

(2007) 10 KAR CK 0057

In the Karnataka High Court

Case No : Regular First Appeal No. 49 of 2004

Sri Veerayya Mahantayya Koppad, Sri Basavaraj Mahantayya
Koppad, Gurudevi Hiremath and Smt. Akkamahadevi
Suragimath

APPELLANT

Vs

Smt. Geetha Hiremath, Sri Virupakshappa Shivappa
Hondappanavar (since dead by L.Rs. Sri Neelakantappa
Hondappanavar and Others) and Sri Tariq Khan Pathan

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Limitation Act, 1963 — Section 110, 127, 65

Citation : (2008) ILR (Kar) 1773 : (2008) 2 KarLJ 317 : (2008) 2 KCCR 619

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; Anand Kavalgimath, for R-1, Mahesh R. Uppin, for R-2 and S.N. Rajendra, for R-3, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The appellants herein were the plaintiffs before the trial court in O.S.No. 101/1996 and the said suit filed by them for partition and separate possession of their share in the suit schedule properties came to be dismissed by the trial court and hence this first appeal by them.

2. The case of the plaintiffs before the trial court can be indicated first by referring to the genealogical table which the plaintiffs themselves have described in their plaint and the said table is as under:

Sangavva Somayya Shiddayya Sattigeri Shanthabai (Died in 1938-39) (Died in 1968) (Died in 1990) | _____ | _____ |
| Muktha Geetha Kom Gangadhara (Died in 1964) Hiremath (Defendant-1) |
_____ | | | | Vewayya
Smt. Gurudevi Smt. Akkamahadevi Basavaraj Mahantayya Kom Shiva- Kom
Shanthayya Mahanthayya Koppada putrayya Hiremath Suragimath Koppada

(Plft-1) (Plft-3) (Plft-4) (Plft-2)

3. It is the specific case of the plaintiffs that they, being the children of Muktha, are entitled to their share in the suit schedule properties because, following the death of the original propositus Somayya, only the plaintiffs and the first defendant were left behind and as the suit properties were the joint family properties of the plaintiffs and the first defendant, the plaintiffs are entitled to their share in the suit schedule properties. The defendants, who are the respondents herein, contended before the trial court that Sangavva was not the wife of the original propositus Somayya and, therefore, the question of Sangavva's daughter Muktha being entitled to any share in the suit schedule properties did not arise and so also the plaintiffs, being entitled to their share by stepping into the shoes of Muktha. It was the specific case of the defendants that Sangavva was not the wife of Somayya but, on the other hand, Somayya had married Shanthabai and first defendant Geetha is the daughter of the said couple Somayya and Shanthabai. Following the death of Somayya, the suit properties fell into the hands of Shanthabai and later, following the death of Shanthabai, the first defendant became the owner of the suit schedule properties. During her lifetime, Shanthabai and her daughter Geetha sold one of the suit items i.e., item No. 1(d), in favour of the second defendant. Subsequently, the above said Geetha also sold one of the suit items i.e., item No. 1(c), in favour of the third defendant. Therefore, the defendants contended that the plaintiffs are not entitled to any share in the suit items and moreover, the suit schedule properties were the self-acquired properties of Somayya.

4. The above pleadings of the parties led to the following issues being framed by the trial court:

- i) Whether the plaintiffs prove the genealogy tree furnished as true and correct?
- ii) Whether the plaintiffs prove that the suit schedule properties are the joint family properties of the plaintiffs and defendant-1?
- iii) Whether the plaintiffs prove that the sale deed executed by mother of defendant-1 Shanthabai in favour of defendant-2 on 21.3.1973 in respect of suit schedule property 3(d) is not binding on them?
- iv) Whether the first defendant proves that she is the sole owner of the suit schedule property?
- v) Whether the plaintiffs prove that they are entitled to partition and separate possession of half share in the suit schedule property?
- vi) Whether the court fee paid is sufficient?
- vii) Whether the plaintiffs prove that they are entitled to mesne profits?
- viii) What order or decree?

Additional Issues:

i) Whether plaintiffs prove that the sale deed effected by defendant-1 to favour of defendant-3 on 29.3.1996 is not binding on their shares?

ii) Whether defendant-3 proves that he is a bonafide purchaser of suit property at 3(c) for valuable consideration?

