

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026



PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 1568 OF 2018 (PAR)

BETWEEN:

1. SMT USHA N SWAMY
W/O DR JAVARAIHAH N SWAMY,
D/O M VENKATASWAMY,
R/AT NO.1493,TOMLIN DRIVE,
BURR RIDGE, LLINOIS-60527
UNITED STATES OF AMERICA

AND PRESENTLY AT
2240, LAKE RIDGE DR. BELMONT,
NC28012-9592, USA

...APPELLANT

(BY SRI. S.SREEVATSA, SENIOR ADVOCATE FOR
SRI. KRISHNAMURTHY K R., ADVOCATE)

AND:

1. SRI M VENKATASWAMY
S/O LATE MUNIYAPPA,
R/AT NO.205,7TH MAIN ROAD,
IV BLOCK, JAYANAGAR,
BANGALORE-560 011
(DIED ON 23.11.2020)
2. SMT JAYAMMA
W/O M VENKATASWAMY,
AGED ABOUT 75 YEARS,
R/AT NO.205, 7TH MAIN ROAD,
IV BLOCK, JAYANAGAR,
BANGALORE-560 011

Digitally
signed by
VASANTHA
KUMARY B K
Location:
HIGH
COURT OF
KARNATAKA

3. SHYLA VENKATA SWAMY
@ SHYLA PRASAD VENKATASWAMY
W/O ANAND PRASAD,
AGED ABOUT 51 YEARS,
R/AT PACIFIC COAST HIGHWAY
NO.432,TORRANCE
CA 90505, USA

ALSO AT:
NO.28253, LOBROCK
DR RANCHO PALOS VERDES
CA 90275,USA

4. SMT. ROOPASRI,
D/O LATE SRI.M.VENKATASWAMY,
AGED ABOUT 51 YEARS,
R/AT No.205, 7TH MAIN,
4TH BLOCK, JAYANAGAR,
BENGALURU-560 011

(ARRAYED AS A PARTY, AS PER
THE ORDER OF THIS HON'BLE
COURT DATE 19.02.2021)

...RESPONDENTS

(BY SRI. B.N.PRAKASH., ADVOCATE FOR R1 & R3;
R2 DEAD,
SRI. SUBRAMANYA.R, ADVOCATE FOR IMPLEADING R4)

THIS RFA IS FILED UNDER SECTION 96 ORDER XLI RULE
1 OF CPC 1908, AGAINST THE JUDGMENT AND DECREE DATED
13.04.2018 PASSED IN OS NO.703/2014 ON THE FILE OF THE
XXXV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU
DISMISSING THE SUIT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 30.04.2026, COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE
D K SINGH** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

PREFACE:

The present regular first appeal has been filed under Section 96 r/w Order XLI Rule 1 of the Code of Procedure 1908 (for short '**the CPC**') impugning the judgment and decree dated 13.04.2018 passed by the XXXV Addl.City Civil and Sessions Judge, Bengaluru, in O.S.No.703/2014 instituted by the appellant/plaintiff.

2. The defendant Nos.1 and 2 are the parents of the plaintiff and defendant No.3 is the sister of the plaintiff. Plaintiff had filed the suit for partition of the suit schedule properties by metes and bounds among the plaintiff and defendant Nos.1 to 3 and to allot equal share to the plaintiff in Schedule 'A' and 'B' properties and such of those properties movable and immovable including family jewelry, Bank deposits, Share Investments, Debentures which are alleged to be the joint family properties of the defendant Nos.1 and 2 (parents) and to put the plaintiff in lawful possession of the allotted share.

BRIEF FACTS:

3. Plaintiff got married to Doctor Javaraiah N. Swamy in the year 1979 and started living with her husband in USA, since the date of her marriage. The plaintiff filed a suit alleging that while she was residing in USA, without her knowledge, 10 acres of land in old Survey No.16/2 and new Survey No.16/6, which was joint family property belonging to all the coparceners had been sold to one M. Narayanaswamy, son of late Muniyappa vide sale deed dated 19.12.2011. Further, she stated that schedule 'A' property was an ancestral property fallen to the share of her father and his name got recorded as Khatedar from the year 1982 to 2013. The parents i.e., defendants Nos. 1 and 2 had generated wealth after getting the quarrying license from the State of Karnataka on the said land and have been beneficiary of windfall of money, which flowed of resorting to quarrying in the schedule 'A' property. Out of the income generated by quarrying stone, from the schedule 'A' property, the defendants had purchased the 'B' schedule property.

