



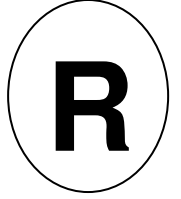
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 1028 OF 2011 (PAR)



BETWEEN:

1. SRI. K.G. VENKATARAMANASA
SINCE DECEASED BY LRS
- 1(A) SMT. PARVATHAMMA
D/O VENKATARAMANASA .K.G
W/O P. NARAYANA
NO. K 69, 6TH CROSS
MAGADI ROAD, BANGALORE-560023.
- 1(B) SRI. K.V. CHANDRAHASA
S/O VENKATARAMANASA .K.G
MAJOR
#20, 1ST A CROSS, 2ND MAIN ROAD
SUBBANNA GARDEN, VIJAYANAGAR
BANGALORE - 560 040.
- 1(C) SRI. K.V. SRI HARI
S/O VENKATARAMANASA .K.G
SINCE DECEASED BY LRS
- 1(C)(A) SMT. PRABHAVATHI
W/O LATE K.V.SRI HARI
AGED ABOUT 62 YEARS
- 1(C)(B) SRI. LAKSHMINARAYANA .K.S
S/O LATE K.V.SRI HARI
AGED ABOUT 37 YEARS
- 1(C)(C) SRI. HEMANTH KUMAR .K.S
S/O LATE K.V.SRI HARI





AGED ABOUT 35 YEARS

- 1(C)(D) SRI. KIRANKUMAR .K.S
S/O LATE K.V.SRI HARI
AGED ABOUT 32 YEARS

ALL ARE RESIDING AT NO.3
1ST MAIN ROAD, MALLIGE THOTA
MAGADI ROAD
BANGALORE-560 023.

- 1(D) MRS. LAXMIDEVI
W/O LATE VENKATARAMANASA .K.G
AGED MAJOR
R/OF NO.6/5, 6TH CROSS
NEAR CHAITANYA COMMUNICATION
MAGADI ROAD, BANGALORE-560 023.

- 1(E) SRI. K.V. GURU GOVIND
S/O LATE VENKATARAMANASA .K.G
AGED MAJOR
R/OF NO.6/5, 6TH CROSS
NEAR CHAITANYA COMMUNICATION
MAGADI ROAD, BANGALORE-560 023.

- 1(F) SMT. KAMALA .K.V
D/O LATE SRI VENKATARAMANASA .K.G
MAJOR
#6/5, 6TH CROSS, NEAR CAITANYA
COMMUNICATION, MAGADI ROAD
BANGALORE - 560 023.

2. SRI. K.G. VITTALASA
S/O CHIKKA GOVINDASA KABADI
SINCE DECEASED BY LRS

- 2(A) SMT. K.V. MANJULA
W/O VASANTHKUMAR
AGED 40 YEARS
D. NO.72/1, 2ND MAIN ROAD
DOBHIGHAT, SRINAGAR



BANGALORE - 560019.

2(B) SMT. M.P. NAGALAKSHMI
W/O M.S. PANDURANGASA
SINCE DECEASED BY LR_s

2(B)(A) SRI. M.S. PANDURANGA
S/O LATE M. SHAMUSA
AGED ABOUT 60 YEARS

2(B)(B) SRI. MITHUN .M.P
S/O LATE NAGALAKSHMI
AGED ABOUT 26 YEARS

2(B)(C) KUMARI SHRUTHI .M.P
D/O LATE NAGALAKSHMI
AGED ABOUT 19 YEARS

R/AT NO.6, A.M.LANE
B.V.K. IYENGAR ROAD
CHIKKAPETE CROSS
BANGALORE-560 053.

2(C) SMT. D.V. GEETHA @ ASHA
W/O D.L. VIKAS
AGED 43 YEARS
NO.4, 5TH CROSS, KILARI ROAD
BANGALORE-560 053.

2(D) SRI. K.V. GOVINDA
AGED 37 YEARS
S/O K.G. VITTALSA
NO.51, 1ST MAIN ROAD
3RD CROSS, GANGAPPA GARDEN
K.P. AGRAHARA, BANGALORE.

2(E) SRI. K.V. KRISHNASA
AGED 46 YEARS
S/O LATE K.G. VITTALASA
NO.65/4, 1ST CROSS, KAVERIPURA
KAMAKSHIPALYA, BANGALORE-560 079.



- 2(F) SRI. K.V. CHANDRASHEKAR
AGED 42 YEARS
S/O LATE K.G. VITTALSA
NO.50, 6TH CROSS, 3RD MAIN
K.P. AGRAHARA
BANGALORE-560 023.
- 2(G) SRI. K.V. SURYAPRAKASH
S/O LATE K.G. VITTALASA
MAJOR
NO.19/1, 22ND CROSS
K P AGRAHARA, BHUVANESHWARINAGAR
BANGALORE-560 023.
- 2(H) SMT. SARASWATHI BAI
AGED 53 YEARS
D/O LATE K.G. VITTALASA
D NO.91, 24TH CROSS
MARIYAPPANAPALYA, K.P. AGRAHARA
BANGALORE-560 023.

...APPELLANTS

(BY SRI. N. VAGEESH, ADVOCATE FOR
SRI. A.RAMACHANDRA, ADVOCATE FOR LRS OF APPELLANT)

AND:

1. SRI K.V. HONNUSA
AGED 63 YEARS
S/O K.G. VENKOBSA
LABEL WORKER
R/OF NO.13, KEMPAPURA AGRAHARA
MAGADI ROAD
BANGALORE - 560023.
2. SRI. K.G. HONNUSA
S/O CHIKKA GOVINDASA KABADI
SINCE DEAD BY HIS LRS
- 2(A) SRI. DWARAKANATH H. KABADI
S/O K.G. HONNUSA



AGE MAJOR
R/AT SREE CHARAN, NO.80
5TH CROSS, 1ST MAIN ROAD
HIG BDA COLONY, II STAGE
RAJMAHL VILAS, BANGALORE-560094.

2(B) SRI. RAGHU H. KABADI
S/O LATE K.G. HONNUSA
AGED MAJOR
M/S MEENA AGARBATHI
#444, 3RD PHASE, 1ST BLOCK
NEAR KADAMBI SCHOOL
RAJAJINAGAR, BANGALORE 560079.

