SIRDAR K.B. RAMACHANDRA RAJ URS. (DEAD) THROUGH LRS. A

v.

SARAH C. URS & ORS.

(Civil Appeal No.6049 of 2007) B

OCTOBER 24, 2019

[ARUN MISHRA AND S. ABDUL NAZEER, JJ.]

Estoppel – When not attracted – Suit property let out to plaintiff no.2 by the late father of defendant no.1 and defendant no.1 – Father of defendant no.1, represented by defendant no.1 as power of attorney, entered into an agreement to sell with the plaintiffs for Rs.1,50,000/- out of which Rs.1,00,000/- was received on the same day – Plaintiffs continued to have the possession of suit property in part performance of the agreement and stopped paying rent – Defendant no.1 received the balance sale consideration from plaintiff no.2 and undertook to execute the deed of conveyance – Defendant no.1 was postponing to execute the registered sale deed – Suit filed seeking specific performance – Trial court decreed the suit – Affirmed by the High Court – Plea of defendants-appellants that the agreement was with the father of defendant no.1 and not with defendant no.1 who did not execute agreement of his share and thus, the suit could not have been decree in toto – Held: Bare reading of the agreement makes it clear that the "Vendors" was late father of the defendant no.1 and not defendant no.1 – Defendant no.1 acted as power of attorney – Said position may indicate that plaintiffs were misled that only father of defendant no.1 was the exclusive owner of the property – However, the statement of plaintiff no.2 clearly indicates that he was well aware of the fact that the property devolved upon, in equal shares and that it was a joint family property – Ownership of the defendant no.1 was known to the plaintiffs and in spite of that they did not set up the case to bind his share – They did not plead in the plaint that defendant no.1 owned the property – In the plaint, the plaintiffs did not take the plea of estoppel and now the case was set up that property had been sold by defendant no.1 in his capacity – In view of the agreement and the admission made by the plaintiffs, decree passed C D E F G H

A *by the courts below modified to the extent of 50 per cent of the shares of the late father of defendant no.1 and is set aside with respect to the remaining ½ share of the defendant no.1 – Trial court to divide the property in two equal proportions and it be given to the parties – Hindu Succession Act, 1956 – s.15 – Income Tax Act, 1961 – s.230-A.*

B

Disposing of the appeals, the Court

HELD: 1.1 The concurrent findings are recorded as to receipt of consideration and execution of the agreement to sell. There is no doubt about it that Plaintiff No.2 was earlier a counsel C **and legal advisor to father of defendant no.1, but when the agreement had been executed, he was not a lawyer and became a Judge of the High Court. There are concurrent findings recorded concerning the execution of the agreement, and it has been rightly found established that signatures were not obtained on blank papers. There is concurrent finding recorded by the courts below** D **that consideration has been paid. Thus, no case for interference is made out in the aforesaid findings. The courts below have found that correspondence was made by defendants No.1 to obtain Income Tax clearance. The suit has been held not to be barred by limitation. Given the facts and material placed on record, no** E **interference is called for with those findings also. [Paras 16, 17][1076-A-C]**

1.2 A bare reading of the agreement makes it clear that agreement is between late father of defendant no.1 through power of attorney, Defendant No.1. The "Vendors" is mentioned as late F **father of defendant no.1 and not defendant no.1. Thus, it cannot be said that defendant no.1 had executed the agreement on his behalf, concerning his share in the property. There is no whisper about the same in the agreement. The position mentioned above may indicate that plaintiffs were misled by the Power of Attorney holder that only late father of defendant no.1 was the exclusive** G **owner of the property. When the statement of Plaintiff No.2 is considered it clearly indicates that he was well aware of the fact that Princess Leelavathi owned the property and upon her death the property devolved upon, in equal shares and he was aware of the other sale deeds executed (Exhs. P 43, P-44, P-45, P-46). It** H **is clear that plaintiff No.2 was aware as to the extant title of**

defendant no.1 in the property and also the fact that it was a joint family property. In the plaint, the plaintiffs have not taken the plea of estoppel, and now the case was set up that property had been sold by defendant no.1 in his capacity without any such plea in the plaint. Thus, plaintiff No.2 was well aware of the fact as to the title of defendant no.1 in the property and that late father of defendant no.1 did not exclusively own the property. [Paras 20][1079-A-D]

