

**Reserved on : 06.03.2026
Pronounced on : 29.04.2026**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 201 OF 2019 (PAR)

BETWEEN:

1. SMT. KALAMMA,
AGED ABOUT 89 YEARS,
W/O LATE H.S. RAMOJI RAO,
HOUSEHOLD, R/O KANIVE BILACHE VILLAGE,
CHANNEGERE TALUK,
DAVANAGERE DISTRICT - 577 231.
2. SMT.JEEJA BAI,
AGED ABOUT 63 YEARS,
W/O SRI. RANGANATH PAAR,
HOUSEHOLD,
R/O D.NO.350/1, 1ST FLOOR,
2ND MAIN, DAVANAGERE,
DAVANAGERE DISTRICT - 577 556.
3. SMT. AMBUJAKSHI,
AGED ABOUT 58 YEARS,
W/O SRI. ASHOK JADHAV,
HOUSEHOLD,
R/O HOUSE NO.11,
CHETANA COLONY,
HUBBALLI,
DHARWAD DISTRICT -580 020.
4. SMT. YASHODA BAI,
AGED ABOUT 56 YEARS,

W/O SRI. NETAJI RAO TAVADE,
HOUSEHOLD,
R/O HOUSE NO.127,
MANJUNATH NILAYA,
BRINDAVAN, 2ND STAGE,
5TH CROSS, MYSORE,
MYSORE DISTRICT - 570 014.

5. SMT. NALINI,
AGED ABOUT 53 YEARS,
W/O YASHVANTH KUMAR MANE,
HOUSEHOLD,
R/O D.NO.313, A BLOCK,
M.S.MAX SONITAIRE,
AGRA-HORAMAVU ROAD,
HORAMAVU,
BENGALURU - 560 043.
BANGALORE URBAN DISTRICT.

...APPELLANTS

(BY SRI. VIGNESHWAR, S. SHSTRI, SENIOR COUNSEL FOR
SRI. G.S. CHIDAMBARA, ADVOCATE)

AND:

1. SRI HR SHIVAJI RAO,
AGED ABOUT 70 YEARS,
S/O H.S. RAMOJI RAO,
AGRICULTURIST AND
BUSINESS MEN,
R/O KANIVE BILACHI VILLAGE,
CHANNAGERE TALUK,
DAVANAGERE DISTRICT - 577 231.
2. SRI. H.R.DEVENDRA RAO,
AGED ABOUT 66 YEARS,
S/O H.S.RAMOJI RAO,
AGRICULTURIST AND
BUSINESS MEN,
R/O KANVE BILACHI VILLAGE,
CHANNAGERE TALUK,
CHANNAGIRI DISTRICT - 577 231.

3. SRI.H.R.RAJA RAO,
AGED ABOUT 65 YEARS,
S/O H.S.RAMOJI RAO,
AGRICULTURIST AND
BUSINESS MEN,
R/O D.NO.19998/84
TARALABALU EXTENSION,
DAVANAGERE
DAVANAGERE DISTRICT - 577 556.
4. SRI. H.R. MANJUNATH RAO,
AGED ABOUT 60 YEARS,
S/O H.S. RAMOJI RAO,
AGRICULTURIST AND
BUSINESS MEN,
R/O D.NO.2152, 4TH MAIN,
4TH CROSS, MCC 'A' BLOCK,
DAVANAGERE,
DAVANAGERE DISTRICT - 577 556.
5. SRI. H.R. GNANESHWARA RAO,
AGED ABOUT 55 YEARS,
S/O H.S.RAMOJI RAO,
AGRICULTURIST AND
BUSINESS MEN,
R/O KANIVE BILACHI VILLAGE,
CHANNAGERE TALUK,
DAVANAGERE DISTRICT - 577 231.
6. SRI. K.S. PRABHUDEV,
AGED ABOUT 55 YEARS,
CHIEF EXECUTIVE OFFICER,
KISSAN WORLD,
UNIVERSAL AGRI SERVICE,
R/O NO.620,
OPP VANI RICE MILL,
HADADI MAIN ROAD,
DAVANAGERE - 577 004.
DAVANAGERE DISTRICT.
7. SRI. H.V. MADHU,
AGED ABOUT 55 YEARS,
S.K. CERAMIC AND

SANITARY WHOLESale,
DEPO OF WALL AND
VITRIFIED TILES,
R/O NO.620,
OPP. VANI RICE MILL,
HADADI MAIN ROAD,
DAVANAGERE - 577 004.
DAVANAGERE DISTRICT.

