HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO. 1292 OF 2016 (DEC/INJ)
C/W
REGULAR FIRST APPEAL NO. 1291 OF 2016 (DEC/INJ)

IN RFA NO.1292/2016

BETWEEN:

M/S. LUVAC ENGINEERING CORPORATION,
KNOWN AS METAL CLOSURES PVT. LTD.,
A PRIVATE LIMITED COMPANY,
INCORPORATED UNDER THE COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT
NO.39/4B, 12 K.M. KANAKAPURA ROAD,
DODAKALLASANDRA VILLAGE,
BANGALORE SOUTH TALUK–560062,
REPRESENTED BY ITS MANAGING DIRECTOR
MR. B.PRASHANTH HEGDE,
SON OF V. RATHANAKAR HEGDE,
AGED ABOUT 70 YEARS.

...APPELLANT
(BY SRI P. S. RAJAGOPAL, SENIOR ADVOCATE, A/W.
SRI. AJITH ACHAPPA, ADVOCATE)

AND

1. SMT. MUNIYAMMA
WIFE OF ANJANAPPA (LATE),
AGED ABOUT 64 YEARS,

2. SMT. NAGAMMA

DAUGHTER OF ANJANAPPA (LATE),
AGED ABOUT 60 YEARS,

3. SMT. RATNAMMA
DAUGHTER OF ANJANNAPPA (LATE),
AGED ABOUT 56 YEARS,

4. SMT. SUSHEELAMMA
DAUGHTER OF ANJANNAPPA (LATE),
AGED ABOUT 53 YEARS,

5. SRI. SRINIVASA
SON OF ANJANAPPA (LATE),
AGED ABOUT 50 YEARS,

6. SRI. VENKATESHA
SON OF ANJANAPPA (LATE),
AGED ABOUT 48 YEARS,

7. SMT. LAKSHMI
DAUGHTER OF ANJANAPPA (LATE),
AGED ABOUT 45 YEARS,

8. SMT. NETHRAVATHI
DAUGHTER OF ANJANAPPA (LATE),
AGED ABOUT 35 YEARS,

RESPONDENTS 1 TO 8 ARE RESIDING
AT DODDAKALASANDRA VILLAGE,
BANGALORE SOUTH TALUK-560062.

9. SRI D.M.ANJANAPPA
S/O CHIKKAMUNISWAMAPPA,
AGED ABOUT 59 YEARS,
MUNIREDDY COLONY,
BINNIGANAHALLI,
OLD MADRAS RAOD,
BANGALORE–560 091.

10. SRI M. SRINIVASA
S/O. CHIKKAMUNISWAMAPPA,
AGED ABOUT 57 YEARS,
6-A/7, HEGGANAHALLI CROSS,
LAKSHMANAGAR, PEENYA 2ND STAGE,
BANGALORE-560091.

SINCE DEAD, REPRESENT BY HIS LR'S

10 (a) SMT. VIJAYAMMA,
W/O. SRINIVAS M,
AGED ABOUT 53 YEARS,

10 (b) MOHAN KUMAR.S,
S/O. SRINIVAS M. (LATE),
AGED ABOUT 43 YEARS,

10 (c) MURALI KUMAR.S,
S/O SRINIVAS M. (LATE),
AGED ABOUT 35 YEARS,

10 (d) SANJAY UMAS S
S/O SRINIVAS M. (LATE),
AGED ABOUT 33 YEARS,

ALL ARE RESIDING AT NO. E-22,
5TH CROSS, 1ST MAIN,
OPPOSITE MOHAN TALKIES,
HEGGANA HALLI CROSS,
LAKSHMANA NAGARA,
BENGALURU NORTH,
BENGALURU–560091.

11. SRI M. RAMACHANDRA
S/O CHIKKASWAMAPPA,
AGED ABOUT 56 YEARS,
NO.123, BASAVESHWARANAGAR,
BANGALORE–560086.

12. SRI M. LAKSHMAN
S/O CHIKKAMUNISWAMAPPA

AGED ABOUT 54 YEARS,
NO.330, KAVIRAJ INDUSTRIES,
PEENYA INDUSTRIAL ESTATE,
1ST STAGE, BANGALORE–560058.

13. SRI M. GANESH
S/O CHIKKAMUNISWAMAPPA,
AGED ABOUT 43 YEARS,
NO.12, 1ST MAIN, MANI VILA GARDEN,
KAMALANAGAR, BANGALORE-560079.

14. SMT. KAMAKSHAMMA
W/O. SHIVALINGAMURTHY,
MAJOR, BEHIND WOODLANDS HOTEL,
TUMKUR–572101.

15. SMT. PARVATHI
W/O SHANTHA KUMAR,
MUNIKRISHNAPPA COMPOUND,
KAMAGUNDANAHALLY
JALAHALLI WEST,
BANGALORE–560015.

16. SMT. LAKSHMIDEVI
C/O. D. M. RAJAPPA ,
MUNIRAMAREDDY COMPOUND
BENNAGANAHALLY
OLD MADRAS ROAD,
BANGALORE–560091.

17. SRI SURYANARAYANA
FATHERS NAME NOT KNOWN
MAJOR, NO.1076, NGO'S COLONY,
KAMALANAGAR, BANGALORE-560079.

18. SRI C. R. SANTHOSH KUMAR,
S/O. C. RAMASWAMY
AGED ABOUT 40 YEARS,
NO.93, NANDI ROAD,
BASAVANAGUDI

BANGALORE–560004.

19. TRASPOSED AS PLAINTIFF NO.1,
M/S. LAVAC ENGG/METAL CLOSURES,

SRI. NAGARAJA SHETTY
SINCE DEAD BY LRS

20. SMT. SHAKUNTALAMMA
W/O. NAGARAJA SHETTY (LATE),
AGED ABOUT MAJOR,
NO.95, 5TH CROSS,
SURVEYOR STREET,
BASAVANAGUDI,
BANGALORE–560004.

21. SRI PARTHASWARTHY
S/O. NAGARAJA SHEETY (LATE),
AGED ABOUT MAJOR,
NO.95, 5TH CROSS,
SURVEYOR STREET,
BASAVANAGUDI
BANGALORE–560004.

22. SRI PADMAPRAKASH
S/O. LAKSHMI NARASIMHA MURTHY,
AGED ABOUT 55 YEARS,
NO.572, 10TH CROSS, 7TH BLOCK,
JAYANAGAR, BANGALORE-560041.

23. M/S. TRIDENT AUTOMOBILES PVT. LTD,
PRIVATE LIMITED COMPANY INCORPORATED
UNDER THE COMPANEIS ACT,
HAVING OFFICE NO.1,
LOWER PLACE ORCHARD,
SANKEY ROAD,
BANGALORE–560003,
REPRESENTED BY ITS
AUTHORIZED SECRETARY
SRI M. BALACHANDRAN.

24. SMT. C. P. BHARATHI
S/O. C.R. PRABHAKAR (LATE),
AGED ABOUT MAJOR,
NO. 20, 1ST FLOOR, SANNIDI ROAD,
BASAVANAGUDI, BANGALORE-560004.

25. SRI C. P. GAURAV,
S/O. C. R. PRABHAKAR (LATE),
AGED ABOUT MAJOR,
NO.20, 1ST FLOOR, SANNIDI ROAD,
BASAVANAGUDI, BANGALORE–560004.

26. SRI C. R. SATHYANARAYANA,
S/O. RAMASWAMY SHETTY,
AGED ABOUT MAJOR,
NO.20, 1ST FLOOR, SANNIDI RAOD,
BASAVANGUDI, BANGALORE–560004.

... RESPONDENTS

(BY SRI S. M. CHANDRASHEKAR, SENIOR ADVOCATE A/W.
SRI N. S. VISWANATHA, ADVOCATE FOR R1 TO R8;
SRI SHASHI KIRAN SHETTY, SENIOR ADVOCATE A/W.
SRI PRAKASH S. SURYAVANSHI, ADVOCATE FOR R10 (A) TO (D) & R17;
V/O. DATED 24.03.2022 NOTICE TO R9 AND R18 TO R22 ARE HELD SUFFICIENT;
V/O. DATED 05.10.2023, R10 STANDS DISMISSED AS ABATED;
SRI ADHITHYA SONDHI, SENIOR ADVOCATE A/W.
SMT. IRFANA NAZEER, ADVOCATE FOR R23)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE, PRAYING TO CALL FOR THE RECORDS IN O.S.NO.8973/2006 AND SET ASIDE THE JUDGMENT AND DECREE DATED 30.06.2016 PASSED BY THE

COURT OF THE I ADDITIONAL CITY CIVIL SESSIONS JUDGE AT: BANGALORE AND ALL THIS APPEAL, IN THE INTEREST OF JUSTICE AND JUSTICE.

IN RFA NO.1291/2016

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AGED ABOUT 70 YEARS.

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SRI SHASHI KIRAN SHETTY, SENIOR ADVOCATE A/W.
SRI CHANDRASHEKARAN, ADVOCATE FOR R10 TO R13 & R17;
NOTICE TO R14, R16, R24 AND R25 ARE SERVED;
SRI ANANTH MANDAGI, SENIOR ADVOCATE, A/W.
SRI AMITH A. MANDAGI, ADVOCATE FOR R26;
V/O. DATED 09.02.2022 NOTICE TO R9, R15 AND R18 TO R22 ARE HELD SUFFICIENT;
SRI ADHITHYA SONDHI A/W. SMT. IRFANA NAZEER, ADVOCATE FOR 23)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE, PRAYING TO CALL FOR THE RECORDS IN O.S.NO.8973/2006 AND SET ASIDE THE JUDGMENT AND DECREE DATED 30.06.2016 PASSED BY THE COURT OF THE I ADDITIONAL CITY CIVIL SESSIONS JUDGE AT: BANGALORE AND ALL THIS APPEAL, IN THE INTEREST OF JUSTICE AND JUSTICE.

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

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

CAV JUDGMENT

RFA No.1291/2016 is filed by plaintiff No.1 in O.S.No.8973/2006 challenging the judgment and decree dated 30.06.2016 passed in O.S.No.8973/2006 (common judgment delivered along with O.S.No.6873/2009) on the file of I Additional City Civil and Sessions Judge, Bengaluru City (CCH-2)[1], thereby, the suit filed by the plaintiffs was dismissed.

2. RFA No.1292/2016 is filed by plaintiff No.1 in O.S.No.6873/2009 challenging the judgment and decree dated 30.06.2016 passed in O.S.No.6873/2009 (common judgment delivered along with O.S.No.8973/2006) on the file of I Additional City Civil and Sessions Judge, Bengaluru City (CCH-2), thereby, the suit filed by the plaintiffs was dismissed.

[1] hereinafter referred to as 'the Trial Court' for short

3. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

BRIEF FACTS IN BOTH O.S.NO.8973/2006 AND O.S.NO.6973/2009 (RFA NOS.1291 AND 1292/2016)

4. It is pleaded that plaintiff Nos.2 and 3 are the legal heirs of late C.R. Prabhakar; plaintiff No.3 was the co-owner and partner of the property owned by C.S.R.Estate. Defendant Nos.1 to 8 are the legal heirs of late Anjanappa, (who was the original plaintiffs in O.S.No.1318/1980-partition suit-Ex.P-26) on the file of III Additional City Civil Judge, Bengaluru, and was the appellant in RFA No.606/1989 (Ex.P-29) before this Court. Defendant Nos.9 to 17 are the legal heirs of Buddamma. Defendant Nos.18 to 21 are the purchasers/co-owners of the suit schedule property.

4.1 The plaintiffs have pleaded that plaintiff No.3 along with defendant No.18 and others formed a partnership firm as per the partnership deed dated

26.04.1970 (Ex.P-18) in the name and style of M/s. Master Products. The said partnership firm purchased the agricultural land measuring 1 acre 20 guntas in Sy.No.39/4 of Doddakallasandra Village, Uttarahalli Hobli, Bengaluru South Taluk, through a registered sale deed dated 18.05.1970 (Ex.P-24) executed by Buddamma D/o. Sri. Papanna. Subsequently, the said partnership firm was reconstituted and finally there were only four partners namely, the 3rd plaintiff, 18th defendant, Roopa Surendranath and C.R. Ashwathanarayana. Due to internal disputes and difference of opinion, the partnership firm was dissolved as per the deed of dissolution dated 01.04.1987 (Ex.P-31). The immovable property above stated, which was purchased in the name of partnership firm was transferred to all the partners in equal proportion.

4.2 One among the partners, Roopa Surendranath transferred her right, title and interest in respect of immovable property by executing a registered transfer

deed dated 04.12.1991 (Ex.P-34) in favour of Sri. C.R. Prabhakar, who is none other than husband of 1st plaintiff and the father of 2nd plaintiff for valuable consideration; accordingly, C.R. Prabhakar became co-owner of the said suit schedule property. All the co-owners of above said property entered into an agreement dated 29.01.1992 and named the property as C.S.R.Estate and also defined the rights of all the co-owners. Sri. C.R. Prabhakar expired on 17.07.1995. After his death, plaintiff Nos.2 and 3, being the legal heirs, inherited the suit schedule property and plaintiff Nos.2 and 3 become the co-owners of the suit schedule property.

4.3 The co-owners of C.S.R. Estate themselves divided the above said property by metes and bounds as per the memorandum of agreement dated 25.01.1996 and divided the entire joint family property into four parts, such as suit schedule 'A', 'B', 'C' and 'D' for identification purpose. The suit schedule 'B' property was allotted to the joint share of plaintiff Nos.1 and 2 and the suit schedule

'C' property was allotted to plaintiff No.3. The suit schedule 'A' property was allotted to defendant No.18. On the basis of Partition Agreement dated 25.01.1996, the above said immovable property was separated among the plaintiffs, 18th defendant and Sri. C.R. Ashwathanarayan. Thereafter, the suit schedule 'D' property was sold to M/s. Metal Closures Pvt. Ltd., by executing a registered sale deed dated 18.01.2001 (Ex.P-39) and the purchaser/company put up construction over the said property and started industrial activities.

4.4 The suit schedule property allotted to the plaintiffs and they are in possession and enjoyment of the same. The revenue records standing in the name of the plaintiffs and the property allotted to them is referred as the suit schedule property. When this being the fact, in the month of August 2005, plaintiff No.2 noticed that defendant Nos.6 and No.18 on the suit schedule property and observed that they were trying to measure the property. The plaintiffs are not in good terms with

defendant No.18 and later, they came to know that the entire suit schedule property is under litigation and there is partition suit and also a decree in favour of defendant Nos.1 to 17. The plaintiffs also came to know that the suit schedule property belonging to the plaintiffs was allotted to the share of Sri. Anjanappa, who is predecessor of defendant Nos.1 to 17. Then the plaintiffs arranged to obtain the details of the litigation and partition suit and came to know that as per the judgment and decree for partition in RFA No.606/1989 (Ex.P-29) dated 24.11.1999, the property above named is ordered to be partitioned and final decree proceedings for division of the suit schedule properties is also filed.

4.5 The said judgment and decree dated 24.11.1999 was modified as per the order dated 18.04.2001 passed in C.P.No.822/2001 (Ex.D-27) in RP No.46/2000. The plaintiffs came to know that though they are necessary parties and owners of certain portions of the land involved in the partition suit, they were not made as

parties either to the suit or to the Regular First Appeal or in the Final Decree Proceedings, but the suit was decreed granting partition. Further, it is pleaded that plaintiff No.1 has purchased the land to the extent of 15 guntas of land in Sy.No.39/4 from C.R. Ashwathanarayana Setty by way of a registered sale deed dated 18.01.2001 and the plaintiffs are in possession over the said suit schedule property. Defendant Nos.1 to 8 have filed an execution petition in E.P.No.2253/2006 (Ex.P-128) and were interfering with the possession and enjoyment of the property of plaintiff No.1. Therefore, plaintiff No.1 has filed the suit in O.S.No.6873/2009 and obtained an interim order of temporary injunction.

4.6 Against the said order, defendant Nos.1 to 8 have preferred MFA No.8591/2009 before this Court and it was dismissed. Against which, defendant Nos.1 to 8 have preferred Special Leave Petition before the Hon'ble Supreme Court, which was also dismissed.

4.7 Further submitted that during the pendency of the above suit in O.S.No.6873/2009, plaintiff No.1 has purchased the suit schedule property from plaintiff Nos.2 to 4 through two registered sale deeds dated 21.07.2010 and 04.10.2010. At the time of registration of the above said two sale deeds, defendant Nos.1 to 8 filed objection to the Sub-Registrar, J.P. Nagar, Bengaluru, and the Sub-Registrar refused to register and release the sale deeds and impounded them making a reference to the District Registrar, who in turn directed the Sub-Registrar not to register the same.

4.8 Being aggrieved by this, plaintiff No.1 has preferred Writ Petition in W.P.Nos.24487 and 25267/2010 before this Court and this Court issuing writ of mandamus on 21.07.2010 issued directions to the District Registrar and Sub-Registrar to register and release the two sale deeds. Thus, in this way, plaintiff No.1 has become owner of the suit schedule property.

4.9 Defendant No.18 though he is a co-owner along with the plaintiffs has joined hands with the other defendants, who have filed partition suit in O.S.No.1318/1980. The total suit property is measuring 4 acre 14 guntas, which includes the property belonging to the plaintiffs. It is pleaded that to overcome from the legal juggle and the consequences of partition decree dated 24.11.1999 passed in RFA No.606/1989, the plaintiffs preferred RP No.645/2005 before this Court, seeking to review the order dated 24.11.1999 and to give an opportunity to the plaintiffs to defend their case. This Court dismissed the Review Petition in RP No.645/2005 on 12.07.2007 with a direction to approach the Civil Court to work out their remedies by filing a suit or any other proceedings.

4.10 It is submitted due to the judgment and decree passed for partition in O.S.No.1318/1980 and in RFA No.606/1989, the rights of the plaintiffs are affected. Though, defendant No.18 is made a party to the suit and

in the RFA, he has represented on his individual and personal capacity, but not on behalf of the partnership firm. It is further pleaded that the original property belonged to one Avalahalli Hanumanthappa, who sold the same to Yediyoor Hanumanthappa under a registered sale deed dated 12.06.1949. The said Yediyoor Hanumanthappa and his son Chikka Muniyappa, through a registered sale deed dated 05.10.1950 and on the very same day, the purchasers once again sold the property in favour of Muniyappa Reddy through a registered sale deed. The said Avalahalli Hanumanthappa had executed the settlement deed dated 22.12.1949, wherein, the half share in the said property is allotted to defendant Nos.1 to 8. Before the said settlement deed, the executor had sold the suit schedule property under a registered sale deed and was not owner; therefore, the said settlement deed could not have been executed by a person who does not have any title over the suit schedule property.

4.11 Initially, the City Civil Court has dismissed the suit in O.S.No.1318/1980. Against which, RFA No.606/1989 was filed before this Court and this Court allowed the said RFA No.606/1989 reversing the judgment and decree passed in O.S.No.1318/1980 and granted decree for partition. Hence, the judgment and decree passed in RFA amounts to continuation of the decree of City Civil Court. Therefore, the plaintiffs filed the suit for declaration to declare that the judgment and decree dated 24.11.1999 passed by this Court in RFA No.606/1989 reversing the judgment and decree dated 04.07.1989 passed in O.S.No.1318/1980 granting as it is, is not binding insofar as the plaintiffs are concerned and other consequential reliefs.

WRITTEN STATEMENT OF DEFENDANT NOS.1 AND 6:

5. Defendant Nos.1 to 6 have filed the written statement contending that they do not have knowledge regarding internal affairs of the plaintiffs. It is stated that defendant No.18 was indicating himself as the Managing

Partner of the firm namely Master Products had purchased 1 acre 20 guntas of land in Sy.39/4 through a registered sale deed dated 18.05.1970. It is the contention that immovable property was transferred to all the partners in equal shares is untenable as it is only during pendency of the suit in which defendant No.18 was contesting the suit proceedings. It is submitted that whatever transactions during the pendency of the suit are hit by principle of *lis-pendens* and therefore such transactions do not in any way confer any right, title or interest in respect of the suit schedule property.

5.1 The contents of the co-owners of the CSR Estate that they have visited the properties by metes and bounds on 25.01.1996, are all absolutely false and baseless and at any rate do not create any independent right, inasmuch as, the said transactions are also during the pendency of the suit. The claim of the property allotted to plaintiffs is kept intact are all absolutely false and baseless as it has fallen to the share of the defendants

in RFA No.606/1989 and subsequently, confirmed in RFA Nos.502 and 692/2003, which were filed against the final decree proceedings to which defendant No.18 was also one of the party.

5.2 The contention of the plaintiffs that in the month of August, 2005, plaintiff No.2 had seen the defendant No.6 talking with defendant No.18 and that they were trying to take measurement of the property is absolutely false. Further contention of the plaintiffs that they are not in good terms with defendant No.18 and that they had somehow came to know that the property is under litigation is absolutely false and baseless. The claim of the plaintiffs that the property belonging to them were allotted to the share of Anjanappa is false. Anjanappa is not the predecessor of defendant Nos.1 to 17, but he certainly predeceased defendant Nos.1 to 8. The judgment and decree dated 24.11.1989 was challenged in CP No.822/2001 and RP No.40/2001, but the same had not been modified as contended. The claim of the plaintiffs

that their share was involved in the litigation is also false and baseless that the property never belongs to the plaintiffs.

5.3 The contention of the plaintiffs that they had made efforts to safeguard the suit schedule property from defendant Nos.1 to 18 is vague as it lacks details as to what efforts were made to suffice to state that the plaintiffs have no right over the suit schedule property. The claim that defendant No.18 is joining hands with the other defendants is absolutely false as it is clear from the very proceedings in O.S.No.1318/1980, which culminated into final decree and confirmed by the High Court. It is stated that the plaintiffs have no right over any portion of the suit schedule property to the extent of 04 acres 14 guntas and reserving liberty by this Court will not create any new right, which is not otherwise vested in the party and therefore, claiming that the suit is filed perhaps, it is liable to be dismissed.

5.4 It is contended that all the necessary parties have been arrayed and the decree has been obtained. Defendant No.18 has contested the suit for the entire suit property to the extent of 1 acre 20 guntas throughout including in the final decree proceedings upon which he had filed an appeal for the entire extent of 1 acre 20 guntas in RFA No.692/2003. Therefore, the contention that defendant No.18 has not represented the plaintiffs is absolutely false and baseless.

5.5 It is further contended that the defendants have filed the suit and the property originally belonged to Avalahalli Hanumanthappa and subsequent transactions referred to were all subject matter of the earlier proceedings in RFA No.606/1989. It is pleaded that there is no cause of action to file the suit and cause of action stated is illusory. The Court fee paid on the relevant claims in the suits is not on the proper.

