



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 25TH DAY OF FEBRUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100200 OF 2021 (PAR/POS-)

BETWEEN:

ARUN S/O. JAYARAO KULKARNI,
AGE: 52 YEARS,
OCC. MEDICAL PRACTITIONER,
R/O. GROUND FLOOR,
IN BANK OF BARODA BUILDING,
M.G. ROAD, VIJAYAPUR.

...APPELLANT

(BY SRI.SATISH S. RAICHUR, ADVOCATE)

AND:

1. SHRIKANT S/O. JAYARAO KULAKARNI,
AGE: 68 YEARS, OCC. PENSIONER,
2. SHRIDEVI
W/O. SHRIKANT KULAKARNI
AGE: 59 YEARS,
OCC. HOUSEHOLD WORK,
3. PAVAN S/O. SHRIKANT KULKARNI,
AGE: 39 YEARS,
OCC. PRIVATE SERVICE,
4. SHEETAL D/O. SHRIKANT KULKARNI,
AGE: 42 YEARS,
OCC. HOUSEHOLD WORK,





ALL ARE R/O. SL.NO.1 TO 4,
R/O. MAHALAXMI NIVAS,
293, D/D 10/31, TG LAYOUT,
50 FEET ROAD, 1ST CROSS ITTAMADU,
BANASHANKARI, 3RD STAGE,
HOSAKERALLI, WARD NO. 161,
LAND MARK VBB BAKERY, ITTAMADU,
BENGALURU.

5. GEETA @ BHARATI
W/O. RAGHAVENDRA PATIL,
AGE: 63 YEARS, OCC. HOUSEHOLD WORK,
R/O. C/O. PRASHANT R. PATIL,
NEAR HULIMAVU BUS STOP,
BEHIND MINAXI MOHAL,
BHANNERUGHATTA ROAD, BENGALURU.
6. PUSHPA @ ARUNA
W/O. ANIL PUROHIT,
SINCE DEAD. BY LRS.
- 6A. SHRI ANILKUMAR
S/O. ANANTRAO PUROHIT,
AGE: 64 YEARS, OCC. PENSIONER,
- 6B. SHRI AMRUT
S/O. ANILKUMAR PUROHIT,
AGE: 38 YEARS, OCC. SERVICE,
- 6C. SMT.ASHWINI
W/O. UMESH HAKKI,
AGE: 34 YEARS, OCC.HOUSEHOLD WORK,

ALL ARE R/O. LIG-229, KHB COLONY,
UDAYAGIRI, SATTUR, DHARWAD,
DIST. DHARWAD.

7. VIJAYA W/O. VINOD KATTI,
AGE: 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. J.P. NAGAR, 7TH STAGE,
BHANNERUGHATTA ROAD, BENGALURU.



8. SURESH S/O. VITTALRAO KULAKARNI,
AGE: 60 YEARS, OCC. SERVICE,
R/O. DESHAPANDE NAGAR,
SIDHARE CHAWL, HUBBALLI-
TAL. HUBBALLI, DIST. DHARWAD.
9. SANJEEV W/O. BEERENDRARAO KULKARNI,
AGE: 52 YEARS, OCC. PRIVATE SERVICE,
R/O. DESHAPANDE NAGAR,
SIKHARE CHAWL, HUBBALLI
TAL. HUBBALLI, DIST. DHARWAD.

...RESPONDENTS

(BY SRI.VISHWANATH HEGDE, ADVOCATE FOR R1 TO R3;
SRI.HIRANKUMAR PATEL, ADVOCATE FOR R8 AND R9;
NOTICE TO R5 AND R7-HELD SUFFICIENT;
NOTICE TO R6(A) TO R6(C)-NOTICE SERVED

THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER
XLI RULE 1 OF CPC., 1908, PRAYING TO A) SET ASIDE THE
JUDGMENT AND DECREE DATED 31.07.2021 PASSED BY THE
SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS,
BILAGI IN O.S.NO.71/2017. B) DECREE THE SUIT OF THE
PLAINTIFF, C) ALLOW THIS APPEAL. D) AWARD COSTS OF THESE
PROCEEDINGS AND ETC.

