



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

DATED THIS THE 18TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

REGULAR FIRST APPEAL NO. 100427 OF 2017 (PAR/POS-)
C/W
RFA CROSS OBJ NO. 100015 OF 2019

IN RFA NO. 100427 OF 2017

BETWEEN:

1. SUNANDA W/O LATE KALLAPPA DALAWAI
AGE: 34 YEARS, OCC: HOUSEHOLD WORK,
R/O. ISHWAR NAGAR, GANESH COLONY,
HOUSE NO.1, AMARGOL, TQ. HUBLI,
DIST: DHARWAD-580031.
2. KUMARI. REKHA D/O KALLAPPA DALAWAI
AGE: 10 YEARS, OCC: STUDENT,
R/O. OPP. APMC, AMARGOL, HUBLI -580031.
3. KUMAR CHANDRU S/O KALLAPPA DALAWAI
AGE: 03 YEARS, OCC: NIL, ISHWAR NAGAR,
GANESH COLONY, AMARGOL, TQ. HUBLI
DIST. DHARWAD – 580031.

(APPELLANTS 2 & 3 ARE MINORS,
REP BY THEIR MINOR GUARDIAN MOTHER
I.E,. APPELLANT NO.1)

...APPELLANTS

(BY SRIYUTHS. ARAVIND D KULKARNI AND
VENKATRAO N. DESHMUKH, ADVS)

AND:

1. PARAWWA W/O LATE ADIVEPPA DALAWAI
AGE: 62 YEARS, OCC: HOUSEHOLD,
R/O. MYAGERI ONI, UNKAL VILLAGE,
TQ. HUBLI, DIS. DHARWAD-580031.

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NC: 2025:KHC-D:10371
RFA No. 100427 of 2017
C/W RFA.CROB No. 100015 of 2019

2. MAHADEVI W/O HANMANTAPPA BELLIGATTI
AGE: 43 YEARS, OCC: HOUSEHOLD,
R/O KURBAR ONI, NUGGIKERI,
TQ: DIST: DHARWAD-580007.
3. RATNAWWA W/O LATE KALLAPPA DALAWAI,
AGE: 32 YEARS, OCC: HOUSEHOLD,
R/O. ISHWAR NAGAR, GANESH COLONY,
HOUSE NO.1, AMARGOL, TQ. HUBLI,
DIST: DHARWAD-580031.
4. SIDDAPPA S/O ADIVEPPA DALAWAI
AGE: 40 YEARS, OCC: AGRIL,
R/O. MYAGERI ONI, UNKAL,
HUBLI, DIST; DHARWAD-580031.
5. MUDAKAPPA S/O FAKKIRAPPA MALLARI,
AGE: 32 YEARS, OCC: PRIVATE JOB,
R/O. HOSPET ONI, AMARGOL, HUBLI-580031.
6. KUMAR RAJU S/O KALLAPPA DALAWAI,
AGE: 12 YEARS, OCC: STUDENT,
R/O: OPP. APMC, AMARGOL, HUBLI-580031.
7. KUMAR BHARAT S/O KALLAPPA DALAWAI,
AGE: 10 YEARS, OCC: STUDENT,
R/O: OPP. APMC, AMARGOL, HUBLI-580031.
8. KUMARI VAISHNAVI D/O KALLAPPA DALAWAI
AGE: 07 YEARS, OCC: STUDENT,
R/O: OPP. APMC, AMARGOL, HUBLI-580031.

...RESPONDENTS

(BY SRI. SATHISH M.S, ADV FOR R3,
NOTICE TO R1, R2, R4 & R5 ARE SERVED
RESPONDENT NOS. 6 TO 8 ARE MINORS, REP BY R3)

THIS RFA IS FILED U/SEC.96 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 23.09.2017 PASSED IN O.S
NO.77/2015 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE,
HUBBALLI, PARTLY ALLOWING THE SUIT FILED FOR PARTITION AND
SEPARATE POSSESSION AND DECLARATION.



