



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO.7297 OF 2013 (PAR)

BETWEEN:

1. SYED SHAFI S/O. LATE SYED KAREEM
AGE: 40 YEARS, OCC: MECHANIC
R/O. 9-5-32, MADDIPETH RAICHUR.
2. HANEEF S/O. SYED KAREEM
AGE: 55 YEARS, OCC: PRIVATE SERVICE
R/O. NEAR M. EARANNA HOUSE
ZAHEERABAD, RAICHUR.
3. SMT. MAIMUNA BEGUM
W/O. LATE SYED GAFOOR
AGE: 75 YEARS,
4. SYED SADIQ S/O. LATE SYED GAFOOR
AGE: 45 YEARS,
5. SYED MOHAMMED S/O. LATE SYED GAFOOR
AGE: 43 YEARS,
6. SYED KHASHIM S/O. LATE SYED GAFOOR
AGE: 41 YEARS,
7. SYED KHAJA HUSSAIN
S/O. LATE SYED ABDUL GAFOOR
AGE: 37 YEARS,
8. SYED MOINUDDIN
S/O. LATE SYED ABDUL GAFOOR,
AGE: 35 YEARS,

Digitally signed
by RENUKA
Location: HIGH
COURT OF
KARNATAKA



9. SYED SHALEM@ SALEEM
S/O. LATE SYED GAFOOR
AGE: 28 YEARS,
APPELLANTS 3 TO 9 ARE R/O. H.NO.9-5-37,
MADDIPETH RAICHUR.
10. SMT. MALAN BEGUM
W/O. KHAJA MOINUDDIN
AGE: 39 YEARS, OCC: HOUSEHOLD,
R/O. BEGUMPET RAILWAY STATION, HYDERABAD
(D/O. LATE SYED GAFOOR)
11. SMT. ZAREENA BEGUM
W/O. SHAIK MOHIUDDIN,
AGE: 30 YEARS, OCC: HOUSEHOLDER,
R/O. NEAR LAKSHMINARAYAN HOSPITAL
TIPPU SULTAN ROAD, RAICHUR.
12. AMINABEE W/O. LATE SYED BASHEER,
AGE: 40 YEARS, OCC: HOUSEHOLD,
13. SYED KHADEER S/O. LATE SYED BASHEER
AGE: 25 YEARS, OCC: STUDENT
APPELLANT NO.12 & 13,
R/O. H.NO.4-11-29,
NETAJI NAGAR, RAICHUR.

...APPELLANTS

(BY SRI. SHIVANAND PATIL, ADVOCATE)

AND:

1. SYED KHASIM
S/O. LATE SYED JAFFER HUSSAIN
DEAD BY LRS.,
- A) SMT. AMIR BANU W/O. SYED KHASIM
AGE: MAJOR, OCC: HOUSEWIFE
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID
HYDERABAD.
- B) SYED ALI S/O. SYED KHASIM



AGE: 45 YEARS,, OCC: BUSINESS
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD,

- C) ABU MOHAMMAD SALEH S/O SYED KHASIM
(AMENDED CAUSE TITLE
V/O COURT ORDER DATED 11.03.2024)
AGE: 42 YEARS, OCC: BUSINESS
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
- D) SYED ALAM S/O. SYED KHASIM
AGE: 38 YEARS, OCC: BUSINESS
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
- E) SYED ELAAHI S/O. SYED KHASIM
AGE: 38 YEARS, OCC: BUSINESS
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
- F) SMT. HAJRA BEGUM D/O SYED KHASIM
AGE: 35 YEARS,, OCC: HOUSEWIFE
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
- G) SMT. KHAJA BEE SYED KHASIM
AGE: MAJOR, OCC: HOUSEWIFE
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
- H) SMT. RAFATUNISSA BEGUM W/O SYED KHASIM
AGE: 35 YEARS,, OCC: HOUSEWIFE
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
- I) SYED YUSUF S/O. SYED KHASIM
AGE: 30 YEARS,, OCC: BUSINESS



R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.

