



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE R.NATARAJ

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

REGULAR FIRST APPEAL NO.716 OF 2015 (PAR)

C/W

RFA CROSS OBJ NO.200004 OF 2019

IN RFA No. 716/2015

BETWEEN:

SMT. CHANDRABHAGA RAJAPPA TALAKERI,
AGED ABOUT 73 YEARS,
OCC: HH WORK AND AGRICULTURE,
R/O. VIVEK NAGAR (EAST),
B. BAGEWADI ROAD,
VIJAYAPUR-586 101.

...APPELLANT

(BY SRI. VINAYAK APTE, ADVOCATE)

AND:

1. SRI RAVINDRA
S/O NAMADEV DUMAKANAL,
AGED ABOUT 55 YEARS,
OCC: AGRICUTURE,
VIJAYAPUR-586 101.
2. SMT. SHWETA BASAVARAJ DUMANAKAL,
AGED ABOUT 34 YEARS,



OCC: HOUSEHOLD WORK,
C/O. H. S. TOTAD,
A/P. BOLACHIKKALAKI,
VIJAYAPUR-586 101.

3. SMT. SURENDRA
S/O NAMADEV DUMAKANAL,
AGED ABOUT 47 YEARS,
OCC: AGRICULTURE,
R/AT VIJAYAPUR-586 101.
4. ASST. EXECUTIVE ENGINEER,
KARNATAKA HOUSING BOARD,
SUB-DIVISION, SOLAPUR ROAD,
VIJAYPUR-586 101.
5. HOUSING COMMISSIONER,
KARNATAKA HOUSING BOARD,
KAVERI BHAVAN,
BENGALURU-560 001.
6. SMT KASTURIBAI
W/O NAMADEV DUMAKANAL,
AGED ABOUT 73 YEARS, OCC: NIL,
R/O. KIRTINAGAR,
VIJAYPUR-586 101.
7. SMT. LALITHA
W/O BASAVARAJ MAYAVANSHI,
AGED ABOUT 57 YEARS,
OCC: HOUSEHOLD WORK,
R/O. KRITINAGAR,
VIJAYPUR-586 101.
8. SMT. NAGAWWA
W/O BHIMARAYA TALAKERI,
AGED ABOUT 53 YEARS,
OCC: HOUSEHOLD WORK,
R/O. KIRTINAGAR,
VIJAYAPUR-586 101.



9. SMT. SUNANDA
W/O SHARANAPPA SHRINIVAS,
AGED ABOUT 48 YEARS,
OCC: HOUSEHOLD WORK,
R/O. VIJAYPUR-586 101.
10. SMT. RAJESHWARI
W/O SATISH SAGAR,
AGED ABOUT 38 YEARS,
OCC: HOUSEHOLD WORK,
R/O. VIJAYAPUR-586 101.
11. SMT. SHAILA
W/O BHIMAPPA BELLUBBI,
AGED ABOUT 48 YEARS,
OCC: HOUSE HOLD WORK,
R/O. NEAR DISTRICT COURT,
VIJAYPUR- 586 101.

...RESPONDENTS

(NOTICE TO R1 TO R3 AND R5 IS SERVED;
BY SRI. S.S. MAMADAPUR, ADV. FOR R4;
SRI. S.S. SAJJANSHETTY, ADV. FOR R6 TO R11)

THIS RFA IS FILED U/S 96 OF THE CODE OF CIVIL
PROCEDURE 1908, PRAYING TO I) SET ASIDE THE JUDGMENT
DATED 30.03.2015 PASSED BY THE PRINCIPAL SENIOR CIVIL
JUDGE VIJAYPUR, IN O.S.NO.224/2012; II) ALLOW THIS
APPEAL WITH COSTS AND ETC.

IN RFA.CROB NO.200004/2019:

BETWEEN:

1. SMT. KASTURIBAI
W/O NAMADEV DUMAKANAL,
AGED ABOUT 79 YEARS, OCC: NIL,
R/O. KIRTINAGAR, VIJAYAPUR,
TQ. DIST. VIJAYPUR PIN -586 101.



