

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

REGULAR SECOND APPEAL NO.2121 OF 2008 (PAR)

C/W

REGULAR SECOND APPEAL NO.2123 OF 2008 (PAR)

IN REGULAR SECOND APPEAL NO.2121 OF 2008

BETWEEN:

SMT. M K SARASWATHI SNICE DEAD BY LRS

- 1A. SMT. PRATHIBHA K. BADRI
W/O. K. BADRI
AGED ABOUT 55 YEARS
R/AT NO.258, 'CHITTARA'
RASHTRAKAVI KUVEMPU ROAD
RAVINDRANATHA TAGORE NAGAR
KEERGALLI, MYSURU - 570 022
- 1B. SRI. H.S. SRINIVASAN
S/O. SRI. H.S. SEETHARAM
AGED ABOUT 52 YEARS
R/AT NO.B-806, ASPEN WOODS
KAMMANAHALLI MAIN ROAD
OFF BANNERGHATTA ROAD
NEAR NANDADEEPA APARTMENT
DODDAKAMMANAHALLI
BENGALURU - 560 076
- 1C. SRI. H.S. MANJUNATHAN
S/O. H.S. SEETHARAM
AGED ABOUT 50 YEARS
R/AT NO.2359/24
12TH CROSS, SEENERUKATTE STREET
BASAVESHWARA ROAD

MYSURU - 570 007

- 1D. SRI. H.S. SRIRAM
S/O. H.S. SEETHARAM
AGED ABOUT 48 YEARS
R/AT NO.150/1, CENTRAL EXCISE LAYOUT
VIJAYANAGAR, BENGALURU - 560 040
- 1E. SRI. H.S. SEETHARAM
AGED ABOUT 85 YEARS
RESIDING AT NO.2359/24
12TH CROSS, SEENERUKATTE STREET
BASAVESHWARA ROAD, MYSURU - 570 007

...APPELLANTS

(BY SRI A M SURYA PRAKASH, ADVOCATE)

AND:

- 1 . SMT. M K SHYLA KUMARI
W/O B G KRISHNAMURTHY
AGED ABOUT 75 YEARS
R/O GURUKRUPA, 10TH CROSS,
S B M COLONY, UDAYAGIRI
MYSORE-19
- 2 . SMT. M.K. KAMALA
W/O. LATE M. KESHAVAMURTHY
AGED ABOUT 98 YEARS
C/O M.K. SATYA PRASAD,
JAYANAGAR, BENGALURU - 560 041
- 3 . SMT. M.K. KALAVATHI
W/O. K.R. VENKATESHAMURTHY
AGED ABOUT 82 YEARS,
C/O. K.V. UMESH, TF-1,
PRATHAM ROHITH RAGHAVI APARTMENT
2ND CROSS, 2ND MAIN, BIKASIPURA
ISRO LAYOUT, BENGALURU - 560 091.
- 4 . SMT. H.S. RATHNAMMA
SINCE DECEASED BY LRS
- 5 . K N SUBRAMANYA

AGED ABOUT 84 YEARS
C/O K N KESHAVAMURTHY

6 . K.N. NAGESHA
AGED ABOUT 81 YEARS

7 . K N KRISHNAMURTHY
MAJOR IN AGE10,

8 . K N KESHAVAMURTHY

RESPONDENTS NO.5 TO 8 ARE RESIDING AT
NO.144, 9TH A CROSS, 5TH MAIN ROAD,
G P ROAD, PRASHANTH NAGAR, BENGALURU -79

9 . SRI. K.N. VISHWANATH
AGED ABOUT 63 YEARS
NO.285, 4TH CROSS, 6TH MAIN, B.C.C. LAYOUT,
CHANDRA LAYOUT, VIJAYANAGARA,
BENGALURU - 40

10 . SMT. K.N. MANJULA
W/O LATE KESHAVAPRASAD
AGED ABOUT 70 YEARS
NO.224, 7TH CROSS, WARNA NAGAR
ROBERTSON PET, K.G.F. 563 122.

11 . SMT. SUMA
D/O K.S. VALLI
AGED ABOUT 52 YEARS
KUPPALLI VILLAGE AND POST, K R PET
MANDYA DISTRICT - 571 401

12 . SMT. K.N. NAGALAKSHMI @ NAGAVENI
W/O NARASIMHA MURTHY
AGED ABOUT 75 YEARS,
BASAVAPATNA, RAMANATHPURA POST
ARAKALAGUDU TALUK
HASSAN DISTRICT - 573 113

13 . SMT. K.N. RADHA
W/O NAGENDRA
AGED ABOUT 65 YEARS
NO.144, 1ST FLOOR, 9TH A CROSS, 5TH MAIN

PRASHANTHANGARA, BENGALURU -79

14 . K N SUBBALAKSHMI
W/O NAGARAJ
AGED ABOUT 70 YEARS
RAMANATHAPURA, ARAKALAGUDU TALUK
HASSAN DISTRICT 573 3133

...RESPONDENTS

(VIDE ORDER DATED 10.09.2015,
SRI. SUNIL S. NARAYAN, ADVOCATE FOR R1
SRI. SUNIL S. NARAYAN, ADVOCATE FOR R2, R3, R5-R10,
R12 AND R13 ALONG WITH GPA COPY
REPRESENTED BY GPA HOLDER R7
SRI. RAVISHANKAE, ADVOCATE FOR R4
R11 AND R14 ARE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST
THE JUDGMENT AND DECREE DATED 26.06.2008 PASSED IN
R.A.NO.13/2001 ON THE FILE OF THE PRESIDING OFFICER,
FAST TRACK COURT-I, HASSAN, PARTLY ALLOWING THE APPEAL
AND PARTLY SETTING ASIDE THE JUDGMENT AND DECREE
DATED 12.09.2000 PASSED IN O.S.NO.55/1991 ON THE FILE OF
THE CIVIL JUDGE (SR. DN.), HASSAN.

