R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

R.S.A.NO.87 OF 2010 (PAR)

BETWEEN:

1 . KRISHNAPPA
AGED 58 YEARS,
SINCE DEAD HIS LR'S

1(A) SMT. MUNIYAMMA
W/O LATE KRISHNAPPA
AGED ABOUT 66 YEARS
R/A RAMANATHAPURA
KOIRA POST, DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT.

1(B) SMT. PARVATHAMMA
D/O LATE KRISHNAPPA
W/O ANANDAPPA
AGED ABOUT 43 YEARS
R/A DASAGONDANAHALLI
RAJAGHATTA POST
DODDABALLAPURA TALUK
BANGALORE RURAL DISTRICT.

1(C) SMT. MANJULA
D/O LATE KRISHNAPPA
W/O MURTHY
AGED ABOUT 38 YEARS
R/A VARADANAHALLI

VEERAPURA POST
DODDABALLAPUR TALUK
BANGALORE RURAL DISTRICT.

1(D) SMT. ANANDAMMA
D/O LATE KRISHNAPPA
W/O REDDAPPA
AGED ABOUT 36 YEARS
R/A KOMMASANDRA,
VIJAYAPURA HOBLI
DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT .

2 . NANJUNDEGOWDA
AGED 31 YEARSS
S/O KRISHNAPPA

3 . ASHWATHEGOWDA
AGED 26 YEARS
S/O KRISHNAPPA

4 . MURTHY
AGED 21 YEARS
S/O KRISHNAPPA

APPELLANT NO.2 TO 4 ARE
R/O RAMANATHAPURA VILLAGE
KOIRA POST, KUNDANA HOBLI
DEVANAHALI TALUK-562110
BANGALORE RURAL DIST.

...APPELLANTS

(BY SRI T.K. RAJAGOPALA, ADV.)

AND:

SMT. ASHWATHAMMA
AGED ABOUT 52 YEARS
D/O LATE MUNIANJANAPPA
W/O LATE PILLANJANAPPA
R/A AALOORU DUDDANAHALLI VILLAGE
KUNDANA HOBLI,
DEVANAHALLI TALUK-562110
BANGALORE RURAL DIST.

…RESPONDENT

(BY SRI.ABHINAV.R, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 15.10.2009 PASSED IN R.A.NO.70/2008 ON THE FILE OF THE PRL. DISTRICT JUDGE, BANGALORE RURAL DISTRICT, BANGALORE, ALLOWING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED 29.11.2007 PASSED IN O.S.29/2006 ON THE FILE OF THE CIVIL JUDGE (SR.DN) & JMFC., DEVANAHALLI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 25.08.2022, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The captioned second appeal is filed by the defendant No.1 questioning the judgment and decree of the Appellate Court wherein the Appellate Court has decreed the suit in entirety and share is granted to the plaintiff in all the properties.

2. For the sake of brevity, the parties are referred to as per their rank before the Court below.

3. The family tree of the parties is as follows:

ಮುನಿಅಂಜಿನಪ್ಪ (78 ವರ್ಷ)
।

| |
1. ನಂಜಮ್ಮ (1ನೇ ಹೆಂಡತಿ ಫವತಿ) 2. ಮುನಿನಂಜಮ್ಮ (2ನೇ ಹೆಂಡತಿ ಫವತಿ)
ಕೃಷ್ಣಪ್ಪ (ಮಗ 55 ವರ್ಷ) ।
ಮುನಿಯಮ್ಮ (ಹೆಂಡತಿ 50 ವರ್ಷ) ಅಶ್ವಥಮ್ಮ (ಮಗಳು 45 ವರ್ಷ)
। (ಮದುವೆ ಆಗಿ ಗಂಡನ ಮನೆಯಲ್ಲಿರುತ್ತಾರೆ)

। । । । ।
1. ಆರ್.ಕೆ.ನಂಜುಂಡೇಗೌಡ 2. ಅಶ್ವತ್ಥಗೌಡ 3. ಮೂರ್ತಿ 4. ಮಂಜುಳ 5. ಅನಂದಮ್ಮ
(ಮಗ 28 ವರ್ಷ) (ಮಗ 23 ವರ್ಷ) (ಮಗ 18 ವರ್ಷ) (ಮಗಳು 22 ವರ್ಷ) (ಮಗಳು 20 ವರ್ಷ)

