

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR JUSTICE M.G.S.KAMAL

REGULAR FIRST APPEAL NO.197 OF 2008 (PAR)

C/W

REGULAR FIRST APPEAL NO.350 OF 2008 (PAR)

IN R.F.A. NO. 197/2008

BETWEEN:

SRI. SEETHARALLA SUBBARAYA SETTY
VENKATA KRISHNAIAH CHETTY
AGED ABOUT 54 YEARS
S/O VENKATAPPA SUBBARAYA SHETTY
R/AT 238, 4TH CROSS
HMT LAYOUT, GOKUL EXTENSION
BANGALORE-560 054.

... APPELLANT

(BY SRI. G.B. NANDISH GOWDA, ADVOCATE)

AND:

1 SRI. SEETHARALLA VENKATAPPA SUBBARAYA SETTY
(SINCE DECEASED ALL LRS ON RECORD)
S/O VENKATAPPA
AGED ABOUT 80 YEARS
NIL, R/OF HOUSE NO.37
HANUMANTHA NAGAR
8TH MAIN ROAD, I STAGE
II BLOCK, BANGALORE-560 050.

2 . SRI. SEETHARALLA SUBBARAYA
SETTY SREENIVASULU
AGED ABOUT 48 YEARS
S/O VENKATAPPA SUBBARAYA SETTY
BUSINESS R/OF HOUSE NO.37
HANUMANTHA NAGAR



8TH MAIN ROAD, I STAGE
II BLOCK, BANGALORE-560 050.

- 3 . SRI. SEETHARALLA SUBBARAYA
SETTY PARTHASARATHY
SINCE DEAD BY HIS LRS
- 3(a) SRI. S.P SANJAY
AGED ABOUT 18 YEARS
S/O LATE S.S. PARTHASARATHY SETTY
R/O NO.766, 15TH MAIN ROAD
SRINIVASANAGAR, 2ND STAGE
BANK COLONY
BENGALURU - 560 050.
- 4 . SMT. SEETHARALLA SUNEETHA
W/O SEETHARALLA SUBBARAYA
SETTY SREENIVASULU
AGED ABOUT 42 YEARS
R/OF HOUSE NO.37
HANUMANTHA NAGAR
8TH MAIN ROAD, I STAGE
II BLOCK, BANGALORE-560 050.
- 5 . SMT. SEETHARALLA SUMATI
W/O SUBBARAYA
SETTY PARTHASARATHY
AGED ABOUT 40 YEARS
NIL, R/OF NO.766
15TH MAIN ROAD
SRINIVAS NAGAR
II STAGE BANK COLONY
BANGALORE- 560 050.

- 6 . KUM. SEETHARALLA SRUSHTI
D/O SUBBARAYA SETTY
SREENUVASULU
AGED ABOUT 10 YEARS
BEING MINOR BY FATHER
GUARDIAN 2ND RESPONDENT
R/OF HOUSE NO.37
HANUMANTHA NAGAR
8TH MAIN ROAD, I STAGE
II BLOCK, BANGALORE-560 050.

- 7 . KUM.SEETHARALLA S P SANJANA
D/O SUBBARAYA SETTY
PARTHASARATHY
AGED ABOUT 9 YEARS
BEING MINOR REP. BY FATHER AND
GUARDIAN 3RD RESPONDENT
D/O SRI. SUBBARAYA SETTY PARTHASARATHY.
R/O NO.766, 15TH MAIN ROAD
SRINIVASANAGAR, 2ND STAGE
BANK COLONY
BENGALURU - 560 050.

- 8 . SMT. KAKARALA P VIJAYA LAKSHMI
W/O PARTHASARATHY
AGED ABOUT 59 YEARS
R/OF NO.30, VASAVI NILAYAM
MLA LAYOUT, R T NAGAR
FURTHER EXTENSION
BENGALURU-560 032

- 9 . SMT. MATANGAM R. GOVINDA LAKSHMI
AGED ABOUT 56 YEARS
W/O RADHAKRISHNAIAH CHETTY
R/AT RAMAMURTHY NAGAR
APPARAO LAYOUT
BENGALURU-560 016

- 10 . SMT. BUGARAM GOPALKRISHNA
SANTHALAKSHMI
AGED ABOUT 53 YEARS

W/O SRI. GOPALKRISHNA
LIC AGENT, R/AT KUMMARA VEEDHI
PUNGANOOR POST
CHITTOOR DISTRICT
ANDHRA PRADESH-636905

11 . G PADMA
AGED ABOUT 50 YEARS
W/O GOWARDHANAN
R/AT NO. 101, BAZAAR STREET
PAPIREDDY PATTI POST
DHARMAPURI DISTRICT
TAMIL NADU-636905

12 . SMT. N SUNEETHA
AGED ABOUT 27 YEARS
W/O SREENIVASA RAJU
R/AT SYAMARAJAPURAM
KARLAGATTA POST
SANTIPURAM MANDAL
CHITTOR DISTRICT
ANDHRA PRADESH-636905

13 . SRI. R GOVINDASWAMY
AGED ABOUT 52 YEARS
FATHER'S NAME NOT KNOW
SRI BALAJI FINANCE
R/AT B M ROAD
ANDERSON PET
KOLAR GOLD FIELDS (KGF)
PIN - 563 113
KARNATAKA STATE.

... RESPONDENTS

(BY SRI. RAJESH MAHALE, SENIOR COUNSEL A/W
SRI. RAMESHCHANDRA., ADVOCATE FOR R2, C/R4
R5 & R7;
SRI. C. SHANKAR REDDY, ADVOCATE FOR R8 TO R11;
R3(a), R6, R12, R13 ARE SERVED AND UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF CPC., AGAINST THE JUDGMENT AND DECREE DT.
24.10.2007 PASSED IN O.S.NO.4136/2001 ON THE FILE OF
THE XXXVIII ADDL. CITY CIVIL & SESSIONS JUDGE,

BANGALORE, PARTLY DECREETING THE SUIT FOR PARTITION
AND SEPARATE POSSESSION.

IN R.F.A. NO. 350/2008

BETWEEN:

1 . SEETHARALLA SUBBARAYA SETTY
PARTHASARATHY
S/O VENKATAPPA SUBBARAYA SHETTY
AGED ABOUT 43 YEARS

1(a) SEETHARALLA SUMATI
W/O SUBBARAYA SHETTY PARTHASARATHY
AGED ABOUT 51 YEARS

1(b) SEETHARALLA S.P. SANJANA
AGED ABOUT 26 YEARS
D/O SUBBARAYA SHETTY PARTHASARATHY

1(c) SRI. SANJAY S.P.,
AGED ABOUT 19 YEARS
S/O S.S. PARTHASARATHY

BOTH ARE R/AT NO.574, 16TH MAIN
SRINIVASANAGARA, BANK COLONY
BENGALURU - 560 050.

2 SEETHARALLA SUMATI
W/O SUBBARAYA SHETTY PARTHASARATHY
AGED ABOUT 36 YEARS

3. SEETHARALLA S.P. SANJANA
AGED ABOUT 11 YEARS
R/O SUBBARAYA SHETTY PARTHASARATHY
BEING MINOR REPTD BY FATHER AND GUARDIAN
1ST APPELLANT
ALL ARE R/AT NO.766, 15TH MAIN
SRINIVASANAGAR, BANK COLONY
BANGALORE - 560 050.