8. SRI.VEERESH,
AGED ABOUT 55 YEARS,
SRI. SAI PLYWOOD SHOP,
WHOLESALE DEPO OF WALL
AND VITRIFIED TILES,
R/O NO.620,
OPP. VANI RICE MILL,
HADADI MAIN ROAD,
DAVANAGERE - 577 004.
DAVANAGERE DISTRICT.

...RESPONDENTS

(BY SRI. MANJUNATH G KHANDEKAR,
ADVOCATE FOR R1 TO R5,
R6 AND R7 ARE SERVED)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE
DATED:02.11.2018 PASSED IN OS.NO.31/2017 ON THE FILE
OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC.,
DAVANAGERE, PARTLY DECREERING THE SUIT FOR PARTITION
AND SEPARATE POSSESSION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,
JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE T.M. NADAF)

The plaintiffs are before us in this Regular First Appeal filed under Section 96 R/w Order XLI Rule 1 of the CPC, challenging the Judgment and Decree dated 02.11.2018 in O.S.No.31/2017 passed by the III Addl. Senior Civil Judge and JMFC, Davanagere¹.

2. Under the impugned decree, the Trial Court partly decreed the suit granting 11/70th share each to plaintiff No.1 & defendant Nos.1 to 5 and 1/70th share each to plaintiff Nos.2 to 5 in item No.1 and 2 property and dismissed the suit in respect of *mesne* profit.

3. The parties are referred to as per their ranking before the Trial Court.

4. The brief facts leading to filing of this appeal are as under:

- (i) The case of the plaintiffs before the Trial Court is that plaintiff No.1 is the wife, plaintiff Nos.2 to 5 and

¹ the Trial Court, for short

defendant Nos.1 to 5 are the children of H.S.Ramoji Rao. It is contended that said Ramoji Rao was the ancestor of plaintiffs and defendant Nos.1 to 5 family having extensive movable and immovable property. The said Ramoji Rao purchased the suit schedule property in the year 1972 out of his own earnings. He died in the year 1992, leaving behind the plaintiffs and defendant Nos.1 to 5 as the only legal heirs. During the lifetime of Ramoji Rao, he was assuring to divide the suit schedule property among all the children, but he died in 1992 intestate without division of the suit schedule property.

- (ii) It is their further case that defendant Nos.1 to 5 who are managing the property after the death of Ramoji Rao had not given any profits earned from the suit schedule property to the plaintiffs, but kept on assuring that they would divide the suit schedule property among all the members of the joint family.
- (iii) It is contended that during the lifetime of Ramoji Rao, a Rice Flour Mill was constructed in the suit schedule

property in the year 1980 in the name and style of Bhavani Akki Girini². The said flour mill belongs to the family of the plaintiffs and defendant Nos.1 to 5. The flour mill was built on the land after availing loan from the bank and also after disposal of the gold ornaments of plaintiff No.1. The flour mill was given on rent basis for about 7 to 8 years. Thereafter the Girini and machineries were sold and bank loan was discharged. The flour mill was operated as a partnership business of the family. However, defendant Nos.1 to 5 have not disclosed the earnings of the business of flour mill. On 03.11.2016, the plaintiffs received a notice from defendant No.2 wherein he has described himself as a partner having 1/5th share in the flour mill. At that point of time, the plaintiffs came to know that defendant Nos.1 to 5 are disputing the claim of each other regarding the proceeds of Flour mill and also rental amount which is being collected from defendant Nos.6 to 8. After receipt of notice, the plaintiffs approached defendant Nos.1 to 5 and requested to part

² hereinafter referred to as, 'Flour Mill'

with their proportionate share in the suit schedule property. The request was stoutly refused by defendant Nos.1 to 5, which has given rise to the cause of action to file the suit seeking partition claiming half share in the property and also for mesne profits in O.S No.31/2017.

