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Court : Karnataka

Decided On : Jun-25-2015

Judge : N. Kumar &Amp; B. Sreenivase Gowda

Appeal No. : Regular First Appeal No. 76 of 2012 connected with Regular First Appeal No. 77 of 2012

Appellant : Vijayalakshmi and Others

Respondent : K.R. Ananthakumar and Others

Judgement :

1. These are plaintiffsregular first appeals against the judgment and decree of the Trial Court which had dismissed the suit for partition and separate possession. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

2. The subject-matter of the suit is four items of landed property bearing Sy. No. 35 measuring 1 acre 20 guntas, Sy. No. 36 measuirng 4 acres 32 guntas, Sy. No. 37 measuring 2 acres 25 guntas and Sy. No. 74/4A measuring 1 acre 38 guntas, all situate in Kasavanahalli Village, Varthur Hobli, Bangalore South Taluk, which are more particularly described in the schedule to the plaint (hereinafter referred to as the schedule properties'). Bschedule property is movable properties.

3. The plaintiffs are the daughters, defendant 1 is the son of defendant 2, who is the wife of deceased Ramachandra Reddy. During the lifetime of the deceased

Ramachandra Reddy, the suit schedule properties were in the possession and enjoyment of plaintiffsfamily members and that Ramachandra Reddy was looking after the family affairs in the capacity of Manager/Kartha. Ramachandra Reddy die don 23-8-1989 intestate. After the death of Ramachandra Reddy, plaintiffs and defendants 1 and 2 have succeeded to the estate of the deceased Ramachandra Reddy and since then, they have been enjoying the schedule properties jointly.

4. It is the specific case of the plaintiffs that the land bearing Sy. Nos. 35, 36 and 37 belonged to undivided Hindu Joint family of defendants 1 and 2 and therefore, plaintiffs are entitled to the share in them.

5. It is the further case of the plaintiffs that, defendants 1 and 2 have entered into an agreement to sell with defendants 3 and 4, the suit schedule properties for a lesser market price at the rate of Rs. 3,60,000/- per acre, in order to make unjust profit behind the plaintiffs. Plaintiffs have got specific share in the suit schedule properties. Defendants 1 and 2 have no right, title over the share of the plaintiffs and that defendants 3 and 4 will not derive perfect title over the shares of plaintiffs and no title passes to the defendants 3 and 4. On purchase of plaintiffs shares from defendants 1 and 2, the defendants 3 and 4 will not get title on the share of the plaintiffs. The sale agreement has taken place without the knowledge of the plaintiffs. As on the date of the transaction, the plaintiffs are majors and they are competent to sell their share to anybody in their individual capacity or in joint and hence, the sale transaction is void under law and the same is not sustainable.

6. Plaintiffs are not in good terms with defendants 1 and 2 and therefore, they demanded their shares about three years back and on 25-11-1994 and subsequently. Defendants 1 and 2 refused to give their shares. Hence, the plaintiffs filed the suit for partition and separate possession of the suit schedule properties.

7. Subsequently, the plaint was amended by an order dated 19-1-2000, wherein item 4 was added to the suit Schedule A'.

8. After service of summons, the second defendant has filed a written statement. She has admitted the relationship with the plaintiffs. She also admitted the nature

of the properties, death of Ramachandra Reddy and all of them succeeding to him estate. She stated that during the lifetime of late Ramachandra Reddy, plaintiffs and first defendant and the said Ramachandra Reddy had sold ASchedule item 2 in favour of one Sri Meda Viswanatham under a registered sale deed dated 6-9-1985 for Rs. 92,000/-. That being so, the suit Aschedule Item 2 is no more a property belonging to the joint family of the plaintiffs and defendants 1 and 2 Suit items 1 and 3 are the only joint family properties. Hence, plaintiffs, defendants 1 and 2 are entitled to equal share in ite4ms 1 and 3 of the plaint ASchedule property, being the members of the joint family. She further submitted that she purchased the said Sy. No. 36 measuring 4 acres 32 guntas from the said Sri Meda Vishwanatham, under a registered sale deed dated 6-9-1990. Thus she became the absolute owner of the item 2 of the plaint ASchedule property. Plaintiffs and defendant 1 have no right or share over Sy. No. 36. She admitted entering into agreement with defendants 3 and 4. She admitted that the plaintiffs and defendants 1 and 2 have 1/5th share in items 1 and 3 of the plaint schedule property.

9. Bschedule properties are movable properties and in it, item Ais a motorcycle, which absolutely belongs to the first defendant alone and the rest are her absolute properties.

10. The third defendant has filed a detailed written statement contesting the claim of the plaintiffs. They do not dispute the relationship pleaded in the plaint, the death of Ramachandra Freddy on 23-8-1989 and the joint family placed by the plaintiffs. They dispute the measurements set out in the plaint in respect of the schedule properties. It is pleaded that after the demise of K.H. Ramachandra Reddy, on 23-8-1989, all the legal heirs of Sri K.H. Ramachandra Reddy, had a partition/family arrangement themselves in the month of September 1989 and schedule properties fell to the share of defendants 1and 2. By virtue of the family partition/family arrangements, defendants 1 and 2 got their names entered in the revenue records, RTCs, mutation and all the original documents and thus they have become absolute owners thereof. Thus they are the only persons who have a right to alienate these properties. Defendants 1 and 2 have entered into an agreement of sale with the defendants 3 and 4 in respect of suit schedule

properties. But it is not true that they agreed to sell for a lesser market value at the rate of Rs. 3,60,000/- per acre, in order to make unjust profit behind the plaintiffs. The plaintiffs have no specific share in the suit schedule properties. It is not correct to say that the sale agreement has taken place without the knowledge of the plaintiffs. Plaintiffs are fully aware of the sale agreement. The fourth defendant is no more. It was specifically pleaded that plaintiffs and defendants 1 and 2 are colluding with each other to defraud the third defendant possible. The averment that the plaintiffs and defendants 1 and 2 are in joint possession and enjoyment of the suit schedule properties are absolutely false. The third defendant was put in possession and enjoyment of the schedule properties on the date of the agreement of sale and thereafter, a sale deed was executed by defendants 1 and 2 represented by their general power of attorney holder by this defendant, in favour of the other persons. There is no cause of action for the suit, Court fee paid is insufficient and therefore, he sought for dismissal of the plaint.

