IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2026

PRESENT

R

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

REGULAR FIRST APPEAL NO. 1165 OF 2009 (PAR)

BETWEEN:

M/S.RAJESH EXPORTS LIMITED,
NO.4, BATAVIA CHAMBERS, KUMARA KRUPA
ROAD, KUMARA PARK EAST, BANGALORE-1.
REP. BY ITS AUTHORISED OFFICER
M.K.NARANG S/O KIRPARAM NARANG.

...APPELLANT

(BY SRI. ROHAN KOTHARI., ADVOCATE)

AND:

1. SRI. B.DEVARAJ S/O BALASUBRAMANYA
AGED ABOUT 29 YEARS,

2. B.YOGESH S/O S.BALASUBRAMANYA
AGE MAJOR-21,

3. SMT.B.SAROJAMMA @ B.SAROJA
W/O S.BALASUBRAMANYA, 48

RESPONDENT NO.1 TO 3 ARE RESIDING AT
NO.43, SUBEDAR CHATRAM ROAD,
BANGALORE-9.

4. SRI.S.BALASUBRAMANYA
DELETED

5. M/S VOLGA RESTAURANT
NO.43 (UPSTAIRS),
SC ROAD, BANGALORE-9
REPRESENTED BY ITS PROPRIETOR,
SHRI.V.K.ABDULLA, MAJOR ABOUT 50.

6. M/S. HOTEL ADORA,
NO.43 (OUT HOUSE),
SC ROAD, BANGALORE-9
REPRESENTED BY ITS SHRI. JANAB AHMED,
MAJOR, 55.

7. SHRI. SRINIVASA SHETTY
60 YEARS, PROP: OF M/S ARUNA STORES,
NO.45, SC ROAD, BANGALORE-9.
AMENDMENT CARRIED OUT IN PURSUANCE OF
ORDER DATED:27.09.2022,

7(a) SINCE DECEASED, REPRESENTED BY LR'S
SMT. NAGALAKSHMI,
AGED ABOUT 80 YEARS,
W/O LATE A.SHRI SRINIVASA SHETTY,

7(b) SRI. S.ARUNA KUMAR,
AGED ABOUT 57 YEARS,
S/O SRINIVASA SHETTY,
BOTH RESIDING AT NO.16/1,
"SUKHI", 5TH CROSS, R.K.PURAM,
BENGALURU-560 009.

7(c) SRI. S.VENKATESH BABU,
AGED ABOUT 52 YEARS,
S/O LATE .A.SRINIVASA SHETTY,
RESIDING AT NO.9, 5TH CROSS,
R.K.PURAM, BENGALURU-560 009.

…RESPONDENTS

(BY SRI. C.SHANKARA REDDY., ADVOCATE FOR C/R1 TO R3; R4-DELETED,

SRI.P.USMAN FOR M/S. HEGDE ASSTS FOR R5 & R6;
SRI. K.R.ASHOK KUMAR., ADVOCATE FOR R7 [A-C])

THIS RFA FILED U/S 96 CPC, AGAINST THE JUDGMENT AND DECREE DATED 15.09.2009 PASSED IN OS.NO. 914/2005 ON THE FILE OF THE XXXVIII ADDL. CITY CIVIL JUDGE, BANGALORE, DECREEING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 29.06.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, ***HON'BLE MS. JUSTICE TARA VITASTA GANJU***, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

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I. Preface:

1. This Appeal has been filed against the Judgment and Decree dated 15.09.2009 passed by the learned XXXVIII Additional City Civil Judge, Bengaluru, in O.S. No.914/2005 [hereinafter referred to as the "Impugned Judgment"]. By the Impugned Judgment, the suit instituted by respondent Nos.1 to 3/plaintiffs for partition and separate possession came to be decreed. By the Impugned Judgment, the learned Trial Court held that the Suit Schedule Property constituted joint family property, declared that the registered Sale Deed dated 22.12.2004 executed by defendant No.1 in favour of the appellant/defendant No.2 was not binding on the 1/4th shares of respondent Nos.1 to 3/plaintiffs each (3/4th share in total) and granted them partition and separate possession of their respective shares.

2. Aggrieved by the aforesaid Judgment and Decree, the appellant/defendant No.2 has preferred the present appeal under Section 96 of the Code of Civil Procedure, 1908 [hereinafter referred to as the "CPC"], contending, *inter alia*, that the learned Trial Court erred in treating the Suit Schedule Property as joint family property despite the registered Sale Deed standing in the name of late Smt. Lalithamma and in consequently holding that defendant No.1 was incompetent to alienate the same in its favour.

2.1 On 02.12.2010, this Court directed that final decree proceedings may continue, but drawing up of the final decree was stayed and the Appeal was admitted.

3. For the sake of convenience, the parties shall hereinafter also be referred to as they were arrayed before the learned Trial Court.

3.1 Since the dispute arises out of a family arrangement and subsequent alienation of the Suit Schedule Property, the relationship between the parties is set out herein for ease of reference. Late Sri D.M. Subbaiah was the husband of late Smt. Lalithamma, who is stated to have acquired the Suit Schedule Property under a registered Sale Deed. They had a son, Sri S. Balasubramanya, who was arrayed as defendant No.1 in the suit. Smt. B. Sarojamma, wife of defendant No.1, and their two sons, Sri B. Devaraj and Sri B. Yogesh, are the plaintiffs in the suit. The appellant herein, M/s. Rajesh Exports Limited, was arrayed as defendant No.2, being the purchaser under the registered Sale Deed dated 22.12.2004 executed in its favour by defendant No.1. Defendant Nos.3 to 5 are tenants in occupation of portions of the Suit Schedule Property and are formal parties to the proceedings.

4. During the pendency of the present appeal, plaintiffs filed three applications: (i) I.A. No.1/2013 under Order XLI Rule 27(1) read with Section 151 of the CPC seeking permission to adduce additional evidence; (ii) I.A. No.2/2013 under Order VI Rule 17 read with Section 151 of the CPC seeking amendment of the plaint; and (iii) I.A. No.2/2017 under Order XLI Rule 27(aa) and (b) read with

Section 151 of the CPC seeking permission to produce additional documents. By Judgment dated 08.12.2023, this Court allowed the aforesaid applications, set aside the Impugned Judgment and remanded the matter to the learned Trial Court for fresh adjudication.

5. The aforesaid Judgment dated 08.12.2023 was assailed before the Supreme Court by the defendant No.2 under Civil Appeal Nos. 5430 /2025 (hereinafter referred to as the 'SC Judgment'). The Supreme Court by the order dated 22.04.2025, allowed the Civil Appeal, set aside the Judgment dated 08.12.2023 passed by this Court, dismissed I.A. Nos.1 and 2 of 2013 filed before this Court, and restored this Appeal to the file of this Court for consideration on merits. The Supreme Court observed that the appeal ought to be decided on the basis of the evidence already available on record and accordingly remitted the matter to this Court for fresh consideration in accordance with law. The relevant extract of the SC Judgment is below:

> *"In our considered view, the High Court, in allowing the amendment of the plaint and remitting the matter to the Trial Court, has committed two errors.* ***The first error is***

> ***<u>with respect to the non-consideration of the completely contrary stand taken by the respondents earlier in their original plaint wherein</u>***, *they stated that they were the only legal heirs available. Admittedly, the alleged co-owner has not even come before the Court. Secondly, the High Court ought not to have remitted the matter to the Trial Court on that score. Instead, it could have called for a finding on the same and, thereafter, proceeded to decide the first appeal on merits.*
>
> *Be that as it may, inasmuch as we are not in agreement with the reasoning assigned by the High Court, we are inclined to set aside the impugned judgment of the High Court.*
>
> ***<u>Accordingly, the impugned judgment is set aside.</u>***
>
> *Consequently, the matter stands remitted to the High Court for* ***<u>the purpose of deciding the first appeal on merits, in accordance with law.</u>***
>
> *The appeal stands allowed, accordingly.*
>
> *In such view of the matter,* ***<u>there is no need for the production of additional evidence before the High Court. Thus, we make it clear that the applications, being IA No.1/2013 and IA No.2/2013, filed before the High Court stand dismissed."</u>***
>
> [Emphasis Supplied]

5.1 Thus and in terms of the SC Judgment, the examination by this Court is to be undertaken based on the record as was available before the Trial Court.

II. <u>Brief Facts:</u>

6. The present dispute pertains to the Suit Schedule Property bearing Municipal Nos.43, 44 and 45, situated at Subedar Chatram Road, now Natarathna Gubbi Veeranna

Road, Gandhinagar, Bengaluru City, admeasuring East to West 80 feet and North to South 42 feet, together with the structures standing thereon (hereinafter referred to as the "Suit Schedule Property"). The parties trace their respective claims to the registered Sale Deed dated 14.03.1963 in the name of late Smt. Lalithamma.

7. The plaintiffs instituted O.S. No.914/2005 seeking partition and separate possession of their respective shares in the Suit Schedule Property, together with the consequential reliefs of permanent injunction, mandatory injunction and mesne profits.

7.1 Subsequently, by way of amendment on 29.07.2009 to the plaint, the plaintiffs also sought a declaration that the Sale Deed dated 22.12.2004 executed by defendant No.1 in favour of defendant No.2 duly registered as Book-I, GAZETTE NO.1-00864-2005-06, C.D. No.GA-ND-45, dated 27.05.2005 (hereinafter referred to as the "Subsequent Sale Deed") was not binding on their shares. The plaintiffs pleaded that although the Suit Schedule Property stood in the name of late Smt. Lalithamma, it had in fact been acquired by her husband late Sri. D.M. Subbaiah out of the income and resources of the joint family and was held in the name of late Smt. Lalithamma only for convenience. According to the plaintiffs, the Suit Schedule Property retained the character of joint family property and, therefore, defendant No.1 had no exclusive right to alienate the same to the prejudice of the plaintiffs. The prayers in the plaint (as amended on 29.07.2009) are set out below:

> *"Wherefore, the plaintiffs herein pray that this honourable court be pleased to pass a judgment and decree against the defendants for:*
>
> *a) Partition and separate possession of plaintiffs' 1/4th share each in the entire suit schedule property between the plaintiffs and the defendant no.1 in accordance with law by taking into consideration of value of the property, location etc.,*
>
> *aa) Declare that the sale deed allegedly executed by 1st defendant in favour of the 2nd defendant dated 21-12-2004 vide no. GAL 1-00864/2005-06 Book 1, C.D. no GAND 45 dated 27.05.2005 in respect of the suit schedule property is not binding on the undivided 1/4th share of each of the plaintiffs.*[1]
>
> *b) Grant mandatory injunction directing the defendants 3 to 5 to pay the 3/4th share of the monthly rents payable by them to the plaintiffs.*
>
> *c) Mesne profits under Order 20 Rule 12 of the Civil Procedure Code.*

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[1] As per the amendment of plaint dated 29.07.2009

> *d) Permanent injunction restraining the defendants 1 and 2 or anyone through them from interfering with or ousting out the plaintiffs from joint possession without due recourse to law."*
>
> *SCHEDULE*
>
> *All that piece and parcel of the immovable property bearing No.43, 44 and 45 situated at Subedar Chatram Road now Natakarathna Gubbi Veeranna Road, Gandhinagar, Bangalore City, measuring about East to West 80 feet and North to South 42 feet together with the constructions found thereon and the same is bounded on the:*
>
> *East by : Subedar Chatram road*
> *West by : Conservancy road*
> *North by : T. Dasappa Home*
> *South by : Kelkar's House."*

7.2 The plaintiffs arrayed their husband/father as Defendant No.1 and the subsequent purchaser as Defendant No.2, while three tenants were arrayed as Defendants No.3 to 5.

