

Rangahanumaiah Vs. Devaraju

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Court : Karnataka

Decided On : Jun-02-2023

Judge : H.P.Sandesh

Appeal No. : RSA 209/2007

Appellant : Rangahanumaiah

Respondent : Devaraju

Judgement :

- 1 - RSA No.209 of 2007 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE2D DAY OF JUNE, 2023 BEFORE THE HON'BLE MR JUSTICE H.P.SANDESH REGULAR SECOND APPEAL No.209 OF2007(PAR) BETWEEN:

1. RANGAHANUMAIAH NOW DEAD BY LRS1a) G.R. RANGASHAMAIAH S/O. LATE RANGAHANUMAIAH HINDU, NOW AGED45YEARS R/AT S. GOLLAHALLI, HIREDODDAWADI KOLALA HOBLI, KORATAGERE TALUK TUMAKURU DISTRICT-572 140. 1(b) G.R. RAMU S/O. LATE RANGAHANUMAIAH HINDU, NOW AGED41YEARS R/AT NO.403, S.R.S.ROAD NEW LAYOUT, VTC: PEENYA I STAGE PEENYA SMALL SCALE INDUSTRIES BENGALURU NORTH BENGALURU-560 058. 1(c) G.R. SREERANGAIAH S/O. LATE RANGAHANUMAIAH HINDU, NOW AGED32YEARS R/OF S.GOLLAHALLI, HIREDODDAWADI KOLALA HOBLI, KORATAGERE TALUK

TUMAKURU DISTRICT-572 140. 1(d) SMT. RAJAMMA W/O. LATE KEMPARANGAIAH & D/O. LATE RANGAHANUMAIAH HINDU, AGED47YEARS - 2 - RSA No.209 of 2007 R/OF BYCHENAHALLI, KOLALA HOBLI KORATAGERE TALUK TUMAKURU DISTRICT-572 129. 1(e) SMT. ANNAPOORNAMMA W/O. KEMPA RAJU & D/O. LATE RANGAHANUMAIAH HINDU, AGED43YEARS R/AT BYCHENAHALLI, KOLALA HOBLI KORATAGERE TALUK TUMAKURU-572 129. APPELLANTS [BY SRI. T.C. SATHISHKUMAR, ADVOCATE FOR APPELLANT1a) TO1e)]. AND:

1. DEVARAJU S/O. KEMPARANGAIAH HINDU, NOW AGED45YEARS2
PANDURANGAIAH S/O. KEMPARANGAIAH HINDU, NOW AGED56YEARS3
KEMPARANGAIAH S/O. DANDI RANGAPPA NOW DEAD R/BY HIS LRS3a)
SMT. CHIKKARANGAMMA W/O. LATE KEMPARANGAIAH HINDU, NOW
AGED65YEARS RESIDENT OF S.GOLLAHALLI VILLAGE KOLALA HOBLI,
KORATAGERE TALUK TUMAKURU DISTRICT. 3(b) SMT.LAKSHMIRANGAMMA
W/O. JAYANNA HINDU, AGED34YEARS - 3 - RSA No.209 of 2007 R/OF
URADAGERE TUMAKURU TALUK TUMAKURU DISTRICT. 3(c) SMT.
KEMPAMMA W/O. NARASIAH HINDU, AGED31YEARS R/OF
AREGUJJANAHALLI VILLAGE URDAGERE HOBLI, TUMAKURU TALUK
TUMAKURU DISTRICT. RESPONDENTS (BY SRI. VIJAYA KUMAR & SRI
S.T.THIPPESWAMY, ADVOCATES FOR R1 AND R2; R3(a), R3(b) AND R3(c)
ARE SERVED) THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DATED2909.2006 PASSED IN R.A.NO.213/2004 ON
THE FILE OF THE II ADDL. DISTRICT JUDGE, TUMAKURU, DISMISSING THE
APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE
DATED1310.1997 PASSED IN OS.NO.9/1993 ON THE FILE OF THE MUNSIFF
& JMFC, KORATAGERE. THIS APPEAL COMING ON FOR FINAL HEARING,
THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This second appeal is filed challenging judgment and decree dated 29.09.2006 passed in R.A.No.213/2004 on the file of the II Additional District Judge, Tumakuru and confirm the judgment and decree dated 13.10.1997 passed in O.S.No.9/1993 on the file of the Munsiff and J.M.F.C., Koratagere.-. 4 - RSA No.209 of 2007