1.3 There was no possibility of erroneous beliefs in the mind of the plaintiffs as to title position in the property. No doubt about it that defendant No.1 acted as a power of attorney, but at the same time, did not act in his capacity as the owner of the property. The ownership of defendant no.1 was known to the plaintiffs. In spite of that the plaintiffs have not set up the case to bind his share. They have not pleaded in the plaint that defendant no.1 owned the property. There is no whisper as to his title in the plaint. They needed to plead the facts to attract the plea of estoppel. That has not been done. Thus, the agreement which had been executed was not concerning share of defendant No.1, but of his late father as his power of attorney. [Paras 22][1081-F-G]

1.4 In view of the agreement and the admission made by the plaintiffs, it is appropriate to modify the decree passed by the courts below to the extent of 50 per cent of the shares of the deceased late father of defendant no.1 and to set it aside with respect to the remaining ½ share of defendant No.1 in the property, since the property devolved under section 15 of the Hindu Succession Act, 1956. The plaintiffs to be entitled only to the extent of ½ share in the suit property. The decree to the remaining extent is set aside. The plaintiffs would not be entitled to refund of any consideration as by now the worth of property has increased manifold. The trial court to divide the property in two equal proportions and it be given to the parties. The division be carried out within four months by the Trial Court. [Paras 23-25][1081-H; 1082-A-C]

R.S. Madanappa (deceased) v. Chandramma & Anr. **AIR 1965 SC 1812 : [1965] SCR 283 – relied on.**

A **Case Law Reference**

[1965] SCR 283	**relied on**	**Para 18**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6049 of 2007.

B From the Judgment and Order dated 13.08.2007 of the High Court of Karnataka at Bangalore in R.F.A. No. 143 of 2000.

With

Civil Appeal No. 6050 of 2007.

C A. K. Ganguli, V. Krishnamurthy, Sr. Advs., T. Harish Kumar, Yuthister Singh, Navneet Dugar, Parijat Sinha, Advs. for the Appellants.

Jaideep Gupta, Sr. Adv., Ms. Anushree Menon, Vikas Mehta, Abhishek, Advs. for the Respondents.

The Judgment of the Court was delivered by

D **ARUN MISHRA, J.**

1. The appeals are preferred against the judgment and order dated 13.8.2007 passed by the High Court, affirming the judgment and order of the trial court decreeing the suit filed by the plaintiff for specific performance of an agreement of sale.

E 2. The plaintiffs filed the suit concerning suit scheduled property inherited by Princess Leelavathi, wife of late K. Basavaraja Urs. She had adopted the defendant No.1 and died during the year 1958-59. The suit scheduled property along with adjoining properties devolved on late K. Basavaraja Urs, father of K.B. Ramachandra Raj Urs, defendant F No.1, in terms of section 15 of the Hindu Succession Act, 1956. The Plaintiff Nos.1 and 2 were the close relatives and friend of the family of late K. Basavaraja Urs and the 2nd plaintiff apart from being a close relative and friend of Defendant No.1, was also a Legal Advisor and Advocate of late K. Basavaraja Urs.

G 3. The property was let out to plaintiff No.2 in the year 1969 by late K. Basavaraja Urs and defendant No.1. Late K. Basavaraja Urs and defendant No.1 sold the adjoining property to various persons vide registered sale deeds. Late K. Basavaraja Urs offered to sell the suit scheduled property to the plaintiffs. On 24.4.1979, late K. Basavaraja Urs, represented by his son, *i.e.*, defendant No.1 as power of attorney, H

entered into an agreement to sell with the plaintiffs for a consideration of Rs.1,50,000/- out of which a sum of Rs.1,00,000/- was received on the same day. The defendant No.1 agreed to obtain a clearance certificate under section 230-A of the Income Tax Act as also under the provisions of the Urban Land Ceiling Act. The plaintiffs continued to have the possession of suit property in part performance of the agreement dated 24.04.1979 and stopped paying rent.

4. The defendant No.1 always ensured the plaintiffs to execute the registered sale deed in terms of suit agreement after obtaining a clearance certificate from the Income Tax Department and under the Urban Land Ceiling Act. On 1.6.1993, defendant No.1 received the balance sale consideration of Rs.50,000/- from 2nd plaintiff and executed a stamped receipt in favour of the plaintiffs with an undertaking to execute the deed of conveyance.