4. It was further stated that defendant No.1, the father had inherited an agricultural land bearing survey No.138/13, situated at Badavanavrathna Kavalu, Kengeri, Hobli, Bangalore South Taluk, which is described as schedule 'C' property as well as inherited schedule 'D' property. Defendant No.1 (father) had been enjoying the property on his own. The entire earnings of bank balance, fixed deposit lying in the names of defendant No.1 and 2 were built up over the period of time from the income and proceeds received from the inherited family properties. Therefore, the plaintiff would be entitled for her share in those properties.

5. The defendants filed their written statement denying the averments stated in the suit. Defendant No.1 specifically stated that 'A' and 'B' schedule properties were not joint family properties as claimed by the plaintiff. The schedule 'A' property was the absolute property of defendant No.1 and therefore, the relief of partition would not be maintainable. It was denied that 10 acres of land in Survey No.16/6 was an undivided property belonging to

all coparceners as per the family tree. It was further stated that the land bearing Survey No.16 was a property acquired by the defendant No.1 was not an ancestral property or a Hindu Undivided Family property. The defendant Nos.1 and 2 had purchased properties in the City of Bangalore. One such property was 'B' schedule property. The properties in hands of defendants No.1 and 2 are their individual/separate properties and plaintiff has no semblance of right to seek partition as such, the suit filed for partition itself is not maintainable and accordingly, sought to dismiss the suit.

ISSUES FRAMED BY THE TRIAL COURT:

6. On the basis of the pleadings of the parties, the Trial Court framed the following issues for determination:-

- "1. Whether the plaintiff proves that the suit schedule property 'A', 'C' and 'D' properties are inherited by her father?
2. Whether the plaintiff proves that the suit schedule 'B' property is purchased from the profits received from the other Hindu Undivided Family Properties and

available for partition amongst the members of the Hindu Undivided Family?

3. Whether the plaintiff being member of Hindu Undivided Family is entitled to partition of her equal share over the suit schedule properties by metes and bounds against the defendants?
4. Is it just and necessary to hold an enquiry with regard to mesne profits in respect of the entire joint family properties standing in the name of defendants 1 and 2 and to grant equal share to the plaintiff?
5. Whether the suit of the plaintiff is bad for mis-joinder of 2nd defendant to this suit?
6. Whether the plaintiff is entitled to reserve her liberty to bring into ambit of this suit of the properties inherited by the defendant No.2 to which the plaintiff is entitled for an equal share?
7. Whether the plaintiff is entitled to be compensated by the defendants for having sold/deprived any property, gold jewellery, bank balances as sought against the defendants?

8. What order or decree?"

7. The plaintiff in order to prove her case got examined herself as PW1 and one M. Narayan Swamy was examined as PW2 and got marked the documentary evidence Exhibits P1 to Exhibit P71 in support of the case. The defendants neither led any oral evidence nor produced any evidence on their behalf.

FINDINGS OF TRIAL COURT ON THE AFORESAID

ISSUES:

RE: ISSUE Nos.1 AND 2:

8. In respect of issue Nos.1 and 2, the Trial Court held that the plaint schedule property bearing No.16/2 measures 41 acres 20 guntas was in possession and enjoyment of defendant No.1 as it was allotted to him under a partition with his father. The Trial Court, at Paragraph No.17 of its impugned Judgment, has held that the plaintiff despite stating that property has been acquired by her father under partition, but has failed to produce the same, even for collateral purpose and in view

of admissions of PW.2 that property at Sy.No.16/2 having an extent 107 Acres purchased by his father (father of PW.2). Schedule 'B' Property was not purchased by defendant No.1, but plaintiff's grandfather had given it to the plaintiff and defendant No.3, while they were minors. Thus issue No.1 was decided in the 'affirmative' and issue No.2 in the 'negative'.

RE: ISSUE No.3:

9. It has been held by the trial Court that 'Properties' claimed by the plaintiff for partition are the absolute properties of defendant No.1, which were acquired by him during his lifetime. Therefore, the plaintiff could not claim right for allotment of share from the defendant Nos.1 and 2 and therefore, the said issue was decided in the 'negative'. The Trial Court also held that defendant No.2 was not a necessary and proper party inasmuch as she is only the wife of the defendant No. 1. Therefore, the Trial held that the suit filed against her was improper for misjoinder.