8. The appellant/defendant No.2, purchaser under the Subsequent Sale Deed contested the suit by filing a Written Statement denying the averments made in the plaint. It was contended that late Smt. Lalithamma had acquired the Suit Schedule Property under the Sale Deed dated 14.03.1963 from one Sri. G.M. Chinnappa which was duly registered by Register No.3669/62-63, Book-1 Volume 1902 at pages 140

to 144 (hereinafter referred to as the "Sale Deed"), and was the absolute owner thereof. According to defendant No.2, upon the demise of late Smt. Lalithamma, defendant No.1 succeeded to the Suit Schedule Property in accordance with law and thereafter validly executed the Sale Deed in favour of defendant No.2 for valuable consideration. Defendant No.2, therefore, asserted that the plaintiffs had no right to seek partition or to question the Sale Deed.

8.1 Written Statements were also filed by the defendants Nos.3, 4 and 5 wherein these defendants affirmed to being tenants of the defendant No.1. Defendant No.4 also set out that the tenancy commenced under a registered lease deed dated 22.03.1990 where a portion of the Suit Schedule Property was leased to them. Defendant No.5 also admitted to being a tenant of one of the shops of the Suit Schedule property. He also stated that he took the Suit Schedule property on rent from the father of the defendant No.1 in the year 1958.

9. Based on the pleadings and documents filed, the learned Trial Court framed the following issues for consideration:

> *"1) Do the plaintiffs prove that suit schedule property is the joint family property belonging to plaintiffs and defendant No.1?*
>
> *2) Does defendant No.2 prove that suit property is the self-acquired property of defendant No.2?*
>
> *3) Does defendant No.2 prove that suit is not properly valued and Court fee paid is not sufficient?*
>
> *4) Is plaintiff entitled to 1/6th share in the suit schedule properties?*
>
> *5) Do plaintiffs prove that they are entitled for a share in suit property, if so, to what share are they entitled to?*
>
> *6) What order or decree?"*
>
> ***Addl. Issue No.1[2] :***
>
> *"Whether plaintiffs prove that the registered sale deed dated 22.12.2004 executed by defendant No.1 in favour of defendant No.2 in respect of suit properties is not binding on their share in the suit property?"*

9.1 In support of their case, the plaintiffs examined plaintiff No.3 as PW-1 and two other witnesses as PWs-2 and 3, and marked several documents as Exs.P-1 to P-59. The material documentary evidence relied upon by the plaintiffs included the registered Sale Deed dated 14.03.1963 (Ex.P-12), the Death Certificate of late Smt.

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[2] In terms of order dated 06.08.2009 passed by learned Trial Court

Lalithamma (Ex.P-28), the certified copy of the Mortgage Deed dated 04.06.1951 (Ex.P-53), the certified copy of the Sale Deed dated 26.03.1960 (Ex.P-54), and the certified copy of the Sale Deed dated 22.01.1952 (Ex.P-55).

9.2 Defendant No.2 examined its General Manager and authorised representative as DW-1 and marked Exs.D-1 to D-13, while defendant No.5 examined himself as DW-2. The material documentary evidence relied upon by defendant No.2 comprised the registered Sale Deed dated 22.12.2004 (Ex.D-2), the Death Certificates of late Smt. Lalithamma and late Sri. D.M. Subbaiah (Exs.D-10 and D-11 respectively), the original registered Sale Deed dated 14.03.1963 in the name of late Smt. Lalithamma (Ex.D-12), and the certified copy of the registered Lease Deed dated 01.01.1979 (Ex.D-13).

III. Impugned Judgment:

10. By the Impugned Judgment, the learned Trial Court answered Issue Nos.1, 2, 4 and 5 and Additional Issue No.1 in favour of the plaintiffs and Issue No.3 in favour of

defendant No.2. Consequently, the suit came to be partly decreed by declaring the Subsequent Sale Deed executed by defendant No.1 in favour of defendant No.2 was not binding on the plaintiffs to the extent of their respective shares and each of the plaintiffs were granted a 1/4th share in the Suit Schedule Property. A preliminary decree for partition and separate possession was also passed.

10.1 The learned Trial Court held that although the registered Sale Deed dated 14.03.1963 stood in the name of late Smt. Lalithamma, the evidence on record established that the Suit Schedule Property had, in fact, been acquired by late Sri D.M. Subbaiah out of the income of the joint family and that the property was purchased in the name of Smt. Lalithamma only because she managed the affairs of the family and the joint family properties. The Trial Court relied principally upon the recitals contained in the Sale Deed, read together with the earlier chain of transactions comprising of the mortgage deed and Sale Deeds relied upon by the plaintiffs, to conclude that the property retained the character of joint family property.

11. The learned Trial Court further held that late Smt. Lalithamma had no independent source of income to purchase the Suit Schedule Property and that the oral evidence of PW-1, coupled with the recitals in Ex.P-12, sufficiently established that the consideration had emanated from late Sri D.M. Subbaiah. The learned Trial Court also observed that defendant No.2 had failed to establish that the Suit Schedule Property was the absolute and self-acquired property of late Smt. Lalithamma notwithstanding the registered Sale Deed standing in her name.

11.1 Since a finding was given that the Suit Schedule Property was joint family property, the learned Trial Court further held that defendant No.1 could not have alienated the entire Suit Schedule Property in favour of defendant No.2 in the absence of legal necessity or benefit to the estate, and thus the alienation was not binding on the plaintiffs to the extent of their respective shares.

12. Aggrieved by the aforesaid findings and the preliminary decree for partition passed by the learned Trial Court, defendant No.2 has preferred the present appeal.

13. As stated above, this Court, by an order dated 02.12.2010, had directed the final decree proceedings were continued but the drawing up of the final decree was stayed at the time of admission of the appeal. Subsequently, by order dated 16.09.2025 after the matter was remanded back by the Supreme Court, this Court requisitioned the Trial Court record and listed the matter for hearing.

<u>IV. Contentions of the Appellant/Defendant No. 2:</u>

14. Learned counsel appearing for the defendant No.2 contended that the Impugned Judgment is contrary to the pleadings, oral evidence and documentary evidence available on record. It was submitted that the learned Trial Court gravely erred in holding that the Suit Schedule

Property constituted joint family property merely on the basis of certain recitals contained in the registered Sale Deed dated 14.03.1963 (Ex.P-12), without there being any independent evidence to establish that the consideration for its purchase had emanated from the joint family or that the property had ever acquired the character of joint family property. It was urged that the burden of proving the said fact squarely rested upon the plaintiffs, which they had failed to discharge.

14.1 Learned counsel further submitted that the oral evidence of PW-1, PW-2 and PW-3 unequivocally establishes that late Smt. Lalithamma was worldly-wise, actively managed the affairs of the family and dealt with the family properties. It was contended that the Trial Court failed to appreciate these admissions in their proper perspective while determining the nature of the Suit Schedule Property.

14.2 It was further contended that the evidence on record clearly demonstrates that late Smt. Lalithamma exercised complete dominion over the Suit Schedule Property. In this regard, reliance was placed on the registered Sale Deed dated 05.08.1963 executed by late Smt. Lalithamma in respect of a portion of the larger property and the registered Lease Deed dated 01.01.1979 (Ex.D-13) registered as No.3246/78-79, Book-I, Volume 2679 pages 159, SF Volume 2696 page-64, to contend that she dealt with the property as its absolute owner during her lifetime. According to the defendant No.2, these material circumstances were completely ignored by the learned Trial Court.

14.3 Learned counsel further submitted that the learned Trial Court failed to appreciate the legal effect of Sections 14, 15 and 16 of the Hindu Succession Act, 1956 (hereinafter referred to as the "Hindu Succession Act"). It was contended that once the property stood in the name of late Smt. Lalithamma under a registered Sale Deed, the rights flowing therefrom were required to be considered in accordance with the statutory scheme contained in the Hindu Succession Act. In support of the said proposition, reliance was placed on the decisions of the Supreme Court in ***Gangamma and Others Vs. G. Nagarathnamma and Others***[3] and ***Marabasappa (Dead) by LRs. Vs. Ningappa (dead) by LRs and others***[4] to contend that no presumption can be made as to joint family property in the absence of evidence and that Section 14 of the Hindu Succession Act mandates, any female Hindu is her absolute property and she therefore has full ownership. It was urged that the findings recorded by the learned Trial Court are contrary to the settled position of law.

14.4 It was next contended that the learned Trial Court erred in holding that the Subsequent Sale Deed dated 22.12.2004 executed by defendant No.1 in favour of the defendant No.2 was not binding on the plaintiffs, despite there being no acceptable evidence to dislodge the title flowing from the registered conveyance. It was submitted that the plaintiffs had failed to establish any legal basis for invalidating the said Subsequent Sale Deed.

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[3] (2009) 15 SCC 756
[4] (2011) 9 SCC 451

14.5 Lastly, learned counsel submitted that the suit, as framed, was not maintainable, inasmuch as the plaintiffs had substantially sought to invalidate the registered Subsequent Sale Deed dated 22.12.2004 without seeking its cancellation and without paying the requisite court fee. On the aforesaid grounds, it was prayed that the Impugned Judgment and Decree be set aside and the suit instituted by plaintiffs be dismissed.

V. Contentions of the Respondent Nos.1 to 3/Plaintiffs :

15. Per contra, learned counsel appearing for plaintiffs has supported the Impugned Judgment and Decree, contending that the learned Trial Court had rightly appreciated the pleadings, oral evidence and documentary evidence on record in holding that the Suit Schedule Property constituted Joint Family Property. It was submitted that the evidence on record clearly establishes that the consideration for the purchase of the Suit Schedule Property had emanated from late Sri. D.M. Subbaiah and that the property was purchased in the name of late

Smt.Lalithamma only to secure her interest, she being the second wife of late Sri. D.M. Subbaiah. It was therefore contended that the mere fact that the registered Sale Deed stood in the name of late Smt. Lalithamma did not alter the character of the Suit Schedule Property.

