

**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 17<sup>TH</sup> DAY OF APRIL, 2026**

**PRESENT**

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

**AND**

**THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

**REGULAR FIRST APPEAL NO.100046 OF 2017**

**BETWEEN:**

1. SMT. SHANTA W/O NELSON KAMAT  
AGE: 75 YEARS, OCC: HOUSEHOLD  
R/O GADAG (IRANI COLONY),  
NEAR MASJIT, TQ. AND DIST. GADAG.
2. KUMARI MADHULATA D/O NELSON KAMAT  
AGE: 53 YEARS, OCC: SERVICE  
R/O. GADAG (IRANI COLONY),  
NEAR MASJID, TQ. AND DIST. GADAG.
3. SMT. SUNITA W/O MOHAN KALKOTI  
AGE: 51 YEARS, OCC: TEACHER  
R/O. GADAG (IRANI COLONY),  
NEAR MASJID, TQ. AND DIST. GADAG.
4. SMT. HEMALATHA W/O LEMOVEL JADI  
AGE: 48 YEARS, OCC: HOUSEHOLD  
R/O CHIKANAL, POST. BHIMANGADA,  
TQ. HUNGUND, DIST. BAGALKOT.
5. SMT. SUREKHA W/O ROCKY ROJARIB  
AGE: 46 YEARS, OCC: HOUSEHOLD  
R/O. DHARWAD (MARATHA COLONY),  
TQ/DIST. DHARWAD.
6. SUNIL S/O NELSON KAMAT  
AGE: 41 YEARS, OCC: PRIVATE SERVICE  
R/O. GADAG (IRANI COLONY),



NEAR MASJID, TQ. AND DIST. GADAG.

... APPELLANTS

(BY SRI ARUN L. NEELOPANT, ADVOCATE)

**AND:**

VASANT BHIMARAO KAMAT,  
SINCE DEAD BY HIS LRS

1. SHOBHA W/O VASANT KAMAT,  
AGED ABOUT 72 YEARS, OCC. HOUSEHOLD,  
R/O. C/O. KAMAT MEDICAL,  
NAREGAL, TQ. RON, DIST. GADAG.
- 2 . ARUN S/O VASANT KAMAT,  
AGED ABOUT 52 YEARS, OCC: BUSINESS,  
R/O. C/O. KAMAT MEDICAL  
NAREGAL, TQ: RON, DIST: GADAG.
- 3 . AJAY S/O VASANT KAMAT,  
AGED ABOUT 49 YEARS, OCC: BUSINESS,  
R/O. C/O. KAMAT MEDICAL, NAREGAL,  
TQ: RON, DIST: GADAG.  
NOW R/AT: GAYATRI APARTMENT,  
1ST FLOOR, H.NO. 6, INDIRA NAGAR,  
HUBBALLI-580023, DIST. DHARWAD.  
  
SINCE DECEASED BY HIS LR'S
- 3(A) SMT. ELIJABET W/O AJAY KAMATH  
AGE:49 YEARS, OCC. HOUSEHOLD WORK,  
R/O. FIRST FLOOR, GAYATRI APARTMENT,  
INDIRA NAGAR, NEAR CHINMAYA SCHOOL,  
KESHWAPUR, HUBBALLI-580023.
- 3(B) VASANTH S/O. AJAY KAMATH  
AGE: 19 YEARS, OCC. STUDENT  
R/O. FIRST FLOOR, GAYATRI APARTMENT,  
INDIRA NAGAR, NEAR CHINMAYA SCHOOL,  
KESHWAPUR, HUBBALLI-580023.
- 3(C) KUSHAL S/O. AJAY KAMATH  
AGE: 17 YEARS, OCC. STUDENT,  
R/O. FIRST FLOOR, GAYATRI APARTMENT,

INDIRA NAGAR, NEAR CHINMAYA SCHOOL,  
KESHWAPUR, HUBBALLI-580023.

- 3(D) ADITYA S/O AJAY KAMATH  
AGE: 13 YEARS, OCC. STUDENT,  
R/O. FIRST FLOOR, GAYATRI APARTMENT,  
INDIRA NAGAR, NEAR CHINMAYA SCHOOL,  
KESHWAPUR, HUBBALLI-580023.

RESPONDENTS NO.3(C) AND (D) ARE MINORS  
REPRESENTED BY THEIR MINOR GUARDIAN  
RESPONDENT NO.3(A)  
(AMENDMENT CARRIED OUT AS PER ORDER DATED  
28.03.2023)

4. SUMAN JULIUS  
AGED ABOUT 47 YEARS, OCC: HOUSEHOLD,  
R/O: C/O JHON, H.NO. ASPUR ROAD,  
NEAR RAILWAY STATION,  
RAICHUR-584101.
5. HEMA JAYAKUMAR,  
AGED ABOUT 40 YEARS, OCC: BUSINESS,  
R/O: C/O. JAYAKUMAR GOODSHED AREA,  
V.V. GIRI ROAD, RAICHUR-584101.
6. SMT. KANTA W/O RICHARD KAMAT,  
AGED ABOUT 61 YEARS,  
OCC: HOUSEHOLD,  
R/O: HOLE-HALUR-582203  
TQ: RON, DIST: GADAG.
7. RAVI S/O RICHARD KAMAT,  
AGED ABOUT 50 YEARS, OCC: TAILOR,  
R/O: HOLE-HALUR-582203,  
TQ: RON, DIST: GADAG.

SURESH ALBERT COURPALIS  
SINCE DEAD BY HIS LR'S

8. SAROJINI W/O SURESH COURPALIS,  
AGED ABOUT 62 YEARS, OCC: TEACHER,  
R/O: COURPALIS COMPOUND,  
OPP: DISTRICT COURT,  
P.B. ROAD, DHARWAD-580001.

