RFA NO.100121 OF 2018

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 29th DAY OF JUNE 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

REGULAR FIRST APPEAL NO.100121 OF 2018

BETWEEN:

1. SMT. BIBIJAN
   W/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 63 YEARS, OCC: HOUSEHOLD WORK,

2. MOHABOOBSAB
   S/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 43 YEARS, OCC: CARPENTER,

3. ABDUL GAFFAR
   S/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 42 YEARS, OCC: GOUNDI WORK,

4. RIYAZ AHMED
   S/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 40 YEARS, OCC: GOUNDI WORK,

5. IRSHAD AHMED
   S/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 34 YEARS, OCC: GOUNDI WORK,

6. DADA HAYAT S/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 33 YEARS, OCC: GOUNDI WORK,

7. SHAH NAWAZ S/O. MOHAMMED GOURSE MULLA,
   AGED ABOUT 32 YEARS, OCC: GOUNDI WORK,

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Location: HIGH COURT OF KARNATAKA, DHARWAD BENCH
Date: 2026.06.30 14:55:47 +0530

(APPELLANTS 1 TO 7 ARE
R/O. DOOR NO.54,
BADI PLOT JANNAT NAGAR,
OLD HUBLI, HUBLI).

8. SMT. ASMA W/O. MOHAMMED ARIF SAVANUR,
AGED ABOUT 26 YEARS,
OCC: HOUSEHOLD WORK,
R/O. GANESH PETH, HUBLI.

9. ABDUL RAZAK S/O. MOHAMMED GOURSE MULLA,
AGED ABOUT 23 YEARS,
OCC: GOUNDI WORK,
R/O. DOOR NO.54, BADI PLOT,
JANNAT NAGAR, OLD HUBLI, HUBLI.

...APPELLANTS

(BY SRI. SANTOSH B. MANE, ADVOCATE)

AND:

1. FATIMA W/O. ABDUL KARIM MULLA,
AGED ABOUT 75 YEARS, OCC: HOUSEHOLD WORK,

2. SHARIF AHMED S/O. ABDUL KARIM MULLA,
AGED ABOUT 57 YEARS, OCC: DRIVER,
SINCE DECEASED BY LRS

R2(A) FATHIMABI W/O. SHARIF AHMED,
AGED ABOUT 38 YEARS,
OCC: HOUSEHOLD WORK,

R2(B) AYESHA D/O. SHARIF AHMED
AGED ABOUT 9 YEARS,
MINOR REPRESENTED BY
NATURAL MOTHER
PROPOSED RESPONDENT NO.2(A)
BOTH ARE RESIDENTS OF
KALMESHWAR NAGAR,

TAKIWALE CHAWL, HUBBALLI.

3. NISAR AHMED S/O. ABDUL KARIM MULLA,
AGED ABOUT 57 YEARS, OCC: DRIVER,

4. IQBAL AHMED S/O. ABDUL KARIM MULLA,
AGED ABOUT 52 YEARS, OCC: DRIVER,
(RESPONDENTS 1-4 ARE
R/O. SADASHIV NAGAR,
OLD HUBLI, HUBLI.

5. KHIRSHEDA BEGUM
D/O. ABDUL KARIM MULLA,
AGED ABOUT 50 YEARS,
OCC: HOUSEHOLD WORK,
R/O. TABIB LAND HUBLI.

6. SOMANATH KASHINATH MISKIN,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. SIDDHARUDH NAGAR,
HEGGERI, OLD HUBLI, HUBLI.

7. NIBANNA MALLESHAPPA BADIGER,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. MISHRIKOTI,
TALUK: KALAGHATAGI,

8. BASAVARAJ S/O. MALLESHAPPA BADIGER,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. MISHRIKOTI,
TALUK: KALAGHATAGI.

9. ABDUL SAMED S/O. ABDUL RAWOOF KHAZI,
AGED ABOUT 78 YEARS, OCC: AGRICULTURE,

10. DADAMIYA S/O. ABDUL RAWOOF KHAZI,
AGED ABOUT 68 YEARS, OCC: AGRICULTURE,

(RESPONDENTS 9 & 10

R/O. SUBHAS NAGAR,
GUDIHAL ROAD, HUBLI.)