15.1 Learned counsel further submitted that the registered Sale Deed executed by defendant No.1 in favour of defendant No.2 was not registered immediately. It was contended that the registering authority kept the document pending as the sale consideration disclosed therein did not reflect the prevailing market value and the requisite stamp duty had not been paid. According to the respondents, the competent authority, by order dated 16.05.2005, determined the deficit stamp duty payable, whereupon the document came to be registered.

15.2 It was further contended that by the time the Sale Deed was registered on 16.05.2005, the present suit had already been instituted and summons had been served upon the defendants. According to the respondents, the completion of registration during the pendency of the suit is a relevant circumstance which the learned Trial Court has rightly taken into consideration.

15.3 Learned counsel also submitted that the Suit Schedule Property is situated in Gandhinagar, Bengaluru, a prime commercial locality, whereas the Sale Deed reflected a consideration of only Rs.20,00,000/-. It was urged that the District Registrar had determined the market value of the property to be substantially higher and consequently initiated proceedings for recovery of the deficit stamp duty. It was submitted that these circumstances cast serious doubt on the bona fides of the transaction in favour of defendant No.2.

15.4 Reliance was further placed upon the evidence of DW-1, who, during the course of cross-examination, admitted that no consideration other than that reflected in the Sale Deed had been paid. According to the respondents, the said admission, read in conjunction with the surrounding circumstances, supports the findings recorded by the learned Trial Court.

15.5 Learned counsel also referred to the notification dated 22.12.1999 and the attendant statutory proceedings as part of the factual background relating to the Suit Schedule Property. It was submitted that the cumulative effect of the oral and documentary evidence fully justified the conclusions arrived at by the learned Trial Court. Accordingly, it was prayed that the present appeal be dismissed and the Impugned Judgment and Decree be affirmed.

16. Since respondent No.4 died in the year 2007 during the pendency of the proceedings before the Trial Court, while filing the present appeal his name was shown as deleted, in the cause-title. The respondent Nos.5 to 7 although served did not contest the appeal.

VI. Issues for Consideration :

17. In view of the submissions advanced by the learned counsel for the parties and upon perusal of the material

available on record, the following questions arise for consideration before this Court:

> *(i) Whether the learned Trial Court was justified in holding that the Suit Schedule Property constituted joint family property despite the registered Sale Deed dated 14.03.1963 standing in the name of late Smt. Lalithamma?*
>
> *(ii) Whether the learned Trial Court correctly appreciated the oral and documentary evidence while holding that the Sale Deed dated 22.12.2004 executed by defendant No.1 in favour of defendant No.2 is not binding on the plaintiffs?*
>
> *(iii) Whether the learned Trial Court correctly appreciated the effect of Sections 14 and 15 of the Hindu Succession Act, 1956 while determining the nature and devolution of the Suit Schedule Property?*
>
> *(iv) Whether the Impugned Judgment and Decree call for interference?*

VII. Analysis and Findings :

A. Nature of Suit Schedule Property

18. Certain foundational facts are not in dispute. It is an admitted position that the Suit Schedule Property was

purchased under the registered Sale Deed dated 14.03.1963 (Ex.P12) in the name of late Smt. Lalithamma. It is also undisputed that, following her demise, defendant No.1 executed the registered Sale Deed dated 22.12.2004 (Ex.D2) in favour of defendant No.2, conveying the Suit Schedule Property.

19. The controversy, however, lies in the legal character of the Suit Schedule Property. While the defendant No.2 contends that late Smt. Lalithamma acquired and held the property in her own right and that defendant No.1, having succeeded thereto, was competent to execute the Subsequent Sale Deed dated 22.12.2004, the plaintiffs contend that notwithstanding the registered Sale Deed standing in the name of late Smt. Lalithamma, the consideration therefor was provided by late Sri D.M. Subbaiah out of the joint family nucleus and that late Smt. Lalithamma was merely the ostensible purchaser. According to the plaintiffs, the Suit Schedule Property thus retained the character of joint family property, with the result that

defendant No.1 could not have conveyed absolute title in favour of defendant No.2.

20. The principal contention that has been raised in this appeal by the defendant No.2 is that in view of the provisions of Section 14 of the Hindu Succession Act, the Suit Schedule property was owned absolutely by Smt. Lalithamma and she could deal with it in the manner she saw fit. While it is the contention of the plaintiffs that on the basis of the oral and documentary evidence available on record established, that the Suit Schedule Property, though purchased in the name of late Smt. Lalithamma, was in fact joint family property.

B. The Statute

21. At the outset, it is apposite to examine the law as is applicable with regard to property owned/purchased by a female Hindu. Section 14 of the Hindu Succession Act provides that a property of a female Hindu shall be her absolute property in the following terms:

> ***14. Property of a female Hindu to be her absolute property.***—*(1)* ***Any property possessed by a female***

> ***Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.***
>
> *Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a* ***female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion,*** *or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.*
>
> *(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.*
>
> [Emphasis Supplied]

21.1 The Supreme Court in the ***Gangamma*** case, while considering as to whether property standing in the name of a Hindu female could be alienated, given that it was alleged to be joint-family property has held that, in the absence of evidence to the contrary, property standing in the name of the female, by operation of Section 14(1) of the Hindu Succession Act, were owned solely by the female Hindu and could not be treated as joint-family properties. The Court further held that the expression "acquired" in

Section 14(1) of the Hindu Succession Act is to be given the widest possible meaning and that the provision covers every kind of acquisition of property by a female Hindu. Unlike prior to the enactment of this provision, the ownership of a female Hindu of property is now her absolute property. The relevant extract is set out below:

> *"9. Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as "the Act") has a bearing on the issue.* ***As the properties at Items 1 and 2 are recorded in the name of the appellant, in the absence of any evidence to the contrary in this case, the appellant by operation of Section 14(1) of the said Act is the full owner of those properties. In the facts of this case discussed above it has to be accepted that those properties are not joint properties but the appellant is the sole owner of those properties.***
>
> *10. The principle laid down in Section 14(1) of the said Act has been read by courts in a very comprehensive manner since the said Act overrides the old law on stridhana in respect of properties possessed by a female Hindu. In Eramma v. Veerupana [AIR 1966 SC 1879] Ramaswami, J. speaking for the Court held that* ***Section 14(1) of the Act contemplates that a female Hindu, who in the absence of the said provision would have been a limited owner of the property, will now become full owner by virtue of the said section.*** *Such female Hindu will have all powers of disposition to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.*
>
> *11. Again, in Punithavalli Ammal v. Minor Ramalingam [(1970) 1 SCC 570 : AIR 1970 SC 1730] a three-Judge Bench of this Court reiterated the position* ***that the said Act has overriding effect and confers full ownership on Hindu female and made it very clear that rights conferred under Section 14(1) to a Hindu female are not restricted or limited by any rule of Hindu Law.*** *In*

> *the opinion of the Court in Punithavalli [(1970) 1 SCC 570 : AIR 1970 SC 1730] the said section makes a clear departure from all texts of Hindu laws and rules and those texts and rules cannot be used for circumventing the plain meaning of Section 14(1) of the said Act.*
>
> *12.* ***In Seth Badri Prasad v. Kanso Devi [(1969) 2 SCC 586 : AIR 1970 SC 1963] the learned Judges held that the word "acquired" in sub-section (1) of Section 14 of the said Act has to be given the widest possible meaning (see paras 6 and 7). In V. Tulasamma v. Sesha Reddy [(1977) 3 SCC 99 : AIR 1977 SC 1944] Bhagwati, J. speaking for the Court held that sub-section (1) of Section 14 is very large in its amplitude and covers every kind of acquisition of property by a female Hindu. Regardless of whether such property was possessed by a female Hindu on the date of commencement of the Act or was subsequently acquired or possessed, she would be the full owner of the property.***
>
> *13.* ***In view of such consistent views taken by this Court on the interpretation of Section 14, we hold that Section 14(1) of the said Act would apply in respect of the properties which stand in the name of the appellant and the appellant would be the full owner of those properties."***
>
> [Emphasis Supplied]

22. It is also a settled legal position that while considering whether properties purchased in the name of a wife should be treated as separate property or joint family property, the Supreme Court has in ***Marabasappa*** case, held that in the absence of cogent and reliable evidence establishing the availability of the alleged joint-family nucleus at the relevant time of acquisition, a property could not be treated

as joint-family property(ies). It was further held that if the property had been acquired by the female in her own right, Section 14(1) of the Hindu Succession Act, conferred full ownership upon her, with the consequence that she was entitled to deal with and dispose of the property and the same did not form part of the joint Hindu family property. The relevant extract is set out below:

> *"21. Now coming to suit schedule properties, Items A(4) to A(6), it is the case of the plaintiffs that the said properties were purchased by Siddappa, father of the plaintiffs and the defendants under a sale deed dated 5-10-1944, but, in the name of his wife Parwatevva from and out of the income of the tenancy lands A(1) to A(3) for the purpose of the joint family for which he was also the karta of the family.* ***However, it is the case of the contesting defendants that the said property is the self-acquired property of Parwatevva from and out of her income derived from the property gifted to her by her father in the year 1924.*** *The defence that is also put up by the defendants is that Siddappa was the tenant of the property A(1) to A(3) only from the year 1947 and, therefore, the plaintiffs cannot claim that from out of the income of the property A(1) to A(3), lands in Items A(4) to A(7) were purchased.*
>
> *22.* ***It has come in evidence of the contesting defendants that propositor Siddappa was the tenant of the lands*** *A(1) to A(3) only from the year 1947. The same is not disputed by the plaintiffs by leading any other cogent evidence to prove that Siddappa was the tenant of the lands A(1) to A(3) even prior to 1944, the date of the sale deed.* ***In the absence of any evidence, much less cogent and reliable evidence, it is difficult to accept the version of the***

plaintiffs that the suit Schedules A(4) to A(6) should be put into common hotchpotch and partitioned by metes and bounds.

23. We may also notice the observations made by the trial court, with which we also agree, in the course of its judgment.