9. ELIZABETH D/O SURESH COURPALIS,  
AGED ABOUT 32 YEARS, OCC: HOUSEHOLD,  
R/O: COURPALIS COMPOUND,  
OPP: DISTRICT COURT,  
P.B. ROAD, DHARWAD-580001.
10. SMT. MARIN W/O ALBERT COURPALIS  
AGE: 96 YEARS, OCC: HOUSEHOLD  
R/O COURPALIS COMPOUND,  
OPP. DISTRICT COURT, P.B. ROAD,  
DHARWAD-580001.
11. NAZEER AHAMAD HASENSAB NOOLVI,  
AGE: 68 YEARS, OCC: RETIRED,  
R/O: LIC OF INDIA,  
DIVISIONAL OFFICE, DHARWAD.  
NOW R/AT C/O NESEEMABANU,  
NO. B-3, LIC QUARTERS, NARAYANPUR,  
DHARWAD-580008.
- SINCE DECEASED BY HIS LR'S
- 11(A) SMT. NASEEMABANU  
W/O NAZEER AHAMAD NOOLVI  
AGE: 62 YEARS, OCC. HOUSEHOLD WORK,  
R/O. 1<sup>ST</sup> MAIN, H.NO.43/36,  
SILVER ORCHAID, KELAGERI ROAD,  
DHARWAD-580001.
- 11(B) SMT. NASEEMABANU  
D/O. NAZEER AHAMAD NOOLVI  
AGE: 38 YEARS, OCC. HOUSEHOLD WORK,  
R/O. 1<sup>ST</sup> MAIN, H.NO.43/36,  
SILVER ORCHAID, KELAGERI ROAD,  
DHARWAD-580001.  
(AMENDMENT CARRIED OUT AS PER ORDER DATED  
22.08.2022)
12. MOULASAB MAKTUMSAB TOREGAL,  
AGE: 65 YEARS, OCC: RETIRED,  
R/O: BHARATH HIGH SCHOOL,  
NAVALGUND ROAD, DHARWAD.  
NOW R/AT GALAGI HULAKOPPA  
TQ. KALAGHATAGI, DIST. DHARWAD-581204.

13. TABEETA,  
W/O VASANT DANDIN,  
AGE: 85 YEARS, OCC: RETIRED TEACHER  
OF BHISHOP'S COTTAGE, HALIYAL ROAD, DHARWAD.  
NOW R/AT SUMITRA RIGHT SIDE OF SAI MANDIR,  
COURPALIS COMPUND, DHARWAD-580008.
- SINCE DECEASED BY HER LR'S
- 13(A) VIJAYKUMAR,  
S/O VASANT BANDI  
AGE: 62 YEARS, OCC. ENGINEER,  
R/O. "SUMITRA", OPP. SAI MANDIR,  
COURPALIS COMPUND, DHARWAD-580008.
- 13(B) BHASKAR,  
S/O VASANT DANDI  
AGE: 54 YEARS, OCC. ENGINEER,  
R/O. "SUMITRA", OPP. SAI MANDIR,  
COURPALIS OMPOUND, DHARWAD-580008.
- 13(C) VANDANA PRAKASH EDEN  
AGE: 57 YEARS, OCC. HOUSEHOLD,  
R/O. NO.210, 2<sup>ND</sup> MAIN, 10<sup>TH</sup> CROSS,  
KADIRENAHALLI, PADMANABHA NAGAR,  
BANGALORE-560070.
- 13(D) NIRMALA GOKAVI  
AGE: 52 YEARS, OCC. HOUSEHOLD,  
R/O. FLAT NO.703, 7<sup>TH</sup> FLOOR,  
ARIHANT APARTMENT, SAPTAPUR,  
DHARWAD-580008.
14. PRABHAKARAO,  
S/O DEVADANI JADIPALLE,  
AGE: 70 YEARS, OCC: RETIRED PRIEST,  
C/O. REV. V.P. INDIAN BHISHOP'S COTTAGE,  
HALIYAL ROAD, DHARWAD.  
NOW R/AT: VASTALYA, RIGHT SIDE OF SAI MANDIR,  
COURPALIS COMPUND, DHARWAD-580008.
15. BABAJAN S/O MAKTUMSAB MULLA,  
AGE: MAJOR, OCC: AGRICULTURE,  
R/O: MARATHA COLONY, DHARWAD.

16. NARAYAN S/O DAMODAR SHANBAG,  
AGE: 60 YEARS, OCC: BUSINESS,  
R/O: MISSION COMPOUND, DHARWAD.  
NOW R/AT RAMANATH GENERALS,  
2<sup>ND</sup> CROSS, MALMADDI CORNER,  
OPP. PRATIMA RESIDENCY,  
DHARWAD-580007.
17. SMT. SHILA,  
W/O PARASHURAM KULENNAVAR,  
AGE: 52 YEARS, OCC: HOUSEHOLD,  
R/O: MANIKILLA, NEAR HARIMANDIR,  
DHARWAD.  
NOW R/AT VENKATESH GHODKE,  
KEP ROAD, SANDUR, DIST. BALLARI.
18. REVEREND DEVANDAN T. KONESAGAR,  
AGE: 69 YEARS, OCC: RETIRED PRIEST,  
R/O: MISSION COMPOUND,  
NEAR LAXMI TALKIES, DHARWAD.  
NOW R/AT ANGEL, PLOT NO. 39, 13<sup>TH</sup> CROSS,  
NIRMAL NAGAR, DHARWAD-580004.
- 18(A) DIGVIJAY DILIPSINH JADAV  
AGE.34 YEARS, OCC. NOT KNOWN,  
R/O. C/O. TABEETA DEVADN KONESAGAR,  
C-1H7, ANGEL, 13<sup>TH</sup> CROSS, NIRMAL NAGAR,  
KALYAN NAGAR, DHARWAD-580003.

(AMENDMENT CARRIED OUT AS PER ORDER DATED  
13.12.2024)

19. AKSHA DEVEDAN KONESAGAR,  
AGE: MAJOR, OCC: HOSTEL WARDEN,  
R/O: NEAR LAXMI TALKIES,  
MISSION COMPOUND, DHARWAD.
20. KHALANDAR,  
S/O EYATSAB JAMAKHAN,  
AGE: 70 YEARS, OCC: BUSINESS,  
R/O: RAMNAGAR, DHARWAD-580003.
21. SMT. SARISBAI W/O ABDULMAJID  
DHARWAD,  
AGE: 70 YEARS, OCC. HOUSEHOLD,

R/O: DANU NAGAR,  
ATTIKOLLA, DHARWAD-580003.

