



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 24TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR FIRST APPEAL NO. 100112 OF 2020 (PAR/POS)

C/W

RFA CROSS OBJ NO. 100015 OF 2022

IN RFA NO. 100112/2020

BETWEEN:

BASAPPA CHANNAPPA HALALLI
AGE : 40 YEARS, OCC : BUSINESS,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

...APPELLANT

(BY SRI. SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

VINAYAKA
B V

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by VINAYAKA B V
Date: 2026.03.25
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1. SMT. MEENAXI @ MAHADEVI
W/O. CHANABASAPPA REVUR
AGE : 49 YEARS,
OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : PLOT NO.45,
C/O. C.G.REVUR ANAND NAGAR, ASHRAM ROAD,
VIJAYAPURA-586101, DIST : VIJAYAPURA.
2. SMT. SHASHIREKHA W/O. RAMESH UGAR
AGE : 47 YEARS,
OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : EW 160, ADARSH NAGAR,
ASHRAM ROAD, VIJAYAPURA-586101
DIST : VIJAYAPURA.
3. SMT. RAJASHREE W/O. KALLAPPA HALALLI
AGE : 43 YEARS,



OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.

4. SMT. SHAKUNTALA W/O. SIDRAI MADABHAVI
AGE : 45 YEARS,
OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : PLOT NO.45, C/O : C.G.REVUR
ANANDNAGAR, ASHRAM ROAD
VIJAYAPURA-586101, DIST : VIJAYAPURA.
5. SMT. SARASWATI W/O. BASAGOUD MUDIGOUDAR
AGE : 75 YEARS, OCC : HOUSEHOLD WORK,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

R5 IS EXPIRED

NOTE: THE LRS OF R5 ARE ALREADY ON RECORD WHO
ARE R1 TO R4, R6 TO R7 AND R23.

6. SHANKARGOUDA S/O. BASANGOUDA MUDIGOUDAR
AGE : 40 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.
7. SAVITR W/O. APPARAI SHEGUNASHI
AGE : 52 YEARS, OCC : HOUSEHOLD WORK,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.

SHANKAREPPA S/O TAMMANNA MADABHAVI
SINCE DECEASED BY HIS LRS.

8. GIRIMALLA S/O. SHANKAREPPA MADABHAVI
AGE : 65 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
9. SHIDARAY SHANKAREPPA MADABHAVI
AGE : 63 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
10. CHIDANAND S/O. SHANKAREPPA MADABHAVI
AGE : 55 YEARS, OCC : AGRICULTURE,



R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

11. MALLAPPA S/O. SHANKAREPPA MADABHAVI
AGE : 50 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

SADASHIV S/O. SHANKAREPPA MADABHAVI
SINCE DECEASED BY HIS LRS.

12. SMT. SAVITA W/O. SADASHIV MADABHAVI
AGE : 37 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248, TQ : ATHANI,
DIST : BELAGAVI,
NOW AT KOTTALAGI-591265.

13. KUMAR ABHISHEK S/O. SADASHIV MADABHAVI
AGE : 16 YEARS, OCC : STUDENT,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI,
NOW AT KOTTALAGI-591265.

14. KUMAR AMAR S/O. SADASHIV MADABHAVI
AGE : 15 YEARS, OCC : STUDENT,
R/O : AIGALI-591248, TQ : ATHANI,
DIST : BELAGAVI,
NOW AT KOTTALAGI-591265.

(SINCE THE RESPONDENT NO.13 AND 14 ARE MINORS
REPRESENTED BY THEIR MINOR
GUARDIAN AND NATURAL MOTHER I.E. RESPONDENT
NO.12)

15. VITHOBA S/O. GOPAL BHOSALE
AGE : 65 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.

16. PUNDALIK S/O. GOPAL BHOSALE
AGE : 62 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.

17. NARAYAN S/O. GOPAL BHOSALE



NC: 2026:KHC-D:4509-DB
RFA No. 100112 of 2020
C/W RFA.CROB No. 100015 of 2022

AGE : 60 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.

