

(2013) 09 KAR CK 0215

In the Karnataka High Court

Case No : Regular First Appeal No. 1672 of 2007

Smt. Rathnavathi and Others

APPELLANT

Vs

Smt. Saraswathi Adappa and Others

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) ILR (Kar) 659 : (2014) 1 KCCR 298

Hon'ble Judges : Mohan M. Shantanagoudar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : Sanath Kumar Shetty and Sri S.K. Acharya, for the Appellant; S. Vishwajith Shetty, for R1, 3, 4, 5 and 7, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantanagoudar, J.—This is plaintiffs' appeal against the judgment and decree of dismissal dated 25.10.2006 passed in O.S. No. 300/1998 by the Court of II Additional Civil Judge (Sr. Dn.)/Mangalore. The case of the plaintiffs is that plaintiffs 1 to 59 and defendant Nos. 1 to 7 and 9 are the members of Aliyasantana family governed by Aliyasantana law of inheritance; plaintiffs 1 to 46 constitute the members of Kavaru (branch of family) headed by one Korapolu Hengasu. Plaintiffs 47 to 57 and defendant No. 9 constitute members of another branch represented by Poovake Hengasu; plaintiffs 58 and 59 belong to the branch of one Veeramma. Defendants 1 to 7 are the wife and children of Nissanthathi Kavaru member by name Kanthappa Adappa. Defendant No. 8 is the purchaser of "C" Schedule property from Kanthappa Adappa. Since one member of Povakke's branch by name Seetharama was not willing to join as plaintiff, he was arrayed as defendant No. 9. One of the sons of Veeramma by name Suresh is stated to be unheard of for more than last 15 years and therefore he is presumed to be dead and is not made as party to the suit.

The partition has taken place in respect of the family properties belonging to the family of late Thimmaju as per the registered partition deed at Ex. P2, dated 16.7.1951; Schedule "E" properties in the said partition deed came to be allotted

to the share of the deceased Kanthappa Adappa, whereas the Schedules "A" and "F" properties of the said partition deed came to be allotted to the shares of the deceased Narayana Adappa and Venkappa Adappa respectively. Thus, it is clear that all the three aforementioned persons were allotted separate and distinct shares. All the three, namely Kanthappa Adappa, Narayana Adappa and Venkappa Adappa were genitive brothers and they were members of Nissanthathi Kavaru. In the deed of partition, it is specifically mentioned that the members of Nissanthathi Kavaru, including Kanthappa Adappa would enjoy the properties allotted to their respective shares during their life time and thereafter their respective properties will revert back to the family or to the nearest Santhathi Kavaru as the case may be.

Sri Kanthappa Adappa, who was Nissanthathi Kavaru member died on 19.8.1996 leaving behind the first defendant (wife of Kanthappa Adappa) and defendants 2 to 7 (children of Kanthappa Adappa). After the death of Kanthappa Adappa, in the normal course, the properties would have reverted to the family (kutumba), or to the members of nearest Santhathi Kavaru as the case may be. But defendants 1 to 7 did not hand over the possession of the properties allotted in favour of Kanthappa Adappa to the nearest Santhathi Kavaru as specified in the partition deed at Ex. P2. According to the plaintiffs, they being the members of nearest Santhathi Kavaru are entitled to the absolute ownership and possession of the properties enjoyed by late Kanthappa Adappa (which are fully detailed in Schedule "B" of the plaint in O.S. No. 300/1998. It is needless to state that the properties detailed in Schedule "B" of the plaint are the very properties detailed in Schedule "E" of the partition deed at Ex. P2) In spite of the demand of the plaintiffs, defendants 1 to 7 did not hand over the possession of "B" Schedule properties in their favour. In the meanwhile, deceased Kanthappa Adappa had sold Schedule "C" property (Sy. No. 33/10) (one of the property allotted to Kanthappa Adappa under partition deed at Ex. P2) in favour of defendant No. 8. Hence, the suit is filed praying for possession.

According to the plaintiffs, the alienation is invalid and inoperative, inasmuch as the alienor Kanthappa Adappa did not have any alienable interest over the "C" Schedule property as he had only life interest over the property alienated.