4. The original plaintiff Muni Anjanappa who is the father of defendant No.1 filed a suit for partition and separate possession in O.S.No.29/2006. The original plaintiff Muni Anjanappa claimed that suit schedule properties were acquired through joint family funds. It was contended that original plaintiff Muni Anjanappa on account of old age was not in a position to manage the affairs of the family and therefore, defendant No.1 being the eldest son was allowed to manage the affairs of the joint family as Kartha of the family. Therefore, the original plaintiff Muni Anjanappa contended that all the properties acquired in the name of defendant No.1 were by utilizing joint family corpus and therefore, the original plaintiff filed a suit for partition against the sons and claimed share in all the properties.

5. Pending suit, the original plaintiff Muni Anjanappa died and his daughter who was originally arrayed as defendant No.5 got transposed as plaintiff. The original plaintiff instituted the present suit by specifically alleging that

defendant No.1 is acting adversely to the interest of the plaintiff and therefore, the present suit came to be filed.

6. The defendant No.1, on receipt of summons, tendered appearance and filed written statement and stoutly denied the entire averments made in the plaint. However, the defendant No.1 admitted the relationship between himself with other defendants and original plaintiff Muni Anjanappa. However, the allegation that all suit schedule properties are joint family ancestral properties was stoutly denied by the defendant No.1. The defendant No.1 specifically contended that except item No.9 of schedule 'A' property, all other properties are self acquired properties and therefore, are not available for partition. The defendant No.1 has furnished all the details and has disclosed the source of acquisition in the written statement.

7. It was also specifically averred in the written statement that item Nos.a, b, m, n, o as well as c, d and e of

schedule 'B' properties are his self acquired properties. The defendant No.1 has further claimed that item Nos.1 and 12 were acquired by him in a compromise decree passed in O.S.No.61/1988 while he acquired right and title in item Nos.2 and 6 by way of adverse possession. He further contended that he acquired absolute right over item Nos.3 and 5 under registered gift deed executed by his uncle. Further, he contended that item Nos.4 and 10 were purchased by him through registered sale deed. While defendants further pleaded that item Nos.7 and 11 do not belong to joint family but, however, his name was mutated to the revenue records. Insofar as item No.8 is concerned, he contended that it originally belonged to Dodda Kempanna and after the death of his uncle, defendant No.1's name was mutated to the revenue records. The defendant No.1, however, admitted that item No.9 is the joint family property.

8. The plaintiff i.e., the daughter of Muni Anjanappa to substantiate the claim of original plaintiff let in oral evidence.

She examined herself as PW.1 and one independent witness as PW.2 and relied on documentary evidence vide Exs.P-1 to P-34. The defendant No.1 to substantiate his claim examined himself as DW.1 and one independent witness as DW.2 and relied on rebuttal documentary evidence vide Exs.D-1 to D-6.

9. The Trial Court having examined oral and documentary evidence has come to conclusion that only item Nos.7 and 9 of schedule 'A' property are joint family ancestral property and therefore, proceeded to grant half share to the plaintiff and defendant No.1. While defendant Nos.2 to 4 were allotted half share in the share of defendant No.1. The Trial Court however, proceeded to dismiss the suit insofar as item Nos.1 to 6, 8, 10 to 12 of schedule 'A' property and schedule 'B' properties.

10. Feeling aggrieved by the judgment and decree of the Trial Court, the plaintiff preferred appeal before the Appellate Court.

11. The Appellate Court having assessed oral and documentary evidence has placed strong reliance on Ex.P-20 which is styled as 'panchayath palupatti'. The plaintiff has placed reliance on Ex.P-20 and a contention was taken that the contents of Ex.P-20 clearly indicates that all the suit schedule properties are admitted to be joint family ancestral properties in the said document. The Appellate Court relying on Ex.P-20 was of the view that defendant No.1 has agreed under Ex.P-20 to allot half share. The Appellate Court was of the view that plaintiff and defendant No.1 have amicably resolved to share the properties equally. It is in this background, Appellate Court by placing reliance on oral evidence of PW.2 has arrived at a conclusion that Ex.P-20 is proved by the plaintiff. Though the said document was seriously challenged by the defendant No.1 by contending that his father never participated in the panchayath, was however negatived by the Appellate Court on an assumption that since Muni Anjanappa had already filed a suit would negate the

defence set up by the defendant No.1 in regard to non-participation of Muni Anjanappa during settlement before the panchayath and the same would lose its significance. The Appellate Court has also drawn adverse inference against the defendant No.1 who has not whispered even a word for having affixed the signature on Ex.P-20.

