**IN THE HIGH COURT OF KARNATAKA BENGALURU**

DATED THIS THE 29th DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

**REGULAR FIRST APPEAL NO.1878 OF 2005 (PAR)**

**BETWEEN:**

1. SURESHA,
S/O LATE SIDDEGOWDA @ KRISHNEGOWDA,
AGE: 35 YEARS,
R/AT HIRIMARALI VILLAGE,
KASABA HOBLI, PANDAVAPURA TALUK,
MANDYA DISTRICT - 571 462.

2. UDESHA,
S/O LATE SIDDEGOWDA @ KRISHNEGOWDA,
AGE:32 YEARS,
R/AT HIRIMARALI VILLAGE,
KASABA HOBLI, PANDAVAPURA TALUK,
MANDYA DISTRICT - 571 462.

… APPELLANTS

(BY SRI MURALIDHAR, ADVOCATE FOR
M/S G.S.BHAT AND ASSOCIATES)

**AND:**

1. SOWBHAGYAMMA,
W/O LATE SIDDEGOWDA @ KRISHNEGOWDA,
AGE:43 YEARS,
R/AT KATTERI, CHINAKURALI HOBLI,
PANDAVAPURA TALUK,
MANDYA DISTRICT - 571 462.

2. LAXMAMMA,
D/O LATE SIDDEGOWDA @ KRISHNEGOWDA,
AGE:21 YEARS,
R/AT KATTERI, CHINAKURALI HOBLI,

PANDAVAPURA TALUK,
MANDYA DISTRICT - 571 462.

3. NINGAMMA,
SINCE DECEASED BY HER LRs.

3(a). KULLEGOWDA,
S/O LATE SIDDEGOWDA
AGE:65 YEARS,
R/AT KATTERI, CHINAKURALI HOBLI,
PANDAVAPURA TALUK,
MANDYA DISTRICT.

3(b). PAPEGOWDA,
S/O LATE SIDDEGOWDA,
AGE:50 YEARS,
R/AT KATTERI, CHINAKURALI HOBLI,
PANDAVAPURA TALUK,
MANDYA DISTRICT.

3(c). JAYAMMA,
W/O.PAPEGOWDA,
AGE:36 YEARS,
R/AT KATTERI, CHINAKURALI HOBLI,
PANDAVAPURA TALUK,
MANDYA DISTRICT.

3(d). DEVAMMA,
SINCE DECEASED BY HER LRs.

3(d)(i). VENKATARAMANEGOWDA,
HUSBAND OF LATE DEVAMMA,
AGE:68 YEARS,
R/AT CHAPARANA DODDI VILLAGE,
MADDUR TALUK, MANDYA DISTRICT.

3(d)(ii). VENKATESH,
S/O VENKATARAMANEGOWDA,
AGE:MAJOR
R/AT CHAPARANA DODDI VILLAGE,
MADDUR TALUK, MANDYA DISTRICT.

3(d)(iii). JAYALAXMI,
D/O VENKATARAMANEGOWDA,
AGE:MAJOR,

R/AT CHAPARANA DODDI VILLAGE,
MADDUR TALUK, MANDYA DISTRICT.

… RESPONDENTS

(BY SRI KAMALESHWARA POOJARY, ADVOCATE FOR
M/S SWARNAKAMALA ASSOCIATES FOR R1 & R2;
R3(a), R3(c), R3(d(i), R3(d)(ii) & R3(d)(iii) ARE
SERVED;
R3(b)-DELETED)

THIS RFA IS FILED UNDER SECTION 96 OF CIVIL PROCEDURE CODE, 1908, CHALLENGING THE JUDGMENT AND DECREE DATED 17.08.2005 PASSED BY THE PRINCIPAL CIVIL JUDGE (SR.DN) & JMFC, SRIRANGAPATNA IN O.S.NO.29/1997.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THIS COURT DELIVERED THE FOLLOWING*:*

**JUDGMENT**

Sri. Muralidhar, learned counsel for M/s. G.Bhat Associates for appellants and Sri. Kamaleshwara Poojary, learned counsel appearing for M/s. Swarnakamala Associates for respondents, have appeared in person.

2. This appeal is from the Court of Principal Civil Judge (Sr.Dn.) & JMFC, Srirangapatna. Unsuccessful defendants have filed this appeal.

3. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

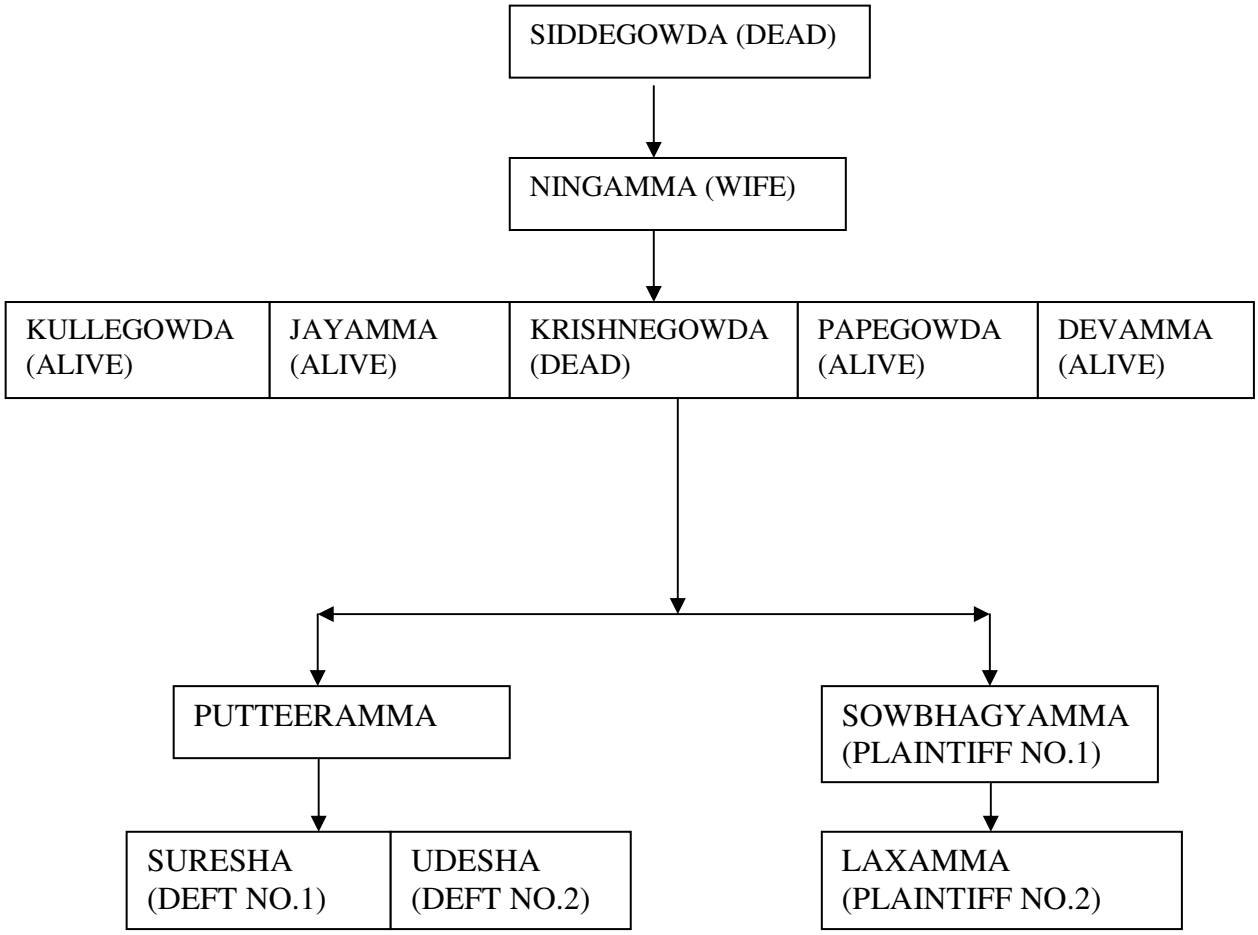
4. The plaint averments are as under: -

One Dyavegowdara Siddegowda of Katteri village, Chinakurli Hobli, Pandavapura Taluk had three sons viz. Kullegowda, Krishnagowda, and Papegowda and two daughters namely, Jayamma and Devamma. They were the members of joint Hindu undivided family, of which Siddegowda was the Manager. The said Siddegowda got married all his sons and his elder daughter - Jayamma by 1971.

In the year 1971, a partition was affected amongst Siddegowda, his three sons and his unmarried daughter Devamma. In the said partition, the suit schedule properties were allotted to the share of Krishnegowda the second son of Siddegowda. Siddegowda died after partition of his joint family properties 17 years back. After partition, the said Siddegowda, his three sons and his unmarried daughters had been in separate possession and enjoyment of their respective properties that had fallen to their respective shares in the said partition as full owners thereof.

For the sake of convenience, the genealogical tree of the family of Siddegowda is given below:

## GENEALOGICAL TREE




The defendants are the sons of Krishnegowda by his wife - Putteeramma who died about 19 years ago leaving behind her two minor sons. It is stated by plaintiffs that Krishnegowda married his niece Sowbhagyamma, D/o Jayamma within a month and half of death of first wife

Putteeramma. Krishnegowda died within one and a half years after his second marriage who was then in advanced stage of pregnancy of 8 months of the second plaintiff-Laxmamma. The second plaintiff born about one month after the death of Krishnegowda.

Plaintiffs stated that after the death of Putteeramma-the first wife, her sons who were minors then, were taken by their maternal parents to their native place at Hiremarali, Kasaba Hobli, Pandavapura Taluk and they were brought up under the care and protection of their maternal grandparents at Hirimarali Village, Kasaba Hobli, Pandavapura Taluk. Plaintiffs averred that since the time of death of Krishnegowda, his second wife - Sowbhagyamma has been looking after the affairs of the suit schedule properties for and on behalf of herself, the second plaintiff and the defendants. They came to know that defendants in collusion with revenue officials and on the active support of their uncle's Kullegowda and Papegowda, and the members of their maternal parents' family, defendants got the Khata and other revenue

records pertaining to the suit schedule properties changed in their favor behind their back.

Contending that the transfer of khata and other revenue records relating to the suit schedule properties do not bind them and the suit schedule properties are the ancestral joint family property of plaintiffs and defendants and that they have been in joint possession and enjoyment of the same, they sought the aid of the Court seeking half share in the suit schedule properties.

After filing of the suit, defendants 1 and 2 appeared through their counsel. Defendant No.3 died and his legal representatives were brought on record as defendants 3(a) to 3(d) (1) to (3).

Defendants 1 and 2 filed joint written statement. They denied the plaint averments. They stated that there was a partition in the year 1971 between Siddegowda and his sons and unmarried daughter. They admitted that the suit schedule property has fallen to the share of Krishnegowda. But, they specifically denied the factum of marriage of Krishnegowda with Sowbhagyamma - plaintiff

No.1 and the factum of parentage of Laxamma-plaintiff No 2 with krishengowda They denied that plaintiffs are the wife and daughter of Krishnegowda. They contended that after the death of Krishnegowda, the khata of the suit property have been changed in their favor who are the only legal heir of Krishnegowda. They contended that plaintiffs are no way concerned to Late Krishnegowda and they are not entitled to claim any share in the suit schedule properties by way of partition and accordingly, they prayed for the dismissal of the suit.

