



IN THE HIGH COURT OF KARNATAKA, AT KALABURAGI

DATED THIS THE 22ND DAY OF DECEMBER, 2022

PRESENT

THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

REGULAR FIRST APPEAL No.23 OF 2002

C/W

REGULAR FIRST APPEAL No.1012 OF 2001 (PAR)

IN R.F.A. No. 23/2002

BETWEEN:

1. SRI BHIMASI FAKIRAPPA BIJJUR
AGE: MAJOR,
OCC: AGRICULTURE,
R/O. MUDDEBIHAL
DISTRICT: BIJAPUR.
SINCE DEAD BY HIS LR's
- 1.a MARUTI KUMAR
S/O. BHIMASI @ BHIMANNA BIJJUR
AGED ABOUT 30 YEARS,
OCC: COOLIE,
R/O. PILEKAMMA NAGAR,
MUDDEBIHAL.
- 1.b RAJESHWARI
W/O. MALLIKARJUN TUMBAGI
AGED ABOUT 28 YEARS,
OCC: H.H. WORK
R/O. ALAGUR, TQ.: SINDAGI,
DISTRICT: BIJAPUR.
- 1.c BHUVANESHWARI
W/O. HANAMANTARAY PATIL,

AGED ABOUT 26 YEARS,
OCC: H.H. WORK,
R/O. KHB COLONY, MUDDEBIHAL,
TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.

- 1.d VIDYASHREE
W/O. SHANTAPPA @ SHIVASHANKA GUDAGUNTI
AGED ABOUT 24 YEARS,
OCC: H.H. WORK,
R/O. ADAVI HULAGBAL,
TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.
- 1.e VIJAYA SHANKAR
S/O. BHIMASI @ BHIMANNA BIJJUR
AGED ABOUT 22 YEARS,
OCC: COOLIE
R/O. PILEKAMMA NAGAR,
MUDDEBIHAL,
TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.
- 1.f ROHINI W/O SHRISHAIL GUBBYAD
AGED ABOUT 20 YEARS,
OCC: H.H. WORK,
R/O. SHIVANAGI,
TQ.: BIJAPUR,
DISTRICT: BIJAPUR.
- 1.g BHAGYASHRI
D/O. BHIMASI @ BHIMANNA BIJJUR
AGED ABOUT 18 YEARS,
OCC: H.H. WORK
R/O. PILEKAMMA NAGAR,
MUDDEBIHAL.
- 1.h. VANISHREE
D/O. BHIMASI @ BHIMANNA BIJJUR
AGED ABOUT 17 YEARS,
OCC: STUDENT,
R/O. PILEKAMMA NAGAR,
MUDDEBIHAL,
BY NEXT FRIEND HER BROTHER
PROPOSED APPELLANT NO.1(a).

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 07/12/2020)

2. SMT. SITABAI
W/O. PEERAPPA LAMANI,
AGE: MAJOR,
OCC: AGRICULTURE,
SINCE DEAD BY HIS LR's
- 2a) PEERAPPA
S/O. KHEERAPPA LAMANI
AGED ABOUT 82 YEARS,
OCC: RETIRED SERVANT.
- 2b) KHEERAPPA
S/O. PEERAPPA LAMANI
SINCE DEAD BY HIS LR's
- i) SMT. SHANTABAI
W/O. KHEERAPPA LAMANI
AGED ABOUT 47 YEARS,
OCC: H.H. WORK.
- ii) MEENAKSHI
D/O. KHEERAPPA LAMANI
AGED ABOUT 34 YEARS,
OCC: ANGANWADI WORKER.
- iii) ASHOK
S/O. KEERAPPA LAMANI
AGED ABOUT 30 YEARS,
OCC: NIL.
- 2c) VAMANARAO
S/O. PEERAPPA LAMANI
AGED ABOUT 55 YEARS,
OCC: RETIRED SOLDIER.
- 2d) MANOHAR
S/O. PEERAPPA LAMANI
SINCE DEAD BY HIS LR's
- i) GEETABAI
W/O. MANOHAR LAMANI
AGED ABOUT 37 YEARS,
OCC: H.H. WORK.

- ii) BHAVANA
D/O. MANOHAR LAMANI
AGED ABOUT 20 YEARS,
OCC: STUDENT.
- iii) SACHIN
S/O MANOHAR LAMANI
AGED ABOUT 16 YEARS,
OCC: STUDENT
BY NEXT FRIEND HER MOTHER
APPELLANT 2d) i)
- iv) LESHAMMA
D/O. MANOHAR LAMANI
AGED ABOUT 12 YEARS,
OCC: STUDENT
BY NEXT FRIEND HER MOTHER
PROPOSED APPELLANT 2d) i)
- 2e) LAKKAJI
S/O. PEERAPPA LAMANI
AGED ABOUT 48 YEARS,
OCC: BUSINESS
- 2f) RAMACHANDRA
S/O. PEERAPPA LAMANI
AGED ABOUT 46 YEARS,
OCC: PAN SHOP,
R/O. PROPOSED APPELLANT
NO.2a) 2f) ALL ARE
PILEKAMMA NAGAR,
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT – BIJAPUR.
- 2g) BHIMASEN
S/O. PEERAPPA LAMANI
SINCE DEAD BY HIS LR's
- i) HEERABAI
W/O. BHIMASEN LAMANI
AGED ABOUT 32 YEARS,
OCC: ANGANWADI WORKER.
- ii) SUMAN
D/O. BHIMASEN LAMANI

AGED ABOUT 20 YEARS,
OCC: STUDENT.

- iii) NAGARJUN
S/O. BHIMASEN LAMANI
AGED ABOUT 16 YEARS,
OCC: STUDENT
BY NEXT FRIEND HER MOTHER
PROPOSED APPELLANT 2g) i)

APPELLANT NO.2g) i) to 2g) iii)
ARE R/O. NEAR DURGA VIHAR
RAILWAY STATION ROAD, BAGALKOT.

- 2h) RAVINDRANATH
S/O. PEERAPPA LAMANI
SINCE DEAD BY HIS LR's

- i) VILASABAI
W/O. RAVINDRANATH LAMANI
AGED ABOUT 24 YEARS,
OCC: H.H. WORK
R/O. PILEKAMMA NAGAR
MUDDEBIHAL,
TQ.: MUDDEBIHAL
DISTRICT: BIJAPUR.

- ii) LALITABAI W/O. BHIMSEN NIAK
AGED ABOUT 37 YEARS,
OCC: H.H. WORK
R/O. ILAKAL,
TQ.: HUNAGUNDA
DISTRICT: BAGALKOT.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 09/03/2015)

3. SANGANGOUDA TAMMAPPA BIRADAR,
AGE: MAJOR,
OCC: AGRICULTURE,
R/O. HUNASHYAL TALUK,
B. BAGEWADI.

... APPELLANTS

(BY SRI AMEETKUMAR DESHPANDE, SENIOR ADVOCATE FOR
SRI S.D. SAGARI, ADVOCATE)

AND:

1. NAGESH BHIMAPPA WADDAR @ MAKTEDAR
AGED 11 YEARS,
2. ANNAPURNA
D/O. BHIMAPPA WADDAR @ MAKTEDAR,
AGED 7 YEARS,
3. SURVARNA
D/O. BHIMAPPA WADDAR @ MAKTEDAR,
AGED 4 YEARS,

RESPONDENT NOS.1 TO 3 ARE MINORS
BY NEXT FRIEND THEIR MOTHER JANAKIBAI
W/O. BHIMAPPA WADDAR @ MAKTEDAR.

4. SMT. JANAKIBAI
W/O. BHIMMAPPA WADDAR @ MAKTEDAR
AGED ABOUT 28 YEARS,
OCC: HOUSEHOLD WORK & AGRICULTURE,
R/AT MUDDEBIHAL,
DISTRICT: BIJAPUR.
5. SMT. SANGAWWA
W/O. NAGAPPA WADDAR @ MAKTEDAR
AGE: MAJOR,
OCC: HOUSE HOLD WORK,
R/AT MUDDEBIHAL,
NOW AT KUSTAGI,
DISTRICT: RAICHUR.
6. SMT. RENUKABAI
W/O. PARASAPPA AMARAVATI
AGE: MAJOR,
OCC: HOUSE HOLD WORK,
R/O. KUSTAGI,
DISTRICT: RAICHUR.
7. BHIMAPPA NAGAPPA WADDAR @ MAKTEDAR
AGED 32 YEARS, OCC: NIL,
R/O. MUDDEBIHAL,
DISTRICT: RAICHUR.