2. The suit is resisted by defendants 1 to 7. Defendants 1, 5 and 7 filed written statement which came to be adopted by defendants 2, 3, 4 and 6. In the written statement, the defendants admit that the partition took place in the family of Thimmaju in respect of Thimmaju's family properties as per Ex. P2, dated 16.7.1951. They also admit that as per the then existing law i.e., Madras Aliyasantana Act of 1949, the share allotted to Nissanthathi Kavaru, or persons as defined under the Madras Aliyasantana Act was to revert back to the Kutumba or to nearest Santhathi Kavaru of the family as the case may be. The same proposition of law as it then existed was given effect to in the said deed of partition dated 16.7.1951 regarding the reversion of the property to the nearest Santhathi Kavaru; which means the defendants also admit that Kanthappa

Adappa was provided only the life interest in the properties under Ex. P2 and that those properties would revert to the original family, or to the nearest Santhathi Kavaru as the case may be after the demise of Kanthappa Adappa. However, it is pleaded by the defendants that in view of subsequent change in law by virtue of Hindu Succession Act, 1956 and the pronouncement of the Apex Court on the subject, the share allotted to Nissanthathi Kavaru in a partition effected prior to passing of Hindu Succession Act would not revert to the nearest Santhathi Kavaru. In other words, defendants 1 to 7 pleaded that the properties allotted to Kanthappa Adappa (member of Nissanthathi Kavaru) under the partition at Ex. P2 would not revert to nearest Nissanthathi Kavaru as specified in Ex. P2, but such properties would vest with the personal heirs of Kanthappa Adappa (i.e., defendants 1 to 7 herein), after coming into force of Hindu Succession Act, 1956.

3. Based on the rival pleadings, the following issues were raised by the Trial Court:-

1. Whether the plaintiffs prove that they alone are entitled to the ownership and possession of the "B" schedule properties enjoyed by deceased Kanthappa Adappa?
2. Whether the plaintiffs further prove that alienation in favour of 8th defendant by deceased Kanthappa Adappa with respect of plaint "C" schedule properties is invalid?
3. Whether the plaintiffs are entitled for mesne profits as prayed for?
4. Whether the plaintiffs are entitled for damages as prayed for?
5. Whether the plaintiffs are entitled for possession of "B" schedule properties?
6. Whether the plaintiffs are entitled for the relief as prayed for?
7. What order or decree?

4. The parties on both sides adduced evidence, both oral and documentary. After hearing the parties and after considering the material on record, the Trial Court dismissed the suit holding that the properties allotted in favour of Kanthappa Adappa (member of Nissanthathi Kavaru) under partition at Ex. P2 on 16.7.1951 will not revert to the nearest Nissanthathi Kavaru as specified in Ex. P2, but the same would be succeeded by the personal heirs of Kanthappa Adappa, i.e., defendants 1 to 7 herein as per the provisions of Hindu Succession Act, 1956.

5. Sri Sanath Kumar Shetty, learned advocate appearing on behalf of the appellants submits that the facts are not disputed at all. He draws the attention of the Court to the written statement filed by the defendants who admitted the factum of partition by virtue of Ex. P2. He further submits that the relationship between the parties is also not in dispute. However, he submits that the Trial Court has fallen in error in misinterpreting the judgment of the Apex Court in the case of Sundari and Others Vs. Laxmi and Others, . Drawing the attention of the

Court to Section 36(5) of the Madras Aliyasantana Act, learned counsel for the appellants submits that the properties allotted to Nissanthathi Kavaru at a partition prior to 1961 in which Nissanthathi Kavaru had only the life interest, shall devolve upon the Kutumba or upon the nearest Santhathi Kavaru as the case may be after the death of Nissanthathi Kavaru; till the year 1961, i.e., till the Madras Aliyasantana Act was amended by Mysore Act No. 1/1961, the Nissanthathi Kavaru who was to be allotted life interest in partition, did not have absolute right over such allotted property. In other words, the property which was allotted to Nissanthathi Kavaru under the partition prior to 1961, would revert to the Kutumba, i.e., original family and consequently the legal representatives of such Nissanthathi Kavaru would not have right, title or interest over the such property which was allotted to Nissanthathi Kavaru; only if the property were to be allotted in favour Nissanthathi Kavaru in a partition after 1961, the same would be possessed by him as absolute owner as per Section 37-A of the Madras Aliyasantana Act. (Section 37A was introduced by Mysore Act No. 1/1961 in the year 1961).

Relying upon the judgment of this Court in the case of Ramappa Gudadappa Gudadannavar Vs. Chandangouda Neelangouda Goudar, , learned counsel for the appellants submits that in a case where a succession had already opened and the estate had already vested in persons in accordance with the law which was in force before the Hindu Succession Act came into force, such succession cannot be reopened and the vesting which has taken place cannot be reversed.

Relying upon the decision of the Full Bench of this Court in the case of Sundara Adapa and Others Vs. Girija and Others, , he submits that the Hindu Succession Act did not repeal the Madras Aliyasantana Act 1949; the customary Aliyasantana Law as amended by the Madras Aliyasantana Act is merely further amended by the Hindu Succession Act; the Hindu Succession Act did not provide either for management of kutumba properties or for partition of the same.