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

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.



ORAL JUDGMENT

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

1. This is the appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure by the appellant/plaintiff praying for setting aside the judgment and decree dated 31.07.2021 passed in O.S.No.71/2017 on the file of Senior Civil Judge and JMFC, Bilagi.

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

3. The plaintiff has filed the suit before trial Court praying for partition and separate possession of his 1/5th share in suit schedule properties by metes and bounds.

4. The case of plaintiff before trial Court in nutshell is that, father of plaintiff died on 03.01.2007 at Vijayapura. The mother of plaintiff Smt.Sharadabai died on 19.02.2015 leaving behind plaintiff, defendant Nos.1 and 5 to 7 as her



legal heirs. The father of plaintiff was owner in possession of VPC No.147 situated at Dhavaleshwar Village, which was submerged under Upper Krishna Project. Hence, the Government has allotted suit 'A' schedule property i.e. site No.C-05 of Dhavaleshwar Rehabilitation Centre, Bilagi to the father of the plaintiff-Jayarao Kulkarni, who was the head of the joint family. Defendant No.1, got mutated name of his son Pavan as the only legal heir of Jayarao to the said plot. The mother of the plaintiff objected for the said entry in revenue records. Therefore, all the legal heirs of Jayarao got mutated their names in revenue records in respect of said property. As far as suit 'B' schedule property is concerned property bearing CTS No.162/25 of Ward No.3 at Serial No.II(b) measuring 485 Sq.Yards was purchased by the uncle of plaintiff Sri Vittal Krishnaji Kulkarni, who is the younger brother of plaintiff's father-Jayarao, under registered sale deed dated 03.06.1970 for a sum of ₹10,000/- from Vasudev and Krishna. Out of this property, Sri.Vittal Krishnaji Kulkarni has gifted eastern portion



measuring East-West 21 feet and North-South 25 feet and 6 inches to their sister-Shantabai Anuradha under registered gift deed dated 05.02.1973., Sri.Vithala Krishnaji Kulkarni divided the remaining western portion and gave SL.No.II(b) to father of plaintiff Jayarao, SL.No.II(c) was given to his brother Bindurao Krishnaji Kulkarni and SL.No.II(d) was given to Direndrarao Krishnaji Kulkarni on 24.08.1983 and City Survey authority have measured and separate card was issued by giving new number 162/25A measuring 129 square yards and kept it in common. The father of plaintiff was given an area measuring 69.4/9 Sq.Yards. The father of plaintiff got said property in partition with his brothers and thus it became the joint family property of Jayarao and his sons and daughters. Thus Jayarao had no absolute right to give said property but unfortunately he has gifted an area measuring northern portion of SL.II measuring 17-½ feet East-West and to the south East-West 20 feet and North-South 25 feet to defendant Nos.8 and 9 by executing a registered gift deed



dated 28.08.2000 by receiving a sum of Rs.2,65,000/- from them. A gift for money is not valid. Thus, said gift deed is null and void. The plaintiff came to know about it when his mother died on 19.02.2015. Defendant No.8 mortgaged this property to Urban Co-operative Bank, Hubballi on 15.09.2017. Defendant No.1 has played undue influence and mischief on his own father and got entered his name to the southern 3 floor storied building by way of registered gift deed dated 28.02.2002. Defendant No.1 will not get any absolute right as donee because it was the joint family property. Therefore, defendant No.1, defendant Nos.8 and 9 got separate cards in their respective names entering 69.4/9 Sq.Yards in the name of defendant No.1, 28.1/9 Sq.Yards in the name of defendant No.8 and 23.3/9 Sq.Yards in the name of defendant No.9. Further, defendant No.1 gifted the property which came from his father under registered gift deed dated 17.01.2006 to his son-defendant No.3. Defendant No.1 had no absolute right to gift the said property to defendant No.3 and thus, the



said gift deed is also null and void. Defendant No.3 by executing registered sale deed dated 01.07.2013 has sold the said property to defendant No.8, who in turn mortgaged the said building in the name of Manager, Urban Co-operative Bank Limited, Main branch, Hubballi for a sum of Rs.20,00,000/- under registered Mortgage deed dated 01.07.2013. All these documents are null and void and they are not binding on the share of the plaintiff.

