

Basappa Vs. Smt. Nagarathnamma and Others

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Court : Karnataka

Decided On : Jul-29-2011

Judge : The Honorable Mr. Justice Mohan Shantanagoudar & the Honorable Mr. Justice K. Govindarajulu

Appeal No. : R.F.A.No. 1665 of 2006 C/w.RFA.No. 1995 of 2011 (R.A.No. 31 of 2006)

Appellant : Basappa

Respondent : Smt. Nagarathnamma and Others

Advocate for Pet/Ap. : For the Petitioner: R. Gopal, Advocate. For the Respondents: Harish Kumar M.S., Advocate for C/R-3.

Judgement :

1. RFA.No.1665/2006 is filed by the original defendant- Basappa against the judgment and decree dated 16.2.2006 passed in O.S.No.483/2000, by the learned II Addl.Civil Judge (Sr.Dn.,) and CJM, Davanagere. Whereas RFA.No.1195/2011 is filed by the original plaintiff- Basappa against the judgment and award passed in O.S.No.136/2006 (old No.118/1997). O.S.No.483/2000 was filed for partition and separate possession, whereas O.S.No.136/2006 was filed for Permanent injunction. Since the properties and the parties involved in both the matters are common, they were heard together. O.S.No.118/1997 came to be dismissed, whereas O.S.No.483/2000 filed for partition was decreed.

Genealogy of the parties is as under:-

Shivalingappa

Chigterappa

Rudrappa

Narappa Basappa Muddappa

(Appellant (Respondents

in both appeals) in both appeals)

2. The first son of Shivalingappa. Viz., Chigterappa divided and went out of the joint family in the year 1951 which is evidenced by the document at Ex.P1. The third son viz., Narappa also divided and went out of the joint family in the year 1953 as per Ex.P2. Thus, Chigterappa and Narappa stated living separately from 1951 and 1953 respectively. From that day onwards, they ceased to be joint family members. Joint family continued with other co-parceners, viz., Shivalingappa (father), Rudrappa, Basappa and Muddappa, (sons of Shivalingappa). Out of them Rudrappa remained unmarried. He is now no more. He has not left any will. Basappa is the appellant in both the appeals. Muddappa died on 14.2.1994, leaving behind his wife and children, who are the plaintiffs in O.S.No.120/1997 (Respondents in both the appeals). There was partition among Basappa and Muddappa in the year 1962 through registered partition deed, dated 23.5.1962 as per Ex.P3. By then, unmarried Rudrappa who was granted share under Ex.P1 and P2 had sold his share in favour Basappa and Muddappa. Thus, Rudrappa was not assigned any share in the partition that took place on 23.5.1962, at Ex.P3.

3. When the facts stood thus, the legal representatives of Muddappa (respondents) claimed that and unregistered partition deed (*palupatti*) came to be executed mutually by Basappa and Mudappa as per Ex.P4 on 25.4.1984; Under the said *palupatta*, partition between Basappa and Muddappa took place once again of all the properties, which are separately standing in the names of Basappa and Muddappa and that the said *palupatti* needs to be acted upon. In other words, according to the legal representatives of Muddappa there was a reunion among Basappa and Mudappa after 1962 and consequently they started cultivating the

agricultural lands and living jointly. According to them, *palupatti* which came to be executed in the year 1984 depicts a final partition among them by metes and bounds . On the basis of such *palupatti*, the legal representatives of Muddappa filed application before the revenue authorities to enter their names for their respective shares said to have been allotted under it. The said application was not granted. Hence, O.S.No.120/1997 (new No.483/2000) came to be filed by the legal representatives of Muddappa for partition and separate possession with the prayer to get the properties divided through registered partition deed in accordance with the allotment of shares in *palupatti*. The said suit came to be decreed by the Court below with the direction to the defendant i.e., Basappa to execute requisite registered partition deed in tone and tenor with *palupatti* (unregistered Partition Deed) at Ex.P4, dated 25.4.1984. In the meanwhile, Basappa filed O.S.No.118/1997 (new No.136/2006) for permanent injunction restraining the legal representatives of Muddappa from interfering with the peaceful possession and enjoyment of Sy.No.69/A of Jodi Thimalapura Village, Santhebennur Hobli, measuring 4 acres and Sy.No.70 of Jodi Thimalapura Village, Santhebennur Hobli to an extent of 2 acres. According to Basappa, Sy.No.69/A of Jodi Thimalapura Village was regranted in his favour in the year 1963 as per Ex.P17 and that he purchased 2 acres 20 guntas in Jodi Thimalapur Village through registered sale deed as per Ex.P7 on 21.1.1972. Since the Trial Court had held that all the properties are liable to be divided as per *palupatti* between Basappa and legal representatives of Muddappa, the decree of injunction is refused to Basappa. Questioning both the decrees, these appeals are filed.

