



RFA No. 100007 of 2016

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE R.NATARAJ**

**REGULAR FIRST APPEAL NO. 100007 OF 2016 (PAR)**

**BETWEEN:**

1. A.M. SANGAPPA @ SANGAPPA,  
S/O MUDIYAPPA SALI @ APPANNANAVAR,  
SINCE DECEASED.

1(A) RAVI SHANKAR A.S.,  
S/O A.M.SANGAPPA,  
AGE: 49 YEARS,  
OCC: PRIVATE JOB,  
R/O NO.2520 NRUPATHUNGA ROAD,  
BESIDE CSI CHURCH  
T.DASARALLI,  
BENGALURU NORTH-560057,  
TQ/DIST: BENGALURU.

1(B) SUNANDA  
D/O A.M.SANGAPPA,  
W/O SATYAVANAGOUDA,  
AGE: 62 YEARS,  
OCC: HOUSEHOLD,  
R/O H.NO.113/1, W.NO.5,  
KOULPETH, BAGALAKOTE,  
TQ/DIST: BAGALAKOTE.

...APPELLANTS

(BY SRI. SHRIHARSH A.NEELOPANT, ADVOCATE)

**AND:**

1. SANGODEPPA S/O YALLAPPA SALI,  
MAJOR, OCC: AGRICULTURE,  
R/O: SANGONDI, BAGALKOT  
TQ & DSIT: BAGALKOT-581101.





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2. GANGA S/O YALLAPPA SALI,  
(SINCE DECEASED)
- 2(A) BASAVVA W/O GANGAPPA GOWDAR,  
AGE: 54 YEARS  
R/O: POST: BHAGAVATHI  
TQ:DIST: BAGALKOT-581373.
- 2(B) SANGANAGOWDA,  
S/O GANGAPPA GOWDAR,  
AGE:34 YEARS  
R/O:POST: BHAGAVATHI  
TQ:DIST: BAGALKOT-581373.
- 2(C) PARVATHI W/O SHRISHAILA KURI,  
AGE: 32 YEARS,  
R/O: POST: GADDANAKERI,  
TQ:DIST: BAGALKOT-581373.
3. SHARANAMMA,  
W/O SHIVAPPA KARAGANNANAVAR,  
AGE: 30 YEARS,  
AT POST: SORUKOPPA,  
TQ:DIST:BAGALKOT-581373.

...RESPONDENTS

(NOTICE SERVED ON R1, R2(A), 2(B), 2(D);  
SERVICE OF NOTICE ON R2(C) IS HELD SUFFICIENT)

THIS R.F.A. IS FILED UNDER SECTION 96 OF C.P.C.  
AGAINST THE JUDGMENT AND DECREE DATED 15.04.2000  
PASSED IN O.S.NO.46/1995 ON THE FILE OF THE I ADDL.  
CIVIL JUDGE (SR.DN.), BAGALKOT, DISMISSING THE SUIT FOR  
PARTITION AND SEPARATE POSSESSION.

THIS APPEAL COMING ON FOR FURTHER HEARING THIS  
DAY, THE COURT DELIVERED THE FOLLOWING:



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**JUDGMENT**

RFA No.100007/2016 (earlier numbered as RFA No.238/2004) is filed by the plaintiff in O.S.No.46/1995 on the file of the I Addl.Civil Judge (Sr.Dn.), Bagalkot challenging the common judgment and decree dated 15.04.2000, by which O.S.No.46/1995 for partition and separate possession was dismissed.

RFA No.622/2007 is filed by the plaintiff in O.S.No.362/1999 challenging the common judgment and decree dated 15.04.2000, by which his suit for declaration of title and consequent perpetual injunction was dismissed.

RFA No.623/2007 is filed by the defendant in O.S.No.362/1999 challenging the common judgment and decree dated 15.04.2000, by which his counter claim was rejected.

In order to avoid confusion in view of the suit and counter suit filed by the parties, they shall henceforth be referred to by their names.