8. SMT. LAXMIBAI
W/O. YAMANAPPA AMARVATI,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. MUDDEBIHAL,
DISTRICT: RAICHUR.
9. SIDDAPPA SANGAPPA NAYANEGALI
AGE: MAJOR, AGILCULTURE,
R/O. MUDDEBIHAL,
DISTRICT: RAICHUR.
SINCE DEAD BY HIS LR's
- 9(a) BABU SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGED MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL,
TQ: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.
- 9(b) ANIL SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGED MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL,
TQ: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.
- 9(c) RAVINDRA SIDDAPPA NAINEGALI,
S/O. SIDDAPPA NAINEGALI
AGED MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL, TQ: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.
- 9(d) ANAND SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGED MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL, TQ: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.
- 9(e) JAGADISH SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGED MAJOR,

JAGADISH GRAPHICS, NO.266,
TIMMAYYA ROAD, 1ST STAGE,
PADMANABHA NAGAR,
BANGALORE – 70.

- 9(f) SMT. UMA S. MORABAD
D/O. SIDDAPPA NAINEGALI
W/O. SHASHIDAR. M. MORABAD
AGED MAJOR,
PLOT NO.68, DCO RESIDENCY
NEAR SATYA PRAKASH SCHOOL,
JAKKUR PLANTATION, YALAHANKA ROAD,
BANGALORE – 70.
- 9(g) VIJAYKUMAR SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGED MAJOR,
NO.488, 6TH CROSS, 9TH MAIN,
2ND BLOCK, 1ST STAGE,
HBR LAYOUT, NEAR BDA COMPLEX,
BANGALORE – 70.
- 9(h) SMT. YOGAWWA SIDDAPPA NAINEGALI
W/O. SIDDAPPA NAINEGALI
AGED MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 23/10/2020)

10. BASAPPA PARAPPA KADI
AGE: MAJOR,
OCC: AGRICULTURE,
R/O. MUDDEBIHAL,
SINCE DEAD BY HIS LR's
- 10(a) SANGAWWA
W/O. SANGAPPA JOLAD
AGED ABOUT 62 YEARS,
OCC: H.H. WORK,
R/O. BASAVANAGAR,
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.

10(b) MALLIKARJUN
ADOPTED S/O. BASAPPA KADI
AGED ABOUT 40 YEARS,
OCC: BOND WRITER,
R/O. BASAVANAGAR,
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 28/03/2017)

11. SIDRAMAPPA RACHAPPA NAVADAGI
AGE: MAJOR,
OCC: AGRICULTURE,
R/O. MUDDEBIHAL,
SINCE DEAD BY HIS LR's

11(a) SMT. ANDANAVVA
W/O. SIDRAMAPPA NAVADAGI
AGED ABOUT 72 YEARS,
OCC: H.H. WORK,
R/O. KHB COLONY, SOLAPUR ROAD,
BIJAPUR TALUK, DISTRICT: BIJAPUR.

11(b) SMT. CHAN BASAVVA @ CHARULATA
W/O. MALLAPPA ANGADI
AGED ABOUT 54 YEARS,
OCC: H.H. WORK
R/O. KHB COLONY, SOLAPUR ROAD,
BIJAPUR TALUK, DISTRICT: BIJAPUR.

11(c) SMT. LALITA @ UMA
W/O. SANGAPPA WALI
AGED ABOUT 42 YEARS,
OCC: H.H. WORK,
R/O. BASAVASHREE,
BHAGYAVANTI NAGAR,
JEVARAGI ROAD, GULBARGA TALUK,
DISTRICT: GULBARGA.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 28/03/2017)

12. MALAKAJAPPA SIDDAPPA CHALAGERI
AGE: MAJOR,
OCC: AGRICULTURE,

R/O. MUDDEBIHAL, DISTRICT: BIJAPUR.
SINCE DEAD BY HIS LR's

12(a) SRI SHIVAPUTRAPPA MALAKAJAPPA CHALAGERI
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL,
TQ.: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.

12(b) SRI VEERANNA MALAKAJAPPA CHALAGERI
AGED MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT: VIJAYAPUR.

12(c) SMT. HEMA
W/O. MAHALINGAPPA SHETTER
AGED MAJOR,
RESIDING NEAR CHARNTIMATH,
BAGALKOT DISTRICT. BAGALKOT.

12(d) SMT. SHOBA
W/O. SANGMESH MORATAGI
AGED MAJOR
RESIDING AT KOKATANUR,
SINDAGI TALUK,
DISTRICT: VIJAYAPUR.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 09/07/2018)

13. BASAPPA RACHAPPA NAVADAGI
AGE: MAJOR,
OCC: AGRICULTURE,
R/O. MUDDEBIHAL,
DISTRICT: BIJAPUR.

14. SMT. SHANTAWWA
W/O. SATTEPPA WADDAR @ MADALGERI,
AGE: MAJOR,
OCC: AGRICULTURE,
R/O. MUDDEBIHAL, DISTRICT: BIJAPUR.
SINCE DEAD BY HIS LR's

14(a) RAMU
S/O. SATYAPPA WADDAR @ HADALAGERI

AGED ABOUT 40 YEARS,
OCC: STONE CUTTER
R/O. NETAJI GALLI
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.

14(b) NARAYAN
S/O. SATYAPPA WADDAR @ HADALAGERI
AGED ABOUT 27 YEARS,
OCC: STONE CUTTER
R/O. NETAJI GALLI
MUDDEBIHAL, TQ.: MUDDEBIHAL,
DISTRICT: BIJAPUR.

(AMENDMENT CARRIED OUT AS PER
ORDER DATED 09/07/2018) ... RESPONDENTS

(BY SRI SANJEEVKUMAR C. PATIL, ADVOCATE FOR R-1 TO R-4;
SRI BASAVARAJ KAREDDY, ADVOCATE FOR R-8;
SRI G. KRISHNAMURTHY, SENIOR ADVOCATE FOR
SRI L. VIJAYKUMAR, ADVOCATE FOR R-9 (a to h),
R-10 (a & b) & R-13;
SRI G.B. YADAV, ADVOCATE FOR R-14 (a & b);
R-5 TO R-7 AND R-12 (a to d) ARE SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST
THE JUDGMENT AND DECREE DATED 10.09.2001 PASSED IN
O.S.NO.155/2001 BY THE CIVIL JUDGE, SR.DN. MUDDEBIHAL,
DECREEING THE SUIT FOR PARTITION AND SEPARATE
POSSESSION.

IN R.F.A. No.1012/2001

BETWEEN:

1. SRI SIDDAPPA SANGAPPA NAINEGALI,
SINCE DECEASED BY LR's.
- 1(a) BABU SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT: VIJAYAPURA.

- 1(b) ANIL SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT: VIJAYAPURA.
- 1(c) RAVINDRA SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT: VIJAYAPURA.
- 1(d) ANAND SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT: VIJAYAPURA.
- 1(e) JAGADISH SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT: VIJAYAPURA.
- 1(f) SMT. UMA S. MORABAD
D/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
W/O. SHASHIDAR M. MORABAD
PLOT NO.68, DCO RESIDENCY,
NEAR SATYA PRAKASH SCHOOL,
JAKKUR PLANTATION,
YALAHANKA ROAD,
BENGALURU – 70.
- 1(g) VIJAYKUMAR SIDDAPPA NAINEGALI
S/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
NO.488, 6TH CROSS,
9TH MAIN, 2ND BLOCK,
1ST STAGE, HBR LAYOUT,
NEAR BDA COMPLEX,
BENGALURU – 43.

1(h) SMT. YOGAWWA SIDDAPPA NAINEGALI
W/O. SIDDAPPA NAINEGALI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT: VIJAYAPURA.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

2. SRI BASAPPA PARAPPA KADI
SINCE DECEASED BY LR's.

2(a) SMT. SANGAVVA
W/O. SANGAPPA JOLAD
AGE: MAJOR,
RESIDING AT BASAVA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.