> *"61. Now let us firstly take up A(4) to A(6) lands. Ext. D-8 is the certified copy of the sale deed in respect of said land, dated 5-10-1944. It is necessary to emphasise that according to the plaintiffs, Siddappa was protected tenant of the lands mentioned therein as per Ext. P-20, which pertains to 1947. They have obviously not produced any records, such as RORs or mutation entries to show that Siddappa was the tenant of those 11 lands, mentioned in Ext. P-20 even prior to 1947. It is essential because, we are assessing the productivity of nucleus as on the date of Ext. D-8. Ext. D-8 is admittedly of 1944. Since no document is produced by the plaintiffs to show that Siddappa was the tenant even prior to 1947 of the lands referred to in Ext. P-20, it cannot be said that he had no independent source of income at the relevant time of 1944 (Ext. D-8).*
>
> *Evidence on record justified that at the relevant time of Ext. D-8, Parwatevva was already owner and possessor of A(7) land, extent of which is 8 acres 16 guntas. Excepting this land, the family of the parents of Plaintiff 1, Defendant 1 and Bheemappa, is not shown to have had any other source of income. Hence, it follows that the land in Ext. D-8 could not have been acquired at all by Siddappa, out of his income, since he is not shown to have had any income at all. It is too much to say that the income of the lands at A(1) to A(3) was the source of income for acquisition of the lands A(4) to A(6) (Ext. D-8). This argument presupposes that Siddappa was a tenant of A(1) to A(3) lands even prior to 1944 (Ext. D-8). Absolutely there is no evidence.* ***Hence, it cannot be said that Siddappa had purchased A(4) to A(6) lands, which is land in Ext. D-8, out of the income of the joint family. Indeed, he was living in the house of his parents-in-law with Parwatevva and Ext. D-60 of 1924 shows that he had no financial strength. Hence, I am of the definite opinion that the land in Ext. D-8 must have had been acquired***

> ***by Parwatevva out of the income she had derived from A(7) land. It cannot be said and it is not acceptable that Siddappa had purchased the land mentioned in Ext. D-8 in the name of his wife Parwatevva. I make it clear that it was purchased by her only out of her income derived from A(7) land.***
>
> *Plaint shows that Plaintiff 1 and Defendant 1 were of 62 and 70 years respectively on the date of suit. It shows that in 1944, the year of Ext. D-8, Plaintiff 1 was about 16 years of age, and Defendant 1 was about 22 or 23 years of age. I am emphasising these facts to show that neither of them had independent source of income. It must mean that Parwatevva was the absolute owner of the suit lands A(4) to A(6) mentioned in Ext. D-8. Hence, it cannot be said as joint family property. Joint family did not have at all, any nucleus to acquire the land in Ext. D-8. Hence, said finding is recorded."*

Therefore, the findings contrary to the above view by the High Court are erroneous and cannot be sustained.

24. ***Section 14 of the Hindu Succession Act, 1956 clearly mandates that any property of a female Hindu is her absolute property and she, therefore, has full ownership. The Explanation to sub-section (1) further clarifies that a Hindu woman has full ownership over any property that she has acquired on her own or as stridhana. As a consequence, she may dispose of the same as per her wish, and that the same shall not be treated as a part of the joint Hindu family property.***

25. ***This Court has time and again held that there is no presumption of joint family property, and there must be some strong evidence in favour of the same.*** *In Appasaheb Peerappa Chamdgade v.Devendra Peerappa Chamdgade [(2007) 1 SCC 521] , after examining the decisions of this Court, it was held: (SCC p. 532, para 17)*

> *"17.* ***Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu***

> ***family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence.***"
>
> [Emphasis Supplied]

23. Thus, in the present case, it is requisite to examine whether the Plaintiffs produced adequate evidence to dispel the contention of the defendants that the Suit Schedule Property was the absolute property of Smt. Lalithamma, acquired as her *Stridhan* property.

C. The Evidence Produced

24. Before adverting to the oral and documentary evidence led by the parties, it is necessary to determine upon whom the burden lay to establish the true nature of the Suit Schedule Property. Admittedly, the registered Sale Deed dated 14.03.1963 (Ex.P12) was in the name of late Smt. Lalithamma. The respondents/plaintiffs do not dispute the execution or validity of the said conveyance. Their specific case, however, is that notwithstanding that the registered Sale Deed was in the name of late Smt. Lalithamma, the consideration for the same was provided

by late Sri D.M. Subbaiah out of the joint family funds and that late Smt. Lalithamma was merely a nominal purchaser. Thus, it is the respondents/plaintiffs who sought to displace the legal effect flowing from the registered conveyance and establish that the Suit Schedule Property retained the character of joint family property. The oral and documentary evidence adduced by the parties is therefore required to be examined in the aforesaid backdrop.

25. An examination of the registered Sale Deed dated 14.03.1963 reflects that the conveyance expressly records that the property was sold in favour of *"Smt. Lalithamma, the second wife of D.M. Subbaiah"* by one Sri. G.M. Chinnappa. The vendor further acknowledges receipt of the entire sale consideration from late Smt. Lalithamma and records that possession of the property was delivered upon execution of the Sale Deed. The Sale Deed also recites that the portions in occupation of tenants were handed over to her after due notice and unequivocally declares that *"you being the owner of the schedule property sold under this*

deed you can collect rents from the tenants and for which you are having right."

25.1 Thus, the Sale Deed not only evidences a transfer of title in favour of late Smt. Lalithamma, but also records delivery of possession together with the attendant rights of ownership, including the right to collect rents from the tenants. It further sets out that the transfer form to transfer the khata has also been handed over to late Smt. Lalithamma. The relevant extract of translation of the Sale Deed is set out below:

> *"This Deed of Absolute Sale is made and executed on this* ***Fourteenth day of March, One Thousand Nine Hundred Sixty Three (14-03-1963)*** *–*
>
> *BY-*
> ***G.M. Chinnappa,*** *son of Subbasheetara Murigappa, now residing at Tumkur Town, Tumkur District-*
>
> *IN FAVOUR OF:*
>
> ***Smt. Lalithamma, the second wife of D.M. Subbaiah,*** *residing at First Floor, Door No. old 50, Subedar Chatram Road, Bangalore City –*
>
> *Whereas, on Twenty sixth day of March, One Thousand Nine Hundred Sixty three, I was residing at Nelamangala Town, Bangalore District, now the property which I purchased from N.Gangappa, bearing old No.50, present No.86,87,88,89 and 90 more fully described in the schedule hereunder consisting upstair house immovable property which I purchased for seventeen thousand*

rupees under ***the absolute sale and the said sale deed registered in the office of the Sub-Registrar, Bangalore City, vide Register No.3320/31-3-60, Book-1 Volume 176 pages 127 to 130.***

Since that day the schedule property is in my possession and occupation, till today I am collecting the rents from the tenants residing in the houses mentioned hereunder. The schedule upstair house entire property sold today in favour of Smt. Lalithamma for a total sum of Rs.17,000-00 (Rupees Seventeen Thousand only). I have received the entire sale consideration from you at the time of execution of this registered sale deed in the presence of Sub-Registrar. *Out of the property sold the upstair and ground floor mill existing shop is one which is under your occupation, one small house which is in my occupation which I vacated and handed over to you, the remaining portion tenants handed over to you and by giving notice to them handed over to you. As per this schedule the entire property is handed over to you today. Hereinafter you being the owner of the schedule property sold under this deed you can collect rents from the tenants and for which you are having right.*

There are no any court decree, lease raised by me over the schedule house, if at all any dispute arisen the same will be solved by me at my own cost and risk out of my other movable and immovable properties. As per your request my vendor who sold the said property now he is dead and his wife and children from whom in taking the consent witness I have no objection. Lalithamma, the purchaser herein you have given notice on behalf of you and your miner [sic: minor] children to me and lawyer [sic: legal] heirs of Late N. Gangappa. In this regard a panchayat was convened and as per its decision I agreed and the amount given for your developments rupees seventeen thousand to which the said property sold to you under this absolute sale deed. ***Hereinafter either myself or my heirs will not be having any kind of rights and connections. In order to transfer khatha of the said property to your name I affixed signature on Transfer form and handed over to you.*** *I handed over all the documents pertaining to schedule property which were with me and hence I have executed*

> *this sale deed with my free will and consent by affixing my signature to this deed of absolute sale*.

[Emphasis Supplied]

26. In order to establish that the Suit Schedule Property, though purchased under a registered Sale Deed dated 14.03.1963 in the name of late Smt. Lalithamma, was in fact acquired out of the joint family funds of late Sri D.M. Subbaiah, the plaintiffs principally rely upon the testimony of PW-1. In her examination-in-chief, PW-1 has deposed that late Sri D.M. Subbaiah, who was employed in Binny Mills, used to raise finances by dealing with the joint family properties and, upon repayment of such liabilities, would obtain reconveyance deeds in the name of his wife, late Smt. Lalithamma. According to PW-1, late Smt. Lalithamma had no independent source of income and her name was utilised only because she was worldly-wise and actively participated in the management of the joint family affairs. It is further deposed that several transactions concerning the joint family properties were carried out in her name and that the Suit Schedule Property was acquired out of the

earnings of late Sri D.M. Subbaiah and the joint family resources. The relevant extract of the deposition of PW-1 is set out below:

> *"2.* ***I submit that I am the lawfully wedded wife of the defendant no.1 and plaintiffs 1 and 2 are our sons and we constitute a hindu joint family governed under Mitakshara law.*** *I submit that our joint family owns the immovable properties bearing municipal no's 43, 44 and 45 all situate at Subedar Chatram Road Bangalore 560009.* ***I submit that we are getting rentals from the said properties which had been rented in portions to tenants i.e., defendants 3 to 5 respectively and we are running*** *a joint family business under the name and style of 'Subramanya Stores' in the portion of property bearing No.44 and the same is managed by first plaintiff and myself.*
>
> *xxx xxx xxx*
>
> *3. I submit that the said* ***properties of the said joint family came to be acquired by my late father-in-law i.e., grandfather of plaintiffs 1 and 2 i.e., late D.M. Subbaiah and the said D.M. Subbaiah used to raise finance whenever required and used to get the said properties released once the liabilities were cleared and used to execute registered deed in this behalf regarding the said properties styled as sale deeds and obtain reconveyance whenever loans were repaid under deeds styled as sale deeds in the name of the paternal grandmother of plaintiffs no.1 and 2 for convenience sake and the said grand mother of plaintiffs 1 and 2 Smt. Lalithamma was worldly wise and used to take active part in the affairs and management of joint family properties as the said D.M. Subbaiah used to be busy with his employment in Binny Mills and was not wordly wise, as such, many of the transactions regarding the said joint family properties used to be carried out in the name of Smt. Lalithamma and her name came to be entered in several deeds and also in municipal katha records concerning the said joint family properties, though she had no independent source of income and the said properties belonging to the***

> ***said joint family came to be acquired out of the income of late D.M. Subbaiah and funds from joint family resources****...*"
>
> [Emphasis Supplied]