18. KESHAV S/O. GOPAL BHOSALE
AGE : 58 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
19. MALHARI S/O. GOPAL BHOSALE
AGE : 56 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
20. ARJUN S/O. GOPAL BHOSALE
AGE : 54 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
21. PANDURANG S/O. GOPAL BHOSALE
AGE : 43 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
22. TUKARAM S/O. GOPAL BHOSALE
AGE : 41 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
23. SMT. JAYASHRI W/O. SHANKARGOUDA MUDIGOUDAR
AGE : 46 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

...RESPONDENTS

(BY SRI ARAVIND D. KULKARNI, ADVOCATE FOR R1 TO R4;
SRI RAMACHANDRA A. MALI, ADVOCATE FOR R8, R10 TO R22;
R5-DECEASED(R1 TO R4, R6, R7, R23 ARE LRS OF THE DECEASED
R5);
NOTICE ISSUED TO R6, R7, R9 AND R23 ARE SERVED BUT
UNREPRESENTED;
R13, R14 ARE MINORS REPRESENTED BY R12)

THIS RFA IS FILED UNDER SEC. 96 OF CPC., PRAYING TO SET
ASIDE THE IMPUGNED ORDER DATED:18.01.2020 PASSED IN
O.S.NO.257/2010 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL
JUDGE, ATHANI, AND DISMISS THE SUIT BEARING
O.S.NO.257/2010 IN THE ENDS OF JUSTICE AND EQUITY.



IN RFA.CROB NO. 100015/2022
BETWEEN:

1. SMT. MEENAXI @ MAHADEVI
W/O. CHANABASAPPA REVUR
AGE: 50 YEARS, OCC. HOUSEHOLD WORK
AND AGRICULTURE, R/O. PLOT NO.45,
C/O. C. G. REVUR,
ANAND NAGAR, ASHRAM ROAD,
BIJAPUR-586101.
2. SMT. SHASHIREKHA W/O. RAMESH UGAR
AGE : 48 YEARS,
OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : EW 160, ADARSH NAGAR,
ASHRAM ROAD, BIJAPUR -586101.
3. SMT. RAJASHREE W/O. KALLAPPA HALALLI
AGE : 44 YEARS,
OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
4. SMT. SHAKUNTALA W/O. SIDRAI MADABHAVI
AGE : 46 YEARS,
OCC : HOUSEHOLD WORK AND AGRICULTURE,
R/O : PLOT NO.45, C/O : C.G.REVUR,.
ANAND NAGAR, ASHRAM ROAD,
BIJAPUR -586101.

...CROSS OBJECTORS

(BY SRI ARAVIND D. KULKARNI, ADVOCATE)

AND:

1. SMT. SARASWATI W/O. BASAGOUDA MUDIGOUDAR
AGE. 76 YEARS, OCC. HOUSEHOLD WORK,
R/O. AIGALI-591248,
TQ. ATHANI, DIST. BELAGAVI.
2. SHANKARGOURDA S/O. BASAGOUDA MUDIGOUDAR
AGE : 51 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.



3. SMT. SAVITRI W/O. APPARAI SHEGUNASHI
AGE : 53 YEARS, OCC : HOUSEHOLD WORK,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
4. BASAPPA CHANNAPPA HALALLI
AGE : 41 YEARS, OCC : BUSINESS,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

SHANKAREPPA S/O. TAMMANNA MADABHAVI
SINCE DECEASED BY HIS LRS.
5. GIRIMALLA S/O. SHANKAREPPA MADABHAVI
AGE : 66 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
6. SHIDARAY SHANKAREPPA MADABHAVI
AGE : 64 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
7. CHIDANAND S/O. SHANKAREPPA MADABHAVI
AGE : 56 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.
8. MALLAPPA S/O. SHANKAREPPA MADABHAVI
AGE : 51 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

SADASHIV S/O. SHANKAREPPA MADABHAVI
SINCE DECEASED BY HIS LRS.
9. SMT. SAVITA W/O. SADASHIV MADABHAVI
AGE : 38 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248, TQ : ATHANI,
DIST : BELAGAVI,
NOW AT KOTTALAGI-591265,
TQ : ATHANI, DIST : BELAGAVI,
10. KUMAR ABHISHEK S/O. SADASHIV MADABHAVI



AGE : 17 YEARS, MINOR M/G MOTHER RESPONDENT NO.9,
SMT. SAVITA W/O. SADASHIV MADABHAVI,
R/O : AIGALI-591248, TQ : ATHANI,
DIST : BELAGAVI,
NOW AT KOTTALAGI-591265.
TQ : ATHANI, DIST : BELAGAVI,