RE: ISSUE No.4:

10. So far as Issue No. 4 is concerned, trial Court has held in view of the findings on Issue Nos.1, 2, 3 and 5 the question of enquiry for mesne profit would not arise when the plaintiff has been held not to be entitled for partition.

RE: ISSUE Nos.6 AND 7:

11. The Trial Court has held that no question arises to compensate the plaintiff by the defendants for having sold gold jewelry, bank balance etc. In respect of Issue No. 6, it has been held that succession to the property has not been accrued during the lifetime of the father of the plaintiff and therefore, there would be no question of reserving her liberty to bring this aspect into the ambit of the suit. There is no right to the plaintiff to seek for partition at this stage and this issue is also decided in the 'negative'. In view of the aforesaid, the suit has been dismissed.

POINT FOR CONSIDERATION:

12. The only point which arises for consideration in this appeal is;

"Whether schedule 'A', 'C' and 'D' are self acquired properties of her father/defendant No.1 or he had inherited those properties from his ancestors and therefore, they were the joint Hindu family properties?"

**SUBMISSIONS ON BEHALF OF THE APPELLANT/
PLAINTIFF:**

13. The learned counsel for the appellant/plaintiff has submitted that issue No.1 as framed by the Trial Court, i.e., *"Whether the plaintiff proves that the suit schedule properties A, C, and D are inherited by her father?"* is wholly misconceived. Neither of the parties denied that these properties were inherited from the father of defendant No.1. What was in dispute between the plaintiff and defendant No.1 was the character of the suit schedule properties and no issue was framed by the Trial Court

regarding the character of the suit schedule properties and therefore, the Trial Court had committed a grave error which has led to the miscarriage of justice.

14. The plaintiff was never given an opportunity to prove the character of the suit schedule properties on account of framing of wrong issue. The appellant/ plaintiff had duly discharged the burden cast on her in respect of Issue No.1. Yet the Trial Court had decided the case against the appellant/plaintiff by dismissing the suit. When the Trial Court had categorically held Issue No. 1 in the 'Affirmative' by concluding that suit schedule properties 'A', 'C' and 'D' properties were inherited by the father of the plaintiff i.e., defendant No.1, the Trial Court had committed a grave error in holding that the said properties were the absolute properties of defendant No.1. The said finding itself is contradictory to the settled principles of Hindu law governing ancestral property. Once it is established that the properties were inherited from the parental ancestors of defendant No.1, the same

necessarily partake the character of ancestral/joint Hindu property in the hands of the successor.

15. The submission is that the Trial Court had misled itself in law by holding that the property acquired by a person in partition would become his separate property. The property inherited by defendant No.1, who in turn had acquired it from his father retained the character of ancestral property in the hands of defendant No.1. Hence, defendant No.1 could not have become the absolute owner, but as Kartha of the Hindu undivided family, because the plaintiff being the daughter of the defendant No.1, has right by birth in the suit schedule properties.

16. Sri S. Sreevatsa, learned Senior counsel appearing for the appellant has further submitted that reliance is placed by the Trial Court on the decision in ***MRS. MALIKA AND OTHERS Vs. MR. CHANDRAPPA AND OTHERS [2007 SCC ONLINE KAR 15]*** is wholly misplaced and distinguishable on facts. The High Court was dealing with a situation where there was severance of joint family

status and the properties devolved under Section 8 of the Hindu Succession Act, 1956. However, in the present case, evidence on record would establish that the suit schedule properties were inherited from the grandfather and therefore, would continue to remain within the joint family. The said decision would not have any application to the facts of the present case.

17. It is further submitted that PW.2, who is none other than the brother of the defendant No.1, clearly deposed that the properties were partitioned in the year 1969 between the family members and the suit schedule A and C properties fell to the share of the defendant No.1 from his father. This clearly establishes the ancestral nature of the properties and this aspect has been completely overlooked by the Trial Court.

