

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31st DAY OF MAY, 2013

P R E S E N T

THE HON'BLE MR.JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE B SREENIVASE GOWDA

R.F.A. NO.412 OF 2006

BETWEEN :

M. VENKATARAMANA,
S/O MANDALADA DASAPPA,
AGED ABOUT 61 YEARS,
NOW R/O S.N. NAGAR,
SAGAR TOWN, SAGAR.

... APPELLANT

(BY SRI: VISHWANATH R. HEGDE, ADV.)

AND :

1. M. KRISHNAPPA,
S/O MANDLADA DASAPPA,
AGED ABOUT 56 YEARS,
R/O GORAMANE,
UDRI VILLAGE,
AVINAHALLI HOBLI,
SAGAR TALUK.

2. VENKATAMMA,
W/O MANDALADA DASAPPA,
AGED ABOUT 83 YEARS,
R/O GORAMANE,
UDRI VILLAGE,
AVINAHALLI HOBLI,
SAGAR TALUK.
3. MANGAMMA,
W/O NARAYANAPPA,
AGED ABOUT 67 YEARS,
R/O SHIVAPPA NAIK NAGAR,
SAGAR.
4. PARVATHAMMA
W/O BABU,
AGED 60 YEARS,
R/A SHIVAPPA NAIKA NAGAR,
SAGAR TALUK.
5. LAKSHMIDEVI,
W/O LAKSHMINARAYANA,
AGED 53 YEARS,
R/A HUDCO COLONY,
SHIMOGA CITY.

... RESPONDENTS

(BY SRI: R.V. JAYAPRAKASH, ADV. FOR C/R1 & ALSO R3
AND R4,
R2 (A & B) - ARE SD)

THIS RFA IS FILED UNDER SECTION 96 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED
07.10.2005 PASSED IN O.S. NO.77/1999 ON THE FILE OF
THE CIVIL JUDGE (SR.DN.), SAGAR, PARTLY DECREERING

THE SUIT FOR PARTITION, POSSESSION AND MESNE PROFITS.

THIS APPEAL HAVING BEEN HEARD, RESERVED FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **B. SREENIVASE GOWDA J.**, PRONOUNCED THE FOLLOWING:

J U D G M E N T

The plaintiff/appellant aggrieved by the judgment and decree dated 07.10.2005 passed in O.S. No.77/1999 by the Court of Civil Judge (Sr. Dn.) Sagar, in dismissing his suit brought for the relief of partition and separate possession of his half share in the suit schedule properties has preferred this appeal.

2. For the sake of convenience, parties are referred to as per the ranking assigned to them in O.S. No.77/1999 on the file of Civil Judge (Sr.Dn.), Sagar.

3. The plaintiff has brought the suit O.S.No. 77/1999 for partition and separate possession of his

half share in the suit schedule properties on the premise that he is the direct brother of first defendant and they are the sons of second defendant and Mandalada Dasappa. They lived in a joint family at Udri village and from the hard earnings of all the members of the joint family, the joint family acquired the landed properties in the name of first defendant. As huge money was required for the improvement of the joint family properties acquired in the name of first defendant, and financial need of the joint family could not be borne out from the landed properties as they were not yielding, the plaintiff was constrained to come over to Sagar with an intention to earn money for the better improvement of the joint family properties. Hence, he commenced the business in she-buffalo vending at Sagar Town and amount earned by him in the said business was promptly given to first defendant for the improvement of the joint family properties. He

also supplied the manure collected from the buffalo business to the landed properties of the joint family, and by which the joint family properties, which were dry lands at the time of grant or purchase were improved to the level of full fledged areca gardens.

A dry land measuring 8 acres in Sy. No.50 of Udri village, described as item No.1 of 'A' schedule property belonged to the Government, was being cultivated by the joint family and in the process of grant, 4 acres was granted in favour of his father and 4 acres was granted in favour of first defendant as more than 4 acres could not be granted in favour of single person vide saguvali chit No. 38/80-81 and 37/80-81 dated 28.10.1980.

Land measuring 1 acre 10 guntas in Sy. No.51/P of Udri village described as item No.2 of 'A' schedule property was purchased by the joint family in the name

of first defendant from one H.D. Subbaiah, son of Devappa as per the registered sale deed dated 10.08.1981.

Item Nos.1, 2, 3 and 4 of 'B' schedule properties are houses and house sites and they were also purchased by the joint family in the name of first defendant.

Movables found in item No. 3 and 4 of B schedule property and described under plaint 'C' schedule are also belonged to the joint family.