- (iv) In response to the notice, defendant Nos.1 to 5 appeared before the Court and filed written statement. Defendant Nos.1, 2, 4 and 5 filed joint written statement, whereas defendant No.3 filed his separate written statement as well as additional written statement subsequently.
- (v) Defendant Nos.1, 2, 4 and 5 in their written statement denied the plaint averments. Apart from denying the plaint averments and the claim of the plaintiffs, they have taken a specific defence that there is a registered Partition Deed between Ramoji Rao and his sons viz., defendant Nos.1 to 5 in respect of joint family properties during his lifetime i.e., on 28.04.1969 in respect of the following properties:

- 1) Sy.No.13 measuring 08 Acres 31 Guntas;
- 2) Sy.No.17 measuring 04 Acres 02 Guntas;
- 3) Sy.No.13/6 measuring 01 Acre 29 Guntas;
- 4) Sy.No.31/1 measuring 1-00 Acre; and
- 5) Sy.No.3/3c measuring 11 Acres 27 guntas;
- 6) One Khana and a house.

- (vi) After the partition, defendant Nos.1 to 5 and their father Ramoji Rao were living separately by way of taking their share allotted under the registered partition deed. Accordingly, the said registered partition deed was acted upon. They contended that there is neither a joint family nor any joint family property ever since the date of said registered partition deed and the same has been seized from the date of registered partition deed dated 28.04.1969.
- (vii) They further contended that plaintiff Nos.2 to 5 are married daughters and they are living with their husband's in their matrimonial home after marriage and they are excluded from the joint family from the date of

their marriage, hence they are not entitled for any share in the suit schedule property.

- (viii) Another specific contention has been taken with respect to limitation that the suit by the plaintiffs is barred by law of limitation as the father of the plaintiff Nos.2 to 5 died in 1992 and succession opened in the year 1992 itself in respect of share of $1/6^{\text{th}}$ of the father of plaintiff Nos.2 to 5 in the suit schedule properties and cause of action arose on the date of death of Ramoji Rao. As the suit filed by the plaintiffs is not within 12 years from the date of death of Ramoji Rao, is hopelessly barred by limitation.
- (ix) Further, it was contended by defendant Nos.1, 2, 4 & 5 that plaintiff Nos.2 to 5 are out of possession since the date of their marriage and they are not in joint possession and enjoyment of the suit schedule properties. The Court fee paid and valuation of the properties is not proper and hence the Court fee paid is insufficient and required to be paid sufficiently.

- (x) They also contended that, defendant Nos.1 to 5 and their father jointly invested amount of Rs.1,50,000/- per head and constructed the flour mill and running the business under partnership and land has been given to the partnership firm by Ramoji Rao in lieu of his capital investment i.e., 1/6th share. The plaintiffs have not disclosed these facts in the plaint. They further contended that 1/6th share of their father immediately after his death, belong only to them and no other persons have got any right. They have cleared the loan of the said partnership firm after the death of Ramoji Rao. The plaintiffs have not joined their hands in clearing the loan. The suit is also bad for the non-joinder of properties allotted to the father, Ramoji Rao and other properties purchased by Ramoji Rao after the registered partition deed, as such the suit is not maintainable for partial partition.
- (xi) They specifically contended that Item No.2 of the suit schedule exclusively belonged to defendant Nos.1 to 5 and the plaintiffs have no manner of right over Item

No.2 of the property. They further alleged that plaintiff No.1 has alienated some of the properties of her husband after getting Katha of the said properties and also created some documents without notice and knowledge of the defendant Nos.1 to 5, as such they are not binding on them. With this, they sought to dismiss the suit.

(xii) Defendant No.3 filed a separate written statement admitting that the plaintiffs and defendant Nos.1 to 5 constitute a Hindu Undivided Family, so also the allegation that the properties are ancestral joint family properties of the plaintiffs, defendant Nos.1 to 5, who are the wife & children of late Ramoji Rao, however denied the other contentions in the plaint.