18. It is further submitted that the Trial Court has ignored the amended provisions of Section 6 of the Hindu Succession Act, 1956. As per the amendment, the daughter is a coparcener by birth in her own right in the

same manner as a son and is entitled to claim partition and separate possession of her share in the ancestral property, as held in **VINEETA SHARMA VS. RAKESH SHARMA [(2020) 9 SCC 1]**.

19. The defendant despite filing written statement neither stepped into the witness box nor produced any documentary evidence to substantiate their contentions and if a party fails to lead evidence in support of pleading, an adverse inference is liable to be drawn against such party. The learned Trial Court has failed to consider this vital aspect and has erroneously treated the findings and statements as evidence, which is impermissible in law. The learned counsel for the appellant has placed reliance on **VIDHYADHAR VS. MANIKRAO AND ANOTHER [AIR 1999 SC 1441]** to support his submission.

20. Learned counsel for the appellant has further submitted the oral evidence of PWs1 and PW2 coupled with the documentary evidence marked as Exs.P1 to P71 would establish the case of the plaintiff that the suit

schedule properties are ancestral properties and thus she would be entitled to an equal share therein.

21. It has been therefore submitted that the plaintiff is entitled to 1/4 share in suit schedule 'A' and 'C' properties being one of the coparceners along with defendant No.1 and other members of the family. So far as the suit schedule 'B' property is concerned, the evidence on record establish that the same was gifted in favour of the plaintiff and defendant No.3 and therefore plaintiff entitled to 50% share in the said property.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/

DEFENDANTS:

22. It has been submitted on behalf of the respondents that defendant No. 1 had acquired the land bearing Survey No.16 measuring 46 acres of Kannayyana Agrahara Village Jigani Hobli, Anekal Taluk, Bangalore South, under the Family settlement and therefore, the contention on behalf of the plaintiff/appellant that defendant No.1 had acquired the land bearing survey No.16/2 measuring 46 acres

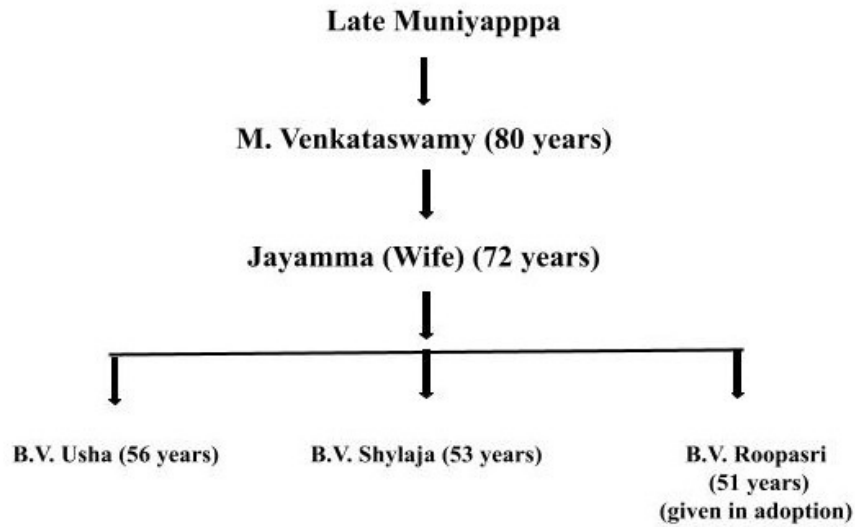
under the family settlement and therefore, the plaintiff would be entitled to a share, is wholly untenable. No documents were produced to show that the schedule 'A' property was an ancestral property. Only records of rights were produced. As per the record of rights produced, schedule 'A' property was purchased by Sri Muniyappa, the father of the defendant No.1 and PW2. Then it has come to Mr.M. Venkataswamy, M. Narayanaswamy and M. Jayamma (who is the sister of defendant No.1 and PW2). As per the RTC the total extent of land in Survey No. 16/2 was 107 acres. RTC (Ex.P9) for the period 1984 to 1985 would show that defendant No.1 got 46 acres, M Narayanaswamy got 51 acres and Jayamma got 10 acres. Jayamma is the sister of defendant No.1 and PW.2 M. Narayanaswamy.

