



NC: 2026:KHC:12056-DB
RFA No. 1979 of 2012
C/W CRP No. 214 of 2006
RFA No. 97 of 2005
AND 2 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE S RACHAIAH

REGULAR FIRST APPEAL NO. 1979 OF 2012 (PAR)

C/W

CIVIL REVISION PETITION NO. 214 OF 2006 (SC),

REGULAR FIRST APPEAL NO. 97 OF 2005 (RES),

REGULAR FIRST APPEAL NO. 1551 OF 2013 (RES),

RFA. CROB. NO. 22 OF 2013 IN RFA NO.1979/2012

IN RFA NO.1979/2012

BETWEEN:

1. SMT. YASMEEN SULTHANA
D/O LATE HAJI AHMED SHERIEF
W/O ZAFARULLA KHAN
AGED ABOUT 51 YEARS, NO.13
NEW GANGAMMACHARI STREET
MOTHINAGAR, BANGALORE-560062
NOW RESIDING AT
NO.8, 1ST CROSS
SOMESHWARANAGAR
JAYANAGAR 1ST BLOCK
BANGALORE-560011
REPRESENTED BY HER SPECIAL
PA HOLDER SRI ZAFARULLA KHAN
HUSBAND OF YASMEEN SULTHANA

...APPELLANT

(BY SRI M. SYED ROOHULLA, ADVOCATE)





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AND:

1. MUSHTAQ AHMED SHARIEF
S/O LATE HAJI AHMED SHARIEF
AGED ABOUT 50 YEARS
NO.40
COCK BURN ROAD
BANGALORE-560051
NOW RESIDING AT NO.39
COCK BURN ROAD
BANGALORE-51
2. MUNEEER AHMED SHARIEF
S/O LATE HAJI AHMED SHARIEF
AGED ABOUT 49 YEARS
NO.39
COCK BURN ROAD
BANGALORE-560051
3. SMT. BIBI JAN
W/O LATE HAJI AHMED SHARIEF
AGED ABOUT 62 YEARS
SINCE DECEASED BY HER LR
WHO IS THE FIRST DEFENDANT
MUSHTAQ AHMED SHARIEF
4. SMT. ZEENATHUNNISA
W/O LATE HAJI AHMED SHARIEF
AGED ABOUT 68 YEARS
SINCE DECEASED BY HER LR
WHO IS THE SECOND DEFENDANT
MUSHTAQ AHMED SHARIEF
5. SMT. ZUBEDA BEGUM
D/O LATE HAJI AHMED SHARIEF
AGED ABOUT 52 YEARS
R/O 21
AREKEMPANAHALLI



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10TH CROSS, 3RD MAIN
BANGALORE-560027

...RESPONDENTS

(BY SRI SHAMS AHMED PATHAN, ADVOCATE FOR
R-1 & R-2 [ABSENT];
SRI DEEPAK, ADVOCATE FOR R-5;
R-1 IS THE LR OF DECEASED R-3;
R-2 IS THE LR OF DECEASED R-4)

THIS RFA IS FILED U/S 96 AND ORDER 41 RULE 1 OF
CPC R/W SECTION 151 OF CPC, AGAINST THE JUDGMENT AND
DECREE DATED 08.06.2012 PASSED IN O.S.NO.7913/1995 ON
THE FILE OF 1ST ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, BANGALORE CITY, PARTLY DECREETING THE SUIT FILED
FOR PARTITION AND SEPARATE POSSESSION.

