

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT GULBARGA  
DATED THIS THE 6<sup>TH</sup> DAY OF DECEMBER 2010

PRESENT

THE HON'BLE MR. JUSTICE K.L. MANJUNATH

AND

THE HON'BLE MR. JUSTICE B.MANO HAR

RFA NO.1080/2008

C/W

RFA NO.5008/2008

IN RFA 1080/2008

BETWEEN

SRI SHARANABASAPPA  
S/O LATE SUBHASH YELAMELI  
AGED ABOUT 33 YEARS  
R/AT RAM MANDIR ROAD  
BIJAPUR-586101

...APPELLANT

(BY SRI GURURAJ RAO KAKKERI  
SRI AMRESH S ROJA, SRI O SHIVARAMA BHAT,  
SRI SANJAY A PATIL ADVS.)

AND

1. NAGENDRA  
S/O LATE SUBHASH YELAMELI  
AGED ABOUT 36 YEARS  
GOVERNMENT SERVANT  
GOVERNMENT GENERAL  
HOSPITAL, GADAG
2. JAGADISH

65

S/O LATE SUBHASH YELAMELI  
 AGED ABOUT 35 YEARS  
 OCC: SAHARA MOTORS  
 R/AT H.NO.10-658  
 BRAHMPUR, KUMBAR GALLI  
 GULBARGA-585101

3. SOMESHEKAR  
 S/O LATE SUBHASH YELAMELI  
 AGED ABOUT 35 YEARS  
 OCC: MEDICAL SHOP  
 R/AT H.NO.10/658  
 BRAHMPUR, KUMBAR GALLI  
 GULBARGA-585101
4. MALLIKARJUN  
 S/O LATE SUBHASH YELAMELI  
 AGED ABOUT 33 YEARS  
 OCC: ADVOCATE  
 R/AT H.NO. 10-658  
 BRAHMPUR, KUMBAR GALLI  
 GULBARGA
5. SMT NEELAMMA  
 W/O LATE SUBHASH YELAMELI  
 AGED ABOUT 59 YEARS  
 OCC: HOUSEHOLD  
 R/AT H.NO. 10-658  
 BRAHMPUR, KUMBAR GALLI  
 GULBARGA-585101
6. LALITHA  
 D/O LATE SUBHASH YELAMELI  
 AGED ABOUT 35 YEARS  
 (MENTALLY ~~RETIRE~~ <sup>2</sup>retarded)  
 UNDER THE GUARDIANSHIP OF  
 SMT. PARVATHI W/O SIDRAMAPPA GULGANI  
 RAM MANDIR ROAD, BIJAPUR-586101
7. SMT PARVATHI

RS

W/O SIDRAMAPPA GULAGANJI  
AGED ABOUT 61 YEARS  
R/AT RAM MANDIR ROAD  
BIJAPUR-586101

8. NARESH  
S/O NANDLAL RONNAWAL  
AGED ABOUT 29 YEARS  
OCC: HOUSEHOLD  
NEAR: OLD SIDDESHWARA TEMPLE  
BIDAR-585401
9. SHIVANANDA  
S/O LALSINGH RATHOD  
AGED ABOUT 32 YEARS  
OCC: BUSINESS  
R/O AMBA NIVAS  
P & T QUARTERS  
ASHARAM ROAD  
BIJAPUR-586101
10. YESHWANTH GOWDA  
S/O BASAVARAJ PATIL  
AGED ABOUT 29 YEARS  
OCC: BUSINESS  
R/AT YESHWANTH NILAYA  
GANACHARI LAYOUT  
CHALUKYANAGAR  
BIJAPUR-586101
11. KIRITI KUMAR  
S/O TIKMACHAND  
AGED ABOUT 24 YEARS  
OCC: BUSINESS  
R/AT KORI CHOWK STATION  
BACK ROAD  
BIJAPUR-586101
12. UDAY  
S/O SADASHIV NAVALGI  
AGED ABOUT 28 YEARS