... APPELLANTS

(BY SRI. RAJESH MAHALE, SENIOR COUNSEL A/W
SRI. RAMESHCHANDRA., ADVOCATE)

AND:

- 1 . SEETHARALLA SUBBARAYA SETTY
VENKATAKRISHNAIAH CHETTY
S/O VENKATAPPA SUBBARAYA SETTY
AGED ABOUT 52 YEARS,
R/AT 238, 4TH CROSS, HMT LAYOUT,
GOKUL EXTENSION,
BANGALORE - 560 054.
- 2 . SEETHARALLA SUBBARAYA SETTY
SREENIVASULU S/O VENKATAPPA
SUBBARAYA SETTY
AGED ABOUT 46 YEARS,
- 3 . SEETHARALLA SUNEETHA
W/O SUBBARAYA SHETTY SREENIVASULU
AGED ABOUT 43 YEARS,
- 4 . SEETHARALLA SRUSHTI,
D/O SUBBARAYA SHETTY SREENIVASULU
AGED ABOUT 13 YEARS,
BEING MINOR REPTD BY FATHER AND GUARDIAN
2ND RESPONDENT R2 TO 4 ARE
RESIDING AT NO.37,
HANUMANTHA NAGAR,
8TH MAIN ROAD, I STAGE, II BLOCK,
BANGALORE - 560 050.
- 5 . KAKARALA P. VIJAYALAKSHMI
W/O PARTHASARATHY,
AGED ABOUT 62 YEARS,
R/O VASAVI NILAYAM, NO.30,
MLA LAYOUT R.T.NAGAR FURTHER EXTENSION,
BANGALORE.
- 6 . MATHANGAM
R.GOVINDALAKSHMI
WIFE OF RADHAKRISHNAIAH CHETTY
AGED ABOUT 56 YEARS,

RAMAMURTHY NAGAR,
APPA RAO LAYOUT,
BANGALORE

- 7 . BUGURAM GOPALAKRISHNAIAH
SANTHALAKSHMI,
W/O GOPALAKRISHNAIAH SETTY
AGED ABOUT 56 YEARS,
BRAHMANA VEEDHI,
PUNGANOOR POST,
CHITTOOR DISTRICT,
ANDHRA PRADESH.
- 8 . G. PADMA
W/O GOWARDHANAN,
AGED ABOUT 50 YEARS,
R/A NO.78, BAZAAR STREET,
PAPIREDDY PATTI POST,
DHARMAPURI DISTRICT,
TAMIL NADU - 636 905.
- 9 . N. SUNEETHA
W/O SREENIVASA RAJU
AGED ABOUT 26 YEARS,
SYAMARAJAPURAM KARIAGATTA POST,
SANTIPURAM MANDAL
CHITTOR DISTRICT,
- 10 . GOVINDASWAMY NAIDU
AGED ABOUT 51 YEARS,
SRI BALAJI FINANCE (R) B.M. ROAD,
ANDERSON PET, KOLAR GOLD FIELDS (KGF)
KARNATAKA STATE PIN - 563 113.

... RESPONDENTS

(BY SRI. G.B. NANDISH GOWDA, ADVOCATE FOR R1;
SRI.MAHESH C., ADVOCATE FOR R2 AND R3
SRI. JAGADISH G. KUMBAR., ADVOCATE FOR R2 TO R4;
SRI. C. SHANKAR REDDY., ADVOCATE FOR R5 TO R8;
R9, R10 ARE SERVED AND UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED
24.10.2007 PASSED IN O.S.NO.4136/2001 ON THE FILE OF
THE XXXVIII ADDL. CITY CIVIL AND SESSIONS JUDGE,

BANGALORE, PARTLY DECREETING THE SUIT FOR PARTITION AND SEPARATE POSSESSION IN RESPECT OF SCHEDULE 'J' AND 'K' PROPERTIES.

THESE REGULAR FIRST APPEALS HAVING BEEN HEARD AND RESERVED ON 13.01.2026 FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT DELIVERED THE FOLLOWING:

THESE APPEALS COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL JUDGMENT

Appeal in RFA No.197/2008 is by plaintiff and appeal in RFA No.350/2008 is by defendants 3, 5 and 7 being aggrieved by the Judgment and decree passed in O.S.No.4136/2001 dated 24.10.2007 on the file of the XXXVIII Addl. City Civil and Sessions Judge, Bangalore, by which suit for partition and separate possession has been partly decreed granting 1/7th share in suit schedule "J" and "K" properties and dismissed the suit in respect of schedule "A" to "I" of the suit schedule properties.

2. Subject matter of the suit are the following immovable properties:

"A" Schedule Property

Karnataka State Bangalore Municipal Corporation, HMT Layout, D.No. 238, IV Cross upstairs, Building with the following boundaries and measurements, 30x40 feet on both sides East to west: 40 ft, North to South: 30 ft East by: Site No.237, West by: Site No. 239 North by: Site No.46, South by: IV Cross Road.

This is the subject matter of gift deed dated 29.10.1999 in favour of defendants 8 to 11 by I defendant.

"B" Schedule Property

Karnataka State Bangalore Municipal Corporation Terraced building division No.39, old No.33/3, New Door No.6 situated at Silver Jubilee Park Road Cross, Second cross also called as Dresser Rajappa Lane and Malavalli Ramarao Road, Cellar Floor measurements East to west: (42.6+30)/2 ft, North to South: (42+47)/2 ft. Total Area 1613 Sq. Ft. Boundaries; East by:Others Property West by: D.R. Lane, North by: M.R.R. Road South by: Property of others. (Subject matter of documents No.849 of 1998-99) alienated to Smt. Suneeta Sreenivas with defendant by D-1.

"C" Schedule Property

Karnataka State Bangalore Municipal Corporation Division No. 39, Door No.5, situated at Silver Jubilee Park Cross Road, Second Cross also called as Dresser Rajappa Lane and Malavalli Rama Rao Road, Cellar Floor, Bangalore Pin-560002 Shop No.33/5, boundaries:- East by: Private Property West by: Shop No.4 of NKS Blds. North by: M.R.R.Road South by:Portion of Shop No. 122 Sabir Brother Ground Floor (Top). Property Manjunath with undivided share included right and interest in the total area of land to the extent of 21-33 Sq.feet plinth area 225 Sq. ft.

"D" Schedule Property

Andhra Pradesh State Chittoor District, Santipuram Mandal, Rallabuduguru village. Agricultural lands

i. S.No. 165/1B, Punja Extent Acre	1-40 Cents
ii. S.No. 166/3B, Punja Extent	0-25 1/2 Cents
iii. S.No. 166/5 Punta Extent	0-53 cents
	2-181/2 Cents

1st defendant extended a gift deed for the above Properties on 1.12.1999 in favour of 6 and 7.

"E" Schedule Property

I. Andhra Pradesh State Chittoor District, Santhipuram, Mandal Muddanapalli village,

Items (1) Sy. No.89/3 Wet	Ac 1 - 48 Cents
(2) Sy. No.89/1 Dry	3 - 39 Cents
(3) Sy. No.139/6 Dry	1 - 14 Cents
(4) Sy. No.139/7 Dry	0 - 47 Cents
(5) Sy. No.139/8 Dry	0 - 46 Cents
6 - 94 Cents	

The above properties are alienated by D-1 lunder Regd. sale deed dated 22.06.2000 to D-12.

