HC-KAR

NC: 2026:KHC-K:8754-DB
RFA No. 200037 of 2014

CNR: KAHC030043832014

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE R.NATARAJ

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

REGULAR FIRST APPEAL NO.200037 OF 2014 (PAR/POS)

BETWEEN:

1. RAJAMATI
W/O CHAMALRAO PANDIT
AGE: 58 YEARS
OCC: HOUSEHOLD

2. CHAMPADEVI
W/O CHANDRAKANTH PANDIT
AGE: 33 YEARS
OCC: HOUSEHOLD

3. JYOTI
D/O CHAMALRAO PANDIT
AGE: 30 YEARS
OCC: HOUSEHOLD,

ALL ARE R/O HUNSI HADGIL,
TQ. AND DIST. GULBARGA

...APPELLANTS

(BY SRI. B.D. HANGARKI, ADVOCATE)

AND:

1. LEELAVATHI
W/O RAJKUMAR PANDIT
AGE: 60 YEARS
OCC: HOUSEHOLD

R/O MAKTAMPURA, GULBARGA

2. BRAHMADEVI
W/O APPARAO PANDIT
AGE: 58 YEARS
OCC: HOUSEHOLD
R/O MAKTAMPURA, GULBARGA
SINCE DECEASED BY HER LRS

2(a) APPARAYA PANDIT
S/O PADMANAPPA PANDIT

2(b) BHARATHI
D/O APPARAYA PANDIT

2(c) MAHAVEER
S/O APPARAYA PANDIT
AGE: 40 YEARS,
OCC: DRIVER

2(d) BHARATHAPPA
S/O APPARAYA PANDIT
AGE: 38 YEARS
OCC: SERVICE

2(e) RANI
D/O APPARAYA PANDIT
AGE: 35 YEARS,
OCC: HOUSEHOLD

ALL R/O MEHTA LAYOUT,
BEHIND SHAHA AUTO KERE,
SEDAM ROAD, KALABURAGI.

...RESPONDENTS

(BY SRI. D.P. AMBEKAR, ADVOCATE FOR RESPONDENT NOS.1, 2(a) AND 2(c) TO 2(e);

NOTICE SERVED ON RESPONDENT NO.2(b) AND UNREPRESENTED)

THIS RFA IS FILED U/S. 96 R/W ORDER 41 RULE 1 OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 28.04.2014

PASSED IN O.S. NO.56/2005 PENDING ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AT GULBARGA, WHEREIN, THE SUIT WAS PARTLY DECREED.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THROUGH VIDEO CONFERENCE THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE R.NATARAJ
and
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

The defendant Nos.1 to 3 in O.S.No.56/2005 on the file of the III Additional Senior Civil Judge, Gulbarga (henceforth referred to as 'Trial Court') have filed this appeal challenging the judgment and decree dated 28.04.2014 passed therein, by which the suit was decreed in part and it was held that the plaintiffs are entitled to 1/3rd share each in the properties mentioned in the decree.

2. The parties shall henceforth be referred to as they were arrayed before the Trial Court. The appellants were the

defendants and the respondents were the plaintiffs before the Trial Court.

3. (i) A suit in O.S.No.56/2005 was filed for partition and separate possession of 1/3rd share of each of the plaintiffs in the suit schedule properties. They claimed that they are the daughters, defendant No.1 is the daughter-in-law and defendant Nos.2 and 3 are grandchildren of Sri. Kasturichand. They claimed that the priesthood at Goddess Padmavathi Jain Mandir at Hunsi Hadgil was held hereditarily by their forefathers and that it was a tradition that only male members of the family should perform pooja at the temple. They claimed that the duties of archak were performed by families of sons of Sri. Hirachand on rotation basis. They claimed that their father Sri. Kasturichand was also performing the duties of an archak. They claimed that Sri. Kasturichand had acquired 2 acres of land in Sy.No.6 where the temple is situate and that the offerings by devotees in cash and kind was valued at a sum of Rs.8,00,000/- per year. They contended that Sri. Kasturichand during his lifetime, was in possession of 1 kg gold and 2 kg silver, which presently are in possession of the defendants.

(ii) The plaintiffs claimed that Sri. Kasturichand owned the following properties, which were his self-acquisition:-

(a) Sy.No.90 of Hatgunda Village, Gulbarga, measuring 16 acres 2 guntas.
(b) Sy.No.94/3 at Nellur measuring 6 acres 32 guntas.
(c) House No.1-84 at Hunsi Hadgil.