Heard the learned counsel for the appellants and learned counsel for the respondents.

2. The parties are referred to as per their original rankings before the Trial Court to avoid confusion and for the convenience of the Court.

3. The factual matrix of the case of the plaintiffs, while seeking the relief of partition and separate possession of their 2/3rd share in the suit schedule property is that suit schedule property is the ancestral Hindu Joint Family property i.e., the plaintiffs and second defendant. The plaintiffs and second defendants were in joint possession of the suit schedule property. The family of the plaintiffs and second defendant was in affluent circumstances and there was no need to the family to incur the debts. The first defendant is a stranger to the family and second defendant has no exclusive right and possession over the suit schedule property to sell the same. The first defendant is interfering with the possession of the suit schedule property. When questioned the same, the first defendant denied the title of the plaintiffs over the suit schedule property by saying that he has purchased the suit - 5 - RSA No.209 of 2007 schedule property from the second defendant. It is contended that the second defendant has no manner of right to alienate the suit schedule property in favour of any person, much less the first defendant. The second defendant at worst, can alienate his share and not the share of the plaintiff Nos.1 and 2. If any alienation is made by the second defendant in favour of the first defendant, the same is not binding on the plaintiffs. Hence, sought for the relief of partition.

4. In pursuance of the suit summons, the first defendant appeared before the Court and filed the written statement contending that age of the first plaintiff at the time of filing the suit was 30 years and the second defendant was 28 years of age and the plaintiffs have given false age as 20 years and 18 years at the time of filing the suit. It is contended that, in order to prove the fact that the suit is within the law of limitation, false averments are made in the plaint and suit is barred by limitation. It is contended that, suit is not filed within three years, after they have attained the age of majority. It is contended that the suit schedule property is also not the Hindu Joint Family property as contended by the plaintiffs and second

defendant and they are also not in joint - 6 - RSA No.209 of 2007 possession as contended in the plaint. It is contended that, immediately on the date of sale itself, possession was delivered in favour of the first defendant and hence, the question of joint possession does not arise. The sale is made by the second defendant for valuable sale consideration and in order to clear the loan, he had sold the property and the same is for the family benefit and legal necessity and hence, there is a cause of action for filing the suit. It is also contended that, property was sold in the year 1974 and suit was filed in 1993, almost after 19 years of sale of the property and that too, the second defendant had obtained loan from P.L.O. Bank, Koratagere for some other persons and for himself and his family benefit and in order to discharge the said loan, he had sold the property.

5. The Trial Court, based on the pleadings of the parties, framed the issues whether the plaintiffs prove that the suit schedule properties are the joint family property enjoyed by the plaintiffs and second defendant, whether the plaintiffs prove that the second defendant has any right to alienate suit schedule properties in favour of the first defendant, whether the plaintiffs and second defendant are in possession over the suit schedule properties, whether the plaintiffs are entitled to - 7 - RSA No.209 of 2007 2/3rd share in the suit schedule properties and whether the defendants prove that suit schedule properties were sold for family legal necessities and sale deed was executed on 30.12.1974 and an additional issue is also framed whether the first defendant proves that the plaintiffs have not filed the suit within three years after they attained the age of majority for which the suit is barred by limitation.

