

(2010) 12 KAR CK 0014

In the Karnataka High Court

Case No : Regular First Appeal No's. 782 and 784 of 1999

Padmanabha Shenoy

APPELLANT

Vs

Dr. Premachandra Shenoy and Others
 Prem Chandra
Shenoy Vs Padmanabha Shenoy and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Hindu Succession (Amendment) Act, 2005 — Section 10, 8

Citation : (2011) 3 KCCR 1757

Hon'ble Judges : V.G. Sabhahit, J;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : C.G. Gopalaswamy, in RFA No. 782 of 1999 and B.L. Acharya, in RFA No. 784 of 1999, for the Appellant; B.L. Acharya, for R 1 in RFA No. 782 of 1999 and C.G. Gopalaswamy, for R 1 in RFA No. 784 of 1999, for the Respondent

Judgement

1. These two appeals are filed by 1st Defendant and Plaintiff in OS. No. 200/1996. The said suit was filed by Plaintiff Dr. Premachandra Shenoy for the relief of partition by metes and bounds, for separate possession of Plaintiff's share and for the relief of mesne profits and consequential benefit. The said suit came to be allowed partially by judgment and decree dated 8.7.1999. The Plaintiff being aggrieved by rejection of portion of his prayer has come up in appeal against the same in RFA. No. 784/1999. The 1st Defendant In the said suit being aggrieved by the partial decree granted in favour of Plaintiff has challenged the same in RFA. No. 782/1999. Both appeals are taken up together for consideration since they arise out of common judgment.

2. The parties to both appeals being common, to avoid confusion in their identification with reference to each of the appeal they are referred to by their respective rank in the original suit for the sake of convenience.

3. Brief facts leading to this appeal are as under:

(a) Plaintiff, Defendants 1 to 3 are sons of Krishna Shenoy. 4th Defendant is his

widow and Defendants 5 to 11 are his daughters. The contention of Plaintiff is that Plaintiff, Defendants 1 to 3 along with their father Krishna Shenoy constituted joint Hindu family governed by Mitakshara law of Inheritance and Succession. Krishna Shenoy as kartha of his joint family acquired suit B and C schedule properties under registered sale deed dated 12.7.1964 vide document No. 1055/1964 registered in his name. Thereafter in the year 1971 there was partial partition in the family wherein each of the sons, namely, Plaintiff, Defendants 1 to 3 were given few items of joint family properties to their share. The said partial partition was reduced into writing as family karar dated 10.8.1971 and confirmed in judgment and decree dated 5.8.1982 passed in OS. No. 522/1982 on the file of II Additional Munsiff of Mangalore.

(b) Since said partition was partial partition the family continued to be joint in respect of other properties mentioned in schedule B and C to the plaint. Subsequently, he came to know that his father entered into partition on 28.3.1984, wherein he gave an extent of 25 cents of land to each of his daughters, Defendants 5 to 11. According to Plaintiff, Defendants 5 to 11 have no right in the joint family properties, as they were married prior to Hindu Succession (Karnataka Amendment Act) coming into force. Therefore, the said document is invalid and inoperative as partition. Any disposition made therein is only gift. Since the properties dealt under the said document dated 28.3.1984 are joint family properties his father as Kartha of the joint family had no right to give away the same. Therefore, the same is required to be ignored.

(c) It is his case that his father died intestate on or about 19.2.1989. According to him, suit B schedule properties are joint family properties and suit C schedule properties are his father's individual properties as per decree dated 5.8.1982 in OS. No. 522/1982. It is also his case that his father had 1/5th share in suit B schedule properties at the time of his death. The same should devolve equally upon Plaintiff and Defendants under the provisions of Sections 8 - 10 of Hindu Succession Act. He is also entitled to 1/12th share in suit C schedule properties. Since Plaintiff does not desire to continue with Defendants he sought for severance to joint status by filing the aforesaid suit. He also claims that he is entitled to future profits in suit B and C schedule properties from the date of suit till date of his share.