(xiii) Defendant No.3 has taken a specific defence that the parents of Late Ramoji Rao, Hanumanthappa and Tulasamma @ Tulasibai, were residents of Kanive Bilachi Village in Basavapatna Hobli, Channagiri Taluk. The said Hanumanthappa purchased two items of the land out of his own funds in the name of his wife out of love and

affection between them. The lands purchased are Sy.No.23/3 measuring 01 Acre 32 Guntas and Sy.No.15 measuring 03 Acres 05 Guntas both situated at Hosalli Village, Basavapatna Hobli, Channagiri Taluk. After the death of grandparents who died intestate, the properties devolved on Ramoji Rao. The lands were fertile and yielding good income. Out of the earnings of the said two lands, Ramoji Rao acquired the suit schedule properties under two sale deeds dated 20.09.1971 executed by one N.Hanumanthappa and Sri.Siddappa and his children, as such the suit property is not personal property of Ramoji Rao, but the same is ancestral in nature. In these circumstances, the plaintiffs are not entitled for equal share therein.

- (xiv) He specifically contended that his father did not contribute any amount for the construction of flour mill and the mill has been constructed only by the efforts of defendant Nos.1 to 5 who borrowed loan from private parties and availed financial assistance with KSFC. The flour mill since beginning was under loss, as such

defendant Nos.1 to 5 were constrained to stop running mill between 1995 and 2007. It is his further contention that he has got renovated the mill building and got constructed three premises and three godowns with an intention to lease them and has invested about Rs.10,00,000/-. He has leased a portion of the property measuring 80 X 88 feet in favour of defendant No.6 on a monthly rent of Rs.55,000/- with an advance of Rs.3,00,000/-, who is carrying on business in fertilizers and agricultural equipments since 01.03.2006. Defendant No.3 has also leased three portions in the suit schedule property each measuring 21 x 28 feet and two godowns measuring 16 x 85 feet and 17 x 21 feet in favour of defendant No.7 on a monthly rent of Rs.36,800/- with an advance of Rs.2,00,000/-, who is carrying on his business since 02.02.2017. Defendant No.3 has further leased a portion of the suit schedule property measuring 18 x 38 feet in favour of defendant No.8 on a monthly rent of Rs.5,000/- with advance

amount of Rs.50,000/-, who is carrying on his business since 19.12.2015.

- (xv) Defendant No.3 further contended that he is paying the tax in respect of the suit schedule properties to the local Corporation and also paying 15% service tax on the rentals received by him once in three months. He is looking after the entire maintenance of the building which would cost him Rs.2,00,000/- per year. He further contend that the plaintiffs have unjustly got entered their names in the Katha and assessment extracts without his consent and knowledge and the mutation proceedings are under consideration in a Review Petition before the concerned authority.
- (xvi) A specific contention regarding Court fee has been taken as has been claimed by defendant Nos.1, 2, 4 & 5. At Paragraph No.12 of the written statement, defendant No.3 has contended as under:

"12. The prayer sought for by the Plaintiffs are unusual and incorrect. The plaintiffs are not entitled for half share jointly in respect of the schedule property and are not entitled for the reliefs

of permanent injunction. In short, the plaintiffs are entitled to 1/60th share as per notional partition in case, they succeed in the suit."

- (xvii) Further, he has contended that the frame of the suit is bad in law and be dismissed with exemplary cost of Rs.50,000/-.
- (xviii) In the additional Written Statement, defendant No.3 contended that the plaintiffs cannot maintain the suit for partition in respect of Item No.2 of the property and they ought to have filed a suit for declaration and possession since, they are not in actual joint possession and enjoyment of the same. He further contended that defendant Nos.1 to 5 became the owners of the item No.2 of the schedule property under a Decree passed by O.S No.209/1985 on the file of the Munsiff Court at Channagiri decreed on 22.10.1994. He contended that the plaintiffs are litigating in respect of such property before the revenue authorities in R.A.CR.202/2016-17. In these circumstances, the suit for mere partition is not maintainable and ought to have filed a suit seeking the relief of declaration and other consequential relief and

the suit which is not filed within 12 years from 22.10.1994 is hit by law of limitation. With this, he sought to dismiss the suit.