12. The Appellate Court placing reliance on the judgment rendered by the Hon'ble Apex Court in the case of Polti Lakshmi vs. Krishnavenamma rendered in AIR 1965 SC 825 was of the view that palupatti does not require registration. It is in this background, Appellate Court was of the view that defendant No.1 who is a party to Ex.P-20 and the fact that evidence of PW.2 who is a witness to Ex.P-20 has gone unchallenged, the Appellate Court finding fault with the findings recorded by the Trial Court on Ex.P-20 has reversed the decree of the Trial Court and consequently share is granted in all the items i.e., schedule 'A' and 'B' properties.

13. The defendant No.1 feeling aggrieved by the judgment and decree of the Appellate Court has filed the captioned second appeal.

14. This Court vide order dated 16.08.2010 has admitted the appeal on the following substantial question of law:

> *"Whether the lower Appellate Court was justified in decreeing the suit of the plaintiff for partition in respect of the suit items on the basis of Ex.P-20, which is an unregistered document and not signed by the appellant?"*

15. Heard learned counsel for the defendant No.1 and learned counsel appearing for the plaintiff. I have meticulously examined the judgment rendered by both the Courts. I have also given my anxious consideration to the judgments cited by the respective counsels, more particularly the judgment cited by the learned counsel appearing for the plaintiff.

16. This is a peculiar case where father files a suit against his children, more particularly against defendant No.1 who is also one of the son of original plaintiff Muni Anjanappa. In schedule 'A', in all there are 12 items while schedule 'B' properties are movable properties. The defendant No.1 has admitted that except item No.9 of schedule 'A', all the other properties are his self acquired properties and therefore, the same are not available for partition. The initial burden to establish that suit schedule properties are joint family ancestral properties is on the piaintiff. The Appellate Court has reversed the findings and conclusions of the Trial Court by placing total reliance on Ex.P-20. Therefore, the substantial question of law formuiated by this Court also revolves around the relevance of Ex.P-20, its evidentiary value and the rights of the plaintiff in terms of Ex.P-20.

17. Before I proceed further, it would be useful for this Court to cull out Ex.P-20 which reads as under:

"ಸನ್ ಎರಡು ಸಾವಿರದ ಒಂದನೇ ಇಸವಿ ನವೆಂಬರ್ ಮಾಹೇ ಹದಿನೈದನೇ ತಾರೀಖಿರಂದು ದೇವನಹಳ್ಳಿ ತಾಲ್ಲೂಕು, ಕುಂದಾಣ ಹೋಬಳಿ ಆಲೂರು ದುದ್ದನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ವಾಸವಾಗಿರುವ ಮುನಿ ಆಂಜಿನಪ್ಪನ ಮಗಳಾದ ಅಶ್ವತ್ತಮ್ಮ ಮತ್ತು ರಾಮನಾಥಪುರದಲ್ಲಿ ವಾಸವಾಗಿರುವ ಮುನಿ ಆಂಜಿನಪ್ಪನ ಮಗನಾದ R.K. ಕೃಷ್ಣಪ್ಪ ಆದ ನಾವುಗಳು ಏಕೀಭವಿಸಿ ಈ ಕೆಳಗೆ ರುಜುವು ಮಾಡಿರುವ ಪಂಚಾಯಿತ್ತಿದಾರರ ಸಮಕ್ಷಮ ಮಾಡಿಕೊಂಡ ಒಪ್ಪಿಗೆಯ ಅನುಮತಿ ಮುಚ್ಚಳಿಗೆ ಕ್ರಮವೇನೆಂದರೆ,