5. Plaintiff further contended that defendant No.2 is the wife of defendant No.1. She is housewife having no independent source of income. Defendant No.3 is working in a private Company and has no sufficient income. Defendant No.1 was working as an Executive Engineer in PWD and retired in the year 2013. Defendant No.1 spent his savings of salary for the education and marriage of defendant Nos.3 and 4. Thus, the only income got by defendant Nos.1 to 4 is the income from Hubballi property described as supra (suit 'B' schedule property). Defendant Nos.1 to 3 have got earnest money by sale of Hubballi



property to defendant No.8 and purchased open plot at Ittamadu, Bengaluru in the name of defendant No.2 (suit 'C' schedule property) for a sum of Rs.12,60,000/-. Thus, said property is also the joint family property of the plaintiff and defendant Nos.1 to 7. Suit 'B' schedule property was sold for a sum of Rs.60,00,000/- but in sale deed, to avoid stamp duty, it is shown as Rs.35,00,000/- and out this amount only, suit 'C' schedule property is purchased. Hence, the plaintiff requested his share in all the suit schedule properties by metes and bounds but defendant No.1 refused to give share. Hence, the suit for appropriate relief.

6. Defendant No.1 filed his written statement wherein he admitted the relationship between parties and grant of suit 'A' schedule property to their father but denied all other averments made in the plaint. He admitted about purchase of CTS No.162/25 by their uncle. He contended that the share of father of plaintiff and defendant No.1 i.e. in suit 'B' schedule property is the self-acquired property of



their father who had given the money for its purchase. Hence, it was the self-acquired property of their father and it was not the partitioned property. He admitted about all other registered gift deeds and sale deeds mentioned in the plaint. Defendant No.1 further contended that their father and uncles have partitioned their properties 25 years long back and sold their properties and some of those properties fallen to their respective shares were submerged for Upper Krishna Project and got compensation amount which was distributed amongst children of their father. It is defendant No.1 who was looking after his parents. The plaintiff has categorically admitted that the gift deed by their uncle in respect of eastern portion of property to their aunt Shantabai and thus she is also necessary party to the suit. The uncles of the plaintiff-Vittal Krishnaji Kulkarni and Bindurao are alive and they are also necessary parties to the suit. Vittal Krishnaji Kulkarni has given his self-acquired property to his brothers and thus it was not the joint family property. Hence, their father had absolute right to gift this



property to defendant No.1 as well as defendant Nos.8 and 9. Defendant No.1 further contended that after his retirement, from his retirement benefits, he has purchased suit 'C' schedule property in the name of his wife and has obtained loan of Rs.25,00,000/- from the bank and constructed house in suit 'C' schedule property. Hence, the plaintiff and other defendants have got no right over this property. Hence, prayed for dismissal of the suit with costs.

7. Defendant Nos.8 and 9 appeared through their counsel but did not file their written statement.

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

ISSUES

- "1. Whether plaintiff proves that plaintiff and defendants constitute joint Hindu family?*
- 2. Whether plaintiff proves that plaintiff is entitled to 1/5th share in suit properties?*
- 3. Whether defendant No.1 proves that suit schedule 'C' property is the self-acquired property of defendant No.1?*
- 4. Whether Court fee paid is proper?*



5. Whether plaintiff is entitled to the relief of partition and separate possession?

6. Whether plaintiff is entitled to any other remedy?

7. What order or decree?"

9. On behalf of the plaintiff, the plaintiff was examined as PW.1 apart from marking Ex.P-1 to P-7. On behalf of defendants, defendant No.1 was examined as DW.1 apart from marking Exs.D-1 to D-10.

