

(2015) 07 KAR CK 0003

In the Karnataka High Court

Case No : R.F.A. No. 4100 of 2012 C/W 3011 of 2011

Aruna

APPELLANT

Vs

Madhukar Bapusaheb Lengade

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Karnataka Registration Rules, 1965 — Rule 79

Citation : (2017) 2 ICC 34

Hon'ble Judges : Ravi Malimath and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Sri. M.G. Naganuri, Advocate, for the Appellant; Sri. Sangram S. Kulkarni, Advocates, for the Respondent Nos. 1 A-D; Sri. Sachin S. Magadum, Advocate, for the Respondent Nos. 7 to 9; Sri. Raviraj C. Patil, Advocate, for the Respondent Nos. 10 to 12; Sri. Y.V. Raviraj, Advocate, for the Respondent No. 26; Sri. Praveen D. Tarikar, Advocate, for the Respondent Nos. 13 and 14

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J.—In both appeals, appellants are aggrieved by the common judgment and decrees dated 30.10.2010, in O.S. Nos. 95/1991 and 249/1996, on the file of the II Additional Senior Civil Judge, Belgaum, decreeing both suits in part. Both cases pertain to family properties belonging to Lengade family Belagavi. Hence, they are heard and disposed of by this common judgment.

2. The genealogical tree of the family is as follows:

3. Plaintiffs in both suits are members of different branches of a family. One Gundappa was the propositus who had sons namely, Bapu Saheb and Shantharam. Properties were partitioned between the two brothers after death of their father. We are concerned with the properties of the branch of Bapusaheb in these appeals. Bapusaheb had nine children i.e. five sons and four daughters.

4. O.S. No.95/1991 is filed by Padmavati W/o. Nanda Kumar and has two

daughters. Plaint averments are as follows:

(i) That Gundappa was the propositus. He had two sons Bapusaheb and Shantaram. After death of father, properties were divided among the brothers.

(ii) Nanda Kumar was taken to vices. Taking advantage of his vulnerable disposition, defendants 1 and 2 in collusion with others have taken signatures of Nanda Kumar on various forms, papers etc and created documents to their detriment. Therefore, any document said to have been signed by Nanda Kumar are not valid in law.

(iii) To be precise, the plaintiffs have stated thus in paragraph 6 of the plaint:

6. The propositus Gundappa had two sons, by name Bapusaheb and Shantaram. The said propositus owned considerable properties at Belgaum. After the death of the propositus Gundappa, there was a partition between his two sons, Bapusaheb and Shantaram. There is absolutely no dispute about the fact of partition and properties allotted to the said partition to the two brothers respectively. After the death of late Bapusaheb, the plaintiffs and defendants no. 1, 2 and others continued to remain as the members of the joint family. The said joint family was never disrupted. The suit schedule properties are ancestral properties of the plaintiffs and defendant no. 1 to 11. All the heirs of late Bapusaheb are having right, title and interest over the said suit properties. The plaintiffs are enjoying all these joint family properties along with defendant no. 1 to 11. The plaintiffs are residing in property bearing CTS no. 23 of Khanapur road, Tilakwadi Belgaum. Hence, the plaintiffs are in joint possession and enjoyment of the suit schedule properties."

(iv) Nanda Kumar died on 18.02.1982. Few years after his death, defendants No.1 and 2 wanted to unlawfully deprive the plaintiffs of their share.

(iv) They are in joint possession and entitled for 9/56th share.

(v) Shantaram is arrayed as a party because his name is appearing in property records.

5. Defendant No. 1 is the contesting defendant. He has denied that propositus owned considerable properties but admitted partition between Bapusaheb and Shantaram. He has taken a stand that documents executed by Nanda Kumar are binding on his heirs. Nanda Kumar was not a partner in M/s. B.G. Lengade and sons and therefore, assets acquired by the said firm cannot be claimed by Plaintiffs. Similar is his stand with regard to industrial and business enterprises of the family. With these averments, he has prayed for dismissal of the suit.

6. Defendant No.2 has filed written statement and stated that after partition between Bapusaheb and Shantaram a registered deed was entered into between Bapusaheb and Nanda Kumar hence plaintiffs have no share and prayed for dismissal.

7. Defendants No.3 to 5 in their written statement have admitted partition

between Bapusaheb and Shantaram. They have prayed for dismissal of suit on the ground that Nanda Kumar did not have right as he was given a running business concern.

8. Defendants No.6 to 7 have also taken a stand that Nanda Kumar had lost his right. Business concerns were owned by separate partnership firms. Therefore, members of joint family did not have any right in them.