2(b) SRI MALLIKARJUN
S/O. BASAPPA KADI
AGE: MAJOR,
RESIDING AT AKSHAY PARK,
HUBLI – 580 030,
DISTRICT – DHARWAD.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

3. SRI SIDRAMAPPA RACHAPPA NAVADAGI
SINCE DECEASED BY LR's.

3(a) SMT. ANDANAVVA
W/O. SIDRAMAPPA RACHAPPA NAVADAGI
AGE: MAJOR,
RESIDING AT BHAGYAVANTI NAGAR,
KALABURAGI – 585 102.

3(b) SMT. CHANABASAMMA (CHARULATHA)
W/O. MALLAPPA ANGADI,
AGE: MAJOR,
RESIDING AT KHB COLONY,
SOLAPUR ROAD,
VIJAYAPURA – 586 101.

3(c) SMT. LALITHA (UMA)
W/O. SANGAPPA WALI
AGE: MAJOR,
RESIDING AT BHAGYAVANTI NAGAR,
KALABURAGI – 585 102.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

4. SRI MALKAJAPPA SIDDAPPA CHALAGERI
SINCE DECEASED BY LR's.

4(a) SRI SHIVAPUTRAPPA MALAKAJAPPA CHALAGERI
AGE: MAJOR,
RESIDING AT MAHANTESH NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.

4(b) SRI VEERANNA MALAKAJAPPA CHALAGERI
AGE: MAJOR,
RESIDING AT VIDYA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.

4(c) SMT. HEMA
W/O. MAHALINGAPPA SHETTAR
AGE: MAJOR,
RESIDING AT CHARANTIMATH,
BAGALKOT – 587 101,
DISTRICT – BAGALKOT.

4(d) SMT. SHOBA
W/O. SANGAMESH MORATAGI
AGE: MAJOR,
RESIDING AT KOKATNUR – 586 115,
TALUK – SINDAGI,
DISTRICT – VIJAYAPURA.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

5. SRI BASAPPA RACHAPPA NAVADAGI
AGE: MAJOR,
RESIDING AT MUDDEBIHAL – 586 212,
DISTRICT - VIJAYAPURA.

6. SMT. SHANTAWWA SATTEPPA WADDAR @ HADALAGERI,
W/O. SATTEPPA WADDAR @ HADALAGERI,
SINCE DECEASED BY LR's.
- 6(a) RAMU
S/O. SATTEPPA WADDAR @ HADALAGERI
AGED ABOUT 40 YEARS,
OCC: STONE CRUSHER,
R/O. NETAJI GALLI,
MUDDEBIHAL,
TQ.: MUDDEBIHAL,
DISTRICT – VIJAYAPURA.
- 6(b) NARAYAN
S/O. SATTEPPA WADDAR @ HADALAGERI
AGED ABOUT 27 YEARS,
OCC: STONE CRUSHER,
R/O. NETAJI GALLI, MUDDEBIHAL,
TQ.: MUDDEBIHAL,
DISTRICT – VIJAYAPURA.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

... APPELLANTS

(BY SRI G. KRISHNAMURTHY, SENIOR ADVOCATE FOR
SRI L. VIJAYKUMAR, ADVOCATE)

AND:

1. MR. NAGESH BHIMAPPA WADDER @ MUKTEDAR
S/O. BHIMAPPA WADDER @ MUKTEDAR
AGE: MAJOR, NETAJI GALLI,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
2. MISS. ANNAPURNA
D/O. BHIMAPPA WADDER @ MUKTEDAR,
W/O. YANKAPPA GUTTEDAR,
AGE: MAJOR,
POST: YADRAMI – 585 325,
TQ.: JEWARGI,
DISTRICT – KALABURAGI.
3. MISS. SUVARNA
D/O. BHIMAPPA WADDER @ MUKTEDAR,

W/O. HANAMANT GUTTEDAR,
AGE: MAJOR,
POST: YADRAMI – 585 325,
TQ.: JEWARGI,
DISTRICT – KALABURAGI.

4. SMT. JANAKIBAI
W/O. BHIMAPPA WADDER @ MUKTEDAR,
AGE: MAJOR,
RESIDING AT NETAJI GALLI,
MUDDEBIHAL 586 212,
DISTRICT – VIJAYAPURA.
5. SMT. SANGAWWA
W/O. NAGAPPA WADDER @ MUKTEDAR,
AGE: MAJOR,
RESIDING AT BEHIND KEB,
NEW PLOT, KUSTAGI – 583 227,
DISTRICT - KOPPAL.
6. SMT. RENUKABAI
W/O. PARASAPPA AMARAVATI,
AGE: MAJOR, RESIDING AT BEHIND KEB,
NEW PLOT, KUSTAGI – 583 227,
DISTRICT – KOPPAL.
7. SRI BHIMAPPA NAGAPPA WADDER @ MUKTEDAR
S/O. NAGAPPA WADDER @ MUKTEDAR,
AGE: MAJOR, R/O. MUDDEBIHAL,
NOW RESIDING AT KONKANAKOPPA – 587 205,
DISTRICT – BAGALKOT.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021
THE RESPONDENT NOS.1 TO 4 ARE LR's OF R-7)

8. SRI BHIMASHI FAKIRAPPA BIJJUR
SINCE DECEASED BY LR's.
- 3(a) MARUTI BHIMASHI BIJJUR
AGE: MAJOR, OCC: LABOUR,
C/O. H.Y. PATIL ADVOCATE,
KHB COLONY,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.

- 8(b) SMT. RAJESHWARI MALLIKARJUN TUMBAGI
AGE: MAJOR,
OCC: HOUSEHOLD,
RESIDENT OF ALGUR – 586 118.
TQ.: SINDAGI,
DISTRICT – VIJAYAPURA.
- 8(c) SMT. BHUVANESHWAR HANAMANTRAYA PATIL
AGE: MAJOR,
OCC: HOUSEHOLD,
C/O. H.Y. PATIL ADVOCATE,
KHB COLONY, MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 8(d) SMT. VIDYASHRI SHANTAPPA
(SHIVASHANKAR) GUDAGUNTI
AGE: MAJOR,
OCC: HOUSEHOLD,
POST: ADAVIHULAGBAL – 586 124,
TALUK – MUDDEBIHAL,
DISTRICT – VIJAYAPURA.
- 8(e) SRI VIJAYKUMAR (VIJAYSHANKAR)
BHIMASHI BIJJUR
AGE: MAJOR, OCC: LABOUR,
C/O. H.Y. PATIL ADVOCATE,
KHB COLONY,
MUDDEBIHAL – 586 212
DISTRICT – VIJAYAPURA.
- 8(f) SMT. ROHINI SHRISHAIL GUBYAD,
AGE: MAJOR, OCC: HOUSEHOLD,
POST: SHIVANAGI – 586 127,
TQ. & DISTRICT – VIJAYAPURA.
- 8(g) SMT. BHAGYASHRI BHIMASHI BIJJUR
AGE: MAJOR,
C/O. H.Y. PATIL ADVOCATE,
KHB COLONY, MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 8(h) KUMARI VANISHRI BHIMASHI BIJJUR
AGE: 16, OCC: STUDENT,
GUARDIAN H.Y. PATIL ADVOCATE,
KHB COLONY, MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

9. SMT. SITABAI PEERAPPA LAMANI,
SINCE DECEASED BY LR's.
- 9(a) KHIRAPPA PEERAPPA LAMANI
SINCE DECEASED BY LR's.
- i) SMT. SHANTABAI KHIRAPPA LAMANI
AGE: MAJOR,
OCC: HOUSEHOLD,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212.
DISTRICT – VIJAYAPURA.
- ii) MINAKSHI KHIRAPPA LAMANI
AGE: MAJOR,
OCC: HOUSEHOLD,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212.
DISTRICT – VIJAYAPURA.
- iii) ASHOKA KHIRAPPA LAMANI
AGE: MAJOR,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212.
DISTRICT – VIJAYAPURA.
- 9(b) VAMANRAO PEERAPPA LAMANI
AGE: MAJOR, OCC: EMPLOYEE,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 9(c) MANOHAR PEERAPPA LAMANI
SINCE DECEASED BY LR's.
- i) GEETABAI MANOHAR LAMANI
AGE: MAJOR, OCC: HOUSEHOLD,
PELEKAMMA NAGAR, MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- ii) BHAVANA MANOHAR LAMANI
AGE: MAJOR, OCC: STUDENT,
PELEKAMMA NAGAR,

- MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- iii) SACHIN MANOHAR LAMANI
AGE: 14 YEARS,
OCC: STUDENT,
GUARDIAN: GEETABAI LAMANI (MOTHER)
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- iv) LESHAMMA MANOHAR LAMANI
AGE: 10 YEARS, OCC: STUDENT,
GUARDIAN: GEETABAI LAMANI (MOTHER)
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 9(d) LAKKAJI PEERAPPA LAMANI
AGE: MAJOR, OCC: BUSINESS,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 9(e) RAMACHANDRA PEERAPPA LAMANI
AGE: MAJOR, OCC: BUSINESS,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 9(f) RAVINDRAPPA PEERAPPA LAMANI
SINCE DECEASED BY LR's.
- i) SMT. VILAS RAVINDRANATH LAMANI
AGE: MAJOR, OCC: LABOUR,
PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 9(g) SMT. LALITHABAI BHIMSEN NAYAK
AGE: MAJOR, OCC: HOUSEHOLD,
PELEKAMMA NAGAR, MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.
- 9(h) PEERAPPA BHIRAPPA LAMANI
AGE: MAJOR,

PELEKAMMA NAGAR,
MUDDEBIHAL – 586 212,
DISTRICT – VIJAYAPURA.

