



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 15726 OF 2022 (GM-CPC)

BETWEEN:

1. SMT. SHARADAMMA
D/O. LATE M. KEMPANNA,
W/O. RAJANNA,
AGED ABOUT 50 YEARS,
R/AT KURUBARAHALLI VILLAGE,
BENGALURU-560 066.
2. SRI. KEMPANNA
H/O. SUJATHAMMA,
AGED ABOUT 60 YEARS,
R/AT KURUBARAHALLI VILLAGE,
BENGALURU-560 066.
3. SMT. VIJAYA
D/O. LATE KEMPANNA,
W/O. NARAYANASWAMY,
AGED ABOUT 40 YEARS,
R/AT VIVEKNAGAR, BANGARPET-563 114.
4. SMT. VASANTHA
D/O. LATE KEMPANNA,
W/O. NAGESH,
AGED ABOUT 43 YEARS,
R/AT KENGERI UPANAGARA,
BENGALURU-560 060.
5. SMT. BYRAMMA
W/O. LATE KEMPANNA,
AGED ABOUT 74 YEARS,



6. SRI. MANI
S/O. LATE KEMPANNA,
AGED ABOUT 25 YEARS,
7. SRI. K. M. MAHADESH GOWDA
S/O. M. KEMPANNA,
AGED ABOUT 60 YEARS,
8. SMT. MALASHREE
W/O. MAHADESH GOWDA,
AGED ABOUT 55 YEARS,

PETITIONERS 5 TO 8 ARE
R/AT KUPPANAHALI VILLAGE,
KASABA HOBLI,
BANGARPET TALUK-563 114.

...PETITIONERS

(BY SRI. M.B. CHANDRACHOODA., ADVOCATE)

AND:

1. SRI. NARAYANASWAMY
S/O. LATE CHIKKANNA,
AGED ABOUT 59 YEARS,
2. SRI. VENKATESHAPPA
S/O. LATE CHIKKANNA,
AGED ABOUT 54 YEARS,
3. SRI. KRISHNAPPA
S/O. LATE CHIKKANNA,
AGED ABOUT 49 YEARS,
4. PARVATHAMMA
D/O. LATE CHIKKANNA,
AGED ABOUT 40 YEARS,
5. LAKSHMIDEVI
D/O. LATE CHIKKANNA,
AGED ABOUT 36 YEARS,
6. SMT. MUNIVENKATAMMA



W/O. VENKATARAMAPPA,
AGED ABOUT 59 YEARS,

7. SRI. MUNIYAPPA
S/O. DODDA KAKAPPA,
AGED ABOUT 54 YEARS,
8. SRI. NARAYANAPPA
S/O. DODDA KAKAPPA,
AGED ABOUT 47 YEARS,

RESPONDENTS NO.1 TO 8 ARE
R/AT KUPPANAHALLI VILLAGE,
KASABA HOBLI, BANGARPET TALUK-563 114.

9. MUNIRATHNAMMA
D/O. K.V.HANUMAPPA,
AGED ABOUT 64 YEARS,
R/AT HOSUR VILLAGE,
SULIKUNTE POST,
BANGARPET TALUK-563 114.
10. SRI. K.K.MUNIYAPPA
S/O. K.V.HANUMAPPA,
AGED ABOUT 69 YEARS,
11. SRI. MAGESHA
S/O. LATE KEMPANNA,
AGED ABOUT 39 YEARS,
12. SMT. BYRAMMA
W/O. M.KUPPANNA,
AGED ABOUT 60 YEARS,

RESPONDENTS 10 TO 12 ARE
R/AT KUPPANAHALLI VILLAGE,
KASABA HOBLI, BANGARPET TALUK-563 114.

13. THE SPECIAL LAND ACQUISITION OFFICER AND
COMPETENT AUTHORITY (CHENNAI EXPRESSWAY)
NATIONAL HIGHWAYS AUTHORITY OF INDIA,



HAVINGS ITS OFFICE AT NO. 678/3,
NEERUBHAVI KEMPANNA LAYOUT,
HEBBAL, BENGALURU-560 024.