23. From the aforesaid documents, it is clear that Muniyappa had purchased the said lands and it was divided amongst defendant No.1, his brother and sister and therefore, the same cannot be treated as an ancestral property nor joint family property. PW.2, the brother of

the defendant No.1 would admit in his evidence that the schedule 'A' property was absolute property of defendant No.1, wherein he has said that "the said Survey No.16/ 2 was purchased by my father. It is true to suggest that the suit schedule 'A' property is the absolute property of 1st defendant. No evidence was produced to show that the suit schedule 'A' property was an ancestral property or the same was purchased from the ancestral nucleus. No evidence was adduced to show that Muniyappa, the father of defendant No.1 had any properties inherited from his ancestors, nor any evidence was produced to show that their ancestral nucleus was used to purchase schedule 'A' property. No document was produced to show that schedule 'B', 'C' and 'D' properties are the ancestral properties on which the plaintiff can seek partition against the father.

ANALYSIS AND CONCLUSION:

24. It would be apposite to note the family tree (Ex.P1), which is provided as hereunder;



The parties trace their lineage to late Muniyappa, who is the father of Sri M. Venkataswamy (defendant No.1) and the Grandfather of the Plaintiff and Respondent No. 3. Sri M. Venkataswamy (defendant No.1) is the son of late Muniyappa, Defendant No.2-Smt. Jayamma is the wife of defendant No.1. The plaintiff-Smt. Usha N. Swamy and defendant No.3-Smt. Shyla Venkataswamy are the daughters of defendant Nos.1 and 2. During the pendency of the proceedings, Smt. Roopasri, another daughter of late M. Venkataswamy, is impleaded as respondent No.4.

25. The suit pertains to four schedule properties, which are hereunder;

Schedule 'A' property	agricultural land comprised in Survey No.16/2 (subsequently Survey No.16/6) situated at Kannayana Agrahara Village, Jigani Hobli, Anekal Taluk, Bengaluru South.
Schedule 'B' property	Site 841/C, 37th F Cross, 4th T block, Jayanagar, Bengaluru
Schedule 'C' property	Agricultural land bearing Survey No.138/13 situated at Badavanavrathna Kavalu, Kengeri Hobli, Bengaluru South Taluk.
Schedule 'D' property	No.60, Pattabhirama Nagar, Jayanagar 4th Block, Bengaluru, bearing Old Municipal No.205 and New Municipal No.89.

26. The submission of the respondent is that once the plaintiff has failed to prove that the Schedule 'A', 'C' and 'D' were the ancestral properties, there was no question of said properties being the joint Hindu family property available for partition among the coparceners. Therefore, the trial Court has rightly dismissed the suit.

27. The essence of a coparcenery under the Mitakshara law is unity of ownership. There has to be a community of interest and unity of possession between all the members of the family, and upon the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession as held in ***TIKAIT HARGOBIND PRASAD SINGH Vs. SRIMATYA PHALDANI KUMARI [AIR 1952 SC 38]***.

28. In the case of ***C. L. ARUNACHALA MUDALIAR VERSUS C. A. MURUGATHNA MUDALIAR AND ANOTHER [(1953)2 SCC 362]***, the Supreme Court held that a Mitakshara father has full powers of disposition over his self-acquired property and that property received by a son under a gift or testamentary bequest from his father does not, merely by reason of such receipt, become ancestral property in the hands of the son. The Court further held that the nature of the interest taken by the donee or legatee depends upon the intention of the donor or testator gathered from the document and surrounding

circumstances. Where the property is conferred upon the son for his exclusive benefit, it remains his separate/self-acquired property and his descendants do not acquire any right therein by birth.

29. After the enactment of Hindu Succession Act, 1956, the devolution of interest in coparcenary property is governed as per the provisions of the said Act. Section 8 provides the general rules of succession in case of males, which reads as under:-

"8. General rules of succession in the case of males.— The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased. "

The order of succession among the heirs in the schedule is provided in Section 9 i.e., Class I shall take simultaneously and to the exclusion of all other heirs, those in the first entry in Class II shall be preferred to those in second entry; those in second entry shall be preferred to those in third entry and so on in succession.

30. Section 6 of the Act is in respect of devolution of interest in coparcenary property, which stands amended with effect from 09.09.2005 and provides that in a joint Hindu family governed by Mitakshara Law, the daughter of a coparcener becomes a coparcener in her own right by birth in the same manner as the son and will have the same rights in the coparcenary properties as that of the son.