(iii) The plaintiffs claimed that Sri. Kasturichand purchased Sy.No.23/3 situated at Hunsi Hadgil measuring 7 acres 9 guntas and Sy.No.93 measuring 13 acres at Nellur Village in the name of his eldest son namely, Sri. Chamalrao @ Chamalraya @ Chamundraya for the benefit of all the members of the family. They claimed that land in Sy.No.19/1 measuring 15 acres 33 guntas at Hunsi Hadgil was purchased in the name of defendant No.1 for the benefit of the family members.

(iv) The plaintiffs claimed that the said Sri. Kasturichand died in the year 1982 and after his death, the properties came into the possession of his son Sri. Chamalrao and after the death of Sri. Chamalrao in the year 1986, the defendants are enjoying the said properties.

(v) The plaintiffs claimed that their brother Sri. Chamalrao died leaving behind his wife (defendant No.1) and his two daughters (defendant Nos.2 and 3), while the plaintiff No.1 has a son and a daughter. They claimed that their sons were entitled to perform the duties of a hereditary priest at Goddess Padmavathi Jain Mandir. However, the defendant No.1 along with her brother and parents were performing the duties of archak in Goddess Padmavathi Jain Mandir. The plaintiffs claimed that when they told defendant No.1 that her brother Sri. Chandrakanth had no right to perform the archakship, she did not heed to their advice.

(vi) The plaintiffs claimed that from the income of the properties mentioned above, land in Sy.No.100 of Nellur measuring 16 acres and also a house bearing No.2-280 at Hunsi Hadgil were purchased in the name of the brother of the defendant No.1, which are also liable to be partitioned. They contended that the yield from all the lands mentioned above was Rs.4,00,000/- per year and that they have a right not only in the properties but also in the income generated from the properties and the temple. The plaintiffs therefore sought for partition of their 2/3rd share in the suit schedule properties, which included the land in Sy.No.6 of Hunsi Hadgil where the temple was situated.

4. (i) The suit was contested by the defendant Nos.1 and 2 who admitted their relationship with the plaintiffs and also the fact that Sri. Kasturichand and Sri. Chamalrao died in the year 1982 and 1986 respectively. They also admitted that the archakship at Goddess Padmavathi Jain Mandir at Hunsi Hadgil was performed by the ancestors of Sri. Kasturichand since time immemorial. They also admitted that it was a tradition in their family that only male members of the family should perform pooja at the temple and that it was being performed by the families of the sons of Sri. Hirachand on rotation basis. They claimed that in the absence of a male member in the family of the archaks, a female member of that family could perform the archakship of the temple through any male member who is a near relative of that family.

(ii) The defendant Nos.1 and 2 admitted that Sri. Kasturichand had acquired 2 acres of land in Sy.No.6 where the temple is situated, but denied that the plaintiffs had any share in the said property. They admitted that Sri. Chamalrao is the eldest son of Sri. Kasturichand. They denied the claim of the plaintiffs that it is only the sons of the plaintiffs who are entitled to continue the tradition of worshiping in the temple. They contended that Sri. Chamalrao was the only male member in the family of Sri. Kasturichand at the time of his death and that the said Sri. Chamalrao inherited the entire family properties and archakship rights and therefore, neither the plaintiffs nor their sons had any right to claim any share in the properties of Sri. Chamalrao. They claimed that Sri. Kasturichand had performed the marriages of the plaintiffs by spending huge sums of money. They admitted that the brother of defendant No.1 was performing the daily rituals in Goddess Padmavathi Jain Mandir. They claimed that the brother of defendant No.1 was also her son-in-law and denied the allegation that he was not related to the family. They contended that the defendant No.1 has absolute right to perform the archakship of Goddess Padmavathi Jain Mandir through any male member and Sri. Chandrakanth has an absolute right to perform the duties of an archak.

(iii) As regards the properties mentioned in the suit, they claimed that Sy.No.90 was owned and possessed by Sri. Kasturichand and he sold the said property to others and the purchasers are in possession of the said land. They admitted that Sy.No.94/3 was owned and possessed by Sri. Kasturichand, but after his death, his son namely, Sri.Chamalrao became the owner of the said property. As regards Sy.No.23/3 of Hunsi Hadgil measuring 7 acres 9 guntas and Sy.No.93 measuring 13 acres situated at Nellur, they admitted that it was in the name of Sri. Chamalrao and was thus the owner in possession of the said lands. They contended that after his death, the revenue records stood transferred to the name of the defendant No.1 and thereafter to the defendant No.2 and that she is the absolute owner of the said properties. They contended that Sy.No.19/1 measuring 15 acres 33 guntas at Hunsi Hadgil was not purchased by Sri. Kasturichand in the name of the defendant No.1. They contended that the said land was purchased by Sri. Chamalrao in the name of the defendant No.1. They admitted that Sri. Kasturichand had a dwelling house bearing No.1-81 at Hunsi