ಪಂಚಾಯಿತ್ತಿದಾರರಾದ ದೇವನಹಳ್ಳಿ ತಾಲ್ಲೂಕು, ಕುಂದಾಣ ಹೋಬಳಿ, ಬೀರಸಂದ್ರ ಗ್ರಾಮದ ವಾಸಿಯಾದ ಆಂಜಿನಪ್ಪನ ಮಗನಾದ A ರಾಮಚಂದ್ರಪ್ಪ ಆಲೂರು ದುದ್ದನಹಳ್ಳಿ ಗ್ರಾಮದ ವಾಸಿಯಾದ ಬಚ್ಚಪ್ಪನ ಮಗನಾದ ರಂಗಸ್ವಾಮಿರವರುಗಳಿಗೆ ನಾವುಗಳು ಒಪ್ಪಿ ಬರೆಸಿದ ಒಪ್ಪಿಗೆ ಪತ್ರವೇನೆಂದರೆ,

ನಮ್ಮಗಳ ಮಧ್ಯೆ ಪಿತ್ರಾರ್ಜಿತ ಮತ್ತು ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿ ವಿವಾದ ನಡೆದು ಕೋರ್ಟಿನಲ್ಲಿ ವ್ಯಾಜ್ಯ ತೀರ್ಮಾನವಾಗಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ಹಿತೈಷಿಗಳು ಹಿರಿಯರ ಮಾತಿಗೆ ಒಪ್ಪಿ ಈ ನಮ್ಮ ನಡುವಿನ ವಿವಾದವನ್ನು ಬರೆಹರಿಸಿಕೊಂಡು ಇನ್ನು ಮುಂದೆ ನೆಮ್ಮದಿಯಿಂದ ಜೀವನ ಮಾಡಬೇಕೆಂದು ತೀರ್ಮಾನಿಸಿ ಬಂದ್ದುದರ ಮೇರೆಗೆ ಪಂಚಾಯಿತ್ತಿದಾರರ ತೀರ್ಮಾನಕ್ಕೆ ಒಪ್ಪಿ ಬರೆಸಿದ ಪತ್ರದ ಕ್ರಮವೇನೆಂದರೆ,

ಪಂಚಾಯಿತ್ತಿದಾರರುಗಳಾದ ನಾವು ಉಭಯ ಪಾಲುದಾರರ ಕೋರಿಕೆಯನ್ನು ಉಭಯ ಪಾಲುದಾರರ ತಂದೆಯಾದ ಮುನಿ ಆಂಜಿನಪ್ಪನ ಮಾರ್ಗದರ್ಶನದಂತೆ ಅವರ ಕುಟುಂಬಕ್ಕೆ ಸೇರಿದ ವಿಶಿಷ್ಟ ಸ್ವತ್ತುಗಳಾದ ಸರ್ವೆ ನಂ.10 ರಲ್ಲಿ 1–10 ಸರ್ವೆ ನಂ. 13/3 ರಲ್ಲಿ 1–1 1/2 ಸರ್ವೆ ನಂ. 17 ರಲ್ಲಿ 2–27 ಸರ್ವೆ ನಂ.18 ರಲ್ಲಿ 1–36 ಸರ್ವೆ ನಂ.32/2 ರಲ್ಲಿ 0–25 ಸರ್ವೆ ನಂ. 38/1 ರಲ್ಲಿ 0–10 ಸರ್ವೆ ನಂ.65/8 ರಲ್ಲಿ 0–37 ಸರ್ವೆ ನಂ. 62/22 ರಲ್ಲಿ 2–00 ಸರ್ವೆ ನಂ. 93 ರಲ್ಲಿ 4–00 ಸರ್ವೆ ನಂ.135 ರಲ್ಲಿ 2–24 ಮತ್ತು ಸರ್ವೆ ನಂ.14/3 ರಲ್ಲಿ 0–18 ಜಮೀನು ಖಾನೇಷುಮಾರಿ 61/64/20 ರ ಸ್ವತ್ತುಗಳ ಬಗ್ಗೆ ಚರ್ಚಿಸಿರುತ್ತೇವೆ.