11. YALLAPPA S/O. RUDRAPPA KAMADHENU,
AGED ABOUT 64 YEARS,
OCC: AGRICULTURE,

12. CHENNAPPA
S/O. RUDRAPPA KAMADHENU,
AGED ABOUT 68 YEARS,
OCC: AGRICULTURE,

13. HANAMANTAPPA S/O. RUDRAPPA KAMADHENU,
AGED ABOUT 64 YEARS, OCC: AGRICULTURE,
RESPONDENT 11 TO 13 ARE
R/O. RAMAPUR, HUBLI-580024,
DIST: DHARWAD.

…RESPONDENTS

(BY SRI. ASHOK T. KATTIMANI AND
SRI. A.V. HONNAVALLI, ADVOCATES FOR R9 AND R10;
SRI. DINESH M. KULKARNI, ADVOCATE FOR R11 TO R13
(GPA OF R13); SRI. CHETAN MUNNOLI, COUNSEL
APPOINTED AS MINOR GUARDIAN IN R/O. R2(B);
R2 A & B, R3, R4, R5 –NOTICE HELD SUFFICIENT;
NOTICE SERVED TO R6, R7 AND R8; VIDE ORDER DATED
27/6/2022 R2-R5 ARE LRS OF DECEASED R1)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, PRAYING TO CALL FOR THE RECORDS, PERUSE THE SAME AND SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 16/11/2017 CORRECTED JUDGMENT DATED 01/01/2018 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC KALAGHATAGI IN O.S.NO.323/2015 AND GRANT THE RELIEF AS PRAYED FOR IN THE PLAINT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE)

1. The present appeal is filed by the plaintiffs/appellants challenging the judgment and decree dated 16.11.2017 (corrected judgment on 01.01.2018) passed by the Senior Civil Judge and JMFC, Kalaghatagi, (for short, the Trial Court) in O.S. No.323/2015.

2. For the sake of convenience, the parties are referred to according to their ranking before the Trial Court.

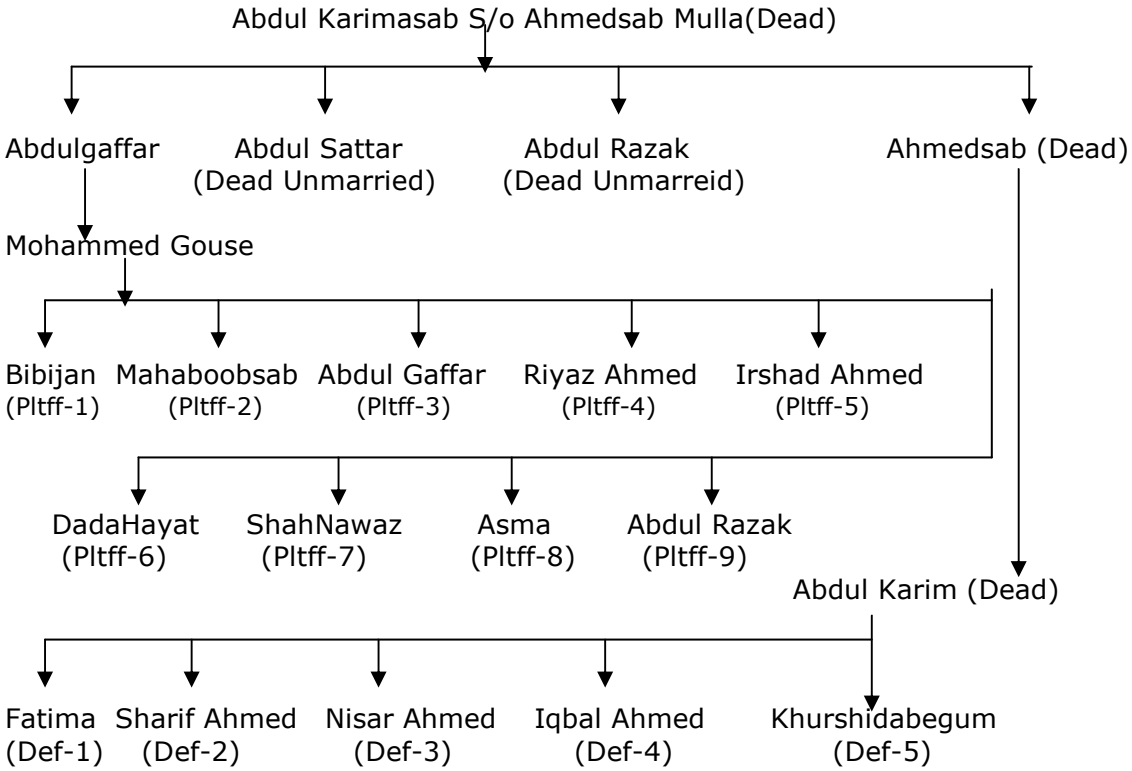
3. Plaintiffs have filed the suit seeking partition and separate possession of their half share in the suit schedule properties by metes and bounds and for a declaration that the sale deeds executed in favour of defendant Nos.6 to 13 in respect of the suit lands are not binding on the plaintiffs and their share, along with other consequential reliefs.