He further relies upon the judgment of this Court in the case of Ratnamala Vs. State of Mysore and Others, to contend that Mysore Act No. 1/61 by which the Madras Aliyasantana Act, 1949 was amended in the year 1961 is only prospective in its operation; the Madras Aliyasantana (Mysore Amendment) Act, 1961 does not purport to modify either the shares allotted in a partition that has already taken place prior to the commencement of Amended Act No. 1/1961 nor the nature of the interest taken under such partition unless there has been a further partition after the commencement of Amendment Act. The sum and substance of arguments of Sri Sanath Kumar Shetty is that the (Mysore) Amendment Act of 1961 would not change the position in respect of share already allotted in favour of Nissansanthi Kavaru and that the share allotted in favour of Nissanthathi Kavaru at a partition prior to 1961 would be binding on Nissanthahi Kavaru and consequently, his personal heirs are not entitled to any right, title or interest in the property allotted in favour of Nissanthathi Kavaru, inasmuch as Nissanthathi Kavaru would take only life interest prior to 1961 and

not absolute interest.

Learned counsel for the appellants further submits that Section 7(2) of the Hindu Succession Act makes it amply clear that when a Hindu to whom Aliyasantana Act would apply, dies after the commencement of Hindu Succession Act having at the time of his death undivided interest of Kutumba or Kavaru, his interest in the property shall devolve by testamentary and intestate succession under the provisions of Hindu Succession Act and not according to Aliyasantana Law. Thus, according to him, only if the property had remained undivided prior to commencement of Hindu Succession Act, 1956, the interest in the undivided property of Kutumba shall devolve by testamentary or interstate succession under the Hindu Succession Act; on the other hand, if division had already taken place prior to 1956 and under such division, if Nissanthathi Kavaru was allotted the share (i.e., life interest), the provisions of Section 7(2) of Hindu Succession Act are not applicable. Thus, according to him, since Kanthappa Adappa (Nissanthathi Kavaru member) had divided interest in the suit properties by virtue of the partition deed dated 16.7.1951 and as he was allotted a limited life interest in the properties under the said partition in accordance with Madras Aliyasantana Act, 1949 as it then existed, the property should revert to the original family i.e., Kutumba and will not devolve upon his personal heirs as per Section 7(2) of the Hindu Succession Act by testamentary or intestate succession.

He further submits that u/s 14 of the Hindu Succession Act, the pre-existing limited right of a female member of a family would enlarge into her absolute property, whereas there is no provision in Hindu Succession Act wherein a male member's limited interest in the family properties would enlarge as absolute interest. Since Kanthappa Adappa was allotted limited interest in the properties under the partition deed at Ex. P2, his interest in the said properties would not get enlarged as absolute interest in favour of Kanthappa Adappa.

6. Sri Vishwajith Shetty, learned counsel appearing for respondents argues in support of the judgment of the Court below by relying upon the observations of the Apex Court in Sundari's Case (cited supra), and of this Court in the case of Ramanna Rai and Another Vs. Jagannatha and Others, . According to him, the Trial Court is justified in coming to the conclusion that the limited estate held by Kanthappa Adappa under the partition deed at Ex. P2 would get enlarged into absolute estate as per Section 7(2) read with Section 17 of the Hindu Succession Act, 1956.

7. Having heard the learned Advocates, we find that the following points arise for our consideration:-

(1) Whether the Trial Court is justified in concluding that the life interest allotted in favour of Nissanthathi Kavaru (Kanthappa Adappa) under the partition deed dated 16.7.1951 enlarges into absolute interest after coming into force of Hindu Succession Act, 1956?

(2) Whether the Trial Court is justified in dismissing the suit for possession by

holding that the defendants 1 to 7 are entitled to succeed to the properties after the demise of Kanthappa Adappa, as absolute owners thereof?

8. Before proceeding further, it is pertinent to note the admitted facts:

The parties to the litigation are governed by the Aliyasantana law of inheritance prevailed in Dakshina Kannada District. They are the members of Kutumba which descended from common ancestor. Plaintiffs 1 to 46 constitute the members of kavaru (branch of family) headed by one Koropolu Hengsu. The plaintiffs 47 to 57 and defendant No. 9 constitute members of another branch (kavaru) represented by Poovakke Hengasu. The plaintiffs 58 and 59 belong to the branch of one Veeramma. Defendants 1 to 7 are the wife and children of Nissanthathi Kavaru by name Kanthappa Adappa. The defendant No. 8 is the purchaser of C-schedule property from Kanthappa Adappa. Partition has taken place in respect of the family properties belonging to the family of late Thimmaju as per registered partition deed dated 16.7.1951 (Ex. P2). In the said partition, Schedule-E property (of the partition deed) came to be allotted to the share of deceased Kanthappa Adappa whereas Schedules-A & F properties (of the partition deed) came to be allotted to the shares of deceased Narayana Adappa and Venkatappa Adappa respectively. It is relevant to note that Kanthappa Adappa, Narayana Adappa and Venkatappa Adappa are brothers and are members of Nissanthathi Kavaru. All the three were allotted separate shares, independent of each other, under the partition Ex. P-2 dated 19.7.1951. It is specifically mentioned in the registered partition deed that each of the three members of Nissanthathi Kavaru, in whose names independent shares are allotted would enjoy the properties allotted to them during their lifetime and thereafter, the respective properties so allotted will revert back to the family (kutumba) or the members of the nearest Santhathi Kavaru as the case may be. Consequently, all the three brothers, including Kanthappa Adappa (members of nissanthathi kavaru) enjoyed the properties allotted to their respective shares independent of each other till their death. Now, the litigation is in respect of the properties allotted in favour of Kanthappa Adappa. Said Sri Kanthappa Adappa died on 19.8.1996. As aforementioned, defendant No. 1 is the widow of Kanthappa Adappa and defendants 2 to 7 are the children of Kanthappa Adappa. These facts are not in dispute.