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**2. Facts as pleaded in O.S.No.46/1995:**

The suit in O.S.No.46/1995 was filed for partition and separate possession by A.M.Sangappa claiming his half share initially in the land bearing Sy.No.15/1 of Mugallolli village in Bagalkot taluk. He claimed that his great grandfather namely Bhimappa had three sons Sangappa, Yallappa and Hanamappa. A.M.Sangappa is the grandson of Sangappa (henceforth referred to as 'A') while Sangondappa was the son of Hanamappa (henceforth referred to as 'S') and Gangappa (henceforth referred to as 'G') was one of the sons of Yallappa. 'A' claimed that Yallappa had relinquished all his rights in the properties of the family and had left his native place and settled down at Bhagavati when he was a young boy. 'A' claimed that till the year 1955, Sangappa and Hanamappa lived jointly and were enjoying the properties jointly. Somewhere during the year 1955, there was an arrangement in the family by which some properties were given to *"exclusive share of the plaintiff's family and certain others were given to the exclusive share of the defendants' family while some other properties were privately divided into two equal divisions, the family of the plaintiff retained one strip and the defendant retained the*



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*other.*" 'A' claimed that the land bearing Sy.No.15/1, which initially was the only suit property, was cultivated by them as tenants since 1940. His father and the father of 'S' were tenants under Desai (village headman) of Mugallolli. Later they filed an application in Form No.7 in respect of this land and the Land Tribunal granted occupancy right in respect of Sy.No.15/1 of Mugallolli village and in the order of the Land Tribunal, the name of 'G' and his brother was inadvertently inserted. 'A' alleged that as Yallappa had left the village long ago, he had relinquished all his rights in the property including the land in Sy.No.15/1. Consequently, the names of 'A' and 'S' was entered in the revenue records after deleting the name of Yallappa. 'A' claimed that the land bearing Sy.No.15/1 was divided into two equal shares and bunds were laid over the land to identify the shares.

'A' claimed that Sy.No.137 of Mugallolli village, belonged to the joint family which were divided in the manner mentioned above. He alleged that the said Sy.No.137 was purchased out of the income of the joint family in the name of the father of 'S'. He further alleged that the western portion of Sy.No.137 was in his possession. He alleged that 'S' attempted to interfere



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with his possession in the western portion of Sy.No.15/1 and he later realized that the interference was due to a counter claim made by him against 'S' in a suit filed in respect of land in Sy.No.137 of Mugallolli. Hence, the plaintiff sought for separation of his half share in the land bearing Sy.No.15/1.

3. 'S' contested the suit and denied that Yallappa had left the village and settled at Bhagavati. He also denied the assertion that Yallappa had relinquished his right, title and interest over the properties of the family. He contended that after the death of his grandfather Bhimappa, the properties of the family were held by his father and uncles namely Sangappa and Yallappa. He claimed that the grandfather of 'A' being the eldest son in the family was managing the affairs of the family and after his death, his father Mudiappa was managing and thereafter 'A' was managing it through his wife, who got his name entered in respect of all the properties of the family. 'S' claimed that after the death of Yallappa, his sons namely 'G' and Kallappa had 1/3<sup>rd</sup> share in the suit schedule property. 'S' categorically stated that the branch of 'A' had 1/3<sup>rd</sup> share, the branch of Yallappa had 1/3<sup>rd</sup> share and branch of 'S' had 1/3<sup>rd</sup> share in the suit property. He claimed that three strips running



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East-West were formed in the land bearing Sy.No.15/1 and the northern strip was in possession of 'S'. He claimed that he was also cultivating the middle strip that was allotted to the share of Yallappa. However, he contended that there was no partition amongst them. He contended that family possessed lands in Sy.Nos.247/3, 270/3, 304/3 and 307/3 of Kirsur village. He also claimed that there were certain other properties in Sangondi village which were bearing Sy.Nos.28/11, 16/3 and 28/10. He claimed that in the aforesaid lands too, all the three branches had 1/3<sup>rd</sup> share each. Further, he contended that there were three houses which belonged to the family and members of each of the branches were in possession of one house each and therefore, all three of them were entitled to one house each. He therefore contended the suit for partial partition was not maintainable. Insofar as land bearing Sy.No.137 was concerned, he claimed that "*the plaintiff cannot sue for partition putting only one land in the hotch-pot and allowing other suit in respect of Sy.No.137 to be prosecuted in some other court.*" Hence, the defendant sought dismissal of the suit.