2(C) SRI. NANDA KUMAR H. KABADI
S/O LATE K.G. HONNUSA
SINCE DECEASED BY LRS
SMT. GOWRAMMA
W/O LATE NANDA KUMAR H. KABADI
MAJOR
R/AT NO.1053, 5TH MAIN ROAD
SANOJURUVANAHALLI
BASAVESHWARANAGAR
BANGALORE - 560079.

2(D) SRI. GOVINDA H. KABADI
S/O LATE K.G. HONNUSA
MAJOR
R/AT NO.2069, 20TH MAIN ROAD
II BLOCK, CHORD ROAD
RAJAJINAGAR, BANGALORE-560010.

2(E) SMT. PUSHPANJALI
W/O LAXMAN SIRIGIRI
GENERAL MERCHANT
3-5-1098/1, SPAN RESIDENCY
FLAT NO.201, II FLOOR
NARAYANAGUDA
SRI NIZAMAT JURG WAKF
HYDERABAD.



- 2(F) SMT. RAJESHWARI
W/O NAGARAJ
D/O K.G. HONNUSA
AGED MAJOR
R/AT NO.15, OLD NO.(8)
4TH CROSS, S.P. EXTENSION
MALLESHWARAM
BANGALORE - 560 003.
- 2(G) SMT. MEENA
D/O LATE K.G. HONNUSA
AGED MAJOR
R/AT NO.1030, DR. RAJKUMAR ROAD
II STAGE, OPP. CORPORATION BANK
RAJAJINAGAR, BANGALORE-560 010.
- 2(H) SMT. PADMA
W/O MACHENDRANATH VAGALE
D/O LATE K.G. HONNUSA
AGED MAJOR
R/AT 2069, 20TH MAIN ROAD
RAJAJINAGAR, BANGALORE - 560 010.
3. SRI. K.V. NARAYANASA
AGED 65 YEARS
S/O LATE VENKOBASA KABADI
R/AT KEMPAPURA AGRAHARA
KADAPPANAPALYA
BANGALORE-560 023.
4. SRI. K.V. LAKSHMANASA
SINCE DECEASED BY HIS LR'S
- 4(A) SMT. PREMA
AGED 55 YEARS
D/O LATE K.V. LAKSHMANASA
R/AT NO.61, 1ST A MAIN
22ND CROSS, K P AGRAHARA
BANGALORE - 560023.



- 4(B) SRI. K.L. SRINIVAS
S/O LATE K.V. LAKSHMANASA
R/AT NO.61, 1ST A MAIN ROAD
22ND CROSS, K P AGRAHARA
BANGALORE-560 023.
- 4(C) SRI. K.L. MAHESH
S/O LATE K.V. LAKSHMANASA
AGED ABOUT 30 YEARS
1ST A MAIN ROAD, 22ND CROSS
K.P. AGRAHARA
BANGALORE-560023.
5. SRI. JAGANNATHSA .K.V
S/O LATE VENKOBASA KABADI
AGED ABOUT 50 YEARS
NO.66, 5TH CROSS
CHOLARAPALYA, MAGADI ROAD
BANGALORE-560023.
6. SRI. SURYAPRAKASHA .K.V
S/O LATE VENKOBASA KABADI
AGED ABOUT 45 YEARS
R/AT NO.9/1, 10TH CROSS
MAGADI ROAD, BANGALORE-560023.
7. SRI. K.V. RAMU
S/O LATE VENKOBASA KABADI
AGED ABOUT 60 YEARS
NO.15, 5TH CROSS
VIDYARANYA NAGAR
MAGADI ROAD, BANGALORE-560023.
8. SRI. PARAMESHWARA
S/O LATE VENKOBASA KABADI
SINCE DEAD BY HIS LRs
- 8(A) SRI. SAVITHRI
W/O LATE PARAMESHWARA
AGED ABOUT 65 YEARS



8(B) SMT. SUNITHA
S/O LATE PARAMESHWARA
AGED ABOUT 38 YEARS

8(C) SMT. GEETHA
D/O LATE PARAMESHWARA
AGED ABOUT 36 YEARS
R/AT 245

8(D) SRI. SHIVA
S/O LATE PARAMESHWARA
AGED ABOUT 32 YEARS

8(E) SMT. SHOBA
D/O LATE PARAMESHWARA
AGED ABOUT 28 YEARS

8(F) SRI. KRISHNA
S/O LATE PARAMESHWARA
AGED ABOUT 33 YEARS

ALL ARE R/AT NO.17
RANGANTHAPURA, II CROSS
KAMAKSHIPALYA
BANGALORE-560 079.

9. SRI. K.V. GOPALASA
S/O LATE VENKOBASA KABADI
AGED ABOUT 72 YEARS
NO.10, 4TH CROSS
PURNASESHACHAR LANE
SANTHOSAPET, BANGALORE-560053.

10. SRI. K.V. CHIKKAHONNUSA
@ KRISHNASA
SINCE DECEASED
BY HIS LRS

SMT LEELAVATHI @ LEELABAI KABADI
W/O LATE CHIKKANONNUSA
@ KRISHNASA



R/AT RAVI TAILORS
KABOOTARAKHANA ZANDA BAZAR
B.K. ROUTH CHAWL
VASSAI-101201.

11. K.N. NAGARAJU
S/O LATE K.G. NARAYANASA
AGED ABOUT 65 YEARS
NO.265, HARIHARESHWARA DEVALAYA
AGRAHARA LAYOUT, YELAHANKA
BANGALORE NORTH TALUK.
12. SMT. RAJAMANI @ RUKMINI
W/O LATE K.M. NAGENDRASA
D/O LATE NARAYANASA KABADI
SINCE DEAD BY LR_s
- 12(A) SHEKAR
S/O LATE RAJAMANI
AGED ABOUT 45 YEARS
- 12(B) MURALI
S/O LATE RAJAMANI
AGED ABOUT 42 YEARS
- 12(C) ARUNA
S/O LATE RAJAMANI
AGED ABOUT 40 YEARS
R/AT NO.245, MUNESHWARA LAYOUT
BEL II STAGE, BYDARAHALLI
MAGADI MAIN ROAD
BANGALORE-560 091.
- 12(D) GURUNATH
S/O LATE RAJAMANI
AGED ABOUT 36 YEARS
- 12(E) SHOBA
D/O LATE RAJAMANI
AGED ABOUT 38 YEARS