IN RFA CROSS OBJ NO.100015 OF 2019

BETWEEN:

1. SMT. RATNAWWA W/O. LATE KALLAPPA DALAWAI, AGE: 32 YEARS, OCC: HOUSEHOLD, R/O. ISHWAR NAGAR, GANESH COLONY, HOUSE NO.1, AMARGOL, TQ. HUBBALLI, DIST. DHARWAD.
2. KUMAR RAJU S/O. KALLAPPA DALAWAI AGE: 13 YEARS, OCC: STUDENT, R/O. OPPOSITE APMC, AMARGOL, TQ. HUBBALLI, DIST. DHARWAD -580031.
3. KUMAR BHARAT S/O. KALLAPPA DALAWAI AGE: 10 YEARS, OCC: STUDENT, R/O. OPPOSITE APMC, AMARGOL, TQ. HUBBALLI, DIST. DHARWAD -580031.
4. KUMARI VAISHNAVI D/O. KALLAPPA DALAWAI, AGE: 8 YEARS, OCC: STUDENT, R/O. OPPOSITE APMC, AMARGOL, TQ. HUBBALLI, DIST. DHARWAD -580031.

(CROSS OBJECTORS 2 TO 4 ARE MINORS,
REP BY THEIR NATURAL GUARDIAN MOTHER
I.E., CROSS OBJECTOR NO.1)

...CROSS OBJECTORS

(BY SRI. SATHISH M.S, ADV)

AND:

1. PARAWWA W/O. LATE ADIVEPPA DALAWAI SINCE DECEASED BY HER LR'S., AS R2 & R4.
2. MAHADEVI W/O. HANUMANTHAPPA BELLIGATTI AGE: 46 YEARS, OCC: HOUSEHOLD, R/O.KURBAR ONI, NUGIKERI, TQ & DIST. DHARWAD.
3. SUNANDA W/O. LATE KALLAPPA DALAWAI AGE: 34 YEARS, OCC: HOUSEHOLD, R/O: ISHWAR NAGAR, GANESH COLONY, HOUSE HO.1, AMARGOL, TQ. HUBBALLI, DIST. DHARWAD.
4. SIDDAPPA S/O. ADIVEPPA DALAWAI



AGE: 42 YEARS, OCC: AGRICULTURE,
R/O. MYAGERI ONI, UNKAL VILLAGE,
TQ. HUBBALLI, DIST. DHARWAD.

5. MUDAKAPPA S/O. FAKKIRAPPA MALLARI
AGE: 34 YEARS, OCC: PRIVATE JOB
R/O. HOSPET ONI, AMARGOL,
TQ. HUBBALLI, DIST. DHARWAD.
6. KUMARI REKHA D/O. KALLAPPA DALWAI
AGE: 12 YEARS, OCC: STUDENT,
R/O: ISHWAR NAGAR, GANESH COLONY,
HOUSE NO.1, AMARGOL,
TQ. HUBBALLI, DIST. DHARWAD.
7. KUMAR CHANDRU S/O. KALLAPPA DALWAI
AGE: 05 YEARS, OCC: STUDENT,
R/O: ISHWAR NAGAR, GANESH COLONY,
HOUSE NO.1, AMARGOL,
TQ. HUBBALLI, DIST. DHARWAD.

(RESPONDENTS 6 & 7 ARE MINORS,
REP BY THEIR MINOR GUARDIAN MOTHER
I.E., RESPONDENT NO.3)

...RESPONDENTS

(BY SRIYUTHS. ARAVIND D. KULKARNI AND
VENKAT RAO N. DESHMUKH, ADVS FOR R3, R6 & R7,
NOTICE TO R2 & R4 ARE SERVED,
NOTICE TO R5 IS DISPENSED WITH)

THIS RFA. CROB IN RFA NO.100427/2017 IS FILED UNDER
ORDER 41 RULE 22 OF CPC, AGAINST THE JUDGMENT AND DECREE
DATED 23.09.2017 PASSED IN O.S.NO.77/2015 ON THE FILE OF THE
III ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI, PARTLY
DECREEING THE SUIT FILED FOR PARTITION AND SEPARATE
POSSESSION AND DECLARATION.

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



CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

These RFA and RFA cross-objection are arising out of the judgment and preliminary decree dated 23.09.2017 passed in O.S.No.77/2015 by the III Addl. Senior Civil Judge, Hubballi.

2. For convenience, the parties are referred to based on their rankings before the trial Court. In RFA No.100427/2017, the appellants were defendants No.1, 8 and 9 and the respondents were the plaintiffs and other defendants. In RFA Crob.No.100015/2019, the appellants were defendants Nos.2, and 5 to 7 and the respondents were the plaintiffs and the other defendants.