4. To the said suit 4th Defendant, mother of Plaintiff, Defendants 1 to 3 and 5 to 11 filed detailed written statement, wherein she denied each and every averment of plaint except the relationship between Plaintiff and Defendants and acquisition of suit schedule properties by her husband, Krishna Shenoy under registered sale deed dated 12.7.1964. According to her, Krishna Shenoy during his lifetime had sold about 60 cents of land acquired by him under two different sale deeds in the year 1965 and 1966. Subsequently in 1971 certain disputes and differences arose between the members of joint family. Hence with the intervention of elders who are well wishers of the family said differences were settled resulting in effecting partition and recording the same in family karar arrangement dated

10.8.1971. The same was in full and final settlement of the claim and rival claims of all the family members. Wherein four sons of Krishna Shenoy were allotted with separate shares, Krishna Shenoy was also allotted with one share. The remaining properties were allotted to daughters and. Krishna Shenoy. According to her, Plaintiff is a party to said family karar and has accepted the same without demur. On allotment of separate shares to Plaintiff, Defendants 1 to 3 and their father and Defendants 5 to 8, Plaintiff and Defendants 1 to 3 came to be separated from the family, there was division in status and properties by metes and bounds.

(a) In the said division an extent of 45 cents was allotted to Plaintiff i.e., an extent of 38 cents in Sy. No. 257/2 and 7 cents in Sy. No. 257/3, 1st Defendant was allotted 43 cents in Sy. No. 257/2, 2nd Defendant was allotted 43 cents in Sy. No. 257/2, 3rd Defendant was allotted 43 cents in Sy. No. 257/3 and an extent of 25 cents was allotted to late Krishna Shenoy in Sy. No. 258/4. In addition to that, he was also given undivided right with daughters in the remaining properties. Under the said family karar, it was agreed that remaining properties shall be held jointly by Krishna Shenoy and his 7 daughters, namely, Defendants 5 to 11. According to 4th Defendant, including Plaintiff all her sons got separate share, which was accepted by each of them and recorded in the said family karar.

(b) It is further stated by her that in the year 1982 there was misunderstanding in connection with the right to use common path reserved under the family karar. Therefore, Krishna Shenoy as Plaintiff No. 1 and Defendants 2 and 3 as Plaintiffs 2 and 3 filed OS. 522/1982 for declaration and injunction against Plaintiff and 1st Defendant herein as Defendants 1 and 2 in the said suit. The said suit was filed in the Court of II Additional Munsiff, Mangalore, D.K., which came to be decreed as per judgment and decree dated 5.8.1982. In the said suit, the family karar dated 10.8.1971 was upheld by the court. The Plaintiff being a party to the said suit was fully aware of the judgment and decree passed therein and the same has become final, wherein the right of way reserved under the said family karar was also confirmed. Therefore, the same is binding on Plaintiff and other parties.

(c) It is also her case that Krishna Shenoy while he was alive in sound and disposing state of mind had executed a Will dated 7.6.1982, bequeathing 25 cents of land allotted in his favour under family karar in favour of 5th Defendant, namely Yashoda B.B. Rao, which is registered as document No. 33/1982-83. Subsequently, Krishna Shenoy and his daughters entered into partition deed dated 28.3.1984, which is registered as document No. 1816/83-84, wherein each of his daughters, namely, Defendants 5 to 11 were allotted with 25 cents of land and remaining land was allotted to Krishna Shenoy. The said partition is valid and allotment of shares to Defendants 5 to 11 is justified, as said properties were allotted jointly in favour of Krishna Shenoy and his daughters under family kara in the year 1971.

(d) The allegation of daughters having no right in suit B and C schedule

properties and shares given to daughters amounts to gift were all denied as false. It was also contended that right of daughters in the present case springs out of family karar of 1971, which is arrived at in full and final settlement of disputes of family members and which is also confirmed in OS. No. 522/1982. It is also the case of 4th Defendant that subsequently there were proceedings initiated by Urban Land Ceiling Authority, wherein the parties to suit had represented and shown to said authority the family karar.