5.6 In the appeal also, defendant No.18 had safeguarded the interest of entire land to the extent of 1 acre 20 guntas in securing an observation that in the final decree proceedings the said 1 acre 20 guntas is not disturbed. The review petition filed in R.P.No.461/2002 and CP No.994/2001 are dismissed. Defendant No.18 has contested the final decree proceedings in view of certain observations made in RFA No.606/1989 and subsequent orders there is no right recognized as per the sale deed under which defendant No.18 had contested the suit. Defendant No.18 diligently prosecuted the suit to its logical conclusion. When defendant No.18 has prosecuted the suit, all the partners in the partnership firm are deemed to have knowledge regarding the proceedings. Anything done are purported to have been done by any partners in the partnership firm on behalf of the firm, it is amounting to suit being contested and prosecuted by the firm and its partners also. Therefore, the plaintiffs were fully aware of the suit and the appeal proceedings and as

such they are estopped from taking contention that they do not know the suit proceedings.

5.7 It is contended that the suit filed by the plaintiffs is barred by limitation. Filing of review petition will not come in the way of computation of the limitation. Also, the review petition is barred by limitation.

5.8 It is contended that in 30 guntas of land huge construction is put up by defendant No.19 during the pendency of the appeals in RFA Nos.502 and 692/2003 despite there being interim orders of status quo. The plaintiffs have not filed the suit with clean hands and have deliberately suppressed the material facts. Defendant No.19 has constructed the buildings and installed the turbines. It is contended that the whole exercise of the plaintiffs is to thwart the right vested with defendant No.19. The plaintiffs now cannot contend contrary to the result in RFA No.692/2003. Hence, prays to dismiss the suit.

WRITTEN STATEMENT OF DEFENDANT NOS.2, 3, 4, 7 AND 8:

6. Defendant Nos.2, 3, 4, 7 and 8 have filed the written statement contending that the suit filed is not maintainable and the reliefs claimed by the plaintiffs are barred by limitation by virtue of decree passed in R.F.A.No.606/1989 in which, the plaintiffs made an application by way of a review petition in RP No.645/2005 dated 12.07.2006. Hence, the review petition is barred by limitation.

6.1 It is further contended that in the suit in O.S. No.1318/1980, C.R. Santhosh Kumar, was a party in the proceedings in the original suit. C.R. Santhosh Kumar is the son of Ramaswamy Setty, thereby, the plaintiffs were aware of the material fact of the family members contending the proceedings. Also, he was partner as the 5th defendant in O.S. No.1318/1980 and he has contested the said suit and also filed appeals in R.F.A. No.606/1989 and R.F.A. No.692/2003 against the order passed in the

final decree proceedings representing not only himself, but also M/s. Master Products. Therefore, he was party in the suit as one of the partners and not only he himself representing on personal capacity and also being partners in the partnership firm has participated in the suit proceedings in the appeals and in the review petitions. Hence, the decree in the suit is binding on the 5th defendant as well as on the all the partners in the partnership firm.

6.2 The plaintiff's husband though he is claiming having certain rights over the suit schedule property, but the suit schedule property was purchased by M/s. Master Products during the pendency of the appeal in RFA No.606/1989 and therefore, the present suit becomes barred by limitation. Further contended that the suit is barred by principles of res-judicata. The plaintiffs do not get any right in view of the decisions in the application filed under XXI Rule 97 of CPC in Execution No.2253/2006 dated 03.04.2008 and the same was dismissed. Also, RFA

No.485/2008 was dismissed on 28.01.2009. Later, it was confirmed by the Hon'ble Supreme Court and also the appeals in RFA Nos.692 and 502/2003 were dismissed. Hence, the suit is barred by principles of res-judicata.

6.3 Also, contended that the suit is barred under Order II Rule 2 of CPC. The plaintiffs were co-owners and partners owned by C.S.R. Estate. Defendant Nos.1 to 8 are LRs of late Anjanappa, were the original plaintiffs in partition suit in O.S. No.1318/1980 and are the appellants in RFA No.606/1989; hence, the suit has been dismissed. Further, plaintiff No.3 and defendant No.18 formed partnership firm namely Master Products on 26.04.1970, but the partnership firm is debarred to purchase the agricultural land under Sections 79A and 79B of the Karnataka Land Reforms Act, 1961[2], disentitle to purchase the agricultural land. The plaintiffs cannot have independent right whether there is finality or decisions in the suit as well as in the appeals.

[2] for short 'the KLR Act, 1961'

6.4 It is further pleaded that the co-owners of the CSR Estate divided the properties by metes and bounds and the allotment made in respect of the property on the basis of partition and thereafter, owner of portion of the property, Sri. Aswathnarayana, sold his portion to Metal Closures Pvt. Ltd., through sale deed dated 18.01.2001 and put up construction and started industrial activities is an act pursuant to the decree and before the finality of the final decree proceedings, thereby, the alienations made are hit by *lis pendence*. The *lis pendence* purchaser purchasing a disputed property cannot improve upon his rights on the basis of documents prepared subsequent to the decree. Therefore, the documents that are adverted to, are improvement of the original decree suffered by the firm of Master Products and representing in the interest of plaintiffs, C.R.Santosh Kumar, who represented all the members and partners in the suit in O.S.No.1316/1980 and in RFA No.606/1989, has filed the written statement and adduced evidence is accepted; therefore, he is being

the authorized to represent not only the plaintiffs, but also all persons in relation to Master Products.

6.5 It is pleaded that the plaintiffs in the month of August, 2005, plaintiff No.2 had seen defendant No.6 talking with defendant No.18 in the schedule property and were talking to each other and were taking measurement of the property are all false. The plaintiffs are not in good terms with defendant No.18 and somehow came to know that the property is under litigation and there is a partition suit and decree in favour of defendant Nos.1 to 17 are all false and it is illusory one just to raise a false cause of action. It is pleaded that the plaintiffs came to know that the property belonging to the plaintiffs, was allotted to the share of Anjanappa.

6.6 It is pleaded that the plaintiffs came to know this fact as on the date of filing of the written statement in O.S.No.1380/1980 filed by C.R.Santosh Kumar, representing Master Products. The knowledge of judgment and decree is correct and the plaintiffs are contesting the

proceedings at the instructions of C.R.Santosh Kumar. The pendency of proceedings adverting to the proceedings are correct and it imputes knowledge in favour of C.R.Santosh Kumar and family members represented and contending the family members.

6.7 It is pleaded that if any portion is given to C.R. Santosh Kumar that property would be the property of M/s. Master Products. The final decree proceedings taking into consideration this adjudication has come to a definite conclusion that no property is allowed to be allotted in favour of C.R.Santosh Kumar, representing Master Products and no property is available for allotment and the impleading application has been rejected by this Court and it has attained finality.

6.8 It is pleaded that Buddamma and others suffered a decree. During pendency of the proceedings, all transactions are hit by *lis pendence* and all are bound by the decree passed by this Court. Buddamma had sold the property over and above her share. The plaintiffs cannot

claim the property from the share of Anjanappa and it is kept intact.

6.9 Further, it is pleaded that C.R. Santosh Kumar has suffered decree with Master Products, which he was representing. The lis pendence purchasers have no title over the property, since all the transactions took place during pendency of the litigation hit by *lis pendence*. No rights can be conferred in favour of the plaintiffs by this Court either by way of declaration or any relief. Therefore, in view of the share allotted and demarcated in the final decree proceedings in favour of Anjanappa, the same was confirmed by the Hon'ble Supreme Court as against Buddamma and others; the property purchased from Buddamma over and above her share cannot assert the right with the extent, share and right of Anjanappa.

6.10 Further, it is pleaded that the present suit has been filed speculatively when the rights had been decided in RFA Nos.692 and 582/2003. The present suit has been filed on the same day when the judgment was pronounced

by this Court. The suit has been filed immediately after the pronouncement of the judgment, which is evidently clear from the order sheet maintained by this Court in the present suit, which shows the time and date of filing of the present suit. Therefore, pray to dismiss the suit.

WRITTEN STATEMENT OF DEFENDANT NO.9:

7. Defendant No.9 has filed written statement stating it is true that the legal representatives of Anjanappa filed the suit in O.S.No.1318/1980 on the file of City Civil Judge, Bengaluru, and thereafter they filed RFA No.606/1989. This defendant stated that it is not within his knowledge that plaintiff No.3 along with others formed partnership firm in the name and style of Master Products and purchased agricultural property measuring 01 acre 20 guntas in Sy.No.39/4 situated in Doddakallasandra, Uttarhalli Hobli, Bengaluru North Taluk, Bengaluru, on 18.05.1970.

7.1 Further, it is pleaded that it is not within the knowledge of the defendants about execution of registered transfer deed and division of property by entering into memorandum of understanding. It is further pleaded that defendant No.9 denied the fact that in the month of August, 2005, plaintiff No.2 saw defendant No.6 in the schedule property and his knowledge about litigation in respect of schedule property. It is further pleaded that originally the property belonged to Hanumanthappa, and thereafter two children, namely, Chikka Munishamappa and Anjanappa succeeded to the estate left behind the said Hanumanthappa. Defendant Nos.9 to 17 are the children of late Chikka Munishamappa. After his death, some sale deeds were executed by using fraud on Buddamma without their being any family necessities to dispose of the property. Buddamma had no right and interest whatsoever to alienate the property inherited by her husband. Without being any family and legal necessities, the transactions are not binding on these

defendants. The transactions, if any, made by Buddamma do not affect the right, title and interest of these defendants. Further, the cause of action pleaded is an imaginary one.

WRITTEN STATEMENT OF DEFENDANT NO.18:

8. Defendant No.18 has filed a written statement contending that the factual matrix pleaded by the plaintiffs is a matter of record to be proved by the plaintiffs. The specific averments made in the plaint by the plaintiffs are denied. It is further stated that the relationship between the plaintiffs and defendant No.18 has been strained and they are not in talking terms and defendant No.18 has totally denied the case of the plaintiffs.

WRITTEN STATEMENT OF DEFENDANT NO.19:

9. Defendant No.19 has filed a written statement contending that he has not disputed the averments made in the plaint at Paragraph Nos.4 and 5. The property in Sy.No.39/4 measuring 01 acre 30 guntas was purchased by the partnership firm Master Products and held by the

partnership firm until the dissolution of the partnership firm in the year 1987. Upon dissolution of the partnership firm, the partners jointly held the said property and in the meanwhile one of the partners in the partnership firm, namely, Roopa Surendranath transferred her right, title and interest in favour of C.R.Prabhakar under a registered transfer deed. Thereafter, the said C.R. Prabhakar died in the year 1995 and plaintiff Nos.2 and 3 succeeded to his estate.

9.1 Further contended that the averments made in the Paragraph Nos.6, 7 and 8 are not disputed. The property was divided into four parts by metes and bounds and allotted to the four co-owners equally and the said properties were marked as schedule 'A', 'B', 'C' and 'D' properties for the purpose of identification. Defendant No.19 had purchased the portion 'D' property from its owner C.R.Ashwatha Narayana under a registered sale deed dated 18.01.2001 and after purchasing the said

property defendant No.19 has put up an industrial shed and running a business.

9.2 Further it is contended by defendant No.19 that defendant Nos.1 to 18 have not made all the partners as partners in the suit or in the appeals, but the only one partner is made as party in the suit and also the partnership firm is not made as party. It is prayer made by defendant No.19 that the suit be allowed and decreed in favour of the plaintiffs and defendant No.19 does not have any objection to pass decree in favour of the plaintiffs.

WRITTEN STATEMENT OF DEFENDANT NO.21:

10. Defendant No.21 has filed a written statement in the line of defendant Nos.1 to 18 and prays for dismissal of the suit. Defendant No.19 has totally denied the case made out by the plaintiffs. Hence, prays to dismiss the suit.

WRITTEN STATEMENT OF DEFENDANT NO.22:

11. Defendant No.22 has filed a written statement in consonance with and in line with the written statement

filed by defendant Nos.1 to 18. Defendant No.22 contended that the plaintiffs alleged that matters of record are liable to be proved in the suit in the trial, but denied the pleadings in the plaint made by the plaintiffs.

11.1 Defendant No.22 has made pleadings in his written statement on the facts stating that the property bearing Survey No.39/4, to an extent of 4 Acres 14 Guntas originally belongs to Avalahalli Hanumanthappa, son of Eerappa, having purchased the same from Mastry Huchappa, vide sale deed dated 04.06.1928, and settled the said property in favour of his sons Chikka Muniswamappa and Anjanappa, allotting 2 acres 7 guntas to each of them and putting in possession of the same, and after four years of the said settlement, a settlement deed was drawn on 22.12.1949, and in the meantime he executed a conditional sale deed dated 13.06.1949, in favour of Hanumanthappa, son of Obalappa, and Hanumanthappa son of Obalappa, in turn executed a document in favour of Avalahalli Hanumanthappa, son of

Eerappa, vide sale deed dated 05.10.1950, and the sale deed was drawn in the name of Avalahalli Hanumanthappa, son of Eerappa and his son Chikka Muniswamappa, and after settling the said property in favour of Anjanappa by his father Avalahalli Hanumanthappa, Anjanappa continued to be in possession and enjoument of his portion i.e., 02 acres 07 guntas of land and possession of the property continued to be with Anjanappa even after the execution of the sale deed dated 13.06.1949, and on 15.10.1950 a document was executed by Avalahalli Hanumanthappa, son of Eerappa and his son Chikka Muniswamappa, in favour of Muniyappa Reddy, and it is required to be noted that neither Avalahalli Hanumanthappa, son of Eerappa or his son Chikka Muniswamappa, had any right, title or interest to execute any document, much less the sale deed dated 05.10.1950, in favour of Muniyappa Reddy, as the possession and right, title and interest in respect of 02 acres 07 guntas of said land vested with Anjanappa, and

even after the existence of the said document dated 05.10.1950, possession of 02 acres 07 guntas of said land continues to be with Anjanappa, son of Avalahalli Hanumanthappa, and after the demise of Muniyappa Reddy, the said property had been restored and the sale deed was drawn in the name of Buddamma, wife of Late Chikka Muniswamappa, and Buddamma will confer her right only to an extent of 02 acres 07 guntas of said land and not more than that and any sale transactions held by Buddamma, wife of Late Chikka Muniswamappa, more than 02 acres 07 guntas, the purchasers will not derive any right, title and interest over the land settled in favour of Anjanappa. In this regard, it is required to note that in the said settlement deed dated 22.12.1949, Avalahalli Hanumanthappa has clearly admitted that the properties had been settled in favour of his sons Chikka Muniswamappa and Anjanappa four years back and they were put in possession of their respective shares and are continued to be in occupation and enjoyment of the same

and the settlement deed had been drawn in order to make the records straight, and he has recited in the said settlement deed that he has executed a sale deed in favour of Hanumanthappa vide sale deed dated 13.06.1949, with a condition to re-convey the same in his favor, by this it is crystal clear that 02 acres 07 guntas of said land had been settled in favour of Anjanappa and this defendant is claiming his right of 30 guntas of land through Anjanappa.

11.2 Further, defendant No.22 has made pleadings in his written statement that Anjanappa has filed a suit for partition and separate possession of his half share in the said Survey No.39/4, to an extent of 04 acres 14 guntas in O.S. No.332/1971, which was later numbered as O.S. No.1310/1990 (before the City Civil Court at Bangalore). A purchaser of the said land has filed a suit bearing O.S. No.177/1973, which was later numbered as O.S. No.473/1981 before the City Civil Court at Bangalore, for the reliefs of declaration and possession in respect of the

property mentioned in the suit. These suits were clubbed together and a common judgment was passed, and the suit bearing O.S. No.1318/1990 before the City Civil Court at Bangalore, filed by Anjanappa, came to be dismissed, against which the LRs of Anjanappa filed RFA No.606/1989, and O.S. No.473/1981 before the City Civil Court at Bangalore was decreed, against which the LRs of Anjanappa filed RFA No.324/1990. After contest, this Court was pleased to allow the said appeals filed by the LRs of Anjanappa by setting aside the judgment and decree passed in O.S. No.1318/1990 before the City Civil Court at Bangalore and O.S. No.473/1981 before the City Civil Court at Bangalore, and a preliminary decree was passed declaring that the LRs of Anjanappa are entitled to a half share in the said property.

11.3 Against the same, the LRs of Anjanappa filed FDP No.41/1999 on the file of the Addl. City Civil Judge at Bangalore. In the said FDP No.41/1999, M/s. Luvac Engineering Corporation by M/s. Metal Closures is the 2nd

respondent and Santhosh Kumar is the 5th respondent, and in the FDP proceedings it has been observed that Buddamma, wife of Chikka Miniswamappa (brother of Anjanappa), has sold 1 acre 20 guntas of the said land on 18.07.1966 in favour of respondent No.2, i.e., M/s. Luvac Engineering Corporation by M/s. Metal Closures (1st plaintiff in O.S. No.8973/2006 and plaintiff in O.S. No.6873/2009), and Buddamma has sold 8 guntas on 03.08.1969 in favour of Padmaprakash, and Buddamma has sold 01 acre of the said land on 26.03.1972 in favour of Padmaprakash, and in total Buddamma has sold 01 acre 08 guntas in favour of Padmaprakash, and Buddamma has sold 01 acre 20 guntas of the said land on 26.03.1972 in favour of Santhosh Kumar, and Buddamma has sold 15 guntas of the said land on 13.03.1972 in favour of Ravindranath. With regard to the apportionment of the said land, the aggrieved purchasers have filed several petitions before this Court at Bangalore, viz., (i) RFA No.606/1999, C.P. No.822/2001, R.P. No.46/2000, R.P.

No.461/2000, and C.P. No.994/2001, and after considering all the observations made therein, the Court was pleased to allow the said petitions.

11.4 Against the same, Santosh Kumar has preferred R.F.A.No.692/2003, and the 1st plaintiff in O.S.No.8973/2006 has preferred RFA No.502/2003, and this Court was pleased to dismiss the said R.F.A. No.692/2003, and the order passed by the Court below was modified to the extent indicated in that part of the judgment in R.F.A.No.502/2003, in pursuance of the memo filed, and as such the above suits are liable to be dismissed with exemplary costs.

11.5 Further, defendant No.22 has made pleadings in his written statement that the 18th defendant–Santosh Kumar had purchased the property as a partner of M/s. Master products. After filing of the suit, he had contested the suit throughout and intimated that the suit was at the first instance dismissed and subsequently, on an appeal

filed the 18th defendant had safeguarded the interest of entire 01 acre 20 guntas securing an observation that in the final decree proceedings, the said 01 acre 20 guntas of land should not be disturbed. In view of the subsequent changes through various review petitions filed, he had again filed R.P.No.461/02 and C.P.No.994/01. The said review petition was dismissed by an order dated 10.10.2001. The 18th defendant had contested the final decree proceedings and in view of certain observations made in R.F.A.No.606/1989 and subsequent orders no right was recognized as per the sale deed under which the 18th defendant had contested the proceedings. Under the circumstances, he had filed RFA No.692/2003 and secured an interim order in respect of the suit schedule property in the suit. Even during the course of arguments, the 18th defendant had made efforts to safeguard the entire 01 acre 20 guntas as consisting of his property or others property. He has diligently prosecuted the proceedings throughout. It is filed beyond a period of 3 years from

when the cause of action arose. Filing of RP will not come in the way of computation of the limitation as in the review petition also, a delay application was filed and without going into the question of limitation, the review petition was dismissed on the ground of maintainability. Therefore, the suit is hopelessly barred by limitation.

11.6 Further, defendant No.22 has made pleadings in his written statement that this Court has found that Santhosh Kumar representing M/s. master products, cannot be granted or allotted any land as the firm happens to be the title third purchaser and there was no land available in Buddamma's share even to accommodat0e the second purchaser to the extent he has purchased from Buddamma. Therefore, it is conclusively held that M/s. Master products cannot be allotted any land. The present plaintiff cannot stand taller than its predecessor. When its predecessor is not allotted any land, the plaintiffs cannot claim to have acquired any land. In other words, the alleged deed of dissolution of the partnership firm, its

partner, including the 21st defendant getting 15 guntas of land each towards their share in the alleged deed of dissolution, its subsequent affirmation by way of agreement dated 25.01.1996 and the subsequent sale of the suit schedule property allegedly by the 21st defendant in favour of the plaintiffs, pale into insignificance. The plaintiffs cannot try to claim title over the property in question on the basis of these documents.

11.7 Defendant No.22 has taken pleading in the written statement that the pleadings made by the plaintiffs that only Santosh Kumar was made as party, but the partnership firm namely, M/s. Master Products, was not made as party, does not have any merit and deserves to be rejected by stating pleadings as follows:

> *(i) Santosh Kumar was the partner of M/s. Master Products over which there was no dispute.*
>
> *(ii) Santosh Kumar filed his written statement in O.S.No.1318/1980 in which he has not claimed any individual right over the property in question. It is clearly stated that it is firm's property. Reliance was also place on the sale deed dated 18.05.1970*

under which M/s. Master Products allegedly purchased 1 acre 20 guntas from Buddamma.

(iii) *Santosh Kumar gave evidence in O.S.No.1318/1980 in which he has clearly stated that he is representing the firm of M/s. Master Products vis-a vis the property in question.*

(iv) *In FDP 41/99 the present plaintiff which was 2nd defendant filed an application to implead all the partners.*

(v) *The FDP court rejected the said application stating that Santosh Kumar is representing the firm and therefore there is no necessity for implelading the other partners.*

(vi) *The FDP court also stated that it is not the case of 2nd defendant in the said application that there is any conflict of interest between Santosh Kumar and the firm or Santosh Kumar is acting against the interest of the firm.*

(vii) *The order stated above has attained finality since the 2nd defendant did not challenge the same in higher court.*

(viii) *Santosh Kumar who filed RFA No.692/2003 pleaded that in view of the sale deed dated 18.05.1970 under which M/s. Master Products purchased certain extent of land from Buddamma, in equity on proportionate basis, some land needs to be allotted to the firm also which was not accepted by the Hon'ble High Court, and hence the contention of the plaintiff that the firm M/s. Master Products was not a party in any of the proceedings and therefore the orders passed in the proceedings do not bind the firm and hence the suit of the plaint deserves to be dismissed with exemplary costs. It has been conclusively held in all the*

> *proceedings that Santosh Kumar was representing that Santosh Kumar was representing M/s. Master Products only in all the proceedings and he did not set up any independent or individual right to the property in question.*

11.8 Defendant No.22 has contended that he is *bona fide* purchaser of 00.30 guntas of land out of 01 acre 36 guntas and got it converted from agricultural into non-agricultural purpose on 17.01.2009 and purchased it through registered sale deed dated 01.04.2010 from the LRs of Anjanappa and from the date of the sale, he is in continuous possession and enjoyment of the same, but M/s. Metal Closures Pvt. Ltd., and Prashanth Hegde tried to interfere with his possession. Therefore, defendant No.22 was constrained to file a suit in O.S.No.25973/2011 before the Additional City Civil Judge, Mayo Hall, Bengaluru, for permanent injunction and it is still under pending consideration and the possession of 01 acre 36 guntas of land belongs to LRs of Anjanappa i.e., Muniyamma and others has been confirmed by the order dated 21.08.2012 passed by the Hon'ble Apex Court in

Special Leave to Appeal (Civil) No.6079/2011 filed by Santosh Kumar against Muniyamma and others. Hence, the suit filed by the plaintiffs is liable to be dismissed. Thus, defendant No.22 prays to dismiss the suit.