Based on the above pleadings, the Trial Court has framed the following issues:

*"1. Whether the genealogical tree furnished by the plaintiffs is correct?*

*2. Whether the plaintiffs prove that the first plaintiff is the wife and the second plaintiff the daughter of Siddegowda through Jayamma?*

*3. Whether they further prove that they are the joint Hindu family members along with the defendants and the suit schedule*

*properties are the joint Hindu family properties?*

4. *Whether they are entitled to half share in the suit schedule properties?*

5. *Whether they are entitled to partition and separate possession of their half share?*

6. *Whether they are entitled to the mesne profits?*

7. *Whether the defendants prove that they are the only legal heirs of deceased Krishnegowda?*

8. *Whether they further prove that the suit is not properly valued?*

9. *Whether they further prove that this court has no jurisdiction to entertain this suit?*

10. *Whether they further prove that the suit is bad for non-joinder of necessary parties?*

11. *To what relief are the parties entitled?"*

In support of their claim, plaintiff No.1 was examined as PW-1 and five witnesses were examined as PWs-2 to 6 and produced 14 documents which were marked as Exs.P1 to P14. On behalf of defendants,

defendant No.2 was examined as DW-1 and two witnesses were examined as DWs-2 & 3 and produced three documents which were marked as Exs.D1 to D3.

On the trial of the action, the suit came to be decreed. Hence, this appeal.

4. Sri.Muralidhar, learned counsel for appellants submitted that the judgment and decree of the Trial Court is contrary to law, evidence on record, circumstances of case and therefore, the same is liable to be set aside.

Next, he submitted that the Trial Court committed a serious error of law in decreeing the suit basing on the statement advanced by the plaintiff that Sowbhagyamma - the alleged second wife of late Krishnegowda and that he had married her after the death of his wife - Putteeramma and that the second plaintiff is born from the wedlock.

A further submission was made that the Trial Court failed to notice that contention advanced in this behalf was not proved by any cogent evidence. There were many manifest contradictions in the evidence of Sowbhagyamma

- the first plaintiff and therefore, the Trial Court could not have decreed the suit.

It has been contended that the Court below failed to appreciate that no satisfactory evidence was led in by plaintiffs to prove the factum of marriage and hence, the Court below could not have decreed the suit. Counsel vehemently submitted that the evidence of witnesses who were examined on behalf of plaintiffs were self-contradictory on which no reliance could have been placed.

Counsel further submitted that in the admission register of school, the name of the father of second plaintiff is shown as 'Krishnegowda'. The said entry was based on the mere information. The self-serving testimony could not have been made use of to establish the factum of marriage and parentage. Therefore, counsel submitted that it would be sub versive of rule of law.

In the circumstances, the reasoning adopted by the Trial Court to hold that marriage was established and that plaintiffs are wife and daughter of Late Krishnegowda and

are entitled to half share in the suit property is unsustainable in law.

Learned counsel vehemently contended that the Trial Court failed to appreciate that the date of death of Krishnegowda and date of birth of second plaintiff creates a genuine doubt as to the factum of marriage and parentage as averred by plaintiffs.

A further submission was made that the Trial Court failed to appreciate the admissions made by the first plaintiff in her evidence which clearly discloses that the factum of marriage and the paternity with Krishnegowda has not been satisfactorily established.

Lastly, he contended that the Trial Court has not drawn proper presumption of laws and facts. The evidence required is to prove the factum of marriage and paternity/parentage and should be of definite nature and the same having not been established, the Court could not have decreed the suit. Therefore, counsel contended plaintiffs are not entitled for any share and that the judgment and decree is liable to be set aside.

5. Per contra, Sri.Kamaleshwara Poojary, learned counsel for respondents 1 and 2 supported the judgment and decree of the Trial Court. He contended that no case is made out to interfere with the judgment and decree.

Next, he submitted that the Trial Court examined the entire facts as well as law on the issue and came to the right conclusion that Sowbhayamma - the first plaintiff is the legally wedded wife of late Krishnegowda and Laxmamma - the second plaintiff is the daughter of Krishnegowda.

A further submission was made that plaintiffs have produced almost 14 documents. Exhibit P-14 is the school leaving certificate which shows that the name of Krishnegowda as the father of second plaintiff and her date of birth is shown as 04.02.1980. The evidence of PW-6 coupled with the contents of exhibits P-12 to P-14 supports the say of PW-1 to prove their relationship with Krishnegowda. Therefore, learned counsel submitted that when such a conclusive evidence is placed on record, and same has been admitted as cogent evidence, then it is the

duty of the defendants to disprove such conclusive evidence.

It has been contended that plaintiff No.1 has proved her marriage by oral evidence. She has even examined 4 witnesses who have deposed that she was married to Krishnegowda. Counsel vehemently submitted that the witnesses have spoken about the ceremonies of valid marriage.

Therefore, it was sought to urge that plaintiff No.1 is the legally wedded wife and plaintiff No.2 is the daughter and are hence, entitled to succeed to the estate of Krishnegowda. Among other grounds. He prayed for the dismissal of the appeal.

Learned counsel relied upon the following decisions:

1. AIR 2020 SC 541 - RATHNAMMA AND OTHERS v. SUJATHAMMA AND OTHERS.

2. AIR 2020 SC 548 - SAURASHTRA CHEMICALS LTD. (PRESENTLY KNOWN AS SAURASHTRA CHEMICALS DIVISION OF NIRMA LTD.) v. NATIONAL INSURANCE CO. LTD.

3. AIR 2019 SC 666 - UNION OF INDIA AND ANOTHER v. V.R.TRIPATHI.

4. AIR 2019 SC 675 - UNION OF INDIA AND OTHERS v. KRISHNA KUMAR AND OTHERS.

5. 2011 (2) KCCR 1531 (SC) - REVANASIDDAPPA AND ANOTHER v. MALLIKARJUN AND OTHERS.

6. (2003) 8 SCC 740 - KASHI NATH (DEAD) THROUGH LRS. v. JAGANATH.

6. I have heard the contentions urged on behalf of appellants and respondents and perused the material o record with care.