After considering the evidence let in by the parties, the trial court answered issues-1, 2, 5 and 7 in the negative and issues-4, 6 and additional issue-2 were answered in the affirmative and the learned judge of the trial court also considered the question of the suit having been barred by limitation in the course of his judgment and answered the said issue against the plaintiffs. The effect of all these findings is the dismissal of the suit filed by the plaintiffs.

5. I have heard the learned Counsel Shri F.V. Patil for the appellants, learned Counsel Shri Anand K. Navalgimath for R-1, learned Counsel Shri Mahesh R. Uppin for R-2(a to g), and learned Counsel Shri S.N. Rajendra for R-3.

6. The submission of Shri F.V. Patil, learned Counsel for the appellants, is that the trial court erred in not appreciating the pleadings and the evidence placed before it inasmuch as though the plaintiffs have placed enough material to show that they are the children of Muktha by examining none other than their father, who also happens to be the power of attorney holder for them, as P.W.1, the trial court did not accept the said evidence of P.W.1 or for that matter, that of P.Ws.2 and 3, but has recorded an erroneous finding to the effect that the plaintiffs had failed even to prove the genealogical table itself as contended by them and secondly, insofar as the factum of Sangavva being the wife of Somayya is concerned, the trial court lost sight of the overwhelming evidence placed by P.W.1 in this regard, particularly when the said evidence has not been seriously challenged or questioned in the cross-examination of P.W.1.

7. As far as Muktha being the daughter of Sangavva and Somayya is concerned, it was submitted by the learned Counsel for the appellants that the plaintiffs have produced the school certificate i.e., Transfer Certificate, as per Ex.P-8. But, the trial court refused to accept the said document. As regards the nature of the suit schedule properties is concerned, it was submitted that the evidence on record leaves no doubt as to the suit schedule properties being the joint family properties of the plaintiffs and defendant-1 and that the defendants did not place any evidence to show that the suit schedule properties were the self-acquired properties of Somayya. As far as the ground of limitation is concerned, the learned Counsel submitted that the trial court suo motu formulated a question for consideration concerning the suit being barred by limitation although there was no such specific stand taken in the written statement filed by the defendants. Apart from this, the trial court erred in coming to the conclusion that the suit of the plaintiffs is barred under Article 110 of the Limitation Act, 1963 and the trial court did not take into consideration the necessity of the defendants establishing the exclusion of the plaintiffs from the suit properties to enforce their right to share in them and, therefore, when no such evidence is placed on

record by the defendants, the limitation starts from the time the exclusion becomes known to the plaintiffs. Therefore, the suit filed by the plaintiffs is well within time, in accordance with Article 110 of the Limitation Act and, as such, the conclusion reached by the trial court in this regard is contrary to the said provision of the Limitation Act as well as to the position in law as has been laid down by various High Courts as well as by the Supreme Court.

8. The learned Counsel for the appellants also submitted that in the event of the plaintiffs' case being accepted by this Court, in the light of the submission made as above and in the light of the evidence on record, the interest of defendants-2 and 3 could very well be protected by allotting the items which have been sold in their favour, to the share of defendant-1 in the final decree proceedings.

9. In support of the above submissions, the learned Counsel for the appellants has placed reliance on the decisions reported in *Muniga alias and Abbaiah Another Vs. Muniraja and Others*, : *Gouranga Sahu and Others Vs. Bhaga Sahu and Another*, and *Sadasivam Vs. K. Doraisamy*,

10. On the other hand, teamed counsel for R-1 Shri Anand K. Navalgimath, while supporting the findings of the trial court, submitted that the school certificate Ex.P-8 produced by the plaintiffs is a concocted document and in the absence of examining any of the authorities of the school, no reliance can be placed on the document Ex.P-8. As far as Sangavva being the wife of Somayya is concerned, no document is produced by the plaintiffs to prove the said relationship and, therefore, the trial court was justified in holding that not only the genealogical table is not acceptable, but even the fact of Sangavva being the wife of Somayya has not been proved. As far as the limitation aspect is concerned, it is submitted by the learned Counsel that the view taken by the trial court is in accordance with the provisions of the Limitation Act and moreover, two of the suit items were sold long back and insofar as the sale deed executed by Shanthabai in favour of defendant-2 is concerned, the said sale deed is executed on 21.3.1973 and, therefore, reckoning from the said date, the suit of the plaintiffs is barred by limitation. As such, the finding of the trial court as regards limitation also does not call for any interference.