A dry land measuring 4 acres 1 gunta in Sy. No.31 of Kamblikoppa village was purchased by the joint family in the name of first defendant from one Chandrasekara Bhat and his sons, residents of Sagar Town as per the registered sale deed dated 10-08-1981. Later it was acquired by the Town Municipality for the purpose of integrated urban development program and an award has been passed by the Special Land

Acquisition Officer, Sagar. As the joint family was not satisfied with the compensation awarded by the Special Land Acquisition Officer, they sought for reference to the Civil Court for determination of compensation and the reference made by the Special Land Acquisition Officer came to be registered as LAC No. 57/1987 on the file of the Civil Judge Court, Sagar and the reference Court has enhanced the compensation awarded by the Special Land Acquisition Officer and it was challenged by the Special Land Acquisition Officer by preferring an appeal before the High Court and the Land Acquisition Officer had deposited the compensation amount as per the direction of the Appellate Court and 90% of the amount so deposited was withdrawn by the first defendant and rest of the amount is in Fixed Deposit with Canara Bank, Keladi Branch. The compensation amount so awarded by the Land Acquisition Officer and

enhanced by the reference Court is the joint family property and described under plaint 'D' schedule.

The properties standing in the name of first defendant are all joint family properties purchased, brought up and improved by the plaintiff and first defendant jointly and severally. They are in joint possession and enjoyment of both the plaintiff and first defendant and belonged to their joint ownership. The properties which were in the name of the father of the plaintiff were also mutated in favour of the first defendant as he was managing the affairs of the joint family properties. That being the factual position of the joint family of the plaintiff and first defendant, the first defendant by illegal inducement of the persons who are having ill will against the plaintiff due to his upliftment in his business has thought of ousting the plaintiff from the joint possession of the joint family house and in the said process, the first defendant filed a suit before the

Prl. Civil Judge (Sr.Dn.) Sagar in O.S. No.77/1987 against him and his son and obtained an order of temporary injunction although they were not interfering with the joint possession and he was saying to have a compromise before well wishers and have a partition of the joint family properties. The first defendant has not allowed the same to materialise and he refused to give share of the plaintiff in the suit schedule properties and hence, he has brought the suit for adequate relief.

4. First defendant has filed written statement denying the case of the plaintiff inter alia contending that there is no joint family as alleged by the plaintiff, the suit schedule properties are not joint family properties as alleged and they are his self acquired properties acquired out of his own earnings. During the life time of his father only, the plaintiff came out of the family in the year 1965 and began to live separately at

Sagar. At that time there were no properties that belonged to the joint family. Neither the plaintiff nor his father had any source of income or avocation, thereafter he never lived in a joint family nor resided with the defendants at any time, let alone participating in cultivation or improvement of the properties. He did not contribute either money or labour to the acquisition or improvement of the properties. From the year 1965 there was disruption of the joint family and plaintiff has separate residence, food and worship from that time. First defendant was not the manager of the joint family till its disruption and there was no joint family properties to manage before such disruption. The plaintiff being the elder brother and father was living during that time cannot say that this defendant was managing the joint family. After disruption of the plaintiff from the joint family, maintenance became obligation of this defendant and there were no

properties out of which family could be maintained. Father of parties was not in a position to work as he was suffering from paralysis. Therefore this defendant has started cattle vending business at Sagar with the aid of loans borrowed from his individual friends and banks and acquired the suit schedule properties. The suit 'A' schedule property was granted for an upset price and he has paid the upset price out of his own savings. Even in respect of 4 acres of land granted in favour of his father he only met all the expenses including the payment of upset price. All other properties were acquired out of the income of his own business and he has made improvements of the lands by investing his own money and labour by borrowing loans from banks and friends. After the land started yielding, the plaintiff has filed this unrighteous suit at the instigation and ill advise of crooked brains only to

make wrongful gain and there is no cause of action for the suit. With this he prayed for dismissal of the suit.

5. During the pendency of the suit, the 2nd defendant mother of the parties died and the plaintiff has got his three sisters impleaded in the suit as defendants 3, 4 and 5.

6. The third defendant has filed written statement denying the case of the plaintiff and supporting the case of the first defendant and further she has adopted the written statement filed by the first defendant.

7. Defendants 4 and 5 have filed a memo adopting the written statement filed by the first defendant.

8. The first defendant – Krishnappa has filed a suit in O.S.No.77/1989 which was later numbered as O.S.No.81/2001 against the plaintiff and his son

seeking the relief of permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the very same suit properties.

9. The defendants 3 to 5 – the sisters have also filed a suit in O.S.No.35/2000 against the first defendant, their mother and the plaintiff by describing them as defendants 1, 2 and 3 respectively seeking the relief of partition and separate possession of their share in the very same suit properties and in the land bearing Sy. No.30 of Kamblikoppa village standing in the name of the plaintiff and occupancy right of which has been granted in favour of the plaintiff and which was later acquired by TMC Sagar, for the purpose of integrated urban development program.

10. All the three suits came to be clubbed together and the trial Court has framed separate issues in each

suit based on the pleadings of the parties in their respective suits.