IN REGULAR SECOND APPEAL NO.2123 OF 2008

BETWEEN:

SMT RATHNAMMA
AGED ABOUT 70 YRS
W/O.LATE M K KESHAVANARAYANA
NO.2853, BEHIND MISSION HOSPITAL
NORTHERN EXTENTION, HASSAN

...APPELLANT

(BY SRI A M SURYA PRAKASH, ADVOCATE)

AND:

1 . M K SHYLA KUMARI
W/O B G KRISHNAMURTHY
AGED ABOUT 57 YEARS
R/O GURUKRUPA 10TH CROSS,
S B M COLONY, UDAYAGIR
MYSORE-19

2 . KAMALA
W/O LATE M KESHAVAMURTHY
AGED ABOUT 77 YEARS
C/O K V UMESH,

3 . KALAWATHI'
W/O K R VENKATESHAMURTHY
AGED ABOUT 68 YEARS,
C/O K V UMESH,

RESPONDENTS NO.2 AND 3 ARE R/AT NO.179,VYSHALI,
1ST J MAIN ROAD, 1ST BLOCK, 2ND CROSS, NAGARABHAVI,
BENGALURU -560 072

4 . K S KRISHNAMURTHY
MAJOR IN AGE
10, 11TH CROSS, PRASHANTH NAGAR, BENGALURU

5 . K N SUBRAMANYA
MAJOR IN AGE
C/O K N KESHAVAMURTHY
144, 1ST FLOOR, 9TH A CORSS, 5TH MAIN ROAD
G P ROAD, PRASHANTHA NAGARA
BENGALURU -79

6 . K S KRISHNAMURTHY
MAJOR IN AGE10,
11TH CROSS, PRASHANTHANGARA, BENGALURU-79

7 . K N KESHAVAMURTHY
MAJOR IN AGE,
NO.144, 9TH A CROSS, 5TH MAIN ROAD,
G P ROAD, PRASHANTH NAGAR, BENGALURU -79

8 . K N NAGESH
MAJOR IN AGE144, 9TH A CROSS, 5TH MAIN ROAD
G P ROAD, PRASHANTHANAGARABENGALURU -79

9 . K N VISHWANTH
MAJOR IN AGE,285, 4TH CROSS6TH MAIN, B C C
LAYOUTCHANDRA LAYOUTVIJAYANAGARABENGALURU -
40

- 10 . K N MANJULA
W/O LATE KESHAVAPRASADMAJOR IN AGE,C/O
LINGAM#224, 7TH CROSSWARNA NAGARROBERTSON
PETK G F 563 122
- 11 . KUMARI SUMA D/O K S VALLI
MAJOR IN AGEKUPPALLI VILLAGE AND POSTK R
PETMANDYA DISTRICT 571401
- 12 . K N NAGALAKSHMI @ NAGA VENI
W/O NARASIMHAMURTHYMAJOR IN AGE, SANKREET
VIDWANBASAVAPATNA POSTRAMANATHPURA
HOBLIARAKALAGUDU TALUKHASSAN DISTRICT 573113
- 13 . K N RADHA W/O NAGENDRA
MAJOR IN AGE,C/O K N KESHAVAMURTHY# 144, 1ST
FLOOR9TH A CROSS, 5TH MAIN ROADG P ROAD,
PRASHANTHANGARABENGALURU -79
- 14 . K N SUBBALAKSHMI
W/O NAGARAJMAJOR IN
AGERAMANATHPURAARAKALAGUDU TALUKHASSAN
DISTRICT 573 3133

...RESPONDENTS

(VIDE ORDER DATED 10.09.2015,
SRI. SUNIL S. NARAYAN, ADVOCATE FOR R1
SRI. SUNIL S. NARAYAN, ADVOCATE FOR R2, R3, R5-R10,
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AND PARTLY SETTING ASIDE THE JUDGMENT AND DECREE
DATED 12.09.2000 PASSED IN O.S.NO.55/1991 ON THE FILE OF
THE CIVIL JUDGE (SR. DN.), HASSAN.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09TH APRIL, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CAV JUDGMENT

RSA No.2123/2008 is filed by 5th defendant, challenging the judgment and decree dated 12.09.2000 in O.S.No.55/1991 on the file of the Senior Civil Judge, Hassan and also the judgment and decree dated 25.06.2008 in R.A.No.13/2001 on the file of the Fast Track Court at Hassan.

2. RSA No.2121/2008 is by 4th defendant against the divergent findings recorded by the First Appellate Court in R.A.No.13/2001.

3. The admitted genealogy is as under:

Anantha Avadhani (DD)

Keshavaiah (DD 1954)			Subbaraya		Krishnappa
↓					
Venkatalakshmamma (DD 1989) (M)					
Rukmini	Kamamma	Kalavathi	Saraswathi	Shyla Kumari	Keshava Narayana
(DD-1963) D1-Deadby L.R's	D-2	D-3	D-4	(Pif)	
K.N Subramanya K.S.Krishnamurthy K.S.Keshavamurthy				Rathnamma - Wife D-5 died on 08/09/2020 Sathyanaraya S-2 Born:1962	

K.N.Nagesh - dead by LRs
K.N Viswanath
K.N Manjula
K.S.Valli - dead by L.R's
Kusuma@ Suma
K.N.Nagalakshmi @ Nagaveni
K.N.Radha
K.N.Subbalakshmi

Note: 1) D-1 Rukmini married prior to 1954
2) D-2 Kamamma married prior to 1954

4. The suit is for the relief of declaration that the plaintiff is entitled to $1/6^{\text{th}}$ share in the suit schedule property and also for partition and separate possession of the plaintiff's share. The plaintiff also sought *mesne* profits.

5. Defendants No.3, 4 and 5 filed written statement. Rest of the defendants did not file written statement.

6. Defendants No.3 and 4 claimed share and supported the plaintiff.

7. Defendant No.5 contested the suit and claimed exclusive right over the property on the basis of registered settlement deed dated 29.05.1963 executed by Venkatalakshamma - mother of plaintiff and defendants 1 to 4.

8. **BRIEF FACTS:**

8.1 On 31.08.1926, Keshvaiah-father of the plaintiff acquired the suit property pursuant to the sale certificate issued by Hassan Town Municipality. Defendant No.5 claims that the said property was separate property of Keshavaiah.

8.2 The plaintiff, defendant No.4, made a claim that the suit property was subject matter of partition which allegedly took place on 28.10.1933, among Keshavaiah and his brothers, Krishnappa and Subbaraya. Defendant No.5 disputed the alleged partition dated 28.10.1933.