6. In order to prove their case, the first plaintiff examined himself as P.W.1 and also examined two witnesses as P.Ws.2 and 3 and got marked the documents as Exs.P1 to P9. The first defendant examined himself as D.W.1 and examined the four witnesses as D.Ws.2 to 5 and got marked the documents as Exs.D1 to D24.

7. The Trial Court after considering both oral and documentary evidence placed on record, answered issue No.1 as affirmative, in coming to the conclusion that the suit schedule properties are joint family properties enjoyed by the plaintiffs and defendants and the defendants have no exclusive right to sell the properties.

Hence, granted the relief of - 8 - RSA No.209 of 2007 partition of 2/3rd share in the suit schedule properties in favour of the plaintiffs.

8. Being aggrieved by the judgment and decree of the Trial Court, an appeal is filed before the First Appellate Court in R.A.No.213/2004, wherein it is contended that the Trial Court has committed an error in accepting the joint possession of the plaintiffs and second defendant while answering issue No.1 and also committed an error in coming to the conclusion that the selling of property is not for legal necessity and the second defendant was not having any absolute right to sell the properties. It is also contended that the Court below committed error in accepting the case of the plaintiffs. The Trial Court failed to consider the contents of the document Ex.D1 and seriously erred in considering the earlier entry in the year 1978 in RTC in the name of second defendant and failed to appreciate that respondents have disputed the later entries. It is further contended that the Lower Appellate Court has committed an error in holding that second defendant has not executed Ex.D1 for and on behalf of his minor sons is unsustainable in law, as the suit schedule properties are not the ancestral properties. The Lower Appellate Court has erred in - 9 - RSA No.209 of 2007 disbelieving the evidence of D.Ws.2 and 3 and the evidence of P.W.1 is not creditworthy in accepting the same and failed to take note of the conduct of the plaintiffs. Hence, the First Appellate Court formulated the points whether the Trial Court has erred in decreeing the suit of the plaintiffs without any cost and answered the same as negative, accepting the reasoning given by the Trial Court and concurred with the finding of the Trial Court. Hence, this second appeal is filed.

9. This Court, having heard the learned counsel for the appellants, while admitting the appeal, framed the substantial question of law considering the grounds urged in the appeal. The learned counsel appearing for the appellants in the second appeal would vehemently contend that the suit was filed for the relief of partition, that too, against the father, who sold the property and also against the purchaser. The counsel would vehemently contend that there is no dispute with regard to the fact that property was sold in 1974 but, suit was filed in 1993, after lapse of 19 years. It is also contended that the plaintiffs were aged about 20 and 18 years and intentionally, in order to prove that the suit is within limitation, they have falsely

mentioned their age as 32 and 28 years.-. 10 - RSA No.209 of 2007 10. The counsel would vehemently contend that, while filing the suit, the first plaintiff himself has signed as Devarajaiah and also while executing the vakalath, he mentioned his name as Devarajaiah but, in the suit, he has mentioned his name as Devaraju. In order to prove the conduct of the plaintiffs, documents are also produced before the Court particularly, the document at Ex.D13-Register Admission Book and while admitting to school, his name is given as Devarajaiah and the said admission register is also summoned and marked as Ex.D13. The counsel also would vehemently contend that suit schedule properties are purchased in the year 1959 by the father and by that time, even the plaintiffs were not born and first plaintiff was born in the year 1961. The counsel also would submit that suit is filed only for the property which was sold and not included other family property and suit is filed only for partial partition and the same is not maintainable. The counsel also would vehemently contend that the suit is barred by limitation since the same is not filed within three years after attaining the majority and both the Courts failed to consider the same and erroneously decreed the suit and the First Appellate Court also not - 11 - RSA No.209 of 2007 considered the same. Hence, it requires interference. The counsel also brought to notice of this Court Ex.P5, wherein Sy.No.42/2 is mentioned in the clearance certificate issued by the bank. Hence, it is clear that family was having other property bearing Sy.No.No.42/2. Admittedly, the family is having other properties, but suit is filed only for the property which was sold by the father.