11. Subsequent to the filling of the suit, the plaintiffs impleaded on K.N. Narasimha Guptha as 5th defendant as against whom they had filed a suit for cancellation of the sale deed in respect of item 4 of the schedule property. He was impleaded by an order of the Court dated 18-10-2005. During the pendency of the proceedings, defendants 1 and 2 represented by their power of attorney holder alienated the schedule properties in favour of defendants 6 and 7. Therefore, they were impleaded by an order of the Court dated 7-11-2006. After such impleadment, 5th defendant though he was served, did not appear and therefore, he was placed ex parte. Insofar as defendants 6 and 7 are concerned, they have filed a detailed written statement. They also do not dispute the relationship between the parties. They specifically contended that there is no undivided joint family. They came to know about the pendency of the suit only after Court summons was served on them on an application filed under Order 1, Rule 10 of Civil procedure Code, 1908. They specifically pleaded that the father of the plaintiffs, 1st defendant and husband of the 2nd defendant inherited the properties under a registered partition deed dated 16-3-1970. In paragraph 4 they have set-out 11 items which fell to the share of Sri Ramachandra Reddy under the partition deed dated 16-3-1970. Though 11 items fell to their share, plaintiffs have challenged the sale deed executed by their mother and brother in favour of defendants 3 and 4 in respect of

the suit schedule properties only. The plaintiffs have purposely and under the mala fide intention, have not included the properties mentioned in paragraph 6 which are remaining 7 items. The plaintiffs ought to have included these properties and sought for 1/5th share out of all 11 items of properties. Further, it is contended the land in Sy. No. 35 measures 1 acre 20 guntas is not correct. It measures only 20 guntas. Sy. No. 36 measuring 4 acre 32 guntas, Sy. No. 37 measuring 2 acres 21 guntas situated at Kasavanahally Village, Varthur Hobli, Bangalore South Taluk were the ancestral properties of late Sri K.H. Ramachandra Reddy and he has acquired these properties including the other properties mentioned in a family partition effected by the brothers and himself is true and correct. Defendants 6 and 7 have reiterated all the allegations made by the 3rd defendant in its written statement. In addition to that, it is pleaded that defendants 1 and 2 are the absolute owners of Sy. No. 74/4A measuring 1 acre 38 guntas, is the ancestral property of late Sri Rmachandra Reddy and during his lifetime he has sold the properties to Sri Narasimha Gupta vide registered sale deed dated 1-3-1978. He died on 23-8-1989. His wife Smt. Ashwathamma-2nd defendant had challenged the said sale deed executed by her late husband Sri Ramachandra Reddy in favour of Narasimha Gupta in O.S. No. 4790 of 1989 before the Civil Judge at Bangalore. The said suit was dismissed and a sale in favour of the 5th defendant was confirmed. Smt. Ashwathamma challenged the judgment in RFA no. 114 of 2000 before the High Court of Karnataka which was disposed of in terms of the compromise petition and she got the properties back. Hence, the property mentioned in item 4 has to be treated as 2nd defendant's self-acquired property. Further, defendants 1 and 2 are the lawful owners of the schedule property bearing Sy. No. 74/4A measuring 22 guntas of converted land out of 1 acre 38 guntas. Sy. No. 35 measuring 1 acre 20 guntas and Sy. No. 37 measuring 2 acres 25 guntas of converted land have excuted registered GPA dated 13-11-1992 in favour of Sri K.P. Champakadama Swamy-the honourary Secretary of KEB Employees CO-operative Society Limited. Defendants 1 and 2 through their GPA holder have sold 1 acre 20 guntas of converted land in Sy. No. 35 and 2 acres 25 guntas of converted land in Sy. No. 37 to this defendant under a registered deed dated 28-5-2002 5th defendant has purchased the property bearing Sy. No. 74/AA measuriing 1 acre 38 guntas under a registered sale deed dated 2-12-2002. They

denied that the plaintiffs and defendants 1 and 2 are in joint possession of the plaint schedule property and therefore, they sought for dismissal of the suit.

12. On the basis of the aforesaid pleadings, the Trial Court framed the following issues on 31-1-2006:

1. Whether the plaintiffs prove that the suit schedule properties are their ancestral/joint Hindu undivided family properties?

2. Whether the plaintiffs prove that they are entitled for equal share in the suit schedule properties?

3. Whether the plaintiffs prove that the sale transaction between the defendants 1 and 2 defendants 3 and 4 respect of item 2 Aschedule properties is void under law and same is not binding on them?

4. What order or decree?

Subsequently, on 27-10-2007 the following additional issues were framed:

5. Whether plaintiffs prove that the suit schedule properties are available for the partition?

6. Whether defendants 6 and 7 prove that defendants 1 and 2 are lawful owners of the suit schedule properties?

7. Whether the defendants 6 and 7 prove the suit is not maintainable in the present form, without seeking the recovery of possession as contended in the para 13 of the written statement?

8.. Whether they further prove that suit is bad for non-joinder of the necessary parties as contended in para 13 of the written statement?

Subsequently, on 13-7-2011, the following additional issue was framed:

9. Whether defendants 6 and 7 prove that suit is bad for seeking partial partition of family properties?

13. During the pendency of the suit, the plaintiffs also filed another suit O.S. NO. 550 of 2003 and in the said suit, defendants 6 and 7 were arrayed as defendants 1 and 2. Defendants 1 and 2 were arrayed as defendants 3 and 4. Defendant 3 was arrayed as 3rd defendant. Therefore, for the purpose of convenience, we will refer to the parties as they are referred to in O.S. No. 550 of 2003.

14. The case of the plaintiffs is since defendants 4 and 5 entered into an agreement to sell the suit schedule property in favour of the 3rd defendant, it is to prevent the sale in the earlier suit, an order of temporary injunction was granted on 4-1-1995. 3rd defendant was duly served in the said suit and he was also served with the interim order. However, in the month of December 2002, plaintiffs came to know that 3rd defendant executed the sale deed in favour of defendants 1 and 2 alienating the properties in the month of May and July 2002. After obtaining the certified copy, the plaintiffs filed the aforesaid suit. The specific case pleaded is defendants 1 and 2 who purchased the suit schedule properties from defendants 4 and 5 through the 3rd defendant, ought to have verified the title and interest of all the persons who had interest in the schedule properties before purchasing the land in question. 3rd defendant had no power or authority to sell the properties during the pendency of the suit for partition and also when the 3rd defendant was restrained from alienating the schedule properties. Hence, the sale and transfer of the suit schedule property effected on 28-5-2002 and 8-7-2002 is illegal and not binding on the plaintiffs. The transfer is hit by Section 52 of the Transfer of Property Act, 1882. The sale deeds are ab initio void unenforceable coupled with fraud, perpetrated on the plaintiffs. There is a collusion and hence, the sale deeds are liable to be cancelled. The sale deeds are sham transactions and defendants 1 and 2 cannot claim any right, title or interest under the said documents over the suit schedule property.

15. Defendants 3 and 4 had no right, authority to sell the shares of the plaintiffs who are entitled to equal shares in the said properties. Defendants 1 and 2 even though purchased the schedule property in the month of May 2002, did not take possession of the suit schedule property and the plaintiffs did not part with the possession. However, the defendants all of a sudden in the second week of January 2003 attempted to develop the suit schedule property by putting up a

compound wall and cutting trees standing on the lands. They prevented the same by intervening. Therefore, the plaintiffs filed the suit for a declaration that the sale deeds executed by defendants 3, 4 and 5 are void and not binding on the plaintiffs and for consequential reliefs.