4. Basappa is the brother of Muddappa. Muddappa is no more. He died in the year 1984, leaving behind his wife and children who are the legal representatives and the plaintiffs in O.S.No.120/1997. Other brothers namely, Chigterappa and Narappa do not have share or title over the properties in question. Their father Shivalingappa has also expired. There was a division of properties by metes and bounds by virtue of the registered partition deed at Ex.P3, dated 23.5.1962 between Basappa and Muddappa. Pursuant to the registered deed of partition, the mutation entries were charged in the names of respective parties as per allotment of shares in the partition deed Ex.P-3. These facts are not in dispute.

5. However, the differences arose by virtue of Ex.P4, dated 25.4.1984, which is an unregistered partition deed (*palupatti*) said to have been executed in the presence of panchas by Basappa and Muddappa. On the basis of such *palupatti*, the legal representatives of Muddappa claimed that there was reunion of two brothers viz., Basappa and Muddappa after 1962; that both the brothers started living together and cultivating the properties jointly; the both the brothers have jointly purchased certain properties subsequent to 1962. However, Basappa, defendant in O.S.No.120/1997 denied the alleged execution of *palupatti* by him. He further contends that there was no reunion between the brother; that the parties have started living separately after 1962; both the parties have purchased the properties separately under separate registered deeds of sale after 1962 and consequently both the parties are enjoying their respective shares of properties after 1962 independently. According to the defendant, joint family does not exist as such between Basappa and Muddappa after 23.5.1962.

6. In order to prove their case, the legal representatives of Muddappa examined six witnesses and got market 80 documents. On behalf of Basappa two witnesses were examined, including himself and 34 documents were got market. As aforementioned, the Trial Court on assessing the material on record, decreed the suit filed by the legal representatives of Muddappa and directed Basappa to execute registered partition deed in tone and tenor with *palupatti*, dated 25.4.1984 (Ex.P4). Consequently, the suit filed by Basappa for injunction is dismissed.

7. Sri R. Gopal, learned counsel appearing for appellant in both the appeals submits that the Court below is not justified in holding that there was reunion among two brother, viz., Basappa and Muddappa; that there is no blending of properties/shares by the said two brother; both the parties have started living and enjoying their properties separately after 23.5.1962, the date of registered deed of partition; both the parties purchased certain properties separately after 1962 and are paying taxes separately; even the *kathasin* respect of those properties are standing separately. The legal representatives of Muddappa are living in Shimoga, whereas Basappa, the appellant is staying in the Village wherein the agricultural properties are situated. He further submitted that there is severance of status of the joint family in the year 1951 itself when Chigterappa came out of the joint

family.

8. Appeals are opposed by Sri Harish Kumar, learned counsel appearing on behalf of the respondents in both the appeals by contending that the Trial Court is justified in granting decree in favour of the respondents holding that there was reunion among the two brothers after 1962, inasmuch as they started cultivating and enjoying the properties jointly; children and son-in-law of the appellant had got education by studying at Shimoga staying in the house of the Muddappa; the taxes are paid by Muddappa even after 1962 for all the properties including the properties allotted to the share of Basappa. The conduct of the parties subsequent to 1962 would go to show that there was reunion among two brothers and consequently, two brothers mutually decided to have partition finally in the year 1984 by executing *palupatti*. In the very unregistered deed of partition (Ex.P4), a recital is made that both the parties shall make endeavor to get the deed of partition registered as per the division of properties found in Ex.P4 dated 25.4.1984. On these among other grounds, the learned counsel for the respondents argues for dismissal of the appeals.