11. Since this appeal is directed against the judgment and decree in O.S. No.77/1989, it is enough if the issues framed in the said suit are extracted as here under:

- a) Does the plaintiff prove that the suit properties are the joint-family properties of himself and the defendants as alleged?*
- b) Does the first defendant prove that the second defendant executed Will in his favour on 23.10.1999 as alleged?*
- c) Whether the plaintiff has $\frac{1}{2}$ share in the suit properties as alleged?*
- d) Whether the suit is in time?*
- e) Whether the plaintiff is entitled for the relief of partition, separate possession and also for mesne profits as prayed?*

12. The plaintiff in order to prove his case, has examined himself as P.W.1 and two witnesses as P.Ws. 2 and 3 respectively and documents produced by him were marked as Exs. P.1 to P.137. The first defendant in support of his defence has examined himself as D.W. 1 and a witness as D.W. 2 and documents produced by him were marked as Exs. D.1 to D.11.

13. The defendants No. 3 to 5 except filing written statement supporting the case of the first defendant have not adduced any evidence either oral or documentary.

14. The trial Court upon consideration of oral and documentary evidence on record by common impugned judgment and decree dated 7-10-05 and by answering issue Nos. 1, 4 and additional issue in the affirmative, issue Nos.3 and 5 partly in the affirmative and issue No.2 in the negative partly decreed the suit

O.S.No.79/99 holding that the plaintiff is entitled for partition and separate possession of 1/5th share in 4 acres of land granted in favour of his father which is a portion of item No.1 of suit A schedule property and ½ share in item No.2 of B schedule property and dismissed the suit in respect of the remaining suit schedule properties.

15. Sri Vishwanath R. Hegde, learned Counsel for the plaintiff/appellant herein submits that non-appreciation of evidence and admission elicited during the cross examination by the trial Court rendered its judgment erroneous. He submits, the finding of the trial Court that the buffalo business is only a joint business of the plaintiff and the first defendant and it is not the joint family business of the parties is erroneous. The trial Court has erred in not considering that the suit schedule properties were acquired in the name of the

first defendant from the hard earnings of all the members of the joint family for the benefit of all the members as his star was good. The trial Court has erred in not considering that the buffalo business was joint family business started during the lifetime of the father of parties to the suit. He further submits that the trial Court having held that the plaintiff is entitled to half share in item No.2 of suit B schedule property ought to have come to the same conclusion in respect of other suit schedule properties. He further submits both the plaintiff and first defendant jointly mortgaged the property under Ex. P 50 for borrowing loan and utilized the said loan amount for acquiring the suit schedule properties. In support of his submission, he has relied upon the following decisions:

- a) AIR 1992 AP page 270 Poorna Bai & Others vs Ranchhoddas and Others which was affirmed

the Apex Court in 2003(5) SCC 89 Madan Lal (dead) by L.Rs vs Yoga Bai (dead) by L.Rs.

With the above submissions and citations he prays for allowing the appeal by decreeing suit as prayed for.

16. Sri R.V. Jayaprakash, learned Counsel appearing for the defendants - respondents while supporting the judgment of the trial Court submits the judgment and decree passed by the trial Court is based on proper appreciation of oral and documentary evidence on record and there is no illegality or infirmity in the said judgment which warrants interference of this Court. He submits that as per the averments made in paragraph 3 of the plaint, the plaintiff came over to Sagar to have a better earning to improve upon the agricultural lands of the family and started she-buffalo vending business and was sending his earnings to the first defendant to invest

and improve the lands and there is no averment regarding the buffalo business was started during the life of the father of the parties. He submits the plaintiff had obtained occupancy rights in respect of the land bearing Sy No.31 of Kamblikoppa village measuring 11 acres 6 guntas from the Land Tribunal, Sagar and when it was acquired he had received the entire compensation amount exclusively for himself with the consent of the first defendant but very cleverly he has not included this land as part of the Hindu undivided joint family properties. He submits the plaintiff though was a party to O.S. No.35/2000 filed by his sisters having not challenged the judgment and decree passed in the said suit is bound by the said decision and he cannot maintain this appeal challenging only the judgment and decree passed in O.S.No.77/1999. In support of his contention, he relied upon the following decisions rendered by the Apex Court.

- a) In the case of Premier Tyres Limited v. Kerala State Road Transport Corporation reported in 1993 Supp (2) SCC 146.
- b) In the case of T.S.Subbaraju v. T.A. Shivarama Setty and others reported in AIR 2004 Karnataka 479
- c) In the case of D.S.Lakshmaiah and another v. L.Balasubramanyam and another reported in AIR 2003 SC 3800
- d) In the case of G.Narayan Raju (dead) by his legal representatives v. G.Chamaraju and others

17. After hearing learned Counsel for the parties, and perusing the judgment and decree of the trial Court, the points that arise for our consideration are as under:

- a) *Whether the judgment and decree passed by the trial Court is based on proper appreciation of oral and documentary evidence on record or does it call for our interference ?*

- b) Whether this appeal preferred by the plaintiff challenging only the judgment and decree passed in O.S.77/1999 without challenging the judgment and decree passed in O.S.35/2000 and O.S. No.81/23001 is maintainable in law?*