11. KUMAR AMAR S/O. SADASHIV MADABHAVI
AGE : 16 YEARS, MINOR M/G MOTHER RESPONDENT NO.9,
SMT. SAVITA W/O. SADASHIV MADABHAVI,
R/O : AIGALI-591248, TQ : ATHANI,
DIST : BELAGAVI,
NOW AT KOTTALAGI-591265.
TQ : ATHANI, DIST : BELAGAVI,
12. SHRI VITHOBA S/O. GOPAL BHOSALE
AGE : 66 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
13. SHRI PUNDALIK S/O. GOPAL BHOSALE
AGE : 63 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
14. SHRI NARAYAN S/O. GOPAL BHOSALE
AGE : 60 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
15. SHRI KESHAV S/O. GOPAL BHOSALE
AGE : 59 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
16. SHRI MALHARI S/O. GOPAL BHOSALE
AGE : 57 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
17. ARJUN S/O. GOPAL BHOSALE
AGE : 55 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.



18. SHRI PANDURANG S/O. GOPAL BHOSALE
AGE : 44 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
19. SHRI TUKARAM S/O. GOPAL BHOSALE
AGE : 42 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248
TQ : ATHANI, DIST : BELAGAVI.
20. SMT. JAYASHRI W/O. SHANKARGOUDA MUDIGOUDAR
AGE : 47 YEARS, OCC : AGRICULTURE,
R/O : AIGALI-591248,
TQ : ATHANI, DIST : BELAGAVI.

...RESPONDENTS

(BY SRI SHRIHARSH A. NEELOPANT, ADVOCATE FOR R4;
SRI RAMACHANDRA A. MALI, ADVOCATE FOR R5 AND R7 TO
R19;
NOTICE ISSUED TO R1, R2, R3 AND R6 ARE SERVED BUT
UNREPRESENTED)

THIS RFA. CROB IN RFA NO.100112/2020 IS FILED UNDER
ORDER XLI RULE 22 OF CPC, PRAYING TO CALL FOR RECORDS
AND SET ASIDE THE JUDGMENT AND DECREE DATED
18.01.2020 PASSED IN O.S.NO.257/2010 ON THE FILE OF THE
PRINCIPAL SENIOR CIVIL JUDGE, ATHANI, IN SO FAR AS
REJECTING THE CLAIM OF THE PLAINTIFFS IN SUIT SCHEDULE
'A' (i, ii, iii and v) PROPERTIES, IN THE INTEREST OF JUSTICE
AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE B. MURALIDHARA PAI



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent No.1 to 4 and also the learned counsel appearing for respondent No.8 and 10 to 22 in RFA No.100112/2020. The said counsels also represent the respective parties in RFA Crob.No.100015/2022.

2. The present appeal and cross-objection are filed against the judgment and decree dated 18.01.2020 passed in O.S.No.257/2010 by the Principal Senior Civil Judge, Athani (hereinafter referred to as 'Trial Court') questioning the granting of decree partially by the defendant No.5 and also by the plaintiffs against rejection of claim made by the plaintiffs in respect of other properties.

3. The factual matrix of the case of the plaintiffs before the Trial Court is that the plaintiffs and defendant No.3 and 4 are the children of defendant No.1 and 2. The suit schedule properties are the ancestral joint family properties inherited from the father of defendant No.1 by name Channappa. The defendant No.1 has three brothers namely



Bhimagouda, Apparaj and Paragouda. In the partition of the year 1986, the suit properties were allotted to the share of defendant No.1. Accordingly, name of the defendant No.1 was entered to the suit properties as per M.E.No.6508. Though the plaintiffs and defendant No.4 are married, they used to visit the suit properties now and then. Thus, the plaintiffs and defendant No.1 to 4 are in joint possession of the suit schedule properties. It is also contented that the suit properties are fertile, irrigated lands and every year there will be surplus income and the family never faced any financial crisis. It is contended that the defendant No.1 and 3 have addicted to bad vices and have created entries showing that defendant No.1 has given two lands bearing R.S.No.392/1 and 391/2B to the defendant No.3 under M.E.No.6774 of Aigali village in the year 1988. It is contended that the said entry was effected behind the back of the plaintiffs and it is not binding on them and after coming to know about the above transactions, in the third week of June-2010, the plaintiffs requested the defendants to effect partition but the defendant No.1 did not do so. The defendant No.16 is added as party to the suit since the defendant No.3 has illegally entered the name of his wife to R.S.No.391/1. The defendant