...RESPONDENTS

(BY SRI. H.M.RAJASHEKARA., ADVOCATE FOR R7;
R1 TO 6, R8 TO 10 ARE SERVED AND UNREPRESENTED;
NOTICE TO R11 TO 13 IS D/W V/O DTD:14.09.2022)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DTD. 26.03.2018 PASSED IN O.S.NO. 59/2016 ON THE FILE
OF SENIOR CIVIL JUDGE AND PRINCIPAL JMFC, KGF, VIDE
ANNX-F.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 26.03.2018 passed on I.A.No.1/2016 filed under Order 39, Rule 7 of the Code of Civil Procedure, 1908, in O.S.No.59/2016 by the learned Senior Civil Judge & Principal JMFC, KGF [hereinafter referred to as the "Impugned Order"].

2. By the Impugned Order, the marking of a memorandum of partition which was sought by the petitioners/defendants was rejected by the learned Trial



Court, with a finding that the document sought to be marked as an Exhibit is a document that is inadmissible.

3. Learned counsel for the petitioners/defendants submits that the petitioner No.5/defendant No.1(e) had passed away on 24.01.2024. However, it is contended that the petitioner No.5's legal representatives are already on record. Thus, he submits that no further steps are necessary.

4. The service to respondent Nos.11 to 13 was dispensed with by order dated 14.09.2022. The report of the registry indicates that the remaining respondents have been served. None appears for the respondents, despite service.

5. This Court, by an order dated 14.09.2022, had directed stay of the proceedings before the learned Trial Court. Given the pendency of this matter and the stay of proceedings before the learned Trial Court for the last



several years, this Court deems it apposite to hear and decide the matter today.

6. During the course of examination-in-chief, the petitioners/defendants sought for marking of an unregistered Partition Deed dated 29.04.1991 as an Exhibit on their behalf. Learned counsel for the petitioners/defendants further submits that the document had been placed on record along with the list of documents filed by the defendants. However, the prayer for marking of this document was rejected by the learned Trial Court, giving a finding that since the Partition Deed dated 29.04.1991 is not a Memorandum of Partition, the same cannot be marked as an exhibit.

6.1. The learned counsel for the petitioners/defendants further submits that this document could have been marked as an evidence and relied upon for collateral purposes. In this regard, he seeks to rely upon a



judgment of the Supreme Court in the case of ***Sita Ram Bhama Vs. Ramvatar Bhama***¹.

7. The effect of non-registration of documents required to be registered, is set out in Section 49 of the Registration Act, 1908. A plain reading of the proviso to this provision sets out that an unregistered document can also be received in evidence for collateral purposes in the Court. It is apposite to set out the said provision along with its proviso as under:

"49. Effect of non-registration of documents required to be registered.-No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall –

(a)affect any immovable property comprised therein, or

(b)confer any power to adopt, or

(c)be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction

¹ AIR 2018 SC 3057



not required to be effected by registered instrument."

[Emphasis Supplied]

8. This issue of whether unregistered documents can be received as evidence is also no longer *res integra*. The Supreme Court has held in ***Sita Ram Bhama's case*** and in catena of judgments that an unstamped document/instrument is admissible in evidence for a collateral purpose. The relevant extract is below:

"10. **The only question which needs to be considered in the present case is as to whether document dated 09.09.1994 could have been accepted** by the trial court in evidence or trial court has rightly held said document inadmissible. The plaintiff **claimed the document dated 09.09.1994 as memorandum of family settlement.** Plaintiff's case is that earlier the partition took place in the life time of the father of the parties on 25.10.1992 which was recorded **as memorandum of family settlement on 09.09.1994.** There are more than one reasons due to which we are of the View that the document dated 09.09.1994 **was not mere memorandum of family settlement rather a family settlement itself.** Firstly, on 25.10.1992, the father of the parties was himself owner of both, the residence and shop being self acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a Will, so that father could have made Will in favour of his two sons, plaintiff and defendant. Neither the plaintiff nor defendant had any share in the property on the day when it is said to have been partitioned by



Devi Dutt Verma. Devi Dutt Verma died on 10.09.1993. After his death plaintiff, defendant and their mother as well as sisters become the legal heirs under Hindu Succession Act, 1955 inheriting the property being a class I heir. document dated 09.09.1994 divided the entire property between plaintiff and defendant which document is also claimed to be signed by their mother as well as the sisters. **In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, courts below are right in their conclusion that there being relinquishment, the document dated 09.09.1994 was compulsorily registrable under Section 17 of the Registration Act.**