9. Son of defendant No.9 has filed a short written statement explaining his relation and prayed for allotting him 3/27th share.

10. Based on the above pleadings, Trial Court framed following issues:

"(1) Whether the plaintiffs prove that the suit schedule properties are the ancestral properties of the plaintiff?

(2) Whether the plaintiffs prove that they have 9/56th share in the suit schedule properties?

(3) Whether the plaintiffs are entitled for partition and separate possession of their share?

(4) Whether the plaintiffs prove that defendants 1 and 2 obtained the signature of late Nandkumar who was a drunkard on various forms papers etc. by practicing fraud and by deceitful means?

(5) Whether the defendant No. 1, 2A, 2B and 2C prove that on 05.08.1965 there was a registered Exchange Deed between late Bapusaheb and late Nandkumar and under this deed Nandkumar received Rs. 12,000/- and relinquished all his property rights?

(6) Whether the suit is barred by limitation?

(7) What order?"

(and answered Issues Nos. 1, 4, and 5 in the negative, issue Nos. 2, 3, and 6 partly in the affirmative.

11. O.S. No.249/1996 is filed by Aruna W/o. Sudhir Lengade and her daughters. Plaint averments are as follows:

(i) With regard to status of properties and partition, it is stated thus in their plaint.

"3. The propositus Gundappa Lengade had two sons by name Bapusaheb and Shantaram. A partition took place between Bapusaheb and Shantaram sons of Gundappa Lengade, on the demise of their father.

3A. As stated above there was a partition between the deceased Bapusaheb and his brother Shantaram Lengade. The document styled as memorandum of partition dated 05.01.1964 has not been acted upon by the parties. The suit properties have been all along treated by the plaintiffs, defendant no. 1 and his

other brothers except Nandkumar, as joint family properties. They are in joint possession of the same. No partition has taken place in the suit properties."

(ii) Nanda Kumar expressed willingness to separate from joint family in 1965 Bapusaheb being karta gave him a running jewelry business M/s. Satish Suhas Lengade & Co., with stock in trade. In lieu thereof he gave up his right in respect of suit schedule properties in favour of Bapusaheb. Terms of settlement were reduced into writing on 05.08.1965 and registered on 07.08.1965.

(iii) Bapusaheb died in 1975. His 2/3rd share devolved upon his wife and children. Brahmalavati wife of Bapusaheb died on 25.09.1987. Her share devolved upon her children. Plaintiffs are entitled for 11.22/60th share. Plaintiffs in O.S. No.95/1991 are entitled for 2.3/60th share which Nanda Kumar inherited from his parents' share in the properties.

(iv) Shantaram is arrayed as a defendant because his name is found in property records.

12. In O.S. No.249/1996, Trial Court framed following issues:

"1. Whether the plaintiffs prove that the ascendant of defendants 7 to 9 i.e. Nandakumar had separated from the family in 1965 by taking his share under a Deed of partition dated 5.8.1965?

2. Whether the defendants prove that the suit properties are the joint family properties of plaintiffs and defendants 1 to 13?

3. Whether the plaintiffs prove that they are entitled for partition in the suit properties? If so, to what share and in which of the properties?

4. Whether the defendants 7 to 9 and 10 prove that the CTS No.812 of Budhawar Peth, Poona is the exclusive property of defendant No. 10 by virtue of the Relinquishment Deeds dated 6.12.1991, 8.8.1989 and 5.3.1992?

5. Whether the defendants 7 to 10 are also entitled for their share?

6. What decree or order?"

and answered issue Nos. 1 and 4 in the affirmative, Issue No. 2 in the negative, Issues No. 3 & 5 in the affirmative.

13. For the sake of convenience, parties shall be referred to by their status in O.S. No.95/1991. Broadly, averments in the plaints in both suit and the written statements can be summarized as follows:

(i) That taking advantage of Nanda Kumar's vices, defendant No. 1, his brothers and father took his signature on some blank papers and created records such as relinquishment deed.

(ii) Release deeds have been executed by brothers and sisters in favour of the eldest sister Nirmala, defendant No.10 in respect of property bearing CTS

No.812, situated in Pune.

(iii) Accordingly, Defendant No. 10 defendants 1, 7 to 9, 11 to 13, husband of defendant No.2 and defendants 5 and 6 have relinquished their rights in CTS No.812, situated in Pune, by relinquishment deeds on various dates which have been duly registered.

