Karnataka High Court
Smt. Puttamma vs Smt. S.G. Jayanthi on 26 May, 2023
Bench: H.P.Sandesh

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

R.S.A. NO.245/2019 (PAR)

BETWEEN:

1. SMT. PUTTAMMA
W/O LATE S.G. GOVINDAPPA
AGED ABOUT 78 YEARS

2. SRI PURUSHOTHAMA
S/O LATE S.G. GOVINDAPPA
AGED ABOUT 61 YEARS

3. SRI MANAVENDRA
S/O LATE S.G. GOVINDAPPA
AGED ABOUT 56 YEARS

ALL ARE RESIDING OPPOSITE TO
SUGAR FACTORY, DUMMALLI ROAD
MALAVAGOPPA POST
SHIVAMOGGA - 577 222.

... APPELLANTS

(BY SRI VIJAYA KUMAR K., ADVOCATE)

AND:

1. SMT. S.G. JAYANTHI
W/O DASAGIRIYAPPA
D/O LATE S.G. GOVINDAPPA
AGED ABOUT 53 YEARS
R/O NARASAMBOODI

2

AGALI POST, MADAKASIRA TALUK
ANANTHAPURA DISTRICT
ANDHRA PRADESH - 515 331

SMT. SHANTHAMMA
DIED ISSULESS DURING THE
PENDENCY OF REGULAR APPEAL

2. SMT. PADMAVATHI
W/O THIMMAPPA
D/O LATE S.G. GOVINDAPPA
AGED ABOUT 60 YEARS
R/O MARENAYAKANA HALLI
VILLAGE, NEGILAL POST
KORATAGERE TALUK
TUMKUR DISTRICT - 572 138

... RESPONDENTS

(BY SRI E.VENKATARAMI REDDY, ADVOCATE FOR R1;
R2 IS SERVED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC.,

AGAINST THE JUDGEMENT & DECREE DATED 07.11.2018

PASSED IN R.A.NO.74/2013 ON THE FILE OF THE III

ADDITIONAL DISTRICT JUDGE, SHIVAMOGGA AND ETC.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT ON 20.04.2023, THIS DAY THE COURT

PRONOUNCED THE FOLLOWING:

3

JUDGMENT

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

2. This appeal is filed challenging the judgment and decree dated 07.11.2018 passed in R.A.No.74/2013 on the file of the III Additional District Judge, Shivamogga.

3. The factual matrix of the case of the respondent No.1/plaintiff before the Trial Court is that she is the daughter of late S G Govindappa and defendant No.1; defendant Nos.2 and 3 are her brothers and defendants Nos.4 and 5 are her sisters. It is also her case that she had another sister by name Shashikala who died issueless. It is contended that they are the members of Hindu undivided joint family and suit 'A' and 'B' schedule properties are the joint family properties and they are in joint

possession of the same. Item Nos.1 and 4 of 'A' schedule were the tenanted lands cultivated by S G Govindappa as a tenant during his lifetime and he died intestate on 08.08.1975. Thereafter, the defendants being the legal representatives of deceased Govindappa, succeeded to the tenancy and got the said properties granted for the benefit of the family. Item Nos.2 and 3 of 'A' schedule property is absolutely belonged to S G Govindappa and it was granted to him under Darkasth by the Government. 'B' schedule property is an ancestral and joint family property. After the death of S G Govindappa, defendant No.1 was managing the joint family properties with the help of defendant No.2. Now, defendant Nos.2 and 3 are managing the said properties as kartha of the joint family. After the marriage, her relationship with defendant Nos.1 to 3 got strained and during April 2010, she came to know that defendant Nos.2 and 3 are mismanaging the joint family properties as well as they are attempting to alienate 'B' schedule property. It is also the case of the plaintiff that she demanded for partition and the same was turned down by the defendants. On obtaining the documents pertaining to the suit properties, she came to know that defendant Nos.1 to 4, in collusion with each other, have created partition deed pertaining to 'A' schedule property among themselves behind her back. Hence, she filed the suit for the relief of declaration, partition and separate possession and mesne profits.