11. **Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the** judgment of this Court in Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119: (AIR 1976 SC 807) The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11:

"10. In other words to put the binding effect and the essentials of a family settlement in a **concretised form, the matter may be reduced** into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) **The family arrangement may be even oral** in which case no registration is necessary;



(4) **It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.** Here also, a distinction should be made between a document containing the terms and recitals of a **family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation.** In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the **mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;**

(5) The members who may be parties the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bonafide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement;

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council Courts and other High Courts, which we shall discuss presently."

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13. There is only one aspect of the matter which needs consideration, i.e., whether the document dated 09.09.1994 which was inadmissible in evidence could have been used for any collateral purpose. **In a suit for partition, an unregistered document can be relied upon for collateral purpose, i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. Further, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded.** A two-Judge Bench judgment of this Court in Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others:(2015)16 SCC 787...”

[Emphasis Supplied]

9. A perusal of the Impugned Order shows that the Impugned Order is in two parts. In the first part of the Impugned Order, the learned Trial Court after examining the document gives its finding on the effect of the document that it is not a memo of partition. Paragraphs 3 and 4 in this behalf are extracted below:

"3. The document produced by the defendants is said to be a memorandum of partition, **but if the documents is perused carefully it clearly shows that it is not** a memorandum of partition, whereas the document itself shows that the list of 'H' Schedule properties of the alleged partition deed has been typed on a stamp paper and the parties have put their signature and thumb impressions on the said document, **it is well established principle of law that the memorandum of partition is a document which reduces into writing about the past partition already effected between the members of the**



family orally, whereas there is nothing in the document produced by the defendants to show that an oral partition was effected between the members of the family which is being reduced into writing under the aforesaid document.

4. On the other hand, if the contentions urged by the defendants in para-22 of the written statement is perused, *the defendants have specifically contended that in pursuance of partition deed dated 29/04/1991 all the revenue entries have been changed in favour of the first defendant Sri.M. Kempanna, therefore, it is clear that the partition was effect* between the members of the family under the partition deed dated 29/04/1991, hence, the document in question produced by the defendants cannot be considered as a memorandum of partition.”

[Emphasis Supplied]

9.1. In the second part of the Impugned Order, the learned Trial Court holds that principles laid down by the Coordinate bench of this Court in ***Lakshmaiah Vs. Smt.Sarojamma and another²***, by placing reliance on the judgment of the Supreme Court in ***Bondar Singh Vs. Nihal Singh³*** are not applicable and that the document cannot be marked as an exhibit. The Impugned Order further sets out that the document sought to be produced has been produced to prove the

² 2003 SCC OnLine Kar 392

³ (2003) 4 SCC 161



fact that 'H' schedule properties are allotted to the first defendant. The learned Trial Court has also given a finding distinguishing between a 'Partition Deed' and a 'Memorandum of Partition'. The relevant extract is below:

*"5. So in far as marking of said documents is concern the learned counsel of defendants relief upon a decision reported in **ILR 2003 KAR 2253** wherein, it is held in the following*

"Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land".

*The principles laid down in the aforesaid decision with due respect are not applicable to the case on hand, since it was a case where an unregistered sale deed was held to be admissible for collateral purposes to prove the nature of possession, **but in this case the defendants are trying to mark the aforesaid document to prove the fact that the 'H' schedule properties are allotted to the first defendant under the partition deed, therefore the defendants can very well produce the partition deed dated 29/04/1991 itself before the Court, hence, the document in question is not a memorandum of partition as contended by the learned counsel for defendants and the same cannot be marked as an exhibit.** Accordingly, I proceed to pass the following:*

[Emphasis Supplied]



10. The Supreme Court in the case of ***P.Anjanappa (D) by LRs. Vs. A.P.Nanjundappa***⁴ has held that even though a deed of partition has been executed between the parties, the same does not require for registration or stamping if it has only been used for collateral purposes. It has further been held that if such document were to be regarded as a family settlement, usually these are upheld by the Courts. Where the execution is admitted, usually the Court should not ask for additional formalities. Even if a document is an unregistered partition deed, the same may be relied upon for proving severance of status of the joint family and explaining the nature of possession. It is apposite to set out the relevant extract of the ***P.Anjanappa's*** case below:

