



**IN THE COURT OF II nd ADDL.DISTRICT AND  
SESSIONS COURT, YADGIR,  
SITTING AT SHORAPUR.  
:PRESENT:**

**Sri. Yamanappa Bammanagi, B.A.LL.B (Spl.)  
II nd Addl. District & Sessions Judge, Yadgir,  
sitting at Shorapur.**

**DATED THIS THE 11<sup>th</sup> DAY OF MARCH, 2026.**

**R.A. NO.5094/2025  
(Old RA.No.23/2023)**

**Appellants/**

**Plaintiffs: 1.**

Pushpa D/O Late Somashekhar  
Hadapad, Age 31 Years, Occ:  
Agriculturist and private work R/o  
Ibrahimpur Village, Tq: Shahapur, Dist:  
Yadgiri, At present residing at  
Balakiyar vasati Nilaya, Rastapur Tq:  
Shahapur, Dist: Yadgiri.

2. Ayyanna S/O Late Somashekhar  
Hadapad, Age 41 Years, Occ:  
Agriculturist And Private Work R/O  
Ibrahimpur Village, Tq: Shahapur, Dist:  
Yadgiri, At Present Residing At Near  
Mallikarjun Temple, Ambika Nagar,  
Kalaburagi, Tq And, Dist: Kalaburagi.

**(By Sri.Anandakumar Swamy Adv.,)**

**//Versus//**



**Respondent**

**Defendants/:**

- 1.** Parvatamma W/O Late Somashekhar Hadapad, Age 71 years Ne Agriculturist R/O Ibrahimpur Village, Tq: Shahapur, Dist: Yadgiri,
- 2.** Ramesh S/O Late Somashekhar Hadapad, Age 48 Years, Occ: Agriculturist And Private Work R/O Ibrahimpur Village, Tq Shahapur. Dist Yadgiri, At Present Residing At Near Mallikarjun Temple, Ambika Nagar, Kalaburagi, Tq And, Dist: Kalaburagi.
- 3.** Saroja Dev! W/O Siddanna [D/O Late Somashekhar Hadapad ], Age 43 Years, Occ. Agriculturist And Private Work R/O Ibrahimpur Village To Shahapur, Dist Yadgiri, At Present Residing At Plot No. 26. Old Revargi Road Opp. Water Tank, Dariyapur, Cj Colony, Ambika Nagar, Kalaouragi, Tq And, Dist: Kalaburagi.
- 4.** Bhim Reddy S/O Sharanappa Gouda Police Patil, Age 41 Years Orc Govt Servant R/O Ibrahimpur Village, Tq: Shahapur, Dist: Yadgiri, Now Working At Krushi Samshodana Kendra



Erehulu Haagu Hainugarike Vibhaga,  
B. Gudi. Tq. Shahapur Dist: Yadgiri.

5. Sharanavya S/O Abdulsa Elligera, Age 61 Years, Occ Agriculturist R/O Ibrahimpur Village, Tq. Shahapur, Dist: Yadgiri.
6. Gouramma W/O Shivaputra Hadapad, Age 48 Years, Occ: House Hold R/O Ibrahimpur Village, Tq: Shahapur, Dist: Yadgiri.

**(R-1 to 3 By Sri.G.M.M. Adv.,)**

**(R-4 to 6 By Sri.S.V.K. Adv.,)**

### **JUDGMENT**

Being aggrieved by the judgment and decree, dated 31.05.2023, passed by the Ld Senior Civil Judge and JMFC, Shahapur, in O.S.No.39/2018, partly decreed the suit of the plaintiffs with cost, the plaintiffs are before this court challenging the correctness and legality of the same.

The parties are referred as per their rank in original suit before the trial court for conveniences of



the court, the plaintiffs are the appellants before this court as the suit filed by the plaintiffs is partly decree with cost.

The reliefs sought in the plaint by the plaintiffs in the suit are to decree the suit by awarding 1/5th share to each plaintiffs in the suit schedule properties and put them their separate possession of respective shares in the suit properties and to declare the registered sale deed dated 22.05.2009 and 06.05.2003 and 30.05.2005 as null and void and not binding upon the plaintiffs share.

**2. Brief facts of the plaintiffs case:**

It is specific case of the plaintiffs that, one Somashekhar @ Somashekharappa S/o Erapanna is propositus, he married with Parvathamma (D-1), said Somashekhar had two daughters and two sons by name Ramesh (D-2), Sarojadevi (D-3), Ayyanna(P-2), Pushpa(P-1), the plaintiffs and the defendant No.1 to 3 are undivided joint family members, the suit properties



are ancestral and joint family properties of plaintiffs and defendant No.1 to 3, so, the plaintiffs and defendant No.1 to 3 are the coparceners, the plaintiffs and the defendant No.1 to 3 are joint owners and possession of the suit properties, the propositus Somashekhar died on 01.02.2017, at Ibrahimpur-Shahapur Taluk, and the plaintiff and the defendant No.1 to 3 are joint owners and possession of suit properties after death of Somashekhar, further contended that, sale deed dated 22.05.2009 said to have been executed by late Somashekhar in respect of suit properties Sy.No.56/5 adm 06 acres 02 guntas in favour of defendant No.4 and sale deed dated 06.05.2003 said to have been executed by Somashekhar in respect of suit property Sy.No.138/2 adm 02 acres 00 guntas out of 04 acres 27 guntas, in favour of defendant No.5 are null and void and not binding on plaintiffs shares as Somashekhar is not absolute owner of the suit properties, and said sale of suit properties are not for legal or joint family



necessity or not for benefit of joint family members, the propositus Somashekhar never act as Kartha of joint family of plaintiffs and defendant No.1 to 3 as said Somashekhar is illitaret and he was addicted alcohol and heavy drinker, the said sale deed are without family necessity and without concern of the joint family members and without payment of consideration and the said properties are in joint possession and enjoyment of the plaintiffs and the defendant No.1 to 3, the said sale deeds are created by misusing the bad habits of drinking of deceased Somashekhar, hence the said sale deed are not binding on the plaintiffs share in the suit properties, further contended that, re-sale of suit property under registered sale deed dated 30.05.2005 said to have been executed by defendant No.5 in favour of defendant No.6 is in respect of land Sy.No.138/2 in respect of 02 acres 00 gunta is null and void and not binding on plaintiffs share as said sale deeds are without delivery of possession, the plaintiffs came to



know about the said sale deed in respect of suit properties in the month of October -2018, the defendant No.4 to 6 are no way concerned to the family of plaintiffs and suit properties, the above sale deed are only created for wrongful game, they are not binding on the plaintiffs, hence the plaintiffs are entitle for their legitimate share in the suit properties as prayed in the plaint.