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4. 'A' amended the plaint and added the land bearing Sy.Nos.16/3, 28/10, 28/11 of Sangondi and Sy.Nos.247/3, 270/3, 304/3 and 307/3 and two houses. In addition, he also included the land bearing Sy.No.160/4. 'S' filed an additional written statement contending that in addition to the lands which were included, Sy.Nos.159, 150/4 and 18/1 of Sangondi village and a house at Dasarahalli were also joint family properties. He denied the right of 'A' in respect of the land bearing Sy.No.137.

5. Defendant No.2 adopted the written statement filed by defendant No.1.

6. Based on these rival contentions, the trial Court framed the following issues and additional issues:

1. Whether the plaintiff proves that he is entitled to take western half portion of RS.No.15/1 measuring 11 acres 2 guntas of Mugallolli in Bagalkot taluk by way of partition with metes and bounds?
2. Whether plaintiff proves that the descendants of deceased Yallappa do not have any right, title or interest in the suit land?





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3. Whether plaintiff proves that he has been exclusively cultivating the suit land from 1974 onwards?
4. Whether defendant proves that the suit of the plaintiff in the present form is not maintainable unless the plaintiff sues for general partition in all the properties viz., lands at Kirsur and Sangondi and house at Sangondi and a house at Dasarhalli in Bangalore?
5. Whether defendants prove that the suit is not maintainable without impleading the sons of deceased Yallappa?
6. Whether the suit valuation and Court fee paid thereon is correct?

Addl.issue dated 02.08.1999:

1. Whether the plaintiff proves that the 'B' schedule properties are the joint family ancestral properties and he has got half share in these properties?
2. What order or decree?

7. **Facts as pleaded in O.S.No.362/1999:**

'S' filed the suit in O.S.No.214/1992 which was renumbered as O.S.No.362/1992 for declaration and injunction that he is the owner of the land bearing Sy.No.137 and for



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consequent injunction restraining 'A' from interfering with his peaceful possession. 'S' contended that Sy.No.137 was owned by his father, which he purchased in terms of a sale deed dated 19.08.1949. He claimed that his father was in possession of the said land from the date of the sale deed till he died somewhere in the year 1983 leaving behind 'S' and four daughters. He claimed that since his sisters were all given in marriage to well to do families, they did not claim any share in the properties. Hence, he claimed that he alone was in possession and enjoyment of the suit property. He claimed that 'A' got his name entered in the revenue records in Mutation Entry No.1492 dated 02.04.1970, allegedly based on a varadi submitted by father of 'S' which was certified on 03.05.1970. He claimed that his father had not given any such varadi to enter the name of 'A'. He claimed that he was paying the land revenue in respect of the said property and since 'A' attempted to interfere with his possession, he filed the present suit.

8. 'A' filed his written statement contending that till the year 1955, Sangappa and Hanamappa lived jointly and there was a partition in the year 1955 in terms of which the properties of the family were divided into two equal halves. He



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claimed that Sy.No.137 was purchased out of the funds of the joint family in the name of the father of 'S' as he was the elder member in the family. He claimed that two strips running North-South were divided in Sy.No.137. The western strip was in possession of 'A' and his father from 1955. He claimed that he was serving in the Indian Air Force from 1949 till 1974. After the death of his father in 1962, he leased the western strip of Sy.No.137 to various tenants. Later, he resumed it from the tenants and was cultivating with the help of his in laws. He claimed that the two strips in Sy.No.137 was divided in the year 1955 itself and the father of 'S' himself gave a varadi in the year 1970 to enter the name of 'A' in the records of Sy.No.137. Accordingly, mutation entries were made in M.E.No.1492 dated 13.05.1970. He also claimed that the western strip was demarcated by a bund which was illegally removed by 'S' prior to the Court Commissioner visiting the spot. Hence, he laid a counter claim for declaration of his right as the owner of the western strip of land measuring 5 acres 19 guntas in Sy.No.137.