4. The description of the suit schedule properties is as under:

A) "An agriculture land bearing R.S.No.256/2, measuring 02 acres 02 guntas, assessed at Rs.5.66, situated at Misrikoti Village of Kalaghatgi Taluka

B) An agriculture land bearing R.S.No.106/2, measuring 14 acres 01 guntas, assessed at Rs.44.58, situated at Misrikoti Village of Kalaghatgi Taluka"

5. The brief facts of the case are that, with regard to the relationship between the parties, the genealogy stated in the plaint is extracted below:



6. The Plaintiffs' case is that:-

a. The suit lands originally belonged to the propositus, Abdul Karimasab Mulla, who died intestate

leaving behind his four sons, namely, (i)Abdul Gaffar, (ii) Abdul Sattar, (iii) Abdul Razak and (iv) Ahmedsab. After the death of the propositus, the aforesaid four sons succeeded to his estate. Thereafter, Abdul Sattar and Abdul Razak died unmarried. Consequently, the suit lands devolved upon Abdul Gaffar and Ahmedsab.

b. The parties profess Islam and are hence, Muslims governed by Hanafi Law of Inheritance. Accordingly, Abdul Gaffar became entitled to half share and Ahmedsab became entitled to the remaining half share in the suit lands. The plaintiffs further contend that Abdul Gaffar, son of the propositus Abdul Karimasab, died leaving behind his only son, Mohammed Gouse. After the death of Mohammed Gouse, his legal heirs, namely the plaintiffs, succeeded to his estate. Ahmedsab died leaving behind his only son, Abdul Karim, who in turn died leaving behind his legal heirs, namely defendant Nos.1 to 5. There has been no partition of the suit lands by metes and bounds.

c. The plaintiffs and defendant Nos.1 to 5 are co-owners, co-sharers and tenants-in-common in respect of the suit lands. They contended that their predecessor-in-interest, Mohammed Gouse, was suffering from chronic bronchitis and was bedridden for a long period. He died in the year 2006. At that time, defendant Nos.1 to 5 were managing and looking after the suit lands. The plaintiffs requested the defendants to effect partition and grant them separate possession of their share. However, the defendants continued to postpone the same on one pretext or another.

d. In January 2014, the plaintiffs once again approached defendant Nos.1 to 5 and requested them to effect partition of the suit lands. However, to the surprise of the plaintiffs, the defendants denied the plaintiffs' share in the suit schedule properties. The plaintiffs verified the revenue records and came to know that defendant Nos.1 to 5, behind the back of the plaintiffs, had illegally sold the suit 'A' schedule land to defendant No.6 under a registered

sale deed dated 22.07.2004. Defendant No.6, in turn, sold the said suit 'A' schedule land to defendant Nos.7 and 8 under a registered sale deed dated 20.03.2008.