4. In pursuance of suit summons, defendant No.1 filed the written statement and other defendants have adopted the same. In the written statement, they have admitted the relationship between the parties. Defendant No.1 contends that 'B' schedule property was purchased by the grandmother of the plaintiff in the capacity of S.G.Govindappa's minor guardian and the same was a dwelling house in the occupation of defendant Nos.1 to 4 and defendant No.4, after divorce, is residing in the 'B' schedule property with them. The suit schedule item Nos.1 to 4 were cultivated by defendant Nos.2 and 3 as tenants and it was granted in their favour under the provisions of Karnataka Land Reforms Act. S G Govindappa was not cultivating item Nos.1 and 4 of 'A' schedule as a tenant as claimed by the plaintiff. Recently, 'B' schedule property is let out on rentals. Late S G Govindappa was an advocate by profession and he never cultivated any lands. The suit 'A' schedule property was personally cultivated by defendant Nos.2 and 3. The income of S G Govindappa was sufficient for their hand to mouth existence and it was never invested in agricultural lands or for the improvement of 'B' schedule property. Defendant Nos.2 and 3 are independently cultivated the suit schedule properties i.e., defendant No.2 is cultivating 0.32 gunta, 2 acre and 1.13 acre in Sy.No.124, 127 and 53 of Toppinaghatta, whereas, defendant No.3 is cultivating 2 acre, 1.10 acre in Sy.No.127 and 53 of Toppinaghatta respectively. They thought it fit to convert 0.11 gunta of land in Sy.No.32 as a farm land with farm house and allowed defendant No.1 to look after the same. The katha of these properties stand in their individual names and they have developed a part of these lands as areca garden by investing huge amount obtained by loan. The suit schedule properties are not joint family properties capable of division as claimed. The marriage of the plaintiff and defendant No.5 was carried out by defendant Nos.2 and 3 out of their own income and they have spent nearly Rs.3,00,000/- for the plaintiff's marriage held in the year 1981-82. Even thereafter the plaintiff often visited them and taken money on several occasions amounting to more than Rs.50,000/-. At the instance of her husband the plaintiff once again visited them in the year 2007 and demanded for money on the ground that it was required for constructing the house and they have paid a sum of Rs.2,00,000/- after borrowing the amount from Eshwarappa. Hence, the plaintiff has no right to claim any share in the suit schedule properties. It is also contended that there was a zubani hissa in

the family during 1992 and the same was reduced into writing and registered. Defendant Nos.2 and 3 have paid the premium out of their own account after items No.1 to 4 of 'A' schedule property was granted in their favour. The plaintiff has no right in these properties and has executed a written document stating that she has received Rs.2,00,000/- in lieu of her share and on humanitarian considerations as well as towards plaintiff's purported share in the suit schedule properties, they have given more than Rs.5,50,000/-.

5. Based on the pleadings of the parties, the Trial Court framed the issues and allowed the parties to lead their evidence. In order to prove the case of the plaintiff, examined herself as PW1 and got marked Ex.P1 to P10 and Ex.P22 to Ex.P26; Ex.P11 to Ex.P20 were marked at the time of cross-examination of DW1 by confronting the same. Defendant Nos.1 to 3 and their witnesses have filed their affidavits and examined themselves as DW1 to DW4 respectively and got marked the documents at Ex.D1 to D11 through DW1 and Ex.D12 to D15 were marked through DW3. The Trial Court after considering both oral and documentary evidence placed on record answered Issue No.1 as negative and Issue No.2 as affirmative and granted the decree only in respect of item Nos.2 and 3 of 'A' schedule property and 'B' schedule property by metes and bounds and separate possession of 1/6th share therein.

6. Being aggrieved by the judgment and decree of the Trial Court, the defendants have filed an appeal in R.A.No.74/2013 and the plaintiff also filed the counter appeal in respect of rejection of item Nos.1 and 4 of 'A' schedule property. The First Appellate Court having considered the grounds urged in the appeal and also perused the material available on record and on re-appreciation of both oral and documentary evidence placed on record, formulated the points that whether the appellant has made out any grounds to allow the application filed under Order 6 Rule 17 of CPC to amend the written statement and whether the appellant has made out any grounds to allow the application filed under Order 41 Rule 27 of CPC to adduce additional evidence and whether the appellant has proved that the Trial Court has erred in answering Issue No.2 in respect of item Nos.2 and 3 of 'A' schedule property holding that they are the absolute property of their father late S G Govindappa and whether defendant No.1 has proved that item Nos.1 and 4 of 'A' schedule properties were tenanted land of their father late S G Govindappa and Trial Court has erred in answering Issue No.1 in negative thereby rejecting the claim of plaintiff over those properties and whether the impugned judgment and decree passed by the Trial Court in O.S.No.59/2010 is illegal and opposed to law, facts and circumstances of the case to warrant interference of this Court. The First Appellate Court also formulated the point that whether respondent/plaintiff in her cross objection/appeal has made out any grounds to interfere in the impugned judgment and decree as it suffers from any illegality and perversity to warrant interference of this Court.