- 9(i) SMT. HEERABAI BHIMSEN LAMANI
AGE: MAJOR, OCC: TEACHER,
NEAR DURGA VIHAR,
STATION ROAD,
BAGALKOT – 587 101.
- 9(j) SUMAN BHIMSEN LAMANI
AGE: MAJOR, OCC: STUDENT,
NEAR DURGA VIHAR,
STATION ROAD, BAGALKOT – 537 101.
- 9(k) NAGARJUN BHIMSEN LAMANI
AGE: MINOR, OCC: STUDENT,
GUARDIAN: HEERABAI LAMANI (MOTHER),
NEAR DURGA VIHAR,
STATION ROAD,
BAGALKOT – 587 101.

(AMENDMENT AS PER COURT
ORDER DATED 16/04/2021)

10. SANGANAGOUDA THAMMAPPA BIRADAR,
AGE: MAJOR,
OCC: BUSINESS,
VIDYANAGAR, MUDDEBIHAL – 586 212,
TALUK – VIJAYAPURA. ... RESPONDENTS

(BY SRI SANJEEVKUMAR C PATIL, ADVOCATE FOR R-1 TO R-4
(R-1 TO R-4 ARE LR's OF DECEASED R-7);
SRI AMEETKUMAR DESHPANDE, SENIOR ADVOCATE FOR
SRI S.D. SAGARI, ADVOCATE FOR LR's OF R-8 AND LR's OF
R-9 & R-10; R-5, R-6, R-7, R-8 (b to e & g) SERVED;
R-9(a) (1,2), b, c (I) (II) (III-IV) R-9 (d & e), R-9 (g-i)
SERVED; V/O. DATED 27.11.2017 NOTICE TO R-4, R-8 (a)
(c) & (f) & R-9 (j) AND R(10) ARE H/S)

THIS RFA IS FILED UNDER SECTION 96 READ WITH ORDER
41 RULE 1 OF THE CPC AGAINST THE JUDGMENT AND DECREE
DATED 10.09.2001 PASSED IN O.S.NO.155/2001 ON THE FILE OF
THE CIVIL JUDGE (SR.DN.), MUDDEBIHAL, DECREERING THE SUIT
FOR PARTITION & SEPARATE POSSESSION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14.12.2022, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **K.S. HEMALEKHA J.**, PRONOUNCED THE FOLLOWING:-

JUDGMENT

Both these appeals arise out of the impugned judgment and decree dated 10.09.2001 passed in O.S.No.155/2001 by the Civil Judge, Senior Division, Muddebihal (for short the trial Court'), whereby the suit for partition and separate possession in respect of the suit schedule immovable properties filed by the plaintiffs (respondent Nos.1 to 6 in both the appeals) against the appellants-defendant Nos.2 to 11 and respondent No.7-defendant No.1 was decreed by the trial Court in favour of the plaintiffs against the defendants.

2. RFA No.1012/2001 is preferred by defendant Nos.3 to 7 and 11, while RFA No.23/2002 is preferred by defendant Nos.8 to 10.

3. The fact leading to the present appeals may be briefly stated as under:

Respondent Nos.1 to 6 – plaintiffs presented the plaint claiming partition and separate possession of their alleged 8/9th share in the suit schedule immovable properties and for other reliefs. Plaintiff Nos.1 to 3 and 5 and 6 claimed to be the children of defendant No.1 - Bhimappa Nagappa Waddar, while plaintiff No.4 – Smt.Janaki Bai was his wife. Defendant No.1 remained ex-parte in the suit and did not contest the same. Defendant Nos.2 to 11 were alienees in respect of portions of the suit schedule properties and they contested the suit. It is relevant to state that undisputedly, the suit schedule properties had been alienated and sold in favour of defendant Nos.2 to 11 during the period 1980-85 under various sale deeds executed by defendant No.1 in favour of defendant Nos.2 to 11. It is relevant to state that while plaint 'A' schedule properties are landed properties comprising of six items, plaint 'B' schedule property is a residential house.

3.1 A perusal of the plaint averments will indicate that defendant No.1 was the son of Nagappa Waddar, who was the son of Shettappa Waddar. It is specifically averred in the

plaint that the suit schedule properties were the self acquired properties of the aforesaid Shettappa Waddar, who expired in 1975. It is also averred that the aforesaid Nagappa Waddar, father of defendant No.1/son of Shettappa Waddar predeceased his father and he expired on 24.02.1965. It is further averred that the suit schedule properties are the ancestral Hindu joint family properties of plaintiffs and defendant No.1.

3.2 Plaintiffs contended that defendant No.1 was employed as a driver in KSRTC and was getting more than Rs.1,000/- per month by way of salary. It was contended that defendant No.1 was given to vices and squandered away joint family properties and neglected the plaintiffs. It was also contended that without any legal necessity, defendant No.1 sold away and alienated most of the suit schedule properties in favour of defendant Nos.2 to 11 to meet his immoral and illegal expenses and the said alienations are void and not binding on the plaintiffs and their share in the suit schedule properties. In this context, it is relevant to state that even according to the plaintiffs, most of the suit schedule properties

were alienated during the period 1980 to 1985 prior to institution of the suit in the year 1986. Putting forth the aforesaid averments and claiming 8/9th share in the suit schedule properties and maintenance and marriage expenses for plaintiff Nos.2 and 3, the plaintiffs instituted the aforesaid suit.

3.3 As stated supra, defendant No.1 remained *exparte* and did not contest the suit. The defendant Nos.2 to 11 – alienees contested the suit and filed their written statement *inter alia* contending that the suit schedule properties were the separate and self acquired properties of defendant No.1 and that he had sold and alienated the same in favour of defendant Nos.2 to 11, who were bonafide purchasers / transferees for valuable consideration prior to institution of the suit. It was also contended that the alienations made by defendant No.1 were for legal necessity and benefit of the estate and consequently, the plaintiffs were not entitled to put forth any claim over the suit schedule properties.

4. Based on the pleadings of the parties, the trial Court framed the following issues:

- 1) *Whether, plaintiffs prove that the suit properties are the joint ancestral?*
- 2) *Do they further prove that they are entitled to 8/9th share in the suit properties?*
- 3) *Are they entitled to separate possession?*
- 4) *Are the plaintiffs Nos.2 and 3 entitled to maintenance and marriage expenditures from Defendants No.1?*
- 5) *Whether Plaintiffs proves that the sales of some of the suit properties in favour of defendants Nos.2 to 7 are not binding upon them as void for the reasons alleged in the Plaint?*
- 6) *Whether defendants Nos.2 to 11 prove that Defendant No.1 sold the properties in their favour legal necessity of the family?*
- 7) *Whether Court fee paid is sufficient?*
- 8) *Whether the suit is bad for mis joinder of necessary parties?*
- 9) *What order and relief?*

Issue No.7 is set down as preliminary issue.

5. During the course of evidence, plaintiff No.4-Smt. Janakibai examined herself as PW.1 and one witness as PW.2 and documentary evidence at Exs.P-1 to P-16 were

marked. On behalf of defendant Nos.2 to 11, defendant Nos.10, 11, 7, 8 and 2 were examined themselves as DWs.1 to 5 respectively and documentary evidence at Exs.D-1 to D-10 were marked.