**3.** The trial court has issued suit summons to the defendants, the defendants appeared through counsel, the defendants No.1 to 3 have filed common written statement admitting the relationship of the plaintiffs and defendant No.1 to 3 and they have contended in the written statement that, the defendant No.1 to 3 have equal share with plaintiffs in the suit schedule properties as the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 3, the sale deeds executed by the propositus Somashekhar in favour of the defendant



No.4 and 5 are not for legal and family necessities as the propositus Somashekhar never acted as Kartha of joint family of plaintiffs and defendant No.1 to 3, the said Somashekhar was addicted to alcohol and he was always in drunken condition and defendant No.4 and 5 created sale deeds in the name of propositus behind the back of defendant No.1 to 3 when Somashekhar was under drunken condition, same are not binding on the share of defendant No.1 to 3, and the defendant No.4 to 6 have created sale deed in respect of suit schedule properties to engulf the share of the plaintiffs and defendant No.1 to 3 in the suit schedule properties and re-sale made by the defendant No.5 in favour of defendant No.6 in respect of suit schedule properties is not binding on the plaintiffs and defendant No.1 to 3, with this defendant No.1 to 3 have paid court fee in respect of their share and sought for 1/5th share each in the suit schedule properties.



4. The defendant No.4 has filed written statement stating that, the plaintiffs and defendant No.1 to 3 are not in joint possession and owners of the suit schedule properties as on the date of suit and suit properties are not coparcenary properties as alleged by the plaintiffs and denied the case of the plaintiffs specifically except those which are admitted as true. The defendant No.4 specifically denied that, the plaintiffs and defendant No.1 to 3 are not in joint possession and enjoyment of the suit properties as on the date of suit, and the propositus was Kartha of joint family of plaintiffs and defendant No.1 to 3 and said Kartha sold the suit properties to the defendant No.4 for family and legal necessity for consideration of Rs.2,49,000/- and defendant No.4 paid the said consideration amount to late Somashekhar and he had delivered possession of suit land to the defendant by executing registered sale deed dated 22.05.2009 in favour of defendant No.4, and said sale transaction was



with knowledge of plaintiffs and defendant No.1 to 3, since then the defendant No.4 is in possession and enjoyment of suit land as owner till today and on basis of said sale deed the name of defendant No.4 entered in the revenue records of suit properties and defendant No.4 is paying land revenue, the sale deed executed by Kartha of joint family in respect of joint family properties for family and legal necessity is binding on the plaintiffs and defendant No.1 to 3, with this the defendant No.4 prayed for dismissal of suit.

**5.** The defendant No.5 and 6 have filed common written statement and denied the ownership and possession of plaintiffs and defendant No.1 to 3 over the suit schedule properties, further contended that, on the date of suit plaintiffs and defendant No.1 to 3 are not joint in possession as well as joint family properties as alleged by the plaintiffs and suit schedule properties are not coparcenary properties as alleged in the plaint and taken same defence as taken in the written statement of



defendant No.4, and contended that, the Somashekhar was being Kartha of joint family of plaintiffs and defendant No.1 to 3 and he has sold the joint family properties for legal and family necessity and sale deed executed by Kartha of joint family for legal and family necessity is binding on plaintiffs and defendant No.1 to 3, hence suit of the plaintiffs is liable to be dismissed.

**6.** On basis of pleadings of the parties and documents produced by both the parties and on basis of material placed before it, the trial court has framed following;

**:ISSUES:**

*1. Whether the plaintiffs prove that, the plaint schedule properties are the Hindu undivided ancestral joint family properties of themselves and the defendant Nos.1 to 3 ?*

*2. Whether the defendant No.4 proves that, the father of the plaintiffs sold item No.(a) of the plaint schedule properties in*



*his favour for his family and legal necessities ?*

*3. Whether the defendant No.4 proves that, he is the bonafide purchaser of item No.(a) of the plaint schedule properties ?*

*4. Whether the defendant No.5 and 6 prove that the father of the plaintiffs sold 02-00-00 acres of land in item No.(b) of the plaint schedule properties in favour of the defendant No.5 for his family and legal necessities ?*

*5. Whether the defendant No.5 and 6 prove that they are the bonafide purchasers of 02-00-00 acres of land in item No.(b) of the plaint schedule properties ?*

*6. Whether the plaintiffs prove that the registered sale deeds dated 22.05.2009, 06.05.2003 and 30.05.2005 are null and void and not binding on them ?*

*7. Whether the suit of the plaintiffs is property valued and the court fee paid on the plaint is sufficient ?*

*8. Whether the suit of the plaintiffs is barred by time ?*



*9. Whether the plaintiffs are entitled for share in the plaint schedule properties ?*

*10. Whether the plaintiffs are entitled for the reliefs prayed in the plaint ?*

*11. What order or decree?*

**Addl. Issues**

*1. Whether the defendant Nos.1 to 3 prove that the registered sale deeds dated 22.05.2009, 06.05.2003 and 30.05.2005 are null and void and not binding on them ?*

*2. Whether the defendant Nos.1 to 3 are entitled for 1/5th each share in the plaint schedule properties ?*

**7.** In order to prove their case the plaintiff No.1 is examined as PW1 and got marked the documents as per Ex.P1 to 15, on the other hand, the defendant No.1 is examined as DW1, and three witnesses are examined as DW2 to 4 and got marked the documents as per Ex.D1 to 38.

**8.** After hearing arguments on both side and after considering the oral and documentary evidence led



by the both the parties, and perusal of material before it by both the parties, the trial court passed the judgment and decree, and decreed the suit of the plaintiffs with cost, being aggrieved by the same the appellants/plaintiffs are before this court challenging the correctness and legality of the same, on the following;

**“GROUNDS”**

*I. The judgment and decree under challenge is without application of mind and trial court not appreciated oral and documentary evidence as per the amended provision of the Hindu Succession Act, the alienation of properties made in the year 2009-10 and 2005-06 are to be considered as their rights of females confirmed from the amended Act.*

*II. The facts pleaded in the plaint is also ignored by the trial court as the father of the plaintiffs was not Kartha of joint family of plaintiffs and defendant No.1 to 3 during his*



*life time and mother of the plaintiffs was the Kartha of joint family as father of the plaintiffs was addicted to alcohol, the trial court failed to appreciate these facts and trial court failed to appreciate the facts that, the sale deed executed by Somashekhar was not for legal or joint family necessity.*

**III.** *The trial court failed to appreciate admissions of defendants in the cross-examination, the plaintiff No.2 is male member coparcener of joint family and he is entitle for declaration declaring that, the sale deeds executed in respect of coparcenery properties without any legal or family necessity are not binding on the joint family members, the defendants No.4 to 6 failed to prove that, the said sale deeds are for legal and family necessities, but, trail court failed to considered and appreciate the oral and documentary evidence led by the parties and came to conclusion, hence, looking from any angle the judgment and decree under challenge is illegal and liable to be set-aside.*



**9.** On admitting the appeal this court has passed order on IA No.I filed U/o 39 Rule 1 & 2 R/w Sec.151 of CPC and restrained the defendant No.4 from alienating the suit schedule "A" property bearing Sy.No.56/5 and restrained in the defendant No.6 from alienating the suit schedule "B" property bearing Sy.No.138/2, this court issued notice to respondents, and respondents appeared through counsel and TCR received.