- J) SMT. JUVARIA D/O SYED KHASIM
AGE: 28 YEARS,, OCC: HOUSEWIFE
R/O. H.NO.19-4-279/D/469
TEEGALKUNTA ROAD,
NEAR SHAIK KI MASJID HYDERABAD.
2. NOORANI BEGUM
W/O. LATE SYED JAFFER HUSSAIN
(SECOND WIFE)
AGE: 70 YEARS, OCC: HOUSEHOLD
R/O. 9-5-37, MADDIPETH RAICHUR.
3. SYED MEHABOOB
S/O. LATE SYED JAFFER HUSSAIN
(SON OF FIRST WIFE OF JAFFAR HUSSAIN)
AGE: 54 YEARS, OC: HOUSEHOLD,
R/O. 9-5-37, MADDIPETH RAICHUR.
4. BIBI BEGUM W/O. LATE IBRAHIM
AGE: 59 YEARS, OCC: HOUSEHOLD,
R/O. OPP. TELEPHONE EXCHANGE,
PATEL ROAD, RAICHUR.
5. SHAMMEEM W/O. ABDUL HAFEEZ,
AGE: 40 YEARS, OCC: HOUSE HOLD,
6. ZAINAB BEGUM W/O. SYED ISAQ,
AGE: 36 YEARS, OCC: HOUSEHOLD,
7. FATHIMA BEGUM W/O. KASIM ALI
AGE: 34 YEARS, OCC: HOUSEHOLD,
8. RAHIMUNNISA W/O. MD. NATEEM KHAN
AGE: 35 YEARS, OCC: HOUSEHOLD,
R-5 TO 11 R/O. NEAR BEGUM PETH
RAILWAY STATION HYDERABAD.
9. HAZI BEGUM W/O. G. FAROOQ
AGE: 34 YEARS, OCC: HOUSEHOLD,
R/O. ADONI, KURNOOL DIST. A.P



10. SALAMAN BANU W/O. ABDUL LATEEF
AGE: 32 YEARS, OCC: HOUSEHOLD,
R/O. BALIB NAGAR,
BESIDES LAXMI HOSPITAL RAICHUR.
11. SHAMSAD BEGUM W/O. G. FAROOQ
AGE: 30 YEARS, OCC: HOUSEHOLD,
R/O. OPP. BEGUMPET RAILWAY STATION.
HYDERABAD.
12. GOUSIA BEGUM W/O SYED SADIQ
AGED ABOUT 39 YEARS, OCC: HOUSEHOLD
R/O 9-5-37, MADDIEPTH, RAICHUR

...RESPONDENTS

(BY SMT. HEMA L. KULKARNI, ADVOCATE FOR R1(B) TO R(J);
V/O DATED 05.02.2024 R1(A) DEAD;
V/O DATED 26.02.2018 SERVICE OF NOTICE TO
R2 IS HELD SUFFICIENT;
V/O DATED 22.07.2019 SERVICE OF NOTICE TO
R3, R6 & R7 ARE HELD SUFFICIENT;
NOTICE TO R4, R5, R8, R9, R10 R11 & R12 IS SERVED)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND DECREE 05.07.2013 PASSED IN R.A.NO.21/2013 BY THE II ADDL. DISTRICT JUDGE, RAICHUR, CONFIRMING THE JUDGMENT AND DECREE DATED 13.03.2013 IN O.S.NO.73/1996 BY THE PRL. SENIOR CIVIL JUDGE, RAICHUR AND TO GRANT ANY OTHER APPROPRIATE RELIEF.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.10.2025 COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM



CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

This is plaintiffs' second appeal questioning the judgment and decree rendered by the learned II-Additional District Judge, Raichur, in R.A.No.21 of 2013, wherein confirmed the judgment and decree passed by the learned Principal Senior Civil Judge at Raichur, in O.S.No.73 of 1996.

2. The original plaintiffs No.1 to 4 instituted O.S.No.73 of 1996 seeking partition and separate possession of the suit property. The sum and substance of the plaintiffs' case is that plaintiffs No.1 and 2, along with the husband of plaintiff No.3 (father of plaintiff No.4) and defendant No.2, are real brothers who were carrying on a joint family business under a partnership with name and style of "M/s. Syed Jaffar and Brothers, Raichur" since the year 1967. It is their contention that all the brothers had equal shares in the said business and, being members of a



joint family, they jointly accumulated savings from the said oil business. Out of these joint earnings, the plaintiffs assert that the agricultural land forming the subject matter of the present suit was purchased in the name of defendant No.1, who at the relevant time was a minor and the son of defendant No.2.