"F" Schedule Property

Karnataka State Bangalore Municipal Corporation Ward No. 58. 95-96, 8th Main Road Banashankari I Stage, House No.37A, New No.8/2 (Second Block) 50 ft Road, Hanumanthanagar Bangalore, House Property of 4th defendant

Measurements: 30X48 feet on both sides.

"G" Schedule Property

Karnataka State Bangalore Municipal Corporation Room No.33 II floor (with a slab) Division No.39 (Godown) NKS Building, situated at Silver Jubilee Park Cross Road, II cross Dresser Rajappa Lane, Malavalli Rama Rao Road, Bangalore.

"H" Schedule Property

Karnataka State Bangalore Municipal corporation No.766, 15th Main, II Stage, Srinivasa Nagar, Bank Colony, Bangalore-50.

(property purchased by Smt.S.P.Sumati w/o Parthasarathy 5th Defendant)

"I" Schedule Property

Andhra Pradesh State Chittoor District, Santipuram, Mandal, Rallabuduquru village House site measuring 12x43 yards = 516 Sq. yards with following boundaries, on East of Compound wall of Devastanam, on west of Terupogala Road, South: House of China Munappa, North: Property of late S.V. Lakshmaiah Chetty (share).

(This property is alienated to D-13 by I Defendant under sale deed dated 22.6.2000)

"J" Schedule Property

Andhra Pradesh State Chittoor District, Santipuram Mandal, Sathu village, Agricultural Lands

I S.No.64/6	Ac 1-09 Cents
S.No.64/7	0-65 Cents
S.No.62/5	1-92 Cents
Total	3-66 Cents

II

S.No.63/1C Wet Ac 0-56 Cent

S.No.37/1 Dry 0-13 Cent

S.No.39/1 Dry 0-74 Cent

"K" Schedule Property

Andhra Pradesh State Chittoor District, Santipuram Mandal, Rallabuduguru Village, Gandhi Street, House, Shop and site bearing assessment No.65 Door No.1-81 with the following measurement 544 Sq. ft and 147 sq. ft.

South by: House portion of late S. V. Lakshmaiah Setty

East by: Vacant Site of others

West by: Girappa Thota

North by: Road.

3. Brief facts of the case of the plaintiff are:

3.1 That defendant No.1 is the father and kartha of the family. While plaintiff, defendants 2 and 3 are his sons and defendants 8 to 11 are the daughters of defendant No.1. Defendant Nos.6 and 7 were the minor daughters of defendant Nos.2 and 3 respectively. Defendant No.12 is the purchaser of Item No.E of the suit schedule properties. Defendant No.13 is also purchaser of Item No.I of suit schedule properties. Mother of plaintiff-Smt.S.Parvathamma died intestate on 21.09.2000.

3.2 That defendant No.1 and his elder brother S.Lakshmaiah Setty had entered into and executed deed of partition dated 21.11.1962 in terms of which properties described in Schedule B to the said deed of partition were allotted to the share of defendant No.1.

3.3 That suit item Nos.A to I are the joint Hindu undivided family properties which are acquired from joint family nucleus and with the joint efforts of all the members namely plaintiff and defendants 2 and 3. That as and when plaintiff and defendants 2 and 3 got married they started living separately doing business and kept the properties in their joint

possession and enjoyment. That there has been no division of the suit schedule properties. Plaintiff is entitled for 1/4th share in all the suit schedule properties.

3.4 That defendant No.1 was unwell and had lost his mental faculties and was hospitalized on several occasions for over 5 years. He was also suffering from partial paralysis. He was residing with defendant No.2. That taking undue advantage of his old age, illness and loss of memory, defendant Nos.2 to 5 and 8 to 11 have obtained several documents executed by defendant No.1 in their names and in the names of their daughters and wives. Defendant Nos.8 to 11 who were the daughters of defendant No.1 have got executed deed of gift dated 29.10.1999 in respect of item No.A of the suit schedule properties in their favour.

3.5 That the plaintiff had contributed huge amount of his self earnings in constructing a portion of building on Item No.A of the schedule properties. Defendant No.1 being the Manager of the Hindu joint family without the concurrence and consent of the other co-parceners could not have executed the said deed of gift.

3.6 Defendant Nos.2 to 5 had obtained another deed of gift dated 01.12.1999 from defendant No.1 in favour of their daughters namely defendants 6 and 7 in respect of item No.D of the suit schedule

properties measuring 2 acres 18 1/2 cents situated at Rallabuduguru village of Andhra Pradesh. The said deed of gift is not binding on the plaintiff to the extent of his 1/4th share therein.

3.7 Defendant Nos.2 and 3 in collusion had got item No.E of the suit schedule properties measuring 6 acres 94 cents situated at Muddanapalli Village alienated through defendant No.1 in terms of deed of sale dated 22.06.2000 for a sale consideration of Rs.1,65,500/- in favour of one Suneetha, defendant No.12. That there was no need or necessity for defendant No.1 to have alienated the said property for the benefit of the joint family. Defendant Nos.2 and 3 have got the sale consideration distributed amongst themselves without plaintiff joining the same. The said deed of sale is thus not binding on the plaintiff to the extent of his 1/4th share.

3.8 Defendant No.2 in collusion with defendant No.1 fraudulently got a deed of sale dated 04.07.1998 executed in respect of item No.B of the suit schedule properties. The said sale was not for the benefit of the family as such the sale was not binding on the plaintiff to the extent of his 1/4th share.

3.9 Defendant No.3 in collusion with defendant No.1 fraudulently obtained deed of sale dated 04.07.1998 in respect of item No.C of the suit schedule properties in favour of his wife S.P.Sumathi. The sale deed was not for the benefit of the family as such the

same is not binding on the plaintiff to the extent of his 1/4th share.

3.10 Defendants 4 and 5 without having any financial capability had created the aforesaid deeds of sale to make believe the transaction which otherwise is false and unenforceable. Defendant No.2 and defendant No.3 in collusion had fraudulently brought defendant No.1 to alienate item No.I of the schedule properties in favour of defendant No. 13 in terms of deed of sale dated 22.06.2000 and got the sale consideration divided between themselves. The said deed of sale not being for the family necessity is not binding to the extent of 1/4th share of the plaintiff.

3.11 Defendant No.2 and defendant No.3 have acquired several immovable properties in their names and in the names of their wives. The said properties were purchased from and out of the joint family funds. The name of defendant No.4 who is the wife of defendant No.2 has been reflected in the property tax register in respect of item No.F of the suit schedule properties. The said property has been acquired from and out of joint family funds as such the plaintiff has got 1/4th share therein.

3.12 Defendant No.2 has also purchased a house property (godown) which is described in item No.G of the suit schedule properties in the name of his wife which was purchased from and out of the joint family

funds in respect of which the plaintiffs has got his 1/4th share.

3.13 Defendant No.3 has purchased property described as item No.H of the suit schedule properties in the name of his wife S.P.Sumathi-defendant No.5 which was acquired from and out of the joint family funds over which the plaintiff has got his 1/4th share.

3.14 Property described in item Nos.J and K of the suit schedule properties are the land and the house property situated in Sathu Village in Santipuram Mandal and a house property situated in Rallabuduguru Village are the joint family properties which are also amenable for partition over which the plaintiff has got 1/4th share.

