certified copies of Ordersheet, plaint and Written statement filed in OS No. 75/2013

Ex.D4: Certified copy of order passed by DC

EX.D.5: Registered sale deed

Ex.P.6: Registered Will

ex.P.6a to d: Signatures

Ex.D.7: Registered Will

Ex.D.7 a to e: Signatures

Ex.D.8: Order of DC

Ex.D.9: Birth certificate

Ex.D.10& 11: Study certificates

Ex.D.12 & 13: School certificates

Ex.D.14 & 15: Kannada medium certificates

Ex.D.16 & 17: Rural certificate

Ex.D.18: Marriage invitation card

Ex.D.19 to 49: RTC extracts

(Smt.USHARANI.R.)
Senior Civil Judge & JMFC.,
Harapanahalli.