**10.** Heard argument on both side. The Ld counsel for the appellants submitted written argument in Addition to oral argument and in support of his argument he relied on the decisions which are as follows;

**a.** *Regular First Appeal  
No.100370/2020(PAR/POS) in case of  
Gangimalavva W/o Gundappa Gonded @  
Hebbal V/s Devakka W/o Parasappa  
Mundawad & Others.*



**b.** *AR 2018 Supreme court 721 in case of Danamma @ Suman Surpur and another V/s Amar and Others.*

**c.** *HCR 2025 Kant. Page 518 in case of Saraswati and others V/s Totamma.*

**d.** *2005(1) CCC 239 (Kant) in case of UG. Shrinivas Rao V/s Veenekumar and Others.*

**11.** In support of his argument, the Ld counsel for respondent No.4 to 6 relied on the decisions shown in the memo dated 23.02.2026 showing the citations, which reads thus;

**a.** *Civil appeal No(S). 5340/2017 in case of Dastagirsab V/s Sharanappa @ Shivasharanappa Police Patil(D) by Lrs. & Ors.*

**b.** *Civil appeal No.3264/2011 in case of Kehar Singh(D) Thr. Lrs & Ors V/s Nachittar Kaur & Ors.*

**12.** I have re-appreciated oral and documentary evidence led by the parties before the trial court and perused the judgment and decree of trial court and material placed before the court, on perusal of the oral



and documentary evidence, led by both the parties before the trial court, the point that would arise for my consideration are as follows;

**POINT NO.1:** Whether the plaintiffs proves that, the suit properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 3 and they are entitle for 1/5th share each in the suit schedule properties ?

**POINT NO.2:** Whether plaintiffs proves that, the sale deed executed by the late Somashekhar on 22.05.2009 in favour of defendant No.4 and on 06.05.2003 in favour of defendant No.5 in respect of suit schedule properties and sale deed executed by defendant No.5 in favour of defendant No.6 dated 30.05.2005 in respect of suit schedule properties are not binding on the plaintiffs share and liable to be declared as null and void not binding on plaintiffs ?



**POINT NO.3:** Whether the defendant No.4 to 6 proves that, the deceased Somashekhar was Kartha of joint family of plaintiffs and defendant No.1 to 3 and he has sold the suit properties in favour of defendant No.4 and 5 for legally and family necessity ?

**POINT NO.4:** Whether the defendant No.4 to 6 proves that, they are bonafide purchasers of suit schedule properties ?

**POINT NO.5:** Whether the plaintiffs proves that, they are entitled for the reliefs sought in the plaint ?

**POINT NO.6:** Whether the defendants proves that, the suit filed by the plaintiff is hit by law of limitation ?

**POINT NO.7:** What order or decree ?

**13.** My answer to the above points are as follows:  
**Point No.1: in the Affirmative,**  
**Point No.2: in the Affirmative,**



**Point No.3: in the Negative,**  
**Point No.4: in the Negative,**  
**Point No.5: in the Affirmative,**  
**Point No.6: in the Negative,**  
**Point No.7: As per the final order,**  
**for the following:-**

**REASONS**

**14. POINT No.1 to 6:** These points are interconnected to each other, and hence taken together for common discussion in order to avoid repetition of facts and evidence. In order to prove their case the plaintiff No.1 is examined as PW1 and got marked documents as per Ex.P1 to P15, and Ex.P1 is the form No.12 Ex.P2 to 6 are the RORs, Ex.P7 is the death certificate, Ex.P8 is the agreement for sale deed, Ex.P9 to 13 are the RORs, Ex.P14 & 15 are the certified copy of sale deeds.

**15.** On the other hand, the defendant No.1 is examined as DW1 and defendant No.4 is examined as DW2, defendant No.6 is examined as DW4, one



Vasantreddy S/o Gurunathreddy executed as DW3 got marked documents as per Ex.D1 to D38, and Ex.D1 is the agreement for sale deed, Ex.D2 is the mutation extract, Ex.D3 to 36 are the RORs, Ex.D37 is the sale deed, Ex.D38 is the mutation extract.

**16.** The plaintiff No.1 is examined of PW1 by filing affidavit in lieu of examination in chief reiterating the plaint averments and got marked Ex.P1 to P15. The defendant No.1 is examined as DW1 by filing affidavit in lieu of examination in chief reiterating the contents of his written statement, defendant No.4 is examined as DW2 by filing affidavit in lieu of examination in chief reiterating contents of his written statement, the defendant No.6 is examined as DW4 by filing affidavit in lieu of examination in which, reiterating the contents of his written statement, DW3 is independent witness examined by the defendant No.6, the DW3 deposed by filing affidavit in lieu of examination in chief. He



deposed in the evidence that, he knows plaintiffs and defendants and suit properties, Somashekhar was owner and possessor of suit land Sy.No.138/2, adm 02 acres 00 guntas of Hurusagundingi village, he sold the said land to Sharanayya S/o Abdul Sab Iligera through registered sale deed in the year 2003, for his family necessity, since then said Sharanayya is owner and possessor of said land and thereafter said Sharanayya sold the said properties in favour of Gouramma for sale consideration of Rs.91,000/-, and he has delivered possession of land to said Gouramma, said Sharanayya sold his land in favour of Gouramma under registered sale deed dated 30.05.2005, so, since then she became owner and possessor of the land, said land sold in his presence and in the presence of Sharanappa, Sabayya and Somashekhar S/o Iranna Hadpad. The defendants got marked Ex.D1 to D38.



**17.** Ex.D1 is the registered sale deed, Ex.D2 is the mutation extract, Ex.D3 to 36 are the RORs, Ex.D37 is the sale deed, Ex.D38 is the mutation extract.

**18.** On careful scrutiny of pleading of both the parties it is clear that, there is no dispute with regard to relationship of plaintiffs and defendant No1 to 3 and there is no dispute that, the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 3 prior to the sale deeds executed by late Somashekhar in favour of defendant No.4 and 5.

**19.** The disputed facts between the parties is that, according to plaintiffs and defendant No.1 to 3 the late Somashekhar was addicted to alcohol and he never act as Kartha of joint family of plaintiffs and defendant No.1 to 3, and it was the mother of plaintiffs who was the Kartha of joint family as the father of the plaintiffs was addicted to alcohol on account of which the plaintiffs mother was Kartha of joint family of plaintiffs



and defendant No.1 to 3. So, the sale deed executed by late Somashekhar in favour of defendant No.4 and 5 in respect of suit schedule properties are not for legal and necessity of joint family of plaintiffs and defendant No.1 to 3, and they are not for the benefit of joint family, hence the sale deed executed by late Somashekhar in favour of defendant No.4 and 5 are not binding on plaintiffs share. The same defence are taken by the defendant No.1 to 3 as taken by the plaintiffs and they are also claimed 1/5th share in the suit schedule properties along with plaintiffs and paid court fee.

**20.** On the other hand, the defendant No.4 to 6 are the purchasers of joint family properties of plaintiffs and defendant No.1 to 3, the specific defence and case of the defendant No.4 to 6 is that, the father of the plaintiffs Somashekhar was the Kartha of joint family of plaintiffs and defendant No.1 to 3, the Somashekhar being karth of joint family of plaintiffs and defendant No.1 to 3 has sold suit properties in favour of defendant



No.4 and 5 for his family and legal necessity and hence those sale deeds are binding on the joint family members i.e., on plaintiffs and defendant No.1 to 3, further, re-sale of suit property by the defendant No.5 in favour of the defendant No.6 is binding on the plaintiffs and the defendant No.1 to 3.