6. In the first instance, the trial Court dismissed the suit vide judgment and decree dated 03.07.1991, which was challenged before this Court in RFA No.510/1991. By judgment and decree dated 05.09.2000, this Court set aside the judgment and decree of the trial Court and remitted the matter back to the trial Court. Pursuant thereto, the parties did not adduce any further oral or documentary evidence and the trial Court proceeded to pass the impugned judgment and decree, thereby decreeing the suit in favour of the plaintiffs against the defendant Nos.2 to 11, who are before this Court by way of the present appeals.

7. During the pendency of the present appeals, the appellants in RFA No.23/2002 filed an application, I.A.No.1/2021 under Order 41 Rule 27 CPC dated 12.07.2021 seeking permission to produce additional documents

comprising of sale deed dated 24.10.2008 and revenue records in respect of portions of item Nos.1 and 2 of suit 'A' schedule properties. Respondent Nos.1 to 6-plaintiffs have filed their objections to the said application.

8. Heard Sri. G. Krishnamurthy, learned Senior counsel for the appellants in RFA No.1012/2001 and Sri. Amit Kumar Deshpande, learned Senior counsel for the appellants in RFA No.23/2002 as well as Sri. Sanjeev Kumar C. Patil, learned counsel for the respondent Nos.1 to 6-plaintiffs and perused the material on record including the impugned judgment and decree.

9. In addition to reiterating the various contentions urged in the Memorandum of Appeals and referring to the material on record, learned Senior counsel for the appellants submitted that the trial Court committed a grave and serious error of law and fact in coming to the conclusion that the suit schedule properties were the ancestral joint family properties of plaintiffs and defendant No.1. In this context, it is submitted that in view of the undisputed fact and the plaintiffs' specific

contention that the suit schedule properties were the self acquired properties of Shettappa Waddar, grand father of defendant No.1, who expired intestate in 1975, the suit schedule properties devolved upon defendant No.1 by way of intestate succession under Section 8 of the Hindu Succession Act, 1956 (for short "the said Act of 1956") and the properties became his separate and self acquired properties and were not ancestral or joint family properties in his hands and consequently, during the lifetime of defendant No.1, the plaintiffs did not have any right over the suit schedule properties, which had been alienated and sold in favour of defendant Nos.2 to 11, who had become the absolute owners of the respective suit schedule properties purchased by them.

9.1 It was also contended that alternatively, even assuming that the suit schedule properties were ancestral / joint family properties in the hands of defendant No.1, in the light of the judgment of the Apex Court in the case of ***Uttam Vs. Saubhag Singh & others – (2016) 4 SCC 68***, the plaintiffs are not entitled to any share in the suit schedule properties on this ground also.

9.2 It is further contended that the present suit for partition without seeking necessary declaration that the alienations made by defendant No.1 prior to the suit were not binding upon the plaintiffs was not maintainable, in the light of the judgment of the Apex Court in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & others – AIR 2010 SC 2807** and the Division Bench Judgment of this Court in the case of **Ganapati Santaram Bhosale Vs. Ramachandra Subbarao Kulkarni – ILR 1985 KAR 1115**. It is further contended that the trial Court committed an error in coming to the conclusion that the order of remand passed by this Court in RFA No.510/1991 was restricted remand and not an open remand and the scope of adjudication after remand was only in relation to issues 2 to 9 and not issue No.1, which had already been answered in favour of the plaintiffs.

9.3 In this context, it is contended that apart from the fact that the remand order of this Court was an open remand and not restricted / limited remand, in view of the judgment of the Apex Court in **Uttam's case (supra)**, issue No.1 would necessarily have to be answered against the plaintiffs and in

favour of defendant Nos.2 to 11 by holding that the suit schedule properties were separate and self acquired properties and not ancestral / joint family properties in the hands of defendant No.1.

9.4 Lastly, it is contended that the trial Court failed to consider and appreciate that the pleadings and evidence on record, which clearly establish that the pre-suit alienations of the suit schedule properties by defendant No.1-Kartha in favour of defendant Nos.2 to 11 were for legal necessity and the benefit of the estate and consequently, the plaintiffs were not entitled to any relief in the suit, which was liable to be dismissed.

9.5 In support of their contentions, learned Senior counsel for the appellants placed reliance upon the following judgments:-

- (1) ***Shri Man Mohan Varma vs. Sheela Sharma***
[26/11/2007 Delhi H.C. 0 SJ]
- (2) ***Velivelli Sydulu vs. Guntupalli Venkateshwarlu***
[AIR 1965 Andhra Pradesh 318]
- (3) ***Vajjiram & others vs. Annadurai & others*** ***[AIR 2020 Madras 101]***

- (4) ***Muthialpet Benefit Fund Ltd. vs. V.Devarajulu Chetty & others [AIR 1955 Madras 455]***
- (5) ***Ram Sundar Lal & another vs. Lachhmi Narain & another [AIR 1929 Privy Council 143]***
- (6) ***Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs. & others. [AIR 2006 SC 2033]***
- (7) ***Uttam vs. Saubhag Singh & others [(2016)4 SCC 68]***

10. Per contra, learned counsel for respondent Nos.1 to 6 would support the impugned judgment and decree and submit that the trial Court has correctly considered and appreciated the entire material on record and has passed the impugned judgment and decree, which does not warrant interference by this Court in the appeals, which are liable to be dismissed. It is also submitted that there is no merit in the application, I.A.No.1/2021 filed by the appellants under Order 41 Rule 27 CPC in RFA No.23/2002 and that the same is also liable to be dismissed. In support of their contentions, learned counsel for the respondents have placed reliance upon the following decisions:-

- (1) ***Krishna Pillai Rajasekharan Nair (Dead) by LRs vs. Padmanabha Pillai (Dead) by LRs. [(2004) 12 SCC 754]***
- (2) ***Commissioner of Police and others vs. Acharya Jagadishwarananda avadhuta and another [(2004) 12 SCC 770]***
- (3) ***Vadde Sanna Hulugappa & Ors. vs Vadde Sanna Hulugappa & Ors. [ILR 1998 KAR 2127]***
- (4) ***Smt. Anusha vs K. Shankar Raman [ILR 1998 KAR 2131]***
- (5) ***Smt. Munithayamma and another Vs Sri. Byanna and others [RSA No.1653/2021]***

11. Based on the above pleadings, the following points arise for my consideration in the present appeals:-

(i) Whether the application, I.A.No.1/2021 filed by the appellants in RFA No.23/2002 under Order 41 Rule 27 CPC for permission to produce additional evidence deserves to be allowed?

(ii) Whether the trial Court was justified in coming to the conclusion that the suit schedule properties were the ancestral joint family properties in the hands of defendant No.1, Bhimappa Nagappa Waddar?

(iii) Whether the impugned judgment and decree passed by the trial Court warrants interference by this Court in the present appeal?

Re- Point No.(i):-

12. As stated supra, the trial Court recorded a finding that the suit schedule properties were the ancestral joint family properties of defendant No.1, in which the plaintiffs were entitled to a share and that the alienations made by defendant No.1 in favour of defendant Nos.2 to 11 were not for legal necessity or benefit of the estate and accordingly, the same were not binding upon the plaintiffs or their share in the suit schedule properties.

12.1 I.A.No.1/2021 has been filed by the appellants seeking permission to produce sale deed dated 24.10.2008 executed by defendant No.1 in favour of one Ashok S/o Lakshmana, under which defendant No.1 sold a portion of Sy.No.112/1 (item No.1 of plaint 'A' schedule) demarcated as Sy.No.112/1/A measuring 4 acres in extent. Along with the application, the appellants have also produced revenue

records in this regard. In the affidavit in support of the application, it is contended that in the said sale deed, the plaintiffs have also joined in and signed the same as witnesses and having not been shown as co-owners in the document, the plaintiffs have not only suppressed the material facts, but have also admitted that the suit schedule properties belong to defendant No.1 and that the same are not joint family/ancestral properties.

12.2 In this context it is relevant to note that in the Statement of Objections filed by respondent Nos.1 to 6 to I.A.No.1/2021, it is not denied by them that they have signed the said sale deed as witnesses; so also, neither the execution of the sale deed nor the signature of respondent Nos.1 to 6 – plaintiffs on the sale deed nor its contents have been denied or disputed by them. In fact, the only reason assigned by respondent Nos.1 to 6 to oppose the application is that the documents sought to be produced are highly belated and no purpose is mentioned or established by the appellants to indicate as to how the documents were relevant for disposal of the appeals.