9. In the normal course, the properties allotted in favour of Kanthappa Adappa (member of nissanthathi kavaru) would have reverted to the kutumba or nearest santhathi kavaru as the case may be. But defendants 1 to 7 did not handover possession of the properties allotted in favour of Kanthappa Adappa to the nearest santhathi kavaru as specified in the partition deed Ex. P-2. Thus a suit came to be filed by the members of Santhathi kavaru to get possession of the properties enjoyed by Kanthappa Adappa during his life time. It is also relevant to note that schedule B-properties in the suit O.S. No. 300/1998 are the very properties detailed in schedule-E of the partition deed dated 16.7.1951 (Ex. P2) which were allotted in favour of Kanthappa Adappa.

10. The case of the plaintiffs is that as per Madras Aliyasantana Act, 1949 and as per the recitals found in Ex. P2 (the partition deed dated 16.7.1951), deceased Kanthappa Adappa would enjoy life interest in the properties in question and thereafter the properties would revert back to the kutumba or the nearest Santhathi Kavaru as the case may be. Consequently, the defendants 1 to 7 who are the personal heirs of deceased Kanthappa Adappa have no right, title or interest over the properties in question after the demise of Kanthappa Adappa. Whereas the case of the defendants is that the properties allotted to Kanthappa Adappa would have reverted to the nearest santhathi kavaru as per the Madras Aliyasantana Law and also as per partition deed Ex. P2; but in view of coming into force of Hindu Succession Act, 1956, w.e.f. 17.6.1956, the properties would not revert back to the kutumba or nearest santhathi kavaru as the case may be, consequently the same would be retained by the defendants who are the legal representatives of the deceased Kanthappa Adappa after coming into force of Hindu Succession Act, 1956. It is the further case of the defendants that if Kanthappa Adappa were to die prior to 17.6.1956 i.e. prior to commencement of Hindu Succession Act, 1956, then also the properties would have reverted to kutumba. It is brought to the notice of the court on behalf of the defendants/respondents herein that the similar claim made by the plaintiffs/appellants herein as against the properties of other two members of Nissanthathi kavaru, i.e. Narayana Adappa and Venkatappa Adappa was rejected and that the plaintiffs/appellants did not pursue the matter further.

11. It is well settled that the provisions of Hindu Succession Act, 1956 are not retrospective in their operation, which means, in a case where succession had already opened and estate had already vested in persons in accordance with law which was in force before Hindu Succession Act came into force, such succession cannot be re-opened and the properties vested cannot be divested. There is nothing in Hindu Succession Act, 1956 which makes it retrospective in operation (see the dictum in the case of Ramappa Gudadappa Gudadannavar Vs. Chandangouda Neelangouda Goudar,).

12. From Section 4 of Hindu Succession Act, 1956, it is clear that any law which is inconsistent with the provisions of the said Act, shall cease to apply to Hindus to the extent of the inconsistency. Therefore, it cannot be said that the Madras Aliyasantana Act does not exist any more. The Madras Aliyasantana Act is not repealed as such. However, the Customary Aliyasantana Law as codified in Madras Aliyasantana Act of 1949 is further amended to certain extent by the Hindu Succession Act, 1956. Neither under the Customary Aliyasantana Law nor under the Madras Aliyasantana Act or under the Indian Succession Act, interest of a coparcener in an Aliyasantana kutumba could have been disposed off by a testamentary disposition. In that regard, a definite change in the law was made by means of an explanation to Section 30(1) of Hindu Succession Act. Undisputedly, at present i.e., after coming into force of Hindu Succession Act, a member of an undivided Aliyasantana kutumba can dispose of his property in the kutumba properties by means of a Will. As aforementioned, the provisions of

Madras Aliyasantana Act, if and only if, are inconsistent with Hindu Succession Act would cease to exist. Thus, as a natural corollary there could not have been inconsistency between the provisions of aforementioned two enactments till 17.6.1956, i.e., till commencement of Hindu Succession Act. Consequently the actions taken prior to 17.6.1956 under Customary Aliyasantana Law as amended by Madras Aliyasantana Act would continue to exist despite the promulgation and Hindu Succession Act, w.e.f. 17.6.1956.