11. The counsel also would vehemently contend that, he has filed two applications under Order 41, Rule 27 of C.P.C. and documents are also produced before the Court. The counsel would vehemently contend that, in order to prove the fact that family was also having other properties, document of RTCs in respect of land bearing Sy.No.7/3 measuring 17 guntas of S. Gollahalli Village for the years 2006-2007 and 2007-2008, copies of RTCs in respect of Sy.No.8/3 measuring 7 guntas of S. Gollahalli Village for the years 2006-2007 and 2007-2008 and copies of RTCs in respect of Sy.No.76/1 measuring 1 acre, 3 guntas of S. Gollahalli Village for the years 2006-2007 and 2007-2008. The counsel also brought to notice of this Court that he has also filed additional documents along with memo dated 07.07.2021 and subsequently, he filed an application in - 12 - RSA No.209 of 2007

I.A.No.1/2023 for additional documents seeking permission of the Court to permit them to adduce additional evidence, wherein also, the learned counsel for the appellants produced encumbrance certificate in respect of Sy.Nos.7/1, 7/6, 8/5 and 9/6 of S. Gollahalli for the period from 01.04.1950 to 30.03.1975 reflecting execution of registered sale deed in favour of Kemparangaiyah i.e., respondent No.3 on 09.06.1999 and the same lands are subsequently sold in favour of appellant-Rangahanumaiah under the registered sale deed dated 30.12.1974.

12. The counsel also would contend that encumbrance certificates in respect of Sy.Nos.26/1 and 26/2 of S. Gollahalli for the period from 01.04.1955 to 31.03.1961 reflecting execution of the registered sale in favour of Kemparangaiyah i.e., respondent No.3 on 09.06.1959. The counsel also would vehemently contend RTC copies in respect of Sy.No.26/1 of S. Gollahalli for the period from 1991 to 2002 and 2003 to 2015 measuring 1 acre, 3 guntas, RTC copies in respect of Sy.No.26/2 of S. Gollahalli for the period from 1991 to 2002 and 2003 to 2015 measuring 1 acre, 7 guntas, RTC copies in respect of Sy.No.7/3 and 8/3 of S. Gollahalli for the period - 13 - RSA No.209 of 2007 2015-2016 measuring 17 guntas and 7 guntas respectively standing in the name of Kemparangaiyah, W/o. Chikkarangamma, RTC copies in respect of Sy.Nos.7/1 i.e., 3 guntas, 7/6 i.e., 7 guntas and 8/5 i.e., 6 guntas and 9/6 i.e., 13 guntas of S. Gollahalli, Kolala Hobli, Koratagere for the period from 2017- 2018 and 2020-2021 are standing in the name of appellant- Rangahanumaiah. These are the documents which clearly disclose that the family was having other items of the properties and in an ingenious method, the suit is filed only for the relief of partition for the property which was sold excluding the other family properties. Hence, the Court has to take note of the conduct of the parties and these are the documents which require to consider the case with regard to the third substantial question of law framed by this Court whether the suit filed only for partial partition is maintainable. Hence, the applications are required to be allowed.

13. Per contra, learned counsel for the respondents would submit that these documents are filed in the second appeal and no proper reasons are assigned to invoke Order 41, Rule 27 of C.P.C. and Order 41, Rule 27 of C.P.C. specifically mentions that, if the appellant is diligent and if he is unable to - 14 - RSA No.209 of

2007 produce the documents before the Trial Court and if he assigns valid reasons, then only the Court can entertain the application, otherwise the same cannot be entertained in a second appeal and there is an inordinate delay in producing the documents. The counsel also would submit that, when these documents are admitted in evidence and also given an opportunity to cross-examine the witnesses with regard to these properties are concerned, the question of considering the same does not arise.