31. It is further provided that where a Hindu dies after commencement of Hindu Succession (Amendment) Act 2005, his interest in the property of the joint Hindu family governed by Mithakshara Law, will devolve by

testamentary or intestate succession, as the case may be, under the said Act and not by survivorship.

32. Thus if a property is joint Hindu family property, then only a coparcener shall acquire the right by birth and not otherwise. If the property is self acquired property of a member of the family, it would not be treated as joint hindu family property and the question of interest of a family member in that property as a coparcener does not arise.

33. In the present case, Grandfather of the appellant/plaintiff had acquired 107 acres of land in Survey No.16/2 situated at Kannayana Agrahara Village, Jigani Hobli, Anekal Taluk, Bangalore South.

34. PW.2 in Paragraph 2 of the Examination-in-Chief states that *"Suit 'A' schedule property in a partition came to the share of myself, my father, my brother and my sister. The total extent of suit Survey No.16/2 was 107 acres. The said Survey No.16/2 was purchased by my father"*. PW.2 is none other than the brother of defendant

No.1 and uncle of the plaintiff, who was examined by the plaintiff in support of her case. PW.2 further admitted that in the partition suit schedule 'A' property came to the share of defendant No.1. It is true to suggest that suit 'A' property is the absolute property of defendant No.1.

35. Further in Paragraph 4 of the cross-examination, he states that *"Suit Schedule 'C' property was also purchased by my father, it is true to suggest that in the partition, the suit schedule 'C' property came to the share of defendant No.1. It is true to suggest that suit Schedule 'C' property is the absolute property of defendant No.1"*. In respect of suit schedule 'D' property, he stated that *"I do not know how suit schedule 'D' property came to the defendant No.1."* To the suggestion that the *"Suit schedule 'B' property is the self-acquired property of defendant No.1 and defendant No.3, the witness answered that it was not related to him"*. He further admitted that *"defendant No.1 might have gifted suit schedule 'C' property by a registered document to his daughter, Roopasri and the defendant No.1 is residing with defendant No.3"*.

36. The suit schedule 'D' Property situated at No.60, Pattabhirama Nagar Jayanagar 4th Block bearing Old Municipal No.205 and New Municipal No.89. These are the self acquired properties of the grandfather of the plaintiff, who is the father of the defendant No.1 and these properties came to the share of the defendant No.1 as a result of a partition effected by the grandfather.

37. The plaintiff also in her deposition admitted that suit schedule 'A' property was purchased by her grandfather. She was not aware of how the suit schedule property was acquired by her parents. However, she stated that suit schedule 'B' property was given to her and defendant No.3 by the grandfather. She stated that both were minors at that time, but she did not know how he gave that property to her and defendant No.3. She further stated that her power of attorney holder viz., Smt. Mohana would know the facts of the case, who was a close family friend, in fact best friend.

38. There is no dispute that suit schedule 'A', 'C' and 'D' properties were self acquired properties of the grandfather of the plaintiff and father of defendant No.1. As per the case of the plaintiff, defendant No.1 has got schedule 'A' 'C' and 'D' properties under the partition from his father which were self acquired properties of the grandfather of the plaintiff and father of the defendant No.1. These properties were not ancestral properties, which devolved on the father of the plaintiff on survivorship. But they were given by 1st defendant's father, who had acquired them in a partition between him, his two sons and daughter. These properties are neither the joint Hindu family properties nor coparcenary properties. These properties became individual/separate properties of defendant No.1. Therefore, plaintiff would not have any right to claim partition of these properties. A coparcener can claim partition in respect of the property which is a coparcenary property and not otherwise.

39. Even as per the case of the plaintiff, the suit 'B' schedule property was purchased by the defendant No.1

from the income generated from the 'A' schedule properties therefore, 'B' schedule property is also a self-acquired property of defendant No.1 and not a coparcenary property. As the plaintiff has failed to prove that the schedule properties were the coparcenary properties of the joint Hindu family in which she claims to be a member, though she has been staying abroad since 1979 after her marriage and she has never been in joint possession and enjoyment of the suit properties which came to be in the exclusive possession of her father given by her grand father acquired by him on his own. These properties did not come to the plaintiff's father by inheritance. Only when a person inherits a property from any one of his three immediate paternal ancestors, his sons, grandsons and great grandsons, acquire an interest in it by birth or under Section 6 after amendment w.e.f. 09.09.2005.