Hadgil and after his death, his son Sri. Chamalrao became the absolute owner of the said house. They however denied the allegation that Sy.No.100 at Nellur was purchased by them in the name of the brother of defendant No.1. Likewise, they also denied that a house bearing No.2-280 at Hunsi Hadgil was purchased by the defendant No.1 in the name of her brother. They claimed that above two properties were purchased by Sri. Chandrakanth out of his own income as he was a Doctor practicing at Hunsi Hadgil. Therefore, they contended that the plaintiffs have no share in the suit schedule properties. They also denied that the plaintiffs had any rights to perform duties of an archak at Goddess Padmavathi Jain Mandir, Hunsi Hadgil.

(iv) An additional written statement was filed by the defendant Nos.1 and 2 wherein they denied that the offerings by the devotees in the temple amounted to a sum of Rs.8,00,000/- per year and they denied that the plaintiffs had a share therein. They also denied that the plaintiffs were entitled to perform pooja at the temple through their sons. They also denied that Sri. Kasturichand was in possession of 1 kg gold and 2 kg silver and that after his death, they are in possession of the same. They claimed that since Sri. Kasturichand sold his land, the question of he coming in possession of 1 kg gold and 2 kg silver did not arise. They also denied that the income from the agricultural lands was Rs.4,00,000/- per year.

(v) The defendant Nos.1 and 2 also filed an additional written statement contending that the plaintiffs had undervalued the properties to avoid payment of Court fee and therefore, the suit is liable to be dismissed.

5. The defendant No.3 filed a memo adopting the written statement filed by the defendant Nos.1 and 2.

6. Based on these rival contentions, the Trial Court framed the following issues:-

1) Whether the plaintiffs prove that they are the Class I heirs of deceased Kasturichand as alleged in the plaint?

2) If so, whether the plaintiffs prove that the properties shown in para No.7 of the plaint were the self acquired property of deceased Kasturichand as alleged?

3) Whether the plaintiffs further prove that the first defendant purchased other properties

within the income from the property left out by Kasturichand as alleged?

4) Whether the plaintiffs further prove that they have got $2/3^{rd}$ share in the suit properties as alleged?

5) Whether the plaintiffs further prove that the defendants are attempting to alienate the suit properties as alleged?

6) Whether the plaintiffs further prove that they have got right to perform Archaka rights of Padmavathi temple at Hunshi Hadgil as alleged?

7) Whether the plaintiffs proves that the mesne profits from the suit properties?

8) Whether the suit is bad for non-joinder of necessary parties?

9) Whether the plaintiffs are entitled for the reliefs claimed?

10) What order or decree?

<u>Additional issue:</u>

1) Whether the Court fee paid is insufficient as contended in the written statement?

7. In support of the plaintiffs' case, the plaintiff No.1 was examined as PW1 and she marked the record of rights as Exs.P1 to P19 and the khata extracts of the properties as Exs.P20 and P21. The defendant No.1 was examined as DW1 and her brother - Sri. Chandrakanth was examined as DW2. They marked the record of rights as Exs.D1 to D22, the mutations as Exs.D23 to D27, the mutation registers as Exs.D28 to D30 and Panchayath receipts as Exs.D32 and D33. The sale deeds under which DW2 purchased Sy.No.100 and house No.2-280 were marked as Exs.D34 and D35 and the concerned mutation was marked as Ex.D36, record of rights of the property was marked as Exs.D37 to D40. An invitation was marked as Ex.P49 and a certificate was marked as Ex.D50.

8. Based on the oral and documentary evidence, the Trial Court held that the plaintiffs were the Class - 1 legal heirs of late Sri. Kasturichand and Sy.No.90 of Hatgunda Village, Sy.No.94/3 of Nellur were his self-acquisition and that Sy.No.23/3 of Hunsi Hadgil and Sy.No.93 of Nellur Village were purchased out of the income generated from the property left out by Sri. Kasturichand. It also held that Sy.No.19/1 was

purchased in the name of the defendant No.1 from out of the income generated from the aforesaid properties. It held that Sy.No.90 of Hatgunda village was sold by Sri. Kasturichand to meet his medical expenses. It also held that the house bearing No.1-84 did not exist as the Trust of Goddess Padmavathi Jain Mandir had demolished the same. It held that the plaintiffs were entitled to share in Sy.No.6 of Hunsi Hadgil. It held that the plaintiffs were not able to establish that the husband of the defendant No.1 was getting benefits from the temple as the same was managed by a Trust. It also held that the plaintiffs were not entitled to claim that their sons are entitled to perform duties of archak in the temple.