**21.** The settled position of law is that, it is for the defendant No.4 to 6, who have to prove the facts that, the sale deeds executed by kartha of joint family of plaintiffs and defendant No.1 to 3 is for family and legal necessity of plaintiffs and defendant No.1 to 3 and sale deed executed by father of the plaintiffs are binding on plaintiffs and defendant No.1 to 3. So, question before the court is that, if the defendant No.4 to 6 are able to prove the sale deeds executed by late Somashekhar in favour of defendant No.4 and 5 are for legal and family necessity of plaintiffs and defendant No.1 to 3 then the appellant has no case at all. So, the burden of proof as to whether sale was for the benefit of joint family or for



legal necessity of joint family member is to be proved by the purchasers i.e., defendant No.4 to 6, so far as defendant No.5 is concerned he has re-sold the suit property in favour of defendant No.6, defendant No.5 did not get into witnesses box and the defendant No.6 is examined as DW4.

**22.** There is nothing before the court placed by the defendant No.4 to 6 to establish that, the sale deeds executed by late Somashekhar are for legal and family necessity except the pleading pleaded in the written statement that, the said sale deeds are for legal and family necessity. What is stated in the written statement of defendant No.4 to 6 is that, the late Somashekhar sold his joint family properties for family and legal necessity. In the sale deeds also it is stated in recital that, seller took the property for sale for his family and legal necessity, except this there is nothing in the sale deeds executed by late Somashekhar in favour of defendant No.4 and 5.



**23.** On perusal of the registered sale deeds executed by late Somashekhar in favour of defendant No.4 and 5 it is mentioned in the recital of the sale deeds that, he is the absolute owner and in possession of the properties sold by him, but, in fact he is not absolute owner and possession of the suit properties as suit properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 3 which is not in dispute between the parties. So except this there is nothing before the court about family necessity and legal necessity to sold the joint family properties by the late Somashekhar, even sale deeds does not discloses in the recital that, he is kartha of joint family of plaintiffs and defendant No.1 to 3 and under the capacity of Kartha of joint family of plaintiffs and defendants he is selling the joint family properties for legal and family necessity. No such recital found in the registered sale deeds. On the other hand, said Somashekhar has mentioned in the registered sale deed



that, he is the absolute owner and in possession of the suit properties sold by him to the defendant No.4 and 5.

**24.** The trial court relied on the cross-examination of DW1, and directly come to conclusion that, the defendant No.4 to 6 have proved that the said Somashekhar has sold the suit properties in favour of defendant No.4 and 5 as a kartha of joint family for legal necessity without appreciation of material evidence placed before the court. I would like to extract the cross of DW1 dated 08.02.2021 which reads thus;

ನನ್ನ ಗಂಡ ತೀರಿಹೋಗಿ 3 ವರ್ಷಗಳಾಯಿತು. 2 ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿಲ್ಲ 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ 13 ವರ್ಷಗಳಾಯಿತ್ತು. 3 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ 15 ವರ್ಷಗಳಾಯಿತು. 1 ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿ 3 ವರ್ಷಗಳಾಯಿತು. ನನಗೆ ಸರಕಾರಿಯಾಗಲಿ ಅಥವಾ ಖಾಸಗಿಯಾಗಿ ಯಾವುದೇ ನೌಕರಿ ಇರುವುದಿಲ್ಲ.

**25.** On basis of said facts extracted supra the trial court appreciated and come to conclusion that, the defendant No.4 to 6 have proved legal necessity to sell the suit schedule properties in favour of defendant No.4



and 5. I would like extract the relevant para of judgment of trial court at para No.59 and 60 which reads thus;

*The learned counsel for defendants No.4 to 6 cross-examined PW-1 & DW-1. In the cross-examination. DW1 admitted that, the marriage of defendant No.2 performed about 13 years back and the marriage of defendant No.3 performed about 15 years back. The relevant portion is as follows;*

ನನ್ನ ಗಂಡ ತೀರಿಹೋಗಿ 3 ವರ್ಷಗಳಾಯಿತು. 2ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿಲ್ಲ 2ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ 13 ವರ್ಷಗಳಾಯಿತು. 3ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ 15 ವರ್ಷಗಳಾಯಿತು. 1ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿ 3 ವರ್ಷಲಾಯಿತು. 1ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿ 3 ವರ್ಷ ಆಯಿತು. ನನಗೆ ಸರಕಾರಿಯಾಗಲಪಿ ಖಾಸಗಿಯಾಗಿ ಯಾವುದೇ ನೌಕರಿ ಇರುವುದಿಲ್ಲ. 1ನೇ ವಾದಿ ತನ್ನ ಮದುವೆಯ ಪೂರ್ವದಲ್ಲಿ ಸುಮಾರು 3 ವರ್ಷ ಹಾಸ್ಟಲಿನಲ್ಲಿ ಆಡುಗೆಯವಳಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಳು. 1ನೇ ವಾದಿಯು ತನ್ನ ಮದುವೆಯಾದ ನಂತರ ಸದರಿ ಕೆಲಸವನ್ನು ಬಿಟ್ಟಿರುತ್ತಾಳೆ. ಈಗ 1ನೇ ವಾದಿ ತನ್ನ ಗಂಡನ ಮನೆಯಲ್ಲಿ ಮಾಸ ಮಾಡುತ್ತಿದ್ದಾಳೆ.

*It is worth to note that, suit schedule item No.B property sold in the year 2003 as per Ex.P14. Suit is filed in the year 2018. there is a time gap of 15 years in between date of sale and date of filing of suit. As per the evidence of DW1, the marriage of defendant No.3 performed about 15 years back. By considering these facts and circumstances. It can be said that, there is a probability that, the father of plaintiffs might have sold the above said suit*



*schedule item No.B property to meet out the marriage expenses of defendant No.3.*

**26.** The specific case of the plaintiffs is that, late Somashekhar never acted as kartha of joint family of plaintiffs and defendant No.1 to 3 as he was addicted to alcohol and he was always in drunken condition. The facts extracted in the cross of DW1 is that, the performance of marriage of daughters and sons, but, there is no suggestion to DW1 in respect of the fact that, the family of plaintiffs and defendant No.1 to 3 was under need of money for performing marriage of sons and daughters of late Somashekhar and defendant No.1. even there is no suggestion to DW1 as to her husband Somashekhar sold the properties because of marriage expenses of his sons and daughters.