26.1 PW-1 further deposed that her husband - defendant No.1, was more interested in films and music and developed contacts with persons who started influencing him as he was weak minded in nature and that the defendant No.1 became a pawn in their hands, failing to look after the affairs of the joint family properties. It is further stated therein that the defendant No.1 disappeared around 21.12.2004 and his whereabouts became unknown. The relevant extract is set out below:

> *"4. I submit that the father of plaintiffs 1 and 2 i.e., my husband was more interested in films and music and had developed interest in singing and had been devoting more time to develop contacts and friendship with persons having connections with films and playback singing as desired to make a name as playback singer* ***and used to spend most of the time with such friends and developed contacts with persons who started wielding influence over him, as he was of weak minded nature and gained control over him and the first defendant became a pawn in the hands of his friends and never took interest in looking after the joint family properties or in taking care of his young children and myself.*** *I submit that I had to take care of my young children i.e.. plaintiffs' 1 and 2 and had to take control of the family affairs and its properties, however, the first defendant who used to collect the rents from the tenants and used to spend the amounts for the gratification of his weaknesses in indulging with the*

activities of his friends connected with film making under a hope that they would help him to become a big playback singer. However, his wishes went unfulfilled and he became a mentally depressed person and a liver and started acting strangely for the past 3 years and he always used to spend time out of the house spending time with friends of questionable antecedents and never took interest in looking after his wife and children or improving the joint family properties and it is feared that he had even became a victim to bad habits wanting money and ultimately he used to keep away from his family members and all of a sudden he started stating that some one had been impersonating him and is trying to borrow money in his name from banks etc taking advantage of the missing documents pertaining to some of the said joint family properties bearing no. 43 to 45 which were found to be missing in 1999 and paper publication had been made in this behalf and the first defendant started behaving unreasonably at times and used to become mentally weak and unable to comprehend normal things and even used to imagine that everyone is against him in the house and used to go to his friends ***and ultimately in the month of December, 2004, my husband / the said first defendant disappeared from 21.12.2004 and his whereabouts became unknown to us and we lodged missing complaint to police and the police have lodged FIR in Crime No.44/2005.*** *I submit that in the meanwhile a letter dated 27-12-2004 allegedly issued by the first defendant stating that he had alienated the joint family properties bearing no's 43, 44 and 45 to the 2nd defendant addressed to me branding me as his tenant in respect of the shop Subramanaya stores and asking me to attorn the tenancy in favour of the second defendant and pay rents to 2nd defendant and it was also learnt that similar letters have been issued to defendants 3 to 5 asking them to attorn tenancy in favour of the second defendant and pay rents to 2nd defendant in future. Thereafter, I had caused to suitable reply to the said letter making it clear that I am not a tenant under the first defendant and I am his wife and I am not paying any rents to first defendant and further make it clear that the said properties no.43 to 45 were never belonged to first defendant absolutely and he had no rights to convey the same to others*

> *passing title over the same and the said properties are all ancestral properties of plaintiffs 1 and 2 and first defendant and even I am entitled to a share therein in the event of partition as per reply dated 24.01.2005."*
>
> [Emphasis Supplied]

27. The plaintiffs have also relied upon a newspaper publication in Kannada daily newspaper "Kannada Prabha" dated 13.08.2003 (Exhibit P14) asking the public in general not to negotiate in respect of the Suit Schedule property except with the plaintiffs. A similar notice was also issued in Kannada daily Evening newspaper "Sanjayvani" dated 17.01.2005 setting out information with regard to factum of the husband of the plaintiff (defendant No.1) as "missing".

27.1 Exhibit P16 is a news item published in English daily Times of India. However, this item is dated 22.12.1999 and sets out that attempts are being made to alienate the Suit Schedule property and that the plaintiffs have right to the same. Concededly, however, the suit was only filed by the plaintiffs in the year 2005.

27.2 However, no other evidence in support of these averments was placed on record. In addition, no explanation is forthcoming as to how the defendant No.1 was "missing", if he was present at the office of Sub-Registrar and his photograph, signature and thumb impression appears on each page of the Subsequent Sale Deed on 22.12.2004.

28. It is also not in dispute that PW-1 entered the family only upon her marriage with defendant No.1 on 18.05.1979, whereas the Sale Deed had been executed more than sixteen years earlier on 14.03.1963. Consequently, and as has been reflected in the cross-examination of PW-1, she had no personal knowledge of the circumstances surrounding the purchase of the Suit Schedule Property, or the *Stridhan* available with Smt. Lalithamma or the source of consideration therefor or the intention of the parties at the time of the transaction. The relevant extract of the cross-examination of PW-1 is below:

> ***"It is false to suggest that in the year 1963 my mother-in-law, out of her streedhana amount had purchased the suit property. I do not remember the date on which day I visited Sub registrar's office and made enquiry.*** *It is false to suggest that in the year 2004 Defendant no.2 had purchased the suit property. I do not remember if on verifying the registered sale deed dated. 22/12/2004 in Sub-*

> *registrar office, I came to know about the fact of Defendant No.2 having purchased the suit property and I also noted address of Defendant No.2.* ***It is true to suggest that I had not challenged the Registered sale deed dated 22/12/2004 executed by my husband transferring suit property in favour of Defendant No.2, in any court. Except suit property no other property was stranding (sic standing) in the name of my mother-in-law.***
>
> *xxx xxx xxx*
>
> *I do not know what work my father-in-law was doing in Binny Mill.* ***I do not know how much salary he was getting. It is false to suggest that my mother-in-law was having stridhan amount with her.*** *I do not know whether the lease deed dated 1/1/1979 executed by my mother-in-law in the name of B.K. Mohammed Ali, my husband had signed or not."*

[Emphasis Supplied]

29. The plaintiffs produced over 60 documents in support of their case. These includes legal notices and replies, complaints, newspaper public notices and police complaints (Exs.P7 to P19, Exs.P25 to P28, Exs.P30 to P31). All these documents relate to the period post 1999 and would not support the contention of a joint family nucleus of the period from 1930's onwards.

30. During the evidence, however, additional documents were permitted to be placed on record by an order dated 13.03.2009 passed by the learned Trial Court and multiple

sale deeds of the period from 1950 to 1963 were marked by PW-1 including two sale deeds of the year 1939 as Ex.P53 to Ex.P59.

30.1 The learned Trial Court in the Impugned Judgment has relied on Exs. P57, P58 and other sale deeds filed to hold that they prove that originally the owner was one Shri Narasimha Iyengar, advocate, who sold the property to one Shri Puttaswamiah who then sold it to Shri D.M. Subbaiah. Shri D.M. Subbaiah first mortgaged the suit property and later sold it in favour of Shri G.M. Chinnappa. It was the said Shri G.M. Chinnappa who then executed the sale deed (Ex.P12) in favour of Smt. Lalithamma. In addition, a reference is made to a loan taken from Shri G.M. Chinnappa which led to a dispute and later the suit property was reconveyed in the name of Smt. Lalithamma in the following terms:

> ***"22. Ex.P-58 certified copy of registered sale deed dated 1.2.1936 goes to prove that one Sri Narasimha Iyengar, Advocate was owner of suit property and under registered sale deed dated 1.2.1936*** *he had sold the suit property in favour of one Sri Puttaswamaiah. Ex.P-57 certified copy of registered sale deed dated 9.10.1939 goes to prove that the said Sri Puttaswamaiah under registered sale deed dated*

9.10.1939 had sold the suit property in favour of Sri D.M.Subbaiah. Ex.P-53 certified copy of registered mortgage deed goes to prove that under registered mortgage deed dated 4.6.1951 late Sri D.M. Subbaiah had mortgaged suit property in favour of one Sri Siddalinga Swamigalu, Belimutt. ***Ex.P-55 certified copy of registered sale deed dated 22.1.1952 goes to prove that late Sri D.M.Subbaiah under registered sale deed dated 22.1.1952 had sold the suit property in favour of one Sri Gangappa.*** *Ex.P-54 certified copy of registered sale deed dated 26.3.1960 goes to prove that the said Sri Gangappa had sold suit property in favour of one Sri Channappa.* ***Ex.P-12 certified copy of registered sale deed goes to prove that the said Sri Channappa by executing registered sale deed dated 14.3.1963 had sold suit property in favour of Smt Lalithamma.***

23. The learned Counsel for plaintiffs relying on recitals of Ex.P-12 registered sale deed has argued before the Court to the effect that, the recitals of the sale deed clearly goes to prove that, ***late Smt. Lalithamma and her husband had availed loan of Rs.17,000/- from Channappa and repaid the loan, which they had availed from Gangappa. Hence, Gangappa had executed a nominal sale deed in the name of Channappa.*** *Later there was a dispute between Smt.Lalithamma and D.M.Subbaiah and Channappa regarding reconvey of suit property in their names* ***and a panchayat was held to resolve the dispute, and as per the decision taken by the panchayat, Sri Channappa had reconveyed the suit property in the name of Smt.Lalithamma by executing registered sale deed as per Ex.P-12. Hence, he has contended that all the documents i.e., sale deeds and mortgage deed goes to prove that late Sri D.M.Subbaiah often use to avail loan on suit property and after repayment of loans he use to get the suit property reconveyed either in his name or in the name of his wife late Smt.Lalithamma.*** *The recitals of Ex.P-12 sale deed supports the argument advanced by the learned Counsel for plaintiffs to the above effect. The recitals of Ex.P-12 sale deed, goes to prove that there was a dispute between Channappa and Lalithamma and her*

> *son regarding reconvey of suit property in their names and to solve the said dispute, a panchayat was held and as per the decision taken in the panchayat, Channappa had agreed to execute sale deed in the name of Smt. Lalithamma for sum of Rs.17,000/-, the same sum which he had earlier paid to them. Hence, the recitals of Ex.P-12 sale deed goes to prove that there is much force in the argument advanced by the learned Counsel for plaintiffs to the effect that the suit property was nominally transferred in the name of* ***Channappa, as he had advanced loan of Rs.17,000/- to Smt.Lalithamma and her husband, and later as per the decision taken in the panchayat, after receiving back loan amount of Rs.17,000/- from Smt.Lalithamma, Channappa has retransferred the suit property in the name of Smt.Lalithamma by executing a registered sale deed dated 14.3.1963, as per Ex.P-12."***
>
> [Emphasis Supplied]

31. The learned Trial Court then adverts to the fact that Smt. Lalithamma was a housewife without any independent source of income, thus holding that the Suit Schedule Property could not be her self-acquired property.

32. However, there is nothing placed on record to dispel the contention that the said loan amount was not paid by Smt. Lalithamma. In addition, the factum of transfer of the property in the name of Smt. Lalithamma cannot simply be overlooked.