5. The defendant No.1, made the correspondence with the Income Tax Department to obtain the Income Tax clearance. However, the need to seek permission under the Urban Land Ceiling Authority vanished as per the decision of this Court concerning section 27 of the said Act as defendant No.1 was postponing to execute the registered sale deed on one pretext or the other. A legal notice dated 5.6.1990 was served, and after that, the suit had been filed on 19.9.1990 seeking specific performance.

6. Defendant Nos.1, 2, and 4 in their written statements contended that the 2nd plaintiff claimed to be a close relative of late K. Basavaraja Urs. He was his lawyer and self-assumed trustee. He obtained the signatures of defendant no.1 on blank papers, which has been misused by the 2nd plaintiff to create the agreement in question dated 24.4.1979. It was assured that agreement was obtained as a collateral document to secure professional charges, which, according to the plaintiff, remained unpaid.

7. The defendants denied the receipt of the sale consideration on 24.4.1979 and 1.6.1993 and also the subsequent correspondence between plaintiff No.2 and defendant No.1 and his Tax Consultant. The 2nd plaintiff was never permitted to put up construction on the property by the defendant No.1. After the demise of Princess Leelavathi, the suit property devolved on late K. Basavaraja Urs and defendant No.1. The 1st defendant has not conveyed his interest in the suit property in favour of plaintiffs.

A Defendants contended that no agreement was entered into with the plaintiffs. The suit is barred by time.

8. Defendant No.5, in his written statement, took the plea that the property being ancestral could not have been sold by defendant No.1 to the detriment of the 5th defendant. There was no legal necessity to sell
B the property.

9. The trial court decreed the suit and recorded a finding that the agreement has been executed on 24.4.1979. The defendant No.1 has admitted his signatures on the suit agreement dated 24.4.1979 and receipt dated 1.6.1983. Defendant No.1 for himself and as a power of attorney
C holder of late K. Basavaraja Urs, executed the suit agreement and, therefore, he cannot be permitted to contend that he is not a party to the suit agreement in his individual capacity. They were required to obtain an income tax clearance certificate and after that to execute the registered sale deed, in which they have failed. Late K. Basavaraja Urs owned vast landed and house properties at Bangalore and Mysore. They were
D statutorily bound to obtain a clearance certificate from the Income Tax Department, and as they failed to obtain it, they cannot be permitted to contend that suit is barred by limitation. The High Court has affirmed the findings of the trial court.

10. The High Court has disbelieved the case set up by defendant
E No.1 that he had put his signatures on blank paper. Plaintiff No.2 was appointed as Judge of the High Court during September 1978; therefore, on 24.4.1979, there was no fiduciary relationship between them. Plaintiffs have also produced the original stamped receipt dated 1.6.1983 (Exhibit P-19) admitting the receipt of remaining Rs.50,000 by defendants No.1 in which a sum of Rs.42,000 was paid in cash and Rs.8,000 was paid by
F cheque. Defendant No.1 had admitted his signatures on Exh. P-19. Defendant No.1 also admitted that he had encashed the cheque. The plea of the 1st defendant is false and thus cannot be accepted. The High Court has also referred to the order passed by the Income Tax Appellate Tribunal wherein the claim of 2nd plaintiff for exemption of Rs.50,000
G under the Income Tax Act, paid to 1st defendant towards the remaining sale consideration was allowed in terms of section 54(F) of Income Tax Act.

11. The High Court has further found that the defendant has taken an inconsistent and contrary stand. The defendant was visiting 2nd plaintiff all along insisting on obtaining Income Tax Clearance Certificate, which
H

was postponed by the defendant No.1 on one pretext or the other. The consideration has been paid under the agreement dated 24.4.1979.

12. The High Court has found that defendant No.1 has executed the agreement not only as power of attorney for his father but also as a son of late K. Basavaraja Urs. The stand of defendant No.1 is inconsistent. Defendant No.1, allowed the plaintiffs to put up the construction in the suit property. Thus, he was precluded from contending that he was not a party to the agreement. The High Court has also held that defendant No.1 has entered into the agreement and the entire consideration has been received, it is not considered appropriate to grant the liquidated damage or penalty for the breach of contract. The High Court has also held that the property was held by Princess Leelavathi, wife of late K. Basavaraja Urs, and after her death, the suit property devolved on late K. Basavaraj Urs and defendant No.1 under section 15 of Hindu Succession Act, 1956.