7. The points that would arise for consideration are,

*1) Whether the Trial Court is justified in holding that plaintiffs have proved the factum of marriage and parentage with Krishnegowda?*

*2) Whether the Trial Court justified in holding that plaintiffs are entitled for half share in the scheduled property?*

8. The facts have been sufficiently stated. The controversy is with regard to the factum of marriage

(plaintiff No.1) and parentage (plaintiff No.2) with Krishnegowda.

Before I answer the points for consideration, I would propose to say few words regarding the law relating to a Hindu marriage.

Marriage and sonship constitute some of the unique chapters in the *litera legis* of ancient Hindu law. As early as the time of *Rig Veda*, marriage had assumed the sacred character of a sacrament and sanction of religion had heightened the character and importance of the institution of marriage. The basal thought was that marriage was a prime necessity, for that alone could enable a person to discharge properly his religious and secular obligations. The earliest records show that the rules of inheritance depended on the rules of marriage and it was obligatory on the father to give the daughter in marriage as a gift. The *smritis* deal with the subject of marriage with meticulous care and make fascinating study. Manu expounded the subject, so also did many other *smritikars* and commentators.

Marriage is necessarily the basis of social organisation and the foundation of important legal rights and obligations. The importance and imperative character of the institution of marriage needs no comment. In Hindu law, marriage is treated as a *samskara* or a sacrament. It is the last of the 10 sacraments, enjoined by the Hindu religion for regeneration of men and obligatory in case of every Hindu who does not desire to adopt the life of a *sanyasi.* In Hindu law, there were no less than eight different forms of marriage, and each being different from the other and at the same time, each form of marriage depicts a different stage of social progress.

Under the Indian law, therefore, it is now open to two Hindus if they desire to contract civil marriage to have it solemnized under the Special Marriage Act of 1954. However, if they prefer marriage in a sacramental form or to state it more precisely, prefer a ceremonial marriage, then it much be solemnized in accordance with the requirements of the present Act. It seems convenient to refer to the former as a special or a civil marriage and to the ceremonial marriage regulated by the present

enactment as a Hindu marriage. The legislature uses the expression 'Hindu marriage' in this Act in the context of such a ceremonial marriage for example, when it lays down the conditions for a Hindu marriage in Section 5 and speaks of ceremonies for a Hindu marriage in Section 7 and registration of Hindu marriages in Section 8.

Sections 5 and 7 of the Act lay down the conditions and ceremonial requirements of a Hindu Marriage. They are:

i) The marriage must be solemnized in accordance with the customary rites and ceremonies of either party and where such rites and ceremonies include *saptapadi* (taking of seven steps by the parties before the sacred fire), that requirement must be observed (Section 7(2)).

ii) There should not be subsisting valid marriage of either of the parties with any other person (Section 5(i)).

iii) The parties should as regard age and mental capacity be competent to have a marriage solemnized between them (sub-Section 5(ii) and (iii)).

iv) The parties should not by reason of degrees of prohibited relationship or sapinda relationship be debarred from marrying one another (sub-Section 5 (iv) and (v)).

The Hindu marriage contemplate by the Act is a ceremonial marriage and it must be solemnized in accordance with the customary rites and ceremonies of one of the two parties. Non-observance of the essential customary rites and ceremonies of at least one of the parties would amount to failure to solemnize the marriage. A marriage, not duly solemnized by performance of the essential ceremonies is, under the Act, no marriage at all. The condition that neither party must have a spouse living at the time of marriage is absolute with the result that monogamy is now the rule.

Marriage under the Act, therefore, is the union of one man with one woman to the exclusion of all others, satisfied by the solemnization of the marriage in accordance with requisite ceremonies and, it directly creates a relation between the parties and that is called the status of each. The status of an individual, used as a legal term, means the legal position of the individual, in or

with regard to the community; the relation between the parties, and that status of each of them with regard to the community, which are constituted upon marriage, are not imposed or defined by contract or agreement but by law. Hindu marriage, under the Act, is a monogamous which must be solemnized by performance of the essential rites and ceremonies and there must be no incapacity in the parties to marry one another arising from prohibited degrees of relationship or *sapinda* relationship.

A Hindu marriage, solemnized after the commencement of the Act, is void *ipso jure* in case of bigamy or where the parties were within the prohibited degrees of relationship or were *spaindas* of each other, unless in the case of any of the two last mentioned conditions the custom and usage governing both the parties to the marriage permits of a marriage between them. Any marriage in contravention of any of these three conditions is null and void from its inception and either party to such marriage can obtain a decree of nullity from the court against the other party (Section 11).

Presumption as to marriage and legitimacy. There is an extremely strong presumption in favor of the validity of a marriage and the legitimacy of its offspring if from the time of the alleged marriage the parties are recognized by all persons concerned as man and wife and are so described in important documents and on important occasions. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. Similarly, the fact that a woman was living under the protection of a man, who generally lived with her and acknowledged her children, raises a strong presumption that she is the wife of that man. However, this presumption may be rebutted by proof of facts showing that no marriage could have taken place. The formalities and customs of a valid marriage are also presumed to have been performed if a presumption of marriage arises on long period of cohabitation. A plea that the marriage was prohibited by an act of the legislature must also be proved by the person alleging as such.

Bearing these principles in mind, let me see what facts I have here.

It is not in dispute that the original propositus of the family is Siddegowda, who had three sons and two daughters. It is also not in dispute that there was a partition and the suit schedule property were allotted to the share of Krishnegowda. Krishnegowda had two sons through his wife Putteeramma. It is also not in dispute that Putteeramma died leaving behind her husband and two minor sons. The minor sons were brought up by their maternal grandfather's house.

The specific case of plaintiffs is that they are the wife and daughter of Krishnegowda and that they are entitled for half share in the properties of Krishnegowda. In order to prove her marriage with Krishnegowda, Plaintiff No.1 relied on oral and documentary evidence. Smt.Sowbhagyamma - plaintiff No.1 was examined as PW-1. She has stated that after the death of first wife Putteeramma, Krishnegowda married her and she gave birth to Laxmamma - plaintiff No.2. She has also stated that Krishnegowda died about one and half years after the marriage.