3. The plaintiffs further contended that they had complete faith and confidence in their elder brother-defendant No.2, who was held in high esteem within the family. Owing to this mutual trust and affection, the plaintiffs voluntarily consented to purchase the suit land in the name of defendant No.1, the minor son of defendant No.2, purely out of love and respect for their elder brother. It is their case that, after the purchase, the suit property remained in the joint possession and enjoyment of all four brothers through defendant No.1. Subsequently, in the year 1996, the plaintiffs decided to effect a division of the suit property. However, since defendant No.2 declined to cooperate in the partition on account of disputes pending



between defendant Nos.1 and 2, who are father and son, in R.A. No.5 of 1996, the plaintiffs were constrained to institute the present suit seeking partition and separate possession. The plaintiffs assert that the suit land was acquired out of the income derived from the joint oil business carried on by all the brothers, and therefore, they are entitled to their legitimate share therein.

4. Upon service of summons, defendant No.1 remained absent and was placed ex parte, whereas defendant No.2 entered appearance through counsel. The trial court initially decreed the suit on 08.10.2001. However, the appellate court, in the appeal preferred by defendant No.1, set aside the said decree and remanded the matter to the trial court, granting defendant No.1 an opportunity to contest the proceedings. Pursuant to the remand, defendant No.1 filed his written statement, vehemently denying the plaintiffs' claim over the suit property. While admitting the relationship between the parties, defendant No.1 specifically contended that the suit



land had been purchased by his maternal grandfather during his minority and, therefore, neither the plaintiffs nor defendant No.2 had any manner of right, title, or interest therein. Defendant No.1 further averred that his father, defendant No.2, had earlier filed O.S. No.79 of 1992 claiming ownership over the very same property, which suit came to be dismissed, and the dismissal was affirmed by the appellate court as well as by this Court in R.S.A. No.1049 of 1996. He also pointed out that his own suit for possession in O.S.No.112 of 1996 had been decreed in his favour. Hence, according to defendant No.1, the present suit is nothing but a collusive and vexatious litigation instigated by defendant No.2, his father, with the active connivance of the plaintiffs, with the sole intention of re-agitating an issue already adjudicated, under the guise of a claim for partition.

5. After framing of issues, both parties were afforded an opportunity to lead evidence in support of their respective contentions. To substantiate their claim,



the plaintiffs examined two witnesses and produced 64 documents, which were marked as Exhibits P1 to P64. On the other hand, defendant No.1 entered the witness box as DW.1 and produced 10 documents, marked as Exhibits D1 to D10. Upon consideration of the oral and documentary evidence placed on record, the trial court answered Issues No.1 to 3 in the negative, holding that the plaintiffs had failed to establish that the suit property was jointly acquired and available for partition. While answering Issue No.2 in the negative, the trial court further observed that defendant No.1 had also failed to prove that the suit was not maintainable or that it was hit by Section 4 of the Benami Transactions (Prohibition) Act. Having thus concluded that the suit land was not a jointly purchased property, the trial court ultimately dismissed the suit.

6. Aggrieved by the dismissal of the suit for partition, the plaintiffs preferred an appeal before the First Appellate Court in R.A.No.21 of 2013. The Appellate Court,



being the final fact-finding authority, independently reappraised the pleadings as well as the oral and documentary evidence on record. While affirming the findings and conclusions recorded by the Trial Court, the Appellate Court held that the plaintiffs, though asserting that the suit property was purchased out of the income derived from the oil business jointly carried on by all four brothers, had failed to substantiate this claim by producing any cogent documentary evidence.

7. The Appellate Court further noted that the suit land was purchased in 1963, whereas the partnership firm, M/s. Syed Jaffar and Brothers, was constituted only in 1967. Hence, there was no material to establish that, prior to the formation of the firm, all four brothers were jointly engaged in any business activity or that they had pooled their individual earnings to purchase the suit property in the name of defendant No.1, who was a minor at that time.