18. The Trial Court by impugned common judgment and decree has partly decreed the suit in O.S.No.77/1999 holding that the plaintiff is entitled for partition and separate possession of his 1/5th share in 4 acres of land granted in favour of his father which is a portion of item No.1 of 'A' schedule property and 1/2 share in item No.2 of 'B' schedule property and dismissed the suit in respect of remaining suit schedule properties, it has decreed the suit in O.S. No.81/2001 filed by the first defendant against the plaintiff and his son and granted permanent injunction restraining the plaintiff and his son from interfering with the

possession and enjoyment of the first defendant in respect of the suit schedule properties and it has partly decreed the suit in O.S.No.35/2000 brought by defendants 3 to 5 - the sisters, against the plaintiff, their mother and the first defendant for partition and separate possession, holding that they are entitled for 1/5th share each in 4 acres of land in Sy.No.50 of Udri village granted in favour of their father, which is a portion of item No.1 of suit A schedule property.

19. It is to be noted that plaintiff has preferred this appeal challenging only the judgment and decree passed in O.S.No.77/1999 in not decreeing his suit in its entirety, and he has not preferred any appeal challenging the judgment and decree passed in O.S.No.81/2001 decreeing the said suit filed by the first defendant and granting permanent injunction restraining him and his son from interfering with the

peaceful possession and enjoyment of the suit schedule property by the first defendant and the judgment and decree passed in O.S.No.35/2000 decreeing the said suit brought by his sisters.

20. Similarly, the defendants particularly the first defendant, has not preferred any appeal challenging the judgment and decree passed in O.S.No.77/1999 partly decreeing the suit of the plaintiff in respect of 4 acres of land granted in favour of his father which is a portion of item No.1 of suit 'A' schedule property holding that each party is entitled to $1/5^{\text{th}}$ share in the said property and granting $1/2$ share in item No.2 of 'B' schedule property. Thereby, judgment and decree passed by the Trial Court in decreeing the suit O.S.No.77/1999 holding that the plaintiff/each party is entitled to $1/5^{\text{th}}$ share in 4 acres of land granted in favour of the father of parties which is a portion of item

No.1 of 'A' schedule property and granting 1/2 share in item No.2 of 'B' schedule property in favour of the plaintiff has become final.

21. It is the specific case of the plaintiff that himself, first defendant and their parents lived in a joint family at Udri village and from the hard earnings of all the members of the joint family, the joint family had acquired landed properties in the name of the first defendant as his stars were good and if properties were acquired in his name they would flourish. As huge money was required for the purpose of improvement of the landed properties acquired in the name of the first defendant and financial need of the joint family could not be borne out by the landed properties of the joint family as they were not yielding, he was constrained to come over to Sagar with an intention to earn money for the improvement of the joint family properties and he

commenced the business of she-buffalo vending at Sagar town and started promptly sending all his earnings to the first defendant for the improvement of the joint family properties and supplied the manure collected from the buffalo business to the landed properties of the joint family and by virtue of it the lands which were dry lands were improved to the level of full fledged Areca garden and therefore he has got half share in all the suit schedule properties.

22. The specific defence of the first defendant was that there was no joint family and the suit schedule properties are not joint family properties as alleged by the plaintiff and they are his self acquired properties acquired and improved out of his own earnings and no one including the plaintiff has any right in the suit schedule properties. During the life time of his father only the plaintiff came out of the family in the year 1965

and began to live separately at Sagar and at that time, there were no properties that belonged to the joint family. Thereafter, he never lived in a joint family nor resided with the defendants at any time, let alone participating either in cultivation of the properties or in their improvements. He did not contribute either money or labour to the acquisition or improvement of the properties. From the year 1965 there was disruption of the joint family and plaintiff has separate residence, food and worship from that time. The first defendant was not the manager of the joint family till its disruption and there was no joint family properties to manage before such disruption.

23. As per the case pleaded by the plaintiff, he has to establish that, himself, first defendant and his parents lived in a joint family in Udri village and from the hard earnings of all the members, the joint family had

acquired the landed properties in the name of first defendant and as huge money was required by the joint family for the purpose of investment and improvement of the said landed properties and financial need of the joint family could not be borne out from the landed properties as they were not yielding, he was constrained to come over to Sagar with an intention to earn money for the investment and improvement of the joint family properties and started buffalo vending business at Sagar town and he was promptly giving all his earnings to the first defendant for the investment and improvement of the joint family properties and supplying the manure collected from the said buffalo business to the landed properties and by virtue of it the lands which were dry lands were improved to the level of full fledged areca garden and therefore he is entitled to half share in the suit schedule properties.

24. Whereas the plaintiff in his written statement filed in O.S.35/2000 which is a suit filed by his sisters, against the first defendant, his mother and himself, as well as in his cross examination deposed in O.S. No.77/1999 has clearly admitted that, since 1963-64 he was permanently residing in Sagar town by cultivating 11 acres 6 guntas of land in Sy. No.30 of Kamblikoppa as tenant under one Sri Lakshminarayana and it is his self acquired property. From his above admission it is clear that he had left Udri village way back in 1963-64 itself and since then he has been living separately at Sagar town as contended by the first defendant. Therefore, we have to see whether the suit landed properties are acquired before the plaintiff left Udri village and whether he has contributed any money for the improvement of the properties alleged to have been acquired prior to his disruption from the joint family. The land bearing Sy.

