



**IN THE COURT OF XLII ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU (CCH-43)**

**Present: Sri. Kengabalaiah,
B.Com., LL.B.
XLII Addl. City Civil & Sessions Judge.**

Dated this 17th Day of September, 2022

O.S.No. 1779/2015

**Plaintiff/s : 1. Smt. A.R.Saraswathi
D/o Late A.Rama Rao**

Since dead by her LRs.

**a) Smt. Shylaja
D/o A.R.Saraswathi
Aged about 56 years,**

**b) Sri. Venkatesh
S/o A.R.Saraswathi
Aged about 56 years,**

**c) Smt. Shashikala
D/o A.R.Saraswathi
Aged about 56 years,**

**All are R/at No.15, II Cross,
Kanakapura Main Road,
Yelachenahalli, Bangalore – 78.**

**2. Smt. A.R.Saroja
D/o Late Rama Rao
Aged about 72 years
R/at No.260, I 'C' Man, 8th Cross,
Kengeri Satellite Town,
Bangalore – 60.**

**3. Smt. A.R.Vijaya
D/o Late A.Rama Rao
Aged about 58 years,
R/at No.LIG 144, Hebbal III Stage,**

Subramanyangar, Mysore- 57008.

4. N.Panikiran
Granson of Late A.Rama Rao
S/o Late A.R.Shantha
Aged about 31 years,
R/at No.282, Datta Krupa
5th Main, 6th Cross, D-Block,
Siddalingeshwara Layout,
J.P.Nagar, Mysore – 570009.

[P1 - By Sri. S.Vasanth Madhav, Adv.]

[P2 to 4 - By Sri. K.R.D., Adv.]

-Vs-

- Defendant/s :
1. A.R.Gopal Rao
S/o Late A.Rama Rao
Aged about 75 years
R/at Mathru Kalyan, No.351,
I 'A' Cross, 3rd Stage, 4th Block,
Basaveshwaranagar,
Bangalore – 79.
 2. A.R.Subba Rao
S/o Late A.Rama Rao
Aged about 68 years,
R/at No.229, 12th Main Road,
Lakkasandra Extension,
Wilson Garden, Bangalore - 30.
 3. A.R.Chandrashekar Rao.
S/o Late A.Rama Rao
Aged about 63 years,
R/at No.16, Mathru Anand,
Gangadhara Layout, Nagarabhavi
Road, Vijayanagar, Bangalore – 40.
 4. A.R.Murali
S/o Late A.Rama Rao
Aged about 63 years,
R/at Flat No.C-1, 1st Floor,

Krishna Residency, Patalamma
Temple Steet, Basavanagudi,
Bangalore – 4

5. A.R.Venkatesh
S/o Late A.Rama Rao
Aged about 56 years,
R/at No.707, 61st Cross, 5th Block,
Rajajinagar, Bangalore – 10
6. Smt.A.R.Kamalamma
D/o Late A.Rama Rao
Aged about 77 years,
R/at Flat No.110, F-2, 1st Floor,
Sarvesha Apartments, 6th Main,
Chamarajpet, Bangalore – 18.
7. Transposed as PI No.2
8. Transposed as PI No.3
9. Transposed as PI No.4
10. M.Prasad
S/o Late R.Munireddy
Aged about 33 years,
R/at No.119//84,Yellamma Devi
Nilaya, Opp. Floor Mills,
Dr.Raj Road, Agara Post and
Village, Bangalore – 560102
11. E.A.Mohamed Sulaiman
S/o M.M.E. Abdul Rahman
Aged about 54 years,
12. Smt.E.N.Seyda Sultana Begum
W/o E.A.Mohamed Sulaiman
Aged about 47 years,

No.11 & 12 are R/at No.6,
Papayagowda Street, Shantinagar,
Bangalore – 27

13. P.Chethan
S/o H.M.Prakash
Aged about 24 years,
R/at Halanayakanahalli Village,
Varthur Hobli, Carmelaram Post,
Bangalore – 35
14. B.S.Prithvi
S/o Shvamurthy
Aged about 21 years,
15. Smt. B.A.Vedavathi
W/o Shvamurthy
Aged about 40 years,

D14 & 15 R/at No.742, 2nd C-Cross,
8th Block, Koaramngala,
Bangalore – 95.
16. Smt. N.Asha
W/o G.S.Kiran
D/o Y.R.Nagaraj
Aged about 28 years,
R/at No.33, 26th Cross, 19th Main
Garden Layout, HSR Layout.
II Street, Bangalore – 560 102.
17. Sri. Rajeev N.J.
S/o Jayadev N.
Aged about 44 years,
R/at No.64, 8th Main Road,
III Stage, 4th Block, BEML Layout,
Basaveshwara Nagar,
Bangalore – 79.

[D1 – by Sri. V.D.R., Adv.]
[D2 – by Sri. S.V.S., Adv.]
[D3 & 6 – By Sri. C.S., Adv.]
[D4 – by Sri. B.R.D., Adv.]
[D5 – by Sri. C.S., Adv.]
[D10 – by Sri. A.R.H., Adv.]
[D1 & 12 – Exparte]

[D13 – by Sri. T.V.N., Adv.]
 [D14 7 15 – by Sri. A.M.S., Adv.]
 [D16 – by Sri. M.K.S., Adv.]
 [D17 – by Sri. D.M.J., Adv.]

Date of institution of the suit	23.2.2015						
Nature of the suit	Partition						
Date of commencement of recording the evidence	5.4.2016						
Date on which the judgment was pronounced	17.09.2022						
Total duration	<table> <thead> <tr> <th>Years</th> <th>Months</th> <th>Days</th> </tr> </thead> <tbody> <tr> <td>07</td> <td>06</td> <td>25</td> </tr> </tbody> </table>	Years	Months	Days	07	06	25
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07	06	25					

(Kengabalaiah),
 XLII Addl. City Civil & Sessions Judge.

J U D G M E N T

The plaintiffs have filed this suit against the defendants for partition in the suit schedule properties.

2. The case of the plaintiffs is that, defendants 1 to 8 are children of late A.Rama Rao who is dead and Defendant No.9 is the grandson of late Rama Rao and son of deceased daughter A.R.Shantha. During the life time, A. Rama Rao has purchased various lands i.e., Sy.No.75 measuring 4 acres 27 guntas; Sy.No. 105 measuring 1 acre 31 Guntas; Sy.No. 108

measuring 1 acre 26 guntas; Sy.No.114 measuring 27 guntas; Sy.No.86 measuring 30 guntas and Sy.No. 50 measuring 1 acre 5 guntas through a registered sale deed dated 22/7/1957. Besides the above lands, the father of the Plaintiffs also acquired certain lands through a family partition dated 22/5/1961 i.e., Sy.No.9, 10 and 11 of Harale Kunte Village, measuring 5 acres 2 guntas; a acres 13 guntas, 6 acres 15 guntas respectively; Sy.No.24 measuring 3 acres 14 guntas of Venkoji Rao Kane Village, Sy.No.201 measuring 1 acres 9 guntas of Amani Bellandura Kane; Sy. No.58/1 measuring 2 acres 6 guntas of Harale Kunte Village, Sy.No.54 and 58 of 10 acres 1 guntas and 10 acres 1 guntas respectively of Chikkanayakanhalli Village; Sy.No.54/1 measuring 20 guntas in Ejipura; Sy.No.55/11 measuring 12 guntas and Sy.No.19 measuring 2 acres 36 guntas (half share) of Ejipura Village; and a house with Mangalore tiled house in Sy.No.107/A of Agara Khane. Late A.Rama Rao was also entitled to 1/4th share in all the properties that were partitioned in favour of his mother Bhageerathamma, as stipulated in the partition deed dated 22/5/1961.

3. It is further submitted that, these lands were acquired by the State for various public purposes. The Defendant No.2 though not the eldest son, was managing the family affairs and represented in various land acquisition cases before the City Civil Courts and Rural Courts, before the authorities and received the compensation amounts in LAC No.15, 45/72-73 dated 9/3/2010 for acquisition of lands in Sy.No.86 and 105 of Agara Village, LAC No.401/87 dated 31/8/2009 for acquisition of lands in Sy.No.114 of Agara Village. LAC No.399/87 dated 1/8/2005 for acquisition of lands in Sy. No.75 of Agara Village. Besides receiving compensation, the Defendant No.2 also applied for sites to BDA for having acquired the lands in Sy.No.108, 114 and 75 of Agara Village and the BDA considering the petition, has granted five sites to the Defendant No.2 contending him to be the owner of lands acquired. The sites allotted are Site No.599/A measuring 40X 60 feet, Site No. 1187 measuring 40 X 60 feet, Site No.670 measuring 40 X 60 feet, Site No.1484 measuring 30 X 40 feet and Site No.1485 measuring 30 X 40 feet and the said sites are the schedule properties and they are situated in most developed area of Bengaluru at HSR

Sector 7, Sector 3 and Sector 4 beside in HRR sector 3. The BDA also executed sale deeds in favour of the Defendant No.2 vide Sale deed dated 14/6/2007 in respect of Site No.599A, Sale deed dated 20/8/2011 in respect of Site No.1187, Sale deed dated 12/10/2007 in respect of Site No.670, Sale deed dated 20/8/2011 in respect of Site No.1484 and Sale deed dated 20/8/2011 in respect of Site No.1485.

4. It is further submitted that, the Defendant No.2 while claiming the sites and/or compensation did not provide the details of other LR's of late A.Rama Rao and filed indemnity bonds/affidavits to the authorities, thus played an illegality in obtaining compensation and sites under incentive scheme. Taking undue advantage of the situation, in spite of collecting huge compensation amounts and not accounting with the LR's of late A.Rama Rao, the Defendant No.2 alienated Site No. 670 to Defendant No.13 for a huge sale consideration vide sale deed dated 2/8/2010 and in turn the Defendant No.13 alienated the same in favour of Defendant No.14 and 15 vide Sale Deed dated 3/1/2013. The Defendant No.14 and 15 appears to have availed loan on the said site amounting to Rs. 72,00,000/- from Union Bank of India on

17/6/2013. The Defendant No.2 also alienated Site No.1485 to Defendant No.10 vide Sale Deed dated 5/3/2012 and in turn Defendant No.10 has alienated the same in favour of Defendant No.11 and 12 vide Sale Deed dated 23/6/2012. The Defendant No.2 had no manner of absolute right, title or interest to alienate the Site No.670 and Site No.1485 to Defendant No.10 and Defendant No.13 and the said sale deeds are not binding on the Plaintiff or other LRs of late A.Rama Rao. The Defendants. 10 and 13 do not derive any right, title or interest and as such the subsequent purchasers namely Defendants 11 and 12 on one hand and Defendants No.14 and 15 on the other hand do not derive any right, title or interest over the said respective Sites. The Plaintiff is entitled for a share in all the schedule properties as she is the daughter of late A.Rama Rao and the sites are provided as an incentive to the lands acquired by the authorities which were joint family properties and there is no partition of any joint family properties pursuant to coming into force the Hindu Succession Act. The Defendants 1, 3 to 9 are also entitled for their 1/9th share in the schedule properties. Even though BDA executed the sale deeds in favour of the Defendant No.2, it

was on behalf of the family as the lands were acquired and sites were given as a special incentive and thus the Plaintiff is in joint possession of the suit schedule properties. Hence, the suit.