(e) It is also her case that Plaintiff having accepted share given to him under family karar, is estopped from contending to the contra. That all the brothers including Plaintiff had consented for allotting share to the daughters at the time of entering into family karar. The contention of Plaintiff regarding family karar dated 10.8.1971 being partial partition in respect of few Items of joint family properties were denied. Denial of rights to Defendants 5 to 11 and Krishna Shenoy under partition dated 28.3.1984 and the contention that Krishna Shenoy died intestate was also denied. It was specifically pleaded that after the partition in 1971 there was no Hindu Undivided joint family status, Krishna Shenoy was not the Kartha and Plaintiff and Defendants 1 to 3 were not the members of joint family. On the aforesaid grounds she sought for rejection of the plaint.

5. Based on the aforesaid pleadings initially on 17.8.1998 the court below proceeded to frame the following issues:

1)Whether the Plaintiff proves that the partition took place between himself, Defendant No. 1 to 3 and their father late Krishna Shenoy in the year 1971 confirmed by the decree dated 5.8.1982 in OS. No. 522/1982 on the file of the II Additional Munsiff of Mangalore is a partial one?

2)Whether the Plaintiff further proves that the partition deed executed by his father dated 23.8.1981 in favour of Defendant No. 5 to 11 is not binding on the Plaintiff?

3)Whether the Plaintiff further proves that after the death of Krishna Shenoy his 1/5th interest in the B schedule properties devolved upon the Plaintiff and Defendants equally?

4)Whether the Defendants prove that the partition took place during 1971 is a final partition as such the Plaintiff has no right to seek partition once again?

5)Whether the Defendants further prove that the late Krishna Shenoy had executed a Will dated 7.6.1982 where under the 25 cents of land allotted in his favour under the family karar was bequeathed in favour of Yashoda B.B. Rao the 5th Defendant?

6)Whether the Defendants further prove that the subsequent partition deed dated 28.3.1984 between late Krishna Shenoy and Defendants 5 to 11 is valid? as contained in para No. 9 of the written statement?

7)Whether the Defendants further prove that late Krishna Shenoy has executed a

last Will on 18.4.1984 bequeathed the properties held by him to his wife - Shambavi, the 4th Defendant and 10 Defendants 1 to 3?

8)Whether the Plaintiff proves that still the plaint B and C schedule properties are the joint family properties of Plaintiff and Defendants?

9)Whether the Plaintiff entitled for partition and separate possession? if so, what is the quantum of share?

10)What order? or decree?

Thereafter on 31.3.1999 the following additional issues were framed.

1)Whether the Defendant No. 3 proves that his father Krishna Shenoy has executed last Will and bequeathed Sy. No. 36-2 measuring 0-56 cents in extent of B schedule property in his favour and as such he is the exclusive owner for the said property?

2)Whether he further proves that the Plaintiff is estopped from going back from the above said Will?

6. Thereafter the matter went into trial. In the trial, the Plaintiff examined himself as PW.1. In support of his case he has produced in all 18 documents and got them marked as Exs.P1 to P18. On behalf of Defendants 6th Defendant, namely Gulabi Seetharamaprabhu was examined as DW. 1 and in support of their case they produced in all 6 documents and got them marked as Exs.D1 to D6.

7. On appreciation of the pleadings, oral and documentary evidence available on record the court below proceeded to answer issue No. 1 regarding partition between Plaintiff and Defendants 1 to 3 and Krishna Shenoy in the year 1971 being confirmed in decree dated 5.2.1982 passed in OS. No. 522/1982 in the affirmative. 2nd issue regarding binding of partition deed dated 28.3.1984 executed by Krishna Shenoy in favour of Defendants 5 to 11 in affirmative. 3rd issue regarding claim of Plaintiff for 1/5th share in B schedule properties was partly held in affirmative. 4th issue which was framed against Defendants wherein they were called upon to prove that the partition took place in the year 1971 is final is held in negative. 5th issue regarding execution of Will dated 7.6.1982 by Krishna Shenoy in respect of 25 cents allotted to his share in favour of 5th Defendant was held in affirmative. 6th issue regarding validity of partition deed dated 28.3.1984 between Krishna Shenoy and Defendants 5 to 11 held in the negative. 7th issue regarding execution of Will dated 18.4.1984 by Krishna Shenoy in favour of Defendants 1 to 3 held in the affirmative. 8th issue regarding Plaintiff's joint possession of suit 3 and C schedule properties was held partly in affirmative. So far as additional issue No. 1 wherein burden was cast on 3rd Defendant regarding Krishna Shenoy bequeathing 56 cents in Sy. No. 36-2 in B schedule properties in his favour was held in affirmative. Additional issue No. 2 was held in negative. Consequently vide issue Nos. 9 and 10 the suit of Plaintiff was allowed in part. The Plaintiff being aggrieved by the said judgment and decree so far as it pertains to rejecting his prayer seeking share in suit C