✓

OCC: BUSINESS  
R/A SRINAGAR COLONY  
BEHIND: NCC OFFICE  
SHOLAPUR ROAD  
BIJAPUR-586101

13. MOH IRFAN S/O MOHD KHASIM  
AGED ABOUT 33 YEARS  
OCC: BUSINESS  
R/AT TAKKE ROAD  
NEAR: JOTNA SCHOOL  
BIJAPUR-586101
14. DR BASAVARAJ  
S/O SHIRSHALIAPPA SANKAL  
AGED ABOUT 63 YEARS  
OCC: MEDICAL PRACTITIONER  
R/O OPP: ITI COLLEGE  
SHOLAPUR ROAD  
BIJAPUR-586101
15. RAMESH  
S/O SANGAPPA SAYAGAV  
AGED ABOUT 39 YEARS  
OCC: BUSINESS  
R/O JADKAR BABLAD  
TALUK: JATH  
DIST: SANGALI  
MAHARASTRA STATE
16. MAHESH  
S/O SANGAPPA SAYAGAV  
AGED ABOUT 39 YEARS  
OCC: BUSINESS  
R/AT H.NO. 701, 7<sup>TH</sup> FLOOR  
ISHWAR APARTMENT  
NETHAJI CHOWK  
ULLASNAGAR-4  
MAHARASTRA STATE
17. AMITH



S/O ANNAPPA HUNNUR  
 AGED ABOUT 21 YEARS  
 OCC: BUSINESS  
 R/AT GACHINKATTI COLONY  
 BLDEA ROAD, BIJAPUR-586101

18. HANUMANTH  
 S/O HUSSAIN CHAUVAN  
 AGED ABOUT 35 YEARS  
 OCC: BUSINESS  
 R/AT SHAPUR, AGASI JAIL ROAD  
 BIJAPUR-586101

... RESPONDENTS

(BY SRI A VIJAYKUMAR, ADV. FOR SRI S M CHANDRASHEKAR  
 & SRI R.J.BHUSRE, ADV. FOR R1 TO R5, R6 TO R8 IS  
 DISPENSED WITH, R9, R10 AND R13 ARE SERVED, SRI Y H  
 JOSHI, ADV. FOR R9 AND R18)

RFA FILED U/S 96 ORDER XLI RULE 1 OF CPC AGAINST  
 THE JUDGEMENT AND DECREE DATED 25.07.2008 PASSED IN  
 OS.NO.204/2007 ON THE FILE OF THE PRL.CIVIL JUDGE  
 (SR.DN.) BIDAR, PARTLY DECREEEING THE SUIT PARTITION.

IN RFA 5008/2008

BETWEEN

1. NAGENDRA S/O SUBHASH YELAMELI  
 AGE 35 YEARS, OCC GOVT. SERVANT  
 R/O. GOVT GENERAL, HOSPITAL, GADAG.
2. JAGADISH, S/O. SUBHASH YELAMELI  
 AGE 34 YEARS, OCC SAHARA PROMOTOR  
 R/O. H.NO.10-658, BRAHAMPUR, KUMBAR  
 GALLI, GULBARGA.
3. SOMASHEKAR S/O. SUBHASH YELAMELI  
 AGE 34 YEARS, OCC MEDICAL SHOP  
 R/O H.NO.10-658, BRAHAMPUR

*R*

KUMBAR GALLI, GULBARGA.

4. MALLIKARJUN S/. SUBHASH YELAMELI  
AGE 32 YEARS, OCC ADVOCATE  
R/O H.NO.10-658, BRAHAMPUR  
KUMBAR GALLI, GULBARGA.
5. NEELAMMA W/O. SUBHASH YELAMELI  
AGE 58 YEARS, OCC HOUSEHOLD  
R/O H.NO.10-658, BRAHAMPUR  
KUMBAR GALLI, GULBARGA.

...APPELLANTS

(BY SRI A VIJAYKUMAR, ADV. FOR  
SRI S M CHANDRASHEKAR, ADV.)