(iv) According to defendant No. 1, Nandakumar had severed his relation by executing the release deed after receiving a running jewelry shop and therefore his branch is not entitled for any share. He has also narrated details of business enterprises and stated that all of them were started by independent firms/ concerns consisting of brothers other than Nanda Kumar.

14. Both suits were clubbed. With the above pleadings and issues, parties went to trial.

15. Common evidence was recorded in both cases. Plaintiff No. 1 in O.S. No. 95/1991 is examined as P.W. 1. 21 documents have been marked. Defendant No.1 was examined as D.W.1. An official from Sub-Registrar's office is examined as D.W.2. Plaintiff No. 1 in O.S. No. 249/1996 is examined as D.W.3. Son of defendant No.8 in O.S. No.95/1991 is examined as D.W.4. After a full dressed trial, the trial Court decreed the suit in part. Plaintiffs in O.S. No. 95/1991 were held entitled to joint 1/9th share in property bearing CTS No. 1382/6+7 and arrears of rent in respect of the said property.

16. Plaintiffs in O.S. No.249/1996 were held entitled to 7/24th share in respect of CTS Nos. 1328 and 1329 and properties bearing CTS Nos.23 A to E and arrears of rent due from New India Assurance Company Limited mentioned in "D" schedule and 1/9th share in CTS No.1382/6+7 and arrears of rent from Income Tax Department.

17. Plaintiffs in both suits are aggrieved by the judgment and respective decrees and preferred these appeals.

18. The grievance of the plaintiff's in O.S. No.95/1991 is that they have been held entitled to only 1/9th share in one property and share in other properties is denied and therefore, the judgment is bad in law.

19. Grievance of plaintiffs in O.S. No.249/1996 is that the trial court has denied share in "A" schedule property consisting of business concerns, the property situated in Pune bearing CTS No.812, property bearing CTS 42 in Shahapur, Belgaum and movable properties viz., jewellery and two cars mentioned in "C" schedule.

20. We have heard Shri M G Naganuri & Shri Sachin S. Magadam, learned Counsel appearing for the plaintiffs and Shri Sangram S. Kulkarni, Sri Raviraj C. Patil, Shri Y.V. Raviraj and Smt.Hemalatha K.S., learned Counsel appearing for the respondents and perused the records.

21. Learned Counsel for the appellants in R.F.A. No.3011/2011 submitted that

the judgment and decree of the trial Court is unsustainable in law because plaintiffs have been denied share in all properties except granting 1/9th share CTS 1382/6+7 and arrears of rent in respect of said property.

22. Learned counsel submits that the Trial Court erred in coming to the conclusion that the 1st appellants' husband had relinquished his share in the properties. He submits that the original of the release deed was not produced as admitted by the DW1. There was no necessity for Nanda Kumar to relinquish his share. Trial Court lost sight of the fact that Nanda Kumar was an alcoholic.

23. Learned Counsel for the appellants in R.F.A. No.4100/2012 submit that the Judgment and Decree of the trial Court is unsustainable because, they are denied share in "A" schedule property i.e., business enterprises and industrial plots, properties bearing Nos.CTS42 situated in Saraff katta, Belgaum and CTS 812 in Pune and movable properties.

24. Learned Counsel for the respondents supports the order of the trial Court and prays for dismissal of the appeals.

25. In the light of pleadings and submissions made by the learned Counsel for respective parties, following points arise for our consideration:

- (1) Whether the suit schedule properties are ancestral properties or joint family properties?
- (2) Whether the relinquishment deed executed by the husband of first plaintiff (Nandakumar) in O.S. No. 95/1991 is valid in law? If so, was there a reunion?
- (3) Whether plaintiffs in both suits have proved their right in property bearing CTS No.812 in Pune?
- (4) Whether the trial Court erred in not considering property bearing No. CTS 42 at Shahapur, Belgaum, movable properties and industrial concerns for partition?
- (5) In the facts and circumstances any interference is called for in the Judgment of trial Court and if so to what extent?"

Re. Point No. 1:

26. Properties involved in these appeals are described in detail in O.S. No.249/1996 and they can be broadly categorized with reference to their description as under.

(a) A schedule

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Industrial enterprises with immovable properties

(b) B schedule

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- (i) Immovable properties in Belgaum city
- (ii) Property bearing CTS No. 812 in Pune
- (c) C Schedule

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Two cars and jewelry

- (d) D schedule

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Arrears of rent from

- (i) New India Assurance Company and
- (ii) Income Tax Department.