No.3 has sold 4 acres in the land bearing R.S.No.392/1 to defendant No.8 to 15 on 14.12.2000. The defendant No.1 without having any family necessity has sold 1 acre 5 guntas of land to the defendant No.6 in R.S.No.556/1 on 14.05.1996. He also sold 1 acre 30 guntas in R.S.No.557/3 to the defendant No.7 on 20.08.1999. He further sold 9 acres and 10 guntas in R.S.No.391/1A to the defendant No.5 on 16.03.2006 and the plaintiffs are not parties to these deeds and they have not come in possession of the purchased properties. The plaintiffs and defendant No.1 to 4 are in actual possession and enjoying the same and the sale deeds are not binding on the plaintiffs. The plaintiffs have not executed any sale deed in favour of defendant No.5 to 15 and they have not received any consideration amount, and the sale deeds are also hallow and not binding on the plaintiffs.

4. In view of the said suit, notice was issued to the defendants and defendant Nos.1 to 4 and 16 have remained exparte. Defendant No.5, defendant No.6(a to d), 7(a to d) and defendant Nos.8 to 15 appeared through their respective counsel and filed their written statement separately. In the



written statement, it is contented that suit is vexatious and the very contention that the plaintiffs are co-parceners and members of the joint family along with defendant No.1, 3 and 4 is denied and also denied that they have got undivided share in the suit properties and totally denied the claim made by the plaintiffs including the joint possession and also denied the contention that the plaintiffs came to know about the said transaction recently. The defendants took specific defence in the written statement that the defendant No.1 and 3 are divided in the year 1988 itself and they are not the joint family members since then. The partition was effected by way of family arrangement and defendant No.3 has got two properties i.e. RS.No.392/1 and 391/2B. Defendant No.1 became absolute owner of the property in RS No.391/1A and as the defendant No.1 was in need of money to repay the loans taken from the bank, society and private persons, he took the amount from defendant No.5 for repayment and sold the RS No.391/1A to the defendant No.5. The defendant No.1 also incurred loans, as he was unable to work being the aged person and his son was living separately. The sale was made in favour of defendant No.5 and the same is also for the family and legal necessity.



Defendant No.5 is a bonafide purchaser. It is also contented that defendant No.1 married in the year 1986 and the plaintiff Nos.2, 4 and defendant No.3 married about 31 years back and defendant No.4 was married in the year 1972-73. The plaintiffs and defendant No.4 are ousted from the family after their marriages and as they have not prayed for their share within 12 years from the date of ouster, their suit is filed beyond the limitation and the same is hit by limitation. Thus, the plaintiffs and defendant Nos.2 to 4 have no better title and have no rights to claim partition in this property and hence prayed the Court to dismiss the suit.

5. Defendant No.7 also filed similar written statement denying the claim made by the plaintiffs and also contended that the sale deed effected in favour of defendant No.6 and 7 is legal and binding on the plaintiffs and they are in actual possession in respect of RS No.556 and 557 and they are the bonafide purchasers. Suit is also barred by limitation. The written statement of defendant Nos.8 to 15 is filed contending that the genealogy given by the plaintiffs is incomplete and also contended that they are not the co-parceners and also not the



members of the joint family and family was in a financial crisis and the properties were sold and defendant Nos.8 to 15 have purchased 4 acres out of land bearing Sy.No.392/1 on 14.12.2000. It is denied that the said sale deed was without the authority and the same is not binding. It is contended that the joint family was disrupted in the year 1988 itself and in the same year, defendant No.1 and 3 got separated and living separately. They also made independent transactions subsequent to the partition and some of the properties were sold even prior to the Amendment and when already there was a partition and public documents are in existence in favour of defendant No.1 and 3, question of granting any relief does not arise.