9. The document evidencing the alleged partition was not admitted in evidence for want of registration.

10. Keshavaiah died in 1954, and was survived by his wife Venkatalakshamma, five daughters, and one son-Keshavanarayana. Two elder daughters were married at the time of Keshavaiah's death (This fact was elicited the cross examination of the Pw1). Plaintiff- Shyla Kumari is one of the daughters of Keshavaiah and Venkatalakshamma. Defendant No.1 - Rukmini is the eldest daughter, defendant No.2 - Kamamma is second daughter, defendant No.3 - Kalavathi is

third daughter and defendant No.4 - Saraswathi is fourth daughter of Keshavaiah.

11. When the suit was filed in the year 1991, the only son of Keshavaiah viz., Keshavanarayana was no more as he had died on 25-1-1963. Thus, wife of Keshavanarayana viz., Rathamma is arrayed as defendant No.5 and she died on 08.09.2020 during the pendency of this appeal.

12. Sathyanarayana the only son of Keshavanarayana and Rathamma had died in 1964 when he was two years old. Venkatalakshamma died in 1989.

13. Rukmini, the eldest daughter of Keshavaiah died during the pendency of the suit and her legal representatives were brought on record.

14. Plaintiff - Shyla Kumari filed the suit on the premise that after the death of Keshavaiah in 1954, she acquired right in the property along with all daughters of Keshavaiah, and Keshavanarayana - the only son of Keshavaiah. Plaintiff claims that she is also one of the sharers in the estate of Keshavaiah.

15. It appears that the plaintiff has made a claim over the property under the provisions of Mysore Hindu Law Women's

Rights Act, 1933 ("Act, 1933"). As already noticed, only defendant No.5, the wife of Keshavanarayana - the sole son of Keshavaiah contested the suit.

16. Defendant No.5 claims that, after the demise of Keshavaiah in 1954, the Keshavaiah's estate devolved on his only son Keshavanarayana under Section 6(2) read with Section 4 of the Act, 1933. And Keshavanarayana died in 1963 leaving behind his mother Venkatalakshamma, widow Rathnamma and minor son Sathyanarayana. After the demise of Satyanarayana, his property devolved on his mother defendant No.5/Rathnamma

17. Rathnamma claims that Venkatalaksmamma, if at all has inherited any property of Keshavaiah, or the share in the property of her son Keshavanarayana who died on 25.01.1963, executed a settlement deed dated 29.05.1963 in favour of Rathnamma, not only on her behalf but also on behalf of her minor daughter- Shyla Kumari - the plaintiff in the suit. Rathnamma also claims that, defendant No.4 Saraswathi also jointly executed the said settlement deed along with Venkatalaksmamma. Thus, defendant No.5 claims that plaintiff and her mother Venkatalaksmamma, and defendant No.4 have no right over the suit property.

18. The Trial Court decreed the suit in part by awarding 23/135th share to each of the plaintiff and defendants No.3 and 4. The Trial Court held that the settlement deed dated 29.05.1963 is not proved.

19. In the appeal filed by defendant No. 5, First Appellate Court modified the share and held that the plaintiff and defendants No.1, 2, 3 and 5 are entitled to 1/6th share each. 1/6th share of 4th defendant is acquired by 5th defendant under the settlement deed dated 29.05.1963.

20. RSA No.2121/2008 is filed by defendant No.4 challenging judgment and decree passed in RA No.13/2001. Defendant No.4 prayed that the judgment and decree passed by the Trial Court has to be restored.

21. RSA No.2123/2008 is by defendant No.5 against aforementioned judgments and decrees rejecting claim based on the settlement deed.

22. Both appeals are clubbed and the following substantial questions of law are framed on 12.01.2019.

(1) *In allotting shares to the married daughters, whether the Courts below acted contrary to Section*

8 of the Hindu Women's Rights to Property Act, 1937?

- (2) *When share of the plaintiff was settled on defendant No.5 under Ex.D5 registered settlement deed dated 29.05.1963 and in the light of the plaintiff not challenging the same soon after she attaining majority. Whether the Courts below acted contrary to Article 60 of the Limitation Act, 1963 in granting the share to the plaintiff?*
- (3) *Under the facts and circumstances of the case, whether the First Appellate Court was right in allotting 1/6th share of defendant No.4 to defendant No.5?*

23. After hearing the learned counsel for the appellants and respondents, the Court noticed that the question of law framed should be with reference to Act, 1933 and not with reference to *Hindu Women's Rights to Property Act, 1937*. In terms of order dated 07.04.2026, said error is noticed and correction is ordered. Both counsel have extensively argued on the rights of the parties with reference to the provisions of Act, 1933.

24. It is noticed that, defendant No.5 is asserting right over the property under the registered Settlement Deed dated 29.05.1963 and it is also noticed that Trial Court has held that the Settlement Deed dated 29.05.1963 marked at Ex.D5 is not

proved. First Appellate Court has held that the said document does not bind the parties to the proceeding except Saraswathi-defendant No.4.

25. Under these circumstances, the Court was of the view that one more additional substantial question of law is required to be framed and the same was framed on 07.04.2026, as under:

(a) Whether the Settlement Deed dated 29.05.1963 marked at Ex.D5 is proved? if so, whether it is proved against all the parties?

26. Learned counsel appearing for the defendant No. 5 raised the following contentions:

(a) Keshavaiah died in the year 1954, before the commencement of Hindu Succession Act, 1956 ("Act, 1956"), the property in the hands of Keshavaiah was his self-acquired property. Under the Act, 1933, Keshavaiah's property would devolve on his only son namely Keshavanarayana under Section 6(2) r/w Section 4 of the Act, 1933. Said Keshavanarayana died on 25.01.1963. After the demise of Keshavanarayana his estate devolved on his mother Venkatalakshmamma, wife Rathnamma and the only son Sathyanarayana.