ಮುನಿ ಆಂಜಿನಪ್ಪನು ಈಗಾಗಲೇ ಮಗನ ಮೇಲೆ ಪ್ರೀತಿ ಕಳೆದುಕೊಂಡು ಮಗಳಾದ ಅಶ್ವತಮ್ಮಳ ಹಾರೈಕೆಯಲ್ಲಿ ಇರುವುದನ್ನು ಮನ:ಗೊಂಡು ಮುನಿಆಂಜಿನಪ್ಪ ಅಶ್ವತ್ತಮ್ಮ ಹಾಗೂ ಕೃಷ್ಣಪ್ಪನಿಗೆ ಈ ಮೇಲ್ಕಂಡ ಸ್ವತ್ತುಗಳಲ್ಲಿ ಸಮಪಾಲು ಹಂಚಿಕೊಳ್ಳಲು ತೀರ್ಮಾನ ಮಾಡಿರುತ್ತೇವೆ.

ಈ ಮೇಲೆ ಹೇಳಿರುವ ಎಲ್ಲಾ ವಿವರಗಳು ಸರಿಯಾಗಿದೆ ಎಂದು ಓದಿಸಿ ಕೇಳಿ ಒಪ್ಪಿ ಈ ಕೆಳಗೆ ರುಜುವು ಮಾಡಿರುತ್ತೇವೆ.

ಸದರಿ ಒಪ್ಪಿಗೆ ಪತ್ರವನ್ನು ಪಂಚಾಯಿತ್ತಿದಾರರ ಮೂಲಕ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರ್ ಪಡಿಸಲು ತೀರ್ಮಾನಿಸಲಾಯಿತು.

ಸಹಿ: (R.K. ಕೃಷ್ಣಪ್ಪ) *ಪಂಚಾಯಿತ್ತಿದಾರರ ಸಹಿ*
L.T.M of ಅಶ್ವತ್ತಮ್ಮ *ಸಹಿ:*
ಸಹಿ:"

18. This document is dated 15.11.2001. The original plaintiff Muni Anjanappa has instituted the suit on 22.11.1996. Therefore, this document has come into existence during the pendency of the suit. Ex.P-20 does not indicate that Muni Anjanappa participated in the panchayath talks and he was a signatory to Ex.P-20. In Ex.P-20, it is the daughter who later got transposed as plaintiff has participated in the said talks and the said document is signed by the defendant No.1 and the daughter i.e., the present plaintiff.

19. The document under Ex.P-20 clearly indicates that daughter i.e., plaintiff and defendant No.1 has resolved to equally share all the suit schedule properties. The said document is admittedly an unregistered document. The

contention of learned counsel for the plaintiff is that the said document amounts to family arrangement which does not require registration and therefore, Ex.P-20 is very much admissible in evidence and can be looked into. Therefore, the counsel for plaintiff has contended that Appellate Court was justified in placing reliance on Ex.P-20 and therefore, the said document cannot be ignored or discarded for want of registration.

20. The question that needs to be examined by this Court is whether Ex.P-20 amounts to family settlement. On bare perusal of Ex.P-20, the same cannot be accepted as a family settlement. The original plaintiff i.e., Muni Anjanappa is not a signatory to Ex.P-20. The family settlement should be among all the family members who agree to common terms and conditions. Therefore, family settlement involves participation and the same needs to be signed by all the members and there has to be an acknowledgment when the agreement is arrived at, free of duress and coercion within the

family members. A family settlement is admissible in evidence provided that the agreement is confirmed with approval of all family members who firmly support resolution given in the agreement at a later date which does not require registration.

21. On perusal of Ex.P-20, this Court is of the view that Ex.P-20 is not in the nature of a family arrangement as all the family members have not participated and have not signed Ex.P-20. Ex.P-20 does not indicate that all the assets are part of a common family. It also does not indicate that original plaintiff Muni Anjanappa and other family members have an antecedent title and right over all the suit schedule properties. The main requirement of a family arrangement is that all the family members have to agree and such an agreement should indicate that rights and title of the parties to the arrangement is voluntarily accepted by all the members and the same is acknowledged under the very document. One more requisite condition for a family arrangement is that each party to the agreement should recognize the right of other members, as

they had previously asserted it, to the portions allotted to them respectively.