6. The trial Court having considered the pleadings of the parties, framed the issues and additional issues and having considered the evidence of PW1 and documentary evidence of Ex.P1 to P25 and defendants examined DW1 to DW5 and got marked Ex.D1 to 32 and having considered the oral and documentary evidence, comes to the conclusion that Issue No.1 is answered 'partly in the affirmative' in coming to the



conclusion that the properties are the ancestral properties, but comes to the conclusion that even the sale was made for the family necessity answering the Issue No.2 as 'negative' since the plaintiffs have contended that there was no family necessity and further answered Issue No.3 in coming to the conclusion that sale deed executed in favour of defendant No.5 to 16 are hallow and the said sale deeds are also not proved. However, the trial Court comes to the conclusion while answering Issue No.4 that defendant No.5 proves that in the year 1988 itself joint family was disrupted and answered Issue No.5 in the 'negative' regarding limitation is concerned. But partly answered Issue No.6 in coming to the conclusion that the plaintiffs are entitled for partition and separate possession of their share in respect of the property, which was sold in the year 2006 i.e. subsequent to the Amendment. The trial Court also answered additional Issue Nos.2, 3 and 4 as 'affirmative' in coming to the conclusion that no dispute with regard to the genealogical tree and also there was a partition in the year 1988 itself between defendant No.1 and defendant No.3 and also defendant Nos.8 to 15 proved that alienation made by defendant No.3 was for family and legal necessity and granted



the relief of partition only in respect of the sale of the property in the year 2006, in coming to the conclusion that the plaintiffs are entitled for partition and separate possession of their 1/6th share individually and collectively and they are entitled for 4/6th share in the suit Item No.4 of property only i.e. the property which was sold on 16.03.2006 to defendant No.5. Being aggrieved by the said judgment in respect of Item No.4 is concerned, which was purchased by the appellant/defendant No.5, the appeal is filed and so also, the plaintiffs have filed Cross objection as against declining to grant the relief in respect of other properties are concerned.

7. Learned counsel appearing for the appellant would submit that already there was a partition in the year 1988 and said partition was between the father and son and subsequent to the partition, both father as well as the son acted upon and sold the property in the year 1996, 1999, 2000 and 2006. The counsel also would submit that when the trial Court comes to the conclusion that the sale was made for the legal necessity and also when there was a partition in the year 1988 and as on the date of the partition in the year 1988, these plaintiffs were



not having any share over the ancestral properties. The counsel also would submit that even PW1 also categorically admitted that there was a partition between the father and son and particularly the survey numbers allotted in favour of the brother as well as the father, but only claims that they have not taken any consent at the time of division of the property and also they came to know about the same recently. But counsel would submit that when the properties were sold in the years 1996, 1999, 2000 and 2006, the family parted with the possession of the respective properties and the claim that they are in joint possession also cannot be accepted. However, the trial Court committed an error in coming to the conclusion that sale deed made in the year 2006 is not binding; but once accepted that there was a partition in the year 1988, the question of conferring any right in favour of the plaintiffs does not arise. Even if amendment was made in the year 2005, the counsel would submit that based on the earlier partition of the year 1988, both father and son dealt with the matter in their individual capacity and hence, the trial Court committed an error having not noticed these factors of sale deed and as well as the partition of the year 1988. The counsel also would



submit that when there was a partition in the year 1988 even subsequent to the amendment in the year 2005, it will not create any right and public documents also disclose that there was a partition in the year 1988 itself. The counsel also would submit that the marriage of the plaintiffs were solemnized even prior to the Karnataka Amendment and even subsequent to the Central Amendment and even if already any transaction was made by way of partition and if public documents, evidence the fact of partition and the same is saved by the Karnataka Amendment as well as the Central Enactment and hence the question of granting any share does not arise.

8. Per contra, the counsel appearing for the respondent Nos.8, 10 to 22 adopts the argument of the counsel appearing for the appellant stating that already there was a partition in the year 1988 and subsequently the father and son acted upon and sold the different properties and no properties are available for partition and apart from all the sale deeds are executed prior to Amendment of 2005 and sales are prior to amendment in favour of these respondents.