22. SMT. INDUBAI,  
W/O MOAHADEVAPPA BHOSLE,  
AGE: 80 YEARS, OCC: HOUSEHOLD,  
R/O: COURPALIS COMPOUND,  
DHARWAD.  
NOW R.AT: OPP. T.V. TOWER GATE,  
APARTMENT GROUND FLOOR,  
3<sup>RD</sup> CROSS, NARAYANPUR.  
HALIYAL ROAD, DHARWAD-580008.
23. SOMESHEKAR S/O MAHADEVAPPA BHOSLE,  
AGE: 48 YEARS, OCC: GOVERNMENT JOB,  
R/O: COURPALIS COMPOUND, DHARWAD.  
NOW R.AT OPP. T.V. TOWER GATE,  
APARTMENT GROUND FLOOR,  
3RD CROS, NARAYANPUR,  
HALIYAL ROAD, DHARWAD-580008.
24. SHIVAJI,  
S/O MAHADEVAPPA BHOSLE,  
AGE: 45 YEARS, OCC: BUSINESS,  
R/O: AIR, COURPALIS COMPOUND,  
DHARWAD.  
NOW R.AT: OPP. T.V. TOWER GATE,  
APARTMENT GROUND FLOOR, 3<sup>RD</sup> CROSS,  
NARAYANPUR, HALIYAL ROAD, DHARWAD-580008.
25. BASAPPA GARAGAPPA AKKI,  
AGED ABOUT 69 YEARS, OCC: RETIRED  
R/O: COURPALIS COMPOUND,  
DHARWAD-580008.  
  
SHARADA BAI,  
W/O MALLAPPA SULLAD  
SINCE DEAD BY HER LR'S
26. MALLAPPA SULLAD,  
AGE: 62 YEARS, OCC: RETIRED,  
R/O: OPP: AIR, COURPALIS COMPOUND,  
DHARWAD-580008.

27. MANJUNATH S/O MALLAPPA SULLAD,  
AGE: ABOUT 33 YEARS, OCC: GOVT. SERVICE,  
R/O: OPP: AIR, COURPALIS COMPOUND,  
DHARWAD-580008.
28. BASAMMA D/O MALLAPPA SULLAD,  
AGE: ABOUT 31 YEARS, OCC: NIL,  
R/O: OPP: AIR, COURPALIS COMPOUND,  
DHARWAD.  
NOW R/AT: W/O BHUMESH ARAVA C. BHUMESH,  
3<sup>RD</sup> CROSS, KALIDAS NAGAR,  
HARIHAR-577601, DIST. DAVANAGERE.
29. TEJASHWINI D/O MALLAPPA SULLAD,  
AGE: ABOUT 25 YEARS,  
OCC: HOUSEHOLD,  
R/O: OPP: AIR,  
COURPALIS COMPOUND, DHARWAD.  
W/O MAHESH HUNASHYAL,  
SANGAMESH NILAY, KILLA ONI,  
BADAMI-587201, DIST. BAGALAKOTE.
30. SHRISHAILAPPA NAGAPPA SURIBAN,  
AGE: 65 YEARS, OCC: BUSINESS,  
R/O: OPP. AIR, COURPALIS COMPOUND,  
DHARWAD-580008.
- SINCE DECEASED BY HIS LR'S
- 30(A) SMT. SAROJA W/O SHRISHAIL SUREBAN  
AGE: 59 YEARS, OCC. HOUSEHOLD WORK,  
R/O. OPP. AIR COURPALIS COMPOUND,  
DHARWAD - 580008.
- 30(B) ANAND S/O. SHRISHAIL SUREBAN  
AGE: 39 YEARS, OCC. PRIVATE SERVICE,  
R/O. OPP. AIR COURPALIS COMPOUND,  
DHARWAD-580008.
- 30(C) SANTOSH S/O SHRISHAIL SUREBAN  
AGE: 39 YEARS, OCC. PRIVATE SERVICE,  
R/O. OPP. AIR COURPALIS COMPOUND,  
DHARWAD - 580008.  
(AMENDMENT CARRIED OUT  
AS PER ORDER DATED 20.06.2024)

31. SUBAS S/O BHARAMAPPA NEERALKERI,  
AGE: 63 YEARS, OCC: RETIRED,  
R/O: OPP: AIR, COURPALIS COMPOUND,  
DHARWAD-580008.
  
32. KHANSAB S/O HASANSAB PINJAR,  
AGE: 71 YEARS, OCC: RETIRED  
R/O: OPP. AIR, COURPALIS COMPOUND,  
DHARWAD-580008.

... RESPONDENTS

(BY SRI J.S. SHETTY, ADVOCATE FOR R1, R2, R3(A) TO R3(D), R4, R5;  
SRI RAJASHEKHAR B. HALLI, ADVOCATE FOR R17;  
SRI AHAMED ALI RAHIMAN SHAH, ADVOCATE FOR R21;  
SRI ABHISHEK KALLAD, ADVOCATE FOR R13(A) AND R13(B) IS  
APPEARED THROUGH VC;  
NOTICE ISSUED TO R9, R11(B), R12, R13(C), R13(D), R14, R16,  
R18(A), R20, R22 TO R28, R30(A) TO 30(C), R31, R32 ARE SERVED  
BUT UNREPRESENTED;  
R29 IS DISPENSED WITH V/O DATED 02.03.2026;  
R9 IS THE LR OF DECEASED R8 V/O. DATED 02.03.2026;  
R6, R10, R13, R15 AND R19 ARE ABATED;  
DEFENDANT NO.3 I.E. R7 IN THIS APPEAL IS LR OF DECEASED  
DEFENDANT NO.2; V/O. DATED 20.06.2025, LRS OF R30 ARE  
ALREADY ON RECORD)

THIS RFA IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL  
PROCEDURE, PRAYING TO, SET ASIDE THE IMPUGNED JUDGMENT  
AND DECREE DATED 19.09.2016 PASSED IN O.S. NO.224/1997  
PASSED BY THE COURT OF II ADDITIONAL SENIOR CIVIL JUDGE AND  
DHARWAD AND DISMISS THE SUIT BEARING O.S. NO.224/1997 IN  
THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME  
HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.03.2026,  
THIS DAY, **B. MURALIDHARA PAI J.**, DELIVERED THE FOLLOWING:

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

**CAV JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

The legal representatives of Defendant No.1 in O.S.No.224/1997 on the file of learned II Additional Senior Civil Judge, Dharwad have maintained this appeal praying to set aside the judgment and decree dated 19.09.2016 passed therein in the interest of justice and equity.