Schedule properties was rejected, filed RFA. No. 784/1999. The 1st Defendant being aggrieved by the judgment and decree so far as granting 1/12th share to Plaintiff in suit B schedule properties challenged the same in RFA. No. 782/1999.

8. The grounds urged by the 1st Defendant in RFA. No. 782/1999 are that the finding on issue Nos. 1, 2, 4, 6 and 8 are not based on proper appreciation of facts and material on record. The same is contrary to the decree in OS. No. 522/1982, which confirmed and upheld the validity of family karar of 1971. The finding in OS. 522/1982 regarding family arrangement being upheld is binding on all the parties including Plaintiff. The wife and daughters of Krishna Shenoy being not parties to the said suit, the said decree does not have universal application and does not alter the rights of the parties acquired under the family arrangement. The finding in OS. No. 522/1982 could not be pressed into service to affect the rights of the parties under the family arrangement. The said suit being instituted and concluded in a span of 8 days without notifying the 1st Defendant in OS. 200/1996 the outcome of the same is not binding on the Appellant/1st Defendant. The family arrangement of 1971 was complete and total. Those of the properties which were not given to the share of Plaintiff and other Defendants were allotted to Krishna Shenoy and his daughters who had joint rights of possession and enjoyment. Clause 4 of the memorandum of partition dated 10.8.1971 termed as family karar discloses that all the properties of the joint family had been partitioned leaving nothing for alleged joint family or future partition.

9. The conduct of the parties especially Krishna Shenoy made it clear that family arrangement was complete and total and had been acted upon. In pursuance of such arrangement, a Will was executed by Krishna Shenoy on 7.6.1982 bequeathing an item of property which had fallen to his share in the family arrangement, the partition effected on 28.3.1984 is in respect of property jointly held by Krishna Shenoy and Defendants 5 to 11 as joint owners pursuant to family karar, thereafter In respect of his share executed a Will dated 18.4.1984. The partition between Krishna Shenoy and Defendants 5 to 11 is binding on Plaintiff also. The allegation regarding Krishna Shenoy dying intestate or that Plaintiff having 1/5th share in suit B schedule properties is without substance. The family arrangement being complete and total and the partition effected in 1984 being division joint owners of the properties, the properties which fell to the share of Krishna Shenoy therein was his personal properties which he could dispose of without reference to any person. Such disposition under the Will admitted to have been executed by him is binding on Plaintiff. The devolution of Krishna Shenoy's properties was by testamentary succession and the suit filed by him cannot be proceeded without seeking relief of setting aside the partition dated 28.3.1984, without challenging the validity of Will dated 18.4.1984.

10. So far as the appeal in RFA. No. 784/1999 which was filed by Plaintiff challenging the denial of share in suit C schedule properties is on the following grounds. The court below having come to the conclusion that Plaintiff is entitled

to seek partition of suit B schedule properties erred in negating his claim in respect of C schedule properties. The finding of the court below that Plaintiff having not chosen to question the Will, it is not open to him to challenge the same at this stage is illegal, as in the court below on issue No. 5 the burden was on the Defendants to prove that Krishna Shenoy had executed a Will on 7.6.1982 and the Defendants were required to prove the genuineness of the said Will in accordance with law. Since they failed to prove the same by leading evidence through attestors the court below ought to have rejected their claim based on the Will. The finding to the contrary, is illegal and opposed to settled principles of law. That the party who produces the Will will have to prove due execution, attestation and as well as genuineness. Merely because Plaintiff did not challenge the same is not a ground to hold that the Will is proved in accordance with law.