- 12(F) LAKSHMI
D/O LATE RAJAMANI
AGED ABOUT 33 YEARS
- R12(A, B, D, E, F) ARE R/AT
NO.21, 'RAJAMANI NILAYA'
14TH CROSS, CHOLARAPALYA
MAGADI ROAD, BANGALORE-23.
13. SRI. K. KASHIVISHWANATHA
S/O LATE K.N. GOPALKRISHNA
AGED ABOUT 55 YEARS
NO.6, 3RD FLOOR
BEHIND KHELEEL BUIDINGS
P.S. CHAR STREET
BANGALORE-53.
14. SRI. G. MANJUNATH
S/O LATE K.N. GOPALKRISHNA
MAJOR
NO.771, 6TH CROSS, 6TH BLOCK
RAJAJINAGAR, BANGALORE-10.
15. SRI. G. RAMESH
S/O LATE K.N. GOPALKRISHNA
MAJOR
NO.4/15, 4TH CROSS
MANJUNATH NAGAR, MAGADI ROAD
BANGALORE-23.
16. SMT. SAVITHRI
SINCE DECEASED BY HER LRS
- SMT. VATSALA .T.V
D/O LATE SAVITHRI
AGED ABOUT 25 YEARS
R/O NO.K-30, PURNA SESHACHAR STREET
SANTHUSAPET
BANGALORE-560053.



- 16(II) SRI. T.V. SUMAN
D/O LATE SAVITHRI
AGED ABOUT 21 YEARS
R/O NO.K-30, PURNA SESHACHAR STREET
SANTHUSAPET
BANGALORE-560053.
- 16(III) SRI. T.V. SASHIREKHA
D/O LATE SAVITHRI
AGED ABOUT 19 YEARS
R/O NO.K-30, PURNA SESHACHAR STREET
SANTHUSAPET
BANGALORE-560053.
- 16(IV) SMT. UMADEVI .T.V
D/O LATE SAVITHRI
W/O CHETANKUMAR
AGED ABOUT 22 YEARS
R/AT 9TH A MAIN ROAD
HAMPINAGAR, BANGALORE-560104.
17. SMT. H.O. CHANDRAKANTHA
W/O H.R. RAJGOPAL
SINCE DEAD BY HER LRS
- 17(A) SRI. ANAND KUMAR
S/O H.R. RAJGOPAL
AGED ABOUT 35 YEARS
- 17(B) MOHANA
S/O H.R. RAJGOPAL
AGED ABOUT 25 YEARS
- 17(C) RAJESHWARI
D/O H.R. RAJGOPAL
AGED ABOUT 33 YEARS
- 17(D) REKHA
D/O H.R. RAJGOPAL
AGED ABOUT 30 YEARS



17(E) LATHA
D/O H.R. RAJGOPAL
AGED ABOUT 27 YEARS

R10(A TO E) ARE R/AT NO.1078/5
9TH MAIN, VIJAYANAGAR
BANGALORE.

[VIDE COURT ORDER CAUSE-TITLE
IS AMENDED]

...RESPONDENTS

(BY SRI. K.N. NITISH, ADVOCATE FOR R2 (A TO H);
SRI. S. NAGARAJ AND SRI. ARUN .B, ADVOCATES FOR
R11, R13 TO R15;
SRI. ANIL KUMAR SHETTY, ADVOCATE FOR R12(A TO F);
SRI. H.N.VENKATESH, ADVOCATE FOR R17(A TO E);
V/O DATED 22.03.2019, R3 IS DECEASED AND NO LRs
TO BE BROUGHT ON RECORD'
R1, R4(A), R4(B), R4(C), R5, R6, R7, R9, PROPOSED
R8(A), R8(B), R8(C), R8(D), R8(E), R8(F), R10(A),
R16(I TO IV) ARE SERVED)

THIS RFA IS FILED U/SEC.96, R/W, O-XLI, RULE-1(r) OF
CPC, AGAINST THE JUDGMENT AND DECREE DATED
18.09.2010 PASSED IN O.S.5734/1994 ON THE FILE OF THE
XXXVIII-ADDL. CITY CIVIL JUDGE, BANGALORE, DISMISSING
THE SUIT FOR THE PARTITION AND SEPARATE POSSESSION.

THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



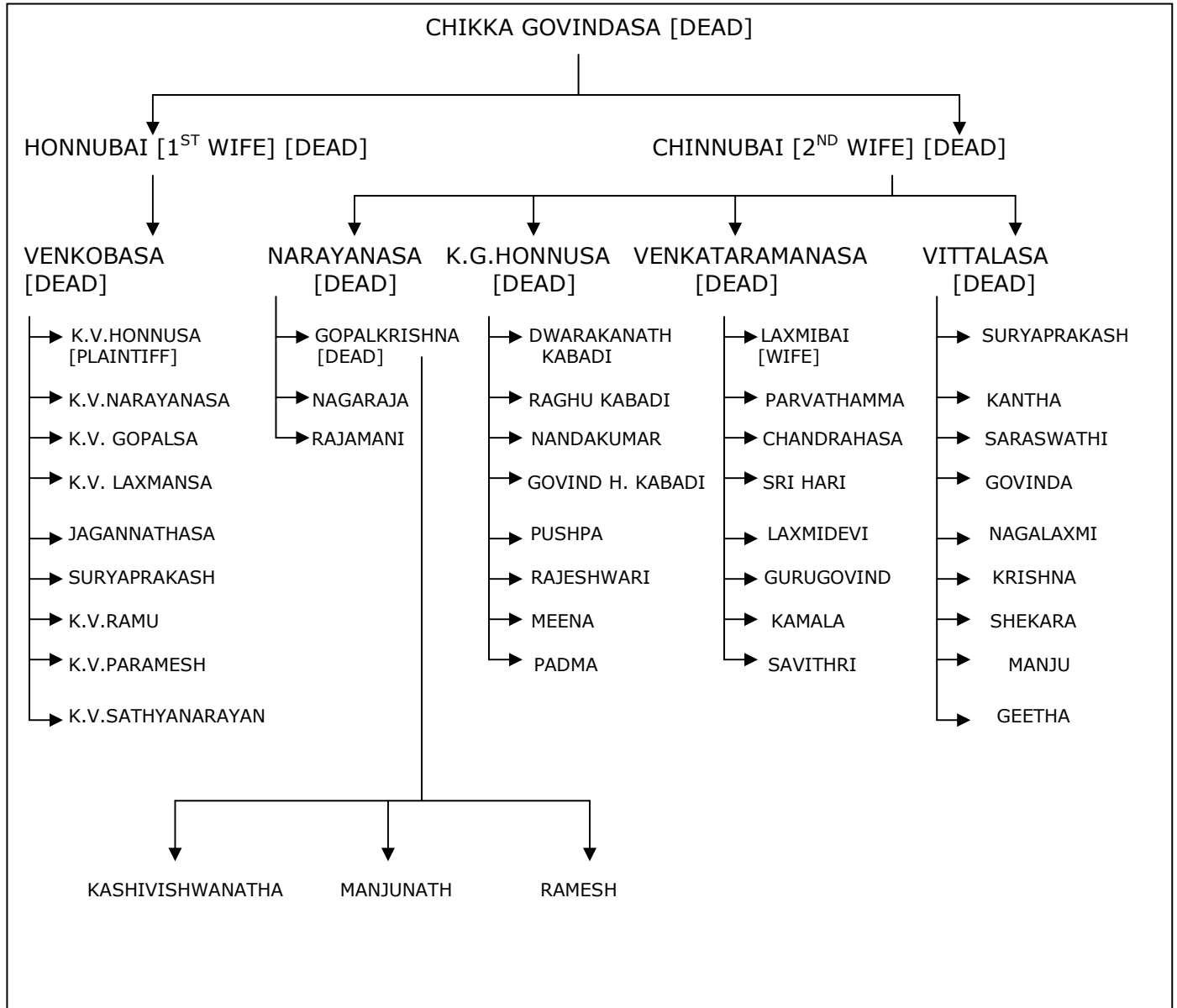
CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the defendant Nos.2 and 3 assailing the judgment and decree rendered in O.S.No.5734/1994, whereby the plaintiff's suit seeking relief of partition is rejected. Consequently, the claim of partition set up by defendant Nos.2 and 3 is also rejected. It is only defendant Nos.2 and 3 who are in appeal while plaintiff has accepted the dismissal decree rendered in O.S.No.5734/1994.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. The family tree is as under:



4. Facts leading to the case are as under:

The plaintiff namely K.V.Honnusa who is the first son of Venkobasa filed a partition suit asserting that suit



schedule properties namely Item Nos.1 to 15 are joint family ancestral properties and that they have legitimate share in the suit schedule properties. Asserting that these properties are joint family ancestral properties and plaintiff constitutes an undivided joint Hindu family with defendants, the present suit was instituted.

5. On receipt of summons, defendant No.1 filed written statement and seriously contested the plaintiff's claim asserting that Item Nos.6 to 15 are the self acquired properties and hence, sought for dismissal of the suit. Defendant Nos.2 and 3 filed written statement and contented that Item Nos.6 to 15 are also joint family ancestral properties and therefore, they have got their legitimate share in the property and hence, by way of a counter claim, claimed their legitimate share thereby virtually supporting the plaintiff's pleadings in the plaint. The daughter of defendant No.3 also filed written statement and sought her legitimate share in the suit schedule property.



6. Based on rival pleadings, the trial Court formulated appropriate issues. The learned trial Court Judge called upon the plaintiff and defendants to lead their respective oral and documentary evidence in support of their claims. The plaintiff examined himself as PW.1 and in all produced 96 documents marked as Exs.P-1 to P-96. Defendant Nos.2 and 3 in support of their contention lead in rebuttal evidence and sought their legitimate share in the suit schedule properties.

7. The trial Court, on over all appreciation of oral and documentary evidence, answered additional Issue No.1 in the affirmative and held that legal representatives of defendant No.1 have succeeded in substantiating that item Nos.4, 5 and 9 to 15 of the suit schedule properties are self acquired properties of deceased defendant No.1. While answering additional Issue No.2 in the affirmative held that father of plaintiff namely K.G. Venkobasa has taken some properties and executed registered release deed on 04.02.1934 and held that plaintiff is not entitled



for a share. While answering additional Issue No.3 in the affirmative also held that legal representatives of defendant Nos.1 to 3 and defendant No.2 have also substantiated that deceased K.G.Narayanasa has released his rights and interest over the suit schedule property.

8. Learned counsel appearing for defendant Nos.2 and 3 reiterating the grounds urged in the appeal memo would vehemently argue and contend that though defendant No.1 has asserted that item Nos.10 to 15 are self acquired properties, except bald assertion in the plaint, there is absolutely no clinching documentary evidence to substantiate the claim of defendant No.1 that Item Nos.10 to 15 are his self-acquired properties. Insofar as Item Nos.6 to 9 are concerned, the counsel appearing for defendant Nos.2 and 3 would point out that though the Revenue officer notified the Item Nos.6 to 9 as a pada land on the premise that the land revenue was not paid, he would point out that these properties are also ancestral properties and defendant No.1 having succeeded to



retrieve back these lands, defendant Nos.2 and 3 are entitled to their legitimate share in the suit schedule property. Reliance is placed on Exs.D-8, D-14 and D-22 in support of their contention.

9. The counsel appearing for defendant Nos.2 and 3 has also placed reliance on the following judgments:

1) Zaheera Banu Kareem vs. Gomathi Bai G.Kamath - ILR 1994 Kar 662;

2) Kashinathsa Yamosa Kabadi vs. Narsingsa Bhaskara Kabadi - AIR 1961 SC 1077;

3) Kashibai and Others vs. Smt. Putalabai and Another - AIR 1987 Kar 156;

4) Sri. Ramamurthy vs. The State of Karnataka and Others - W.P.No.31530/2024;

5) Smt. V.V.Ramani and Another vs. Smt. V.V.Hemalatha & Others - W.P.No.12403/2020.



