

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27th DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100059 OF 2019

BETWEEN

1. SMT. LAXMAVVA W/O. JAYAPPA BADIGER,
SINCE DECEASED BY LR'S
APPELLANT NO.2 AND RESPONDENT NO.12
2. KALAMMA D/O. JAYAPPA BADIGER,
AGE: 35 YEARS, OCC: HOUSE HOLD,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
3. SRI. PARAMESHWARAPPA
S/O. NAGAPPA KURAGUND,
AGE: 55 YEARS, OCC: HOUSE HOLD,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
4. SRI. PARAMESHWARAPPA LAKSHMAPPA BANAKAR,
AGE: 51 YEARS, OCC: AGRICULTURE,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
5. SUBHASAPPA GUDDAPPA MALAGUDDAPPANAVAR,
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

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6. MAILARAPPA SHIVALINGAPPA NEGALUR,
AGE: 55 YEARS, OCC: AGRICULTURE,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
7. PUTTAPPA BALAPPA LAMANI,
AGE: 48 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
8. BHEEMAPPA BALAPPA LAMANI,
AGE: 59 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
9. GANGADHAR BASAVANTHAPPA KUGANUR,
AGE: 43 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
10. KARIYAPPA HALAPPA HEBBAL,
AGE: 63 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
11. SMT. BASAVVA W/O. YALLAPPA ANDALAGI,
AGE: 49 YEARS, OCC: HOUSE HOLD,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

...APPELLANTS

(BY SRI. B.S. KAMATE, ADVOCATE)

AND

1. SMT. BHAGEERATHIBAI
W/O. JAYAPPA BADIGER,
AGE: 61 YEARS, OCC: HOUSE HOLD WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

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2. SRI. BHARAMAPPA
S/O. HANUMANTHAPPA TALAWAR,
AGE: 38 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
3. SMT. BHARAMAVVA
W/O. YALLAPPA TALAWAR,
AGE: 33 YEARS, OCC: HOUSE HOLD WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
4. SRI. NEELAPPA
S/O. GUDDAPPA DEVARAGUDDA,
AGE: 43 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
5. GOURAVVA
S/O. BASAYYA HIREMATH,
AGE: 48 YEARS, OCC: HOUSE HOLD WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
6. SIR. HANUMANTHAPPA HADAPAD,
AGE: 58 YEARS, OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
7. SMT. KARIYAVVA
W/O. BASAPPA SETAVANNANAVAR,
DECEASED BRING LRS DISPENS WITH
VIDE ORDER DATED 6/6/2025
8. SMT. MANJAVVA
W/O. LAKSHMAPPA LAKSHMESHVAR,
AGE: 38 YEARS, OCC: HOUSE HOLD WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

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9. SRI. KRISHNAPPA
S/O. MUNIYAPPA LAMANI,
DECEASED BRING LRS DISPEND WITH
VIDE ORDER DATED 6/6/2025
10. SRI. ANJANAPPA
S/O. MUNIYAPPA LAMANI,
DECEASED BRING LRS DISPEND WITH
VIDE ORDER DATED 6/6/2025
11. SMT. SHARAVVA
W/O. SIDDAPPA HADAPAD,
AGE: 58 YEARS, OCC: HOUSE HOLD WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

SMT. VISHALAKSHI @ BASAMMA
W/O. IRAPPA KAMMAR,
SINCE DEAD BY HER LRS.,
12. IRAPPA KAMMAR,
AGE: MAJOR, OCC: AGRICULTURE,
R/O: KALLEDEVARU VILLAGE,
TQ: BYADGI, DIST: HAVERI.

REVANEPPA GOORAPPA JYOTHI,
SINCE DEAD BY HIS LRS.
13. KAMALAVVA W/O. REVANEPPA JYOTHI,
AGR: 60 YEARS,
OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.
14. NINGAPPA S/O. REVANEPPA JYOTHI,
AGE: 43 YEARS,
OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

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15. BASAVARAJAPPA
S/O. REVANEPPA JYOTHI,
AGE: 35 YEARS,
OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

16. RAMESH S/O. REVANEPPA JYOTHI,
AGE: 29 YEARS,
OCC: AGRICULTURE WORK,
R/O: KOONABEVU VILLAGE,
TQ: RANEBENNUR, DIST: HAVERI.