13. It is also relevant to note that the Madras Aliyasantana Act, 1949 was amended in the year 1962 by Madras Aliyasantana (Mysore Amendment) Act (1 of 1961). The Mysore Amendment Act is also held to be prospective in its operation, by this Court in the case of Ratnamala Vs. State of Mysore and Others, . While concluding so, this Court has observed that the Madras Aliyasantana (Mysore Amendment) Act (1 of 1962), does not purport to modify either the shares allotted in a partition that has already taken place prior to the commencement of the Amendment Act nor the nature of the interest taken under such partition unless there has been further partition after the commencement of Amendment Act; if in a partition prior to Mysore Amendment Act, a Nissanthathi Kavaru has taken only a life interest in the properties allotted to it, the Amendment Act does not enlarge such interest into an absolute interest; nor does the Amendment Act prevent the reversion of the properties to the kutumba or the nearest Santhathi Kavaru on the death of the last member of such Nissanthathi kavaru.

14. As per Section 37A of Madras Aliyasantana Act, 1949 (inserted by way of amendment in the year 1961), any male or female member of a Kutumba or kavaru having undivided interest in the properties of a kutumba or a kavaru shall be entitled to claim partition of his or her share in the properties of the kutumba or kavaru, as the case may be. The share allotted in favour of a male or female member of the kutumba or kavaru will vest with such person absolutely which means the allottee of a share will own the same absolutely. In other words, even a male member, who was earlier entitled only for life interest, will get the absolute interest in the properties after insertion of Section 37A of Madras Aliyasantana Act, only if the partition takes place after insertion of Section 37A of Madras Aliyasantana Act.

15. It is beneficial and relevant to note the provisions of Section 36(3), 36(4) and 36(5) of the Madras Aliyasantana Act, 1949 which read thus:

36(3): If at the time of the partition, any kavaru taking a share is a nissanthathi kavaru, it shall have only a life interest in the properties allotted to it, if the kutumba from which it separates has at least one female member who has not completed the age of fifty years, or where the kutumba breaks up into a number of kavarus at the partition, if at least one of such kavarus is a santhathi kavaru and if there is no such female member or santhathi kavaru, the kavaru shall have an absolute interest in the properties allotted to it.

36(4): In the case referred to in subsection (3), the life interest of the nissanthathi kavaru in the properties allotted to it at the partition shall become absolute, if the kutumba concerned ceases to have among its members a female who has not completed the age of fifty years or if all the kavarus into which the kutumba broke up, whether at the same or at a subsequent partition, become nissanthathi kavarus.

36(5): The properties allotted to a nissanthathi kavaru at a partition and in which it had only a life interest at the time of the death of the last of its members, shall devolve upon the kutumba, or where the kutumba has broken up, at the same or at a subsequent partition, into a number of kavarus, upon the nearest santhathi kavaru or kavarus.

Section 36(3) of the Madras Aliyasantana Act, 1949 makes it amply clear that a member of nissanthathi kavaru, at the time of partition, shall have only a life interest in the properties allotted to him, if the kutumba from which nissanthathi kavaru separates has at least one female member who has not completed the age of 50 years. In the matter on hand, undoubtedly, the kutumba from which, Kanthappa Adappa had separated, has at least one female member who has not completed 50 years. Sub-section (4) of section 36 discloses that the life interest of nissanthathi kavaru in the properties allotted to it at the partition shall become absolute, if the kutumba concerned ceases to have among its members a female who has not completed the age of 50 or if all the kavarus into which the kutumba broke up, whether at the same or at a subsequent partition become Nissanthathi Kavaru or Kavarus. In this matter, admittedly, sub-section (4) of Section 36 is not applicable inasmuch as the Kutumba does not cease to have among its members a female who has not completed the age of fifty years. So also, undisputedly, all the kavarus of the Kutumba after breaking up, have not become Nissanthathi Kavarus. Sub-section (5) of Section 36 of the Act, states that the properties allotted to a Nissanthathi Kavaru at a partition and in which it had only a life interest at the time of death of the last of its members, shall devolve upon the Kutumba or to the nearest santhathi kavaru as the case may be.

Thus, it is clear that the life interest in the properties allotted in favour of Kanthappa Adappa (Nissanthathi Kavaru), after his death shall devolve upon the kutumba or to the nearest santhathi kavaru, as the case may be.