e. Likewise, defendant Nos.1 to 5, in collusion with defendant Nos.9 and 10, created and concocted a number of sale deeds in respect of the suit 'B' schedule lands. The sale deed dated 11.02.1986 purportedly executed in favour of defendant No.9 was never executed by Mohammed Gouse. According to the plaintiffs, there was foul play in the said transaction. The signature found on the sale deed dated 11.02.1986 is not the signature of Mohammed Gouse, the predecessor-in-interest of the plaintiffs. Therefore, the said transaction is not binding on the plaintiffs.

f. Thereafter, defendant Nos.1 to 5 sold 3 acres and 1 gunta of land comprised in the suit 'B' schedule property to defendant No.9 under a registered sale deed dated 05.08.1987. Defendant Nos.1 to 5 further sold 4 acres of land comprised in the suit 'B' schedule property to defendant No.10 under a registered sale deed dated

18.04.1988. Subsequently, defendant Nos.9 and 10 sold the entire extent of 14 acres and 1 gunta comprised in the suit 'B' schedule property to defendant Nos.11 to 13 under three different registered sale deeds dated 13.08.2001. The plaintiffs contend that the said sale deeds are not binding on them or on their half share in the suit schedule properties.

g. It is further contended that the suit lands are ancestral properties and that the plaintiffs and defendant Nos.1 to 5 are co-owners, co-sharers, and tenants-in-common in respect of the suit lands. The plaintiffs are entitled to half share therein. Therefore, defendant Nos.1 to 5 had no right, title, or authority to alienate the suit properties in favour of defendant Nos.6, 9 and 10**.** Consequently, the registered sale deed dated 22.07.2004 executed in favour of defendant No.6, the subsequently registered sale deed dated 20.03.2008 executed in favour of defendant Nos.7 and 8, and the registered sale deeds dated 11.02.1986, 05.08.1987, 18.04.1988, and

13.08.2001 executed in favour of defendant Nos.9, 10, 11 to 13, respectively are not binding on the plaintiffs or their half share in the suit schedule properties. Having no alternative, the plaintiffs were constrained to file the suit before the trial court.

7. Despite service of suit summons, defendant Nos.1 to 6 failed to appear before the Trial Court and were placed *ex parte*.

8. Defendant Nos.7 and 8 appeared before the Court and filed their written statement, wherein they denied all the plaint averments. They contended that they are the bona fide purchasers of Suit Schedule Item No.1 property, having purchased the same from defendant No.6 for a valuable consideration of Rs.3,40,000/-. They further contended that they purchased the said property after duly verifying all the documents pertaining to the land. According to them, there is no cause of action for filing the suit. They alleged that the plaintiffs have filed the suit only with an intention to harass defendant Nos.7 and 8 and to deprive

them of their valuable property at the instance of persons inimically disposed towards them. Hence, they prayed for dismissal of the suit.

9. Defendant No.9 appeared through his counsel and filed a written statement denying all the plaint averments. He contended that:

a. There had been an earlier partition of the suit properties between Mohammed Gouse and defendant Nos.1 to 5. In the said partition, 7 acres of land was allotted to the share of Mohammed Gouse and the remaining 7 acres 1 gunta was allotted to the share of defendant Nos.1 to 5. Accordingly, the revenue records in respect of R.S. Nos. 106/1 and 106/2 were mutated in the names of Mohammed Gouse and defendant Nos.1 to 5 accordingly.

b. Subsequently, Mohammed Gouse, the father of Plaintiff Nos.2 to 9, sold the 7 acres of land allotted to his share in favour of defendant No.9 during the year 1986 after obtaining the requisite permission from the Assistant Commissioner, Dharwad.

c. Similarly, defendant Nos.1 to 5, after obtaining said valid permission, sold 3 acres 1 gunta of land out of the 7 acre 1 gunta in favour of defendant No.9 under a registered sale deed dated 05.08.1987 and the remaining 4 acres of land in favour of defendant No.10 during the year 1988. Accordingly, mutation entries were effected in the names of defendant Nos.9 and 10.

d. It is further contended that for the last 15 years, defendant No.9 has been in peaceful possession and enjoyment of the said property without any interference from anybody.

e. Therefore, defendant Nos.9 and 10 claim to be bona fide purchasers of Suit Schedule Item No.2 properties. Hence, it is contended that the plaintiffs have filed the said suit only with an intention to make unlawful gain and, therefore, prayed for dismissal of the suit.