5. The defendants 7 to 9 subsequently transposed as plaintiffs 2 to 4.

6. The defendants have appeared through their counsel and filed the written statements. The defendant No.2 has filed the written statement contending that the plaintiff is guilty of suppressing the facts and also misrepresenting the facts. The plaintiff has not approached this Court with clean hands and hence not entitled for any reliefs. The suit filed by the plaintiff is also bad in law in view of the fact that the suit filed by this plaintiff along with Kamalamma, A. R Saroja, A.R Vijaya and N.Panikiran who are Defendant No. 6, 7, 8 and 9 respectively in the present suit has been dismissed by this Court by its judgment and decree dated 16.12.2014 in O.S.No.95/2012 on the ground that the plaintiffs therein have not included all the properties in which they have claimed to have shares. Such being the state of affairs, the present suit is technically disqualified to be entertained and hence liable to

be dismissed. The plaintiff is tend to file suits in installments only in order to harass this Defendant. The relationship explained in para-3 of the plaint is admitted. The averments made in Para-4 of the plaint that during the life time of plaintiff's father A.Rama Rao, he had purchased 6 items of agricultural lands under a registered sale deed dated 22.7.1957 is true and correct. However, all the lands were mortgaged by their original owners by name A.Savithramma and her sons in favour of one A.Ashwathnarayana Rao in the year 1947. The said lands have been purchased by A.Rama Rao along with the mortgage, with a condition that he would discharge the mortgage and then would acquire the absolute title of the said lands. The Defendant No. 2 had to spend huge amounts in order to get the litigation cleared in respect of the lands purchased by his father.

7. It is submitted that, one person by name M.Muga Reddy of Agara Village had filed Form No.7, seeking grant of occupancy rights in respect of Sy.No.75 before the Land Tribunal, Bengaluru South Taluk. The Defendant No.2 who intended to save the said land had to convince the said applicant and to make him agreeable for the compromise in

order to get the said land out of the litigation. Accordingly, an extent of 2 acres 22 guntas of land in Sy.No.75, Agara Village has been given to his share while remaining extent of 2 acres of land was fallen to the share of Defendant No.2. In this view of the matter, the plaintiff or any of the sisters of Defendant No.2 do not have any rights to claim any share in the lands purchased by his father and in view of the fact that, huge amounts have been spent by this Defendant as well his father during lifetime for performing the marriages of daughters. In this view of the matter, the plaintiff is also not entitled to seek any partition in the sites formed by BDA on the land in Sy. No.75 which is now in exclusive possession of Defendant No.2. The lands in Sy.No.105 and 86 have been duly acquired by the Ministry of Defence in the year 1961 itself and the plaintiff cannot make any claim of whatsoever nature as the very suit filed by her is hopelessly barred by time. All the lands purchased by the father of Defendant No.2 were admittedly Inam Lands governed by the provisions of The Karnataka Village Offices Abolition Act, 1961. Hence a re-grant order had to be passed by the Tahasildar. However there is a rival claim for the said purpose by one S. Rama Reddy and

Venkataswamy of Agara Village in respect of Sy.No.105 and 86. Defendant No. 2 who has also been one of the aspirants for re-grant had to eventually give up 50% of either the land or the compensation or the sites given under incentive scheme to the legal heirs of said S.Rama Reddy and Venkatasway. For the said reasons, Defendant No. 2 had spent huge amounts in order to bring the said persons to the terms and save the property purchased by his father. Hence the plaintiff is estopped from making any claims in any of the sites formed and handed over to Defendant No.2. The lands in Sy. No.108 and 50, situated at Agara Village were also subject matter of re-grant before the Competent Authority. Along with Defendant No.2, said S. Rama Reddy and others had also sought for re-grant of the lands claiming certain rights on the same. Even when the said lands have been acquired by BDA and KIADB respectively, there was rift between said S. Rama Reddy and Defendant No.2 and with the intervention of friends and well wishers, Defendant No.2 had to enter into a compromise with the said persons and had to part with 50% of either the land or the compensation or the sites given under incentive scheme and accordingly certain were given to the legal heirs

of S. Rama Reddy. In this view of the matter, the claim of the plaintiff is not entitled to be given and as such had become the absolute owner of the same with total exclusion of the plaintiff.

8. It is further submitted that, in respect of the land in Sy. No.114, a rival claim was preferred by one Venkataswamy and others who sought re-grant order in his favour. This land has been acquired by the BDA. During the disbursement of compensation, Defendant No.2 had to yield to the pressure of said Venkataswamy to agree to part with 50% of either the land or the compensation or the sites formed thereon. Hence the plaintiff cannot make claim of partition in respect of the same. Even otherwise, the plaintiff is not entitled to seek any partition in any of the joint family properties since the father of the plaintiff had himself sold several properties for the performance of daughters' marriage. The plaintiff claim that she is entitled for partition and separate possession of any property is untenable. Hence, sought for dismissal of the suit.

9. The defendant No.3 has filed the written statement by admitting the entire case of the plaintiff. The defendant No.3 submits that the land was acquired by the State for

various public purposes. The defendant No.2 though not the eldest son, was managing the family affairs and represented in various Land Acquisition Cases, before the City Civil Courts and Rural Courts, before the Authorities and received the compensation amounts in; a) LAC NO.15, 45/72-73, dated 09-03-2010 for acquisition of lands in Sy.Nos. 86 and 105 of Agara Village, b) LAC NO.401/87, dated 31-08-2009 for acquisition of lands in Sy.No.114 of Agara village, and c) LAC No.399/87 dated 01-08-2005 for acquisition of lands in Sy.No.75 of Agara Village. Apart from that besides receiving compensation, the 2nd defendant also applies for sites to BDA for having acquired lands in Sy.Nos.108, 114 and 75 of Agara Village under the Bangalore Development Authority (Incentive Schedule for Voluntary Surrender of Land) Rules, 1989. The BDA considering the petition, has granted five sites to the 2nd defendant contending him to be the owner of lands acquired and allotted sites i.e., Site Nos.599/A, 1187, 670, 1484 and 1485 i.e., schedule properties which are situated in most developed area of Bangalore at HSR Sector 7, Sector 3 and Sector 4 besides in HRR Sector 3. The BDA also executed Sale Deeds in favour of the 2nd defendant i.e., a)

Sale Deed dated 14-06-2007 in respect of Site No.599/A (Schedule I), b) Sale Deed dated 20-08-2011 in respect of Site No, 1187 (Schedule I), c) Sale Deed dated 12-10-2007 in respect of Site No. 670 (Schedule III). d) Sale Deed dated 20-08-2011 in respect of Site No.1484 (Schedule IV) and e) Sale Deed dated 20-08-2011 in respect of Site No. 1485 (Schedule V). The 2nd defendant while claiming sites and/or compensation did not provide the details of other LRs, of late A.Rama Rao and filed indemnity bonds/affidavits to the Authorities and thus, played an illegality in obtaining compensation and sites under the Incentive Scheme.

10. It is further submitted that, taking undue advantage of the situation and circumstances inspite of collecting huge compensation amounts and not accounting with the LRs. of late A.Rama Rao, the 2nd defendant alienated Site No.670 to defendant No.13 for a huge sale consideration vide Sale Deed dated 02-08-2010 and in turn, the defendant No.13 alienated the same to the defendants Nos.14 and 15 vide Sale Deed dated.03-01-2013 and then, the said defendants 14 and 15 appear to have availed the loan of Rs.72,00,000-00 from the Union Bank of India. The 2nd defendant also

alienated Site No.1485 to the Defendant No.10 vide Sale Deed dated .05-03-2012 and in turn, the defendant No.10, has alienated the same in favour of Defendants 11 and 12 vide Sale Deed dated 23-06-2012. The defendant No.2 had no manner of absolute right, title or interest to alienate the above said site to the defendant No.10 and the defendant No.13 and the Sale Deeds are not 'binding on the plaintiff or other LRs of late A.Rama Rao and the defendant No.10 and 13 also do not derive any right, title or interest and as such, the subsequent purchasers i.e., defendants 11 and 12 on one hand and the defendants 14 and 15 on the other hand, derive no right, title or interest over the said respective sites. The plaintiff is entitled for share in all the suit schedule properties and she is the daughter of A.Rama Rao and the sites are provided as incentive to the lands acquired by the BDA which were joint family properties and there was no partition in the joint family properties pursuant to coming into force of Hindu Succession Act. The defendants 1, 3 to 9 are also entitled for their 1/10th share in the schedule properties. There is no cause of action for the suit. Hence, sought for decreeing the suit.

11. The defendant No.6 has filed a memo to adopt the written statement filed by the defendant No.3 as written statement of the defendant No.6.

12. The defendant No.13 has filed the written statement and submitted that the property bearing No.670 BBMP Khatha No.1190/670 Sector-3. Hosur-Sarjapur Road Extension, Bangalore is the absolute property of A.R.Subba Rao, who in turn had acquired the same under a registered sale deed dated 12.10.2007 executed by the BDA and the same was registered on 15.10.2007. This defendant purchased the said property from A.R. Subba Rao under a sale deed dated 2.8.2010 by investing his hard earned money. This defendant is a bonafide purchaser of the said property by paying sale consideration amount to A.R.Subba Rao and continued in possession and enjoyment of the same till 3rd January, 2013. Thereafter. this defendant sold the said property under sale deed dated 3.1.2013 in favour of defendant Nos.14 and 15 and they are in possession and enjoyment of the said property as absolute owners by getting khatha and other documents in their name from BBMP and they have constructed a building on the property in question

by obtaining sanction plan from the BBMP and let out the same. The defendant Nos.14 and 15 have also mortgaged the said property in favour of M/s Union Bank of India and the Defendant Nos.14 and 15 are in lawful possession and enjoyment of the property as absolute owners from the date of purchase.

13. It is further submitted that, the plaintiff has no right of whatsoever in respect of the property bearing No.670 Khatha No.1190/670 Sector 3, HSR Road Extension and it was the absolute property of A.R. Subba Rao and this defendant is the bonafide purchaser of the said property. The averments made in para-3 to 8 of the plaint are all baseless allegations. The plaintiff has not approached this court with clean hands and suppressed the material facts i.e. dismissal of earlier suit filed by the plaintiff for partition. In view of this suppression of material fact, the plaintiff has played fraud in order to snatch a favorable order. In view of suppression of the material fact and in view of Section 10 of the Code Of Civil Procedure, 1908, the plaint is liable to be rejected. The suit of the plaint has not been properly valued and the Court Fee paid on the plaint is insufficient for the simple reasons that the

plaintiff is not in possession of the suit property at any point of time and she cannot value the suit under Section 35(2) of the Karnataka Court Fees and Suits Valuation Act. The suit without impleading M/s Union Bank of India, is bad in law and the same is liable to be dismissed for non-joinder of necessary parties. The suit for partial partition without incorporating the other properties bearing Site Nos.1091 to 1105 situated at 7th Sector, HSR Road Layout, Bangalore, is not maintainable and on that count also the suit is liable to be dismissed. The sites were given to A.R.Subba Rao and his brothers by BDA (incentive scheme for voluntary surrender of land) Rules, 1989. Some sites given to A.R.Subba Rao as his absolute property. The property in question is the absolute property of A.R.Subba Rao and no other family members of Late A.Rama Rao have got any right over the property which was purchased by this defendant and thereafter transferred to Defendant No.14 & 15. In case if this Court comes to the conclusion that the property in question is liable to be partitioned, the property which was purchased by this defendant may kindly be allotted to the share of A.R. Subba Rao and the interest of the bonafide purchasers i.e. this

defendant and defendant Nos.14. 15 may kindly be protected. Hence, sought for dismissal of the suit.