11. The learned Counsel for R-2(a to g) and the learned Counsel for R-3, while supporting the above submissions of the learned Counsel for R-1, contended that the age of the plaintiffs shown in the cause-title to the plaint gives rise to doubt as to the plaintiffs being the children of Muktha and, therefore, the trial court was justified in coming to the conclusion that certain serious doubts have arisen with regard to the genealogical table that is mentioned by the plaintiffs and, as such, as the plaintiffs have failed to place convincing material in proof of their relationship with the original propositus and, as the defendants have seriously questioned the fact of Sangavva being the wife of Somayya, the finding of the trial court on issue No. (i) is just and proper.

12. Yet another submission made by Shri Mahesh R. Uppin, the learned Counsel

for R-2(a to g), is that the plaintiffs did not enter the witness box to speak to the factum of their relationship with Muktha or for that matter, Sangavva being the wife of Somayya and P.W.1 examined on behalf of the plaintiffs, being a power of attorney holder for them, cannot speak to the relationship aspect of the matter and, therefore, the evidence of P.W.1 has no value. As such, the over all evidence on record does not lead to the inference that Sangavva was the wife of Somayya and hence, the plaintiffs are not entitled to any share in the suit schedule properties. It was also contended that in view of the fact that the two of the suit items were sold by Shanthabai and Geetha in favour of defendants-2 and 3, it has to be held that the plaintiffs were aware of they being excluded from getting any share in the suit schedule properties and, as such, the suit of the plaintiffs was barred by limitation, as has been held by the trial court. Another point urged by learned Counsel Shri Mahesh R. Uppin is that Article 65 of the Limitation Act is applicable to the case on hand and not Article 110. On these submissions, the learned Counsel for the respondents-defendants sought for dismissal of the appeal.

13. In the light of the material on record and the contentions put forward by the learned Counsel for the parties, the following points arise for consideration:

- 1) Whether the finding of the trial court that the plaintiffs have failed to prove that Sangavva was the wife of Somayya is in accordance the evidence on record?
- 2) Whether the suit schedule properties are the joint family properties of the plaintiffs and the first defendant?
- 3) Whether the suit of the plaintiffs is barred by limitation?

14. Taking the first point into consideration, it is the specific case of the plaintiffs that Sangavva was the wife of Somayya and their mother Muktha was the daughter of Sangavva. In order to establish the above said relationship, the plaintiffs have taken the said stand in their pleadings and P.W.1 Mahanthayya has also deposed to the said effect. No doubt, P.W. 1 is the power of attorney holder for the plaintiffs. In the course of his evidence, P.W.1 has deposed to the effect that Somayya had two wives and they were Sangavva and Shanthabai He has also stated in his evidence that Sangavva died during 1938-39 and subsequently, Shanthabai died in the year 1995. The death of Somayya has been put as in the year 1968 by P.W.1. He has also stated in his evidence that out of the wedlock between Somayya and Sangavva, two daughters were born and they were Susheela and Muktha. It is in his evidence that Susheela died without any issues and Muktha also died in the year 1964. This witness has also stated that Muktha was his wife and all the plaintiffs are the children born to him and Muktha. The above evidence of P.W.1, who is none other than the husband of Muktha, has not been discredited in the cross-examination though P.W.1 was cross-examined at great length. In the entire cross-examination, nowhere it has been brought out that P.W.1 is not the husband of Muktha or for that matter, the plaintiffs are not the children born to P.W.1 and Muktha. On the other hand, it is suggested to

P.W.1 that during the lifetime of Somayya, his daughter Muktha was given a share in the properties. The above evidence of P.W.1, therefore, leads to the inference that Sangavva was the wife of Somayya and Muktha was born to them.

15. Even P.W.2 has also stated that Somayya had two wives and he goes on to state further that both the wives of Somayya and children of Muktha all were jointly managing the joint family properties. In the cross-examination of P.W.2, it has not been brought out that Somayya had only one wife and that she was Shanthabai and none else.

16. P.W.3 Takappa is yet another witness who testifies to the effect that Sangavva being the wife of Somayya and Muktha being born to them and the said Muktha being given in marriage to P.W.1 Mahanthayya and this witness further deposes to the effect that the plaintiffs are the children born to Muktha and P.W.1 Mahanthayya. This witness has denied the suggestion put to him during the cross-examination that Sangavva was not the wife of Somayya.

17. D.W.1 Geetha, who is the daughter born to Shanthabai, also has deposed in her evidence that her mother Shanthabai married Somayya after the death of Sangavva.