**27.** Defendant No.1 is wife of late Somashekhar she has specifically stated in her written statement that, her husband Somashekhar was addicted to alcohol and



he never acted as a joint family kartha and he was always under drunken condition. Further, defendant No.1 specifically stated in the written statement that, her family was never under need of money for any purpose during the life time of Somashekhar. Now in order to appreciate the oral and documentary evidence in respect of facts in issue that, whether the defendant No.4 to 6 proved legal necessity or joint family benefit. At this stage I would like to extract cross of PW1 dated 30.11.2020 para No.3 and 4, which reads thus;

ನನ್ನ ಮದುವೆಯಾಗಿ 2 ವರ್ಷಗಳಾಯಿತು. ನಾನು ಸುಮಾರು 6 ರಿಂದ 7 ವರ್ಷಗಳ ಹಿಂದೆ ರಸ್ತಾಪೂರದಲ್ಲಿರುವ ಕಸ್ತೂರಬಾ ಹಾಸ್ಟೆಲಿನಲ್ಲಿ ವಾರ್ಡನಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದೆನು. ಸದರಿ ಕೆಲಸವನ್ನು ಬಿಟ್ಟು 6 ರಿಂದ 7 ವರ್ಷಗಳಾಯಿತು. ಸದರಿ ಕೆಲಸವನ್ನು ಮಾಡುತ್ತಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ನನಗೆ ತಿಂಗಳಿಗೆ ರೂ.15,000/- ಸಂಬಳ ಕೊಡುತ್ತಿದ್ದರು. ಈಗ ನಾನು ಯಾವುದೇ ಕೆಲಸವನ್ನು ಮಾಡುತ್ತಿಲ್ಲ. 2 ನೇ ವಾದಿಯ ಕಲಬುರಗಿಯಲ್ಲಿ ಕಂಪ್ಯೂಟರ್ ಆಪರೇಟರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾನೆ. ನನ್ನ ಅಣ್ಣನಾದ 2 ನೇ ವಾದಿ ಸದರಿ ಕೆಲಸವನ್ನು ಮಾಡಲು ಪ್ರಾರಂಭಮಾಡಿ 6 ರಿಂದ 7 ವರ್ಷಗಳಾಯಿತು. 2 ನೇ ವಾದಿಗೆ ತಿಂಗಳಿಗೆ ರೂ.8,000/- ಸಂಬಳ ಕೊಡುತ್ತಿದ್ದಾರೆ. 2 ನೇ ಪ್ರತಿವಾದಿಯು ಕಲಬುರಗಿಯಲ್ಲಿ ಕೂಲಿಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾರೆ. 2 ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿಲ್ಲ. 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ ಸುಮಾರು 9 ವರ್ಷಗಳಾಯಿತು. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆ 2012 ನೇ ಇಸವಿಯಲ್ಲಿ ಆಗಿರುತ್ತದೆ. ನನ್ನ ತಾಯಿ ಕೂಲಿಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾರೆ.

2 ನೇ ಪ್ರತಿವಾದಿಯು ಸಾಮೂಹಿಕ ವಿವಾಹ ಆಗಿರುವುದರಿಂದ ಅವರ ಮದುವೆಗೆ ಯಾವುದೇ ಖರ್ಚು ಆಗಿರುವುದಿಲ್ಲ. 2 ನೇ ಪ್ರತಿವಾದಿಯ ಸುರಪೂರ ತಾಲೂಕಿನ ನಗನೂರ ಗ್ರಾಮದಲ್ಲಿ ನಡೆದಿರುತ್ತದೆ. 3 ನೇ



ಪ್ರತಿವಾದಿಯ ಮದುವೆಯ ಎಲ್ಲಾ ಖರ್ಚು ವೆಚ್ಚಗಳನ್ನು ಅವರ ಗಂಡನ ಮನೆಯವರು ಭರಿಸಿರುತ್ತಾರೆ. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆಗೆ ನಾವು ಯಾವುದೇ ಹಣವನ್ನು ಖರ್ಚು ಮಾಡಿಲ್ಲ. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆಗೆ ಎಷ್ಟು ಖರ್ಚಾಗುತ್ತದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನ್ನ ತಾಯಿಯನ್ನು ಮದುವೆ ಆದಾಗಿನಿಂದ ನನ್ನ ತಂದೆಗೆ ಮದ್ಯಪಾನದ ಚಟ ಇತ್ತು. ನನ್ನ ತಂದೆಗೆ ಮದ್ಯಪಾನ ಮತ್ತು ಸಿಗರೇಟ ಸೇರುವ ಚಟಗಳು ಇತ್ತು. ನನ್ನ ತಂದೆ ಕುಡಿದು ಎಲ್ಲಿ ಬೇಕಾದರಲ್ಲಿ ಬೀಳುತ್ತಿದ್ದರು. ಆ ಬಗ್ಗೆ ನನ್ನ ತಂದೆಗೆ ಪೋಲಿಸರು ಎಚ್ಚರಿಕೆ ನೀಡಿರುತ್ತಾರೆ.

**28.** The defendant No.1 is wife of deceased Somashekhar she has specifically pleaded in the written statement that, even prior to her marriage with Somashekhar he was drinker and after marriage he addicted to alcohol, and her husband Somashekhar never acted as Kartha of joint family of plaintiffs and defendant No.1 to 3, and her family was not under need of money at any time. The defendant No.1 is examined as DW1 reiterated the contents of her written statement. Off-course, DW1 deposed that, marriage of defendant No.2 took place 13 years back, marriage of defendant No.3 took place 15 years back, and marriage of plaintiff No.1 took place 03 years back as extracted supra. On basis of cross-examination of DW1 extracted supra, the



trial court directly came to conclusion that, the defendant No.4 to 6 have proved the facts that, the sale deed executed by the deceased Somashekhar in favour of defendant No.4 and 5, in respect of suit schedule properties is for legal necessity as it could be seen from para 59 and 60 of trial court judgment extracted supra.

**29.** The trial court failed appreciate evidence before it. Mere performance of marriage of daughters is not sufficient to hold that, the sale of joint family properties is for family necessity, because, performance of marriage of daughters and sons is quite common in family, but, fact to be proved is as to whether joint family was under need of money for performance of marriage of its family members, so, performance of marriage of joint family member is entirely deferent from the need of money to performance marriage of joint family members and joint family was under need of money. Thus, mere performance of marriage is not sufficient to hold that the sale of joint family properties



are for family necessity. The trial court came to wrong conclusion that, since the defendant No.1 admitted the performance of marriage of sons and daughters of late Somashekhar hence the sale of joint family properties in favour of defendant No.4 and 5 was family necessity. Because, the performance of marriage of daughters and sons can not be ground for assuming and presuming that, he has sold joint family properties for marriage expenses of his daughters without their being any materials evidence to prove that, joint family properties sold for marriage expenses and family was under need of money.

**30.** Even there is no suggestion in the cross of DW1 extracted supra that, said Somashekhar sold the suit properties for marriage expenses of daughters and sons. DW1 is being mother of plaintiffs and defendants No.2 and 3, she is competent to depose about the fact as to whether her husband was acted as a Kartha of joint family, and she is competent to depose as to



whether joint family was under need of money. DW1 specifically pleaded in her written statement and deposed in her evidence that, her husband Somashekhar was addicted to alcohol and he never acted as Kartha of joint family. Apart from the facts extracted supra, the plaintiff No.1 is examined as PW1, she has specifically pleaded in the plaint and deposed in her evidence that, her father Somashekhar was addicted to alcohol and he never acted as kartha of joint family. There is no effective cross-examination of PW1 to suspect her evidence. That apart, the Ld counsel for defendant No.4 to 6 elicited the facts in the cross of PW1 that, the plaintiffs and defendant No.2 and 3 were earning members, further, the facts elicited in cross of PW1 clearly proves that, the Somashekhar has 02 sons and 02 daughters by name Pushpa (P-1), another daughter by name Sarojadevi (D-3), sons by name Ayyanna (P-2), another son by name Ramesh (D-2), in the cross-examination of PW1 the Ld counsel for



defendant No.4 to 6 elicited that, out of 02 sons plaintiff No.2 Ayyanna is remained unmarried, another son by name Ramesh defendant No.2 married in mass marriage. So, under this circumstances there is no expenses for marriage of sons of deceased Somashekhar. Another relevant facts elicited in the cross of DW1 that, marriage of plaintiff No.1 took place just 03 years back from the date of cross of DW1, because, trial court relied on the cross of DW1 extracted supra, from the cross of DW1 it is clear that, marriage of plaintiff No.1 Pushpa took place 03 years back, DW1 cross examined on 08.02.2021, marriage of plaintiff No.1 took place in the year 2019 because DW1 deposed that, the marriage of plaintiff No.1 took place just 03 years back, her cross-examination is on 08.02.2021 so 03 years back means the marriage of plaintiff No.1 took place in the year 2019-20, so, marriage of plaintiff No.1 took place during the pendency of the suit. Hence, the name of plaintiff No.1 in the cause title shown as



Pushpa D/o late Somashekhar, otherwise her name would be shown with her husband name.