3.15 That the plaintiff had got issued notice dated 17.06.2000 to defendants 2 and 3 demanding for partition of schedule properties. Defendants having received the same caused the issue of a reply dated 05.07.2000 on false and untenable grounds. That the above division of agricultural properties possessed by the family, the house property purchased in the name of the wife of the plaintiff by borrowing loans, as such he had entered into agreement to sell the same for discharge of loans. Plaintiff was therefore entitled for one for 1/4th share in the suit schedule properties and the transactions in the nature of deeds of sale referred to above were not binding

required to be declared so. As such suit seeking partition and separate possession of his 1/4th share over the suit schedule properties.

4. Defendant No.2 filed his written statement while denying the plaint averments had contended:

4.1 That their mother Smt.Parvathamma during her lifetime had acquired gold, diamond and navarathan jewellery items worth Rs.15,00,000/- and silver articles weighing about 35kgs in addition had possessed cash savings which she had given to the custody of the plaintiff. Upon her demise, the plaintiff has not chosen to give account for the same.

4.2 That the claim of the plaintiff that the suit schedule properties are the joint family properties acquired from the joint family nucleus and with the joint family efforts are specifically denied. It is contended that defendant No.2 got separated from the family prior to 1980 and started living on his own efforts and on his own business, earning his own income without the assistance of any of the joint family members.

4.3 The allegation of defendant No.1 having lost his mental faculties and having been hospitalized on several occasions has been denied. Allegation of defendant Nos.2 to 5 and 8 to 11, taking advantage of illness of defendant No.1, obtaining the documents is also denied. It is contended defendant No.1 being

the absolute owner of the Item No.A of the suit schedule properties had every right, title and interest to deal with the same in the manner he deemed fit as such execution of deed of gift dated 29.10.1999 was valid and subsisting.

4.4 Similar is the situation with respect to Deed of gift dated 01.12.1999 executed by defendant No.1 in favour of defendant No.6 and defendant No.7 in respect of item No.D of the suit schedule properties. Allegation of defendant Nos.2 and 3 causing defendant No.1 to alienate Item No.3 of the suit schedule properties in favour of defendant No.12 and sharing the sale proceeds has been denied. It is contended that defendant No.1 had not parted with the sale proceeds to any of the defendants.

4.5 It is contended that the sale proceeds derived from the sale of Item No.E of suit schedule properties has indeed been received by the plaintiff by way of cash as well as demand draft drawn in his favour.

4.6 Allegation of defendant No.4 obtaining deed of sale dated 04.07.1998 fraudulently and in collusion in respect of item No.B of the suit schedule properties is denied. It is contended that the said property was purchased by defendant No.4 out of her self earning for valuable sale consideration as per the prevailing market value. As such plaintiff has no right, title and interest over the same. Allegation of

defendant No.3 obtaining the deed of sale dated 04.07.1998 from defendant No.1 in respect of suit schedule properties is also denied. It is contended said property is a self-acquired property of defendant No.1 and he has conveyed the same in favour of defendant No.4 on the then prevailing market value which is self-acquired property of defendant No.4. As such plaintiff did not have any share, right, title and interest over the same. It is contended that defendant No.4 is a diploma holder in pharmacy doing her own business and having her own savings. Out of which she had acquired the properties. As such, the plaintiff cannot claim to have any share, right, title and interest over the same. The allegation of defendant No.2 and defendant No.3 causing defendant No.1 to alienate Item No.I of the suit schedule properties in favour of defendant No.13 in terms of deed of sale dated 22.06.2000 and dividing the sale consideration between themselves is denied. It is contended that there was no joint family funds. All the properties are the self acquired properties of defendant No.1, defendant No.2 and defendant No.4. The property purchased by defendant No.2 in the name of his wife, defendant No.4 is shown in Schedule F. Item No. F to the suit schedule properties which is the self-acquired property of defendant No.4 and the family has no claim over the same. Defendant No.2 purchases item No.G of the suit schedule properties in the name of his wife out

of his own earnings without any contribution from the family.

4.7 That there has been a partition of all the joint family assets and as early as 1978 there has been severance of joint family. The parties have been residing separately and all the acquisition of the properties were made subsequent to the year 1978. Therefore, the plaintiff cannot claim the family to be joint family and properties to be joint family properties

contending as above sought for dismissal of the suit.

5. Defendant No.3 and defendant No.5 filed their separate written statement contending:

5.1 that they do not have personal knowledge about deed of partition dated 21.11.1962 having been effected and registered. The father of defendant No.1 was a very poor man suffering from paralysis. Defendant No.1 did not acquire any properties mentioned in the above partition dated 21.11.1962. Defendant No.1 and his elder brother during their lifetime had acquired properties out of their self earnings prior to the date of the said partition which they got divided in terms of the deed of partition dated 21.11.1962. The said properties are the self-acquired properties of defendant No.1. Except defendant No.1, no other person has any share, right, title and interest over the same.

5.2 It is however submitted that only half of the two properties i.e., one situated at Nadeempalli Village and another at Morasanapalli are the only ancestral properties acquired by defendant No.1. Except these two items, all other properties are the self acquired properties of defendant No.1.

5.3 That plaintiff ever since he was in 7th Standard, was studying at Bangalore, and after his education he started his own business by obtaining a sum of Rs.5,00,000/- from defendant No.1 and started his general merchant business known and called as Triveni Mini Bazaar in the year 1978. Again during 1980 he had taken a sum of Rs.10,00,000/- from defendant No.1 for his wholesale business of oil, dal, ghee and butter and he has not repaid the said amount to defendant No.1 or to the other defendants. Out of the earnings from the said business, the plaintiff has acquired several movable and immovable properties worth more than 8 house sites, gold and jewelry in the name of his wife and sisters-in-law and he has never paid any amount to any of the defendants as there exists no joint family.

5.4 Allegation of defendant No.1 suffering from illness and loss of memory is denied. It is contended that defendant No.1 had appeared before the Court, had even filed vakalath through his counsel, clearly indicating his health condition. The execution of deed of gift by defendant No.1 in favour of defendant No.6 and defendant No.7 is voluntary and out of his love

and affection towards the granddaughters. That suit schedule properties were acquired by defendant No.1 even before the birth of the plaintiff, which is a self-acquired property of defendant No.1.

5.5 Item No.E of the suit schedule properties is also the self acquired property of defendant No.1 purchased out of his own self earnings. There was no collusion or fraud played by defendant No.2 and defendant No.3 in defendant No.1 alienating the said property in favour of defendant No.12. Similar is the averment in respect of the deeds of sale executed by defendant No.1 in favour of wife of defendant No.2 as above.

5.6 As regards item No.K of the suit schedule properties it is contended that the same was purchased by defendant No.1 in terms of deed of sale dated 30.05.1961 and he had his absolute right and interest to deal with the said property. That he had gifted the same in favour of defendant No.7 in terms of which registered deed of gift dated 12.11.2001. Ever since then defendant No.7 has been in actual possession and enjoyment of the said property.

5.7 That item No.J of the suit schedule properties is the self acquired property of defendant No.1, which he had bequeathed in favour of defendant No.2 and defendant No.3 in terms of registered Will dated 01.12.1999.

5.8 That the plaintiff was paid as his share though he was not a member of the joint family by defendant No.1 by way of cash and demand drafts. That there was land ceiling proceedings at Madanapalli Chittoor District, Andhra Pradesh. Wherein the plaintiff himself had clearly admitted there having been a deed of partition entered into between the family members and he having received his share of property.

5.9 Defendant Nos.6, 7, 8, 10 and 11 filed written statement reiterating the averments made in the written statement filed by defendants 2, 3 and 5.