16. After service of summons, 1st defendant filed a detailed written statement. They reiterated what they had stated in the written statement filed in O.S. No.42 of 1995. However, in this written statement, they pleaded as a matter of fact that defendants 3, 4 and plaintiffs 1 to 3 had filed O.S. No. 4790 of 1990 on the file of the Additional City Civil Judge, Bangalore against one Sri K.M. Narasimha Gupta for a declaration declaring that the sale deed dated 1-3-1978 executed by late K.H. Ramachandra Reddy was sham, nominal, by playing fraud and hence, not binding on them in respect of item 4 of the plaint schedule property. The suit was dismissed. The appeal in RFA No. 114 of 2000 was preferred by defendants 3 and 4 and plaintiffs 1 to 3. During the pendency of the said appeal, since by then there was already an agreement of sale, power of attorney etc., in favour of 3rd defendant in respect of the said item 4 of the property, to put an end to the litigation, the 5th defendant had paid further sum of Rs. 3.00 lakhs since he had no other alternative, apart from the sale consideration to the respondents in that appeal viz., K.M. Narasimha Gupta for and on behalf of defendants 3 and 4 and plaintiffs 1 to 3 to get the appeal allowed by consent of the parties. Only at the instance of the mutual agreement, it is learnt that 3rd defendant had paid the sum of Rs. 3.00 lakhs to the said K.N. Narasimha Gupta for enabling them to complete the sale transaction in favour of the 3rd defendant. A memo was filed. A compromise petition was filed. After recording the compromise, by order dated 27-11-2003, the earlier sale deed was set aside. It is only thereafter, the sale in favour of the 3rd defendant was completed. Plaintiffs were aware of all these proceedings and they were also aware that 3rd defendant was put in possession of the property. That being so, the plaintiffs are estopped from taking a contrary and untenable stand. Being fully aware that the 3rd defendant was put in possession and enjoyment of the schedule property as on the date of the registered sale deeds dated 28-5-2002 and 8-7-2002, defendants 3 and 4 should have executed the registered sale deeds on those dates in favour of these defendants represented by their general power of attorney-3rd defendant and they were put in

possession of the property. The sale deed in their favour is not void ab initio. It is not a sham transaction. Therefore, they sought for dismissal of the suit.

17. The 2nd defendant filed a separate written statement reiterating parawise what is stated by the 1st defendant. 3rd defendant filed a written statement reiterating what he had stated in his original suit and also what defendants 1 and 2 in the suit have stated. Therefore, he also sought for dismissal of the suit.

18. On the aforesaid pleadings, the Trial Court framed the following issues:

1. Whether the plaintiffs prove that suit properties are joint family properties of plaintiffs and defendants 3 and 4?

2. Whether the plaintiffs prove that registered sale deeds dated 28-5-2002 and 8-7-2002 executed by defendants 3 to 5 are void and not binding on the plaintiffsshare?

3. Whether plaintiffs are entitled for the relief of permanent injunction sought for?

4. Whether defendants 1, 2 and 5 prove the prior partition dated 28-3-1989 and therefore, the plaintiffs are not entitled for any share in the suit properties?

5. Whether the Court fee paid is insufficient?

6. What decree or order?

19. Initially, the evidence was recorded in O.S. No. 550 of 2003. Subsequently, an order came to be passed consolidating both the suits and the evidence recorded in O.S. No. 42 of 1995 and the evidence recorded earlier in O.S. No. 550 of 2003 was ordered to be read in O.S. No. 42 of 1995. Thus, common evidence was recorded.

20. The plaintiffs in order to substantiate their claim examined the 2nd plaintiff-Pushpavathi as P.W.1. 3rd defendant-Geetha was examined as P.W.2. They have produced 37 documents which were marked as Exs. P.1 to P.37. On behalf of the defendants, one C.H. Devaraj “ the Partner of 6th defendant-M/s. Golden Gate Projects was examined as D.W.2 and M.G. Naranaswamy “ the Secretary of the

3rd defendant-KEB Employees Co-operative Society Limited was examined as D.W.3. They produced in all 23 documents which were marked as Exs. D.1 to D.23.

21. The Trial Court on appreciation of the aforesaid oral and documentary evidence on record held that the plaintiffs have proved that the suit schedule properties are their ancestral/joint Hindu undivided family properties. It held that defendants 6 and 7 have proved that the suit is bad for seeking partial partition of the family properties. The plaintiffs have failed to prove that they are entitled to equal share in the suit schedule property. They failed to prove that the sale transaction between defendants 1 and 2 and defendants 2 and 4 in respect of item 2 of the schedule property is void under law and the same is not binding on them. The plaintiffs have failed to prove that the suit schedule property are available for partition. Defendants 6 and 7 have failed to prove that defendants 1 and 2 are the lawful owners of the suit schedule properties. Defendants 6 and 7 have failed to prove that the suit is not maintainable in the present form without seeking recovery of possession as contended in paragraph 13 of the written statement. They failed to prove that the suit is bad for non-joinder of the necessary parties as contended in paragraph 13 of the written statement. Thus issues framed in O.S. No. 42 of 1995 were answered as aforesaid.

22. Insofar as issues in O.S. No. 550 of 2003 is concerned, it held the plaintiffs have proved that the suit properties which are the joint family properties of plaintiffs and defendants 3 and 4. The plaintiffs have failed to prove that the sale deed dated 28-5-2002 and 8-7-2002 are void and not binding on the plaintiffs shares. Plaintiff is not entitled for the relief of permanent injunction. Defendants 1, 2 and 3 who are defendants 3,6 and 7 in O.S. No. 42 of 1995 have failed to prove the prior partition dated 18-3-1999 and therefore, the plaintiffs are not entitled for any share in the suit properties. It was also held that court fee paid is sufficient and thus, both the suits came to be dismissed.

23. Aggrieved by the said judgment and decree in both for suits, the suits, the plaintiffs have preferred these two appeals.

24. Sri S.K.V. Chalapathy, learned Senior Counsel appearing for the plaintiffs/appellants contend though 11 items fell to the share of the plaintiff's father under a registered partition deed, 5 items were sold as on the date of the suit and therefore, question of including them in the suit did not arise. Insofar as Sy.No.6/1 is concerned, it was an inam land which vested with the Government and subsequently, it was regranted in favour of the 2nd defendant-Smt. Ashwathamma. Therefore, as it belonged to her exclusively, that was not included in the suit schedule.

25. Insofar as other properties are concerned, that was a subject-matter of the sit in O.S. No. 9253 of 1980 as per Ex. P.35 where there was an order of injunction restraining them from alienating the property and therefore, it was not available for partition. Therefore, Court below was not justified in dismissing the suit on the ground that all the joint family properties are not included.

26. Secondly, he contended the Trial Court has held the alienations made in favour of defendants 6 and 7 are for legal necessity and therefore, the sale deeds are binding on the plaintiffs. As such, they cannot seek for cancellation or for partition in respect of the said properties. However, he filed a memo confining the claim in respect of item 1 of the schedule property to only 20 guntas itself the property had been alienated and such alienation being not only on his behalf but also on behalf of the plaintiffs who were minors at that time. He also submitted item 6/1 was subsequently partitioned between the family members by a registered document dated 23-8-2010-a copy of which is produced along with an application filed under Order 41, Rule 27 of CPC and therefore, as the said property is partitioned, the question of including the said property does not arise.