AMENDED CAUSE TITLE AS PER
ORDER DATED 06/06/2025

...RESPONDENTS

(BY SRI. MADANMOHAN M. KHANNUR, ADVOCATE FOR R1;
NOTICE TO R2-R6 AND R8 & R11-R16 SERVED;
BRINGING LRS OF R7, R9 & R10 DISPENSED WITH
V/O DATED 06.06.2025)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, PRAYING TO CALLING FOR THE RECORDS AND PROCEEDS OF THE CASE THIS HON'BLE COURT BE PLEASED TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 13.11.2018 PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, RANEBENNUR IN O.S.NO.01/2015 (OLD NO.02/2014) AND THE O.S.NO.01/2015 FILED BY THE PLAINTIFF MAY KINDLY BE DISMISSED, BY ALLOWING THIS R.F.A. WITH COSTS IN THE INTEREST OF JUSTICE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.02.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

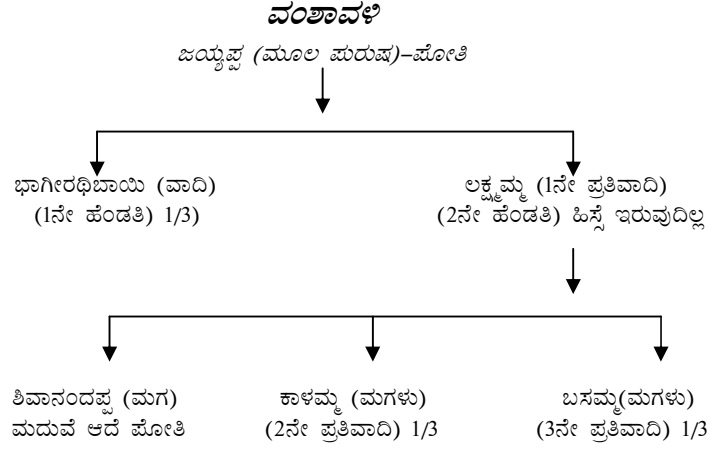
This is the appeal filed by appellants/defendant Nos.1 to 11 and 13 under Section 96 CPC challenging the judgment and decree dated 13.11.2018 in O.S.No.1/2015 on the file of Additional Senior Civil Judge and J.M.F.C., Ranebennur in decreeing the suit of plaintiff and granting 1/3rd share to plaintiff in suit schedule properties by metes and bonds.

2. The parties would be referred with their ranks, as they were before the trial Court for sake of convenience and clarity.

3. The plaintiff has filed the suit before trial Court praying for partition and separate possession of her 1/3rd share in suit schedule properties by metes and bounds and for such other reliefs.

4. The case of plaintiff before trial Court in nutshell is as follows:

5. Plaintiff has furnished genealogical tree of their family as follows:



6. According to plaintiff, she is the first wife of deceased Jayappa and after his death, plaintiff, defendant No.1-his second wife and his three children i.e. defendant Nos.2, 3 and son Shivanandappa succeeded to his properties. Said Shivanandappa also died without marriage. Defendant No.1 is not having any right over suit schedule properties, as she is the second wife of late Jayappa married during subsistence of marriage of plaintiff with late Jayappa. Recently, defendant Nos.1 to 3 have sold some portion of suit schedule properties to defendant Nos.4 to 13. Hence, they are also made as parties to the suit. Without the knowledge and consent of the plaintiff behind her back, defendant No.1 got mutated suit schedule properties into her name and sold portion of it to defendant Nos.4 to 13 and thereby caused loss to plaintiff. She further contended that all suit

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schedule 'B' to 'K' properties were sold without her consent to defendant Nos.4 to 13 and the registered sale deed dated 12.07.2013 and 19.07.2013. Hence, said sale is not binding on plaintiff. The plaintiff further contended that defendant Nos.1 to 3 illegally sold the suit schedule properties. There was quarrel between plaintiff and her husband and during his lifetime, plaintiff came to her parental house situated at Ranebennur. Taking undue advantage of this position, within two months of death of her husband, defendant Nos.1 to 3 got notice and took the forged signature of plaintiff to it and they have concocted the sale deeds. Recently about one month prior to filing of the suit, plaintiff came to know about the illegal acts of defendants Nos.1 to 3 and hence, she demanded her share with defendants, but they refused to give share and hence, the suit for appropriate reliefs.