- (b) Mother of the plaintiff namely Venkatalakshamma executed the settlement deed on 29.05.1963 which is duly registered and conveyed her property, and even the property of minor daughter-plaintiff Shyla Kumari, even if she is assumed as an heir under the Act, 1933. In the said settlement deed, defendant No.4 also conveyed her right in favour of defendant No.5, assuming that defendant No. 4 was an heir of Keshavaiah.
- (c) Satyanarayana the son of defendant No.5 died in 1964 when he was a kid and his right in the property devolved on defendant No.5-the mother, as the only Class I heir of Satyanarayana.
- (d) Settlement deed dated 29.05.1963 is not under challenge by anyone. Said Settlement is acted upon and the plaintiff does not acquire any right over the property.
- (e) The suit of the plaintiff is also barred by limitation as she has not chosen to question the settlement deed dated 29.05.1963 within three years of attaining majority.

27. Learned counsel for the plaintiff and defendant No. 4 raised the following contentions.

- (a) The suit property is not the self acquired property of Keshavaiah. It was his ancestral property, or if not ancestral property, it was blended with the joint family property and later was subject matter of partition among two brothers of Keshavaiah in the year 1933. Thus, after the demise of Keshavaiah, his wife, unmarried daughters also acquired share under Section 8(1)(d) the Act, 1933.
- (b) The settlement deed dated 29.05.1963 is not valid in the eye of law as no consideration was paid in favour of the plaintiff, Venkatalakshamma and Saraswathi.
- (c) The pleading relating to settlement deed was introduced on an application dated 22.01.1997 seeking amendment of written statement and after the closure of evidence by all the parties and same cannot be looked into.
- (d) No suggestion is put to the Dw1 and Dw2 based on the document dated 29.05.1963 and the plaintiff and defendant No. 4 were denied the opportunity of contesting the said document.
- (e) Assuming that the settlement deed dated 29.05.1963 was validly executed, still it was a contingent contract which is to take effect on Sathyanarayana the beneficiary under

the settlement deed fulfilling conditions/obligations imposed under the said deed. Since Sathyanarayana died when he was aged 2, obviously the conditions/obligations imposed therein where the beneficiary was required to perform the marriage of the plaintiff and defendants 3 to 4 and to look after Venkatalakshamma, remained unfulfilled by Satyanarayana, as such, the property did not vest in favour of Sathyanarayana.

- (f) Venkatalakshamma had no right to transfer the property of minor without there being any consideration for the minor's benefit, and the document dated 29.05.1963 would be void and there is no limitation to file a suit and to claim share as long as the defendant does not plead and establish the ouster.
- (g) Once the settlement deed dated 29.05.1963 is held to be void, the legal position is, the joint family status continues and the plaintiff and other daughters of Keshavaiah are entitled to the benefit of amended Section 6 of the Act, 1956.

28. Learned counsel for both sides have cited the judgments of the Apex Court and High Court which will be dealt in this judgment.

Discussion on the nature of the property in the hands of Keshavaiah and its devolution.

29. Learned counsel for the plaintiff and defendant No.4 urged that under Section 8 (1)(d) of the Act, 1933 the property would devolve on the single coparcener by survivorship subject to right to shares of the certain females enumerated in Clauses (a) to (c) of Section 8(1) of Act, 1933. Said provision reads as under:

"8. Certain females entitled to shares at partition:

- (1)(a) At a partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue shall be entitled to share with them.*
- (b) At a partition of joint family property among brothers, their mother, their unmarried sisters and the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue shall be entitled to share with them.*
- (c) Sub-Sections (a) and (b) shall also apply mutatis mutandis to a partition among other co-parceners in a joint family.*

(d) Where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to shares of the classes of females enumerated in the above sub-sections.

xxxxxxx"

30. On perusal of the Section 8(1)(d) of the Act, 1933, it is evident that for a sole surviving coparcener to acquire the property subject to right of female sharers the property should be **'joint family property'**.

31. Learned counsel for defendant No.5/appellant would contend that Section 8(1)(d) of the Act, 1933 has no application on the premise that the property in question was separate property of Keshavaiah as it was purchased by Keshavaiah in 1927. It is also urged that such property would be governed under Section 6 of Act, 1933. Referring to Section 6(2), it is urged that such property will pass on to the male heirs and if male heirs are not available to the female heirs. It is also urged that Section 4 of Act, 1933 would also apply in ascertaining as to who would inherit the separate property of the male Hindu dying intestate in case the succession has opened under the Act, 1933 and before the commencement of Act, 1956.

32. In support of his contention, learned counsel for defendant No.5 would place reliance on the judgment of Division Bench of this Court in ***Annamma vs. Pattamma***¹.

33. Learned counsel appearing for the plaintiff and defendant No.4 would urge that judgment in ***Annamma*** (*supra*) does not notice the implication of Section 8(1)(d) of Act, 1933, as such, said judgment cannot be said to be applicable to the present case where Section 8(1)(d) of the Act, 1933 applies. Learned counsel would also refer to the judgment of the Hon'ble Apex Court in ***Nagendra Prasad and Another vs. Kempnanjamma***² and the judgment of Division Bench of this Court in ***S.Melagiriappa and others vs. Lalithamma***³.

34. At this juncture it is relevant to notice the observation of the Hon'ble Apex Court in ***Nagendra Prasad*** (*supra*). The majority view in the said judgment in paragraph No.7 reads as under

"7. xxxxx The object of Clause(d) is to give all females entitled to maintenance from the co-parcenary property a right to claim share in the joint family property instead of a right to maintenance and that is why reference is made in it to all females enumerated in clauses(a), (b) and (c).

¹ ***ILR 1993 KAR 755***

² ***AIR 1968 SC 209***

³ ***AIR 1961 MYSURU 152***

Clauses (a) and (b) refer to four classes of female viz, the mother, the widow, the unmarried daughter and the unmarried sister. All these four classes of females are within Clause (d). The actual share which a female becomes entitled to under Clauses (a) (b) (c) or (d) has to be ascertained with reference to sub-section (2) of Section 8. Further, in ascertaining the females to whom the rights accrue to shares in the joint family property either on partition under Clauses (a), (b) or (c), or on passing of the property to sole survivor under Clause(d), effect has to be given to sub-section (3) of Section 8 in which the scope of the words "widow", "mother", and "son" is enlarged and which, in addition, lays down that the provisions of this whole section relating to the mother are to apply mutatis mutandis to the paternal grandmother and great grandmother. xxxxxxxx"

35. From the aforementioned judgment of the Apex Court, it is evident that Act, 1933 under certain circumstances, confers right of succession in favour of certain females.