9. Being aggrieved by the judgment and decree passed by the Trial Court in so far as it related to partitioning the properties in the names of Sri. Chamalrao and defendant No.1, this appeal is filed by the defendants.

10. During pendency of this appeal, I.A.No.1/2020 was filed by the appellants/defendants for production of additional documents. This Court vide order dated 10.02.2026 allowed

I.A.No.1/2020 and the documents produced by the appellants/defendants were marked as Exs.D51 to D58.

11. (i) Learned counsel for the defendants contended that Sri. Kasturichand was performing the duties of an archak in Goddess Padmavathi Jain Mandir and therefore, any income generated would be his independent income and if he has applied the same to purchase the properties in the name of defendant No.1, the plaintiffs cannot have any share in the said properties. He contends that the plaintiffs have to prove the existence of a joint family and that it possessed sufficient properties which were capable of generating income and only then there can be presumption that the properties purchased in the name of the members of the joint family can be treated as joint family properties. In support of this contention, he relied upon the following judgments:

(a) *Bhagwat Sharan (Dead Through LRs) vs. Purushottam and others [AIR 2020 SC 2361]*

(b) *Sangappa Ramappa Jambur vs. Honnappa Jambur and others [2013 (1) AKR 332]*

(ii) He contended that if the husband of the defendant No.1 was employed elsewhere, he would have generated some income and hence, whatever income that he earned as an archak at the temple should be construed as his independent income. He therefore, contends that the Trial Court committed an error in decreeing the suit in so far as properties that were purchased by Sri. Chamalrao in his name and in the name of defendant No.1.

12. Per contra, learned counsel for the plaintiffs contended that it was the tradition in the family that only male members should perform duties of an archak at Goddess Padmavathi Jain Mandir. He contends that this right to worship was inherited by Sri. Kasturichand from his ancestors and thus, the right enured not only to him but also to all the members of the joint family and constituted a property in itself. He therefore contends that any income generated from such right should enure to all the members of the family. He contends that neither Sri. Chamalrao nor the defendant No.1 had any income of their own and therefore, properties purchased in the name of Sri. Chamalrao and defendant No.1 should be

construed as acquisition out of nucleus of the family and therefore, the plaintiffs are entitled to a share in the properties purchased in the name of Sri. Chamalrao and the defendant No.1. In support of his contentions, he relied upon the judgment of the Allahabad High Court in the case of ***Hanso Patak vs Harmandil Patak and another [AIR 1934 All 851]*** and the judgment of the Hon'ble Apex Court in the case of ***Vineeta Sharma vs. Rakesh Sharma and others [(2020) 9 SCC 1].***

13. After considering the submissions of the learned counsel for the defendants and learned counsel for the plaintiffs and after perusing the records of the Trial Court and its judgment and decree, following points would arise for our consideration:

i) Whether the properties that stood in the name of Sri. Chamalrao and the defendant No.1 was acquired out of the joint family nucleus?

ii) Whether the income earned by Sri. Kasturichand as a hereditary archak in a temple could be treated as income of the joint family?

iii) If yes, whether the plaintiffs are entitled to share in the properties purchased in the name of defendant No.1 and her deceased husband?

14. The suit for partition is filed in respect of Sy.No.6, Sy.Nos.90, 94/3 and House No.1-84 that stood in the name of Sri. Kasturichand and Sy.Nos.23/3 and 93 that were purchased in the name of "Sri. Chamalrao" @ "Sri. Chamundraya" and Sy.No.19/1 that stood in the name of defendant No.1. Apart from the above, a claim is also made in respect of Sy.No.100 and House No.2-280 that stood in the name of the brother of the defendant No.1. The suit was decreed in part and it was held that plaintiffs were not entitled for a share in (i) Sy.No.90 as it was sold long before the death of Sri. Kasturichand, (ii) House No.1-84 as it was demolished by the trustees of the Trust, (iii) Sy.No.100 and House No.2-280 as they were purchased by the brother of the defendant No.1 out of his own funds.

15. Before we answer the above points for consideration, it would be apt to first capture the below mentioned facts that are admitted and not in dispute.