5. The Trial Court upon completion of pleadings, framed following issues and additional issues:

"ISSUES

(Framed on 01.09.2017)

1. *Whether plaintiffs prove that suit schedule properties are joint family property?*
2. *Whether defendant No.1 to 5 prove that, suit schedule property is acquired by Ramoji Rao income from land bearing Sy.No.23/3 and 15 of Hosalli Village, Channagiri Taluk?*
3. *Whether plaintiffs are entitled for mesne profits from defendant Nos.1 to 5?*
4. *Whether plaintiffs and defendant Nos.1 to 5 are entitled share in the suit schedule property?*
5. *What order or decree?*

ADDITIONAL ISSUES

(Framed on 23.04.2018)

1. *Whether defendant No.2 proves that item No.2 property is separate property?*
2. *Whether defendant No.2 proves that he his exclusive possession of Item No.2 property by virtue of decree passed in O.s.No.209/1985 on 22.10.1994 by Munsiff Court, Channagiri?*

3. *Whether Court fee paid by plaintiff is insufficient?*
4. *Whether defendant proves that, suit of the plaintiffs is barred by limitation?*
5. *Whether defendant Nos.1, 2, 4 and 5 prove that, plaintiffs are outsiders from joint family?*
6. *Whether defendant Nos.1, 2, 4 and 5 prove that, partition effected hence registered partition deed dated 28.04.1969 between plaintiffs and defendants?*
7. *Whether defendant Nos.1, 2, 4 and 5 prove that, plaintiffs have not included all joint family property in this suit as contended in Para No.10(h) of their written statement?"*

6. The plaintiffs in order to substantiate their claim examined plaintiff No.3 as PW.1 and produced five documents, which were marked as Ex.P1 to P5. Defendant No.3 examined himself as DW.1 and produced seven documents, which were marked as Ex.D1 to D7. However, defendants 1, 2, 4 to 8 neither adduced oral evidence nor produced documentary evidence.

7. The Trial Court after hearing the parties, proceeded to answer Issue Nos.1, 2 & 4 and Addl. Issue No.3 in the affirmative in favour of the plaintiffs and Issue

on *mesne* profits against the plaintiff and other Issues against the defendants and proceeded to partly decree the suit granting 11/70th share each to plaintiff No.1 & defendant Nos.1 to 5 and 1/70th share each to plaintiff Nos.2 to 5 in item No.1 and 2 property and dismissed the suit in respect of *mesne* profits.

8. The Trial Court records its reason on Issue Nos.1, 2, Addl. Issue Nos.1, 2 & 6, refusing the contention of defendant Nos.1, 2, 4 & 5 on the registered Partition Deed dated 28.04.1969 stating that the defendants though have specifically pleaded that partition effected in joint family property on 24.08.1969 through a registered instrument, however they have neither adduced any cogent evidence nor produced any document to substantiate their claim. Further the Trial Court observed that Item No.1 property purchased through Ex.D3 and D4 sale deeds on 20.09.1971 by the common ancestor Ramoji Rao. The Trial Court also observed that according to the pleadings of defendant Nos.1, 2, 4 & 5, as on the date of purchase of item No.2 property, joint family was not in

existence and it was severed in 1969 only and the common ancestor Ramoji Rao purchased Item No.2 property thereafter. In these circumstances held that Item No.1 property became the separate property of common ancestor Ramoji Rao.

9. The Trial Court further observed that the suit in O.S No.209/1988, the plaintiffs are not parties and the suit ended in compromise between the parties. The Trial Court also observed that defendant Nos.3 to 5 have acquired the title over Item No.2 on the basis of succession to their father and not in their individual capacity and held that plaintiff Nos.1 to 5 and defendant Nos.1 to 5 constitute Hindu undivided family and that Item Nos.1 and 2 of the suit schedule are the joint family properties of common ancestor.