10. Defendant Nos.11 to 13 appeared and filed their written statement denying all the plaint averments. They contended that:

a. They are the bona fide purchasers of Suit Schedule 'B' property under registered sale deeds dated 13.08.2001 executed by its previous owners, i.e., defendant Nos.9 and 10, for valuable consideration.

b. They further contended that, at the time of the purchase, they had properly verified all the documents pertaining to the said property. According to them, the total extent of land in R.S. No.106 measures 14 acres 1 gunta. Out of the said extent, defendant Nos.11 and 12 purchased 5 acres of land each.

c. The plaintiffs have no right to question the alleged sale transactions and there is no property available for partition. The suit is barred by limitation. The father of Plaintiff Nos.2 to 9 passed away in the year 2006. After the sale of the properties, the vendor remained alive for more than 20 years. During that period, Mohammed Gouse never questioned the said sale transactions. The plaintiffs were well aware of the said transactions. In spite of the same, they have filed the present suit after a lapse of about nine

years. Under Mohammedan Law, the plaintiffs have no right to challenge the transactions made by their father. Accordingly, the defendants prayed for dismissal of the suit.

11. Based on the pleadings and evidence on record, the Trial Court framed the following issues:

1. "Whether the plaintiff proves that suit properties are the joint properties of the plaintiffs and defendants no.1 to 5 and plaintiffs are having half share in the suit properties?

2. Whether the transaction in respect of A &B- schedule is not binding on the share of the plaintiffs in the suit property ?

3. Whether the plaintiff prove that sale deed dated: 11-02-1986 is created as if late Mohammed Gouse Mulla executed it ?

4. Whether defendants no.7 and 8 prove that they are the bonafide purchasers of land measuring 2 acres of and 2 guntas of land in Survey no. 256/2 ?

5. Whether defendant no.9 proves that there was a partition between Mohammed Gouse Mulla and defendants no.1 to 5 as averred in para 12(a) of the written statement ?

6. Whether defendant no. 9 proves that he is the bonafide purchasers of the land bearing survey no. 106/2 measuring 7 acres and he developed the said land ?

7. Whether the defendant no. 11 & 13 prove that they are the bonafide purchasers of 11 acres 1 guntas of the property in Survey no.106 ?

8. Whether the suit is barred by limitation ?

9. Whether the court fee paid is insufficient ?

10. Whether the plaintiffs are entitled for the reliefs claimed in the suit ?

11. What order ?"

12. In order to prove their case, Plaintiff No.3 was examined as PW1 and got marked documents at Exs.P1 to P16. On behalf of the defendants, Defendant No.7 was examined as DW1, the GPA holder of Defendant Nos.11 to 13 was examined as DW2, Defendant No.9 was examined as DW3, and one independent witness was examined as DW4. The defendants got marked documents at Exs.D1 to D40.

13. After hearing the arguments and appreciating the oral and documentary evidence on record, the Trial Court answered Issue Nos.1 to 3, 9 and 10 in the negative and Issue Nos.4 to 8 in the affirmative. Consequently, the Trial Court dismissed the suit of the plaintiffs with costs by judgment and decree dated 16.11.2017.