No.31 of Kamblikoppa village which is the subject matter of LAC No. 57/1987 and compensation awarded in respect of the said land is described as plaint 'D' schedule property was acquired by the first defendant from one Chandrashekara Bhat and his sons under the registered sale deed dated 25.02.1976. Agricultural land measuring 8 acres belonged to Government and described as item No.1 of suit 'A' schedule property was granted in the name of first defendant and his father at the rate of 4 acres each in the year 1978. Item No.2 of 'A' schedule property, i.e. 1 acre 10 guntas of land was purchased in the name of first defendant under the registered sale deed dated 10.08.1981 from one H.D. Subbaiah, son of Devappa. From the above details it is clear that all the suit landed properties were acquired subsequent to 1963-64 and long after the plaintiff had left Udri village and settled in Sagar town. So we cannot accept the case of the plaintiff that the suit landed

properties were acquired by the joint family from the earnings of all the members of the joint family before plaintiff left Udri village in 1965, and if that is so, we cannot accept his further case that he came to Sagar with an intention to earn money for the investment and improvement of the landed properties alleged to have been acquired prior to his disruption from the joint family. On the other hand, it has to be held that the first defendant has proved his case that plaintiff came out of the joint family during the life time of his father in the year 1965 and began to live separately at Sagar and at that time there were no properties belonging to the joint family. Therefore finding of the Trial Court that there was no ancestral or joint family property belonging to the family of the plaintiff and the first defendant at the time of plaintiff leaving Udri village is based on proper appreciation of oral and documentary evidence on record.

25. The plaintiff has also contended that since 8 acres of dry land in Sy. No.50 of Udri village belonging to Government was being cultivated by the joint family and in the process of grant 4 acres was granted in favour of his father and 4 acres was granted in favour of first defendant as more than 4 acres could not be granted in favour of a single person under saguvali Chit No.37 and 38/1980-81 dated 28-01-1980. The plaintiff in support of his said contention has not produced any documents except producing two RTCs – Exs. P.1 and P.2. On the other hand, Ex. D. 1 the grant order produced by the first defendant discloses that the Tahsildar, Sagar Taluk by order dated 27.12.1978 granted 4 acres of land in favour of first defendant and another 4 acres of land in favour of his father on upset price of Rs.324/- in respect of each grant. Ex. D. 2 discloses an application for grant of land was filed by the first defendant on 20-08-1978 in his individual capacity requesting the

Tahsildar, Sagar to grant 4 acres of land in Sy. No.50 of Udri village in his favour. Ex. D 3 is the statement made by the villagers of Udri Village to the effect that grantees (first defendant and his father) do not have any other lands and they can be granted land in Sy. No.50. Ex D. 4 and Ex.P.2 are the copies of RTC for the years 1998-99 and 1996-97 respectively in respect of 4 acres of land granted in favour of the first defendant, in which the name of first defendant appeared in both the column No.9 and 10 of the RTC. Ex.D. 5 and P.1 are the copies of RTC for the years 1996-97 and 1998-99 respectively in respect of 4 acres of land in Sy.No. 50/P granted in favour of the father of the parties to the suit and in which also the name of first defendant appeared in both the column Nos. 9 and 10 of the RTC. In none of these documents there is any reference regarding alleged cultivation of these lands by the joint family prior to grant i.e. prior to 1978 as contended by the

plaintiff and further these lands are granted long after the plaintiff left Udri village and long after his disruption from the joint family. Thus, plaintiff has miserably failed to prove that since 8 acres of dry land in Sy.50 of Udri Village which belonged to Government was being cultivated by the joint family and while granting, 4 acres was granted in favour of his father and 4 acres in favour of first defendant as more than 4 acres cannot be granted in favour of a single person. Learned Counsel for the plaintiff during the course of arguments before the trial Court has filed a memo dated 30.09.2000 stating that as per notional partition plaintiff is entitled to $1/3^{\text{rd}}$ and $1/5^{\text{th}}$ share in the share of his father. The first defendant in support of his contention that he has met all the expenses including payment of upset price, relating to grant of 4 acres of land in Sy.No. 50/P of Udri village in favour of his father and after the death of his father, his mother bequeathed the same in his

favour and therefore it is his property, has not adduced any evidence except producing the alleged will at Ex. P.114. Apart from that, he has not preferred an appeal challenging the finding of the trial Court that 4 acres of land in Sy.No. 50/P of Udri village being granted in favour of the father of parties to the suit, it was his self acquired property and all his children have got $1/5^{\text{th}}$ share each in the said 4 acres of land. Therefore, the finding of the trial Court that 4 acres of land which is a portion of item No. 1 of suit 'A' schedule property granted in favour of father of parties, is his self acquired property and each party has got $1/5^{\text{th}}$ share in the said land is based on proper appreciation of oral and documentary evidence on record and it does not call for our interference.