Schedule A consists of the following items:

1. Shed No.D/3.
2. Leasehold right in Plot No.M-17
3. Industrial land measuring 1 acre 29 Zi guntas in survey No.341. There is also reference of Shed No.M/17 in this item.
4. Sushal Enterprises, a proprietary concern.
5. Elco Enterprises, a business concern.

27. Plaintiffs in both O.S.No.91/1995 and O.S. No.249/1996 have claimed share in business enterprises, industrial bearing Shed No.D3. Elco Industries, machineries and equipment. But they have not placed any evidence before the Trial Court to substantiate their claim.

28. Plaintiffs in both suits have deposed as PW.1 and DW.3. The contesting defendant is DW.1. Plaintiff No.1 in O.S. No.249/1996 has admitted in her evidence that with regard to Elco Engineering, she has received share of her husband.

29. The eldest living son of the family namely, Madhukar-Defendant No.1 has explained in his examination-in-chief, the genesis of all the properties. According to him, one acre of industrial land was purchased by Bapusaheb from the Co-operative Industrial Estate in the year 1974. This property has been sold by widow of his brother Smt.Nisha, w/o Sathish. Industrial plot bearing No. M-17 was purchased by the firm M/s. ELCO Engineers in 1993. The said property has also been sold by Smt.Nisha. There is no mention with regard to Shed No. D/3, Industrial Estate, in his evidence. Nothing is elicited from this witness by the plaintiffs in the cross-examination.

30. The plaintiff in O.S. No. 249/1996 has admitted in cross-examination that

she had received a demand draft bearing D.D. No. 681601 dated 29.10.1981 which was her share in ELCO enterprises. Plaintiffs in both suits have not placed any cogent material before the Court to establish their respective claims with regard to Shed No. M/17 D/3, Industrial land and assets of Sushal Enterprises.

Schedule B consists of the following:

1. Property bearing RS No. 1382/6+7
2. CTS No. 23
3. CTS Nos. 3128 and 3129
4. CTS No. 42
5. CTS No. 812 in Pune

31. In respect of these properties, D.W.1 has stated that his father Bapusaheb and his uncle Shantharam started a jewelry business in 1932 in the name of M/s S.G. Lengade & Co. His father had purchased property bearing survey No. 1382/2+6+7 in Club Road, Belgaum property bearing CTS 42 Saraf Katta, Belgaum. The property bearing CTS No.23 and property bearing CTS Nos.3128 and 3129 were purchased jointly by his father Bapusaheb and Shantaram. The mode of acquisition of property bearing No. CTS 812 in Pune is not forthcoming in his evidence nor in the evidence of plaintiff or in any record. Plaintiffs have not elicited anything contrary in the cross examination from DW1.

32. Another witness who is examined on behalf of defendant is D.W.4 Pradeep, son of defendant No.8 in O.S. No.95/1991. His evidence is mainly with regard to CTS No.812 in Pune. The trial Court has adverted to the evidence on record and has held the issue with regard to ancestral joint family status of the properties in the negative.

33. In order to answer the point with regard to the status of properties, we have scanned through the pleadings and evidence of P. W. 1, DW1 and DW3. P. W. 1, plaintiff in O.S. No.95/1991 and DW3, plaintiff in O.S. No.249/1996 have categorically stated in their pleadings that there is absolutely no dispute about the fact of partition between Bapusaheb and Shantaram and the suit properties fell to the share of Bapusaheb in the partition between him and his brother Shantaram. They have affirmed the same in their evidence also. D. W. 1 has admitted about the partition between his father Bapusaheb and Shantaram in his written statement as also in his evidence (para 17, examination-in-chief). At the same time, he has also admitted that property bearing CTS No.23 was purchased by Bhujbali Gundappa, step brother of Bapusaheb and Shantaram on 26.03.1926. He has admitted in his cross-examination that property bearing CTS No.42 was allotted to Gundappa.

34. Combined reading of evidence of plaintiffs and defendant No. 1 leads us to an inference that the immovable property except CTS No. 42 contained in "B" schedule were acquired by Bapu Saheb independently or jointly with his brother

Shantharam. The said property bearing CTS No. 42 was ancestral as it was allotted to Gundappa, the propositus. Both plaintiffs and defendants have admitted that there was a partition between Bapusaheb and Shantaram. In these proceedings, Shantaram and his LRs. have remained ex parte.