6. Trial Court based on the aforesaid pleadings, framed following issues for its consideration:

- 1) Does plaintiff prove that the suit schedule properties are the joint family properties as alleged?
- 2) Does plaintiff further prove the partition deed dated: 21.11.1962?
- 3) Does plaintiff further prove that the gift deed dated:29.10.1999 in respect of A schedule property by defendant No.1 in favour of defendants 8 to 11 is not valid and binding on him?
- 4) Does plaintiff further prove that the gift deed dated 1.12.1999 in favour of defendants 6 and 7, in respect of 'D' schedule property is not valid and binding on him?
- 5) Does plaintiff further prove that the sales deed executed by defendant No.1 in favour of defendant 12 in respect of 'E' schedule property is not valid and binding on him?

6) Does plaintiff further prove that the sale deed dated 4.7.1998 executed by defendant No.1 in respect of 'B' schedule property is not valid and binding on him?

7) Does plaintiff further prove that the sale deed dated:22.6.2000 executed by defendant No.1 in favour of defendant No.13 in respect of 'I' schedule property is not valid and binding on him?

8) Do the defendants 3, 5 and 7 prove that the properties divided under the partition deed dated 21.11.1962 were the self acquired properties of defendant No.1?

9) Do the defendants 3, 5 and 7 prove that defendant No.1 voluntarily executed gift deed in favour of defendants No.8 and 11?

10) Do they further prove that 'D' schedule property was gifted voluntarily by defendant No.1 in favour of defendant No.6 and 7?

11) Do they further prove that plaint 'D' and 'E' schedule properties were acquired by defendant No.1 out of his own earnings.

12) Do they further prove that the properties comprised in 'F' and 'G' schedule were acquired by defendant No.2 in the name of his wife?

13) Do they further prove that 'H' schedule property was acquired by defendant No.5 from her self-earnings?

14) Do they further prove that 'J' and 'K' schedule properties are the self acquired properties of defendant No.1?

15) Does defendant No.2 prove the severance of joint status in the family in the year 1978?

16) Does defendant No.2 prove that properties purchased by defendant No.2 and 4 in their names are their self-acquisitions?

17) Does defendant No.2 prove the suit is not properly valued and the Court fee paid is inadequate?

18) Does plaintiff entitled to 1/4th share in all the 'A' to 'K' schedule properties?

19) Is plaintiff to an enquiry into mesne profits.

20) What order or decree?

Additional issues framed on 9.4.2007

1) Do the defendants 10 and 11 prove that the execution of the Will dated 01.12.1999?

2) Do the defendants 10 and 11 prove the payment made to plaintiff as alleged in para-7 of their written statement?

3) Do the defendants 10 and 11 prove that the Court fee paid is insufficient?"

7. Plaintiff examined himself as PW1 and exhibited 31 documents marked as Exhibit P1 to Exhibit P31. 5 witnesses have been examined on behalf of the defendants as DW1 to DW5 and have exhibited 143 documents marked as Exhibit D1 and Exhibit D143.

8. On appreciation of evidence, trial Court answered Issue Nos.1, 3 to 7, 17 and Additional Issue No.1 in the negative, Issue Nos. 2, 8, 9 to 16 in the affirmative, Issue No.18 in the negative, holding plaintiff being entitled for 1/7th share in suit Schedule J and K properties. Issue No.19 partly in the affirmative and consequently partly decreed the suit as noted above.

9. Plaintiff is thus before this Court being aggrieved by the dismissal of the suit in respect of other items of properties except item Nos.J and K. While defendants are before this Court being aggrieved by non consideration of their claim in respect of deed of gift dated 12.11.2001 in respect of item No.J of suit schedule properties and Will dated 01.12.1999 in respect of item No.K of the suit schedule properties.

10. Learned counsel for appellant taking this Court extensively through the records submits:

10.1 That the suit schedule properties are the joint family properties acquired through and from the joint family funds. That the father of defendant No.1 and his brother had in turn entered into a partition in the year 1942 in terms of which large extent of agricultural lands had fallen to the share of father of defendant No.1. It is from and out of the income generated from the said properties, the properties mentioned in the deed of partition dated 21.11.1962, had been acquired by defendant No.1. As such plaintiff being member of the joint family and a co-parcener is entitled for a share in the suit schedule properties.

10.2 That defendant No.1 has neither filed the written statement nor has entered the witness box to deny the case of the plaintiff. As such adverse inference has to be drawn. Defendant No.2 and defendant No.3 cannot

substitute the stand of defendant No.1, which the trial Court has failed to appreciate.

10.3 That there was a family business being run under the name and style of "Triveni Mini Bazaar" which was established on 10.05.1978. The ledger account of the said family business produced at Ex.P20 indicate the same is a joint family business. The said ledger account was maintained by defendant No.1 during his lifetime and the plaintiff was just aged about 26 years as on the date when the business commenced. Thus sufficient evidence made available on record to show the availability of joint family properties as well as the joint family business which partakes the character of the joint family nucleus that the properties acquired by defendant No.1 are thus the joint family properties.

10.4 That plaintiff has specifically pleaded at paragraph 7 of the plaint regarding the existence of joint family nucleus which has not been specifically denied. Merely because PW1 in the cross-examination had made certain stray admissions with regard to Item No.J and K of the suit schedule properties which are situated at Morasanapalli and Nadeempalli to be punja lands not yielding any income, same cannot be held adverse to the interest of the plaintiff.

10.5 That defendant No.3-DW2 in his cross examination has admitted to the fact of plaintiff raising loan between the year 1982 to 1987 in a sum of Rs.5,00,000/- and handing over the same to his father at Rallabuduguru

Village. That the said lands were sold to repay the loans which were raised by the father of the parties.

10.6 That defendant No.3 though has resisted the case of the plaintiff, they have pleaded ignorance about defendant No.1 possessing agricultural land yielding crops such as coconut, tamarind, mango etc. situated in Nadeempalli and Morasanapalli villages.

10.7 That the plaintiff has thus discharged his initial burden of proving existence of joint family properties and the joint family nucleus sufficient enough to acquire the suit schedule properties and the execution of deed of gift and deeds of sale by defendant No.1 in favour of defendant Nos.1 and 2 and their respective wives were not binding on the plaintiff. The said documents brought into existence only to deny and deprive the legitimate entitlement of the plaintiff to the extent of 1/4th share in the suit schedule properties.

10.8 Learned counsel for appellant had filed an application in I.A.No.1/2016 seeking production of additional documents which was allowed by order dated 23.02.2026. In furtherance to which, plaintiff has examined himself and produced certified copy of the registered partition deed dated 16.10.1942 along with a translation copy of the same, which are marked as Exhibits P39 and P39(a). The plaintiff has also produced a true copy of the order/declaration dated 06.09.1975 marked at Exhibit P40 referring to the same learned counsel for appellant submitted that Ex.P39, which is a

partition dated 16.10.1942 entered into between the father of defendant No.1 and his brother, indicate family possessing vast extent of agricultural lands which are the joint family properties, which fact has been reiterated in the document which is Ex.P40, a declaration given by defendant No.1 and the plaintiff before the Land Tribunal, declaring the said properties to be the joint family ancestral properties. Thus, he submits sufficient materials has been placed on record by the plaintiff in justification of his claim of family possessing joint family properties, which the trial Court has lost sight of resulting in perverse judgment and decree requiring interference at the hands of this Court.