11. The court below having regard to the averments in OS. 522/1982 and oral evidence ought to have come to the conclusion that suit B schedule properties were ancestral properties of Krishna Shenoy. The finding is contrary and illegal. The share granted by court below to an extent of 1/12th in suit B schedule property is lesser than what he is entitled to and the conclusion of the court below that Krishna Shenoy had only 1/12th share in B schedule properties and not 1/5th share, is incorrect. The finding that Defendants 1 to 11 are also entitled to equal share in B schedule properties is illegal. The court below has failed to appreciate that Krishna Shenoy did not have absolute right in the properties bequeathed under Will dated 7.6.1982. The court below having held that Will dated 7.6.1982 being not proved, Plaintiff is entitled to 1/12th share in C schedule properties also. The court below has erred in not holding Defendants 5 to 11 are not entitled to any share in the suit schedule properties. The appreciation of oral and documentary evidence is also not proper. There is no application of principles of law to the facts on hand.

12. In these appeals, this Court on appreciation of the grounds urged in the appeals and the finding of the court below with reference to issue Nos. 1 to 10 and additional issue Nos. 1 and 2 framed therein hold that the following points arise for consideration in these appeals:

- 1) Whether the finding given by the court below regarding partition under family karar dated 10.8.1971 is partial partition, is just and proper?
- 2) Whether the finding of the court below holding partition dated 28.3.1984 as invalid, is just and proper?
- 3) Whether the finding of the court below regarding bequest made by Krishna Shenoy under Will dated 7.6.1982 in favour of 5th Defendant and Will dated 18.4.1984 in favour of his wife and sons, are valid and binding?
- 4) Whether awarding of 1/12th share to Plaintiff in B schedule properties, is just and proper?
- 5) Whether rejecting the prayer of Plaintiff for share in suit C schedule

properties, is just and proper?

13, Heard the counsel for Appellants and Respondents In both the appeals, perused the grounds of appeals, finding of court below in judgment passed in OS. 200/1996 and the oral and documentary evidence therein. On reappraisal of the same this Court answer point Nos. 1, 2 and 4 in the negative and point Nos. 3 and 5 in the affirmative for the following reasons:

14. The relationship between the Plaintiffs and Defendants is not in dispute. The fact that suit schedule properties were acquired by Krishna Shenoy under registered sale deed date 12.7.1964 is also not in dispute. It is further not in dispute that as on 10.8.1971 Plaintiff, Defendants 1 to 3 and late Krishna Shenoy formed members of joint family. It is also not in dispute that in the year 1971 due to differences between the parties partition was effected in the family of Krishna Shenoy, which was reduced into writing as family karar on 10.8.1971. This is the document under which the rights of the parties will have to be decided as it has come into place at an undisputed point of time when the properties of the joint family was divided.

15. The division in the joint family in the year 1971 is not in dispute. It is also not in dispute that in the said partition Plaintiff is awarded 45 cents of land which is B schedule in the family karar/1st Defendant was allotted 43 cents, which is A schedule, the 2nd Defendant was allotted 43 cents, which is C schedule, the 3rd Defendant was allotted 43 cents, which is D schedule and their father Krishna Shenoy was allotted 25 cents, which is E schedule. Now coming to the family karar dated 10.8.1971 at para 5 it is stated that other than A to E schedule properties all other immovable properties belongs to 1st of the parties in the family karar (Krishna Shenoy and his daughters who are at No. 6 to 12 in the said family karar). It is also made clear in the said family karar that Krishna Shenoy and his daughters who are at 6 to 12 are joint in possession and enjoy the same in equal rights. The said family karar and the recitals made therein, is not in dispute.

16. Therefore, as on 10.8.1971 there is division in the joint family of Krishna Shenoy and joint family properties were divided by metes and bounds. The contents of said family karar clearly discloses that the same is full and final partition between all the members of the family. Since the remaining properties of the joint family other than schedule A to E stated therein are allotted to the share of Krishna Shenoy and his daughters, they continue to be in possession thereof as joint owners and not as joint family members. It is to be seen that this is the document, which is Ex.D1, which decides the right and status of the parties. Therefore, as on 10.8.1971 there is total severance of joint family between Plaintiff and Defendants. Therefore, the contention of Plaintiff that partition under family karar is partial partition is without any basis.