2. Parties to this appeal are hereinafter referred with their original ranking before the trial court.

3. Brief facts leading to this appeal are as under:

i) The plaintiff namely Sri Vasant Bhimarao Kamat instituted the suit in O.S.No.224/1997 praying to declare his ownership over the scheduled property by holding that the sale deeds executed, by Defendant No.4 as GPA holder of Defendant No.1 in favour of Defendant Nos.5 to 9, 11 to 18, 22 and 23; by Defendant No.9 in favour of Defendant Nos.10, 19 and 20; and by Defendant No.10 in favour of Defendant No.21 as illegal, void and not binding on him. The plaintiff also sought for mandatory injunction directing Defendant Nos.5 to 23 to demolish the buildings constructed by them in the schedule property and to

give vacant possession of the respective portions and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment over the schedule property.

ii) The case of the plaintiff is that he had purchased the property i.e., the non-agricultural land bearing CTS No.11A/1D measuring 3 acres situated in Dharwad city under a sale deed dated 05.10.1967, out of his own income and he was in possession and enjoyment of the said property as absolute owner thereof by getting mutation in his name in CTS record. Out of the said extent of 3 acres, he sold 22½ guntas of land under sale deeds dated 28.03.1968, 03.06.1985 and 11.06.1994 and the remaining extent of 2 acres 15 guntas of land therein came to be renumbered as CTS No.11A/1D/A1A1. After coming into force of the Urban Land Ceiling Act, 1976 (in short, 'the ULC Act'), he filed a declaration on 27.09.1976 in LUCR No.4107 before the Special Deputy Commissioner, Dharwad, giving the names of his family comprising of himself, his wife Smt.Shobha, two minor sons namely Master Arun and Master Ajay and two minor daughters namely Kum.Suman and Kum.Hema. As he was residing and serving as a High School Teacher at Naregal of Ron

Taluk, he executed a GPA in favour of Defendant No.4, who is his sister's son, to look after the proceeding before the Special Deputy Commissioner, Dharwad. Later, it was informed by Defendant No.4 that the authority under the ULC Act has passed an order holding that the plaintiff is entitled to retain an extent of 4500 square meters of land and remaining land is required to be surrendered to the Government. Later on, the Defendant No.1 and Sri Richard in collusion with Defendant No.4 made an application on 17.10.1994 before the Assistant Director of Land Records, praying to mutate their names in CTS record by claiming that they are entitled for 1500 square meters of land each in the schedule property. On receiving notice on such application, he submitted his objection through registered post on 17.11.1994, but the ADLR refused to consider the said objection on the ground that it was not received within the time and ordered to enter the names of all the three persons i.e., the plaintiff, Defendant No.1 and Sri Richard in CTS record. Though he challenged the said order before DDLR as well as before this Court in W.P No.25751/1995 and Writ Appeal No.2489/1997, all those proceedings came to be dismissed. During pendency of all these proceedings, the defendants alienated portions of the

schedule property. In the above circumstances and pursuant to liberty reserved to the plaintiff to approach competent civil court for appropriate remedy, he maintained the suit in O.S.No.224/1997 for the relief of declaration and other consequential reliefs.

iii) Admittedly, Defendant No.1 was the younger brother and Sri Richard was his eldest brother of the Plaintiff. Defendant Nos.2 and 3 are the wife and son of Sri Richard. Defendant No.4 is the sister's son of the plaintiff. Defendant Nos.5 to 23 are the purchasers. On service of summons, Defendant Nos.1, 15 and 22 appeared before the trial court and filed their separate written statements. Defendant Nos.6, 8, 9, 11 to 13 and 16 to 18 have adopted the written statement filed by Defendant No.15. The other defendants did not choose to file their written statement.

iv) In his written statement, Defendant No.1 admitted the relationship with the plaintiff and Sri Richard and contended that the plaintiff had purchased the schedule property out of joint funds provided by him and Sri Richard and that the plaintiff was managing the affairs of the family. He stated that after coming into force of ULC Act, the plaintiff submitted a declaration on his behalf and on behalf of his wife and children excluding his

brothers. On coming to know the said fact, Defendant No.1 and Sri Richard approached the plaintiff to give them their legitimate share in the property and accordingly, the matter was resolved between them. Thereafter, the plaintiff filed an affidavit before concerned authority stating that the property had been purchased out of joint funds provided by his brothers and they got equal share in the property. Acting upon such affidavit, the authority granted permission to retain 4500 square meters of land i.e, three equal units of 1500 square meters, to the plaintiff and his brothers on 08.05.1984. Thereafter, the plaintiff alienated some portion of the property without their knowledge, consequent of which they were constrained to apply for entering their names in CTS record. At that time, the plaintiff gave consent to mutate their names in CTS record, and accordingly, their names were mutated in the record. Thus, Defendant No.1 contended that the plaintiff has got no right over the extent of land given to them by the ULC Authority and as such, the suit is not maintainable.

v) Initially, Defendant No.4 had adopted the written statement filed by Defendant No.1. Thereafter, he filed his additional written statement contending that the suit is false,

frivolous and vexatious. He contended that the description of the suit property is not proper and the extent of suit property has not been specified. As such, he prayed for dismissal of the suit.

vi) Similarly Defendant Nos.15 and 22 in their written statements contended that they are bonafide purchasers of portions of the property for valuable consideration and they are in possession of the property so purchased from the date of sale deed. As such, they prayed for dismissal of the suit.

vii) During pendency of the suit, the plaintiff and Defendant Nos.1, 4 and 20 died and their legal representatives were brought on record.

viii) Earlier, the suit came to be disposed of vide judgment and decree dated 30.11.2011. The said judgment and decree was challenged by some of the defendants by preferring an appeal in RFA No.4013/2012. The Coordinate Bench of this Court allowed the said appeal and remanded the matter for fresh disposal in accordance with law, after noticing certain lacunas such as lack of proper description of the property in dispute, non-production of sale deeds under challenge and with a

direction to reframe the issues keeping in mind requirement of Order XIV of CPC.