36. The Division Bench of this Court in ***Annamma*** (*supra*), has held that Section **4 applies to both ancestral as well as separate property**. Last three sentences in paragraph No.9 of the judgment read as under:

"9. xxxxxx. Thus, Section 4 of the Act falling under Part-I relating to 'Inheritance' exhaustively deals with the order of succession to a Hindu male dying intestate. The Section does not make any difference whether the property of deceased Hindu male dying intestate is his

self acquired separate property or an undivided share in a joint Hindu family. It governs succession to both the type of properties of a male Hindu dying intestate."

(Emphasis supplied)

37. In the aforementioned judgment, the Division Bench of this Court has not noticed the implication of Section 8 of the Act, 1933. However, the Division Bench has interpreted Sections 4 and 6 of the Act, 1933 to take a view that Section 4 applies to both self-acquired and coparcenary properties. Having said so, the Court has applied Section 4 of the Act, 1933 to exclude the daughters.

38. The Division Bench of this Court in ***S.Melagiriappa*** (*supra*), has not referred to Section 4 of the Act, 1933 and has referred to Section 8 of the Act, 1933. And in the case of ***Nagendra Prasad*** (*supra*), the Hon'ble Apex Court has not interpreted Section 4 as is done in the case of ***Annamma*** (*supra*).

39. As can be noticed under Section 4 of the Act, 1933, the expression used is "*succession to Hindu male dying intestate*"

40. Section 6(2) of the Act, 1933, provides for succession of separate property in the event of male Hindu dying intestate,

Section 8 of Act, 1933 provides for allotment of share in a partition and it also covers a situation where the property is in the hands of a sole surviving coparceners and deceased is survived by certain females.

41. The expression used in Section 8(1)(d) is "joint family property passes to a single coparcener by survivorship". Thus, it would mean that Section 8 refers to joint family property though it is found in Part II of Act, 1933 which deals with separate property.

42. From the conjoint reading of the provisions namely Sections 4, 6 and 8 of the Act, 1933 and interpretation of the said provisions by the Apex Court and the Division Bench of this Court in the judgments referred to above, the Court is of the view that, mode of succession does not change depending on the nature of the property, be it separate property or joint family property or ancestral property, of a male Hindu dying intestate in so far as his share is concerned.

43. Since the arguments have been advanced by both sides on the respective contention relating to the nature of the property, the Court has also proceeded to ascertain the nature of the property. The Court has also borne in mind the contention of

the defendant No.5 that the plaintiff has not pleaded that suit property was the ancestral property in the hands of Keshavaiah.

44. The plaintiff has pleaded that the suit property was the subject matter of partition in 1933 among Keshavaiah and his brothers. Said partition deed is marked as Ex.P.10 for a limited purpose.

45. It is indeed true that the document at Ex.P.10 purports to effect a partition on the very same date, thus it requires registration. However, what is required to be noticed is, Defendant No. 5 does not claim right over the remaining half portion of the property said to have been allotted to the share of Krishnappa, the brother of Keshavaiah.

46. The plaintiff is claiming right over only the portion of the property which is allotted to Keshavaiah. That being the position, this Court has to hold that though the partition deed of 1933 is not registered, it is acted upon. And it appears that Keshavaiah has thrown the property into common hotchpot with an intention to create a right in favor of his brother Krishnappa in the northern half portion of the property by retaining southern half portion for himself. Though said document cannot be treated as a partition deed, nevertheless, taking note of the said

document for collateral purpose, this Court is of the view that the property was treated as a joint family property in the year 1933. The Court has to take the said view despite a sale certificate in respect of the suit property and remaining half portion of the site was purchased in the name of Keshavaiah in 1927.

47. There is no dispute that suit property was exclusively enjoyed by Keshavaiah after 1933 and not by his two brothers and the remaining half of the property which was said to be partitioned was exclusively enjoyed by Krishnappa. In other words, the parties have treated the property as a joint family property and have effected the partition. Thus, the ratio laid down in ***Kale and Others vs. Deputy Director of Consolidation and Others***⁴ by the Apex Court would squarely apply to the facts of the case.

48. That being the position, the property would be the joint family property of Keshavaiah at the time of his death as he had a son born by the time he died in 1954. The Act, 1956 was not enacted at that point of time. Thus, the parties were governed by the Act, 1933.

⁴ **(1976)3 SCC 119**

49. As already noticed in terms of the law laid down by the Apex Court in the case of **Nagendra Prasad** (*supra*), when a person dies leaving behind the joint family property and a sole surviving coparcener, the female heirs specified in Section 8 of Act, 1933 would also acquire right over the property. And thus, it can be safely concluded that when Keshavaiah died in 1954, his son Keshavanarayana acquired right in the property as a sole surviving coparcener, subject to the rights of the female heirs specified in Section 8 of Act, 1933 and those female heirs are the unmarried daughters, (plaintiff and defendants No.3 and 4) and as well Venkatalakshamma, the widow of Keshavaiah.

50. Paragraph No.11 in the plaint speaks about the cause of action and it is stated that the cause of action arose after the death of the plaintiff's father Keshavaiah who died in 1954 and in 1989 when plaintiff's mother died. In addition, it is also stated that cause of action arose on 09.07.1991, when the plaintiff demanded share in the suit schedule property.

51. There is no challenge to the registered settlement deed said to have been executed by plaintiff's mother, though the plaintiff pleads that defendant No.5 is claiming right over the property on the basis of the documents said to have been executed by the plaintiff's mother Venkatalakshamma.

On the proof and validity of the registered settlement deed dated 29.05.1963.

52. Defendant No.5 contested the suit and raised a specific defence that plaintiff has no right over the property in view of the registered settlement deed dated 29.05.1963 executed by Venkatalakshamma along with defendant No.4, her daughter, and also on behalf of the plaintiff who was then minor.

53. Trial Court framed issue relating to the settlement deed 29.05.1963 and the said issue No.7 reads as under:

"Whether 5th defendant is the absolute owner of suit property by virtue of settlement dated 29.05.1963?"

54. Said issue is answered in the negative on the premise that Venkatalakshamma had no right to execute the settlement deed marked at Ex.D5. Consequently, the suit was decreed awarding 23/135th share as against the claim of 1/6th share.