14. The defendants 14 and 15 have filed the written statement and submitted that they are the absolute owners in possession and enjoyment of the property bearing No.670, B.B.M.P. Katha No.1190/670, Sector-3, Hosur Sarjapura Road Extension and they have acquired the same under a sale deed dated 03/01/2013 executed by the defendant No.13 who had acquired the same from A.R. Subba Rao, under a sale deed dated 02/08/2010. The said property was the self acquired property of A.R. Subba Rao, who had acquired the same under a sale deed dated 12/10/2007 executed by the BDA. In pursuance of the aforesaid sale deed, the katha in respect of the aforesaid property was made in the respective names and presently the property is standing in the names of these Defendants. These Defendants had applied for building plan before the BBMP and after obtaining the approved plan put up construction over the said property. These Defendants have mortgaged the aforesaid property in favour of M/s Union Bank of India, Bangalore by Memorandum of deposit of title deeds dated 17/06/2013 and the original documents are in the

custody of the Bank. They have paid up to date taxes in respect of the same. The building is also provided with electricity and water connections. The allegations made in para-3 to 8 are denied as false. The defendants are given to understand that the lands which are acquired by the BDA were the self-acquired properties of defendant No.2. The averments made in para-11 of the plaint that the defendant No.2 alienated the site in favour of defendant No.13 and the defendant No.13 alienated the same in favour of these defendants and these defendants have availed loan from the Union Bank of India are matter on record. The rest of the allegations made there in are denied as false. The allegations made in para-12 to 16 are denied as false. These defendants are in exclusive possession and enjoyment of the item No.3 of the suit schedule property along with building existing therein which are tenanted. There is no cause of action for the suit and the alleged cause of action is created for the purpose of filing of this suit. Hence, sought for dismissal of the suit.

15. The defendant No.16 has also filed separate written statement by denying the allegations made in para-3 to 18. This defendant submits that he is the absolute owner in

possession and enjoyment of the Site No.1485, measuring East to West 9.15 meters and North to South 14.55+30.10/2 meters, in all measuring 126.50 square meters, BBMP Katha No.1121/1485, in the layout formed by the Bengaluru Development Authority, situated at Hosur Sarjapura Road Layout (HSR Layout) Sector-7, Bengaluru, presently comes under the limits of BBMP Bengaluru having purchased the same under the registered sale deed dated 13.04.2015. Originally the above said site was allotted by the BDA to one A.R.Subbarao, the defendant No.2 under the allotment letter No. BDA/DS-1/1485/HSR Sector-7/2011-12 dated 14.07.2011. Subsequently, the BDA has executed an absolute sale deed dated 20.08.2011 in favour of the 2nd defendant and had also delivered the physical, vacant possession of the same to him through the possession certificate PCR No.DS-1/95/2011-12 dated 22.08.2011. The 2nd defendant in order to meet his family and legal necessities had sold the above said site in favour of M.Prasad through a registered sale deed dated 05.03.2012 and the said M. Prasad in turn had sold the said site in favour of E.A.Mohammed Sulaiman and Mrs. E.N.Syeda Sultana Begum through a registered sale deed

dated 23.06.2012 and in pursuance of the registered sale deed, katha was transferred in their names and the BBMP has also assigned the new BBMP Katha No.1171/1485.

16. It is further submitted that, subsequently, said E.A. Mohammed Sulaiman and E.N.Syeda Sultana Begum, in order to meet their family and legal necessities, have sold the said site in favour of this defendant for valuable sale consideration vide registered sale deed dated 13.04.2015 and in pursuance of the said sale deed, katha was effected in his name by the BBMP. This defendant had also paid property tax to the BBMP authority in respect of the site in question and further she obtained construction license and approved plan for putting up dwelling structure on the site in question. This defendant had acquired, right, title, interest and possession over the item No.5 of the suit schedule property and she also obtained Electricity connection from BESCOM and water connection from BWSSB. The plaintiff has filed the above suit against the 2nd defendant by claiming a share in the suit schedule properties including item No.5, knowing fully well that this defendant has been in possession and enjoyment of the said item No.5 of the suit schedule property. The plaintiff

has not made this defendant as party in the said suit. Hence this defendant came on record by way of filing impleading application and consequent allowing the of the same by this court by order dated 01.10.2016. The plaintiff along with her other four sisters have jointly filed a suit in OS.No.95/2012 on the file of the V Additional City Civil Judge at Bengaluru (CCH-13) against their brothers and others i.e. defendant No. 2 to 9, seeking partition and allotment of their share in the suit schedule properties. After full-fledged trial and contest by the parties, the said suit came to be dismissed by an order dated 16.12.2014, against which they have not preferred any appeal and that order became final. If that be so, the present suit is barred under order II Rule 2 of CPC. The plaintiff has completely suppressed the fact of filing of earlier suit in the present and as such the suit is liable to be dismissed. Hence, sought for dismissal of the suit.

17. The defendant No.17 has also filed a separate written statement by denying the allegations made in plaint para-1 to 16 as false. This defendant submits that A.Rama Rao was the propositor of the Hindu Undivided joint family of defendants 1 to 5 and the said A.Rama Rao was barvardar

Shanbog of Agara Village which was governed under the provisions of Villagers Officers Act and the said Barvardar Shanbog office was abolished under the provisions of Abolition of Village Officers Act 1961. Portion of the lands in Sy.No.50, 75, 105, 108 and 114 of Agara Village were under the possession and acquisition of said Shanbog and the said lands were alleged to be acquired by way of registered sale deed dated 22-7-1957. After the said Act came into force, the defendant No.1 to 5 filed case before Court of Bangalore South Taluk for re-grant of the said properties in case No.HAOCR 19/1987-88 for regrant. The Respondents in the said case had already filed appeal before Land Tribunal for tenancy rights and the said case was dismissed in favour of defendant No.1 to 5 of this suit. On 29-3-2008, the respondents of case No.11/87-88 filed before Tahasildar withdrawn stating that they have no objection to regrant the said properties in favour of applicants. Hence their right to appeal was surrendered in favour of applicants i.e. defendant No. 1 to 5. In the said case applicant No.1 and 3 to 6 who were the coparceners of HUJF filed a written memo that they have no objection to regrant the said lands in favour of

A.R.Subba Rao i.e., defendant No.2. The Tahasildar re-granted the said lands in favour of defendant No.2 and recorded in the said case that the lands in Sy.No. 86 and 105 were acquired by Ministry of Defence, Sy.No.50 was acquired by KIADB and Sy.No.108 and 114 were acquired by the BDA. Schedule-IV of this suit is outcome of said acquisition from BDA in the year 1987-88. The BDA deposited the compensation in jurisdictional courts. Since defendant No.2 was re-grantee became the party in LCA NO.15, 45/72-73, LAC No.228/87, 399/87 and 401/87 and the said suits were filed before CCH-17 and were decreed in favour of defendant No.2. To the said LAC Cases and Case No.11/87-88 that plaintiff and defendant No.6 to 9 were not made as parties by the defendant No.1 to 5 since they were not recognized as members of HUJF of A.Rama Rao Family.

18. It is further submitted that, the BDA allotted five sites in favour of defendant No.2 of which schedule-IV i.e. site No.1484 was registered and the said site was fallen as exclusive share of said defendant No.2. It is exclusive and absolute share of defendant No.2 because he was re-grantee of said Sy. No.108 and 114 of Agara Village besides said sites

allotted by BDA under incentive scheme was not absolutely free but defendant No.2 paid Rs.37,301/- as consideration. Besides the said 5 sites, BDA also allotted under the same incentive scheme 9 sites bearing Site Nos.1094 to 1097, 1097, 1100 to 1103 in Sector-VI of HSR Layout in favour of defendant No.1 to 5. The said sites specially schedule-IV is absolute property of defendant No.2 and the defendant No.2 is a bonafide purchaser of said site beside regrantee.

19. It is further submitted the plaintiff forget the other transactions in the nature of incentive sites made by the BDA in favour of LR's of said A.Ramarao and above said sites Nos.1094, 1097 and 1100 were alienated by the defendant No.4 in favour of Sridhar M. Neither the plaintiff nor the defendants 1 to 3, 5 to 9 were parties to the said sale transaction and the said purchaser was not made as party to this suit and also said transaction were not submitted in the suit. The plaintiff along with defendant No. 6 to 9 executed a confirmation deed with respect to said site No. 1094, 1097 and 1100 in favour of said Sridhar though said defendant No.6 to 9 and plaintiff were aware that defendant No. 1 to 3 and 5 were not executed said sale deeds which were executed in

favour of said Sridhar. So the plaintiff was in the knowledge of all the alienation made by BDA and thereafter alienations of defendant No.4 but kept mum with respect to said transaction and there is no mention of the said transaction. Hence, it can be understood that indemnity bonds, affidavits filed by the defendant No.2 with BDA is bonafide submission. The plaintiff suppressed all these material facts. The plaintiff and defendant No.1 to 9 are legal heirs of A.Rama Rao who was Barvardar Shanbog. Shanbog of any village are in respectable fiduciary position in the villages and they are there to guide, educate the villagers in respect of property transactions or any such other matters. The plaintiff and defendant No. 1 to 9 are well educated coming from dignified family shall have acted in dignified lawful manner with respect to sale transaction. Unfortunately said L.R.s acts are mischievous, unlawful and all are trying to enrich themselves by unlawful means also filing false and frivolous suits like this just to harass the bonafide purchasers. The plaintiff and defendant No. 1 to 9 are colluded with each and illegally supporting each other for unlawful gains. Plaintiff is aware of the provisions of Hindu Succession Act and plaintiff failed in

OS.No.95/2012 but again approached this Court for partial partition is bad in law.

20. It is further submitted that, the plaintiff shall not be permitted to take advantage of her own inaction and negligence by not appearing LAC courts, land tribunal and Tahasildar courts. Plaintiff's belated, unlawful action which is collusive, pernicious, fraudulent and unjust needs to be estopped. Plaintiff kept quiet for 22 long years and defendant No. 1, 3 to 9 practically waived their rights by giving up their rights before Tahasildar and also by making a statement before the Tahasildar, Bangalore South Taluk, allowed the re-grant in favour of defendant No. 2. The plaintiff, defendant 1, 3 to 9 are very well aware and it was in their knowledge that BDA acquired the lands for public purpose, even then they kept quiet till the compensation was paid under the instructions of CCH-7 in favour of Defendant No.2. The incentive sites were also granted in favour of defendant No.2 to meet the directions of said decision in LAC courts. Hence such conduct of plaintiff shall not be entitled to be treated as equity. It is because the plaintiff and defendant No.6 to 9 executed confirmation deed in favour of said Sridhar with

respect to site No.1094, 1097 and 1100. Hence the same equity shall be followed with this defendant also. The alienations in favour of Sridhar by defendant No.4, execution of confirmation deed by plaintiff and defendant No.6 to 9 suggest that there is a family settlement between the plaintiff and defendant No. 1 to 9. Hence defendant No.1 to 3 and 5 are not questioning the sale transaction between said defendant No.4 and Sridhar. This also suggest that there was oral partition between the plaintiff and defendants. This suit is barred under principles of estoppel. Now it is open to this defendant to contend that alienation made in favour of this defendant is share of defendant No. 2. Said share of defendant No. 2 shall bind the plaintiff, defendant No.1, 3 to 9 which also requirement of law besides act of a prudent person. The suit is barred by limitation. The plaintiff has no locus standi to claim share in undivided Hindu Joint family since the plaintiff born to prior to 1955 i.e., prior to opening of Hindu Succession Act. This suit suffers from non-joinder of various immovable properties and the purchaser of said properties non-joinder of immovable properties are situated in Agara, Haralakunte Village. The plaint itself discloses that the

lands in Sy.No.50/75, 108, 114 of Agara village, Sy.No.9 to 11 and 58/1 of Haralakunte Village, Sy. No. 24 of Venkoji Rao Khane Village, Sy No. 201 of Amani Bellanduru Kane, Sy. No. 54 and 58 of Chikkanayakanahalli Village, Sy. No. 54/1, 55/11, 19 of Ejipura Village and Sy. No. 107/H of AgaraKhane village were acquired by said A. Rama Rao. All these properties were not included in the suit. Hence this suit shall be a partial partition suit which is bad in law, liable to be dismissed. The rights of the parties who are the bonafide purchasers of the above said properties are affected if the suit is allowed in favour of plaintiff.