26. Item No.2 of 'A' schedule property is 1 acre 10 guntas of land in Sy. No.51/P of Udri Village. The

plaintiff except pleading in paragraph 4 of the plaint that 1 acre 10 guntas of land in Sy.No.51/P of Udri Village was purchased by the joint family in the name of defendant No.1 from one H.D.Subbiah as per registered sale deed bearing SRO No.333/1981-82 dated 10.8.1981 has neither produced the said sale deed nor revenue records, although it is mandatory for the plaintiff to produce revenue documents in the suit brought in respect of agricultural lands. It is only on production of the said sale deed, it could be found out how much was the sale consideration, who paid the same and what was the source for payment of said sale consideration. In the absence of production of this material document, it has to be presumed that the person in whose favour the sale deed is standing, has paid the sale consideration. Admittedly, the sale deed in respect of this item of the suit property is standing in the name of the first defendant and this property was

acquired in the year 1982 nearly 18 years after the plaintiff left Udri village and therefore, the trial Court is justified in holding that the plaintiff has failed to prove that it is acquired in the name of first defendant from the earnings of the business of the joint family and he contributed for its development.

27. The property described under Item No.1 of 'B' schedule property is only northern half of the property bearing Khatha No.777 and assessment No. 735. It was granted by the Town Municipality, Sagar, in favour of the first defendant and khatha was mutated in his name. Exs.P.16, 18 to 23, 26, 29, 31, 37, 38, 40 to 45 are tax paid receipts in respect of this item of suit property and these exhibits disclose, first defendant has been paying tax on this property. The plaintiff by obtaining the consent of first defendant by way of an affidavit which is marked as Ex.P-115 has got the

khatha of Southern half of the said property effected in his name and thereafter he has constructed a house and has been living there with his family. The plaintiff by suppressing the fact that he has already taken southern half of this property from the first defendant has brought the suit in respect of only Northern half of the said property belonging to first defendant. This is yet another circumstance which has estopped the plaintiff from maintaining the suit in respect of item No.1 of 'B' schedule property and the trial Court considering this material aspect of the matter is justified in dismissing the suit of the plaintiff in respect of this item of the suit schedule property.

28. Item No.2 of 'B' schedule property originally belonged to Sheik Ahammed Saheb, Sheik Ibrahim and Fathima Bee. They entered into an agreement of sale Ex.P.118 dated 29-04-1965 agreeing to sell the said

property in favour of the plaintiff. Under the said agreement, plaintiff out of the sale consideration of Rs.2,000/- had paid the advance sale consideration of Rs.1,000/- to the vendors and later it was purchased in the name of first defendant by paying the balance sale consideration of Rs.1,000/- as evident from Ex.P-50, an usufructory mortgage deed dated 04-11-1968 jointly executed by the first defendant and the plaintiff in favour of N.G.Pai. Subsequently, they got the said mortgage deed redeemed under the redemption of mortgage deed as per Ex.P.51 dated 12-03-1984. The trial Court considering these material evidence on record has rightly held that both the plaintiff and the first defendant have equally contributed in acquiring this item of suit schedule property and therefore they are the joint owners of this property and justified in decreeing the suit in respect of this item of suit property

holding that plaintiff is entitled for half share in item No.2 of 'B' schedule property.

29. Item Nos.3 and 4 of 'B' schedule properties are admittedly standing in the name of the first defendant. Further the Demand Register Extract produced at Ex.P.5 and P.6 disclose that item No. 3 of 'B' schedule property is standing in the name of first defendant. The plaintiff has neither produced the sale deeds nor any other title deed relating to these items of suit schedule properties to show that he has also contributed to the first defendant in acquiring these properties and therefore, the trial Court is justified in dismissing the suit in respect of item Nos.3 and 4 of 'B' schedule properties.

30. Item Nos.1 to 11 described under the plaint schedule 'C' are alleged movables found in item 3 and 4 of 'B' schedule properties. An Advocate Court

Commissioner appointed by the trial Court for making inventory of movables of `C' schedule property has made an inventory and submitted his report stating that movables described under schedule `C' do not tally with that of the movables found in item Nos. 3 and 4 of `B' schedule property. The trial Court by holding that the properties furnished in the list prepared by the Commissioner do not tally with the list of properties described under plaint `C' schedule is justified in dismissing the suit of the plaintiff in respect of `C' schedule properties holding that they are not in existence.