55. As already noticed, the First Appellate Court modified the share. First Appellate Court also held that defendant No.5 did not acquire exclusive right over the property under the settlement deed dated 29.05.1963. First Appellate Court held

that defendant No.4 transferred her right in favour of defendant No. 5 under the registered settlement deed dated 29.05.1963

56. Now the question is, *"whether shares of unmarried daughters namely the plaintiff, defendants No.3 and 4 and the widow-Rathnamma were validly transferred under the settlement deed of 1963 relied upon by defendant No.5?"*.

57. It is noticed that the settlement deed dated 29.05.1963 was executed by Venkatalakshamma on her behalf as well as on behalf of the plaintiff and the said document is also executed by defendant No.4-Saraswati. Though it has been strenuously urged that the document cannot be used against defendant No.4 who is one of the co-defendants in the suit and the defendant No.5 was required to independently file a suit to establish the claim under the document dated 29.05.1963, the Court is of the view that such contention is untenable.

58. In the plaint, the plaintiff has alleged that defendant No. 5 is denying the plaintiff's right on the basis of a document said to have been executed by her mother as claimed by defendant No.5. Thus, in a way defendant No. 4 is also put to notice of a document and allegation of denial of plaintiff's share is made against all the defendants including defendant No.4.

59. In addition, the suit is one for partition and separate possession. The defendant No.5 has resisted the claim based on the settlement deed dated 29.05.1963. This is the specific defence raised in the written statement albeit an amendment introduced on an application dated 22.01.1997. Earlier to the said amendment the plaintiff's claim was denied.

60. The defendant No.4 had supported the case of the plaintiff and also sought for partition. That being the position, the defendant No.4 was also a contesting party as against defendant No.5 and defendant No.5 has denied the claim of the plaintiff as well as defendant No.4 based on the registered settlement deed dated 29.05.1963. The document though initially was not produced in evidence, when defendant No.5 was initially cross-examined and later on an application filed by defendant No.5, the settlement deed was produced and evidence was led on the said settlement deed. The contention of defendant No.4 that such a course is impermissible cannot be accepted.

61. As already noticed the suit is one for partition and separate possession, defendant No.4 having supported the case of the plaintiff has also sought for partition and separate possession. And defendant No.5 having taken a defence in the

written statement that, there is a settlement deed executed on 29.05.1963 has resisted the claim of the plaintiff as well as the claim of defendant No.4. That being the position, the contention that the document introduced at a belated stage of the trial, cannot be looked into, cannot be accepted at all.

62. The further contention of defendant No.4 that the document should have been confronted to defendant No.4 and since it is not confronted during the cross-examination of defendant No.4, said document cannot be read in evidence has no merit. The said contention is too technical.

63. It is to be noticed that there is a pleading in the written statement filed by defendant No.5 wherein, it is stated that there is a settlement deed dated 29.05.1963 in respect of the suit property and under the said settlement deed, defendant No.5 has denied the right of the plaintiff as well as defendant No.4 and the said document is tendered in evidence. The said document is marked. The said document was brought to the notice of defendant No.4 as well as the plaintiff and there is cross-examination by the plaintiff on the said document. In case the defendant No.4 has not cross-examined the defendant No.5 on the said document, it is the fault of defendant No.4 and not the fault of defendant No.5. And that being the position, the

contention that the document cannot be looked into or read in evidence cannot be accepted.

64. More important, though defendant No.4 is a signatory to the said document in 1963, has not chosen to question the same. Said document is duly registered. It is not the case of defendant No.4, that the said document is forged or outcome of fraud and misrepresentation.

65. The contention that defendant No. 5 has not filed counter claim and could not have filed counter claim against a co-defendant with reference to the settlement deed dated 29.05.1963, hence, there was no scope for defendant No.4 to file additional written statement on the amended written statement of defendant No.5, does not merit consideration.

66. As already noticed, the suit is one for partition and defendant No. 4 also claimed the share from defendant No.5. Thus, when defendant No. 5 claimed exclusive right, defendant No. 4 could have filed additional written statement taking a stand on the document dated 29.05.1963 which allegedly was also executed by her. Despite such omission, defendant No.4 is entitled to a share if the document is not proved.

67. Now the question is "*whether the settlement deed dated 29.05.1963 is validly proved or not?*"

68. It is to be noticed that the document is duly registered. The registration is not in dispute. On going through the evidence led by the parties, it is also evident that the signatures on the said document are not in dispute. The objection to the said document is more on the capacity of the mother to execute a document in favour of Satyanarayana or Rathamma conveying the title of the plaintiff without there being any consideration.

69. The Court has also considered the evidence led in this behalf. From the tenor of the settlement deed, one can infer that the said document apart from conveying the property to Satyanarayana, also expected him to perform the marriage of the unmarried daughters of Keshavaiah and to look after his grandmother.

70. Admittedly, Satyanarayana was aged two years when the property was conveyed. The said settlement deed at some place also gives an indication that the property is transferred to Rathamma (because of the use of the plural) who had lost her husband and was required to take care of her child

Satyanarayana. In a way the document can be construed as having imposed the responsibility of performing the marriage of unmarried daughters of Keshavaiah on Rathnamma, in addition to the responsibility of taking care of Venkatalakshamma. From this perspective it cannot be said that the transfer of property is not for the benefit of the plaintiff who was minor and for the benefit of defendants No.3 and 4 who were unmarried.

71. It is a well-settled position of law that, consideration in respect of a transaction conveying the property need not be necessarily in terms of exchange of cash for the property or property for the property, and it can be any other form of consideration where certain obligation is imposed on the transferee.

72. In the instant case, the obligation is imposed to perform the marriage of unmarried daughters while transferring the property to Satyanarayana. Thus, the contention that the transaction is void for want of consideration is also not tenable.

73. The next contention raised on behalf of the plaintiff and defendant No.4 is that, the transferee/the beneficiary under the settlement deed dated 29.05.1963 namely Satyanarayana was minor and he was required to perform the marriage of his

aunts on attaining majority and he died before attaining majority without fulfilling the obligations cast on him. Thus, this contingent transfer under the settlement deed dated 29.05.1963, would take effect only on happening of the contingency named in the document i.e. performance of marriages of the plaintiff and other daughters of Venkatalakshamma by Satyanarayana.