18. Thus, the evidence placed by the plaintiffs through P.Ws.1 to 3 gives rise to draw the inference that Sangavva was the wife of Somayya and their daughter was Muktha. Apart from the said inference being drawn from the oral evidence on record, the plaintiffs have also produced the school certificate of Muktha as per Ex.P-8. The said document reveals that Muktha is the daughter of Somayya Sattigeri. The trial court has not given any importance to Ex.P-8 on the ground that it was not proved as per the provisions of the Evidence Act and no inference can be drawn with regard to paternity on the basis of Ex.P-8 without examining the author of Ex.P-8.

19. In my view, the plaintiffs, apart from leading oral evidence particularly of P.W.1, have also placed on record a public document, which is the Transfer Certificate Ex.P-8, issued by the school authorities. No doubt, the said document Ex.P-8 itself will not be a conclusive proof of the paternity of Muktha. But, the plaintiffs have established the paternity of Muktha by examining P.W.1, who is none other than the husband of Muktha. It is the defence of the defendants that Muktha was not the daughter of Sangavva and that Sangavva was not the wife of Somayya. The onus, therefore, lies on the defendants to show that Muktha was not the daughter born to Sangavva and Somayya. In view of the evidence of P.W.1, who is the husband of Muktha, a presumption arises in favour of the legitimacy of the offspring. In the case of *Muniga alias and Abbaiah Another Vs. Muniraja and Others*, , a learned judge of this Court has held that when the paternity is disputed, the burden is on the party disputing the said fact and the law presumes strongly in favour of the legitimacy of the offspring. Having observed thus, the court accepted the oral evidence placed by the close relative of the parties and held in the said case that the plaintiffs had proved the

paternity set up to try them. In my view, the said decision applies to the case on hand also inasmuch as the plaintiffs have established the paternity of Muktha by examining her husband i.e., P.W.1, and the evidence of the said witness, as already mentioned by me, has not been seriously discredited. At the same time, the defendants have failed to discharge the burden cast on them since they disputed the paternity of Muktha. No evidence is placed by the defendants to disprove the fact of Sangavva being the wife of Somayya and Muktha being born to them. The appreciation of evidence by the trial court, therefore, is totally perverse and contrary to the evidence on record. The plaintiffs did not mention in the genealogical table the name of Susheela, another daughter of Sangavva and Somayya, but the said omission has been made good in the course of the evidence of P.W.1 by deposing to the effect that Susheela died issueless and, therefore, the plaintiffs are seeking their share in the suit schedule properties. I, therefore, answer the point under consideration by holding that the plaintiffs have proved the genealogical table as well as the relationship between Sangavva and Somayya and Muktha being the daughter born to them.

20. Coming to the nature of the suit schedule properties, it is contended by the defendants that the suit schedule properties are the self-acquired properties of Somayya. On the other hand, P.W.1, who is the son-in-law of Somayya, has deposed in his evidence that all the suit schedule properties were the ancestral properties of Somayya. It is also not in dispute as could be seen from the evidence placed on behalf of the plaintiffs as well as the defendants that following the death of Somayya, the suit properties came to the hands of Shanthabai and her daughter Geetha. The defendants have not been able to place any convincing evidence to show that the suit schedule properties were the self-acquired properties of Somayya. No sale deeds are produced in proof of the suit properties having been purchased by Somayya out of his own earnings during his lifetime. As such, the overall effect of the evidence on record is that the suit schedule properties are the joint family properties of the plaintiffs as well as the first defendant. Even otherwise, as rightly submitted by Shri Mahesh R. Uppin, once the relationship between the parties is established and once it is shown that the plaintiffs are the children of Muktha and Muktha being the daughter of Somayya and Sangavva, the branch of Sangavva as well as the branch of Shanthabai all will be entitled to equal shares in the suit schedule properties. I, therefore, answer this point under consideration by holding that the suit schedule properties are the joint family properties of the plaintiffs as well as first defendant.

21. The last of the point to be considered, is concerning the suit being barred by limitation, and no issue was framed by the trial court in this regard but only in the course of the judgment, the trial court thought it fit to consider the issue of limitation and answered the said issue against the plaintiffs mainly on the footing that the plaintiffs ought to have filed the suit within twelve years period from the date of their exclusion from the suit properties. In holding against the plaintiffs in this connection, the trial court took note of the fact that Shanthabai had sold one

of the suit items on 21.3.1973 itself and, therefore, counting the period from the said date, the suit was barred by time inasmuch as 23 years had elapsed as on the date of filing of the suit in the year 1996. The court also held that following the death of Somayya in the year 1968, the plaintiffs were deemed to have been excluded from the possession of the suit schedule properties.