2. SMT.LALITHA W/O BASAVARAJ MAYAVANSHI,
AGED ABOUT 61 YEARS, OCC: HOUSEHOLD,
R/O. KIRTINAGAR, VIJAYAPUR,
TQ. DIST. VIJAYPUR - 586 101.
3. SMT. NAGAWWA W/O BHIMARAYA TALAKERI,
AGED ABOUT 57 YEARS, OCC: HOUSEHOLD,
R/O. KIRTINAGAR, VIJAYAPUR,
TQ. DIST. VIJAYPUR - 586 101.
4. SMT. SUNANDA W/O SHARANAPPA SHRINIVAS,
AGED ABOUT 52 YEARS, OCC: HOUSEHOLD,
R/O. KIRTINAGAR, VIJAYPUR,
TQ. DIST. VIJAYPUR - 586 101.
5. SMT. RAJESHWARI W/O SATISH SAGAR,
AGED ABOUT 42 YEARS, R/O. KIRTINAGAR,
VIJAYPUR, TQ. DIST. VIJAYPUR - 586 101.
6. SMT. SHAILA W/O BHIMAPPA BELLUBI,
AGED ABOUT 52 YEARS, OCC: HOUSEHOLD,
R/O. NEAR DISTRICT COURT, VIJAYPUR,
TQ. DIST. VIJAYPUR - 586 101.

...CROSS OBJECTORS

(BY SRI. S. S. SAJJANSHETTY, ADVOCATE)

AND:

1. SRI. RAVINDRA S/O NAMADEV DUMAKANAL,
AGED ABOUT 59 YEARS,
OCC: AGRICULTURE,
R/O. VIJAYPUR - 586 101.
2. SMT. SHWETA BASAVARAJ DUMAKANAL,
AGED ABOUT 39 YEARS,



NC: 2026:KHC-K:902-DB
RFA No. 716 of 2015
C/W RFA.CROB No. 200004 of 2019

OCC: HOUSEHOLD WORK,
R/O. C/O. H.S.TOTAD,
A/P: BOLACHIKKALAKI,
TQ. DIST. VIJAYPUR - 586 101.

3. SMT. SURENDRA
S/O NAMADEV DUMAKANAL,
AGED ABOUT 51 YEARS,
OCC: AGRICULTURE,
R/O. TQ. DIST. VIJAYPUR - 586 101.
4. ASST. EXECUTIVE ENGINEER,
KARNATAKA HOUSING BOARD,
SUB-DIVISION, SOLAPUR ROAD,
VIJAYPUR - 586 101.
5. HOUSING COMMISSIONER,
KARNATAKA HOUSING BOARD (KHB),
KAVERI BHAVAN,
BANGALORE - 560 032.
6. SMT. CHANDRABHAGA RAJAPPA TALAKERI,
AGED ABOUT 81 YEARS,
OCC: HOUSEHOLD WORK & AGRICULTURE,
R/O. VIVEK NAGAR (EAST),
B.BAGEWADI ROAD,
R/O. TQ. DIST. VIJAYAPUR,
PIN -586 101.

...RESPONDENTS

(V/O/D 16.03.2021 SERVICE OF NOTICE TO R1, R3 & R6 IS
DISPENSED WITH;
BY SRI. SANJEEVKUMAR C. PATIL, ADV. FOR R2,
SRI. S.S. MAMADAPUR, ADV. FOR R4,
NOTICE TO R5 IS SERVED.)



THIS RFA CROSS OBJECTION IS FILED UNDER ORDER 41 RULE 2 R/W SEC.96 OF THE CIVIL PROCEDURE CODE 1908, PRAYING TO ALLOW THE CROSS APPEAL AND CROSS OBJECTION AND SET ASIDE THE JUDGMENT AND DECREE DATED 30.03.2015 PASSED IN O.S.NO.224/2012 & COUNTER CLAIM, BY THE LEARNED PRINCIPAL SENIOR CIVIL JUDGE, VIJAYPUR VIDE **ANNEXURE-A**; CONSEQUENTLY ALLOW THE SUIT AND COUNTER CLAIM WITH COSTS AND ETC.