14. Being aggrieved by the dismissal of the suit, the plaintiffs have preferred the present appeal on the following grounds:

a. The impugned judgment and decree passed by the Trial Court are perverse, capricious and contrary to the evidence available on record.

b. The Trial Court failed to consider the case of the plaintiffs that the defendants, who were managing the affairs of the suit properties, had fabricated documents by forging the signature of deceased Mohammed Gouse, thereby causing serious prejudice to the plaintiffs.

c. The Trial Court failed to consider that Suit Schedule 'B' property was sold only by Defendant Nos.1 to 5 without the signature of the father of the plaintiffs. The evidence on record discloses that Mohammed Gouse was bedridden and was not in a position to move about and attend to such transactions.

d. The Trial Court further failed to consider that there was no partition between Mohammed Gouse and his brothers. In the absence of any cogent evidence establishing such partition, the finding recorded by the Trial Court is unsustainable.

e. The Trial Court failed to properly appreciate the documents produced by the plaintiffs. Two important documents produced by the plaintiffs disclose that Mohammed Gouse had signed in Kannada, whereas the documents relied upon by the defendants contain signatures in Urdu purportedly made by Mohammed Gouse. This material aspect has not been properly considered by the Trial Court.

f. Defendant Nos.1 to 5 did not enter the witness box before the Trial Court. This circumstance clearly supports the plaintiffs' contention that false documents were created and relied upon to alienate the suit properties.

g. The Trial Court also failed to consider Exs.P14 to P16, which disclose that the deceased Mohammed Gouse had approached the bank for financial assistance along with a project report. Despite these being public documents, the Trial Court failed to properly appreciate their evidentiary value.

15. On these grounds, the plaintiffs have prayed for allowing this appeal, by setting aside the impugned judgment and decree, and to decree the suit.

16. Heard the learned counsel for the parties.

17. We have perused the appeal papers, the records of the Trial Court, and the oral and documentary evidence adduced by the respective parties.

18. The point that would arise for our consideration in this appeal is:

"Whether the impugned judgment and decree passed by the Trial Court is perverse, illegal, and calls for interference by this Court?"

19. In the present case, the relationship between the parties is not in dispute. Abdul Karimasab had four sons, namely: (i) Abdul Gaffar, (ii) Abdul Sattar, (iii) Abdul Razak and (iv) Ahmed Sab. Abdul Sattar and Abdul Razak died unmarried. Abdul Gaffar had a son by the name Mohammed Gouse. The present plaintiffs are the legal heirs of Mohammed Gouse. Ahmed Sab also died leaving behind his son Abdul Karim Defendant Nos.1 to 5 are the legal heirs of the said Abdul Karim.

20. According to the plaintiffs, Defendant Nos.1 to 5 created documents showing that Mohammed Gouse had sold the properties in favour of Defendant No.6, 9 and 10 who in turn sold the properties in favour of the subsequent purchasers, namely Defendant Nos.7 to 13.

21. There are two suit schedule properties involved in the case. Defendant Nos.6 to 13 claim that they are bona fide purchasers of Suit Schedule properties.

22. Admittedly, out of the four sons of Abdul Karimasab, Abdul Sattar and Abdul Razak died unmarried.

Therefore, the properties would devolve upon the remaining two branches, namely Abdul Gaffar and Ahmed Sab. Both of them are no more. The plaintiffs are the legal heirs of Mohammed Gouse, representing the branch of Abdul Gaffar, whereas Defendant Nos.1 to 5 are the legal heirs of Abdul Karimasab representing the branch of Ahmed Sab.

23. A perusal of the documents produced by the plaintiffs, particularly the mutation extracts, discloses that the suit properties were originally purchased by the propositus and continued to stand in the names of his successors.

24. Learned counsel for the appellants/plaintiffs argued that, after the death of their father, Defendant Nos.1 to 5 were managing the suit properties. It is contended that they fabricated the signature of Mohammed Gouse and alienated the properties. It is further argued that, despite the specific contention of the plaintiffs that the sale deeds were created by defendant Nos.1 to 5, the Trial

Court failed to properly appreciate the evidence available on record.

25. On going through the evidence adduced by the plaintiffs before the Trial Court, it can be observed that PW1 Abdul Gaffar Mulla, who is Plaintiff No.3, deposed that his father, Mohammed Gouse, was a chronic asthma patient, who was bedridden for a long time, and died in the year 2006. He further deposed that defendant Nos.1 to 5, who were managing and looking after the suit lands, got created the sale deed in respect of Suit Schedule 'A' property in favour of Defendant No.6 under the registered sale deed dated 22.07.2004. Thereafter, Defendant No.6 sold the property to Defendant Nos.7 and 8 under the registered sale deed dated 20.03.2008. He further stated that Defendant Nos.1 to 5 had also created several sale deeds in favour of Defendant Nos.9 and 10 in respect of the suit schedule 'B' properties.