33. The assertion of the plaintiffs that late Sri D.M. Subbaiah had provided the entire consideration and that the Suit Schedule Property was acquired out of joint family funds, would thus have to be supported by the documentary evidence produced. However, no other evidence was produced to establish either the existence of a joint family nucleus for the purchase of this property or that the consideration paid for the Sale Deed emanated from late Sri.D.M. Subbaiah and not Smt. Lalithamma.

34. The plaintiffs also examined PW-2 and PW-3 in support of their case. A perusal of their depositions discloses that they have substantially reiterated the version deposed to by PW-1, namely, that late Sri D.M. Subbaiah had acquired the Suit Schedule Property out of the joint family funds and that late Smt. Lalithamma, although had no independent source of income, was actively involved in the management of the family affairs and, therefore, several transactions relating to the family properties were carried out in her name.

34.1 The affidavits and evidence-in-chief of both PW-2 and PW-3 are identical to each other. PW-2 is the driver of a lorry who is stated to have known Shri D.M. Subbaiah when he took his lorry for loading purpose to Binny Mills and his entire evidence is based on hearsay. PW-3 is an agriculturist who was a resident of Maddur, whose evidence is also based on information received.

34.2 However, neither PW-2 nor PW-3 claim to have witnessed the execution of the Sale Deed or the payment of consideration thereunder. Their evidence regarding the source of consideration is founded upon information received and not upon their own personal knowledge. Their testimony is therefore corroborative of PW-1 and does not independently establish the plaintiffs' case either.

35. On the other hand, the defendant No.2 has examined one witness being the Manager of defendant No.2 as DW-1. A tenant Srinivas Shetty/defendant No.5 was also examined as DW-2 whose evidence appears to be self-serving.

36. The Manager of the defendant No.2 who was examined as DW-1, has deposed that the Suit Schedule property was the self-acquired and exclusive property of the defendant No.1 and that it was sold to defendant No.2 by virtue of a registered sale deed dated 22.12.2004. DW-1 has deposed that originally, Smt. Lalithamma acquired a larger composite property which included the Suit Schedule property, by virtue of a registered sale deed dated 14.03.1963. He further deposed that a portion of the composite property was also sold and conveyed to Smt. Lakshmidevamma, w/o. T. Narasimhaiah under a registered sale deed dated 05.08.1963 registered as No.1336/63-64, Book-I, Volume 1921 at pages 207 to 213 in the office of the Sub-Registrar, the then Bangalore City North. It was further deposed that even in this Sale Deed, the property is described as the absolute property of Lalithamma. The relevant extract of the evidence of DW-1 is set out below:

> *"3. I state that the suit schedule property* ***was the self-acquired absolute and exclusive property of the first Defendant and he has sold the same to the Second Defendant herein, pursuant to the registered sale deed dated 22.12.2004 and the same has been assigned as pending***

__No.520/2004-05__. I state that this sale deed has been referred to the undervaluation authority for determination of proper guideline value and for payment of proper stamp duty and registration charges thereon. The said sale deed is produced herewith and marked as Exhibit D2.

4. I state that the first Defendant herein acquired the suit schedule property by means of __intestate succession,__ upon the death of his mother Smt. Lalithamma. I state that upon the death of Smt. Lalithamma on 12.10.1987, first-Defendant herein, being the __only sole surviving class-1 legal heir__ has succeeded to the estate, left behind by Smt.Lalithamma, under the provisions of the Hindu Succession Act, 1956. The khata of the suit schedule property was later transferred and registered in the name of the first Defendant herein and the copy of the khata certificates are produced herewith and marked as Exhibit D3, D4, and D5 respectively. The first Defendant paid the property taxes in respect of the suit schedule property and the copy of the tax paid receipts are produced herewith and marked as Exhibit D6. The extract from the assessment register showing the name of the first Defendant herein and the copies of the khata extracts are produced herewith and __marked as Exhibit D7, D8, and D9__ respectively. I state that the husband of Smt. Lalithamma and the father of the first Defendant herein __Sri. D.M.Subbaiah, had also passed away on 1.6.1986.__ The copies of the death certificates of Smt. Lalithamma and Sri. D.M.Subbaiah are produced herewith and marked as Exhibit D10 and D11 respectively.

5. I state that the aforesaid __Smt. Lalithamma has originally acquired the larger composite property including the suit schedule property,__ then measuring about East to West 80 feet and North to South 42 + 51 1/2 feet, pursuant to __the registered sale deed dated 14.3.1963, registered as No.3669/62-63, Book-I, Volume 1902 at pages 140 to 144__ and registered in the office of the then Sub-Registrar, Bangalore City North, from its previous owner Sri. G.M.Channappa. The copy of the said sale deed dated 14.3.1963 is produced herewith and marked as Exhibit D12.

> *6. I state that Smt. Lalithamma W/o.Sri. D.M.Subbaiah, the mother of the first Defendant herein, having purchased the larger composite property, as detailed in the previous para, sold and conveyed a portion of the same to Smt. Lakshmidevamma W/o. Sri.T.Narasimahiah, under the sale deed dated 5.8.1963, registered as No.1336/63-64, Book-I, Volume 1921 at pages 207 to 213 and registered in the office of the Sub-Registrar, the then Bangalore City North.* ***In this sale deed, she describes the aforesaid property as her absolute, exclusive property. It is very important and relevant to observe that her husband Sri. D.M. Subbaiah or the name of the first Defendant is not reflected in this sale deed. In fact, a careful reading of this sale deed, would clearly establish that during her lifetime, Smt. Lalithamma had treated this property as her absolute, exclusive "Streedhana" property. This sale deed is more than 4 decades old and as (sic has) remained unchallenged.*** *This sale deed and the lease deed referred to below, have come into existence, at a time, when there was no disputes or controversy. These documents are very germane, valid, subsisting and enforceable. The Plaintiffs with a view to blackmail, intimidate, coerce this Defendant have filed the above suit, with intent to make wrongful gain on the part of the Plaintiffs."*
>
> [Emphasis Supplied]

36.1 The deposition of DW-1 further sets out that during her lifetime, Smt. Lalithamma leased a portion of the property to various tenants by virtue of registered lease deeds including 1.1.1979 (Exhibit D13). It was deposed that the property was *Stridhan* property of Lalithamma and not the ancestral or joint family property as below:

"7. I state that the mother of the first Defendant herein during her life time, ***had leased a portion of the entire composite property including the suit schedule property to Mr.V.K. Mohammed Ali, S/o. Mr.P.K.Abdul Khader Haji*** *pursuant to the registered Lease Deed dated 1.1.1979, registered as 3246/78-79, Book-I, Volume 2679 at page 159, SF Volume 2696 page 64* ***and registered in the office of the sub-registrar, Gandhinagar, Bangalore City. The copy of the said lease deed dated 1.1.1979 is produced herewith and marked as Exhibit D13.*** *I state that in this lease deed Smt. Lalithamma had specifically stated that she* ***was the sole and absolute owner of the suit schedule property.*** *I state that since it was the entire composite property of Smt.Lalithamma, she had not included her son, the first Defendant herein, as an executant to the lease deed dated 1.1.1979, which was executed during her life time, which remain unchallenged even till date.*

8. I state that the ***1st Defendant*** *is the son of the deceased Smt.Lalithamma. I state that the suit schedule property continues as the exclusive property of the first Defendant, since it has no ancestral nature and characteristic. The suit schedule* ***property was the "Streedhana" property of Smt. Lalithamma, who had absolute right and authority of alienation and disposal over the suit schedule property.*** *The suit schedule property was therefore the absolute and exclusive property of Smt. Lalithamma and it was never impressed with the joint family characteristic or joint family status.*

9. I state that ***since the suit schedule property is not an ancestral property and not a joint family property,*** *the Plaintiffs have no right whatsoever in the suit schedule property in question. It is therefore submitted that the suit for partition prima facie does not lie and suit deserve to be rejected and dismissed in limine with exemplary costs. I state that the suit is totally misconceived and it is based on a total misconception of law. If at all the Plaintiffs are aggrieved their remedy lies elsewhere and have no vested or contingent right with reference to the suit schedule property."*

[Emphasis Supplied]

37. Although DW-1 was cross-examined over several days by counsel for the plaintiffs, no admission to the contrary was adverted to. In fact, while describing the property, the following is stated by DW-1 in his cross-examination dated 05.08.2008 and 02.12.2008:

> "***<u>CROSS-EXAMINATION OF DW-1 DATED 05.08.2008</u>***
>
> *The property purchased by Defendant No.2 is consisting of ground floor and first floor. Ground floor is consisting of a shop, a passage and a residential house. It is true to suggest that Plaintiffs are residing in the said house.* ***<u>In the property purchased by Defendant No.2 under Ex.D2 Sale Deed portion of property which Smt. Lalithamma had leased in favour of Defendant No.4</u>*** *is situating but I cannot say its exact measurement.*
>
> *(At this stage further cross-examination is deferred at the request of counsel for Plaintiff)"*
>
> ***<u>FURTHER CROSS-EXAMINATION OF DW-1 DATED 02.12.2008</u>***
>
> *In the suit property, the Plaintiffs are running Subrahmanya Stores as tenants.* ***<u>Plaintiffs have taken the shop on rent from the 1st Defendant.</u>*** *I cannot say since how many years plaintiffs are running the said shop. But they are running since many years. I have not seen the rental agreement entered into between Plaintiffs and 1st Defendant. I don't know whether any rental agreement is entered into between them or not.* ***<u>After 1st Defendant sold the suit property to 2nd Defendant, 1st Defendant had issued notice to his tenants informing that he has sold the suit property and rents should be paid to 2nd Defendant and he has sent the notice copy to 2nd Defendant also.</u>*** *In the said notice, 1st Defendant had shown that he is residing in the*

> *suit property. I personally did not enquire the plaintiffs on what strength they are residing in the suit property. But enquired the plaintiffs from 2nd Defendant company side. 2nd Defendant issued notice to plaintiffs that they should pay rents to him. I don't know whether the plaintiffs had replied to the said notice or not. After plaintiffs filed this case, we learnt that they are wife and children of the 1st Defendant.*
>
> *xxx xxx xxx*
>
> *Based on the documents produced before the Court, **I say that the suit property is the self acquired property of Smt. Lathithamma. I don't know about** the old numbers of suit property. Originally khatha of the suit property was in the name of Gangappa, later khatha was transferred in the name of Chinnappa. From Chinnappa, khatha of the suit property came in Smt. Lalithamma's name. It is false to suggest that though we know that the plaintiffs are the owners of suit property, we colluded with Defendant No.1 and purchased the suit property from him."*
>
> [Emphasis Supplied]

37.1 However, this evidence was also based on the documents produced and was also based not on personal knowledge of Sri. M.A. Prakash/DW-1 who was a Manager of the subsequent purchaser.