27. Per contra, Sri Ananth V. Mandagi, learned Senior Counsel appearing for defendants 6 and 7 contended the plaintiffs have not come to the Court with clean hands. They have suppressed the true facts. Insofar as item 2 of the plaint schedule property is concerned, the finding of the Trial Court that it is a joint family property is contrary to the legal evidence on record. Though the said property originally belonged to the family, during the lifetime of Ramachandra Reddy, he on his behalf and on behalf of the members of the family as kartha had alienated the

property in favour of one Medha Vishwanath for legal necessities under Ex. D.5, dated 2-9-1985. There was no agreement of reconveyance. However, subsequently the said property was the subject-matter of a sale by him in favour of 2nd defendant under a registered sale deed dated 5-9-1990 as per Ex. D.6. The recitals in the said sale deed makes it clear that 2nd defendant purchased the property in her name, it is her exclusive property; it is her stridhana property in which during her lifetime, the plaintiffs have no manner of right, title or interest. The Court below did not properly appreciate these registered documents and committed a serious error in recording a finding that it is a joint family property.

28. Insofar as item 4 is concerned, that property had been sold by Ramachandra Reddy as kartha representing the entire family in favour of Narasimha Guptha under a registered sale deed dated 1-3-1978. The plaintiffs after attaining the majority, had filed a suit in O.S. No. 4790 of 1990 for a declaration that sale deed is not binding on them and they sought for cancellation. The suit after contest came to be dismissed. Aggrieved by the same, they preferred RFA No. 114 of 2000. During the pendency of the appeal before this Court, as defendants 6 and 7 had paid huge consideration to the 3rd defendant, negotiated settlement, provided a sum of Rs. 3.00 lakhs which was paid to Narasimha Guptha who in turn agreed to give up his claims. A memo was filed. Compromise petition was filed and this Court, acting on the said compromise allowed the appeal, set aside the judgment and decree granted by the Trial Court and also set aside the sale deed. Thus, the property which they have purchased from the 3rd defendant conferred a valid title on them and the plaintiffs being a party to all these transactions, not only have suppressed these facts in the plaint but, they cannot put forth any claim as they are estopped from doing so. He further contended when admittedly the plaintiffs and the family members under a registered partition deed, got 11 items, the suit is filed only in respect of 4 items without any whisper in the plaint regarding remaining items, they have suppressed the facts. They have not come to the Court with clean hands. No evidence is adduced to show that other items were not available on the date of the suit and therefore, the Trial Court rightly dismissed the suit for partition.

29. He also contended in the year 1989, there was an oral partition. The plaintiffs have admitted in their evidence that in the oral partition the schedule property fell to the share of defendants 1 and 2 and acting on the oral partition, the Revenue Authorities have mutated in their names and therefore, the plaintiffs have no manner of right, title or interest in the schedule property. Unfortunately, the Trial Court did not properly appreciate these aspects and committed a serious error in recording a finding that oral partition is not proved. The said finding also requires to be set aside. For the foregoing reasons, he submits no case for interference is made out.

30. Learned Counsel Sri S.P. Kulkarni appearing for the 3rd defendant adopted the arguments canvassed on behalf of defendants 6 and 7. He submitted that defendants 1 and 2 not only entered into a registered agreement to sell in respect of the schedule property in favour of the society, they also executed a registered power of attorney authorizing him to sell the schedule property and by virtue of such authorization, he has executed the sale deed in favour of defendants 6 and 7 and therefore, those sale deeds executed are for valid consideration, with lawful authority and no case for setting aside the same is made out.

31. In the light of the aforesaid pleadings and rival contentions, the points that arise for consideration in these appeals are as follows:

(1) Whether the findings of the Trial Court that the schedule properties are all joint family properties of the family requires interference?

(2) Whether defendants 3, 6 and 7 have established the oral partition which they have pleaded which disentitled the plaintiffs from claiming any right in the schedule property?

(3) Whether item 2 of the schedule property is a joint family property or the self-acquisition or separate property of the 2nd defendant?

(4) Whether the plaintiffs have any share or right in item 4 of the schedule property in view of the compromise decree passed by this court in RFA No. 114 of 2000?

(5) Whether the findings of the Trial Court that the suit is bad for non-inclusion of all joint family properties is proper?

(6) Whether the findings of the Trial Court that the alienations in favour of defendants 6 and 7 are for legal necessities and therefore, it is binding on the plaintiffs?

(7) What order?

32. Point No.1.- The case of the plaintiffs is, the schedule properties belonged to Undivided Hindu Family of plaintiffs and defendants 1 and 2 and therefore, they were joint family properties. The second defendant-their mother, has filed a written statement. The defendants 6 and 7 have filed their written statement contending that the plaintiffs and the defendants 1 and 2-son and wife respectively of late Sri Ramachandra Reddy, inherited the property which are mentioned in the registered partition deed dated 16-3-1970 bearing Document No. 5433/1969-70, Volume 805, pages 173 to 179, Book IV, registered in the office of the sub-Registrar, Bangalore South Taluk, Ex. P.1 is the said partition deed. This document is not in dispute. This document shows 11 items of the properties, including the suit schedule properties fell to the share of late Sri Ramachandra Reddy at a partition effected between him and his brothers. The said Ramachandra Reddy died on 23-8-1989 intestate. During the lifetime, there was no partition. Therefore, in view of these undisputed facts, the Trial Court was justified in holding that the schedule properties were all joint family properties.

33. Point No.2.- It was contended on behalf of the defendants 6 and 7 that these properties were divided under an oral partition which took place in the month of September 1989, after the death of Sri Ramachandra Reddy. According to defendants 3,6 and 7, the suit schedule properties fell to the share of defendants 1 and 2 in the said partition. On the basis of the said partition, their names were entered in the revenue records, RTC, mutation and in all the original documents. Thus, they have become absolute owners thereof. The plaintiffs have no right in the schedule properties after the said partition.

34. In order to substantiate their claim, the defendants relied on the admissions in the cross-examination of P.W.1. In para 66, P.W.1 has stated that, if suggested that there was an oral partition between me, my sisters, my brother and my mother, I say, there was an oral statement and it was stated that we would be given our share, but there was no specification of the share. If suggested that subsequent to oral partition, the katha of the properties that were given to the share of my mother “ Ashwathamma and brother Ananthakumar was got changed to their names, I say, we have got changed the katha subsequent to the death of my father'. Further she deposed that it is not true to suggest that as per the oral partition, they have got the katha changed in the revenue records and sold the same. Witness voluntaries, I only said that they had got the revenue documents changed to their names subsequent to the death of my father. It is true to suggest that my mother and brother had not obtained any no objectionfrom me and my sisters, but they got the katha changed stating that there was an oral partition and they were allotted the said properties. I do not know that we never questioned the change of katha to the names of my mother and brother stating that such change of katha was incorrect.