8. The Appellate Court also took into account the fact that the suit for possession filed by defendant No.1 against defendant No.2 had been decreed, and that the earlier comprehensive suit filed by defendant No.2 in O.S. No.79 of 1992 claiming absolute ownership was dismissed, with the dismissal being affirmed in appeal and later confirmed by this Court in second appeal. Referring to these circumstances, the Appellate Court concluded that the present plaintiffs had been set up by defendant No.2, who had already suffered decrees in the earlier proceedings, in an attempt to re-litigate the same issue under the guise of a partition suit.

9. The Appellate Court further observed that there were no proper pleadings or evidence to establish the existence of any joint family nucleus or other properties held in common by the brothers. Referring to the cross-examination of PW1, the Court found that no details were furnished as to the alleged joint properties or the shares allotted among the brothers. An adverse inference was



accordingly drawn against the plaintiffs for their failure to include other properties, if any, in the suit schedule.

10. The Appellate Court also noted that the plaintiffs themselves, in their pleadings, admitted their knowledge of the ongoing disputes between defendant No.1 and defendant No.2 and the pendency of the regular appeal in R.A. No.5 of 1996 arising out of O.S. No.79 of 1992. Considering these aspects, the Appellate Court held that there was no credible evidence to establish the existence of any joint family nucleus or that the suit property had been acquired out of joint earnings from the oil business. Consequently, the appeal was dismissed, thereby confirming the findings of the Trial Court. It is these concurrent findings that are now under challenge by the plaintiffs before this Court.

11. Having heard the learned counsel appearing for the plaintiffs and the learned counsel appearing for defendant No.1, this Court has carefully considered the



substantial questions of law framed for determination. The same are extracted below:

- i. Whether the lower appellate Court is justified in holding that the suit is hit by the provisions of Benami Transaction Prohibition Act, 1988, in the facts and circumstances of the case?*
- ii. Whether the perverse appreciation of the entire evidence on record by the Courts below has vitiated the judgments and decrees under challenge in this appeal?*
- iii. Whether the lower appellate Court is justified in holding that the judgment and decree in O.S.No.79/1992, in which the plaintiffs were not parties, is binding on the plaintiffs?*
- iv. Whether the cumulative effect of the circumstances, especially the facts of the case like, recital in the partnership deed dated 1.5.1967 that, prior to the partition, the plaintiffs had also assisted the defendant No.2 in doing the business and in the fact that the property was purchased in the name of the minor defendant No.1, who had no independent source of income at*



the relevant point of time and also the fact that the defendant No.1 having stated that the L.R. of the plaintiff No.2 are still in possession of the property in his objection to the memo dated 22.03.2006 in Misc. No.178/2004, are ignored by the Courts below, which has vitiated the judgments and decrees of the Courts below?

v. Whether the lower appellate court is justified in law in rejecting the application under Order XLI Rule 27 of CPC?

Finding on Substantial Question of Law No.(i)

12. It is true that the First Appellate Court, while upholding the findings of the Trial Court, incidentally referred to the applicability of the Benami Transactions (Prohibition) Act and observed that the provisions of the said Act could operate in the present case, given that defendant No.2's earlier claim in O.S. No.79 of 1992 had been rejected. However, this Court is of the view that the issue of Benami need not be examined in detail, since the plaintiffs' case fails at a more fundamental level, namely, the complete absence of any substantive evidence showing



that, even prior to the constitution of the registered partnership firm in 1967, the four brothers were jointly engaged in business, that defendant No.2 was managing the business accounts, or that the suit property was purchased from pooled business income.

13. As rightly observed by the learned Appellate Court, there are no serious or independent allegations made against defendant No.2 in the present proceedings, which by itself demonstrates that the plaintiffs and defendant No.2 are acting in concert to challenge the title of defendant No.1. In the absence of any credible documentary evidence to show that the income from the alleged joint oil business was utilized for purchasing the suit land in the name of defendant No.1, the plaintiffs' case remains wholly unsubstantiated. Accordingly, substantial question of law No.(i) does not survive for consideration for the reasons stated supra.



Finding on Substantial Question of Law Nos.(ii) and (iii)

14. Upon a meticulous examination of the pleadings and the evidence adduced by both parties, the Court finds that, although the plaintiffs have made an attempt to contend that the suit land was jointly purchased by all four brothers, such an assertion remains wholly unsubstantiated. As rightly observed by the First Appellate Court, there is no cogent or reliable evidence to establish that, prior to the constitution of the registered partnership firm in 1967, all four brothers were jointly engaged in any oil business or that they had pooled their earnings to acquire the suit property in the name of defendant No.1.

