

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR FIRST APPEAL NO.2523/2007 (PAR)

BETWEEN:

SMT. JAYALAKSHMAMMA
W/O RATNAIAH
AGED ABOUT 58 YEARS
R/AT HASSAN
OPP. TO PRITHVI THEATRE
M.B.ROAD, HASSAN.

... APPELLANT

(BY SRI. NAGARAJ DAMODAR, ADVOCATE)

AND:

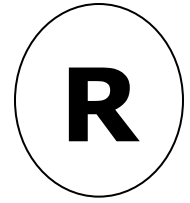
1. ANJINAPPA
S/O SUBBARAYAPPA
SINCE DECEASED BY HIS LRS

1(a) JAYAMMA
W/O LATE ANJANAPPA
SINCE DECEASED BY HIS LRS

1(b) MANJUNATH
S/O LATE ANJANAPPA
AGED ABOUT 36 YEARS

1(c) KUMAR,
S/O LATE ANJANAPPA
AGED ABOUT 34 YEARS,

BOTH 1(b) AND (c)
RESIDING AT OLD NO.1726/1,



BEHIND AYYAPPA SWAMY TEMPLE
YELAHANKA 3RD DIVISION,
YELAHANKA, BENGALURU – 560 064.

2. SMT. ANJANAMMA
W/O RAJAPPA
AGED ABOUT 58 YEARS
RESIDING AT SANTHEPETE CIRCLE
BEHIND AIYAPPASWAMY TEMPLE
YELAHANKA, BENGALURU-560 064.

(AMENDED VIDE ORDER DATED 10.03.2025)

... RESPONDENTS

(BY SRI. PRAKASH M.H., ADVOCATE FOR R1(b & c);
SRI. SUMAN M., ADVOCATE FOR R2;
R1(b & c) ARE LRS OF DECEASED R1(a)
VIDE ORDER DATED 13.06.2023)

THIS R.F.A. IS FILED UNDER ORDER XLI R 1 R/W SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 22.9.2007 PASSED IN O.S.NO.6014/97 ON THE FILE OF THE I ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-2), DISMISSING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07.04.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

1. This regular first appeal is filed by plaintiff No.1 challenging the judgment and decree dated 22.09.2007 passed in O.S.No.6014/1997 by the I Additional City Civil and Sessions Judge, Bangalore City.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of plaintiff Nos.1 and 2 before the Trial Court that Smt. Ammayamma is the absolute owner and in possession and enjoyment of the suit schedule property which is morefully described in the plaint schedule. The said property is the joint family property of the plaintiffs and defendant since the said Ammayamma is the mother of plaintiffs and defendant. It is contended that the said Ammayamma lost her husband and she used to maintain her family by selling vegetable and she had purchased a property at Yelahanka and the said property was acquired for the purpose of construction of a hospital and in lieu of the said acquisition, she had given the present suit schedule property which is morefully described in the suit schedule. The suit schedule property measures 40 x 60 feet and she had put up three portions in the suit schedule property. The said Ammayamma died on 06.09.1991 leaving behind plaintiff Nos.1 and 2 and the defendant as her legal heirs. It is also the case of the plaintiffs that Ammayamma had executed a Will bequeathing the portion

of the suit schedule property measuring 20 x 18 feet AC sheet house in favour of the daughter of plaintiff No.1 namely Kum.Maheshwari and remaining two portions were bequeathed in favour of the defendant. But the plaintiffs are also the legal heirs of said Ammayamma. After the death of Ammayamma, the defendant is not ready to allot the shares of the plaintiffs in the suit schedule property. Moreover, he has taken the portion of the suit schedule property which is bequeathed in favour of the daughter of plaintiff No.1 by giving the said portion on rental basis and receiving a total rent of Rs.3,60,000/- from the year 1992. Hence, the plaintiffs are constrained to file the present suit for the relief of partition and separate possession claiming $1/3^{\text{rd}}$ share each in the suit schedule property.

4. The defendant appeared and filed the written statement denying the relationship between himself and the plaintiffs. It is contended that his mother's name is Ammayamma but she is different from the mother of the plaintiffs because the father of the defendant is one Ramaiah and not Subbarayappa as contended by the plaintiffs. It is contended that Ammayamma's husband name is Ramaiah. In the said wedlock, the defendant and one Smt. Vasanthi were

born to his parents i.e., Ammayamma and Ramaiah and hence, denied the total case of the plaintiffs. The said Vasanthi died and thus, the defendant is the only legal heir of said Ammayamma and Ramaiah. But he admitted that the suit schedule property is purchased by his mother Ammayamma w/o Ramaiah and not by Ammayamma W/o Subbarayappa. The very claim of the plaintiffs that plaintiffs and defendant are the children of Ammayamma and Subbarayappa and same has been denied by the defendant. It is also denied that Ammayamma had executed a Will and bequeathed a portion of the suit schedule property in favour of the daughter of plaintiff No.1 namely Kum. Maheshwari. The other contention that two portions of the suit schedule property bequeathed in favour of the defendant is also denied and prayed the Court to dismiss the suit. During the pendency of the suit, the sole defendant passed away and his legal representatives were brought on record and defendant No.1(a) has also filed the written statement and the said the written statement is in consonance with the written statement filed by her husband i.e., the deceased defendant.

5. The Trial Court having taken note of the pleadings of the parties, framed the following Issues:

- 1) Whether the plaintiffs prove that the suit schedule property is a joint family property?
- 2) Whether the plaintiffs further prove the deceased Ammayamma is their mother?
- 3) Whether the plaintiffs further prove that the deceased Ammayamma had executed a Will in respect of the portion of suit schedule property in favour of the plaintiff's daughter Maheswari on 27.06.1986?
- 4) Whether the defendant proves that the deceased Anjinappa is the son of late Ammayamma W/o late Ramaiah and not related to the plaintiffs?
- 5) Whether the defendant proves that the suit schedule property is not the joint family property?
- 6) Whether the plaintiffs prove that they were for the relief of partition and separate possession and $\frac{1}{3}^{\text{rd}}$ share each?
- 7) To what order or decree?

6. The Trial Court after considering the pleadings of the parties, allowed them to lead their evidence. In order to prove the case of the plaintiffs, examined five witnesses as PW1 to PW5 and got marked the documents at Ex.P1 to P4. On the

other hand, four witnesses have been examined on behalf of the defendant and got marked the documents at Ex.D1 to D28. The Trial Court having appreciated both oral and documentary evidence placed on record answered Issue No.1 as negative in coming to the conclusion that the suit schedule property is not a joint family property as contended by the plaintiffs however, answered Issue No.2 as affirmative in coming to the conclusion that the plaintiffs prove that the deceased Ammayamma is their mother and Issue No.3 answered as does not survive for consideration that is execution of the Will in favour of the daughter of plaintiff No.1-Maheshwari on 27.06.1986 and the same has not been proved. The Trial Court having assessed the evidence on record comes to the conclusion that the defendant proves that the deceased Anjinappa is the son of late Ammayamma W/o late Ramaiah and not related to the plaintiffs and hence, answered Issue No.4 as affirmative and also comes to the conclusion that the suit schedule property is not the joint family property and answered Issue Nos.5 and 6 as negative in coming to the conclusion that the plaintiffs are not entitled for the relief of partition as claimed and dismissed the suit. Being aggrieved by the judgment and decree of the Trial Court, the

present regular first appeal is filed before this Court by plaintiff No.1.

7. The learned counsel appearing for the appellant/plaintiff No.1 would vehemently contend that the Trial Court committed an error in dismissing the suit. Plaintiff No.2 has not been arrayed as appellant but arrayed as respondent No.2 in this appeal. It is contended that the Trial Court has erroneously appreciated that the defendant is the son of one Ramaiah without any proper evidence on question and finding is contrary to the material available on record. It is also contend that the Trial Court erroneously comes to the conclusion that that Ramaiah is the husband of the deceased Ammayamma without proper evidence on record to show that there is a valid marriage, muchless the marriage between the deceased Ammayamma and Ramaiah. No marriage certificate or invitation card or any photo or any other incident or circumstances is produced showing that there is a marriage between Ramaiah and said Ammayamma. It is also contend that the evidence adduced by respondent No.1 does not show that Anjanappa is the son of Ammayamma through Ramaiah. Mere production of school certificate is not the proof regarding

parentage of respondent No.1 that he is the son of Ramaiah through Ammayamma. The school certificate produced by respondent No.1 is not the foolproof to show that respondent No.1 is the son of Ramaiah through Ammayamma. The documents which have been produced by respondent No.1 cannot be made use of the same for the purpose of establishing the relationship or parentage of the parties and the Trial Court wrongly relied upon those documents.

8. The counsel for the appellant also would vehemently contend that the Trial Court has failed to appreciate the documents at Ex.D1 and D2 which do not prove the relationship and the documents at Ex.D1 to D5 are the death certificates issued by the Government Municipal Council, Yelahanka, Bangalore and those documents do not disclose that the deceased Ammayamma is the wife of Ramaiah and these certificates are issued by the authorities only on the statement made by the interested persons at the time of obtaining the documents and hence, ought not to have relied upon those documents to establish the relationship between the parties. The Trial Court also utterly failed to consider Ex.D6 which is katha extra in favour of the suit schedule property wherein the

name of deceased respondent No.1 is appearing as Anjinappa son of Ammayamma but Ex.D6 does not disclose that Anjinappa is the son of Ramaiah. This clearly shows that Ramaiah is never the husband of said Ammayamma and the property had never devolved upon Ramaiah though Ramaiah is alive after the death of Ammayamma. The Trial Court has failed to appreciate the document at Ex.D8 which is an electoral card in which the name of Ramaiah is entered but the said Ramaiah is not described as husband of Ammayamma whereas the Trial Court has utterly and wrongly appreciated the documents at Ex.D2 to D8 in coming to the conclusion that the said documents prove the parentage of respondent No.1 as the Ramaiah is the father of respondent No.1. Ex.D8 is a letter issued by the Nagara Sabha, Yelahanka and in that letter, respondent No.1's name is mentioned as Anjinappa son of Ramaiah and not mentioned that Ammayamma is the wife of Ramaiah and this document is also does not disclose that respondent No.1 is the son of Ramaiah or Ammayamma is the wife of Ramaiah. The Trial Court had entirely misapplied the law and comes to a wrong conclusion.