IN CRP NO. 214/2006

BETWEEN:

1. SMT. YASMEEN SULTANA
W/O ZAFRULLA KHAN
AGED MAJOR
R/AT NO.73
GANGAMMACHARI STREET
MOTINAGAR
BANGALORE-560 002

...PETITIONER

(BY SRI M SYED ROOHULLA, ADVOCATE)

AND:

1. SRI MUNEER AHMED SHARIFF
S/O AHMED SHARIFF



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AGED 40 YEARS
NO.39
COCK BURN ROAD
SHIVAJINAGAR
BANGALORE-560051

...RESPONDENT

(BY SRI SHAMS AHMED PATHAN, ADVOCATE [ABSENT])

THIS CRP IS FILED U/S 18 OF THE SMALL CAUSES
COURTS ACT AGAINST THE JUDGMENT AND DECREE
DATED 27.09.2005 PASSED IN SC NO.34/2003 ON THE
FILE OF THE 1ST ADDITIONAL JUDGE, COURT OF SMALL
CAUSES, BANGALORE AND ETC.

IN RFA NO. 97/2005

BETWEEN:

1. YASMEEN SULTANA
W/O ZAFRULLAH KHAN
AGED ABOUT 47 YEARS, NO.73
NEW GANGAMMACHARI STREET
MOTHINAGAR, BANGALORE

...APPELLANT

(BY SRI M SYED ROOHULLA, ADVOCATE)

AND:

1. SRI MUNEER AHMED SHARIFF
S/O LATE AHMED SHARIFF
AGED ABOUT 40 YEARS
R/AT NO.39, COCKBURN ROAD
SHIVAJINAGAR, BANGALORE

...RESPONDENT

(BY SRI SHAMS AHMED PATHAN, ADVOCATE [ABSENT])



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THIS RFA IS FILED U/S 96 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 07.10.2004 PASSED IN O.S.NO.475/2003 ON THE FILE OF THE I/C III ADDITIONAL SESSIONS JUDGE, BANGALORE (XXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-23) DISMISSING THE SUIT FOR EJECTION.

IN RFA NO.1551/2013

BETWEEN:

1. JAVERIA NUSRATH
D/O ZAFARULLA KHAN
AGED ABOUT 35 YEARS
NO.13
NEW GANGAMMACHARI STREET
MOTHI NAGAR
BANGALORE-560 002
NOW R/AT NO.8, 1ST CROSS
SOMESHWAR NAGAR
JAYANAGAR, 1ST BLOCK
BANGALORE-560 011

REPRESENTED BY GPA HOLDER
SRI ZAFARULLA KHAN
S/O LATE KHADER KHAN
AGED ABOUT 62 YEARS

...APPELLANT

(BY SRI M SYED ROOHULLA, ADVOCATE)

AND:

1. SYED AYUB HUSSAIN @ AYUB
S/O B SYED HUSSAIN
AGED ABOUT 42 YEARS



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PROP. CLASSIC AUTOMOBILES SHOP
IN PROPERTY NO.40/1
COOK BURN ROAD
SHIVAJINAGAR
BANGALORE-560 051

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AND ORDER 41, RULE 1 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 08.07.2013 PASSED IN O.S.NO.206/2009 ON THE FILE OF THE III ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, DISMISSING THE SUIT FOR EJECTMENT AND MESNE PROFITS.

IN RFA.CROB NO. 22/2013

BETWEEN:

1. MUSTAQ AHMED SHARIFF
AGED 49 YEARS
S/O LATE HAJI AHMED SHARIFF
RESIDING AT NO.11-B
STEPHENS SQUARE
BANGALORE-51
2. MUNEEER AHMED SHARIFF
AGED 41 YEARS
S/O LATE HAJI AHMED SHARIFF
RESIDING AT NO.39, 40/1
COCK BURN ROAD
BANGALORE-51

...CROSS OBJECTORS

(BY SRI SHAMS AHMED PATHAN, ADVOCATE [ABSENT])



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AND:

1. YASMEEN SULTANA
AGED 50 YEARS
WIFE OF ZAFARULLA KHAN
RESIDING AT NO. 8
1ST CROSS, TANK GARDEN
SOMESHWARA NAGAR
JAYANAGAR
BANGALORE-560011
2. ZUBEIDA BEGUM
AGED 52 YEARS
W/O IQBAL AHMED
RESIDING AT NO.21
AREKENKEMPAHALLI
10TH CROSS, WILSON GARDEN
3RD MAIN, BANGALORE-27