35. The properties were divided among brothers in the partition held during 1963. Bapusaheb had settled one half of his share in property No. 13 82/6+7 in favour of his wife Brahamalavathi. All shareholders including the plaintiffs and defendant No.1 have executed a release deed in respect of property bearing CTS 812 of Bhudhawarpet, Pune. The trial Court accepted the relinquishment deed executed by Nandakumar as valid in law and therefore, allotted share to the plaintiffs in O.S.No.95/91, only in the share held by Brahmalavathi, w/o Bapusaheb in the property bearing No. 1382/6+7. It has held that plaintiffs in O.S.No.249/1996 are entitled to B schedule properties and D schedule properties.

36. The C schedule consists of two cars and jewelry. Insofar as the Cars are concerned, D.W.1 in his evidence has stated that Maruthi Car was purchased in the name of ELCO Engineering. There is no reference to the Fiat Car in the evidence of either plaintiffs nor contesting defendant. No documentary evidence is placed by any of the parties with regard to the Cars. So far as the jewelry is concerned, P.W.1 in her cross-examination has stated that her mother-in-law Brahamalavathi was staying in Calicut with her daughter in her last days. She had carried her jewelry on her person while going to Calicut, where she passed away. When her body was brought to Belgaum for last rights, there were no jewelry. Except this evidence, there is no other material with regard to jewelry.

37. D schedule consists of arrears of rent. Trial Court has held that plaintiff in O.S. No.95/1991 is entitled for 1/9th share in the arrears of rent and plaintiffs in O.S. No.249/1996 are entitled for 7/24th share.

38. On re-appreciation of the evidence on record, we are of the considered view that the trial Court's view with regard to ancestral nature of the properties is perverse. We say so because both witnesses on behalf of the plaintiffs have categorically averred that deposed in evidence that the properties in "B" schedule fell to the share of Bapusaheb in the partition. DW1 has stated in his evidence that property bearing CTS No. 42 was allotted to Gundappa. However, after the partition, the properties were held by Bapusaheb exclusively and the business was being run by his branch. 1st Plaintiff's evidence in her examination-in-chief in O.S. No.95/1991 that Bapusaheb and Shantaram were living separately fortifies that Bapusaheb was holding schedule properties in his exclusive possession after partition. Therefore, we hold that the property bearing CTS No. 42 was an ancestral property and all other properties in B Schedule were joint family properties. We further hold that what fell to share of Bapusaheb as his share in per stripes partition, was held in his hands as joint family properties of his branch. Accordingly, we answer Point No. 1.

Re. Point No.2: (Release deed of Nanada Kumar)

39. The next question that arises is with regard to relinquishment of his share by Nanda Kumar and the claim of plaintiffs in O.S. No.95/1991 for their share in the property. Case of plaintiffs in O.S. No.95/1991 is that Nanda Kumar was taken to vices. His signatures taken by defendants on forms and papers and documents have been fabricated to show that Nanda Kumar had accepted a running jewelry shop and relinquished his share. The specific defence taken by the contesting defendant No.1 is that the husband of the first plaintiff Nandakumar had demanded for a partition and he was given a running jewelry shop namely, "Sathish Suhas Lengade & Co." with Stock in trade and he had executed a release deed-Ex.D8. We have examined the same. The said release deed clearly indicates that Nandakumar was also allotted a sum of Rs. 12,000/- and a running firm "Sathish Suhas Lengade & Co." together with stock in trade and goodwill of the concern was given to him. The recital in the release deed is to the effect that post execution of the release deed, Nanda Kumar would not have any right of any kind over the properties mentioned in the release deed.

40. Ex.D3 is the true extract of a statement on oath given by Nanda Kumar on 17.8.1976 before the municipal authorities. It is clearly mentioned therein that his father Bapusaheb expired on 16.12.1975. He was one of the heirs and he had given up his rights in the properties and further that he had no objection for the names of his brothers namely, Madhukar, Vijay, Suresh and Satish being entered into the municipal records.

41. The suit is resisted on the ground that Nanda Kumar demanded his share and executed a release deed while he was in good senses. We note that there is nothing cogent on record to prove the defendants contrary to their stand on this point. The release deed is a registered document. P.W.1 in O.S.No.95/1991 has clearly admitted in her cross-examination that her husband Nanda Kumar had demanded for a partition by stating thus:

"14. Till 1965, my husband had demanded his share in properties, to his father. It is true that pursuant to the same demand, my father-in-law had given the business concern "Sathish Suhas Lengade & Co." to my husband." (sic)

This admission of 1st plaintiff in evidence renders the brawn of the plaintiffs pleading untenable. I Nanda Kumar had made an intelligent choice to separate from the joint family.