16. Sri Vishwajith Shetty, learned counsel for the respondents also fairly concedes that u/s 36(5) of Aliyasantana Act, if a Nissanthathi Kavaru is allotted life interest in the properties of kutumba, upon his death, such properties which are allotted to Nissanthathi Kavaru, would revert either to kutumba or to nearest santhathi kavaru in case of non availability of kutumba, as the case may be.

17. Sub Section (2) of Section 7 of the Hindu Succession Act refers to Aliyasantana law and the same reads as under:

When a Hindu to whom the Aliyasantana Law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of

his or her death an undivided interest in the property of a kutumba or kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be under this Act and not according to the Aliyasantana law.

(Emphasis Supplied)

In the matter on hand, the claim is made by the defendants that they have got absolute interest over the properties taking the help of section 7(2) of the Hindu Succession Act, 1956. The plain reading of section 7(2) of the Hindu Succession Act, 1956 makes it amply clear that a Hindu to whom Aliyasantana Law applies, if dies after the coming into force of Hindu Succession Act, 1956, having undivided interest at the time of his or her death in the property of a kutumba or kavaru as the case may be, his or her undivided interest in the property shall devolve by testamentary or intestate succession as the case may be under Hindu Succession Act, 1956, and not under Aliyasantana Law. Which means that if the kutumba property were to remain undivided at the time of commencement of the Hindu Succession Act, 1956, even a member of Nissanthathi Kavaru, who would have otherwise got limited right under the provisions of Madras Aliyasantana Act, would get absolute interest as per the provisions of Hindu Succession Act, 1956. In other words, after coming into the force of Hindu Succession Act, 1956 i.e. with effect from 17.6.1956, even a member of Nissanthathi Kavaru would get equal share to the share of a female member, if and only if, the property of kutumba or Kavaru remained undivided as on 17.6.1956.

18. Thus it is clear, if the properties are already divided prior to commencement of Hindu Succession Act among the members of kutumba and if a life interest has already been allotted in favour of Nissanthathi Kavaru in such partition, Nissanthathi Kavaru would continue to enjoy the properties in a limited manner during his life time. The life interest granted in favour of Nissanthathi Kavaru under the partition prior to 17.6.1956 would not automatically enlarge into absolute interest and devolve upon his personal heirs after coming into the force of Hindu Succession Act, 1956.

19. Sri Vishwajith Shetty, learned counsel for the respondents relies heavily on the judgment of this Court in the case of Ramanna Rai and Another Vs. Jagannatha and Others, and of the Apex Court in Sundari's case (cited supra) to contend that after coming into the force of the Hindu Succession Act, even divided interest of a Hindu would devolve upon his personal heirs absolutely as provided for u/s 7(2) of the Hindu Succession Act and that the limited interest of Nissanthathi Kavaru as prescribed under the Madras Aliyasantana Act would enlarge into an absolute interest and would devolve upon his personal heirs absolutely.

20. We have perused the judgments of the Apex Court in Sundari's Case and Ramanna Rai's Case cited supra, meticulously. We do not find any reason to accept the aforementioned submission of Sri Vishwajith Shetty.

21. In Sundari's Case, the facts reveal that there was no division among the members of Nissanthathi Kavaru and the properties allotted in favour of members of Nissanthathi Kavaru remained undivided. In such circumstance, the Apex Court, in paragraph-12 of its judgment has observed that under the Customary Aliyasantana Law and under the Madras Aliyasantana Act, 1949 the undivided interest in the property of a Hindu in Aliyasantana kutumba or kavaru devolved according to the provisions of the Aliyasantana Law, but after the introduction of Section 7(2) of Hindu Succession Act, the devolution by testamentary or intestate succession is under the provisions of the Hindu Succession Act. The Explanation to Section 7(2) of the Hindu Succession Act provides that the interest in the properties of kutumba or kavaru of a Hindu shall be deemed to be the share in the property of the kutumba or kavaru, as the case may be, that would have fallen to him or her, if a partition of that property per capita had been made immediately before her or his death among all the members of the kutumba or kavaru, then living and such share shall be deemed to have been allotted to him or her absolutely. The resultant position u/s 7(2) of Hindu Succession Act read with its explanation is that the undivided interest of a Hindu in the property of Aliyasantana kutumba or kavaru shall devolve as provided for under Hindu Succession Act and that the share of a Hindu shall be held by him absolutely. Explanation to Section 30(1) of the Hindu Succession Act enables the male Hindu in a kutumba or kavaru to dispose of his interest in a kutumba or kavaru inasmuch as such interest shall be deemed to be property capable of being disposed of by him. Combined effect of Section 7(2) and Section 30 of Hindu Succession Act would enable the male Hindu governed by Aliyasantana Law to dispose of his undivided interest in the property of the kutumba or kavaru by way of a Will after coming into force of Hindu Succession Act. Section 17 of Hindu succession Act deals with the succession to the separate property of a Hindu male under the Aliyasantana Law. Section 17 further provides that Sections 8, 10, 15 and 23 of Hindu Succession Act shall have effect, with certain modifications, in relation to persons who would have been governed by the Aliyasantana Law. The Apex Court has concluded that while Section 7(2) of Hindu Succession Act relates to devolution of undivided interest in the property of a kutumba or kavaru of a Hindu belonging to Aliyasantana family, Section 17 of Hindu Succession Act makes the provisions of Sections 8, 10, 15 and 23 applicable with certain modifications specified in Section 17 to the devolution of separate property of a Hindu under the Aliyasantana Law. Thus, it is clear that after coming into force of the Hindu Succession Act, the provisions of Section 7(2) are applicable as regards undivided interest of a Hindu governed by Aliyasantana Law.