31. The plaintiff has described the compensation that was already awarded and enhanced in LAC No. 57/87 and for recovery of which the Execution No. 44/85 is pending on the file of the Civil Judge, Senior Division, at Sagar, including the amounts already received by the

defendant as plaint 'D' schedule property. The land bearing Sy. No.30 measuring 11 acres 6 guntas which had been cultivated by the plaintiff as tenant under its owner Lakshminarayan since 1963-64 and occupancy right of which has been granted in favour of the plaintiff and the land bearing Sy. No. 31 measuring 4 acres 1 gunta both situated at Kamblikoppa village were acquired by T.M.C. Sagar for the purpose of integrated urban development program. The Land Acquisition Officer has passed the awards in respect of both the lands. The plaintiff has withdrawn the award in respect of his land bearing Sy. No.30 by obtaining no objection from the first defendant and similarly he has allowed the first defendant to withdraw compensation in respect of his land bearing Sy. No.31 by issuing no objection in his favour. Aggrieved by the quantum of compensation awarded by the Land Acquisition Officer, the plaintiff requested the Land Acquisition Officer to

refer both the matters to the jurisdictional Civil Court for determination of compensation and on reference, the subject matter relating to land bearing Sy.No. 30 belonging to the plaintiff came to be registered as LAC No. 39/89 and the matter relating to land bearing Sy.No. 31 belonging to the first defendant came to be registered as LAC No. 57/1987 on the file of the Civil Judge (Sr. Dn.) Sagar. The reference Court by a common judgment disposed of both the LACs. together by enhancing the compensation awarded by the Land Acquisition Officer. It was challenged by the Land Acquisition Officer by preferring appeals before this Court. In the said land acquisition proceedings, the plaintiff who was examined as P.W.1 has admitted that the subject matter of LAC No.39/89 is his self acquired property and property in LAC No. 57/87 is the self acquired property of the first defendant. Apart from that Ex.D.11 certified copy of sale deed dated 25.2.1976

shows land bearing Sy.No.31 measuring 4 acres 1 gunta situated at Kambalikoppa Village was purchased by defendant No.1. Exs.D - 6, 7 and 8 - the RTC extracts in respect of the said land were also standing in the name of first defendant and he only has paid tax on this land as evident from Exs.D - 9, 10 and 48. The plaintiff nowhere in the plaint nor in his examination-in-chief has mentioned about the receipt of compensation by him in respect of land bearing Sy.No.30 of Kambalikoppa Village measuring 11 acres 6 guntas. The plaintiff being elder brother of the 1st defendant estopped from contending that the properties which are standing in his name are his self acquired properties and properties which are standing in the name of first defendant are properties acquired by the joint family from the earnings of the members of the joint family and they are developed from the earnings derived from buffalo business carried on by him. It is yet another

circumstance which made the trial Court to disbelieve the case of the plaintiff and to hold that the compensation amount in respect of Sy.No.31 which is the subject matter of LAC No.57/87 exclusively belongs to first defendant.

32. As per the averments made in the plaint, it is not the case of the plaintiff that the buffalo business was commenced during the life time of his father and it was continued by him and the first defendant and therefore it was their joint family business and from the earnings of said joint family business, the suit properties were acquired. Nor it is his case that buffalo business was jointly carried on by him and the second defendant and from the earnings of said joint business the suit properties were acquired in the name of the first defendant. For the first time, he has stated in his

evidence that the buffalo business was carried on by him and the first defendant jointly in the name of first defendant since an astrologer has told him that if business is carried on in the name of first defendant it would flourish well and accordingly, he carried on buffalo business in the name of the first defendant and gave all his earnings to his brother for the development of the joint family properties. Therefore the judgments relied upon by the learned Counsel for the plaintiff –appellant to the effect that the joint family property- business carried on by joint efforts of the father and his sons, the properties acquired from the earnings of such business are joint family properties have no application to the facts of the present case.

33. Exs.P.10, P.11, P.13 and P.14 are letters addressed by Lakappa, who was examined on behalf of the plaintiff as P.W.2 to first defendant. Ex.P.12 is letter

written by one Mathada Sanna Basavaiah to first defendant and Ex.P.15 is letter written by one Shantappa Balavva to the plaintiff. In all these letters, reference was made to both the plaintiff and first defendant in connection with their business transactions.

34. Ex.P.49 is a copy of notice dated 8-5-89 issued by the State Bank of Mysore, Sagar Branch, to the first defendant, asking him to pay instalment and in which plaintiff is described as guarantor for the said loan. Ex.P.52 is a copy of the plaint of O.S.No. 197/86, which is a suit filed by the first defendant and the plaintiff against H.K.Gundappa and others seeking permanent injunction in respect of a vacant place which they have taken for lease and in which they have been carrying on business in cattle and buffalo respectively. Ex.P 53 is the memo filed by the defendants in the said suit stating

that they will not evict the plaintiffs (first defendant and plaintiff in the present suit) from the possession of the said suit schedule property without due process of law. Ex.P.60 is an 'On Demand Pronote' dated 7.7.1965 jointly executed by the plaintiff and first defendant in favour of one A.C.Somashekar Reddy, undertaking to repay the loan of Rs.2,000/-. Ex.P.61 is another 'On Demand Pronote' dated 22-4-1968 jointly executed by the plaintiff, first defendant, their father and one A.C.Somashekarappa for Rs.500/- received through Canara Banking Corporation. Ex.P.62 is also an 'On Demand Pronote' dated 7-3-70 jointly executed by plaintiff, first defendant and their father, undertaking to repay the loan of Rs.1,500/- in favour of Gajanan Rice Mill, Sagar. In Exs.P.61 & 62, the plaintiff is described as tobacco merchant, the first defendant is described as an employee working in Sagar town and their father is described as landholder of Hosabhavinakere, Sagar.