"7.6. Turning to Ex.D-16 (14.09.1967), it is a registered deed by which defendant no. 3 relinquished all his rights, title and interest in favour of the father and the then coparceners, and contemporaneously received seven items of property. Execution was admitted in the pleadings; defendant no. 3 entered the box and accepted the deed; and the instrument was exhibited. The courts below treated Ex.D-16 with unwarranted scepticism. The Trial

⁴ 2025 SCC Online SC 2358



Court discounted it, broadly on "not acted upon" and recital-based reasoning. **The High Court, while accepting that the deed partook the character of an instrument of partition for stamp purposes, declined to give effect to it on the footing that proper valuation and stamp duty were not demonstrated and that, in any case, it had not been acted upon.** That approach is unsustainable for multiple reasons.

7.7. **Firstly, the deed is registered and was admitted in evidence; no timely, specific objection on stamp duty was pressed to a logical conclusion at the stage of marking, and the instrument having been received in evidence,** its admissibility on that score cannot be re-agitated at the appellate stage. **Secondly, even if one were to regard Ex.D-16 through the lens of a family arrangement, the law leans strongly in favour of upholding such settlements among close relations where consideration has passed and possession has followed.** Here, there is both consideration and unequivocal admission of execution. **Thirdly, the "acted upon" objection is misplaced on the facts and in principle.** The record shows consistent, post-1967 conduct aligning with the break-away of defendant no. 3: he did not assert coparcenary incidents thereafter; the subsequent family arrangement of 11.02.1972 proceeded between plaintiff no. 1 and defendant no. 5; and the revenue course and dealings which we shall discuss while considering the palupatti are plainly inconsistent with defendant no. 3 continuing as a coparcener. **Where execution is admitted, consideration is shown, and later conduct corroborates severance, courts ought not to defeat a registered relinquishment by demanding proof of superadded formalities.**

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8.1. **The plaintiffs deny that there was any partition or disruption of the joint family and contend that the writing described as the palupatti is an unregistered partition deed that cannot be looked at for any purpose. Defendant no. 5 asserts that Ex.D-17 records a**



family arrangement which contains an unequivocal declaration of severance of status between plaintiff no. 1 and defendant no. 5 after the earlier releases by plaintiff no. 2 and defendant no. 3, that the arrangement was acted upon in fact, and that even if it is unregistered it is admissible for the limited collateral purposes of proving disruption of joint status and explaining the nature of subsequent possession and enjoyment.

8.2. An unregistered partition deed, including the palupatti in the present case, may be relied upon for the limited collateral purposes of proving severance of the joint family status and title, explaining the nature of possession, recording the arrangement made thereunder, and evidencing the parties' subsequent conduct as was observed by this Court in various judgments such as Sita Ram Bhama v. Ramvatar Bhama, Yellapu Uma Maheswari v. Buddha Jagadheeswararao and K.G. Shivalingappa v. G.S. Eswarappa. The same has been clearly expounded by this Court in Thulasidhara v. Narayanappa in the following paras:

"9.4. It is required to be noted that the deed dated 23-4-1971, under which the suit property had gone/devolved in favour of Krishnappa, was reduced in writing before the panchayat and panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Ext. D-4, on considering the entire evidence on record and even the deposition of the plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. **He has also admitted that he has got the share which tallies with the document dated 23-4-1971 (Ext. D-4).** Execution of the document/partition deed/Palupatta dated 23-4-1971 has been established and proved by examining different witnesses. **The High Court has refused to look into the said document**



and/or consider document dated 23-4-1971 (Ext. D-4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in Kale [Kale v. Director of consolidation, (1976) 3 SCC 119] that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in S. Shanmugam Pillai v. K. Shanmugam Pillai [S. Shanmugam Pillai v. K. Shanmugam Pillai, (1973) 2 SCC 312] in which it was observed as under: (S. Shanmugam Pillai case [S. Shanmugam Pillai v. K. Shanmugam Pillai, (1973) 2 SCC 312], SCC pp. 319 & 321, paras 13 & 22)

"13. Equitable, principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

22. As observed by this Court in T.V.R. Subbu Chetty's Family Charities case [T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar, 1961 SCC OnLine SC 142 : AIR 1961 SC 797], that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."