10. The Trial Court on Additional Issue No.7 on partial partition observed that the PW.1 in her cross examination admitted that four sisters have relinquished their rights in favour of plaintiff No.1 & defendant Nos.1 to 5. Though PW.1 tried to make a voluntary statement that

the relinquishment has been obtained by playing fraud, but she further deposed that they have not challenged the relinquishment deed dated 28.06.2004 and on this the Trial Court comes to a conclusion that except Item No.1 and 2 properties, the plaintiffs have executed relinquishment deed in respect of all other properties. In these circumstances, the plaintiffs have rightly chosen for non including house property situated at Bar-line road Davanagere and answered the Additional Issue No.7 accordingly.

11. While answering Issue No.4 and Addl. Issue Nos.3, 4 & 5, the Trial Court has held that the parties are Hindus and governed by Mithakshara law, as such they have got right by birth in the family property. The Trial Court held that the plaintiffs have taken a contention that they are in joint possession of the property, accordingly, they have valued the suit and the Court fee paid is sufficient, but held that, since the plaintiffs have admitted that they are in joint possession of the properties, they are not entitled for *mesne* profits.

12. The Trial Court has reasoned that as on the date of suit, common ancestor was not alive and according to Hindu Law, succession is never kept in abeyance and whenever it is opened all heirs are entitled to share or rights in joint family properties and following the judgment of Apex Court in **PRAKASH Vs. PULAVATHI's** case³, considering the date of death of common ancestor Ramoji Rao held that, at that time, two Acts were in force in Karnataka i.e., Hindu Succession Act, 1956 and daughter as a coparsener under Hindu Succession (Karnataka Amendment) Act and the plaintiffs have not disclosed that they are married after commencement of daughter as a coparsener under the Hindu Succession (Karnataka Amendment) Act, and considering the fact that the marriage of plaintiff Nos.2 to 5 performed by common ancestor during his lifetime and they are married prior to 1990, and considering the date of death of common ancestor held that the plaintiffs are entitled for share in the suit schedule properties as per notional partition and answered Issue No.4 in the Affirmative holding that

³ (2016) 2 SCC 36

plaintiff No.1 & defendant Nos.1 to 5 have got 11/70th share each and plaintiff Nos.2 to 5 have got 1/70th share each in Item Nos.1 and 2 of the suit schedule property. It is this judgment and decree passed by the Trial Court is called in question by the plaintiffs in this appeal.

13. Heard, Sri.Vigneshwar S.Shastri, learned Senior counsel appearing for Sri.G.S.Chidambara, learned counsel for the appellants and Sri.Manjunath G.Khandekar, learned counsel appearing for respondents 1 to 5. Respondents 6 and 7 though served, remained unrepresented.

14. Sri.Vigneshwar S.Shastri, learned Senior counsel submits that the properties even according to defendant Nos.1 to 5 were purchased by father Ramoji Rao. Though defendant No.3 has stated that he has succeeded to the properties of his parents, which were the self-acquisition properties of his parents, deceased Ramoji Rao succeeded to the properties under Section 15 of the Hindu Succession Act, 1956⁴ and as such, the same becomes his independent property and the property which

⁴for short, 'the Act'

he has acquired out of his income becomes his self-acquired property. In these circumstances, the Trial Court has failed to consider the fact that after death even prior to amendment 2005, plaintiffs and defendant Nos.1 to 5 both succeeded to the suit schedule property under Section 8 of the Act i.e., succession in respect of a Male dying intestate. The properties being independent and self-acquired property of the father, both the plaintiffs as well as defendant Nos.1 to 5 are entitled for equal share being the Class-I heirs under Section 8 of the Act. The Trial Court has failed to consider this aspect of the matter and proceeded in a wrong path and misdirected itself and misconstrued the judgment of the Hon'ble Apex Court in ***PRAKASH Vs. PULAVATHI*** which is not at all applicable to the case since the property is succeeded under Section 8 of the Act. In these circumstances, the Trial Court ought to have declared the share equally between the plaintiffs and defendant Nos.1 to 5. In that view of the matter, the Judgment and Decree passed by the Trial Court requires to

be modified, granting proper share in terms of Section 8 of the Act.