10.9 He relies upon the following judgments in support of his case:

- (1) AIR 1959 SC 906 - Mallappa Girimallappa Betgeri and others Vs R.Yellappagouda Patil and others
- (2) AIR 2013 SC 3525 -Rohit Chauhan Vs Surinder Singh and others
- (3) AIR 2003 SC 3800 - D.S.Lakshmaiah and anr Vs L.Balasubramanyam and anr
- (4) AIR 2017 SC 4465 Adivappa and others Vs Bhimappa and anr
- (5) AIR 1965 SC 289 - K.V.Narayanaswami Iyer Vs K.V.Ramakrishna Iyer and others
- (6) 2024(2) KCCR 1401 - D.S.Sundarshan Vs N.Shanthi
- (7) AIR 2017 SC 2596 - Satyavati Ramprasad Ruia Vs New India Assurance Co. Ltd.,
- (8) (2013) AIR SCW 3444 - V.K.Surendra Vs V.K.Thimmaiah and others
- (9) 2007(3) KCCR 2107 - Puttanna Shetty (deceased) by LRs and others Vs Padma Shetty (deceased) by LRs and others

(10) ILR 2008 Kar 3500 - M.Ethiraj Vs Smt.Farida Khanum

(11) AIR 1971 SCC 1542, Chikkam Koreswara Rao vs Chikkam Subbarao and ors

11. Sri.Rajesh Mahale, learned Senior counsel along with Sri.Ramesh Chandra, learned counsel for defendants justifying the dismissal of the suit of the plaintiff in respect to schedule 'A to I' properties submitted:

11.1 That the very basis of the suit of the plaintiff is the partition deed dated 21.11.1962 and the plaintiff has tried to improve upon his case after its dismissal. He submits none of the properties which are subject matter of the suit finds mention in the said partition deed except Item No.I of the suit schedule properties which is sold to defendant No.13.

11.2 That the defendant No.1 being the absolute owner of the suit schedule properties had every right to deal with the same, which he did by executing deeds of gift and Will conveying Item Nos.D and K respectively of the suit schedule properties.

11.3 That the sale deeds that were executed in favour of defendant Nos.4 and 5 on 04.07.1998 in respect of item Nos.B and C are legal, valid and subsisting as same were purchased by defendants 4 and 5 out of their own earnings.

11.4 Defendant No.1 sold item No.E to defendant No.12 and Item No.I to defendant No.13.

11.5 That though it is contended that defendant No.1 was suffering from illness affecting his mental faculty, no application seeking appointment of next friend as contemplated under the provisions of Order XXXII of CPC was filed.

11.6 That PW1 in his cross-examination has categorically admitted that he is not aware of the survey numbers of the lands held by his grandfather. That his father did not have any land other than the two items of the lands left behind by his grandfather at Morasanapalli and Nadeempalli. That land situated at Morasanappalli were not included in the partition. As the said lands, were disposed of.

11.7 He further points out to the deposition recorded on 24.07.2006 to submit that plaintiff has admitted that Triveni Mini Bazaar was his own business and not the joint family business. That land situated at Nadeempalli was measuring only 6 guntas and that he is not aware of the lands acquired by the grandfather during his lifetime.

11.8 That the plaintiff himself has admitted to the fact of division of the family during the year 1978. That he had obtained the lease deed in respect of Triveni Mini Bazaar in his individual name and he had invested his own funds in the said business.

11.9 That the plaintiff himself had admitted to have acquired four residential sites in his name and in the name of his wife from and out of the proceeds generated from the said Triveni Mini-bazaar which he has not included in the plaint.

11.10 The plaintiff has admitted to the fact of defendant No.2 having started his own business in the name and style of Karthik and Company in the year 1988 dealing with the business of barbed wire and bending wire. That the plaintiff himself has admitted to the fact of defendant being assessed to be income tax in his individual capacity.

11.11 Thus, referring to the said pleading and deposition of PW1, learned Senior counsel insists that even according to the plaintiff, there existed no joint family properties or the joint family nucleus sufficient enough to acquire the suit schedule properties.

11.12 As regards the additional evidence led in by plaintiff as per ExP39 and P40, he submitted that though this Court had shown indulgence permitting the plaintiff to produce additional document, the plaintiff had not satisfied the requirement of Order XLI Rule 27 CPC. The plaintiff in the deposition has admitted availability of said document even at the time of filing of the suit and he having informed his counsel yet he had not taken care to produce the said document which he has introduced at this belated stage. In any event the said documents are not admissible. That mere marking of the document is not

sufficient to accept the contents of said documents. A document obtained under the Right to Information Act do not qualify the requirement of Section 65F of the Evidence Act. Even if the said documents are taken on the face value, they do not better the case of the plaintiff inasmuch as even according to the plaintiff, the properties mentioned in Exhibit P39 are the properties acquired by their grandfather. Such a position of law, according to the learned Senior counsel is, property inherited from the grandfather would fall within the purview of Section 8 of the Hindu Succession Act. And the grandson being excluded from the class 1 heir, as such the plaintiff cannot claim to be the co-parcener. Therefore, production of additional documents as evidenced at Exhibit P39 is of no avail.

11.13 That the purported statement made by the plaintiff and defendant No.1 before the Tribunal, Andhra Pradesh do not carry any evidentiary value as statement made to avoid any consequences by rigor of then prevailing law cannot be used as a substantive piece of evidence. Therefore, even if the additional documents and evidence is led by the plaintiff are accepted, his claim of suit schedule properties being the joint family properties has remained unjustified.

11.14 He relies upon the following judgments in support of his case:

1. AIR 1986 SC 1753 - Commissioner of Wealth Tax, Kanpur, etc. etc., Vs Chander Sen etc.

2. AIR 2003 SC 3800 - D.S.Lakshmaiah and anr Vs L.Balasubramanyam and anr
3. (2004) 11 SCC 320 - P.S.Sairam and anr Vs P.S.Rama Rao Pissey and others
4. Documentary Evidence -Admissibility - Kumarpal N. Shah (since deceased) through L.Rs Mrs.Taunbala Kumarpal Shah and others Vs Universal Mechanical Works Pvt. Ltd., Mumbai and others - (2020) 1 Mh.L.J 442
5. 2010 SCC Online AP 350 - Bhaskar Rao Vs K.A.Rama Rao
6. AIR 1995 Orissa 300 - Santanu Kumar Das and others Vs Bairagi Charan Das and others
7. ILR 1998 Kar 681 - Sri.Tukaram Vs Sri.Sambhaji and others
8. ILR 2007 Kar 3216 - Mrs.Mallika and others Vs Mr.Chandrappa and others
9. Order dated 06.09.2021 in W.P.No.38760/2019 - Mr.B.Shankara Nayak Vs M/s.Pruthvi Builders and others
10. AIR 1968 SC 1276 - G.Narayana Raju(dead) by his LR appellatant Vs G.Chamaraju and others

12. Heard and perused the records.

13. Points for consideration are:

- "1. Whether the appellant/plaintiff has proved suit schedule properties are joint family properties?
2. Whether the appellant/plaintiff is entitled for 1/4th share as claimed?
3. Whether the defendants proves that item No.K of the suit schedule property is subject matter of deed of gift dated 12.11.2001 at Ex.D41?
4. Whether the trial Court is justified in granting 1/7th share to the plaintiff in item Nos.J and K of the suit schedule properties?"

DISCUSSION AND ANALYSIS:

14. Settled principle of law is that there can be a presumption of existence of a joint family, but there cannot be a presumption of existence of joint family property. Party who asserts existence of joint family property is required to discharge the burden by producing cogent material evidence in that regard. Anything short of it cannot be countenanced to hold the property claimed to be the joint family properties.

15. Apex Court in the case of ***Bhawat Sharan (dead through LRs.) Vs Purushotham and others*** reported in **(2020) 6 SCC 387** at paragraph 10, 11 has held as under:

"10. At the outset we may note that a lot of arguments were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered. The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in Bhagwan Dayal v. Reoti Devi [Bhagwan Dayal v. Reoti Devi, AIR 1962 SC 287] . Both the parties have placed reliance on this judgment. In this case, this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer [Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer, 1951 SCC 486 : 1951 SCR 603] , it held as follows : (SCC p. 491, para 10)

"10. ... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their

dealings with properties, would not give them the status of coparceners under the Mitakshara law."

11. The Privy Council in *Randhi Appalaswami v. Randhi Suryanarayanamurti* [Randhi Appalaswami v. Randhi Suryanarayanamurti, 1947 SCC OnLine PC 42 : ILR 1948 Mad 440] held as follows : (SCC OnLine PC)

"... The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."

The aforesaid view was accepted by this Court in Shrinivas Krishnarao Kango v. Narayan Devji Kango [Shrinivas Krishnarao Kango v. Narayan Devji Kango, (1955) 1 SCR 1 : AIR 1954 SC 379] ."

16. The perusal of plaint averments indicate that the plaintiff has based his claim on the partition deed dated 21.11.1962-Ex.P1. Admittedly, except item No.I of the suit schedule properties, no other items of the suit schedule properties form part of the said partition deed.

17. Item No. A of the suit schedule properties, which is a house property situated at Mathikere HMT layout, Bangalore, has been acquired by defendant No.1 in terms of deed of sale dated 06.10.1982 produced at Ex.D149. This also finds mention in Ex.P2 deed of Gift dated 29.10.1999 executed by defendant No.1 in favour of defendants 8 to 11.

18. Item No.B of the suit schedule properties is a commercial shop, business premises which is purchased by defendant No.1 in terms of deed of sale dated 04.07.1998 as per Exhibit D86.

19. Item No.C of the suit schedule properties is the business premises situated at City Market, Bangalore which is purchased by defendant No.1, in terms of deed of sale dated 09.01.1993, produced at Exhibit D113.

20. Item No.D of the suit schedule properties is agricultural land measuring 2 acres 18 1/2 cents forming part of Sy.No.165/5B, 165/3B and 166, 166/3B and 166/5B acquired by defendant No.1 in terms of mortgage deed dated 22.06.1951 and subsequent deed of sale dated 08.09.1961 produced at Exhibits D32 and 33.

21. Item No.E of suit schedule properties is additional land measuring 6.94 acres situated at Muddanapalli Village, Andhra Pradesh acquired by defendant No.1 as per affidavit produced at Ex.D35.

22. Item No.F of the suit properties is property bearing No.8/2 situated within BBMP limits purchased by defendant

No.4- Wife of defendant No.2 in terms of deed of sale dated 02.06.1994 from D. Govinda as per Ex.D82.

23. Item No.G of the suit schedule properties is purchased by defendant No.2 from one Santosh Kumar and others in terms of deed of sale dated 18.05.1994 produced at Ex.P31.

24. Item No.H of suit schedule properties bearing No.766 is purchased by defendant No.5-wife of defendant No.3 in terms of deed of sale dated 14.10.1996 as per Exhibit D92 from one Nataraju.

25. Item No.I of the suit property is stated to be a free site allotted by Gramapanjayat of Rallabuduguru in favour of defendant No.1. This suit property was acquired in terms of partition deed dated 21.11.1962-ExP1.

26. Item No.J of the suit schedule properties is self acquired property of defendant No.1. This property has been conveyed by defendant No.1 in favour of defendant No.7 in terms of deed of Gift dated 12.11.2001 produced at Ex.D41.

27. According to the plaintiff item No.D of the suit schedule properties corresponds to the property item No.37 of Ex.P1 (found at page 261 of Volume II of paper book).

28. Learned Senior counsel for the respondent vehemently submits that Item No.28 of the property found at Ex.P1 (at page 270 of Volume II of paper book) bearing Sy.Nos.165/1 and 166/5, falls within Morasanapalli and Nadeempalli Villages. Whereas suit item No.D falls within Rallabuduguru Village. The same are different and distinct.

29. As regards Item No.K of the suit schedule properties he submits the same do not tally with the description provided at item No.41 (Page 273 of paper book) at Ex.P1.

30. Though it is vehemently contended by plaintiff that item Nos.D, K and I of the suit schedule properties forms part of Ex.P1, necessary to note Ex.P1 refers to self acquired properties of defendant No.1 and his brother and there is no reference in said document as to the said properties being ancestral or joint family properties. Even if there is reference to said Item Nos.D, K and I of the said properties in Exhibit P1, nothing is brought on record to show that the same were acquired from and out of the joint family funds by the plaintiff.

31. As regards reliance placed on by the plaintiff to Exhibit D39 and D40, necessary to note, Item No.D of the suit schedule properties corresponds to item No.28 of Ex.P1 (page 270 of paper book) and item No.K of the suit schedule properties corresponds to item No.41 of Ex.P1 (page 273 of paper book).

32. It is necessary to note that admittedly Ex.D39 and D40 have to be read in conjunction with each other. A note at Page 172 of Exhibit D40 reads as under:

"The declarant has admitted during the enquiry that the lands shown above are held on conditional sales. In all the above conditional cases of sales, the declarant has not produced any documentary evidence to prove that the lands held on conditional sales have been given possession back to the original owner after receiving back the amount advanced to them as per the conditions of the sale agreement. If the declarant produces any documentary evidence before the Tribunal, the question of deleting these survey numbers from his holdings may be considered. The documents are stated to be not available with him. The party may kindly be ordered to produce the documentary evidence while enquiry by the Tribunal and such orders as deemed fit by the Tribunal may be passed. Record of enquiry is submitted herewith."

33. The aforesaid note as rightly pointed by learned Senior counsel indicate that the properties subject matter of Ex.P39 appears to be the properties which were held during the course of the business of finance which admittedly the father of defendant No.1 and his brother were carrying on. The said

properties apparently subject matter of conditional deeds of sale which were obtained by them from the borrowers of the loan during the course of their business. It is under these circumstances, the proceedings before the Tribunal appears to have been conducted regarding clarity as to the holding of their said lands. The aforesaid note further clarifies that if and when the documents were furnished by the declarant regarding they having given up the land, the said lands will be deleted from their names.

34. In the light of the aforesaid note and the circumstances of transaction referred to in Exhibit D39 and 40 there is nothing to indicate that the properties subject matter of these documents were indeed acquired by the father of defendant No.1.