7. After service of notice, defendant Nos.4, 5 and 7 filed the written statement, which is being adopted by defendant Nos.1 to 3, 6, 8 to 11 and 13. In the said written statement, defendants have denied the relationship of plaintiff with defendants or the deceased Jayappa. Their contention is that Jayappa never married plaintiff and never lived with her and

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there is no matrimonial relationship between plaintiff and Jayappa. Plaintiff is falsely claiming her relationship with deceased Jayappa only to knock off the suit schedule properties. Defendant No.1 is the only wife of deceased Jayappa and thus, she is the legally wedded wife of Jayappa. They got two daughters and a son i.e., defendant Nos.2 and 3 and Shivanandappa (no more). Plaintiff is stranger to the family of Jayappa. They have denied all other averments made in the plaint. They further contended that after death of Jayappa, defendants got revenue entries into their names as per rules and not behind the back of plaintiff as alleged in the plaint. Hence, they are the absolute owners of the suit schedule properties. Based on said ownership, defendant Nos.1 to 3 for their urgent legal family necessity have sold Item Nos.1(b) to 1(k) of suit schedule properties to defendant Nos.4 to 13 for valid consideration and thus, they are the absolute owners of those properties. Hence, prayed for dismissal of suit with exemplary costs.

8. Based on above pleadings, the trial Court has framed the following issues:

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"ISSUES

1. *Whether plaintiff proves the genealogy as stated in the plaint?*
2. *Whether defendants prove that, plaintiff is not the legal heir of late Jayappa and not related to defendant No.1 to 3?*
3. *Whether defendant No 4, 5 and 7 prove that they are the bonafide purchasers of suit item No.1(b) to 1(k)?*
4. *Whether the plaintiff is entitled for partition and separate possession?*
5. *What order or degree?"*

9. On behalf of plaintiff, the plaintiff was examined as P.W.1 apart from examining two witnesses as P.W.2 and P.W.3 and marking Exs.P.1 to P.27 before the trial Court. On behalf of defendants, defendant Nos.4 and 1 were examined as D.W.1 and D.W.2 respectively and examined three witnesses as D.W.3 to D.W.5 and also got marked Exs.D.1 to D.58 before trial Court.

10. After hearing arguments of both sides, the learned trial judge has opined that plaintiff has proved her relationship with deceased Jayappa based on the genealogical tree produced by plaintiff as per Ex.P.2 and oral evidence of P.W.2 and P.W.3 and also based on Exs.P.24 to 26 decreed the suit granting 1/3rd

share in suit schedule properties by metes and bounds to plaintiff.

11. Aggrieved by said judgment and decree, defendant Nos.1 to 11 and 13 have filed the present appeal. During pendency of the appeal, defendant No.1 died and her legal representatives are appellant No.2 and respondent No.12 who were already on record; during pendency of the appeal, respondent Nos.7, 9 and 10 died and their respective legal representatives were brought on record.

12. Heard arguments of both sides.

13. Learned counsel for the appellant Sri. B.S. Kamate would submit that except producing Election ID card, Voters' ID card and the Pension ID card, plaintiff has not produced any material before the trial Court to prove her relationship with deceased Jayappa. Ex.P.2, the genealogical tree is only the document prepared at the instance of plaintiff as mentioned in Ex.P.2 itself. Hence, it is not having any value in the eye of law. Defendant No.1 is a rustic villager. When her name and names of her children shown in Ex.P.2 to her, she only admitted that their names are mentioned in Ex.P.2 and in that context, she admitted that Ex.P.2 is correct. However only by that stray admission of

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D.W.2, the suit of plaintiff ought not to have been decreed. Plaintiff has filed the suit and it is her initial burden to establish her relationship with deceased Jayappa. Admittedly, Jayappa died in the year 1993, but this suit is filed in the year 2015 praying for partition. Furthermore, the revenue entries mutated into the names of defendant Nos.1 to 3 in the year 1993 itself. Under those circumstances, the trial Court ought not to have decreed the suit. Hence, prayed for allowing the appeal and to dismiss the suit of plaintiff in entirety.