ix) After such remand, the plaintiff got amended the plaint and incorporated relevant averments and description of the properties. Similarly, Defendant No.1(f) filed his additional written statement in the case of contending that the plaintiff has failed to give proper description of the property in dispute.

x) Subsequently, the trial court reframed the issues as under:

1. Whether the plaintiff proves that he has purchased the plaint Schedule A property by a registered Sale Deed dated 5.10.1967, from its earlier owner namely Albert Charles Courpalis and thereby he became the absolute owner of same?
2. Whether the plaintiff further proves that in view of repealing of the Urban Land Ceiling Act, the suit property continued to be in ownership and possession as contended by him?
3. Whether the plaintiffs prove that Sale Deeds executed by the defendant No.1 through his power of attorney holder/defendant No.4 and other Sale Deeds referred to in the list annexed to the plaint, came into existence during the pendency of the suit and other proceedings, are illegal and not binding on the plaintiffs and would not confer any title to the purchasers?
4. Whether the defendant No.1 proves that suit schedule A property was purchased by the

- plaintiff on the contributions made by him and as such he has also got right over the suit property?
5. Whether the defendant No.1 proves that the plaintiff gave a declaration before the Urban Land Ceiling Authorities and also filed the affidavit before the survey authorities stating that suit schedule A property is the joint family property of himself and his brothers and by virtue of which the plaintiff would loose his right over the property in question?
  6. Whether the defendant No.1 further proves that plaintiff entered into a compromise dated 18.12.1992 and the said compromise is acted upon?
  7. Whether the defendant No.1(h) further proves that the description of the suit properties, as mentioned in the suit are vague, ambiguous and does not give any identify of the properties, as contended by him in his additional written statement at para No.5?
  8. Whether the defendant No.1(h) further proves that the Court fee paid by the plaintiff is not proper?
  9. Whether the defendants No.5 to 23 proves that they are the bonafide purchasers for valuable consideration without notice?
  10. Whether the plaintiffs are entitled for the relief claimed by them?
  11. What order or decree?

xi) At first instance, the legal representatives of the Plaintiff had adduced their evidence by examining Plaintiff No.1(c) as PW-1, brother of Defendant No.4 as PW-2 and one more witness as PW-3 and got marked documents at Ex.P1 to P43. Similarly, Defendant No.1(f) had adduced evidence as DW-1

and got marked documents at Ex.D1 to D23. After the remand, the legal representatives of the plaintiff adduced further evidence through PW-1 and got marked few more documents at Ex.P44 to P63. Even DW-1 adduced his additional evidence in the case.

xii) The trial court after hearing the arguments and considering the materials on record proceeded to decree the suit and granted the reliefs as sought for. Being aggrieved by the said judgment and decree, the legal representatives of Defendant No.1 have come up with this appeal.

4. Sri Arun L. Neelopant, learned Counsel for the legal representatives of Defendant No.1, vehemently submitted that the trial court has misconstrued the substance of the contentions raised with regard to nature of the property that it was acquired jointly and proceeded to record a finding that there is no joint family concept amongst the Christians. He submitted that during their evidence, PW-2 and PW-3 have admitted the property belonged to all three brothers i.e., the plaintiff, Defendant No.1 and Sri Richard but the trial court has ignored such admissions under a wrong notion. He further submitted that the trial court could not have ignored the affidavit of the plaintiff produced at Ex.D12 and the reasoning given by the trial court to discard such

a document is not proper. He submitted that the plaintiff having availed benefit of order passed by the competent authority under the ULC Act, he was estopped from disputing the permission granted by the said authority to his other two brothers to retain two units of land. He also submitted that the trial court has failed to take note of the finality reached to the order passed by the competent authority under ULC Act. In the above circumstances, he prayed to allow the appeal and to set aside the impugned judgment and award.

5. Per contra, Sri J.S. Shetty, learned Counsel appearing for the legal representatives of the Plaintiff, supported the findings recorded by the trial court and prayed to maintain the impugned judgment and decree. He submitted that admittedly the property in question was purchased in the name of the plaintiff and the plaintiff himself had filed declaration before the ULC Authorities praying for permission to retain the entire extent of land by giving details of his family members i.e., the wife and minor children. He submitted that during the year 1994, for the first time, an application for mutation was filed by Defendant No.1 and in the name of Sri Richard, in collusion with Defendant No.4 and that the concerned authority proceeded to

order in their favour ignoring the objection filed by the plaintiff. He submitted that the defendants have not adduced any evidence before the trial court to prove their contribution for acquiring property in question and in spite of pendency of proceedings before the revenue authorities and various courts, the defendants executed several sale deeds through Defendant No.4, which are illegal and void in law. In the above circumstances, he contended that the trial court has rightly arrived at a conclusion that the plaintiff has proved his case and accordingly, decreed the suit as prayed for.

6. Learned Counsels appearing for some of the purchasers have strenuously submitted that they are the bonafide purchasers of portions of the schedule property for valuable consideration and as such, their right needs to be protected.

7. The following points would arise for consideration of this Court:

- i. Whether the trial court was justified in holding that the plaintiff is the absolute owner in possession of the schedule property?
- ii. Whether the trial court was justified in decreeing the suit as prayed for?

**Property in dispute :**

8. In the original plaint, the plaintiff had mainly sought the following relief:

"1) that the plaintiff be declared to be the full and absolute owner in possession of the suit property as the alleged sale deeds passed by Defendant No.4 in favour of the Defendants 5 and 6 are void and illegal and not binding on the plaintiff. ...".

Further, the plaintiff had described the schedule property as under:

"N.A. land situated at Dharwad City, Dharwad bearing present CTS No.11A/1D/A1A1 measuring 2-15-108 2/9 square yards. Out of this, 3000 square meters".

