

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

R.F.A. NO.100069 OF 2016 (PAR/POS)

C/W

R.F.A. CROB. NO.100011 OF 2018

IN RFA NO.100069/2016:

BETWEEN:

1. SHRI BALAGOUDA SIDAGOUDA PATIL,
AGE: 46 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
2. SMT. MAHADEVI W/O. BALAGOUDA PATIL,
AGE: 38 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.

(BY SMT. P.G. NAIK, ADVOCATE FOR
SRI. G.B. NAIK, ADVOCATE)

- APPELLANTS

AND:

1. SHRI DADAPPA APPANNA PATIL
SINCE DECEASED BY HIS LRS,
- 1A. SMT. GANGAWWA BALAGOUDA PATIL,
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. BYAKUD ROAD, RAMAPPAGOL FARM,
SAVASUDDI-591235, TAL. RAIBAG, DIST. BELAGAVI.



- 1B. SHRI BHIMAGOUD DADAPPA PATIL
AGE: 53 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
- 1C. SHRI REVAPPA DADAPPA PATIL
AGE: 48 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
2. SHRI MAHADEV S/O. BASAGOUDA PATIL,
AGE:59 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
3. SMT. BALAWWA W/O. IRAPPA DAWANI,
AGE:49 YEARS, OCC. HOUSEHOLD WORK
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
4. SMT. GOURAWWA W/O. SHANKAR PATIL,
AGE:46 YEARS, OCC. HOUSEHOLD WORK
R/O SOUNSUDDI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
5. SHRI CHANAGODA S/O. BASAGOUDA PATIL,
AGE: 44 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
6. SHRI NINGONDA @ NINGAPPA SIDAGOUDA PATIL
AGE: 59 YEARS, OCC. AGRICULTURE
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
7. SHRI APPANNA S/O SIDAGONDA PATIL
AGE: 52 YEARS, OCC. AGRICULTURE
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
8. SMT. PATREWWA W/O. BASAPPA ULLAGADDI,
SINCE DECEASED BY HER LRS,

- 8A. SHRI BASAVARAJ HOLEBASAPPA ULLEGADDI
AGE: 61 YEARS, OCC. SERVICE, R/O. 1995, WARD NO.6,
RAJESHWARI ICE FACTORY,
LOKAPUR-587122, DIST. BAGALKOTE.
- 8B. SHRI VINOD BASAVARAJ ULLEGADDI
AGE: 29 YEARS, OCC. AGRICULTURE ,
R/O. 1995, WARD NO.8, SUBHAS NAGAR,
LOKAPUR-587122, DIST. BELAGAVI.
- 8C. SMT. PRIYA BASAVARAJ ULLEGADDI
AGE: 26 YEARS, OCC. HOUSEHOLD WORK,
R/O. 1995, WARD NO.6, RAJESHWARI ICE FACTORY,
LOKAPUR-587122, DIST. BELAGAVI.
9. SHRI PATREPPA SIDLINGAPPA TOTAGI
AGE: 44 YEARS, OCC. AGRICULTURE,
R/O. KUNNAL VILLAGE, TAL. RAMDURG, DIST. BELAGAVI.
10. SMT. BALAWWA W/O. ASHOK PATIL,
AGE:36 YEARS, OCC. HOUSEHOLD WORK,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
11. SHRI REVANNA REVPAPA PIDAI
AGE: 36 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE
TAL. RAIBAG, DIST. BELAGAVI.
12. THE SPECIAL LAND ACQUISITION OFFICER
HIDAKAL DAM, DIST. BELAGAVI.
13. SHRI BHIMAPPA DODDAPPA PATIL
AGE: 47 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.
14. SHRI REVAPPA BALAGOUDA PATIL
AGE: 62 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.

15. SHRI PUNDALIK SHIVAPPA KAMBLE
SINCE DECEASED BY HIS LRS
- 15A. SMT. DRAUPATI W/O. PUNDALIK KAMBLE,
AGE: 60 YEARS, OCC: HOUSEHOLD WORK,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
- 15B. SHRI NINGAGOUDA S/O. PUNDALIK KAMBLE,
AGE: 40 YEARS, OCC: AGRICULTURE,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
- 15C. SHRI KARISIDAGOUDA PATIL S/O. PUNDALIK KAMBLE,
AGE: 35 YEARS, OCC: AGRICULTURE,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
- 15D. SHRI RAMESH S/O. PUNDALIK KAMBLE
AGE: 30 YEARS, OCC: HOUSEHOLD WORK,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
- 15E. SHRI SHANKAR S/O. PUNDALIK KAMBLE,
AGE: 28 YEARS, OCC: HOUSEHOLD WORK,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
16. SHRI MALLAPPA SHIVAPPA KAMBLE
AGE:57 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
17. SHRI HANAMANT NINGAPPA ALAGUNDI
SINCE DECEASED BY HIS LRS,
- 17A. SMT. RANGAWWA W/O. HANAMANT ALAGUNDI,
AGE: 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.
- 17B. SMT. SATTEWWA REVAPPA PAKANDI,

AGE: 40 YEARS, OCC. HOUSEHOLD WORK
R/O KATAKABHAVI VILLAGE-591222
TAL. RAIBAG, DIST. BELAGAVI.

17C. SMT. TAYAWWA BHIMAPPA PAKANDI
AGE:38 YEARS, OCC. HOUSEHOLD WORK,
R/O. DEVAPURHATTI VILLAGE,
KATAKABHAVI VILLAGE-591222,
TAL. RAIBAG, DIST. BELAGAVI.

17D. SMT. KEMPAWWA RAYAPPA PUJERI
AGE: 36 YEARS, OCC. HOUSEHOLD WORK,
R/O. NIPNYAL-591317, TAL. RAIBAG, DIST. BELAGAVI.

17E. SHRI NINGAPPA S/O. HANAMANT ALAGUNDI,
AGE: 34 YEARS, OCC. HOUSEHOLD WORK,
R/O KATAKABHAVI VILLAGE-591222
TAL. RAIBAG, DIST. BELAGAVI.

17F. SHRI NINGAWWA RAMAPPA PUJARI
AGE: 32 YEARS, OCC. HOUSEHOLD WORK,
R/O NIPNYAL-591317, TAL. RAIBAG, DIST. BELAGAVI.

17G. SMT. MALLAWWA RAMAPPA PAKANDI,
AGE:28 YEARS, OCC. HOUSEHOLD WORK,
R/O. DEVAPURHATTI VILLAGE,
POST: KATAKABHAVI-591222
TAL. RAIBAG, DIST. BELAGAVI.

18. SHRI PUNDALIK RAMAPPA MELAVANKI
AGE: 37 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.

19. SHRI HANAMANT RAMAPPA MELAVANKI
AGE: 37 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI.

- RESPONDENTS

(BY SRI. SANTOSH B. RAWOOT, ADVOCATE FOR R1 TO R10, R13
TO R15(A TO E) AND R17 TO R19 IS APPEARED THROUGH VC;
SRI. BAHUBALI N. KANABARGI, ADVOCATE FOR R11;

NOTICE ISSUED TO R12, R1(A), R1(A), (B), (C), R8(A TO C);
17(A), R17 (D-G) ARE SERVED BUT UNREPRESENTED;
R16-NOTICE DISPENSED WITH;
R17(B) AND R17(C)- SERVICE OF NOTICE IS HELD SUFFICIENT)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 R/W. ORDER XLI RULE 1 & 2 OF CPC 1908, PRAYING THAT THE JUDGMENT AND DECREE DTD:11.02.2016 PASSED IN O.S.NO.56/2011 BY THE SENIOR CIVIL JUDGE AND JMFC, RAIBAG REJECTING THE CLAIM OF THE PLAINTIFFS FOR PARTITION AND SEPARATE POSSESSION IN RESPECT OF THE PROPERTIES ALIENATED INFAVOUR OF DEFENDANT NO.12 MAY KINDLY BE SET ASIDE AND SUIT OF THE PLAINTIFFS IN RESPECT OF THE SAID PROPERTIES MAY KINDLY BE DECREED BY AWARDING THEIR LEGITIMATE SHARE IN THE SAID PROPERTIES, IN THE INTEREST OF JUSTICE AND EQUITY.

IN RFA CROB. NO.100011/2018:

BETWEEN:

1. SHRI DADAPPA APPANNA PATIL
SINCE DECEASED BY HIS LRS,
- 1A. SMT. GANGAWWA BALAGOUDA PATIL
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. BYAKUD ROAD, RAMAPPAGOL FARM,
SAVASUDDI. TQ. RAIBAG, DIST. BELAGAVI-591235.
- 1B. SHRI BHIMAGOUD DADAPPA PATIL
AGE: 53 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE, TQ. RAIBAG,
DIST. BELAGAVI-591222.
- 1C. SHRI REVAPPA DADAPPA PATIL
AGE: 48 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE, TQ. RAIBAG,
DIST. BELAGAVI-591222.

2. SHRI MAHADEV S/O. BASAGOUDA PATIL,
AGE:61 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
3. SMT. BALAWWA W/O. IRAPPA DAWANI,
AGE:51 YEARS, OCC. HOUSEHOLD WORK,
R/O KATAKABHAVI VILLAGE, TAL. RAIBAG,
DIST. BELAGAVI-591222.
4. SMT. GOURAWWA W/O. SHANKAR PATIL,
AGE:48 YEARS, OCC. HOUSEHOLD WORK
R/O SOUNSUDDI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
5. SHRI CHANAGODA S/O. BASANGOUDA PATIL,
AGE: 46 YEARS, OCC. HOUSEHOLD,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
6. SHRI NINGONDA @ NINGAPPA
S/O. SIDAGOUDA PATIL,
AGE:61 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
7. SHRI APPANNA S/O. SIDAGOUDA PATIL,
AGE:54 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
8. SMT. PATREWWA W/O. BASAPPA ULLAGADDI,
SINCE DECEASED BY HER LRS,
- 8A. SHRI BASAVARAJ HOLEBASAPPA ULLAGADDI
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LOKAPUR, DIST. BAGALKOTE-587122.

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R/O. 1995, WARD NO.6,
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AGE:46 YEARS, OCC. AGRICULTURE,
R/O. KUNNAL VILLAGE,
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10. SMT. BALAWWA W/O. ASHOK PATIL,
AGE:38 YEARS, OCC. HOUSEHOLD WORK,
R/O. KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
11. SHRI PUNDALIK SHIVAPPA KAMBLE
SINCE DECEASED BY HIS LRS.
- 11A. SMT. DRAUPATI W/O. PUNDALIK KAMBLE,
AGE: 60 YEARS, OCC. HOUSEHOLD WORK,
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- 11B. SHRI NINGAGOUDA S/O. PUNDALIK KAMBLE,
AGE: 40 YEARS, OCC. AGRICULTURE,
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- 11D. SHRI RAMESH S/O. PUNDALIK KAMBLE,
AGE: 30 YEARS, OCC. AGRICULTURE,
R/O.KATAKABHAVI, TQ. RAIBAG, DIST. BELAGAVI.
- 11D. SHRI SHANKAR S/O. PUNDALIK KAMBLE,
AGE: 28 YEARS, OCC. AGRICULTURE,

R/O.KATAKABHAVI, TQ. RAIBAG, DIST. BELAGAVI.

- CROSS OBJECTORS

(BY SRI. SANTOSH B.RAWOOT, ADVOCATE)

AND:

1. SHRI BALAGOUDA SIDAGOUDA PATIL,
AGE:48 YEARS, OCC. AGRICULTURE,
R/O. KATAKABHAVI VILLAGE, TAL. RAIBAG,
DIST. BELAGAVI-591222.
2. SMT. MAHADEVI W/O. BALAGOUDA PATIL,
AGE:40 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
3. SHRI REVANNA REVAPPA PIDAI
AGE:38 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
4. THE SPECIAL LAND ACQUISITION OFFICER
HIDKAL DAM, DIST. BELAGAVI.
5. SHRI BHIMAPPA DODDAPPA PATIL
AGE:49 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
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AGE:63 YEARS, OCC. AGRICULTURE,
R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.
7. SHRI PUNDALIK SHIVAPPA KAMBLE
SINCE DECEASED BY HIS LRS.

DELETED AND HIS LRS HAVE BEEN TRANSPOSED AS
CROSS OBJECTORS NO.11A TO 11E.
8. SHRI MALLAPPA SHIVAPPA KAMBLE
AGE:60 YEARS, OCC. AGRICULTURE,

R/O KATAKABHAVI VILLAGE,
TAL. RAIBAG, DIST. BELAGAVI-591222.

9. SHRI HANAMANT NINGAPPA ALAGUNDI
SINCE DECEASED BY HIS LRS.
- 9A. SMT. RANGAWWA W/O. HANAMANT ALAGUNDI,
AGE:52 YEARS, OCC. HOUSEHOLD WORK,
R/O. KATAKABHAVI, TAL. RAIBAG, DIST. BELAGAVI.
- 9B. SMT. SATTEWWA W/O. REVAPPA PAKANDI,
AGE:40 YEARS, OCC. HOUSEHOLD WORK
R/O KATAKABHAVI,
TAL. RAIBAG, DIST. BELAGAVI.
- 9C. SMT. TAYAWWA BHIMAPPA PAKANDI
AGE:38 YEARS, OCC. HOUSEHOLD WORK,
R/O. DEVAPURHATTI VILLAGE,
KATAKABHAVI, TAL. RAIBAG, DIST. BELAGAVI.
- 9D. SMT. KEMPAWWA RAYAPPA PUJERI
AGE:36 YEARS, OCC. HOUSEHOLD WORK,
R/O. KATAKABHAVI,
TAL. RAIBAG, DIST. BELAGAVI.
- 9E. SHRI NINGAPPA S/O. HANAMANT ALAGUNDI,
AGE:34 YEARS, OCC. HOUSEHOLD WORK
R/O KATAKABHAVI,
TAL. RAIBAG, DIST. BELAGAVI.
- 9F. SHRI NINGAWWA RAMAPPA PUJARI
AGE:32 YEARS, OCC. HOUSEHOLD WORK
R/O NIPNYAL,
TAL. RAIBAG, DIST. BELAGAVI.
- 9G. SMT. MALLAWWA RAMAPPA PAKANDI
AGE:28 YEARS, OCC. HOUSEHOLD WORK
R/O. DEVAPURHATTI VILLAGE,
POST: KATAKABHAVI,
TAL. RAIBAG, DIST. BELAGAVI.
10. SHRI PUNDALIK RAMAPPA MELAVANKI

AGE:39 YEARS, OCC. AGRICULTURE
R/O KATAKABHAVI VILLAGE, TAL. RAIBAG,
DIST. BELAGAVI-591222.

11. SHRI HANAMANT RAMAPPA MELAVANKI
AGE:39 YEARS, OCC. AGRICULTURE
R/O KATAKABHAVI VILLAGE, TAL. RAIBAG,
DIST. BELAGAVI-591222.

- RESPONDENTS

(BY SMT. P.G.NAIK, ADVOCATE FOR SRI.G.B. NAIK,
ADVOCATE FOR R1 AND R2;
SRI. BAHUBALI N. KANABARGI, ADVOCATE FOR R3;
R9(A) TO (E) NOTICE SERVED ON
IA 10/22 TO IA 12/2022 BUT UNREPRESENTED;
R9(F) AND (G)-NOTICE SERVED BUT UNREPRESENTED;
V/O/DATED 26.09.2024 DECEASED R7 COME ON
RECORD AS CROSS OBJECTOR 11(A TO E);
V/O/DATED 17.08.2022 CROSS OBJECTION
AS AGAINST R9 IS ABATED)

THIS RFA CROB IN RFA NO.100069/2016 FILED UNDER
ORDER 41 RULE 22 OF CPC, PRAYING TO SET ASIDE THE
JUDGMENT AND DECREE PASSED BY THE SENIOR CIVIL JUDGE
AND JMFC RAIBAG IN O.S.NO.56/2011 DATED 11.02.2016 IN SO
FAR AS REJECTING THE CLAIM OF THESE DEFENDANTS IN
RESPECT OF THE PROPERTIES ALIENATED IN FAVOUR OF
DEFENDANT NO.12 BY ALLOWING THIS APPEAL FILED BY THESE
CROSS OBJECTORS, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL AND CROSS OBJECTION,
HAVING BEEN HEARD AND RESERVED ON 25.03.2026, COMING ON
FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUSTICE
H.P.SANDESH, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE H.P.SANDESH)

The Regular First Appeal and the Regular First Appeal Cross Objection are filed challenging the judgment and decree passed by the trial Court in dismissing the suit in respect of the properties which have been sold in favour of defendant No. 12 by the plaintiffs No.1 and 2 and the defendants No.1 to 5 so also defendants No. 7 to 11 on the file of the learned Senior Civil Judge & JMFC, Raibag in O.S. No. 56/2011 vide judgment dated 11.02.2016.

2. The factual matrix of the case of the plaintiffs as well as the defendants who have filed this appeal and the cross objection is as follows:

In the plaint as well as in the written statement filed by them they contended that the suit properties belong to the joint family and plaintiffs claim 1/3 share in the said properties. Plaintiffs No.1 and 2 are the husband and wife. It is contended that sale deed was executed without their knowledge and behind their back, without any legal

necessity. Hence sale deeds are not binding on the shares of the plaintiffs. It is contended that deceased Sidagouda Patil said to have executed two sale deeds dated 14.05.2003 in respect of R.S. No. 4/1 and also in respect of 4/4A totally measuring 1 acre 35 guntas and 3 acres 24 guntas respectively in favour of defendant No. 12. On the same day, defendant No. 8 said to have executed a sale deed in respect of R.S. No. 4/4 measuring 3 acres 24 guntas in favour of defendant No. 12 so also on the very same day defendant No. 7 said to have executed another sale deed in respect of R.S. No. 4/2D measuring 16 guntas and R.S. No. 4/4B measuring 3.23 acres in favour of defendant No. 12. It is contended that the said properties are part and parcel of the suit property bearing R.S. No. 4.

3. It is alleged in the plaint that the defendant No. 12 has got created these sale deeds with an intention to grab suit properties. It is also contended that defendant No. 12 is not a bonafide purchaser. There is no partition by metes and bounds in the suit properties. The plaintiffs are also in

joint possession and enjoyment of the suit properties. Defendant No. 12 on the basis of these sale deeds causing disturbance to the plaintiffs with their possession. It is also contended by the defendants that when they filed their individual written statements, defendant No.1 contends that the case of the plaintiff is true and he also claims 1/3rd share so also defendants No.2 to 5 filed their written statement admitting the plaint averments. They also claim for 1/3 share so also defendants No. 6, 9 to 12 have also admitted the plaint averments and prayed 1/3 share in the suit properties. Hence it is clear that based on the pleadings of the plaintiffs as well as other defendants except defendant No. 12 all of them are sailing in the same boat contending that sale deeds are created by defendant No.12.

4. The defendant No. 12 who has filed the written statement has denied the plaint averments and contended that he had purchased the properties by paying the sale consideration and from the date of sale he is in possession of the same and the said land was divided and he has

purchased portion of the properties in R.S. No. 4 from the defendant No.1 as well as defendants No. 7 and 8 on the same day, i.e. on 14.05.2003. Those properties are sold for the family necessities. The said properties have been fallen to the share of the deceased Sidagouda Patil in the family properties. It is also contended that first plaintiff was personally present at the time of execution of the sale deeds by Sidagouda Patil so also defendants No. 7 and 8 as attesting witnesses to all these sale deeds. Hence defendant No. 12 is a bonafide purchaser of these properties. It is also contended that name of defendant No. 12 has been mutated in the concerned R.T.C. extracts and also contended that suit is barred by limitation and all the sale deeds are more than three years and prayed the Court to dismiss the suit as against him.

5. The trial Court having considered the pleadings of the parties framed the following issues:

ISSUES

"1. Whether plaintiffs prove that, the suit properties are joint family properties?"

2. *Whether plaintiffs prove that, the Sale Deeds executed in favour of defendant No.12 by deceased Sidagouda Patil dt:14.05.2003, executed by defendant No.8 Appanna dt: 14.05.2003 and defendant No.7 dt: 14.05.2003 and not binding on their shares?*
3. *Whether defendant No.1 proves that, the Sale Deeds executed in his favour dt: 14.05.2003 by deceased Sidagouda, Appanna and Ningdouda are for benefit of the family or for family necessity?*
4. *Whether suit is time barred?*
5. *Whether plaintiffs are entitle for any share in the suit properties? If so, what share?*
6. *Whether plaintiffs are entitled for any relief?*
7. *What decree or order?"*

6. The plaintiffs in order to substantiate their case examined the first plaintiff as PW1 and two witnesses as PWs.2 and 3 and got marked in all 28 documents and closed their side. Defendant No. 3 who also claims share over the properties, examined as DW1. Defendant No. 12 who is the only contesting defendant examined as DW2 and marked 14 documents.

7. The trial Court having considered both oral and documentary evidence answered issue No.1 in the affirmative in coming to the conclusion that the suit

properties are joint family properties; answered issue No.2 in the negative in coming to the conclusion that the sale deeds executed in favour of defendant No. 12 are not binding and not accepted the case of the plaintiffs; so also the trial Court comes to the conclusion in answering issue No. 3 in the affirmative that defendant No. 3 sale deeds are executed for the benefit of the joint family; answered issue No. 4 partly in the affirmative in coming to the conclusion that suit was barred by limitation and also comes to the conclusion that plaintiffs are entitled for a share over the properties in respect of the remaining properties other than the properties which have been sold in favour of defendant No.12. Being aggrieved by the judgment and decree of the trial Court, the present appeal as well as cross objections are filed.

8. The main contention of the counsel appearing for the appellant in her arguments is that there is no dispute with regard to the relationship between the plaintiffs and defendants No. 1 to 11. Defendant No. 12 is a third party

who had purchased the property from the father of the plaintiff No.1 and plaintiff No.1 is also a consenting witness not only in respect of the sale deeds executed by the father but also in respect of the sale deed executed by defendants No. 7 and 8. The counsel also would vehemently contend that the sale deeds are marked as Exs.P. 11, 12, 13 and 14 and also contend that plaintiff No.2 is the wife of plaintiff No.1 and also the granddaughter. The counsel further contends that plaintiff No. 2 is entitled for 1/5th share in the share of Ningavva. The property was sold and the same is not for the legal necessity but there an averment in the sale deed. She further contends that burden is on the defendant No. 12 to prove that he is a bonafide purchaser but the same is not proved. The counsel also would contend that mutation is in favour of defendant No. 12 was set aside at the instance of the Bank since there were entries in favour of the bank earlier and loan was also availed and the bank initiated proceedings for recovery of money.

9. The counsel further submits that the plaintiff no. 1 has paid the amount in favour of the bank and got cleared the loan. Hence the trial Judge ought to have granted relief in favour of the plaintiff. The counsel would vehemently contends that reasons assigned by the trial Court while dismissing the suit that plaintiffs No.1 and 2 and the defendant No.5 have signed the document of sale deed executed in favour of defendant No. 12 in terms of Ex.P.11 to P.14. Hence they are not entitled for any relief. The counsel would further submit that even if the plaintiff No.1 and the defendant No.5 have attested the sale deeds as witnesses, the trial Court ought not to have rejected the claim of the other plaintiff and also the other defendants. Further, in coming to the conclusion that sale was made for family necessity there is no any cogent evidence before the trial Court. The trial Court committed an error in coming to the conclusion that sale deeds were executed for legal necessity. The very approach of the trial Court is erroneous and ought to have granted the relief in favour of the other plaintiff and other defendants who have not signed the sale

deeds. She further submits that though it was the case of the defendant No. 12 that sale was made for legal necessity but the amount was not utilized for clearing the loan. The plaintiff No.1 only paid the amount to the bank. The counsel further submits that father died in the year 2010 and the plaintiff No. 1 paid amount in 2022-23. The counsel also would submit that defendant No. 12 had purchased the undivided share and when such being the case when there was no division and undivided share is sold to defendant No. 12, the defendant No. 12 himself ought to have filed the suit claiming right of possession on the basis of sale deeds.

10. The counsel appearing for the cross objectors also reiterate the grounds which have been urged by the counsel for the appellants and also would contend that there was no legal necessity and there was no partition between the father and his brothers and there were three branches to the original propositor. It is further submitted that defendant No. 3 who is also examined before the trial Court

as DW1 and makes a claim as in consonance with the claim made by the plaintiffs. The trial Court committed an error in dismissing the suit. Hence the cross objection is liable to be allowed setting aside the judgment of the trial Court.

11. Per contra, the counsel for defendant No. 12 would vehemently contend that there is no dispute that two properties were sold by the father and other properties were sold by defendants No. 7 and 8. The counsel also would submit that while selling the property there is a clear recital of family necessity, i.e., family is facing the difficulty properties are sold. The counsel also submit that only 12 acres 34 guntas of land were purchased by defendant No.12 out of 60-70 acres and the remaining properties are vested with the joint family. The cause of action stated in the suit is that it was arisen in the year 2007 when defendant No.7 tried to execute the sale deed, the suit was filed in the year 2011. The counsel also vehemently contends that on the date of sale, possession was delivered in favour of defendant No. 12, i.e. on 14.05.2003 and suit is filed after

eight years. When the father of plaintiff No. 1 had sold the properties and his brothers have not challenged the same contending that the same was not for the family necessity, though it is contended that sellers were addicted to bad vices and the same are not proved. The counsel also would submit that when defendant No. 12 was examined before the trial Court as DW2 contention was taken that during the drunken stage of the sellers, sale deeds are obtained but the counsel would vehemently contend that admission on the part of PWs 1 to 3 as well as DW1 is very clear that the plaintiff was having debts and in order to clear the debt, properties were sold and those admissions were taken note of by the trial Court while appreciating both oral and documentary evidence. Hence question of allowing the appeal and the cross objections does not arise and are liable to be dismissed.

12. Having heard the counsel for the appellants and also the counsel for the cross objectors as well as respondent/

defendant No. 12 the points that arise for consideration of this Court are:

(1) Whether the trial Court committed an error in answering issue No. 2 as negative and whether the trial Court committed an error in answering issue No.3 in coming to the conclusion that plaintiffs failed to prove the sale deeds executed in favour of defendant No. 12 not binds the plaintiffs and defendants and whether the trial Court committed an error in coming to the conclusion that sale deeds are executed for the benefit of the family and whether it requires interference of this Court?

(2) What order?

13. Having heard the respective counsels and also on perusal of the material available on record it is not in dispute that in the suit, it is contended that the properties belong to the joint family. It is also not in dispute that the trial Court answered issue No.1 in the affirmative that suit properties are joint family properties but the very contention of the plaintiffs that sale deeds are not binding on the plaintiffs and also it is the contention of the defendants that sale deeds are also not binding on them and not sold the properties for family necessity but there is

no dispute that sale deeds are executed by Sidagouda Patil and defendants No. 7 and 8 in terms of Exs.P.11 to P.14. It is also not in dispute and also during the course of evidence it is emerged that plaintiff No. 1 and defendant No. 5 have attested the sale deeds when the same are executed in favour of defendant No. 12 by Sidagouda Patil and defendants No. 7 and 8.

14. The main contention appearing for the appellants that even if both of them have attested their signatures as consenting witnesses and trial Judge ought not to have rejected the claim made by the plaintiff No. 2 as well as other defendants. It is also the contention that it was not for the family necessity and the trial Court committed an error in coming to such a conclusion. The counsel also fairly submits before the Court that if the properties are sold for the legal necessity, the appellants are out of Court but the contention is that the reason assigned that plaintiff No.1 and defendant No. 5 have signed the same as attesting witnesses and the same disentitles, this reasoning is

erroneous and also the amount was not utilized for clearing the loan and plaintiff No. 1 has paid the bank loan amount but the Court has to take note of the material available on record particularly the plaintiffs evidence on record.

15. This Court being the first appellate Court has to consider both question of fact and law to find out whether an error has been committed by the trial Court while appreciating both oral and documentary evidence since first appeal is a statutory appeal. The trial Judge having assessed both oral and documentary evidence in paragraph No. 20 taking note of the deposition of the plaintiffs and defendants No. 1 to 5 and defendants No. 7 to 11 taken note of the case of the plaintiffs as well as the defendants are very clear and all of them question the sale deeds made in favour of defendant No. 12 but there is no dispute with regard to the relationship between the parties, i.e., plaintiffs and defendants No. 1 to 11. The same is an admitted fact. Except the defendant No. 12 none have contested the matter.

16. It is also not in dispute that first plaintiff and defendant No. 5 consented for the sale which were executed in favour of defendant No.12 by Sidagouda Patil and also defendants No. 7 and 8. The nature of properties is also not in dispute. It is also important to note that there are four sale deeds of the year 2003 but the particular date, 14.05.2003. The witness PW1 though denies that family was not having loans but not specifically denied the same, but only says that he is not aware of the same and in an ingenious method denies the same and throughout in the cross examination except saying that he do not know the same there is no specific denial. It is very clear that PWs 2 and 3 who have been examined on behalf of the plaintiffs have categorically admitted that there were bank loans and loans at societies and the same is in favour of the family. Though PW1 denies that there was no such loan, but admitted that notices were issued by the banks. Hence evidence of PW1 and also PW2 and 3 is very clear that family was having loan. It is also important to note that

deceased Sidagouda Patil and defendants No. 7 and 8 have alienated the properties.

17. It is also emerged that first plaintiff as well as defendant No. 5 also signatories to these sale deeds but the fact is that other defendants have not questioned the sale deeds which were made in the year 2003 itself but the suit is filed in the year 2011, i.e. after eight years. No doubt plaintiff No.2 is the wife of the first plaintiff and she is also a relative as contended by the counsel for the appellant and there is no dispute to that effect. It is important to note that 1/3 share is claimed by the plaintiffs. The very contention that they were not having knowledge about these sale deeds cannot be accepted for the reason that all of them are residing jointly and the same is admitted and also when the sale deeds are executed in the year 2003 itself the family parted with the possession in favour of defendant No. 12.

18. It is also important to note that DW1 has categorically admitted that his deceased father and defendants No. 2 and

7 were managing the family affairs. The very admission on the part of PW1, 2 and 3 and though PW1 denies about the loan even when suggestion was made categorically admitted that PW1 and her uncles and all the brothers are residing together and family was having totally 70 acres of land. The plaintiff also admits that father died on 14.08.2010 and also categorically admission was made that during the lifetime father was the Kartha of the family and the Kartha and other family members have availed loan including the father, though intelligently denies the loan by PW1 but admitted the issuance of notice, even not able to tell what was the extent of property that was sold and intelligently denies very execution of sale deed in favour of defendant No. 12. PW1 also admits that defendant No. 5 is residing along with them. A categorical admission is given that notice was given to the father as well as other defendants. Even he admits that notice was given to PW1 also. A specific question was put to PW1 that in order to clear the bank loan, his father and also defendants No. 7 and 8 have sold the property he has not denied specifically

but only stated that he is not aware of the same and there is no specific denial. PW1 categorically admits that during the lifetime of the father they did not challenge the sale deeds. The other admission on the part of PW2 though supports the case of the plaintiffs who categorically says that even not aware of the contents of the plaint and against whom the suit was filed. The plaintiffs only approached him to give evidence before the Court. He is not even aware of the extent of the land but only says that in respect of four survey numbers the suit is filed. However, he claims that properties are adjacent to his property but not produced any documents. However he admits that defendants No.7 and 8 have also executed sale deeds in faovur of defendant No. 12 but denied sale made in favour of defendant No. 12. However he categorically admits that in order to clear the bank loan, sale deeds are executed and also there were loans in the Urban Bank as well as in M.G.Bank. The revenue documents stand in the name of defendant No. 12. He categorically admits that sisters were cordial with the plaintiff No.1.

19. The other admission on the part of PW3 is also very clear that he is not aware of the contents of his chief examination and on the say of plaintiff he has signed the same and even he is not aware for what purpose and against whom the suit was filed. However he admits that defendant No. 12 is in possession of some of the properties though he denies the sale deeds. He admits that defendant No. 12 has purchased the same from Sidagouda Patil as well as defendants No. 7 and 8 and sale deeds were executed in the year 2003 and revenue records stand in the name of defendant No. 12 so also he categorically admits similarly that he is the friend of first plaintiff and evidence of PW2 and 3 is contrary to the evidence of PW1.

20. The other evidence, i.e. DW1 who is also the defendant No.3 and case of the defendant No.3 is also similar to that of the plaintiff. He also admits that he is giving evidence on behalf of the other defendants. He also admits that there is an averment in the affidavit that there was a loan and documents are also produced. He

categorically admits that all of them have given instructions while filing the suit. Hence it is very clear that it is nothing but a collusive suit. The admission is very clear that he came along with the first plaintiff and also along with other brother and sisters to the Court to depose in the case.

21. Having considered the evidence of defendant No. 12 he claims that he is a bonafide purchaser and while cross examining this witness except the suggestions that he did not enquire before purchasing the property and the sellers were addicted to bad vices and also during the drunken stage sale deeds are obtained but nothing is elicited from the mouth of DW2. When a suggestion was made that he did not enquire but he categorically says that he enquired the children of Sidagouda Patil and his children have also executed the sale deeds.

22. Having re-assessed both oral and documentary evidence on record and particularly taking note of the claim of the parties and also the specific contention of defendant No.12 that he is a bonafide purchaser and that the sale was

for the family necessity, all these material admission clearly discloses that sale was made for family necessity and also some of the family members have also attested the sale deed through plaintiff No. 1 as well as defendant No.5, so also the uncles have not challenged the sale deeds made by Sidagouda Patil during his lifetime and they kept quiet during his lifetime. The answers elicited from the mouth of the witnesses was clear that there was loan in favour of the family and notices were issued and intelligently PW1 denies that there was no loan and PW2 and 3 who have been examined before the Court have also categorically admit the sale as well as possession is with the defendant No. 12 as well as the family loans which were in existence.

23. Though counsel for appellant claims that plaintiff no.1 cleared the loan but the fact is that he was also an attesting witness to the sale deed and mere making of payment by plaintiff No.1 cannot take away the case of the defendant No. 12 who had purchased the property for valuable consideration. It is not their case that sale consideration

has not been paid, whether the father of the plaintiff has paid the amount to the bank or not that is immaterial. Apart from that the admissions are clear that PW1 to 3 as well as DW1 that there was loan in favour of the family in the Urban Bank as well as M.G. Bank. When such material available before the Court and when the sale was made long back in the year 2003 and none of them have questioned the same and only the ground was urged before the trial Court that sellers were addicted to bad vices and the same cannot be accepted and defendant No. 12 is in possession of the property from the date of purchase that is in 2003 even till filing of the suit, the family also parted with the possession and the mere contention that they were not having knowledge of the same cannot be accepted in view of the admission of PW1 that all of them are residing together and hence we do not find any error on the part of the trial Court in coming to the conclusion that the very contention of the plaintiffs that the sale deeds are not binding on them cannot be accepted and the said finding is based on the material so also the trial Court rightly

appreciated the material on record while answering issue No. 3 in coming to the conclusion that sale was made for family necessity having taken note of admission on the part of PW1 to 3 as well as DW1.

24. We do not find any error in appreciation of evidence by the trial Court. The trial Court has assigned cogent reasons that some of the family members are the attesting witnesses to the sale deeds as well as they have not questioned the same during the lifetime of Sidagouda Patil and only subsequent to his death suit was filed that too making an allegation that he was addicted to bad vices that is after the death of Sidagouda Patil and not during his lifetime. It was their grievance that while taking care of the family by Sidagouda Patil during his lifetime, he was addicted to bad vices and the same is not proved. It is nothing but an afterthought pursuant to the death of Sidagouda Patil approached the Court. Hence, no ground is made out to reverse the finding of the trial Court. In view of the discussion made above, we pass the following order:

ORDER

The Regular First Appeal and the Cross Objections are dismissed by confirming the judgment of the trial Court.

Parties to bear their own costs.

SD/-
(H.P.SANDESH)
JUDGE

SD/-
(B. MURALIDHARA PAI)
JUDGE

BVV
CT-PA