9. The learned counsel also would vehemently contend that the Trial Court has failed to appreciate the documents at Ex.D11 to D22 which are the tax paid receipts. Even though in those receipts, respondent No.1-Anjinappa is described as son of Ammayamma but never disclosed that Anjinappa is the son of Ramaiah and the Trial Court had confused the entire issue and comes to the conclusion that the tax paid receipts are the documents of title and ownership since tax can be paid by any person on behalf of the family property or a person who is in possession of the property. The Trial Court has failed to appreciate Ex.D11 to D22 which have been obtained by respondent No.1 during pendency of the suit into his name and later into the name of respondent No.1(a) by illegal and hence, the Trial Court ought not to have relied upon those documents. The Trial Court had failed to appreciate in considering the letter issued by the Electricity Service company wherein the letter addressed as Amt. Ammayamma W/o Ramaiah and the letter was issued on 10.10.2006 whereas the electricity installation was done in the year 1982 i.e., during the lifetime of Ammayamma and the Trial Court erred in coming to the conclusion that Ex.D23 is also helpful to the case of respondent

No.1 to demonstrate that Ramaiah is the husband of Ammayamma. The document at Ex.D23 is a fabricated document which is created for the purpose of the case hence, the Trial Court failed to take note of the fact that the electricity was installed in the year 1982 itself. It is contended that there was no occasion to issue a letter dated 10.10.2006. Though, respondent No.1 has relied upon the documents, none of the witnesses have been examined to prove the said documents.

10. It is contend that the Trial Court failed to appreciate Ex.D24 to D27 in considering them as the conclusive proof to establish the parentage and relationship of the parties and these documents though says that Anjinappa is the son of Ramaiah but those documents does not disclose that Ramaiah is the husband of said Ammayamma. The very approach of the Trial Court is erroneous and failed to consider the evidence of witnesses who have been examined in support of the case of the plaintiffs and the witness have categorically deposed before the Court that all of them have been residing together. Even examined the vendor of the said Ammayamma wherein she categorically deposed that the plaintiffs and the defendant are the children of Ammayamma wife of Subbarayappa. The evidence of PW3 and

PW4 is very clear with regard to parentage of the plaintiffs and the defendant that they are the legal heirs of Ammayamma W/o Subbarayappa. It is also contended that the Trial Court failed to appreciate and consider the most vital and important evidence of Ex.P2 and P3 and these documents are basic documents to establish that the suit schedule property is the self-acquired property of the deceased Ammayamma which had purchased by one N Keerthi and the said Keerthi is also examined as PW4 and PW4 deposed that the deceased Ammayamma is the wife of Subbarayappa and respondents and appellant are the daughters and son of deceased Ammayamma. This evidence of PW4 is most important and vital evidence to answer the issue of relationship and also conclusively prove the relationship of the parties *inter se*.

11. The counsel also would vehemently contend that Section 50 of the Evidence Act very clear that if any evidence is adduced and the same is conclusive proof and the witness is having a special knowledge regarding the fact of proving relationship between the parties as he is the vendor of the suit schedule property who is having thorough knowledge regarding the status of the purchaser of the property and this transaction

took place twice with PW4. The said evidence has not been considered by the Trial Court and erroneously jumped to the wrong conclusion that there is no documentary evidence inspite of documents at Ex.P2 and P3 which corroborates the evidence of PW4. The Trial Court committed an error in relying upon only the documents which have been produced by the defendant. The Trial Court utterly neglected in considering the vital piece of evidence of PW5 and this witness is the daughter of one Nagappa who is the brother of deceased Ammayamma. The said witness admitted the relationship of Nagappa with Ammayamma and categorically deposed that she is the sister of Nagappa and both of them are children of Bedhi Yenni Chowdappa and the same has been admitted by respondent No.1(a) in her evidence and this PW5 had deposed that Ammayamma is the wife of Subbarayappa and that the appellant and the respondents are the daughters and son of the said Ammayamma and Subbarayappa. The Trial Court failed to take note of evidence of PW5 which is most relevant for the purpose of establishing the relationship and fails to invoke Section 50 of the Evidence Act. The Trial Court also failed to consider the evidence of PW1 to PW3 wherein PW1 is the

landlord of the school premises who let out the same to the deceased Ammayamma and Subbarayappa and they were residing there as husband and wife and the appellant and the respondents as their children. The evidence of PW1 has not been much disputed, nothing contrary is elicited in the cross-examination. The Trial Court also failed to appreciate the evidence of PW2 and PW3 who are the neighbourers residing in the adjoining premises of the deceased Ammayamma and Subbarayappa with the same landlord i.e., PW1 and their evidence is also most relevant under Section 50 of the Evidence Act. The Trial Court committed an error in not relying upon the evidence of these witnesses.

12. The learned counsel also in his arguments would vehemently contend that he had also filed an application under Order VI Rule 17 of CPC before this Court contending that Will had executed by the deceased Ammayamma in favour of the daughter of plaintiff No.1 and defendant is not acted upon and therefore, the said Will is not binding on the parties and the suit schedule property is available for partition among the plaintiffs. The counsel also brought to notice of this Court wherein this Court held that this application will be considered along with

main appeal. The counsel also brought to notice of this Court the application filed under Order 26 Rule 10(A) read with Section 151 of CPC which is filed praying this Court to direct respondent Nos.1(b) Manjunatha that is the son of late Anjanappa and respondent No.2 to submit their blood samples for conducting an Avuncular DNA profiling with that of appellant in the collection centre of DNA Forensics Laboratory Private Limited at Advanced Gen Care, No.2848, 2nd Floor, Lakshmi Saloon, MKK Road, Near Metro Pillar No.218, Rajajinagar, Bengaluru on the date specified by this Court. The counsel would contend that if DNA test is conducted, it will help the Court to come to a right decision and the counsel would vehemently contend that if the DNA test is negative, the appellant/plaintiff No.1 is out of the Court and the same has to be considered and pass an appropriate order and this Court earlier held that I.A. will be considered along with main appeal.

13. Per contra, the learned counsel appearing for the respondents would vehemently contend that the plaintiff has propounded the Will and the same has not been proved and now an application is filed under Order VI Rule 17 of CPC and separate objection is filed contending that the Will is an

unregistered document and same is marked as Ex.P4. The counsel contend that the Will is not proved under Sections 63 and 68 of the Evidence Act and also under Succession Act respectively. The relationship is denied. The defendant specifically claims that his father is Ramaiah and though admits that mother is Ammayamma but the mother of the defendant is different from mother of plaintiff Nos.1 and 2 as claimed. The counsel would vehemently contend that when the witnesses have been examined on behalf of the plaintiffs wherein they categorically admits that Vasanthi is no more who claims to be the sister of the defendant. The counsel would vehemently contend that defendant has produced genealogical tree and Vasanthi who is sister of defendant also passed away and her death certificate is also produced. Death certificate of grandfather is also produced and death certificate of defendant also produced and property extracts at Ex.D6 and D7 are also produced and Ex.D8 is the electoral card and Ex.D10 is the intimation letter of the year 1996-97. Ex.D24 is the vital document i.e., transfer certificate in which the father name is mentioned as Ramaiah and in the marks card also father name is mentioned as Ramaiah and all these documents are even prior to

the suit and the Trial Court meticulously examined those documents and rightly comes to the conclusion that the defendant has proved that his father is Ramaiah and not the Subbarayappa as contended by the plaintiffs. The counsel would vehemently contend that there is an inconsistency in the case of the plaintiffs and evidence is also against the pleading and though contend that the plaintiff has contributed for purchase, nothing is placed on record.

14. The counsel also would vehemently contend that IA filed for amendment wherein there is an inconsistent plea and specifically pleaded for the relief of partition and contend that the suit property is a joint family property and they are the legatees under the Will and the plaintiff utterly failed to prove the relationship between the defendant along with their father and having suffered the set back in the suit, now the appellant is trying to rebuild the case by disowning her plea on the pretext that the alleged Will is not acted upon and contend that very character of the said suit will be changed if the application is allowed and said application is filed to overcome the admission made before the Trial Court and the Trial Court has opined that unless the plaintiffs sought for the cancellation of the Will alleged

to have been executed by the deceased Ammayamma, the plaintiffs have no locus standi to claim that the suit schedule property is subjected for partition and hence, prayed the Court to dismiss the application.

15. The counsel also brought to notice of this Court separate objection statement filed with regard to seeking for DNA test. The counsel would vehemently contend that the relationship contended by them was flatly denied and disputed by the father of these respondents and these respondents have produced sufficient material to make out their case and contend that categorical finding was given by the Trial Court that father of the said respondent is late Ramaiah and Ammayamma and the Trial Court has opined that the plaintiffs failed to prove that the children of Ammayamma and Subbarayappa and in fact the very identity of Ammayamma between two persons itself was the key factor which was highlighted by the Trial Court in its judgment. Even after categorical finding given by the Trial Court that the appellant failed to establish the relationship with the father of this respondent, an application is filed belatedly even though appeal was filed in the year 2007. The very filing of application is probalised without any basis and prima facie

material are placed before the Trial Court that there is no relationship between the plaintiffs and defendant and passing an order for scientific investigation would leads to serious consequences so far as the paternity of an individual. Unless a substantial case is made out, an application in this manner would not lie before the Court of law and cannot seek for DNA Test.

16. The counsel also in support of his arguments relied upon the judgment reported in **(2022) 1 SCC 20** in the case of **ASHOK KUMAR vs RAJ GUPTA AND OTHERS** and mainly contend that presumption as to legitimacy of child, rebuttal of higher standard of proof required for, presumption in law of legitimacy of a child cannot be lightly repelled. The said presumption can only be displaced by strong preponderance of evidence, and not merely by balance of probabilities. Burden of proof is on litigant to establish their case based on evidence they choose to adduce or not, with the attendant risk of adverse inference being drawn on refusal to adduce any particular evidence. It is the burden on a litigant party to prove his case adducing evidence in support of his plea and Court cannot compel the party to prove his case in the manner suggested by

the contesting party, except as may be permitted by law. The counsel also brought to notice of this Court the detailed discussion made in paragraphs 8, 9, 10, 12 of the judgment and so also 14 to 16.

17. The counsel also in support of his arguments relied upon the judgment reported in **AIRONLINE 2023 SC 214** in the case of **APARNA AJINKA FIRODIA vs AJINKYA ARUN FIRODIA** and referring this judgment the counsel would vehemently contend that the Apex Court in detail discussed with regard to the scope of DNA test. The law does not contemplate use of DNA tests as exploratory or investigatory experiments for determining paternity. There was insufficient material to dislodge presumption under Section 112. The issue of paternity of child was alien to the issue of adultery on the part of the wife. Section 114(h) of the Evidence Act would not apply.