14. Learned counsel for respondent No.1, Sri.Madanmohan M. Khannur would submit that plaintiff has produced Exs.P.2, 24 to 26 documents and also examined her brother-in-law as P.W.2 to establish her relationship with deceased Jayappa. There is categorical admission from D.W.2 in respect of relationship of plaintiff with deceased Jayappa. Considering these facts, rightly the trial Court has decreed the suit of plaintiff. Hence, it needs no interference. Hence, prayed for dismissal of appeal.

15. Having heard arguments of both sides and verifying the appeal papers along with trial Court records, the points that arise for consideration are:

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- i) *Whether the plaintiff has established her relationship with deceased Jayappa that she is the first wife of deceased Jayappa?*
- ii) *Whether the purchasers-defendant No.4 to 13 establish that they are the bonafide purchasers of suit Item No.1B to 1K of schedule properties?*

16. The finding of this Court on the above Point No.1 is in ***affirmative*** and Point No.2 is in ***negative***, for the following:

REASONS:

It is the specific contention of plaintiff that she is the first wife of deceased Jayappa. Her contention is that there was quarrel between her and her husband, hence she came back to her parental house and started residing in Ranebennur. Defendant No.1 is the second wife of Jayappa and defendant Nos.2 and 3 are daughters of Jayappa through second wife.

17. To substantiate the above said contention of plaintiff, plaintiff mainly relies upon the evidence of P.W.2; P.W.2 is the brother-in-law of plaintiff and has stated in his affidavit evidence that during 1975, his marriage with younger sister of plaintiff-Smt.Shantavva was performed and on the same day, marriage of plaintiff with deceased Jayappa was performed. In this regard,

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he has deposed that there were no marriage invitation cards and photos because there were no such facilities at that time.

18. It is to be noted here that as per the say of this witness, the marriage was performed in 1975 in a small village-Anooru. Thus, the say of P.W.2 that there were no such facilities appears to be genuine. P.W.2 is none other than the brother-in-law of plaintiff.

19. P.W.3 is another witness on behalf of plaintiff. He has stated in his affidavit evidence that about 40 years prior to his deposition, marriage of plaintiff has taken place with Jayappa at Anooru village, Byadagi Taluk. It is further stated that about 4-5 years, plaintiff led her life with Jayappa and then, without tolerating the harassment being given by Jayappa, she had been to her parental house.

20. The age of P.W.3 is mentioned as 65 in his affidavit evidence which was filed on 07.08.2017. He denied the suggestion in cross-examination that the name "Jayappa" with plaintiff is a different person and he is not related to Jayappa son of Badiger Manappa.

21. According to cross-examination of P.W.3, he had seen the marriage photographs and marriage invitation card and they are with plaintiff. However, he might have exaggerated it.

22. In this regard, defendant No.1 is the person who is capable of saying anything about the first marriage of her husband. Specifically she has not filed her written statement denying the contention in the plaint, but she has adopted the written statement filed by the purchaser. She is examined as D.W.2. In her affidavit evidence D.W.2 denied the contention of the plaintiff. However, in the cross-examination, she has deposed that Bhagirati Bayi (plaintiff) might have left Koonabevu village about 25 years prior to her deposition. She has deposed that she married Jayappa about 35 years back. She has deposed so on 21.02.2018. 35 years prior to said might be in the year 1983 and not 1975.

23. Furthermore in the cross-examination, D.W.2 categorically admitted that the recitals in Ex.P.2 (genealogical tree) are correct. She admitted that she has not challenged the said genealogical tree. She further admitted that because the recitals of Ex.P.2 are true she has not challenged.

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24. Ex.P.2 is the genealogical tree prepared by the revenue authorities i.e., Village Accountant on 02.12.2014 i.e., before filing of the suit. According to this genealogical tree, the plaintiff is shown as the first wife of deceased Jayappa Manappa Badiger and defendant No.1 is shown as his second wife. Defendant Nos.2 and 3 are shown as his daughters and they had a son called Shivanandappa, who died as a bachelor.