15. This was a crucial aspect that the plaintiffs were required to establish through clear, convincing, and contemporaneous documentary evidence. Except for bald and self-serving assertions in the plaint, the plaintiffs have failed to produce any credible material to demonstrate that a joint business existed among the brothers before the



formation of the registered partnership firm. No records of business transactions, accounts, income details, or any document evidencing joint investment have been placed before the Court to support the claim that the suit property was acquired out of joint business income.

16. It is significant to note that the partnership firm M/s. Syed Jaffar and Brothers was formally registered in the year 1967, as is evident from Exhibit P-60, whereas the suit land was purchased much earlier, on 12.11.1963, in the name of defendant No.1, who was then a minor, as evidenced by Exhibit P-20. The chronological sequence of these events assumes critical importance. If the suit land was purchased in 1963, four years prior to the registration of the partnership firm, the plaintiffs' assertion that the brothers were already engaged in an oil business prior to 1967 and that the purchase was made out of the income from such business remains highly improbable and unsupported by any material on record.



17. The plaintiffs have further contended that the second defendant, being the eldest brother, was managing the business affairs and that the other brothers, having implicit faith and trust in him, permitted the property to be purchased in the name of his minor son, defendant No.1. However, such a contention, unsupported by any tangible evidence of prior business dealings or financial contributions, cannot by itself form the basis for recognizing a joint acquisition. Trust and familial affection, however genuine, cannot substitute the legal requirement of proof of joint investment or existence of a common nucleus.

18. It is also well settled in law that the concept of joint family and joint family nucleus, as recognized under the Hindu law, is wholly alien to Mohammedan law. Unlike a Hindu coparcenary or a Mitakshara joint family, where property can be presumed to be joint and where a joint family nucleus may serve as the foundation for claiming co-ownership, Muslim law does not recognize such a



doctrine. Under Mohammedan jurisprudence, every acquisition made by a member of a family is presumed to be his or her individual and absolute property, unless it is clearly proved that such property was acquired by all co-sharers jointly and in accordance with specific contractual or partnership arrangements.

19. In the present case, the plaintiffs have sought to apply the concept of a joint family nucleus to contend that the suit land was purchased out of the income generated from a common business allegedly carried on by all four brothers. Such a plea, in the absence of any registered partnership or documentary evidence showing a defined joint investment, is legally unsustainable. The doctrine of joint family property and the presumption of joint acquisition arising from a common nucleus cannot be imported into Mohammedan law, as the law governing Mohammedans recognizes only tenancy in common and not joint family ownership by birth or status.



20. Therefore, even on a fundamental legal premise, the plaintiffs' claim that the suit property, though standing in the name of defendant No.1, was acquired for the benefit of all brothers is misconceived. The mere fact that the parties are related by blood or that they were living together or engaged in business does not, in Mohammedan law, create any presumption of joint ownership. Each brother would be entitled only to the property acquired by him in his own name, unless there is unimpeachable evidence of joint contribution or an express agreement to that effect, which, in the present case, is conspicuously absent.

21. In light of the above settled principles, this Court is of the clear opinion that the plea of joint family nucleus and the claim of joint acquisition are inapplicable to Mohammedan parties, and hence, the plaintiffs' entire claim based on such a concept must necessarily fail. Consequently, no substantial question of law arises for consideration in this second appeal. The question framed



in the appeal memorandum does not, in law or on facts, constitute a substantial question of law within the meaning of Section 100 of the Code of Civil Procedure, as the findings of the courts below are based purely on appreciation of evidence and settled legal principles.

22. Therefore, having regard to the undisputed fact that the suit land was purchased on 12.11.1963 in the name of defendant No.1, much before the partnership firm came into existence in 1967, and in the absence of any documentary evidence establishing a prior joint business or pooling of funds, both the Trial Court and the Appellate Court were fully justified in concurrently holding that the plaintiffs have failed to prove that the suit property, though standing in the name of defendant No.1, was a joint family acquisition. Consequently, this Court finds no reason to take a different view from the concurrent findings recorded by the courts below.