21. It is further submitted that, schedule IV was the self acquired property of 2nd defendant who had acquired the same under the sale deed dated 20.08.2011, executed by BDA for a sale consideration of Rs.37,301/- and the BDA had allotted the said on 14/7/2011 and also issued the possession certificate in the name of 2nd defendant and the 2nd Defendant was put in possession of the aforesaid property from the date of allotment as well as for issuance of possession certificate and sale deed. The 2nd defendant had acquired the said property by way of making sale

consideration and the documents stands in the name of the 2nd defendant and the khatha has been issued in his name and the 2nd defendant was holding right, title, interest and possession over the property since from the date of acquisition. This defendant has acquired the aforesaid vacant site property under a sale deed dated 04.05.2012 executed by the 2nd Defendant and he is the absolute owner in possession and enjoyment of the property bearing No.1484, BBMP Katha No.1172/1484, sector -7, Hosur - Sarjapur Road extension, measuring East to West 9.15 meters and North to South 13.10 + 12.05/2 meters totally in all 115.0612 Square Meters along with construction thereon. In pursuance of the sale deed, the katha made in his name and presently the said property is standing in the name of this defendant. This defendant had applied for building plan and the BBMP authority after having verified the same approved the building plan Dated 7/08/2012 and this defendant has put up construction on the said property and let out the same.

22. It is further submitted that, this defendant has mortgaged the aforesaid property for Rs.40,00,000/- in favour of M/s LIC Housing Finance Ltd., Bengaluru at the time of

registering the sale deed in favour of this defendant. The said sanctioned amount of Rs.27,65,000/- for the purchase of the plot has been paid directly to the vendor i.e., defendant No.2 and all the original documents are in the custody of the LIC Housing Finance Ltd. The 2nd defendant had covenanted and declared in the sale deed that it is a self-acquired property and is free from all encumbrances, claims, charges & demands and that there are no litigations in respect of the title of the property. After verifying the RTCs of the lands acquired by the BDA which solely stood in 2nd defendant's name and after verifying the sale deed executed by the BDA in favour of the 2nd defendant and after verifying the BBMP documents which stood in 2nd defendant's name, this defendant has purchased the property for a valuable consideration and thus he is a bonafide purchaser. The plaintiff and defendants No.1 to 9 are not in possession of the property on the date of institution of the suit. In order to harass this defendant, the plaintiff has filed a false and frivolous suit in collusion with the defendants in order to make wrongful gain.

23. It is further submitted that, after verifying the old records, it is learnt that these survey numbers were regranted

to the 2nd defendant by the Tahsildar, Bangalore South Taluk under Karnataka Village Officers Abolition Act, 1961. In the said regrant case though the wife of late Rama Rao and defendants 1 to 5 were the claimants along with several rival claims under tenancy act, finally everyone gave up their claims in favour of the 2nd defendant, thus making him the absolute owner of the regrant property. The BDA has acquired the said survey No.114 & 108 and deposited the award in the civil court because of the disputes. the Hon'ble civil court after conducting enquiry has ordered award in favour of the 2nd defendant, recognizing him as the absolute owner of the regranted property. After taking the compensation amount, the 2nd defendant has been allotted the suit schedule item No.4 along with few other sites under special incentive scheme for a valuable consideration of Rs.37,301/- though the entire proceedings went on for more than 22 years from 1988 to 2011, the plaintiff never made any representation in any form claiming any rights. The plaintiff not claimed her alleged share well within 12 years after the death of propositor A. Rama Rao. Though the other members of the family had applied for regrant as claimants they have given up their rights in favour

of 2nd defendant thus making him the absolute owner. The BDA has mentioned in its sale deed executed in favour of 2nd defendant with respect to item No.4 that the 2nd defendant is the absolute owner of the suit schedule item No.4. This defendant has purchased the suit schedule item No.4 from 2nd defendant for consideration under a registered sale deed. The facts clearly demonstrate that the plaintiff and the defendant Nos.1 to 9 are not in possession of any portion of the aforesaid property. The suit of the plaintiff is undervalued and in the light of the fact that this defendant is in exclusive possession. The plaintiff is liable to pay court fee as per section 35 (1) of the Karnataka Court Fee and Suits Valuation Act and further the plaintiff without seeking declaration of her alleged right, cannot maintain the present suit for partition. The 2nd defendant has indemnified the this defendant with respect to any claims, suits for damages/title or cost if any arising out of adverse claim to the title of the 2nd defendant with respect to the aforesaid property. Hence, it is requested that if the 2nd defendant has fraudulently sold the property, the schedule item No.4 may be considered as his share in the

joint family property and begs to protect the interest of the bonafide purchaser. Hence, sought for dismissal of the suit.

24. On the basis of the above pleadings, my learned predecessor has framed the following issues :-

- 1) Whether the plaintiff proves that all the suit schedule properties are the joint family properties?
- 2) Whether the plaintiff proves that during the lifetime of Sri.A.Ramarao purchased various lands through Registered Sale Deed dated 22.07.1957 and also acquired several lands through Partition Deed dated 22.05.1961?
- 3) Whether the plaintiff proves that joint family properties were subject matter of acquisition and suit schedule properties are provided as incentives to the lands acquired by the authorities?
- 4) Whether the defendants 14 and 15 prove that suit is barred under Order II Rule 2 of CPC?
- 5) Whether the defendants 14 to 16 prove that they are the bonafide purchasers of suit sites for valuable consideration?
- 6) Whether the plaintiff proves that the transactions effected on the schedule properties are not binding on the plaintiff?
- 7) Whether the plaintiff proves that she is entitled to get share in the suit schedule properties? If so, at what share?
- 8) What order or decree?

25. In order to prove the case of the plaintiffs, the 1st plaintiff herself examined as PW.1 and got marked the documents at Ex.P1 to P21. After her death the plaintiff

No.1(a) Shylaja examined herself as PW.2 and she got marked one document at Ex.P22. On the other hand, the 14th defendant B.S.Prithvi examined herself as DW.1 and got marked documents at Ex.D1 to D57. The 17th defendant Rajeev N.J. himself examined as DW.2 and he got marked the documents at Ex.D58 to D110. The 16th defendant Asha herself examined as DW.3 and she got marked the documents at Ex.D111 to D154. However, the 3rd defendant examined himself as DW.4 and he got marked only one document at Ex.D155.

26. Heard the arguments and perused the written arguments submitted by both the parties.

27. My findings on the above issues are as under:-

Issue No.1 : In the Negative
Issue No.2 : In the affirmative
Issue No.3 : In the negative
Issue No.4 : In the affirmative
Issue No.5 : In the affirmative
Issue No.6 : In the negative
Issue No.7 : In the negative
Issue No.8: As per final order, for the following:

REASONS

28. **Issue No.1 and 3:-** Since these issues are inter-related to each other, hence they are taken together for common discussion to avoid repetition of facts.

29. At the outset, it is relevant to mention the admitted facts that the plaintiffs and defendants 1 to 8 are the children of A.Ramarao and defendant No.9 is the grandson of A.Ramarao and son of deceased daughter A.Shantha. Since there is no dispute about the relationship between the parties, as such no elaborate discussion is necessary with respect to relationship of the parties is concerned.

30. According to the plaintiffs, during the life time of A.Ramarao he purchased various lands i.e., Sy.No.75 measuring 4 acres 27 guntas; Sy.No. 105 measuring 1 acre 31 Guntas; Sy.No. 108 measuring 1 acre 26 guntas; Sy.No.114 measuring 27 guntas; Sy.No.86 measuring 30 guntas and Sy.No. 50 measuring 1 acre 5 guntas through a registered sale deed dated 22/7/1957. It is further contended that the father of the plaintiffs also acquired certain lands through family partition dated 22.5.1961 i.e., Sy.No.9, 10 and 11 of Harale Kunte Village, measuring 5 acres 2 guntas; a acres 13 guntas, 6 acres 15 guntas respectively; Sy.No.24 measuring 3 acres 14 guntas of Venkoji Rao Kane Village, Sy.No.201 measuring 1 acres 9 guntas of Amani Bellandura Kane; Sy. No.58/1 measuring 2 acres 6 guntas of Harale

Kunte Village, Sy.No.54 and 58 of 10 acres 1 guntas and 10 acres 1 guntas respectively of Chikkanayakanhalli Village; Sy.No.54/1 measuring 20 guntas in Ejipura; Sy.No.55/11 measuring 12 guntas and Sy.No.19 measuring 2 acres 36 guntas (half share) of Ejipura Village; and a house with Mangalore tiled house in Sy.No.107/A of Agara Khane. Besides the properties acquired in the partition, A.Ramarao also entitled for 1/4th share in all the properties that were partitioned in favour of his mother Bhageerathamma, as stipulated in the said partition deed. It is further stated that the lands were acquired by the State for various public purposes, the defendant No.2 though not the eldest son, was managing the family affairs and represented in various land acquisition cases before the City Civil Courts and Rural Courts, before the authorities and received the compensation amounts in LAC No.15, 45/72-73 dated 9/3/2010 for acquisition of lands in Sy.No.86 and 105 of Agara Village, LAC No.401/87 dated 31/8/2009 for acquisition of lands in Sy.No.114 of Agara Village. LAC No.399/87 dated 1/8/2005 for acquisition of lands in Sy. No.75 of Agara Village. Besides receiving compensation, the Defendant No.2 also applied for sites to

BDA for having acquired the lands in Sy.No.108, 114 and 75 of Agara Village. The BDA considering the petition, has granted five sites to the Defendant No.2. The sites allotted are Site No.599/A measuring 40X 60 feet, Site No. 1187 measuring 40 X 60 feet, Site No.670 measuring 40 X 60 feet, Site No.1484 measuring 30 X 40 feet and Site No.1485 measuring 30 X 40 feet and the said sites are the schedule properties. The BDA also executed sale deeds in favour of the Defendant No.2. But the 2nd Defendant while claiming the sites or compensation did not provide the details of other LR's of late A.Rama Rao and thus played an illegality in obtaining compensation and sites. It is further stated that the defendant No.2 collected huge compensation amounts, not accounted with the LR's of late A.Rama Rao, the 2nd Defendant alienated the Site No.670 i.e., schedule item No.3 to Defendant No.13 under registered sale deed dated 2/8/2010 and in turn the Defendant No.13 alienated the same in favour of Defendant No.14 and 15 under a registered Sale Deed dated 3/1/2013. The Defendant No.14 and 15 have availed loan of Rs.72,00,000/- from Union Bank of India. It is further stated that the 2nd Defendant also alienated Site No.1485 i.e.,

schedule item No.5 to the Defendant No.10 under a registered Sale Deed dated 5/3/2012 and in turn the Defendant No.10 has alienated the same in favour of Defendant No.11 and 12 through a Sale Deed dated 23/6/2012.