13. It was submitted by the learned counsel appearing on behalf of the appellants that plaintiff No.2, M.P. Chandrakanta Raj Urs, was elevated as Judge of the High Court. Earlier, he was the Legal Advisor of the late K. Basavaraja Urs. Thus, he could not have purchased the property. The agreement was not duly executed, and the suit was barred by limitation. The findings have been recorded that property was inherited by K.B. Ram Chandra Raj Urs, *i.e.*, defendant No. 1 from Princess Leelavathi. The agreement was with late K. Basavaraja Urs and not with defendant No.1. Defendant No.1 did not execute agreement of his share. The Courts below erred in decreeing the suit in toto. The suit could have been decreed to the extent of the shares of the late K. Basavaraja Urs.

14. Learned senior counsel appearing on behalf of the respondents has supported the judgment and decree passed by the courts below. It is further submitted that no case for interference is made out in the appeals given the concurrent findings of facts recorded by the courts below. The appeals deserve to be dismissed.

15. We deem it appropriate to place on record that learned counsel for the parties had taken time to file the compromise, if reached. We have been informed that no compromise could be arrived at between the parties. Be that as it may. We proceed to decide the appeals on merits.

A 16. The concurrent findings are recorded as to receipt of consideration and execution of the agreement to sell. There is no doubt about it that M.P. Chandrakanta Raj Urs (Plaintiff No.2) was earlier a counsel and legal advisor to K. Basavaraja Urs, but when the agreement had been executed, he was not a lawyer and became a Judge of the
B High Court. There are concurrent findings recorded concerning the execution of the agreement, and it has been rightly found established that signatures were not obtained on blank papers. There is concurrent finding recorded by the courts below that consideration has been paid. Thus, no case for interference is made out in the aforesaid findings.

C 17. The courts below have found that correspondence was made by defendants No.1 to obtain Income Tax clearance. The suit has been held not to be barred by limitation. Given the facts and material placed on record, no interference is called for with those findings also.

D 18. Learned senior counsel submitted that agreement to sell dated 24.4.1979 was between "late K. Basavaraja Urs and "Smt. Sarah C. Urs', wife of M.P. Chandrakantaraj Urs and P. Chandrakantaraj Urs, son of Late R. Putturaj Urs". There was no dispute concerning ½ share of K.B. Ram Chandra Raj Urs, which he had inherited from Princess Leelavathi. Thus, the suit could not have been decreed in toto; it could have been decreed only to the extent of the share of late K. Basavaraja
E Urs in the property. In support of his contention, he has relied upon the decision of this Court in *R.S. Madanappa (deceased) v. Chandramma & Anr.*, AIR 1965 SC 1812.

19. The statement of plaintiff No. 2 has been pointed out, indicating that he was aware that there were equal shares of K. Basavaraja Urs
F and K. B. Ramchandra Raj Urs (defendant No.1) in the property. Thus, plaintiff No.2 cannot plead that they were induced by erroneous belief while entering into agreement, by the conduct of defendant No.1. The plea of estoppel is, thus, not attracted. There is no proper foundation in the pleading regarding the plea of estoppel. The submission raised by learned counsel on behalf of respondent is that defendant No.1 acted as
G power of attorney holder of his father and received the sale consideration also. As such he is bound by the plea of estoppel to contend to the contrary.

20. It is necessary to consider the agreement. The agreement is extracted hereunder:

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"THIS AGREEMENT TO SELL is made on 24th day of April 1979 BETWEEN SRI K. BASAVARAJ URS, son of Late Sri Muddaraj Urs, aged about 84 years, residing at 1-A (old No.5), Palace Road, Bangalore – 560 001 (hereinafter referred to as the "VENDOR" which expression shall unless the context otherwise required include the heirs, assigns, administrators, successors and legal representatives of the VENDOR) of the one part AND SMT. SARAH C. URS, the wife of Sri M.P. Chandrakantaraj Urs and SRI P CHANDRAKANTARAJ URS, son of late Sri R Putturaj Urs, residing at 1B Palace Road, Bangalore – 560001, (hereinafter called the "PURCHASERS" which expression shall unless the context otherwise requires to include their heirs, assigns, administrators, successors and legal representatives of the other part.

WHEREAS the VENDOR is the absolute owner of the property at 1B, Palace Road, Bangalore – 560001, an whereas the VENDOR is desirous of disposing of the said house together with the plot of land, fixtures, fittings, etc. of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) and the PURCHASERS are agreeable to buy the same at the said price.