42. In Ex.D8 (released deed executed by Nanda Kumar) it is mentioned that Bapusaheb had got the properties in the partition dated 31.12.1963 and they had decided that Nandakumar and his father did not want to have any relation and Nandakumar desired to carry on business independently. To start the business, he was in need of funds. Therefore, he had relinquished all his rights in the immovable properties and in lieu thereof, a running business concern was given to him as his share. Ex.D8 is the document which is more than 30 years old. It is registered in the office of the Sub-Registrar. It is contended on behalf of the plaintiffs that Nanda Kumar was taken to vices and therefore, no value can

be attached to Ex.D8. It is also contended that his thumb impression was not taken in the book maintained by the Sub-Registrar. We have perused the original book maintained in the Sub-Registrar's office. It is true that thumb impressions of Nanda Kumar as well as Bapusaheb are not taken while registering Ex.D8. We hasten to add that the said book shows that thumb impressions is not taken not only in the case of Nanda Kumar and Bapusaheb but in case of several other registrations. Law permits the Sub-Registrar to exercise his discretion to exempt any executant of a document to affix his thumb impression if the person was known to Sub-Registrar personally in exercise of discretion in terms of proviso to Rule 79 in Chapter 12 of the Karnataka Registration Rule, 1965. Therefore, we have no hesitation to hold that the Release Deed executed by Nanda Kumar in favour of his father in respect of his share by accepting Rs. 12,000/- and a running business concern M/s. Sathish Suhas Lengade & Co. is valid in law.

Re. Point No.3: (Re Property bearing CTS No. 812, Pune)

43. The evidence of DW1 and DW4 reveal that property bearing CTS 812 situated in Pune originally belonged to Bapusaheb. By a release deed-Ex.D25 dated 8.8.1989, the plaintiffs in O.S.No.95/1991 have relinquished their right in favour of defendant No.8 Nirmala. By release deed-Ex.P28 dated 6.12.1991, the plaintiffs in O.S.No.249/1996 have relinquished their rights in favour of defendant No.8. Both release deeds are registered documents and for a consideration. In the cross-examination, in O.S.No.249/1996, plaintiff has denied a suggestion that she has executed a release deed. Defendant No.1 has also denied execution of any release deed in respect of said property. Neither the plaintiffs in both suits nor the defendant No. 1 have placed any material before the Court to demonstrate any endeavour of their behalf to get the said registered deeds cancelled. Plaintiffs in O.S.No.249/1996 have sought to impeach document E\\D28 in this Court on the ground that the said document is written in Marati language and permission was not obtained by the first plaintiff (Aruna) to alienate the share of minor daughters. Plaintiffs in both suits have executed powers of attorney based on which relinquishment deeds have been executed in favour of defendant No. 10. In the cross-examination, plaintiffs in both suits have given evasive answers with regard to the release/relinquishment deeds executed by them. Defendant No. 8 is the eldest sister. The transaction is within the family and all parties have executed relinquishment deeds. Except including the said property in the schedule in their respective complaints, the plaintiffs have neither pleaded nor proved by any cogent evidence that release of their rights is invalid in law. Therefore, we hold that the plaintiffs have not proved that they have any right in the property CTS 812 of Pune and hold this point against them.

Re. Point No. 4: (Re: Property bearing CTS No. 42, Shahapur Belagavi, Industrial Concerns and Moveable properties)

44. In the aforementioned discussions, we have held that the suit properties are joint family properties which fell to the share of Bapusaheb. Therefore, the property bearing CTS No. 42 also should be brought into the hotchpot as the

same is also a partible asset of the joint family.

45. So far as the industrial units and immovable properties attached thereto are concerned, plaintiffs in both suits have not placed any evidence with regard to assets of the business concerns. Plaintiffs in O.S. No.95/1991 would not be entitled to any share in industrial concerns in view of our finding to point No. 2, that Nanda Kumar had relinquished all his rights. Plaintiff No. 1 in O.S. No.249/1996 has admitted to have received share of her husband in Elco Enterprises. D.W.1 has stated in his evidence that industrial land shed M-17 have been sold by Smt. Nisha W/o. Satish one of the sons of Bapusaheb. There was no serious efforts by counsel for plaintiffs to stake claim over the industrial concerns and automobiles namely the Fiat and Maruti Car at the time of hearing. We according answer point No. 4.

Re. Point No.5: (Any interference required ?)

46. Issue No.1 in O.S. No.95/1991 is whether suit properties are ancestral in nature and the trial Court has held it in negative.