16. (i) The relationship of the plaintiffs with the defendants is admitted. It is admitted that the predecessors of the plaintiffs were performing the duties of archak at Goddess Padmavathi Jain Mandir on rotation basis. It is admitted that there was a tradition in the family that a male member in the family should alone perform the duties of an archak and if there were no male members, then the female member could perform the duties through any male member related to the family. It is admitted that Sri. Kasturichand was performing the duties of archak at Goddess Padmavathi Jain Mandir. It is admitted that Sy.Nos.90 and 94/3 were purchased by Sri. Kasturichand in his name, though no material in this regard is placed on record by either of the parties. It is admitted that the plaintiffs were given in marriage in the year 1971 and the marriage of the defendant No.1 with Sri. Chamalrao was performed in the year 1971. The defendants by marking Ex.D51 have admitted that Sy.No.23 of Hunsi Hadgil was purchased in the name of Sri. Chamalrao on 27.12.1965 when he was a 22 year old man. It is also evident from Ex.D51 that out of Rs.2,000/- paid as consideration, a sum of Rs.1,000/-

was paid prior to the execution of the sale deed. Sy.No.93 of Niloor village was purchased in the name of "Chamundraya S/o Kasturichand" on 15.06.1972 in terms of Ex.D52. There is a recital in this deed, which reads as follows:-

> *"Whereas, due to family necessities, the vendor had contracted to sell and the vendee had agreed to purchase the above mentioned land in the year 1961 for a consideration of a sum of Rs.2000/- (Rs. Two Thousand only) which sum the vendor has already received in full from the vendee (the receipt of which sum the vendor hereby acknowledges) and the vendor had put the vendee in possession of the land. But the proper conveyance could not be executed".*

(ii) Sri. Chamalrao was aged 24 years in the year 1972. Sy.No.19/1 of Hunsi Hadgil was purchased in terms of Ex-D54 on 29.11.1979 in the name of defendant No.1, who was then aged 21 years. It is admitted that Sri. Kasturichand died in the year 1982, while Sri. Chamalrao died in the year 1986. It is also admitted that the defendant No.1 is performing the duties of archak at Goddess Padmavathi Jain Mandir through her brother, who is also her son-in-law.

17. There are no clear pleading and proof as to when and how Sri. Kasturichand became the owner of the land in Sy.Nos.90 and 94/3. There is nothing to establish that Sri. Kasturichand was in possession of any ancestral assets which was generating enough income or he was in possession of ancestral nucleus to purchase Sy.Nos.90 and 94/3. On the contrary, plaintiffs have admitted in the plaint that Sy.Nos.90 and 94/3 were the self acquisition of Sri. Kasturichand. Hence, an inference can be drawn that he had purchased those properties out of his own labour and therefore, was his self acquisition. Therefore, there is nothing to show that the suit properties were acquired out of joint family nucleus. Therefore, the plaintiffs cannot contend that the suit properties were all purchased out of the nucleus of the joint family. The case of the plaintiffs is that Sri. Kasturichand was earning Rs.4,00,000/- annually from the temple and Rs.4,00,000/- from the land in Sy.Nos.90, 94/3 and that the same was ploughed in to purchase Sy.Nos.23/3, 93 and 19/1 in the name of "Sri. Chamalrao" @ "Sri. Chamundraya" and the defendant No.1 respectively on 27.12.1965, 15.06.1972 and 29.11.1979. As

the plaintiffs have admitted that Sy.Nos.90 and 94/3 were the self acquisition of Sri. Kasturichand, any income derived therefrom would also become his personal income and if he had applied it to purchase properties in the name of his son Sri. Chamalrao and the defendant No.1, that was his wish and the plaintiffs cannot claim any share therein and hence, Sy.Nos.93, 23/3 and 19/1 were the self acquisition of Sri. Chamalrao and the defendant No.1. Hence, the point No.1 is answered against the plaintiffs and in favour of the defendants.

18. As regards point No.2 for consideration, assuming that Sri. Kasturichand was earning some income from performing duties as a priest, there is nothing to show that he was earning Rs.4,00,000/- per annum. Even if he was earning some income, the question is whether that income enured to the members of his family and consequently the properties purchased in the name of Sri. Chamalrao and the defendant No.1 could be construed as an accretion out of the joint family nucleus or the labour of the joint family.