Ex.P.63 is receipt dated 30-04-88 issued by PCA and RD Bank, Sagar, to the plaintiff, acknowledging the payment of instalment made by him in respect of loan borrowed by the first defendant. Exs.P.68 to 79 and Exs.P.87 to 95 are receipts issued to P.W.1 regarding payment made by him in respect of the loan borrowed by first defendant. A perusal of above exhibits would only go to show that defendant No.1 was initially working in a provision store of one Sri R.P. Vishwanath situated at Market Road, Sagar Taluk and later he was doing business in cattle selling. The plaintiff was doing business in selling buffalo and tobacco. Both the plaintiff and first defendant were doing business jointly and severally by raising loans and helping with each other. But the above referred exhibits do not support the case of the plaintiff that he had contributed his earnings derived from buffalo business to the first defendant either for acquiring suit schedule properties

or for their improvement. Admittedly the first defendant is the younger brother of the plaintiff and 4 acres of land in item No.1, 1 acre 10 guntas of land in item No.2 of the suit 'A' schedule property, item No.3 and 4 of B schedule property and 4 acres 01 guntas of land in Sy. No. 31 of Kampalikoppa village which has been acquired by the TMC, Sagar and compensation in respect of the said land has been described as D schedule property were the properties acquired in the name of first defendant. Exhibits referred in paragraphs 33 and 34 of this judgment and discussion made therein do not support the case of the plaintiff that he has contributed his earnings derived from buffalo business to the first defendant either to acquire or to improve the above properties in the name of the first defendant. There is no evidence to show that the first defendant was managing the affairs of the alleged joint family of the plaintiff and the first defendant. In fact this question

does not arise as there were no properties belonged to the family of the plaintiff and the first defendant before the plaintiff left Udri village. Even the sisters of the plaintiff who were arrayed as defendants 3, 4 and 5 in the suit of the plaintiff and who have also filed a separate suit in O.S. No.35/1999 for partition and separate possession of very suit property have not supported the case of the plaintiff and on the other hand they have supported the case of first defendant. The properties acquired in the name of a co-parcener of a joint family that too when they were living separately from each other are presumed to be his self acquired properties and they won't automatically become joint family properties in the absence of cogent evidence to that effect and the judgments relied upon by the learned Counsel for first defendant/respondent in the case of **G. Narayanaa Raju (dead) by his L.Rs vs G. Chamaraju and Others** reported in AIR 1968 SC 1276 and in the

case of ***T.S. Subbaraju vs T.A. Shivaramasetty and Others*** reported in AIR 2004 Kar 479 squarely applicable to the facts of the present case. Therefore the trial Court is justified in holding the above properties are the self acquired properties of first defendant and dismissing the suit in respect of the said properties.

35. Exs.P.3 and P.4 are assessment extracts in respect of property bearing door No. 543 and standing in the name of the first defendant. Exs. P.7 and P.8 are assessment extracts in respect of property bearing No. 860 and standing in the name of first defendant. These two properties are not included in the plaint schedule. If these properties and suit schedule properties are the joint family properties alleged to have been acquired and improved from the earnings of buffalo business, the plaintiff would not have brought the suit only in respect of suit schedule properties and the suit brought by him

in respect of certain properties amounts to seeking partial partition which is not permissible in law and the Trial Court could have dismissed his suit on this score also.

36. For the foregoing reasons we hold that the judgment and decree passed by the trial Court is based on proper appreciation of oral and documentary evidence on record and it would not call for our interference. Point No. 1 is answered accordingly.

37. The above appeal preferred by the plaintiff challenging only the judgment and decree passed in O.S. No.77/1999 without challenging the judgment and decrees passed in O.S. 81/2001 filed by the first defendant against the plaintiff and his son for the relief of permanent injunction restraining them from interfering with the possession and enjoyment of the

first defendant over the very same suit properties and in O.S. No.35/2000 filed by his sisters for partition and separate possession of the same suit properties against defendant No.1, their mother and the plaintiff is hit by the principles of res-judicata and is therefore liable to be dismissed on this ground also as per the judgment of the Apex Court in the case of Premier Tyres L td. Vs L. Balasubramanyam and Another reported in 1993 Supplemental (2) SCC 146. Point No.2 is answered accordingly and against the plaintiff/appellant.

Accordingly, we dismiss the appeal as devoid of merits.

Parties to bear their own costs.

Sd/-
JUDGE

Sd/-
JUDGE

Vb/-mgn/dm/-
CT-Hmr