74. It is relevant to notice that, the plaintiff was aged 13 when the settlement deed was executed in 1963. The plaintiff's marriage was performed in 1973. It is very difficult for defendant No.5 to adduce documentary/oral evidence to establish that she performed the marriages of the plaintiff and other unmarried daughters of Keshavaiah, after more than two decades from the date of marriage.

75. However, on overall appreciation of the evidence on record, by applying the test of preponderance of probability it is certainly possible to take a view that marriage of the plaintiff was likely been performed by Ratnamma. The Court takes such a view as the plaintiff has admitted that both the plaintiff and her mother lived along with defendant No.5. The plaintiff lived till her marriage with defendant No.5 and mother till her death in 1989. More than anything else, the contention that the settlement was

to take effect on Satyanarayana performing the marriage of the plaintiff and her unmarried sisters was never raised and the defendant No. 5 was never required to lead evidence on the said issue which was never raised.

76. That being the position, the contention that the settlement dated 29.05.1963 is invalid as Satyanarayana could not perform the marriage cannot be accepted.

77. When the document was executed on 29.05.1963, Satyanarayana was minor and Ratnamma has represented Satyanarayana as the minor's guardian. Thus the obligation to perform the marriages of unmarried sisters cannot be imposed on the minor. From that angle also the settlement of the property cannot be said to be contingent.

78. It is also relevant to notice that after the demise of Satyanarayana, the property would go to Ratnamma who is the Class-I heir of deceased Satyanarayana. Thus it is quite possible that Ratnamma must have taken the responsibility of performing the marriage of her deceased husband's unmarried sisters.

79. The said questions need not be discussed at length as the plaintiff has not chosen to file the suit on the premise that

the obligations imposed under the settlement deed are not fulfilled. It is not even the alternative contention in the plaint.

80. Though the learned counsel for defendant No.4 has strenuously urged that the coparcenary continued even after the demise of Keshavaiah and that being the position, the benefit of amended Section 6 of Act, 1956 is available to the plaintiff as well as all other daughters of Keshavaiah, the Court is unable to accept the said contention. The reason is Section 6 of Act, 1956 as amended in the year 2004 is subject to certain exceptions. In case there is a valid transfer of the property before 20th December, 2004, then the benefit of Section 6 of Act, 1956 cannot be availed by the daughters.

81. Admittedly, one of the daughters of Keshavaiah namely defendant No.3 was unmarried when Keshavaiah died and there is no transfer of her share in the property in favour of Satyanarayana or Ratnamma under the registered settlement deed dated 29-05-1963 and she is entitled to share in the property.

82. The learned counsel for the defendant No.4 would alternatively place reliance on the Co-ordinate Bench in ***Shri***

Narayanswamy and another Vs Smt Ratnamma and others⁵ to contend that the ratio laid down in the said case would apply to the facts of the case. And urged that applying Sections 4 and 6 of Act, 1956, the daughters should be given equal share in the suit property.

83. It is to be noticed that the Co-ordinate Bench of this Court in the aforementioned case has taken a view on the premise that the death of the holder of the property in the said case was before 1956 is not established. And in addition, the Court also held that assuming that the death of the holder has taken place before 1956, in the light of the facts of the said case, that the family continued to be joint till amendment to Section 6 of Act, 1956.

84. As already noticed the fact situation in the present case is otherwise. The succession has opened before the commencement of Act, 1956 and there is already a transfer of property before 20th December 2004 by the plaintiff represented by the guardian mother, the plaintiff's mother Venkatalakshamma as well as defendant No.4.

⁵ ***RFA NO.714 of 2009 and C/W RFA CROB No.7/2010***

85. The reliance placed by the Learned Counsel for Plaintiff and Defendant No.4 on the judgment of Apex Court in ***Vineeta Sharma vs Rakesh Sharma and others***⁶ is misplaced, and the said judgment supports the case of the defendant No.5 as there is valid transfer under the registered settlement deed dated 29.05.1963.

86. This being the position, the Court has to take the view that the plaintiff's claim is not maintainable and so also the claim of defendant No.4. Defendant No.4 was major when the document dated 29.05.1963 was executed and defendant No.4 being a signatory has not challenged the document dated 29.05.1963 and, as such, the claim of defendant No.4 is wholly untenable and liable to be rejected.

87. In so far as the case of the plaintiff is concerned, though the plaintiff was minor on 29.05.1963, what is relevant is that the settlement deed was executed by the plaintiff's mother Venkatalakshamma as minor guardian and same is permissible under law. The suit property is not the self-acquired or separate property of the plaintiff. It was inherited from her father. That

⁶ (2020)9 SCC 1

being the position, there was no need for Venkatalakshmama to take Court's permission to transfer the property of the minor.

88. The learned counsel for defendant No.4 would place reliance on the judgment of the Co-ordinate Bench of this Court in ***Sushilawwa Vs Gangawwa and others***⁷ wherein , this Court has taken a view (based on the facts of the said case) that, transfer of property of a minor without consideration is void and in such event, there is no limitation to challenge such transfer.

89. The Court is of the view that the said judgment does not come to the aid of the plaintiff for the simple reason that the Court has already taken a view that it is not a case where the property is transferred without there being any consideration for the benefit of minor. Moreover, that is not the plea raised in the plaint and such plea based on facts cannot be raised for the first time in the second appeal under Section 100 of Code of Civil Procedure, 1908.

90. In ***Sushilawwa*** (*supra*), the property was gifted by the minor guardian to her deceased husband's brother wherein minor's property was gifted. Admittedly, the gift was executed

⁷ ***RFA No.10072/2015 C/w RFA Cross Obj No.100002/2016***

for no consideration. The transfer did not confer any benefit to the minor and in that context, the Court has held that such a gift deed is invalid and does not convey the title to the donee and does not extinguish the title of the minor. The facts in the said case are entirely different as compared to the facts in the present case and accordingly, the said judgment also does not come to the aid of the plaintiff.

91. The First Appellate Court has not taken these factors into consideration and erroneously held that the parties to the proceedings are entitled to equal share and this Court does not agree with the said finding for the reasons already recorded.