40. There was no unity of ownership and possession between all members of the family. The plaintiff was never in possession of the property, which became the self-

acquired properties of her father. In the absence of unity of possession of the plaintiff along with other family members i.e. parents and defendant No.3/sister. The plaintiff did not acquire an interest by birth in the properties, which are the individual/separate properties of her father.

41. It is well settled that Mitakshara father has absolute right of disposition over his self-acquired property, to which no exception can be taken by male/female descendants. In **GOVINDBHAI, CHHOTABHAI PATEL VS. PATEL, RAMANBHAI, MATHURBHAI, [(2020) 16 SCC 255]** it was held in paragraph 11 as follows:-

"11. This Court in a three-Judge Bench decision in C.N. Arunachala Mudaliar considered the question as to whether the properties acquired by Defendant 1 under the will are to be regarded as ancestral or self-acquired property in his hands. It is a case where the plaintiff claimed partition of the property in a suit filed against his father and brother. The stand of the father was that the house properties were the self-

*acquired properties of his father and he got them under a will executed in the year 1912. **It was held that father of a Joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way.** The Court while examining the question as to what kind of interest a son would take in the self-acquired property of his father which he receives by gift or testamentary bequest from him, it was held that Mitakshara father has absolute right of disposition over his self-acquired property to which no exception can be taken by his male descendants. It was held that it was not possible to hold that such property bequeathed or gifted to a son must necessarily rank as ancestral property. It was further held that a property gifted by a father to his son could not become ancestral property in the hands of the donee simply by reason of the fact that the donee got it from his father or ancestor."*

(Emphasis supplied)

42. If the case of the plaintiff was that the Schedule 'A', 'C' and 'D' properties were self acquired properties of the grandfather, then the grandfather had the absolute right of disposition over these properties. Once he has given these properties, to his two sons and daughter, they became the absolute owner of these properties, which came to their share and they were not the ancestral property to have any coparcenary character.

43. In the case of ***KALIANJI RANCHHOD VS. BEZONJI HASARWANJI [ILR 32 BOMBAY 512]*** it was held that where a father divided the family property between him and his sons, the share obtained by him was a self-acquired property, which he could bequeath to his wife. It was also held that the son, who inherited the property on partition by the father, got the property as his separate property and not of the joint family consisting of himself, his wife, sons and daughters.

44. Considering the case of the plaintiff and the evidence on record, the plaintiff has failed to prove that

the properties in question were coparcenary properties and that she acquired rights in those properties being member of the joint Hindu family.

45. So far as the argument of Sri.Sreevatsa, learned Senior counsel that the Trial Court has not framed specific issue on the nature/character of the property, stating when Issue No.1 framed by the Trial Court, that, whether the plaintiff proves that suit schedule 'A', 'C' and 'D' properties are inherited by her father, having been answered in affirmative, the Trial Court ought to have considered other issues for allotting the share to the plaintiff that she has become co-parcener under Section 6 of the new Amended Act of 2005, as such the suit ought to have been decreed. He further submits that in the absence of any specific issue framed with regard to character/nature of the property, the plaintiff was deprived of an opportunity to answer the same. As such, the judgment and decree passed by the Trial Court required to be set-aside on this count.

46. Further, it is the contention of learned Senior counsel that the defendants, except filing the written statement, have neither led any evidence either oral nor documentary in support of their contention, as such the Trial Court ought to have taken adverse inference against them and decreed the suit.

47. The argument advanced by the learned Senior counsel at first instance are appealable to us, but after going through the entire Judgment and evidence led both oral and documentary by the plaintiff, we are of the considered opinion that the Trial Court has properly considered the case answering all the issues against the plaintiff. Though Issue No.1 has been framed and answered in affirmative stating that father has acquired the property under the partition from his father, but Issue No.3 which has been framed by the Trial Court answers the argument advanced by learned Senior counsel regarding the character/nature of the property, which reads as under:

"Whether the plaintiff being member of Hindu Undivided Family is entitled to partition of her equal share over the suit schedule properties by metes and bounds against the defendants?"