38. In addition, evidence was also given by DW-2 (A. Srinivasa Setty who is the Proprietor of Aruna Stores, tenant in the Suit Schedule property and Defendant No.5 in the plaint). DW-2 acknowledges his relationship as a tenant

of Defendant No.1 in respect of Shop No.45 (which is part of the Suit Schedule property). He also states that he took the property from the father of the first defendant late Sri. D.M. Subbaiah in the year 1958 and until the death of Sri. D.M. Subbaiah, was paying rent to him. After his death, the rents were being paid to Smt. Lalithamma (mother of Defendant No.1) and after her death, the rents were being collected by Defendant No.1. The deposition further sets out that DW-2 does not acknowledge that he is the tenant of defendant No.2. The relevant extract of the deposition of DW-2 is set out below:

> *"3. I submit that I took the* ***suit schedule shop from the Father of the 1st Defendant Subbaiah in the year 1958 and he being the absolute owner of the property. I am in occupation of the schedule shop as a lawful tenant by paying rents till the death of the said Subbaiah and thereafter the rents are paid to the 1st Defendant's Mother Smt. Lalithamma W/o. Late Subbaiah*** *and after her death the rents were being collected by the 1st Defendant on behalf of his family as* ***a Kartha of HUF, from November 1995 till 12.12.2004.*** *I denied that on the death of Lalithamma Plaintiff and the 1st Defendant are only left as legal heirs. But in fact Smt. Lalithamma left only* ***Daughter Pramila who died around 1999 leaving behind only son Mallikarjuna alias Mani and thus Pramila and the 1st Defendant along with the plaintiff jointly succeeded to the schedule property as Class-I Legal Heirs.***

4. I submit that the 1st Defendant stopped collecting rents ***from December 2004 and thereafter he has not seen in the suit schedule property*** *wherein the suit premises comprising shops in the front side and residential units on the hind portion in respect of Shop No.44.*

5. I submit that I am not aware that the 2nd Defendant is the Purchaser of the suit property from the 1st Defendant for a sale consideration, no details are forthcoming in the plaint as well as in the letter issued by the 2nd Defendant. In this regard I have sent interim reply on 26.01.2005 calling upon him to furnish the details for which so far I have not received any letter/communication. Therefore I do not accept that the Second defendant is the purchaser of the property from the 1st Defendant. Even otherwise, assuming that the 2nd Defendant has purchased the property from the ***1st Defendant still I am not a Tenant of the 2nd Defendant and the 2nd defendant has not purchased the property from all the members*** *of joint family as it is not self acquired property of Mr. Balalsubramanyam (1st Defendant) and the* ***1st Defendant is enjoying the property on the death of his father followed by the death of his mother Smt. Lalithamma and thereby the 1st Defendant succeeded to the above property as sharer along with his sister Smt. Pramila.*** *Thus, Balasubramanyam has succeeded to the schedule property to the extent of half share only and the remaining half share was held by Smt. Pramila Daughter of Subbaiah and Smt. Lalithamma.* ***On the death of Smt. Pramila her only son Mallikarjuna alias Mani has succeeded to the property. Thus, the Plaintiff got half share, right, title, interest in the schedule*** *property along with 1st Defendant as the co-parcenary property. Therefore, the marketable and transferable right of Balasubramanyam in favour of the 2nd Defendant is defective and that the 1st Defendant did not possess absolute marketable or transferable right to sell the same in favour of the 2nd Defendant. More over the said sale is effected under a clandestine manner without disclosing the actual sale consideration and mentioning the sale consideration at a negligible value and the same is opposed to the principles of law."*

[Emphasis Supplied]

38.1 In his cross-examination, DW-2 deposed that earlier he was paying rent to late Sri. Subbaiah and thereafter to Lalithamma and after her death, to Defendant No.1. Lalithamma had a daughter who had died four years after her death. He also deposed that the Suit Schedule Property was succeeded by defendant No.1 as co-parcenary property without disclosing any reason therefor. However, since the entire emphasis of the evidence of DW.2 was not to attorn to defendant No.2, his evidence has to be examined in this light.

39. The evidence of DW-2 however does clearly set out that rental for his portion of the Suit Schedule property was paid to Smt. Lalithamma and not to defendant No.1 who he claims became the 'karta' after the death of Sri. D.M. Subbaiah. In addition, DW-2 clearly acknowledges that he attorned to Smt. Lalithamma as owner.

40. The defendant No.2 also produced other documents in support of their contention, including a registered lease deed dated 01.01.1979 executed by late Smt. Lalithamma

in favour of one V.K. Mohammed Ali in respect of a portion of the Suit Schedule Property (hereinafter referred to as the "Lease Deed of 1979"). The recital therein describes late Smt. Lalithamma as the "sole and absolute owner" of the immovable property bearing Corporation No.43, Subedar Chatram Road, Bengaluru. The deed further records that she agreed to lease the property for a period of thirty-three years and contains detailed covenants conferring various rights upon the lessee, including construction, renovation and peaceful enjoyment of the leased premises.

40.1. The significance of this Lease Deed of 1979 lies not merely in the recital describing late Smt. Lalithamma as the sole and absolute owner, but in the fact that she dealt with the property in her individual capacity as the lessor. The Lease Deed of 1979 does not indicate that she executed the document on behalf of a Hindu Undivided Family or in any representative capacity. Additionally, this lease deed was witnessed by defendant No.1. On the contrary, every covenant of this document reflects that she possessed the authority to create a long-term lease and regulate the incidence of the tenancy in her own right. This conduct is consistent with the assertion that she exercised rights ordinarily associated with ownership over the property. The relevant extract of the lease deed is below:

> **"*LEASE DEED***
>
> *THIS DEED OF LEASE made and executed at Bangalore, on the First Day of January, One Thousand Nine Hundred and Seventy Nine (1.1.1979) between (i).* ***Smt. Lalithamma, wife of Sri.D.M. Subbaiah****, residing at No.43, Subedar Chatram Road, Bangalore-9, hereinafter called the "LESSOR" which term shall also mean and include all her heirs, legal representatives, executors and assigns of the FIRST PART, and (ii)* ***Sri K Mohammed Ali, s/o Sri. P.K.Abdul Khader Haji****, residing at No.47, Subedar Chatram Road, Bangalore, hereinafter called the LESSEE" which term shall also mean and include all his heirs, legal representatives, executors and assigns of the OTHER PART, witnesseth as follows:-*
>
> ***Whereas the Lessor is the sole and absolute owner of the immovable property bearing Corporation No.43, situated in Subedar Chatram Road, Bangalore-9.***
>
> *xxx xxx xxx*
>
> *1) That in consideration of the payment by the Lessee of such rent and of the Lessee performing and observing such obligations and covenants as hereinafter referred and stipulated,* ***the Lessor agrees to lease the Schedule property to the Lessee by way of lease for a period of 33 (thirty three) years commencing from First Day of October, 1978.***
>
> *2) That on the date of the registration of the lease deed, the Lessor shall hand over vacant possession of the structures on the schedule property which remains in her own occupation.*
>
> *xxx xxx xxx*

> ***4) That the Lessee shall pay to the Lessor from the date of commencement of lease, the following rates of rent for and during the period of lease:***
>
> *(i) For the period of six months from 1.10.1978 to 31.3.1979, the Lessee shall pay a sum of Rs.5/- (Rupees Five only) as rent per month;*
>
> *(ii) For the next period of 14 years commencing from 1.4.1979 to 31.3.1993, the Lessee shall pay a sum of Rs.200/- (Rupees two hundred only) as rent per month.*
>
> *xxx xxx xxx*
>
> *SCHEDULE "B"*
>
> *SKETCH*
>
> *IN WITNESS WHEREOF, the Lessor and the Lessee have affixed their respective signatures to this Deed of Lease on the day, month and year first above written.*
>
> ಲಲಿತಮ್ಮ
> ***LESSOR***
>
> ***WITNESSES:*** ***V.K. Mohammed Ali***
> ***LESSEE***
>
> *1) S. Balasubramanya*
> *2) R. Krishna Gowda,*
> *Rajajinagar, B'lore."*
>
> [Emphasis Supplied]

D. Requisites of Joint Family Property :

41. The Supreme Court in the case of ***D.S. Lakshmaiah and Another Vs. L. Balasubramanyam and Another***[5], while considering whether a disputed property was joint-family property, held that the mere existence of a joint Hindu family does not give rise to a presumption that every property held by a member is joint-family property; the

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[5] (2003) 10 SCC 310

person asserting such character must first establish the existence of an adequate joint-family nucleus from which the acquisition could have been made, and only upon such foundation being established does the onus shift to the person claiming the property as self-acquired. The Supreme Court further held that the failure of the alleged self-acquirer to establish his separate source of income does not, by itself, discharge the initial burden resting upon the person asserting the joint-family character of the property. The relevant extract is set out below:

> *"17. **In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item 2 property** and no other nucleus was claimed, the burden remained on the respondents to establish that Item 1 property was joint family **property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of Item 1 to be joint family property would fail as rightly held by the first appellate court.***
>
> *18. **The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the***

> ***property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."***
>
> [Emphasis Supplied]

42. The discussions above reflect that the plaintiffs have, however, failed to place cogent evidence establishing the existence of a joint-family nucleus of sufficient extent and income which was available for financing the acquisition in 1963. The oral evidence relied upon by them, as noticed hereinabove, also does not emanate from any witness having personal knowledge of the original transaction or payment of consideration. The execution of 3-4 sale deeds (Exhibits P57 to P59) does not by itself reflect a joint family nucleus qua the Suit Schedule Property. There is nothing on record to dispel the assertion that the amounts were paid by Smt. Lalithamma from her *Stridhan* money. There would otherwise be no reason for the transfer from Shri G.M. Chinnappa to her name in 1963. The subsequent conduct of late Smt. Lalithamma, particularly as reflected in Lease Deed of 1979, wherein she dealt with the property in her

own capacity and asserted ownership thereof, is also consistent with the recitals contained in Sale Deed.

43. An argument has been made by the plaintiffs that the Sale Deed of 1963 was a 'benami' transaction. Explaining when a transaction can be considered as 'benami', the Supreme Court in the case of ***Mangathai Ammal (Died) through Legal Representatives and Others Vs. V. Rajeswari and Others***[6], has held that the burden of proving that the apparent purchaser is not the real owner rests upon the person asserting the benami nature of the transaction, and such burden must be discharged by cogent evidence; the apparent purchaser starts with an initial presumption in her favour, and the Court must determine the true nature of the transaction by considering the source of consideration, possession, motive, relationship of the parties and their subsequent conduct. The relevant extract is set out below:

> *"7. While considering the issue involved in the present appeal viz.* ***whether the transactions/sale deeds in favour of Defendant 1 can be said to be benami transactions or not, the law on the benami***

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[6] (2020) 17 SCC 496

__transactions is required to be__ considered and few decisions of this Court on the aforesaid are required to be referred to.