3. Brief facts leading rise to the filing of this appeal and cross-objection are as follows:

4. Plaintiffs filed a suit against the defendants for partition and separate possession. It is the case of the



plaintiffs that one Ningappa is the propositus. He had 3 sons viz., Siddappa, Adivappa and Maruti and a daughter Renavva. Plaintiff No.1 is the wife of Adivappa. Adivappa and Parawwa had four children viz., Mahadevi (plaintiff No.2), Sannasiddappa (defendant No.3), Kallappa and Yallappa. Out of four children, Yallappa died issueless and Kallappa died leaving behind two wives i.e., defendants No.1 and 2 viz., Sunanda and Ratnavva. Defendants No.8 and 9 are the children of Kallappa and defendant No.1-Sunanda. Defendants No.5 to 7 are the children of Kallappa and defendant No.2-Ratnavva. It is contended that the suit schedule properties are the ancestral properties of the plaintiffs and defendants and they are the members of a Hindu Undivided Family and no partition is effected between the plaintiffs and the defendants. The plaintiffs demanded for the partition and separate possession. The defendants refused to effect the partition. Hence, a cause of action arose between the plaintiffs to file



a suit for partition and separate possession. Accordingly, pray to decree the suit.

5. Summons were issued to the defendants. Despite the service of summons, defendants No.3 and 4 remained unrepresented and they were placed exparte.

6. Defendants No.1, 8 and 9 appeared through a counsel. Defendants No.8 and 9 were minors represented by defendant No.1 and hence, defendant No.1 filed a written statement denying the averments made in the plaint and contended that the plaintiffs have filed a false suit. She admitted the nature of the suit schedule properties and genealogy but denied rest of the averments made in the plaint. It is contended that in the first week of August 2014, in the presence of elderly persons, partition was effected between plaintiff No.1 and other members of the family and a partition deed was prepared which was registered in the office of Sub-Registrar, Hubballi regarding suit schedule properties wherein



plaintiff No.1 received a cash of Rs.4,00,000/- in lieu of her share, and had given up her rights in favour of other members of the family. Hence, plaintiff No.1 has no right to seek a share in the suit schedule properties in view of the execution of a partition deed and relinquishment of her share by receiving a sum of Rs.4,00,00/- . Hence, prayed to dismiss the suit as not maintainable. Defendant No.1 also filed an additional written statement contending that item Nos.F and G properties are not joint family and ancestral properties. In view of the partition in their family by metes and bounds, item Nos.F and G properties were allotted to Kallappa. Hence, prayed to dismiss the suit insofar as the properties in item Nos.F and G of the suit schedule. It is also contended that 3 acres 10 guntas of land in Sy.No.308/2 was purchased by Kallappa in the name of defendant No.2, which is the joint family property of the defendant Nos.1, 2, and 5 to 9. Hence, prayed to dismiss the suit.



7. Defendants No.2 and 5 to 7 appeared through a counsel. Defendants No.5 to 7 were being minors represented by defendant No.2. Hence, defendant No.2 filed written statement denying the averments made in the plaint and also denied the joint possession over the suit schedule properties. It is contended that all the properties are not the joint family properties. It is contended that property in Sy.No.309/2 measuring 6 acres 27 guntas of Unkal village and the house properties bearing Municipal Corporation Nos.345 and 345/1 of Myageri Oni, Unkal village are the only ancestral properties. It is also contended that during the lifetime of Kallappa, partition was effected between Kallappa, Maruti, Renawwa, Parawwa and defendant No.3. The said proeprieties were partitioned and plaintiff No.1 is a party to the said partition deed dated 01.08.2014. It is further contended that Sy.No.309/3 measuring 4 acres and house property bearing Municipal Corporation No.299/4+5 of Amargol and vehicle were the self-acquired properties of Kallappa.



Hence, the plaintiffs have no right, title or interest over these properties. It is contended that Kallappa and defendant No.3 performed the marriage of plaintiff No.2 by giving huge amount and gold and hence, she relinquished her share in the suit properties and plaintiff No.1 receiving Rs.4,00,000/-, relinquished her share. Hence the plaintiffs cannot claim a share in the suit schedule properties. Hence, prayed to dismiss the suit.