12.3 A perusal of I.A.No.1/2021, the documents sought to be produced and the Statement of Objections filed by respondent Nos.1 to 6 is sufficient to show that the documents sought to be produced relate to item Nos.1 and 2 of the suit schedule properties bearing Sy.No.112 and consequently, I am of the considered opinion that the said documents are relevant, material and essential for adjudication of the issues in controversy involved in the present appeals and for its disposal. It is no doubt true that the documents sought to be produced are *post litem* documents, which have come into existence during the pendency of the appeal; nevertheless, so long as the documents are not disputed by respondent Nos.1 to 6 and they relate to the suit schedule properties coupled with the fact that the suit is one for partition and separate possession of the plaintiffs' alleged share, it cannot be said that the documents are not to be permitted to be produced by way of additional evidence and I.A.No.1/2021 deserves to be allowed.

Accordingly, I.A.No.1/2021 is hereby **allowed** and **Point No.1** is answered accordingly.

Re- Point No.(ii):-

13. A perusal of the impugned judgment and decree will indicate that the trial Court has come to the conclusion that though the suit schedule properties were the separate and self acquired properties of the propositus - Shettappa Waddar, grand father of defendant No.1, upon his demise in 1975 and since his son, Nagappa Bhimappa Waddar (father of defendant No.1) had predeceased him in 1965, the suit schedule properties were ancestral joint family properties in the hands of defendant No.1. In this regard, it is significant to note that the question, whether the self acquired and separate properties inherited by a male Hindu from his father/grand father, who expired after 1956 when the said Act of 1956 came into force is no longer *res integra* in the light of the judgment of the Apex Court in ***Uttam's case*** (*supra*), wherein it is held as under:-

"6. Having heard the learned counsel for the parties, it is necessary to set out the relevant provisions of the Hindu Succession Act, 1956. The Act, as its long title states, is an Act to amend and codify the law relating to intestate succession among Hindus. Section 4

overrides the Hindu law in force immediately before the commencement of this Act insofar as it refers to any matter for which provision is made by the Act. Section 4 reads as follows:

“4. Overriding effect of Act.—Save as otherwise expressly provided in this Act—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.”

Section 6 prior to its amendment in 2005 reads as follows:

“6. Devolution of interest in coparcenary property.—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by

testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.”

7. It is common ground between the parties that since the present suit was filed only in 1998 and the decree in the said suit was passed on 20-12-2000, that the amendment to Section 6, made in 2005, would not govern the rights of the parties in the present case. This becomes clear from a reading of the proviso (i) to Section 6 of the amended provision which states as follows:

“Provided that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

The Explanation to this Section also states thus:

“Explanation.—For the purposes of this section ‘partition’ means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”

From a reading of the aforesaid provision it becomes clear that a partition having been effected by a court decree of 20-12-2000, which is prior to 9-9-2005, (which is the date of commencement of the amending Act), would not be affected.

8. The next important section from our point of view is Section 8, which reads as follows:

“8. General rules of succession in the case of males.—*The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—*

- (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;*
- (b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;*
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.”*

“THE SCHEDULE

Class I

Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a

predeceased son of a predeceased son; widow of a predeceased son of a predeceased son; son of a predeceased daughter of a predeceased daughter; daughter of a predeceased daughter of a predeceased daughter; daughter of a predeceased son of a predeceased daughter; daughter of a predeceased daughter of a predeceased son.”

9. Also of some importance are Sections 19 and 30 of the said Act which read as follows:

“19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and
(b) as *tenants-in-common* and not as joint tenants.

30. Testamentary succession.—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a *Mitakshara* coparcenary property or the interest of a member of a *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* in the property of the *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.”

10. Before analysing the provisions of the Act, it is necessary to refer to some of the judgments of this Court which have dealt, in particular, with Section 6 before its amendment in 2005, and with Section 8. In *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum* [*Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum*, (1978) 3 SCC 383 : (1978) 3 SCR 761], the effect of the old Section 6 was gone into in some detail by this Court. A Hindu widow claimed partition and separate possession of a 7/24th share in joint family property which consisted of her husband, herself and their two sons. If a partition were to take place during her husband's lifetime between himself and his two sons, the widow would have got a 1/4th share in such joint family property. The deceased husband's 1/4th share would then devolve, upon his death, on six sharers, the plaintiff and her five children, each having a 1/24th share therein. Adding 1/4th and 1/24th, the plaintiff claimed a 7/24th share in the joint family property. This Court held : (SCC pp. 386-87, paras 6-7)

“6. The Hindu Succession Act came into force on 17-6-1956. Khandappa having died after the commencement of that Act, to wit in 1960, and since he had at the time of his death an interest in Mitakshara coparcenary property, the preconditions of Section 6 are satisfied and that section is squarely attracted. By the application of the normal rule prescribed by that section, Khandappa's interest in the coparcenary property would

devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Act. But, since the widow and daughter are amongst the female relatives specified in Class I of the Schedule to the Act and Khandappa died leaving behind a widow and daughters, the proviso to Section 6 comes into play and the normal rule is excluded. Khandappa's interest in the coparcenary property would therefore devolve, according to the proviso, by intestate succession under the Act and not by survivorship. Testamentary succession is out of question as the deceased had not made a testamentary disposition though, under the Explanation to Section 30 of the Act, the interest of a male Hindu in Mitakshara coparcenary property is capable of being disposed of by a will or other testamentary disposition.

7. There is thus no dispute that the normal rule provided for by Section 6 does not apply, that the proviso to that section is attracted and that the decision of the appeal must turn on the meaning to be given to Explanation 1 of Section 6. The interpretation of that Explanation is the subject-matter of acute controversy between the parties.”

11. This Court, in dealing with the proviso and Explanation 1 of Section 6, held that the fiction created by Explanation 1 has to be given its full effect. That being the case, it was held : (Magdum case [Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, (1978) 3 SCC 383 : (1978) 3 SCR 761] , SCC pp. 389-90, para 13)

“13. In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing that alone can one determine the extent of the claimant's share. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener 'shall be deemed to be' the share in the property that would have been allotted to him if a partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out

some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition."

12. *In State of Maharashtra v. Narayan Rao Sham Rao Deshmukh [State of Maharashtra v. Narayan Rao Sham Rao Deshmukh, (1985) 2 SCC 321 : (1985) 3 SCR 358] , this Court distinguished the judgment in Magdum case [Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, (1978) 3 SCC 383 : (1978) 3 SCR 761] in answering a completely different question that was raised before it. The question raised before the Court in that case was as to whether a female Hindu, who inherits a share of the joint family property on the death of her husband, ceases to be a member of the family thereafter. This Court held that as there was a partition by operation of law on application of Explanation 1 of Section 6, and as such partition was not a voluntary act by the female Hindu, the female Hindu does not cease to be a member of the joint family upon such partition being effected.*

13. *In Shyama Devi v. Manju Shukla [Shyama Devi v. Manju Shukla, (1994) 6 SCC 342] , this Court again considered the effect of the proviso and Explanation 1*

to Section 6, and followed the judgment of this Court in Magdum case [Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, (1978) 3 SCC 383 : (1978) 3 SCR 761] . This Court went on to state that Explanation 1 contains a formula for determining the share of the deceased on the date of his death by the law effecting a partition immediately before a male Hindu's death took place.

14. On application of the principles contained in the aforesaid decisions, it becomes clear that, on the death of Jagannath Singh in 1973, the proviso to Section 6 would apply inasmuch as Jagannath Singh had left behind his widow, who was a Class I female heir. Equally, upon the application of Explanation 1 to the said Section, a partition must be said to have been effected by operation of law immediately before his death. This being the case, it is clear that the plaintiff would be entitled to a share on this partition taking place in 1973. We were informed, however, that the plaintiff was born only in 1977, and that, for this reason, (his birth being after his grandfather's death) obviously no such share could be allotted to him. Also, his case in the suit filed by him is not that he is entitled to this share but that he is entitled to a 1/8th share on dividing the joint family property between 8 co-sharers in 1998. What has therefore to be seen is whether the application of Section 8, in 1973, on the death of Jagannath Singh would make the joint family property

in the hands of the father, uncles and the plaintiff no longer joint family property after the devolution of Jagannath Singh's share, by application of Section 8, among his Class I heirs? This question would have to be answered with reference to some of the judgments of this Court.