47. Issue No.2 in O.S. No.249/1996 is whether the suit properties are joint family properties and trial Court has held in partly in negative. The said findings of Trial Court in respect of both issues referred herein are not sustainable in view of above discussion. We hold that the suit properties in the hands of Bapusaheb are joint family properties. We say so because, ancestral properties are one of the species of co-parcenary properties. After death of their father Bapusaheb and Shantaram have divided both ancestral and joint family properties among themselves as we have held while answering point No.1 that properties are joint family properties.

48. Having held that suit properties are joint family properties, we shall now examine as to what share the parties are entitled.

49. The plaintiffs in O.S. No.95/1991 have come to Court with a plea that the relinquishment deed executed by Nanda Kumar is obtained by fraud.

50. It is settled in law that there can be a partial partition between the coparceners either in respect of property or in respect of persons making it. It is open to the members of joint family to divide even a portion of joint estate while retaining their status as a joint family and holding the rest as properties of undivided family. While considering the question with regard to re-union, the Hon"ble Supreme Court in the case of Bhagawan Dayal v. Mst. Reoti Devi, AIR 1962 SC 287 quoting the observations of judicial commission reported in the case of Palani Ammal v. Muthuvenkatacharla Moniagar reported in AIR 1925 PC 49 has held thus:

For the correct approach to this question, it would be convenient to quote at the outset the observation of the Judicial Committee in Palani Ammal v. Muthuvenkatacharla Moniagar. "It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu

family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. The leading authority for that last proposition is *Balabux Ladhuram v. Bukhmabai*".

It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but maybe implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. The legal position has been neatly summarized in Mayne's Hindu Law, 11th edn., thus at p. 569:

"As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties "already (1) (1924) L.R. 52. I.A. 83, 86. (2) (1903) L.R. 30 I.A. 190, divided, lived, or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its, usual incidents. It requires very cogent evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu, family have succeeded, in so altering their status as to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family."

51. We feel it appropriate to quote the entire passage contained in the *Palani Animal*'s judgement which reads as follows:

In coming to a conclusion that the members of a Mitakshara joint family have or have not separated, there are some principles of law which should be borne in mind when the fact of a separation is denied. A Mitakshara, family is presumed in law to be a joint family until it is proved that the members have separated. That the coparceners in a joint family can by agreement amongst themselves separate and cease to be a joint family, and on separation are entitled to partition the joint family property amongst themselves, is now well established law. An authority for that proposition is the judgment of the Board in *Appovier v. Rama Subba Aiyar* (1866) 11 M.I.A. 75 which applies to joint families such as the joint family which descended from the propositus. But the mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to an inference that the family had separated. There may be reasons other than a contemplated immediate separation for ascertaining what the shares of the coparceners on a separation would be. It is also now beyond doubt that a member of such a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of

the joint family ascertained and partitioned off for him, and that the remaining co-parceners without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained" after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener had separated from them. It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. The leading authority for that last proposition is *Balabux Ladhuram v. Rukhmabai* (1903) 30 L.R.-I.A. 130 : S.C. 5 Bom. L.R. 480.

52. In the case of hand, plaintiff in OS 95/91 has come to Court with a pleading that the signatures of her husband Nanda Kumar were taken on blank forms while his mental state was vulnerable. However, in view of admission in the evidence that her husband was given his share in the form of a running business concern, the factum of partition will have to be presumed. This results in loading heavy burden upon the plaintiff to prove that there was a re-union. There is no pleading of re-union nor a whisper in the depositions of parties. It is no doubt true that re-union is permissible between the persons who were parties to original partition. Even if the version of the plaintiffs in OS 95/91 that they have been living with the defendants is accepted that would lead to another moot question as to whether at all there was a re-union. There is no pleading to this effect. It is now well settled that a mere fact that parties who were separated started to live together after partition does not amount to a re-union.

53. Therefore, in our considered view, the plaintiffs in OS 95/91 have failed to prove that there was no partition between Nanda Kumar and Bapusaheb. Hence, they are dis-entitled for any share in the joint property.

54. Bapu Saheb died intestate on 16.12.1975. The parties are residents of Belgaum. Therefore, his wife, Brahamalavati would be entitled for an equal share in the joint family property in the notional partition. (See ILR 1989 KAR 2261) Thus, in terms of explanation to Section 6 of Hindu Succession Act 1956, in the notional partition, Bapu Saheb, his wife, and sons would be entitled for an equal share in the joint family property. However, in view of our finding, that Nanda Kumar was already given his share and he had executed a release deed, the joint family properties will have to be divided among Bapu Saheb, his widow and 4 sons entitling each one of them to 1/4th share in properties bearing CTS 23, CTS 3128, CTS 3129 & CTS 42 situated in Belgaum and CTS No.8/2 situated in Pune.