25. The above categorical admission of D.W.2 in her cross-examination about Ex.D.2 establishes that plaintiff is the first wife of deceased Jayappa.

26. Immediately after the death of Jayappa Badiger, on 11.06.1993, as per Ex.P.3, defendant No.1 has given application to mutate the suit schedule properties into the name of defendant Nos.2 and 3 and her son-Shivanandappa, who were minors and to appoint her as minor guardians. After filing such an application, the revenue authorities by making publication of notice as required under law as per Ex.P.4, and as no objection came forward, they have mutated the suit schedule properties bearing No.183/2 into the name of defendant Nos.2 and 3 and their brother Shivanandappa represented by their minor guardian defendant No.1.

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27. Ex.P.4 is the form-U notice issued by the revenue authorities before mutating Sy.No.183/2 into the name of defendant Nos.2 and 3 and their brother Shivanandappa. This document is dated 21.06.1993. It is stated in it that the Khatedar-Jayappa Manappa Badiger died on 15.04.1993 at Koonabevu village and he has a son-Shivanandappa daughters-Kamma and Basamma(Defendant Nos.2 and 3) and wife Smt. Laxmavva are his simple nearest legal representatives and the children are minors and thus, by deleting the name of Khatedar, names of Shivanandappa, Kamma, Basamma is to be added and application is given to make it.

28. This notice is signed by defendant No.1 and also by one Bhagirathi Bayi Badigera (plaintiff denies her signature on it). If really this Bhagirathi Bayi Badigera is not related to deceased and if she had no interest in the suit schedule properties, there was no need to take her signature on it.

29. In this regard, documentary evidence produced by the plaintiff Exs.P.24 to 26 are also relevant.

30. Ex.P.24 is the Aadhar Card of plaintiff, wherein it is stated that Bhagirathi Bayi Badiger, wife of Jayappa Badiger, Mahaveera Road, Doddapete, Ranibennur, Ranibennur, Haveri.

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Ex.P.25 is the Election ID card of plaintiff, wherein her husband's name is shown as Jayappa and year of her date of birth is mentioned as 1956 and she is resident of Mahaveer Road, Ranebennur. This document is issued on 21.12.2014 i.e., at the time of filing of the suit.

31. Ex.P.26 is the Widow Pension Scheme's card issued on 05.07.1993 wherein name of plaintiff is shown as Bhagirati Bayi Badiger, her husband's name is shown as Jayappa Badiger and address is mentioned as Subhash Chowka, Doddapete, Ranebennur.

32. As discussed above, it is the specific case of the plaintiff that because there was no cordial relationship between her and her husband, she came to her parental house and started residing at Ranebennur. Hence, in Ex.P.24 to 26, the plaintiff's residence is shown as Ranebennur.

33. The above facts clearly and categorically establish that plaintiff is the first wife of Jayappa. Thus, she has right in the suit schedule properties immediately after demise of Jayappa. Mere change of revenue entries into the name of defendant Nos.2 and 3 and their brother-Shivanandappa, will not create absolute ownership to them. Mutation of revenue entries

is only to facilitate the parties to pay land revenue. The entries in R.T.Cs. will only prove the possession and it will not prove the title and ownership.

34. Under these circumstances, without any registered relinquishment deed from plaintiff, defendants will not get absolute rights over the suit schedule properties.

35. The trial Court has not examined Section 16(3) of the Hindu Marriage Act, 1955 and blindly granted 1/3rd share to the plaintiff. However, it is to be noted here that during subsistence of the marriage of plaintiff with Jayappa, he married defendant No.1. Hence, said marriage is violative of Section 5(i) of Hindu Marriage Act, 1955. Hence, said marriage is *void abinitio*.

36. The children born under void marriage will not get any share in ancestral property, but they would get share only in the property of their parents. Defendant No.1 being second wife of deceased Jayappa will not get any share in the property of her husband. She can only claim maintenance. Defendant Nos.2 and 3 being daughters born under void marriage, they would get share only in the share of their father. Under these circumstances, there shall be notional partition and in that notional partition between plaintiff and deceased Jayappa would

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be $\frac{1}{2}$ each and in the share of Jayappa, plaintiff and defendant No.2 & 3 would get $\frac{1}{3}^{\text{rd}}$ each; thus, plaintiff would get half share + $\frac{1}{3}^{\text{rd}}$ share in the remaining half share i.e., $\frac{2}{3}^{\text{rd}}$, which is more than $\frac{1}{3}^{\text{rd}}$ in the suit schedule properties.