9. Based on these rival contentions, the Court framed the following issues:



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1. Whether plaintiff proves that he is the absolute owner in possession of the suit land?
  2. Whether plaintiff further proves that he is entitled for the relief of injunction sought for?
  3. Whether the defendant proves that he is the owner in possession of western strip of Sy.No.137 of Mugallolli village measuring 5 acres 19 guntas?
  4. Whether the defendant proves that he is entitled for the relief of injunction sought for?
  5. Whether defendant further proves that the suit land is joint family property liable for partition?
  6. Whether defendant alternatively proves that he is entitled for half share and separate possession over the suit land by effecting partition by metes and bounds?
  7. What order or decree?
10. 'S' was examined as PW1 and marked Exs.P1 to P15.
11. Later both the suits were clubbed. The trial Court after hearing the learned counsel for the parties, held that the properties that were the subject matter of O.S.No.46/1995 were separately cultivated by 'A' and 'S' in equal halves. It held that 'A' was cultivating the western strip of land in Sy.No.137.



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It further held that the heirs of Yallappa also possessed an undivided 1/3<sup>rd</sup> right, title and interest in the suit properties and therefore 'A' is not entitled to half share in the suit schedule property. It further held that 'A' had included the house property at Dasarahalli as one of the suit items and therefore, the suit was not liable to be dismissed on the ground that it was for partial partition. Having held thus, the Court observed that 'A' was bound to array the other son of Yallappa and daughter as parties to the suit and hence the suit was liable to be dismissed for non-joinder of necessary parties. It held that without knowing the defence of the other son and daughter of Yallappa, share of 'A' cannot be decided. Hence it dismissed the suit for partition in O.S.No.46/1995.

12. Insofar as O.S.No.362/1999 is concerned, the Court held that 'S' had not impleaded all his four sisters to the suit and therefore, he was not entitled for any declaration in the absence of any relinquishment by the sisters. Consequently, it dismissed the suit. It also rejected the counter claim by 'A' on the ground that 'A' was unable to demonstrate that the funds to purchase Sy.No.137 was drawn out of the nucleus of the joint family.



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13. Being aggrieved by the dismissal of the suit in O.S.No.46/1995, 'A' filed RFA No.238/2004 before this Court. In the meanwhile, 'S' filed R.A.No.123/2001 before the District Court challenging the dismissal of O.S.No.362/1999 and 'A' filed R.A.No.121/2001 challenging the dismissal of his counter claim in O.S.No.362/1999. This Court withdrew R.A.No.121/2001 and R.A.No.123/2001 from the file of the District Court and called these two appeals along with RFA No.238/2004. This Court in terms of the common order dated 19.08.2006 disposed off the appeals holding that Yallappa had separated from the family and hence, set aside the dismissal of the suit in O.S.No.46/1995 and decreed it declaring that 'A' and 'S' had an undivided  $\frac{1}{2}$  share in the suit properties. It held that 'S' had demonstrated that Sy.No.137 belonged to his father exclusively and hence decreed the suit in O.S.362/1999 and dismissed the counterclaim of 'A'. Later, R.A.Nos.121/2001 and 123/2001 were renumbered as RFA Nos.622 and 623 of 2007. 'A' thereafter filed SLP No.2121/2008 before the Hon'ble Supreme Court and after leave was granted; it was numbered as Civil Appeal No.10490/2013. The Hon'ble Supreme Court in terms of the order dated 19.11.2013, allowed Civil Appeal No.10490/2013 and directed reconsideration of RFA



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No.238/2004 c/w RFA Nos.622 and 623 of 2007. RFA 238/2004 is now renumbered as RFA No.100007/2016 which is the lead appeal.

14. The learned counsel for 'A' submitted that the suit properties in O.S.No.46/1995 were admittedly joint family properties and therefore, the plaintiff and defendant No.1 were entitled to an equal share since the plaintiff and defendant no.1 were in agreement to the fact that Yallappa had renounced his right, title and interest in the joint family properties and hence was ousted from the same. He submitted that the land in Sy.No.137 was purchased by the father of 'S' out of the income generated from the suit properties and therefore, the same was also available to be partitioned. He further submitted even assuming that Yallappa's children had a share in the suit schedule properties, the trial Court ought not to have dismissed the suit on the ground of non joinder of necessary parties, in view of Order I Rule 10(2) of C.P.C which invested jurisdiction in the Court to add the parties to the suit or to decide the rights of the non-parties to the suit based on admitted facts. He contended that one of the sons of Yallappa namely 'G' was already on record and he substantially represented the interest



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of Yallappa in the suit schedule properties. In this regard, he relied upon the following judgments:

- (1) *2012 (3) KLJ Page 1, Smt.Hanumakka V/s Sharadamma.*
- (2) *HCR 2015 KAR 424, Basavannevva V/s Basappa.*
- (3) *ILR 1999 KAR 931, Balagouda Alagouda Patil V/s Babasaheb Ramgouda Patil.*

15. He further contended that the joint family possessed large extent of properties which were capable of generating sufficient nucleus and since the father of 'S' was the eldest member who was handling the suit properties, he purchased the property bearing Sy.No.137 in his name out of the funds of joint family. He submitted that there was no evidence placed on record to prove that the father of 'S' had any independent source of income. He claimed that if the joint family is possessed of large extent of property, then a presumption arises that the property purchased by any person in management of the family, is purchased out of the funds of the joint family. In this regard, he relied upon the following judgments:





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- (1) 1996 (2) SCC 491, *Surendra Kumar V/s Phoolchand (dead) through LR's and another.*
- (2) 1973(2) SCC 334, *Baikuntha Nath Paramanik (dead) by his LR's and heirs V/s Sashi Bhusan Pramanik (dead) by his LR's and others.*
- (3) HCR 2020 Kant. 71, *H.S.Sreedhara Rao V/s H.N.Sreenivasappa since dead by LR's and others.*
- (4) AIR 1954 SC 379, *Srinivas Krishnarao Kango V/s Narayan Devji Kango and others.*

16. The learned counsel submitted that the father of 'S' himself had given a varadi to enter the name of 'A' and his father in respect of the western portion of Sy.No.137 based upon which M.E.No.1492 was approved on 13.05.1970 and that the said entry is continued thereafter. He contended that this generated a presumption about the ownership in possession of 'A' in respect of the western portion of Sy.No.137. In this regard, he relied upon the judgment in the case of ***Sir Bhimeshwarswamy Varu Temple V/s Peddapudi Krishnamurthy [AIR 1973 SC 1299]***.



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17. The learned counsel for 'S' was absent during hearing and therefore, this Court did not have the advantage of his arguments.

18. Based on the contentions canvassed before this Court and the oral and documentary evidence, the following points arise for consideration:

- (i) Whether there was sufficient evidence to establish that Yallappa had abandoned, his right, title and interest in the suit properties?
- (ii) Whether there are sufficient evidence to establish that Sy.No.137 was purchased by father of 'S' from out of the funds of the joint family?
- (iii) Whether 'A' had established that he was in possession of the land bearing Sy.No.137 from the year 1955 till the year 1970 when M.E.No.1492 was approved on 13.05.1970?
- (iv) Whether the Court could have dismissed the suit on the ground of non-joinder of the all the legal heirs of Yallappa in O.S.No.46/1995 and the sisters of 'S' in O.S.No.362/1999?

19. The answers to the points for consideration are as follows:



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20. **Point No.(i):** 'A' pleaded that Yallappa had abandoned his right in the suit properties and settled down at Bhagavati when he was young. 'S' disputed this and claimed that Yallappa's children possessed 1/3<sup>rd</sup> share in the suit schedule properties. 'G' adopted the written statement of 'S'. Therefore, it was incumbent upon 'A' to establish that Yallappa had renounced his share in the suit schedule properties. PW1 ('A') in the course of his cross-examination deposed “ನನಗೆ ಮತ್ತು 1ನೇ ಪ್ರತಿವಾದಿಗೆ ಮಾತ್ರ ಸದರಿ ಜಮೀನದಲ್ಲಿ ಹಿಸ್ತೆ ಇರುತ್ತದೆ. ಎಲ್ಲವು ಅಥವಾ ಆತನ ಮಗ ಗಂಗಪ್ಪನಿಗೆ ಸದರಿ ಹೊಲದಲ್ಲಿ ಹಿಸ್ತೆ ಇರುವುದಿಲ್ಲ. ಎಲ್ಲವು ಚಿಕ್ಕಂದಿನಿಂದ ಸದರಿ ಜಮೀನು ಮಾಡಿಲ್ಲ. ಕಾರಣ ಆತನಿಗೆ ಮತ್ತು ಗಂಗಪ್ಪನಿಗೆ ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಹಿಸ್ತೆ ಇರುವುದಿಲ್ಲ.” PW1 further deposed “ಎಲ್ಲವು ಭಗವತಿಗೆ ಸಣ್ಣವರಿದ್ದಾಗಲೇ ಉರು ಬಿಟ್ಟು ಹೋಗಿದ್ದಾರೆ. ಕಾರಣ ಅವರಿಗೆ ಹಿಸ್ತೆ ಇಲ್ಲ. ಸ್ವಯಂ ಹೇಳಿಕೆ ಬಂಗಾರ, ಹಣ ತೆಗೆದುಕೊಂಡು ಹೋಗಿದ್ದಾರೆ. ಎಲ್ಲವು ತನ್ನ ಹಿಸ್ತೆಯ ಬಗ್ಗೆ ಬಂಗಾರ, ಬೆಳ್ಳಿ ಮತ್ತು ಹಣ ತೆಗೆದುಕೊಂಡು ಹೋಗಿದ್ದಾನೆ. ಆ ಬಗ್ಗೆ ಕಾಗದ ಇಲ್ಲ. ಎಷ್ಟು ಬಂಗಾರ ಹಾಗೂ ಬೆಳ್ಳಿ ತೆಗೆದುಕೊಂಡನು ಅಂತಾ ಹೇಳಲು ನನಗೆ ಆಗದು. ನಾನು ಹುಟ್ಟುವುದಕ್ಕಿಂತ ಮೊದಲೇ ಎಲ್ಲವು ಮನೆ ಬಿಟ್ಟು ಹೋಗಿದ್ದಾನೆ. ನಾನು 1930ರಲ್ಲಿ ಹುಟ್ಟಿರುತ್ತೇನೆ.”