10. After recording of evidence of both sides and hearing the arguments of both sides, the learned trial Judge came to the conclusion that suit 'A' schedule property was the joint family property of the plaintiff, defendant Nos.1 and 5 to 7 and they are entitled for $1/5^{\text{th}}$ share each in suit 'A' schedule property and so far as suit 'B' and 'C' schedule properties are concerned, the learned trial Judge dismissed the suit holding that suit 'B' schedule property was the absolute property of father of the plaintiff and defendants No.1, 5 to 7 and he gifted it to defendant No.1 and so far as



suit 'C' schedule property is concerned, it is purchased by defendant No.1 in the name of defendant No.2 without the help of any joint family funds.

11. Aggrieved by the dismissal of the suit in respect of suit 'B' and 'C' schedule properties, the appellant is before this Court.

12. During pendency of this appeal, learned counsel for the appellant has filed I.A.No.1/2025 under Order VI Rule 17 of CPC praying for amendment of the plaint to include para No.4-A in the plaint which reads as follows:

"4 A. The gift deed executed by defendant No.1 in favor of defendant No.3 dated 17/01/2006 have the recitals at page No.4 of the said deed the defendant No.1 has admitted the fact that the properties gifted to him by his father are the ancestral properties. As such it is admitted by the defendant No.1 regarding schedule B property is the ancestral property. The said admitted fact is sufficient to hold that the schedule B property is the ancestral property of the plaintiff and defendants. The nature of the suit schedule B property being the ancestral property the plaintiff has got share in the schedule B property. It is further stated that the serial No.2 property shown in the said gift deed dated 17/01/2006 is a self-acquired property



of late Jayarao Kulkarni which was acquired by him out of his own income from his avocation as the executive engineer in PWD department. Such being the fact, the said properties at serial no. 2 in the said gift deed are not shown as schedule properties in this suit and the y are not taken in the hotch-pot"

13. In the affidavit annexed to I.A.No.1/2025, the appellant has stated that recently he has obtained some documents pertaining to the suit 'B' schedule property and there are no pleadings in respect of those documents and hence, he is praying for proposed amendment in the plaint. Hence, prayed for allowing I.A. No.1/2025.

14. The appellant has filed I.A. No.2/2025 under Order XLI Rule 27 of CPC with 5 additional documents.

15. In the affidavit annexed to this I.A., the appellant has stated that during pendency of this appeal, the appellant got some of the material documents which he could not get during trial before the trial Court. These are relevant documents to prove the nature of the suit 'B'



schedule property. Hence, prayed for allowing I.A. No.2/2025.

16. The learned counsel for respondent Nos.1 to 3 has filed common objections to I.A. Nos.1/2025 and 2/2025 stating that both I.As. are not maintainable at this stage. These I.As. are filed only to protract the proceedings. The proposed amendment is not at all necessary to establish the case. So far as amendment to Order VI Rule 17 of CPC is concerned, amendment cannot be sought after commencement of trial. No admissible reasons are given by the appellant to amend the plaint at this belated stage. The appellant has not established any of the ingredients of Order XLI Rule 27 of CPC to file the documents at this belated stage. Hence, prayed for dismissal of both the I.As. with costs.

17. Heard arguments of both sides.

18. The learned counsel for appellant Sri Satish S. Raichur would submit that relationship between the parties



is admitted. Thus, the plaintiff being one of the sons of Jayarao is entitled for a share in the suit 'B' schedule property which was given to his father in a partition between his father and his uncles. He would further submit that only from earnest money of sale proceeds of suit 'B' schedule property, suit 'C' schedule property is purchased and hence, he is entitled for share even in suit 'C' schedule property. However, the learned trial Judge has not considered these aspects meticulously. Furthermore, in this appeal, he has produced some certified copies of the documents, which throw light that the suit 'B' schedule property had come to the father of the plaintiff under partition and hence, the plaintiff is entitled for share is substantiated by the said document. Hence, the proposed amendment to the plaint is required because these facts were not in the knowledge of the plaintiff. Only after the plaintiff obtained the certified copies of those documents, he came to know about the recitals of those documents.