18. The learned counsel for the respondent would contend that the judgment of this Court is distinguished in the judgments referred by the learned counsel for the appellant. The learned counsel contend that 'paternity' and 'legitimacy' is different and distinct aspect. The learned counsel contend that

the records discloses that the father name is Ramaiah and the same was proved and the Trial Court also in detail discussed the same and the plaintiff/appellant only relies upon the oral evidence of P.W.1 to P.W.5. The learned counsel contend that no roving enquiry is permitted. The learned counsel contend that there is no need of considering of the applications filed by the appellant and the admission cannot be over come by filing an application for amendment. The learned counsel contend that on merits and also on technicality, no grounds are made out for amendment as well as for DNA test.

19. The learned counsel in support of his arguments relied upon the recent judgment of the Apex Court in the case of **IVAN RATHINAM v. MILAN JOSEPH** reported in **2025 0 Supreme (SC) 231** and brought to the notice of this Court, the discussion made in paragraph Nos.7 to 9 displacing the presumption of legitimacy and permitting a DNA test, wherein an observation is made that only when non-access is made out, the Court may order a DNA test. An order for a DNA test, therefore, must be resorted to sparingly. Having considered both the side arguments comes to the conclusion that this issue hinges on two primary prongs requiring detailed analysis: (i) the difference

between legitimacy and paternity, and consequently, the circumstances under which the presumption of legitimacy is displaced to permit an enquiry into paternity; and (ii) the exercise of 'balancing of interests' and evaluating the imminent need for a DNA test. The learned counsel also brought to the notice of this Court paragraph Nos.10 and 11, wherein an observation is made that scientifically and technically, a legitimate child, i.e., one born during the subsistence of a valid marriage between two persons, may not always be the biological child of the persons in the marriage. In our view, it would be possible and easy to contemplate such a situation arising, which leads us to the postulation that in a more technical sense, the terms 'legitimacy' and 'paternity' may indeed undertake different meanings.

20. The learned counsel also brought to the notice of this Court paragraph No.28, wherein discussion was made that the language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. The learned counsel also brought to the notice of this Court the discussion made in paragraph No.30 that it is only when such an

assertion is made, that the Court can consider the question of ordering a DNA test to establish paternity. The Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman and no one can be compelled to give sample of blood for analysis and held that these parameters have been subsequently followed by this Court in *Sharda v. Dharmpal and Bhabani Prasad Jena v. Orissa State Commission for Women*. In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the Court to arrive at a decision.

21. The learned counsel also brought to the notice of this Court the discussion made in paragraph No.46 that when dealing with the eminent need for a DNA test to prove paternity, this Court balances the interests of those involved and must consider whether it is possible to reach the truth without the use of such a test. In paragraph No.47, it is observed that first and foremost, the Courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the

Court consider ordering a DNA test. Once the insufficiency of evidence is established, the Court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.

22. The learned counsel referring this judgment would contend that there is no any need of ordering for a DNA test since it is not the question of insufficient evidence and the materials are placed before the Court to establish that the father and the mother are different from the case contended by the plaintiff.

23. In reply to the arguments of the counsel for the respondents, the learned counsel for the appellant relied upon the judgment of this Court in **W.P.No.112825/2019** dated **27.09.2024** and brought to notice of this Court the very same judgment i.e., in the case of **APARNA AJINKYA FIRODIA** referred supra and also the judgment of **NARAYAN DATTA TIWARI vs ROHIT SHEKHAR AND ANOTHER** reported in (12

SCC 554) and also the order passed by this Court in W.P.No.201175/2015 wherein discussion was made to the judgment of **KAMTI DEVI (SMT.) AND ANOTHER vs POSHI RAM [(2001) 5 SCC 311** wherein discussion was made with regard to DNA test is concerned and so also the judgment of **BHABANI PRASAD JENA vs CONVENOR SECRETARY, ORISSA STATE COMMISSION FOR WOMEN AND ANOTHER (2010) 8 SCC 633** wherein a detail discussion was made in a case for suit for partition ordering for DNA test is concerned and directed to get the DNA test report by following the procedure by allowing the writ petition and submits that the said judgment is also aptly applicable to the case on hand wherein also the relief is sought for partition.

24. The learned counsel would contend that the amendment sought does not change the nature and only amendment is sought that Will is not acted upon. The learned counsel contend that for imminent need it can be considered for DNA test and not for legitimacy only for whether consideration of siblings and invoke Section 50 of the Evidence Act adduced the evidence of P.W.4 and P.W.5. The learned counsel contend that though the documents are produced by the defendant, the same

have not been proved before the Trial Court, however, the Trial Court relied upon those documents.

25. Having heard the learned counsel appearing for the respective parties and also on perusal of the mar and also the grounds urged in the appeal as well as in the applications which are pending to be considered along with the main appeal as ordered earlier, the points that would arise for the consideration of this Court are:

1. Whether the appellant has made out a ground to allow the application filed under Order VI Rule 17 of CPC as sought?
2. Whether the appellant has made out a ground to allow the application filed under Order 26 Rule 10 read with Section 151 of CPC to direct respondent No.1(b) and respondent No.2 to submit their blood samples for conducting an Avuncular DNA profiling with that of appellant?
3. Whether the Trial Court committed an error in dismissing the suit in answering Issue Nos.2 and 4 as negative in coming to the conclusion that the plaintiffs have not proved the relationship and on the other hand, the defendant has proved that the deceased

Anjanappa is the son of Ammayamma wife of late Ramaiah and whether it requires interference of this Court?

4. What order?

26. Having considered the material available on record, this Court has to consider both the question of fact and question of law and while considering the same, the matter requires to consider the evidence on record. Hence, this Court would like to rely upon both oral and documentary evidence placed on record by both the parties.

27. The plaintiff in order to prove her case examined herself as P.W.1 by filing an affidavit reiterating the averments of the plaint and got marked the documents at Exs.P.1 to 4 i.e., genealogy tree, sale deed dated 13.07.1979, certified copy of the sale deed dated 07.03.1981 and the Will executed by the mother in favour of the daughter. This witness was subjected to cross-examination.

28. In the cross-examination, a suggestion was made that the parents of the defendant Anjaneyappa were Ammayamma and Ramaiah and the same was denied, but

admitted that her mother name is Ammayamma and father name is Subbarayappa. It is suggested that there is no blood relationship between the defendant Anjaneyappa and her father Subbarayappa and the same was denied. It is suggested that Ex.P.1 is created and the same was denied. A suggestion was made that she does not have any right over the suit schedule property and the same was denied. It is admitted that the Will was with one Keerthi and she is aware of the same from her childhood. It is suggested that Ex.P.4 is created and the same is not executed by Ammayamma and the same was denied. It is suggested that she has not contributed any amount for the purpose of construction of the house over the suit schedule property and the same was denied. However, she admits that she is an illiterate. P.W.1 says that she has produced the document in order to show that her parents are Ammayamma and Subbarayappa. She admits that she does not know the native place of her father. She admits that her father did not had any brothers or sisters. She admits that she has got issued legal notice to the defendant demanding the partition in the property. It is suggested that at no point of time herself, Ammayamma and the defendant lived together and the same

was denied. She admits that she has not produced any ration card in order to show that herself and the defendant and Ammayamma lived together in one house. P.W.1 admits that her father died when she was aged about 12 years. She admits that the mother would have died about 8 or 9 years back. She admits that she has not produced the death certificate of her mother to the Court, but not pertaining to her father.

29. In the further cross-examination, it is suggested that one Ramaiah was the husband of Ammayamma and he died on 29.09.1996 and the same was denied. It is suggested that there were two children to Ammayamma and Ramaiah and the same was denied. It is suggested that one Vasanthi and the defendant are the children of Ammayamma and Ramaiah and the same was denied. It is suggested that the said Vasanthi died on 03.11.1990 and the same was denied. It is elicited that the said Ammayamma died on 06.03.1991. She volunteers that she was the mother of the witness. It is suggested that the L.Rs of the defendant are in possession of the suit schedule property and they are paying the taxes and the same was denied. A suggestion was made that her mother Ammayamma and the

mother of the defendant, namely, Ammayamma were different persons and the same was denied.

30. The other witness is P.W.2. He filed an affidavit stating that plaintiff Nos.1 and 2 are the daughters of Ammayamma, wife of Subbarayappa. The defendant Anjanappa is also the son of late Ammayamma, w/o Subbarayappa. He knows the defendant Anjanappa. He died in the year 1998 leaving behind his wife Jayamma and two sons, namely Manjunath and Kumar. It is also his evidence that Ammayamma, the mother of both the plaintiffs and the defendant Anjanappa was the wife of one Subbarayappa. Subbarayappa, Ammayamma and her daughters Jayalakshamma, Anjanamma and Anjanappa were all together residing in Hosabeedhi at Yelahanka Town. He also says that he is residing in Hosabeedhi at Yelahanka Town, Bangalore from past 30 years. He was a tenant under Voddarahalli Chokkappa. The family of Subbarayappa i.e., the plaintiff's and defendant and also Ammayamma Subbarayappa were also the tenants under Voddarahalli Chokkappa. It is also his evidence that the marriage of the plaintiff Jayalakshamma took place at

Yelahanka, Hosabeedhi. The marriage was celebrated by late Ammayamma and Subbarayappa at Hosabeedhi, Yelahanka. After the marriage of the plaintiff Jayalakshamma, she had been to her husband's house at Yelahanka. Later after four years Jayalakshmma shifted to Hassan. The deceased Ammayamma had also left her tenanted house and she has shifted to the present house some 15 years back. Now the deceased Anjanappa is residing in that house. It is also his evidence that he learnt that the deceased Ammayamma had executed a Will bequeathing a portion of the property in favour of Maheshwari, who is a handicapped and the elder daughter of plaintiff No.1. It is his evidence that the deceased Ammayamma while she was residing in the tenanted house at Hosabeehi, Yelahanka she had purchased the schedule property and she had put up the construction and she had shifted to her house. It is also his evidence that the marriage of the defendant Anjanappa took place at the suit schedule property. The ceremony of the marriage took place at Ayyappaswamy Temple near the suit schedule property. The plaintiff Jayalakshmma and her husband Rathanaiah both have attended the marriage of the defendant. He says that he also attended the marriage of

Anjanappa, the defendant. This witness was subjected to cross-examination.