21. However, except asserting this, 'A' did not prove the same by acceptable evidence. The documentary evidence



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on record shows that Form No.7 was filed jointly by the father of 'A', father of 'S' and 'G', Kallappa sons of Yallappa claiming occupancy rights in respect of Sy.No.15/1. Following this, the Land Tribunal conferred occupancy rights in Sy.No.15/1 upon the father of 'A', father of 'S' and 'G' and his brother, thereby probablising that all three of them were entitled to an undivided share in the properties. Even the revenue records in respect of Sy.No.15/1 reflected the names of 'A', 'S', 'G' and his family members. Likewise RTC of Sy.Nos.247/3, 270/3, 304/3, 307/3 (Ex.P7, P8, P9, P10) reflected the names of 'A', 'S' and Yallappa.

**22. 'S' deposed as follows:**

“ಒಬ್ಬ ಯಲ್ಲಪ್ಪ ಭೀಮಪ್ಪ ಸಾಲಿರವರು ನನ್ನ ದೊಡ್ಡಪ್ಪನಾಗಬೇಕು. ಆತನು ಮೊದಲು ನಮ್ಮೂರಿನಲ್ಲಿಯೇ ಇರುತ್ತಿದ್ದನು. ಈಗ ಭಗವತಿಯಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾನೆ. ಆತನಿಗೆ ಭಗವತಿಯಲ್ಲಿ ಸುಮಾರು 7 ಕೂರಿಗೆ ಭೂಮಿಯು ಇರುತ್ತದೆ. ನನ್ನ ದೊಡ್ಡಪ್ಪರವರು ಭಗವತಿಗೆ ಹೋದ ನಂತರ ಈ ಆಸ್ತಿಯನ್ನು ಖರೀದಿ ಮಾಡಿರುತ್ತಾರೆ. ಆದರೆ, ಎಷ್ಟು ವರ್ಷದ ಹಿಂದೆ ಖರೀದಿಸಿರುತ್ತಾರೆ ಅಂತಾ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ನನ್ನ ದೊಡ್ಡಪ್ಪ ಅಲ್ಲಿ ಒಕ್ಕಲುತನವನ್ನು ಮಾಡುತ್ತಾರೆ. ನಮ್ಮ ದೊಡ್ಡಪ್ಪ ನಮ್ಮ ಊರಿನಿಂದ ಭಗವತಿಗೆ ಹೋಗುವ ಕಾಲಕ್ಕೆ ಮನೆಯಲ್ಲಿ ದುಡ್ಡು, ಬಂಗಾರ ಒಯ್ದಿದ್ದಾನೋ ಇಲ್ಲ ಎನ್ನುವದು ನನಗೆ ಗೊತ್ತಿಲ್ಲಾ.