35. A reading of the aforesaid evidence makes it clear that after the death of Ramachandra Reddy, in the family, there was a talk of partition. However, the witness has emphatically stated that the mutation entries, katha entries were not changed on the basis of oral partition. After the death of Ramachandra Reddy, the mutation entries and katha entries were changed as they are the legal heirs. Plaintiffs have not given their no objection'. This evidence does not indicate that there was an oral partition and in that oral partition the schedule properties fell to the share of the defendants 1 and 2 and on the basis of the said oral partition, they got the khata and mutation entries changed into their names. Rightly the Trial Court on appreciation of the oral evidence held that the oral partition pleaded by defendants 3, 6 and 7 is not established. As the appreciation of this oral evidence by the Trial Court is based on this legal evidence and as there is no perversity, we do not see any justification to interfere with the finding of fact recorded by the Trial Court. Therefore, what follows is, the plaintiffs have established that the schedule properties are all joint family properties and till the date of the suit there was no partition in the family.

36. Joint No. 3,- It was contended on behalf of defendants 6 and 7 that item 2 is the self-acquired property of the second defendant-Smt. Ashwathamma. It is her streedhanproperty. Therefore, plaintiffs have not right and the Trial Court was not justified in holding item 2 as the joint family property.

37. The undisputed material on record shows, during the lifetime of Ramachandra Reddy, Sy. No. 36 measuring 4 acres 32 guntas was sold to one Sri Medha Vishwanathan under a registered sale deed dated 2/6-9-1985 registered as Document No. 21/6/1985-86. Ex.D.5 is the sale deed executed by late Sri Ramachandra Reddy on his behalf and on behalf of his minor children " the first defendant and three minor daughters that is the plaintiffs herein as their guardian. He sold the same for Rs. 92,000/- for discharging the hand loans incurred, and also for the expenses incurred towards minor children's education. This document is not in dispute. However, after the death of Ramachandra Reddy, second defendant purchased the said property under a registered sale deed dated 5-9-1990 which is marked as Ex.D.6 for a consideration of Rs. 1,50,000/-. Relying on the recitals in Ex. D.6, it was contended, the sale deed stood in the name of Smt. Ashwathamma only. It is not the case of the plaintiffs that after sale of the said property under Ex.D.5, there was no agreement of reconveyance and by virtue of the said agreement, the property was reconveyed in favour of the second defendant and that the consideration for the purchase has flown from the joint family nucleus. Therefore it was contended, the said property is the self-acquisition/separate/streedhan of defendant 2-Ashwathamma. Countering this argument, the Counsel for the plaintiffs relies on Ex.P.6-the general power of attorney executed by defendants 1 and 2 in favour of K.P. Champakdhamaswamy, the Secretary of the Karnataka Electricity Board Employees CO-operative Society Limited-the Third defendant, wherein the defendants 1 and 2 are shown as the absolute owners of item 2 of the schedule property. Further in pursuance of the power of attorney, the said document is signed by the second defendant not only on her behalf, but also on behalf of the plaintiffs as guardian as they were all minors at that time. If the said property was the self-acquisition of Ashwathamma and none of her children had any right in the property, there was no necessity to describe defendants 1 and 2 are absolute owners nor there was any necessity for the second defendant to execute the agreement even on behalf of her minor

children. Further in pursuance of the said power of attorney, the power of attorney holder has executed the absolute sale deed in favour of defendant 7-Sanjay Raj C.D. on 8-7-2002 as per Ex.P.8. In the sale deed it is recited that Mr. K.H. Ramachandra Reddy passed away intestate on 23-8-1989, leaving behind the vendors 1 and 2 i.e. defendants 1 and 2 to succeed to his estate as the only legal heirs. The property mentioned in the sale deed i.e. item 2 of the suit schedule property is the absolute property of defendants 1 and 2 and ever since the date of acquisition of the above mentioned property, defendants 1 and 2 have been paying the property tax to the jurisdictional Competent Authorities and the mutation records have been registered in the name of the first defendant in the revenue registers of the jurisdictional Revenue Authorities and is in possession and enjoyment of the same as absolute co-owners without any let or hindrance from any one. Therefore it is clear, the mutation records stand in the name of the first defendant and not the second defendant, in whose name the sale deed was obtained. This sale deed was executed by the power of attorney holder representing the defendants 1 and 2. Though the power of attorney was executed by the second defendant, not only on her behalf, but also on behalf of her minor children i.e., the plaintiffs, the sale deed is executed by the power of attorney holder only on behalf of defendants 1 and 2. The case of an absolute ownership is given a go by and what is mentioned in the document is absolute co-owners. Therefore, the case of defendants 6 and 7 that second defendant is the absolute owner of the property, neither the plaintiffs nor defendant 1 has any right in the said property is on the face of it running counter to the contents of the sale deed under which, they are claiming title. Merely because in the said document it is mentioned that defendants 1 and 2 are co-owners, that by itself would not deprive the plaintiffs of their right in the said property which belongs to the joint family. Plaintiffs are also the co-owners along with defendants 1 and 2. Therefore on appreciation of this material on record, relying on Exs. P.6 and P.8, the Trial Court rightly held that item 2 of the schedule property is a joint family property and the contention of defendants 6 and 7 that it is the exclusive property of Ashwathamma is not tenable and without any substance. Therefore, we do not find any justification to interfere with the said finding of fact, which is again based on documentary evidence.

38. Point No.4.- It was contended on behalf of defendants 6 and 7, in the entire plaint, there is no whisper that item 4 is the joint family property, but still, the Trial Court committed a serious error in holding that it is a joint family property. In fact, it is not in dispute, in the plaint originally filed, only items 1 to 3 were mentioned. Item 4 was added subsequently by way of an amendment. That explains the reason why in the plaint there is no reference to item 4. In the written statement of defendants 6 and 7 at paragraph 8, they have pleaded that defendants 1 and 2 are the absolute owners and further Sy. No. 74/4A measuring 1 acre 38 guntas, which is item 4 of the plaint schedule is the ancestral property of late Sri Ramachandra Reddy. During his lifetime, he has sold the properties to Sri Narasimha Gupta vide registered sale deed dated 1-3-1978, bearing Document No. 5302/1977-78 registered in the office of Sub-Registrar, Bangalore South Taluk. The said sale deed is produced and marked as Ex. D.4, which is not in dispute. Subsequent to the sale deed, he died on 23-8-1989. Thereafter, his wife, the second defendant and her children-plaintiffs and first defendant filed a suit O.S.No. 4790 of 1999 on the file of the City Civil Judge, Bangalore, for a declaration that the sale deed is not binding on them and that it is null and void. Sri Narasimha Gupta-the purchaser, contested the matter. After trial, the said suit came to be dismissed on 29-11-1999 and the sale in favour of Narasimha Guptha-defendant 5 was confirmed.

39. Aggrieved by the said judgment and decree, Smt. Ashwathamma, the second defendant and her children i.e. the plaintiffs and the second defendant preferred Regular First Appeal in RFA No. 114 of 2000 before this Court. Before this Court, on the basis of a compromise, the appeal came to be allowed by the judgment and decree dated 27-11-2003, which is marked as Ex. P.26. A perusal of the said judgment disclose, the third defendant paid a sum of Rs. 3,00,000/- by way of pay order dated 27-11-2003 drawn on State Bank of Mysore, Madhava Nagar Branch, Bangalore, to the respondent i.e. Sri K.N. Narasimha Gupta, towards the full settlement and he accepted the same and he has no objection to allow the above appeal. Thereafter, appeal was allowed. The judgment and decree of the Trial Court was set aside. Consequently, the sale deed dated 1-3-1978 was cancelled and direction was issued to the Sub-Registrar, Bangalore South Taluk, to endorse that the sale deed dated 1-3-1978 is cancelled. Therefore, acting on the said

memo, the appeal was allowed and judgment and decree of the Trial Court was set aside by declaring the plaintiffs/appellants as the full and absolute owners of item 4 of the schedule property and the sale deed executed by late K. Ramachandra Reddy in favour of Narasimha Gupta on 1-3-1978 was declared as null and void. The argument is, defendants 6 and 7 had entered into an agreement with the third defendant to purchase the said property without knowing the pendency of the said proceedings. On coming to know of the said appeal, as by that time they had already purchased the said property under a registered sale deed dated 28-5-2002 as per Ex. D.7, they got the matter settled through the third defendant by paying a sum of Rs. 3,00,000/- to the third defendant. Plaintiffs are aware of the same. Therefore the plaintiffs are stopped from putting forth any claim in respect of this property. The effect of the judgment of the High Court is, sale deed executed on 1-3-1978 was set aside declaring the plaintiffs and defendants 1 and 2 as the full and absolute owners of item 4 of the schedule property. The doctrine of feeding the estoppels which was prevalent under the rules would apply in a case where, if a person under title had conveyed the property and subsequently he acquires title, the purchaser from such person gets the benefit of the said title. The condition precedent for application of the said doctrine is, a person who has no right should have conveyed the property and thereafter, he should have acquired the property. The said doctrine will have application insofar as defendants 1 and 2 are concerned. Defendants 1 and 2 had entered into an agreement, executed and registered power of attorney on the basis of which, third defendant-power of attorney holder executed sale deed in respect of defendants 6 and 7 in respect of item 4 of the schedule property. Therefore, on the day the sale deed was executed, defendants 1 and 2 had no title because they had parted with their title by executing a sale deed and suit challenging the same was dismissed and the matter was pending. Now that the appeal was allowed, sale deed was set aside, defendants 1 and 2 became the owners and as they had already conveyed their title, the purchaser gets benefit of that judgment. Admittedly, plaintiffs have not executed any agreement. Defendants 1 and 2 did not execute the agreement for and on behalf of the minors. The defendants 1 and 2 have executed the power of attorney in favour of Champakadhama Swamy, the Secretary of the third defendant, who in turn

executed the sale deed in favour of defendant 6. Therefore the benefit of the judgment of the High Court would enure to the benefit of defendant 6 insofar as the title of defendants 1 and 2 is concerned. To that extent, defendant 6 would get title under the sale deed. However, plaintiffs are the co-owners. Plaintiffs share is 3/5th, whereas defendants 1 and 2 have 2/5th share. Therefore under the sale deed, defendant 6 would not get title to 3/5th share in the schedule property. When the defendant 6 wanted to compromise the matter, was paying consideration on behalf of the third defendant and they got the memo drafted, which says, if the judgment and decree of the Trial Court was seta side, the sale deed is set aside, appellants in that case who are plaintiffs and defendants 1 and 2 became the absolute owners. Therefore, either after becoming the absolute owners, or even earlier at any point of time, the plaintiffs have not conveyed their share in the property in favour of defendant 6. Therefore, the said share of the plaintiffs is in tact and not conveyed to defendant 6.

40. Point No. 5.- The Trial Court has dismissed the suit on the ground that the plaintiffs have not included all joint family properties in the suit. It is not in dispute that under the registered partition deed dated 16-3-1970-Ex-P.1, 11 items of the property fell to the share of late Ramachandra Reddy. They are as under:

PLACE	SY No.	ACRES	GUNTAS
1. Bellandur	6/1	1	23
2. Kaikondrahalli	3/2	-	10
3. Kaikondrahalli	2	3	5
4. Kaikondrahalli	1/3	-	36
5. Kaikondrahalli		1	8
6. Kaikondrahalli	46	2	7
7. Kaikondrahalli	35	1	20
8. Kaikondrahalli	36	4	32
9. Kaikondrahalli	37	2	25
10. Kaikondrahalli	74/4A	1	38
11. Kaikondrahalli	Site No. 230 at Agara Village	-	-

41. The subject-matter of the suit is only in respect of 4 out of 11 items. They are as under:

SY. No	EXTENT	
	ACRES	GUNTAS
1. 35	1	20
2. 36	4	32
3. 37	2	25
4. 74/4A	1	38

42. Therefore the defendants contend as the remaining 7 items are not included in the plaint, as set out in para 6, the null is not maintainable.

43. It is true that the plaintiffs in the suit have not averred why these 7 items are not included. But when a plea is taken by the defendants that the plaintiffs have not included all the joint family properties, the burden of proving that there exist properties other than what is mentioned in the plaint schedule and that they are available for partition, rests on the defendants. The burden of proving the said plea is squarely on the defendants. In this regard, the plaintiffs in their evidence have contended that five out of eleven items had been sold prior to the date of the suit and that they were not available for partition. At para 65 of the evidence of P.W.1, she admits that, it is true to suggest that all the items that belonging to my father have not been incorporated in the present suit. P.W.1 also admits that she has not arrayed the residential house in the present suit. An explanation is sought to be given to the effect that the said property has been standing in the joint names of all of us and therefore the same has not been arrayed and there was also a promise by my mother and brother that they would give us the three houses which are adjacent to their residential house to each of the sisters even before the suit was filed. Only those properties which had been alienated have been incorporated in the suit and other properties are as it is. However, the witness was recalled and an attempt was made to produce documentary evidence. At para 103 of the evidence, P.W.1 has admitted that her father had secured 11 items of properties under a family partition. The suit is filed seeking partition only in respect of 4 of the said 11 items. Her father had sold 4 items of the properties that he secured at the partition

during his lifetime and therefore they are not questioning the same. Subsequent to the death of their father, all the family members including the plaintiffs have alienated the land in Sy. No. 3/2 in favour of Jolly Brothers under a general power of attorney during 1989 and performed the obsequies of their father and the same is also not challenged in this case. The said Jolly Brothers have formed sites and sold the sites to various persons. In order to substantiate her contention, copies of the registered sale deeds were produced. Ex. P.28 is a sale deed dated 25-1-1990, Ex.P.29 is the sale deed dated 16-6-1978, Ex.P. 30 is the sale deed dated 15-`2-1989, Ex.P.31 is the sale deed dated 22-6-2002 and Ex. P.33 is the sale deed dated 19-4-1988. The learned Trial Judge on considering this piece of documentary evidence, has categorically held at para 46 of the judgment, that 5 lands were already sold by the family of the plaintiffs and therefore the said properties were not available for partition when O.S. No. 42/95 was filed. The said finding is not challenged in this appeal. Now what remains is, the remaining two items.