37. In this regard, we rely on the judgment of the Hon'ble Supreme Court in **Revanasiddappa and Another v. Mallikarjun and Others**¹, which is as follows:

"62.1. Now, let us assume for the sake of example that there are four coparceners — C1, C2, C3, and C4. C2 has died. C2 is survived by a widow, a son, and a daughter but it so transpires that one of the children is born from a marriage which is null and void under Section 11 of the HMA, 1955. C2 would have a 1/4th share in the coparcenary which consisted of him and his three brothers — C1, C3 and C4. Now, in order to ascertain C2's share in the property and the devolution of this shares among C2's heirs, the Explanation mandates an assumption that a partition took place immediately before C2's death. In such a partition, between him and his brothers, C2 gets 1/4th share in the larger coparcenary comprising himself and his 3 brothers. Now, within his own branch, C2, his widow and his child born from a valid marriage would each have a 1/3rd share. In other words, in the notional partition which is deemed to

¹ (2023) 10 SCC 1

have taken place in terms of the Explanation the share of C2 is ascertained at 1/3rd.

62.2. *In working out the devolution of interest and the distribution of property following the death of C2, C2's 1/3rd share would be equally distributed between his widow, child born from the marriage which was valid and the child born from the marriage whose legitimacy is protected by Section 16(1) of the HMA, 1955 though the marriage was null and void. In other words, such a child would have a share in the property which would be allotted to his parent (C2) if a partition had taken place immediately before the death of C2. The widow would take a 1/3rd share (her share in the notional partition) plus 1/3rd in the 1/3rd share of C2 (her share in succession, as an heir to C2). The child who was born from the valid marriage would acquire a 1/3rd share plus a 1/3rd share in C2's 1/3rd share. The child who has the benefit of Section 16(1) of the HMA, 1955 acquires a 1/3rd share in the 1/3rd share which was allotted to C2 presuming that the partition had taken place immediately before the death of C2. This child, unlike the child born from a lawful marriage, is not entitled to a share in the notional partition itself. After the father's share is determined in such notional partition, a child whose legitimacy is protected under Sections 16(1) and 16(2) will have a share in the father's share, along with the surviving widow and the other children. This, in our view, would be the correct and proper interpretation of the Explanation to Section 6 which mandates the assumption of a notional state of*

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affairs, namely, a partition immediately before the death of the Hindu male coparcener."

38. Relying on the above judgment, plaintiff would get 2/3rd share in suit schedule properties. However, plaintiff has claimed only 1/3rd share in the plaint and restricted her claim only for 1/3rd share and further she has not filed any appeal challenging grant of only 1/3rd share. Hence, we are of the opinion that interference on the grant of 1/3rd share to plaintiff by the trial Court is not required.

39. Some of the purchasers have filed appeal contending that they are *bona fide* purchasers for value, but it was not considered by the Trial Court. On behalf of purchasers, only D.W.1 i.e., defendant No.4 was examined. He has deposed in his cross-examination that, he has not examined mutation entries or form-U or revenue documents to know that who are owners of these properties. He does not know the exact survey number of these properties. He does not know that signature of plaintiff was forged to get mutation into the name of defendant Nos.2 and 3.

40. The other purchasers are not examined.

41. Considering these aspects, rightly the learned trial judge held that defendant Nos.4 to 13 failed to establish that

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they are *bonafide* purchasers of the suit Item Nos.1(b) to 1(k) properties. Hence, it needs no interference.

42. Thus, we proceed to pass the following:

ORDER

The appeal filed under Section 96 Code of Civil Procedure is dismissed by confirming the judgment and decree dated 13.11.2018 in O.S.No.1/2015 on the file of Additional Senior Civil Judge and J.M.F.C., Ranebennur.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

SSP
CT-MCK