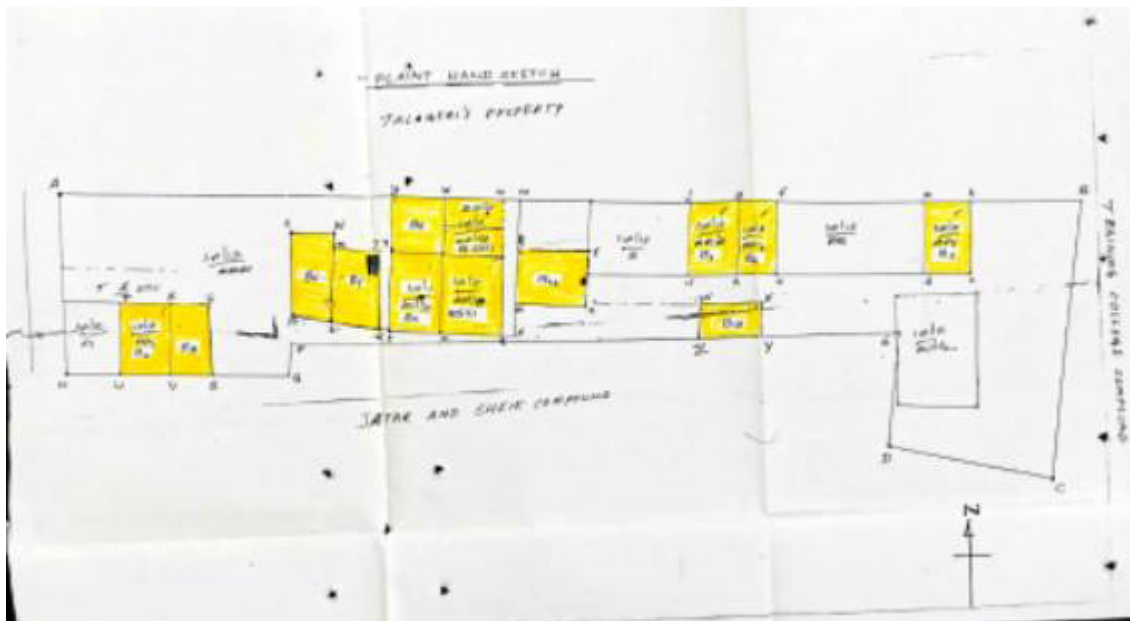
9. After the remand, the plaintiff got amended the plaint, modified prayer column and incorporated additional details of the property in dispute. As such, now the main relief sought in the plaint reads as follows:

"1. The plaintiff be declared to be the full and absolute owner in possession of the suit property mentioned at Schedule B1 to Schedule B12 by holding that the alleged sale deeds more particularly mentioned in the list annexed to the plaint, alleged to have been executed by the Defendant No.4 as the power of attorney holder of the Defendant No.1, in favour of the Defendant Nos.5 to 9, 11 to 18, 22 and 23 and the subsequent sale deed executed by the Defendant No.9 in favour of the Defendant Nos.10, 19 and 20 and the sale deed executed by the

Defendant No.10 in favour of the Defendant No.21, are illegal, void and not binding on the plaintiff.”

In schedule to the plaint, the plaintiff has furnished details of the entire extent of the property as Schedule A and details of the properties/ portions purchased by Defendant Nos.5 to 23 as Schedule 'B1' to 'B12'.

10. The hand-sketch annexed to the plaint, showing locations of the properties in dispute, is as under:



11. The above extracted portions of the original and amended plaint as well as the hand sketch annexed to the plaint unequivocally indicate that the plaintiff has maintained the suit

only in respect of around 3000 square meters of land in CTS No.11A/1D/A of Dharwad City and in particular, the portions of the land sold in favour of Defendant Nos.5 to 23, i.e, Schedule B1 to Schedule B12, which are spread over in different portions of property bearing CTS No.11A/1D/A.

**Point Nos.(i) and (ii) :**

12. Admittedly, the Urban Land (Ceiling and Regulation) Act, 1976 came into force in Karnataka on 17.02.1976. Pursuant to the same, the plaintiff herein had submitted a declaration before competent authority on 27.09.1976 praying for permission to retain 1 acre 16 guntas of land out of total extent of 2 acres 26 guntas in CTS No.11A/1D/A of Dharwad City on the ground that remaining portions therein are either in possession of lessees under long lease or the persons under bonafide agreement of sale and some portion has been acquired by HDMC for public road etc. It is also admitted that pursuant to such declaration, concerned authority passed an order permitting retention of 4500 square meters of land, with a direction to surrender excess land of 5434.7466 square meters, without affecting 789.3950 square meters of land left for road.

13. It is also admitted that the property bearing CTS No.11A/1D/A measuring 3 acres was purchased in the name of the plaintiff under sale deed dated 05.10.1967. The plaintiff claims that it is his self-acquired property. Whereas the contesting defendants claim that the said property was purchased from joint funds of the plaintiff and his brothers i.e., Defendant No.1 and Sri Richard.

14. The contesting defendants have not adduced any direct evidence before the trial court to prove their contribution for purchase of the property in the name of the plaintiff or to show that it was acquired out of joint funds. On the other hand, they are mainly relying on the statements said to have been made by the plaintiff during the proceeding before the authority under ULC Act and in other proceedings as well as the order passed by the said authority.

15. It is the definite case of the contesting defendants that in LUCR No.4107, the authority under ULC Act permitted to retain 4500 square meters of land in CTS No.11A/1D/A, based on affidavit filed by the plaintiff admitting the contribution of the contesting defendants in acquiring the property. According to them the said extent of 4500 square meters of land comprises of

three units of 1500 square meters of land each, permitted to be retained by Defendant No.1 and Sri Richard. Whereas, the plaintiff contends that concerned authority had permitted such retention taking into consideration him and his two major sons as the three persons, who entitled to retain one unit each.

16. Ex.P2 is the declaration submitted by the plaintiff under ULC Act, seeking permission to retain a total extent of 1 acre 16 guntas of land in CTS No.11A/1D/A. In the said declaration, the plaintiff has categorically stated that he is entitled to hold an extent of 1500 square meters plus 500 square meters being the area appurtenant to number of buildings in the area, for himself and sought for permission to retain remaining extent of land on the ground that he intends to construct a mini-theatre or develop dairy and poultry or carry on small scale industry or construct dwelling units for weaker section. As per the information provided in the said declaration, all the four children of the plaintiff i.e., two sons and two daughters, were minors and aged between 4 years to 10 years, at the relevant point of time. On the other hand, the documents marked at Exs.D16 to D20 pertain to the proceeding before ULC Authority. Amongst these documents, Ex.D20 contains a specific reference

to Defendant No.1 and Sri Richard as the persons claiming interest in the land and as the owners thereof. Thereby the materials on record cumulatively and unerringly point out that concerned authority permitted retention of 4500 square meters of the land, taking into consideration the interest of the plaintiff and his brothers i.e, Defendant No.1 and Sri Richard in the land and permitted them to retain an extent of 1500 square meters of land each in CTS No.11A/1D/A.