23. This Court also cannot lose sight of the background of litigation between defendant No.1 and defendant No.2, who are son and father respectively, which was initiated much prior to the institution of the present partition suit by the plaintiffs. In his written statement, defendant No.1 has specifically pleaded that it is defendant No.2 who, having suffered adverse decrees in earlier proceedings, has now set up his brothers and his brother's wife (the present plaintiffs) to re-litigate the issue under the guise of a partition claim. Defendant No.1 has drawn the Court's attention to the fact that the suit filed by his father, defendant No.2, in O.S. No.79 of 1992, seeking a declaration of ownership over the very same property, was dismissed. The said dismissal was affirmed in appeal and subsequently confirmed by this Court in R.S.A. No.1049 of 1996. Furthermore, defendant No.1's own suit in O.S. No.112 of 1996, filed against defendant No.2 for possession of the same property, was decreed in



his favour, and execution proceedings are presently pending consideration.

24. This sequence of events clearly establishes that the disputes between defendant No.1 and defendant No.2 over the ownership and possession of the suit land were already the subject matter of judicial adjudication much before the plaintiffs instituted the present partition suit in 1996. Therefore, the timing of the plaintiffs' suit assumes significant relevance. The institution of this suit, soon after defendant No.2 suffered an adverse decree in O.S. No.79 of 1992 and while the decree in O.S. No.112 of 1996 was in the process of being executed, strongly indicates that the present proceedings are a continuation of the same contest only now being pursued through the plaintiffs, who are none other than the close relatives and siblings of defendant No.2.

25. The fact that the plaintiffs were not parties to the earlier suits does not dilute the evidentiary relevance



of those proceedings. On the contrary, the earlier findings, which have attained finality, have a direct bearing on the credibility and bona fides of the plaintiffs' present claim. The earlier adjudications conclusively held that defendant No.1 is the absolute owner of the suit land and that defendant No.2 has no right, title, or interest therein. Hence, viewed in this background, the partition suit appears to be a collusive attempt by defendant No.2, in concert with the plaintiffs, to indirectly contest defendant No.1's title which has already been upheld in previous rounds of litigation.

26. Even on this count, therefore, the plaintiffs' contention that the suit property was a joint acquisition cannot be accepted. The concurrent findings of both courts below that the plaintiffs have failed to establish any joint family nucleus or collective investment stand fortified by the undisputed litigation history. Accordingly, substantial question of law No.(ii) is answered in **negative** and



substantial question of law No.(iii) is answered in ***affirmative.***

Finding on Substantial Question of Law No.(iv)

27. The plaintiffs, in the present suit, have asserted that all four brothers were jointly carrying on an oil business under a partnership firm in the name and style of M/s. Syed Jaffar & Brothers since the year 1967. It is their specific case that all the partners, out of the income generated from the said business, had set aside a portion of their earnings as common savings and that these accumulated savings were utilized for the purchase of the suit schedule property in the name of defendant No.1.

28. This Court deems it appropriate to extract paragraphs 2 to 5 of the plaint, which contain the foundational pleadings upon which the plaintiffs have based their claim, as they constitute the substratum of the case set up by them. Paragraphs-2 to 5 of the plaint are extracted, which reads as under:



"2. The Plaintiff No.1 Plaintiff No.2 one Syed Basheer the husband of the Plaintiff No.3 and rather of the Plaintiff No.4 and the Defendant No 2 are the real brothers. They are all sons of Late Syed Khaja Hussain. Out of 4 sons of late Syed Khaja Hussain one Sri. Syed Basheer is no more. His wife and lonely son the Plaintiff Nos.3 and 4 claim through the said Syed Basheer.

3. All the 4 brothers namely, the Plaintiff No.1, Plaintiff No.2, Late Syed Basheer and Syed Jaffer Husssain were carrying on the business as Partners under the name and style; "M/S. SYED JAFEER AND BROTHERS", Raichur since the year 1967. All the said brothers has equal share in the business.