15. *In CWT v. Chander Sen [CWT v. Chander Sen, (1986) 3 SCC 567 : 1986 SCC (Tax) 641] , a partial partition having taken place in 1961 between a father and his son, their business was divided and thereafter carried on by a partnership firm consisting of the two of them. The father died in 1965, leaving behind him his son and two grandsons, and a credit balance in the account of the firm. This Court had to answer as to whether credit balance left in the account of the firm could be said to be joint family property after the father's share had been distributed among his Class I heirs in accordance with Section 8 of the Act. This Court examined the legal position and ultimately approved of the view of four High Courts, namely, Allahabad [CIT v. Ram Rakshpal Ashok Kumar, 1966 SCC OnLine All 429 : (1968) 67 ITR 164] , Madras [CIT v. P.L. Karuppan Chettiar, 1978 SCC OnLine Mad 30 : (1978) 114 ITR 523] , Madhya Pradesh [Shrivallabhdas Modani v. CIT, (1982) 138 ITR 673 (MP)] and Andhra Pradesh [CWT v. Mukundgirji, 1983 SCC OnLine AP 288 : (1983) 144 ITR 18] , while stating that the Gujarat High Court [CIT v. Babubhai Mansukhbhai, 1975 SCC*

OnLine Guj 77 : (1977) 108 ITR 417] view contrary to these High Courts, would not be correct in law. After setting out the various views of the five High Courts mentioned, this Court held : (Chander Sen case [CWT v. Chander Sen, (1986) 3 SCC 567 : 1986 SCC (Tax) 641] , SCC pp. 577-78, paras 21-25)

"21. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. In view of the Preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court [CIT v. Babubhai Mansukhbhai, 1975 SCC OnLine Guj 77 : (1977) 108 ITR 417] view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court [CWT v. Mukundgirji, 1983 SCC OnLine AP 288 : (1983) 144 ITR 18] that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-à-vis his own son; that would amount

to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-à-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son, etc.

23. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu Law, 15th Edn. dealing with Section 6 of the Hindu Succession Act at pp. 924-26 as well as Mayne Hindu Law, 12th Edn., pp. 918-19.

24. The express words of Section 8 of the Hindu Succession Act, 1956 cannot be ignored and must prevail. The Preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.

25. In the aforesaid light the views expressed by the Allahabad High Court [CIT v. Ram Rakshpal Ashok Kumar, 1966 SCC OnLine All 429 : (1968) 67 ITR 164] , the Madras High Court [CIT v. P.L. Karuppan Chettiar, 1978 SCC OnLine Mad 30 : (1978) 114 ITR 523] , the Madhya Pradesh High Court [Shrivallabhdas Modani v. CIT, (1982) 138 ITR 673 (MP)] , and the Andhra Pradesh High Court [CWT v. Mukundgirji, 1983 SCC OnLine AP 288 : (1983) 144 ITR 18] , appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court [CIT v. Babubhai Mansukhbhai, 1975 SCC OnLine Guj 77 : (1977) 108 ITR 417] noted hereinbefore."

16. In *Yudhishter v. Ashok Kumar* [*Yudhishter v. Ashok Kumar*, (1987) 1 SCC 204], SCC at pp. 210-11, para 10, this Court followed the law laid down in *Chander Sen* case [*CWT v. Chander Sen*, (1986) 3 SCC 567 : 1986 SCC (Tax) 641].

17. In *Bhanwar Singh v. Puran* [*Bhanwar Singh v. Puran*, (2008) 3 SCC 87 : (2008) 1 SCC (Civ) 779], this Court followed *Chander Sen* case [*CWT v. Chander Sen*, (1986) 3 SCC 567 : 1986 SCC (Tax) 641] and the various judgments following *Chander Sen* case [*CWT v. Chander Sen*, (1986) 3 SCC 567 : 1986 SCC (Tax) 641]. This Court held : *Puran* case [*Bhanwar Singh v. Puran*, (2008) 3 SCC 87 : (2008) 1 SCC (Civ) 779], SCC pp 90-91, paras 12-15)

“12. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non obstante provision in terms whereof any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

13. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Class I of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but

a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

14. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record-of-rights. A partition had taken place amongst the heirs of Bhima.

15. Although the learned first appellate court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants-in-common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue.”

12. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe [Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, (1988) 2 SCC

126] , *Sheela Devi v. Lal Chand* [*Sheela Devi v. Lal Chand*, (2006) 8 SCC 581] and *Rohit Chauhan v. Surinder Singh* [*Rohit Chauhan v. Surinder Singh*, (2013) 9 SCC 419 : (2013) 4 SCC (Civ) 377] were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarised as follows:

- (i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).
- (ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.
- (iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property

would devolve by testamentary or intestate succession, and not by survivorship.

- (iv) *In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.*
- (v) *On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.*
- (vi) *On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants.*

19. *Applying the law to the facts of this case, it is clear that on the death of Jagannath Singh in 1973, the joint family property which was ancestral property in the hands of Jagannath Singh and the other coparceners, devolved by succession under Section 8 of the Act. This being the case, the ancestral property ceased to be joint family property on the date of death of Jagannath Singh, and the other coparceners and his widow held the property as tenants-in-common and not as joint tenants. This being the case, on the date of the birth of the appellant in 1977 the said ancestral property, not being joint family property, the suit for*

partition of such property would not be maintainable. The appeal is consequently dismissed with no order as to costs.”

13.1 As can be seen from the aforesaid judgment, the Apex Court has not only reiterated the well settled principle of law that the self acquired and separate property of a male Hindu dying intestate, devolves by succession under Section 8 r/w Section 19 of the Hindu Succession Act, by virtue of which the properties become the self acquired and separate properties of his children, but has also categorically held that even joint family/ancestral property of a male Hindu dying intestate also devolves by succession and not survivorship, consequent upon which, the children take it as tenants-in-common and not as joint tenants, on account of which the properties become their separate and self acquired properties and not joint family/ancestral properties in their hands.

13.2 In the instant case, the material on record including the undisputed plaint averments to the effect that the suit schedule properties were the separate and self acquired properties of the propositus - Shetappa Waddar, who died

intestate in 1975 is sufficient to establish that defendant No.1 succeeded to the same as separate and self acquired properties by virtue of Sections 8 and 19 of the said Act of 1956, particularly when his father Nagappa Bhimappa Waddar had pre-deceased Shettappa Waddar in 1965 itself. Further, as rightly contended by the learned Senior counsel for the appellants, even assuming that the suit schedule properties were the ancestral / joint family properties of Shettappa Waddar, the same would still devolve upon defendant No.1 as his separate and self acquired properties and not as joint family ancestral properties as held by the Apex Court in ***Uttam's case supra.***

13.3 Under these circumstances, notwithstanding and irrespective of the fact as to, whether the suit schedule properties were the separate self acquired properties of the Shettappa Waddar or his ancestral joint family properties, the properties devolved upon defendant No.1 by succession and the suit schedule properties became the separate and self acquired properties of defendant No.1, in which the plaintiffs did not have any share and consequently, the alienations

made by defendant No.1 in favour of defendant Nos.2 to 11 in respect of the suit schedule properties were perfectly legal, valid and proper and the same deserves to be upheld by this Court in the present appeals. It is therefore clear that the trial Court completely fell in error in failing to consider and appreciate the inter-play between Sections 4, 6, 8 and 19 of the said Act of 1956 in the factual matrix obtaining in the instant case and this has resulted in an erroneous conclusion.

13.4 We are therefore of the considered opinion that the trial Court committed an error in holding that the suit schedule properties were the ancestral joint family properties of defendant No.1 without appreciating that the same were in fact the separate and self acquired properties of defendant No.1, as a result of which, he was entitled to alienate the same in favour of defendant Nos.2 to 11 and consequently, the said findings recorded by the trial Court are hereby set aside.