15. Per contra, Sri.Manjunath G.Khandekar, with all vehemence submits that the father died in the year 1992. In view of the law existing as on that day, the notional partition has opened and the sons along with father are entitled for a share each since the properties were inherited by the father from his parents and the properties purchased are out of the nucleus of the property which he has inherited from his parents becomes the ancestral properties in his lands and as on the date of the death of the father, the daughters are not entitled for equal share. Accordingly, the share allotted by the Trial Court is just and proper and does not require any interference at the hands of this Court.

16. Having heard the rival submissions, we have perused the entire appeal paper as well as the Trial Court Record.

17. As could be noticed from the pleadings itself, especially the pleadings of defendant No.3, it is clear that though the father has inherited properties from his parents, it becomes properties in his hands under Section 8 of the Act and he acquiring further properties out of the nucleus, becomes his own properties, as such after his death intestate, the plaintiffs and defendant Nos.1 to 5 are entitled for equal share under Section 8 of the Act.

18. To the query of this Court regarding the status of the properties, learned counsel for the respondent Nos.1 to 5 is unable to answer as how the properties can be termed as an ancestral properties. Even otherwise, it is ancestral properties, there is no partition effected. Since the earlier partition pleaded has not been substantiated before the Trial Court and the Trial Court has answered the point in respect of registered Partition Deed against the defendants.

19. Further, counsel for respondent Nos.1 to 5 is unable to substantiate his claim that the plaintiffs are not entitled for equal share in the property. Since the

properties are independent and self-acquisition of common ancestor i.e., father Ramoji Rao, and as per Section 8 of the Act, the plaintiffs as well as defendant Nos.1 to 5 being the legal heirs to the common ancestors, coming within the Class-1 heirs are entitled for equal share in respect of any property which is left by a Male dying intestate. In these circumstances, we are of the opinion that the Trial Court has misdirected itself considering the property as ancestral property, so also holding that the notional partition opened the moment the father died in 1992 and the daughters are not having equal right in the property of the father.

20. It is on record that the father of Ramoji Rao, Sri.Hanumanthappa purchased two bits of land in the year 1959 i.e., on 09.01.1959 and 14.03.1959 respectively in the name of his wife Smt.Tulasi Bai @ Tulsamma and since they died intestate subsequent to 1956, Ramoji Rao inherited the properties being the first preferential heir under Section 15 of the Hindu Succession Act, 1956, as such the properties becomes his independent properties

and he having purchased the other property out of the nucleus earned by the properties, they become his self-acquired properties and he having died intestate, his wife and children being the Class-1 heirs are entitled for equal share under Section 8 of the Hindu Succession Act, 1956.

21. The Trial Court has erred in law in concluding that the petitioners are not entitled to *mesne* profits solely on the ground that they have admitted to being in joint possession of the suit properties. Such a finding is unsustainable, in the absence of any documentary evidence to the effect that the plaintiffs are shared with the profits, that apart, in the teeth of the contention of defendants 1 to 5 that the plaintiffs are not entitled for any accounts in the properties and they are enjoying the income and proceeds from the suit properties. In these circumstances, the plaintiffs are entitled for *mesne* profits and they can work out their remedy in the Final Decree Proceedings. In that view of the matter, the issue on the point is answered in favour of the plaintiffs. In that view of

the matter, the Judgment and Decree passed by the Trial Court requires modification in terms of the law.

22. For the foregoing reasons, we proceed to pass the following:

ORDER

- I. The Regular First Appeal is ***allowed***.
- II. The Judgment and Decree dated 02.11.2018 in O.S.No.31/2017 passed by the III Addl. Senior Civil Judge and JMFC, Davanagere is hereby modified declaring that plaintiffs and defendants 1 to 5 altogether have got 1/10th share each in the suit schedule properties.
- III. The observation of the Trial Court that the plaintiffs are not entitled for *mesne* profits on the point that they are in joint possession of the property is misplaced and accordingly, it is set-aside. The plaintiffs shall work out their share in the

mesne profits in the Final Decree Proceedings.

- IV. Registry is directed to draw the preliminary decree accordingly.
- V. In light of the facts and circumstances of the case, and considering the relationship between the parties, there shall be no order as to costs.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN