NC: 2025:KHC-D:6730
RFA No. 1911 of 2005

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 22ND DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 1911 OF 2005 (PAR)

BETWEEN:

1. ISHWARAPPA SIDDAPPA GOULI @ SAMPAGAVI,
SINCE DEAD BY LRS.

1(A). IRANNA S/O. ISHWARAPPA SAMPAGAVI.

1(B). SHIDDAPPA S/O. ISHWARAPPA SAMPAGAVI.

1(C). HALAPPA S/O. ISHWARAPPA SAMPAGAVI.

1(D). SMT. CHAMPAVVA W/O. ISHWARAPPA SAMPAGAVI.

1(E). SMT. DYAMAVVA D/O. ISHWARAPPA SAMPAGAVI.

1(F). SMT. YELLAVVA @ REKHA
D/O. ISHWARAPPA SAMPAGAVI.
ALL ARE MAJOR, R/O. GOULI GALLI, HAVERI.

...APPELLANTS

(BY SRI. B. CHIDANANDA, ADVOCATE)

Digitally signed by VISHAL NINGAPPA PATTIHAL
Location: High Court of Karnataka, Dharwad Bench.

AND

1. YALLAPPA SIDDAPPA GOULI @ SAMPAGAVI,
SINCE DEAD BY LRS.

1A. RATMAVVA W/O. YALLAPPA GOULI.

1B. VIJAYAKKA W/O. VEERAPPA,
AGED MAJOR, OCC: AGRICULTURE & GRAZING
BUFFALOES, R/O. GOULIGALLI, HAVERI.

2. GANAPPA SIDDAPPA GOULI @ SAMPAGAVI,
AGED ABOUT 60 YEARS, OCC: COOLIE,
R/O. KONANATAMBAGI, KHANVALI,
M. G. ROAD, HAVERI.

3. SMT. NINGAVVA W/O. NAGAPPA GOULI,
AGED ABOUT 55 YEARS,
SINCE DEAD R10(A) TO 10(E) ARE LRS.

4. SMT. SHIVAKKA W/O. MALLESHAPPA GOULI,
AGED ABOUT 55 YEARS, OCC: HOUSEHOLD,
R/O. RANEBENNUR, DIST. HAVERI.

5. IRAPPA S/O. MALLESHAPPA GOULI,
AGED ABOUT 30 YEARS, OCC: MILK BUSINESS,
R/O. GOULIGALLI, RANEBENNUR.

6. DYAMAPPA S/O. MALLESHAPPA GOULI,
AGED ABOUT 19 YEARS, OCC: MILK BUSINESS,
R/O. GOULIGALLI, RANEBENNUR.

7. SMT AVVAKKA W/O. NAGAPPA GOULI,
AGED ABOUT 32 YEARS, OCC: HOUSEHOLD,
R/O. GOULIGALLI, RANEBENNUR,
SINCE DEAD BY LRS.

7(A). PRAMESHAPPA NAGAPPA GOULI,
AGED ABOUT 12 YEARS, OCC: GRAZING BUFFALOES,
R/O. RANEBENNUR HAVERI DISTRICT.

7(B). KUM. SARASAVVA D/O. NAGAPPA GOULI,
OCC: STUDENT, R/O. RANEBENNUR,
HAVERI DIST. SINCE 7(A) & 7(B) ARE MINORS,
NAME OF NAGAPPA GOULI IS DELETED AS PER
HON'BLE COURT ORDER DATED 19.08.2014.

8. SMT. RENAVVA W/O. FAKKIRAPPA GOULER,
NAME IS CORRECTED AS PER ORDER DATED 20.01.1996
AS SMT.SAROJA W/O. PARASAPPA GOULI,
R/O. GOULI GALLI, MUNDAGOD, DIST. KARWAR.

9. SMT. KUSUMVVA W/O. HALAPPA HAVERI,
DECEASED BY HER LRS.

9(A). RAJA HALAPPA GOULI,
AGED ABOUT 25 YEARS, OCC: MILK VENDOR,
R/O. GOULIGALLI, RANEBENNUR, HAVERI DIST.