...RESPONDENTS

THIS RFA.CROB. IS FILED UNDER ORDER 41 RULE 22 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 08.06.2012 PASSED IN O.S.NO.7913/1995 ON THE FILE OF THE I ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, PARTLY DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

RFAs, CRP AND RFA.CROB COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE S RACHAIAH

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

1. RFA No.1979/2012 has been filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (CPC) impugning the judgment and decree dated 08.06.2012 passed by the learned 1st Additional City Civil and Sessions Judge, Bengaluru City (CCH No.2) in Original Suit No.7913/1995.

2. The suit was filed by the appellant and the respondent No.5, the two daughters of late Haji Ahmed Shariff, for partition of the suit schedule properties and allotment of 4/13th share to each one of them as per the Law of Inheritance applicable to Hanafi Sect of Muslims and also for separate possession thereof. A decree of permanent injunction was also prayed against the defendants from alienating or inducing any third person into the suit schedule properties.



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3. The case of the plaintiffs before the Trial Court was that their father late Haji Ahmed Shariff had two wives viz., Smt. Bibijan and Smt. Zeenathunnissa-defendant Nos.3 and 4 respectively, who died during the pendency of the suit proceedings.

4. The plaintiff No.1 i.e., the appellant herein and the defendant No.2 i.e., the respondent No.2 herein are the daughter and son of late Haji Ahmed Shariff through his second wife-Zeenathunnissa. The plaintiff No.2 i.e., the respondent No.5 herein and the defendant No.1 i.e., the respondent No.1 herein are the daughter and son of late Haji Ahmed Shariff through his first wife-Bibijan.

5. Late Haji Ahmed Shariff, during his lifetime, acquired 'A' to 'C' schedule properties as described in the plaint schedule. The suit schedule 'D' and 'E' properties were purchased by him in the names of his two wives. The stock in trade and other jewels and household articles which were in the custody of the defendants belonged to late Haji Ahmed Shariff, who died on 14.01.1995



leaving behind the plaintiffs and the defendants to succeed to the estate left by him, which were more fully described in the plaint schedule. It was stated that the stock in trade, jewels and articles worth Rs.6 lakhs were in the care and custody of the defendants after the death of Haji Ahmed Shariff. The defendant Nos.1 and 2 got the 'A' schedule property bifurcated into two shops after the death of Haji Ahmed Shariff and they were carrying on the business in these two shops. It was further stated that the first and second floors of 'A' schedule property would fetch rent of Rs.3,000/- per month and an advance of Rs.1,50,000/- each, if the premises were let out.

6. The suit schedule 'B' property was said to be a residential property consisting of ground floor and first floor having seven tenements on the ground floor and four tenements on the first floor, which were given on rent.

7. So far as 'C' schedule property was concerned, it was said that the defendant No.3 was residing on the ground floor and the defendant No.2 was residing on the first floor, and if these



properties were given on rent, they would fetch rent of Rs.2,000/- per month each.

8. In respect of schedule 'D' property, it was said that there were two shops which were vacant and in one portion, the defendant No.1 was residing, which would fetch rent of Rs.1,500/- per month.

9. In respect of 'E' schedule property, it was said that the defendant No.4 was residing in the said property and it could fetch rent of Rs.1,500/- per month. It was further said that one shop was vacant and there were three tenements.

10. The defendants, after the death of Haji Ahmed Shariff, were collecting rents and were in possession of the suit schedule properties. The defendants were trying to dispose off some of the properties and were also letting out the vacant shop premises for higher advance pagadi and higher rents without the consent of the plaintiffs. Therefore, the aforesaid suit came to be filed by the plaintiffs for partition of the schedule properties.