**31.** Thus, on appreciation of the evidence of plaintiffs and defendants extracted supra it is clear that, the marriage expenses of plaintiff No.1 daughter is noway concerned to the proof of legal and family necessity, because her marriage took place during pendency of suit, now the marriage of the defendant No.2 who is son of late Somashekhar, took place in the mass marriage. Another son by name Ayyanna plaintiff No.2 is unmarried, so, no prudent man could believe that, late Somashekhar sold the two properties in the year 2003 and in the year 2009 to the defendant No.4 and 6 only for marriage expenses of only one daughter. The trial court failed to appreciate the facts elicited in the cross-examination of PW1 and DW1 with reference to fact in issue.

**32.** So far as, cross of PW1 is concerned one son is unmarried and one son marriage took place in mass



marriage, one daughter marriage took place in year 2019-20 during the pendency of the suit, under these circumstances it can not be held that, late Somashekhar sold joint family properties in the year 2003 and 2009 only for one daughter marriage expenses, on appreciation of oral and documentary evidence led by the both the parties and facts pleaded in the pleading it is clear that, the said sale deeds executed by deceased Somashekhar he not for joint family and legal necessity of plaintiffs and defendant No.1 to 3. and said sale deeds executed by Somashekhar in favour of defendant No.4 and 5 in respect of suit schedule properties are not binding on plaintiffs and defendant No.1 to 3 as those sale transaction in respect of joint family properties are not for legal and joint family necessity. On careful scrutiny of facts pleaded in the pleading of both the parties and on careful appreciation of oral and documentary evidence led by the both the parties it can be safely held



that, deceased Somashekhar addicted to alcohol and executed registered sale deed in favour of defendant No.4 and 5 in respect of suit schedule properties for his bad habits of drinking, further it is clear that, he has not sold the suit properties for proper consideration and he has not received the sale consideration as contended in the written statement as appreciated supra. Thus, when sale deed executed by Somashekhar in favour of defendant No.4 and 5 itself is not binding on plaintiffs and defendant No.1 to 3 share then the sale deed executed by defendant No.5 in favour of defendant No.6 is also not binding on the plaintiffs and defendant No.1 to 3. It is also clear from the appreciation of oral and documentary evidence that, the defendant No.4 and 5 have miss used the conduct of deceased Somashekhar and got executed the above said sale deed when he was under intoxication mode.

**33.** There is no specification in respect of legal necessity. In the cross-examination of PW1 the Ld



counsel for the defendant No.4 to 6 extracted in the cross of PW1, dated 30.11.2020 para No.4, which reads thus;

2 ನೇ ಪ್ರತಿವಾದಿಯು ಸಾಮೂಹಿಕ ವಿವಾಹ ಆಗಿರುವುದರಿಂದ ಅವರ ಮದುವೆಗೆ ಯಾವುದೇ ಖರ್ಚು ಆಗಿರುವುದಿಲ್ಲ. 2 ನೇ ಪ್ರತಿವಾದಿಯ ಸುರಪೂರ ತಾಲೂಕಿನ ನಗನೂರ ಗ್ರಾಮದಲ್ಲಿ ನಡೆದಿರುತ್ತದೆ. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆಯ ಎಲ್ಲಾ ಖರ್ಚು ವೆಚ್ಚಗಳನ್ನು ಅವರ ಗಂಡನ ಮನೆಯವರು ಭರಿಸಿರುತ್ತಾರೆ. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆಗೆ ನಾವು ಯಾವುದೇ ಹಣವನ್ನು ಖರ್ಚು ಮಾಡಿಲ್ಲ. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆಗೆ ಎಷ್ಟು ಖರ್ಚಾಗಿತ್ತು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನ್ನ ತಾಯಿಯನ್ನು ಮದುವೆ ಆದಾಗಿನಿಂದ ನನ್ನ ತಂದೆಗೆ ಮದ್ಯಪಾನದ ಚಟ ಇತ್ತು. ನನ್ನ ತಂದೆಗೆ ಮದ್ಯಪಾನ ಮತ್ತು ಸಿಗರೇಟ ಸೇದುವ ಚಟಗಳು ಇತ್ತು. ನನ್ನ ತಂದೆ ಕುಡಿದು ಎಲ್ಲಿ ಬೇಕಾದರೂ ಬೀಳುತ್ತಿದ್ದರು. ಆ ಬಗ್ಗೆ ನನ್ನ ತಂದೆಗೆ ಪೋಲಿಸರು ಎಚ್ಚರಿಗೆ ನೀಡಿರುತ್ತಾರೆ.

**34.** So, there is no material before the court to establish that, the joint family of plaintiffs and defendant No.1 to 3 was under need of money for family expenses. That apart, the Ld counsel for defendant No.4 to 6 elicited facts which proves that, all joint family members were earning members and there was no need of money for any purpose of family of plaintiffs and defendant No.1 to 3. In the cross of PW1 the counsel for the defendant No.4 to 6 elicited at para No.3, which reads thus;



ನನ್ನ ಮದುವೆಯಾಗಿ 2 ವರ್ಷಗಳಾಯಿತು. ನಾನು ಸುಮಾರು 6 ರಿಂದ 7 ವರ್ಷಗಳ ಹಿಂದೆ ರಸ್ತಾಪೂರದಲ್ಲಿರುವ ಕಸ್ತೂರಬಾ ಹಾಸ್ಟೆಲಿನಲ್ಲಿ ವಾರ್ಡನಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದೆನು. ಸದರಿ ಕೆಲಸವನ್ನು ಬಿಟ್ಟು 6 ರಿಂದ 7 ವರ್ಷಗಳಾಯಿತು. ಸದರಿ ಕೆಲಸವನ್ನು ಮಾಡುತ್ತಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ನನಗೆ ತಿಂಗಳಿಗೆ ರೂ.15,000/- ಸಂಬಳ ಕೊಡುತ್ತಿದ್ದರು. ಈಗ ನಾನು ಯಾವುದೇ ಕೆಲಸವನ್ನು ಮಾಡುತ್ತಿಲ್ಲ. 2 ನೇ ವಾದಿಯ ಕಲಬುರಗಿಯಲ್ಲಿ ಕಂಪ್ಯೂಟರ್ ಆಪರೇಟರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾನೆ. ನನ್ನ ಅಣ್ಣನಾದ 2 ನೇ ವಾದಿ ಸದರಿ ಕೆಲಸವನ್ನು ಮಾಡಲು ಪ್ರಾರಂಭಮಾಡಿ 6 ರಿಂದ 7 ವರ್ಷಗಳಾಯಿತು. 2 ನೇ ವಾದಿಗೆ ತಿಂಗಳಿಗೆ ರೂ.8,000/- ಸಂಬಳ ಕೊಡುತ್ತಿದ್ದಾರೆ. 2 ನೇ ಪ್ರತಿವಾದಿಯು ಕಲಬುರಗಿಯಲ್ಲಿ ಕೂಲಿಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾರೆ. 2 ನೇ ವಾದಿಗೆ ಮದುವೆಯಾಗಿಲ್ಲ. 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ ಸುಮಾರು 9 ವರ್ಷಗಳಾಯಿತು. 3 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆ 2012 ನೇ ಇಸವಿಯಲ್ಲಿ ಆಗಿರುತ್ತದೆ. ನನ್ನ ತಾಯಿ ಕೂಲಿಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾರೆ.