9(B). SAROJAVVA W/O. FAKKIRAPPA GOULI,
AGED ABOUT 33 YEARS, OCC: HOUSEHOLD,
R/O. GUTTAL, DIST. HAVERI.

9(C). RAMESH HALAPPA GOULI,
AGED ABOUT 27 YEARS, OCC: HOUSEHOLD,
R/O.TAGARSI, DIST: SHIMOGA.

9(D). LAXMAVVA VEERABASAPPA GOULI
AGED ABOUT 31 YEARS, OCC: HOUSEHOLD,
R/O. TAGARSI, DIST. SHIMOGA.

9(E). SMT. GODAVVA W/O. IRAPPA SAMPAGAVI,
AGED ABOUT 36 YEARS, OCC: HOUSEHOLD,
R/O. GOULIGALLI, RANEBENNUR.

9(F). KUM. RENUKA D/O. HALAPPA GOULI,
AGED ABOUT 26 YEARS, OCC: HOUSEHOLD,
R/O. GOULIGALLI, RANEBENNUR.

9(G). GEETA HALAPPA GOULI,
AGED ABOUT 23 YEARS, OCC: HOUSEHOLD,
R/O. GOULIGALLI, RANEBENNUR.

9(H). SURESH HALAPPA GOULI,
AGED ABOUT 34 YEARS, OCC: NIL,
R/O. GOULIGALLI, RANEBENNUR.

10. SMT. NINGAVVA DEAD BY LRS.

10(A). PARASAPPA S/O. NINGAPPA GOULI,
SINCE DEAD BY HIS LRS.

10(A)(i). RAJESHWARI PARASAPPA
D/O. LATE PARASAPPA N. MUDHOLKAR,
AGED ABOUT 35 YEARS.

10(A)(ii). DEVARAJA PARASAPPA
S/O. PARASAPPA N. MUDHOLKAR,
AGED ABOUT 33 YEARS.

10(A)(iii). LATHA PARASAPPA
D/O. PARASAPPA N. MUDHOLKAR,
AGED ABOUT 30 YEARS.

10(A)(iv). BASAVA PARASAPPA
S/O. LATE PARASAPPA MUDHOLKAR,
AGED ABOUT 28 YEARS,
ALL ARE R/AT. GOULIGALLI, MEGINAKERI,
RANEBENNUR, DIST: HAVERI.

CAUSE TITLE AMENDED AS PER HON'BLE
COURT ORDER DATED 07.11.2023.

10(B). SMT. SAVANTHRAVVA @ CHAMPAVVA.

10(C). PRABHU S/O. NINGAVVA S. GOULI.

10(D). KARIBASAPPA S/O. NINGAVVA NAGAPPA GOULI,
@ MUDHOLKAR.

10(E). CHANNAPPA NAGAPPA MUDHOLKAR,
ALL ARE MAJOR, R/O. SHIVALINGANAGAR,
KUMBARGUNDI ROAD, HAVERI.

…RESPONDENTS

(BY SRI. VIJAYENDRA BHIMAKKANAVAR, ADV. FOR R1 (A & B);
R1(B) IS LRS OF DECEASED R1 (A);
SRI. N. R. KUPPELUR, ADV. FOR R5, R6, R9(E) & R9(F);
NOTICE TO R2 & R4 ARE DISPENSED WITH VIDE ORDER DATED 21.02.2014;
NOTICE TO R7(B), R8, R9(B), R9(D), R10A(i), R10A(ii) & R10B(ii) ARE SERVED;
NOTICE TO R3, R7(A), R9(A), R9(C), R9(G), R9(H), R10(C), R10(D), R10A(iii), R10A(iv), R10E(i) & R10E(ii) ARE HELD SUFFICIENT)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 R/W. UNDER ORDER 41 RULE 1 OF CPC, PRAYING TO ALLOW THE TOP NOTED APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE DATED 24.10.2005 IN O.S. NO.36/1994 PASSED BY THE LEARNED CIVIL JUDGE (SR.DN) HAVERI, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 08.04.2025 FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE UMESH M ADIGA)

1. This appeal is preferred by the defendant No.1 against the judgment and decree dated 24.10.2005 passed in O.S. No. 36/1994 by the learned Senior Civil Judge, Haveri.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. It was the case of the plaintiff (respondent No.1 herein) that his father Siddappa had six sons by name, Ganapa (second defendant), Malleshappa (defendant No.4), Eshwarappa (first defendant), Yallappa (plaintiff), Erappa (defendant No.5) and Dyamappa (defendant No.6) and four daughters by name Ningavva (defendant No.3), Kusumavva (defendant No.9), Avakka (defendant No.7), Renavva (defendant No.8). Both Siddappa and his wife are no more. The son of Siddappa by name Malleshappa referred above died about ten years back in Ranebennur. His wife and children are defendants in the present suit. The second son

of Siddappa, i.e., defendant No.2, is not mentally sound and he has no independent thinking capacity. He was working in different houses in the village and thereafter he worked in a hotel at Haveri and is staying in the said hotel. He was married and having four children. Another son of Siddappa by name Malleshappa left Haveri during the year 1958 and was residing with his family in Ranebennur and as stated above he died about ten years back. The daughters of Siddappa got married and they were residing in their respective husband's houses. It is further contended that Siddappa during his lifetime maintaining the cattle and used to sell milk and from the said earning he purchased some of the properties. At that time by his earning he purchased the property mentioned in Schedule B2 by registered sale deed dated 19.03.1960. Property bearing CTS No. 1566, i.e., Schedule B1 is ancestral property of Siddappa.

4. During the lifetime of Siddappa, plaintiff and defendant No.1 were residing with him in the ancestral house and continued milk vending business by maintaining

the cows and buffalos. From the said dairy farm they used to earn. Defendant No.1 was intelligent and having worldly knowledge. Plaintiff was not having so much worldly knowledge. Therefore he used to work in the farm and maintaining the cattle. He was milking the cow and defendant No.1 used to sell to different hotels and other household. Defendant No.1 was elder to the plaintiff and he was managing the family. Even after the death of Siddappa, plaintiff and defendant No.1 continued said business jointly and defendant No.1 used to get earning from the said business with him. From the said income he purchased suit 'A' schedule property by registered sale deed dated 06.02.1976. Thereafter the said property has been enjoyed by the plaintiff and first defendant together. The number of she-buffaloes were increased approximately four to five years prior to the filing of the suit. Consequently, defendant No.1 rented a building from one Shivappa Agadi and maintaining the cattle in the said building. The plaintiff was also residing in the said premises until recently to

assist in maintaining the cattle. The same was continued till recently, i.e., prior to filing of the suit.

5. It is further averred that, few weeks prior to filing of the suit, son of the first defendant abused the plaintiff and alleged that he was not maintaining the cattle properly. In view of the said reason plaintiff demanded for partition and separate possession of his share in the suit property. Defendant No.1 refused to effect partition. Therefore he was constrained to file the suit. With these reasons plaintiffs prayed to grant the relief of partition and separate possession of his share in the suit property.

6. Defendant No.1 filed his written statement denying the averments made in the plaint. He contended that the suit schedule 1(c) property does not exist. However, he admitted that the suit schedule B-1 property, bearing CTS No.1566, is an ancestral property belonging to his late father, Siddappa. The said property is a non-agricultural plot. Late Siddappa had taken a loan of Rs.200/- from Smt. Tippavva W/o. Basappa Kudari, by

creating an encumbrance and charge over said property. Subsequently, Tippavva filed a suit for recovery of the amount and attempted to auction the suit property for recovery of the amount. Defendant No.1 repaid the said to Tippavva and thereby got the property released from the auction proceedings. Thereafter, the said property became the absolute property of defendant No.1. However, the name of his late father Siddappa continued in the revenue records. Hence, defendant No.1 claimed that CTS No.1566 is his absolute property.