9.5. As held by this Court in Subraya M.N. [Subraya M.N. v. Vittala M.N., (2016) 8 SCC 705 : (2016) 4 SCC (Civ) 163] **even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing.** Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Ext. D-4 dated 23-4-1971.”

[Emphasis Supplied]

11. This Court has examined the translated copy of the deed of partition. The document sets out that a partition was effected on 29.04.1991 between the children of Venkataramanappa who are; (i) Chinnappa through his daughter Lakshmamma; (ii) Doddakakappa; (iii)



Chikkakakappa through his daughter Munivenkatamma;
(iv) K.V.Hanumegowda through his daughter K.H.
Munirathnamma; (v) Chikkanna; (vi) Muniyappa; (vii)
Appajigowda; and (viii) M.Kempanna. It further states
that there are eight persons who have executed the
documents and that Kempanna's share is described in the
'H' schedule to this deed.

12. The defendant No.2 has averred in his evidence that
after the death of Sri.K.V.Hanumappa, the property was
partitioned and divided into eight shares by a partition
deed dated 29.05.1991. It further states that partition
deed has already been acted upon and in pursuance
thereof, defendants were in exclusive possession and
enjoyment of the property under the partition. In
addition, it is stated that the first defendant had falsely
been contending that the property belongs to the
plaintiffs. The relevant extract of the affidavit dated
27.11.2017 is below:



"3. I further swear that, subsequent to the death of Sri. K.V. Hanumappa, the above said properties were partitioned between Smt.Lakshamma, Dlo Chennappa, Dodda Kakappa, Smt. Munivenkatamma, Smt. K.H Munirathnamma, Chikkanna, M.Kempanna, K. Appaji Gowda and K.K Muniyappa vide Partition Deed dated 29-04-1991 and the above said property was divided into 8 shares and that the 1st Defendant Sri Kempanna had got 'H' schedule property being the 8th schedule and that the following properties had fallen to the share of the Sri. M.Kempanna vide Partition Deed dated 29-04-1991, situate at Kuppanahalli Kasaba Hobli, Bangarpet Taluk and the same is detailed hereunder:

a. Wet land bearing Survey No.24/1, measuring 3 acres, 22 guntas out of which 15 guntas, comprising of borewell and the said property is bounded on the East by: Kare Katte, West by: Property of M.S.Anand, North by:Survey No.80 belonging to Defendant No.1 and South by: Property of Chikkanna and that the Defendants are cultivating seasonal crops thereon over the said property.

b. Survey No.4/1A, measuring 1 acre, 29 guntas, comprising of Eucalyptus Trees and the same is bounded on the East by: Kare Angala, West by: Narayanappa and Kempanna's property, North by: Guiappa's property and South by: Appaji Gowda's property and the said Appaji Gowda, being the Grandson of Sanjeevappa and that the Defendants had cut and removed the said Eucalyptus Trees Four times and there is standing Eucalyptus Trees for Cutting.

c. Survey No 68/2, measuring 1 acre, 10 guntas, out of which 4 guntas comprising of 3 tamarind trees and the said property is bounded on the East by: Munirathnamma's property West by:Munivenkatamma's property, North by: Lakshamma's property and South by: Thoti Inamthi property and that the Defendants have entered into a lease of Tamarind Trees



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d. Wet land bearing Survey No.80. measuring 6 acres, 26 guntas, out of which 39 guntas, and the said property is bounded on the East by: Kare Angala, West by: M.S. Anand, North by: Survey No.24/1 of Defendant No. 1 and South by: Chandrappa's property.

e. Survey No. 80, measuring 6 acres, 26 guntas, out of which 2 guntas. and the said property is bounded on the East by: M.S. Anand, West by: M.S. Anand, North by: Road, and South by: M.S. Anand and the said property comprises of Mangalore Tiled Roofed House, Measuring East to West: 22 feet and North to South: 16 feet and the Door of the House is facing on the Western side.