19. PW1 has admitted that a Trust was created to administer Goddess Padmavathi Jain Mandir and the relevant evidence is extracted below:

> "ಪದ್ಮಾವತಿ ಜೈನಮಂದಿರ ಟ್ರಸ್ಟ್ ಇರುತ್ತದೆ ಎಂದರ ಸರಿ. ಟ್ರಸ್ಟನ ಸದಸ್ಯರುಗಳೆಂದರೆ ಅಪ್ಪುಸಾಬ, ಶಾಂತಪ್ಪ, ವಿಜಯಕುಮಾರ ಕಿವಡೆ, ಸುಭಾಷ ಗೋಳೇದ್, ಇನ್ನಿತರೆ 4–5 ಜನರು ಇರುತ್ತಾರೆ. ಗುಡಿಯ ಉಸ್ತುವಾರಿಯನ್ನು ಇವರುಗಳೆಲ್ಲರೂ ನೋಡಿಕೊಳ್ಳುತ್ತಾರೆ ಎಂದರೆ ಸರಿ."
>
> "ಸದರಿ ದೇವಸ್ಥಾನದ ಆದಾಯದ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿದೆ. ಆದರೆ ಲೆಕ್ಕ ಪತ್ರ ನೋಡಿಲ್ಲ. ಟ್ರಸ್ಟನವರು ಲೆಕ್ಕ ಇಟ್ಟಿರಬಹುದು ನಾನು ಲೆಕ್ಕ ಇಟ್ಟಿಲ್ಲ. ಟ್ರಸ್ಟನವರು ಯಾರಿಗೆ ಎಷ್ಟು ಹಣ ಕೊಟ್ಟಿದ್ದಾರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ, ದೇವಸ್ಥಾನದವರು ಎಷ್ಟು ಹಣ ಇಟ್ಟುಕೊಂಡಿರುತ್ತಾರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಸ್ವತಹ ಪೂಜೆ ಮಾಡಿಲ್ಲ. ಟ್ರಸ್ಟಿಗೆ ಗುಡಿಯಿಂದ ಆದಾಯ ಬರುವುದಾಗಿ ಮತ್ತು ಆ ಆದಾಯದಲ್ಲಿ ನನಗೆ ಪಾಲು ಇರುವುದಾಗಿ ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ."

20. Therefore, any offering by the devotees to the temple cannot become the income of the priest but on the contrary would be accounted by the Trust. The only offering that a priest is entitled to take home is the offering made by the devotees in the mangalarathi plate. The follow-up question would therefore be whether the offering made by the devotees

in the mangalarathi plate could be construed as income of the joint family.

21. A member of a family, for whatever reason, may or may not undertake the duties of a hereditary archak. He may, instead, pursue any other avocation or could be a freelancing archak performing religious rites for others outside his family. In that event, any earning from such freelancing or avocation would be his own earning. If such person, in deference to the traditions in the family, endows himself in the service of the deity and devotees show obeisance to him by offering cash or in kind, then such offerings would be in recognition of the man's service and hence, should be construed as his individual income.

22. The offerings made by the devotees to the archak is the remuneration that he receives for leading a pious life and as a token of respect for his vidwath in agama shastra, mastery over kriyas, kainkaryas, memorizing hymns, mantras, rituals and understanding the relevant religious texts and reciting them appropriately and invoke the blessings of God etc. These offerings are therefore in recognition of the learning of the

person and hence, are deemed to be his own income saved under Section 3 of the Hindu Gains of Learning Act, 1930 and not the income of the joint family. In the case on hand, there is no evidence of whatsoever nature to indicate that the income earned by Sri. Kasturichand was treated as an income of the joint family.

23. The Madras High Court in the case of ***Ramakrishna Mardi and others vs Vishnumoorthi Mardi and others [(1956) 2 MLJ 550]*** was considering a suit for partition in respect of certain properties, where it was contended that income from kulachara of the family namely "Pourohitya" belonged to the joint family and any purchase out of such income should be construed as property of the joint family. The learned Judge, referred to a passage in Manusmriti and held as follows:-

> *"It is clear from this passage that any wealth acquired by learning belongs exclusively to the acquirer and such acquisition being one of the chief sources of private property even from the early days, it is too late in the day to say that the earnings of defendants 3 and 4 should be impressed with joint family character. Their Lordships of the Privy Council in Gokal Chand v. Hukam*

Chand Nath Mal, ILR 2 Lah. 40: (AIR 1921 PC 35) (A) had to consider whether a member of the Indian Civil Service who received his entire education with the aid of the family funds should be allowed to claim the earnings made by way of salary, as his self-acquisition."

24. The Allahabad High Court in the case of ***Hanso Patak,*** referred supra, held as follows:-

"But the income received as amounts paid by people at their discretion either by way of charity or by way of remuneration for personal services rendered cannot be claimed as of right and cannot in my opinion, amount to a family property"

Justice Mukherji, while elaborating on this held as follows:

"The following is laid down as the law of Katyayana.

"What is acquired from a pupil that is, (by the profession of teaching), by performing the work of a priest at a sacrifice etc. etc."

All this is declared to be "Vidyadhana" and it is not divided at partition. The expression "Vidyadhana" means the same thing as "gains of science" or what has been acquired by exercise of learning."

25. The issue whether acquisition of a priest from the hereditary profession of an archak should be treated as joint

family property or not, was authoritatively answered by the Hon'ble Apex Court in the case of ***Lakshmi Chand Khajuria and others vs. Ishroo Devi [(1977) 2 SCC 501],*** where it was held as follows:-

> *"12……. In support of the contention that the income derived from practice of a hereditary profession should be construed as ancestral property, the learned counsel referred us to two decisions in Ghelabhai Gavrishankar v. Hargowan Ramji [ILR 36 Bom 94], and Hanso Pathak v. Harmandil Pathak [AIR 1934 All 851]. Neither of the cases support the contention of the learned counsel. In the first case the question that arose for consideration was about the nature of the office of a hereditary priest. It was held that the hereditary right of the priest is immovable property. Chandavarkar J. pointed out that hereditary priesthood vested in particular families is regarded as vritti or immoveable property but we do not find any support for the contention that the income of the hereditary priest will also be hereditary property. In fact in Hanso Pathak v. Harmandil Pathak it has been made clear that in the United Provinces the income received as amounts paid by Yajamans at their discretion either by way of charity or by way of remuneration for personal*

services rendered by the priest, cannot be claimed as of right, and cannot amount to a family property. Chief Justice Sulaiman expressed his view that the income received as amounts paid by people at their discretion either by way of charity or by way of remuneration for personal services rendered cannot be claimed as of right, and cannot amount to family property. Mukerji, J. in a concurring judgment after distinguishing Ghelabhai Gavrishankar v. Hargowan Ramji held that the income is "Vidyadhana" which is the same thing as "gains of science" or what has been acquired by exercise of learning cannot be divided by partition. We agree with the view thus expressed by the Allahabad High Court and find that the income from the practice of a hereditary profession will not be joint family property."

26. Therefore, we have no hesitation to hold that in the facts and circumstances of this case, the income earned by Sri. Kasturichand as a hereditary archak in Goddess Padmavathi Jain Mandir was his individual and personal income and not the income of the joint family.

27. As regards point No.3 for consideration, the land in Sy.No.90 was sold on 29.01.1980, which is evident from

Exs.D29 and D30 to meet the expenses of treatment of Sri. Kasturichand, who was suffering from cancer and substantial sums of money were spent on his treatment. PW1 admitted this in the following words:-

> "ನನ್ನ ತಂದೆಗೆ ಕ್ಯಾನ್ಸರ್ ಆಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಆತನ ಚಿಕಿತ್ಸೆಗಾಗಿ ಸಾಕಷ್ಟು ಹಣ ಖರ್ಚು ಮಾಡಲಾಗಿದೆ ಎಂದರೆ ಸರಿ."

28. Therefore, the Trial Court was justified in not granting any share to the plaintiffs in the land bearing Sy.No.90. However, in so far as Sy.No.94/3 is concerned, it stood in the name of Sri. Kasturichand and he died intestate, the plaintiffs and the defendant No.1 are entitled to equal shares therein in view of Section 8 of the Hindu Succession Act, 1956. As regards the House No.1-84, admittedly it stood on Sy.No.6 and this house was demolished by the Trustees of Goddess Padmavathi Jain Mandir, which is admitted by PW1 who stated as follows:

> "ಮನೆ ನಂಬರ 1:84 ಹುಣಸಿಹಡಗಿಲ ಗ್ರಾಮದಲ್ಲಿರುವ ಮನೆಯನ್ನು ಪದ್ಮವತಿ ಟ್ರಸ್ಟ್‌ನವರು ಮಾನಸ್ತಂಭ ಕಟ್ಟಲು ಕೆಡವಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಈಗ ಆ ಜಾಗ ಖಾಲಿ ಇದೆ ಎಂದರೆ ಸರಿ."

Therefore, House No.1-84 does not exist and hence, the plaintiffs are not entitled to a share therein.

29. In so far as Sy.No.6 of Hunsi Hadgil is concerned, the RTC for the year 1978-79 shows that it stood in the name of three persons namely, (i) Kasturichand (ii) Sripala and (iii) Ratanchand. There is no document placed on record by either of the parties to show as to how and when this land came in possession of Sri. Kasturichand. However, it is stated that Goddess Padmavathi Jain Mandir is situate on Sy.No.6 and hence, this land is endowed to the temple and the plaintiffs cannot claim any share in this land so long as the temple exists.