Defendants specific case is that their mother Putteeramma is the wife of Krishnegowda and they are the children of Putteeramma and Krishnegowda. Plaintiffs have filed a suit for partition and separate possession of claiming half share in the schedule properties in the year 1997 contending that Krishnegowda had first wife - Putteeramma, who died about 19 years ago leaving behind her two minor sons. After the death of his first wife-Putteeramma, Krishnegowda married his niece Smt. Sowbhagyamma–plaintiff No.1, within one and half months after the death of his first wife - Putteeramma.

In this regard, it would be relevant to refer to the pleadings. I have carefully perused the plaint, more particularly, pleadings and the evidence. In the plaint, except stating that Putteeramma died 19 years ago (in the plaint) and 26 years ago (in the evidence), plaintiffs have not disclosed that when exactly Putteeramma died. Therefore, in the absence of definite proof of death of Putteeramma, one cannot come to the conclusion that

Putteeramma had died when Krishnegowda alleged to have married plaintiff No.1.

The first plaintiff herself was examined and she has stated that Putteeramma died about 26 years back. The relevant portion of the evidence is extracted as under;

*"ದಿ: 08.02.2005 ರಂದು ಸಾಕ್ಷಿಯನ್ನು ಪುನ: ಕರೆದು ಪ್ರಮಾಣವಚನ ಭೋಧಿಸಲಾಯಿತು.*

*ಪಾಟೀ ಸವಾಲು: ಎಂಆರ್ಎಸ್ಎಸ್ ವಕೀಲರಿಂದ:–*

*ನನ್ನ ಮತ್ತು ಕೃಷ್ಣೆಗೌಡರ ಮದುವೆ ಶುಕ್ರವಾರದಂದು ನಡೆದಿರುತ್ತದೆ. ಆದರೆ ತಾರೀಖು ತಿಂಗಳು ಇಸವಿ ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. ನನಗೆ ಲಗ್ನವಾದಾಗ 18 ವರ್ಷ ಪ್ರಾಯವಾಗಿತ್ತು. ಲಗ್ನಪತ್ರಿಕೆಯನ್ನು ಪ್ರಿಂಟ್ ಮಾಡಿಸಿದ್ದೆವು ಮತ್ತು ಲಗ್ನಪತ್ರಿಕೆಯನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರ್ಪಡಿಸಿರುತ್ತೇನೆ. ನಾರ್ತ್ಬ್ಯಾಂಕ್ನ ಪುಟ್ಟಣ್ಣಯ್ಯ ಎಂಬ ಪುರೋಹಿತರು ಲಗ್ನಪತ್ರಿಕೆಯನ್ನು ಬರೆದಿರುತ್ತಾರೆ. ಲಗ್ನಪತ್ರಿಕೆಯ ನಕಲು ಮತ್ತು ಅಸಲು ನಮ್ಮ ಬಳಿ ಇರುತ್ತದೆ. ನನ್ನ ಹೆಸರು ಕೃಷ್ಣೇಗೌಡರ ಹೆಂಡತಿ ಎಂದು ಮತದಾರರ ಪಟ್ಟಿಯಲ್ಲಿರುತ್ತದೆ. ಮತದಾರರ ಪಟ್ಟಿಯನ್ನು ನಾನು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ.*

*ವಾದಿ ಲಕ್ಷಮ್ಮ ನಮ್ಮ ಮನೆಯಲ್ಲಿಯೇ ಜನಿಸಿರುತ್ತಾರೆ. ಆಕೆಯನ್ನು ಲಕ್ಷಮ್ಮ ಎಂಬ ಸೂಲಗಿತ್ತಿ ಹೆರಿಗೆ ಮಾಡಿಸಿರುತ್ತಾರೆ. ಸದರಿಯವರು ಪೌತಿಯಾಗಿರುತ್ತಾರೆ. ಲಕ್ಷ್ಮಮ್ಮ ಜನಿಸಿದ ಬಗ್ಗೆ ಸಂಬಂಧಪಟ್ಟ ಅಧೀಕಾರಿಗಳಿಗೆ ತಿಳಿಸಿ ನೋಂದಾಯಿಸಿರುತ್ತೇವೆ. ಆ ಬಗ್ಗೆ ದಾಖಲೆಯನ್ನು ತೆಗೆದುಕೊಂಡು ಹಾಜರ್ಪಡಿಸಿರುತ್ತೇನೆ. ಲಕ್ಷ್ಮಮ್ಮ ಶೀವರಾತ್ರಿಯ ಕಾಲದಲ್ಲಿ ಜನಿಸಿರುತ್ತಾಳೆ. ನನ್ನ ಲಗ್ನ ಸಹ ಶಿವರಾತ್ರಿಯ ಕಾಲದಲ್ಲಿ ನಡೆದಿರುತ್ತದೆ. ಲಕ್ಷ್ಮಮ್ಮ ನನ್ನ ಮದುವೆಯಾದ*

ಒಂದು ವರ್ಷಗಳ ನಂತರ ಜನಿಸಿರುತ್ತಾಳೆ. ಲಕ್ಷ್ಮಮ್ಮನನ್ನು ಶಾಲೆಗೆ ಸೇರಿಸಿರುವಾಗ ಜನಿಸಿದ ತಾರೀಖನ್ನು ತಿಳಿಸಿರುತ್ತೇವೆ. ಲಕ್ಷ್ಮಮ್ಮನ ಜನನದ ಪ್ರಮಾಣಪತ್ರವನ್ನು ನಾನು ಹಾಜರ್ಪಡಿಸಿರುತ್ತೇನೆ.