7. The First Appellate Court on re-appreciation of both oral and documentary evidence placed on record answered Point Nos.1 to 3 as negative, Point No.4 as affirmative in coming to the conclusion that the judgment and decree of the Trial Court does not requires any interference with regard to granting of relief in respect of item Nos.2 and 3 of 'A' schedule property and also answered Issue No.6 as affirmative in coming to the conclusion that the respondent No.1/plaintiff has made out the grounds to grant the relief in respect of item Nos.1 and 4 of 'A' schedule property also and consequently, the appeal filed by the appellants was dismissed and cross objection filed by the

plaintiff was allowed and decreed the suit in entirety granting the relief in respect of 'A' and 'B' schedule properties in coming to the conclusion that the plaintiff is entitled for 1/6th share. Hence, the present second appeal is filed before this Court.

8. The learned counsel appearing for the appellants would vehemently contend that both the Courts have failed to consider Ex.P14 - Registered Partition Deed dated 19.02.1997 wherein the suit 'A' schedule properties are partitioned between defendant Nos.1 to 3 and decreeing the suit of the plaintiff in respect of item Nos.2 and 3 of 'A' schedule property and 'B' schedule property by allowing 1/6th share is erroneous and the same requires to be set aside. The counsel further contends that both the Courts have failed to appreciate Section 6A of the Amended Hindu Succession Act and even assuming for a minute that the suit schedule properties are ancestral and joint family properties, the plaintiff and defendant Nos.4 and 5 being the daughters are only entitled for a share under the notional partition since the father of the plaintiff died on 08.08.1975 and hence, amendment of Section 6A of Hindu Succession Act, 2005 is prospective and hence, decreeing the suit by allotting 1/6th share to the plaintiff in respect of suit schedule properties is erroneous. It is further contended that both the Courts have failed to consider that even though defendant Nos.1 to 3 proved that the marriage of the plaintiff was solemnized in 1981-82 and the plaintiff has received substantial amount and hence the plaintiff is not entitled for equal share in the suit schedule properties and both the Courts have failed to appreciate that the succession opened on 08.08.1975 i.e., on the death of the father that is prior to amendment to Section 6 of Hindu succession Act hence, both the Courts ought not to have granted any relief and the plaintiff is entitled for only 1/5th share out of the share allotted to the father i.e., 1/4th share. The First Appellate Court has wrongly decreed the suit of the plaintiff without considering Ex.P22 which shows that as on the date of filing of application before the Special Deputy Commissioner, the father of the plaintiff i.e., S G Govindappa was not alive and the katha came to be effected in the joint names of defendant Nos.1 and 2 under Section 6A of the Inams Abolition Act and PW1 has admitted that the defendants are separately cultivating the land granted in their favour since from the time of grant and defendant Nos.2 and 3 have paid premium to the revenue authorities and insptie of the same, both the Courts have committed an error. It is further contended that the finding of the Trial Court is erroneous, incorrect and the First Appellate Court also committed an error in reversing the finding of the Trial Court in respect of item Nos.1 and 4 of the 'A' schedule property. Hence, prayed this Court to admit the appeal and to frame the substantial question of law.

9. Based on the grounds urged in the appeal memo, this Court also framed the following substantial question of law:

> (1) Whether the findings by the First Appellate Court that suit item Nos.1 and 4 of the suit schedule 'A' properties are joint family properties/ancestral properties are based on evidence on record? (2) Whether the partition deed dated 19.02.1997 being a partition deed executed and registered prior to the amendment to Section 6 of the Hindu Succession Act, 1956 is saved by the Amendment and this is overlooked by the Courts below?