22. The above reasoning of the trial court is not in accordance with the position to law is the submission made by the learned Counsel for the appellants and he has also referred to several decisions in this regard. Before I answer this question. It is, therefore, necessary to refer to the position in law as laid down by the courts in this regard Article 110 of the Limitation Act.

23. In the case of Mohammed Ibrahim v. Syed Muhammad Abbubakker reported to AIR 1976 Mad 84, it has been held that a co-owner cannot set up title himself by being accidentally in possession of such property to the exclusion of others unless a specific case of ouster is pleaded and made out. Possession to be adverse must be adequate in continuity in publicity and in extent to show that the possession is adverse to the competitors.

24. The High Court of Andhra Pradesh in the case of Abdul Kareem Sab v. Gowtivada S. Silar Saheb reported in AIR 1957 A.P. 40, dealing with the issue concerning possession of one of the co-sharers is concerned and the effect of limitation, has observed thus:

It is well-settled that the possession of one co-sharer is, in law, the possession of his co-owners and unless there is an ouster, that is to say, a denial of the rights of the other co-owners over the property to their knowledge, the co-owner in possession cannot plead that till possession was adverse to the other co-owners. Mere non-participation in profits of the common property by one co-sharer or exclusive occupation of the property by the other is not, by itself, sufficient to constitute an adverse possession.

It must be proved that such exclusive possession was in denial of the title of the other co-owners and the latter had notice thereof, either direct or inferable from notorious acts and circumstances. The mere occupation of common property without more, would be referable to the lawful title possessed by the co-owner to use the common property and would not be regarded as an assertion of a hostile title or of a right to hold it as his own separate property Mubarak-Un-Nissa Bibi and Another Vs. Muhammad Raza Khan and Others, Rel. on.

25. The question relating to proof of exclusion was considered by the Madras High Court to the case of Marudanayagam Pillai Vs. Sola Pillai (died) and Others, and the law laid down is as under:

(11) It is settled law that lapse of time is never in itself a bar to partition and the statute of limitation will operate from the time the plaintiff is excluded from his share and such exclusion became known to him. There can be no exclusion without a denial of the coparcener's right to a share and such denial may be

express or implied. While partition is demanded and refused or if the coparcener is expelled from the joint family, that would be clear exclusion. Once the plaintiff established his claim to a share in the joint family properties by showing that the family was joint and that he was a coparcener entitled to a share in its properties, the onus is on the defendants to establish exclusion to plaintiff's knowledge for over 12 years prior to suit. If authority is required for this proposition, one may refer to the decisions in *Jivanbhat v. Anibhat* ILR 22 Bom. 259 : *Ramnath Chatterjee v. Kusum Kamini Devi* 4 Cal LJ 56 and the decision of a Division Bench of our High Court in *Machiraju v. Simhachala* 9 Mad LJ 129.

Further, in the said case, reference was also made to the observations of the Privy Council in the case of *Radhoba Baloba v. Aburao Bhagwantrao* ILR 53 Bom 699 at p.712 : AIR 1929 PC 231 at p.236 and the said observation is as under:

Their Lordships, however, desire to observe that, with regard to the third question, even assuming that the facts retted upon by the defendants could be stated to amount to exclusion, the defendants have failed to prove that Nana was aware more than 12 years before the institution of the suit of any intention on the part of the members of the joint family to exclude him from the joint family property when he should choose to assert his rights." From the evidence, counsel were able to point out it is difficult to hold that there is any evidence from which an inference could be made that the plaintiff was aware, more than 12 years before the institution of the suit of any intention on the part of the defendants to exclude him from the joint family property when he should choose to assert his rights. In considering this question, it is relevant to take into account that the main defence was that the plaintiff was not a member of the joint family, and that he was not the son of the second defendant and that his mother had left her husband immediately after the marriage and had been divorced by her husband. The exclusion that is contemplated under Article 127 is a conscious and deliberate act amounting to denial of the right of the particular member concerned to a share in the property analogous to ouster and it must also have been brought home to him. As noticed by the Privy Council in the decision above referred, to bar the plaintiff under Article 127, three questions will have to be considered namely (i) whether the claimant to a share was excluded from the joint family property (ii) if so excluded, when the exclusion took place; and (iii) when the exclusion, if any, became known to the claimant. The point to be noticed is that time will not begin to run against the plaintiff until he became aware that he was excluded from claiming a right to a share in the properties.