ನನ್ನ ಲಗ್ನದಲ್ಲಿ ಸಂಜೀವ ಎಂಬುವರು ವಾಲಗ ಊದಿರುತ್ತಾರೆ. ಅವರ ಹೆಸರನ್ನು ಸಾಕ್ಷಿ ಪಟ್ಟಿಯಲ್ಲಿ ತಿಳಿಸಿರುತ್ತೇನೆ. ನನ್ನ ಮದುವೆ ಕೃಷ್ಣೇಗೌಡರೊಂದಿಗೆ ಆಗಿಲ್ಲವೆಂದು ಪ್ರತಿವಾದಿಗಳು ತಿಳಿಸಿದ ಕಾರಣ ಹಳ್ಳಿಯಲ್ಲಿ ನಡೆಯದ ಮದುವೆ ರೀತಿಯನ್ನು ನನ್ನ ಪ್ರಮಾಣಪತ್ರಿಕೆಯಲ್ಲಿ ಬರೆಸಿ ಹಾಕಿರುತ್ತೇನೆ. ಮದುವೆಗೆ ಚಂದ್ರಪ್ಪ ಎಂಬ ಪೂಜಾರಿ ಇದ್ದರು. ಅವರ ಹೆಸರನ್ನು ಸಾಕ್ಷಿ ಪಟ್ಟಿಯಲ್ಲಿ ತಿಳಿಸಿರುತ್ತೇನೆ. ನಮಗೆ ಮತ್ತು ಕುಳ್ಳೇಗೌಡ ಹಾಗೂ ಪಾಪೇಗೌಡರ ನಡುವೆ ದ್ವೇಷ ಏನು ಇರುವುದಿಲ್ಲ. ಅವರನ್ನು ಸಹ ಸಾಕ್ಷಿಪಟ್ಟಿಯಲ್ಲಿ ತಿಳಿಸಿರುತ್ತೇನೆ. ಮದುವೆಗೆ ರಾಮಪ್ಪ, ಚಂದ್ರೇಗೌಡ, ಕೃಷ್ಣಪ್ಪ ಅಡುಗೆ ಮಾಡಿರುತ್ತಾರೆ.

ನನ್ನ ಗಂಡನ ಮರಣದ ಪ್ರಮಾಣಪತ್ರವನ್ನು ಪಡೆದಿರುವುದಿಲ್ಲ. ಸುಮಾರು ಹತ್ತು ಸಲ ನಾನು ಮತ ಚಲಾಯಿಸಿರುತ್ತೇನೆ. 7ನೇ ಸಾಲಿನಲ್ಲಿ ವಿಭಾಗವಾದಾಗ ನಾನು ಇದ್ದೆ. 7ನೇ ಸಾಲಿನ ವಿಭಾಗಪತ್ರದ ನಕಲನ್ನು ನಾನು ತೆಗೆದುಕೊಂಡಿರುವುದಿಲ್ಲ. ದಾವಾ ಹಾಕುವಾಗ ಪ್ರತಿವಾದಿಗಳ ತಾಯಿಯ ಹೆಸರನ್ನು ಪುಟ್ಟೀರಮ್ಮ ಎಂದು ತಿಳಿಸಿರುತ್ತೇನೆ. ಪುಟ್ಟೀರಮ್ಮನನ್ನು ನಾಗಮ್ಮ ಎಂದು ಕರೆಯುತ್ತಿರಲಿಲ್ಲ, ಆದರೆ ನಿಂಗಮ್ಮ ಎಂದು ಕರೆಯುತ್ತಿದ್ದರು. ಪುಟ್ಟೀರಮ್ಮನನ್ನು ನಿಂಗಮ್ಮ ಎಂದು ಕರೆಯುತ್ತಿದ್ದ ಬಗ್ಗೆ ದಾಖಲೆ ಇದ್ದು ಅದನ್ನು ನಾನು ಹಾಜರ್ಪಡಿಸಿರುತ್ತೇನೆ.

ನಿಪಿ–1 ರಿಂದ 6 ಆರ್‌ಟಿಸಿ ನಕಲುಗಳನ್ನು ನಾನೇ ಅರ್ಜಿ ಕೊಟ್ಟು ತೆಗೆಸಿರುತ್ತೇನೆ. ಫೋಟೋವನ್ನು ತೆಗೆದವರು ಯಾರೆಂದು ಅವರ ಹೆಸರು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. ಊರಿಗೆ ಬಂದಿದ್ದಾಗ ತೆಗೆಸಿರುತ್ತೇವೆ. ಫೋಟೋವನ್ನು ನನ್ನ ತಾಯಿಯ ಮನೆಯಲ್ಲಿ ಇಟ್ಟಿದ್ದೆ. ಸುಮಾರು 25 ವರ್ಷವಾಗಿರುವ ಕಾರಣ ಫೋಟೋವನ್ನು ಯಾರು ತೆಗೆದುರುತ್ತಾರೆಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ.