14. The counsel also would vehemently contend that the recitals of the sale deed is very clear that the property is purchased by selling the ancestral property of the second defendant and hence, it is clear that, it is an ancestral joint family property and also in the sale deed, it is not stated that the sale is made for any family necessity and the recitals of the document at Ex.D1 is very clear with regard to the reason for selling the property. The counsel also would vehemently contend that both the Courts have given the reasoning, in coming to the conclusion that the second defendant was not having any absolute right to sell the property and at the most, he could sell the property of his share and not the share of the plaintiff Nos.1 and 2 and the same has been rightly considered - 15 - RSA No.209 of 2007 by the Trial Court as well as the First Appellate Court. Hence, there are no grounds to entertain the same.

15. The learned counsel appearing for the respondents also rely upon the judgment NINGEGOWDA AND OTHERS VS. K.B. DODDEGOWDA AND OTHERS reported in AIR 1986 KAR90 wherein also the Division Bench of this Court discussed with regard to alienation by Karta of joint family consisting of himself and his sons, legal necessity and antecedent debts, evidentiary value of recitals in the sale deed, held that, in the circumstances of case, alienee failed to discharge onus that he made reasonable and bonafide enquiry as to existence of necessity for alienation. It is also observed that the alienee had to establish one of the two things i.e., the transaction was in fact justified by legal necessity or was for the benefit of the joint estate or he had made reasonable and bonafide inquiry as to the existence of the necessity and satisfied himself that the manager was acting for the benefit of the estate. The learned counsel referring this judgment would vehemently contend that the appellants herein have not made any bonafide

enquiry as to the existence of necessity for the - 16 - RSA No.209 of 2007 alienation. Hence, this judgment is aptly applicable to the case on hand.

16. Having heard the respective counsel and also the grounds urged in the appeal and also the principles laid down in the judgment referred by the learned counsel for the respondents, this Court has to analyze the material on record. This Court, while admitting the appeal, framed the following substantial questions of law:

1. Whether the learned District Judge who has exercised the appellate power could have accepted the appeal filed against the judgment and decree of Civil Judge (Jr.Dn.), which normally would lie on the Civil Judge (Sr.Dn.)?.

2) Whether the judgment impugned of the Appellate Court is maintainable in the absence of specific findings that the suit was barred by time?.

3) Whether the suit only for partial partition was maintainable?.

17. In order to consider these substantial questions of law and also having considered the material on record, this - 17 - RSA No.209 of 2007 Court has to consider the finding of appeal filed before the II Additional District Judge and also the judgment and decree passed by the Civil Judge, Junior Division. On perusal of the records, it discloses that appeal was filed before the Civil Judge and the same is numbered as R.A.No.101/1997 and thereafter, the same was made over to the District Court. Hence, the District Court has taken up the matter and considered the matter on merits. Hence, it is clear that District Judge has considered the appeal filed against the judgment and decree of the Civil Judge, Junior Division on merits. Hence, I answer the first substantial question of law that the District Judge has exercised the appellate power, in view of the same being made over to District Court and the appeal was filed rightly before the Civil Judge, Senior Division and consequent upon transfer, the same was considered on merits.

18. The second substantial question of law framed by this Court is whether the judgment impugned of the Appellate Court is maintainable in the absence of specific findings that the suit was barred by time. Having considered the reasoning given by the Trial Court, while the issue pertaining to the limitation is concerned

i.e., additional issue framed by the Trial - 18 - RSA No.209 of 2007 Court with regard to the defense which has been raised that suit is barred by limitation, answered the same as negative. The main contention of the appellants is that suit is barred by limitation and the plaintiffs were aged about 32 years and 28 years respectively, while filing the suit. In order to prove the same, the plaintiffs secured the document of Ex.D13, which is the Register Admission Book and the same is dated 08.04.1961 and the suit is filed in 1993 almost after 32 years and consequently, the age of the first plaintiff is 32 years as on the date of the suit and the second plaintiff is two years younger to him and his age would be 30 years on the date of filing of the suit. The reasoning given by the Trial Court is that Ex.D13 is not proved since, there is an insertion.