9. On the basis of the rival contentions advanced at the Bar, the following points arise for our consideration in theses appeals:-

1) Whether the Trial Court is justified in concluding that there was reunion between Mudappa and Basappa after 23.5.1962 (date of registered deed of partition at Ex.P2)?

2) Whether the Trial Court is justified in concluding that the legal representatives of Muddappa have proved that the partition took place finally by virtue of unregistered deed on 25.4.1984 (Ex.P4) between late Muddappa and Basappa?

3) Whether the Trial Court is justified in dismissing the suit of Basappa for injunction holding that he has not proved his exclusive possession over the suit property in O.S.No.118/97?

10. Since all the points are interconnected they are considered and decided as under:-

From the facts pleaded and the evidence adduced by the parties, it is clear that the legal representatives of Muddappa who are the respondents herein made a claim for partition and separate possession on the basis of alleged reunion between Muddappa and Basappa. According to them there was reunion between those two after 23.5.1962 and consequently, the parties effected partition finally in the year 1984 by virtue of unregistered partition deed (*palupatti*).

11. It is not in dispute that Muddappa was an educated man and was an employee of Municipality. It is also not in dispute that the appellant herein is an agriculturist looking after the agricultural affairs in the village. It is further not in dispute that there was partition by metes and bounds through registered deed of partition as per Ex.P3, dated 23.5.1962. Under said partition, all the joint family properties were divided between Basappa and Muddappa.

12. It is not by well settled that co-parceners, either all or some of them, after severance of status and partition, can reunite and thus become reunited in estate and interest. If a joint Hindu family separates, all or any of the members of it may agree to reunite as a joint Hindu family, may be such a reuniting is for obvious reasons. Under the law of *Mitakshara*, it is of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. It is also now well settled that to constitute a reunion there must be an intension of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct inconsistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties already divided, lived or traded together, but that they did so with the intention of altering their status and of forming a joint estate with all its usual incidents. It requires very cogent

evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu family have succeeded in so altering their status as to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family.

13. As aforementioned, under Mitakshara a reunion is of rare occurrence and that when it is pleaded by a party, he must establish it by cogent, convincing and unimpeachable evidence. In other words, it must be proved strictly. It is further cautioned by the Supreme Court of India in the case of **Balabuxvs. Rukhamabai, reported in (1903) ILR 30 Cal 725** that it is not enough if the erstwhile members of the undivided family after partition live together or carry on business together. It must be further established by convincing evidence that they had the intention to alter their status and revert back to the status of coparcenary.

14. This Court in the case of **Iswarappavs. Shivalingappa, reported in 1968(2) Mys.L.J.266**, has observed thus:-

“A reunion is established only when the divided coparceners intend to restore unity both in estate as well as in interest. The evidence to the effect that after partition, the parties were living together in the same house, cultivating the same or all the properties together and were spending the income over common expenditure is insufficient to establish reunion.”

15. It is well established that the hallmark of coparcenary is unity of possession and community of interest. We have, therefore, to consider whether such evidence is forthcoming on the facts of the present case. It is no doubt true that the evidence of subsequent conduct is relevant to establish such an intention.

16. The question as to whether the reunion has taken place between the parties in real sense depends upon the fact as to whether the parties have blended the properties to make them as joint family properties. It is not uncommon to the members of the joint family to own separate and individual properties. It is also not uncommon for the divided brother allowing other divided brother or brothers to use his self-acquired property jointly. Unless there is a blending of the divided properties by the divided members, there cannot be a reunion of the divided

brothers in real sense. The law in respect of blended properties is well settled that separate or self acquired property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein. But to establish such abandonment, a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, inasmuch as, an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation. In this context, it is relevant to note the observations of the Division Bench of this Court in the case of **SHRI RAMESH SIRNIVASA JUNNU - vs -SRINIVAS VITTOBA JANNU and OTHERS {2000 (4) KCCR 2609}**, which read thus :