It is clearly stated by the Apex Court in Sundari's Case that the provisions of Section 7(2) of Hindu Succession Act are applicable as regards undivided interest of a Hindu governed by Aliyasantana law, whereas section 17 of the Hindu Succession Act which makes Sections 8, 10, 15 and 23 applicable with certain modifications provides for succession of the separate property of a Hindu male or

female governed by Aliyasantana Law.

22. However, Sri S. Vishwajith Shetty, learned counsel for the respondents relying upon paragraphs-14 and 15 of the very judgment in Sundari's Case contends that the observations made in the aforementioned paragraphs deal with divided interest of a male also. Hence, we propose to quote paragraphs-14 and 15, which read thus:

14. It may be noted that regarding the separate property of a Hindu the Madras Aliyasantana Act provides that the provisions of Sections 19, 20, 21, 22, 23 and 24 of the Act would be applicable. The separate property does not revert back to the kutumba or kavaru of the Aliyasantana family. At the time of the partition if any kavaru taking a share is a nissanthathi kavaru, it shall have only a life interest in the properties allotted to it under certain circumstances and the property would revert back to a santhathi kavaru if it is in existence. Section 36(3) of the Madras Aliyasantana Act provides that the properties allotted to a nissanthathi kavaru at a partition and in which it had only a life interest at the time of the death of the last member, shall devolve upon the kutumba or where the kutumba has broken up, at the same or at a subsequent partition, into a number of kavarus, upon the nearest santhathi kavaru or kavarus. The devolution of the property allotted to a nissanthathi kavaru which has only a life interest devolves upon a kutumba or the nearest santhathi kavaru. This mode of devolution prescribed by Section 36(5) of the Aliyasantana Act has to give way to the provisions of Section 8 of the Hindu Succession Act which prescribes a different mode of succession.

15. The effect of the provisions of the Hindu Succession Act above referred to is that after the coming into force of the Hindu Succession Act an undivided interest of a Hindu would devolve as provided for u/s 7(2) while in the case of separate property it would devolve on his heirs as provided for in the Hindu Succession Act. Even though a nissanthathi kavaru might have a limited interest as the devolution prescribed for in the Madras Aliyasantana Act is no more applicable the devolution will be under the Hindu Succession Act.

(emphasis supplied)

23. If we read the aforementioned two paragraphs meticulously, it is clear that those observations are made only in respect of undivided interest of a Hindu governed by Aliyasantana law. No where in the said paragraphs, the Apex Court has dealt with the divided interest of Nissanthathi Kavaru. Even otherwise, the observations made in paragraphs-14 and 15 have to be viewed keeping in mind the facts in Sundari's Case. More over, the entire judgment needs to be read harmoniously and one or two paragraphs of the judgments cannot be read in isolation and differently. It is also relevant to extract paragraph-16 of the said judgment which reads thus:-

16. In this case the property has been found to be undivided as between defendants 22, 23 and 24 and therefore the position is that on the death of each

one of the defendants his undivided interest would devolve on his heirs.

Hence, it is clear that the Apex Court has reiterated in Sundari's Case that the properties which were found to be undivided between defendants 22, 23 and 24 (in the said matter) would devolve on the heirs absolutely after the death of each one of such defendants, who were members of Nissanthathi Kavaru.

There cannot be any dispute that the Supreme Court has made the aforementioned observations keeping in mind the facts of that particular case. Even in paragraph-23 of the very judgment, the Supreme Court narrates as to what would happen to separate property of a Nissanthathi Kavaru. In the matter on hand, we are concerned only with the divided property of Nissanthathi Kavaru, who was having only life interest. By virtue of division which has occurred prior to commencement of Hindu Succession Act, Nissanthathi Kavaru would get only limited estate. Since the division has already taken place in the year 1951 in the kutumba wherein each of the three brothers belonging to Nissanthathi Kavaru was allotted a separate share (i.e. independent of each other). Section 7(2) of Hindu Succession Act cannot be taken advantage of by the defendants 1 to 7.