26. PW1 further deposed that, though the plaintiffs and defendants are co-owners, co-sharers and tenants-in-

common, Defendant Nos.1 to 5 alienated the properties without the knowledge of the plaintiffs. The plaintiffs have produced relevant documents in support of their claim. In the cross-examination, PW1 stated that there was no partition between his father and the father of the defendants.

27. On the other hand, it is the specific defence of the defendants that there had been a partition between the plaintiffs' father and the defendants' Nos.1 to 5 father and that the plaintiffs' father had sold the properties allotted to his share to defendant Nos.1 to 5. It is the contention of the defendants that there was a family partition. However, the said partition deed was not registered. In the cross-examination of DW1, who is Defendant No.7, a suggestion was made that Mohammed Gouse, the father of the plaintiffs, had a half share in the suit properties. DW1 answered that he was not aware whether the plaintiffs' father had any share in the suit properties.

28. On a careful scrutiny of the evidence adduced by the defendants, though they contend that the plaintiffs' father had sold the properties, no satisfactory documentary evidence has been produced to substantiate the same.

29. In the present case, the subject matter of the suit consists of two properties, namely Schedule 'A' and Schedule 'B'. Schedule 'B' property is claimed to be a granted Inam land standing in the name of Abdul Karimasab. Therefore, it is contended that the plaintiffs' father and the defendants' father would each be entitled to a half share in the said property. However, the plaintiffs have not produced any document to establish that R.S. No.106/2, i.e., Schedule 'B' property, belonged to their grandfather but on perusal of the records it discloses that it stood in the names of Mohammed Gouse and Fatima B., wife of the propositus Abdul Karimasab.

30. Though PW1 stated that the defendants had fabricated the signature of Mohammed Gouse and alienated the properties and that the signatures found on the

disputed documents were not that of Mohammed Gouse, the plaintiffs did not make any effort to send the disputed signatures for examination by the Forensic Science Laboratory (FSL).

31. In the present case, the properties sold in favour of Defendant Nos.9 to 13 relate to Item No.2 of the suit schedule properties, namely R.S.No.106/2 measuring 14 acres 1 gunta. The defendants have specifically contended that the suit, insofar as Item No.2 is concerned, is barred by limitation, as the property was alienated during the years 1986 to 2001. The father of the plaintiffs, Mohammed Gouse, died in the year 2006. During his lifetime, the sale deeds were never challenged.

32. The said sale deeds are marked by the plaintiffs as Exs.P.8 to P.13. It is the contention of the plaintiffs that their father, Mohammed Gouse, who was suffering from chronic asthma, was unaware of the execution of the said sale deeds and that the defendants, taking advantage of his condition, got the sale deeds executed. Therefore, it is

contended that the said sale deeds are not binding on the plaintiffs.

33. However, it is relevant to note that Mohammed Gouse died in the year 2006, whereas the sale deeds in question were executed during the period 1986 to 2004. Admittedly, neither Mohammed Gouse during his lifetime nor the plaintiffs challenged the said sale deeds covered under Exs.P.8 to P.13.

34. On perusal of the evidence of DW.1, who purchased an extent of 2 acres 2 guntas in R.S. No. 256/2, being Item No.1 of the suit schedule property, under Ex. P.6, it is seen that in his examination he has stated that he was not aware as to whether there had been any partition between Mohammed Gouse and Abdul Karimasab, the fathers of the plaintiffs and defendants respectively, in respect of Item No.1 of the suit property.

35. Further, DW.1, in his cross-examination, has stated that he was not aware that Mohammed Gouse had

filed an application before the Tahsildar claiming a ½ share in Item No.1 of the suit property.