*ನನ್ನ ಗಂಡನೆಂದು ಹೇಳುವ ಕೃಷ್ಣೇಗೌಡ ಪೌತಿಯಾದ ತಾರೀಖು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. ನಿಂಗಮ್ಮ ಉ: ಪುಟ್ಟೀರಮ್ಮ ಪೌತಿಯಾದ ತಾರೀಖು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. ಫೋಟೋವನ್ನು ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಇಟ್ಟುಕೊಂಡಿದ್ದೆವು. ಒಂದು ವರ್ಷದ ಹಿಂದೆ ನನ್ನ ತಾಯಿಯ ಮನೆಗೆ ಹೋದಾಗ ಅಲ್ಲಿಗೆ ತೆಗೆದುಕೊಂಡು ಹೋಗಿ ಇಟ್ಟಿದ್ದೆ. ದಾವಾ ಹಾಕುವಾಗ ಫೋಟೋ ನನ್ನ ಬಳಿ ಇತ್ತು. ಫೋಟೋವನ್ನು 25 ವರ್ಷಗಳ ಹಿಂದೆ ಯಾರೋ ಊರಿನಲ್ಲಿ ತೆಗೆಯಲು ಬಂದಿದ್ದಾಗ ಅವರ ಮೂಲಕ ತೆಗೆಸಿರುತ್ತೇವೆ. ಅವರು ಯಾವ ಊರಿನವರೆಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. ಫೋಟೋ ಯಾರು ತೆಗೆಸಿರುತ್ತಾರೆಂದು ತಿಳಿದುಕೊಳ್ಳಲು ನಾನು ಪ್ರಯತ್ನ ಮಾಡಿರುವುದಿಲ್ಲ. ಫೋಟೋದಲ್ಲಿ ಕಾಣಿಸಿದ ವ್ಯಕ್ತಿ ಕೃಷ್ಣೇಗೌಡ ಅಲ್ಲ ಎಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ. ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ನಾನು ಫೋಟೋವನ್ನು ಯಾರು ತೆಗೆಸಿರುತ್ತಾರೆ ಮತ್ತು ಅವರು ಯಾವ ಊರಿನವರೆಂದು ನನಗೆ ಗೋತ್ತಿಲ್ಲವೆಂದು ಸುಳ್ಳು ಸಾಕ್ಷಿ ಹೇಳುತ್ತೇನೆನ್ನುವುದು ಸರಿಯಲ್ಲ ನಿಂಗಮ್ಮ ಅಥವಾ ಕೃಷ್ಣೇಗೌಡ ಜಮೀನನ್ನು ಗುತ್ತಿಗೆ ಮೂಡುತ್ತಿರಲಿಲ್ಲ. ಸೂಲಗಿತ್ತಿ ಲಕ್ಷಮ್ಮನ ಮಗನ ಹೆಸರು ಕೃಷ್ಣೇಗೌಡ ಎಂದು, ಅವರು ಇರುತ್ತಾರೆ. ಮತದಾರರ ಗುರುತಿನ ಬಗ್ಗೆ ಫೋಟೋವನ್ನು ನಾನು ತೆಗೆಸಿರುತ್ತೇನೆ, ಸದರಿ ಫೊಟೋ ನನ್ನ ಬಳಿ ಇರುತ್ತದೆ.*

*ಕೃಷ್ಣೇಗೌಡರಿಗೆ ಕುಳ್ಳೇಗೌಡ ಮತ್ತು ಪಾಪೇಗೌಡ ಎಂಬ ಸಹೋದರರು ಇರುತ್ತಾರೆ. ನನ್ನ ಮತ್ತು ಅವರ ನಡುವೆ ಜಿದ್ದು ಏನು ಇರುವುದಿಲ್ಲ. ಕೃಷ್ಣೇಗೌಡ ನನ್ನನ್ನು ಮದುವೆಯಾಗಿಲ್ಲವೆಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ. ಲಕ್ಷ್ಮಮ್ಮ ನನಗೆ ಕೃಷ್ಣೇಗೌಡರ ಮೂಲಕ ಜನಿಸಿಲ್ಲವೆಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ. ಆಸ್ತಿ ಲಪಟಾಯಿಸಲು ನಾನು ಸುಳ್ಳು ಸಾಕ್ಷಿ ಹೇಳುತ್ತೇನೆನ್ನುವುದು ಸರಿಯಲ್ಲ. ನಿಪಿ–4 ಫೋಟೋವನ್ನು ಸೃಷ್ಟಿಸಿರುತ್ತೇನೆಂದು ಸೂಚಿಸುವುದು ಸರಿಯಲ್ಲ."*

The suit is instituted on the 21st day of February 1997. The evidence is recorded in the year 2005. If we

carefully read the contents of the plaint and the evidence, we should go back 19 years from 1997, we reach 1978 and 26 years from 2005 we reach the year 1979. Plaintiff No.1 has specifically pleaded that she was in advanced pregnancy of 8 months at the time of death of Krishnegowda. If this is to be considered, then her alleged marriage with Krishnegowda must have been performed between the period 1978-79. In the absence of any proof of death of Putteeramma**,** this Court cannot presume that the marriage of Smt.Sowbhagyamma with Krishnegowda is void, because there is nothing on record to show that Putteeramma had died prior to the marriage of plaintiff No.1 with Krishnegowda.

There is yet another strong reason to disbelieve the version of plaintiffs. They have stated that Krishnegowda died on 13.7.1979 and plaintiff No.1 was in advanced pregnancy of 8 months as on the date of death of Krishnegowda. Assuming for a while that plaintiff No.1 was in advanced pregnancy of 8 months at the time of death of Krishnegowda, then plaintiff No.2 should have been born in the month of August or September 1979. On the

contrary, the birth certificate depicts that date of birth of plaintiff No.2 as '04.02.1980'. This also raises a doubt in the mind of the Court that whether plaintiff No.2 is born to Kirshnegowda.

Therefore, viewed from any angle, the alleged marriage of Krishnegowda with Smt.Sowbhagyamma is in contravention of Section 5 of the Act and the same *void initio*. Hence, plaintiff No.1 cannot be considered as the legally wedded wife of Krishnegowda and is not entitled to inherit the properties of Krishnegowda.

As could be seen from the judgment, learned Judge has relied upon the documents, which are not relevant to consider the valid proof of marriage.

Further apart from oral evidence, plaintiff has relied upon documentary evidence to prove her relationship with Krishnegowda.

Ex.P4 is the photograph of Krishnegowda Gowda and Sowbhagyamma produced as proof of factum of marriage. Ex.P6 is the voters list of family of Papegowda. In the said

voters list, the following names and their age have been mentioned: -

1) Papegowda, S/o.Siddegowda, aged 40 years.

2) Jayamma, W/o.Papegowda, aged 30 years (first plaintiff's mother).

3) Ningamma, D/o.Siddegowda, aged 20 years.

4) Sowbhagyamma, W/o.Krishnegowda, aged 35 years. (plaintiff No.1).

Ex-P-12 is the admission register issued by the Head master of Government Higher Primary School, Katteri village dated 'Nil' wherein, he has stated that as per the admission serial No.54/86-87 her date of birth is 04.02.1980. Ex.P-13 is the endorsement issued by the Tahsildar on 04.06.1998.