THESE APPEALS, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

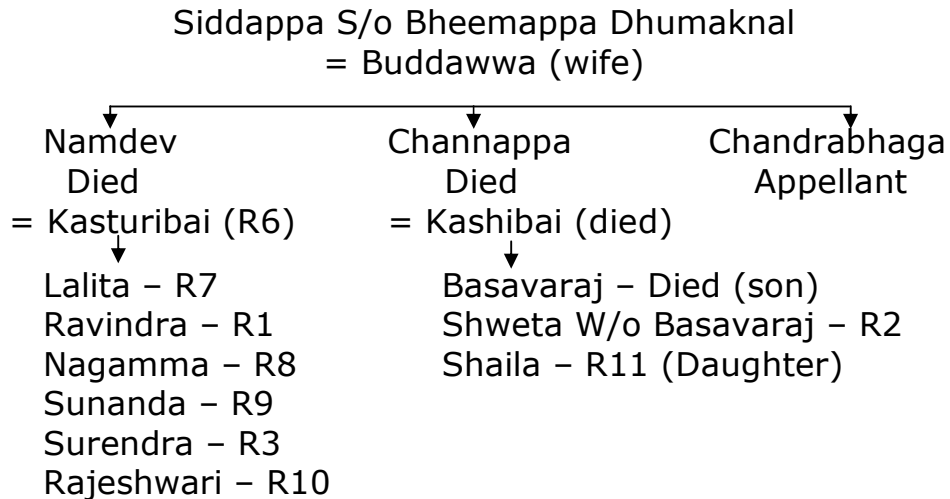
This appeal is filed by the unsuccessful plaintiff challenging the judgment and decree dated 30.03.2015 passed by the court of the Principal Senior Civil Judge, Vijayapur (henceforth referred to as 'the trial Court') in O.S.No.224/2012 by which *her suit for partition was dismissed.

* Corrected vide order dated 24.02.2026.



2. The parties are henceforth referred to as they were arrayed before the trial Court.

3. The suit in O.S.No.224/2012 was filed for partition and separate possession of the plaintiff's 1/3rd share in the suit schedule properties. The suit properties were agricultural lands bearing Sy.Nos.73/1, 73/2 and 73/3 of Kasaba Village, Vijayapur, measuring 4-33 acres, 5-02 acres and 5-05 acres respectively. The plaintiff claimed the genealogy of her family as follows:



4. Plaintiff contended that the suit properties were the ancestral properties of the family and that she and the



defendant Nos.1 to 3 jointly owned and possessed the same. She came to know that the defendants Nos.1 to 3 had fabricated a partition by submitting a varadi to the Village Accountant and got their names entered in the revenue records, in terms of which, the defendant No.1 claimed Sy.No.73/1 while Sy.No.73/2 was claimed by the husband of the defendant No.2 and Sy.No.73/3 was claimed by the defendant No.3. They thereafter brought about sale deeds in favour of defendant No.5 in the year 2009 without the notice and knowledge of the plaintiff. Plaintiff claimed that despite her demands, the defendants failed to partition the suit properties which compelled her to cause a notice on 22.08.2012 claiming her share. The plaintiff has therefore filed the suit for partition and separate possession of her 1/3rd share.

5. The defendant Nos.1 to 3 did not contest the suit.

6. Defendant No.4 representing defendant No.5 filed a written statement denying the averments made in



the plaint and also claimed that the suit was not maintainable as the plaintiff was born prior to the Hindu Succession Act, 1956 and therefore she was not entitled to any share in the suit properties. It was contended that as per the pleadings of the plaintiff, a partition between the defendants was effected long back and based upon that, the plaintiff had relinquished her share. It was also contended that the defendant No.5 had purchased the suit property from the defendant Nos.1 to 3 and therefore the plaintiff is not entitled to file a suit. It was also contended that the suit is not maintainable for non-compliance of the statutory notice under Section 72 of the Karnataka Housing Board Act, 1962 (henceforth referred to as 'the KHB Act, 1962').

7. It also contended that the plaintiff as well as the other defendants had allowed the defendant Nos.4 and 5 to form a layout and thereby they acquiesced the sale made in their favour by the defendant Nos.1 and 3 and the husband of defendant No.2.



8. The defendants No.6 to 11 were subsequently impleaded. Amongst them, the defendant No.6 filed a written statement, admitting the averments made in the plaint. She claimed that the suit properties were the properties of the plaintiff and the defendant Nos.1 to 3 and 6 to 11. She also claimed that defendant No.2 was not the only heir of deceased Channappa and that she also was one of the heirs of deceased Channappa. Likewise she contended defendant Nos.6 to 10 are the legal heirs of deceased Namadev and that defendants Nos.1 and 3 were also the heirs of the deceased Namadev. She therefore prayed that the suit be decreed and a decree be passed declaring that the defendant Nos.2 and 11 are entitled to $1/6^{\text{th}}$ share each and defendant Nos.6 to 10 are entitled to $1/21$ share each in the suit properties.

9. The defendant Nos.7 to 11 adopted the written statement filed by defendant No.6.

10. Based on these contentions, the trial Court framed the following issues :



1. *Whether plaintiff proves that suit properties are ancestral properties of her and defendants ?*
2. *Whether plaintiff proves that she has got 1/3rd share in suit properties ?*
3. *Whether defendants prove that plaintiff was born before 1956 and suit is not tenable under law, as contended in written statement ?*
4. *Whether sixth defendant proves that she has got 1/6th share in suit properties as contended in written statement ?*
5. *Whether plaintiff is entitled for relief sought ?*
6. *Whether sixth defendant is entitled for relief of counter claim ?*
7. *What order or decree ?*

11. The plaintiff was examined as PW-1 and she marked Ex.P-1 to P-21. The officials of defendant No.5 was examined as DW-1 and DW-2, while the defendant No.9 was examined as DW-3 and they marked Ex.D-1 to D-5.

12. Based on the oral and documentary evidence, the trial Court held that the mutation entries and the revenue records disclosed that the suit properties were ancestral properties of the plaintiff and the defendant



Nos.1 to 3 and 6 to 11. It however held that the plaintiff was born prior to 1956 and therefore she was not entitled to any share in the suit properties. In this regard, it relied upon the judgment of learned Single Judge of this Court in ***Pushpalatha N.T. v. Padma – (2010) 3 Kant LJ 549.***

13. As regards the counter claim of the defendant Nos.6 to 11, it held that defendant Nos.1, 3, 6 to 10 are the heirs of deceased Namdev Dumakanal. The sons of Namdev Dumakanal namely Ravindra and Surendra (defendant Nos.1 and 3) had sold the suit properties to the defendant Nos.4 and 5 on *18.10.2007 while Basavaraj, the husband of defendant No.2 was also a party to the said sale deed. It held that the defendant Nos.6 to 11 though claimed a share in respect of the suit properties as against defendant Nos.1 to 3 and defendant Nos.4 and 5, they did not issue any statutory notice to defendant Nos.4 and 5 under Section 72 of the KHB Act, 1962 which was mandatory and prerequisite before filing a suit. Consequently, it dismissed the suit and rejected the

* Corrected vide order dated 24.02.2026.



counter claim in terms of the impugned judgment and decree.

14. Being aggrieved by the said judgment and decree, the plaintiff is before this Court. The defendant Nos.6 to 11 have also filed RFA CROB No.200004/2019 staking their share in the suit schedule properties.

15. The learned counsel for the plaintiff as well as the defendant Nos.6 to 11 submitted that the suit properties were originally owned and possessed by their father and hence after his death, the plaintiff as well as defendants were entitled to an equal share. He contends that the defendant Nos.1, 3 and the husband of the defendant No.2 had unconscionably got their names entered in the revenue records though there was no partition of the properties and thereafter conveyed the properties to the defendant No.5. He therefore contends that neither the plaintiff nor the other defendants have consented or agreed to convey the suit properties to the defendant No.5 and therefore to that extent, plaintiff as



well as defendant Nos.6 to 11 are entitled to their respective shares in the suit schedule properties.

16. *Per contra*, the learned counsel for the defendant Nos.4 and 5 submitted that the plaintiff was bound to file a suit after issuing notice under Section 72 of the KHB Act, 1962. He contends that though plaintiff had issued a notice, she did not follow it up by filing a suit within the time prescribed under Section 72 of the KHB Act, 1962. He invited the attention of the Court to Section 72 of the KHB Act, 1962 which reads as follows :

"72. Notice of suit against Board.—No person shall commence any suit against the Board ¹[,Housing Commissioner, Chief Engineer, Secretary] or against any officer or servant of the Board or any person acting under the orders of the Board, for anything done or purporting to be done in pursuance of this Act, without giving to the Board ²[,Housing Commissioner, Chief Engineer, Secretary], officer or servant or person concerned two months' previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of."

17. He contends that during the course of cross examination of plaintiff, she admitted that she was aware of the alienation of the suit properties by the defendant



Nos.1, 3 and the husband of defendant No.2 in the year 2009. However, she did not take any steps to file the suit within 6 months from the date of issuance of the notice. He therefore contends that the suit is barred by time and the trial Court was justified in dismissing the suit.

18. As regards the claim of defendants Nos.6 to 11 he contended that the said defendants did not issue notice under Section 72 of the KHB Act, 1962 and therefore they are not entitled to make a counter claim in respect of their alleged share in the suit schedule properties. Besides this, he contends that the husband of the defendant No.2 and the father of the defendant No.11, namely Mr. Basavaraj had already sold the suit properties and therefore the defendant Nos.2 and 11 cannot sustain their claim for their share in the suit schedule properties.

19. He also submits that the defendant Nos.4 and 5 have purchased the suit property taking into account the revenue records that stood in the name of the defendant Nos.1, 3 and the husband of the defendant No.2 and



therefore if the plaintiff as well as the defendant Nos.6 to 11 are interested, they may pursue their suit for recovery of money from the defendant Nos.1, 3 and the husband of the defendant No.2.

20. We have considered the submissions of the learned counsel for the plaintiff, the learned counsel for the defendant Nos.6 to 11 as well as the learned counsel for the defendant Nos. 4 and 5.

21. The points that arise for consideration in this appeal are :

- "1. Whether the trial Court was justified in applying the law declared in ***Pushpalatha N.T. v. Padma – (2010) 3 Kant LJ 549*** in denying the share to the plaintiff?"
2. Whether the defendant Nos.6 to 11 were entitled to a share in the suit schedule properties ? and
3. Whether the sale deed executed in favour of defendant Nos.4 and 5 bound their interest in the suit properties ?"



22. The fact that the suit properties were purchased by Siddappa, the father of the plaintiff and the grandfather of the defendant Nos.1, 3, and the husband of the defendant No.2 is not in dispute. It is also not in dispute that the revenue records of the properties in question stood in the name of Siddappa, which is evident from ME No.4389. The said Siddappa died intestate on 22.07.1988, leaving behind his grandchildren from the first son Namdev and Channappa as well as the plaintiff. It is not in dispute that plaintiff was born prior to Hindu Succession Act, 1956. However, Siddappa died on 22.07.1988 and therefore the law applicable to determine the succession to his property was the Hindu Succession Act, 1956. The properties in question were neither alienated nor partitioned amongst the sons of Siddappa prior to 20.12.2004 and therefore the succession to the property of Siddappa had to be as provided under Section 6 of the Hindu Succession (Amendment) Act, 2005. The finding of the trial Court that the plaintiff is not entitled for a share



in the suit schedule properties as she was born prior to 1956 is therefore incorrect. The law declared in ***Pushpalatha N.T.*** stated supra is no longer good law in view of the authoritative pronouncement of law regarding the rights of a daughter in ancestral property in ***Vineeta Sharma v. Rakesh Sharma and others*** reported in **AIR 2020 SC 3717**. Therefore, we have no hesitation to hold that plaintiff was entitled to 1/3rd share in the suit schedule properties.

23. The contention of the defendant Nos.4 and 5 that the plaintiff was bound to file a suit within 6 months in view of what is contained in Section 72 of KHB Act, 1962 does not appeal to this Court as Section 72 of the KHB Act, 1962 is in respect of an action to be taken by a party who is privy to a transaction and not by a person who is not privy to a transaction. The plaintiff admittedly was not a party to the sale deed in favour of the defendant Nos.4 and 5 and therefore the stipulation under Section 72 of the KHB Act, 1962 was strictly not applicable to the



plaintiff. Even otherwise the rights conferred on the plaintiff under the Hindu Succession (Amendment) Act, 2005 were substantive in nature which cannot be obliterated by Section 72 of the KHB Act, 1962 which is merely procedural in nature. This apart a right conferred by a central legislation cannot be decimated or truncated by a state enactment. Consequently, we hold that the judgment and decree of the trial Court denying the share to the plaintiff is incorrect and plaintiff is entitled to 1/3rd share in the suit schedule properties.

24. As regards the counter claim of the defendant Nos.6 to 11, it is relevant to note that the defendant Nos.2 and 11 are the wife and children of Basavaraj, who had executed a sale deed in favour of the defendant No.5. Therefore, they are not entitled to any share in the suit schedule properties. However, insofar as the defendant Nos.6, 7, 8, 9 and 10, they were the mother and sisters of the defendant Nos.1 and 3 who are also entitled to an equal share in the suit schedule properties. The trial Court



proceeded on the assumption that the said defendants were also bound to issue a notice under Section 72 of the KHB Act, 1962 before making a claim. The trial Court was clearly oblivious of the fact that a suit was already initiated by the plaintiff for partition and separate possession of her share in the suit properties and therefore the defendant Nos.4 and 5 were aware of the proceedings. The requirement of law under Section 72 of the KHB Act, 1962 is not applicable to a counter claim as that is done during the course of a suit. Therefore, the judgment and decree of the trial Court denying the relief to the defendant Nos.6, 7, 8, 9 and 10 is without any basis and the reasoning of the trial Court in rejecting their claim is thoroughly incorrect and warrants interference. Therefore they are entitled to 1/21th share each in the suit schedule properties. Consequently, their cross objection deserves to be **allowed** and they are entitled to 1/21th share each in the suit schedule properties. As regards the claim of the defendant Nos.2 and 11, the counter claim filed by them



before the trial Court and the cross objection filed by them has to be ***rejected***.

25. Insofar as the third point for consideration is concerned, the sale deeds in favour of defendant No.5 were executed by defendant Nos.1, 3 and husband of defendant No.2. The plaintiff and defendants Nos.6, 7, 8, 9, 10 were not parties to the aforesaid sale deeds. There is no mention that the plaintiff and defendant Nos.6, 7, 8, 9, 10 had consented to such sale or had relinquished their right, title and interest in favour of defendant Nos.1 and 3 and the husband of defendant No.2. There is also nothing to show that these deeds were brought about to meet the necessities of the family. Consequently, they did not bind the plaintiff as well as defendant Nos.6, 7, 8, 9 and 10.

26. In view of the above, the appeal filed in RFA No.716/2015 is allowed and the impugned judgment and decree dated 30.03.2015 passed in O.S.No.224/2012 by the Court of the Principal Senior Civil Judge, Vijayapur is



set aside and the suit is decreed and it is declared that the plaintiff is entitled to 1/3rd share in the suit properties.

27. Likewise, RFA *CROB No.200004/2019 is allowed in part. The judgment and decree dated 30.03.2015 passed in O.S.No.224/2012 by the Court of the Principal Senior Civil Judge, Vijayapur insofar as it relates to rejection of the counter claim is set-aside in part. The counter claim filed by defendant Nos.6, 7, 8, 9 and 10 is decreed and it is declared that they are entitled to 1/21th share each in the suit properties. The rejection of counter claim of defendant Nos.2 and 11 stand confirmed.

28. It is relevant to note that the suit properties are no longer agricultural lands as it is developed into a residential township by the defendant Nos.4 and 5. Therefore, while allotting the shares of the plaintiff as well as the defendant Nos.6, 7, 8, 9 and 10, care shall be taken to ensure that the shares shall be apportioned out of the developed area by factoring the area utilized for the

* Corrected vide order dated 24.02.2026.



purposes of civic amenities, roads etc. to their respective shares as per the layout plan duly sanctioned.

29. Office is directed to draw a decree in terms of this judgment.

30. In view of disposal of the appeal and cross-objection, all pending interlocutory applications stand dismissed.

Sd/-
(R.NATARAJ)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE

SN
List No.: 1 Sl No.: 19