36. A perusal of the evidence of DW.1, who is the purchaser of a portion of Item No.1 of the property measuring 2 acres 2 guntas in R.S. No. 256/2, discloses that he had purchased the property without thoroughly verifying the title documents relating thereto.

37. The plaintiffs contend that the defendants, who were in joint possession of the properties, took advantage of the condition of Mohammed Gouse and alienated the properties without safeguarding his interest.

38. Upon consideration of the oral and documentary evidence placed on record and after hearing the learned counsel appearing for the respective parties, this Court is of the opinion that, insofar as Item No.2 of the suit property, namely Survey No.106/2 measuring 14 acres 1 gunta, is concerned, the plaintiffs have failed to establish that the alienations were made without the knowledge of Mohammed Gouse. Since Mohammed Gouse died in the

year 2006 and the alienations were effected much earlier, namely in the years 1986-2001 the plaintiffs are not entitled to claim any share in Schedule 'B' property, i.e., Survey No.106/2.

39. However, insofar as Item No.1 of the suit schedule property is concerned, though the property was initially sold in favour of defendant No.6 and thereafter conveyed to other defendants, defendant No.6, in his cross-examination, has admitted that he had not verified the relevant title documents before purchasing the property under Ex. P.6 dated 22.07.2004. The evidence on record further discloses that Mohammed Gouse had asserted his claim to a ½ share in the said property. Therefore, the alienation, insofar as the plaintiffs' ½ share in Item No.1 is concerned, is not binding upon them. Accordingly, the plaintiffs are entitled to a ½ share in Item No.1 of the suit schedule property.

40. On going through the judgment of the Trial Court, it is seen that the learned Trial Judge has properly

appreciated the evidence on record insofar as Suit Schedule Item No.'B', measuring 14 acres 1 gunta, is concerned.

41. The plaintiffs have failed to establish their entitlement to any share in Suit Schedule Item No.'B'. However, insofar as Suit Schedule Item No.'A', measuring 2 acres 2 guntas, is concerned, the said property originally belonged to the propositus Abdul Karimasab. Therefore, his two sons, Abdul Gaffar and Ahmad Sab, would be entitled to half share each. Consequently, the plaintiffs, being the legal heirs of Abdul Gaffar, are entitled to half share in Item No.'A' of the suit schedule properties.

42. Insofar as Item No.'B' is concerned, the judgment and decree of the Trial Court is affirmed, and the plaintiffs are not entitled to any share therein.

43. Therefore, the impugned judgment and decree of the Trial Court, insofar as Item No.'A' is concerned, requires interference. However, insofar as Item No.'B' is concerned, the Trial Court has rightly dismissed the suit.

44. Accordingly, the judgment and decree of the Trial Court are set aside insofar as Item No.'A' of the suit schedule properties is concerned. In respect of Item No.'A', the plaintiffs on one side and Defendant Nos.1 to 5 on the other side shall be entitled to half share each.

45. Accordingly, the point for consideration is answered.

46. Hence, the following:

ORDER

a. The appeal is ***allowed in part***.

b. The judgment and decree passed by the Trial Court is set aside insofar as Item No.1 /suit 'A' schedule property is concerned and are confirmed insofar as Item No.2/ suit 'B' schedule property is concerned.

c. The plaintiffs are entitled to a ½ share in Item No.1 of the suit schedule property. Defendant Nos.1 to 5 are entitled to the remaining ½ share therein.

d. Draw a preliminary decree accordingly.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

AC,
CT-cmu

ORAL ORDER

Learned counsel Sri Chetan Munnoli has brought to our notice that in this case, as per the order dated 20.08.2024, he has been appointed as the next friend of minor respondent No.2(b). We have perused the said order and taken on record, his assistance in the disposal of this appeal.

As no remuneration has been paid to the learned counsel representing minor respondent No.2(b), we are of

the opinion that the State Legal Services Authority be directed to pay a sum of ₹5,000/- to Sri Chetan Munnoli, learned counsel, towards his legal fee.

Accordingly, the Office is directed to communicate this order to the State Legal Services Authority for taking needful done in this regard.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

AC,
CT-cmu