4. Since all the partner of the said business were all members of same family and real brothers, all of them jointly reserved and served portion of their earning out of the joint business and out of the said savings they purchased an Agricultural Land bearing Sy.No.163 measuring 18 Acres 35 Guntas assessed at Rs.26-58 Ps,. situated in the limits of Jalibenchi Village, Tq: Raichur. The said land shall hereinafter be called as the "SUIT LAND".

5. At the time of purchase of the suit land by the said four brothers, except the defendant No.2 none of the other brothers had issues. Since the Defendant No.2 being oldest of the four brothers, commanded respect in the family, other brothers voluntarily agreed for



purchase of the suit land in the name of the defendant No.1 who is the son of the Defendant No.2 and was minor at the time of purchase of the land. The purchase of the suit land in the name of the defendant No.1 was only out of love and affection and it was in trust on behalf of all the brothers and accordingly it was being kept under the joint possession of all the brothers through the defendant No.2."

29. During the course of trial, the plaintiffs have reiterated that the suit land was purchased from the income generated out of the partnership business. In his Examination-in-Chief, PW-1 has deposed that, at the time of purchasing the suit land, all four brothers were jointly running a business under the name and style of M/s. Syed Jaffar & Brothers, and that they were partners in the said firm. However, PW-2, in his Examination-in-Chief, has attempted to introduce a new version, claiming that the oil business was in existence much prior to the formal registration of the partnership firm in 1967.

30. At paragraph-3 of his deposition, PW-2 has specifically stated that the business was initially carried on



by defendant No.2 in his individual capacity with the assistance and financial contributions of his brothers, namely, the original plaintiffs No.1 and 2 and the late Syed Basheer, and that a formal partnership deed was executed and registered subsequently on 01.05.1967. In order to appreciate this variance, this Court deems it fit to extract paragraph-3 of the examination-in-chief of PW-2. The same is extracted as under:

"3. All the four brothers are no more now and their respective LRs are brought on record in the above suit. All the said 4 brothers were jointly carrying on the oil business in Raichur. Initially the said business was carried in the individual capacity of the defendant No.2 with the help and contribution of all the 3 brothers i.e., the original plaintiff No.1 & 2 and the deceased Syed Basheer. Subsequently, a registered partnership Deed containing all the said 4 brothers as partners came into existence on 1-5-1967 as Syed Jaffer & Brothers. My deceased father was paying the land revenue as he filed the land revenue receipts in the above suit."

31. It is evident upon a close reading of the pleadings and the evidence that there are no specific pleadings in the plaint or written statement indicating that



the three brothers had contributed to or assisted the second defendant in his individual business prior to the formation of the partnership firm in 1967. The attempt made during trial to set up a new narrative that the brothers had contributed to or shared in the income generated by defendant No.2 prior to the registration of the partnership firm is clearly beyond the pleadings and hence inadmissible in evidence.

32. It is a settled principle of law that pleadings are the foundation of a case, and parties are bound strictly by the pleadings in the plaint and written statement. Any amount of oral or documentary evidence adduced without a corresponding foundation in the pleadings cannot be looked into by the Court. The law in this regard has been consistently laid down by the Hon'ble Supreme Court in several decisions.

33. In ***Bachhaj Nahar v. Nilima Mandal and Another, [(2008) 17 SCC 491]***, the Apex Court held:



"No amount of evidence can be looked into upon a plea which was never put forward in the pleadings. The object and purpose of pleadings is to enable the adversary to know the case he has to meet. A case not pleaded is, therefore, a case not set up in law, and the Court cannot base its findings on facts that are not pleaded."

34. Similarly, in ***Union of India v. Ibrahim Uddin and Another, [(2012)8 SCC 148]***, the Hon'ble Supreme Court reiterated that:

"The Court cannot travel beyond the pleadings of the parties and any evidence adduced which is beyond the pleadings must be ignored. Evidence without pleading cannot form the basis of any finding of fact."

35. The same principle is also embodied in Sections 101 to 103 of the Indian Evidence Act, 1872, which place the burden of proof on the party who asserts a fact. In the absence of proper pleadings, the party cannot discharge the burden merely by adducing oral or documentary evidence that has no foundation in the pleadings. Furthermore, Section 92 of the Evidence Act precludes the admission of oral evidence to contradict or vary the terms



of a written document, which in this case would apply to the partnership deed at Ex.D1.