31. In support of the contention of the plaintiffs, the 1st plaintiff herself has filed an affidavit in lieu of her examination-in-chief as PW.1 by reiterating the contents of the pleadings and she has relied upon the certified copy of the Sale Deed dated 22.7.1957 marked at Ex.P2 and the typed copy of the same is marked at Ex.P2(a), certified copy of the partition deed dated 22.5.1961 is marked at Ex.P3, certified copy of the award passed in LAC.No.399/198 marked at Ex.P4, endorsement endorsement issued by the BDA is marked at Ex.P5, certified copy of the Sale Deed dated 14.6.2007 executed by the BDA in favour of defendant No.2 with respect to Site No.599/1 marked at Ex.P6, certified copy of the Sale Deed dated 20.8.2011 is marked at Ex.P7, certified copy of the Sale Deed dated 12.10.2007 executed by the BDA in favour of the 2nd defendant with respect to site No.1187 marked at Ex.P8, certified copy of the Sale Deed dated

20.8.2011 executed by the BDA in favour of the 2nd defendant with respect to site No.670 marked at Ex.P9, certified copy of the Sale Deed dated 20.8.2011 executed by the BDA in favour of the defendant No.2 with respect to Site No.1484 is marked at Ex.P10, certified copy of the indemnity bond executed by defendant No.2 marked at Ex.P11, certified copy of the indemnity bond and affidavit executed by defendant No.2 marked Ex.P12, Ex.P13 is the certified copy of the Sale Deed dated 2.8.2010 executed by the 2nd defendant in favour of P.Chetana with respect to Site No.670, Ex.P14 is the certified copy of the Sale Deed executed by P.Chethana in favour of B.S.Prithvi and B.A.Vedavathi with respect to Site No.670, Ex.P15 is the certified copy of the memorandum of deposit of title deeds issued by the Bank in favour of Prithvi, Ex.P16 is the certified copy of the Sale Deed dated 5.3.2012 executed by the 2nd defendant in favour of Prasad i.e., defendant No.10 with respect to Site No.1485, Ex.P17 is the certified copy of the Sale Deed dated 23.6.2012 executed by the defendant No.10 in favour of E.A.Mohammed Suleman and E.N.Seyda Sultana Bagum i.e., defendants 11 and 12 with respect to Site

No.1485, Ex.P18 to P21 are the encumbrance certificate issued by the Sub-Registrar.

32. Whereas in her cross-examination, the learned counsel for the defendants elicited that during the year 2012 her sisters and also one Panikiran filed a similar suit in respect of other properties where they also pleaded that those are all joint family properties and the certified copy of the judgment is confronted to her which she stated that she preferred appeal before the Hon'ble High Court, the same is marked at Ex.D1. She also admitted the plaint in OS.No.95/2012 which was confronted to her marked at Ex.D2 and she also admitted the written statement filed by the defendants 1 and 2 in the said suit and they are marked at Ex.D3 and D4. Further she has categorically stated that the defendant No.2 looking after the properties belonged to the family. She do not know about the property situated at Venkoji Rao Khane. She admits that before filing of the suit regarding existence and available of the schedule property, her brothers and children have secured the documents and handed over to her and her brothers together discussed to file the suit for partition and accordingly she has filed the suit. She do not

know that before the Tribunal in respect of Sy.No.75 litigation was initiated and she do not know the survey numbers. Further she deposed that Wilson Garden house property standing in the name of her brother Sundar. She do not know originally how it came to their family. She admits that the 1st defendant is residing in his own house. However, she stated that the said defendant No.1 acquired the said property, after selling her father's property and by utilizing the nucleus. She admits that defendants 1 to 5 are residing in separate house. Those properties were purchased by them by utilizing the funds derived out of selling the properties of her father. She admits that she has not included those properties in this suit. Further she admitted in her cross-examination at page-16, 7th line from the bottom that she has filed a case against the purchasers of schedule properties which was already sold. She admits that acquisition of properties held by her father Site No.1094, 1095, 1096, 1097, 1100, 1101 and 1103 were given to their family by the BDA. She volunteers that it was given in the name of her brothers i.e., defendants 1 to 5. In that property they did not give any share in the property and she did not include those sites in this suit. However, the

learned counsel for the defendants confronted the deed executed by the plaintiff, defendants 6 to 9 which is marked at Ex.D5. She admits that in respect of Site No.1094, 1097, 1100 which was sold by Murali and they have confirmed through registered Sale Deed as per Ex.D5. The Sale Deed executed by Murali on 2.8.2013. Murali has sold the property and all the sisters have executed separate confirmation deed. The said Sale Deeds are marked at Ex.D6, D7 and D8. Further she admits that Sy.No.6/2 of Agara Village measuring 10 guntas was standing in the name of her father. She admits that Sy.No.17/3 of Rupena Agrahara is standing in the name of the 2nd defendant. However, she deposed that their sister have filed a suit against their brothers in respect of Sy.No.201/2 of Ammani Bellandur Khane measuring 1 acre 9 guntas standing in the name of herself, her brothers and sisters and the said RTC was confronted to her and she admits the same which is marked at Ex.D9. She admits that except 5 sites which acquired by the BDA, they have not filed any suit with respect to other properties of their family.

33. However, the plaintiff No.1(a) namely Shylaja herself has filed an affidavit in lieu of her examination-in-chief

as PW.2 by reiterating the contents of the pleadings as similar to the evidence of PW.1 and she she got marked the documents i.e., certified copy of the award passed in LAC.No.401/1987 marked at Ex.P22. Whereas in her cross-examination, she admits that their mother and other sisters of their mother filed a suit in OS.No.95/2012 and the said suit has been dismissed on 16.12.2014. However, she denies that their mother has executed the confirmation deed. She pleads ignorance that apart from the schedule property, Site No.1094, 1095, 1096, 1097, 1100, 1101, 1102, and 1103 were also allotted to their family as incentive sites She admits that Sy.No.6/2, 17/3, 201/2, 15/1 were stood in the name of their family. She volunteers that the said properties are the ancestral properties of their family. She admits that the defendants 1 to 5 have jointly acquired 8 sites from the BDA as incentive sites. She pleads ignorance that the defendants 1 to 3 have alienated the Site No.1095, 1101, 1102 and 1103. She admits that Site No.1094, 1097 and 1100 have been sold by the 4th defendant. She admits that their mother and defendants 6 to 9 have executed the confirmation deed.

34. Though PW.1 and 2 claiming share over the suit schedule properties alleging that the suit schedule properties

have been allotted in favour of the 2nd defendant as incentive sites by the BDA and no partition has taken place between the children of A.Rama Rao. However, PW.1 and 2 have specifically admitted in their cross-examination that apart from the schedule properties, other Site Nos.1094, 1095, 1096, 1097, 1100, 1101, 1102, and 1103 also allotted to their family as incentive sites, but the plaintiffs not included those sites in this suit. PW.1 has admitted that Murali has sold the sites, for which the 1st plaintiff has executed confirmation deed in favour of the purchasers. Further they have admitted that apart from the schedule sites, other properties in Sy.No.6/2, 17/3, 201/2, 15/1, 75, 105, 108, 114, 86 and 50 are also the joint family properties of their family and the said properties have not been included in the suit. In view of the admission made by PW.1, makes it clear that the suit has been filed by excluding the other properties belonged to their family.

35. On the other hand, to substantiate the defence, the 14th defendant B.S.Parvathi herself examined as DW.1. She has deposed in her evidence that herself and her mother are the absolute owners in possession and enjoyment of Site No.670 i.e., suite item No.3 having acquired the same under a

registered Sale Deed dated 3.1.2013 from P.Chethan. The said Chethan acquired the said site from A.R.Subba Rao under a registered Sale Deed dated 2.8.2010. The said property was acquired by Subbarao under a registered Sale Deed dated 15.10.2007 executed by the BDA and the said Subbarao was in possession and enjoyment of the same. Thereafter, P.Chethan was in possession of the said site till the executed of the Sale Deed in their favour and thereafter they are in exclusive possession of the said property and they have constructed the building thereon after obtaining necessary license from the BBMP and all the revenue records made out in their names. She has mortgaged the said site in favour of Union Bank of India and obtained the loan for construction of the house. The said site was the self-acquired property of A.R.Subbarao who acquired the same from the BDA in lieu of voluntary surrender of the lands apart from the compensation amount, sites were allotted under incentive scheme. In support of her evidence, she relied upon the Memorandum of title deeds issued by Union Bank of India, which is marked at Ex.D10, wherein allotment letter issued by the BDA in favour of A.R.Subbarao on 29.9.2007, intimation

letter issued by the BDA in faovur of Subba Rao, Sale Deed executed in favour of Subba Rao by the BDA. She also relied upon the tax paid receipts which are marked at Ex.D11 to D14, Letter issued by the Union Bank regarding deposit of title deeds marked at Ex.D15, application given to the BWSSB for water connection marked at Ex.D16, Receipt issued by BESCOM for electricity connection marked at Ex.D17, approved plan issued by BBMP for construction of the building marked at Ex.D18, water bill and receipt marked at Ex.D19, Electricity bills and receipts marked at Ex.D20 to D33 and Ex.D20(a) to D33(a), photographs pertaining to the house property marked at Ex.D34 to D36 and C.D. marked at Ex.D37, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1095 marked at Ex.D38, certified copy of the Sale Deed executed by the defendants 1 to 5 in favour of Vishnu N.M. marked at Ex.D39, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1094 marked at Ex.D40, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1096 marked

at Ex.D41, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1097 marked at Ex.D42, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1100 marked at Ex.D43, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1101 marked at Ex.D44, certified copy of the Sale Deed dated 19.2.1998 executed by the defendants 1 to 5 in favour of Kalki Kranthi respect of Site No.1101 marked at Ex.D45, certified copy of the Sale Deed dated 5.1.2004 executed by Kalki Kranti in favour of R.Ratnakumari in respect of Site No.1101 marked at Ex.D46, certified copy of the Sale Deed dated 23.1.1998 executed by the defendants 1 to 5 in favour of A.Venkatasubramanyam in respect of Site No.1102 marked at Ex.D47, certified copy of the Sale Deed dated 14.8.1997 executed by the BDA in favour of defendants 1 to 5 in respect of Site No.1103 marked at Ex.D48, certified copy of the Sale Deed dated 19.2.1998 executed by the defendants 1 to 5 in favour of P.Vivekanandan in respect of Site No.1103 marked at Ex.D49, certified copy of the Sale Deed dated

6.4.2000 executed by P.Vivekanandan in favour of R.Nanjappa in respect of Site No.1103 marked at Ex.D50, certified copy of the Sale Deed dated 12.5.2003 executed by R.Nanjappa in favour of Dr.A.S.Manish in respect of Site No.1103 marked at Ex.D51, certified copy of the Sale Deed dated 13.6.2013 executed by Dr.A.S.Manish in favour of Niranjana N. in respect of Site No.1103 marked at Ex.D52, certified copy of the Memorandum of title deeds executed by Dr. Manish in favour of Andhra Bank to obtain the loan marked at Ex.D53, RTC pertaining to Sy.No.6/2 measuring 10 guntas stood in the name of A.Ramaraao marked at Ex.D54, RTC pertaining to Sy.No.17/3 measuring stood in the name of A.R.Subbarao marked at Ex.D55, M.R.No.5/03-04 pertaining to Sy.No.15/1 stood in the name of defendants 1 to 5 marked at Ex.D56 and MR.No.8/10-11 pertaining to Sy.No.17/3 stood in the name of A.S.Narayana and others marked at Ex.D57.