17. The contesting defendants have produced an affidavit dated 14.03.1983 at Ex.D12. The reading of the said affidavit prima facie indicates the plaintiff has sworn to the said affidavit admitting purchase of property in question out of the funds provided by his brothers as well as their equal share in the said property. It is an affidavit sworn to before a notary of Hubli-Dharwad. The signature of the deponent therein resembles the admitted signatures of the plaintiff. It is to be noted that though the plaintiff disputed execution of such an affidavit and contended that it is a forged document, he made no effort to send the said document to an expert to obtain an opinion/report regarding genuineness of his alleged signatures therein.

18. It is to be noted that the plaintiff does not dispute concerned authority having allowed them to retain 4500 square meters of land based on the contents of the affidavit dated 14.03.1983 and the statement made by Defendant No.4 in his capacity as the GPA holder for the plaintiff. However, the plaintiff contends that his Power of Attorney i.e., Defendant No.4 had given such a false and mischievous affidavit admitting contribution of Defendant No.1 and Sri Richard for acquiring the property in question and that they have got equal share in the said property. However, the plaintiff and his legal representatives have failed to adduce sufficient evidence on record to prove that Defendant No.4 had done such acts without proper authority or by exceeding the powers conferred on him under GPA executed in his favour.

19. In Para 7 of the affidavit filed by PW1 in lieu of his examination-in-chief it is stated that on coming to know about the alleged acts committed by Defendant No.4, his father had scrutinized the case papers in LUCR No.4107 and found that it contained only a xerox copy of the affidavit dated 14.03.1983 said to have been sworn to by him. Thereby, it becomes clear that the plaintiff was aware of such alleged fraudulent act of

Defendant No.4 much prior to concerned authority passing an order on 08.05.1984. In spite of the same, the plaintiff or his legal representatives have not whispered anything about the corrective action taken by them in the matter till 1993. The plaintiff got cancelled the Power of Attorney executed in favour of Defendant No.4 only in the year 1993 i.e, through legal notice dated 10.04.1993. In the above circumstances, this court does not find any merit in the objection and dispute raised by the plaintiff questioning competence and correctness of the statements made by Defendant No.4 before ULC Authority.

20. Added to the above, the contesting defendants have produced one more document at Ex.D-22, which is a certified copy of compromise deed produced as Ex.P33 in O.S. No.259/2005. It was a document executed between the plaintiff represented by his GPA holder i.e., Defendant No.4, with one Sri Alec David Couraplias, on 18.12.1992. Under the said document a settlement was arrived between parties to the document in respect of property bearing CTS No.11A/1D/A, wherein the plaintiff agreed to leave 6 guntas of land to Sri Alec David Couraplis and also to give 30% of the sale proceeds of remaining

plots. The said compromise deed contains a specific clause, which reads as under:

“Party No.1 admits that two units of 15 Guntas which allotted by ULC Authorities have fallen to the share of his brothers – Richard Henry Kamath and Nelson Henry Kamath in respect of above mentioned CTS number i.e., 11A/1D/A situated in front of AIR Station, Dharwad and has no right to enter into any kind of compromise in respect of 2 clients of his brothers with any third person”

The said compromise deed came to be executed much prior to the date on which Defendant No.1 and Sri Richard submitted an application to enter mutation in their names. Thus, there are ample materials on record to establish the right of Defendant No.1 and Sri Richard over the land bearing CTS No.11A/1D/A and that during the proceeding under ULC Act, concerned authority had permitted them to retain an extent of 1500 square meters of land each in the said property.

21. At this stage, it is relevant to note that in **Abdul Khader Vs Land Tribunal, Sedam and another** reported in **AIR 1987 KARNATAKA 18**, this Court has held -

“15. It seems to us that the view taken by the learned Judge may not be correct. It may be noted that it is not the filing of the declaration under

Section 66(1) of the Act alone that confers jurisdiction or enables the Tribunal to determine the ceiling area. Sub-section (2) of Section 66 confers power on the Tahsildar to call upon any person to furnish to him a declaration as to the lands held by him. And besides this, in the declaration filed in Form No.11 in a given case, if there is a statement that the lands are held by a joint family; that joint family consists of the number of persons mentioned therein and if the Tribunal finds, on enquiry, that the lands are held by that joint family and that joint family consisted at the relevant time some major male members, the Tribunal can certainly take notice of that fact and allow the family in the case of each major member a ceiling area or an extent equivalent to that major male member's share (emphasis supplied). It may thus work out the extent of land that the family could hold. Sub-section (4) of Section 63 read with Section 66 clearly provides for this.

16. The ceiling area has to be determined either with reference to a person or with reference to a "family" as defined in the Act. Therefore, the possibility of a "joint family" as defined in the Act also holding lands, as such joint family, is not ruled out by the Act. This is clear by sub-section (4) of Section 63 itself. An unmarried major member of a "joint family" would be, under the Act, a person and not a family as defined in the Act. Sub-section (4) says that in calculating the extent of land held by such a person, who is also a member of a joint family, the share that such person may have in the lands held by the "joint family" shall also have to be taken into consideration. Now, the "joint family" as defined in the Act is not confined to one or the other communities. It applies to all communities including Muslims. Under sub-section (17) of Section 2 of the Act "joint family" means in the

case of persons governed by Hindu Law an undivided Hindu family and in the case of others, a group or unit the members of which are by custom joint in estate or residence. It is relevant to note that Mahomedan Law does not recognize a joint family like an Undivided Hindu Coparcenary. The agrarian relations Acts throughout the country, therefore, wanted to have a uniform definition applicable to all sections of the people. It is with that end in view this new term "joint family" has been coined and introduced in the various agrarian relations Acts. The law recognizes and rightly so, the members of a family of Muslims or Christians together holding property. To treat them on par with Undivided Hindu families this entity "joint family" has been brought about in the Act. The possibility of a Muslim family as such family holding agricultural land is recognised by the Act. Joint possession of properties by the members of a family governed by Mahomedan Law is also envisaged by that law under certain circumstances (emphasis supplied). The following observations of the learned Authors of Mulla's Principles of Mahomedan Law, Eighteenth Edition, page 50 may be noted:

"However, if a custom of the family establishing joint holding as is common among Hindus is proved, it will be given effect. Additions to the joint estate by the managing member of a Mahomedan family will be presumed to have been made from the joint estate and will be for the benefit of all the members. But acquisition of property not attributable to the family assets will not be for the family.