The contention of Plaintiff is mainly based on certain averments made in OS. 522/1982, which was filed by Krishna Shenoy 11 years after the partition of joint

family properties taking place. The plaint in OS. 522/1982 relied upon by Plaintiff and made much about the pleadings stated therein will have to be looked into in the light of the family karar dated 10.8.1971 and not the other way, i.e., the family karar cannot be looked into in the light of the plaint averments in OS. 522/1982. First of all the circumstance under which the said suit came to be filed will have to be looked into. The said suit was filed by Krishna Shenoy along with Defendants 2 and 3 in this proceedings against Plaintiff and 1st Defendant in this proceedings. The circumstance under which the said suit came to be filed is when there was an attempt on the part of Plaintiff and 1st Defendant herein to encroach into the place reserved for road which was meant for common use of other members of the family as per family karar. A reading of the plaint averments in its entirety does not give on indication that there is an admission made by Krishna Shenoy that the partition dated 10.8.1972 is partial partition

17. The entire reading of the plaint clearly indicates that the Plaintiff and 1st Defendant herein from the beginning are trouble mongers not only to Defendants but to the other members of the family. It is also seen that it is at their instance partition has taken place. When once partition has taken place in the year 1971, there appears to be no mutuality between them right from 1971 to 1982 i.e., the date when suit in OS. 522/1982 was filed by their father and brothers against them for declaration that partition dated 10.8.1971 is valid and binding. In the said suit, nowhere it is mentioned that suit B and C schedule properties are to be treated as joint family properties held by Krishna Shenoy. It is also not in admission in the said plaint that joint family does exist between Krishna Shenoy, Plaintiff and Defendants 1 to 3. Therefore, reference to the portion of pleading in paragraph 2 that the remaining agricultural properties were decided to be kept as joint family properties of the family does not mean that joint Hindu Undivided family of Krishna Shenoy and his four sons exist. This pleading will have to be read and understood in the light of Clause 5 of family karar dated 10.8.1971. Therefore, the family as meant and stated by Krishna Shenoy in the said plaint refers to himself and his daughters to whose share the said property is allotted. The Plaintiff cannot make much out of it and can claim the same as joint family property.

18. The concept of partial partition is alien to Hindu Law. When once there is severance of status between the parties by way of partition by metes and bounds, as it has taken place in this case on 10.8.1971, it is not open to Plaintiff or 1st Defendant in the presort suit to contend that suit B schedule property is joint family property and they have a share in the said property. The contention of Plaintiff that as on the date of filing of this suit in 1996 the joint family of Krishna Shenoy and Hindu Undivided joint family of Krishna Shenoy exist between himself and his four sons cannot be accepted. His contention that the partition dated 10.8.1971 under family karar is partial partition also cannot be accepted. The finding of the court below on this aspect is without any basis and justification. Probably the court below must have carried away by a reading of a stray sentence of plaint in OS. 522/1982 without giving credence to the

document under which severance between Krishna Shenoy and his sons has taken place way back on 10.8.1971. Therefore, this Court answer the 1st point for consideration in the negative.

19. Now coming to 2nd point for consideration, when once it is held that the partition which has taken place on 10.8.1971 is total partition by metes and bounds between the parties and in terms of Clause 5 of family karar other than schedule A to E to said family karar all other properties of joint family are stated to be the properties of Krishna Shenoy and his daughters, namely Defendants 5 to 11 in this proceedings. In the light of such a recital in family karar the father of Plaintiff namely Krishna Shenoy and Defendants 5 to 11 are entitled to get the same divided amongst themselves by effecting partition of the said properties. Therefore, the partition effected between them on 28.3.1984 under a registered partition deed is just and proper. The share allotted to each of Defendants 5 to 11 in the ratio of 25 cents of land In the said partition is just and proper and cannot be held to be invalid. Therefore, the finding of the court below on this aspect is required to be set aside in this appeal. Therefore, this Court answer the 2nd point for consideration in the negative.

20. Now coming to the 3rd point for consideration regarding execution of the Will, admittedly an extent of 25 cents of land was allotted to the share of Krishna Shenoy at schedule E in the family karar dated 10.8.1971, which he has bequeathed in favour of his. 1st daughter, 5th Defendant under a registered Will dated 7.6.1982. The Plaintiff in his pleadings has not challenged the same. Whereas in his examination-in-chief dated 18.9.1998 he has stated as under:

I am aware that my father had executed a Will in the year 1982 in favour of my elder sister Defendant No. 5 in respect of 25 cents of land out of agricultural property i.e., B schedule property and I have not questioned the said Will.