22. Muni Anjanappa is not a party to Ex.P-20. He does not acknowledge defendant No.1's right in all the suit schedule properties. Under Ex.P-20, even otherwise, plaintiff and defendant No.1 are shown to have resolved and have agreed to equally share the suit schedule properties. These significant details needs to be meticulously examined in the light of the principles laid down by the Hon'ble Apex Court in the case of ***Ramgopal vs. Tulshi Ram and Others***[1], wherein it has been held as under:

> *"1. It is possible to make a family settlement deed verbally.*
>
> *2. If the decision is taken verbally and there is no written record then there is no need for registration.*
>
> *3. If it could have been made verbally but was reduced to the form of a "document", registration is required (when the value exceeds Rs.100).*

[1] AIR 1928 ALL 641

4. Whether the words have been "reduced to the form of a document" in each case is a matter of reality that must be decided based on the meaning and phraseology of the writing, as well as the circumstances and intent for which it was written."

23. In the present case on hand, under Ex.P-20, plaintiff and defendant No.1 have resolved to share equally and the said agreement is reduced into writing. If the parties have reduced the family agreement into writing with an intention of using that writing as an evidence of what they have negotiated and when the arrangement is brought on by the document alone, then the said document requires registration in terms of Section 17(1) of the Registration Act.

24. In the light of the above said discussion, the document vide Ex.P-20 cannot be looked into on two counts. The document does not indicate that it is in the nature of family arrangement. The document does not indicate that all the family members have participated and therefore, the

document is inadmissible in evidence. Secondly, the agreement is sought to be reduced into writing and therefore, it compulsorily requires registration. Ex.P-20 does not record previously negotiated terms but what can be gathered is under the document, plaintiff and defendant No.1 have agreed to take equal share and therefore, it is not a family arrangement but it amounts to a partition deed during the pendency of the suit and therefore, the said document requires registration and is subject to payment of stamp duty. The Appellate Court erred in relying on Ex.P20 to hold that properties held by defendant No.1 are also joint family properties.

25. The Appellate Court has virtually misread the evidence on record. Its finding recorded under Ex.P-20 is found to be palpably erroneous. The Appellate Court has interpreted Ex.P-20 with several dimensions. The Appellate Court refers Ex.P-20 as a family settlement and therefore, has come to conclusion that it does not require registration. Based on the very same document vide Ex.P-20, the Appellate Court

has come to conclusion that due execution of Ex.P-20 is proved wherein it clearly stands established that defendant No.1 has agreed to give half share in all the suit schedule properties. The Appellate Court has relied on Ex.P-20 to also come to conclusion that the other properties are also joint family ancestral properties as defendant No.1 has agreed to give half share. It is in this background, this Court would find that the reasons assigned by the Appellate Court while interpreting Ex.P-20 are found to be oscillating. Therefore, for the reasons stated supra, this Court is of the view that Ex.P-20 has no evidentiary value and this aspect was rightly dealt by the Trial Court. Therefore, the findings recorded by the Appellate Court on Ex.P-20 are not at all sustainable and therefore, the reversal of decree at the hands of the Appellate Court is palpably erroneous.

26. If Ex.P-20 is discarded, this Court has to examine whether original plaintiff and the present plaintiff have succeeded in producing tangible evidence indicating the

existence of nucleus and also surplus income. On perusal of the averments, this Court is of the view that there is lot of ambiguity and vagueness in the pleadings. All that is stated in paras 2 and 3 of the plaint is that plaintiff and defendants constituted a Hindu Undivided Joint Family and that they are in joint enjoyment over the suit schedule properties. At para 3, plaintiff claim that the family owned some immovable properties, while few were acquired with the aid of joint family funds. At para 3, plaintiff has also specifically pleaded that defendant No.1 is the eldest son and was managing the affairs of the joint family. It is trite law that there is a presumption in regard to existence of joint family but such a presumption cannot be extended to the properties held by the family members. If the Trial Court judgment is looked into, this Court is of the view that the Trial Court has dealt with the matter in detail to ascertain the nature of the properties which are in fact claimed by the plaintiff to be joint family ancestral properties.