AMENDED WRITTEN STATEMENT OF DEFENDANT NOS.1 TO 6 AND 8:

12. Defendant Nos.1 to 6 and 8 have further filed additional written statement under Order VIII Rule 1 of CPC and also on behalf of Power of Attorney holders, which are taken in the original written statement filed by them. Hence, they prayed to dismiss the suit.

REJOINDER OF THE PLAINTIFFS:

13. After filing the written statement by all the defendants, the plaintiffs have filed rejoinder under Order VIII Rule 9 of CPC to the common written statement filed by defendant No.22 in O.S.No.8973/2006 and defendant No.24 in O.S.No.6873/2009. The plaintiffs once again reiterated the contentions taken in the plaint and denied the averments of the written statement as false.

13.1 In the rejoinder, the plaintiffs have reiterated the pleadings made in the plaint and there is no need to repeat the same except the new pleadings stated in the rejoinder.

13.2 The plaintiffs have stated that Sections 79A, 79B and 79C of the KLR Act, 1961 were inserted with effect from 01.03.1974, but the sale deed had been taken place prior to the passing of the amendment to the Act i.e., 18.05.1970. Therefore, the provisions of the KLR Act, 1961, are not applicable in this case. The plaintiffs have admitted that the alleged partnership firm M/s. Master Products existed on 26.04.1970 was dissolved by dissolution deed dated 01.04.1987 with effect from 31.03.1987. Hence, the sale of the land, which is purchased by the plaintiffs, is valid and denied the pleadings made by the defendants. The plaintiffs admitted that Sri. Ashwathanarayana sold his portion to M/s. Meta Closures through a sale deed dated 18.01.2001 and

denied that Sri. Ashwathanarayana did not have right to alienate the alleged property.

13.3 Further, the plaintiffs have made averments in Paragraph No.5 that the property bearing Sy.No.39/4, to an extent of 04 acres 14 guntas, originally belonged to Sri. Avalahalli Hanumanthappa S/o Eerappa, having purchased the same from Maistry Huchchappa vide sale deed dated 04.06.1928 and he settled the said property in favour of his sons, namely Chikka Muniswamappa and Anjanappa by allotting 02 acres 07 guntas to each of them and each of them were in possession of the same and after four years the said settlement deed was drawn, are all denied as false.

13.4 Further, the plaintiffs have made averments that, in the meantime, he (not clear who) executed a conditional sale deed dated 13.06.1949 in favour of Hanumappa S/o Obalappa and the said Hanumappa S/o Obalappa, in turn, executed a document in favour of

Avalahalli Hanumanthappa S/o Eerappa, vide sale deed dated 05.10.1950, that the sale deed was drawn in favour of Avalahalli Hanumanthappa and his son Chikka Muniswamappa and after settling the said property in favour of Chikka Muniswamappa and Anjanappa, they continued to be in possession and enjoyment of their respective portions i.e., 02 acres 07 guntas and the possession of the property continued to be with Avalahalli Hanumanthappa even after execution of the sale deed dated 13.06.1949 and on 05.10.1950. A document was executed by Avalahalli Hanumanthappa S/o Eerappa and his son Chikka Muniswamappa in favour of Muniyappa Reddy and the possession, right, title and interest in respect of 02 acres 07 gunats of land vested with Anjanappa are all denied as totally false.

13.5 Further averment that, it is required to be noted here that neither Avalahalli Hanumanthappa S/o Ereppa nor his son Chikka Muniswamappa had any right, title and interest to execute any document, much less the

sale deed dated 05.10.1950 in favour of Muniyappa Reddy as the possession, right, title and interest in respect of 02 acres 07 guntas of the said land vested with Anjanappa and even after the execution of the document, possession of 02 acres 07 guntas of the said land continued to be with Anjanappa S/o Ereppa and after the demise of Muniyappa Reddy, the said property was restored and a sale deed was drawn in the name of Buddamma W/o. Chikka Muniswamappa and Buddamma was conferred with the right only to an extent of 02 acres 07 guntas of land and not more than that and any sale transaction held by Buddamma W/o. late Chikka Muniswamappa exceeding 02 acres 07 guntas, the purchaser will not derive any right, title and interest over the land settled in favour of Anjanappa, are all denied as false and baseless.

13.6 Firstly, defendant Nos.22 and 24 in respective suits may be called upon to produce the conditional sale deed dated 13.06.1949 and disclose the conditions mentioned in the said sale deed. The further averments

that, in this regard, it is required to be noted that in the said settlement deed dated 22.12.1949, Avalahalli Hanumanthappa has clearly admitted that the properties had been settled in favour of his sons Chikka Muniswamappa and Anjanappa four years back and they were put in possession of their respective shares and continued to be enjoying the said property and settlement deed has drawn in order to make the record straight and he has received in the said settlement deed that he has executed a sale deed in favour of Hanumanthappa, vide sale deed dated 13.06.1949 with a condition to re-convey the same in his favour, by this, it is crystal clear that 02 acres 07 guntas of land was settled in favour of Anjanappa and Anjanappa became the absolute owner of 02 acres 07 guntas of land and this defendant is claiming right over the same, are all denied as false.

13.7 Further, the plaintiffs have stated that in the suit filed by them, the partnership firm, namely M/s. Master Products was not a party and the suit filed without

making the registered partnership firm a party to the said suit proceedings. It is further stated that there is no pleading giving clear averment that the suit in O.S.No.177/1973 later re-numbered as O.S.No.473/1981 for the relief of declaration and possession lacks clarity.

13.8 It is further pleaded that the firm M/s. Master Products or its partners were not made as parties either in the suit in O.S.No.1318/1990 or in the appeal RFA No.692/2003. The preliminary decree was passed declaring that the LR's of Sri. Anjanappa are entitled to half share in the suit schedule property. Thereafter, LRs of Anjanappa filed F.D.P.No.41/1989 on the file of Additional City Civil Judge, Bengaluru. In the said F.D.P.No.41/1989, it has been observed that Buddamma W/o. Sri. Chikka Muniswamappa has sold 01 acre 20 guntas of land on 18.07.1966 in favour of the 2nd respondent and further sold 08 guntas of land in favour of Padmaprakash. The said Buddamma has sold 08 guntas on 03.08.1969 and 01 acre on 26.03.1972 all together 01 acre 08 guntas and

Buddamma has sold 01 acre 20 guntas in favour of Santosh Kumar and Buddamma had sold 15 guntas of land in favour of Ravindranath.

13.9 Further, it is pleaded that the plaintiffs have filed RFA No.606/1999, CP No.822/2001, RP No.461/2000 and CP No.994/2001 and after considering all the observations made therein, the Court allowed the said petition. Against which, Santosh Kumar preferred RFA.No.692/2003 and the 1st plaintiff in O.S.No.8973/2006 preferred RFA.No.502/2003 and this Court has dismissed RFA.No.693/2003 and the order passed by the Trial Court was modified to the extent indicating that in pursuance of the memo filed, are all matters of record and do not need any traverse. The sale deed dated 26.03.1972 executed in favour of Santosh Kumar has nothing to do with the claim of the plaintiffs.

13.10 Further, it is denied that Santosh Kumar and defendant No.18 had purchased the suit schedule

property as partner of M/s. Master Products, which is false. It was the firm Master Products had purchased the suit schedule property and Santosh Kumar was authorized only to admit the execution of the sale deed executed by the firm M/s. Master Products. Defendant No.18, Santosh Kumar had not purchased the suit schedule property on his individual capacity. Further, defendant No.18, Santosh Kumar has contested the suit in his individual capacity and not as a partner of the firm M/s. Master Products or with any authority given to him to contest on behalf of the plaintiffs. The plaintiffs, while filing the suit had not formed a partnership firm as already and there is an explanation forthcoming from defendant Nos.22 to 24.

13.11 Further, it is contended that the FDP Court stated that it is not the case of defendant No.2 in the said application that there is no conflict of interest between Santosh Kumar and the firm or Santosh Kumar is going against the interest of the firm when the FDP Court had not heard the other partners and when Santosh Kumar

colluded with defendant Nos.1 to 18, there was no one to prove these aspects and represent the interest of the partnership firm effectively before the Court; therefore, it is contended that the said application is liable to be rejected. It is stated that Santosh Kumar had truly represented the interest of the partnership firm he ought to have filed the appeal against the said order, but he did not do so. Hence, the said order does not bind on the vendors of the plaintiffs herein since they were not parties to it. Therefore, submitted that any order passed by the Court is binding only on the parties in the suit proceedings. Hence, when the firm and other partners were not parties to and had not contested the said proceedings and there being no notice to them, defendant Nos.22 to 24 cannot rely on certain things and put them before the Court stating that the judgment and decree are binding on the firm and on all the partners.

13.12 Further, averments that Santosh Kumar, who filed an appeal in RFA No.692/2003 pleaded that in

view of the sale deed dated 18.04.1970 under which M/s. Master Products purchased certain extent of land from Buddamma on an equitable proportionate basis, some land needs to be allotted by the firm also; it is not accepted by the Court. The said observation is nothing to do with the partnership firm Master Products. Hence, the contentions of the plaintiffs that the firm Master Products was not a party in any of the proceedings and therefore, the order passed in the proceedings does not bind on the firm are true and correct. Further, it is stated that though Santosh Kumar was represented the firm M/s. Master Products in all the proceedings he did not set up an independent individual right to the property in question.

13.13 Further, the plaintiffs denied as false the averments made in Paragraph No.10 that the defendants are the *bona fide* purchasers of 30 guntas of land out 01 acre 36 guntas in Sy.No.39/4A situated at Doddakallasandra Village, Uttarahalli Hobli, Bengaluru South Taluk, converted from agricultural to non

agricultural for commercial use vide final memorandum dated 17.01.2009 for a sale consideration vide sale deed dated 01.04.2010 from the LRs of Anjanappa S/o. Avalahalli Hanumanthappa without notice and that since the date of purchase of the said property, they have been in continuous possession and enjoyment of the same exercising it to the exclusion of others. It is stated that defendant Nos.22 to 24 are not the *bona fide* purchasers and they have purchased the property during the pendency of the litigation. The said property was purchased by defendant Nos.22 to 24.

13.14 When there was an interim order not to alienate the property, the said property was purchased when execution case No.2253/2006 had directed to restore the possession taken by defendant Nos.1 to 8 from Santosh Kumar back to Santosh Kumar. Defendant Nos.22 to 24 were aware of the pending litigation.

13.15 Further contended that in O.S.No.25973/1991 initially, the Trial Court granted an order of temporary injunction, but it was vacated after the defendant appeared by filing objections and written statement. Against which, an appeal in MFA was filed before this Court and that was dismissed. It was held in the said MFA that defendant Nos.22 to 24 cannot get any better title than their vendors.

13.16 Whatever the observations were made in the SLP No.6079/2001 by the Hon'ble Supreme Court are not binding on the firm M/s. Master Products and its partners since they are not partners to it. Further, it is contended that whether the defendants are asked for declaration declaring that the judgment and decree are not binding on them, the plaintiffs have rightly followed the relief under Section 24(d) of the Karnataka Courts Fees and Suits Valuation Act, 1958[3].

[3] for short 'the KCFSV Act, 1958'

13.17 The cause of action stated in the suit is true and correct. Whatever contentions defendant Nos.22 to 24 have taken are without significance. It is contended that Santosh Kumar suppressed the facts before the Court by stating that Avalahalli Hanumanthappa purchased the property in Sy.No.39/2 presently bearing Sy.No.39/4 measuring 04 acre 30 guntas from one Hucchhappa. On 13.06.1949, Avahalli Hanumanthappa sold the suit property to one Yadiyur Hanumanthappa S/o. Obalappa under a registered sale deed. On 27.12.1949, Avalahalli Hanumanthappa executed a registered settlement deed in favour of his three children namely, Doddamuniswamappa, Chikka Muniswamappa and Anjanappa. It is submitted that Avalahalli Hanumanthappa could not have executed the settlement deed since he did not have the property in his name at that point of time as he had already sold it to Yadiyur Hanumanthappa.

13.18 These aspects of the matter were ignored throughout the proceedings. However, Santosh Kumar

never took up these contentions in the appeal or in his written statement; therefore, Santosh Kumar colluded with other defendants to defeat the rights of partnership firm. Further, on 05.10.1950, Avalahalli Hanumanthappa, after executing the settlement deed dated 27.12.1949 had re-purchased the property in Sy.No.39/2 measuring 04 acres 14 guntas from Yadiyur Hanumanthappa. Further, Avalahalli Hanumanthappa on the same day sold the property to Muniyappa Reddy by way of an absolute sale deed. Therefore, there was absolutely no property to settle in favour of the children of Avalahalli Hanumanthappa. On 22.07.1963, the wife of Muniyappa Reddy sold the property under a sale deed in favour of Buddamma since Muniyappa Reddy had expired leaving behind his wife namely Muniyamma. Thereafter, on 18.05.1970, Buddamma sold the land to an extent of 01 acre 20 guntas in favour of partnership firm namely M/s. Master Products.

13.19 Further, on 12.10.1970, the partnership firm, namely M/s. Master Products converted the property

from agricultural into non-agricultural use for industrial purposes vide order dated 12.10.1970. Earlier, the vendors of Buddamma namely Yediyur Hanumanthappa and Muniyappa, were not made parties to the suit. Then, the said registered sale deeds executed in favour of Muniyappa Reddy and Yediyur Hanumanthappa are still in force and as on the date have not been set aside. Therefore, this clearly goes to show that he has colluded with defendant Nos.1 to 18 to defeat the rights of the partnership firm and its partners.

13.20 Further, it is contended that plaintiff Nos.2 to 4 came to know by O.S.No.8973/2006 and O.S.No.6873/2009 from the beginning that the 18th defendant namely Santosh Kumar colluded with defendant Nos.1 to 8 and by all of them have suppressed the filing of the suit in O.S.No.1318/1980 and decree passed thereon. The plaintiffs further pleaded that defendant Nos.1 to 8 and Buddamma, the erstwhile vendor of the suit schedule property also colluded with defendants to defeat the rights

of the plaintiffs in respects of the suit schedule property. Defendant Nos.1 to 8 were aware of the sale deed dated 18.05.1970 executed by Buddamma in favour of the partnership firm, namely M/s. Master Products, but they intentionally did not make the said partnership firm or defendant No.21 parties to the proceedings.

13.21 Further, Buddamma, who was the vendor of the suit schedule property did not contest the case by filing an appeal against the judgment in RFA.No.606/1980; therefore, the suit filed by the Anjanappa is nothing but a collusive suit to defeat the rights of the partnership firm and the partners are intentionally and deliberately not made parties. Defendant Nos.1 to 8 in the suit in O.S.No.1318/1980 did not call in question the sale deed dated 18.09.1970 executed in favour of partnership firm namely M/s. Master Products, no declaration was sought in the same suit to set aside the sale deed dated 18.05.1970 under which defendant No.21 has become the owner. Though, defendant Nos.1 to 8 were aware of the fact that

registration of the sale deed dated 18.05.1970 in favour of the partnership firm, namely M/s. Master Products and the partners have not been made as parties in the suit in O.S.No.1318/1980. Thus, the title of defendant No.21 acquired under the registered sale deed has never been questioned.

13.22 In the suit in O.S.No.1318/1980, defendant Nos.1 to 8 made only Buddamma as party and subsequently got the plaint amended on 03.06.1972 and have impleaded defendant No.18 herein as party to the suit in his personal capacity by showing his residential address in the cause title. In O.S.No.1318/1980, defendant No.18 has not been arrayed as a partner representing the partnership firm namely M/s. Master Products and also has nowhere stated that defendant No.18 Santosh Kumar is a partner of the partnership firm.

13.23 When, defendant Nos.1 to 8 were trying to execute the decree in the suit in O.S.No.1318/1980

against the Buddamma and were trying to dispossess the plaintiffs they have filed RP.No.645/2005. Defendant Nos.1 to 8 were trying to dispossess the plaintiffs from the suit property under the grab of executing the decree, to which defendant No.21 is not made as party. The suit in O.S.No.1318/1980 is not maintainable against Buddamma as she had already sold the property in favour of the partnership firm namely M/s. Master Products much prior to the filing of the suit. Defendant Nos.1 to 8 have obtained decree against a person who had no title by suppressing the fact that she had already alienated the suit schedule property; therefore, the plaintiffs are claiming that they are in possession over the suit schedule property. Hence, prays to dismiss the suit.

14. Upon the pleadings of the parties, the Trial Court has framed the following issues:

ISSUES IN O.S.NO.8973/2006:

1. *Whether the suit is maintainable?*

2. *Whether the plaintiffs are entitled for the relief sought in the plaint?*
3. *What Order or decree?*

ADDITIONAL ISSUES FRAMED ON 12.08.2010:

1. *Whether plaintiffs prove that Judgment and decree dated 24.11.1998 passed by the Hon'ble High Court of Karnataka in RFA 606/1989 reversing the Judgment and decree dated 4.7.1989 passed by the City Civil Court in O.S.No.1318/1980 granting partition is not binding on the plaintiffs?*
2. *Whether the suit is properly valued and Court fee paid is sufficient?*
3. *Whether the suit is barred by limitation?*
4. *What Order or decree?*

ADDITIONAL ISSUE DATED 19.08.2010:

5. *Whether the suit is barred by doctrine of res – judicata?*

ADDITIONAL ISSUES DATED 01.08.2011:

6. *Whether the suit is barred by time in so far as the transposed first plaintiff?*
7. *Whether the suit is hit by the principles of lis pendense in view of O.S.No. 1318/1980?*

8. *Whether the suit is barred by principles of waiver and estoppels?*

ISSUES IN O.S.NO.6873/2009:

1. *Whether the suit in the present form and nature is maintainable?*
2. *Whether plaintiff proves that he is not bound by the judgment and decree OS.No. 1318/1980 and RFA 606/1989?*
3. *Whether the plaintiff proves the judgment and decree in OS.No. 1318/1980 and RFA 606/1989 is not binding on the plaintiff's vendor and thereby on the plaintiff?*
4. *Whether suit is barred by limitation?*
5. *What Order or decree?*

ADDITIONAL ISSUES DATED 31.10.2015 IN BOTH OS 8973/2006 & 6873/2009:

1. *Whether the plaintiffs prove that the defendant no.22 purchased the suit schedule property from defendant no. 1 to 8?*
2. *Whether the defendant no.22/24 proves that the sale deed dated 18.5.1970?*
3. *Whether the defendant no.22/24 further proves that it is a bonafide purchaser of 30 guntas of land out of 1 acre 36 guntas in Sy.no.39/4A situated at Doddakallasandra village?*

4. *Whether the defendant no.22/24 further proves that it is in lawful possession and enjoyment of the property purchased?*
5. *Whether the defendant no.22/24 further proves that the plaintiffs ought to have pay the court fee under Sec.24(b) of the Karnataka Court Fee & Suit Valuation Act and not under sec.24(d)?*
6. *What decree or order?*

15. During the trial, the managing director of plaintiff No.1 Company is examined as PW-1 and got marked as Exs.P.1 to Exs.P.141 documents. On behalf of the defendants, defendant No.6 is examined as DW-1, defendant No.21 is examined as DW-2, and defendant No.22 in O.S.No.8973/2006 and defendant No.24 in O.S.No.6873/2009 is examined as DW-3 and got marked Exs.D.1 to Exs.D.84.

REASONING OF THE TRIAL COURT:

16. Upon appreciation of both oral and documentary evidence in the background of the pleadings

of the parties, the Trial Court dismissed the suit of the plaintiffs.

17. The trial Court held that the suit of the plaintiffs is not maintainable and it is hit by Res-judicate, waiver and estoppels. It is further held that defendant No.22/24 a bonafide purchaser of 30 guntas of land out of total extent of 1 acre 37 guntas in Sy.No.39/4A situated at Doddakallasandra village, and that he is in lawful possession thereof.

18. The Trial Court assigned reasons that Defendant No.22 in O.S.No.8973/2006 and Defendant No.24 in O.S. No.6873/2009, namely C.R. Santosh Kumar, along with nine others, formed a partnership firm in the name and style of M/s. Master Products on 26.04.1970. M/s. Master Products purchased 1 acre 20 guntas in Sy.No.39/4 from one Buddamma under a registered sale deed dated 18.05.1970. The suit is contested by partner C.R. Santosh Kumar on behalf of the partnership firm, M/s. Master Products. The Trial Court, upon appreciating

the admission given by PW-1, held that C.R. Santosh Kumar, as partner, had executed documents in respect of the property purchased by M/s. Master Products. It further appreciated the evidence under Ex.D-1, which specifically mentioned that the purchase was made on behalf of M/s. Master Products represented by C.R. Santosh Kumar. C.R. Santosh Kumar had also given evidence in O.S. No.1318/1980 as DW-1. Accordingly, it was held that the plaintiff firm was effectively represented by C.R. Santosh Kumar both in O.S. No.1318/1980 and in RFA No.606/1989.

19. The trial Court further appreciated the evidence of PW-1 with cross examination and held that M/s. Metal Closures had taken over M/s.Luvac Engineering Corporation in the year 1980 and M/s. Metal Closures was well aware of pendency of O.S.No.1318/1980. It is further appreciated that C.R.Santosh Kumar had independently filed RFA No.692/2003, and he has urged the interest of entire 1 acre 20 guntas. Based on the evidence on record,

the trial Court formed the opinion that the plaintiff firm was effectively represented by C.R.Santosh Kumar not only on his individual capacity but also as a partner of the plaintiff partnership firm. The trial Court further held that M/s.Metal Closures Private Limited, having taken over M/s.Luvac Engineering Corporation, was not a stranger to the suit proceedings. The chairman of both companies was one and same i.e., Prashanth Hegde. Therefore, it is held that whatever proceedings relating to M/s.Luvac Engineering Corporation is also binding on M/s. Metal Closures Private Limited. Further it is observed that plaintiff No.1 in present suit, who is also second defendant in O.S.No.1318/1980 is party to the proceedings and plaintiff No.1 was representing by M/s. Luvac Engineering Corporation in RFA Nos.692/2003 and 502/2003. Therefore, held that judgments and decree passed in both RFAs is binding on the plaintiff and the plaintiff cannot seek declaratory relief.