10. Per contra, learned counsel appearing for the legal heirs of defendant No.1 has vehemently argued and contended that insofar as item Nos.6 to 8 are concerned, the said lands were lost in view of non-payment of land revenue which resulted in forfeiture and the lands stood vested with the State Government and the Government in turn treating these lands as surplus lands has granted to third parties and without impleading third parties and questioning the grant, the defendant Nos.2 and 3 cannot assert claim over Item Nos.6 to 8.

11. Insofar as Item No.9 is concerned bearing Sy.No.35, counsel appearing for the legal heirs of defendant No.1 has vehemently argued and contended that this land was also notified as a pada land in view of non-payment of land revenue to the government and the land stood vested with the Government. He would further contend that third party rights were created and that State has already granted the land in Item No.9 to one Kempaiah, who also turned out to be a defaulter and at



this juncture, after lapse of 27 years, defendant No.1 paid the land revenue arrears and the charge over Item No.9 was discharged. Therefore, he would submit that Item No.9 has to be treated as self acquired property of defendant No.1 and therefore, defendant Nos.2 and 3 cannot enforce partition in respect of Item No.9. He would further point out that as on the date the kathas were restored in the name of defendant No.1, all the brothers had already separated, there was complete severance, there was no joint family nucleus and therefore, restoration of katha in the name of defendant No.1 has to be construed as self-acquired property of defendant No.1 and therefore, defendant Nos.2 and 3 are not entitled for a share in Item No.9.

12. Insofar as Item Nos.10 to 15 are concerned, he would submit that except bald assertion by the plaintiff and defendant Nos.2 and 3, there is absolutely no material indicating that Item Nos.10 to 15 are also joint family ancestral properties. He would submit that it is trite that



the initial burden is always on the plaintiff and the co-defendants who are supporting plaintiff to demonstrate that a particular suit property is a joint family ancestral property. Except bald assertion, no documents are produced to demonstrate that Item Nos.10 to 15 are also joint family ancestral properties. He has also laid emphasis on the fact that defendant Nos.2 and 3, though set up a counter claim, have failed to pay court fee and therefore, there is legally no claim insofar as defendant Nos.2 and 3 are concerned and therefore, the defendant Nos.2 and 3 cannot maintain an appeal and insist for their legitimate share in the suit schedule property.

13. In support of his contention, he has placed reliance on the following judgments:

1) Muddasani Venkata Narasaiah (Dead) through LR's vs. Muddasani Sarojana - (2016) 12 SCC 288;

2) The Trading Corporation of India Limited, Bangalore vs. Vanivilas Co-operative Sugar Factory



Limited, Hiriur, Chitradurga District - 2001 SCC Online Kar 239;

3) Thulasidhara & Another vs. V.Narayanappa & Others - (2019) 6 SCC 409.

14. Having heard the learned counsel on record, this Court has given its anxious consideration to the pleadings averred by defendant Nos.2 and 3 and also the stand taken by the original defendant No.1 in the written statement. The following points would arise for consideration:

(i) Whether defendant Nos.2 and 3 have succeeded in substantiating that Item Nos.6 to 15 are joint family ancestral properties?

(ii) Whether trial Court erred in dismissing the counter claim on the ground that Item Nos.6 to 15 are self acquired properties of defendant No.1?

(iii) Whether the legal heirs of defendant No.3 are estopped and they would lose a right in view of agreement executed by them evidenced at Ex.D-28



thereby acknowledging the defendant No.1's right and title over the suit schedule property?

(iv) Whether defendant Nos.2 and 3 are to be non-suited on the ground that though counter claim was set up in a written statement for non-payment of court fee, the counter claim has to be non-suited?

(v) What Order?

Finding on Point Nos.(i) and (ii):

15. Though defendant Nos.2 and 3 have made an attempt to contend that Item Nos.6 to 15 constitute joint family ancestral properties, such contention, on a closer and deeper scrutiny of the pleadings and evidence, does not inspire confidence. A mere assertion in the written statement that the properties are ancestral, without foundational facts and supporting material, cannot be elevated to proof. Insofar as Item Nos.10 to 15 are concerned, except making a bald and omnibus statement that they are joint family ancestral properties, defendant Nos.2 and 3 have not placed any acceptable material



before the Court to demonstrate that these properties were originally acquired by the common ancestor or that they descended through successive generations so as to partake the character of coparcenary property.

16. The learned counsel appearing for defendant Nos.2 and 3 sought to draw sustenance from certain recitals found in the sale deeds executed by the legal heirs of defendant No.1, wherein the suit lands are described as "ancestral properties." This Court is not persuaded to accept the said submission. A recital in a sale deed, particularly when executed by the children of original defendant No.1, describing the property as ancestral, cannot by itself determine the legal character of the property. Such description must be understood in the context of the *inter se* understanding of the executants and cannot substitute strict proof of the property being ancestral in the eye of law. The character of a property as joint family ancestral property must be established by



independent evidence tracing title to the ancestor and showing its devolution by survivorship.

17. It is a settled principle of law that the initial burden squarely lies on the party who asserts that a property is joint family ancestral property. Such party must at least produce foundational documents such as earlier title deeds, mutation extracts, revenue records, or other contemporaneous records demonstrating that the property stood in the name of the common ancestor and thereafter devolved upon the members of the joint family. In the present case, no such documentary evidence is forthcoming. Not even revenue records are produced to indicate that Item Nos.10 to 15 were ever held by the ancestors of the parties. There is also no cogent oral evidence explaining the source of acquisition or the manner in which the properties became part of the joint family nucleus.



18. In the absence of specific pleadings detailing the genealogy, the origin of the property, and its continued treatment as joint family property, coupled with the total lack of documentary substantiation, this Court is constrained to hold that defendant Nos.2 and 3 have miserably failed to discharge the burden cast upon them. Consequently, the claim that Item Nos.10 to 15 are joint family ancestral properties cannot be accepted.

19. The next question that arises for consideration is whether Item Nos.6 to 9 can be treated as ancestral properties. A feeble attempt was made by the plaintiff and defendant Nos.2 and 3 to contend that Item Nos.6 to 8 were ancestral lands and that a charge had been created over these lands by an order of the Revenue Officer under the provisions of the Karnataka Land Revenue Act on account of non-payment of land revenue. However, no documentary evidence is placed on record to demonstrate that such charge was merely an encumbrance and that the lands continued to remain with the family thereafter.