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ನಮ್ಮ ದೊಡ್ಡಪ್ಪನು ನನ್ನ ಊರು ಯಾಕೆ ಬಿಟ್ಟಿದ್ದಾನೆ ಅನ್ನುವುದು ನನಗೆ ಗೊತ್ತಿಲ್ಲಾ.”

23. 'S' deposed “ಒಬ್ಬ ತಿಮ್ಮನಗೌಡ ಈತನು ನನ್ನ ಅತ್ತಿಯ ಮಗನಾಗಬೇಕು. ಆತನು ಬಹಳ ದಿವಸದ ಹಿಂದೆ ತೀರಿಹೋಗಿರುತ್ತಾನೆ. ಆತನು ಭಗವತಿ ಊರಿನವನು ಆಗಿದ್ದಾನೆ. ಆತನಿಗೆ ಭಗವತಿಯಲ್ಲಿ ಹೊಲ ಮತ್ತು ಮನೆಗಳು ಅಲ್ಲಿರುತ್ತವೆ. ಆತನಿಗೆ ಸುಮಾರು 40 ಕೂರಿಗಿಯಷ್ಟು ಹೊಲ ಇದೆ. ಆತನು ಊರಗೌಡನು ಆಗಿದ್ದನು. ತಿಮ್ಮನಗೌಡನ ತಾಯಿ ಅಂದರೆ ನನ್ನ ಸೋದರ ಅತ್ತಿ (ಬಸವ್ವ) ಅವರ ಮದುವೆ ಎಂದು ಆಗಿತ್ತು ಎಂಬ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿಲ್ಲಾ.”

24. He further deposed “ಭಗವತಿಯಲ್ಲಿದ್ದಂತಹ ಆಸ್ತಿಯಲ್ಲಿ ಅಂದರೆ ಎಲ್ಲಪ್ಪನ ಆಸ್ತಿಯಲ್ಲಿ ನಮ್ಮ ಹಿಸ್ಸೆ ಇರುವುದಿಲ್ಲಾ. ಸದರಿ ಜಮೀನು ಎಲ್ಲಪ್ಪ ಹಿಡಿದು ಎಷ್ಟು ವರ್ಷ ಆಗಿತ್ತು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಹುಟ್ಟುವುದಕ್ಕಿಂತ ಮುಂಚೆಯೇ ಹೋಗಿದ್ದಾನೆ.”

25. The above evidence probablises that Yallappa and his children were residing at Bhagavati and were looking after the land belonging to his uncle Thimmanagoud. It is not the case of either 'A' or 'S' that Yallappa had gone in adoption to Thimmannagoud of Bhagavati. Though 'S' claimed that Yellappa had purchased the land at Bhagavati from Thimmannagoud, no documents were placed on record in this regard. Therefore,



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there was nothing to indicate or mean that Yallappa and his children had relinquished their right, title and interest in the suit schedule properties. Therefore, it cannot be held that Yallappa gave up his share or was ousted from the suit schedule properties. Ouster of a member from a joint family should be by a physical act by throwing him out or he disowning the joint family. If a member is residing away from the joint family owing to his employment or avocation, that in itself does not result in his ouster. In the present case Yellappa had gone to Bhagavathi to look after the lands that were owned by his maternal uncle and continued there till his death. This arrangement between Yellappa and his brothers was more for the sake of convenience and therefore cannot be construed as a relinquishment of the rights of Yellappa.

26. 'G' did not enter the witness box, which is obvious since his relationship with 'A' and 'S' was admitted and the suit properties were admittedly properties of the joint family.

27. Except the oral assertions by 'A' and 'S', there was no evidence on record to establish that Yallappa had relinquished his share or was ousted from the suit schedule



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properties. It may be that Yallappa did not claim any share in the suit properties, but allowed 'A' and 'S' to cultivate the suit properties. This did not mean or even imply that Yallappa and his children had relinquished their interest in the suit schedule properties. Hence, Point No.(i) is answered and it is held that there was no sufficient evidence to establish that Yallappa and his children had relinquished their interest in the suit schedule properties.