11. The defendant Nos.1 and 4 filed the common written statement. The relationship between the parties was not disputed. However, it was said that the suit schedule 'A' property was given in 'Hiba' by late Haji Ahmed Shariff in favour of the defendant Nos.1 and 2 during his lifetime and the possession was also given to them. The defendant No.2 was doing his independent business in the western portion of the suit schedule 'A' property from the year 1983-1984 and he was given the suit schedule 'A' property by way of oral gift in the year 1986. The entire first floor was given to the defendant No.2 to keep good relation with the defendant No.1. The defendant No.2 was sharing the first floor with the defendant No.1 and therefore, 'A' schedule property would not be available for partition as it was settled in favour of the defendant Nos.1 and 2 by way of 'Hiba' by their father late Haji Ahmed Shariff.

12. So far as suit schedule 'B' and 'C' properties were concerned, the same belonged to late Haji Ahmed Shariff, who was the father of the plaintiffs and the defendant Nos.1 and 2, and the husband of the defendant Nos.3 and 4. The suit



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schedule 'D' and 'E' properties were purchased by the defendant Nos.3 and 4 jointly with their own funds and not out of the money of late Haji Ahmed Shariff. The suit schedule 'D' and 'E' properties remained in the joint names of the defendant Nos.3 and 4 till 07.01.2001. On 07.01.2001, the defendant Nos.3 and 4 made 'Hiba' in respect of 'D' and 'E' schedule properties in favour of the defendant Nos.1 and 2 and the grandchildren viz., Sadiya Begum and Zikrur Rehman in a family function which was recorded in a video and photographs and therefore, it was said that the suit schedule 'D' and 'E' properties were not available for partition.

13. It was also said that late Haji Ahmed Shariff had stopped the business in 1980 and was leading a retired life. He had not left any stock in trade. In fact, at the time of going to Haj, he sold away whatever movable properties he had. He had no jewelry, and there was no suit schedule 'F' property, as alleged. Late Haji Ahmed Shariff never took any amount from suit schedule 'B' and 'C' properties, which were given exclusively for the full lifetime of the defendant Nos.3 and 4. This understanding about taking of



the rent by the defendant Nos.3 and 4 from 'B' and 'C' schedule properties was consented by the plaintiffs and continued after the death of Haji Ahmed Shariff. Now, the plaintiffs were not entitled to rescind from the 'Vasiyath' of late Haji Ahmed Shariff after 40th day of his death ceremony.

14. The Trial Court, on the basis of the above pleadings, has framed the following issues:-

"1. Whether the plaintiffs prove that they are the co-owners of the suit schedule property with the defendants and are in joint possession of the same?

2. Whether plaintiffs prove that they are entitled for 4/13th share in the suit schedule property in partition and separate possession of the same by metes and bounds?

3. Whether plaintiffs are entitled for enquiry into mesne profits?

4. Whether defendants 1 and 4 prove that the suit schedule properties are not available for partition in view of the oral



gift in 1986 in favour of the first defendant with regard to the suit A schedule property and in view of "Hiba" in favour of defendants 1 & 2 so far as the suit D & E schedule properties are concerned?

5. *To hear what reliefs are the parties entitled to?*

6. *To hear what Order or decree?*

Addl. Issues framed on 24.8.2007:

1. *Whether the defendant No.2 and 4 prove that Allah bakash is son of late Haji Ahmed Sheriff?*

2. *Whether the suit is barred by limitation?*

3. *Whether defendant No.2 proves that defendant No.3 gave their share in schedule D and E property in favour of her late husband Haji Ahmed Sherieff?*

4. *Whether defendant No.2 proves that defendant No.3 and 4 gave their undivided share to him and children of Allabakash?"*



15. In respect of additional issue No.1, both sides had admitted that late Haji Ahmed Shariff found an abandoned newborn male child in a dustbin on the road side. He picked up the baby and tried to locate the parents of the baby, but did not succeed. He brought up the child and named it Allah Bakash. As Haji Ahmed Shariff did not father Allah Bakash, he was not the son of Haji Ahmed Shariff under the Mohammedan law and therefore, he would not be entitled for a share in the property of Haji Ahmed Shariff.