19. No doubt, D.W.4 admitted that name of Ranga is incorporated, the Court has to look into the very document of Ex.D13 and even insertion is also in the same handwriting which is the original and the same is also more than 30 years old document and author of the document could not be examined but, the person who was in custody has been examined before the Court and got marked the same before the Court and the Trial Court has magnified the admission - 19 - RSA No.209 of 2007 given by the D.W.4 with regard to that he cannot say, who has corrected the same but, failed to take note of the very conduct of the first plaintiff. The first plaintiff, while filing the suit has signed as Devarajaiah and also, while giving vakalath to the advocate, he has signed as Devarajaiah but, while filing the suit, his name is mentioned as Devaraju. He also contends that, he did not go to any school but, in the cross-examination, he categorically admits that he is the son of Kemparangaiah and not disputes the same.

20. It is important to note that, he claims that he is an illiterate. But, he has signed the document of plaint, vakalath and even after giving the evidence also, not put any thumb impression but, claims that, he learnt the same in the Saksharatha Scheme. The evidence of the very witness, who has been examined on his behalf is very clear that, they are the residents of the very same village. It is also important to note that, when he tried to give evidence in other way, noted in the cross-examination that the answer elicited from the mouth of D.W.1 is very clear that, in his village, they have school and when suggestion was made that in the

admission register, it is mentioned that Devaraju is the son of Kemparangaiah and he is - 20 - RSA No.209 of 2007 the same person but, he did not deny the same and only says that he is not aware of the same and no specific denial with regard to the admission register and he categorically admits with regard to the fact that his father was maintaining the family and he was the karta of the family but, he claims that only difference between him and his brother is only two years.

21. It is also important to note that, when the cross- examination was made with regard to the RTC Extract and the same is standing in the name of purchaser, he denies the same and says that he did not see the RTC as to in whose name the same is standing and also did not see the contents of the notice which was given and for what purpose the said notice was given. Hence, the very admission of D.W.1 is very clear that he has not specifically denied the admission register and also, when the document is 30 years old and the school register is secured before the Court and marked through the custodian of the said document and the fact that he is also the resident of S.Gollahalli is not in dispute and these are the material not considered by both the Trial Court as well as the First Appellate Court.-. 21 - RSA No.209 of 2007 22. It is also important to note that, suit is filed in the year 1993 but, the plaintiffs claim that they were aged about 20 years and 18 years at the time of filing the suit. In order to substantiate the fact that they were aged about 20 years and 18 years at the time of filing the suit, no material is placed before the Court. The Trial Court as well as the First Appellate Court has blindly accepted the oral evidence of plaintiffs, instead of considering the 30 year old document of Ex.D13 which is marked through the person, who is the custodian of the said document i.e., the Register Admission Book and no explanation on the part of the first plaintiff to show that he is an illiterate and in order to prove that he is an illiterate also, no document before the Court and both the Courts have committed an error in accepting the contention of the plaintiffs. The material on record is very clear that the suit was filed after 19 years of sale made by the father and the document Ex.D13 discloses that he was aged about 32 years on the date of filing of the suit since, the date of birth in the school records is of 1961.

23. It is settled law that, when the sale is challenged by the minor children, they have to seek for the relief within three - 22 - RSA No.209 of 2007 years of sale and