44. One such item is, Sy. No. 6/1 which is renumbered as 66/A or 66/B measuring 1 acre 26 guntas. The learned Counsel for the appellant pointed out that, in this appeal they have filed an application for production of additional evidence, explaining the circumstances in which the said property was not included in the suit. It is numbered as I.A. No.2/12. Along with the application, two documents were produced. As could be seen from the records in O.S. No. 42 of 1995, for the first time, issues were framed on 31-1-2006. Subsequently, four additional issues were framed on 27-10-2007 and the additional issue regarding partial partition is filed on 13-7-2011. The judgment was delivered on 29-11-2011. Therefore, it was contended, as the said issue was framed on 13-7-2011, they did not have sufficient opportunity for production of the documents which are now sought to be produced by way of additional evidence. As could be seen from the material on records the issue was framed on 13-7-2011. P.W.1 was recalled and further examination-in-chief was conducted on 10-8-2011 and witness was cross-examined on 5-9-2011 and again the witness was recalled and examined-in-chief on 20-9-2011 and further cross-examination was done on 22-9-2011 and the judgment was delivered on 29-11-2011. They could not produce the documents which are now sought to be produced. The documents now sought to be

produced, show that Sy. No. 66/1 was granted to the second defendant on 26-11-1982. Subsequently by a registered partition deed dated 23-8-2010 during the pendency of this suit, the said property has been partitioned between the plaintiffs and defendants 1 and 2. The statement made was, as this property was allotted to the name of Ashwathamma, they were under the impression that this property exclusively belongs to her and the others had no right in the property and therefore it was not included in the schedule to the plaint. The said submission has no substance. When item 2 was sold by Ramachandra Reddy as karthato Meda viswanatham and after his death he executed a sale deed in favour of second defendant and when the plaintiffs and defendants 1 an 2 contend, second defendant is not the absolute owner, it is the joint family property, it is not open to them to contend in respect of Sy.No.66/1 that merely because the same stands in the name of the second defendant, her children have no right in the said property. However, as is clear from the registered partition deed produced the property has been divided by metes and bounds among all the family members. Therefore, this property is the joint family property and the said property ought to have been included in the suit. But the question is, was the Court justified in dismissing the suit on the ground that it is not included. The law on the point is well-settled. In a suit for partition, all the persons who are members of a joint family or who are having a share in the property should be impleaded as parties. Similarly, all the properties belonging to the joint family are to be included in the suit schedule. However, if any property is not available for partition, it is open to them to exclude the same being included in the suit and if a proper explanation is offered, a second suit for partition in respect of the said property is maintainable when that property is available for partition. In the instant case, in the first place, as the record disclosed at the fag end of the trial, this issue was framed. Even though plaintiff has made an attempt to produce document to show that five out of the seven items which are the subject-matter of an earlier partition deed had been sold to them, they could not produce these documents, not they could include the said property. Now that the property is available for all the persons to be divided by metes and bounds, it means, it is a joint family property and the said property has to be included in the schedule at the time of effecting a final decree. In which event, the purchaser will also have an opportunity to contend, that property is to be

taken into consideration by assigning a share to which each party is entitled to and to plead that the property which is already purchased by them should be left out or at the time of allotment, this property also has to be taken into consideration. In our view, that would meet the ends of justice.

45. As these documents were not available, we cannot find fault with the Court. However, the Court in the facts of this case, having held five not of seven properties are already sold, should not have dismissed the sit on that ground. It is to be remembered, that is not the plea which is taken by the defendants 1 and 2. This is a defence taken by the purchaser pendente lite and that is why, issue is framed at the fag end of the trial. The property thing which the Trial Court ought to have done is to direct the plaintiffs to include the said property and grant a decree in respect of the said property also, so that at the time of final decree proceedings, that property could have been taken note of in deciding the share of the parties.

46. Insofar as the other properties which are not included, i.e.. the house property is concerned, the plaintiffs contend that it is not available for partition and in support of their contention, they have produced Ex. P.35. Ex.P.35 is the judgment and decree passed in O.S. No. 9253 of 1980, where the deceased Ramachandra Reddy was shown as the first defendant and on his demise, the defendants 1 and 2 and Vijayalakshmi-the plaintiff 1 were shown as the L.Rs of the deceased Ramachandra Reddy. This is a suit filed by the cousin brothers of Ramachandra Reddy for a decree of permanent injunction from alienating or encumbering the suit schedule properties in the said suit which is described as a chatramin any manner, i.e. by way of sale, mortgage, gift, lease or otherwise and to award costs of the present suit. The schedule in the said suit gives the description as immovable property bearing old No. 230 and present No. 260 situated near Sarjapura Road at Agara Village, Begur Hobli, Bangalore South Taluk. After contest, the suit came to be decreed restraining the defendants by issue of a permanent injunction from alienating or encumbering the suit schedule property in any manner as prayed for by the plaintiffs. A perusal of the partition deed-Ex.P.1 shows, this property is allotted to the share of Ramachandra Reddy. The parties to the said partition deed are his two brothers namely. Narayana Reddy and Srinivasa Reddy. But the persons who have filed the suit i.e. O.S. No. 9253 of

1980 are “ K. Govinda Reddy and K. Gopala Reddy, A.V. Srinivasa Reddy, A.R. Mukunda Reddy, A.R. Janardhana Reddy and A.L. Gokula Reddy, all cousins or Ramachandra Reddy. Except the entry in the deed, there is nothing on record to show that this property was earlier a joint family property which has fallen to the share of the branch of Ramachandra Reddy, who in turn was allotted that property towards his share. On the contrary, the judgment in the case shows, it was a chatramwhich originally belonged to one Rama Reddy, who was a pious, philanthropic and religious person. He donated certain lands and money and endowed the same to Sri Channarayanaswamy Temple and Sri Venkataramanaswamy Temple of Agara Village and other temples and he was conducting annual jatrasand car festivalsand during that time, cattle fair used to be conducted annually and that with a view to facilitate the devotees of the temples and persons participating in the said fair, the said late Rama Reddy constructed a chatramin Sarjapura Road. The descendants of late Rama Reddy as persons interested in the maintenance, preservation nd upkeep of the suit chatram are entitled to do so, which is their private property managed under private family trust created by late Rama Reddy, the founder and endowed as a family trust. Plaintiffs in the said suit are sons of Patel Rama Reddy. The defendants in the said suit who are also the descendants of the founder have become greatly selfish and with a view to knock off the suit schedule property and to misappropriate and misuse for their own ends, started manipulating the village panchayat records where the entry in respect of the suit property is shown upto 1969 as dharmachatraand got it changed in the name of Hanumanthappanavara Dharma Chatrawhich is no other than the name of father of defendants. Therefore, they were constrained to file a suit for the said relief.