*7.1. __**In Jaydayal Poddar [Jaydayal Poddar v. Bibi Hazra, (1974) 1 SCC 3] it is specifically observed and held by this Court that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be sold.**__ __**It is further observed that this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the benami transaction or establish circumstances unerringly and reasonably raising an interference of that fact.**__ In para 6 of the aforesaid decision, this Court has observed and held as under: (SCC pp. 6-7)*

> *"6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. __**The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant**__*

> ***indicia, the courts are usually guided by these circumstances : (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title deeds after the sale; and (6) the conduct of the parties concerned in dealing with the property after the sale.***"

xxx xxx xxx

8. Even the reasoning and the findings recorded by the trial court confirmed by the High Court while holding the sale deeds/transactions in favour of Defendant 1 as benami cannot be said to be germane and/or fulfilling the circumstances as carved out by this Court in the aforesaid decisions.

*8.1***.** *The first reason which is given by the learned trial court while holding the suit properties as benami transactions is that part sale consideration was paid by Narayanasamy Mudaliar at the time of the purchase of the property vide sale deed, Ext. B-3****. As held by this Court in a catena of decisions referred to hereinabove, the payment of part sale consideration cannot be the sole criterion to hold the sale/transaction as benami. While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct, etc.*** *It is required to be noted that Narayanasamy Mudaliar, who contributed part sale consideration by purchasing property at Ext. B-3, might have contributed being the husband and* ***therefore by mere contributing the part sale consideration, it cannot be inferred that sale deed in favour of Defendant 1 wife was benami transaction and for and on behalf of the joint family****. Therefore, the trial court as well as the High Court have committed a grave error in holding the suit properties as benami*

> *transactions/ancestral properties on the basis of the document at Ext. B-3.*
>
> [Emphasis Supplied]

43.1 The plaintiffs however, did not establish that late Smt. Lalithamma was merely a nominal purchaser or that the Suit Schedule Property was acquired for and on behalf of the joint family. Accordingly, the plea that the Suit Schedule Property was nominal/benami property cannot also be accepted.

44. An analysis of the aforesaid gamut of facts shows the following undisputed facts:

(i) On 14.03.1963, one Sri. G.M.Chinnappa executed a registered sale deed in favour of Smt. Lalithamma in respect of a portion of the property which included the Suit Schedule property. One portion of the larger property was sold in favour of Smt. Lakshmidevamma by virtue of another registered sale deed dated 05.08.1963. On 01.01.1979, a lease-deed was registered in favour of one V.K. Mohammed Ali by Smt.Lalithamma of a portion of the Suit Schedule property. Upon the death of Smt.Lalithamma on 12.10.1987, her legal heir/son had mutated the municipal and revenue records in his name.

(ii) On 22.12.2004, defendant No.1 executed a sale deed in favour of defendant No.2 wherein it was set out that the defendant No.1 has succeeded to the Suit Schedule property by virtue of intestate succession upon the demise of Smt. Lalithamma and the husband of Smt. Lalithamma Shri Subbaiah had already predeceased her on 01.02.1986.

(iii) The daughter of Smt. Lalithamma is also stated to have passed away in the year 1999 prior to such execution. This fact has not been disputed by the plaintiffs. There is, however, no evidence of any legal heir of the said daughter of Smt. Lalithamma placed on record by either party.

45. On a cumulative appreciation of the evidence, this Court is unable to accept the contention of the plaintiffs that the Suit Schedule Property, though purchased in the name

of late Smt. Lalithamma under the Sale Deed, was in fact acquired by late Sri D.M. Subbaiah out of the funds of the joint family in the name of Smt. Lalithamma. As noticed hereinabove, the Sale Deed expressly records late Smt. Lalithamma as the purchaser, acknowledges receipt of the entire sale consideration from her and records delivery of possession to her, together with the right to collect rents from the tenants. Thus, the plaintiffs who had the burden of establishing the existence of the joint family funds *qua* the purchase of the Suit Schedule Property failed to discharge the burden. The defendant No.2 thus did not require to prove the contrary, given the settled legal position.

46. Having held that the plaintiffs have failed to establish that the Suit Schedule Property was acquired from the joint-family nucleus or that late Smt. Lalithamma was merely a nominal purchaser, the Suit Schedule property has to be considered as property acquired by late Smt. Lalithamma in her own right. In this regard, Section 14(1) of the Hindu

Succession Act, 1956, assumes significance. The provision expressly includes within the ambit of "property" any movable or immovable property acquired by a female Hindu "by purchase" and declares that such property shall be held by her as the full owner thereof and not as a limited owner. Consequently, by virtue of Section 14(1) of the Hindu Succession Act, late Smt. Lalithamma held the Suit Schedule Property as its full owner and not as a limited owner.

47. Upon the intestate death of late Smt. Lalithamma, the devolution of the property so held by her would be governed by the provisions of Sections 15 and 16 of the Hindu Succession Act. These provisions are set out below:

> *"15.* ***General rules of succession in the case of female Hindus.—****(1)* ***The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,****—*
>
> *(a****) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter)*** *and the husband;*
>
> *(b) secondly, upon the heirs of the husband;*
>
> *(c) thirdly, upon the mother and father;*
>
> *(d) fourthly, upon the heirs of the father; and*

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

*16. **Order of succession and manner of distribution among heirs of a female Hindu.**—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—*

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such

> *person had died intestate in respect thereof immediately after the intestate's death."*
>
> [Emphasis Supplied]

48. The Supreme Court in the case of ***Sachidhanandam since dead through his Legal Representative Vs. E. Vanaja and Others***[7], while considering the devolution of the estate of a female Hindu dying intestate, has held that Sections 15 and 16 of the Hindu Succession Act, 1956, must be read together and that, under Section 15(1)(a), the property of a female Hindu dying intestate devolves in the first instance upon her sons and daughters (including the children of any predeceased son or daughter) and her husband. The Court further held that, under Rule 1 of Section 16, the heirs falling within the same entry take simultaneously and are preferred to heirs in succeeding entries. The relevant extract is set out below:

> *"11. Sections 15 and 16 of the Act provide that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16.* ***Section 15(1)(a) provides that such devolution shall be firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. The rule for distribution of the intestate property of a female Hindu and order of***

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[7] (2024) 19 SCC 731

> ***succession is provided under Section 16 of the Act according to which, the order of succession among the heirs of a female Hindu referred to in Section 15 shall be firstly, as per rule 1 thereof, among the heirs specified in sub-section (1) of Section 15 of the Act.***
>
> *12****. A combined reading of Section 15(1)(a) and Section 16 of the Act would make it manifest that the property of a female Hindu dying intestate shall devolve, firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.*** Therefore, the plaintiff being the widow of the pre-deceased son does not have the first right or entitlement to receive any share in the share of her mother-in-law.*
>
> [Emphasis Supplied]

49. In the present case, late Sri D.M. Subbaiah, husband of late Smt. Lalithamma, had admittedly predeceased her, having died on 01.02.1986, whereas late Smt. Lalithamma died intestate thereafter on 12.10.1987. Late Smt. Lalithamma is also stated to have given birth to a daughter by name Prameela, who had died around the year 1999. Smt. Lalithamma had one son and he would succeed to her estate as both her husband and daughter had passed away.

50. It has been deposed by DW-2, the tenant, that the daughter had a son Mallikarjuna as her legal heir. However, the plaintiffs had neither pleaded with the existence of

Prameela in the plaint nor led any evidence in that regard. D.W.2, in his cross-examination, further stated that he did not know the whereabouts of Mallikarjuna and could not state when he had last seen him. The Trial Court, therefore, proceeded on the basis of the material then available before it. Significantly, no issue was framed by the Trial Court determining the status of Prameela or the alleged entitlement of her son Mallikarjuna in the Suit Schedule Property.

51. At the same time, in his cross-examination, D.W.2 stated that he had last seen Smt. Prameela about ten years earlier i.e., around 1995 and that he did not know the whereabouts of her son Mallikarjuna or when he had last seen him. The Trial Court further noticed that the plaintiffs had neither pleaded in the plaint that Defendant No.1 had a sister by name Prameela nor had P.W.1 stated in her evidence that Defendant No.1 had such a sister or that she had left behind Mallikarjuna as her legal heir.

52. It is, therefore, evident that while there is evidence on record, through D.W.2, regarding the alleged existence of Prameela and her son, the same is not supported by the pleadings or evidence of the plaintiffs. Further, the material on record does not appear to contain any independent documentary evidence establishing the relationship of Prameela with late Smt. Lalithamma, the date of Prameela's death, or the status of Mallikarjuna as her legal heir. In any event, no claim has been made by any person as the legal heir of the deceased daughter of Smt. Lalithamma on any part of the Suit Schedule Property till date.

53. Accordingly, and in view of the fact that the plaintiffs have been unable to show any cogent evidence in relation of the existence of a Joint Hindu Family nucleus of funds, even assuming that a Joint Family was in existence, in terms of the settled legal position in the ***Marabasappa*** case, the factum of the Suit Schedule property or the larger property being purchased from joint family funds, has not been indicated from the evidence of the plaintiffs. Merely to

assume, that because Smt. Lalithamma was a woman and was unemployed, she would not have any funds, as has been assumed by the learned Trial Court, would not be in order. It is not disputed that Lalithamma was the second wife of late Sri. D.M.Subbaiah and the Suit Schedule Property this is stated to be the only property registered in her name. The right to property of a female Hindu is absolute in terms of Section 14 of the Hindu Succession Act and the record does reflect that Smt. Lalithamma was dealing with the property in the manner she deemed fit much as an absolute owner during her lifetime, after which defendant No.1 succeeded to it.

VIII. Conclusion :

54. In view of the aforegoing discussion, this Court is unable to agree with the conclusion arrived at by the learned Trial Court.

55. The appeal is accordingly ***allowed***. The Judgment and Decree dated 15.09.2009 passed in O.S.No.914/2005 by the learned XXXVIII Additional Civil Judge, Bangalore, is

hereby set aside. Consequently, the suit filed by the respondent Nos.1 to 3/plaintiffs is dismissed.

56. Pending applications, if any, stand closed. No order as to costs.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(TARA VITASTA GANJU)
JUDGE

YN/KS
List No.: 2 Sl No.: 1