**35.** PW1 deposed in the cross-examination that, about 6 to 7 years back, she was earning monthly Rs.15,000/-, and it is also clear from the cross of PW1 that, the plaintiffs No.2 is also serving in as computer operator in Kalaburagi and getting monthly salary of Rs.8,000/- for the last 6 to 7 years. This facts clearly shows that, PW1 was earning monthly salary of Rs.15,000/- and she left the work about 6 to 7 years back, when PW1 left the work about 6 to 7 years, the plaintiff No.2 started to earning monthly Rs.8,000/- for the last 6 to 7 years. These facts clearly establishes



that, in the year 2009 the joint family of plaintiffs and defendant No.1 to 3 was not under need of money to sale the joint family properties.

**36.** That apart, I have gone through the registered sale deeds executed by late Somashekhar on 22.05.2009 in respect of Sy.No.56/5 adm 06 acres 02 guntas for sale consideration of Rs.2,49,000/-. No prudent man could believe that, the late Somashekhar sold 06 acres 02 guntas land for such lowest consideration of Rs.2,49,000/-. Rs.2,49,000/- divided into six it comes Rs.41,500/- per acre. As already appreciated the facts elicited in the cross of PW1 that, PW1 and plaintiff No.2 were earning members during the year 2009 and PW1 was earning Rs.15,000/- per month which comes Rs.1,80,000/- per year, when income of joint family member is Rs.1,80,000/- per year what forced them to sell the suit properties to the extent of 06 acre 02 gunts for lowest consideration of Rs.41,500/- per acres. Even the above said earning of



Rs.1,80,000/- per year is only one member of joint family income, what about the income of entire joint family members of plaintiffs and defendant No.1 to 3.

**37.** The question before the court is what was necessity to sell such a huge land of 06 acres 02 guntas for Rs.2,49,000/-. So, it is clear case of transaction made by the late Somashekhar in intoxication condition as he was addicted to alcohol. Even in the cross of PW1 itself clearly shows that, the late Somashekhar was addicted to alcohol, the cross of PW1, which reads thus;

ನನ್ನ ತಾಯಿಯನ್ನು ಮದುವೆ ಆದಾಗಿನಿಂದ ನನ್ನ ತಂದೆಗೆ ಮದ್ಯಪಾನದ ಚಟ ಇತ್ತು. ನನ್ನ ತಂದೆಗೆ ಮದ್ಯಪಾನ ಮತ್ತು ಸಿಗರೇಟ ಸೇರುವ ಚಟಗಳು ಇತ್ತು. ನನ್ನ ತಂದೆ ಕುಡಿದು ಎಲ್ಲಿ ಬೇಕಾದರಲ್ಲಿ ಬೀಳುತ್ತಿದ್ದರು. ಆ ಬಗ್ಗೆ ನನ್ನ ತಂದೆಗೆ ಪೋಲಿಸರು ಎಚ್ಚರಿಗೆ ನೀಡಿರುತ್ತಾರೆ.

**38.** Thus, even in the cross-examination of PW1 Ld counsel for defendant No.4 to 6 elicited that, late Somashekhar was addicted to alcohol, and not only in cross-examination of PW1 it reflects in the evidence of DW1 who is wife late Somashekhar reflects that, since



said Somashekhar was addicted to alcohol, hence the plaintiffs mother was kartha of joint family of plaintiffs and defendant No.1 to 3. In the recital of sale deeds at Ex.P8 it is clear that, ನನ್ನ ಅವಸರ ನಿಮಿತ್ಯ ಇತರ ಕೌಟುಂಬಿಕ ಅವಶ್ಯಕತೆಗಳು ಹಾಗೂ ದುಡ್ಡಿನ ಅಡಚಣೆಗಾಗಿ ನನ್ನ ಸ್ವಂತ ಒಡೆತನ ಸ್ವಾಧೀನ ಅನುಭವದಲ್ಲಿರುವ ಕೆಳಗೆ ನಮೂದಿಸಿದ ಸ್ಥಿರ ಆಸ್ತಿಯನ್ನು ನಿಮಗೆ ರೂ.2,49,000/- ಖಂಡಿತ ಖರೀದಿ ಕೊಟ್ಟು ನಿಮ್ಮ ಸ್ವಾಧೀನ ಅನುಭವದಲ್ಲಿ ಕೊಟ್ಟು ಖರೀದಿ ಹಣ ಸಂಪೂರ್ಣ ನಿಮ್ಮಿಂದ ಇದ್ದಕ್ಕೂ ಮುಂಚಿತವೇ ಪಡೆದು ಪಾವತಿ ಸಹ ಕೊಟ್ಟಿರುವೆ.

**39.** Question before the court is as per the recital of Ex.P8 extracted supra it is clear that, the vendor Somashekhar already received consideration amount, it is not specific case of the defendant No.4 to 6 that, they have already paid consideration amount of RS.2,49,000/- to the Somashekhar prior to execution of Ex.P8, there is no pleading and proof that, when the defendant No.4 has paid consideration amount of Rs.2,49,000/- prior to Ex.P8, mode of payment of consideration is not known. Just mentioning in sale



deed at Ex.P8 that, the consideration amount already received.

**40.** To prove the legal and family necessity of the plaintiffs and defendant No.1 to 3 the defendant No.4 to 6 atleast prove the payment of consideration at the time when the plaintiffs joint family was under need. It is specific case of the plaintiffs that, the defendants No.4 to 6 never paid consideration to the Somashekhar, because, he was addicted to alcohol and he was not Kartha of family and their family was not under need of money. So, the recital extracted in Ex.P8 does not proves when plaintiffs joint family was under need and when the kartha of joint family of plaintiffs and defendant No.1 to 3 received consideration amount of Rs.2,49,000/- for suit properties adm 06 acres 02 gunta, atleast to prove family and legal necessity the purchasers must have prove the payment of consideration amount when plaintiffs family was under need. Ex.P8 does not discloses any date of payment of



consideration by the defendant No.4 to late Somashekhar, these facts clearly proves that, the said Somashekhar sold the properties to defendant No.4 and 6 not for legal and family necessity, but, he has sold the said properties for his bad habits of drinking of alcohol.