Article 60 is applicable to challenge the said sale. It is also important to note that suit is filed only for the relief of partition and not questioned the sale deed and even, not contended that the sale is not binding on him and this Court, in the judgment reported in ILR 2014 KAR1293 wherein this Court, considering the material on record with regard to application of Article 60 of Limitation Act, 1963 held that, when there is a transfer of minors interest by the natural guardian and suit is filed for setting aside the sale from the date of minor attaining the age of majority, the transfer of minors property by a natural guardian in contravention of Clauses (2) and (3) of Section 8 of the Act of 1956 is a voidable transaction and suit to set-aside the sale and for possession has to be filed within 3 years under Article 60 of the Limitation Act and further held that, suit for a declaration that the sale deed is not binding on her interest in the suit property and this relief is similar to setting aside the sale, which is contemplated under Article 60 of the Limitation Act and in the absence of the said relief, the suit itself cannot be maintained and ought to have filed the suit within three years.-. 23 - RSA No.209 of 2007 24. This Court also would like to rely upon the judgment of the Apex Court in PRABHAKAR VS. JOINT DIRECTOR, SERICULTURE DEPARTMENT AND ANOTHER reported in (2015) 15 SCC1 wherein the Apex Court in Para No.38 observed with regard to doctrine of acquiescence and held that, it is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases, Courts have coined the doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity delay defeats equities.

25. This Court also would like to rely upon the judgment of the Apex Court in B.L. SREEDHAR AND OTHERS VS. K.M. MUNIREDDY (DEAD) AND OTHERS reported in (2003) 2 SCC355 wherein the Apex Court, while discussing with regard to law of acquiescence in Para No.22, extracted Para No.40 of illustrious book Estoppels and the Substantive Law under the title Conduct of indifference or Acquiescence - 24 - RSA No.209 of 2007 and held that, it is settled law that an estoppel may arise as against persons who have not willfully made any

misrepresentation, and whose conduct is free from fraud or negligence, but as against whom inferences may reasonably have been drawn upon which others may have been induced to act. The doctrine of acquiescence may be stated thus, if a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to it being committed, he cannot afterwards be heard to complain of the act.

26. It is also important to note that sale was made in 1974 itself and it is also very clear that, even revenue entries are also made in the name of the purchaser immediately after property was sold. It is unfortunate that both the Courts not taken note of the same but, comes to the conclusion while answering issue No.1 that they are in joint possession as claimed by the plaintiffs since, the plaintiffs claim that they are in joint possession and the fact that the possession of the - 25 - RSA No.209 of 2007 property has parted on the date of the sale itself has not been considered. No doubt, learned counsel for the respondents brought to notice of this Court referring the sale deed, wherein it is not mentioned that the sale of the property is for legal necessity and also for the benefit of minors but, it is specifically mentioned in the document that, it is for clearance of loan which was obtained from P.L.O. Bank. No doubt, there is a reference in the sale deed in Ex.D1 that he had purchased that property by selling the joint family property and no dispute to that effect, since the document itself discloses the same. When the document itself discloses that sale was for clearance of the loan, the very contention of the learned counsel for the respondents cannot be accepted and both the Courts committed error in considering the document of Ex.D1 in proper perspective and there was no need to mention that sale is for legal necessity but, the Court has to see the reason for sale and the same is also for clearance of loan.

27. It is also important to note that the document which the learned counsel for the respondents relies upon to consider the grounds urged in this appeal is very clear that possession was delivered on the date of sale in the year 1974 itself, inspite - 26 - RSA No.209 of 2007 of it, both the Courts while answering issue No.1 as

affirmative comes to the conclusion that the plaintiff Nos.1 and 2 and also the second defendant are in joint possession of the property. It is nothing but an attempt made to question the sale made by the father of the second defendant after 19 years of sale and doctrine of acquiescence is applicable to the case on hand. Apart from that, suit is barred by limitation and suit has to be filed within three years immediately after attaining majority and both the Courts failed to take note of the conduct and while filing the suit, the age of the plaintiffs is mentioned as 20 years and 18 years respectively and failed to take note of the fact that the first plaintiff has signed the plaint and also the vakalath as Devarajaiah but, he contend that his name is Devaraju, though the document at Ex.D13 mentions his name as Devarajaiah. Hence, the very conduct of the plaintiffs has not been appreciated by the Trial Court and also the First Appellate Court and when the suit is barred by limitation, ought not to have entertained the suit. Hence, I answer the second substantial question of law as framed by this Court whether the judgment impugned of the Appellate Court is maintainable in the absence of specific findings that the suit was barred by time - 27 - RSA No.209 of 2007 is maintainable, since the appellate Court has to consider the same and the same is a question of law and even though, no ground is urged, as a First Appellate Court, ought to have considered the same but, not considered the same and this Court, while exercising the power under Section 100 of C.P.C. can consider the same as substantive question of law. Therefore, I answer the second substantial question of law accordingly.