27. Item No.1 was the subject matter of litigation in O.S.No.61/1988. Defendant No.1 has succeeded in the said suit where the plaintiff in the said suit entered into compromise admitting the title of defendant No.1 in respect of item No.1. Plaintiff has not produced any documents to demonstrate that this item No.1 was joint family ancestral property. The material on record clearly indicates that item No.1 was not at all joint family ancestral property. It appears that defendant No.1 had set up a plea of adverse possession and he succeeded by way of compromise which is evident from Ex.D-2. Item No.2 is exclusively standing in the name of defendant No.1 and the same is evident from the revenue records vide Ex.P-6. Admittedly suit is filed by the father against the son. Nothing prevented plaintiff from producing the earlier record of rights to demonstrate that this is also joint family ancestral property and the same was inherited. There is no rebuttal evidence to counter this revenue record vide Ex.P-6.

28. Now coming to item No.3, defendant No.1 has acquired right and title on the basis of registered gift deed vide Ex.D-6. If defendant No.1 has acquired title based on gift deed pertaining to item No.3, same cannot attain the character of joint family and therefore, plaintiff cannot assert and claim share in item No.3. Insofar as item No.4 is concerned, defendant No.1 has purchased the said property under registered sale deed dated 14.08.1991 vide Ex.D-4.

29. Item Nos.5, 6 and 8 are found to be standing in the name of defendant No.1. No title documents are produced. These are exclusively standing in the name of defendant No.1. If these properties are also ancestral properties, nothing prevented the plaintiff from producing prior revenue records indicating that these properties were standing in the name of ancestors.

30. Insofar as item Nos.10 and 11, defendant No.1's name is mutated to the revenue records only on a vardhi. No

title documents are produced. Even if title documents are not produced by defendant No.1, the initial burden was always on the plaintiff to prove that these items which are exclusively standing in the name of defendant No.1 were ancestral properties. Even in absence of title documents, plaintiff ought to have produced the earlier revenue records atleast to demonstrate that these properties were owned and were standing in the name of the ancestors of plaintiff and defendants. In absence of clinching evidence, the above said items cannot be held to be joint family ancestral properties. There is not even a slender evidence to indicate that these properties are also joint family ancestral properties.

31. If the above said significant details are taken into consideration, the next point that needs to be examined is whether the father can assert and claim share in the properties held by his son. This Court has to also look into as to whether the original plaintiff Muni Anjanappa has laid a foundation in the plaint and strong evidence is let in to

substantiate the said claim. Admittedly, item No.9 is a dry land measuring 4 acres 29 guntas. The original plaintiff has not pleaded as to what was the income generated from the said land. To render the property joint, the plaintiff must plead and prove that family possessed some property which generated surplus income. Therefore, the initial burden is always on the plaintiff to establish that family possessed some joint property which, from its nature and relative value formed a nucleus and the said land was generating surplus income. It is only then the burden shifts on the party alleging self acquisition to establish affirmative, that the suit schedule properties were acquired without the aid of the joint family. It is trite law that such a presumption would not arise, if the nucleus is such that with its help, the property claimed to be joint could have been acquired. This Court would also find that there is absolutely no material indicating that defendant No.1 was acting as a Kartha and therefore, had access to the income generated from the joint family property. In the

present case on hand, the original plaintiff has failed to discharge the burden of proving that apart from item No.9, all other properties standing in the name of defendant No.1 were acquired out of joint family funds.

32. Therefore, the findings of the Appellate Court in recording a finding that the above said items are also ancestral properties is perverse and in absence of clinching evidence. All these significant details are not examined by the Appellate Court. The Appellate Court erred in not taking note of the fact that plaintiff failed to discharge the initial burden. The findings of the Trial Court is based on rebuttal evidence. Therefore, the Appellate Court erred in reversing the judgment and decree of the Trial Court by placing reliance on Ex.P-20. The judgment and decree of the Appellate Court suffers from serious infirmities and also illegality. The finding of the Appellate Court that in terms of Ex.P-20, plaintiff is entitled to half share suffers from perversity and therefore, substantial question of law formulated by this Court is liable to be

answered in the affirmative. The Appellate Court erred in placing reliance on Ex.P-20 which does not carry any evidentiary value.

33. Hence, I pass the following:

ORDER

(i) The appeal is allowed;

(ii) The judgment and decree dated 15.10.2009 passed in R.A.No.70/2008 is set aside. Consequently, the judgment and decree dated 29.11.2007 passed in O.S.No.29/2006 stands restored.

Sd/-
JUDGE

CA