AND

1. SHARANABASAPPA  
S/O SUBHASH YELAMELI  
AGE 32 YEARS  
OCC PRIVATE WORK  
R/O. RAM MANDIR ROAD  
BIJAPUR
2. LALITA D/O. SUBHASH YELAMELI  
AGE 34 YEARS, OCC NIL,  
(MENTALLY RETARDED)  
UNDER THE GUARDIANSHIP  
SMT. PARVATI W/O. SIDRAMAPPA GULAGANGI  
RAM MANDIR ROAD, BIJAPUR.
3. PARVATI W/O. SIDRAMAPPA GULAGANJI,  
AGE 60 YEARS, OCC HOUSEHOLD  
R/O. RAM MANDIR ROAD, BIJAPUR.
4. MAHESH S/O. NANDLAL ROONAWAL,  
AGE 28 YEARS, OCC BUSINESS  
NEWAR OLD SIDDESHWAR TEMPLE  
BIJAPUR.



5. SHIVANAND S/O. LALSINGH RATHOD  
AGE 31 YEARS, OCC BUSINESS  
R/O. AMBA NIVAS P&T QUARTERS  
ASHRAM ROAD, BIJAPUR.
6. YESHWANTH GOWDA  
S/O. BASAWARAJ PATIL  
AGE 28 YEARS, OCC BUSINESS  
R/O. YESHWANTH NILAYA  
GANACHARI LAYOUT  
CHALUKAYA NAGAR, & BIJAPUR.
7. KIRITI KUMAR S/O. TILKMACHAND JAIN,  
AGE 23 YEARS, OCC BUSINESS  
R/O. SRINAGAR, COLONY  
BEHIND NCC OFFICE  
SOLAPUR ROAD, BIJAPUR.-3.
8. UDAY S/O. SADASHIV NAVALGI  
AGE 27 YEARS, OCC BUSINESS  
R/O. SRINAGAR COLONY  
BEHIND NCC OFFICE  
SOLAPUR ROAD, BIJAPUR.
9. MOHD. IRFAN, S/O. MOHD. KHASIM,  
AGE 32 YEARS, OCC BUSINESS  
R/O. TAKKE ROAD, NEAR JOTNA SCHOOL  
BIJAPUR.
10. DR. BASAVARAJ S/O. SHIRSHAILAPPA SANKAL  
AGE 62 YEARS, OCC MEDICAL PRACTITIONER  
R/O. OPP: ITI COLLEGE, SOLAPUR ROAD  
BIJAPUR.
11. RAMESH S/O. SANGAPPA SAYAGAV  
AGE 46 YEARS, OCC BUSINESS  
R/O. JADKAR BABLAD  
TQ JATH, DIST SANGALI  
(MAHARASTRA STATE)



12. MAHESH S/O. SANGAPPA SAYAGAV  
AGE 38 YEARS, OCC BUSINESS  
R/O. H.NO.701, 7TH FLOOR  
ISHWAR APARTMENT, NETHAJI CHOWK  
ULAS NAGAR-4 (MAHARASTRA STATE)
13. AMTI S/O. ANNAPPA HUNNUR  
AGE 20 YEARS, CC BUSINESS  
R/O. GACHINKATTI COLONY  
BLDEA, ROAD, BIJAPUR.
14. HANMANATH S/O. HUSSAIN CHAUVAN  
AGE 34 YEARS, OCC BUSINESS  
R/O. SHAHAPUR, AGASI , JAIL ROAD  
BIJAPUR.

... RESPONDENTS

(BY SRI SANJAY A PATIL, ADV. FOR R-1,  
SRI Y H JOSHI, ADV. FOR R5 TO R14, R2 AND R4 SERVED  
SRI AMRESH S ROJA, ADV. FOR R1, R3 NOTICE DISPENSED  
WITH, SRI GURURAJ RAO KAKKERI AND SRI MOHAN KUMAR  
RANJOLKAR, ADV. FOR R1)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 READ  
WITH SECTION 96 OF CPC PRAYING TO SET ASIDE THE  
JUDGMENT AND DECREE PASSED IN O.S.NO.240/07 DATED  
25<sup>TH</sup> JULY 2008 ON THE FILE OF PRL. CIVIL JUDGE (SR.DN.)  
BIDAR AND DECREE THE SUIT IN O.S.NO.204/2007 AS PRAYED  
FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

These appeals coming on for final hearing this day,  
MANJUNATH J. delivered the following:-

### JUDGMENT

RFA No.1080/2008 is filed by the appellant who  
was defendant No.1 and RFA No.5008/2008 is preferred



by plaintiff Nos.1 to 5 both of them are challenging the legality and correctness of the judgment and decree dated 25.07.2008 passed by the Principal Civil Judge (Sr.Dn.), Bidar in O.S.No.204/2007.