7. Defendant No.1 further contended that the plaintiff left his native place, Haveri, around 30 years back and had been residing elsewhere. About eight to ten years prior to the filing of the suit, the plaintiff returned to Haveri and began residing in a rented house belonging to Shivappa Agadi. The plaintiff never assisted defendant No.1 in maintaining the she buffaloes. Defendant No.1 asserted that he is not a member of the joint family consisting of the plaintiff and others. Their father, the deceased Siddappa

was in poor health and unable to earn livelihood. Defendant No.1 claims to have purchased CTS No.1567 on 16.03.1969 out of his own earnings. After the death of Siddappa, the names of all his sons were entered in the revenue records. However, defendant Nos.2, 3, 9 and Malleshappa, son of Siddappa have relinquished their shares in the suit schedule A property in favour defendant No.1. Therefore, the plaintiff has no right to claim share in the said property. Defendant No.1 further stated that he constructed a building on CTS No.1567 in the year 1972 from his own funds. He has been in open, continuous and exclusive possession and enjoyment of CTS Nos.1566 and 1567 for more than 12 years, with the knowledge of the plaintiff thereby became owner and adverse possession. He further contended that the agricultural lands bearing R.S. Nos. 101, 102 and 103 are his self acquired properties. Neither the plaintiff nor any of the other defendants have any right, title, or interest in the suit property and, therefore, cannot claim any share in the suit properties. Without prejudice his contention, he has stated that if it the suit properties are considered as

joint family properties, the plaintiff would be entitled to only 1/6th share in the said properties. With these reasons, Defendant No.1 prayed to dismiss the suit.

8. Based on the pleadings of the parties, the trial Court framed the following

ISSUES

1. *Whether plaintiff proves that he and defendant no.1 and their father Siddappa were constituted Hindu Joint family?*

2. *Whether plaintiff further proves that the suit schedule properties are the joint family properties of him, defendant no.1 and their father Siddappa?*

3. *Whether plaintiff further proves that he has got½ share in the suit 'A' schedule properties, 7/30 share in suit schedule B-1 properties and 7/18 share in suit schedule B-2 properties and ½ share in suit 'C' schedule properties?*

4. *Whether defendant no.1 proves that suit schedule properties are his self acquired properties?*

5. *Whether defendant no.1 further proves that defendant no.2, 3, 9 and Malleshappa the husband of defendant no.4 and father of defendant no.5 to 8 have relinquished their rights in the suit properties in his favour?*

6. *Whether defendant no.1 provesthat he has become owner of the shares of plaintiff and*

other defendants in the suit schedule properties by adverse possession?

7. *Whether plaintiff is entitled for the relief sought for?*

8. *What decree or order?*

9. In support of his case, the plaintiff examined two witnesses as PW1 and PW2 and Exs.P1 to P8. Defendant No.1 examined DW1 to DW4 and marked as Exs.D1 to D28.

10. After hearing both parties and upon appreciating the pleadings and material available on record, the trial Court answered issue Nos.1, 2 and 7 in the affirmative; issue No.3 partly in the affirmative; issue Nos.4 to 6 in the negative. Accordingly, the suit was partly decreed by the impugned judgment and decree dated 24.10.2005. The same is challenged by defendant No.1 in the present appeal on the grounds urged in the appeal memorandum.

11. I have heard the arguments of the learned counsel appearing for the appellant as well as the learned counsel for respondent No.1. The other respondents,

though duly served with notice, have not chosen to appear before this Court.

12. The following points arise for consideration:

(i) Whether the learned trial Judge erred in holding that the suit properties are joint family properties and in allotting shares to the parties as per the impugned decree?

(ii) Whether the documents produced by the appellant are necessary to pass an effective judgment and whether he has been able to prove that despite due diligence, he could not produce them before the trial Court?

13. The finding of this Court on the above-mentioned points are in the negative, for the following reasons:

Re: Point No.1:

14. Learned counsel for the appellant repeatedly and vehemently contended that the plaintiff, in the pleadings, stated that the suit schedule A property was purchased out of the joint excretions of himself, his father and defendant

No.1. However, he has not disclosed anywhere the details of income earned from such joint excretions. He did not plead how many she-buffalos were maintained by them, the quantity of milk obtained from the said she-buffalos, or the amount of money earned from the sale of such milk. These facts are conspicuously absent from both the plaint and his evidence. Unless the plaintiff is able to prove that he and defendant No.1 had a sufficient and identifiable source of income through their joint excretions, his contention that he also contributed to the earnings of defendant No.1 cannot be acceptable.