8. The trial Court, based on the pleadings of the parties, framed the issues and additional issues as follows:

- "1. Whether the plaintiffs prove that they and defendants No.1 to 3 are the members of joint family and they are having 1/4th share in the schedule property?*
- 2. Whether the defendant No.1 proves that there was already family partition and plaintiff No.1 has received Rs.4,00,000/- towards her share?*
- 3. Whether the defendants No.1 proves that court fee paid is insufficient?*



4. Whether the plaintiffs are entitled for the reliefs claimed in the suit?

5. What order or decree?"

9. The plaintiffs to substantiate their case, plaintiff No.2 was examined as PW-1 and marked 9 documents as Exs.P-1 to P-9. In rebuttal, defendant No.2 was examined as DW-1, defendant No.2 was examined as DW-2, 2 independent witnesses were examined as DW-3 and DW-4 and marked 10 documents as Exs.D-1 to D-10.

10. The trial Court, after recording the evidence, hearing on both sides and assessing the verbal and documentary evidence, answered issue Nos.1, 3, additional issue Nos.2 and 5 in the negative, issue No.2, additional issue No.1, 3 and 6 in the affirmative, issue Nos.4 and addition issue No.4 partly in the affirmative and issue No.5 as per the final order. The suit of the plaintiffs was partly decreed with costs and it is ordered that plaintiff No.1 is entitled for partition and separate possession of 1/7th share in the suit items No.2(B), 2(D)



and 2(E) properties, by metes and bounds; plaintiff No.1 is entitled for partition and separate possession of her 1/4th share in the suit items No.2(C) and 2(G) properties by metes and bounds; defendant No.1 and her children i.e., defendants No.8 and 9 are entitled for partition and separate possession of 1/4th share each in the suit items No.2(C) and 2(G) properties and 1/7th share each in suit items No.2(B), 2(D) and 2(E) properties; defendants No.5 to 7 are entitled for partition and separate possession of 1/7th share each in suit items No.2(B), 2(D) and 2(E) properties; suit of the plaintiffs for partition and separate possession in rest of the other properties was dismissed and held that the plaintiffs are not entitled for the relief of declaration as prayed.

11. Defendants No.1, 8 and 9, aggrieved by the judgment and decree dated 23.09.2017, have filed this appeal on the ground that the trial Court has declined to grant an equal share in respect of item No.2(H) of the suit schedule properties between defendant Nos.1 and 2. On



the other hand, defendants No.2 and 5 to 7 have filed a cross-objection stating that defendant No.2 is the first wife of deceased Kallappa and they are entitled to a share in suit item Nos.2(A), 2(C), 2(F) and 2(G).

12. Heard the arguments of the learned counsel for defendant Nos.1, 8, 9 and the learned counsel for defendants No.2 and 5 to 7.

13. Learned counsel for defendants No.1, 8 and 9 submits that item No.2(H) is also the joint family property and the trial Court has committed an error in declining to grant a share in item No.2(H). He also submits that defendant No.1 is the legally wedded wife of the deceased Kallappa and the trial Court has rightly recorded its finding that defendant No.1 is the first wife of Late Kallappa and defendant No.2 is the second wife. He submits that the trial Court has committed an error in dismissing the suit in respect of item No.2(H) of the suit schedule properties. Hence, on these grounds, he prays to allow the appeal



filed by defendant Nos.1, 8 and 9 and dismiss the cross-objection filed by defendants Nos.2 and 5 to 7.

14. *Per contra*, learned counsel for defendants No.2 and 5 to 7 submits that defendant No.1 has not produced any records to establish that she is the first wife of the deceased Kallappa. On the contrary, defendant No.2 has produced the records, i.e., the marriage invitation card, copy of the Marriage Certificate and Birth Certificates of defendants No.5 to 7 and also produced the notarized copy of the ration card and identity card of defendant No.2. Defendant No.2, who was examined as DW-1 in O.S. No.487/2016, has contended that she is the legally wedded wife of the deceased Kallappa. Hence, the learned counsel submits that the trial Court has committed an error in recording a finding that defendant No.1 is the legally wedded wife of deceased Kallappa. Hence, on these grounds, he prays to dismiss the appeal filed by defendant Nos.1, 8 and 9 and allow the cross-objection filed by defendants Nos.2 and 5 to 7.



15. Perused the records and considered the submissions of the learned counsel for the parties.

16. The points that arise for consideration are as follows:

- (i) *Whether defendants No.1, 8 and 9 prove that item No.2H of the suit schedule properties is the joint family property of the plaintiffs and the defendants and they are entitled to a share in item No.2H of the suit schedule properties?*
- (ii) *Whether defendant No.2 proves that she is the legally wedded wife of the deceased Kallappa?*
- (iii) *Whether the impugned judgment and preliminary decree passed by the trial Court is perverse and arbitrary?*

REG.POINT No.1:

17. The plaintiffs filed a suit for partition and separate possession regarding the suit schedule properties. It is the case of the plaintiffs that item No.2(H) of the suit schedule properties is the joint family property



of the plaintiffs and the defendants and the same was purchased by Kallappa in the name of defendant No.2 under a registered sale deed marked as Ex.P-9. Defendants No.1, 8 and 9 also contended that the said property was purchased by Kallappa in the name of Ratnawwa i.e., defendant No.2 out of joint family nucleus and the said property is the joint family property of the plaintiffs and defendants and they are entitled to a share in the said property.

18. Admittedly, the plaintiffs have produced the registered sale deed marked as Ex.P-9, which discloses that defendant No.2-Ratnawwa had purchased item No.2(H) of the suit schedule properties. It is neither the case of the plaintiffs nor the other defendants that the said property was purchased out of the joint family nucleus, and the plaintiffs and other defendants have failed to establish that the family was possessing a sufficient nucleus for purchasing of item No.2(H) in the name of defendant No.2.



19. In order to consider the case on hand, it is necessary to examine Section 14 of the Hindu Succession Act, 1956, which reads as under:

"14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.— In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.



20. A reading of the above provision makes it clear that the expression "***any property possessed by a female Hindu***" in sub-section (1) of Section 14 have to be given a wider interpretation in consonance with the wishes and desires of the framers of the Constitution.

21. Admittedly, the said property was purchased by defendant No.2 and she becomes the absolute owner by virtue of Section 14(1) of the Hindu Succession Act. During her lifetime, the legal representatives cannot claim any share in the said suit schedule property. The trial Court has rightly recorded a finding that item No.2(H) of the suit schedule property is the self-acquired property of defendant No.2 in view of Section 14(1) of the Hindu Succession Act, 1956 and rightly dismissed the suit in respect of item No.2(H) of the suit schedule property.

22. The plaintiffs have not preferred any appeal, challenging the dismissal of the suit in respect of item No.2(H) of the suit schedule properties. It is the settled



law that in a suit for partition and separate possession, each and every party in the suit is the plaintiff and hence, the defendants can also challenge the dismissal of the suit in respect of item No.2(H) of the suit schedule properties.

23. At the cost of repetition, it is to be stated here that suit item No.2(H) of the suit schedule property was purchased by defendant No.2 and it is her self-acquired property and the said property is not amenable for partition. Hence, the trial Court was justified in dismissing the suit in respect of item No.2(H) of the suit schedule properties.

24. In view of the above discussion, I answer point No.1 in the negative.

REG. POINT No.2:

25. Defendant No.2 filed a written statement contending that she is the legally wedded wife of the deceased Kallappa. Defendant No.2 was examined as DW-1 and she reiterated the written statement averments in



the examination-in-chief and to prove the marriage between defendant No.2 and the deceased-Kallappa, defendant No.2 has produced the copy of Marriage Certificate, marked as Exhibit D-2, which discloses that the marriage of Kallappa was performed with defendant No.2 on 17.04.2001, issued by the Marriage Officer on 17.04.2001.

26. Defendant No.2 has also produced the Birth Certificates of defendants Nos.5 to 7 as per Exs.D-3 to D-5. A perusal of these birth certificates discloses that defendant No.5 was born on 09.06.2006; defendant No.6 was born on 28.09.2009; defendant No.7 was born on 20.04.2012 and in all these birth certificates, father's name is shown as Kallappa and mother's name is shown as Ratna.