2. The facts leading to the filing of these appeals are as under:

The plaintiffs filed a suit for partition and separate possession of their 1/5<sup>th</sup> share to each of the plaintiffs and to declare that the decree passed in O.S.No.385/2003 is not binding on the plaintiffs and further to declare that the sale deed in favour of defendant Nos. 4 and 5 in respect of suit schedule property by defendant No.1 is not binding on them. The suit filed by the plaintiffs came to be decreed in part by the Court holding that plaintiffs Nos.1 to 4 are entitled for partition <sup>of their</sup> ~~in respect~~ <sup>each</sup> of 1/7<sup>th</sup> share in suit item Nos.5

to 8 and their claim in respect of the suit item Nos. 1 to 4, has been rejected by the Court below.

3. Challenging the decree of partition granted to the plaintiff Nos.1 to 4 in respect of the suit item Nos.5 to 8 defendant No.1 has come up in appeal. Similarly the plaintiffs being aggrieved by in not granting the share in respect of item Nos. 1 to 4 have also preferred an appeal requesting the Court to grant share in the aforesaid properties. In the circumstances these two appeals are taken up together by the consent of the learned counsel for both parties.

4. It is the case of the plaintiffs that plaintiff Nos.1 to 4 are sons of one Subhash Yelameli and plaintiff No.5 is his wife and defendant Nos. 1 and 2 are children born to Subhash Yelameli through defendant No.3 who is not legally wedded wife of Subhash Yelameli and the remaining defendants are the purchasers of suit



schedule property. According to the plaint averments Subhash Yelameli was a resident of Manak Kallagi Village of Indi taluk, Bijapur district. He came to Gulbarga and started working in a cloth shop and that he was also doing business as Commission Agent and that in the year 1970 Subhash Yelameli married plaintiff No.5 and out of the said marriage plaintiff Nos.1 to 4 were born and after plaintiffs were born he shifted to Bijapur in the year 1975 and he had purchased property bearing No.10-658 at Brahmpur Kumbar Galli Gulbarga, where the plaintiffs started residing with Subhash Yelameli.

5. It is the further case of the plaintiffs that after shifting his business to Bijapur he developed illegal intimacy with defendant No.3 who is none other than the sister of plaintiff No.5 and that defendant No.3 had actually married one Sidramappa Gulaganji who



was the maternal uncle of defendant No.3 and plaintiff No.5. Out of the illicit relationship with defendant No.3 defendant Nos.1 and 2 were born to Subhash Yelameli and defendant No.2 is mentally challenged lady. Out of the business income of Bijapur item Nos.1 to 4 of the suit schedule properties were purchased. The father of the plaintiffs Nos.1 to 4 had relinquished his rights in the entire ancestral properties and thereafter he purchased suit item Nos.2, 3 and 5 and let out the same. Item No.2 CTS.No.994 to 999 of Ward No.III of Bijapur was very old and after demolishing the old building a huge shopping complex was got constructed in the year 1998 which consists around 128 shops including open space. Similarly he had purchased suit item No.1 in the name of defendant No.3 and also got demolished and new building was constructed consisting of a godown in the cellar portion, in the ground floor a mini video theatre with film studio and



second floor and third floor were constructed exclusively for residential use. Out of the income from the godown he purchased an agricultural land Sy.No.44/1 of Manakkalgi Village measuring 28 acres 1 guntas. Plaintiff Nos.2 to 4 assisted their father. However a dispute arose in the year 1994 between the Subhash Yelameli and his brothers in respect of the suit property CTS No.994-999, wherein shop complex is built by him. In connection with said dispute Subhash Yelameli's father died which resulted in registering a case in S.C.No.69/1985 before the Sessions Court at Bijapur. Plaintiffs father Subhash Yelameli was also involved in several cases of money laundering and cases were also registered against him for gambling. In the mean while, behind the back of the plaintiffs, defendant No.1 had filed a suit against Subhash Yelameli for partition and separate possession in O.S.No.385/2003 on the file of Principal Civil Judge (Sr.Dn.) Bijapur and the same has



been settled by filing compromise petition between the defendant Nos.1 and 3 and his father Subhash Yelameli without making plaintiffs as parties. According to the plaintiffs said a suit is a collusive and decree obtained by defendant No.1 is a collusive decree and the same does not bind the rights of the plaintiffs. In the circumstances the present suit was filed for partition and separate possession of 1/5<sup>th</sup> share of each of the plaintiffs and to declare that the decree obtained by the defendant No.1 in the aforesaid suit does not bind them and further transactions made by the defendant No.1 in favour of the defendant Nos.4 and 5 does not bind them.

6. The defendants contested the suit. According to the defendants, plaintiff No.5 Neelamma is not the legally wedded wife of Subhash Yelameli and plaintiff Nos.1 to 4 are not the legitimate children of Subhash



Yelameli and defendant Nos.1 and 2 alone are his legitimate children and that the suit filed by the plaintiffs is not maintainable. They denied the allegation's that defendant No.3 had married one Sidramappa Gulaganji. According to them that plaintiff No.5 had married one Chandrakanth Ammani Mugali and they further contend that the suit filed by the defendant No.1 in O.S.NO.385/2003 was maintainable and decree granted in favour of the defendant No.1 is binding and therefore it was contended that the suit filed by the plaintiffs is not maintainable and the Court fee paid is insufficient and that the plaintiffs cannot attack the sale deed executing by defendant No.1 either in favour of the defendant Nos.4 and 5 or other defendants who have purchased the property and the purchasers also contended as bonafide purchasers for valuable sale consideration. In the circumstances they requested the Court to dismiss the suit.



7. Based on the above pleadings the following issues were framed by the Court below.

1. Whether the plaintiffs prove their relationship with deceased Subhash Yelmeli and they are true legal heirs of him?

2. Whether the plaintiffs prove that the defendants No.1 and 2 were born to Subhash Yelameli out of his illegitimate relationship with defendant No.3?

3. Whether the defendant No.1 proves that defendant No.3 Smt.Parvati alone is the legally wedded wife of deceased Subhash Yelameli and plaintiff No.5 Smt.Neelamma was given in marriage with one Chandrakanth Ammani Mugali and plaintiff No.1 to 4 are no way concerned with the suit properties?

4. Whether the plaintiffs prove that all the items of suit properties are the self acquired properties of deceased Subhash Yelameli and



*they are entitled to succeed the properties as his legal heirs?*

5. *Whether the plaintiffs prove that the compromise decree passed in O.S.No.385/2003 on the file of Prl. Civil Judge (Sr.Dn.) Bijapur in a collusive decree, as such not binding on the plaintiffs?*

6. *Whether the plaintiffs prove the sale deeds executed in favour of the defendants No.4 to 9 are void and not binding on the plaintiffs?*

7. *Whether the defendant No.5 to 9 prove that they are the bonafide purchasers for value without notice, as such, the plaintiffs are not entitled to get any relief against them?*

8. *Whether the suit is properly valued and court fee paid is sufficient?*

9. *Whether the plaintiffs prove that they are entitled to get 1/6<sup>th</sup> share each in the suit schedule properties?*

*re*

10. Whether the plaintiffs prove that they are entitled to get the relief of partition as sought?

11. Whether the plaintiffs prove that they are entitled to the relief of declaration as sought?

12. What decree or order?

8. In order to prove the respective contentions, on behalf of the plaintiffs in all four witnesses were examined. PW-1 is plaintiff No.4. They relied upon the Exs.P-1 to P-134. On behalf of the defendants in all six witnesses were examined. Out of them DW-1 Sharanbasappa is defendant No.1, DW-3 Yashwant defendant No.6 and they relied upon Exs.D-1 to D-27. The Trial Court after appreciating the oral and documentary evidence held that issue Nos.1, 7 and 9 in the affirmative and issue Nos.2, 5, 6, 8 and 11 in the negative and issue Nos.3, 4 and 10 partly in the

*re*

affirmative. Ultimately the suit was decreed in part by holding that the plaintiff Nos.1 to 4 as illegitimate children of Subhash Yelameli and that they are entitled 1/7<sup>th</sup> share each in regard to suit item Nos.5 to 8 and their claim in respect of item Nos.1 to 4 was rejected on the ground that the suit item Nos.1 to 4 were given to defendant Nos.1 and 3 under the compromise decree passed in O.S.NO.385/2003. Being aggrieved by the aforesaid judgment both parties have preferred these two appeals.

9. We have heard the learned counsel for both parties.

10. Sri. Gururaj Rao Kakkeri the learned counsel appearing for appellant in RFA No.1080/2008 contends that the Trial Court has committed serious error in granting the decree in favour of the plaintiffs holding them <sup>as</sup> illegitimate children of deceased

Subhash Yelameli. According to him they are not the children born out of the illicit relationship by Subhash Yelameli and plaintiff No.5. When the plaintiffs have failed to prove their relationship with deceased Subhash Yelameli the question of treating them as illegitimate children and granting a decree does not arise at all. In the circumstances he contends that granting of share to the plaintiffs Nos.1 to 4 in respect of the suit item Nos.5 to 8 has to be set aside. Accordingly, he requests the Court to set aside the judgment and decree of the Court below and no other ground is urged by him.

11. Per contra, counsel for appellants in O.S.NO.5008/2008 contends that even though plaintiff Nos.1 to 4 are the legitimate children of Subhash Yelameli and plaintiff No.5, the trial Court as wrongly held the defendant No.3 as the legally wedded wife of Subhash Yelameli and further erred in not treating the

12

plaintiff No.5 as not a legally wedded wife and that Subhash Yelameli had only illicit relationship with plaintiff No.5. He further contends that even if it is accepted for the sake of arguments that the plaintiff No.5 had illicit relationship, the Trial Court has committed a serious error in not granting a decree in respect of item No.1 to 4. In view of clear admission of the defendant Nos.1 and 3 in their pleadings in O.S.NO.385/2003 that suit item No.1 to 4 were purchased by Subhash Yelameli out of his income in their name and treating the suit item Nos. 1 to 4 as ancestral properties. Defendant No.1 has pleaded in the plaint that suit item Nos.1 to 4 are the properties of Subhash Yelameli. Defendant No.3 admits that residential house in suit item No.1 was purchased in the name of Subhash Yelameli out of the joint family income would prove that even if they are held as illegitimate children, the properties given in



O.S.No.385/2003 in favour of defendant Nos. 1 and 3 is bad in law, since the same has been obtained behind the back of the plaintiffs and the said decree is collusive and the same does not bind the share of the plaintiffs. He further contends that the Trial Court without assigning any reason for rejecting the share of the plaintiff Nos.1 to 4 in suit item Nos.1 to 4 has declined to grant a decree, therefore he requests the Court to set aside the findings of the Trial Court on issue No.9. He further contends that defendant Nos.4 and 5 the purchasers from defendant Nos.1 and 3 cannot be treated as bonafide purchasers for valuable consideration without the knowledge of the rights of the plaintiffs. In the circumstances he requests the Court to allow RFA No.5008/2008 and dismiss RFA No.1080/2008.