10. The learned counsel appearing for the appellants in support of his arguments vehemently contend that the original propositor S G Govindappa died leaving behind his wife Puttamma, two sons and three daughters. It is contended that the suit schedule properties are the ancestral and joint family properties. Item No.1 is tenanted property. Defendant No.1 only filed written statement and the same is adopted by defendant Nos.2 and 3. The said Govindappa was an practicing advocate and defendant Nos.2 and 3 only cultivating the property independently and there was a partition in the year 1992 itself and the same was registered in the year 1997. The defendants have also filed counter claim in written statement. The First Appellate Court has committed an error in allowing the cross objection. The very finding given by the Trial Court and First Appellate Court that the plaintiff is entitled for 1/6th share in respect of the 'A' and 'B' schedule properties is erroneous and the plaintiff is entitled only for 1/5th share out of 1/4th share i.e., in the share of her father. The counsel also vehemently contend that the suit 'B' schedule property is a dwelling house and the plaintiff is not entitled for the share in that property in view of Section 23 of Hindu Succession Act. Both the Courts have committed an error in not considering Ex.P22 and also failed to take note of the katha which stands in the name of defendant Nos.1 to 3. PW1 also admitted in the cross-examination that the said properties are under cultivation of DW1 to DW3. The documents at Ex.P7, P8, P16 to P18 show that defendant No.2 is cultivating the land. The document at Ex.D2 also clearly discloses that defendant No.2 is the grantee and hence, the plaintiff cannot claim any share. It is further contended that there was already a partition and the same is binding on the co-parceners and the said contention is admitted by PW1. It is also contended that in terms of Ex.P19, occupancy right was issued and the same is an absolute property of the mother - Puttamma. Hence, the finding of the First Appellate Court is erroneous. In respect of item No.4, Ex.P7, P10 and P20 disclose that grant was not made in favour of the family and the same was admitted by PW1. Inspite of the said admission, the First Appellate Court committed an error in decreeing the suit of the plaintiff in entirety. The counsel further submits that the father of the plaintiff Govindappa died on 08.08.1975 itself and also admission is given that he is not aware that whether the suit schedule properties are the joint family properties or individual granted properties since, the grant was made in the year 1976 that is after the death of the father S G Govindiappa and the suit schedule properties were partitioned in the year 1997 between defendant Nos.1 to 3. The counsel also vehemently contends that amendment came into effect only in the year 2005 and the said amendment will not comes to the aid of the plaintiff. The suit was filed in the year 2010 i.e., after 13 years of partition and the parties are acted upon in terms of the partition.

11. The learned counsel for the appellants in support of his argument relied upon the judgment reported in AIR 2009 SC 2649 in the case of G SEKAR vs GEETHA AND OTHERS and brought to notice to paragraphs 20 to 22 and contended that the very statement of objects and reasons of 2005 Act is clear that Section 23 of the Act disentitled a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. Amendment to Section 6 also came into force in the year 2005 which is very clear that if any deed of partition duly registered under the Registration Act or partition effected by a decree of a Court, then only they are entitled for share thus, where partition has not taken place, the said provision shall apply and when already there was a partition, the question of granting any decree does not arise.

12. The counsel also relied upon the judgment reported in 2018 (2) KLJ 737 in the case of RAJENDRA S/O KASHIDAS SAWKAR vs VENKATESH S/O KASHIDAS SAWKAR AND OTHERS and in the said judgment also it is discussed that whether amendment effects retrospectively or prospectively. In the case on hand, already there was a partition in the year 1992 and the same is reduced into writing in the year 1997 itself, hence, this judgment is aptly applicable to the case on hand. Hence, both the Courts have committed an error in decreeing the suit of the plaintiff.

13. Per contra, the learned counsel appearing for the respondent No.1/plaintiff would vehemently contend that the Trial Court considered the material available on record and rightly decreed the suit in respect of item Nos.2 and 3 and committed an error in dismissing the suit in respect of item Nos.1 and 4. The item Nos.1 and 4 are not at all self-acquired property and the First Appellate Court rightly observed by considering the material available on record that regularization application was filed by the father of the plaintiff in terms of Ex.P19 and P22 that is in the year 1971-72 itself. The mother also admitted in the cross-examination that her husband only filed an application and grant was made subsequently in her favour. The First Appellate Court mainly appreciated the documents at Ex.P19 and P22 and reversed the finding of the Trial Court in respect of item Nos.1 and 4 also. The counsel also vehemently contends that 'B' schedule property is acquired by her father by a Will and the said Will was executed by his mother and it is not in dispute that the said property is a dwelling house. It is also admitted by DW1 that it is a shop premises. The counsel also vehemently contends that the plaintiff is not a party to the partition deed and she has not relinquished her right and both the Courts considered the same. It is further contended that the 'B' schedule property was sold during the pendency of the appeal and objection statement was also filed along with the documents and purchaser is not made as a part in the said appeal, hence, the said sale deed is not binding in respect of 'B' schedule property. The counsel also vehemently contends that the plaintiff has proved that the suit schedule properties are the joint family properties and the father had not executed any testamentary document and it is further contends that Section 6 of Hindu Succession Act attracts, not Section 8 of the said Act.