16. So far as issue Nos.1 and 4 are concerned, the Trial Court held that the relationship of the parties was not in dispute. The suit schedule 'A' to 'C' properties were the properties of Haji Ahmed Shariff acquired by himself and this fact was not at all in dispute. Ex.P.7 is the Assessment Register Extract pertaining to 'A' schedule property, Ex.P.3 is the Assessment Register Extract pertaining to 'B' schedule property and Ex.P.4 is the Assessment Register Extract pertaining to 'C' schedule property which are all standing in the name of Haji Ahmed Shariff. These properties



were acquired by Haji Ahmed Shariff himself and this fact was even admitted by the defendants and not contested.

17. The defendant No.2 got examined himself as D.W.1. During his cross-examination, he deposed that plaint 'A' schedule property was in possession of himself and the defendant No.1. In his affidavit of evidence, the defendant No.2 deposed that late Haji Ahmed Shariff, before proceeding to Hajj pilgrimage, gifted the suit schedule 'A' property to the defendant Nos.1 and 2 and the 'Hiba' was an oral 'Hiba'. The plaintiffs did not challenge the assertion of D.W.1 that 'A' schedule property was given to the defendant Nos.1 and 2 by late Haji Ahmed Shariff by making oral 'Hiba' and therefore, the Trial Court held that by oral 'Hiba', Haji Ahmed Shariff had given 'A' schedule property to the defendant Nos.1 and 2.

18. In respect of 'B' schedule property, the Trial Court held that P.W.1, during the cross-examination, has admitted the 'Hiba' of suit schedule 'A' property in favour of the defendant Nos.1 and 2 and the plaintiffs failed to prove that they were the co-owners of



suit schedule 'A' property with the defendants and were in joint possession of the same.

19. So far as 'B' and 'C' schedule properties were concerned, it was not in dispute that these were left behind by late Haji Ahmed Shariff, who was the owner of the said properties. However, the case of the defendants was that late Haji Ahmed Shariff permitted the defendant Nos.3 and 4 to take rentals during their lifetime. The Trial Court has held that the plaintiffs and the defendant Nos.1 and 2 would be entitled for a share in 'B' and 'C' schedule properties as the plaintiffs were able to prove that they were co-owners with the defendant Nos.1 and 2.

20. In respect of 'D' schedule property, the Trial Court found that the same was not at all available for partition as it was the property purchased by the defendant No.3 herself. The fact that 'D' schedule property was acquired and owned by the defendant No.3 was admitted by the plaintiffs. Thus, on the date of filing of the suit, 'D' schedule property was not available for partition as during her lifetime, the defendant No.3 had gifted the said



property in favour of the defendant No.1 under an oral 'Hiba' confirmed under Ex.P.10 and therefore, the claim of the plaintiffs in respect of the 'D' schedule property was rejected by the Trial Court.

21. So far as 'E' schedule property bearing No.40/1 is concerned, the plaintiffs did not press the relief in respect of the said property and therefore, the Trial Court did not record any finding in that respect.

22. In respect of 'F' schedule property i.e., movables is concerned, it was held that no evidence was available on record to establish the availability of any of the movables and therefore, the issue in respect of 'F' schedule property was negated.

23. Considering the aforesaid, the impugned judgment was passed by the Trial Court declaring that the plaintiff Nos.1 and 2 were entitled for partition and separate possession of 1/6th share in 'B' and 'C' schedule properties and they were also entitled to 1/6th share in the mesne profits in 'B' schedule property. The plaintiff No.1 and the defendant No.1 were liable to account for



the rentals received in respect of 'C' schedule properties. It was further held that separate enquiry should be held for determination of mesne profits during the final decree proceedings. The partition was to be effected under Order XX Rule 18 of CPC by appointing a Court Commissioner. The suit in respect of 'A', 'D', 'E' and 'F' schedule properties was dismissed.