20. Further it is held that C.R.Santosh Kumar, representing M/s. Master Products, had purchased the property measuring 1 acre 20 guntas from Buddamma. Prior to the execution of sale deed Ex.P.35 dated 18.05.1970, Buddamma had sold 1 acre 20 guntas to Ramamurthy and another 1 acre 20 guntas to Padma Prakash out of the total extent of 4 acre 15 guntas. The remaining land was 1 acre 20 guntas, however, as per Ex.P.35 she sold 1 acre 20 guntas, which made it clear that she had sold 5 guntas of land that was not standing in her name.

21. The Trial Court further assigned reasons that in O.S.No.1318/1990, C.R.Santosh Kumar filed his written statement (Ex.D-1), wherein he categorically stated that the subject property purchased by him was assigned as Sy.No.39/4A. It is held that C.R.Santosh Kumar represented the partnership firm in the said suit as well as in RFA No.606/1989. The Court observed that non-mentioning of C.R.Santosh Kumar as partner of M/s.

Master Products in the cause title was not fatal. It was further observed that, as per Ex.P-25, M/s.Luvac Engineering Corporation was the second defendant in the suit and the first plaintiff in O.S. No.6873/2009, and that the said M/s.Luvac Engineering Corporation was subsequently taken over by M/s.Metal Closures Private Limited. Both entities were represented by Prashanth Hegde, who was examined as PW-1. Therefore, it was held that M/s.Metal Closures Private Limited was a party to Ex.P-25.

22. In O.S.No.1318/1980, C.R.Santosh Kumar filed an affidavit in support of an application under Order XIII Rules 1 and 2 of CPC, marked as Ex.D-69, wherein he stated that he was representing M/s. Master Products. Further, under Ex.P-35, the sale deed dated 18.05.1970, C.R.Santosh Kumar was shown as representing M/s. Master Products as a partner in the purchase of property bearing Sy.No.39/4. Therefore, it was held that the

plaintiff firm was effectively represented by partner C.R.Santosh Kumar.

23. Upon appreciation of the oral and documentary evidence, including Exs.P-92, D-52, P-97, P-10, P-3, D-4, D-6, D-7, and D-8, and the oral evidence of PW-1, the Trial Court held that the partnership firm was duly represented by C.R.Santosh Kumar and that the plaintiff firm had knowledge of such representation. The Court further appreciated Ex.D-13, the certified copy of RSA No.692/2003, wherein a Commissioner was appointed to measure Sy.No.39/4 and demarcate half share to be allotted to the plaintiff. It was observed that the parties had consented to such appointment. Ex.D-19, an interlocutory application in FDP No.41/1999, revealed that Adishesha, representing M/s.Luvac Engineering Corporation (now known as M/s.Metal Closures Private Limited), had filed an application to implead present Plaintiff Nos.2 to 4 in O.S. No.8973/2006. The Court concluded that the plaintiff firm had knowledge of the

proceedings. Further, Review Petition No.461/2002 and CP No.994/2001 filed by C.R.Santosh Kumar were rejected. Accordingly, upon consideration of the entire evidence, the Trial Court concluded that the decree was not obtained behind the back of the plaintiff firm and dismissed the suit.

24. The Trial Court also observed, based on Ex.D-2 (the deposition of C.R.Santosh Kumar in O.S.No.1318/1980), that he had categorically deposed that he was a partner of M/s. Master Products. If he had appeared only in his individual capacity, he would have so stated that he represented in his individual capacity but had not stated so. His conduct clearly established that he appeared as partner and not merely in his personal capacity. It was further observed that the partners of M/s. Master Products were members of the same family. Therefore, merely because the partnership firm has not given authority to Santosh Kumar itself is not ground to hold the he has represented to the said suit as partner of M/s. Master Product. The Court thus concluded that the

plaintiff partnership firm was effectively represented by its partner C. R.Santosh Kumar and dismissed the suit.

25. It is also held that Court fee paid by the plaintiffs is not sufficient on the relief claimed by them.

GROUNDS RAISED IN THE MEMORANDUM OF APPEAL:

26. Being aggrieved by the dismissal of the suit, the plaintiffs partnership firm preferred the present appeal by raising various grounds, which are summarized hereunder;

27. Apart from the raising grounds that the judgment and decree passed in suffering from error and evidence are not properly assessed, but a specific ground raised is that C. R.Santosh Kumar was representing M/s. Master Products of his individual capacity in the suit. Further raised ground that the trial Court has failed to appreciate that no where in the plaint filed by Muniyamma and others has there any mentioned that C.R.Santosh Kumar is being sued to the partner representing either the

firm M/s. Master Products or the other partner in accordance with Order XXX Rule 1 of CPC.

28. Also contended that Buddamma herself has sold the land measuring 1 acre 20 guntas to M/s. Master Products much prior to filing of suit by Muniyamma and others, whether in such situation, when Buddamma ceased to be the owner of 1 acre 20 guntas the Doctrine of *lis-pendens* is not attracted. Further raised grounds that the trial Court is erroneously held that Trident Automobiles defendant No.21 is in possession but the actual aspect is that the plaintiffs is the factory is in possession over the suit schedule property. The trial Court has much gone into as aspect regarding the possession over the property but the real question is whether decree suffered by C.R.Santosh Kumar is binding on the plaintiff's firm and other partner has not at all been considered.

29. Further it is raised grounds that the trial Court rather appreciated evidence correctly regarding the suit

filed by the plaintiff is much prior to the execution proceedings taken out by the decree holder in O.S.No.1318/1980 and executing Court dismissed the application which give raise the plaintiff to filing review petition before the High Court of Karnataka in RP No.645/2005 and the Review petition dismissed with an observation that review petitioners namely C.P.Bharathi and Sathyanarayana were not parties in the original suit filed by Anjanappa and also they were not parties in the appeal filed by the legal heirs of Anjanappa.

30. Also raised ground that the trial Court did not examine the careful aspect whether defendants had obtained a decree against Buddamma who had no title in the immovable property on the date of filing of the suit against the person who had title prior to the date of institution of the suit and whether the decree could binding on the plaintiffs

31. Further contended that the trial Court did not take consideration the right of conveyance alleged and asserted by Avalahalli Hanumanthappa which could be transfered and assignable and could be enforceable since the sale was different and had right of repurchase Yadiur Hanumanthappa as per the term agreed upon between them Avalahalli Hanumanthappa had right to reconveyance of the property from Yadiur Hanamanthappa. Therefore, whatever rights Avalahalli Hanumanthappa had in respect of the property related to the suit on his rights got relinquished and Anajappa and Chikka Muniswappa are alone by virtue of settlement deed were capable of enforcing it having taking assignment of those rights.

32. Further contended that the trial Court did not take consideration that on 05.10.1950 Avalahalli Hanumanthappa and Chikk Muniswamappa obtained said property from Yadiur Hanumathappa on the very same day both of them had sold the said property to Muniyappa

Reddy and both transactions the Anjanappa is not a party. Therefore, in this circumstance the Court has not considered as to what is the right of the Anjanappa in respect of the property granted under the settlement deed. Therefore, obtaining the sale deed from Yadiur Hanamanthappa by Avalahalli Hanumanthapp from Chikk Muniswamappa becomes distinct transactions and sale deed obtained from Yadiur Hanumanthappa on 05.10.1950 virtually is contrary to the rights create under the settlement deed by Avalahalli Hanumanthappa himself and independently although he relinquished all his rights.

33. Further contended that the trial Court is not taken consideration the question of competing claims to two registered documents in respect of the same properties by the same person as per Section 48 of the Transfer of property Act is not applicable. Therefore, Anjanappa ought to have taken action in respect of whatever rights he had under the settlement deed and at

an appropriate stage by calling for reconveyance in his favour which he has not done.

34. Further contended that the trial Court has not taken into consideration that defendant No.22 Trident Automobiles has claimed that he had purchased 36 guntas in Sy.No.39/4A from defendant Nos.1 to 8 and got into converted from the agriculture land which is contrary to the evidence on record and it is perverse.

35. The trial Court erroneously held in concluding that defendant No.22 Trident Automobiles is in possession over the suit property.

36. Therefore, by raising various grounds as summarized above the plaintiffs have preferred the present appeal.

37. Upon issuance of notice the defendants/respondents have appeared through their respective advocates.

38. Heard arguments and perused the records.

ARGUMENTS OF APPELLANTS:-

39. Learned Senior Counsel Sri Ananth Mandagi, appearing for the appellant, submitted that Plaintiff No.1 partnership firm was not a party to O.S.No.1318/1980 (old O.S.No.332/1971) also O.S.No.167/1976. O.S.No.332/1971 was filed on 09.05.1971, but Plaintiff No.1 was not a party therein. Therefore, the judgment and decree in RFA No.606/1989 reversing O.S.No.1318/1980 dated 04.07.1989 were not binding on the plaintiffs. He argued with reference to Order XXX Rules 1, 2, and 3 of CPC and Section 14 of the Indian Partnership Act, 1932[4] that representation by a single partner without impleading the firm does not constitute compliance with the said provisions i.e., Order XXX Rules 1, 2 and 3 of CPC and Section 14 of the Act, 1932..

[4] Hereinafter referred to as " the Act, 1932"

40. It is submitted that the plaintiff partnership firm purchased the property as per the Exs.P.24 and 25 on 18.05.1970 and thus suit schedule property becomes the property of partnership firm therefore, when the subject matter of suit is property belongs to partnership firm then firm shall be necessary party and in the absence of impleading the plaintiff partnership firm whatever judgment and decree passed are not binding on the partnership firm. The deceased Buddamma was made a party in the suit who is vendor of the property, but not made a plaintiff firm as a party. Buddamma purchased the property on 20.02.1963 and sold to the plaintiff firm on 18.05.1970 and therefore, when defendant Nos.1 to 8 claiming they are owners of property but plaintiff firm ought to have been made as a party in the suit proceedings in O.S.No.332/1971. Therefore, raised question when plaintiff firm is not made party in the suit, after disposal of the suit RFA No.606/1989 is filed, even in the appeal proceedings also plaintiff firm ought to have

been made a party. Buddamma died in the year 1984 but in RFA proceedings legal heirs of Buddamma are not made parties. Therefore, there is no compliance of Order XXX Rules 1, 2 and 3 and Section 14 of the Act, 1932. Therefore, judgment and decree in RFA No.606/1989 not binding on the plaintiff firm.

41. Further argued with reference to Order XXII Rule 9 of CPC, if party in the suit died the suit stands abated against the party because legal heirs of Buddamma are not brought on record. Therefore, submitted judgment and decree passed in RFA No.606/1989 is void decree. Further submitted that plaintiff firm not making party in the appeal is not cureable defect. Therefore, submitted that judgment and decree passed in RFA No.606/1989 is not binding on the plaintiff firm. Therefore prays to allow the appeal.

42. Learned Senior Counsel Sri Ananath Mandagi relied upon the following judgments in support of his contentions.

i) *V Tulasamma and ors vs. V Sesha Reddi (dead) by l.rs.*[5]

ii) *Dhanalashmi and others vs P Mohan and others*[6]

iii) *Rajendra prasad and another vs khirodhar mahto and others*[7]

iv) *Sushil k chakravarty (d) thr.l.rs. Vs tej properties pvt.ltd*[8]

v) *Jaladi Suguna (deceased) through lrs vs Satya Sai Central Trust and others*[9]

vi) *T Ganavel vs T.S. Kanagaraj another*[10]

vii) *Sharadamma vs Mohammed Pyarejan*[11]

viii) *Gangabai Gopaldas Mohata vs Fulchand and others*[12]

ix) *B.L.Shreedhar and others vs K.M.Munireddy (dead) and others*[13]

x) *Vijay Narayan Thatte and others vs State of Maharastra and others*[14]

[5] (1977) 3 SCC 99
[6] (2007) 10 SCC 719
[7] 1994 Supp (3) SCC 314
[8] AIR 2013 SC 1732
[9] 2008 (8) SCC 521
[10] (2009) 14 SCC 394
[11] AIR 2015 SCC 3747
[12] (1997) 10 SCC 387
[13] (2003) 2 SCC 355
[14] (2009) 9 SCC 92

43. Learned Senior counsel Sri.P.S.Rajgopal, appearing for Plaintiff Nos.2 to 4, submitted that under Order XXII Rule 4 of CPC, upon the death of Buddamma, her legal heirs were not brought on record, nor was any exemption sought by Defendant Nos.3 to 8 prior to the judgment.

44. Further submitted that under Order XXII Rule 4 of CPC, where no application is made within the prescribed time to implead the legal representatives of a deceased party, the suit abates as against such deceased party. Therefore, it was contended that the entire appeal stood abated, particularly when Defendant Nos.1 to 8 were claiming partition in respect of property that had already been sold by Buddamma to the plaintiff firm. Accordingly, prayed to allow the appeal.

45. In support of his arguments learned Senior Counsel Shri P.S.Rajgopal relied the following judgments;

i) *T.Gnanavel vs T.S. Kanagaraj and others*[15]

ii) *Budh Ram and others vs Bansi and others*[16]

iii) *Gurnam Singh (dead) through legal representatives and others vs Gurbachan Kaur (dead) by legal representatives*[17]

ARGUMENTS BY RESPONDENTS:-

46. Per contra, learned Senior Counsel Shri S.M. Chandra Shekhar submitted that Buddamma had remained ex parte in O.S.Nos.8973/2006 and 6873/2009. He further submitted that the plaintiff firm was duly represented by C.R.Santosh Kumar, who was one of its partners. In his written statement, C.R.Santosh Kumar stated that he is representing not only himself but also the plaintiff firm. It is contended that the partnership firm was a family entity and that C.R.Santosh Kumar is a family member of the other partners; hence, the other partners were well aware of the suit proceedings. Therefore, it could not be

[15] (2009) 14 SCC 294
[16] (2010) 11 SCC 476
[17] (2017) 13 SCC 414

contended that the judgments and decree were passed behind their back.

47. It is further submitted that under Section 18 of the Act, 1932 a partner is an agent of the firm, and under Section 19, a partner has implied authority to bind the firm in acts done in the usual course of business. Under Section 22 the Act, 1932 of a partner bind the firm. Therefore, the representation by C.R.Santosh Kumar is binding on the partnership firm. Further contended that under Section 28 of the Act, 1932, the doctrine of "holding out" applied, and hence all acts done by C.R.Santosh Kumar is binding on the firm. Accordingly, he argued that the plaintiff's contention lacked merit.

48. It is further submitted that under Section 19(1)(e) and (f) of the Partnership Act, acts done by a partner in carrying on the business in the usual way bind the firm. Participation in litigation concerning partnership property would bind the firm. Therefore, when

C.R.Santosh Kumar represented the firm in the suit, it is not merely in his individual capacity but also as partner of the firm.

49. It is further submitted that the plaintiff firm not only had knowledge of the proceedings but was constructively aware thereof. Hence, the plaintiffs were estopped from contending that they had no notice of the suit proceedings.

50. Learned Senior Counsel further submitted that admissions made by PW-1 during cross-examination clearly established that the plaintiff firm was duly represented by partner C.R.Santosh Kumar.

51. It was further submitted that the judgment and decree passed in RFA No.606/1989 stood merged with the order passed in SLP No.6079/2011 by the Hon'ble Supreme Court. By virtue of the doctrine of merger, the issues raised by the plaintiff were carried to the Hon'ble Supreme Court and the Hon'ble Supreme Court rejected

their prayer. Therefore, the plaintiff could not re-agitate the same issues.

52. It is sum and substance, it is contended that the partnership firm was duly represented by C.R.Santosh Kumar, who was a family member and partner, and that all issues relating to non-impleadment of the firm had attained finality up to the Hon'ble Supreme Court. Hence, the present appeal was devoid of merit.

53. Learned Senior Counsel further elaborated upon the documentary and oral evidence, particularly the admissions of PW-1 in cross-examination, to demonstrate that all partners were aware of and had knowledge of the suit proceedings.

54. In support of his arguments learned Senior Counsel Shri.S.M.Chandra Shekhar relied the following judgments;

i. *A.V. Papayya Sastry and others vs. Govt. of A.P. And others*[18]

ii. *Kunhayammed v. State of Kerala and another*[19]

iii. *Municipal Borad, Lucknow vs. Pannalal Bhargava and others*[20]

iv. *Shivshankara and another vs. H.P.Vedavyasa Char*[21]

v. *Delhi Development Authority vs. Diwan Chand Anand and ors*[22]

vi. *Mangal Singh and others vs. Smt. Rattno (dead) by her legal representatives and another*[23]

vii. *Kanhaiyalal vs. Rameshwar and others*[24]

viii. *Vantaku Appalanaidu and others vs. Peddinti Demudamma and another*[25]

ix. *Bhurey Khan vs. Yaseen Khan (dead) by L.Rs. And others*[26]

x. *Manovikas Kendra Rehabilitation & Research Institute vs. Prem Prakash Lodha*[27]

xi. *K. Naina Mohamed (dead) through L.Rs. Vs. A.M.Vasudevan Chettiar (dead) through L.Rs. And others*[28]

xii. *Raghunath Keshava Kharkar vs. Ganesh alias Madhukar Balakrishna Kharkar and others*[29]

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[18] (2007) 4 SCC 221
[19] (2000) 6 SCC 359
[20] (1976) 3 SCC 85
[21] (2023) SCC online SC 358
[22] 2022 LiveLaw (SC) 581
[23] AIR 1967 SC 1786
[24] (1983) SC 260
[25] 1981 SCC online AP 155
[26] 1995 SUPP (3) SCC 331
[27] (2005) 7 SCC 224
[28] (2010) 7 SCC 603
[29] AIR 1964 SC 234

xiii. *Kanhaiyalal vs. Mulla Abdul Hussain and others*[30]

xiv. *Krishnaveni and 4 others vs. Ramchandra Naidu and others*[31]

xv. *Collector of 24 Parganas vs. Lalith Mohan Mallick and others*[32]

xvi. *P.P.K. Gopalan Nambiar vs. PPK Balakrishna Nambiar and others*[33]

xvii. *Lachmi Narai Marwari vs. Balmukund Marwari and another*[34]

xviii. *Bk Basha vs. Mohd. Ali & other*[35]

xix. *Krishndevi Malchand Kamatia and others vs. Bombay Environmental Action Group and others*[36]

xx. *Ashutosh vs. State of Rajasthan & others*[37]

55. Learned Senior Counsel Sri Aditya Sondi and Sri Shashikant Shetty submitted that the judgment and decree in O.S.No.6673/2009 are not binding on Respondent Nos.11 to 17, as they are passed against deceased persons. It is submitted that the appeal filed by the plaintiff is frivolous and liable to be dismissed.

[30] ILR 1984 MP 393
[31] 1998 (I) CTC 423
[32] (1988) SUPP. SCC 578
[33] 1995 SUPP 2 SCC 664
[34] AIR 1924 JC 321
[35] C.R.P.(NPD) No.771/2014
[36] (2011) 3 SCC 363
[37] (2005) 7 SCC 308

POINTS FOR CONSIDERATIONS:-

56. Upon hearing the learned Senior Counsel and considering the submissions, the following points arise for consideration:

i. *Whether, under the facts and circumstances involved in the case, the defendants have proved that the plaintiff firm was represented by C.R. Santosh Kumar on behalf of the plaintiff partnership firm in O.S. No. 1318/1980 and in RFA No. 606/1989, and whether such representation amounts to the plaintiff firm being duly represented by its partner?*

ii. *Whether, under the facts and circumstances involved in the case, the judgment and decree dated 24.04.1998 passed by this Court in RFA No. 606/1989 is binding on the appellant/plaintiff?*

iii. *Whether, under the facts and circumstances involved in the case, the representation made by C.R. Santosh Kumar amounts to representation for and on behalf of the plaintiff firm, M/s Master Products, in O.S. No. 1318/1980 and in RFA No. 606/1989, not only*

in his individual capacity but also on behalf of the plaintiff firm?

iv. *Whether, under the facts and circumstances involved in the case, on account of the death of Buddamma, the appeal in RFA No. 606/1989 stood abated for failure to bring the legal heirs of late Buddamma on record?*

v. *Whether, under the facts and circumstances involved in the case, the non-filing of a written statement by Buddamma in the suit, her death during the pendency of RFA No. 606/1989, and the failure to bring her legal heirs on record amount to abatement of the appeal in its entirety?*

vi. *Whether, under the facts and circumstances involved in the case, on account of the death of Buddamma, the appeal in RFA No.606/1989 abated in view of the LRs of Buddamma not being brought on record in the appeal?*

vii. *Whether, under the facts and circumstances involved in the case, the suits filed in O.S.No.8973 of 2006 and O.S.No.6873 of 2009 are hit by principle of res-judicata as per Section 11 of CPC?*

viii. *Whether, under the facts and circumstances involved in the case, re-conveyance of property*

made as per the settlement deed dated 22.12.1949 is applicable in determining the shares of parties in the suit in O.S.No.1318 of 1980 (O.S.No.334 of 1971) and in RFA No.606 of 1989?

REASONING:-

57. In *V. Tulasamma*, as noted supra, the Hon'ble Supreme Court has authoritatively interpreted the provisions of Section 14 of the Hindu Succession Act. In the present case, the appellants have confined their arguments to substantial questions of law pertaining to the interpretation of sub-sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956. The following two points arise for consideration in relation to the interpretation of sub-sections (1) and (2) of Section 14 of the Hindu Succession Act, as stated in paragraph No.4, as follows:

4. Thus the two points that fall for determination in this appeal may be stated thus:

"(1) whether the instrument of compromise under which the properties were given to the appellant Tulasamma before the 1956 Act in lieu of

maintenance falls within Section 14(1) or is covered by s. 14(2) of the 1956, Act and

(2) Whether a Hindu widow has a right to property in lieu of her maintenance, and if such a right is conferred on her subsequently by way of maintenance it would amount to mere recognition of a pre-existing right or a conferment of new title so as to fall squarely within Section 14(2) of the 1956 Act."

58. Therefore, in view of the difference in the factual matrix involved in the above-stated case and the present case, the said case is not applicable to the present case.