47. From this material on record which is not controverted, but is not clear whether the said property really belongs to Ramachandra Reddy and on his death, whether his children acquired any right in the said property. If it is a dharmachatraand a property endowed with a specific purpose, even the family members cannot effect a partition and share it amongst themselves. As is clear from the alienation, an attempt is made to change the katha of the property and probably, on the basis of the said katha, a partition was effected and in the partition it is allotted to late Ramachandra Reddy. Under these circumstances, the non-inclusion of the said

property, the title of which is doubtful, cannot be made a ground to dismiss a suit for partition where the nature of the property is in dispute. Therefore, the Trial Court has not properly applied its mind to the evidence on record, has not looked into Ex.P.1 along with Ex.P.35 and therefore the said finding cannot be sustained. Accordingly, it is hereby set aside.

48. Yet another ground which influenced the Court in dismissing the suit, declining to set aside the alienation made in favour of defendants 6 and 7 is, the family of the defendants 1 and 2, after the death of Ramachandra Reddy was in great difficulties, they were not rich, they had to raise loans to run the family, sheet house was demolished and new constructions have come up. In fact they got back the land sold to Medha Vishwanathan by paying a substantial consideration. Subsequently, there is improvement in the status of the family. That was possible because of the money which they received under registered agreement of sale and general power of attorney they executed in favour of Society-Exs.P.3 to P.6. Therefore the benefit under the agreement and power of attorney has enured to the plaintiffs. There was legal necessity for the family and also benefit of estate. Therefore it was held, plaintiffs cannot question the said alienations effected at items 1 to 4. In item 1 what was sold was only 20 guntas of land out of 1 acre 20 guntas and the family has retained 1 acre of land. In item 2, 20 guntas and the family has retained 1 acre of land. In item 2, 20 guntas of land was retained and in item 3 it had retained 4 guntas and therefore the alienations made by the defendants 1 and 2 are not liable to be cancelled or set aside. It is obvious from this reasoning, the learned Judge is not conscious of the law on the point. When defendants 1 and 2, excluding them, entered into a registered agreement and a registered power of attorney and were attempting to alienate the property, the plaintiffs approached the Court contending the said alienation was for a lesser price, they are not parties to the same and their share cannot be alienated. Third defendant took up a specific contention that the suit is collusive one. In fact, the written statement filed by the defendants 1 and 2 makes it clear, they consented for a decree for partition in respect of items 1 and 3, though they contended, item 2 is a self-acquired property. Therefore, even before the power of attorney holder of defendants 1 and 2 would execute any sale deed on the basis of the power of attorney and in pursuance of the agreement, the plaintiffs were before the Court.

Plaintiffs are majors. The evidence on record shows that they are all married and they are living with their husbands. The suit was filed in the year 1995. The defendants 6 and 7 have purchased the schedule properties under three registered sale deeds of the year 2002 i.e., nearly 7 years after filing of the suit. May be, they were not aware of the suit. But it makes no difference in the eye of law. When they purchased the property which is the subject-matter of the suit during the pendency of the proceedings, the said sale is hit by the doctrine of lis pendence as contained in Section 52 of the Transfer of Property Act. Admittedly, to the agreement of sale the plaintiffs are not parties. To the power of attorney the plaintiffs are not parties. The plaintiffs were already before the Court seeking an injunction restraining the defendants 1 and 2 from alienating the property. The Court had granted an order of injunction and it was extended from time to time. In this background, if the defendants 6 and 7 who are not illiterate persons, who are builders of repute, purchased the property from the power of attorney holder of defendants 1 and 2, the said sale cannot be held to be valid, much less, it cannot be held to be for meeting the legal necessities of the family. On the date of the sale and for nearly 7 years prior to the date of the sale, if parties are fighting the litigation before the Court, plaintiffs are majors, they have not executed the sale deed, that the Trial Court was in total error in holding that the family was living in difficult circumstances, they had to borrow money, they had a sheet house and the same was demolished and a new construction was made and for all that, money was needed and money received under the agreement of sale is utilized for the sake, which enured to the benefit of the plaintiffs and therefore alienations cannot be cancelled, is contrary to law and also the evidence on record. That cannot be made as a basis for dismissing the sit of the plaintiffs for partition and separate possession and also for cancellation of the sale deed. Therefore, we hereby set aside the said finding also.

49. In the light of the above discussion, what emerges is, the plaint schedule properties are all joint family properties. Item 66/1 which is the subject-matter of a partition between the plaintiffs and defendants 1 and 2 is also a joint family property. Plaintiffs, each one of them have got 1/5th share. Similarly, defendants 1 and 2 have also got 1/5th share. As the defendants 1 and 2 have not challenged the alienation made by their power of attorney holder in favour of defendants 6 and

7, the defendants 6 and 7 are entitled to the shares which belong to the defendants 1 and 2 i.e. 2/5th share in all the plaint schedule properties in respect of which, sale deeds have been executed in their favour. But these sale deeds do not bind the plaintiffs to the extent of their 3/5th share. Therefore, the plaintiffs are entitled to a decree for partition in respect of their 3/5th share in all the plaint schedule properties.

50. In that view of the matter, we pass the following order:

Appeals are allowed.

(1) The plaintiffs are entitled to 3/5th share in only 20 guntas of land in item 1 of the plaint schedule property;

(2) 3/5th share in all the remaining items 2, 3 and 4 and also in Sy. No. 66/1, the land granted to the second defendant;

(3) The dismissal of the suit in respect of BSchedule properties is affirmed as no arguments were canvassed before us;

(4) It is made clear, though property bearing Sy. No. 66/1 is not included in the plaint schedule, the same shall be included in the plaint schedule and while effecting partition in the final decree proceedings, that property also shall be taken into consideration. The plaintiffs are hereby directed to include the said survey number in the plaint schedule as item 5.

51. At the time of arguments, the Court noticed, though two wonderful paper books are prepared neatly bound, it was not possible for the Court to act on the same and write this judgment. We were compelled to look into the original records and write this judgment. We also noticed, in the original written statement filed by the defendants, no due care is taken to put forth the defence and statements made therein were quite misleading. All this is possible because no proper care is taken while drafting the pleadings. They are not corrected and unfortunately, arguments were canvassed on pleas which are not there, making the plight of the Court miserable. Because the Courts are tolerating all these things, we find these instances are increasing day by day, thereby the quality of advocacy, quality of

pleadings in Courts is deteriorating. This is also one of the reasons for delay in disposal of cases. If the Courts were to condone these lapses by adopting a sympathetic approach, it would be a case of misplaced sympathy and thereby Courts also will be a party to this. Under the circumstances, in the facts of this case, we are constrained to impose a cost of Rs. 10,000/- both on the plaintiffs and on the defendants 6 and 7 for filing defective pleadings and defective paper book without proper verification as required in law.

52. The said cost should be deposited in the High Court Registry. It is only on deposit of the said amount, the High Court shall draw the decree.

53. Memo is filed on behalf of the appellants-plaintiffs, confining the claim in respect of item 1 of the schedule property, only to the extent of 20 guntas there is no claim in respect of 1 acre in item 1 of the schedule property.

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