RS

12. Having heard learned counsel for the parties. We have to consider the following points in these appeals.

*“1. Whether the Court below is justified in granting a decree to plaintiff Nos.1 to 4 holding each of them are entitled to 1/5<sup>th</sup> share in respect of the suit item Nos.5 to 8?*

*2. Similarly whether the Trial Court is justified in not granting a decree in respect of the suit item Nos.1 to 4 to the plaintiff Nos.1 to 4?”*

13. After hearing the learned counsel for the parties and on perusal of pleadings and evidence and the documents, the following points are not dispute to the following extent. Defendant Nos.3 and 5 are direct sisters. Each of them are claiming as legally wedded wives of Subhash Yelameli and both of them admit that plaintiff Nos.1 to 4 and defendant Nos.1 and 2 are born to Subhash Yelameli. The plaintiff No.5 contends that

15

she is the legally wedded wife of Subhash Yelameli and plaintiff Nos.1 to 4 as the legitimate children of Subhash Yelameli. Defendant No.3 contends that she is the legally wedded wife of Subhash Yelameli and defendant Nos.1 and 2 as legitimate children of Subhash Yelameli. In other words plaintiff No.5 contends that defendant Nos.1 and 2 as illegitimate children of Subhash Yelameli and similarly defendant No.1 contends that plaintiff Nos.1 to 4 are the illegitimate children of Subhash Yelameli. The Trial Court after examining the documents produced by the parties came to the conclusion that defendant No.3 is the elder sister of plaintiff No.5 Ex.D-24 is marriage invitation card of Subhash Yelameli having married Parvathibai on 18.02.1960. The marriage invitation card of plaintiff No.5 has not been produced. The marriage invitation Ex.D-24 is 50 years old. Relying upon the said document the Court below has come to the conclusion




that defendant No.3 is legally wedded wife of Subhash Yelameli and that plaintiff No.5 has not produced any document to show that when her marriage took place and she has not stepped into the witness box. When there is a definite finding of the Court below based on Ex.D-24 and in the absence of plaintiff Nos.5 and 3 not stepping into the witness box, we are of the opinion that the Trial Court is justified in holding defendant No.3 as legally wedded wife of Subhash Yelameli and that plaintiffs are the illegitimate children. Plaintiff Nos.1 to 4 are illegitimate children the share allotted to them cannot be disputed by defendant No.1 who is appellant in RFA No.5008/2008 for the following reasons. In order to prove that plaintiffs are also born to the deceased Subhash Yelameli, voluminous documents are produced by the plaintiffs. Mainly Exs.P-36 to P-41 original ID cards, Ex.P-42 original ration card of Subhash Yelameli. Showing the name of plaintiff Nos.1



to 5. Ex.P-43 original SSLC marks card of Nagendra plaintiff No.1, Ex.P-44 is original SSLC marks card of Jagadish plaintiff No.2. Ex.P-45 is original SSLC marks card of Somshekar plaintiff No.3 and Ex.P-46 original SSLC marks card of Mallikarjun plaintiff No.4, wherein the name of father of the plaintiffs is shown as Subhash Yelameli. Exs.P-36 to P-46 are public documents issued while discharging their duties and genuinity of these documents cannot be doubted by any Court, since these documents are not challenged by the defendant Nos.1 to 3. In addition to that Ex.P-47 is the affidavit of Subhash Yelameli filed before Municipal Authorities for changing of Khatha. Plaintiffs have also relied upon several other documents to show that they are the children of Subhash Yelameli namely Exs.P-83 to P-91 and they have also produced the birth certificate of plaintiffs. The evidence of defendant No.3 deposed in O.S.No.233/2005 is marked as Ex.P-126. This is and



important piece of document, when Subhash Yelameli's father was murdered a case was registered in S.C.No.233/2005 against the plaintiffs and in the said proceedings defendant No.3 has been examined as an eyewitness on behalf of the prosecution, wherein she has admitted that plaintiff No.5 is her sister and plaintiff Nos.1 to 4 born to her through her husband Subhash Yelameli. This document is not challenged by the defendant No.1, when the plaintiffs have produced Ex.P-1 to P-134 to show their relationship with Subhash Yelameli and when these documents are not challenged by defendant No.1, we cannot interfere with the findings of the Court below in holding that plaintiff Nos.1 to 4 as illegitimate children of Subhash Yelameli. Accordingly we answer point No.1 holding that plaintiff Nos.1 to 4 as illegitimate children of Subhash Yelameli and that they are entitled 1/7<sup>th</sup> share each as determined by the Court below. The next question



would be whether the Trial Court is justified in rejecting the claim of the plaintiff Nos.1 to 4 in regard to the suit item Nos.1 to 4.