92. The learned counsel for plaintiff, and defendant No.4 have urged that unless the document dated 29-05-1963 was confronted and suggestion is put to the D.W.1 and D.W.2 based on the said document, the defendant No.5 cannot claim any right under the said document. Reliance is placed on the judgment of Apex Court in ***C.P.Francis Vs C.P.Joseph And Others***⁸.

93. In the said case, the Apex Court referring to the decision of the English House of Lords in ***Browne Vs Dunn***⁹ has

⁸ **2025 SCC OnLine SC 1896**

⁹ **(1893) 6 R 67**

taken a view that material suggestions need to be put to the witness to give a fair opportunity to the witness to contest the document or the stand of the other party. In **C.P.Francis** (*supra*), the plaintiff had questioned the Will on the premise that the Will is outcome of fraud and forgery. Later, before the High Court in the Second Appeal a new contention is raised under Section 67 of Indian Succession Act, 1925 to contend that the beneficiary under the Will cannot be a witness. In this context the Apex Court held a new contention based on facts cannot be introduced for the first time in second appeal when no such suggestion is put to the witness during trial.

94. The facts in the present case are clearly distinguishable. The plea relating to the settlement deed dated 29.05.1963 is raised in the written statement and the said document is also produced. The plaintiff as well as Defendant No.4 had every right to question the said document. Moreover, this is a suit for partition and the defendant No.4 also claimed share in the property. There was no impediment whatsoever for the defendant no.4 to question the said document. Thus the aforesaid judgments do not come to the aid of the plaintiff and defendant No.4

95. The Learned Counsel for plaintiff and defendant No.4 also relied on judgment of Apex Court in ***Sait Tarajee Khimchand & Ors. Vs Yelamarti Satyam & Ors.***¹⁰ to contend that mere marking of document is not the proof of the document and the document is required to be confronted to the witness.

96. This Court has not held that the settlement deed dated 29-05-1963 is proved because it is marked. The document is said to be proved in this case as there is no dispute on the question of execution of the registered deed dated 29-05-1963. The dispute is relating to the validity of the said deed. In the aforementioned case the Apex Court was dealing with books of account which were disputed by the other party.

97. The judgment in ***Rajul Manoj Shah Vs Kiranbhai Shakrabhai Patel and another***¹¹ is also of no consequence to the plaintiff and defendant No.4. As already discussed by this Court there is no need to the defendant No.5 to raise the counter claim based on deed dated 29-05-1963 as defendant No.5 was only required to defend the suit for partition by proving the settlement deed dated 29-05-1963.

¹⁰ (1972) 4 SCC 562

¹¹ 2025 SCC OnLine SC 1958

98. The judgment in ***Commissioner of Income Tax, MP, Nagpur Vs Seth Govindram Sugar Mills***¹², has also no application to the facts of the case. In the instant case Venkatalakshamma has not transferred the property as the manager, however, has transferred the property as the guardian of her minor daughter. Admittedly, when the property was transferred, guardian's husband was no more and Venkatalakshamma was the natural guardian under law.

99. The judgments in ***K.S.Shivappa Vs K Neelamma***¹³ and ***Madhegowda Vs Ankegowda & Ors.***¹⁴ deals with the question relating to the validity of a sale deed where the property of the minor is transferred without the permission of the Court.

100. It is a well settled position of law that the Court's permission to sell the minor's property is required if the property is the separate property of the minor. If the joint family property where the minor has an undivided share is transferred by the guardian then the guardian need not obtain the permission. The guardian is only required to establish the fact that the transfer was for the benefit of the minor and if it is not for the benefit of

¹² ***AIR 1966 SC 24***

¹³ ***2025 SCC OnLine SC 2149***

¹⁴ ***(2002) 1 SCC 178***

the minor, the transaction becomes voidable at the instance of the minor. In that event, such voidable transactions have to be questioned within the limitation prescribed under law.

101. In the instant case, the Court has held the transfer is for the benefit of the minor. The minor/plaintiff attained the age of majority in 1968. The suit is filed in 1991 without laying a challenge to the settlement deed dated 29-05-1963, hence the aforementioned judgment does not come to the aid of the plaintiff and defendant No.4.

102. The judgment in ***Shantidevi Vs Jagan Devi and others***¹⁵ lays down a law that a person who is not a party to the instrument need not seek cancellation. In the instant case the plaintiff is a party to the instrument as she was represented by her mother and defendant No.4 is the executant to the deed dated 29-05-1963. If not cancellation of the deed dated 29-05-1963, the bare minimum expected from the plaintiff and defendant No.4 was a challenge to the deed dated 29-05-1963. There is no such challenge on the execution of the document which is admittedly registered.

¹⁵ ***2025 SCC OnLine 1961***

103. For the aforementioned reasons, the Court has to interfere with the judgment and decree passed by the Trial Court as well as the First Appellate Court.

104. This Court would conclude that the transfer of property under registered settlement deed dated 29-05-1963 by the plaintiff represented by her mother/natural guardian Venkatalashmamma and defendant No.4 and the transfer of share of Venkatalakshmamma in favour of Satyanarayana is valid.

105. Admittedly defendant No.3 who had a share in the property under the Act, 1933, is not a party to the transaction dated 29-05-1963. Thus, defendant No.3 is entitled to benefit of amended Section 6 of Act, 1956 and entitled to 1/5th share in the suit property. Remaining property will remain with transferee from defendant No.5.

106. Hence the following:

ORDER

- i. RSA No. 2123/2008 is ***allowed-in-part***.
- ii. RSA No.2121/2008 is ***dismissed***.

- iii. The judgment and decree dated 12-09-2000 in O.S.No.55/1991 on the file of Senior Civil Judge at Hassan are set aside.
- iv. The judgment and decree dated 26-06-2008 in RA No.13/2001 on the file of Fast Track Court at Hassan are set aside in part.
- v. Suit of the plaintiff in OS.No.55/1991 on the file of Senior Civil Judge at Hassan is dismissed.
- vi. The claim of the defendant No.4 for partition and separate possession on the suit property is also rejected.
- vii. Defendant No.3 in OS.No.55/1991 on the file of Senior Civil Judge at Hassan is entitled to 1/5th share in the suit property.
- viii. The transferee from Defendant No.5 is entitled to 4/5th share in the suit property.
- ix. No order as to costs.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/CHS/GVP