f. Wet land bearing Survey No. 104, measuring 1 acre, 7 guntas, out of which 4 guntas, and the said property is bounded on the East by: Government land, West by: Road and K.H. Munirathamma's land, North by: Road and South by: Property of Defendant No.1 Sri. M Kempanna, Measuring 39 guntas.

g. Survey No. 101, measuring 3 acres, 33 guntas, comprising of Eucalyptus trees and the said property is bounded on the East by: Shankar's land, West by:Smt. Byramma's land, having got under Gift Deed dated 03-07-2007, North by: Narayanappa's land and South by: K.V. Veeranna's property.

h. Survey No. 102. measuring 5 acres, 22 guntas, comprising of 3 acres of Mango groove and the Horticulture Department had already given subsidy for Mango Groove and the said property is bounded on the East by: Mahadesh Gowda (Defendant No.2), West by: Chandrappa property, North by: Appanna property and South by: Kare Angala and that the Defendants are cultivating in remaining 2 acres of land.

i. House property comprising of Asbestos Sheets, measuring East to West: 19 feet and North to



South: 34 feet with a right of 3 feet on the western side for ingress and egress, bearing Khatha No.4, and the same is bounded on the East by: Kaluve, West by: 3 feet space and thereafter property of K.K. Muniyappa, North by: Road and South by: Munivenkatamma House and Road.

j. House property comprising of Stone Roofed Molding, measuring East to West: 100 feet and North to South: 30 feet, bearing Khatha No.68, and the same is bounded on the East by: Kunte, West by: Munivenkatamma property, North by: Kuppanahalli Government Higher Primary School and South by: Munivenkatamma's House and Road and the said property had been given to the said school by the 1st Defendant Sri. M. Kempanna and the same is in Possession of the School Authorities and the School Buildings are existing.

k. The said Partition also comprises of Hakkudhari Trees subject to Partition Deed dated 29-04-1991.

i. Old dilapidated Tractor now already sold by the 1st Defendant Sri.M.Kempanna.

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5. I further swear **that in pursuance of Partition Deed dated 29-04-1991, all the Relevant Entries has** been changed in favour of the 1st Defendant Sri.M. Kempanna vide mutation proceedings bearing No.31/94-95 and all the Relevant Documents stood in the name of the 1st Defendant in respect of the above said properties and the entries in the name of the Defendants are well within the knowledge of the **Plaintiffs and Plaintiffs are estopped from contending otherwise and plead ignorance in respect of the entries standing in the name of the Defendants.**

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7. I further swear that the **Plaintiffs and the persons mentioned above are the signatories to the partition Deed dated 29-04-1991 and the said Partition Deed had already been acted upon and in**



pursuance of the partition, Defendants have been in exclusive possession and enjoyment of the properties got under Partition, as stated supra and that the Plaintiffs, even though are aware of the said Partition Deed dated 29-04-1991 between the Plaintiffs and 1st Defendant Sri. M. Kempanna in order to play fraud on Defendants had falsely contending that the property belongs to Plaintiffs and Plaintiffs are having a right over the property belonging to Defendants.”

[Emphasis Supplied]

13. This document thus has been only relied upon not to prove a partition but to establish that a partition had already been taken place and that, in pursuance of the said partition, the shares of the parties had already been distributed. This document thus appears to be a document that has recorded a family arrangement, as has been set out in **P.Anjanappa's** case. Such examination will however have to be undertaken by the learned Trial Court at the time of hearing the matter. Given the settled law, even though this unregistered document cannot be accepted as substantive evidence, it can be marked for collateral purposes.

14. In view of the foregoing, the petition is **allowed**. The order dated 26.03.2018 passed on I.A.No.1/2016



filed under Order 39 Rule 7 of the Code of Civil Procedure, 1908, in O.S.No.59/2016 by the learned Senior Civil Judge & Principal JMFC, KGF, is set aside.

15. The petitioners/defendants are permitted to mark the deed of partition as an exhibit and rely upon the same for collateral purposes.

16. It is clarified that all rights and contentions of both parties are left open to be agitated before the learned Trial Court.

(TARA VITASTA GANJU)
JUDGE

BMV/YN
List No.: 2 Sl No.: 1