Hence, prayed for allowing the appeal and also I.A. Nos.1/2025 and 2/2025.

19. Learned counsel for respondent Nos.1 to 3 Sri Vishwanath Hegde, would submit that defendant Nos.1 to 3 have no objection whatsoever in respect of granting share to plaintiff in suit 'A' schedule property. However, suit 'B' schedule property came to the father of plaintiff and defendant No.1 from the uncle of plaintiff and defendant No.1 and it was not the property came to his father through his ancestors. Hence, it is not joint family property. Hence, father had every right to gift the said property to defendant No.1 as well as defendant Nos.8 and 9. Thus, the gift deeds came into existence during 2001 and the plaintiff knowing fully well that the said property is the self-acquired property of their father has kept quiet till filing of this suit in the year 2017. This shows that the plaintiff was fully aware that the suit 'B' schedule property is the self-acquired property of their father. Furthermore, the suit is bared by limitation, as the plaintiff has not challenged the gift deeds within the



prescribed period of limitation. So far as suit 'C' schedule property is concerned, defendant No.1 was a Government servant and after retirement, from the retirement benefits and also availing loan from the bank, he has purchased suit 'C' schedule property in the name of his wife and constructed a house in the said property. Hence, it is the absolute property of defendant Nos.1 and 2.

20. The learned counsel for respondent Nos.1 to 3 would further submit that after gift in favour of defendant No.1, he gifted the said property to defendant No.3, who in turn sold the said property to defendant Nos.8 and 9. These transactions are not at all questioned by the plaintiff in the suit and even in this appeal, he has not prayed for cancellation of any of those documents or prayer that those documents are not binding on the share of the plaintiff or that they are null and void. Under these circumstances, the judgment and decree passed by the trial Court is in accordance with law and it needs no interference. However, he fairly concedes that even though the plaintiff has not



made out any of the ingredients of Order XLI Rule 27 of CPC to produce additional documents, all the additional documents produced by him are the certified copy of public record and certified copies of registered deeds. Hence, he is not disputing those documents. He would further submit that the plaintiff has not made out any case to amend the plaint at this belated stage. Hence, prayed for dismissal of the appeal and IAs. with costs.

21. Having heard arguments of both sides, verifying the appeal papers and trial court records, the points that arise for consideration are:

- i. Whether the appellant be permitted to amend the plaint as prayed in I.A. No.1/2025?
- ii. Whether the appellant be permitted to adduce additional evidence as prayed in I.A. No.2/2025?
- iii. Whether the appellant is entitled for any share in the suit schedule 'B' and 'C' properties?
- iv. What order or decree?

Findings on these points are:

Point No.1: In negative;
Point No.2: In affirmative;
Point No.3: In negative;



Point No.4: as per final order
for the following:

REASONS

22. **Point No.1:** The plaintiff has prayed for amendment of the plaint to add one more paragraph in the plaint at paragraph No.4-A. In that amendment, plaintiff prayed for insertion of the recitals in the registered gift deed executed by defendant No.1 in favour of defendant No.3 and also taken contention that the said recitals would establish that the suit 'B' schedule property is ancestral property.

23. Under Order VI Rule 17 CPC, parties to the suit are not permitted to amend the pleadings after commencement of trial, unless the Court comes to the conclusion that in spite of exercise of due diligence, the party could not have raised the matter before commencement of trial.

24. In the instant case, this application for amendment is filed after completion of trial and



pronouncement of judgment by the trial Court and only in the appeal. Thus, generally the plaintiff is not entitled to file the application for amendment at this stage. However, if he establishes that in spite of exercise of due diligence, he could not have made such plea, then he could be permitted to amend the plaint.

25. In the instant case, in the affidavit annexed to I.A.No.1/2025, plaintiff has stated that he has obtained certain documents pertaining to suit 'B' schedule property and filed I.A. under Order XLI Rule 27 of CPC seeking permission to produce them and thus he intended to amend the plaint.

26. All the documents produced by plaintiff along with I.A.No.2/2025 are certified copies of public documents and they were available in public domain. They are not foreign documents and plaintiff was fully aware about all these documents. Already plaintiff has produced portion of certified copy of first two documents in the suit and they



were already marked as exhibits. Thus, plaintiff was fully aware about these documents. Furthermore, the registered documents produced along with this I.A. are the documents pleaded in the written statement of defendant No.1 long back. Hence, there was no bar for plaintiff to obtain the certified copies of them and to make any pleading which was available to him at initial stage itself. However, he did not do so. No reason is given by plaintiff in the affidavit annexed to I.A.No.1/2025 that even after exercise of due diligence, he could not get those documents. Hence at this belated stage, plaintiff is not entitled to amend the plaint and to commence the proceedings afresh. It is nothing but abuse of process of law, if plaintiff is permitted to amend the plaint at this stage without giving any proper and admissible reasons. Hence, I.A.No.1/2025 deserves to be rejected. Accordingly, Point No.1 is answered in **Negative**.

27. **Point No.2:** Plaintiff has produced certified copies of mutation extracts in respect of C.T.S.Nos.162/25,



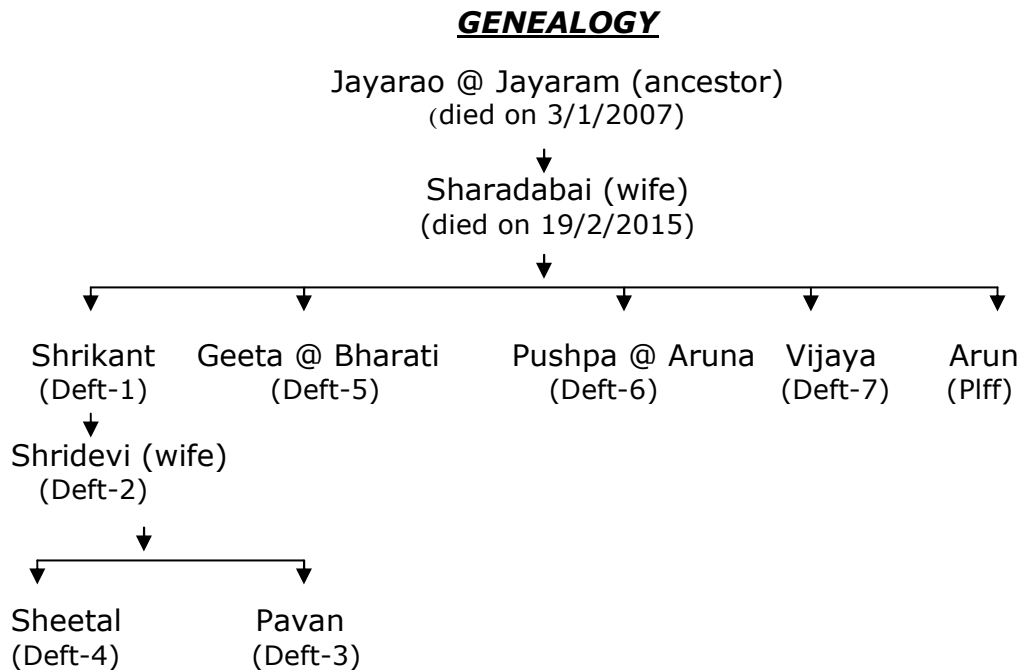
162/25L, registered gift deeds dated 28.02.2002, 17.01.2006 and registered sale deed dated 01.07.2013.

28. All these documents are pertaining to suit 'B' schedule property. Defendant No.1 is claiming right only under registered gift deed dated 28.02.2002. Based on it, he has gifted said property to defendant No.3 under registered gift deed dated 17.01.2006 and based on that, defendant No.3 sold this property to defendant No.8. Hence, defendants cannot object the production of these documents. Furthermore, as discussed above, already portion of mutation extracts was produced. But it was only a partial document and now, plaintiff is producing the entire document and thus, it will not make any difference. Hence, even though, the plaintiff has not made out any grounds available under Order XLI Rule 27 CPC to allow I.A.No.2/2025, but for the above sufficient cause and because these documents would throw sufficient light on the case to decide the matter effectively, we are of the considered opinion that the plaintiff be permitted to produce



these additional documents which are noted in I.A.No.2/2025. There is no dispute between parties about these documents. Hence, these documents could be looked into at the time of passing of the judgment on main. Accordingly, Point No.2 is answered in **Affirmative**.

29. **Point No.3:** The admitted genealogy of plaintiff and defendants is as follows:



30. According to the genealogy produced by plaintiff and admitted by defendants, plaintiff and defendant No.1 are sons and defendant Nos.5 to 7 are daughters of



deceased Jayarao and Sharadabai. Defendant No.2 is the wife of defendant No.1 and defendant Nos.3 and 4 are children of defendant Nos.1 and 2. Defendant Nos.8 and 9 are the cousins of plaintiff and defendant Nos.1, 5 to 7; they are sons of plaintiff's uncles-Vittal Kulkarni and Direndrarao Kulkarni respectively.

31. It is an admitted fact that father had 12 acres of lands at Dhavaleshwar and it was submerged in upper Krishna project. Hence, he got suit 'A' schedule property in lieu of acquisition of said property by the Government. Thus, suit 'A' schedule property is the ancestral property of plaintiff and defendant Nos.1, 5 to 7. Hence, all of them will get equal share in that property. Considering it, rightly, the trial Court decreed the suit in respect of suit 'A' schedule property.

32. With this background, we have to verify about the nature of suit 'B' schedule property. The admitted facts are that, C.T.S.No.162/25, totally measuring 485 square yards was purchased by the uncle of plaintiff-Vittal Krishnaji



Kulkarni under registered sale deed dated 03.06.1970 for a sum of ₹10,000/-. It was noted in Plain Card. Admittedly, he was a Government servant at that point of time. No evidence is produced by either side to say that whether father of plaintiff and other uncles of plaintiff have contributed for purchase of this property. None of them have made any objection to gift the eastern portion of this property measuring East-West 21 feet and North-South 25.6 feet to Shantabai Anuradha, who is the sister of father of plaintiff.

33. The Plain Card produced along with I.A.No.2/2025 establishes that this Krishnaji Kulkarni has given eastern portion to Shantabai Anuradha on 02.05.1973 through gift. Afterwards, from the name of this Vittal Krishnaji Kulkarni, this SL.II(b) property was mutated into the name of Jayarao, (father of plaintiff), SL.II(c) property was mutated into the name of Bindurao and SL.II(d) property was mutated into the name of Direndrarao (uncles of plaintiff) on 24.08.1983. It does not reveal the way in



which Vittal has given this property to his brothers. However, it is clearly stated that it is changed into the names of brothers of Vittal as per the application given by him.

34. It is an admitted fact that suit 'B' schedule property was never in the name of father of plaintiff or in the name of their ancestors. It is only after this Vittal Krishnaji Kulkarni gave this property to his three brothers, this CTS No.162/25 SL.II is subdivided into 162/25L and other properties. 162/25L is the property of father of plaintiff, defendant Nos.1, 5 to 7. Afterwards, father of plaintiff, defendant Nos.1, 5 to 7 has executed registered gift deed dated 28.08.2000 and gifted northern portion to defendant No. 8 and 9; gifted southern portion of 165/25L consisting of 3 floor buildings to defendant No.1 under registered Gift deed dated 28.02.2002. Thus, defendant Nos.8 and 9 are in possession of said property from 28.08.2000 onwards and defendant No.1 became in absolute owner in possession of southern portion from



08.03.2002 onwards. Plaintiff is a medical practitioner and residing in Vijayapura. He is not an illiterate person. The registered document is a notice to the entire public. Thus plaintiff was fully aware about execution of these registered documents in favour of defendant Nos.1, 8 and 9 in the year 2000 and 2002 itself. However, he filed the suit only in the year 2017. Even in this suit, he has not made any prayer for cancellation of those registered documents and also not made any prayer that those registered documents are null and void or those registered documents will not bind the share of plaintiff. He has only taken contention in the plaint that this is the joint family property and thus, father has no absolute right to gift this property to defendant Nos.1, 8 and 9.

35. As discussed above suit 'B' schedule property has not come to Jayarao through his father. It was not the ancestral property. This property came to father only from his brother. If the property is not ancestral property and if it is partitioned amongst brothers, then it cannot be called as



coparcenary property. It is only partition amongst co-owners. In the recitals of gift deed produced along with I.A.No.2/2025 in favour of defendant No.1, it is stated that in partition, Jayarao got this property. If it is partitioned between Jayarao and his brothers in respect of the absolute property of his another brother, then they will be called as co-owners and they are not coparcenars. Hence, if there is partition amongst co-owners, then the co-owner who get his share will be absolute owner of that share and thus, that property became his absolute property. Thus from 1983, father was exercising his absolute right, title and interest over suit 'B' schedule property till he executed gift deeds during 2000 and 2002 in favour of defendant No.8 & 9 and defendant No.1 respectively. As discussed above, these gift deeds were not at all challenged. If these properties were the ancestral properties, then the gift deed executed by father would become *void ab initio* and at that time, there was no need for plaintiff to challenge it. However that is not the situation in this case as discussed above. Hence, suit 'B'



scheduled property at any stretch of imagination cannot be called as the joint property of plaintiff and defendant Nos.1, 5 to 7.

36. As far as suit 'C' schedule property is concerned, it has come in evidence that defendant No.1 from his retirement benefits and from Bank loan, he has purchased said property and constructed house in said property in the name of defendant No.2.

37. It is the contention of plaintiff that after sale of suit 'B' schedule property to defendant No.8, defendant No.1 has purchased suit 'C' schedule property. However the sale deed of suit 'B' schedule property is in the year 2013 whereas the purchase of suit 'C' schedule property is in the year 2011. Hence, at any stretch of imagination, it cannot be said that from the sale proceeds of suit 'B' schedule property, suit 'C' schedule property was purchased.

38. Considering these aspects, the trial Court has dismissed the suit in respect of suit 'B' and 'C' schedule



properties which needs no interference. Accordingly, point No.3 is answered in Negative.

39. Point No.4: in view of findings on point No.1 to 3, we proceed to pass the following:

ORDER

- i) I.A.No.1/2025 filed under Order VI Rule 17 R/w Section 151 of CPC is dismissed.
- ii) I.A.No.2/2025 is filed under Order XLI Rule 27 R/w Section 151 of CPC is allowed.
- iii) Documents produced along with this I.A. are taken on record and considered at the time of passing this judgment.
- iv) The appeal filed under Section 96 R/w Order XLI Rule 1 of CPC is dismissed by confirming the judgment and decree dated 31.07.2021 in O.S.No.71/2017 on the file of Senior Civil Judge and J.M.F.C., Bilagi.
- v) Under facts and circumstances of the case, parties are directed to bear their own costs.



vi) Draw decree accordingly.

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

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

kmv:Para 1 to 20
SSP: Para 21 to end
CT:PA List No.: 1 Sl No.: 17