59. The sum and substance of the plaintiff's contention, as urged in the plaint and in arguments, is that the judgment passed in RFA No.606/1989 (Ex.P-29), arising out of dismissal of O.S.No.1318/1980, is not binding on the plaintiff firm. It is contended that the plaintiff firm was not a party to O.S.No.1318/1980 or RFA No.606/1989 and therefore was not represented therein.

Consequently, the judgment and decree passed therein are not binding on the plaintiff firm.

60. Per contra, it is the contention of the defendants that C.R.Santosh Kumar, being a partner of the plaintiff firm, represented the firm in both proceedings not only in his individual capacity but also on behalf of the partnership firm.

61. It is not in dispute that C.R.Santosh Kumar was subsequently impleaded as Defendant No.6 in O.S. No.1318/1980 on 03.06.1992. The question for consideration is whether the plaintiff firm was represented by its partner in the said suit and appeal and whether the partnership firm had knowledge of the proceedings such that the decree cannot be said to have been passed behind its back.

62. It is the case of the plaintiff that the partnership firm purchased the suit schedule property in Sy.No.39/4 of Doddakallasandra Village, Uttarahalli Hobli, Bengaluru,

measuring 1 acre 20 guntas from Buddamma under a registered sale deed dated 18.05.1970 (Ex.P-24). Ex.P-18, the partnership deed dated 26.04.1970, reveals that C.R. Santosh Kumar and others formed the partnership firm M/s. Master Products. It is not disputed that C.R.Santosh Kumar was one of the partners and that the property was purchased on behalf of the firm.

63. Learned Senior Counsel Sri Ananth Mandagi contended that upon purchase, the property became partnership property under Section 14 of the Act, 1932, therefore, the firm was a necessary party in any suit concerning the property. In the absence of impleading the firm, decree passed would not bind the partnership firm.

64. Section 18 of the Act, 1932 provides that a partner is an agent of the firm for the purposes of the business of the firm. Section 4 of the Act, 1932 defines partnership as a relationship between persons who agree

to share profits of a business carried on by all or any of them acting for all.

65. The Hon'ble Supreme Court, in the case of ***Controller and Auditor General v. Kamlesh Vadilal Mehta***[38]**,** held that a partnership firm is not a separate legal entity like a company but is a collective of individual partners. Therefore, whether representation by one partner amounts to representation of all partners requires consideration.

66. Under Section 19 of the Act, 1932, acts done by a partner in carrying on the business of the firm in the usual manner bind the firm. There is implied authority in such acts.

67. Therefore, if a partner appears in proceedings with the intention to bind the firm, such participation may constitute implied authority, and other partners are bound under Section 22 of the Act, 1932.

[38] (2003) 2 SCC 349

68. In the present case, C.R.Santosh Kumar represented the firm in the suit and appeal concerning partnership property. The question is whether such representation binds the firm, considering the evidence on record.

69. In O.S.No.167/1966 filed by Anjanappa against Buddamma and others in which, defendant No.5 is C.R. Santosh Kumar, who has filed written statement in the said suit, which is marked as Ex.D-21 and has made a statement in the written statement that in Sy.No.39/4 (formerly bearing Sy.No.39/2) of Doddakallasandra village measuring 04 acres 14 guntas was owned and possessed by one Mystry Hucchappa S/o. Subbanna. The said Hucchhappa sold the said property under a registered sale deed dated 04.06.1928 to Avalahalli Hanumanthappa S/o. Eerappa. The said Avalahalli Hanumanthappa was in possession and enjoyment of the said property. The said property was his separate and self acquired property. The said Avalahalli Hanumanthappa sold the entire land under

a registered sale deed dated 18.06.1949 to one Hucchhappa S/o. Hoblappa and put him in possession of the same. The said Hucchhappa S/o. Hoblappa transferred and granted the said land under registered sale deed dated 05.10.1950 to Avalahalli Hanumanthappa and his son Chikka Munishamappa. On the same day, i.e., on 05.10.1950, Avalahalli Hanumanthappa and his son Chikka Munishamappa conveyed, transferred and sold the property under the registered sale deed to Muniyappa Reddy and put in possession. The said Muniyappa Reddy sold the property under registered sale deed dated 22.07.1963 in favour of defendant No.1-Buddamma (In O.S.No.167/1966) and thereafter the said Buddamma sold the property to M/s. Master Products represented by defendant No.5-C.R. Santosh Kumar under a registered sale deed dated 08.05.1970 and conveyed 01 acre 20 guntas out of said Sy.No.39/4.

70. Further, it is averred in the said written statement that defendant No.5-C.R.Santosh Kumar,

formed a layout with permission from the competent authorities and a portion of Sy.No.39/4 was assigned as Sy.No.39/4A and it is contended that defendant No.5-C.R. Santosh Kumar had invested considerable amount for business. It is contended that when Avalahalli Hanumanthappa parted with his right over the said land on 18.06.1949 in favour of Hucchhappa S/o. Hoblappa he had lost title and interest as on 22.12.1949. When the alleged settlement deed was executed, therefore, Avalahalli Hanumanthappa did not have competency to transfer any right as on 22.12.1949. Hence, defendant No.5-C.R. Santosh Kumar had appeared on behalf of firm-M/s. Master Products in the earlier suit proceedings in O.S.No.167/1966. Hence, the plaintiff-M/s. Master Products, cannot contend that he was got surprised, it proves that the plaintiff-M/s. Master Products, knew about the legal proceedings.

71. Further, in the evidence of C.R.Santosh Kumar in O.S. No.1318/1980, produced as Ex.D-2 in the present

case, he deposed in chief examination that he was one of the partners of M/s. Master Products and that the firm had purchased the suit land. In cross-examination, he has admitted that there were five partners, four of whom were brothers and one the wife of a brother. Therefore, the partners were not strangers to him. When C.R.Santosh Kumar participated in O.S. No.1318/1980, it must be inferred that the other partners were aware of the proceedings and had authorized him to represent the firm. Accordingly, the partnership firm cannot now contend that it had no knowledge of the proceedings.Further after the said land sold to the plaintiff partnership firm and same was got re-surveyed and assigned Sy.No.39/4A. Therefore, it is proved that C R Santosh Kumar definitely having awareness of the property in question in the suit proceedings and this fact is proved to be known by the partnership firm and other partners.

72. Considering partners in the plaintiff partnership firm all the partners are the family members and the

partnership firm is family entity. It is further evident from Ex.P-18, the partnership deed dated 26.04.1970, that the partners were residing at the same address, namely No.20, SST Street, V.V.Puram, Bengaluru. C.R.Santosh Kumar's address is shown as the same. Therefore, it cannot be contended that the partners were unaware of the litigation and they are strangers.

73. Under Order XXX of CPC, a partner may sue or be sued in the name of the firm. When a partner contests proceedings concerning partnership property, it amounts to representation of the firm. Therefore, the participation of C.R. Santosh Kumar as partner constitutes representation of the partnership firm, and the decree cannot be said to have been passed behind its back.

74. Ex.P-18, though an unregistered partnership deed dated 26.04.1970, discloses that C.R.Santosh Kumar (Party No.7), C.P.Satyanarayana (Party No.8), Sooramma (Party No.9), and Roopa (Party No.10) shared the same

address. Hence, it cannot be asserted that they were strangers to one another or unaware of the proceedings.

75. Certificate of Registration dated 03.01.1972 (Ex.P-59), Partnership Deed dated 01.06.1974 (Ex.P-20), Retirement Deed dated 01.04.1980 (Ex.P-21), Partnership Deed dated 01.04.1980 (Ex.P-22), Dissolution Deed dated 01.04.1987 (Ex.P-31), Agreement of Co-Ownership dated 01.05.1987 (Ex.P-33), and Deed of Transfer dated 04.12.1991 (Ex.P-34) demonstrate that all partners were residing at No.20, Subramaniyaswamy Temple Street, V.V.Puram, Bengaluru. Therefore, it is reasonable to conclude that the firm was duly represented by C.R. Santosh Kumar in both the suit and the appeal.

76. The plaintiff partnership firm is a family entity. M/s Master Products partnership firm was registered on 03.09.1972. C.R.Santosh Kumar had filed impleading application on 18.01.1972 in a suit filed on 29.05.1971, therefore, as on the date of filing of the suit and on the

date of sale deed dated 18.01.1970 the partnership firm was unregistered. Therefore, the partnership firm was duly represented by C.R.Santosh Kumar who is acted on behalf of the firm and dependant estate of deceased Buddmma throughout proceedings.

77. The admission of PW-1 Prashanth Hegde further establishes that C.R.Santosh Kumar participated in the proceedings on behalf of M/s. Master Products throughout. Hence, the judgment and decree in RFA No.606/1989 (Ex.P-29) is binding on M/s. Master Products and its partners.

78. Ex.D.69 is the application filed by C.R.Santosh Kumar in O.S.No.1318/1980, (Ex.P-26) being defendant No.5, and he deposed that M/s. Master Products, represented by him, had purchased 1 acre 20 guntas of land out of the suit land from its previous owner, Buddamma, who was defendant No.1 in the suit, under a registered sale deed dated 18.05.1970. He has also

deposed in the written statement as to how his predecessor-in-title, M/s. Master Products, acquired rights in the said suit property and has given details of the transactions. Therefore, by this very admission, it is proved that C.R.Santosh Kumar, not only in his individual capacity but also as a partner of the plaintiff partnership firm, has contested the suit in O.S. No.1318/1980.

79. The plaintiff partnership firm filed an application under Order I Rule X(2) of CPC in FDP No.41/1999 (Ex.D-38) to implead C.R.Satyanarayana as respondent No.5(a), C.R.Prabakar as respondent No.5(b), and C.R.Ashwathnarayana as respondent No.5(c). In the affidavit, the partnership firm deposed that the present respondents are also partners of the said firm and that 1 acre 20 guntas of land was purchased by M/s. Master Products from Buddamma by respondent No.5, and that the proposed respondents are all partners of the said firm. It is observed in the order (Ex.D-39) in FDP No.41/1999 that the firm M/s. Master Products was already

represented by one of its partners, namely C.R.Santosh Kumar. It is further observed in the order that C.R.Santosh Kumar was not neglecting the interest of the firm, nor was it the case of the partners that his interest was conflicting with that of the proposed respondents. Therefore, it is observed that C.R.Santosh Kumar duly represented the proceedings on behalf of the other partners and that his interest was not conflicting with that of the other partners and the partnership firm. Therefore, it cannot be said that the judgment and decree were passed behind the back of the other partners and the partnership firm.

80. Plaintiff No.4, who is a partner of the plaintiff partnership firm, preferred Special Leave Petition No.18464/2009 (Ex.D-10) before the Hon'ble Supreme Court and raised the ground that in O.S.No.1318/1980, (Ex.P-26) the plaintiff firm M/s. Master Products and its partners were not made parties. Therefore, the judgment and decree are not binding on the plaintiff firm, but this

contention was not accepted by the Hon'ble Supreme Court. Therefore, the plea taken by the plaintiff firm has attained finality up to the Hon'ble Supreme Court, and the Hon'ble Supreme Court has rejected their contentions.

81. Shanthanath Shetty filed an application under Order XXI Rule 97 read with Section 151 of CPC in Execution Case No.2253/2006 (Ex.D-70) and the said application was rejected, against which the plaintiff filed RFA No.385/2009, but it was also dismissed.

82. The plaintiff filed RFA No.951/2008 against the order passed in O.S.No.25813/2008, being aggrieved by the rejection of the plaint under Order VII Rule 11(a) and (d) of CPC. This appeal was also dismissed on 19.11.2009, and the said document is marked as Ex.D-18.

83. In this appeal, this Court addressed this issue and observed, giving findings that when the issue was taken to the Hon'ble Supreme Court against the order passed in the RFAs, the contention raised by the plaintiff

attained finality, and the decree holders in O.S. No.1318/1980 (Ex.P-26) have attained finality as they have got half share in the suit schedule properties. Therefore, Muniyamma and the LRs of Anjanappa are entitled to 2 acres 7 guntas of land in the concerned survey number. Therefore, even the share granted by this Court in RFA No.606/1989 (Ex.P-29) has attained finality on its merits. Therefore, the trial Court is correct in dismissing the suit.

84. The further contention of the plaintiff that the judgment and decree passed in O.S. No.1318/1980 (Ex.P-26) against which RFA No.606/1989 (Ex.P.29) was filed, is not binding on them, is well addressed in Execution Case No.2253/2006 (Ex.P-128). The plaintiff herein filed an application under Order XXI Rule 97 of CPC as an obstructer in executing the decree, and it was observed and found that C.R. Santosh Kumar was a party to the suit proceedings and also in appeal, and that he represented not only himself but also the partnership firm. Thus, the

said obstruction application was dismissed, which was challenged in RFA No.485/2008 (Execution) (Ex.D-64), and the said RFA No.485/2008 was rejected.

85. At the time of filing O.S.No.1318/1980 (Ex.P-25) (old O.S. No.332/1971) also O.S.No.167/1976 (Ex.D-20 and 21) the firm M/s. Master Products was not a registered firm, and it was not registered at the time of purchasing the suit property. Therefore, the representation made by C.R.Santosh Kumar in the suit was well thought by the plaintiff, as C.R.Santosh Kumar had purchased the property on behalf of an unregistered firm. Therefore, C.R.Santosh Kumar was made a party as defendant No.5 in the suit, as there was no necessity to make the other partners parties to the suit because the partnership firm was not registered at that point of time.

86. The appellants/plaintiffs have raised the question that the judgment and decree in RFA No.606/1989 (Ex.P-29) are a nullity as Buddamma died

during the pendency of the appeal in RFA No.606/1989 and her LRs were not brought on record; therefore, it is contended that the judgment and decree passed in the appeal abated in whole.

87. Here, the pertinent question to be considered in this context is whether non-arraying of the LRs of deceased Buddamma on record abates the appeal and causes any prejudice to the appellants/plaintiffs. The plaintiff partnership firm purchased the property from Buddamma, and the said Buddamma was defendant No.1 in O.S.No.1318/1980. Initially, after notice to her, she remained absent and was placed ex parte. The records disclose that Buddamma filed an application for recalling the order placing her ex parte, and the order was recalled and she was allowed to contest the suit. However, thereafter, she did not file any written statement and did not contest the suit. It is pertinent to mention here that the purchaser from Buddamma stepped into her shoes. Therefore, Buddamma remained silent. C.R. Santosh

Kumar, who is a partner of the plaintiff firm, namely M/s. Master Products, represented the suit by stepping into the shoes of Buddamma also, on behalf of the other partners and the partnership firm. Therefore, there is no question of non-representation in the suit affecting the rights of the plaintiffs, including the firm.

88. The entire appeal would not abate when there were other respondents who duly represented and contested the appeal. Buddamma was given two opportunities to contest the suit as stated above, but she remained absent and was placed ex parte. She also remained ex parte in the appeal upon issuance of notice, as she had sold the excess land to the plaintiff. Therefore, the plaintiff, in the place of Buddamma, was contesting the suit through C.R.Santosh Kumar. C.R.Santosh Kumar contested the suit as a partner of the firm and on behalf of the other partners. It is pertinent to mention here that, as discussed above, all were residing under the same roof at the same address; therefore, at no point of time can it be

said that the judgment and decree passed in the suit or in the appeal were behind the back of the plaintiff.

89. The plaintiffs/appellants have brought the legal heirs of Buddamma on record in RP No.46/2000 (Ex.D-3), CP No.822/2001 (Ex.D-27), RP No.461/2001 (Ex.D-28) and CP No.994/2001; therefore, the legal heirs of Buddamma have also contested the issue in various litigations. Therefore, the judgment and decree in RFA No.606/1989 have merged with the orders passed in the above review petitions and civil petitions. Thus, the appeal is not abated. The other defendants/respondents contested RFA No.606/1989 by representing the estate of Buddamma. M/s. Luvac Engineering (presently known as Metal Closers) was arrayed as defendant No.2 in O.S. No.1318/1980.

90. After the judgment and decree were passed in RFA No.606/1989 holding that Buddamma was entitled to half share, M/s. Luvac Engineering purchased from M/s.

Master Products an extent of 1 acre 20 guntas, which is in excess of the half share; therefore, M/s.Luvac Engineering is estopped from contending that the order passed against a dead person is not binding on them. In the contest, having regard to the fact that M/s. Luvac Engineering was a party to the proceedings throughout, non-arraying of the legal heirs of Buddamma cannot abate the appeal proceedings.

91. In the final decree proceedings in FDP No.41/1999 (Ex.D-40), RFA No.692/2003 (Ex.D-59), RFA No.502/2003 (Ex.D-55) and SLP No.3278/2007, this Court as well as the Hon'ble Supreme Court held that no land was available to C.R.Santosh Kumar, who had purchased 1 acre 20 guntas, and the same was in excess of the share of Buddamma. M/s. Luvac Engineering is holding 1 acre 5 guntas, knowingly well that the conveyance of the property by Buddamma was in excess of her later determined share of 2 acres 7½ guntas; M/s. Luvac

Engineering purchased 1 acre 5 guntas from the partners of M/s. Master Products.

92. Buddamma died on 12.11.1984 during the pendency of the appeal in RFA No.606/1989. In RP No.46/2000, CP No.822/2001 (Ex.D-27), RP No.461/2001 (Ex.D-28) and CP No.994/2001, in all the proceedings the legal heirs of Buddamma were parties, and there is no question that the legal heirs of Buddamma were not heard. What was allotted to Buddamma's share in RFA No.606/1989, the same quantum of extent of land would go to the plaintiff firm. Further, the same was ratified by subsequent legal proceedings as stated above. Therefore, merely on technicality, substantial justice cannot be curtailed, and the plaintiff does not have excess rights beyond what was allotted to Buddamma in RFA No.606/1989. The whole attempt of the plaintiff is nothing but to thwart the rights, interests, and entitlements of defendant Nos.1 to 8 as per RFA No.606/1989. Therefore,

considering the provisions of Order XXII Rule 6 and Rule 10 of CPC, the appeal would not stand abated.

93. The plaintiff purchased land from Buddamma in excess of what she was entitled to in RFA No.606/1989, wherein the share was determined in the suit for partition in O.S.No.1318/1980. C.R.Santosh Kumar has contested the suit in the place of Buddamma on behalf of the partnership firm and other partners. Therefore, the technical contention that the legal heirs of Buddamma were not brought on record in the appeal and that the whole appeal stands abated is misconceived, and by such misconceived arguments the plaintiff is now trying to curtail the determined rights of defendant Nos.1 to 8 to get the share that was awarded in RFA No.606/1989. The whole scheme of the suits in O.S.No.8973/2006 and O.S.No.6873/2009 is nothing but contesting on technical aspects of law to somehow see that the judgment and decree passed in RFA No.606/1989 are set aside so as to cause deprivation of the rights of defendant Nos.1 to 8 for

claiming their legitimate share. The plaintiff purchased the property from Buddamma, and they do not possess any independent title or right other than what Buddamma had; therefore, the plaintiff and other defendants who are claiming through the plaintiff and having beneficial interest in the suit have stepped into the shoes of Buddamma. Therefore, they are deemed to have the characteristics of legal representatives as defined under Section 2(11) of CPC. There is a difference between legal heirs and legal representatives. Section 2(11) of CPC defines legal representatives as follows:

> *"legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;*

94. Therefore, when C.R.Santosh Kumar and other defendants who are claiming through the plaintiff were representing the estate of deceased Buddamma, because

C.R.Santosh Kumar, being one of the purchasers and representing the partnership firm, is to be considered as a legal representative of Buddamma. Therefore, upon considering Section 2(11) and Order XXII Rule 10 of CPC, it would clearly demonstrate that the plaintiff and C.R.Santosh Kumar have already stepped into the shoes of Buddamma, and it is not open for them to contend that they were not represented in the suit and in RFA No.606/1989.

95. In SLP No.6079/2011 (Ex.D-68), the Hon'ble Supreme Court held that defendant Nos.1 to 8 are entitled to land to the extent of 1 acre 36.5 guntas. Therefore, the determination of the share has attained finality up to the proceedings before the Hon'ble Supreme Court. Therefore, when considering substantial justice vis-à-vis the technical aspects raised in the suit, the Hon'ble Supreme Court, while considering all these aspects, has correctly held that the determination of the share made in RFA No.606/1989

is correct by holding that defendant Nos.1 to 8 are entitled to 1 acre 36.5 guntas of land.

96. Non-arraying of the LRs of Buddamma shall not abate the appeal in whole, and in this regard I place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Shivashankara and others vs. H.P.Vedvyasa Char, Bhurey Khan Vs Yaseen Khan,*** as stated *supra*, and ***State of Andhra Pradesh vs. Pratap Karan***[39].

97. Upon the death of the deceased Buddamma, the joint interest was fully and substantially carried forward in the proceedings by the appellant along with the substituted legal representatives of the deceased. This aspect is agitated in RFA No.692/2003 C/w RFA No.502/2003 (Ex.P-28), in which C.R.Santosh Kumar and M/s. Luvac Engineering Corporation have challenged the order dated 10.03.2003 passed in FDP No.41/1999 (Ex.P-27) on the file of VI Additional City Civil Judge, Bengalore

[39] (2016) 2 SCC 82

City, CCCH-11 and in these appeals, the legal representatives of Buddamma were made parties as respondent Nos.9(a) to 9(i); therefore, the legality and propriety of the decree passed in RFA No.606/1989 is also considered and C.R. Santosh Kumar and M/s. Luvac Engineering Corporation have pleaded equity and this Court has observed that in the name of equity this Court cannot interfere with or modify a valid and just order passed by the Courts, however sympathetic it may be to its cause.

98. In the order it is observed that though it may cause considerable hardship and heartburn for C.R.Santosh Kumar and M/s. Luvac Engineering Corporation in losing the entire extent of land, though they claim to be in possession to an extent of 01 acre 20 guntas from the year 1970, the suit itself is of the year 1971 (O.S.No.334/1971) and the interval between the purchase and the date of filing of the suit being just one year, such equities cannot be pleaded at this point of time.

Hence, the validity of the decree passed in RFA No.606/1989 is also considered and filing these appeals, C.R. Santosh Kumar and M/s. Luvac Engineering Corporation, as a lost hope, pleaded equity by accepting the decree passed in RFA No.606/1989; therefore, the grievance of the plaintiff/partnership firm and its partners are fully heard and considered.

99. Further, the appellants/plaintiffs have filed an undertaking and an affidavit dated 12.06.2001 before the final decree proceedings Court that M/s. Luvac Engineering Corporation and its partners will not plead equities and sought for permission to complete the partly constructed structures, etc.; therefore, it is at their risk that they have started construction and filed the affidavit not to plead equity. Therefore, considering all these aspects, it cannot be said that the legal heirs of Buddamma as well as the plaintiff/partnership firm and its partners have not been heard.