**41.** Even the sale deed executed by late Somashekhar in favour of defendant No.5 does not discloses the date, month and year of payment of consideration under registered sale deed and said sale deed was came into existence in the year 2003, again the said Somashekhar sold his properties adm 06 acres 02 guntas to defendant No.4 as appreciated supra. These facts clearly shows that, the sale deeds executed by Somashekhar in favour of defendant No.4 and 5 are not for legal and family necessity they are only for bad habits of late Somashekhar, because, if really family was under need of money when he could have sold the properties in the year 2003. Question before the court is what forced the late Somashekhar again took the



property bearing Sy.No.138/3 adm 06 acres 02 guntas for sale in the year 2009 when he sold the landed property in year 2003 in favour of defendant No.5. So, if late Somashekhar sold the property in the year 2003 for his family necessity what was necessity again to sale 06 acres land of joint family properties in the year 2009. These facts clearly creates doubts for sale transaction under Ex.P8.

**42.** Off-course, the legal necessity encompasses events that are unavoidable or necessary for the family welfare, such as marriage expenses, medical expenses, payment of family debts or maintenance of family members. No such events pleaded and proved in the present case by the defendant No.4 to 6, as already appreciated that, the joint family members were the earning members and plaintiff No.2 unmarried, marriage of defendant No.2 took place in mass marriage, no marriage expenses born the parents so far as two sons are concerned, because plaintiff No.2 is



unmarried and marriage of defendant No.2 took place in mass marriage as already appreciated that as per facts elicited in cross of PW1 and DW1 that, one daughters marriage took place during pendency of suit.

**43.** That apart, the payment of sale consideration on particular date, month and year not mentioned neither in the registered sale deed nor in the pleadings. Under such circumstances when defendant No.4 to 6 failed to prove legal and family necessity of plaintiffs and defendant No.1 to 3 and when defendant No.4 to 6 failed to prove payment of sale consideration under Ex.P8 then it can be safely held that, the plaintiffs proved their case and the defendant No.4 to 6 failed to prove the legal and family necessity for sale of joint family properties. It is also failed to prove the facts that, the late Somashekhar was kartha of joint family of plaintiffs and defendant No.1 to 3. It is settled position of law that, atleast reasonable enquiry i.e., a purchaser must prove that they acted with ordinary prudent man



could act under the circumstances, this includes verifying the Karta's authority and checking for evidence of the stated legal necessity or family necessity i.e., records of debt or pending family obligation etc., It is also settled law that, mere vague recital in the registered sale deeds or in the pleading i.e., mere statements in sale deeds claiming "legal necessity" are not insufficient. The purchaser atleast require the concrete evidence to prove that, the funds were genuinely required for the family. Or otherwise the purchaser must atleast prove that, the sale of joint family properties is for the benefit of the estate that, a Karta can sell properties if it is for clear benefit of the family estate, such as improving properties or replacing unproductive assets with more beneficial. In the case on hand, no such pleading and proof in respect of legal necessity, except the formal wards used in sale deeds as legal and family necessity, even in the pleading also mentioned as legal and family



necessity, no such events proved by the defendant No.4 to 6.

**44.** That apart, late Somashekhar died on 01.02.2017 as per Ex.P7 original death certificate of Somashekhar, so, suit filed in the year 2018, soon after death of father of the plaintiffs, the present plaintiffs have filed suit for partition and separate of their 1/5th share in the suit properties and for declaration declaring that sale deeds executed by their father not binding on the plaintiffs shares, this suit is filed in the year 2018, so, the plaintiffs father died on 01.02.2017. thus, the suit is in time. Under Hindu law, the cause of action for a son to demand partition of joint family properties is recurring or continuing right that arises whenever a coparcener desires to sever their interest from the joint family. So, it specifically arises upon a definite, unambiguous declaration of intention to separate, refusal of a demand for partition is cause of action. Thus, the present suit is for partition and



separate possession of plaintiffs share the cause of action arises when the other joint family member refused to give their share. Further, the plaintiffs have specifically stated in the plaint as well as in their evidence that, they came to know about the sale of joint family properties by their father in the year 2018. Looking from any angle the suit is in time.

**45.** As already appreciated oral and documentary evidence of both parties and held that, the defendant No.4 to 6 failed to prove the facts that, late Somashekhar was kartha of joint family of plaintiffs and defendant No.1 to 3 and they failed to prove that, sale of joint family properties are for legal and joint family necessity, since the defendant No.4 to 6 failed to prove the said facts hence they are not entitled to have a shelter under the law laid down in the decisions relied on by them.



**46.** So, issue involved in the present suit is only in respect of proof of legal and family necessity of plaintiffs and defendant No.1 to 3, as per the settled position of law this issued has to be proved by the defendant No.4 to 6. as already appreciated oral and documentary evidence in respect of legal and family necessity and in respect of fact as to whether late Somashekhar was acted as a kartha of joint family of plaintiffs and defendant No.1 to 3, since the defendant No.4 to 6 failed to prove that late Somashekhar was kartha of joint family of plaintiffs and defendant No.1 to 3 and further failed to prove that, he has sold joint family properties to the defendant No.4 and 5 for legal and family necessity, hence the sale deed executed by late Somashekhar in favour of defendant No.4 and 5 in respect of suit schedule properties are not binding on plaintiffs and defendant No.1 to 3 share in the suit schedule properties. Hence the interference of this court is necessary. Hence the judgment and decree under



challenge is liable to set-aside in respect of suit schedule “A and B” properties and suit of the plaintiffs is to be decreed in respect of suit schedule “A and B” properties as plaintiffs and defendant No.1 to 3 being joint family members and they are entitled for 1/5th share in the suit schedule “A and B” properties, I answer and point No.1, 2 and 5 in the **Affirmative** and point No.3, 4 and 6 in the **Negative**.

**47. POINT NO.7:** In view of the discussion made on point No.1 to 6, I proceed to pass the following;

**ORDER**

Regular Appeal preferred  
U/Sec.96 R/w order 41 Rule 1 of CPC,  
by the appellants/plaintiffs, is hereby  
partly allowed.

Consequently, the judgment and  
decree under challenge, passed by the  
Ld Senior Civil Judge and JMFC



Shahapur, in OS No.39/2018, dated 31.05.2023 is hereby set-aside, in respect of suit schedule “A and B” properties.

Consequently, suit of the plaintiffs is hereby decreed in respect of suit schedule “A and B” properties.

Consequently, the plaintiffs and defendant No.1 to 3 each entitle for 1/5th share in the suit schedule ‘A and B’ properties by metes and bounds.

Further, it is made it clear that, registered sale deeds dated 06.05.2003 and dated 22.05.2009 and 30.05.2005 are declared as Null and void and are not binding on the plaintiffs and defendant No.1 to 3.



Further, it is made it clear that,  
the judgment and decree of trial court in  
respect of suit schedule “C and D”  
properties and in respect of cost of the  
suit remained intact.

Draw decree accordingly.

Office is directed to send TCR to the  
trial court with copy of the judgment.

(Dictated to the Stenographer-III directly on  
computer, transcript computerized by her, corrected, initialed and then  
pronounced by me in the open court, on this the 11<sup>th</sup> day of March –  
2026)

**(Yamanappa Bammanagi)**  
**(II nd Addl. District and Sessions Judge**  
**Yadgir, Sitting at Shorapur)**