14. The counsel for the appellants replied to the arguments of the counsel for the respondent/plaintiff contending that only 18 x 81½ feet was sold and the order is very clear that it is an Inam land and the material available on record also clearly discloses that defendant Nos.2 and 3 are cultivating the suit schedule properties hence, both the Courts have committed an error in granting the relief as sought and hence, it requires interference.

15. Having heard the respective counsel, on perusal of the material available on record and also considering the substantial question of law framed by this by at the time of admitting the appeal, this Court has to analyse the material available on record that whether finding of the First Appellate Court that suit item Nos.1 and 4 of the 'A' schedule property are ancestral and joint family properties as per the evidence on record and whether the partition deed dated 19.02.1997 being a partition deed executed and registered prior to the amendment to Section 6 of the Hindu Succession Act, 1956 is saved by the amendment and this is overlooked by the Courts below.

16. This Court has to reconsider the material available on record. No doubt, there is a concurrent finding in respect of item Nos.2 and 3 but there is a divergent finding in respect of item Nos.1 and 4.

In keeping the same, this Court has to re- analyse the material available on record.

17. Having considered the grounds urged in the second appeal and the material available on record, admittedly there is no dispute with regard to the relationship between the parties. The main contention of the learned counsel for the appellants in this second appeal by relying upon the judgment of the Apex Court in the case of G. Sekar (supra) is with regard to vesting of right where succession had already taken place. Operation of 2005 Amendment Act is prospective in nature as held by the Apex Court and also the judgment of this Court in the case of Rajendra (supra) wherein it is held by this Court that amendment operates prospectively and it is also observed that succession opened on 05.05.1992 on the death of the father i.e., prior to amendment to Section 6 in the year 2005 and hence the very contention of the learned counsel for the appellants that the Trial Court as well as the First Appellate Court have ignored the document of registered partition which came into existence in 1997 and amendment came into effect in the year 2005. At the most, the daughter is entitled for 1/5th share out of the share of the father and not equal share in respect of the suit schedule properties.

18. Having considered the grounds urged in the appeal and also the principles laid down in the judgments referred supra, this Court has to consider the material available on record. There is no dispute with regard to the relationship between the parties is concerned. The only dispute is with regard to the entitlement of the share. It is borne out from the records that the suit is filed for the relief of partition and for the relief of declaration that the registered partition deed dated 19.02.1997 is not binding on the plaintiff's right, title and interest over the suit schedule properties and hence claimed the share in the suit schedule properties. It is the case of the plaintiff before the Trial Court that she is the daughter of late S.G. Govindappa and defendant Nos.1 to 5 are the legal heirs of the said S.G. Govindappa along with the plaintiff. The other sister passed away issueless and they are undivided Hindu joint family and schedule 'A' and 'B' properties are joint family properties and the same are in joint possession. It is contended that item Nos.1 and 4 of 'A' schedule were tenanted lands cultivated by S.G. Govindappa as a tenant during his lifetime and he died intestate on 08.08.1975. Thereafter, the defendants being the legal heirs succeeded to the tenancy and got the said properties granted for the benefit of the family. It is the case of the plaintiff that item Nos.2 and 3 of 'A' schedule property absolutely belonged to S.G. Govindappa and it was granted to him under darkasth by the Government. The 'B' schedule property is an ancestral joint family property. It is her case that defendant No.1 was managing the joint family properties with the help of defendant No.2 after the death of the father S.G. Govindappa.

19. Having perused the material available on record, the Trial Court granted the relief of partition in respect of suit 'A' schedule item Nos.2 and 3 properties and 'B' schedule property and declined to grant any relief in respect of suit 'A' schedule item Nos.1 and 4 properties. Being aggrieved by the same, an appeal was filed by the appellants against the judgment and decree of the Trial Court. The First Appellate Court rejected the claim of the appellants having considered both oral and documentary evidence placed on record and allowed the cross- objection granting share in respect of all the suit schedule 'A' and 'B' schedule properties to the extent of 1/6th share. The First Appellate Court while allowing the counter claim, particularly taken note of the documents Exs.P.19, 21 and 22 and also extracted the recitals of the document Ex.P.14, which the defendants have relied upon that

there was a partition. No doubt, the partition deed is also a registered document wherein it is categorically admitted that the suit schedule properties are the joint family properties of the family and the same is extracted in paragraph No.64 of the judgment. The First Appellate Court also taken note of the document Ex.P.22 and the same is crucial in order to ascertain whether item No.4 of the suit schedule property was under the tenancy of S.G. Govindappa and in the order it is clear that Sy.No.53 measuring 2 acres 23 guntas including phut kharab of Thoppinakatte Village, Shimogga Taluk, is in possession and enjoyment of the applicant since 15 years as genidar paying gutta and there are no counter claims. The applicant has paid gutta upto 1975 and the applicant claims comes under the purview of Section 6A of the Karnataka (Religious and Charitable) Inams Abolition Act, 1955. It is also referred in the order that the applicant S.G. Govindappa expired in the year 1975 leaving his wife and two sons, one is minor. The khatha may be effected in the joint names of S.G.Purushothama and Smt. Puttamma. Hence, the very claim of the appellants that the said grant in favour of defendants is an individual grant and the plaintiff is not having any right cannot be accepted. There is an admission in the partition document itself that all the properties are joint family properties and also recitals of document Ex.P.22 is very clear.

20. The First Appellate Court also taken note of the admission given by D.W.1 in the cross-examination and admittedly the application was given by the father of the plaintiff and subsequent to the death of the father, the family members have made an application and grant was made. The First Appellate Court taken note of the fact that the Trial Judge has erred in appreciating the document which are marked as Exs.P.20 to 22. It is not in dispute that item Nos.2 and 3 of the properties were granted in favour of the father and the father died intestate. Ex.P.21 is an order passed by the Land Tribunal dated 08.01.1976, which clearly goes to show that the application was submitted by S.G. Govindappa before the Land Tribunal, but before the grant he died. The very contents of the document of Ex.P.21 is clear that S.G. Govindappa passed away five months prior leaving behind his son Purushothama and wife Puttamma and they requested to consider them as legal heirs and keep the khatha in their name. Taking note of these averments, in paragraph No.68 the First Appellate Court taken note of the fact that the property belongs to the family. The First Appellate Court also taken note of that in a suit for partition, initial burden is upon the plaintiff to prove that the subject matter of the suit are joint family properties. The plaintiff in order to prove the same, produced the document that there was a grant of darkasth in favour of the father in respect of item Nos.3 and 4 and in respect of item Nos.1 and 4 also an application was filed by the father during the year 1971-72. Admittedly, the father died in the year 1975 and subsequent to the death of the father, grant was made in favour of the legal heirs of S.G. Govindappa and hence it cannot be contended that the said grant is an individual grant. Item No.1 of suit schedule property also stands in the name of defendant No.1 Puttamma and in her evidence she categorically admitted that her husband was in cultivation of the said properties and after his death, the same is granted to her name. In the cross-examination, she had pleaded her ignorance how she acquired the property in her name. She has categorically admitted that the said property measures 11 guntas in Sy.No.32, but she cannot tell how she got that property. She categorically admitted that in respect of the said property her husband has given an application after the Land Reforms Act came into existence. She categorically admitted that after the death of her husband, as she is the elder member of the family, the same was granted in her favour. When these admissions were not taken note of by the Trial Court, the First Appellate Court re-analysed both oral and documentary evidence placed on record

and applied its mind both in respect of question of fact and question of law since there was no any testamentary document executed by the father S.G. Govindappa.