100. Further, the Hon'ble Supreme Court has observed that Order XXII Rule 1 of CPC declares that the death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives. In the present case, the purchasers through Buddamma have accrued their rights by contesting in the final decree proceedings. Though the legal representatives of Buddamma are required to be brought on record, it would not be of any consequences as the legal representatives of Buddamma would not benefit out of the decree, since the purchasers of Buddamma are already placed on record. Hence, though Buddamma died and her legal representatives were not brought on record in RFA No.606/1989, the right to sue survives as the purchasers are contesting the appeal by stating in the suit as the legal representatives of Buddamma. In this regard, I place reliance on the judgment of Hon'ble Supreme Court in the case of ***DDA VS. DIWAN CHAND ANAND AND OTHERS,*** as stated *supra,* which has observed that non-

impleading of legal representatives in all cases would not abate the suit as a whole. It is held at Paragraph Nos. 9, 9.1, 9.2, 9.3,9.4, which reads as under:

> *"9. While considering the impugned order passed by the High Court dated 09.07.2007, dismissing the appeal as having abated, the law on abatement and on Order 22 CPC is required to be discussed. Order 22 CPC fell for consideration before this Court in the recent decision in the case of Venigalla Koteswaramman (supra) in which this Court considered in detail the earlier decisions of this Court in the case of Nathu Ram (supra) as well as the other decisions including the later decision in the case of Hemareddi (supra). The relevant discussion on Order 22 CPC in paragraphs 42 to 44.8 are extracted as under:*
>
> *"42. The rules of procedure for dealing with death, marriage, and insolvency of parties in a civil litigation are essentially governed by the provisions contained in Order 22 of the Code.*
>
> *42.1. Though the provisions in Rule 1 to Rule 10 A of Order 22 primarily refer to the proceedings in a suit but, by virtue of Rule 11, the said provisions apply to the appeals too and, for the purpose of an appeal, the expressions "plaintiff", "defendant" and "suit" could be read as "appellant", "respondent" and "appeal" respectively.*

42.2. Rule 1 of Order 22 of the Code declares that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. When read for the purpose of appeal, this provision means that the death of an appellant or respondent shall not cause the appeal to abate if the right to sue survives.

42.3. Rule 2 of Order 22 of the Code ordains the procedure where one of the several plaintiffs or defendants dies and right to sue survives to the surviving plaintiff(s) alone, or against the surviving defendant(s) alone. The same procedure applies in appeal where one of the several appellants or respondents dies and right to sue survives to the surviving appellant(s) alone, or against the surviving respondent(s) alone. The procedure is that the Court is required to cause an entry to that effect to be made on record and the appeal is to proceed at the instance of the surviving appellant(s) or against the surviving respondent(s), as the case may be.

42.4. However, by virtue of Rule 4 read with Rule 11 of Order 22 of the Code, in case of death of one of the several respondents, where right to sue does not survive against the surviving respondent or respondents as also in the case where the sole respondent dies and the right to sue survives, the contemplated procedure is that the legal representatives of the deceased respondent are to be substituted in his place; and if no application is made for such substitution within the time limited by law, the appeal abates as against the deceased respondent.

42.5. Of course, the provisions have been made for dealing with the application for substitution filed belatedly but the same need not be elaborated in the present case because it remains an admitted fact that no application for substitution of legal representatives of Defendant 2 (who was Respondent 3 in AS No.1887 of 1988) was made before the High Court.

42.6. The relevant provisions contained in Rules 1, 2, subrules (1), (2) and (3) of Rule 4 and Rule 11 of Order 22 could be usefully reproduced as under

"1. No abatement by party's death, if right to sue survives.— The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.— Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

* * *

4. Procedure in case of death of one of several defendants or of sole defendant.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

* * *

11. Application of Order to appeals.—In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal."

43. For determining if Order 22 Rule 2 could apply, we have to examine if right to sue survived against the surviving respondents. It is not the case that no legal heirs were available for Defendant 2. It is also not the case where the estate of the deceased Defendant 2 passed on to the remaining parties by survivorship or otherwise. Therefore, applicability of Order 22 Rule 2 CPC is clearly ruled out.

44. Admittedly, steps were not taken for substitution of the legal representatives of Defendant 2, who was Respondent 3 in AS No. 1887 of 1988. Therefore, sub-rule (3) of Rule 4 of Order 22 of the Code directly came into operation and the said appeal filed by Defendants 16 to 18 abated against Defendant 2 (Respondent 3 therein). We may profitably recapitulate at this juncture that in fact,

the other appeal filed by Defendants 4, 13 and 14 (AS No.1433 of 1989) was specifically dismissed by the High Court as against the deceased Defendant 2 on 25-4-2006.

44.1. Once it is found that the appeal filed by Defendants 16 to 18 abated as against Defendant 2 (Respondent 3), the question arises as to whether that appeal could have proceeded against the surviving respondents i.e. the plaintiff and Defendants 1 and 3 (who were Respondents 1, 2 and 4). For dealing with this question, we may usefully refer to the relevant principles, concerning the effect of abatement of appeal against one respondent in case of multiple respondents, as enunciated and explained by this Court.

44.2. The relevant principles were stated and explained in depth by this Court in State of Punjab v. Nathu Ram [State of Punjab v. Nathu Ram, AIR 1962 SC 89]. In that case, the Punjab Government had acquired certain pieces of land belonging to two brothers jointly. Upon their refusal to accept the compensation offered, their joint claim was referred to arbitration and an award was passed in their favour that was challenged by the State Government in appeal before the High Court. During pendency of appeal, one of the brothers died but no application

was filed within time to bring on record his legal representatives. The High Court dismissed [Province of East Punjab v. Labhu Ram, 1954 SCC OnLine P&H 132] the appeal while observing that it had abated against the deceased brother and consequently, abated against the surviving brother too. The order so passed by the High Court was questioned before this Court in appeal by certificate of fitness.

44.3. While dismissing the appeal and affirming the views of the High Court, this Court in Nathu Ram case [State of Punjab v. Nathu Ram, AIR 1962 SC 89] enunciated the principles concerning the effect of abatement and explained as to why, in case of joint and indivisible decree, the appeal against the surviving respondent(s) cannot be proceeded with and has to be dismissed as a result of its abatement against the deceased respondent; the basic reason being that in the absence of the legal representatives of deceased respondent, the appellate court cannot determine between the appellant and the legal representatives anything which may affect the rights of the legal representatives. This Court pointed out that by abatement of appeal qua the deceased respondent, the decree between the appellant and the deceased respondent becomes final and the appellate court cannot, in any way modify that decree, directly or indirectly.

44.4. The Court observed in that case, inter alia, as under: (Nathu Ram case [State of Punjab v. Nathu Ram, AIR 1962 SC 89] , AIR pp. 9091, paras 46 & 8)

"4. It is not disputed that in view of Order 22 Rule 4, Civil Procedure Code, hereinafter called the Code, the appeal abated against Labhu Ram, deceased, when no application for bringing on record his legal representatives had been made within the time limited by law. The Code does not provide for the abatement of the appeal against the other respondents. Courts have held that in certain circumstances, the appeals against the co respondents would also abate as a result of the abatement of the appeal against the deceased respondent. They have not been always agreed with respect to the result of the particular circumstances of a case and there has been, consequently, divergence of opinion in the application of the principle. It will serve no useful purpose to consider the cases. Suffice it to say that when Order 22 Rule 4 does not provide for the abatement of the appeals against the co-respondents of the deceased respondent there can be no question of abatement of the appeals against them. To say that the appeals against them abated in certain circumstances, is not a correct statement. Of course, the appeals against them cannot proceed in certain circumstances and

have therefore to be dismissed. Such a result depends on the nature of the relief sought in the appeal.

5. The same conclusion is to be drawn from the provisions of Order 1 Rule 9 of the Code which provides that no suit shall be defeated by reason of the misjoinder or nonjoinder of parties and the court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. It follows, therefore, that if the court can deal with the matter in controversy so far as regards the rights and interests of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it. It is only when it is not possible for the court to deal with such matters, that it will have to refuse to proceed further with the appeal and therefore dismiss it.

6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents

other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed.

* * *

8. The difficulty arises always when there is a joint decree. Here again, the consensus of opinion is that if the decree is joint and indivisible, the appeal against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the

deceased respondent. Different views exist in the case of joint decrees in favour of respondents whose rights in the subject-matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will have the result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate court. We do not consider this view correct. The specification of shares or of interest of the deceased respondent does not affect the nature of the decree and the capacity of the joint decree-holder to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decreed in his favour. The abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also, as a necessary corollary, that the appellate court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondent, the appellate court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the Court will do is one to which exception can or cannot be taken.

"9.1 After referring to the decision of this Court in the case of Nathu Ram (supra), in the case of Vennigalla Koteswaramma vs. Malampati Suryamba and Others, (2003) 3 SCC 272, it is observed by this Court that the nature and extent of the abatement in a given case and the decision to be taken thereon will depend upon the facts of each case and, therefore, no exhaustive statement can be made either way and that the decision will ultimately depend upon the fact whether the decree obtained was a joint decree or a separate one. It is further observed that this question cannot and should not also be tested merely on the format of the decree under challenge or it being one or the manner in which it was dealt with before or by the Court which passed it.

Thus, as observed and held by the Court:

(i) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives;

(ii) If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants (Order 22 Rule 2);

(iii) where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Where within the time limited by law no application is made under sub-rule 1 of Order 22 Rule 4, the suit shall abate as against the deceased defendant;

(iv) the provision of Order 22 shall also apply to the appeal proceedings also.

9.2 As observed and held by this Court in the aforesaid decisions while considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents. Thereafter the Appellate Court has to consider the question whether non-bringing the legal representatives of some of the defendants, the appeal could have proceeded against the surviving respondents. Therefore, the Appellate Court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the impugned judgment and order dated 09.07.2007 passed by the High Court, it appears that the High Court has mechanically and without holding any further enquiry which was required to be conducted as observed hereinabove, has simply dismissed the entire appeal as having abated due to non-bringing on record the legal representatives of some of the respondents – the original defendants who, as such, neither contested the suit nor filed the written statements. At the cost of repetition, it is observed that as such the original plaintiffs instituted the suit being co owners/co-sharers and for and on behalf of all the co owners/cosharers of the entire land sought to be acquired under the Land Acquisition Act.

9.4 As observed and held by this Court in the case of K. Vishwanathan Pillai (supra), the coowner is as much an owner of the entire property as a sole owner of the property. No coowner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. It is observed that, therefore, one co--

owner can file a suit and recover the property against strangers and the decree would enure to all the co-owners. The aforesaid principle of law would be applicable in the appeal also. Thus, in the instant case, when the original plaintiffs – two co-owners instituted the suit with respect to the entire suit land jointly owned by the plaintiffs as well as defendants nos. 9 to 39 and when some of the defendants/respondents in appeal died, it can be said that estate is represented by others – more particularly the plaintiffs/heirs of the plaintiffs and it cannot be said that on not bringing the legal representatives of the some of the co sharers–defendants–respondents in appeal the appeal would abate as a whole".

101. The above view is fortified also by the judgment of the Hon'ble Supreme Court in the case of ***SIRAVARAPU APPA RAO AND OTHERS VS. DOKALA APPA RAO***[40]***,*** wherein it was observed that the entire suit cannot be held to be abated on the death of one of the plaintiffs. The matter is still pending consideration before the executing Court in Ex.No.2253/2006. The purchasers

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from Buddamma, namely the plaintiffs and C.R.Santosh Kumar have filed cases are after other whatever the possible in their attempt, even after the judgment of the Hon'ble Supreme Court and now the executing Court has issued delivery warrant.

102. Further, the Hon'ble Supreme Court in the case of ***V. UTHIRAPATHI VS. ASHRAB***[41] has held that abatement does not apply to execution proceedings. It is relevant to mention here that as on the date of the filing of the suit in O.S.No.1318/1980 (O.S.No.334/1971), Buddamma has already transferred her interest in the entire schedule property in favour of the other defendants; therefore, quite naturally, Buddamma did not participate in the above said suit and or in the appeal. The plaintiffs, viz., plaintiff/partnership firm and its partners, being purchasers from Buddamma filed a written statement and stepped into the shoes of Buddamma and led evidence before the Trial Court; hence, Buddamma was well

[41] (1998) 3 SCC 148

represented by her purchasers. Therefore, it cannot be said that the judgment and decree were passed behind the back of the plaintiffs.

103. In O.S.No.1318/1989, C.R.Santosh Kumar and other purchasers from Buddamma have filed the written statement by stating that they protected the interest of Buddamma by contending that she was the absolute owner of the suit schedule property and that she sold the same to them for valuable consideration. M/s. Luvac Engineering Corporation and C.R. Santosh Kumar have contested the suit and appeal as the legal representatives of Buddamma as they acquired interest over the suit schedule property by way of sale deeds from Buddamma.

104. The cause of action to file the suit in O.S.No.1318/1989 has survived and the adjudication of claim has continued as the purchasers as well as C.R.Santosh Kumar and the plaintiff/partnership firm have substantially represented the estate of Buddamma in the

proceedings and the plea of abatement or nullity of the appeal in RFA No.606/1989 does not arise for consideration. Further, the Hon'ble Supreme Court in the case of ***SHIVSHANKARA AND ANOTHER VS. H.P.VEDAVYASA***, as stated *supra* has stated that non-impleading of all legal representatives would not abate the suit if the estate of the deceased is substantially represented by other defendants. In the present case, the plaintiff/partnership firm and other partners, being purchasers from Buddamma were representing contesting the suit; therefore, there is no question of abatement merely because of the death of Buddamma. Also, places reliance on the judgment of the Hon'ble Supreme Court in the cases of ***BHUREY KHAN VS. YASEEN KHAN (dead) by L.Rs. and others,*** and ***ANDHRA PRADESH VS. PRATAP KARAN,*** as stated *supra*.

105. Hence, applying the principles of law laid down by the Hon'ble Supreme Court stated above, upon the death of the deceased Buddamma, the joint interest was

fully and substantially taken forward in the proceedings by the plaintiff/partnership firm and partners by substituting the legal heirs of deceased Buddamma and also when the said appeal was duly accepted. Therefore, it is not open for the appellants to contend that the final judgment and decree passed in RFA No.606/1989 have to be held abated owing to the non-substitution of all the legal heirs of the deceased Buddamma.

106. The plaintiff/partnership firm and partners being purchasers from Buddamma stepped into the shoes of Buddamma by virtue of Order XXII Rule 10 of CPC. They were heard and thereafter, the judgment and decree in RFA No.606/1989 was passed. It is contended that the property in question has divested to Buddamma by virtue of sale deed dated 22.07.1963 cannot be accepted as such because of children of Avalahalli Hanumanthappa i.e., Chikka Muniswamappa (husband of Buddamma) and Anjanappa/plaintiff in O.S.No.1318/1980, entered into a settlement deed wherein 02 acres 07 guntas of land was

allotted to Chikka Muniswamappa and Anjanappa each. Thus, applying principle of Doctrine of Feeding out grant by estoppel embodied under Section 43 of the Transfer of Property Act, 1882, the land in question to the extent of 02 acres 07 guntas stood vested with the plaintiff/Anjanappa by virtue of the said settlement deed. This is also considered on its merits in the appeal in RFA No.606/1989 (Ex.P-29) even in RP No.46/2000, CP No.822/2001, RP No.461/2001 and CP No.944/2001 (which were filed seeking review of the judgment in RFA No.606/1989) and in the final decree proceedings as well as in the execution proceedings, where the plaintiffs have sought allotment of their shares out of the shares of Buddamma by accepting the decree.

107. The judgment and decree passed in RFA No.606/1989 is accepted by the plaintiff/partnership firm and its partners and other respondents/defendants, who are supporting the plaintiff/partnership firm have accepted the judgment and decree passed in RFA No.606/1989 and

the review petitions and civil petitions filed by them are also dismissed; but once again, the present suit for recalling the judgment and decree passed in RFA No.606/1989 is nothing but misconceived one. The plaintiff/partnership firm has raised a technical ground that the legal heirs of Buddamma were not represented; this technicality is nothing but another attempt to curtail the rights of defendant Nos.1 to 8, to get their shares as per the decree passed in RFA No.606/1989. At one stage, the decree passed in RFA No.606/1989 is accepted and at another stage, it is being opposed; therefore, the conduct of the plaintiff/partnership firm and its partners and C.R. Santosh Kumar is nothing but approbation and reprobation. The purchasers from Buddamma have stepped into the shoes of Buddamma and therefore, being legal representatives of Buddamma have contested the suit and appeal; therefore, such representation is valid as per Order XXII Rule 10 of CPC read with Sections 2 and 11 of CPC and therefore, there is no question of abating the

appeal. Hence, the argument canvassed in this regard is found to be meritless.

108. In ***Dhanalakshmi***, case as stated supra, an application for impleadment was filed and came to be dismissed. In the said case, the appellants had purchased the property under two registered sale deeds and, therefore, claimed to be bonafide purchasers for value and entitled to the share of the alienor in equity. On that basis, they contended that they were necessary parties for the effective adjudication of the dispute in the suit.

109. The said application having been dismissed, a revision petition was preferred before the High Court; however, the High Court also dismissed the application. The same was thereafter challenged before the Hon'ble Supreme Court. In this background, it was observed in paragraph No.5 as follows:

> *"5. Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of the*

respondents nos.2, 3, 4 & 6. It is not in dispute that the first respondent P. Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein in the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trial Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings".

110. Therefore, the facts and circumstances of the above-stated case are different from those of the present case. Accordingly, the said judgment is not applicable to the present case.

111. In ***Rajendra Prasad***, case as stated supra, the facts are that the suit was one for partition of property. The suit came to be decreed; however, during

the pendency of the appeal, the plaintiff died and his legal heirs were not brought on record. Consequently, it was held that the appeal stood abated. The facts and circumstances are observed in paragraph No. 4 as follows:

> *"4. Though Shri A.K. Srivastava, learned counsel for the appellants sought to contend that the entire decree is a nullity as held by the High Court and the High Court ought to have held that as legal representative of donor was not brought on record the declaration that Tapeshari Kuer is not the daughter of Ramyad Mahto should not have been given and the dismissal of the suit in its entirety by the appellate decree is not warranted and the appellants are accordingly entitled to the preliminary decree in respect of Schedule 4 properties. It is not necessary to go into that question as per the findings of the High Court itself. It is seen that the preliminary decree for partition consists of two items, namely, Schedule 4 and Schedule 5. As regards Schedule 4 is concerned, it is declared that the appellants are entitled to half share and preliminary decree in that behalf was granted. Equally second part relates to Schedule 5 declaring that Tapeshari Kuer is entitled to half share therein. Pending appeal when Tapeshari Kuer died, her legal heirs were not brought on record. The*

appeal abates as against the interest of her in respect of second part of the decree relating to Schedule 5. As regards Schedule 4 is concerned, the appellants had already acquired interest even prior to the institution of the suit by virtue of gift over on June 28, 1965 and that they claimed that possession was also delivered and they are in possession of the Schedule 4 properties under the gift deed. In the appellate court the right of the respondent in regard to 4th Schedule properties depends upon the status of Tapeshari Kuer. The question whether she is the daughter of Ramyad Mahto or not is required to be gone into only when her legal representatives were brought on record and properly contested but the legal representatives were not brought on record. As rightly pointed out by the High Court, the decree as against the dead person is a nullity. Therefore, the declaration that Tapeshari Kuer is not the daughter of Ramyad Mahto also is not valid in law. Since the High Court has held that the decree of the appellate court is a nullity and the respondents did not file any appeal against that part of the decree. It is not necessary for us to go into that question as the entire appellate decree became a nullity. The result is that the preliminary decree became final".

112. However, in the present case, although Buddamma has died and her legal heirs have not been

brought on record, their interest is contested by the plaintiff firm. Therefore, in light of the principles of law laid down by the Hon'ble Supreme Court under Order XXII Rules 4 and 9 of the Code of Civil Procedure, as discussed above, the appeal does not abate. Accordingly, the decision in *Rajendra Prasad* is not applicable to the present case, having regard to the difference in the factual matrix.

113. In ***Sushil K. Chakravarthy***, as stated supra, the facts were that the defendant, Sushil K.C., died and his legal representatives were not brought on record; nevertheless, the proceedings were continued. In this background, the issue that arose was whether the continuation of the proceedings, without bringing the legal heirs of the deceased Sushil K.C. on record, was legally sustainable. In this regard, it was observed in paragraphs Nos.26 and 27 as follows:

> *"26. We have given our thoughtful consideration to the submissions advanced at the hands of the learned Counsel for the Appellant. The real issue which needs*

to be determined with reference to the contention advanced at the hands of the learned Counsel for the Appellant under Order XXII Rule 4(4) of the Code of Civil Procedure is whether the learned Single Judge while proceeding with the trial of CS (OS) No.2501 of 1997 was aware of the death of the plaintiff Sushil K.C. (the Appellant herein). And further, whether the learned Single Judge of the High Court had thereafter, taken a conscious decision to proceed with the suit without insisting on the impleadment of the legal representatives of the deceased Defendant Sushil K.C. It is possible for us, in the facts of this case, to record an answer to the question posed above. We shall now endeavour to do so. It is not a matter of dispute, that Sushil K.C. had died on 3.6.2003. It is also not a matter of dispute, that on 29.8.2003 the plaintiff Tej Properties (the Respondent herein) had filed an interlocutory application, being IA No.9676 of 2003 under Order XXII Rule 4(4) of the Code of Civil Procedure, for proceeding with CS (OS) No.2501 of 1997 ex-parte, by bringing to the notice of the learned Single Judge, that Sushil K.C. had died on 3.6.2003. That being the acknowledged position, when the learned Single Judge allowed the proceedings in CS(OS) No.2501 of 1997 to progress further, it is imperative to infer, that the court had taken a conscious decision under Order XXII Rule 4(4) of the Code of Civil Procedure, to proceed with

the matter ex-parte as against interests of Sushil K.C., (the defendant therein), without first requiring Tej Properties (the plaintiff therein) to be impleaded the legal representatives of the deceased defendant. It is therefore, that evidence was recorded on behalf of the plaintiff therein, i.e., Tej Properties (the respondent herein) on 28.1.2005. In the aforesaid view of the matter, there is certainly no doubt in our mind, that being mindful of the death of Sushil K.C., which came to his knowledge through IA No.7696 of 2006, a conscious decision was taken by the learned Single Judge, to proceed with the matter ex-parte as against the interests of Sushil K.C. This position adopted by the learned Single Judge in CS(OS) No.2501 of 1997 was clearly permissible under Order XXII Rule 4(4) of the Code of Civil Procedure. A trial court can proceed with a suit under the aforementioned provision, without impleading the legal representatives of a Defendant, who having filed a written statement has failed to appear and contest the suit, if the court considers it fit to do so. All the ingredients of Order XXII Rule 4(4) of the Code of Civil Procedure stood fully satisfied in the facts and circumstances of this case. In this behalf all that needs to be noticed is, that the defendant Sushil K.C. having entered appearance in CS (OS) No. 2501 of 1997, had filed his written statement on 6.3.1998. Thereafter, the defendant Sushil K.C. stopped

appearing in the said civil suit. Whereafter, he was not even represented through counsel. The order to proceed against Sushil K.C. ex- parte was passed on 1.8.2000. Even thereupon, no efforts were made by Sushil K.C. to participate in the proceedings of CS(OS) no.2501 of 1997, till his death on 3.6.2003. It is apparent, that the trial court was mindful of the factual position noticed above, and consciously allowed the suit to proceed further. When the suit was allowed to proceed further, without insisting on the impleadment of the legal representatives of Sushil K.C. it was done on the court's satisfaction, that it was a fit case to exempt the plaintiff (Tej Properties) from the necessity of impleading the legal representatives of the sole defendant Sushil K.C. (the appellant herein). This could only have been done, on the satisfaction that the parameters postulated under Order XXII Rule 4(4) of the Code of Civil Procedure, stood complied. The fact that the aforesaid satisfaction was justified, has already been affirmatively concluded by us, hereinabove. We are therefore of the considered view, that the learned Single Judge committed no error whatsoever in proceeding with the matter in CS (OS) no.2501 of 1997 ex-parte, as against the sole defendant Sushil K.C., without impleading his legal representatives in his place. We therefore, hereby, uphold the determination of the learned Single Judge, with

reference to Order XXII Rule 4(4) of the Code of Civil Procedure.