55. Further, Bapu Saheb had settled one half of his share in property bearing CTS No. 1382/6+7 in favour of his wife Brahmamalavati. Upon his death, in terms of Section 8 of the Hindu Succession Act, his wife and all children became entitled for equal share of the properties held by him at the time of his death.

56. Consequently, his wife Brahamalavati and all children (both sons and daughters) would be entitled to 1/10th share.

57. Upon death of Brahamalavati, who died intestate, in terms of Section 15 of the Hindu Succession Act, all children became entitled for 1/9th share each in properties held by her at the time of death.

58. We have held that in view of relinquishment deeds executed by parties, the property bearing CTS No. 812 shall vest with daughter Nirmala (defendant No. 8 in OS 95/91) and therefore, the same is excluded while calculating the shares of other parties in the suit.

59. In the result, the entitlement of share of parties in O.S.No.95/1991 shall be as follows:

Plaintiffs -

- 1/10th (Bapu Saheb's share)*

+

1/9th (Brahamalavati share)**

Sons:

Defendant No.1 -

- 1/6th (B schedule + D schedule)

+

1/10th (Bapu Saheb's share)*

+

1/9th (Brahamalavati share)**

Defendant Nos.2(a)(b)(c) -

1/10th (Bapu Saheb's share)*

Kalpana w/o.Vijay

+

1/9th (Brahamalavati share)**

Defendant Nos.3 + 4 + 5

1/10th (Bapu Saheb's share)*

+

1/9th (Brahamalavati share)**

Defendant Nos.6 + 7

1/10th (Bapu Saheb"s share)*

+

1/9th (Brahamalavati share)**

Defendant Nos.8(a) to (c)

1/10th (Bapu Saheb"s share)*

+

1/9th (Brahamalavati share)**

Defendant Nos.9(a) to (d) -

1/10th (Bapu Saheb"s share)*

+

1/9th (Brahamalavati share)**

Defendant No. 10 -

1/10th (Bapu Saheb"s share)*

+

1/9th (Brahamalavati share)**

Defendant No.11 -

1/10th (Bapu Saheb"s share)*

+

1/9th (Brahamalavati share)**

*Baoyasahab"s shares=

[1/6th share in CTS 23, CTS 3128, CTS 3129 & CTS 42 situated in Belgaum+1/12th share in CTS 1382/6+7]

Brahamalavati"s share

= [11/60th share in CTS 23, CTS 3128, CTS 3129 & CTS 42 situated in Belgaum+1/12th share in CTS 1382/6+7]

60. In the light of our discussions, we hold as follows :check matter

"A" Schedule -

Existence of properties not proved.

"B" Schedule -

As per share calculation given in Paragraph 59 above.

"C" Schedule -

Maruti car + Fiat car

D1 has stated in his evidence that Maruti car was purchased by Elco Engineering by Satish. But instalments were not paid and finally he has paid Rs.65,000/-. There is no evidence with regard to Fiat car. Hence, no orders are passed.

"D" Schedule -

The arrears of rent shall also be divided in the same manner suit properties are allotted in para 59 above.

61. For the foregoing reasons, on re-appreciation of the entire material on record, we are of the considered view that judgment rendered by the trial Court needs to be interfered in the above terms.

62. In the result, we pass the following order :

(i) RFA No.3011/2012 and RFA No.4100/2012 are allowed in part.

(ii) The common judgment and decrees in OS No.95/1991 and OS No.249/1996 on the file II Addl. Senior Civil Judge, Belagavi are modified.

(iii) R.F.A. No.3011/2011 is allowed in part by holding that plaintiffs are entitled for their share in above terms described in paragraph No. 62 above. Appeal in respect of "A" and "C" schedule properties namely industrial concerns and movables (Fiat Car, Maruti Car and jewelry) stand dismissed.

(iv) R.F.A. No.4100/2011 is allowed in part by holding that plaintiffs are entitled for their share in above terms described in paragraph No. 62 above. Appeal in respect of "A" and "C" schedule properties namely industrial concerns and movables (Fiat Car, Maruti Car and jewelry) stand dismissed.

63. In the circumstances, there shall be no order as to costs.

64. Decree to be drawn accordingly.