14. Issue No.9 has been framed by the Court below in regard to the determination of share of the plaintiffs. In the plaint they claim 1/6<sup>th</sup> share each in all the suit schedule properties. The Trial Court in paragraphs Nos. 54 and 55 has held that in view of the compromise decree passed in O.S.No.385/2003 on the file of Civil Judge (Sr.Dn.) Bijapur dated 26.06.2006 plaintiffs are not entitled to claim share in item Nos. 1 to 4. Unfortunately the Trial Court has not given any reasons why and how the judgment and decree passed in O.S.No.385/2003 is binding on the plaintiffs in order to deny their share where<sup>R</sup> the Court has held the plaintiffs as illegitimate children of Subhash Yelameli. O.S.No.385/2003 is filed by defendant No.1 against his

<sup>R</sup>

father, mother and defendant No.2. Copy of the plaint is marked as Ex.P-50, in the said suit the plaintiffs are not made as parties. Admittedly it is contended by defendant No.1 and defendant No.3 that these plaintiffs are illegitimate children of Subhash Yelameli and that the plaintiff are also necessary parties to the suit filed by the defendant No.1. The reasons for not making them as parties is not explained either in O.S.No.385/2003 or in the written statement filed by defendant No.1 in the present suit. In paragraph-3 of the plaint in O.S.No.385/2003 defendant No.1 has admitted that suit item Nos.1 to 4 in the present suit were acquired out of the income from the ancestral property of Subhash Yelameli and they were purchased in the name of defendant Nos. 1 and 3 and that the defendant No.1 had filed the suit for partition and separate possession his share and the suit is ended in compromise. Ex.P-51 is the compromise petition. Even



defendant No.2 admits the plaint averments in O.S.No.385/2003. From the looking into the plaint in O.S.No.233/2005 and compromise petition filed therein, defendant Nos.1 and 3 admit that suit item Nos.1 to 4 in the present suit were purchased in the name of defendant Nos.1 and 3 and they were purchased by Subhash Yelameli out of the joint family properties. When they admit the suit item Nos.1 to 4 as the joint family properties of Subhash Yelameli and his children, plaintiff Nos.1 to 4 being his illegitimate children are also entitled to their share. But the Trial Court without any discussion and assigning any reasons held that plaintiff Nos.1 to 4 are not entitled to claim any share in suit item Nos.1 to 4. Similarly the defendant Nos.4 and 5 or other defendants who are claiming to be the purchasers from defendant No.1 have not lead any evidence to show that how they can claim as bonafide purchasers for valuable consideration. In the



circumstances we are of the view that the Trial Court committed a serious error in holding that plaintiff Nos. 1 to 4 are not entitled to claim share in suit item Nos. 1 to 4. Accordingly we hold that plaintiffs are also entitled to claim  $1/7^{\text{th}}$  share each in suit item Nos. 1 to 4. Though the suit filed for partition and separate possession, plaintiff No. 5 and defendant No. 3 who are sisters have not stepped into the witness box and defendant No. 3 has not filed any written statement which only shows that dispute is only between the children of Subhash Yelameli and not between his spouses.

15. In the result the judgment and decree passed by the Principal Civil Judge (Sr.Dn.) Bidar in O.S.No.204/2007 dated 25.07.2008 is modified. The appeal filed by defendant No. 1 in RFA No.1080/2008 is dismissed. The appeal filed by plaintiffs in RFA



No.5008/2008 is allowed and judgment and decree of the Trial Court is modified by holding that plaintiff Nos.1 to 4 are entitled to  $1/7^{\text{th}}$  share each in all the plaint schedule properties including suit item Nos.1 to 4. While drawing up of final decree the claim of the purchasers may be considered by the Court by applying the principles of equity of the share of defendant No.1. Considering the relationship between the parties, we direct the parties to bear their costs.

Registry is directed to draw the modified decree in the aforesaid terms.

Sd/-  
JUDGE

Sd/-  
JUDGE

Srt