35. Assuming, as rightfully pointed out by learned Senior counsel for defendants-respondent that the said properties were indeed acquired by the father of defendant No.1, the same would not become the joint family properties and the plaintiff being the grandson of the father of the defendant No.1 cannot claim any vested right over the said properties. Reference in this regard is made to the judgment of the Apex Court in the case of ***Commissioner of Wealth Tax, Kanpur***

Vs Chander Sen Etc., reported in ***AIR 1986 SC 1753,*** wherein the Apex Court, analysing the decisions of Madhya Pradesh High Court, Allahabad High Court, Andhra Pradesh High Court, Madras High Court as well as Gujarat High Court, has come to the conclusion that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class 1 of the Schedule and sons of son and son of son living would not get right over the same. Paragraphs 10 and 11 of the said judgment is extracted hereunder:

"10. The question here, is, whether the income or asset which a son inherits from his father when separated by partition the same should be assessed as income of the Hindu undivided family of son or his individual income. There is no dispute among the commentators on Hindu Law nor in the decisions of the Court that under the Hindu Law as it is, the son would inherit the same as karta of his own family. But the question, is, what is the effect of section 8 of the Hindu Succession Act, 1956? The Hindu Succession Act, 1956 lays down the general rules of succession in the case of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and class I of the Schedule provides that if there is a male heir of class I then upon the heirs mentioned in class I of the Schedule. Class I of the Schedule reads as follows:

"Son; daughter; widow; mother; son of a pre- deceased son; daughter of a predeceased son; son of a pre-deceased daughter, daughter of a pre- deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son."

11. The heirs mentioned in class I of the Schedule are son, daughter etc. including the son of a pre-deceased son but does not include specifically the grandson, being a son of a son living. Therefore, the short question, is, when the son as heir of class I of the Schedule inherits the property, does he do so in

his individual capacity or does he do so as karta of his own undivided family?"

36. Thus even if the properties described in the plaint are taken as the properties subject matter of Exhibit P1, it is clear that said properties are the self-acquired properties of defendant No.1 and there is no evidence placed on record to show that the same were acquired by defendant No.1 from and out of the joint family properties.

37. As already noted, the burden of proving existence of joint family property and the joint nucleus is on the party who asserts and in the instant case plaintiff though has claimed, has failed as rightly pointed out by learned counsel for the respondents and rightly taken note by the trial Court to establish this aspect of the matter.

38. The instrument under which suit schedule properties acquired by defendant No.1 indicate that the same were acquired on and after the year 1980, which is almost 20 years subsequent to Exhibit P1.

39. Plaintiff-PW1 himself has admitted that in the year 1978 there was a partition and he started his business of Triveni Mini-bazaar by investing his own funds on and after

1978. He has also admitted the fact that he had acquired four residential properties in his name and in the name of his wife and he has not included the same in the plaint. This clearly goes to indicate that there was a severance in the joint family. Pursuant to which the plaintiff himself had commenced his own business and acquired his own properties which he has consciously not included in the plaint.

40. In the absence of any cogent material evidence being produced by the plaintiff to justify his claim of suit properties being the joint family properties acquired from and out of the joint family income and in the light of unambiguous unequivocal admission on his part of he having his own business and acquiring the property in his name and in the name of his wife, it does not lie in the mouth of the plaintiff to contend that the suit schedule properties are the joint family properties and he having 1/4th share therein.

41. Defendants, as noted above, have produced the documents under which defendant No.1 had acquired the suit items of the properties which indicate the same to be his self acquired properties. Once this aspect of the matter is accepted, defendant No.1 has every right under law to deal with the same

in the manner he wishes and plaintiff cannot object to the same.

42. For the aforesaid reasons and analysis appeal filed by the appellant fails and same is dismissed confirming the Judgment and decree passed by the trial Court rejecting his claim.

43. As regards appeal filed by the defendant trial Court declined to accept the case of the defendants 2 and 3 as to they having acquired item No.K of the suit schedule properties in terms of deed of Gift 12.11.2001, merely because said document has come into existence. Trial Court has not taken into consideration deed of gift dated 12.11.2001 produced at Ex.D41 in terms of which defendant No.1 had conveyed item No.K of the suit properties in favour of grand daughter - Sanjana.

44. According to learned counsel for plaintiff item No.K of the suit schedule properties corresponding to item No.41 of Ex.P1 indicate portion allotted to defendant No.1 read as under:

41) In the same village a stone upstairs which is East of Rajaveedhi to the North of the house of 'A' schedule sharer- to the south of Rajabattar to the West of vacant

site of 'B' schedule sharer. To the stone upstairs. It is situated to the East of Rajaveedhi East to West 5 adis. North to South 21 Adis. In the Eastern Upstair one room on Eastern side East to West 10 Adas North to South 10 Adis again North to South 5½ Adis Eastern hall East to West 16 adis North to South 15 Adis Joint on the East. East to West 18 Adis North to South 5½ Adis. To the North wall of Battar East to West 45 ½ Adis North to South 5½ Adis through this lane water of 'A' schedule sharer and the water of Ramayya Setty and other water should flow. It bears the expenses of Maintenance. To this 'B' schedule sharer's vacant site and their tiled house two Ankanams. To the west of Chedubavi (well) Lane 'B' schedule vacant vataram South East to West 33½ Adis North to South 11 Adis. In this one Ankanam tiled house East Path way leading to Chadabavi. East to West Adas 3½ North to South 25½. 'A' and 'B' schedule sharers are having equal rights over the lane East Venkatesu vataram West to South A schedule vacant site North Verandah East to West 21 Adis North to South 7 Adis with one Ankanam tiled house Rajabhattachar's Mahadi on East to South, To the West of vataram of Venkatesu. In between 40½ North to South 14 ½ vacant vataram including To the East of 'A' schedule Angadi same to the South to the West of Rooms of Kerosine Oil - North of Rajaveedhi East to West 12½ adis - North to South 16 Adis including verandah the upstairs 'A' schedule person has a right.

45. Item No.K of suit schedule properties as described in the plaint reads as under:

"K" Schedule Property

Andhra Pradesh State Chittoor District, Santipuram Mandal, Rallabuduguru Village, Gandhi Street, House, Shop and site bearing assessment No.65 Door No.1-81 with the following measurement 544 Sq. ft and 147 sq. ft.

South by: House portion of late S. V. Lakshmaiah Setty

East by: Vacant Site of others

West by: Girappa Thota

North by: Road.

46. Thus, there is no similarity in the item No.K of the suit schedule properties with item No.41 of Ex.P1 as contended by learned counsel for plaintiff.

47. In any event properties described in Ex.P1 are self acquired properties of the defendant No.1.

48. Ex.D41 is the gift deed dated 12.11.2001 conveying item K of the suit schedule properties in favour of defendant No.7. Trial Court however has lost sight of this aspect of the matter and allotted 1/7th share to the plaintiff in this regard. If trial Court had taken this document into consideration and had read description of the property at item No.K of the suit schedule properties with item No.41 of Ex.P1 probably it would come to a different conclusion. To the said extent, appeal filed by defendants requires to be allowed.

49. As regards Will dated 01.12.1999, admittedly same is not proved in the manner known to law. Learned counsel for respondent submits that the decree passed granting 1/7th share to the plaintiff in item No.J of the suit properties be sustained.

50. Submission placed on record.

51. Points raised above answered accordingly.

Accordingly following:

ORDER

1. RFA No.197/2008 filed by plaintiff/appellant is dismissed.
2. RFA No.350/2008 filed by the defendants 3, 5 and 7 is partly allowed.
3. Judgment and decree dated 24.10.2007 passed in O.S.No.4136/2001 on the file of the XXXVIII Addl. City Civil and Sessions Judge, Bangalore, by the trial Court is modified.
4. Plaintiff is held entitled for 1/7th share only in respect of item No.J and not in Item No.K of the suit schedule properties.

**Sd/-
(M.G.S. KAMAL)
JUDGE**