20. On the contrary, the learned counsel appearing for the legal heirs of defendant No.1 specifically contended that Item Nos.6 to 8 are no longer available to the family, as grants have already been made and third-party rights have come into existence. Significantly, there is no serious or effective challenge to this assertion by the contesting parties. In the absence of rebuttal evidence, this Court cannot proceed on conjecture that the properties are still available or that the alleged charge did not culminate in loss of title.

21. What, therefore, survives for consideration is Item No.9. It is not in dispute that Item No.9 was originally an ancestral property. The revenue records indicate that on account of non-payment of land revenue, a charge was created over the said property. The RTC extracts disclose an endorsement that the land is treated as "pada land." Though defendant No.1 and his legal heirs have stoutly contested the claim of defendant Nos.2 and 3 by contending that the land stood lost to the family



pursuant to a grant made by the State in favour of one Kempaiah, this contention is not supported by substantive documentary proof.

22. It is true that there are stray references in Exs.D-8 and D-14 suggesting certain proceedings. However, except for these isolated entries, no grant order issued by the competent authority is produced to demonstrate that the State, having assumed title over the property as surplus or otherwise vested land, formally granted the same to a third party. In the absence of a valid grant order, mere entries in revenue documents, without more, cannot conclusively establish divestment of title.

23. Be that as it may, Exs.D-8 and D-14 assume significance in determining the fate of Item No.9. These documents contain entries which may have a material bearing on the claim put forth by defendant Nos.2 and 3. In order to appreciate the rival contentions in proper



perspective, this Court deems it appropriate to extract Sl.Nos.38, 44, 49 and 71 of Ex.D-8. Similarly, Sl.No.71 in Ex.D-14 also requires extraction and consideration, as the said entries are relied upon to substantiate the plea regarding the alleged grant and consequent divestment of the family's interest in Item No.9. The same are extracted which read as under:

EX.D-8

	ಹಕ್ಕುದಾರರ ಹೆಸರು ಮತ್ತು ಹಕ್ಕಿನ ಸ್ವಭಾವ	ಸಂಬಂಧವುಳ್ಳ ಸರ್ವೆ ನಂಬರು ಮತ್ತು ಸಬ್ ನಂಬರು	ಮ್ಯುಟೇಷನ್ ರಿಜಿಸ್ಟರ್ ದಾಖಲೆ
38	ಚಿಕ್ಕಗೋವಿಂದಪ್ಪ ಜನ್ ವೆಂಕಪ್ಪ ಕಪನಿ ಮಗ ಮರಿಯನಿಂದ ಜುಖಾನೆ ಕ್ರಯ ಮೂಲ್ಕ ಪಡೆದು ಅನುಭವಿಸುತ್ತಿದ್ದಾನೆ 10 ವರ್ಷದ ಅನುಭವ	35-0	
43	X X X X X X		
44	ದರಖಸ್ತು ಜಮೀನು ಹರಾಜಿನಲ್ಲಿ ಮರಿಯ ಜನ ಕಪನಿ ಎಂಬುವನ ಹೆಸರಿಗೆ ನಿಂತು ತಾ.ಆ.ದಿ. 1/36.37ನೇ ನಂಬರ್ ಹುಕ್ಕುಂ ಪ್ರಕಾರ ಮಂಜೂರಾಗಿದೆ.	25	2/36-37
48	X X X X X X		
49	ಹಕ್ಕು ಬದಲಾವಣೆ ರಿಪೋರ್ಟ್ ಕೆಂಪಯ್ಯ ಜನ ಚೆನ್ನಯ್ಯ ಫಡಕ್ಕೆ ದಾಖಲೆ. ಸದರಿ ಸರ್ವೆ 35/38.39ನೇ ಸಾಲ್ ಕಂದಾಯದ ಬಾಕಿಗೆ ಹರಾಜಾಗಿ ಅವಲ್ಡಾರ್ ರವರ 16.11.39ನೇ ಆರ್ಡರ್ ಮೇರೆಗೆ 39.40ನೇ ಸಾಲಿಗೆ ಫಡಕ್ಕೆ ಬಂದಿರುತ್ತೆ ನೋ ನಂ.441/35.36	35	2/39-40
61	X X X X X X		



63	X X X X X X		
71	ಶ್ರೀ K.G. ಹೊನ್ನಸಾ ಜನ ಲೇ. ಚಿಕ್ಕಗೋವಿಂದಪ್ಪರವರಿಗೆ ಉದ್ದಿ ಚಿಕ್ಕನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ 35ನೇ ನಂಬರ್ ಜಮೀನು 1938.39ನೇ ಸಾಲಿನಲ್ಲಿ ಕಂದಾಯದ ಬಾಕಿಗೆ ಫಡಾಕ್ಕೆ ಬಂದಿದ್ದರ ಮೇರೆ ಸದರಿ ಚಿಕ್ಕಗೋವಿಂದಪ್ಪನವರ ಮಗ K.G. ಹೊನ್ನಸಾ ರವರಿಂದ ಪೂರಾ ಕಂದಾಯದ ವಸೂಲಿ ಮುಖಾಂತರ ತಹಶೀಲ್ದಾರ ಹುಕ್ಕುಂ ನಂ. RRT 22/77.78 ದಿನಾಂಕ 4.11.78ರಂತೆ ಖಾತೆ ದಾಖಲೆ	35 22.19	RRT 22/77-78 MT 4/77-78

EX.D-14

	ಹಕ್ಕುದಾರರ ಹೆಸರು ಮತ್ತು ಹಕ್ಕಿನ ಸ್ವಭಾವ	ಸಂಬಂಧವುಳ್ಳ ಸರ್ವೆ ನಂಬರು ಮತ್ತು ಸಬ್ ನಂಬರು	ಮ್ಯುಟೇಷನ್ ರಿಜಿಸ್ಟರ್ ದಾಖಲೆ
71	ಶ್ರೀ K.G. ಹೊನ್ನಸಾ ಜನ ಲೇ. ಚಿಕ್ಕಗೋವಿಂದಪ್ಪರವರಿಗೆ ಉದ್ದಿ ಚಿಕ್ಕನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ 35ನೇ ನಂಬರ್ ಜಮೀನು 1938.39ನೇ ಸಾಲಿನಲ್ಲಿ ಕಂದಾಯದ ಬಾಕಿಗೆ ಫಡಾಕ್ಕೆ ಬಂದಿದ್ದರ ಮೇರೆ ಸದರಿ ಚಿಕ್ಕಗೋವಿಂದಪ್ಪನವರ ಮಗ K.G. ಹೊನ್ನಸಾ ರವರಿಂದ ಪೂರಾ ಕಂದಾಯದ ವಸೂಲಿ ಮುಖಾಂತರ ತಹಶೀಲ್ದಾರ ಹುಕ್ಕುಂ ನಂ. RRT 22/77.78 ದಿನಾಂಕ 4.11.78ರಂತೆ ಖಾತೆ ದಾಖಲೆ	A G 35 22 - 19	RRT 22/77-78