31. In the cross-examination, he says that he is residing in the address since from his childhood and knows the plaintiff from his childhood. He knows Ammayamma and Subbarayappa since his childhood. He does not know the native place of Subbarayappa. It is suggested that the father name of Anjanappa was Ramaiah and the same was denied. He admits that he does not know the date of death of the deceased defendant Anjanappa. It is suggested that the said Anjanappa died in 1998 as stated by him in the affidavit and the same was denied. It is suggested that the mother of the plaintiff and the defendants are two different Ammayamma's and not one and the same persons and the same was denied. It is suggested that Ammayamma W/o Subbarayappa resided in Yelahanka New Town as stated by him in the affidavit and the same was denied. It is suggested that he is not at all residing from 30 years in the address shown in his affidavit and the same was denied. It is suggested that he not at all resided in Voddarahalli Chokkappa as a tenant and the same was denied. He says that he visited the house of the plaintiff at Hassan on the way to the visit to

Dharmasthala. It is suggested that the defendant and his parents Ammayamma and Ramaiah resided over the suit schedule property, but not the plaintiff and her mother and the same was denied. He admits that he has not personally seen the Will executed by Ammayamma. It is suggested that the mother of the plaintiff Ammayamma not at all purchased the suit schedule property and put up any construction of house as stated by him in the affidavit and the same was denied. It is suggested that the suit schedule property was purchased by the mother of the plaintiff Ammayamma, but the defendant constructed the house and residing with his parents alone with his sister Vasanti and the same was denied. He says that he is not aware that the marriage of the defendant was performed by the father Ramaiah. He says that he is not aware that the sister of the defendant Vasanthi died about ten years back. He denies the suggestion that there is no relationship between Anjanappa and he does not know anything about their relationship and he is deposing falsely in order to help the plaintiff.

32. The other witness is P.W.3 and she reiterates the evidence of P.W.2 in her affidavit. She says that her father late Voddarahalli Bommakka's son Chokkappa is the owner of the

house situated at Hosabeedhi in Yelahanka Town. It is her evidence that Bediyenne Chowdappa and Adamma, the grandmother and grandfather of the plaintiff as well as the defendant have occupied their premises situated at Hosabeedhi at Yelahanka Town as tenants in the house of her father Chokkappa. The plaintiff and the defendant's mother, namely Ammayamma was also residing with her parents Chowdappa and Adamma. The deceased Ammayamma as well as her husband Subbarayappa were also residing as tenants in her father's house. She was aged about ten years at the time of occupation of the premises by Chowdappa and Adamma. It is her evidence that she got married at the age of 20 years and she lived along with her husband at Bandikodigehalli near Yelahanka after her marriage, but she used to visit her father's house every now and then because Bandikodigehalli is very near to Yelahanka. It is her evidence that subsequently her husband died some 15 years back and now again from the past 15 years she is residing in the present address at Yelahanka. It is her evidence that the marriage of Jayalakshamma, the plaintiff and Rathanaiah was celebrated in 1970 and she had been to the marriage of plaintiff No.1 and their marriage took place in the tenanted house

belonging to her father. It is also her evidence that one Jayaramappa S/o Narasappa is also a tenant in their house. He was residing in the neighbouring premises of Ammayamma and Subbarayappa in the compound of our father Chokkappa. It is her evidence that while she was residing as a tenant, the said Ammayamma had purchased a house and she had put up a construction later and she had shifted to her own house and she also reiterated the bequeathing of the Will by Ammayamma. It is also her evidence that the marriage of the deceased defendant Anjanappa took place in Ayyappaswamy Temple near the schedule property and the other functions celebrated in the suit schedule property and all of them attended the marriage. It is her evidence that the suit schedule property is very near to her present house and the deceased Anjanappa had a wife by name Jayamma and sons by name Manjunath and Kumar. This witness was subjected to cross-examination.

33. In the cross-examination, she says that since her birth, she is staying in the address shown in her affidavit. Jayalakshmmamma has studied upto 4th standard. Anjanamma is illiterate. She do not know whether the said Anjanappa is educated or not. One Bommakka is her father's mother.

Chokkappa is her father. Her father has got three children and she is the eldest daughter of her father. The house in which she is residing is in the same situation as it was at the time of her birth. It is her evidence that one Bedhienne Chowdappa and Adamma are husband and wife. They have got one son and one daughter. Nagappa is the son of said Bedhienne Chowdappa and Ammayamma is the daughter of the said Bedhienne Chowdappa. The said Bedhienne Chowdappa was giving rent to Bommakka at the rate of Rs.5/- to Rs.10/- per month. He resided in their house as a tenant for about 30 years. There are no documents in respect of said rent transactions. It is suggested that she is unaware of the fact of residing of the said Bedhienne Chowdappa in their house as a tenant and the same was denied. It is her evidence that Chowdappa and Adamma have resided in her grandmother's house for more than 25 years. The said Chowdappa and Adamma died about 8 or 10 years back. It is suggested that the said Chowdappa, Adamma and Ammayamma have not resided in the house of Bomakka and the same was denied. It is her evidence that Ammayamma was residing in the said house along with her husband Subbarayappa and children.

The said Subbarayappa was working in power looms at Doddaballapur.

34. It is her evidence that by the side of the house in which Ammayamma was residing, there was a house of Jayarappa and Jayaramappa and the house of Hongegowda was in front of said Ammayamma. Subbarayappa married Ammayamma when he was staying in the house of Bommakka. It is suggested that she is falsely stating that Subbarayappa and Ammayamma have resided in the house of Bomakka and the same was denied. It is also suggested that Subbarayappa is not the husband of Ammayamma and the same was denied. It is suggested that one Ramaiah is the husband of Ammayamma and the same was denied. It is suggested that one Anjanappa is born to Ammayamma through Ramaiah and the same was denied. It is elicited that P.W.2 Jayaramappa has vacated the house in which he was residing about 15 years back. Ammayamma has also vacated the house in which she was residing for about 15 years back. Ammayamma vacated the said house earlier to P.W.2 Jayaramappa. It is elicited that she does not know where the Will Ex.P.4 was prepared. It is elicited that

she was not present at the time when Will Ex.P.4 came to be executed. It is elicited that Ammayamma herself informed her about the execution of the Will deed Ex.P.4. It is suggested that Ammayamma has not executed any Will, muchless Ex.P.4 in favour of Maheshwari and the same was denied. It is suggested that she is falsely deposing stating that the marriage of Jayalakshamma has taken place with Rathnaiah in the year 1970 and the same was denied. It is suggested that though she knew fully well that the plaintiffs have got no relationship with Ammayamma, she is deposing falsely and the same was denied. It is elicited that Anjanappa has studied upto SSLC in Government Junior College, Yelahanka, Bangalore. It is suggested that the said Anjanappa is not the son of Subbarayappa and the same was denied. It is suggested that since 4-5 years only she is staying in her parents' house and the same was denied. It is suggested that P.W.2 Jayaramappa has not stayed in their house as a tenant at any point of time and the same was denied. It is suggested that Ramaiah and Ammayamma have constructed the building in the suit schedule property and the same was denied.

35. Another witness is PW4 – N Keerthi. PW4 in his evidence, he reiterates that plaintiff Nos.1 and 2 and the defendant are the children of Ammayamma W/o Subbarayappa and all of them were residing together in a rented premises belongs to M Vaddarahalli Chokkappa at Hosabeedi, Yelahanka and he was also a resident of Hosabeedi for some time. It is also his evidence that Ammayamma, the mother of the plaintiffs had borrowed a sum of Rs.4,000/- from him and she also had executed a sale deed in respect of the suit schedule property and later, he executed the sale deed in favour of Ammayamma and now, Ammayamma has put up a house in the suit schedule property and the plaintiffs and defendant are known to him from childhood. The document of sale deed is marked as Ex.P3 and at the time of execution of sale deed, he was staying at Hosabeedi, Yelahanka and plaintiff Nos.1 and 2, Ammayamma, deceased defendant No.1 were also staying in the said Hosabeedi at Yelahanka. The said Ammayamma is the wife of Subbarayappa.

36. This witness was subjected to the cross-examination. In the cross-examination, it is elicited that he does not know the father's name of said Subbarayappa. Since, 1977, he knows the said Subbarayappa but he does not know when the said

Subbarayappa passed away. In the cross-examination, it is suggested that Anjanappa is the son of Ammayamma born through Subbarayappa and not born through Ramaiah and the said suggestion was denied. It is suggested that Anjanappa and Vasanthi are the children of Ammayamma born through Ramaiah and the same was denied. A suggestion was made that plaintiff Nos.1 and 2 are not the sisters of deceased defendant No.1 and the same was denied. It is suggested that Ammayamma and Ramaiah have purchased the suit schedule property from him and the same was denied. It is elicited that he does not know the educational qualification of Anjanappa. It is suggested that Ammayamma, Anjanappa and Ramaiah were residing in the suit schedule property and the said suggestion was also denied.

37. The other witness is PW5 – Rathnamma. PW5 in her evidence she deposed that she is the daughter of one late Nagappa. The said Nagappa and late Ammayamma are the brother and sister. The said Nagappa and Ammayamma are the children of one late Badiyanne Chowdappa. It is also her evidence that the deceased Ammayamma had two daughters i.e., the plaintiff Nos.1 and 2 and one son who is the deceased

defendant. Her maternal aunt - Ammayamma was residing at Yelahanka still her death. It is her evidence that Anjanappa died seven years back and she had been invited for the funeral ceremony of the deceased Anjanappa and she had attended the said ceremony and she also attended the 11th day ceremony of the Anjanappa. It is also her evidence that she knows plaintiff Nos.1 and 2 who are the sisters of Anjanappa. Jayalaxmamma – plaintiff No.1 given in marriage to one Rathnaiah and they are residing at Hassan and the second plaintiff is residing at Yelahanka and her maternal aunt herself had performed the marriage of her daughters and son and her maternal aunt's husband name is Subbarayappa and she deposed that the plaintiffs and deceased defendant are the children of Ammayamma and Subbarayappa.

38. This witness was subjected to cross-examination. In the cross-examination, a suggestion was made that Anjanappa is not the son of Ammayamma W/o Ramaiah and the same was denied. It is elicited that the sister of Anjanappa by name Vasanthi is now no more. It is suggested that she has not seen Ammayamma, Subbarayappa and their family and the same was denied. It is suggested that she is not having any

acquaintance with the family matter of Ammayamma and she filed false affidavit and same is also denied.