“Although a specific plea as regards blending of self acquired property with joint family property was not in the light of the decision of the Supreme Court in **Binod Bihar’s** case (supra), necessary, yet blending could be said to have taken place only if the plaintiff satisfactorily established:- (a) that his father Sri Srinivas Vittoba Jannu was a coparcener, who had an interest in the coparcenary property held by the joint family, and (b) he had clearly and unequivocally intended to throw his self acquired property in the common hotchpot and abandon all his rights and claims in respect of separate ownership.”

It is further relevant to note the observation of the Supreme Court in the case of **LAKKIREDDI CHINNA VENKATA REDDI AND OTHERS- vs -LAKKIREDDI LAKSHMAMA (AIR 1963 SC 1601)**, which read thus ;

“Separate or self acquired property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein. Such abandonment or waiver could however be established only if the person concerned had a clear intention to do so. The mere fact that other members of the family were allowed to use property jointly with himself, or that the

income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support or his failure to maintain separate accounts cannot result in abandonment.”

Same is the dictum laid down by the Apex Court in the case of **G. NARAYANA RAJU - vs - CHAMA RAJU (AIR 1968 SC 1276)**. The Apex Court in the said judgment has reiterated that the property which was originally self acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims to it. A clear intention on the part of the coparcener to abandon his separate rights is necessary and that such intention cannot be inferred from acts which may have been done from out of kindness or affection.

17. It is needless to observe that partition brings severance of status between the coparceners. The members become tenants-in-common. Subsequent acquisition by a member even with joint fund in his possession belongs to him alone and other members cannot claim a share therein. (see. **M.N. Aryamurthi and another -vs- M.L.Subbaraya Setty (dead) by his legal representatives and other - AIR 1972 SC 1279**). If one of the members remains in possession of the entire property even after severance of status, there is no presumption that the property which is acquired by him after severance of status, must be regarded as acquired for the family. Where rents and profits are received by the member in possession, he would be liable to account for the same. But the funds in the hands of the member do not become impressed with any trust in favour of the other member. Therefore, if such a member acquired some property with the funds in his possession, the other members could claim no share in that property.

18. In the light of the aforementioned established law on the question, the material on record is viewed.

There is no pleading by the legal representatives of Muddappa who claim reunion that there was blending of the properties on the part of Basappa. The plaint merely narrates as to what has allegedly happened after 1962. The plain reading of the averments made in the plaint reveals that Muddappa took care of the education of the children and son-in-law of Basappa to certain extent; that Muddappa paid the

taxes and looked after all the family affairs even after 1962 etc., The same, in our opinion, may not be sufficient to hold that the parties blended their properties. There cannot be any dispute that a member of Hindu joint family after division, holds the property allotted to his share as his own. It practically becomes his self acquired property. The burden is on the other members of the family who claim such property as a joint family property to plead and prove that such property was blended with other joint family properties. As far as the blending of self acquired property with other joint family properties is concerned, it has to be specifically pleaded and evidence has to be adduced in that regard. Mere plea that the properties allotted to the respective share of the persons who are the parties to the registered partition Deed are treated as joint family properties is not sufficient to hold that such properties are joint family properties by reason of blending. As aforementioned, in the matter on has, there is no pleading relating to blending of the properties by the plaintiffs. Even otherwise, we do not find any documentary or oral evidence to support the contention of the respondents that there was a reunion of the properties and parties in real sense.

19. As aforementioned, the properties of the parties were divided by metes and bounds through registered partition deed on 23.5.1962. Thereafter, both Basappa, as well as, Muddappa have purchased various properties separately either in their names or in the names of their children. Item No.1 in suit Schedule-D i.e., Survey No.59/1A and 1B of Madapura village, Kasaba Hobli, Channagiri Taluk, measuring 5 acres, in purchased by respondent No.2 under Ex.p-5 on 12.10.1970. So also respondent No.3 herein purchased the land bearing Survey No.70 of Jodi Thimlapura Village, Santhebennur Hobli, Channagiri Taluk, to an extent of 2 acres (item No.3 of Schedule-D) as per Ex.P-9 on 24.11.1972.

20. The appellant has purchase 2 acres out of Survey No.70 of Jodi Thimlapura village, as per Ex.p-7 on 21.1.1972; another 2 acres in the very survey number as per Ex.p-8 on 21.2.1973; subsequently another 2 acres in the very survey number as per Ex.p-6 on 27.6.1974. The properties purchased under Exs.P-6,P-7 and P-8 form part of Item No.3 of suit Schedule-D.

21. These facts clearly reveal that the parties have acted independently and they have purchased the properties in their names separately under separate sale deeds after 1962. Had there been an intention on the part of the parties to reunite and to blend the properties, they would have jointly purchased the properties after specifically mentioning so after 1962.

22. It is relevant to note that the names of the respective parties were mutated in the revenue records pursuant to the registered partition deed of 1962 - Ex.P-3. Though their father Shivalingappa was alive up to the year 1973, the names of Muddappa and Basappa were separately mutated in respect of their shares in the Mutation Register. Exs.D-1 and D-2 clearly reveal that the partition deed of 1962 was acted upon by the parties and the names of the parties were mutated. Muddappa was residing in Shimoga, whereas, Basappa was residing in the village. They were residing separately. From the above, it is clear that they were not living together or carrying on the agriculture together, and they did not have any intention to revert back to the status of coparceners. There was no intention on the part of the parties to bring unity in estate and interest. There is nothing on record to prove, much less, by cogent and reliable evidence, that the intention of the parties was to bring back unity.

23. The respondents herein rely upon Ex.P-4 - palupatti executed in the year 1984. PWs.1,2 and 3 are examined to prove said palupatti. PW-1 is respondent No.3 herein. He is the son of Muddappa. He does not have personal knowledge of palupatti, inasmuch as, he is not a signatory to the palupatti. However, in his examination-in-chief, he has deposed that he was present at the time of executing palupatti. He identifies the signature of Basappa as Ex.P-4 (a) and that of his father as Ex.P-4 (b). Since Basappa has denied his signature over Ex.P-4 - palupatti, it was incumbent on the part of the respondents herein to prove the signature of Basappa as per law. No attempt was made by the respondents herein for getting the disputed signature compared with the admitted signature.

24. PW-2 is one of the attestors to the palupatti Ex.P-4. He identifies his signature at Ex.P-4(c). Nowhere in his evidence, he has stated that he has seen Basappa signing Ex.P-4. He has also not deposed that he has signed in the presence of

both the executants.

25. PW-3 is one of the panchas who participated in the talks at the time of execution of palupatti Ex.P-4. He is also the signatory to the palupatti and his signature is at Ex.P-4(d). This witness also does not depose that the appellant Basappa signed in his presence and he has signed in the presence of both the executants. He has specifically admitted in the cross-examination that he has not seen any of the admitted signature of Basappa.

In view of the above, the evidence of the attestors cannot be relied upon.

In the light of such shaky evidence adduced by the respondents herein relating to so called palupatti, it cannot be held that the palupatti was prepared with consent of both the parties. It is curious to note that respondents herein who are the plaintiffs in O.S.No.120/1997 (renumbered as O.S.No.483/2000) in paragraph-3 of the plaint averred as under (relevant portion) :

“At last, a pachayath was held on 25.4.1984 in Settihally village; some 12 important people of the village participated in the panchayath and in their presence both the brother separated. The factum of separation was reduced to writing on the very day by one Sri K.S.Somashekarappa of Settihalli and the defendant and D.S.Muddappa, put their signatures thereto accepting the partition made. The panchayatdars also did affix their signatures thereto one after another and the separation of the brothers was proclaimed. Then the defendant did not allow D.S.Muddappa to partition the properties by metes and bounds actually. One Ravikumar Patil was the Sub Inspector of Police in Channagiri. At last, he interfered and with the help of the police, the brothers effected the partition by metes and bounds. It went on like that. Since then, D.S.Muddappa enjoyed the properties which fell to his share in exclusion of the defendant.”

(Emphasis supplied)

From the above, it is clear that, the Sub-Inspector of Police at Channagiri, at that relevant point of time interfered and with the help of the police, Ex.P-4 came to be executed by the parties. Even assuming that Basappa was present and executed

the palupatti, the same was not voluntary, inasmuch as, the palupatti was prepared due to interference of the local Sub-Inspector and with the help of police. The document at Ex.P-4 which is the outcome of threat and coercion by police, cannot be relied upon by the respondents herein to contend that there was reunion and there was a subsequent partition between the two brothers. As aforementioned, Basappa has specifically denied his signature on palupatti. Denial on the part of the appellant herein about his signature cannot be said to be artificial or false, inasmuch as, the Deed itself was prepared under the circumstances mentioned above.

26. It is further relevant to note that the respondent herein did not give any application to enter their names pursuant to the palupatti after 1984. Had the palupatti been voluntary or genuine, there was not reason as to why the respondents should keep quiet without changing the entries in the revenue records pursuant to Ex.P-4 - the palupatti after 1984. In Ex.P-4, there is no reference of alleged reunion at all. It does not even mention about the earlier registered partition deed of the year 1962. The said partition deed of 1962 could not have been ignored by the parties while preparing Ex.P-4, particularly when the same was registered and was acted upon by the parties. Thus, it is clear that Ex.P-4 is wholly unbelievable, prepared under threat and coercion, under the influence of the local Sub-Inspector of Police and is not acted upon. There is nothing on record to show that the parties have reunited at any point of time after 1962. There is no blending of properties. It is only in the year 1996, i.e., after the death of Muddappa, the respondents herein made an application to enter their names pursuant to Ex.P-4. The said application is rejected on the ground that the palupatti cannot be acted upon as the same is unregistered and that the registered partition deed of 1962 cannot be overlooked. Had there been an intention on the part of the parties to reunite and to blend the properties, there was no hurdle for the parties to mention so in the palupatti - Ex.P-4, making their intention very clear. Even otherwise, the records reveal that the parties started living separately in letter and spirit and there was no intention of reunion at all. Of course, both the brothers continued amicably. Mere amicable living together cannot be equated to reunion as aforementioned. Thus, the trial Court is not justified in concluding that there was reunion of the parties. The appreciation of the evidence by the Court if

improper and incorrect and consequently it has reached a wrong conclusion. The law relating to reunion and blending has not been properly considered by the trial Court while coming to the conclusion.

27. Item No.4 of Schedule-D property is the agricultural land bearing Survey No.16/2 of Shettihalli Village, Kasaba Hobli, Channagiri Taluk, measuring 3 acres 22 guntas. The same stands in the name of Basappa. According to the learned Advocates, the said property must have been purchased in the year 1958.

Record of Rights in respect of Item No.4 of Schedule -D i.e., Survey No16/2, of Settihalli village, stands in the name of Basappa (appellant herein) since 1958 till this day. In view of the above, it is clear that the property at Item No.4 in Schedule-D was owned and possessed by Basappa personally even prior to 1962 and therefore, the same was rightly not the subject matter of lthe registered partition deed of 1962. Since the said property was the self-acquisition of Basappa, there was no reason for bringing the said property into common hotchpot while dividing the properties in the year 1962. Hence the same will continue to be owned and possessed by Basappa.

28. Item No.5 of Schedule-D i.e., a residential house situated in Nadigar Street, Channagiril taluk, measuring 31'*61' is purchased in the year 1961. The same stands in the name of Basappa. This property does not find place in the registered partition deed of 1962. It is brought on record that the said residential house is possessed by both the brothers to an extent of 50% each. Such possession by both the parties to an extent of half is continued from 1961 till this day. According to the respondents through the house stands in the name of the appellant herein, the same was purchased by Muddappa. Learned counsel appearing on behalf of respondents relies upon Ex.P-10 to contend that the payment was made by Muddappa. On perusal of original of Ex.P-10, we find that the name of Muddappa is not written by the same person who has written Ex.P-10. It merely bears the signature of Muddappa under different ink. Under what circumstances and for what reason Muddappa put his signature is not known. Be that as it may, that fact remains that both the parties are living in the said house to an extent of 50% each. The signaturae of Muddappa also finds place in Ex.P-10. In view of the above, we

are of the opinion that interest of justice will be met if status quo is continued by both the parties relating to the same property.

29. Item No.2 of Schedule-D property is an agricultural land bearing Survey No.69/A of Jodi Thimlapura village, Santhenennur Hobli, Channagiri Taluk, measuring 4 acres. The said land is an inam land. The land was regranted in favour of Basappa in the year 1963 as per Ex.P-70. The proceedings must have originated much prior to 1962 relating to regrant. The family was the tenant, cultivating the inam land. Merely because the same is regranted in favour of the appellant (elder member) in the year 1963, the appellant herein will not become exclusive tenant over the property. Since the family is the tenant of the inam land, the respondents also will have share in the said property to the extent of half.

Hence, properties as Item No.2 and Item No.5 in D-Schedule (not he subject matter of registered partition deed of 1962) are liable to be divided among the two brothers. In respect of all other properties, the registered Deed of Partition dated 23.5.1962 binds both the parties.

30. It is also relevant to mention that Schedule-A property i.e., Survey No.15/5 of Settihalli village, measuring 1 acre 1 gunta was owned and possessed by Shivalingappa (propositus) till his death. He executed a Will as per Ex.P-43 on 24th May 1962 bequeathing the said property to an extent of half to each of the two brothers. Thus, both the parties will have half share in the said property.

31. It is needless to observe that the immovable properties purchased by respective parties after the deed of Ex.P-3 i.e., registered partition Deed dated 23.5.1902, will be held by them exclusively.

32. In view of the observations made above and the conclusions arrived at, it clear that Basappa-appellant herein has exclusively purchased 6 acres out of the total extent of 8 acres in Survey No.70 of Jodi Thimalapura Village by virtue of three Sale Deeds dated 21.1.1972, 21.2.1973 and 27.6.1974. He is in possession of the said bits of lands. The entries in the Record of Rights also support the case of the appellant. If it is so, nobody, including the respondents can disturb his possession over the purchased portions of Survey No.70 of Jodi Thimalapura Village.

However, the trial Court is justified in dismissing the suit for injunction in respect of Survey No.69/A of Settihalli Village, measuring 4 acres. We have held that the said property is liable to be divided among the brothers by holding that the said property is regranted in the name of the appellant for and on behalf of the family consisting of appellant, as well as respondents. Since the respondents have got 50% share in the said property, the order of injunction cannot be granted in favour of the appellant.

Accordingly, following order is made :

Order in RFA.No.1665/2006

(a) The judgment and decree passed by the trial Court in O.S.No.483/2000 directing the appellant herein to execute requisite registered partition deed in accordance with the division of the properties found in unregistered partition deed dated 25.4.1984 - Ex.P-4, stands set aside. The parties are bound by the registered partition Deed-Ex.P-3 dated 23.5.1962. The parties will own and possess the properties in accordance with the allotment made under said partition deed.

(b) Survey No.15/5 of Settihalli village, (suit Schedule-A Property) shall be divided among the appellant and respondents to an extent of half each.

(c) The properties found at item No.2 and item No.5 of D-Schedule i.e., agricultural land bearing Survey No.69/A of Jodi Thimlapura village, measuring 4 acres and residential house situated in Nadigara Street, Channagiri Taluk, measuring 31' * 76' respectively, shall be divided between the appellant and the respondents to an extent of half each.

Accordingly, RFA.No.1665/2006 is **allowed in part.**

Order in RFA. No.1195/2011

The judgment and decree passed by the trial Court in O.S.No.118/1997 dismissing the suit modified as under:

The respondents are directed not to interfere with the peaceful possession and enjoyment of the portions of the property in Survey No. 70 of Jodi Thimalapur village purchased by the appellant.

Accordingly, RFA. No.1195/2011 is **allowed in part.**

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