24. On a careful and meticulous examination of the extracts of the endorsements relied upon by the parties, it becomes abundantly clear that the khata came to be restored in the name of original defendant No.1 solely on the premise that he is the son of Govindasa. The restoration was not on account of any independent title



acquired by defendant No.1 in his individual capacity, but only in recognition of his status as a legal heir of the original holder. The entries do not disclose any fresh grant, reconveyance, or independent conferment of title by the State in favour of defendant No.1.

25. The principal contention urged by original defendant No.1 and his legal representatives is that the land in question was lost to the family on account of non-payment of land revenue and that the same stood vested with the Government, and therefore, upon payment of arrears and restoration of khata, the property must be treated as the self-acquired property of defendant No.1. This contention, however, does not merit acceptance. The issue as to whether mere forfeiture or creation of a charge for arrears of land revenue results in absolute vesting of title in the State has already been considered and authoritatively answered by this Court in a catena of decisions.



26. In particular, the judgment rendered in ***Zaheera Banu Kareem vs. Gomathi Bai G. Kamath*** (supra) squarely addresses the core controversy. The co-ordinate Bench, while examining the legal effect of forfeiture for arrears of land revenue, has clearly held that mere forfeiture or endorsement for arrears does not amount to complete divestment of title so as to permanently vest the property in the State. The creation of a charge by the Revenue Authorities under the executive machinery of the Karnataka Land Revenue Act is essentially a mode of securing recovery of arrears. It does not ipso facto extinguish proprietary rights. The Bench has unequivocally observed that once the arrears of land revenue are paid and the charge is discharged, the property “stands reverted back to its original position.”

27. The expression “reverted back to its original position” is of considerable legal significance. It necessarily presupposes that the property regains the very character which it possessed prior to the creation of the charge. If



the land was ancestral in character before the creation of the revenue charge, the discharge of such charge and restoration of khata would revive the same ancestral character. There is no legal transformation of the nature of the property merely because arrears were paid by one of the coparceners.

28. It is also important to bear in mind that when land revenue is not paid and a charge is created over agricultural lands, the family does not lose the land in the sense of complete divestment. There is no automatic vesting in favour of the State in the absence of a statutory sale or grant in favour of a third party pursuant to due process. The endorsement of "PADA" in the revenue records, as reflected in the RTC, is indicative of a subsisting charge over the property. It is a fiscal entry signifying that the land is encumbered on account of arrears. It does not denote absolute vesting of title in the State.



29. The learned counsel Sri. Nitish, appearing for defendant No.1, advanced a rather intricate proposition that there was complete severance among the brothers and that in the absence of a joint family nucleus, the act of defendant No.1 in approaching the revenue authorities and paying the arrears of land revenue should be construed as an act of acquisition in his individual capacity, thereby rendering the property his self-acquired property. Though the submission appears attractive at first blush, on deeper scrutiny, it cannot be sustained in law.

30. If defendant No.1 had not been the son of Govindasa, the revenue authorities would not have restored the katha in his favour. The very basis for restoration was his representative capacity as a legal heir of the original holder. It is nobody's case that after alleged vesting, the Government, in exercise of sovereign power, independently re-granted or reconveyed the land to defendant No.1 treating him as a fresh grantee in his personal capacity. No grant order, no sanad, nor any



document evidencing independent conferment of title is forthcoming.

31. The restoration of khata under the provisions of the Karnataka Land Revenue Act must therefore be understood in its proper legal context. It was an administrative act recognizing the discharge of arrears and restoring the revenue entry to the name of the person representing the original tenure holder. Such restoration cannot be equated to a fresh acquisition of title. Payment of arrears by one coparcener to remove an encumbrance over joint family property does not metamorphose the character of the property into his separate property. At best, he may be entitled to seek equitable adjustment or reimbursement in appropriate proceedings, but he cannot, by unilateral payment of revenue arrears, appropriate the entire ancestral property to himself.

32. Therefore, the restoration of khata in favour of defendant No.1 has to be construed as restoration on



behalf of the entire joint family and not in his individual capacity. The property, having originally been ancestral and having merely been subjected to a revenue charge, regained its ancestral character upon discharge of arrears. It did not assume the character of self-acquisition of defendant No.1.

Accordingly, Point No.(i) is answered in the ***Negative*** and Point No.(ii) is answered in the ***Affirmative***.

Finding on Point No.(iii):

33. On a careful perusal of the unregistered document relied upon by defendant No.1, which is marked as Ex.D-28, it is evident that defendant No.3 and his children have made certain recitals acknowledging defendant No.1 as the absolute owner of the suit schedule property. The pivotal question that arises for consideration in the present appeal is: whether such an admission,



embodied in an unregistered document, is sufficient in law either to create title in favour of defendant No.1 or to extinguish the pre-existing rights of defendant No.3 and his children in the coparcenary property.

34. At the outset, it must be borne in mind that under Hindu law, the right of a coparcener in joint family property is not a right created by contract or conveyance; it is a pre-existing right. Such right accrues by birth in a Mitakshara coparcenary, as statutorily recognized under Section 6 of the Hindu Succession Act, 1956 (as amended), and may also devolve by inheritance under Section 8 in appropriate circumstances. A coparcener's interest is inherent in the very status of being a member of the joint family. It is neither contingent upon acknowledgment by another member nor dependent upon any formal instrument for its existence.