39. The wife of the deceased defendant (Jayamma) has been examined as DW1. In her affidavit, she reiterated the averments of written statement denying the case of the plaintiffs and got marked the documents i.e., genealogical tree as Ex.D1; death certificate of Vasanthi as Ex.D2; death certificate of Ammayamma as per Ex.D3; death certificate of Ramanna, her father-in-law as Ex.D4; death certificate of her husband - Anjanappa as Ex.D5 and also claims that documents of the suit schedule property are produced at Ex.D6 and D7; Electoral card is marked as Ex.D8; change of katha as Ex.D9; notice issued by Yalahanka Nagarasabhe as Ex.D10 and also tax paid receipts at E.D11 and D22; electricity supply document at Ex.D23; transfer certificate pertaining to her husband - Anjinappa issued by Government Junior College is marked as Ex.D24; SSLC marks card as Ex.D25; character certificate issued by Government High School is Ex.D26; cumulative record is marked as Ex.D27 and Form No.2 pertaining to her husband's income declaration as Ex.D28.

40. This witness was subjected to cross-examination. In the cross-examination, she deposed that her marriage was solemnized with Anjanappa about 22 years back but she does not remember the date of marriage. She deposed that they belongs to ST caste by name Nayaka and her mother-in-law also belongs to same community but denied the suggestion that plaintiff Nos.1 and 2 are the daughters of Ammayamma and her husband is a son of Ammayamma and Subbarayappa and the same was denied but admits that she does not know when marriage of Ammayamma was taken place with Ramaiah since there was no procedure at that time to get it print the wedding card of Ammayamma and Ramaiah and she does not have any document in this regard as well as photographs to show that they are leading the life as husband and wife but claims that she has produced the other document to show that Ammayamma is the wife of Ramaiah. It is elicited that she has not produced any documents to show that her mother and Ramaiah are the daughter and son of the same mother but she may produce the documents in due course. The relatives of Ramaiah are alive but she does not know the name of the relatives. Except her mother and Ramaiah, no other brothers and sisters to them. The

Ramaiah died at the age of more than 60 years and it is elicited that she has not produced the birth certificate of Vasanthi who is the sister of her husband. But the said Vasanthi did not attend the school, therefore, there is no school certificate to establish the birth date of Vasanthi and the said Vasanthi was died at the age of five years. It is suggested that the Vasanthi is not the daughter of Ammayamma and the same was denied.

41. It is elicited that prior to the death of her husband, the suit schedule property was standing in the name of her husband. It is suggested that prior to the death of her husband, the suit schedule property was standing in the name of Ammayamma and the same was denied. The suit schedule property is the property of Ammayamma therefore, it was standing in her name earlier. DW1 admits that one Adyama was the mother of Ammayamma. Chowdappa is the father of Ammayamma. The said Chowdappa who is the father of Ammayamma was also calling as a Cholappa but not calling as Bediyene Cholappa. She does not know from whom the Ammayamma purchased the suit schedule property and also she does not know whether Ammayamma purchased the suit schedule property in the year 1979 under registered sale deed

as per Ex.P2 from one N Keerthi of Yelahanka. She also elicited that she does not know the number of the suit schedule property at the time of purchase whether it is the suit schedule property site No.7 and subsequently, it was changed as 1727/1 and then 1859 and new number is No.130/A. It is elicited that at the time of purchasing the suit schedule property, the Amayamma was residing in Yelahanka but she does not know the house number where she was residing. It is elicited that Ammayamma has no sister but she has one elder brother by name Nagappa. She does not know how many sons and daughter to the said Nagappa and she also does not know whether the said Nagappa had a daughter. It is elicited that after 5 to 6 years of her marriage, the said Ammayamma died. It is suggested that during the lifetime of the Ammayamma, she given the ill-treatment to her therefore, she was residing in the suit schedule property separately and the same was denied. It is suggested that the said Ammayamma executed a Will and bequeathed the suit schedule property in favour of her husband as well as elder daughter of first plaintiff and the same was denied. A suggestion was made that husband of plaintiff No.2 dissented her

and therefore, she is leading a great miserable life and she says that she is not aware of the same.

42. It is also suggested that her mother-in-law had executed a Will and bequeathed the suit schedule property in favour of the first daughter of plaintiff No.1 – Maheshwari as well as in the name of her husband and the same was denied. It is suggested that LTM contains in Ex.P4 is the LTM of Ammayamma and the same was denied. It is suggested that forcibly she has taken the portion of the property from Maheshwari who is the first daughter of plaintiff No.1 and accordingly, she had leased that portion to others and deriving the rent from that house to a sum of Rs.1,000/- per month and the same was denied. It is suggested that at the time of death of her husband, the Rathnamma had also attended the funeral ceremony of her husband and the same was denied. It is suggested that they have not at all invited plaintiff Nos.1 and 2 for the funeral ceremony of her husband and the same was denied.

43. It is elicited that Ramaiah was alive for three years after the death of Ammayamma. It is suggested that at the

time of filing the suit, about 11 portions were there in the suit schedule property and the same was denied. It is suggested that till today, they are collecting the rents and also suggested that they are collecting the rent of the portion fallen to the name of Maheshwari and the same was denied. It is suggested that in the year 1995, the plaintiffs came and demanded their share in the suit schedule property and the same was denied. It is suggested that in Ex.D13 to D22, the name of Anjanappa S/o Ramaiah is not appeared but on the other hand, Anjanappa S/o Ammayamma is appeared and witness says that it was standing in the name of her mother-in-law. It is elicited that her father-in-law may submitted the application to the school authorities for joining her husband to the school in terms of Ex.D24 to D27 and she does not know the school authorities who issued the certificates at Ex.D24 to D27 are alive or not. It is elicited that she does not know the application which is submitted to the school authorities for issuing Ex.D24 to D27 is available or not in the file because the application was submitted by her husband whereas she admits that she had not produced Ration Card to show that how many people are residing in her house but she says that husband has not obtained the Ration Card.

44. The other witness is DW2-Lallu Sab. In his evidence, he says that both Ramaiah and Ammayamma were residing near Santhe Circle, Yelahanka and they were selling groundnuts in Yelahanka and he was also selling groundnuts in that place and he personally knows them. It is his evidence that said Ramaiah and Ammayamma had one son and one daughter and their daughter died at young age. Even Ammayamma and Ramaiah were also died and he attended their funeral. Their son Anjanappa was living with his wife and later, he also died. This witness also subjected to cross-examination. In the cross-examination, he deposed that he has a Ration Card to show that he is residing in the address mentioned in his affidavit but he has not produced the same before the Court. He has also not produced any identification card or any document to show that Ramaiah and Ammayamma are residing at Sante Circle, Yelahanka and he admits that Ramaiah and Ammayamma were selling the groundnuts at Sante Circle. A suggestion was made that Ammayamma is not the wife of Ramaiah and the same was denied. It is suggested that plaintiff Nos.1 and 2 and deceased first defendant are the children of Ammayamma and Subbarayappa and the same was denied.

45. The other witness is DW3 – Sarasamma. DW3, in her evidence, she says that both Ramaiah and Ammayamma were selling the groundnuts at Yelahanka and both of them had one son and daughter and their daughter died at young age. She also reiterated the averments of DW2 in the affidavit. DW3 was subjected to cross-examination. In the cross-examination, she admits that she has not produced any documents to show that the address which is mentioned in the affidavit is her own house. She deposed that the house where she is residing is the distance of half a kilometer from Sante Circle. The Ramaiah and Ammayamma are her neighbours. Therefore, she knows them. But admits that Ammayamma and Ramaiah are not her relatives. It is suggested that Ammayamma is the wife of Subbarayappa and accordingly, plaintiff Nos.1 and 2 and deceased defendant are the children of said Ammayamma and Subbarayappa and same was denied. It is elicited that for the last thirty years, she was residing in the house addressed in her affidavit. It is suggested that in the house of Chokkappa; Ammayamma, Subbarayappa, plaintiff Nos.1 and 2 and deceased defendant were residing on a rental basis and the said suggestion was denied.

46. The other witness is DW4 – Uchamma. DW4 also reiterates similarly the averments of DW2 and DW3 in her affidavit. In the cross-examination, she admits that for the last 30 to 35 years, they were residing in the house which address is shown in her affidavit. DW4 admits that she got an elder sister by name Jayamma and she herself and her sister Jayamma were residing in different houses. She further deposed that her marriage was performed about 35 years back. DW4 admits that she had produced the document to show that the house where she is residing is belongs to Ramaiah who is the elder brother of her husband. The said Ramaiah is now alive. It is suggested that Ammayamma has gifted the house to the plaintiff's first elder daughter - Maheshwari and they are residing in the portion of that house on rental basis and the same is denied. It is suggested that Ammayamma and Ramaiah are not the husband and wife and the same was denied. It is suggested that Ammayamma is the wife of Subbarayappa and the same was denied. It is suggested that at the instance of wife of deceased defendant, she deposing falsely before the Court and the said suggestion was denied. It is suggested that plaintiff Nos.1 and 2, the deceased defendant are the children of Ammayamma

and Subbarayappa and the same was denied. It is suggested that she is residing in the house No.129 as a tenant and the wife of deceased defendant is residing in house No.130 and therefore, she is deposing falsely at the instance of wife of the deceased defendant No.1 and the same was denied.

Point No:1

47. Having considered the pleadings of the parties and also the evidence available on record and also the prayer sought in the appeal as well as in the application, this Court has to consider the application filed under Order 6 Rule 17 of CPC and the prayer sought in the application. The prayer sought in the application is that permit the appellant to amend the plaint at paragraph No.3 of the plaint by adding the proposed amendment to the plaint that though the deceased Ammayamma had executed a Will in favour of the daughter of the appellant as well as the defendant Anjinappa, the said Will is not acted upon and therefore the said Will is not binding on the parties and the suit property is liable for partition among the plaintiffs and defendant in the suit. In support of this application, an affidavit is sworn to that while filing the suit specifically stated in paragraph No.6 of the plaint that though the deceased Ammayamma is her mother

had executed Will in favour of her daughter namely Maheshwari as well as her brother Anjinappa in respect of the suit schedule property, but the deceased Anjinappa himself used to collect the rent as sum of Rs.1,000/- per month as rent from out of the schedule property bequeathed in the name of Maheshwari, specifically implies that Will has not been acted upon by the parties and specific pleading was made with regard to existence of the Will and suit schedule property khata stands in the name of deceased Anjinappa. The specific case of the plaintiff is that the deceased Ammayamma though executed a Will it was not acted upon and hence, necessary amendment is required to determine the issues involved between the parties. This application was objected by filing statement of objections contending that case of the appellant along with the respondent No.2 is that they are the daughters of deceased one Smt.Ammayamma and the suit property in respect of which suit was filed for seeking the relief of partition was self acquired property by their deceased mother. The appellant and respondent No.2 have specifically pleaded that the suit property is joint family property to them. Further contended that appellant's daughter and the deceased defendant are the

legatees under the Will, said to have been executed by the deceased Ammayamma. It is contended that plaintiffs have utterly failed to prove the very relationship with the deceased defendant along with their mother and nature of the property involved in the suit. The plaintiffs have taken dual contention and when such being the case, the plaintiffs have no right at all as per the alleged Will executed by the deceased Ammayamma in favour of the daughter of the appellant and the deceased defendant and having suffered the set back in the suit, an attempt is made to trying to re-built the case by disowning her pleading on the pretext that Will alleged was not acted upon.

48. It is also contended that according to their own admission, the appellant and the respondent No.2 will have no say in the very suit itself as the suit property according to them is self acquired property of the deceased Ammayamma and by admitting this fact, now the appellant cannot turn around and says that the Will was not acted upon on the suit property standing in the name of the deceased defendant and this Will contravene the very admission made in the plaint and hence, cannot seek for an amendment.

49. Both the learned counsel for respective parties re-iterated the grounds urged in the amendment application and also the statement of objections during the course of the arguments. The counsel appearing for the appellant would vehemently contend that it is necessary to permit the plaintiff to amend the plaint as well as prayer portion to consider the issue involved between the parties. The counsel appearing for the appellant would vehemently contend that amendment sought in the application not changes the very nature and only amendment is sought that Will is not acted upon, but the fact that there was a Will was categorically pleaded by the plaintiff even at the time of filing of the suit itself.

50. Per Contra, the counsel appearing for the respondent would vehemently contend that there was no any need of consideration of the application and admission cannot be taken away by filing the application for amendment and no grounds is made out for amendment and the amendment takes away the case of defendant and the amendment is sought also against the admission on the part of the plaintiff.

51. Having considered the application, objection and also the grounds urged by both the counsel for respective parties, this Court has to examine whether the amendment causes prejudice to the rights of the parties. Having perused the plaint at paragraph No.3, it is stated that the Ammayamma was passed away on 06.09.1991 leaving behind the plaintiff Nos.1 and 2 as daughters and the defendant is the son. During the life time of Ammayamma she had executed a Will bequeathing the portion of the property measuring 20 x 18, AC sheet house had been given to the 1st plaintiff's minor daughter namely Kum. Maheswari, the said Kum. Maheswari is a crippled girl and therefore she had bequeathed the said portion of the property measuring 20 x 18 and remaining two portions measuring 20 x 42 feet and 20 x 60 feet had bequeathed in favour of the defendant. The copy of the Will is also annexed along with the plaint.

52. Having considered this pleadings it is very clear that in respect of the Will is concerned, there is a pleading. No doubt having considered the pleading there is an averment with regard to the execution of the Will, but now prayer is sought only to plead that inspite of Will was in existence, the same was not

acted upon. The main contention of the counsel appearing for the appellant that amendment sought will not change the very nature of the suit.

53. On the other hand, the counsel appearing for the respondent would vehemently contend that this application is made after thought and the same takes away the admission on the part of the plaintiff, but the fact is that there was a Will in favour of the 1st plaintiff's daughter and the defendant and by way of amendment not taking away the said admission, only contend that the said Will was not acted upon, whether the Will was acted upon or not is a matter of proof. It is also noticed that in respect of the Will, though it was marked before the Trial Court none of the witnesses have been examined before the Court in order to prove the said Will. When such being the case, first of all there is no material with regard to the proving of the said Will and also whether it was acted upon or not is a issue to be considered by the Court in view of the amendment and amendment will not take away the right of the defendant and the same will not cause any prejudice since there is a clear pleading in paragraph No.3 of the plaint that Will in existence and only prayer is sought and the same was not acted upon.

Hence, the very contention of the counsel appearing for the respondents that it takes away the admission cannot be accepted and the same will not result in causing of any prejudice in pleading of the case of the plaintiff with regard to whether the same is acted upon or not. No doubt the said application is filed during the appellate stage and appeal is also a continuation of the suit and when the pleadings are necessary, in order to prove the case, the Court can allow the parties to amend the plaint and seek appropriate relief and prayer in the appeal also unless the same cause any prejudice to the defendant. No doubt the defendant took the specific defense that no such Will and when the pleading was made by making an amendment, burden lies on the plaintiff/appellant to prove the same and the right of the plaintiff cannot be curtailed only on the ground that suit already been disposed of and in order to prove the existence of Will as well as execution of Will and whether the same is acted upon or not matter requires consideration. I have already pointed out that the amendment sought will not takes away the right of the appellant and this Court also earlier held that I.A will be considered at the time of considering the main appeal and hence, the same is considered and comes to the conclusion that

amendment will not cause any prejudice to the defendant/respondent and hence, the plaintiff/appellant has made out a ground to allow the application filed under Order VI Rule 17 of C.P.C. Hence, I answer the Point No.1 as affirmative.

Point No.2:

54. This Court having considered the application filed under Order 26 Rule 10 r/w Section 151 of C.P.C wherein prayer was sought to direct the respondent No.1(b) and respondent No.2 to submit their blood samples for conducting an avuncular DNA profiling with the appellant. The prayer which is sought is supported by an affidavit wherein in the affidavit, appellant narrated the grounds an order for DNA test. In the affidavit it is stated that suit is filed for the relief of partition and separate possession of the suit schedule property against her brother Anjinappa S/o Subbarayappa and also stated that the suit is in respect of the suit schedule property was originally owned by her mother Smt.Ammayamma and earlier when she was in need of money sold the same in favour of the one N.Keerthi and the same was repurchased in the year 1991. In both the sale deeds she had not given the name of her husband Subbarayappa, but given the name of her father Bediyenne Chowdappa. It is also

further sworn to that after the death of their father Mr.Subbarayappa, her mother Smt.Ammayamma take care of them by selling vegetables and she had done the construction through her funds over the suit schedule property. After the death of the mother, the respondent No.2 she being deserted by her husband was living along with Smt.Ammayamma in the suit schedule property was thrown out by her brother Anjinappa despite he had the knowledge of unregistered Will dated 27.06.1986 bequeathing her portion in favour of her daughter and defendant refused to honor the terms of the Will. Hence, the suit was filed. It is also further sworn to that when the defendant appeared and filed written statement denying the relationship between the plaintiff and the defendant, he took specific defense that he is the son of Ammayamma wife of Ramaiah and the only daughter of Ammayamma wife of Ramaiah is Vasantha @ Vasanthi and she also died and he is the only successor to the estate of Smt.Ammayamma wife of Ramaiah.

55. It is also contended that in order to prove the case, plaintiff examined P.W.1 to P.W.4 and witnesses have supported the case of plaintiff. The fact that Ammayamma had executed the sale deed in favor of N.Keerthi and in turn Keerthi had

executed the sale deed in favour of Ammayamma has been proved by placing on record the documents of registered sale deed. The defendant has been examined as D.W.1 and got marked the document and Trial Court committed an error in coming to the conclusion that Anjinappa was the son of Ammayamma wife of late Ramaiah and comes to an erroneous conclusion that not related to the plaintiff. It is stated that herself and her sister that is respondent No.2 being illiterate were not aware of how the defendant got the documents showing the name of his father as Ramaiah and husband of Ammayamma as Ramaiah instead of Subbarayappa, but the fact remains that the said Anjinappa is none other than biological brother of the plaintiff and respondent No.2 since the defendant Anjinappa had denied the very relationship between her and her sister, now by virtue of advance technology the relationship between themselves with that of the defendant can be proved and identified easily by conducting avuncular DNA profiling test, if the said test is conducted, the dispute between the parties would be resolved and hence, filed an application for DNA test. This application was resisted by filing statement of objections by the respondent.

56. The main contention urged in the statement of objections that the relationship was denied and disputed and the contention taken by the plaintiff that they are the daughters of one Subbarayappa and Ammayamma and they also contend that defendant No.1 is also their brother. Having disputed the relationship plotted by the plaintiffs, the respondent who being a legal heir of Anjinappa has produced sufficient material before the Trial Court to make out their part of the case in which it was the categorical finding given by the Trial Court that father of these respondents is the son of late Ramaiah and Smt.Ammayamma. The Trial Court has also ruled against the appellant and another that they failed to prove that they are the daughters of Ammayamma and Subbarayappa. In fact, the very identity of Ammayamma between two persons itself was the key factor which was highlighted by the Trial Court in its judgment. It is contended that even after the categorical finding given by the Trial Court that the appellant fails to establish her relationship with the father of these respondents. The present application is filed before this Court belatedly that too after lapse of decade, this application came to be filed by the appellant for scientific investigation for DNA profiling. The very act of filing the

application probalilize that the same is filed mechanically without any basis and the contention taken by the appellant that they are the daughter of one Ammayamma and one Subbarayappa ought to have been placed by placing on record both oral and documentary evidence and the same was not placed and only to overcome the finding given by the Trial Court the present application is filed and hence, the same cannot be permitted.

57. The counsel appearing for the appellant in support of her contention seeking for DNA test relied upon judgment passed by this Court in W.P.No.112825/2019 dated 27.09.2024 and in this judgment discussed judgment of M.V.Narayanaswamy and others V/s Sri.Suresh in W.P.P.No.13491/2018 delivered on 14.02.2014 as well as decision of co-ordinate bench and so also the judgment of Apex Court in case of Narayana Datta Tiwari V/s Rohit Shekhar and another reported in 2012 SCC 554 a distinction was drawn between legitimacy and paternity of the child since counsel for the respondent argued more on the distinction between legitimacy and paternity of the child and so also taken note of Section 112 of Indian Succession Act is intended to safeguard

the interest of the child by securing his or her legitimacy and not the paternity.

58. It is also important to note that there is no bar for conducting such DNA test and it is not in violation of the right to life or privacy of a person and also an observation is made that it will not come out an invasion of right to life. This Court also taken note of judgment of Aparna Ajinkya Firodia's case and also while discussing the same, taken note of the principles laid down in the judgment of Kamti Devi (Smt) and another V/s Poshni Ram, reported in (2001) 5 SCC 311 wherein also held that the result of genuine DNA test is said to be scientifically accurate. Even that is not enough to escape from the conclusiveness of Section 112 of Act that is if a husband and wife living together during the time of conception but the DNA test reveal that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This Court made detailed discussion in a case of Aparna Ajinkya Firodia and even extracted paragraph No.24 of the judgment wherein also an observation is made that it was incumbent upon the plaintiff Nos.1 to first prove that she was the wife of defendant No.1 by adducing both oral and documentary evidence and even after such evidence is led, the

question whether the plaintiff No.1 was the wife of defendant No.1 or not, cannot be scientifically established or if there is a doubt as to whether the defendant No.1 had access to the plaintiff No.1 or not and if the DNA test was the only route to establish the truth, then Court may consider the application filed by the parties. Having taken note of the same also, it is very clear that if no sufficient material available before the Court then the Court can invoke the DNA test, but in case on hand, the plaintiff examined P.W.1 to P.W.4 relying upon the oral evidence as well as the documentary evidence of sale deed executed by Smt.Ammayamma in favour of one Keerthi and in turn the very same Keerthi executed the sale deed in favour of Ammayamma and these two sale deeds were taken place in the year 1979 and 1981. The Trial Court has not discussed more anything about these two sale deeds whether this sale deed between Ammayamma to whom the plaintiff relies upon the evidence and also not given definite finding whether Ammayamma which the plaintiff relies is the mother of the defendant since the defendant claims Ammayamma is the wife of Ramaiah but plaintiff claims that plaintiff and defendant are the children of Ammayamma wife of Subbarayappa. When the issue is with regard to whether

they are the children of Ammayamma wife of Subbarayappa, if DNA test is conducted and the same would be scientifically a conclusion can be made and sufficiently establish the relationship between the parties since there is a serious dispute between the parties in respect of relationship between the plaintiff and defendant.

59. This Court also in the judgment taken note of paragraph No.57 of the Aparna Ajinkya's case wherein Apex Court considered the presumption under Section 112 and 114 of Evidence Act. This Court also comes to the conclusion that DNA test is not only a substantive piece of evidence and the said DNA test will comes to the aid of the petitioner in order to prove the claim and also submission of the appellant's counsel is very clear that if DNA test evidence goes against the appellant they are out of Court and when such submission is made, taken note of the said fact into consideration.

60. This Court also in the judgment in W.P.No.36322/2017 dated 05.04.2019 in a similar set of facts when the relief is sought for DNA test discussed in detail in paragraph No.13 and so also in paragraph No.14 and considering

the judgment of Goutam Kundu V/s State of West Bengal reported in 1993 (3) SCC 418 wherein it is held that normally the Courts in India cannot order blood test as a matter of course and also cannot be entertained and unless there must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. In the judgment also setting aside the order of the Trial Court allowed to make scientific investigation of the DNA profiling of blood samples.

61. The High Court of Madras in CRP.PD.No.646 of 2023 and CMP.No.5083 of 2023 taken note of judgment of Ashok Kumar case reported in (2022) 1 SCC 20 wherein also even discussed the case of Ajinkya Firodia's case and in paragraph No.10 discussed the DNA test is only to ascertain whether the plaintiffs are born to Arimuthu and thereby whether they are entitled to a share in the properties, by way of partition. It is observed that with the advancement of the technology, it is now possible for getting such a finding by sibling DNA test. In the said judgment discussion was made with regard to the Narayan Dutt Tiwari case reported in (2012) 12 SCC 554 wherein is also observation is made that the DNA test ordered is only of siblings

who are not minors and also observation is made that Courts power to order DNA test has not been totally shut out and also an observation is made that unless the petitioners are able to establish through the sibling DNA test that they are also children of late Arimuthu, they would not be in a position to successfully claim their legitimate share in the suit for partition.

62. The counsel for the respondent mainly relies upon the case of Ashok Kumar V/s Raj Gupta and others wherein discussion was made with regard to Section 101 to Section 103 and Section 112 and presumption as to legitimacy of child wherein also discussion was made with regard to the timing of the application is equally relevant. The plaintiff has already led evidence from his side to prove relationship between the parties and at this stage whether the High Court should have directed the plaintiff to undergo the DNA test and in paragraph No.11 discussion was made that where other evidence is available to prove or disprove the relationship, the Court should ordinarily refrain from ordering blood tests. This is because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions and also discussion was made with regard to Section 112 and also discussed in paragraph

No.14 that possibility of stigmatizing a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy. No doubt the Apex Court in detail discussed in this judgment with regard to asking for subjecting the plaintiff to a DNA test and in the case on hand the issue is involved between the parties with regard to proving of sibling test and not the question of right of privacy and test is sought for the purpose of determining the legitimate claim of the plaintiff. No doubt the counsel appearing for the respondent relies upon the judgment of Aparna Ajinkya Firodia's case which I have also taken note of while discussing the consideration of DNA test in the Writ Petition which has been disposed of by this Court wherein also principles summarized for conducting of DNA test.

63. The counsel also relied upon the recent judgment of Apex Court in case of Ivan Rathinam V/s Milan Joseph wherein also discussion was made with respect of article 21 and Section 112 of evidence Act particularly issue No.1 displacing of legitimacy and permitting a DNA test was discussed in paragraph No.7 wherein cases of Aparna Ajinka Firodia case, Ashok

Kumar's case and Goutam Kundu's case were also discussed and also discussed regarding paternity and not legitimacy and this Court already made discussion with regard to factual aspects of the case on hand and here is a case for testing of sibling test for the purpose of arriving for a conclusion regarding relationship between the parties and not the question of right of privacy and also in paragraph No.47 discussed in the judgment also that Courts must therefore consider the existing evidence assess the presumption of legitimacy and if that evidence is insufficient to come to a finding, only then should be consider ordering for a DNA test. Once the insufficiency of evidence is established, the Court must consider whether ordering a DNA test is in the best interest of the parties involved and must ensure that it does not cause undue harm to the parties.

64. Having considered the principle, it is very clear that in the case on hand only for the purpose of deciding the issue of plaintiffs whether they are entitled for claim in the suit schedule property has a share the issue is involved and also plaintiff is ready to take the result of DNA test and also submission of the counsel is very clear that if report goes against the plaintiffs, plaintiffs will be out of the Court and when such submission is

made and issue involved between the parties is not in respect of right of privacy and only with respect to test of siblings as well as consideration of legitimate claim of the plaintiff for a share in the property. Hence, I do not find any force in the contention of the counsel appearing for the respondent that there cannot be any order of DNA test and the reasons assigned in the application filed by the appellant is very clear only for the purpose of determining the relationship as well as legitimate claim going to take DNA test. Under these circumstances, the appellant made out the case to allow the application. Hence, I answer the Point No.2 as *Affirmative*.

Point No.3:

65. Having considered the material on record and also the point for consideration which this Court has framed regarding the judgment of the Trial Court whether the Trial Court committed an error in dismissing the suit in answering issue Nos.2 and 4 in the negative in coming to the conclusion that the plaintiffs have not proved the relationship and on the other hand, the defendant has proved that the deceased Anjanappa is the son of Ammayamma W/o Ramaiah and whether it requires interference of this Court, this Court has to re-analyze the

material available on record keeping in view the grounds urged by both the learned counsel for the appellant and the learned counsel for the respondents.

66. The case of plaintiff Nos.1 and 2 is that they are the daughters of Ammayamma and Subbarayappa. It is their claim that the defendant is also the son of both of them. It is the contention of the plaintiffs that the suit schedule property is the joint family property of the plaintiffs and the defendant since the said Ammayamma is the mother of both of them. It is also their case that the said Ammayamma lost her husband and she used to maintain her family by selling vegetables and she had purchased the property at Yelahanka and the said property was acquired for the purpose of construction of a hospital and in view of the said acquisition, she had given the present suit schedule property which is morefully described in the suit schedule to the granddaughter through first daughter and also the son. It is not in dispute that the property belongs to Ammayamma and both plaintiff Nos.1 and 2 and the defendant claim that the property belongs to Ammayamma. But the dispute is with regard to that it is the claim of the plaintiffs that Ammayamma is the wife of

Subbarayappa and it is the claim of the defendant that Ammayamma is the wife of Ramaiah.

67. It is important to note that it is the claim of the plaintiffs that Ammayamma had executed a Will in terms of Ex.P.4. The Will is also not proved by examining any of the attesting witnesses. It is important to note that in the present appeal, an application is filed seeking for amendment that the said Will was not acted upon inspite of the Will was executed. It is important to note that the plaintiffs have relied upon the document of sale deed executed in the year 1979 by Ammayamma in favour of one Keerthi, who has been examined as P.W.4. It is the claim of the plaintiffs that the very same Ammayamma had re-purchased the property in the year 1981. It is important to note that the original sale deed was executed in favour of Keerthi and in turn the said Keerthi executed the sale deed in favour of Ammayamma were not placed on record, but the appellant claims that both of them were lost. It is important to note that the defendant also claims that the very same property belongs to Ammayamma, but claims that Ammayamma is the wife of Ramaiah. The defendant also not placed both the original sale deeds before the Court, but claims

that the property belongs to Ammayamma wife of Ramaiah. It has to be noted that though the defendant claims that he is the son of Ramaiah, but to prove that he is the son of Ammayamma through Ramaiah, no document is placed before the Court except changing of the names in the revenue records. The very identity of Ammayamma is in dispute, since the defendant claims that the said Ammayamma is distinct from the Ammayamma claimed by the plaintiffs. The Trial Court also given the finding that Ammayamma is the wife of late Ramaiah and the defendant is the son of Ammayamma wife of Ramaiah. But the oral evidence of the witness examined on behalf of the plaintiffs, one Keerthi deposes that Ammayamma is the mother of plaintiff Nos.1 and 2 and also the defendant. Apart from that, even the relative of Ammayamma comes and deposes before the Court that Ammayamma is the mother of plaintiff Nos.1 and 2 and the defendant. When such material is available before the Court, in order to come to a conclusion that the said Ammayamma is distinct, as contended by the defendant, nothing is placed on record. In order to prove that Ammayamma is the mother of the plaintiffs as claimed by the plaintiffs and Ammayamma is the mother of the defendant as claimed by the defendant that she is

the wife of Ramaiah, no material is placed on record. When such being the case, this Court while considering point No.2 comes to the conclusion that DNA test is necessary, since it is the claim of the plaintiffs that the plaintiffs and defendant are the children of Ammayamma and Subbarayappa. But the defendant claims that he is the son of Ammayamma wife of Ramaiah. If paternity of both are distinct and Ammayamma is also distinct, as claimed by the defendant, the same could be answered by collecting scientific opinion in respect of the plaintiffs and the defendant, since there is no other material on record to come to the conclusion and in the absence of the DNA report, it is highly difficult to come to the conclusion that both Ammayamma which the plaintiffs and the defendant claim are distinct and in the absence of the same, relationship between the parties also cannot be determined.

68. This Court has already pointed out that when both of them are claiming that the property belongs to Ammayamma and unless the said Ammayamma is related to the plaintiffs as claimed and the defendant as claimed is determined, the rights which the plaintiffs and the defendant are having cannot be decided. However, the Trial Court having considered the

documentary evidence placed on record by the defendant comes to the conclusion that Ammayamma is the wife of Ramaiah and the defendant is the son of Ramaiah. It has to be noted that the plaintiffs relies upon the oral evidence as well as documentary evidence that Ammayamma sold the property during her lifetime in favour of Keerthi and the said Keerthi, who has been examined before the Court deposes that he had sold the property in terms of Ex.P.3 in favour of Ammayamma. He also categorically deposes that at the time of execution of the sale deed, he was staying in Hosabeedhi at Yelahanka and also specifically deposes that at the time of execution of the sale deed, plaintiff Nos.1 and 2, Ammayamma, the deceased defendant No.1 were also staying in Hosabeedhi at Yelahanka. P.W.4 denied that Anjanappa is the son of Ammayamma born through Ramaiah and specifically denied the suggestion that plaintiff Nos.1 and 2 are not the sisters of the deceased defendant No.1. P.W.4 identified Ammayamma, plaintiff Nos.1 and 2 and the defendant and they belong to the very same family. This Court has already pointed out that both the plaintiffs and the defendant have not placed on record the

original sale deed of Exs.P.2 and 3 and those documents would have been the crux of the documents to decide the relationship.

69. It is important to note that the plaintiffs examined P.W.5, who claims that Ammayamma and her father are the brother and sister and both of them are the son and daughter of late Bediyenne Chowdappa. It has to be noted that in the sale deed Ex.P.2 while executing the sale deed by Ammayamma, she has mentioned the name of her father. Her father's name is mentioned as Bediyenne Chowdappa and the same has not been considered by the Trial Court while considering the relationship between the parties. It is also her evidence that the deceased Ammayamma had two daughters, namely plaintiff Nos.1 and 2 and son who is the deceased defendant, namely Anjanappa. It is her evidence that her maternal aunt Ammayamma was residing at Yelahanka till her death. The evidence of P.W.5 is clear that she is the close relative of Ammayamma since Ammayamma is the sister of her father Nagappa. Both of them are the daughter and son of late Bediyenne Chowdappa. The document Ex.P.2 clearly discloses that the father name of Ammayamma is Bediyenne Chowdappa.

70. The learned counsel for the respondents also relies upon the admission on the part of P.W.5 that the sister of Anjanappa, by name Vasanthi is no more. P.W.5 categorically denies that she has not seen Ammayamma and Subbarayappa and their family and the said stray admission will not take away the case of the plaintiffs even though she is the witness of the plaintiffs. Keerthi, the person who purchased the property comes and deposes before the Court that Ammayamma is the mother of plaintiff Nos.1 and 2 and the defendant. The sale deeds of the year 1979 and 1981 also is not disputed by the defendant that Ammayamma has not executed the sale deed. It is important to note that in the sale deeds of the year 1979 and 1981, which are marked as Exs.P.2 and 3, nowhere Ammayamma's husband's name is mentioned as Subbarayapa and also not mentioned as Ramaiah. The Court has to take note of the fact that the name of Ramaiah is also not mentioned in the sale deeds whether the said Ammayamma was the wife of Ramaiah. No doubt, the defendant relies upon the death certificates of Vasanthi, Ammayamma and Ramaiah, who is the father of Anjanappa and the death certificate of Anjanappa, the property extract and electoral card and change of khatha. No

doubt, these documents disclose with regard to the death as well as change of khatha. But in order to come to a definite conclusion that Ammayamma is the wife of Ramaiah, nothing is placed on record and the very identity of Ammayamma is in dispute.

71. D.W.1 categorically admits that she does not know when the marriage of Ammayamma took place with Ramaiah and nothing is placed on record. Even the photos are also not available to show the marriage of Ammayamma and Ramaiah and also the admission was given that there are no photos of their marriage to show that they were leading life as husband and wife and also not produced any document to show that Ammayamma is the wife of Ramaiah. When these answers were given by D.W.1, the Trial Court erroneously comes to the conclusion that Anjanappa is the son of Ammayamma. D.W.1 also claims that Ramaiah used to come to their house and her mother told that the said Ramaiah was her brother and therefore she know that Ramaiah is the elder brother of her mother. D.W.1 admits that she has not produced any document to show that her mother and Ramaiah are the daughter and son of the same mother and though claims that she may produce the

document in due course, but none of the documents are placed before the Court that the mother of D.W.1 and the said Ramaiah are sister and brother. It is important to note that when D.W.1 claims that relatives of Ramaiah are alive, but she gave the admission that she do not know their names and none of them have been examined before the Court and claims that Ramaiah died at the age of more than 60 years. She also admits that she has not produced the birth certificate of Vasanthi said to be the sister of her husband, but only relies upon the death certificate. When such materials were available before the Court, the Trial Court ought not to have come to the conclusion that Anjanappa is the son of Ammayamma wife of Ramaiah and the very finding given by the Trial Court is erroneous.

72. The Trial Court also committed an error in not accepting the case of the plaintiffs, since the plaintiffs have placed on record Exs.P.2 and 3 about the sale made by Ammayamma in favour of P.W.4 and P.W.4 comes and deposes before the Court. Though only oral evidence is adduced by the plaintiffs, but the very documents of Exs.P.2 and 3 was not considered by the Trial Court in proper perspective and all the issues with regard to identity of Ammayamma to be considered

by the Court. The Trial Court has not given any definite finding that both of them are distinct and only relies upon the documents produced by the defendant and comes to such a conclusion. Even when a question was put to the witness D.W.1 in respect of Exs.D.13 to 22 that the name of Anjanappa bin Ramaiah is not appeared, but on the other hand, Anjanappa bin Ammayamma is appeared, the witness says that they are standing in the name of her mother-in-law. Nowhere in the documents which have been relied upon by the defendant, any document is produced that Ammayamma is the wife of Ramaiah to accept the death certificate. When such being the case, the matter requires to be re-considered in view of the observations made by this Court as well as proving of the document of Ex.P.4 by examining the attesting witnesses since the plaintiffs claim that Ammayamma had executed a Will during her lifetime. It is the claim of the plaintiffs that though the said Will was executed, the same was not acted upon and this Court also allowed the application to amend the plaint with regard to whether the parties have acted upon in terms of the Will or not and also given a finding that the said amendment will not change the very nature of the suit and only it is the pleading whether they have

acted upon or not, but the plaintiffs have categorically pleaded in the original plaint itself that there was a Will left by Ammayamma.

73. It has to be noted that D.W.2 in the cross-examination says that he do not know that the plaintiffs and the defendant were residing in the house of Chokappa, who is the father of Rangamma i.e., P.W.3 on rental basis at Hosabeedi, Yelahanka. It is also to be noted that P.W.3 deposes that the family of the plaintiffs was residing in their house. Though the defendant examined D.W.3, but she categorically says that Ammayamma and Ramaiah are not her relatives. D.W.4 deposes in support of the defendant and admits that herself and her sister Jayamma were residing in different houses, but claims that they are residing in different houses side by side. She claims that the house where they were residing belongs to the elder brother of her husband Ramaiah. She claims that she has produced the document to show that the said house belongs to Ramaiah, but no such document is placed before the Court. She claims that the said Ramaiah is now alive.

74. Having considered the evidence of these witnesses, the very identity of Ammayamma is not proved. It is important to note that I have already pointed out that when the Will was placed on record, the same has not been proved by examining any of the witnesses. Whether the Will was executed and whether the same was acted upon or not and whether Ammayamma are distinct or same, in the absence of any conclusive evidence, the matter requires to be remanded and also DNA test will be helpful to the Court to determine the issue involved between the parties since the material on record clearly discloses that this is a peculiar case since the plaintiffs claims that the plaintiffs and the defendant are the children of Ammayamma and Subbarayappa and the defendant claims that he is the son of Ammayamma wife of Ramaiah and the said Ammayamma is distinct. In order to answer all these issues, further evidence is necessary and also DNA test is necessary as observed by this Court while answering point No.2. Hence, the matter requires to be re-considered and the finding given by the Trial Court is erroneous in view of the observations made by this Court. Hence, I answer the point in the affirmative.

Point No.4:

75. In view of the discussions made above, I pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment and decree dated 22.09.2007 passed by the Trial Court in O.S.No.6014/1997 is set aside.
- (iii) The matter is remitted back to the Trial Court for fresh consideration in view of the observations made by this Court.
- (iv) The application filed by the appellant under Order VI Rule 17 of CPC is allowed and the appellant is permitted to amend the plaint.
- (v) The Trial Court shall give an opportunity to the defendant to file additional statement in view of the allowing of the application filed under Order VI Rule 17 of CPC.
- (vi) The application filed under Order 26 Rule 10 read with Section 151 of CPC is allowed.
- (vii) In view of the allowing of the application filed under Order 26 Rule 10 read with Section 151 of CPC, the Trial Court is directed to secure plaintiff

Nos.1 and 2 and respondent No.1(b) to submit their blood samples for conducting an avuncular DNA profiling.

- (viii) The Trial Court is directed to consider the material on record and allow the plaintiffs and the defendant to adduce their further evidence in view of the observations made by this Court and also consider the DNA report as well as the material on record in toto and dispose of the suit in accordance with law within a period of one year, since the suit is of the year 1997.
- (ix) The parties are directed to appear before the Trial Court on 05.07.2025 without expecting any notice from the Trial Court and the respective parties and counsel are directed to assist the Trial Court to dispose of the matter within the time bound period. No further time will be extended in future, since one year is given.
- (x) The Registry is directed to transmit the records forthwith to enable the Trial Court to take up the matter on 05.07.2025 and time for disposal starts from 05.07.2025.

Sd/-
(H.P. SANDESH)
JUDGE