We hasten to once again note that in the matter on hand that each of the member of Nissanthathi Kavaru, including Kanthappa Adappa, was allotted separate life interest in the partition of 1951. The three brothers (i.e., members of Nissanthathi Kavaru) including Kanthappa were not allotted the share jointly. On the other hand, the shares allotted to each of the three brothers were separate and distinct. These facts are undisputed. Therefore, it is clear that the facts on hand are different from the facts of Sundari's Case.

24. As aforementioned, the provisions of Hindu Succession Act do not have retrospective effect. Thus, the succession which has already opened and the estate if already vested prior to coming into force of Hindu Succession Act in the form of limited interest with the male governed by Aliyasantana Law, cannot be reopened after coming into force of Hindu Succession Act.

25. It is beneficial to note the provisions of Section 14 of Hindu Succession Act at this stage, which read thus:-

14. Property of a female Hindu to be her absolute property - (1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Undisputedly, Section 14 of Hindu Succession Act enlarges the limited interest in the property possessed by a Hindu female whether acquired before or after the commencement of Hindu Succession Act into absolute interest. This provision is applicable to Hindu females only and the same does not have the effect of enlarging the limited estate in the hands of a Hindu male. A Hindu male would continue to hold the limited interest provided to him under the law that was

applicable to him during relevant time.

Since Kanthappa Adappa was provided only with limited interest in the partition of 1951 (i.e. prior to the commencement of Hindu Succession Act) as per law applicable to him, he would continue to hold only to the limited interest/right provided to him. But if the properties were to remain undivided till commencement of Hindu Succession Act and had Kanthappa Adappa claimed partition after the date of commencement of Hindu Succession Act, he would have been definitely provided absolute interest in the properties inasmuch as, the succession would have been as per the provisions of Hindu Succession Act. In the matter on hand, since Kanthappa Adappa was allotted life interest in the properties as per the law applicable to him and then existed in the partition of 1951, his personal heirs cannot claim absolute ownership over such properties after his death. Section 14 of the Hindu Succession Act cannot be made use of by Hindu males having limited interest. If the intention of the legislature was to enlarge the limited interest held by the male into absolute interest, it would have specifically provided so u/s 14 of Hindu Succession Act, as provided for Hindu females.

Sri S. Vishwajith Shetty, learned counsel for the respondents, as aforementioned, relied upon yet another judgment in Ramanna Rai's Case (cited supra) in support of his case. The observations made in the said judgment may not be made applicable to the facts of this case inasmuch as, the facts in the said matter are totally different. In the said matter also (as in Sundari's Case) the properties had remained undivided among the members of Nissanthathi Kavaru. In that context, this court relied upon the judgment in Sundari's Case cited supra and concluded that Nissanthathi Kavaru who had otherwise limited estate would get absolute interest after 1956. As aforementioned in the said matter the properties had remained undivided.

On the other hand, in this case, the properties were admittedly divided much prior to the commencement of the Hindu Succession Act by virtue of the registered partition deed in which Kanthappa Adappa was given only the life interest. Thus, we clarify that the observations made and conclusion reached in Ramanna Rai's Case, would hold good for that matter only.

In view of the same, the judgment and decree passed by the Trial Court is liable to be set aside.

Life interest of a Hindu governed under Aliyasantana Law allotted in favour of Nissanthathi Kavaru under the registered partition deed dated 16.7.1951, (i.e., prior to commencement of Hindu Succession Act) does not enlarge into absolute interest after coming into force of Hindu Succession Act, 1956 and consequently, the natural heirs of such Nissanthathi Kavaru are not entitled to succeed to the estate of Nissanthathi Kavaru as absolute owners, after the death of Kanthappa Adappa (Nissanthathi Kavaru).

The points for consideration are answered accordingly. Hence, we conclude as

under:-

(a) The Trial Court is not justified in concluding that the life interest allotted in favour of Nissanthathi Kavaru, i.e., in favour of Kanthappa Adappa under the registered partition deed dated 16.7.1951 (i.e. prior to commencement of Hindu Succession Act,) enlarges into absolute interest after coming into force of the Hindu Succession Act, 1956.

(b) The Trial Court is not justified in dismissing the suit for possession holding that the defendants 1 to 7 are entitled to succeed to the estate of Kanthappa Adappa in the properties as absolute owners.

(c) The judgment and decree passed by the Trial Court in O.S. No. 300/1998 passed by the II Addl. Civil Judge (Sr. Division), Mangalore stands set aside. Suit in O.S. No. 300/1998 is decreed against defendants 1 to 7. Office is directed to draw the decree accordingly.

Appeal is allowed accordingly.