15. The appellant further contended that the plaintiff had been residing with defendant No.1 until the filing of the suit, but no peace of material evidence has been placed on record to support his case. He has not examined the any relevant witnesses to prove that he had been residing in a room of a Mutt prior to filing of the suit. If he was not residing with defendant No.1, the contention that he was

assisting defendant No.1 and performing all the work to maintain she-buffalos does not hold ground.

16. The appellant further contended that the burden of proving the issues lay on the plaintiff. However, the trial Court erroneously shifted the burden onto defendant No.1 to prove the case of the plaintiff, which led to an incorrect conclusion. Defendant No.1 produced a document showing that the suit schedule A property was purchased in his name under a registered sale deed. Defendant No.1 has been engaged in business and used to take agricultural lands on lease, cultivating them by paying rent to the respective land owners. From this income, he maintained his family and acquired the property. Although he previously possessed supporting documents, they were misplaced. After filing of this appeal, the appellant was able trace the documents pertaining to the agreement of sale and lease of the agricultural lands, which were submitted along with an application before this Court. These documents are relevant and constitute crucial evidence in

support of the case of defendant No.1. It is settled principle of law that parties may be permitted to produce additional evidence if such documents are relevant and necessary for resolving the dispute between the parties, and the same may be allowed at any stage of the proceedings. In light of the above reasons, it is prayed that the application filed under Order XLI Rule 27 of the CPC be allowed, and the matter be remanded to the trial Court to record the additional evidence of defendant No.1 and thereafter decide the matter on merits. Accordingly, prayed to pass appropriate orders.

17. Learned counsel for the appellant further that the suit schedule C property comprise a cattle shed, which is claimed to belong jointly to the plaintiff and defendant No.1. However, the trial Court did not accept this contention and answered the issue in the negative. Since the plaintiff failed to prove that there were any she-buffalos jointly owned by himself and defendant No.1, the question of plaintiff maintaining such she-buffalos does not arise.

Based on this finding, the entire case put forth by the plaintiff was disbelieved. Nevertheless, the trial Court proceeded to decree the suit, thereby committing a serious error.

18. Learned counsel for the plaintiff vehemently contended that the plaintiff had clearly stated in the plaint as well as in his evidence that he lacked worldly knowledge, whereas defendant No.1 had studies up to the 3rd or 4th standard and possessed such knowledge. Therefore, it was the plaintiff who maintained the she-buffalos, milked them, and handed over the milk to defendant No.1, who then sold it to various hotels and collected the proceeds. Defendant No.1 is the elder brother of plaintiff, and due to this relationship the plaintiff did not demand an account of the money earned. He placed great faith and trust in his elder brother, Misusing this trust, defendant No.1 purchased the property in his name and later denied the rights of the plaintiff over it. The version of plaintiff is credible and

probable, whereas the denial by defendant No.1 is not reliable.

19. He further contends that PW2 corroborated the evidence of PW1. Defendant Nos.2 and 4 stated that defendant No.1 was maintaining the she-buffalos and selling the milk. This fact was not disputed by defendant No.1 during the evidence. The testimonies of defendant Nos.2 and 4 thus corroborate the case of plaintiff. This evidence clearly support the case of plaintiff. The trial Court has properly appreciated the evidence and arrived at a right conclusion. Hence, there is no need for interference with the said finding.

20. During the course of the trial, defendant No.1 admitted that the suit schedule B property is joint family property and that both houses belonged to the deceased Siddappa. The house bearing Sl.No.B2 is ancestral property, which Siddappa inhirited from his ancestors. The trial Court upon appreciating the evidence, held that the plaintiff was unable to prove his claim over the suit schedule C property.

The said finding was not challenged by the plaintiff. Hence, there is no need to reconsider the same. The only disputed property is the suit schedule A property. According to the plaintiff, it was acquired out of the joint excretions of himself and defendant No.1, whereas defendant No.1 contends that it is his self acquired property.

21. I have anxiously gone through the materials produced by both sides.

22. Admittedly, the plaintiff has not produced any documentary evidence to establish that he and defendant No.1 owned and maintained the she-buffalos, or that he was taking care of them, milking them, and handing over the milk to defendant No.1 for sale to hotels, from which the income was used to acquire the suit schedule A property. The claim has been specifically disputed by defendant No.1.