24. The learned counsel for the appellant has submitted that the Trial Court has committed an error in believing the execution of Ex.D.9 and Ex.D.10 by the registered Gift Deed dated 18.10.2002 without appreciating the fact that the recitals in both the documents were diametrically opposed to each other. It is further submitted that the findings of the Trial Court in respect of 'A' schedule property are also contrary to the records and the evidence.

25. We have considered the submissions.

26. The issue for consideration is whether the findings recorded by the Trial Court are based on proper appreciation of



the evidence on record or the impugned judgment and decree require an interference by this Court?

27. The Trial Court has already accepted the claim of the plaintiffs in respect of 'B' and 'C' schedule properties. In respect of 'F' schedule property i.e., the movables, the parties could not lead evidence to suggest that late Haji Ahmed Shariff had left movables in the hands of the defendants and therefore, the Trial Court has rightly rejected the claim of the plaintiffs in respect of 'F' schedule property. In respect of 'F' schedule property, the plaintiffs did not press their claim.

28. So far as 'A' schedule property is concerned, P.W.1, the plaintiffs' witness, during the cross-examination, deposed that the plaintiff No.1 had executed 'Hiba' in favour of the defendant No.1 in respect of her share in 'A' to 'C' schedule properties. Thus, it is clear from the cross-examination of P.W.1 that 'A' schedule property was given in 'Hiba' in favour of the defendant Nos.1 and 2. As the plaintiffs have given their share in favour of the defendant Nos.1 and 2 in Hiba in respect of 'A' schedule



property, the plaintiffs were not entitled for partition of 'A' schedule property as after the Hiba, they would not remain the co-owners of 'A' schedule property. No evidence was brought on record to suggest that they were in joint possession of 'A' schedule property.

29. So far as 'D' schedule property is concerned, it would be relevant to take note of the evidence of the parties. According to the plaintiffs, 'D' schedule property was acquired by late Haji Ahmed Shariff in the names of his two wives i.e., defendant Nos.3 and 4. Ex.P.5-Assessment Register Extract would suggest that 'D' schedule property was standing in the name of the defendant No.3 viz., Smt. Bibijan and the said property was gifted by defendant No.3 during her lifetime in favour of the defendant No.1. Ex.P.10 is the Deed of Declaration confirming the 'Hiba' made by the defendant No.3 in favour of the defendant No.1. P.W.1, during the course of evidence, did admit that 'D' schedule property was the property purchased by the defendant No.3 herself. Ex.P.10 suggests that 'D' schedule property was gifted by the defendant No.3 in favour of the defendant No.1.



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The fact that 'D' schedule property was acquired by the defendant No.3 herself was admitted by the plaintiffs, which is evident from the affidavit sworn on 23.12.1998. Therefore, the said property was not available for partition. The defendant No.3 had died on 24.11.2001 and during her lifetime, the defendant No.3 had gifted the 'D' schedule property in favour of the defendant No.1 under an oral 'Hiba', which was confirmed under EX.P.10 and therefore, the claim of the plaintiffs in respect of 'D' schedule property was rightly rejected by the Trial Court.

30. So far as 'E' schedule property is concerned, the plaintiffs did not press the relief in respect of the said property.

31. In view of the observations made above, we are of the considered view that the impugned judgment and decree passed by the Trial Court does not require an interference.

32. Accordingly, we dismiss RFA No.1979/2012. The cross-objections i.e., RFA.CROB.No.22/2013 also results in dismissal. Consequently, CRP No.214/2006, RFA No.97/2005 and RFA No.1551/2013 also stand dismissed.



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Pending IAs, if any, do not survive for consideration and accordingly, they stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(S RACHAIAH)
JUDGE**

BKV
List No.: 2 Sl No.: 6