36. Whereas in her cross-examination, she admits that Site No.670 which was purchased by her originally allotted to Subbarao by the BDA. She denies that the document relied by plaintiff at Ex.P5 to P9 are no way related to the schedule property. She denied that they have created the documents in

her favour though her vendor has no any right to execute the Sale Deed.

37. The 17th defendant namely Reshma M. examined herself as DW.2. She has deposed that schedule-4 property is the self-acquired property of A.R.Subba Rao who acquired the same under a registered Sale Deed dated 20.8.2011 executed by the BDA. The BDA allotted the said site to the 2nd defendant on 14.7.2011 vide allotment letter No.BDA/DS/1/1484/HSR Sector-7/2011-12 and issued possession certificate in his favour. The 2nd defendant has acquired the said property by way of making sale consideration. The khata has been accepted in his name by the BBMP. She has purchased the said site under a registered Sale Deed dated 4.5.2012 from the 2nd defendant for valuable consideration. The khata has been accepted in her name. She has obtained the building plan from the BBMP and put up construction in the said site. Further she has deposed that she has mortgaged the property for availing loan of Rs.40 lacs in favour of LIC HFL, Bangalore and she discharged the said loan and they are exercising the acts of ownership over Item No.4 of schedule property and paid up to date tax and

obtained electricity and water connection. The defendant No.17 is the bonafide purchaser of the said property by paying sale consideration. It is further deposed that the item No.4 of schedule property is the self-acquired property of the 2nd defendant and it was allotted by the BDA under Special Incentive Scheme for voluntarily surrendering the land in Sy.No.114 and 108. The lands were regranted to the 2nd defendant by Tahsildar under Karnataka Village Offices Abolition Act. Even though wife and children of A.Ramarao claiming under tenancy Act, everyone gave up their claim in favour of the 2nd defendant. The BDA for having acquired the Sy.No.114 and 108 had deposited the award amount.

38. In support of her evidence, she relied upon the GPA executed by the 17th defendant in her favour which is marked at Ex.D58, certified copy of the judgment and decree in OS.No.95/2012 marked at Ex.D59 and D60, certified copy of the Order in Case No.HOACR.11/87-88 marked at Ex.D61, certified copy of the order sheet in LAC No.228/87 marked at Ex.D62, certified copy of the judgment and award passed in LAC.No.228/87 marked at Ex.D63 and D64, allotment letter issued by the BDA in favour of A.R.Subbarao under Special

Incentive Scheme with respect to Site No.1484 marked at Ex.D65, Receipts issued by Canara Bank regarding remittance of the sale consideration amount marked at Ex.D66 and D67, certificate issued by the BBMP in the name of A.R.Subbarao with respect to Site No.1484 marked at Ex.D68, demand register extract issued by BBMP marked at Ex.D69, tax paid receipts marked at Ex.D70, Sale Deed dated 4.5.2012 executed by Subbarao in favour of Rajeev N.J. in respect of Site No.1484 marked at Ex.D71, encumbrance certificate marked at Ex.D72, demand register extract in the name of Rajeev marked at Ex.D73, khata certificate issued by BBMP marked at Ex.D74, tax paid receipts marked at Ex.D75 to D79, approved plan issued by BDA in favour of 17th defendant for construction marked at Ex.D80, application to issue RTC pertaining to Sy.No.108 marked at Ex.D81, RTCs pertaining to Sy.No.108 marked at Ex.D82 to D86, application to issue RTC pertaining to Sy.No.114 marked at Ex.D87, RTCs pertaining to Sy.No.114 marked at Ex.D88 to D92, loan sanction letter issued by LIC HFL in favour of 17th defendant marked at Ex.D93, list of documents submitted by the 17th defendant to the LIC marked at Ex.D94, Certificate

issued by LIC for repayment of loan marked at Ex.D95, electricity bills marked at Ex.D96 to D103, water bills marked at Ex.D104 to D107, Photographs pertaining to house property marked at Ex.D108 and D109 and the CD is marked at Ex.D110.

39. Whereas in her cross-examination, the learned counsel for the plaintiff elicited that A.Ramaraao had purchased the properties under Ex.P2. She admits that Sy.No.15/1 measuring 20 guntas was acquired by Subbarao in the family partition. She admits that except Ex.D61, no reference was made in any other documents stating that the LRs of Ramaraao given up their claim in favour of A.R.Subbarao. She denies that she has got created Ex.D61. She admits that 5 sites have been allotted under special incentive scheme after acquiring Sy.No.105, 108, 114, 86 and 75.

40. The 16th defendant namely N.Asha herself examined as DW.3. She has deposed that Site No.1485 allotted by the BDA in favour of A.R.Subbarao under Allotment Letter No.BDA/DS-1/1485/HSR Sector-7/2011-12 on 14.7.2011, which is marked at Ex.D111 and Sale Deed has been executed in his favour on 20.8.2011 which is marked at

Ex.D112 and the khata has been accepted in the name of Subbarao which is marked at Ex.D113 and the khata certificate issued by the BBMP is marked at Ex.D114. In order to meet out his family necessities, Subbarao got executed a registered Sale Deed dated 5.3.2012 as per Ex.D116 in favour of M.Prasad i.e., defendant No.10 and the khata certificate and khata extract issued by the BBMP in the name of defendant No.10 are marked at Ex.D117 and D118. In turn, the defendant No.10 has sold the said site in favour of E.A.Mohamed Sulaiman and E.N.Seyda Sultana Begum i.e., defendants 11 and 12 through a registered Sale Deed dated 23.6.2012 which is marked at Ex.D122. The khata extract and khata certificates issued in favour of defendants 11 and 12 are marked at Ex.D123 to D125.

41. Further she deposed that defendants 11 and 12, in order to meet their family necessities have sold item No.5 of schedule property in her favour under a registered Sale Deed dated 13.4.2015 which is marked at Ex.D126. In pursuance of the Sale Deed, khata mutated in her name by the BBMP which is marked at Ex.D127 and demand register extract and khata certificate are marked at Ex.D128 and D129. Further

she deposed that she obtained the license for construction of the building, for which she has produced the license issued by the BBMP in her favour on 14.5.2015 which is marked at Ex.D130 and she also produced the approved plan issued by the BBMP which is marked at Ex.D131 and the receipt for having paid the amount for approval of the plan marked at Ex.D132. Further she deposed that, she obtained water supply connection from BWSSB as per Ex.D133 and the endorsement issued by BWSSB marked at Ex.D134, Champakadhama Engineering Works has given requisition to BBMP for road cutting to get water connection which is marked at Ex.D135. Further she deposed that the defendants 11 and 12 have paid up to date property tax as per Ex.D136 to D145 and the encumbrance certificate marked at Ex.D146 and the photographs pertaining to the house property marked at Ex.D147 to D150 and the CD is marked at Ex.D151. She also relied upon the electricity bills which are marked at Ex.D152 to D154. Whereas in her cross-examination, she admits that the site has been allotted to Subbarao under Special Incentive Scheme for having acquired the lands. She denies that Subbarao has no any right to sell the property.

42. The 3rd defendant namely A.R.Chandrashekar Rao himself examined as DW.4. He has given his evidence similar to the evidence of PW.1 and 2 by admitting the case of the plaintiff. He has deposed that the lands acquired by the BDA are the properties absolutely owned by their father A.Ramarao. The order of Tahsildar reveals that, he has regranted the lands in favour of Subbarao on the basis of the consent given by the other family members. The affidavit filed by them before the Tahsildar, is deliberately not produced by DW.2. He relied upon certified copy of the affidavit filed by their mother Anandamma, himself and others before the Tahsildar, which is marked at Ex.D155.

43. Whereas in his cross-examination, the learned counsel for the defendants 14 and 15 elicited that their father died in the year 1962 and the marriage of Subbarao had taken place only after the death of their father. He admits that they are residing separately after their marriage. Further he has deposed that the 2nd defendant was doing Shanbogh after the death of their father and he volunteers that some year he was doing. He admits that brother of their father got divided the properties on 22.5.1961. He admits that properties which

were allotted to their father, were partitioned among the brothers and the said fact has been known to their sisters. He admits that their father has got purchased the property on 22.7.1957 and the 2nd defendant was managing the properties after the death of their father. He pleads ignorance that the 2nd defendant has filed Form No.7 pertaining to Sy.No.75/4 measuring 27 guntas. He admits that Sy.No.105 and 86 acquired by the Military. He denies that Sy.No.75, 105, 114, 50 have been regranted in the name of Subbarao. He pleads ignorance that 2 acres of land has been regranted in favour of defendant No.2 pertaining to Sy.No.75 and 2 acres 20 guntas has been granted in the name of Moogareddy. He pleads ignorance that 50% of Sy.No.75 was regranted in the name of the defendant no.2 and the remaining 50% regranted in the name of Moogareddy. He admits that the case filed by their sister in OS.No.95/2012 has been dismissed. He admits that his brother A.R.Murali sold the Site No.1094 on 2.8.2013 which was allotted to him under Special Incentive Scheme. He admits that the BDA has allotted 5 sites to all the 5 brothers. He admits that totally 10 sites have been allotted to them by the BDA jointly. He pleads ignorance that their sisters

have got executed a confirmation deed to the site which was sold by their brother to Sridhar. He admits that the BDA has executed a Sale Deeds in favour of Subbarao with respect to 5 Sites. He admits that the BDA has executed the Sale Deeds with respect to totally 10 sites. But he volunteers that all the 10 sites have been got divided among the brothers in the year 1961. He admits that Subbarao has paid the entire sale consideration and neither himself nor his brothers have paid any amount to the BDA towards sale consideration of sites. Further he pleads ignorance that Subbarao has sold item No.3 of the schedule property on 2.8.2010 in favour of 13th defendant. In turn the 13th defendant has sold the same in favour of defendants 14 and 15 on 3.1.2013. He admits that the Sale Deeds were executed by the BDA in favour of Subbarao and the possession has also been handed over to him. Further he also admits that Ex.D155 affidavit has been filed by them with the consent of all the brothers before the Tahsildar. He admits that the 17th defendant has purchased the suit item No.4 from the 2nd defendant and he has constructed the building therein.

44. On careful scrutiny of the evidence of PW.1 and 2 and DW.1 to 4 and the documents relied by them, it is an undisputed fact that A.Ramarao acquired Sy.No.75 measuring 4 acres 27 guntas, Sy.No.105 measuring 1 acre 31 guntas, Sy.no.108 measuring 1 acre 26 guntas, Sy.No.114 measuring 27 guntas, Sy.No.86 measuring 30 guntas and Sy.No.50 measuring 1 acre 5 guntas under a registered Sale Deed dated 22.7.1957 which is marked at Ex.P2. It is also admitted fact that Sy.No.9, 10, 11, 24, 201, 58/1, 54, 58, 54/1, 55/11, 19 and 107/A acquired under the partition which is marked at Ex.P3. According to the plaintiff, land in Sy.No.75, 10, 108, 114 and 86 acquired by the BDA which belonged to A.Ramarao. The said properties are the ancestral and joint family properties of the plaintiff and the defendants 1 to 8. The BDA has allotted sites under Special Incentive Scheme in favour of the 2nd defendant and the said sites are also the joint family properties of the plaintiff and the defendants 1 to 8. The plaintiff is also entitled for a share in the said sites.