21. It is the contention of the appellants that there was a partition in the year 1992 and the same was reduced into writing in the year 1997 in terms of Ex.P.14 and admittedly while entering into the partition excluded the plaintiff and the plaintiff was not a party to the said document. However, they claim that they made a payment of Rs.5,50,000/- in favour of the plaintiff, but no such document is placed before the Court for having made the payment and the plaintiff has relinquished her right in respect of the suit schedule property. Hence, the very contention of the learned counsel for the appellants that both the Courts have committed an error in granting the decree cannot be accepted. The First Appellate Court on re-appreciation of both oral and documentary evidence placed on record, in detail discussed not only the pleadings, but also considered the grounds urged in the appeal and also the question of law and formulated the points. While considering point Nos.3 to 6, in detail, discussed the same and also taken note of both oral and documentary evidence placed on record and admission given by D.W.1 i.e., wife of S.G. Govindappa, wherein she has categorically admitted that her husband was managing the family affairs and thereafter herself with the assistance of her elder son were managing the family affairs. It is important to note that she has categorically admitted that the properties situated at Shimoga Thoppinakatte, Machenahalli are all self- acquired properties of S.G. Govindappa. It is also her evidence that her husband S.G. Govindappa was cultivating the land and some of the properties were under his tenancy. The very contention of the learned counsel for the appellants that the plaintiff is entitled only for 1/5th share out of the share of the father cannot be accepted, since the father died intestate and not made any testamentary provision in respect of any of the family members. It is also not in dispute that the husband S.G. Govindappa had filed an application before the Deputy Commissioner for re-grant during his lifetime and other two properties were already granted by dharkasth.

22. The other contention of the learned counsel for the appellants is that the amendment came into effect prospectively and hence the plaintiff is not entitled for share in respect of dwelling house also. But the fact is that, it is emerged in the evidence that 'B' schedule property is a commercial property and there are shop premises and the rents are collected and she claims that rent of 'B' schedule property was left for her living expenses. When there is no any legal document of partition and admittedly while partitioning the property excluded the plaintiff, the same cannot be accepted as a legal document. Section 23 of the Hindu Succession Act has been omitted to remove disability on female heirs to ask for partition. Though it is contended by the learned counsel for the appellants relying upon the judgment, the same is prospective effect and I have already pointed out that there is no any legal document of partition and even though assuming that there was a document of Ex.P.14 partition deed wherein the plaintiff was excluded and she was not party to the said partition, her right cannot be excluded by the defendants themselves in order to defeat her legal right. Admittedly, all the properties are joint family properties in terms of their own document of partition deed at Ex.P14 and the father had made an application before the concerned authority during his lifetime and grant was made in respect of item Nos.2 and 3 of 'A' schedule property and the same was granted in favour of father under darkasth. Though the other defendants claim that other two tenanted properties are granted in their name, the same is not their individual properties as the father had made an application for grant of the said land. Subsequently, the grant was made based

on the claim of the father, who made the claim before the competent authority and the said grant is not in their individual capacity. When such being the case, the very contention of the learned counsel for the appellants in the appeal that both the Courts have committed an error cannot be accepted.

23. This Court while admitting the appeal framed the substantial question of law with regard to whether the findings of the First Appellate Court in respect of suit item Nos.1 and 4 of the suit schedule 'A' properties are joint family properties are based on evidence on record. Having re-considered the material on record and considering the question of law and question of fact, the First Appellate Court has not committed any error in giving such a finding. The First Appellate Court mainly relies upon the document of partition deed of the year 1997 and this Court having considered the said ground, framed the substantial question of law whether the partition deed dated 19.02.1997, being a partition deed executed and registered prior to the amendment to Section 6 of the Hindu Succession Act, 1956 is saved by the amendment and the same is over-looked by the Courts below. I have already pointed out that the said partition deed came into existence amongst the defendants themselves excluding the plaintiff and hence the said document is not binding on the plaintiff since the plaintiff sought for the relief of declaration that the said partition deed is not binding on the plaintiff since she was excluded and no provision is made to her. Apart from that, the plaintiff has not relinquished her right and though it is contended by the appellants that they have made payment to the tune of Rs.5,50,000/- to the plaintiff, no documentary evidence is placed before the Court. No doubt, the marriage was performed in the year 1982, subsequent to the death of the father i.e., by mother as well as other legal heirs of S.G. Govindappa, the same will not curtail the right of the plaintiff. The First Appellate Court has given the finding based on both oral and documentary evidence placed on record and considered the question of law and hence, I answer both the substantial questions of law in the negative in coming to the conclusion that the findings of the First Appellate Court is not erroneous and there is no merit in the second appeal to come to the other conclusion.

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

ORDER The appeal is dismissed.

Sd/-

JUDGE SN/MD