23. PW1 in his evidence, reiterated the averments made in the plaint. He produced documents such as the

voters list, record of rights, property extract, ration card, and election identity card. PW2 was also examined on behalf of the plaintiff and he corroborated the evidence of PW1. Although it was vehemently contended that PW2 has stated mere facts more than what was stated by PW1 and was merely a henchman of the plaintiff, this contention lacks substance. The entire cross-examination does not suggest that PW2 was a tutored witness, giving evidence at the behest of the plaintiff.

24. In the cross-examination, both PW1 and PW2 stated the number of buffalos that were tethered prior to the filing of the suit. They claimed that there were 16 milk-yielding she buffalos, but were unable to recall the exact number. They also admitted that they could not specify how many liters of milk were produced by each buffalo or the price at which defendant No.1 used to sell the milk. It is the case of the plaintiff that he lacked worldly knowledge, and accordingly, worked in the cattle shed, maintaining the buffalos, while defendant No.1, being the elder member and

Kartha of the family, sold the milk in the market, to hotels and to other customers. Under such circumstances, the inability of the plaintiff to state the price per liter of milk cannot be a ground to discredit his evidence. Learned trial Judge discussed these facts in detail and rightly concluded that the suit schedule A property was acquired though the exertions of plaintiff and defendant No.1 and, therefore, it constitutes joint family property.

25. It is a matter of repetition, but nonetheless important to note that defendant No.1 denied the entire contention raised by the plaintiff and vaguely claimed that he had an income and that the suit property was purchased from that income. However, at no point did he disclose any specific or credible source of income sufficient ot purchase the said property. During the course of the trial, he stated that he had been engaged in selling the cereals and food grains since his childhood, including his schooldays, and that he continued this business after leaving the school and thereby earned income, He has also contended that he had

taken agricultural land on lease, cultivated it, and earned income from it. However, the plaint is silent on these aspects.

26. As per the Order VI of the CPC, any evidence led without proper pleading cannot be considered. Therefore, the contention of defendant No.1 that he was engaged in the food grain business or that he was taking agricultural land on lease, cultivating it, and earning income therefrom, is not at all acceptable, as there was no such pleading in the written statement regarding these avocations. These assertions were developed only during the course of the trial, specifically during the evidence of defendant No.1. Hence, such facts cannot be taken into consideration.

27. Defendant No.1 was examined as DW1, and in his evidence, he reiterated the contentions raised in his written statement. The sale deed under which he purchased the property was also marked in evidence. In his cross-examination, he claimed ignorance about his date of birth, but stated that his age was 59 years. He denied the

suggestion that he falsely stated his age as 59 years to support his case. He also provided particulars regarding the land he had obtained on lease for cultivation by paying rent, and further stated that he was also engaged in dealing with oil. He expressed ignorance regarding whether any suit had been filed by Timmappa Kudari against his father. During cross-examination, he denied the suggestion of the plaintiff that he refused to carry out a partition after the plaintiff requested it.

28. Defendant No.1 examined DW2 to DW4 in order to establish that defendant No.1 was in possession of the agricultural land (suit schedule A property) and that the plaintiff had never cultivated the same. DW2 also stated during cross-examination that defendant No.1 belongs to Gouli community, whose traditional occupation is maintaining cows and she-buffalos, milking them and selling the milk in the market. He admitted that there were several she-buffalos at the house of defendant No.1 and that the milk was sold to hotels and khanavalis (local

eateries), but asserted that the plaintiff never came to the agricultural land. He denied the suggestion that he had taken money on behalf of the plaintiff and deposed falsely before the Court.

29. DW3, appearing to have taken clues from the evidence of DW2, pleaded ignorance regarding the tethering of cattle by defendant No.1 along with plaintiff, and the sale of milk by defendant No.1 to hotels and Khanavalis. He further stated that defendant No.1 was engaged in selling groundnut oil and food grains. However, these facts were never mentioned by defendant No.1 in his written statement. Therefore, the evidence of DW1 and DW3 on these aspects are not reliable.