45. The learned counsel for the defendant No.17 vehemently argued that the land in Sy.No.75, 105, 108, 114 and 86 are Shanbogh lands. The wife and sons of A.Ramarao

i.e., Anandamma, A.R.Gopal Rao, A.R.Subbarao, A.R.Chandrashekar Rao, A.R.Murali and A.R.Venkatesh, have filed a petition in HOACR.11/1987-88 against Venkataswamy and others for regrant of the lands. Karnataka Village Offices Abolition Act, 1961 came into force in the year 1963. By virtue of Section 4 of Village Offices Abolition Act, the land attached to the Village Office vested in the State Government. Provision is made under Section 5 of the Village Offices Abolition Act, for regrant of the lands to holder of the village office. Under Section 2(g) of the Act, clearly stated that the holder of a village office means the one who is having an interest in that village office, is entitled for regrant of land. In the instant case, after the death of A.Ramarao, A.R.Subbarao was doing Shanbogh. Though the wife and sons of Ramarao are parties to the proceedings in HOACR.11/1987-88, the land was regranted in the name of A.R.Subbarao, wherein the other brothers namely A.R.Gopal Rao, A.R.Chandrashekar Rao, A.R.Murali and A.R.Venkatesh, gave up their right in favour of A.R.Subbarao before the Tahsildar South Taluk by producing the affidavit which is marked at Ex.D155. Accordingly, the land in Sy.No.75, 105, 108, 114 and 86 were

regranted in the name of A.R.Subbarao. Though the BDA has acquired the said properties, the said properties were not remained as ancestral joint family properties of the plaintiff and the defendants 1 to 8. The said properties were acquired by A.R.Subbarao under regrant and the same are his absolute properties. The Sites have been granted in favour of the defendant No.2 under Special Incentive Scheme. The said defendant No.2 being the owner of the sites, sold the same in favour of defendants 10 and 13. the plaintiff who is the daughter of A.Ramarao, she has no any right to seek partition with respect to the said properties since she is residing in her matrimonial house after her marriage and she is not entitled to claim co-parcenary right with respect to the schedule properties. It is further submitted that, Ex.D61 the order of the Special Tahsildar, reveals that the legal heirs of A.Ramarao who are interested in the Village office had contested claiming regrant on their individual capacity. Apart from the sons of Ramarao, the outsiders other than the family members were also rival claimants in the said dispute. Finally in the regrant order, all the rival claimants including the wife and sons of A.Ramarao have made a statement before the competent

authority that they have no objection to regrant the land in favour of defendant No.2. Accordingly, the land has been regranted in the name of the defendant No.2. As such, the plaintiff is not entitled for a share with respect to the schedule properties. In support of his argument he has relied upon the decision of the Hon'ble High Court reported in Company Application No.994 c/w 868 of 1989, in Company Petition No.77 of 1989 in case of G.R.Basappa Vs. tahsildar, Shimoga. In that decision, their Lordship held that "Rudramma has filed an application for regrant as rival claimant. During the pendency of the proceedings, she died leaving behind the petitioners as legal representatives. On the death of Channabasappa, father of Rudramma, she having been married, left her father's family for her husband's home and neither she nor her husband was visiting the village office muchless they were enjoying the lands in question. The Tahsildar, having held an enquiry, rejected the application of Rudramma hold that her legal representatives had no right to seek for regrant of the lands in question, in the very order, the Tahsildar regranted the lands in favour of respondent No.2 Channabasappa". The learned counsel for the 17th defendant

has submitted that neither the plaintiff nor her children comes under the purview of the definition of authorized holder or holder as defined in Section 2 of the Village Offices Abolition Act. After the marriage of the plaintiff, she lost her right over the Shanbogh as they are not member of the family. The right in the village office could not applicable to the plaintiff. Hence, she is not entitled for any share in respect of the schedule properties since the schedule properties allotted by the BDA in favour of the defendant No.2 under Special Incentive Scheme for having acquisition of the lands.

46. On the other hand, the learned counsel for the plaintiff argued that the plaintiff being the daughter of A.Ramarao and the said Ramarao died intestate, as such the plaintiff is entitled to a share under Section 8 of Hindu Succession Act. It is further submitted that whatever the land acquired by the BDA are all the ancestral joint family properties of the plaintiff and the defendants 1 to 8. Though sites have been allotted in favour of the 2nd defendant, the 2nd defendant is not having absolute right to alienate the sites since the sites have been allotted to him under the Special Incentive Scheme for acquisition of the lands belonged to the

father of the plaintiff. What are the alienation made by the 2nd defendant are not binding on the share of the plaintiff. As such, the plaintiff is entitled for a share in the suit schedule properties.

47. It is significant to note here that though the land in Sy.No.75, 105, 108, 114 and 86 shown in Ex.P2 Sale Deed alleging that A.Ramarao has purchased the properties from Savithramma and her sons, but the wife and sons of A.Ramarao themselves have filed HOACR.11/1987-88 before the Tahsildar, Bangalore South Taluk against Venkataswamy and others for regrant of the said lands. After enquiry, the Tahsildar, has regranted the land in favour of A.R.Subbarao with the consent of his brothers. Once the land has been vested with the Government after Village Offices Abolition Act, 1961, the property not remained in the family of A.Ramarao. After regrant of the land in the name of A.R.Subbarao by the Order of the Tahsildar, it has lost the character of ancestral property, it is the absolute property of A.R.Subbarao who acquired the same as Shanbogh land. During the course of cross-examination, DW.4 and PW.1 have also admitted that after the death of A.Ramarao, A.R.Subbarao doing the

Shanbogh. Under Section 2(g) of Village Offices Abolition Act, holder of a village office means, person who is having an interest in that village office. In the instant case, A.R.Subbarao is doing Shanbogh after the death of his father and he is having interest in the village office and as such the land has been regranted in the name of the defendant No.2, which is evident from Ex.D61. As such there is no force in the arguments of the learned counsel for the plaintiff that the BDA has allotted sites under Special Incentive scheme after acquisition of the joint family properties of the plaintiff and the defendants.

48. It is important to note here that the BDA has allotted 10 Sites under Special incentive scheme bearing Nos.1094 to 1097, 1100 to 1103 in Sector-VI of HSR Layout in favour of the defendants 1 to 5. The Site No.1094, 1097 and 1100 were alienated by the defendant No.4 in favour of Sridhar. The said Sridhar was not made as party to the suit and also the said sites were also not included in this suit. It also could be seen that the plaintiff along with plaintiffs 2 to 4 and defendant No.6 has executed a conformation deed in respect of 1094, 1097 and 1100 in favour of Sridhar. The plaintiff was well within the knowledge of the said alienation

made by the defendant No.4 in favour of Sridhar with respect to the above sites. But the plaintiff has not included the said sites in this suit for the reasons best known to her.

49. The learned counsel for the defendant No.17 has submitted that that the plaintiff has filed this suit only with respect to the sites which belongs to defendant No.2 which are his absolute properties. This fact has been admitted by PW.1 during the course of cross-examination at page-16 that she has filed a case against the purchasers of the schedule property which was already sold. But she stated that her brothers are not inclined to give share to sisters. PW.1 has specifically admitted the confirmation deed which is marked at Ex.D5. The Sale Deed which was executed by A.R.Murali in respect of Sites in favour of Sridhar. She admits that under Ex.D6, D7 and D8, the site Nos.1094, 1097 and 1100 were sold. She admits that Sy.No.6 measuring 10 guntas standing in their father's name and Sy.No.17/3 standing in the name of defendant No.2 and Sy.No.201/2 measuring 1 acre 9 guntas standing in her name and her brothers and sisters' name. Admittedly, the said properties not been included in this suit. The learned counsel for the defendants submitted that in a

suit for partition, all the family properties should be included and the suit for partial partition is not maintainable. In support of his argument, he has relied upon the decision reported in ILR 1998 KAR 681 – Tukaram Vs. Sambhaji and others, wherein their lordship held that :-

“(A) Hindu Law – Partition - Maintainability of suit for partition of alienated item only, even though the joint family owned number of properties – Trial court held suit not maintainable as the inclusion of all joint family property was must. Lower appellate court took the view that suit for partial partition is maintainable – In Second appeal the High Court hold that the suit for partial partition is not maintainable restored the decree of the trial court.

(B) Civil Procedure Code, 1908, Section 100 – Whether a suit for partial partition is maintainable or not is a substantial question of law.”

In the instant case, the plaintiffs have not included all the properties to held by the joint family as rightly pointed out by the learned counsel for the defendants. On this score also, suit for partial partition is not maintainable.

50. The learned counsel for the defendants submitted that the plaintiffs and defendants 1 to 5 are not in joint possession of the suit schedule properties and hence the

plaintiff is liable to pay the court fee as per Section 35(1) of the Karnataka Court Fees and Suits Valuation Act. On the other hand, the learned counsel for the plaintiff submitted that the properties belonged to the family of A.Ramarao and the plaintiff being the daughter of A.Ramarao, she is a co-owner and she is in possession of the properties. The general principle of law is that in case of co-owners, possession of one in law is possession of all, unless ouster or exclusion is proved. When the co-owner is in possession, the possession is continued to be joint possession in law. It is not necessary that the plaintiff should be in actual possession of the properties. In the instant case, the defendants have not pleaded that the plaintiff ousted from the joint family or plaintiff is excluded from the possession. Since the plaintiff is the daughter of A.Ramarao, need not be necessary that the plaintiff should be in actual possession of the properties. The possession of the co-owner is treated as possession of the plaintiff. Hence, what is the court fee paid by the plaintiff is in accordance with law. There is no force in the contention of the defendants that the court fee paid by the plaintiff is insufficient.

51. From the evidence of the parties and the documents relied by them, it is clear that the suit schedule properties are not the joint family properties and the plaintiff has failed to prove the said fact with cogent and convincing evidence. By considering the ratio of the decision and the discussions, I hold issue No.1 and 3 in the negative.

52. **Issue No.2** :- From the evidence of plaintiffs as well as the documents produced at Ex.P2 and P3, it reveals that the father of the plaintiff A.Ramarao has purchased Sy.No.75 measuring 4 acres 27 guntas; Sy.No.105 measuring 1 acre 31 Guntas; Sy.No. 108 measuring 1 acre 26 guntas; Sy.No.114 measuring 27 guntas; Sy.No.86 measuring 30 guntas and Sy.No. 50 measuring 1 acre 5 guntas under a registered Sale Deed/Ex.P2. This fact has not been disputed by the parties to the suit. Further A.Ramarao has also acquired the lands through a family partition dated 22/5/1961/Ex.P3 i.e., Sy.No.9, 10 and 11 of Harale Kunte Village, measuring 5 acres 2 guntas; a acres 13 guntas, 6 acres 15 guntas respectively; Sy.No.24 measuring 3 acres 14 guntas of Venkoji Rao Kane Village, Sy.No.201 measuring 1 acres 9 guntas of Amani Bellandura Kane; Sy. No.58/1

measuring 2 acres 6 guntas of Harale Kunte Village, Sy.No.54 and 58 of 10 acres 1 guntas and 10 acres 1 guntas respectively of Chikkanayakanhalli Village; Sy.No.54/1 measuring 20 guntas in Ejipura; Sy.No.55/11 measuring 12 guntas and Sy.No.19 measuring 2 acres 36 guntas (half share) of Ejipura Village; and a house with Mangalore tiled house in Sy.No.107/A of Agara Khane. This fact has also not been disputed by the parties to the suit. Hence, I hold issue No.2 in the affirmative.