The mother of plaintiff No.1 Smt. Jayamma appears to have made an application to the Tahsildar concerned to supply the birth certificate of Laxmamma, but since the same was not available, she was directed to approach JMFC, Srirangapattana. It is relevant to note that she also made a request stating that Krishnegowda died on

13.7.1979 and Parvatamma died on 10.05.1978 and sought for the death certificates.

Plaintiff No.1 has relied upon the above-mentioned documents to establish the factum of marriage and parentage. I have carefully perused the above said documents. As could be seen from the voters list, it pertains to the family of Papegowda. In the said voters list, the age of the mother of plaintiff is shown as 30 years and the age of plaintiff No.1 is shown as 35 years. Normally, the mother will be elder than the daughter, but here the mother is younger than the daughter. Hence, it raises some doubt with regard to the veracity of the document. Assuming for a while, the documents are genuine; in my considered opinion, they cannot be considered as the documents to prove the factum of marriage and parentage. Hence, Trial Court has totally erred in placing reliance upon the said documents in holding that plaintiffs have established their relationship with Krishnegowda.

While arguing the case, learned counsel for respondents vehemently urged that in the absence of proof of marriage, the Court can draw presumption as to the legality of marriage. There has been a strong appeal made to the general presumption of marriage arising from cohabitation

The question as to whether a valid marriage had taken place between the deceased Kirshnegowda and the first plaintiff is essentially a question of fact. In arriving at a finding of fact indisputably the Court is not only entitled to analyze the evidences brought on record by the parties hereto so as to come to a conclusion as to whether all the ingredients of a valid marriage as contained in Section 5 of the Hindu Marriage Act, 1955 stand established or not; a presumption of a valid marriage having regard to the fact that they had been residing together for a long time and has been accepted in the society as husband and wife, could also be drawn.

The question as to in which circumstances, the Court can draw presumption as to the legality of marriage was

succinctly explained by Mulla in his book- Hindu Law, 17th Edition in Article 438, page 664 under the heading - "Presumption as to legality of marriage" - in following words:

> *"438. Presumption as to legality of marriage - Where it is proved that a marriage was performed in fact, the court will presume that it is valid in law, and that the necessary ceremonies have been performed. A Hindu marriage is recognized as a valid marriage in English law.*
>
> *Presumption as to marriage and legitimacy - There is an extremely strong presumption in favor of the validity of a marriage and the legitimacy of its offspring if from the time of the alleged marriage the parties are recognized by all persons concerned as man and wife and are so described in important documents and on important occasions.*
>
> *The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. Similarly, the fact that a woman was living under the control and protection of a man who*

*generally lived with her and acknowledged her children raises a strong presumption that she is the wife of that man. However, this presumption may be rebutted by proof of facts showing that no marriage could have taken place."*

The question arose before this Court in ***THAKUR GOKAL CHAND VS. PARVIN KUMARI @ USHA RANI***, - ***AIR 1952 SC 231,*** as to whether on facts / evidence, the Court could record a finding about the existence of lawful marriage between the parties and, if so, what should be the principle to be applied while deciding such question. Learned Judge - Fazal Ali J, speaking for the Bench examined this question in the context of Section 50 of the Indian Evidence Act, 1872 and other relevant provisions of law and laid down the following principle of law for determination of such question:

*"It seems to us that the question as to how far the evidence of those particular witnesses is relevant under section 50 is academic, because it is well-settled that continuous cohabitation for a number of years may raise the presumption of marriage. In the present case, it seems clear*

*that the plaintiff and Ram Piari lived and were treated as husband and wife for a number of years, and, in the absence of any material pointing to the contrary conclusion, a presumption might have been drawn that they were lawfully married. But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the court cannot ignore them"*

In recent time, this Court in ***Madan Mohan Singh & Ors. vs. Rajni Kant & Anr. - (2010) 9 SCC 209***, relying upon the aforesaid principle of law, reiterated the same principle in following words:

*"24. The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide Mohabbat Ali Khan v. Mohd. Ibrahim Khan, AIR 1929 PC 135, Gokal Chand v. Parvin Kumari, AIR 1952 SC 231, S.P.S. Balasubramanyam v. Suruttayan, (1994) 1 SCC 460, Ranganath Parmeshwar Panditrao*

*Mali v. Eknath Gajanan Kulkarni, (1996) 7 SCC 681 and Sobha Hymavathi Devi v. Setti Gangadhara Swamy, (2005) 2 SCC 244).*

Bearing these principles in mind, let me see whether in the present case, whether the Court can draw a presumption?

In the present case, it seems clear that the plaintiff No.1 and Krishnegowda did not live together and were not treated as husband and wife for a number of years. Therefore, a presumption cannot be drawn that they were lawfully married. Assuming for a while that a presumption could be drawn but the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the Court cannot ignore them.

Therefore, the argument with regard to presumption fails.

In my considered opinion, there is no sufficient material on record to conclude that the marriage of

Smt.Sowbhagyamma with Krishnegowda is valid and that Laxmamma is born to Krishnegowda.

On facts and in all the circumstances of the case, plaintiffs have failed to establish their relationship with Krishnegowda. Therefore, the marriage of plaintiff No.1 is void and hence, she cannot be treated as a legally wedded wife of Krishnegowda, and is therefore, entitled to any share in the property left behind by Krishnegowda.

At the same time, plaintiffs have also failed to prove that plaintiff No.2 is the daughter of Krishnegowda. Therefore, they are not entitled for any share in the property. Accordingly, point Nos.1 and 2 are answered.

The decision relied upon by counsel for plaintiffs/respondents are not applicable to the facts and circumstances of the present case.

9. Accordingly, the appeal is ***allowed*** and the judgment and decree dated 17.08.2005 passed by the Prl. Civil Judge (Sr.Dn.) & JMFC, Srirangapatna, in O.S.No.29/1997 is hereby set aside.

Registry to draw up the decree accordingly.

Parties to bear their own costs in the appeal.

**Sd/-**
**JUDGE**

VMB