48. The plaintiff is claiming the right to the property under Section 6 as a co-parcener to the property stating that the property came to father through his ancestor i.e., grandfather. As such, the plaintiff has got all rights to maintain the suit seeking for partition. The issue framed as No.3 answers the character/nature of the property. In the admitted facts and evidence placed by the plaintiff that, the property is the self-acquired property of the grandfather, which is even admitted by PW.2 who is none other than the parental uncle of the plaintiff and brother of defendant No.1, who was also a party to the said partition/family arrangement, wherein he was also allotted a share in the property bearing Sy.No.16/2. The said witness clearly admits that the property fell to the share of

defendant No.1 under the said partition/ family arrangement is his self-acquired property.

49. The plaintiff has not produced any cogent and corroborative or substantial evidence to prove that the properties stated i.e., 'A', 'C' and 'D' schedule properties are the ancestral properties in the hands of her grandfather and he has partitioned the same between his children. In the absence of such evidence and in the admitted facts and oral evidence backed with the documentary evidence produced by the plaintiff, herself, clearly points out that the properties are the self-acquired properties of her grandfather i.e., father of defendant No.1 and PW.2.

50. The properties acquired by defendant No.1, either under the partition/ family arrangement or by way of succession, become his individual and separate property. The reason being, even in the absence of such partition, defendant No.1, PW.2 and their sister would have inherited the properties as per Section 8 of the Hindu Succession Act, 1956. In these circumstances, whether the

self-acquired property of the father has been acquired by his children by way of partition/ family arrangement or succession, are one and the same.

51. The issues are framed to answer the claim made by the parties on the basis of their pleadings. The issues are framed to give an understanding to the parties with respect to the dispute for which they are before the Court. Issue Nos.1 to 3 clearly indicates that the plaintiff is very well aware of the fact regarding the character/ nature of the property.

52. The plaintiff once due to lack of evidence failed to prove that the property is parental ancestral property of defendant No.1, is not entitled for any claim and entitlement under Section 6 that prescribes devolution of interest in co-parcenary property i.e., survivorship on the properties which are ancestral joint family properties of his/her immediate parental ancestral i.e., sons, grandsons, great grandsons. The plaintiff very specific in describing the properties as the self-acquired properties of the grandfather, cannot claim the properties as a joint family

properties and she being the co-parcener or a Member of Hindu Undivided Family, which entails her to seek partition. Issue Nos.1 to 3 clearly show that the parties are aware of their case and proof which they are required to place to substantiate their claim. In that view of the matter, the argument of learned Senior counsel on non-framing of issue on the character/ nature of the properties cannot be countenanced. Accordingly, the said contention is rejected.

53. So far as contention regarding adverse inference against the defendant for their failure to lead evidence i.e., both oral and documentary, we are unable to comprehend such an argument. It is well settled principles of Indian Evidence Act that, the party who approaches the Court should prove his case on his legs, and not on the weakness of the other side. The person who approaches the Court must and should discharge his initial burden on the claim which he wants the Court to decide in his/her favour. In the absence of such discharge of initial burden, there is no burden casted on the other side to prove their

contention. There are any number of Judgments of the Supreme Court as well as this Court and other High Courts across the Country that, even in the absence of any evidence both oral as well as documentary, a suit filed by the plaintiff can be dismissed on his/her failure to produce corroborative evidence of for lack of evidence to substantiate his/her claim to seek a relief from the hands of the Court.

54. In the case on hand, the plaintiff has miserably failed to adduce evidence, both orally as well as documentary to prove that the properties were the ancestral properties in the hands of her grandfather which further partitioned by him between his children i.e., defendant No.1 - father, PW.2 and their sister. The admissions given by PW.2 clearly indicate that the properties partitioned were the self-acquired properties of the grandfather. In such an eventuality, there cannot be any adverse opinion against the defendants for their failure to lead evidence, when the plaintiff, herself, has failed to discharge the initial burden casted upon her.

55. It is cardinal principle of the Indian Evidence Act that, the plaintiff must stand on his legs and prove his case on his ground. In that view of the matter, the contention of learned Senior counsel on adverse inference does not hold any water. Accordingly, the said contention is rejected.

56. We therefore, find no error in the impugned judgment and decree dated 13.04.2018 passed in OS No.703/2014 passed by the Trial Court. Accordingly, the appeal is ***dismissed***.

57. In view of the appeal having been dismissed, pending interlocutory applications, if any do not survive for consideration, hence stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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