27. For the reasons recorded hereinabove, we find no merit in the instant appeals and the same are accordingly dismissed".

114. In the above-stated case, the Court was satisfied that it was an appropriate case to exempt the plaintiff from the necessity of impleading the legal representatives of the sole defendant, Sushil K.C. Accordingly, it was observed that the interest of the appellant was duly considered, and the proceedings were held not to have abated.

115. In ***Jaladi Suguna,*** case as stated above it is observed in paragraphs No.14 to 18 as follows.

"14. When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent - plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the

second respondent (tenant) was only a proforma respondent. When first respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore it was necessary to bring the legal representative/s of the deceased Suguna on record to proceed with the appeal.

15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, it can be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, vis-vis other rival claimants to the estate of the deceased.

16. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the

deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record.

17. The third respondent, who is the husband of the deceased, wants to come on record in his capacity as a sole legal heir of the deceased, and support the case of the Trust that there was a valid gift by the deceased in its favour. On the other hand, the appellants want to come on record as testamentary legatees in whose favour the suit property was bequeathed by will, and represent the estate of the deceased Suguna as intermeddlers. They want to continue the contest to the appeal. When Suguna - the first respondent in the appeal before the High Court died, the proper course for the High Court, was first to decide as to who were her legal representatives. For this purpose the High Court could, as in fact it did, refer the question to a Subordinate Court under the proviso to Rule 5 of Order 22 CPC, to secure findings. After getting the findings, it ought to have decided that question, and permitted the person/s who are held to be the legal representative/s to come on record. Only then there

would be representation of the estate of the deceased respondent in the appeal. The appeal could be heard on merits only after the legal representatives of the deceased first respondent were brought on record. But in this case, on the dates when the appeal was heard and disposed of, the first respondent therein was dead, and though rival claimants to her estate had put forth their claim to represent her estate, the dispute as to who should be the legal representative was left undecided, and as a result the estate of the deceased had remained unrepresented. The third respondent was added as the legal representative of the deceased first respondent only after the final judgment was rendered allowing the appeal. That amounts to the appeal being heard against a dead person. That is clearly impermissible in law. We, therefore, hold that the entire judgment is a nullity and inoperative.

18. We may look at it from yet another angle. The relief sought by Suguna in the suit was one in regard to which the right to sue would have survived to her legal representatives if she had died during the pendency of the suit. She successfully prosecuted the suit and obtained the decree declaring the deed to be void. The said decree would continue to be in force unless it is set aside in a manner known to law. It could be set aside in an appeal filed by the aggrieved party, but only after hearing the plaintiff who had secured the decree. Pronouncement of judgment in a case, can be only after the case has been heard. (Vide section 33, Order 20 Rule 1 and Order 41 Rule 30 of CPC). When the respondent - plaintiff died and his/her estate remains unrepresented, it cannot be said that the appeal was `heard'. When the respondent-plaintiff died, the legal representatives who succeeded to her estate will have to be brought on record and they should be heard in their capacity as persons representing the estate of deceased plaintiff. If they are not heard, there is no `hearing' of the appeal in the eye of law.

Consequently the judgment of the trial court could not be disturbed or set aside by the appellate court. Be that as it may".

116. It was held in the above judgment that, without impleading the legal representatives of a deceased party, the proceedings cannot be continued. However, as discussed above, during her lifetime, Buddamma had sold the property to the plaintiff firm, exceeding her share. Consequently, the plaintiff firm has stepped into the shoes of Buddamma, and the plaintiff is contesting the suit on legal heirs of Buddamma and since Buddamma has already sold the land to plaintiff and bringing L.Rs. of Buddamma on record is not necessary in the proceedings as L.Rs. interest is taken care of by the plaintiff.

117. The question, therefore, arises whether bringing the legal representatives of Buddamma is necessary, or merely a legal formality, given that the plaintiff firm already holds her interest and is actively contesting the suit. This implies that the interest of Buddamma's legal representatives is effectively

represented and contested. Accordingly, even after Buddamma's death, the right to sue survives.

118. This distinction in the factual matrix clearly differentiates the present case from the above-stated case. Therefore, the said judgment is not applicable to the present case.

119. Similarly, for the reasons discussed above, the judgments in ***T. Gnanavel vs. T.S. Kanagaraj***, ***Sharadamma vs. Mohammed Pyarejan***, **and** ***Gangabai Gopaldas Mohata vs. Fulchand and Others,*** as stated *supra* are not applicable.

120. Further, the judgment relied upon by the learned counsel for the appellant in ***B.L. Shreedhar****, case* is also not applicable, having regard to the difference in the factual matrix between that case and the instant case. Therefore, the said case cannot be applied to the present proceedings.

121. The learned Senior Counsel for the appellants also relied on the decisions in ***Vijay Narayan Thatte*** **and** ***Madhya Pradesh Development Authority*****,** which, as discussed above, are rendered *in pari materia*. However, the judgments delivered by this Court in RFA, CP, and RP, as discussed above, are neither illegal nor contrary to statute. Hence, the cited decisions are not applicable to the present case.

122. In ***Budh Rama and Others***, as stated supra, while dealing with Order XXII Rules 1 to 4 of the Code of Civil Procedure regarding abatement of appeal, the Hon'ble Supreme Court considered the circumstances under which an appeal stands abated upon the death of a party and when the right to sue survives. The observations in paragraphs Nos. 10 to 18 are relevant and are held as follows:

> *"10. Abatement takes place automatically by application of law without any order of the court. Setting aside of abatement can be sought once the suit stands abated. Abatement in fact results in denial to hearing of the case on merits. Order 22*

Rule 1 CPC deals with the question of abatement on the death of the plaintiff or of the defendant in a Civil Suit. Order 22 Rule 2 relates to procedure where one of the several plaintiffs or the defendants die and the right to sue survives. Order 22 Rule 3 CPC deals with procedure in case of death of one of the several plaintiffs or of the sole plaintiff. Order 22 Rule 4 CPC, however, deals with procedure in case of death of one of the several defendants or of the sole defendants. Sub-clause (3) of Rule 4 makes it crystal clear that

> *"4. (3) where within the time limited by law, no application is made under sub-Rule (1) the suit shall abate as against the deceased defendant.*
>
> *(emphasis in original)*

11. The provisions of Order 22 Rule 4 (4) CPC, provide that in case, the deceased defendant did not contest the suit and did not file a counter affidavit, the substitution may not be warranted. In the instant case, the High Court repelled the submission regarding application of Order 22 Rule 4(4) CPC on the ground that the said provision requires the presentation of an application before the Court, before it pronounces its judgment for seeking such a relief and once such an application is allowed, in that case, it can only be taken against the said defendant notwithstanding the death of such defendant and such a decree shall have the same force and effect as if it was pronounced before the death had taken place. This view stands fortified by the Judgments of this Court in Zahirul Islam Vs. Mohd. Usman[i] and T. S. kanagaraj[ii]. Thus, it has rightly been held by the High Court that the provisions of Order 22 Rule 4(4) CPC were not attracted in the facts of this case.

12. In State of Punjab Vs. Nathu Ram[iii] while interpreting the provisions of Order 22 Rule 4(3) CPC read with Rule 11 thereof, this Court observed that an appeal abates as against the deceased respondents where within the time limited by law no application is made to bring his heirs or legal representatives on record. However, whether the appeal stands abated against the other respondents also, would depend upon the facts of a case.

13. In Sri Chand Vs. M/s Jagdish Pershad Kishan ChanD[iv], this Court held that in case one of the respondents dies and the application for substitution of his heirs or legal representatives is not filed within the limitation prescribed by law, the appeal may abate as a whole in certain circumstances and one of them could be that when the success of the appeal may lead to the courts coming to a decision which may be in conflict with the decision between the appellant and the deceased respondent and, therefore, it will lead to the court passing a decree which may be contradictory and inconsistent to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent in the same case.

14. In Ramagya Prasad Gupta V. Murli Prasad[v], this Court examined the same issue in a case of dissolution of a partnership firm and accounts and placed reliance upon two judgments referred to immediately hereinabove and held as under: (SCC pp. 16-17 para 16)

"16. .....The courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which may be in conflict with the decision between the appellant and the deceased respondent and, therefore, it would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject

matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed. These three testes ..... are not cumulative tests. Even if one of them is satisfied, the court may dismiss the appeal".

(Emphasis added)

15. In Sardar Amarjit Singh Kalra V. Pramod Gupta[vi] a Constitution Bench of this Court, while dealing with the similar issue, has after considering large number of judgments of this Court, reached the following conclusion : (SCC p. 294, para 21)

"21…..(a) In case of "Joint and indivisible decree", "Joint and inseverable or inseparable decree", the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal and require to be dismissed in toto as otherwise inconsistent or contradictory decrees would result and proper reliefs could not be granted, conflicting with the one which had already become final with respect to the same subject matter vis-a-vis the others; (b) the question as to whether the Court can deal with an appeal after it abates against one or the other would depend upon the facts of each case and no exhaustive statement or analysis could be made about all such circumstances wherein it would or would not be possible to proceed with the appeal, despite abatement, partially; (c) existence of a joint right as distinguished from tenancy in common alone is not the criteria but the joint character of the decree, dehors the relationship of the parties inter se and the frame of the appeal, will take colour from the nature of the decree challenged; (d) where the dispute between two groups of parties centerd around claims or based on grounds common relating to the respective groups litigating as distinct groups or bodies --

the issue involved for consideration in such class of cases would be one and indivisible; and (e) when the issues involved in more than one appeals dealt with as group or batch of appeals, which are common and identical in all such cases, abatement of one or the other of the connected appeals due to the death of one or more of the parties and failure to bring on record the legal representatives of the deceased parties, would result in the abatement of all appeals."

(Emphasis added)

The Court further observed that any relief granted and the decree ultimately passed, would become totally unenforceable and mutually self-destructive and unworkable vis-`-vis the other part, which had become final. The appeal has to be declared abated in toto. It is the duty of the court to preserve and protect the rights of the parties.

16. In Shahazada Bi v. Halimabi[vii] *, this Court considered the same issue and held as under :- (SCC P. 360, para 9)*

"9.....That, so far as the statute is concerned, the appeal abates only qua the deceased respondent, but the question whether the partial abatement leads to an abatement of the appeal in its entirety depends upon general principles. If the case is of such a nature that the absence of the legal representative of the deceased respondent prevents the Court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same subject matter. The Court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the Court has no alternative but to dismiss the appeal as a whole. If, on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the Court should not hear

the appeal and adjudicate upon the dispute between the parties."

(Emphasis added)

19. Therefore, the law on the issue stands crystallised to the effect that as to whether non-substitution of LRs of the defendants/respondents would abate the appeal in toto or only qua the deceased defendants/ respondents, depend upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not inter-dependent upon one or the other, nor the parties have conflicting interests inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the Court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law does not permit two contradictory decrees on the same subject matter in the same suit. Thus, whether the judgment/decree passed in the proceedings vis-`-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test.

18. The instant case requires to be examined in view of the aforesaid settled legal propositions. Every co-owner has a right to possession and enjoyment of each and every part of the property equal to that of other co-owners. Therefore, in theory, every co-owner has an interest in every infinitesimal portion of the subject matter, each has a right irrespective of the quantity of its interest, to be in possession of every part and parcel of the property jointly with others. A co-owner of a property owns every part of the composite property along with others and he cannot be held to be a fractional owner of the property unless partition takes place".

123. It is well established that non-substitution of the legal representatives (L.Rs.) of a deceased party does not automatically result in abatement of the appeal. Whether non-substitution leads to abatement depends upon the facts and circumstances of each case. As discussed above, the principle of law is that where the right to sue survives, mere non-joinder of the L.Rs. of the deceased does not cause the appeal to abate.

124. In the present case, the plaintiffs are contesting the suit in place of Buddamma. Consequently, the interest of the L.Rs. of Buddamma is effectively represented. Undisputedly, Buddamma had sold the property to the plaintiff firm, after which respondent Nos. 1 to 8 filed a suit for partition, which was decreed in RFA No. 606/1989. Therefore, the interests of Buddamma and her L.Rs. have already been considered.

125. In these circumstances, mere non-joinder of the L.Rs. of Buddamma does not abate the appeal, and the

appeal survives for consideration. Abatement would occur only if the rights of the L.Rs. of the deceased were affected by their non-joinder. In the present case, since Buddamma had already sold the property to the plaintiff firm, the rights of her L.Rs. are not prejudiced, as the plaintiffs stand in her place. Therefore, the death of Buddamma does not give rise to abatement of the appeal.

126. Accordingly, the judgment in *Budh Rama* is not applicable to the present case. Similarly, the judgment in *Guramma Singa*, supra, is also not applicable, having regard to the difference in the factual matrix between that case and the present case.

DOCTRINE OF MERGER:

127. C.R. Santosh Kumar, who was respondent No.22 in RFA No.606/1989 filed I.A. under Section 148 of CPC for restoration of possession in Ex.No.2253/2006 (Ex.P-128) and the same was allowed. Respondent Nos.1 to 8 (defendant Nos.1 to 8) in O.S.No.8973/2006, being the children of Anjanappa have challenged the same

before this Court in W.P.No.2338/2010 and RFA No.904/2010 (Ex.P-81), which were also dismissed. Respondent Nos.1 to 8 filed a Special Leave Petition in SLP No.6079/2011 (Ex.D-68), wherein, the Hon'ble Supreme Court was pleased to allow the special leave petition by confirming the delivery warrant of land measuring to an extent of 01 acre 36.5 guntas in favour of respondent Nos.1 to 8 vide order dated 21.08.2012.

128. It is submission of the learned counsel appearing on behalf of respondent Nos.1 to 8 that the order passed in RFA No.606/1989 arising out of O.S.No.1318/1980 has merged with the order passed in SLP No.6079/2011; therefore, the allotment of shares made in RFA No.606/1989 is also dealt with in SLP No.6079/2011 and the Hon'ble Supreme Court has confirmed the said allotment of shares. Hence, all the judgments, decrees and orders by passed by way of the preliminary decree in RFA No.606/1989 on its merits

merged with SLP No.6079/2011 and reliance is placed on the judgment of Hon'ble Apex Court.

129. The Hon'ble Supreme Court in the case of ***A.V. PAPAYYA SASTRY AND OTHERS VS. GOVT. OF A.P. AND OTHERS,*** as stated *supra* at Paragraph No.38, it is held as follows:

> *"38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order."*

130. Further, the Hon'ble Supreme Court in the case of ***KUNHAYAMMED AND OTHERS VS. STATE OF KERALA AND ANOTHER,*** as stated *supra* at Paragraph No.44, it is held as under:

> *"44. To sum up, our conclusions are:*

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) The Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme

Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a revew petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C".

131. The Hon'ble Supreme Court in the case of ***EXPERION DEVELOPERS PRIVATE LTD., VS. HIMANSHU DEWAN AND SONALI DEWAN AND OTHERS***[42], at Paragraph Nos.32, 33, 34.

*"32. The dismissal of the appeal in the case of **Pawan Gupta** (supra) without any reasons being recorded would not attract Article 141 of the Constitution of India as no law was declared by the Supreme Court, which will have a binding effect on all courts and tribunals in India. There is a clear distinction between the binding law of precedents in terms of Article 141 of the Constitution of India and the doctrine of merger and res judicata. To merge, as held in **Kunhayammed** (supra), and*

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Khoday Distilleries Ltd. *(supra) means to sink or disappear in something else, to become absorbed or extinguished. The logic behind the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority is subjected to a remedy available under law before a superior forum, then the decree or order under challenge continues to be effective and binding; nevertheless, its finality is put in jeopardy. Once the superior court disposes the dispute before it in any manner, either by affirming the decree or order, by setting aside or modifying the same, it is the decree of the superior court, tribunal or authority, which is the final binding and operative decree. The decree and order of the inferior court, tribunal or authority gets merged into the order passed by the superior forum. However, as has been clarified in both decisions, this doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior court and the content or subject matter of challenge laid or could have been laid will have to be kept in view.*

33. What is important is the distinction drawn by this Court between the law of precedents and res

judicata. In ***State of Rajasthan*** *v.* ***Nemi Chand Mahela and Others***[14]*, it is held:*

"11. *The learned counsel for the petitioners had drawn our attention to para 22 of the decision in Manmohan Sharma case , (2014) 5 SCC 782 which refers to the case of one Danveer Singh whose writ petition had been allowed and the order had attained finality as it was not challenged before the Division Bench or before the Supreme Court. Termination of services in the case of Danveer Singh, it was accordingly held, was not justified and in accordance with law. The reasoning given in paras 22 and 23 in Manmohan Sharma case relating to the case of Danveer Singh would reflect the difference between the doctrine of res judicata and law of precedent. Res judicata operates in personam i.e. the matter in issue between the same parties in the former litigation, while law of precedent operates in rem i.e. the law once settled is binding on all under the jurisdiction of the High Court and the Supreme Court. Res judicata binds the parties to the proceedings for the reason that there should be an end to the litigation and therefore, subsequent proceeding inter se parties to the litigation is barred. Therefore, law of res judicata concerns the same matter, while law of precedent concerns application of law in a similar issue. In res judicata, the correctness of the decision is normally immaterial and it does not matter whether the previous decision was right or wrong, unless the erroneous determination relates to the jurisdictional matter of that body."*

This ratio was followed and approved by a three judges' Bench in Malook Singh and Others v. State of Punjab and Others15.

> *34. In Makhija Construction & Engg. (P) Ltd. v. Indore Development Authority and Others16, after referring to several earlier decisions, this Court has observed that a precedent operates to bind in similar situations in a distinct case, whereas res judicata operates to bind parties to proceedings for no other reason, but that there should be end to litigation. Principle of res judicata should apply where the lis was inter-parties and has attained finality on the issues involved. The principle of res judicata will have no application in cases where the judgment or order has been passed by the Court having no jurisdiction thereof or involving a pure question of law.17 Law of binding precedents, in terms of Article 141 of the Constitution of India, has a larger connotation as it settles the principles of law which emanates from the judgment, which are then treated as binding precedents".*

132. Ex.D-68 is the copy of the order passed in SLP No.6079/2011; Ex.D-69 is the copy of order passed on I.A. filed in O.S.No.1318/1980 and Ex.D-70-copy of order sheet in Ex.No.2253/2006.

133. The Hon'ble Supreme Court in SLP No.6079/2011 (Ex.D-68) has passed order as follows:

> *"ORDER*
>
> *We have heard Mr. Rajesh Mahale, learned counsel for the petitioners, and Mr. T. S. Doabia, learned senior counsel for the respondent.*

Special leave petition is disposed of by the following order:-

(i) The petitioners are entitled to the land admeasuring 1 acre 36.5 guntas details of which has been given in the Schedule in the final decree which reads as under:-

SCHEDULE

Area marked as- B, C, D, E, F, G, H, measuring 1 acres in respect of Sy. No.39/4 situated at Doddakalasandra village consisting of 4-14 guntas of land."

(ii) The land in excess of the above land, if delivered to the petitioner pursuant to the delivery warrant, shall be taken back by the executing court from the petitioners and restituted to the respondent."

134. Therefore, the order passed by the Hon'ble Supreme Court in SLP No.6079/2011 has become final and has attained finality and the only recourse is to execute the decree passed in RFA No.606/1989; therefore, when the preliminary decree is passed by this Court in RFA No.606/1989 and the merits of making allotment of shares is confirmed by the Hon'ble Supreme Court and also considering that the question of abatement and on the issue of legal representatives are all answered and an order is passed on merits. Hence, whatever orders are

passed in Regular First Appeals, Civil Petitions, Review Petitions and Execution Petition, all are merged with the order passed in SLP No.6079/2011.

135. Upon considering all the evidence on record, the judgment and decree passed in RFA No.606/1989 has not been challenged and the said judgment and decree has attained finality. Now, the grounds taken that the appeal has abated and the order passed against a dead person is a nullity cannot be accepted as the said contentions are nothing but an attempt to protract the proceedings merely to defeat the fruits of the decree passed in RFA No.606/1989.

136. Arising out of the decree passed in RFA No.606/1989, the shares were finally demarcated in FDP No.41/1999. Being aggrieved in the order passed in FDP No.41/1999, the appeals were filed before this Court in RFA Nos.502 and 692/2003, against which SLP No.3278/2007 was filed; however, the same was

dismissed. Therefore, the orders passed at the intermediary stage while getting the fruit of decree in RFA No.606/1989 are all merged with SLP No.3278/2007. Hence, the doctrine of merger is applicable in the present case as per the principle of law laid down above stated by the Hon'ble Supreme Court.