30. In so far as Sy.Nos.93, 23/3 and 19/1 are concerned, Sri. Kasturichand had performed the marriages of the plaintiffs and his two sons in the year 1971 itself, which is admitted by PW1 in the following words:-

> "ನನ್ನ ಮದುವೆ 1971ರಲ್ಲಿ ಆಗಿದೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಮದುವೆಯ ಜೊತೆಗೆ ನನ್ನ ತಂಗಿ 2ನೇ ವಾದಿಯ ಮದುವೆ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಅಣ್ಣನಾದ 1ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡನ ಮದುವೆ ನನ್ನ ಮದುವೆಯ

ಜೊತೆಯಲ್ಲಿ ಆಗಿರುತ್ತದೆ. ನನ್ನ ತಮ್ಮನಾದ ಪದ್ಮಾರಾಜನ ಮದುವೆ ಸಹ ನಮ್ಮ ಮದುವೆ ಜೊತೆಯಲ್ಲಿ ಆಗಿದೆ."

31. After the marriage, Sri. Kasturichand purchased Sy.Nos.23/3 and 93 in the name of his son "Sri. Chamalrao" @ "Sri. Chamundraya". These purchases were definitely made out of the income of Sri. Kasturichand as in the year 1965 when Sy.No.23/3 was purchased, Sri. Chamalraya was a 22 year old man who obviously had no known source of income. Likewise, Sy.No.93 was purchased on 15.06.1972 which shows that consideration of Rs.2,000/- was paid in the year 1961 but the sale deed was registered later. This therefore, establishes that these properties were purchased by Sri. Kasturichand in the name of his son Sri. Chamalrao. Likewise, the defendant No.1 did not have income of her own when Sy.No.19/1 was purchased in her name in the year 1979. Therefore, we can safely hold that these purchases were made by Sri. Kasturichand in the name of his son and daughter-in-law. As these purchases were made out of the personal income of Sri. Kasturichand, the acquisition in the name of Sri. Chamalrao and the defendant No.1 cannot be construed as properties of

the joint family. Therefore, they are the self acquisition of Sri. Chamalrao and the defendant No.1 where the plaintiffs have no share.

32. It is also relevant to note that the plaintiff No.1 was married in the year 1971 and the plaintiff No.2 was also married in the same year. Sri. Kasturichand died in the year 1982 and Sri. Chamalrao died in the year 1986. The plaintiff No.1 is the resident of Maharashtra, while plaintiff No.2's residence is not known. It is therefore, clear that the plaintiffs were never concerned with the income generated by Sri. Kasturichand as the hereditary priest in the temple. This apart, as stated above, Sri. Kasturichand died in the year 1982 and plaintiffs have not staked their claim from the year 1982 and even after the death of Sri. Chamalrao, they did not immediately take steps to claim their share in the properties. Therefore, the only irresistible conclusion that can be drawn is that the plaintiffs were aware that the properties purchased in the name of defendant No.1 and her husband were their independent properties. Besides this, even if it is assumed that Sri. Kasturichand had purchased the properties in the name of

defendant No.1, by virtue of Section 14 of the Hindu Succession Act, 1956, the said properties became her absolute properties over which the plaintiffs were not entitled to a share.

33. In that view of the matter, point Nos.1 to 3 framed by this Court for consideration are answered and it is held that there is no cogent evidence to establish that Sri. Kasturichand had purchased the properties in the name of Sri. Chamalrao and the defendant No.1 out of the income of the joint family and therefore, the plaintiffs are not entitled to a share in the properties purchased in the name of Sri. Chamalrao and defendant No.1.

34. In view of the above, this appeal is ***allowed in part.*** The judgment and decree dated 28.04.2014 passed by the III Additional Senior Civil Judge, Gulbarga, in O.S.No.56/2005 is modified. It is held that the plaintiffs are entitled to $1/3^{rd}$ share each in the land bearing Sy.No.94/3 of Nellur village. As long as Goddess Padmavathi Jain Mandir exists on Sy.No.6 of Hunsi Hadgil, the plaintiffs shall not be entitled to any share in the said survey number.

35. It is made clear that this Court has not given any finding that the defendant No.1 is entitled to perform the duties of archak through her son-in-law and the said issue is kept open to be considered in an appropriate proceedings as none of the male members of the family of Sri. Kasturichand are before this Court.

36. Parties to bear their own costs.

37. Office is directed to draw a decree accordingly.

Sd/-
(R.NATARAJ)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE

PMR
List No.: 19 Sl No.: 1