35. Once such a pre-existing right inheres in a coparcener by birth, it cannot be divested or extinguished



except in a manner known to law namely, by a registered instrument of release or relinquishment, by a lawful partition, or by operation of a statutory provision. A mere unregistered document containing an admission or acknowledgment cannot, by itself, operate as a conveyance of title. Nor can it amount to a legally valid relinquishment of coparcenary rights, particularly when the subject matter relates to immovable property of significant value.

36. In the case on hand, Ex.D-28 is admittedly an unregistered document. Even assuming that defendant No.3 and his children have acknowledged defendant No.1 as the absolute owner therein, such acknowledgment cannot, in the eye of law, amount to a valid transfer, release, or extinguishment of their rights in Item No.9. If, at all the document purports to relinquish or declare exclusive ownership in favour of defendant No.1 in respect of immovable property, it would compulsorily require registration under the provisions of the Registration Act. In



the absence of registration, the document cannot affect immovable property nor can it be received as evidence of any transaction affecting such property, except for collateral purposes.

37. The submission that defendant No.3 and his children, due to illiteracy or lack of awareness, executed such a document further reinforces the need for strict scrutiny. However, even dehors such considerations, the legal position remains unchanged: a coparcener's right by birth cannot be extinguished by a mere unregistered agreement. The law does not countenance deprivation of proprietary rights in coparcenary property through informal or legally unenforceable instruments.

38. Equally untenable is the contention that the doctrine of estoppel should operate against defendant No.3 and his children on the basis of Ex.D-28. The doctrine of estoppel cannot be invoked to defeat a statutory or pre-existing right in immovable property. Estoppel is a rule of



evidence; it cannot create or extinguish title where none exists in law. When a party possesses a pre-existing legal right in coparcenary property, an admission in an unregistered document cannot estop him from asserting such right in a properly instituted partition suit.

39. It is well settled that in a suit for partition, the Court does not confer title for the first time. The Court merely declares and works out the pre-existing rights of the parties. Each coparcener holds an undivided interest in every inch of the joint family property until partition. Therefore, any assertion that such right stands extinguished by virtue of an unregistered acknowledgment is contrary to settled principles governing Hindu joint family property.

40. In that view of the matter, this Court is of the considered opinion that Ex.D-28 does not and cannot extinguish the rights of defendant No.3 and his children in Item No.9. Their coparcenary rights, being pre-existing



and statutorily recognized, remain unaffected by the said unregistered document.

Accordingly, Point No.(iii) is answered in the ***Negative.***

Finding on Point No.(iv):

41. It is a well-settled and trite proposition of law that a suit for partition stands on a distinct and unique footing when compared to ordinary adversarial civil proceedings. In a typical civil suit, the plaintiff asserts a cause of action and seeks specific relief against the defendant, who, in turn, may set up an independent claim by way of a counterclaim under the provisions of Order VIII Rule 6-A of the Code of Civil Procedure. However, the jurisprudential framework governing a partition suit is fundamentally different.

42. In a partition suit, the *lis* is not in the nature of a claim by one party against another for an independent



cause of action. Rather, it is a collective adjudication of pre-existing rights among co-owners or coparceners. Time and again, this Court in a catena of judgments has consistently held that in a partition action, every coparcener or co-owner is, in substance, a plaintiff. The mere fact that some parties are arrayed as defendants is a matter of procedural convenience and not of substantive character. The Court, while adjudicating a partition suit, is duty-bound to ascertain and declare the respective shares of all sharers, irrespective of whether they have sought relief in a formal manner.

43. Learned counsel Sri. Nitish has placed reliance on the judgment in ***The Trading Corporation of India Limited, Bangalore vs. Vanivilas Co-operative Sugar Factory Limited, Hiriya, Chitradurga District*** (supra), to contend that in the absence of a properly instituted counterclaim and payment of requisite court fee, defendant Nos.2 and 3 cannot seek affirmative relief. The principles laid down in the said judgment, however, are



rendered in the context of ordinary civil disputes where a counterclaim constitutes a cross-suit requiring independent compliance with procedural requirements, including valuation and payment of court fee.

44. The ratio of the said decision cannot be mechanically extended to a partition suit. In a partition action, a defendant who asserts a share in the joint family property is not setting up a counterclaim in the strict sense of Order VIII Rule 6-A CPC. He is merely asserting his pre-existing right as a coparcener or co-owner in the very subject matter of the suit. Such an assertion is intrinsic to the nature of partition proceedings. The Court, once seized of a partition suit, cannot confine itself to the claim of the plaintiff alone but must determine the rights of all sharers and effectuate a complete and final partition.

45. Therefore, the plea that defendant Nos.2 and 3 are disentitled to seek partition on the ground that they have not filed a counterclaim is misconceived. In the



context of a partition suit, there is, strictly speaking, no necessity for a counterclaim in order to work out the share of a defendant who is admittedly a coparcener.

46. As regards the objection relating to non-payment of court fee, it is equally well settled that in partition suits, deficiency of court fee does not operate as a substantive bar to adjudication of rights. The liability to pay court fee is a matter between the litigant and the State. The Court is empowered to direct payment of proper court fee at any stage of the proceedings. Non-payment or deficit payment does not extinguish the substantive right of a coparcener to seek partition of joint family property. At best, it is a curable procedural defect.

47. In the present case, even assuming that defendant Nos.2 and 3 have not deposited the requisite court fee while asserting their share, such omission cannot be construed as a bar to enforcement of their right to partition. The appropriate course would be to direct them



to make good the deficit court fee within a stipulated time. Once such compliance is ensured, there remains no impediment to granting relief.

48. Accordingly, the contention founded on the absence of a counterclaim and non-payment of court fee is liable to be rejected. Point No.(iv) is answered in the ***Negative***, subject to defendant Nos.2 and 3 depositing the requisite court fee before this Court within the time granted.

Finding on Point No.(v):

49. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The appeal is ***allowed in part***;

(ii) The judgment and decree dated 18.09.2010 passed in O.S.No.5734/1994 is partly modified insofar as the counter claim set



up by defendant Nos.2 and 3 of their 1/3rd share each in the suit schedule property is concerned;

(iii) The defendant Nos.2 and 3 are entitled for 1/3rd share each in Item No.9 subject to deposit of court fee before this Court;

(iv) The rest of the decree stands affirmed;

(v) Office shall draw the preliminary decree only after deposit of court fee.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

CA
List No.: 1 Sl No.: 16