NOW THEREFORE, THIS DEED/ WITNESSETH AS FOLLOWS:

(1) That the VENDOR shall free from encumbrances the said property situated at q-B Palace Road, Bangalore – 560 001, and the PURCHASER shall buy the same at the said prices and on the conditions hereinafter mentioned;

(2) That the said property consists of a single-storeyed house with the following boundaries:-

On the EAST: No.1-C

On the WEST: Vacant land of VENDOR

On the NORTH: Storm Drain

On the SOUTH: By Common Road

(3) That the consideration of the house shall be payable as follows:-

A A sum of Rs.1,00,000/- (Rupees One Lakh Only) paid on the date of this agreement and the balance of Rs.5,40,000/- (Rupees Fifty Thousand only payable on or before 23.4.1984.

(4) The VENDOR has delivered possession of the house, which is the subject matter of this agreement to the PURCHASERS on this day.

B

(5) This agreement shall subject to permission, express or implied, being granted under the Urban Land (Ceiling and Regulation) Act. In the event such permission is not granted, the advance of Rs.1,00,000/- (Rupees One Lakh only) paid shall be refunded to the PURCHASERS by the VENDOR:

C

(6) That in the event of the sale not materializing through the default of the VENDOR, the amount of Rs.1,00,000/- (Rupees One Lakh Only) shall be refunded to the PURCHASERS with interest at 10 percent per annum from the date hereof to the date of refund;

D

(7) That in the event of the sale not materializing through the default of the PURCHASERS, 10 percent of the consideration money shall be forfeited as earnest money and the balance refunded by the VENDOR to the PURCHASERS out of the advance of Rs.1,00,000/- (Rupees One lakh only) received by the former;

E

(8) VENDOR or his Power of Attorney shall cause all licences etc., to be sanctioned for any additions or alterations to be made to the premise before the actual transfer of title in terms of this agreement.

F

IN WITNESS where of the parties have set their hands the day and the year first above mentioned.

Sd/-
SELLER

G

WITNESSES:

1. Sd/-
2. Sd/-

PURCHASERS"

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A bare reading of the agreement described above makes it clear that agreement is between late K. Basavaraja Urs through power of attorney, K.B. Ramchandra Raj Urs. The "Vendors" is mentioned as K. Basavaraja Urs and not K.B. Ramchandra Raj Urs. Thus, it cannot be said that K.B. Ramchandra Raj Urs had executed the agreement on his behalf, concerning his share in the property. There is no whisper about the same in the agreement. The position mentioned above may indicate that plaintiffs were misled by the Power of Attorney holder that only late K. Basavaraja Urs was the exclusive owner of the property. When we consider the statement of M.P Chandrakanta Raj Urs (Plaintiff No.2), it clearly indicates that he was well aware of the fact that Princess Leelavathi owned the property and upon her death the property devolved upon, in equal shares and he was aware of the other sale deeds executed (Exhs. P 43, P-44, P-45, P-46). It is clear that plaintiff No.2 was aware as to the extant title of K.B. Ram Chandra Raj Urs in the property and also the fact that it was a joint family property. In the plaint, the plaintiffs have not taken the plea of estoppel, and now the case was set up that property had been sold by defendant No.1 in his capacity without any such plea in the plaint. Thus, plaintiff No.2 was well aware of the fact as to the title of K.B. Ramchandra Raj Urs in the property and that late K. Basavaraja Urs did not exclusively own the property.

21. The plea of estoppel in view the decision of this court in *R.S. Madanappa (deceased) v. Chandramma & Anr.*, (supra) is not attracted, in which the Court has held that estoppel by conduct could not arise when a person concerned knew the right position relating to the title in property in his possession, he could not plead that he was induced to hold an erroneous belief because of the conduct of real owner of that property. This court has observed thus:

> "6. We will consider the question of estoppel first. The conduct of the first defendant from which the learned counsel wants us to draw the inference of estoppel consists of her attitude when she was served with a notice by the plaintiff, her general attitude respecting Bangalore properties as expressed in the letter dated 17th January 1941, written by her to her stepmother and the attestation by her and her husband on 3rd October 1944, of the will executed on 25th January 1941 by Maddanappa. In the notice dated 26th January 1948, by the plaintiff's lawyer to the first defendant it was stated that the plaintiff and the first defendant

A were joint owners of the suit properties which were in possession of their father and requested for the cooperation of the first defendant in order to effect the division of the properties. A copy of this notice was sent to Maddanappa, and he sent a reply to it to the plaintiff's lawyers. The first defendant, however, sent no reply at all. We find it difficult to construe the conduct of the first defendant in not replying to the notice and is not cooperating with the plaintiff in instituting a suit for obtaining possession of the properties as justifying the inference of estoppel. It does not mean that she impliedly admitted that she had no interest in the properties. It is true that in Ex. 15, which is a letter sent by her on 17th C January 1941, to her stepmother she has observed thus:

> "I have no desire whatsoever in respect of the properties which are at Bangalore. Everything belongs to my father. He has the sole authority to do anything…. We give our consent to anything done by our father. We will not do D anything."