However, if all the members of the family live in commensality and are in joint possession of family properties, it will be for the person claiming property as his own to show that the source of the property was his own. Mohammed Ibrahim v. Mohammad Abubakker ('76) A. Mad. 84."

The above referred decision clarifies the legal position that the members of a family of Muslims or Christians together can jointly acquire and hold any property and to treat them on par with undivided hindu families for the purpose of ULC Act.

22. Learned Counsel for contesting defendants has relied on a decision in **Bansidhar and others Vs State of Rajasthan and others** reported in **AIR 1989 SC 1614**. In this case, Hon'ble Supreme Court of India while considering the effect of a saving provision in a repealing statute held as under:

"13. A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in *I.T. Commissioner U.P. v. Shah Sadiq & sons*, AIR 1987 SC 1217, at p. 1221:

"... In other words whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c), General Clauses Act, 1897...."

We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of Section 5(6A) and Chapter III-B of "1955 Act" so far as pending cases are concerned and that the rights accrued and liabilities

incurred under the old law are not effaced. Appellant's contention (a) is, in our opinion, insubstantial. ...”

23. A similar view has been taken by Hon'ble Apex Court in **Commissioner of Income Tax, U.P. Vs M/s Shah Sadiq and Sons** reported in **AIR 1987 SC 1217**, which reads as follows:

“15. In this case the “savings” provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words, whatever rights are expressly saved by the “savings” provision stand saved. But, that does not mean that rights which are not saved by the “savings” provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c) of the General Clauses Act, 1897. The right to carry forward losses which had accrued under the repealed Income Tax Act of 1922 is not saved expressly by Section 297, Income Tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by Section 297 either expressly or by implication.”

24. It is true that the ULC Act has been repealed with the effect from 1999. Further, the document produced by the

plaintiff at Ex.P42 goes to show that the proceeding initiated by the said authority to recover excess land in possession of the plaintiff and his family members stood abated on account of failure on the part of the Government to take possession of such excess land in accordance with law. At the same time, it is to be noted that unambiguously the plaintiff enjoyed the benefit of Order dated 08.05.1984 passed by the authority under ULC Act for considerable period and he did not challenge the said order at any point of time. As such, this Court relying on the decisions referred supra, holds that the repealed ULC Act of 1999 does not take away the rights accrued in favour of Defendant No.1 and Sri Richard, vide Order dated 08.05.1984.

25. If we carefully analyse the averments of the plaint and the materials available on record, it becomes clear that the plaintiff has disposed of almost entire extent of land in property bearing CTS No.11A/1D/A excluding the portions sold in favour of Defendant Nos.5 to 23. He has maintained the present suit in respect of about 3000 square meters of land, fallen/given to the share of Defendant No.1 and Sri Richard, which are spread over entire extent of the land in the form of plots. This aspect also gives rise to a presumption in favour of Defendant No.1 and Sri

Richard. It is because if at all Defendant No.1 and Sri Richard had no right or possession over such plots, they could not have alienated those portions to different persons and put the purchasers in possession of the respective portions sold to them. When the plaintiff claimed that he was the absolute owner in possession of entire extent of the land purchased under sale deed dated 05.10.1967, it was required for him to explain the circumstances in which Defendant No.1 or Sri Richard could sell different portions of the property under his ownership and possession. Thus, the materials available on record give an impression that the plaintiff has not come up with true facts while maintaining the suit for declaration of title and other consequential reliefs.

26. Learned Counsel for the legal representatives of Plaintiff has relied on decisions in **Balwant Singh and another Vs Daulat Singh (dead) by Lrs. and Others**, reported in **(1997) 7 SCC 137** and **U.A.Basheer through GPA Holder Vs State of Karnataka and another**, reported in **(2021) 5 SCC 313**. In the first case Hon'ble Apex Court has reiterated well established legal principle that mutation of property in revenue records neither creates nor extinguishes title to the property nor

has it any presumptive value on title and those entries are relevant only for the purpose of collecting land revenue. The second case deals with the effect of Repeal Act on vesting of any vacant land and on the proceedings for any excess land under ULC Act. In the considered view of this Court the principles laid down in these decisions are no way helpful for the plaintiff in substantiating the contentions put forth in the suit.

27. The impugned judgment goes to show that the trial court failed to take into consideration the real dispute between the parties and got misguided by applying the principle that there is no joint family concept in Christian Law, ignoring specific pleading about acquisition of the property out of joint funds and the conduct of the plaintiff even after coming to know about the affidavit dated 14.03.1983, statements said to be given by Defendant No.4 in the proceeding before ULC Authority and more importantly Order dated 08.05.1984, nothing was done to controvert the same. Further, the trial court has also failed to take notice that some of the sale deeds, i.e, sale deeds executed in favour of Defendant Nos.5 to 9, came to be executed prior to institution of the suit and that the doctrine of lis-pendens can be invoked only where immovable property rights are directly in

question in a civil litigation. Revenue proceedings do not themselves amount to lis-pendens. The trial court has not bestowed its attention to these aspects while deciding the contention of the purchasers that they were bonafide purchasers. For the foregoing reasons, this Court holds that the impugned judgment and decree needs interference. Accordingly, Point Nos.(i) and (ii) are answered in the affirmative.

28. In the result, this Court proceeds to pass the following:

**ORDER**

- i. The appeal is allowed with cost through out.
- ii. The judgment and decree dated 19.09.2016 passed in O.S.No.224/1997 by learned II Additional Senior Civil Judge, Dharwad is set aside and consequently, the suit is dismissed.
- iii. Draw a decree accordingly.
- iv. The registry is directed to send back the record to concerned trial court forthwith.

**Sd/-  
(H.P.SANDESH)  
JUDGE**

**Sd/-  
(B. MURALIDHARA PAI)  
JUDGE**