9. Per contra, the counsel appearing for the respondent Nos.1 to 4/plaintiffs and also the Cross objector would vehemently contend that the trial Court committed an error in coming to the conclusion that the sale was already made prior to the amendment and only granted the relief in respect of Item No.4, that was sold subsequent to the amendment of 2005 i.e. in 2006. The trial Court ought to have granted the relief in respect of all the properties, which have been claimed by the plaintiffs and hence the very approach of the trial Court is erroneous. Hence, the learned counsel would submit that cross objection requires to be allowed and the judgment of the trial Court requires to be set-aside and modified by granting the share in all the properties.

10. Having heard the counsel appearing for the appellant, learned counsel for the respondents and also the learned counsel for the cross-objector, the points that would arise for the consideration of this Court are:

- 1) Whether the trial Court committed an error in granting the relief in respect of Item No.4, which was sold in favour of the appellant/defendant No.5?



2) Whether the trial Court committed an error in declining to grant the relief in favour of the plaintiffs in respect of other properties and whether it requires interference of this Court by allowing the RFA Crob?

3) What order?

Point Nos.1 and 2:

11. Having heard the respective counsel and also considering the material available on record i.e. pleadings of the plaintiffs as well as defendants, it is not in dispute that the suit schedule properties belong to the family and also ancestral properties of the family. It is also emerged during the course of the evidence that the plaintiffs have married prior to 1994 and also it is the specific contention of the subsequent purchasers that already there was a partition between the father and son i.e. defendant No.1 and defendant No.3 in the year 1988, as per Ex.D29 i.e. MR No.6808 and subsequently defendant No.3 got mutated the property in his favour consequent upon the partition as per MR No.6774 and in terms of the said MR No.6774 dated 04.04.1988, two items of the properties are fallen to the share of defendant No.3 i.e. RS No.391/2B and



also RS No.392/1 measuring 8 acres 15 guntas situated at Aigali village. The remaining properties are vested with the father i.e. defendant No.1. The records also disclose that there were several sale deeds subsequent to the partition i.e., the sale deeds executed in the years 1996, 1999, 2000 and 2006 in respect of suit schedule properties. Defendant No.1 sold the property in Item No.1 in favour defendant No.6 by executing sale deed dated 14.05.1996 and he also sold the property Item No.2 in favour of defendant No.7 by executing sale deed dated 20.08.1999. Defendant No.3 sold the property in Item No.3 in favour of defendant Nos.8 to 15 on 14.12.2000. Defendant No.1 also sold the property in Item No.4 in favour of defendant No.5 by executing the sale deed dated 16.03.2006. No doubt, having considered the sale transactions of the years 1996, 1999, 2000 and also 2006, the trial Court has come to the conclusion that already properties are sold prior to the amendment 2005, except the Item No.4 i.e. to the extent of 9 acres 4 guntas that was sold by the father on 16.03.2006, which is amenable for partition. Whether such conclusion given by the trial Court is erroneous or correct, this Court has to take note of the same.



12. Having considered the material on record, it is not in dispute that there was a partition among the father and son in the year 1988 and the same is admitted by PW1. Even having considered the admission on the part of PW1 during her cross-examination, she categorically admitted that there was a division among the father and son. In the cross-examination, she categorically admits that her marriage was performed in the year 1988 and also admits that there was earlier partition between the father and her uncles in year 1986 and so also document of Diary No.6508 was confronted and also categorical admission was given that her sisters were also married 25 years ago and all of them are residing in their matrimonial house, but claims that they were managing the affairs of the family along with other family members but the properties are parted with possession on the date of sale itself. When the suggestion was made that in the year 1988, there was a partition between the father and son, though she denied, but admits the Diary No.6774 and claims that father and brother got divided the same without their consent, but claims that she came to know about the same before filing the suit and also claims that they have filed an appeal before the Assistant