But even these statements cannot assist the appellants because admittedly, the father knew the true legal position. That is to say; the father knew that these properties belonged to Puttananjamma and that he had no authority to deal with these properties. No E doubt, in his written statement, Maddanappa had set up a case that the properties belonged to him by virtue of the declaration made by Puttananjamma at the time of her death, but that case has been negatived by the courts below. The father's possession must, therefore, be deemed to have been, to his knowledge, on behalf of the plaintiff and the first defendant. There was thus no F possibility of an erroneous belief about his title being created in the mind of Maddanappa because of what the first defendant had said in her letter to her stepmother.

7. Insofar as the attestation of the will is concerned, the appellants' G position is no better. This "will" purports to make a disposition of the suit properties along with other properties by Maddanappa in favour of Defendants 3 to 8. The attestation of the will by the first defendant and her husband, would no doubt affix them with the knowledge of what Maddanappa was doing, but it cannot operate as estoppel against them and in favour of Defendants 3 to 8 or H even in favour of Maddanappa. The will could take effect only

upon the death of Maddanappa and, therefore, no interest in the property had at all accrued to Defendants 3 to 8, even on the date of the suit. So far as Maddanappa is concerned, he, as already stated, knew the true position and, therefore, could not say that an erroneous belief about his title to the properties was created in his mind by reason of the conduct of the first defendant and her husband in attesting the document. Apart from that, there is nothing on the record to show that by reason of the conduct of the first defendant Maddanappa altered his position to his disadvantage.

8. Mr. Venkatarangaiengar, however, says that subsequent to the execution of the will, he had effected further improvements in the properties and for this purpose, spent his own moneys. According to him, he would not have done so in the absence of assurance like the one given by the first defendant and her husband to the effect that they had no objection to the disposition of the suit properties by him in any way he chose to make it. The short answer to this is that Maddanappa, on his own allegations, was not only in possession and enjoyment of these properties ever since the death of Putananjamma but had made improvements in the properties even before the execution of the will. In these circumstances, it is clear that the provisions of Section 115 of the Indian Evidence Act, which contain the law of estoppel by representation, do not help him."

22. Thus, it is clear that there was no possibility of erroneous beliefs in the mind of the plaintiffs as to title position in the property. No doubt about it that defendant No.1 has acted as a power of attorney, but at the same time, did not act in his capacity as the owner of the property. The ownership of K.B. Ramchandra Raj Urs was known to the plaintiffs. In spite of that the plaintiffs have not set up the case to bind the share of K.B. Ramchandra Raj Urs. They have not pleaded in the plaint that K.B Ramchandra Raj Urs owned the property. There is no whisper as to the title of K.B. Ramchandra Raj Urs in the plaint. They needed to plead the facts to attract the plea of estoppel. That has not been done. Thus, the agreement which had been executed was not concerning share of defendant No.1, but of late K. Basavaraja Urs as his power of attorney.

23. In view of the agreement and the admission made by the plaintiffs, we are of the opinion that it would be appropriate to modify the decree passed by the courts below to the extent of 50 per cent of the

A shares of the deceased late K. Basavaraja Urs and to set it aside with respect to the remaining ½ share of K.B. Ramchandra Raj Urs (defendant No.1) in the property, since the property devolved under section 15 of the Hindu Succession Act.

24. Thus, we hold that the plaintiffs to be entitled only to the extent
B of ½ share in the suit property. The decree to the remaining extent is set aside. The plaintiffs would not be entitled to refund of any consideration as by now the worth of property has increased manifold.

25. We direct the trial court to divide the property in two equal proportions and it be given to the parties. Let the division be carried out within four months by the Trial Court. The appeals are allowed to the extent mentioned above. No costs.

Divya Pandey Appeals disposed of.