36. The recitals contained in Ex.D1, though they refer to the fact that the other three brothers were assisting defendant No.1 in his individual business prior to registration of the partnership firm, do not, by themselves, confer any legal right or share in the property subsequently purchased in the name of defendant No.1, particularly when there are no corresponding pleadings to support such a claim. Even assuming that such assistance was rendered, it would, at best, amount to a moral contribution and not a legal one, absent specific pleadings and proof of a joint investment or agreement.

37. The plaintiffs themselves, in unequivocal terms, have admitted that defendant No.2 was independently running the oil business in his individual capacity prior to 1967. Hence, the contention that the income from such business was pooled jointly by all brothers for the



purchase of the suit property is unsupported by pleadings and evidence and, therefore, cannot be accepted.

38. In view of the settled position of law that “pleadings are the foundation of litigation and evidence without pleadings cannot be relied upon,” this Court finds that the plaintiffs’ attempt to set up a new case during trial is legally impermissible. Consequently, Substantial Question No.(iv) is answered in the ***negative***.

Finding on Substantial Question of Law No.(v)

39. The plaintiffs have also filed an application under Order XLI Rule 27 of the Code of Civil Procedure seeking permission to adduce additional evidence before this Court. This Court has carefully examined the said application as well as the nature of the documents and depositions sought to be produced by way of additional evidence. The plaintiffs propose to rely upon the deposition of defendant No.1 recorded in Execution Petition No.85 of 2011 and certain admissions allegedly



made by him in Execution Petition No.85 of 2011, with a view to demonstrate that they are in possession of the suit land and, therefore, the property is a joint acquisition entitling them to a share therein.

40. However, on a closer scrutiny, this Court finds that the additional material now sought to be produced has no bearing whatsoever on the core issue which was the subject matter of the original partition suit, namely, whether the suit land was jointly acquired by all four brothers out of the income from their alleged oil business prior to the constitution of the registered partnership firm in 1967. The question of possession, even if established, does not by itself establish title or joint acquisition, particularly when both the Trial Court and the Appellate Court have concurrently held that the plaintiffs failed to produce any evidence of joint investment or existence of a joint family nucleus.



41. The attempt of the plaintiffs to introduce evidence relating to possession at this belated stage appears to be an indirect effort to fill in the lacunae in their original case, which is impermissible in law. It is well settled that additional evidence under Order XLI Rule 27 of CPC cannot be permitted to enable a party to patch up weak points in the case or to introduce evidence that could have been produced earlier with due diligence. The plaintiffs' claim that they are in possession of the suit land, even if assumed to be correct, cannot override the undisputed fact that the property was purchased in the name of defendant No.1 when he was a minor. Possession by the brothers during the minority of defendant No.1, or the reflection of their names in the revenue records, is of no legal significance in determining ownership, particularly when the title document stands exclusively in the name of defendant No.1.

42. Moreover, the record reveals that upon attaining majority, defendant No.1 noticed the wrongful



entry of one of the plaintiffs' names in the revenue records and, in exercise of his statutory rights, preferred an appeal under the provisions of the Karnataka Land Revenue Act. The competent authority, after due consideration, set aside the mutation entries, thereby reaffirming defendant No.1's title over the property. This fact further weakens the relevance of the additional evidence now sought to be introduced.

43. It is also pertinent to note that the scope of adducing additional evidence at the stage of second appeal under Section 100 of the Code of Civil Procedure is extremely limited. A second appeal lies only on a substantial question of law, and the introduction of new factual material at this stage is permissible only in rare and exceptional circumstances, where such evidence is indispensable for pronouncing judgment or where the court below has refused to admit evidence which ought to have been admitted. None of these conditions are satisfied in the present case.



44. Therefore, this Court is of the considered view that the proposed additional evidence neither satisfies the requirements of Order XLI Rule 27 of CPC nor is necessary for an effective and just adjudication of the dispute between the parties. The attempt is clearly an afterthought and an endeavour to reopen factual findings which have attained finality. Accordingly, the application filed by the plaintiffs under Order XLI Rule 27 of CPC for production of additional evidence stands rejected. Accordingly, substantial question of law No.(v) is answered in ***affirmative***.

45. Accordingly, this Court passes the following:

ORDER

The appeal is hereby dismissed.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

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