53. **Issue No.4** :- The defendants 14 to 16 have contended that the suit is barred under Order 2 Rule 2 of CPC. The learned counsel for the plaintiff argued that the suit filed by the plaintiff and other sisters in OS.No.95/2012 with respect to the property in Sy.No.15/1 which was allotted to the share of Bhageerathamma who is the grandmother of the plaintiff. After the death of Bhageerathamma, the said property devolves on the heirs of Bhageerathamma i.e., A.Rama Rao, A.Krishnamurthy, A.S.narayana Rao and A.S.Keshava Rao. In that property, a share was allotted to the father of the plaintiff A.Ramarao, for which the plaintiff has filed the said suit for partition. The schedule properties are no way related to the

said suit and as such the suit is maintainable. In support of his arguments, he has relied upon the decision of the Hon'ble Supreme Court reported in (2014) 6 SCC 424 – Coffee Board Vs. Ramesh Exports Pvt. Ltd., wherein their Lordship held that “Order 2, R.2 – Bar of subsequent suit – Conditions for invocation of – When cause of action and parties involved in both suits are the same and reliefs claimed in subsequent suit could have been claimed in previous suit itself but had been omitted, only then would subsequent suit be barred under R.2 – Bar under R.2 must be specifically pleaded by defendant in subsequent suit and trial court must frame a specific issue in that regard – Court must examine both the plaints by reading them as a whole to identify cause of action after giving opportunity to plaintiff to explain its case – on facts held, cause of action on which two suits were based were the same and parties were also the same and in absence of any explanation of plaintiff as to why reliefs claimed in subsequent suit had not been claimed in previous suit, subsequent suit barred under R.2”.

54. Admittedly, the present plaintiff and her mother and other sisters namely Saroja and Shantha and

A.R.Vijayakumar have filed a suit in OS.No.95/2012 with respect to Sy.No.15/1 measuring 5 acres 20 guntas alleging that the said property allotted to the share of Bhageerathamma in the partition and after the death of Bhageerathamm, A.Ramaraao also entitled for share, for which the plaintiff and others have filed the said suit for partition. It is relevant to state here that apart from the property in Sy.No.15/1 measuring 5 acres 20 guntas, the father of the plaintiff also acquired properties under Ex.P3 partition deed dated 22.5.1961. The said properties and the suit schedule properties were not included in the earlier suit in OS.No.95/2012. Order 2 Rule 2 of CPC reads thus :-

“Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

55. The decision relied by the learned counsel for the plaintiff, abundantly clear that when the cause of action and parties involved in both the suites are same and relief claimed

in subsequent suit could have been claimed in previous suit itself but had been omitted then would subsequent suit be barred under Rule 2. In the instant case, the defendants have specifically contended that the cause of action for this suit and the earlier suit are one and the same and the parties are also one and the same. There is no explanation of the plaintiff as to why the reliefs claimed in this suit have not been claimed in previous suit. In this regard a specific issue has been framed. The plaintiff has not explained as to why they have not claimed the relief in previous suit with respect to the suit schedule properties since both the reliefs sought by the plaintiff as well as the cause of action in both the suits are one and the same. In the light of the above decision of the Hon'ble Supreme Court, the suit filed by the plaintiff is barred under Order 2 Rule 2 of CPC. Hence, I hold issue No.4 in the affirmative.

56. **Issue No.5**:- It is the specific case of the defendants that the properties of A.Ramaraao were acquired by the Governemnt and some of the properties were regranted in favour of the 2nd defendant. Thereafter, the BDA has acquired the properties of the 2nd defendant for formation

of Layout. In pursuance of the acquisition of the lands, the BDA has allotted the schedule Sites to the 2nd defendant under Special Incentive Scheme. After confirming the same, these defendants have purchased the suit schedule properties from the 2nd defendant for valuable consideration and they have got transferred the khata into their names. Thereafter, they have obtained the license and put up construction therein. This fact has not been disputed by the plaintiff. As such, the defendants 14 to 16 are the bonafide purchasers of the suit sites for valuable consideration. Hence, I hold issue No.5 in the affirmative.

57. **Issue No.6** :- When the plaintiff has failed to prove that the suit schedule properties are the joint family properties of the plaintiffs and defendants 1 to 5, the transactions effected on the schedule properties are binding on the plaintiff also. Hence, I hold issue No.6 in the negative.

58. **Issue No.7** :- When the plaintiff has failed to prove the prime issue that the suit schedule properties are the joint family properties of the plaintiffs and defendants 1 to 5,

the plaintiff is not entitled for any share in the suit schedule properties Hence, I hold issue No.7 in the negative.

59. **Issue No.8:-** In view of the above discussions, I proceed to pass the following order:-

ORDER

The Suit of the plaintiff is hereby dismissed.

Considering the relationship of the parties,
there is no order as to costs.

Draw a decree accordingly.

(Dictated to the Judgment Writer, typed by him, the transcript thereof corrected and then pronounced by me, in open court, on this the 17th day of September , 2022).

(Kengabalaiah),
XLII Addl. City Civil & Sessions
Judge, Bengaluru.

ANNEXURE

List of witnesses examined for plaintiffs:

PW.1	Smt. A.R.Saraswati
PW.2	Smt.Shylaja

List of documents exhibited for plaintiffs:

Ex.P1	Family tree
Ex.P2	Certified copy of Sale Deed dtd 22.7.1957
Ex.P2(a)	Typed copy of Ex.P2
Ex.P3	Certified copy of partition deed dtd 225.1961

Ex.P4	Certified copy award in LAC.No.399/1987
Ex.P5	Endorsement issued by BDA
Ex.P6	Certified copy of Sale Deed dtd 14.6.2007
Ex.P7	Certified copy of Sale Deed dtd 20.8.2011
Ex.P8	Certified copy of Sale Deed dtd 12.10.2007
Ex.P9	Certified copy of Sale Deed dtd 20.8.2011
Ex.P10	Certified copy of Sale Deed dtd 20.8.2011
Ex.P11 & 12	Certified copy of indemnity bonds along with affidavit
Ex.P13	Certified copy of Sale Deed dtd 2.8.2010
Ex.P14	Certified copy of Sale Deed dtd 3.1.2013
Ex.P15	Certified copy of Memorandum of title deeds
Ex.P16	Certified copy of Sale Deed dtd 5.3.2012
Ex.P17	Certified copy of Sale Deed dtd 23.6.2012
Ex.P18 to 21	Encumbrance certificates
Ex.P22	Certified copy of Award in LAC.No.401/1987

List of witnesses examined for defendants:

DW.1	B.S.Prithvi
DW.2	Reshma M.
DW.3	Asha
DW.4	Chandrashekar Rao

List of documents exhibited for defendants:

Ex.D1	Certified copy of the judgment in OS.No.95/2012
Ex.D2	Certified copy of the plaint in OS.95/2012
Ex.D3 & D4	Certified copy of the written statements in OS.No.95/2012
Ex.D5	Certified copy of the confirmation deed dated 12.9.2013

Ex.D6	Certified copy of Sale Deed dated 2.8.2013
Ex.D7	Certified copy of Sale Deed dtd 16.11.2012
Ex.D8	Certified copy of Sale Deed dtd 16.11.2012
Ex.D9	RTCs
Ex.D10	Certified copy of Memorandum of deposit of title deeds
Ex.D11 & 12	Tax paid receipts
Ex.D13 & 14	Tax Challans
Ex.D15	Letter issued by Union Bank
Ex.D16	Application to BWSSB
Ex.D17	BESCOM Receipt
Ex.D18	Approved plan
Ex.D19	BWSSB bill and receipt
Ex.D20 to 33 & D20(a) to D33(a)	BESCOM Bills and receipts
Ex.D34 to 36	Photographs
Ex.D37	C.D.
Ex.D38	Certified copy of Sale Deed dtd 14.8.1997
Ex.D39	Certified copy of Sale Deed dtd 23.10.1997
Ex.D40	Certified copy of Sale Deed dtd 14.8.1997
Ex.D41	Certified copy of Sale Deed dtd 14.8.1997
Ex.D42	Certified copy of Sale Deed dtd 14.8.1997
Ex.D43	Certified copy of Sale Deed dtd 14.8.1997
Ex.D44	Certified copy of Sale Deed dtd 14.8.1997
Ex.D45	Certified copy of Sale Deed dtd 19.2.1998
Ex.D46	Certified copy of Sale Deed dtd 5.1.2004
Ex.D47	Certified copy of Sale Deed dtd 23.1.1998
Ex.D48	Certified copy of Sale Deed dtd 14.8.1997

Ex.D49	Certified copy of Sale Deed dtd 19.2.1998
Ex.D50	Certified copy of Sale Deed dtd 6.4.2000
Ex.D51	Certified copy of Sale Deed dtd 12.5.2003
Ex.D52	Certified copy of Sale Deed dtd 13.6.2013
Ex.D53	Certified copy of Memorandum of title deeds
Ex.D54 & 55	RTCs
Ex.D56 & 57	MR.No.5/2003-04 and MR.No.8/2010-11
Ex.D58	GPA
Ex.D59	Certified copy of judgment in OS.95/2012
Ex.D60	Certified copy of decree in OS.95/2012
Ex.D61	Certified copy of Order in HOACR.No.11/1987-88
Ex.D62	Certified copy of Order sheet in LAC.No.228/87
Ex.D63	Certified copy of judgment in LAC.No.228/87
Ex.D64	Certified copy of Award in LAC.No.228/87
Ex.D65	Allotment letter issued by the BDA
Ex.D66 & 67	2 Challans
Ex.D68	Khata Certificate
Ex.D69	Khata extract
Ex.D70	Tax paid receipt
Ex.D71	Sale Deed dated 4.5.2012
Ex.D72	Encumbrance certificate
Ex.D73	Khata extract
Ex.D74	Khata certificate
Ex.D75 to 79	Tax paid receipts
Ex.D80	Approved plan
Ex.D81	Application
Ex.D82 to 85	Certified copy of RTCs

Ex.D86	RTC
Ex.D87	Application
Ex.D88 to 91	Certified copy of RTCs
Ex.D92	RTC
Ex.D93	Loan sanction letter issued by LIC HFL
Ex.D94	List of documents given to LIC HFL
Ex.D95	Letter issued by the LIC HFL
Ex.D96 to 103	8 Electricity bills
Ex.D104 to 107	to Bills issued by BWSSB
Ex.D107 to 109	& 2 Photographs
Ex.D110	C.D.
Ex.D111	Allotment letter
Ex.D112	Sale Deed dated 20.8.2011
Ex.D113	Khata registration
Ex.D114	Khata certificate
Ex.D115	Khata extract
Ex.D116	Sale Deed dated 5.3.2012
Ex.D117	Uttara Pathra
Ex.D118	Khata extract
Ex.D119	Khata extract
Ex.D120	Possession certificate issued by BDA
Ex.D121	Khata certificate
Ex.D122	Sale Deed dated 23.6.2012
Ex.D123	Khata extract
Ex.D124	Khata certificate
Ex.D125	Khata certificate
Ex.D126	Sale Deed dated 13.4.2015

Ex.D127		Uttara Pathra
Ex.D128		Khata extract
Ex.D129		Khata certificate
Ex.D130		Approved License
Ex.D131		Approved Plan
Ex.D132		Receipt
Ex.D133		Copy of application submitted to BWSSB
Ex.D134		Endorsement issued by BWSSB
Ex.D135		Permission Letter to BBMP
Ex.D136	to	10 Tax paid receipts
145		
Ex.D146		Encumbrance certificate
Ex.D147	to	4 Photographs
150		
Ex.D151		C.D.
Ex.D152	to	3 Electricity bills
154		
Ex.D155		Notarized copy of Affidavit

XLII Addl. City Civil & Sessions
Judge, Bengaluru.