Commissioner Court. But in further admission, she categorically stated that RS No.391/1A was allotted in favour of her brother and the same was sold in favour of defendant No.5, till then it was standing in the name of her brother and also in respect of RS No.392/1B and 391/2B, these two properties were standing in the name of her brother i.e. defendant No.3 and also admits that her brother got the loan from the bank in respect of these two survey numbers and even admits availing of the loan by defendant No.3. But when the suggestion was made that whether they objected for getting the loan, but she claims that father and son, without her knowledge, obtained the loan. It is also the claim that defendant No.1 and 3 were addicted to bad vices, but nothing is placed on record. In further cross-examination, PW1 admits that these properties are fallen to the share of her father from their grandfather and also categorical admission was given that father and brother performed the marriage of all the sisters and spent the huge money and marriage was performed 25 years ago and claims that they were having cordial relationship. The admission given by PW1 is very clear that two items of the properties were allotted to the brother and other remaining properties were allotted in favour



of the father and admits the Diary No.6774 and when the suggestion was made that they were aware of the partition of the year 1988, but the same was denied, but the admission takes away the case of PW1. The suggestion was made that both father and son were cultivating the property subsequent to the partition and the same was denied. Further she admits that she has maintained cordial relationship with the parents as well as the brother.

13. Having taken note of these admissions on the part of PW1, it is very clear that inspite of having cordial relationship with the parents as well as the brother, suit is filed only with an intention to question the sale deed and hence, it is clear that it is a collusive suit. But the fact is that the partition was effected in the year 1988 and subsequently sale was made by the father and son in respect of the properties, which were allotted in the years 1996, 1999, 2000 and 2006 respectively. When such partition was effected in the year 1988, there is a force in the contention of the counsel appearing for the appellant that as on the date of partition between the father and son, these plaintiffs were not having any right over the property in the



year 1988 and also subsequent Karnataka Amendment of 1994. As on the date of the Karnataka Amendment also, all of them have married and the admission of PW1 is very clear that her marriage was performed in the year 1988 as well as the other sister's marriage was also 25 years ago and hence Karnataka Amendment 1994 will also not come to the aid of the plaintiffs. When there was already a partition in the year 1988 and the parties have acted upon and the public document discloses that the properties are standing in the name of the father and son from 1988 onwards and subsequently the parties have acted upon and executed the sale deeds by the father as well as the brother of the plaintiffs. The judgment of the Apex Court is also very clear with regard to subsequent partition that if any material evidencing the fact of public document that already there was a partition and the parties have acted upon, then the question of reopening the same does not arise. However, the trial Court committed an error in granting the relief in respect of Item No.4 is concerned, that was sold by the father in favour of the defendant No.5 i.e. the appellant in RFA No.100112/2020. The very approach of the trial Court is erroneous when the material on record clearly discloses that



the partition was effected in the year 1988 and subsequently the parties have acted upon. Even the sale made by the father in favour of the appellant will not affect them since there was already a partition and no properties are available for partition even subsequent to the amendment of 2005. When such being the material available on record, the trial Court committed an error in granting the relief in favour of the plaintiffs with respect to Item No.4. The trial Judge committed an error in appreciating both oral and documentary evidence and particularly the trial Judge committed an error in not taking note of admission given by PW1 with regard to the partition effected in the year 1988 itself. But only contention is taken by PW1 that they got partitioned the property without their knowledge and question of bringing the same to their knowledge does not arise and as on the date of partition in the year 1988, they were not having any share over the co-parcenary property of the family and they are not co-parceners and only the right is conferred subsequent to the amendment in 2005. When such being the case, when there was no right as on the date of partition in 1988, questioning the same does not arise and all documents including partition as well as



subsequent sale confers that the parties have acted upon in terms of the partition in the year 1988 and the properties were sold and even granting the relief in respect of Item No.4 is also erroneous. Hence, the appellant in RFA No.100112/2020 succeeds in the appeal and cross objection filed by the plaintiffs questioning the declining of relief in favour of the other properties also cannot be granted and the plaintiffs will not succeed to any of the properties of the suit schedule properties. In view of the discussions, we answer the point Nos.1 and 2 accordingly.

14. In view of above discussions, we pass the following:

ORDER

- i) RFA No.100112/2020 is ***allowed***.
- ii) RFA Crob No.100015/2022 is ***dismissed***.
- iii) The impugned judgment and decree dated 18.01.2020 passed in OS No.257/2010 by the trial Court in favour of the plaintiffs in respect of Item No.4, which was sold in favour of the appellant is set-aside.



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iv) The judgment and decree passed by the
trial Court in respect of other items of the
property is confirmed.

SD/-
(H.P.SANDESH)
JUDGE

SD/-
(B. MURALIDHARA PAI)
JUDGE

YAN/JTR
CT-CMU
LIST NO.: 1 SL NO.: 13