26. The decision in the case of *Jadho Nagu Bai v. Jadho Ganga Bai* reported in AIR 1958 A.P. 19, is also to the effect that the possession by a co-owner is the possession of all the co-owners and it will not be adverse to the co-owners, who are out of possession in the absence of ouster.

27. Another decision in regard to the point under consideration is the one in the case of *Gouranga Sahu and Others Vs. Bhaga Sahu and Another*, . In the said case, it has been held that for limitation to begin under Article 110 of the

Limitation Act, 1963 in a suit for partition, there must be complete exclusion of the plaintiff from the enjoyment of the joint family property and where the exclusion is partial and the plaintiff is in possession of part of the joint family property, the cause of action does not accrue for a partition suit.

28. The Apex Court in the case of Sadasivam Vs. K. Doraisamy, , dealing with the question of exclusive possession by a coparcener under Articles 64 and 65 of the limitation Act, has held that exclusive possession of a cosharers does not amount to adverse possession against other cosharers unless such possession is exercised by ousting the other cosharers.

29. The effect of the law laid down by the Apex Court and the other High Court as mentioned above is that when there is no foundation laid to prove the factum of exclusion, the limitation under Article 110 will not start unless it is shown that a person was excluded from a joint family property to enforce his rights to share therein. In the instant case, absolutely there is no evidence placed by the defendants to show that the plaintiffs were excluded completely in claiming their share in any of the suit schedule properties. It has come in the evidence that the plaintiffs as well as the first defendant were residing together following the death of Somayya. There is also no pleading by the defendants with regard to the plaintiffs being excluded totally from enforcing their right to a share in the suit schedule properties. In the absence of necessary pleadings and the evidence in regard to the actual period from when the plaintiffs were excluded by the first defendant, it has to be held that the period of limitation runs only from the time when the exclusion becomes known to the plaintiffs. Therefore, in the case on hand, as the plaintiffs have pleaded in their plaint that it was only when, in the year 1996, the defendants started to refuse to give the plaintiffs their share in the suit schedule properties that the cause of action arose, I am of the view that the above material on record, seen in the light of the proposition of law referred to above, therefore, does not give room to take the view that the suit of the plaintiffs is barred by limitation under Article 110 of the Limitation Act. I accordingly answer the said point under consideration.

30. The conclusion reached by me as above, therefore, leads to the inferences that the trial court was not justified in dismissing the suit of the plaintiffs. Not only its appreciation of evidence is contrary to the evidence on record and perverse, but the view taken by the trial court is also erroneous in law and contrary to the provisions of Article 110 of the Limitation Act. As such, the appellants-plaintiffs have made out a case for interference with the judgment and decree of the trial court and they are entitled to their share in the suit schedule properties.

31. Since two of the suit items i.e., 1(c) and 1(d), have already been sold by defendant-1 and her mother Shanthabai in favour of defendants-2 and 3 and as the learned Counsel for defendants-2 and 3 have also submitted that the said defendants were the bonafide purchasers of the respective suit items, I find sufficient force in the submission made by the learned Counsel for the appellants

that while allotting the shares to the plaintiffs as well as deft-1, care can be taken to safeguard and to protect the interests of defendants-2 and 3 by making appropriate apportionment of the shares among the contesting parties in such a manner as to ensure that the properties which have been already sold do not fall within the shares to which the plaintiffs are entitled.

32. As all the plaintiffs are the sons and daughters of Muktha and the first defendant being the daughter of Shanthabai and Muktha being the daughter of Sangavva, all the plaintiffs are entitled together to share half of the suit items and the other half shall go to the share of the first defendant. In other words, the branch of Sangavva and the branch of Shanthabai will equally share the suit items.

33. In the result, I proceed to pass the following order:

The appeal is allowed.

The judgment and decree of the trial court in dismissing the suit of the plaintiffs is set aside.

It is declared that the plaintiffs are entitled together to share half of the suit items and the other half shall go to the share of the first defendant.

Insofar as the suit items 1(c) and 1(d) (mentioned as 3(c) and 3(d) by the trial court), which have been already sold in favour of defendants-2 and 3, are concerned, in the final decree proceedings, allocation of shares shall be so made as to ensure that the said two items do not fall within the half share to which the plaintiffs are together entitled.

Draw the preliminary decree accordingly.

No costs.