28. **Point No.(ii):** The land bearing Sy.No.137 was admittedly purchased by father of 'S' in the year 1949 for a sum of Rs.2,200/-. The learned counsel for 'S' submitted that it was endorsed on the sale deed dated 19.08.1949 that a sum of Rs.2,200/- was paid to the vendors of Sy.No.137 by the uncle of the father of 'S' (Goudappa Patil) of Bhagavati. He therefore submitted that this was a property that was purchased in the name of father of 'S' by his uncle. However, in Form No.7 filed claiming occupancy rights in Sy.No.15/1, the father of 'A', father of 'S' and 'G' specifically mentioned that Sy.No.137 was one of the properties belonging to them jointly. In addition, the father of 'S' himself submitted a varadi to enter the name of father of 'A' in the revenue records of Sy.No.137 in



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M.E.No.1492 which was approved on 13.05.1970. The RTC of Sy.No.137 reflects the name of the father of 'A' and this has continued till the year 1987-88. Therefore, there is ample evidence to indicate that the father of 'A' and 'S' had unequivocally admitted that land bearing Sy.No.137 was the joint family property and consequently, 'A', 'S' and 'G' were entitled to an undivided share in the said property. Therefore, Point No.(ii) is answered in the affirmative and it is held that the evidence on record indicated that Sy.No.137 was the joint family property and was purchased out of the income from the joint family.

29. **Point No.(iii):** The revenue records in respect of Sy.No.137 show consistently that 'A' and his father were lawful owners of half portion of Sy.No.137. This is also fortified by the mutation entry (Ex.P16) as well as the receipt patta (Ex.P17). Therefore, it is held that 'A' was in possession of half share in Sy.No.137.

30. **Point No.(iv):** The trial Court failed to consider that there was no dispute between the parties regarding the relationship of 'A' and 'S' with 'G' and the fact that all the suit





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properties were ancestral in nature. While 'A' claimed that there was a partition of the family properties in the year 1955 between the father of 'A' and father of 'S', the latter contended that there was no partition. However both of them were consensus ad-idem over the fact that Yallappa and his children were residing at Bhagavati. Even assuming that Yallappa and his children had a share in the suit properties, mere non-inclusion of all the heirs of Yallappa cannot result in the dismissal of the suit. On the contrary, based on the admitted pleading and evidence, the trial Court could have declared the share of 'A' and 'S' in respect of the suit schedule properties. As rightly contended by the learned counsel for 'A', the branch of Yallappa was sufficiently represented by 'G' and therefore, the Court ought not to have dismissed the suit on that ground. Consequently, the point for consideration is answered accordingly and it is held that the Court ought to have declared the share of 'A' and 'S' in the suit schedule properties based on the admitted facts. Hence point (iv) is answered accordingly and it is held that the Trial Court ought to have declared the shares of 'A' and 'S' after reserving the share of 'G' and his brother/ sisters representing the branch of Yallappa.



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31. 'S' claimed that the property purchased by 'A' at Dasarahalli Bengaluru was out of the funds of the joint family and that the construction put up thereon was also out of the funds of the joint family. The house site at Dasarahalli Bengaluru was granted by Bagalagunte HBCS Limited in favour of 'A' on 17.03.1982 (Ex.P13) which indicates that a sum of Rs.2,000/- was paid as consideration by 'A' in the year 1982. It is necessary to note that 'A' was admittedly employed in the Indian Air Force and he purchased the said property in the year 1982, by which time he had retired from service and the consideration paid towards purchase of this site was a sum of Rs.2,000/-. It is probable that 'A' had funds in his hand to purchase this site. There is no evidence on record to indicate that the joint family funds were used to purchase the aforesaid site or to construct a house thereon. Hence, it is held that all the other properties except the property of 'A' bearing Gram Thana No.1161 of Dasarahalli village, Bengaluru North taluk, were the properties of the joint family. Hence, the following:



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**ORDER**

These Regular First Appeals are disposed off setting aside the judgment and decree passed by the trial Court in O.S.No.46/1995 and O.S.No.362/1999.

It is declared that A.M.Sangappa, Sangondappa and the legal heirs of Yallappa are entitled to 1/3<sup>rd</sup> share in all the suit schedule properties including Sy.No.137 of Mugallolli village, Bagalkot taluk, but excluding the property bearing No.1161 of Dasarahalli village, Yashawantpura Hobli, Bengaluru North taluk that stands in the name of A.M.Sangappa.

The office is directed to draw a decree in terms of this judgment.

**SD/-  
JUDGE**

CLK/JM