27. Exhibit D-6 is the Ration card and Ex.D-7 is the Election Identity card of defendant No.2.



28. Though in the course of cross-examination, it was suggested to DW-1 that she is the second wife of Kallappa, the said suggestion was denied by DW-1.

29. Defendant No.2 examined herself as DW-1. She reiterated the written statement averments in the examination-in-chief and she has deposed that she is the legally-wedded wife of the deceased Kallappa. To substantiate her defence, defendant No.1 has not produced any records nor adduced any evidence to demonstrate that defendant No.1 is the legally wedded wife of the deceased Kallappa.

30. The trial Court, in the absence of evidence, has recorded its finding in paragraph No.37 that defendant No.1 is the first wife of Late Kallappa. On the other hand, defendant No.2 has produced the Marriage Certificate and also the Birth Certificates of defendants Nos.3 to 5, which disclose that they are the children of defendant No.2 and Kallappa. The findings recorded by the trial Court in regard



to defendant No.1 being the legally wedded wife of deceased Kallappa, is without any basis. The trial Court has overlooked the documents produced by defendant No.2 i.e., Exhibits D-2 to D-7.

31. From the perusal of records produced by defendant No.2, it discloses that defendant No.2 is the legally wedded wife of deceased Kallappa and defendant Nos.5 to 7 are born to the deceased Kallappa through defendant No.2. Hence, the said aspect was not properly appreciated by the trial Court and committed an error in recording its finding that defendant No.1 is the first wife of Kallappa.

32. In view of the above discussion, point No.2 is answered in the affirmative.

REG. POINT No.3:

33. Defendant Nos.1, 8 and 9 have failed to establish that suit item No.2(H) of the suit schedule properties, is the joint family property of the plaintiffs and



the defendants. The trial Court was justified in dismissing the suit regarding item No.2(H) of the suit schedule properties. The trial Court has committed an error in recording the finding that defendant No.1 is the legally wedded wife of deceased Kallappa in the absence of material on record. On the other hand, defendant No.2 has produced the records, marked as Exs.D-2 to D-7, which disclose that the deceased Kallappa married defendant No.2 on 17.04.2001 and out of their wedlock, defendant No.2 gave birth to defendant Nos.5 to 7. The trial Court has not properly considered Exs.D-2 to D-5 and has recorded the finding that defendant No.2 is the second wife, and the defendants Nos.5 to 7 are the children born to the second wife. The finding recorded by the trial Court on the said aspect is without any basis. Hence, the cross-objectors have proved that the judgment and decree passed by the trial Court insofar as the relationship of defendant Nos.1 and 2 with the deceased Kallappa is



perverse, arbitrary and erroneous. The cross-objectors have made out a ground to allow the cross-objection.

34. In view of the above discussion, I answer point No.3 partly in the affirmative.

35. As observed above, at the cost of repetition, it is to be stated here that defendant No.1 is the second wife of deceased Kallappa and defendant Nos.8 and 9 are born to defendant No.1 through Kallappa. They are entitled for share in the estate of Kallappa as per Section 16(3) of the Hindu Marriage Act and in view of the ratio laid down by the Constitutional Bench of the Hon'ble Apex Court in ***Revanasiddappa and another vs. Mallikarjun and others¹***, defendant Nos.8 and 9 are entitled for a share in Kallappa's share i.e. $1/42^{\text{nd}}$ share in the deceased Kallappa's estate (i.e. $1/7^{\text{th}}$ share of $1/6^{\text{th}}$ share of Kallappa in notional partition between the deceased Kallappa, defendant Nos.2, 5 to 7, and plaintiff No.1).

¹ (2023) 10 SCC 1



36. In the result, I proceed to pass the following:

ORDER

- (i) The appeal is ***dismissed***.
- (ii) The Cross objection is ***allowed***.
- (iii) The impugned judgment and preliminary decree dated 23.09.2017 passed in O.S.No.77/2015 by the III Addl. Senior Civil Judge, Hubballi, is modified.
- (iv) Defendant Nos.2 and 5 to 7 are entitled for partition and separate possession by metes and bounds of 13/42nd share, in the deceased Kallappa's estate.
- (v) Defendant Nos.8 and 9 are entitled for partition and separate possession of 1/42nd share, in the deceased Kallappa's estate.

**Sd/-
(ASHOK S. KINAGI)
JUDGE**