137. Further, defendant Nos.1 to 8 in O.S.No.8973/2006, who are plaintiffs in O.S.No.1318/1980 have initiated Execution Petition in Ex.No.2253/2006 (Ex.P.128) to get their share as per divisions in FDP No.41/1999 and objections filed in this regard by C.R. Santosh Kumar and the partnership firm under Order XXI Rule 97 of CPC are rejected. Against which, RFA No.485/2008 (Ex.D-64) was filed and the same was also dismissed. Against which, SLP No.18464/2009 (Ex.D-17) was filed and the same was also dismissed; therefore, as discussed above, whatever intermediary stage was initiated and orders passed by the executing Court and by this Court are merged with SLP

No.18464/2009 (Ex.D-17). Hence, the principles of law laid down by the Hon'ble Supreme Court are squarely applicable to the case on hand as per doctrine of merger. Further, the Hon'ble Supreme Court in SLP No.6079/2011 (Ex.D-68) has put to rest the controversy involved in the case and the judgment and decree passed in RFA No.606/1989 has attained finality; therefore, the appeal does not stand abated in view of the death of Buddamma as the purchasers from Buddamma have represented in the appeal. Therefore, there is no technical law and also the judgment and decree passed in RFA No.606/1989 are found to be well merited; hence, respondent Nos.1 to 8, who are children of Anjanappa are entitled to 01 acre 36.5 guntas of land as per the judgment and decree passed in RFA No.606/1989. Thus, the Trial Court is correct in dismissing the suit in O.S.No.8973/2006 and O.S.No.6873/2009. Hence, the present appeals are also liable to be dismissed.

138. As discussed above, the judgment and decree passed in RFA No.606/1989 has attained finality and the objectors' applications filed by the partners under Order XXI Rule 97 of CPC in Ex.No.2253/2006 (Ex.P-128) and the order passed in RFA No.485/2008 (Ex.D-64) are all merged with the order passed in SLP No.18464/2009 (Ex.D-10); therefore, this Court and the Hon'ble Apex Court have considered the entire issue on its merits as well as the plea of technical aspects and ultimately it is held that the children of Anjanappa, who are respondent Nos.1 to 8 in this appeal (defendant Nos.1 to 8 in O.S.No.8973/2006 and O.S.No.6873/2009) are entitled to the share of 01 acre 36.5 guntas of land. Hence, the entire issue went before the Hon'ble Supreme Court and all the orders passed at intermediary stages as discussed above have been merged with the order passed in SLP and ultimately the rights of children of Anjanappa are recognized by the Hon'ble Supreme Court in SLP No.6079/2011 (Ex.D-68). Therefore, as per doctrine of

merger, the appeals filed are found to be devoid of merits and also are not maintainable. Thus, the judgment and decree passed by the Trial Court are liable to be confirmed.

139. Learned counsel appearing on behalf of defendant Nos.1 to 8 (the children of Anjanappa) has argued that the suit in O.S.No.8973/2006 and O.S.No.6873/2009 are hit by the principle of res-judicata. It is submitted that no person should be vexed twice for the same cause of action. Learned counsel appearing on behalf of the plaintiff/partnership firm and its partners and C.R.Santosh Kumar submitted that the above two suits are not hit by principle of res-judicata.

140. The judgment and decree passed in RFA No.606/1989 has attained finality. There is no challenge to this and the rights of parties in getting their respective shares are finally decided in RFA No.606/1989, respondent Nos.26 and 28 in RP No.645/2005 (Ex.D-32). The objector

application filed under Order XXI Rule 97 of CPC was filed by them in Ex.No.2253/2006 (Ex.P-128) and the same was dismissed. Thereafter, respondent No.26/C.R. Santosh Kumar preferred RFA No.485/2008 before this Court, which was also dismissed. Against which, SLP no.18484/2008 was filed before the Hon'ble Supreme Court and was also dismissed as having no merits, since the proceedings under Order XXI Rule 97 of CPC in Ex.No.2253/2006 were adjudicated as a suit and all the questions have attained finality including the allotment of share and whatever orders were passed under Order XXI Rule 97 of CPC is a decree.

141. Therefore, when an issue is finally and substantially decided in RFA No.606/1989 and for enforcement of the preliminary decree in the execution petition filed in Ex.No.2253/2006 (Ex.P-128), the rights are determined finally and substantially; therefore, filing of the suits in O.S.No.8973/2003 and O.S.No.6873/2009 are hit by principle of res-judicata.

142. Though, C.R.Santosh Kumar, in his written statement and also in his affidavit evidence in O.S.No.1318/1980 has taken the plea that he has acted on behalf of the firm in the dispute. The partnership firm, after accepting the judgment and decree in RFA No.606/1989 has filed Review Petitions, Civil Petitions and participated in the final decree proceedings and execution of decree since the judgment and decree in RFA No.606/1989 has attained finality and the Civil and Review Petitions and I.A's filed in FDP and in execution cases are dismissed. Hence, the right of sharers is finally determined; therefore, it operates as res-judicata. Thus, the suit in O.S.No.8973/2006 and O.S.No.6873/2009 are not maintainable, as the same are hit by the principle of res-judicata, which is correctly decided by the Trial Court.

143. Further, the grounds urged in the present appeals and the grounds urged in SLP No.18464/2009 (Ex.D.10) are one and the same and the Hon'ble Supreme Court in SLP No.18464/2009 has dealt with this issue;

hence, filing of the subsequent suit and appeal are not permissible, as they are hit by principle of res-judicata. Therefore, the suits filed in O.S.No.8973/2006 and O.S.No.6873/2009 are not maintainable in view of the principle of res-judicata, which is correctly appreciated by the Trial Court and there is no perversity found in the order passed by the Trial Court. Thus, the appeals are liable to be dismissed.

144. Section 43 of the Transfer of Property Act, 1882 stipulates as follows:

> *"43. Transfer by unauthorised person who subsequently acquires interest in property transferred.— Where a person [43][fraudulently or] erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.*
>
> *Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."*

[43] Ins. By Act 20 of 1929, sec. 13.

145. It is contention taken by the plaintiffs/partnership firm, C.R.Santosh Kumar and other partners that the settlement deed dated 22.12.1949 (Ex.P-73) is relevant in the suit. This Court, in RFA No.606/1989, has discussed it as follows:

> *"8. The point is there was settlement deed by Huchappa on 22-12-1949 through which B. schedule property was allotted to plaintiff Anja…. And defendant of defendant -1 Chikka Muniswamappa. It is seen that after the purchase of the property under Ex.D-1, Huchappa, the settler, had sold to avalahalli Hanumanthappa under Ex.D.19 on 13.06.1949 the entire property, 4 acres 14 guntas, on 22-12-1949 the settlement deed in question in respect of B-schedule property consisting the suit property came into existence. Under Ex.D.2 Avalahalli Hanumanthappa has sold the property back to Hanumanthappa and Chkka Muniswamappa on 05-10-1950 and Chikka Muniswamappa and Hanumanthappa sold the property to one Muniyappa Reddy under Ex.D.3 on the same day i.e., on 05.10.1950. Now Muniappa Reddy's wife seslls to defendant-1 under Ex.D.20 again the entire property and defendant-1 in turn has sold 1 acre 20 guntas to one santosh kumar who is 5th respondent herein under Ex.D.27 dated 18-5-1970. The property so sold to him was only 1 acre 20 guntas.*
>
> *9. The suit was dismissed by the trial court on the ground that the settlement deed conveyed onbly a right of reconveyance and not the property. The trial court omitted to consider the application of section 43 of the T.P. Act. When the property is sold back to Hanumanthappa and chikka*

Muniswamappa, in my opinion, Chikka Muniswamappa's name appering in the sale deed does not give any better title than the half share as granted to him under the settlement deed dated 22-12-1949. Therefore, Hanumanthappa has no right to sell after Settlement and any sale exercised by Hanumanthappa to others after the settlement deed is not valid in the eye of law and they are no est in the eyr of law. In any event the share of the plaintiff, namely, 2 acres 12 guntas, can never be held by anybody and any sale taken between by any partly will not bind the plaintiff's Share. Once it is held that by virtue of repurchase made by Hanumanthappa, he gets back the right which he conveys under the settlement deed on 22-12-1949. Under the sale deed the plaintiff is entitled to 2 acres 12 guntas of land which right cannot be denied by anybody."

146. As discussed above, the judgment and decree passed in RFA No.606/1989 has attained finality. Upon considering the same, the plaintiff/partnership firm, C.R. Santosh Kumar and other partners cannot rake up the issues that are already settled. Upon considering the pleadings in the suit in O.S.No.8973/2006 and in O.S.No.6873/2009, there is no pleading or issues regarding this non appreciation of Section 43 of the TP Act, 1882. There was a settlement deed by Hucchhappa on 22.12.1949, through which the schedule property was

allotted to plaintiff - Anjanappa and defendant No.1 – Chikka Muniswamappa. After purchase of the property under Ex.D-1 (O.S.No.1318/1980), Hucchhappa, the settler, sold the property to Avalahalli Hanumanthappa under Ex.D-19 (O.S.No.1318/1980) on 13.06.1949, the entire property to the extent of 04 acre 14 guntas. Avalahalli Hanumanthappa sold the property back to Hanumanthappa and Chikka Muniswamappa on 05.10.1950 and Chikka Muniswamappa and Hanumanthappa sold the property to one Muniyappa Reddy on the same day i.e., on 05.10.1950. Buddamma, who is the wife of Muniyappa Reddy sold the entire extent to defendant No.2 represented by C.R. Santosh kumar. Once it is held that by virtue of the repurchase made by Hanumanthappa he gets back the right which he conveyed under the settlement deed dated 22.12.1949; therefore, under the said sale deed, the plaintiff is entitled to an extent of 02 acre 07 guntas of land. Therefore, the applicability of Section 43 of the TP Act, 1882 has attained

finality and when it is held in RFA No.606/1989, Section 43 of the TP Act, 1882, is applicable to the settlement deed dated 22.12.1949 (Ex.D-73). In this regard, I place reliance on the judgment of Kerala High Court ***RAMASWAMY PATTAMALI AND OTHERS VS. LAKSHMI AND OTHERS***[44], at Paragraph Nos. 14,15, 16, 19, and 20 it is held as under:

> "14. Counsel for the appellants contended that on the date of Ext. M. the plaintiffs' branch had no real interest in the suit properties which were then held by Ananthalakshmi Ammal in succession to her father, that they had nothing more than a mere possibility of becoming the reversioners in the off chance of Ananthalakshmi Ammal dying, issue-less, that such a possibility not being transferable there could not be a transfer in regard to the suit properties under Ext. M. The recitals in Ext. M ??? not purport to transfer an expectancy or a possibility of reversion. What it purports to transfer is property in praesenti. It might be that the assignors had at the time only a chance of becoming-reversioners, and therefore had nothing further than that to assign; but certainly that was not what they professed to assign to the defendants' branch as per the terms and recitals in Ext. M. It may be that the assignors had no real title to the properties assigned; but as observed by Viswanatha Sastri, J. in *Veeraswami* v. *Durga Venkata Subbarao*, AIR 1957 Andh Pra 288:

[44] AIR 1962 KERALA 313

To attract an application of Section 43 of the Transfer of Property Act, it is not prohibited by law though it may not be effective to vest ownership of the property in the transferee".

To attract an application of Section 43 of the Transfer of Property Act, it is enough if the transferor in form professed to transfer property which he erroneously or fraudulently represented to be within his power to transfer and received consideration for his act. In other words, if a person who has no title to the property purports to transfer it to another by a deed which in form carries the legal estate and receives consideration therefor and he subsequently acquires an interest in the property sufficient to satisfy the transfer, the estate will pass to the transferee without any further act on the part of the transferor provided the transferee having not rescinded the transfer opts for such effectuation.

15. That such a case is covered by Section 43 of the Transfer of Property Act, is clear from the illustration to the section, which reads:

"A, a Hindu who has separated from his father B, sells to C three fields X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir, obtains Z.C., not having rescinded the contract of sale, may require A to deliver Z to him."

In the property Z, retained by B at the partition, what A can have at the time of the transfer is nothing but a chance of succession on B's death, which, by the provisions of Section 6(a) of the Act, cannot be the subject of a transfer. Nonetheless the legislature has said that the transfer would become valid if ever in fact A became the owner of that property. Illustrations in enactments provided by the legislature are valuable aids in under-standing the real scope of the text thereof. It may be that if the text is clear and an

illustration is beyond it, the illustration cannot be taken as extending or limiting the scope of the text. But in all other cases the illustration shall be taken as explanatory of the section. It has been laid down by the Privy Council:

"In the construction of the….. Act, it is the duty of a Court of law to accept—if that can be done— the illustrations given as being both of relevance and value in the construction of the text". (*Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark*, AIR 1916 PC 242.)

16. Nor is the principle far to seek. If a person purports to transfer property to which he has really no title then and receives consideration therefor, he will he held always bound by his transfer and will not be heard to assert the contrary thereto. If subsequent to the transfer, the property besoms his then also he will not be heard to disown the title of his transferee to the property, if the transfer has not been rescinded by the transferee. (See *Kamaraju* v. *Venkatalakshmipathi*.—AIR 1925 Mad 1043) Here one distinction has to be kept in view. If the transfer was one forbidden by law, that cannot be effectuated by an application of Section 43 of the Transfer of Property Act. Thus in the illustration cited above if A has purported to transfer his chance of succession to his father in the estate Z, the transfer will not be validated by the section when subsequently the chance turns a reality.

19. Counsel for the appellants contended further that the right to a limited estate vested in Ananthalakshmi Animal at the time of Ext. M was well known to the members of the defendants' branch and therefore the representation could not have misled them to act on its faith as now to entitle them to the benefit of Section 43 of the Transfer of Property Act. The section prescribes only three conditions for its applicability, and they are: (1) the transferor should have made a fraudulent or erroneous representation (2) the transfer should be for consideration, and (3) there

should not be another transferee in good faith for consideration without notice of the existence of the option to be pre-judicially affected by its exercise. No fourth requirement for the attraction of Sec. 43 finds a place in the enactment. As held in *Parmanand* v. *Champa Lal*, (S) AIR 1956 All 225 (FB).

"Section 43 of the Transfer of Property Act, does not require that the transferee who can take advantage of it should be one to whom not only a fraudulent or erroneous representation about the transferor's authority to transfer the property is made but should also be one who did not have knowledge of the true factual position and had merely acted on the belief of the erroneous or fraudulent representation made to him by the transferor".

AIR 1957 Andh Pra 288 also held:

"In the application of the doctrine of equity it is immaterial that the transferee knew the truth that the transferor had no authority to transfer the interest which he purported to transfer".

We are in respectful agreement with the above dicta and hold that even if the defendants' branch knew of the defect in the title of the plaintiffs' branch it is of no relevance so far as the applicability of Sec. 43 is concerned.

20. The principle applicable to a case of this kind has been pointed out by the Supreme Court in *T.V.R. Subbu Chetty's Family Charities* v. *M. Raghava Mudaliar*, AIR 1961 SC 797 (801) thus:

> ".....it may be taken to be well-settled that if a presumptive reversioner is a party to an arrangement which may properly be called a family arrangement and takes benefit under it, he would be precluded from disputing the validity of the said arrangement when reversion falls open and he becomes the actual reversioner."

It is often characterised as a rule of estoppel (See *Dhiyan Singh* v. *Jugal Kishore*, (1952) 1 SCC 184 : AIR 1952 SC 145) but it is not the estoppel which is a rule of evidence preventing a party from alleging and proving the truth of facts. Plaintiffs are not prevented from proving anything in the case. Having allowed the parties to prove every detail about the transaction we are only finding the legal consequences thereof; and the consequence is found to be that the arrangement or transfer made by the plaintiffs for consideration is binding on them and their interests in the properties though made before they became actually entitled thereto. (See *Sahu Madho Das* v. *Mukand Ram*, (S) AIR 1955 SC 481). If it be a rule of estoppel in the words of Denning L.J. in *Lyle-meller* v. *A. Lawis and Co. (Westminster), Ltd.*(1956) 1 All ER 247 (251)

"It was not the old kind of estoppel, which was only a rule of evidence. It was the new kind of estoppel which affects legal relations."

147. Further, I place reliance on the judgment of Hon'ble Supreme Court in the case of ***N.P SASEENDRAN VS. N.P POONAMMA AND OTHERS***[45] at Paragraph Nos.14, 14.1, it is held as under:

"14. In Mathai Samuel v. Eapen Eapen0, while examining a composite document, this Court outlined the requirements for both a Will and a gift, which read as under:

[45] Civil Appeal No.4312 of 2025 (arising out of SLP (C) No.698/2023

"16. We may point out that in the case of a will, the crucial circumstance is the existence of a provision disposing of or distributing the property of the testator to take effect on his death. On the other hand, in case of a gift, the provision becomes operative immediately and a transfer in praesenti is intended and comes into effect. A will is, therefore, revocable because no interest is intended to pass during the lifetime of the owner of the property. In the case of gift, it comes into operation immediately. The nomenclature given by the parties to the transaction in question, as we have already indicated, is not decisive. A will need not be necessarily registered. The mere registration of "will" will not render the document a settlement. In other words, the real and the only reliable test for the purpose of finding out whether the document constitutes a will or a gift is to find out as to what exactly is the disposition which the document has made, whether it has transferred any interest in praesenti in favour of the settlees or it intended to transfer interest in favour of the settlees only on the death of the settlors.

17. A composite document is severable and in part clearly testamentary, such part may take effect as a will and other part if it has the characteristics of a settlement and that part will take effect in that way. A document which operates to dispose of property in praesenti in respect of few items of the properties is a settlement and in future in respect of few other items after the deaths of the executants, it is a testamentary disposition. That one part of the document has effect during the lifetime of the executant i.e. the gift and the other part disposing the property after the death of the executant is a will. Reference may be made in

this connection to the judgment of this Court in M.S. Poulose v. Varghese [1995 Supp (2) SCC 294].

18. In a composite document, which has the characteristics of a will as well as a gift, it may be necessary to have that document registered otherwise that part of the document which has the effect of a gift cannot be given effect to. Therefore, it is not unusual to register a composite document which has the characteristics of a gift as well as a will. Consequently, the mere registration of document cannot have any determining effect in arriving at a conclusion that it is not a will. The document which may serve as evidence of the gift, falls within the sweep of Section 17 of the (2012) 13 SCC 80 Registration Act. Where an instrument evidences creation, declaration, assignment, limitation or extinction of any present or future right, title or interest in immovable property or where any instrument acknowledges the receipt of payment of consideration on account of creation, declaration, assignment, limitation or extinction of such right, title or interest, in those cases alone the instrument or receipt would be compulsorily registerable under Section 17(1)(b) or (c) of the Registration Act, 1908. A "will" need not necessarily be registered. But the fact of registration of a "will" will not render the document a settlement. Exhibit A-1 was registered because of the composite character of the document."

14.1. Thus, the legal position is well settled. There must be a transfer of interest in praesenti for a gift or a settlement and in case of postponement of such transfer until the death of the testator, the document is to be treated as a will. The fact that a document is

registered, cannot be the sole ground to discard the contents and to treat the document as a gift, just because the law does not require a will to be registered. The act and effect of registration depends upon the nature of the document, which is to be ascertained from a wholesome reading of the recitals. The nomenclature given to the document is irrelevant. The contents of the document have to be read as a whole and understood, while keeping in mind the object and intent of the testator. What is not to be forgotten is that in case of a gift, it is a gratuitous grant by the owner to another person; in case of a settlement, the consideration is the mutual love, care, affection and satisfaction, independent and resulting out of the preceding factors; in case of a will, it is declaration of the intention of the testator in disposition of his property in a particular manner. Therefore, even when there is any ambiguity in understanding the nature of the documents from its contents, we are of the view that the subsequent conduct of the executant must also be considered to take a decision. It is possible that in a single document, there could be multiple directions in different clauses though seemingly repugnant but in reality, it could only be ancillary or a qualification of the earlier clause. Therefore, the document must be harmoniously read to not only understand the true intent and purport, but also to give effect to each and every word and direction".

148. The said settlement deed dated 22.12.1949 is found to be for valid consideration. Therefore, upon considering the nature of the settlement deed, Section 43

of the TP Act, 1882, is applicable and moreover, this issue has attained finality in RFA No.606/1989. Therefore, in conclusion, when the entire evidence, both oral and documentary evidence are meticulously perused and scanned, the right of entitlement of shares in the suit schedule properties by the children of Anjanapa has attained finality on its merits up to the Hon'ble Supreme Court as discussed above.

149. Further, the entire suits in O.S.No.8973/2006 and O.S.No.6873/2009 are framed on technical plea that C.R.Santosh Kumar, who is the 5th defendant in O.S.No.1318/1980, has duly represented the firm has given evidence on behalf of the partnership firm as one of the partners. Moreover, the plaintiff/partnership firm is mainly a characteristic family entity and were living under one roof; therefore, the other partners of the firm knew very well the proceedings and were watching the proceedings amounting to deemed participation through C.R. Santosh Kumar. Hence, they defended the suit and

the appeal very well and the partnership firm and other partners had full and complete knowledge of the developments in the suit and in the appeals.

150. Though, C.R. Santosh Kumar alone is defendant No.5 in O.S.No.1318/1980, upon considering his evidence, both oral and documentary evidence as discussed above and appreciated by the Trial Court and once again upon re-appreciation by this Court in the appeal, there is no merit found in the contention urged by the partnership firm, C.R. Santosh Kumar and other partners.

151. Further, it is borne out from the entire records as discussed above, filing of two suits above stated O.S.No.8973/2006 and in O.S.No.6873/2009 are nothing but a futile attempt just to avoid respondent Nos.1 to 8 getting fruitful decree in RFA No.606/1989. Furthermore, the Hon'ble Supreme Court in SLP No.6079/2011 (Ex.D-68) has upheld the share to be given to the children of Anjanappa to an extent of 01 acre 36.5 guntas. Therefore,

the appeals are found to be devoid of merits and the same are liable to be dismissed. Accordingly, I answer point Nos.(i) to (iii), (vii) and (viii) in the ***Affirmative*** and point Nos.(iv) to (vi) in the ***Negative***. Therefore, for the aforesaid reasons, the appeals are liable to be dismissed with cost of Rs.25,000/-.

152. In the result, I proceed to pass the following:

ORDER

i. The Regular First Appeals are ***dismissed*** with cost of Rs.25,000/-.

ii. The common judgment and decree dated 30.06.2016 passed in O.S.No.8973/2006 and O.S.No.6873/2009 by the I Additional City Civil and Sessions Judge, Bengalore City (CCH-2) is hereby confirmed.

iii. Registry is directed to send back the Trial Court Records along with a copy of this judgment to the Trial Court.

In view of dismissal of the appeals, pending IAs' if any, shall stand disposed of.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA, ASN
List No.: 19 Sl No.: 1