The said evidence of Plaintiff in his examination-in-chief clearly takes away his right to challenge the same. So far as the 2nd Will is concerned, it is a registered Will. The Plaintiff though he was aware of the same has not challenged the same except making a reference that execution of said Will is not within his knowledge and his father has no right to execute the Will. The said contention is taken by him in the light of the fact that he was contending that suit B and C schedule properties are the properties of joint family consisting of himself, his brothers Defendants 1 to 3 and his father Krishna Shenoy. Therefore, his contention is that his father had no right to execute the said Will and the same is not binding on him.

21. In view of the fact that this Court has given a finding to the effect that the status of joint family between Krishna Shenoy and his four sons has come to an end on execution of family karar on 30.8.1971, the contention of Plaintiff that suit C schedule property being joint family property is negated. When once it is negated then it is not open for him to challenge the right of his father to execute the said Will. It is not his contention that the Will is not executed by his father or

that the execution of the same is under suspicious circumstance or that the same is not the Will of his father. The challenge to the Will is on the basis that his father has no right to execute the Will. In the light of the finding given by this Court on issue Nos. 1 and 2 the contention of Plaintiff that suit B and C schedule properties are joint family properties being negated and his claim to the same is put to rest. Then his contention that his father has no right to execute the Will does not have any basis. Therefore, the Will executed by his father on 18.4.1984 is valid and the validity of the same cannot be questioned in this suit. If Plaintiff had contended that the Will has come into existence under suspicious circumstance or the Will is not executed by his father or it is a concocted and created document, then probably he would have had light to contend that the same is required to be proved and established by the propounder of the Will. Here what is being challenged by him in the suit and as well as in the appeal is, the right of his father to execute the Will, which is put to rest by the finding given by this Court on point Nos. 1 and 2. Therefore, this Court answers 3rd point for consideration in the affirmative and holds that the finding of the court below that the Will dated 7.6.1982 and 18.4.1984 executed by Krishna Shenoy is valid and binding on all the parties.

22. Now coming to 4th point for consideration in the light of the fact that oral partition which is reduced into writing as family karar on 10.8.1971 is declared as final partition between the members of Hindu Undivided Joint Family of Krishna Shenoy of which he was Kartha and that in the said partition suit B schedule properties are being allotted to the share of Krishna Shenoy and his daughters, Defendants 5 to 11 in this proceedings the question of granting 1/12th share in the said properties or any other share to Plaintiff and 1st Defendant does not arise for consideration. Therefore, the aforesaid point is answered in the negative.

23. Finally coming to 5th point for consideration, in the light of the finding given above when partition dated 10.8.1971 is considered as final partition among the members of the joint family of Krishna Shenoy in the light of family karar and under Clause 5 of family karar the suit B and C schedule properties falling to the share of Krishna Shenoy and his daughters (they had right to enter into partition on 28.3.1984 and allotting schedule properties to the share of Krishna Shenoy which he is entitled to bequest the same under the Will. Therefore, no share can be awarded to Plaintiff in the said properties. Hence, this Court answers the aforesaid point for consideration in the affirmative.

24. In effect this Court while summing up all the five points for consideration is of the opinion that Plaintiff in OS. 200/1996 has no manner of right, title or interest in suit B and C schedule properties as on the date of filing of suit for the reason that Hindu Undivided Joint family of Krishna Shenoy was dissolved and separated as on 10.8.1971 when partition was effected and all the properties of the said joint family were divided by metes and bounds under the said family karar, which is at Ex.D1. Therefore, in the light of the aforesaid finding of this

Court, the appeal filed by 1st Defendant in RFA. 782/1999 is allowed, the judgment and decree passed granting 1/12th share to Plaintiff in B schedule properties in OS. No. 200/1996 is set aside and the suit is dismissed. Consequently, the appeal filed by Plaintiff in RFA. No. 784/1999 is dismissed without any order as to costs.