28. The third substantial question of law is whether the suit only for partial partition was maintainable. No doubt, on perusal of the plaint, it is seen that the suit is filed only for the property which was sold by the second defendant in favour of the first defendant, not disputes the fact that the minors were not the parties. But when the plaintiffs have challenged the very sale contending that their father was not having absolute right, but filed the suit only for the relief of partition and not included all the family properties. No doubt, the appellants have also not produced any documents before the Trial Court but, now, they have made an attempt to produce the documents that the plaintiffs family was having other properties by invoking Order 41 Rule 27 of C.P.C. and those - 28 - RSA No.209 of 2007 documents are pertaining to the properties purchased by the father even prior to the selling of the

property and encumbrance certificate also discloses the same.

29. No doubt, the counsel for the respondent would contend that unless those documents are admitted and given an opportunity, those documents cannot be relied upon in the second appeal and the appellants have also not made any efforts before the Trial Court as well as the First Appellate Court and only the Court can exercise the powers under Order 41 Rule 27 of CPC if the appellants are diligent in producing the documents and no such diligence is shown by the appellants. However, it is important to note that the plaintiffs themselves have produced the document at Ex.P5 - loan clearance certificate issued by the bank in the year 1984 to show that they have cleared the loan but no date of loan is mentioned in that document. But it is clear that the alleged loan clearance certificate is in respect of Sy.No.42/2 and their own document itself clearly discloses that the family was having the other properties and they have availed loan and cleared the same and this document is produced before the Trial Court to show that there was no need to sell the property as the family - 29 - RSA No.209 of 2007 availed loan by pledging document of the family. But the document is clear that the loan was cleared in the year 1984 but no details are mentioned to show that when the loan was obtained and the document at Ex.P5 clearly show that the family is having other property in Sy.No.42/2. Hence, it is clear that other properties were there in respect of the family. Thus, the Court has to take note of the conduct while filing of the suit only in respect of the property which was sold by the father, a suit is filed for the relief of partition. Hence, I answer point No.3 that the suit is filed only for partial partition which is not maintainable by answering third substantial question of law.

30. The counsel for the respondents also relied upon the judgment in NINGEGOWDA AND OTHERS vs K.B. DODDEGOWDA AND OTHERS reported in AIR 1986 KAR90 wherein this Court held that when the transaction was made, it is the duty of the purchaser to discharge the onus that he made reasonable and bonafide enquiry as to existence of necessity for alienation. In the case on hand it has to be noted that the suit was filed after 19 years of sale that means the sale was made in the year 1974 and belatedly, filed the suit in the year - 30 - RSA No.209 of 2007 1993. This Court comes to the conclusion that the suit is barred by

limitation and the suit ought to have been filed within the three years in terms of the Article 60 of the Limitation Act. The judgment relied upon discloses that sale transaction has taken place in the year 1972 and the suit was filed in the year 1973 i.e., immediately and hence, the factual aspects will not come to the aid of the contention of the learned counsel for the respondents and the reason for sale is also for clearance of loan availed. Hence, the judgment is not applicable to the facts and circumstances of the case.

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

ORDER

The second appeal is allowed. The impugned judgments and decree of the Trial Court in O.S.No.9/1993 as well as the First Appellate Court in R.A.No.213/2004 are set aside. Consequently, the suit in O.S.No.9/1993 is dismissed. No cost. Sd/-
JUDGE ST,SN List No.:

3. SI No.: 1

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