30. DW4 also stated that both defendant No.1 and plaintiff belongs to Gouli Community. He denied the suggestion of the plaintiff that he had stated in his affidavit that, defendant No.1 was engaged in the edible oil (groundnut oil) business. Upon examining both the oral and documentary evidence, one fact becomes evident that both

plaintiff and defendant No.1 were involved in running a diary business, and defendant No.1 was selling milk to hotels and khanavalis. These facts were admitted by DW1 to DW3, and they lend probability to the case of plaintiff. Had defendant No.1 pleaded these facts in his written statement and led corresponding evidence, the matter would have been viewed differently. However, the contentions raised during the course of trial that defendant No.1 was cultivating agricultural land on lease, and engaged in the sale of food grains, cereals and edible oil appears to have been raised merely to cover up the deficiencies in his case and to suggest a source of income. These facts are not acceptable.

31. The trial Court, after detailed consideration, held that the agricultural lands standing in the name of defendant No.1 were purchased when he was a minor, if the age mentioned in the sale deeds is to be accepted. Learned counsel for the appellant commented on the trial Court

acceptance of the age of defendant No.1, but failed produce any documentary evidence to prove his actual age.

32. Defendant No.1 is literate and stated that he studied in primary school. Under such circumstances, it would not have been difficult for him to produce a document containing his date of birth to establish that the finding of the trial Court was erroneous. But, no such steps were taken by defendant No.1. Therefore, the observation made by the learned trial Judge that the property was said to have been purchased when he was merely 10 to 12 years old and was a minor, remains unchallenged and cannot be proved to be incorrect.

33. It is not in dispute that the sale deed stands in the name of defendant No.1. The plaintiff contends that as defendant No.1 was the elder brother, possessed worldly knowledge, and managed the financial affairs of the family, the sale deed was executed in his name. Pursuant to this sale deed, the revenue records were mutated in the name of defendant No.1 in respect suit schedule A property. This

fact is not disputed. However, mere mutation in the revenue records, and the existence of a sale deed in the name of defendant No.1 are not sufficient grounds to conclude that the suit schedule A property is his self acquired property or that he is the absolute owner thereof. Therefore, no interference with the findings of the trial Court is warranted.

Re: Point No2:

34. The contention of the appellant is that the said documents were misplaced during the pendency of this appeal. He now seeks to produce them before this Court, asserting that they establish his independent income to purchase the property. Therefore, he has prayed that the documents be admitted and the matter be remanded to the trial Court for recording further evidence and delivering a fresh finding in this regard. However, it is significant to note that there is no reference in the pleadings regarding defendant No.1 taking agricultural lands on lease, cultivating them, or doing so by sharing crops or paying

rent. There is also no mention of the documents now sought to be produced. These documents appear to have been produced as a surprise to the opposite party. Hence, the contention of the plaintiff that these are created documents carries weight. Moreover, except for one document that refers to a lease transaction, the other documents are merely agreements of sale without possession. Such documents cannot be relied upon to establish that the lands in question were handed over to defendant No.1 for cultivation. Therefore, the submission of the plaintiff in this regard is acceptable.

35. In the affidavit filed in support of the application Order XLI Rule 27 of the CPC, no valid or sufficient reasons have been assigned for the non-production of the said documents before the trial Court. Merely stating that the documents were misplaced does not constitute a justifiable explanation. In light of these reasons, the documents in question cannot be considered for the purpose of passing judgment. It is worth reiterating that, in the absence of

appropriate pleadings, any amount of evidence produced by a party is of no evidentiary value. Therefore, allowing the application would serve no useful purpose for either party. Accordingly, the application deserves to be rejected.

36. Based on the above discussion, point Nos.1 and 2 are answered in the *negative,* and the following order is passed:

(i) The appeal is dismissed.

(ii) The judgment and decree dated 24.10.2005 passed in O.S. No. 36/1994 by the learned Senior Civil Judge, Haveri is hereby confirmed.

(iii) The application filed under Order XLI Rule 27 of the CPC is rejected.

(iv) Send back the trial Court records, along with a copy of this judgment, to the trial Court.

Sd/-
(UMESH M ADIGA)
JUDGE

BVV, VNP /CT-AN
List No.: 3 Sl No.: 1