



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 24TH 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. 200181 OF 2018 (PAR)

BETWEEN:

MALLIKARJUNA NADAGOUDA
S/O CHANDAYYA @ CHANDRAYAGOUDA,
AGE: 62 YEARS,
OCC: RETIRED GOVERNMENT TEACHER,
R/O: H.NO.8-11-180/127/1,
NGO COLONY, NEELAKANTESHWARA NAGAR,
RAICHUR – 584 101.

...APPELLANT

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

AND:

1. SMT. GIRIJADEVI
W/O SIDDAPPAGOUDA,
AGE: 72 YEARS,
OCC: HOUSEHOLD,
R/O: GANADINNI VILLAGE,
TQ: MANVI, DIST: RAICHUR – 584 123.
2. VIJAYALAXMI
W/O CHANDRASHEKAR,
AGE: 34 YEARS,
OCC: HOUSEHOLD,
R/O: PAMANAKELLUR VILLAGE,
TQ: MANVI, DIST: RAICHUR – 584 123.





3. SMT. AKKANAGAMMA
W/O SHARANAPPAGOUDA HALAGERI,
AGE: 65 YEARS,
OCC: HOUSEHOLD,
R/O: HALGERI, TQ: SHAHAPUR,
DIST: YADGIR – 585 223.
4. SMT. BASALINGAMMA
W/O H.MALLIKARJUNGOUDA,
AGE: 53 YEARS,
OCC: HOUSEHOLD,
R/O: ACHOLI, TQ: SHIRGUPPA,
DIST: BALLARI – 586 121.
5. SMT. SHASHIKALA
W/O CHAMARASA,
AGE: 59 YEARS,
OCC: HOUSEHOLD,
R/O: CHATNALLI, VIA KHANAPUR,
TQ: SHAHAPUR,
DIST: YADGIR – 585 223.
6. SHANKARAPPA NADAGOUDA
S/O CHANDAYYA @ CHANDRAYAGAUD,
AGE: 55 YEARS,
OCC: AGRICULTURE,
R/O: KARADIGUDDA,
POST: JAGATAGAL,
TQ: DEODURGA,
DIST: RAICHUR – 584 111.
7. RAJASHEKHAR
S/O CHANDAYYA @ CHANDRAYAGAUD,
AGE: 50 YEARS,
OCC: AGRICULTURE,
R/O: KARADIGUDDA,
POST: JAGATAGAL,
TQ: DEODURGA,
DIST: RAICHUR – 584 111.

DIED NO LEGAL
HEIRS TO BE
BROUGHT ON
RECORD V/O DATED
03.07.2025.



8. SMT. SHAKUNTALAMMA
W/O NARASAREDDY,
AGE: 60 YEARS,
OCC: HOUSEHOLD,
R/O: GONVAR VILLAGE,
TQ: AND DIST: RAICHUR – 585 101.

9. SMT. SANGANABASSAMMA
W/O CHANDAYYA @ CHANDRAYAGOUNDA,
SINCE DECEASED BY LRS.

9A. CHANDRAKALA
D/O MALLIKARJUN NADAGOUNDA,
NOW AFTER MARRIAGE
W/O: SHARANAGOUNDA,
AGE: 32 YEARS,
OCC: PRIVATE WORK AND AGRICULTURE,
R/O: H.NO.8-11-181/14,
SINDHU NILAYA, FARUQ LAYOUT,
NGO COLONY, RAICHUR - 584111.

AMENDED
VIDE
ORDER
DATED
15.10.2019

...RESPONDENTS

(BY SRI SANJEEV KUMAR C. PATIL, ADVOCATE FOR R1 TO R4;
V/O DATED 03.07.2025 R5 HAS DIED;
SRI A.M.NAGRAL, ADVOCATE FOR R6;
NOTICE TO R7 AND R8 IS SERVED;
SRI D.P. AMBEKAR, ADVOCATE FOR R9(A))

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND
DECREE DATED 30.08.2018 PASSED BY THE LEARNED SENIOR
CIVIL JUDGE AT DEODURGA IN O.S.NO.25/2016
(O.S.NO.135/2011 OLD) AND DISMISSED THE SUIT WITH
COSTS THROUGHOUT, BY ALLOWING THE APPEAL, IN THE
INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL, COMING ON FOR FINAL
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)

The defendant No.2 in O.S.No.25/2016 (Old No.135/2011) on the file of the Senior Civil Judge and JMFC, Deodurga (henceforth referred to as 'Trial Court') has filed this appeal challenging the judgment and decree dated 30.08.2018 by which, the suit was decreed and the plaintiffs were held entitled to 1/10th share in 'A', 'B' and 'C' schedule properties.

2. The parties shall henceforth be referred to as they were arrayed before the Trial Court. The appellant herein was defendant No.2, while respondent Nos.1 to 4 were plaintiff Nos.1 to 4. The respondent Nos.5 to 9 were defendant Nos.1, 3 to 6 before the Trial Court.

3. (i) The suit in O.S.No.25/2016 (Old No.135/2011) was filed for partition and separate possession of plaintiffs' share in the suit properties. The suit 'A' properties were agricultural lands, while suit 'B' property was a plot,



where a house was constructed and suit 'C' properties are motor vehicles. The plaintiffs claimed that Chandrayya @ Chandraraya was the propositus of the family comprised of the plaintiffs and the defendants. The plaintiff No.1 is the daughter of the said Chandrayya from his first wife Smt.Eshwaramma. After the death of his first wife, he married Sanganabasamma (defendant No.6 herein) and he had four sons namely, Chamarasa (husband of defendant No.1), defendant No.2, defendant No.3, defendant No.4 and four daughters namely, plaintiff No.3, plaintiff No.4, defendant No.5 and Eshwaramma, who died leaving behind his daughter-plaintiff No.2. The plaintiffs claimed that the whereabouts of Chamarasa was not known to them or the defendants and it is not known whether he is dead or alive. The said Chamarasa, plaintiffs and the defendants constituted a joint family and owned agricultural lands, plots and house properties at Karadigudda village. After the presumed death of Chandrayya, defendant No.2 was managing the properties of the family as kartha. The plaintiffs claimed that there was no partition between the plaintiffs and the defendants and that all of them were enjoying the suit properties jointly.



(ii) The plaintiffs claimed that defendant No.2 being the kartha of the family, purchased the suit 'B' property and constructed a house thereon by investing nearly Rs.25,00,000/-. They claimed that defendant Nos.3 and 2 had purchased a tractor/trailer and a motorcycle respectively out of the joint family funds. The plaintiffs claimed that defendant Nos.2 and 3 illegally got their names entered in the revenue records without their notice and knowledge and did not give proper accounts of the income from the joint family properties. Therefore, they demanded their share in the suit properties, which was however, postponed on one or the other reasons. The plaintiffs claimed that they demanded the defendants on 10.07.2011 to divide the suit properties, which was refused by the defendants. The plaintiffs therefore, filed the suit claiming their share in the suit properties.

4. (i) The defendant No.1 filed a written statement contending that the age of the plaintiffs is wrongly mentioned and that they may be put to strict proof of their age as mentioned in their plaint. She contended that during the lifetime of the propositus, an oral partition was effected between plaintiff Nos.1, 3, 4, mother of plaintiff No.2 and their



father as well as the defendants. At the said partition, plaintiff Nos.1, 3, 4 and mother of plaintiff No.2 separated from the family by accepting gold and cash equivalent to their share. She claimed that from the date of partition, the plaintiffs and defendants are not members of the joint family and they do not possess the suit properties jointly. She admitted that defendant No.2 is a Government employee and he purchased a plot and constructed a house thereon by availing loans from banks apart from his own earnings. She also claimed that the motorcycle was purchased by defendant No.2 after availing a loan.

(ii) She claimed that she had filed a suit in O.S.No.28/2009 before the Principal Senior Civil Judge, Raichur, for partition and separate possession against the present defendant Nos.2, 3 and 4 in respect of Schedule 'A' and 'C' properties. In the said suit, the defendant Nos.2 and 3 were placed *ex-parte* and defendant No.1 (defendant No.2 herein) filed his written statement and claimed his share. After an enquiry, the suit was decreed on 06.10.2009 against which the defendant Nos.2 and 3 (defendant Nos.3 and 4 herein) filed RFA No.5029/2010 before this Court, which was dismissed on



23.09.2010. The defendant Nos.1 and 2 herein filed FDP Nos.8/2010 and 9/2010. The final decree Court after recording the evidence, appointed ADLR, Deodurga, for effecting partition as per decree. The ADLR conducted a survey and submitted a report along with survey sketches, which was accepted by the Court. She claimed that as per the order of the Court, Block - A of land in Sy.No.12, Block - A of Sy.No.16, Block - A of Sy.No.18, Block - A of Sy.No.9, Block - A of Sy.No.11 and Block - A of Sy.No.4 were allotted to her share. She claimed that she therefore, became the absolute owner of the aforesaid lands and hence, the plaintiffs and other defendants, have no rights over the above lands. She admitted that defendant No.2 being a Government employee has purchased a plot No.8-11-180/127/1 and constructed a house thereon by availing loans from banks and other sources. She also admitted that defendant No.2 had purchased motorcycle out of his own funds and therefore, prayed that the suit be dismissed.

5. (i) The defendant No.2 filed a written statement admitting his relationship with the plaintiffs and the other defendants. He claimed that the plaintiffs had already taken their shares in the suit properties. He claimed that he was a



Government servant and was not the kartha of the family and not managing the affairs of the family. He contended that he purchased the suit 'B' property and constructed a house thereon after raising loans from various banks and therefore, it was his self-acquisition, where neither the plaintiffs nor the other defendants had any share. He contended that defendant No.3 obtained a loan and purchased a tractor/trailer and was managing it. He claimed that the motorcycle was purchased by him after raising a loan. Therefore, he contended that the plaintiffs are not entitled to a share in the suit properties. He further contended that each of the plaintiffs had received 15 tolas of gold and cash of Rs.10,000/- each at the time of their marriage and they relinquished their right over the suit properties.

(ii) He claimed that the defendant No.1 filed O.S.No.28/2009 before the Principal Senior Civil Judge, Raichur, for partition and separate possession against the defendant Nos.2, 3 and 4 in respect of suit 'A' and 'C' properties. In the said suit, the defendant Nos.2 and 3 were placed *ex-parte* and the defendant No.1 (defendant No.2 in this case) filed a written statement and claimed his 1/4th share.



After adducing evidence, the suit was decreed on 06.10.2009 against the defendant Nos.2 and 3, who are the defendant Nos.3 and 4 in the present suit. They then filed RFA No.5029/2010 before this Court, which was dismissed on 23.09.2010. Thereafter, defendant Nos.1 and 2 in O.S.No.28/2009 filed FDP No.9/2010. The Court appointed a Commissioner for effecting partition. The ADLR conducted a survey and made a division of the suit property and submitted a report, which was accepted by the Court and a final decree was passed on 26.11.2011. The defendant No.2 therefore, contended that all the above facts were within the knowledge of the plaintiffs and other defendants. However, the plaintiffs in collusion with the defendant No.3, filed a suit to harass and cause monetary loss to the defendant No.2.

(iii) The defendant No.2 claimed that he was working as a Teacher in a Government School. He had applied for permission from his department on 12.02.1996 to purchase the suit 'B' property and on 23.02.1996, permission was granted. He claimed that he purchased the suit 'B' property in terms of a sale deed dated 15.02.1996 for Rs.27,500/-. He claimed that



he had raised the following loans for construction over the suit 'B' property:-

Sl.No.	Particulars	Amount
1	From LIC First installment	Rs.1,00,000/-
2	From LIC Second installment	Rs. 75,000/-
3	KGID	Rs. 25,000/-
4	Syndicate Bank loan on salary deduction	Rs. 25,000/-
5	GPF loan	Rs. 15,000/-
	Total	Rs.2,40,000/-

(iv) He claimed that he sold gold ornaments of his wife from which, he invested Rs.50,000/- for construction of the house. He claimed that the loan raised from LIC was taken over by Indian Bank. The defendant No.2 claimed that he raised the loan of Rs.4,00,000/- from the Central Bank of India, Raichur, for education and for performance of his daughter's marriage. He claimed that he also purchased a motorcycle in the year 2004 from a loan obtained from the Bank. Therefore, he claimed that the above properties are not available for partition as they are his self-acquisition.



6. The defendant No.6 adopted the written statement filed by the defendant No.2.

7. (i) The defendant No.3 filed a written statement and claimed that the contention of the plaintiffs that there was no division or partition between the plaintiffs and defendants is false. He also claimed that plaintiffs and defendants are not enjoying the properties jointly as claimed. He contended that during the lifetime of propositus Sri. Chandrayya, he was separated from the joint family in the year 1988, soon after his marriage. Therefore, he claimed that there was no joint family as claimed by the plaintiffs since the year 1988. He denied that the joint family of the plaintiffs and defendants owned ancestral property bearing Sy.No.18/AA measuring 7 acres 6 guntas and Sy.No.4 measuring 16 acres 2 guntas, both situate at Karadigudda, Deodurga Taluk. He claimed that since year 1988, he was in exclusive possession and enjoyment of the land bearing Sy.No.4 of Karadigudda and mutation was entered in his name after M.R.No.01/2003-04 dated 21.11.2003 was accepted. He claimed that he purchased the land bearing Sy.No.18 of Karadigudda out of his own earnings in the year 1992 and that he was in possession of the same as its owner.



He claimed that the plaintiffs and defendant Nos.1, 2, 4 to 6 had no right, title and interest in Sy.No.4 and Sy.No.18.

(ii) The defendant No.3 further claimed that the tractor/trailer were not joint family properties as alleged as he purchased them after availing a loan from the bank and mortgaging his own properties. He claimed that tractor/trailer were his absolute properties, where neither the plaintiffs nor the defendant Nos.1, 2, 4 to 6 had any right. He contended that he did not get his name entered in the revenue records in respect of the alleged joint family properties. He also claimed that the plaintiffs never approached him for partition of the suit properties or for accounts.

(iii) He contended that item Nos.5 and 6 of schedule 'A' and item No.1 of schedule 'C' properties are not the properties of the joint family and neither the plaintiffs and defendant Nos.1, 2, 4 to 6 were in joint or constructive possession of the same.

(iv) The defendant No.3 claimed that his marriage took place in the year 1988. Soon after his marriage, dispute arose between him and other members of the family. Hence, in a



settlement, the propositus allotted Sy.No.4 of Karadigudda to him in the year 1988. He therefore, contended that he was separated from the joint family in the year 1988. He claimed that after separation from the joint family, he purchased Sy.No.18 of Karadigudda in the year 1992 out of his own earnings. He claimed that after the death of propositus, the revenue records of land bearing Sy.Nos.9, 11, 12 and 16 of Karadigudda were transferred to the name of defendant No.6 nominally as she was the eldest in the joint family. He admitted that the suit house was constructed on the plot purchased during the lifetime of propositus and therefore, the plaintiffs are entitled to their respective shares in the suit properties except item Nos.5 and 6 of schedule 'A' and item No.1 of schedule 'C' properties.

8. The defendant No.4 also filed a written statement contending that there was a division between the plaintiffs and the defendants. He denied that the plaintiffs and defendants were enjoying the properties jointly. He contended that defendant No.3 was separated from the joint family in the year 1988 soon after his marriage. Therefore, he claimed that there was no joint family as contended by the plaintiffs. He claimed



that Sy.Nos.18 and 4 of Karadigudda were not the ancestral properties as claimed, but Sy.No.4 was allotted to the share of defendant No.3 by the propositus in the year 1988. He claimed that defendant No.3 purchased Sy.No.18 out of his own funds. He thus, contended that the plaintiffs and defendant Nos.1, 2, 4 to 6 had no right, title and interest in the aforesaid properties. He also contended that after the death of the propositus in the year 1992, the land bearing Sy.Nos.9, 11, 12 and 16 of Karadigudda were nominally transferred to the name of defendant No.6, while the house was constructed on the plot purchased during the lifetime of the propositus. He claimed that the plaintiffs are entitled to a share out of all properties except item Nos.5 and 6 of schedule 'A' and item No.1 of schedule 'C' properties.

9. Based on the above contentions, the Trial Court framed the following issues:-

1. Whether the plaintiffs No.1 to 4 prove that themselves and defendants No.1 to 6 are the members of Hindu Joint Family and Suit Schedule A, B & C properties are their ancestral properties?
2. Whether the plaintiffs prove that they are entitled to get their share in the suit schedule property?



3. Whether defendant No.2 proves that already partition has taken place in Joint Family Properties?
4. Whether the defendant No.2 proves that the Suit Schedule B & C properties are his self acquired properties?
5. Whether the defendants prove that the court fee paid by the plaintiffs is not proper and correct?
6. Whether the defendant No.2 proves that suit is hit by resjudicata Sec.11 of CPC?
7. Whether the defendant No.2 proves that the suit is barred by limitation?
8. Whether defendant No.1 proves that suit is bad for non-joinder of necessary parties?
9. What decree or order?

10. The plaintiff No.4 was examined as PW.1 and she marked Exs.P1 to P79. The defendant No.2 was examined as DW.1, defendant No.3 was examined as DW.2 and defendant No.4 was examined as DW.3. They all marked Exs.D1 to D60.

11. Based on the oral and documentary evidence, the Trial Court held that the plaintiffs had proved that the suit 'A' properties were the ancestral properties of the family, while the suit 'B' and 'C' properties were purchased out of the income generated from the suit 'A' properties and hence, decreed the



suit of the plaintiffs and declared that the plaintiffs are entitled to 1/10th share in the suit 'A', 'B' and 'C' properties.

12. Being aggrieved by the said judgment and decree, defendant No.2 is before this Court in this appeal.

13. The learned counsel for defendant No.2 submitted that defendant No.2 was working as a Teacher in a Government school and that he had applied for permission to purchase a plot and the source of funds was shown as his monthly income. He contends that defendant No.2 applied for a loan from LIC Housing Finance Ltd., and also withdrew from KGID and also raised a loan from Syndicate Bank apart from withdrawing his GPF. He contends that a sum of Rs.2,90,000/- was spent for construction of the house. The defendant No.2 thereafter raised a loan of Rs.4,00,000/- for education and for performing the marriage of his daughter and for the said purpose, he had deposited the title deed of suit 'B' schedule property. He also contends that the motorcycle mentioned in the schedule 'C' was purchased by him in the year 2004 by raising a loan from the bank and therefore, the above properties were the self acquisition of defendant No.2. He therefore, contends that the



Trial Court committed an error in decreeing the suit in its entirety without perusing the records produced by the defendant No.2 at Exs.D1 to D15 and D20. He therefore, submits that the impugned judgment and decree is liable to be set aside at least in so far as the schedule 'B' and 'C' properties are concerned.

14. The learned counsel for the plaintiffs on the other hand submitted that the suit 'A' properties were capable of generating sufficient income and hence, the acquisition of suit 'B' property in the name of defendant No.2 should be construed as an acquisition from out of the income of the joint family. He therefore, contends that the Trial Court was right in decreeing the suit in so far as 'B' schedule properties are concerned. He also contends that 'C' schedule properties were also the acquisition out of the income of the joint family and hence, the plaintiffs were entitled to equal share therein.

15. We have considered the submissions of the learned counsel for defendant No.2 as well as the learned counsel for the plaintiffs. We have also perused the records of the Trial Court and its judgment and decree.



16. The only point that arises for consideration in this appeal is,

"Whether the defendant No.2 had furnished sufficient material to justify his claim that the suit 'B' property and the motorcycle in schedule 'C' were his self acquisition?"

17. The defendant No.2 specifically contended in his written statement that the suit 'B' property was purchased out of his own income and that he raised a loan from LIC Housing Finance Ltd., and Syndicate Bank for construction of a building thereon. There is no reply filed to his written statement by the plaintiffs. Be that as it may, defendant No.3 claimed that he was given away Sy.No.4 of Karadigudda measuring 16 acres 2 guntas (item No.6 of 'A' schedule). He also claimed that he purchased Sy.No.18 of Karadigudda (item No.5 of 'A' schedule). He also claimed that Sy.Nos.9, 11, 12 and 16 of Karadigudda were nominally transferred in the name of defendant No.6 as she was the eldest in the joint family. The defendant No.4 reiterated the claim of defendant No.3. The defendant No.1 also contended that there was a prior partition and that the plaintiffs were given away valuables and cash equivalent to



their share. She claimed that defendant No.2 was a Government employee and he purchased suit schedule 'B' property and constructed a house thereon after availing loan from the banks and also pooling his own earnings.

18. The plaintiff No.4, who was examined as PW.1, admitted in her cross-examination that defendant No.2 was working as a Teacher in a Government school. Though she claimed that the suit 'B' property was purchased by her father, she was unable to disclose when her father had purchased it. She denied that defendant No.2 had purchased the suit 'B' property after obtaining appropriate permission from the department and also constructed a building thereon by raising loan from various institutions. She however, feigned ignorance about defendant No.2 being posted for the first time at Alakanur village, Sindhanur Taluk. She also claimed that she did not know that defendant No.2 was working at Baidoddi village, Raichur Taluk from 01.06.1985. She however, admitted that from July, 1992, defendant No.2 was residing at Mangalwarpet in Raichur. She denied knowledge about defendant No.2 working as a Headmaster at Hospet, Raichur Taluk. She also denied knowledge about defendant No.2



working at Hirapura village of Matamari Hobli in the year 2013 - 14. She however, denied knowledge that from the year 1982, the defendant No.2 was residing at Halabanur village of Sindhanur Taluk. She however, admitted that he was residing at Maktalpet, Raichur from the year 1985. She admitted that defendant No.2 had constructed a house in 'B' schedule property in the year 1992-93. Therefore, it is more than evident that defendant No.2 was employed beneficially.

19. The defendant No.2, who was examined as DW.1, mentioned that he had purchased 'B' schedule property in the year 1996 for a sum of Rs.27,500/- and that he constructed a house thereon after obtaining loan from LIC Housing Finance Ltd., KGID, Syndicate Bank and also withdrew from GPF. He also deposed that he had obtained a loan of Rs.4,00,000/- from Central Bank of India for the education and marriage expenses of his daughter. He also deposed that he had purchased the motorcycle shown in suit 'C' schedule. There is no contra evidence extracted in his cross-examination to disbelieve his claim that he had purchased suit 'B' schedule property out of his own funds. The plaintiffs were not able to establish that



defendant No.2 had utilized the income generated from the properties of the family to purchase the schedule 'B' property.

20. The defendant No.2 has furnished Exs.D1 and D2, which are the letters addressed by him to the Block Education Officer (BEO) of Raichur seeking permission to purchase 'B' schedule property. Ex.D3 is the permission granted by the BEO on 15.03.1996 allowing the defendant No.2 to purchase 'B' schedule property. Ex.D4 is a notice dated 28.12.1998 issued by the KGID for recovery of Rs.3,119/- in respect of a loan of Rs.25,200/- availed by defendant No.2. An unmarked document is a memorandum issued by the Department of Public Instructions sanctioning a sum of Rs.15,000/- out of GPF. Ex.D5 is an intimation dated 16.10.1999 by LIC Housing Finance Ltd., informing the defendant No.2 about the disbursal of second installment of housing loan. Ex.D6 is the intimation of the disbursal of the first installment of the loan and is dated 06.08.1999. Ex.D7 is the communication dated 04.11.2000 addressed by the LIC Housing Finance Ltd., to defendant No.2 transferring the loan files to the Gulbarga office. Ex.D8 is a certificate of installment dated 10.11.2001 addressed to defendant No.2, which shows that he was sanctioned loan of



Rs.1,75,000/- and that certain amounts were paid by him. Likewise, Ex.D9 is a receipt dated 22.10.2001 issued by LIC Housing Finance Ltd., acknowledging the receipt of portion of the loan amount. Ex.D10 is a certificate dated 08.10.2011 issued by the Indian Bank, Raichur, acknowledging that it had taken over the loan from LIC Housing Finance Ltd., on 20.12.2001. Exs.D11 and D12 are the letters addressed by the Indian Bank acknowledging the receipt of Rs.1,65,934/- towards full and final settlement of the loan outstanding and the return of the documents pledged for the loan. Ex.D13 is a letter dated 03.05.2011 by the Central Bank of India acknowledging the mortgage of title deeds of 'B' schedule property for sanction of a loan of Rs.4,00,000/-. Ex.D14 is a notice issued by the KGID for recovery of the loan. Ex.D15 is the RC book of the motorcycle, while Ex.D16 is a sale deed of the predecessor of the defendant No.2 and Ex.D17 is the sale deed in the name of the defendant No.2 in respect of 'B' schedule property.

21. The above documents establish beyond doubt that defendant No.2 had some source of income to purchase 'B' schedule property and that he also raised a loan for the



purpose of constructing a building thereon. There are no documents produced by the plaintiffs that 'B' schedule property was purchased out of the income generated from 'A' schedule properties. Moreover, the defendant No.3 claimed that he was in possession of item Nos.5 and 6 of 'A' schedule properties and therefore, it is improbable that defendant No.2 was cultivating 'A' schedule properties or receiving any income from 'A' schedule properties so as to purchase 'B' schedule property and the motorcycle found in schedule 'C'.

22. It is no doubt true that when a family possesses substantial properties, then the possibility of the income generated from such properties could be used to purchase other properties in the name of the members of the family. However, when it is shown that defendant No.2 himself had a source of income and that he had purchased suit 'B' property out of his own funds, unless the plaintiffs established that income of the joint family was utilized for purchase of the property, they cannot claim that such property is also joint family property. In view of the documentary evidence furnished by defendant No.2, we are satisfied that he had his own independent income to purchase 'B' schedule property and



the motorcycle found in schedule 'C'. It is now well settled that any member of a joint family even while living in a joint family, is entitled to have his own income.

23. In view of the above, we are of the opinion that the plaintiffs have failed to establish that they have a share in 'B' schedule property as well as the motorcycle found in schedule 'C'. In view of the above, the point framed for consideration is answered accordingly.

24. Consequently, the following order is passed:

ORDER

- (i) This appeal is ***allowed-in-part.***
- (ii) The impugned judgment and decree dated 30.08.2018 passed by the Senior Civil Judge and JMFC, Deodurga in O.S.No.25/2016 (Old No.135/2011), in so far as it relates to 'B' schedule property and the motorcycle found in schedule 'C' is set aside.
- (iii) The suit filed by the plaintiffs in O.S.No.25/2016 (Old No.135/2011) on the file of the Senior Civil



**NC: 2026:KHC-K:1862-DB
RFA No. 200181 of 2018**

Judge and JMFC, Deodurga, is dismissed in so far as it relates to 'B' schedule property and the motorcycle found in schedule 'C'.

**Sd/-
(R.NATARAJ)
JUDGE**

**Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE**

PMR
List No.: 1 SI No.: 38