13.5 A perusal of the impugned judgment and decree will also indicate that the trial Court has failed to consider and appreciate the well settled position of law that in a suit for

partition in relation to alleged joint family properties, which have been alienated by the defendant(s) prior to the suit, in addition to the prayer for partition, it is necessary for the plaintiffs, who are not parties to the alienation to seek a declaration that the alienations are not binding upon them or their alleged share in the properties. In this regard, it is necessary to refer to the judgment of the Apex Court in **Suhrid Singh's case** (*supra*), wherein it was held as under:-

“Leave granted. The appellant filed a suit (Case No. 381 of 2007) on the file of the Civil Judge, Senior Division, Chandigarh for several reliefs. The plaint contains several elaborate prayers, summarised below:

(i) for a declaration that two houses and certain agricultural lands purchased by his father, S. Rajinder Singh were coparcenary properties as they were purchased from the sale proceeds of ancestral properties, and that he was entitled to joint possession thereof;

(ii) for a declaration that the will dated 14-7-1985 with the codicil dated 17-8-1988 made in favour of the third defendant, and gift deed dated 10-9-2003 made in favour of the fourth defendant were void and non est “qua the coparcenary”;

(iii) for a declaration that the sale deeds dated 20-4-2001, 24-4-2001 and 6-7-2001 executed by his father, S. Rajinder Singh in favour of the first

defendant and sale deed dated 27-9-2003 executed by the alleged power-of-attorney holder of S. Rajinder Singh in favour of the second defendant, in regard to certain agricultural lands (described in the prayer), are null and void qua the rights of the "coparcenary", as they were not for legal necessity or for benefit of the family; and

(iv) for consequential injunctions restraining Defendants 1 to 4 from alienating the suit properties.

6. The second proviso to Section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under sub-clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under sub-clause (e) thereof.

7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently

A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.”

13.6 A similar view was taken in **Ganapati Santaram Bhosale's case** (*supra*), by the Division Bench of this Court, wherein it was held as under:-

“19. The second contention that the suit should have failed for lack of specific relief in regard to the setting aside of the sales is also devoid of merit. It is now well settled that in a suit for partition by Hindu coparcener it is not necessary for him to seek the setting aside of the sale. It is sufficient if he asks for his share in the joint family properties and he be put in possession thereof and for a declaration that he is not bound by any alienations or interest of others created in such properties which, fall to his share:”

13.7 In the instant case, it is an undisputed fact that except seeking for a decree for partition simpliciter, the plaintiffs have not sought for any declaration that the alienations made by defendant No.1 prior to the suit during the years 1980-1985 are not binding upon them. It is well settled that Kartha of a Hindu undivided family is empowered to alienate joint family/ancestral properties for legal necessity or benefit of the estate of the joint family and the validity of such an alienation would have to be adjudicated depending on the facts of the case. In other words, there was no bar for defendant No.1 to alienate the suit schedule properties in favour of defendant Nos.2 to 11 including the alleged share of

the plaintiffs and so long as the said alienations were affected prior to institution of the suit, it was incumbent upon the plaintiffs to seek a declaration that the said alienations by defendant No.1 were not binding upon the plaintiffs or their alleged share in the suit schedule properties.

13.8 This crucial aspect of the matter, which affects maintainability of the suit, in our considered opinion has not been considered or appreciated by the trial Court and consequently, the impugned judgment and decree passed by the trial Court decreeing the suit of the plaintiffs for partition simpliciter without seeking appropriate relief of declaration deserves to be set aside on this ground also.

13.9 A perusal of the impugned judgment and decree will also indicate that the trial Court has proceeded on the basis that issue No.1 as to, whether the suit schedule properties were joint family properties, had already been answered in favour of the plaintiffs by this Court in RFA No.510/1991 and that the remand order was restricted to the other issues. In this context, it is necessary to extract the

relevant portion of this Court's aforesaid order (passed in RFA No.510/1991) as under:-

"13. The trial Court acting upon the admission of PW.1 in evidence that the properties are the self acquired properties of Shettappa Waddar, the inheritance of the properties by the first defendant is not established and in view of the mutation entries finds that the properties are in the nature of self acquired properties of the first defendant. The said finding of the trial Court in view of the law laid down by the Supreme Court appears to be improper and liable to be set aside. In the absence of any valid transfer intervivos or testamentary succession the property of Hindu dying intestate shall devolve as per the provisions of Hindu Succession Act in which event, the widow of Nagappa also would be entitled to a partition. Further the claim made by the other plaintiffs also require due and valid consideration for adjudication which the trial Court failed to address itself.

14. The trial Court has committed a grave error in not answering the issues No.2 to 5 which has a bearing on the controversial facts, crucial for determination of rights of all the contesting parties. Under Order 20 Rule 5 it is mandatory that the court shall state its finding or decision with reasons and all the distinct issues have to be answered by the finding supported by reasons. The exceptional situation is

provided under Order 14 Rule 2 where a issue relating to the jurisdiction or & bar to a suit created by any law for the time being arises for determination and if court can once and for all dispose of the case with reference to the said issues only. In such a situation, the court is entitled to postpone the settlement of other issues only after that issue has been determined and may deal with the suit in accordance with the decision on the said preliminary issues. In the instant case, the issue No.1 obviously cannot be considered as one covered by the perview of the order 14 rule 2. Hence, the trial Court was not justified in not considering the other issues.

In view of the foregoing reasons and discussions made above, the appeal is remanded to the trial Court for disposal according to law on issue No.2 to 8.”

13.10 A perusal of the aforesaid order of this Court will clearly indicate that no categorical or conclusive finding has been recorded by this Court to the effect that the suit schedule properties are ancestral joint family properties of defendant No.1. On the other hand, the said order contains mutual contradictions, ambiguities and inconsistencies, which are sufficient to show that it was an open remand by this Court to the trial Court for reconsideration afresh including the question as to, whether the suit schedule properties were the ancestral

joint family properties of defendant No.1 or whether the same were his separate self acquired properties. Under these circumstances, we are of the view that the trial Court committed an error in coming to the conclusion that the suit schedule properties are the joint family properties by wrongly placing reliance upon the aforesaid remand order of this Court and consequently, even this finding recorded by the trial court deserves to be set aside.

Accordingly, we answer **Point No.2** by holding that the suit schedule properties were the separate and self acquired properties of defendant No.1 – Bhimappa Nagappa Waddar and not his joint family / ancestral properties and that the alienations made by him in favour of defendants 2 to 11 are perfectly legal, valid and proper and that the plaintiffs are not entitled to any share in the said properties.

Re-Point No.(iii):-

14. As stated supra, while dealing with **Point No.1**, we have already come to the conclusion that the documents sought to be produced by way of additional evidence are

relevant and material for the purpose of adjudication / disposal of the present appeals and that the same are required for the purpose of pronouncing judgment in the appeals. The sale deed sought to be produced by way of additional evidence also indicates that the plaintiffs having signed as witnesses to the documents have categorically and unequivocally admitted that the defendant No.1 was the sole and absolute owner of the properties conveyed under the said sale deed, thereby falsifying their claim that the suit schedule properties were joint family ancestral properties, particularly when all the suit schedule properties including the properties alienated in favour of defendants 2 to 11 prior to the suit and the properties alienated by defendant No.1 during the pendency of the appeals were all acquired by the defendant No.1 by succession and there were his separate and self acquired properties.

14.1 The subsequent conduct and the documents produced along with I.A.1/2021 and the material on record referred to while discussing **Point No.2** (*supra*), are sufficient to establish that the impugned judgment and decree passed

by the trial court is erroneous and contrary to the material on record warranting interference by this Court in the present appeal. It is relevant to state that since the respondents 1 to 6 – plaintiffs do not dispute the documents produced along with I.A.1/2021 filed by the appellants, we do not deem it necessary to remit the matter back to the trial court or call for a finding on the said documents, since no disputed questions of fact or law arise for consideration in relation to the said documents.

14.2 Insofar as the judgments relied upon by the respondents and the other judgments relied upon by the appellants are concerned, in view of our findings above and the legal principles enunciated in the judgments extracted above, we are of the view that the said judgments are not applicable to the facts of the instant case.

We accordingly, answer **Point No.3** by holding that the impugned judgment and decree passed by the trial court is illegal, unjust, unfair and opposed to the facts and probabilities of the case and the same deserves to be set aside and the suit of the plaintiffs is liable to be dismissed.

15. In the result, we pass the following:-

ORDER

(i) Both the appeals in RFA No.1012/2001 and RFA No. 23/2002 are hereby allowed.

(ii) The impugned judgment and decree dated 10.09.2001 passed in O.S No.155/2001 by the trial court is hereby set aside.

(iii) The suit filed by respondents 1 to 6 – plaintiffs stands dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Bmc/Srl.