

Karnataka High Court S P Subba Rao vs M Lakshmana Rao on 19 February,  
2013 Author: Subhash B.Adi 1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF FEBRUARY 2013

BEFORE

THE HON'BLE MR. JUSTICE SUBHASH B ADI

REGULAR FIRST APPEAL NO.683/2003

C/W

REGULAR FIRST APPEAL CROSS OBJECTION NO.3/2004

IN R.F.A.NO.683/2003

BETWEEN :

1 S P SUBBA RAO MAJOR

SINCE DEAD BY HIS LRS

1(a) S.NARAYANA RAO  
AGED ABOUT 58 YEARS

1(b) S.RAMAKRISHNA RAO  
AGED ABOUT 54 YEARS

1(c) S.RAJA RAO  
AGED ABOUT 52 YEARS

1(d) S. PRAKASH RAO  
AGED ABOUT 50 YEARS

ALL ARE SONS OF LATE SUBBA RAO  
ALL ARE R/AT VIDYANAGARA  
KRISHNA BADVANE  
SIRA TOWN, SIRA TALUK  
TUMKUR DISTRICT - 572 137

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2 S P SIDDRAMMA RAO

3 S P SHIVAJI RAO

4 S P RAMA RAO

5 S P DEVA RAO

ALL ARE MAJORS AND S/O LATE S.B.PANDURANGA RAO  
NO.1,3 AND 4 ARE RESIDENTS OF SIRA TOWN  
NO.2 IS RESIDING IN BANGALORE  
NO.5 IS RESIDING AT  
CHIKKANAHALLI, SIRA TOWN . . . APPELLANTS

(BY SRI. S R KRISHNA KUMAR, ADV., A/W SRI. UDAYA HOLLA, SR.  
COUNSEL )

AND :

1 M LAKSHMANA RAO  
2 M SIDDOJI RAO  
3 M DEVA RAO  
4 M RAMESH BABU  
5 M HARINATHA RAO  
6 M SRIDHAR  
7 M DEEPAK

ALL ARE MAJORS AND S/O LATE MALLAIAH RAO ALL ARE R/AT  
BALAJI NAGAR, SIRA TOWN . . . RESPONDENTS

(BY SRI. M K BHASKARAIHAH, ADV., A/W SRI. YOGANARASIMHA, SR.  
COUNSEL FOR C/R-1 TO R-7 ) 3

IN R.F.A.CR.OB.NO.3/2004

BETWEEN :

AND :

1 M LAKSHMANA RAO  
2 M SIDDOJI RAO  
3 M DEVA RAO  
4 M RAMESH BABU  
5 M HARINATHA RAO  
6 M SRIDHAR  
7 M DEEPAK

ALL ARE MAJORS AND S/O LATE MALLAIAH RAO ALL ARE R/AT  
BALAJI NAGAR, SIRA TOWN , TUMKUR DISTRICT. . . CROSS OBJECTORS

(BY SRI. VARDHAMAN V GUNJAL, ADV., A/W SRI. YOGANARASIMHA,  
SR. COUNSEL )

AND :

1 S P SUBBA RAO

2 S P SIDDRAMA RAO

3 S P SHIVAJI RAO

4 S P RAMA RAO

5 S P DEVA RAO

ALL ARE MAJORS AND S/O LATE S.B.PANDURANGA RAO  
NO.1,3 AND 4 ARE RESIDENTS OF SIRA TOWN

4

NO.2 IS RESIDING CHIKKANAHALLI,  
SIRA TALUK, TUMKUR DISTRICT.

...RESPONDENTS

(BY SRI. S R KRISHNA KUMAR, ADV., A/W SRI. UDAYA HOLLA, SR.  
COUNSEL FOR R-1 TO R-5 )

RFA NO.683/2003 IS FILED UNDER SECTION 96 OF CPC AGAINST

THE JUDGMENT AND DECREE DATED 27.3.2003 PASSED IN  
O.S.NO.75/95 ON THE FILE OF THE CIVIL JUDGE (SR.DN.), MAD-  
HUGIRI, PARTLY DECREEEING THE SUIT FOR PARTITION AND  
SEPARATE POSSESSION.

R.F.A.CR.OB.3/2004 IS FILED UNDER ORDER 41 OF RULE 22 OF

CPC AGAINST THE JUDGMENT AND DECREE DATED 27.3.2003  
PASSED IN O.S.NO.75/1995 ON THE FILE OF THE CIVIL JUDGE  
(SR.DN.) MADHUGIRI, PARTLY DECREEEING THE SUIT FOR PAR-  
TITION AND SEPARATE POSSESSION & THE CROSS-OBJECTORS  
HEREIN PRAYS TO SET ASIDE THE FINDINGS WITH RESPECT TO  
THE ITEM NOS. 3,4 & 5 OF THE PLAINT SCHEDULE.

THESE APPEAL AND CROSS OBJECTION COMING ON FOR

HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

R.F.A.No.683/2003 is by the defendant Nos.1 to 5 whereas, R.F.A.Cr.Ob.No.3/2004 is by the plaintiff Nos.1 to 7 against the judgment and decree in O.S.No.75/1995 dated 27th March 2003 on the file of Civil Judge (Sr.Dn.), Madhugiri. 2. Parties would be referred to as per their ranking in the trial court. 3. Suit is one for declaration, declaring that the plaintiffs together are entitled for one half share in every item of the suit schedule properties and partition of this one half share by metes and bounds and for separate possession of the same. Further for enquiry as to the mesne profits. 4. The facts, which are not in dispute are that, the father of the plaintiffs viz., Mallaiah Rao and father of the defendants S.B.Panduranga Rao were the sons of one Buddojappa. Plaintiffs' claim is that, the father of the plaintiffs and father of the defendants were never divided in status and had remained joint till their death. They constituted undivided Hindu Joint Family owning schedule properties item Nos.1 & 2. The said properties were acquired out of joint earning even though the properties stand in the name of father of the defendants, however, same was purchased, as he was an eldest son and was a Kartha of the family. 5. After the death of Panduranga Rao, defendants tried to exclude the plaintiffs from the possession of the suit schedule property and were trying to appropriate the same for themselves claiming that, all the suit schedule properties are their own properties. During the pendency of the suit, the plaint was amended by insertion of para-5(a) to show that, some of the properties were acquired by the defendants. They were also acquired out of the joint family income. Hence, the plaintiffs claimed that they are entitled for half share in suit schedule properties. On the basis of these allegations and amongst the others, the plaintiffs sought for partition and separate possession of the suit schedule property. 6. Suit was contested by the defendants by filing a written statement inter alia alleging that, the family was divided 70 years before the suit, family did not possess joint family properties nor it had any joint earning, the suit schedule properties are acquired out of the self-earning of the father of defendant Nos.1 to 5 and thereafter by defendant Nos.1 to 5. Suit item Nos.1 and 2 were acquired by their father, item No.3 by the first defendant, item Nos.4 and 5 by the defendant No.3, plaintiffs were never in possession nor they have any interest in the suit property. Father of the defendants had independent income and out of the same, he acquired the suit item No.1 property in 1950-51, which was a Government grant on upset price, further, he acquired another property under registered sale deed in his name on 13.6.1934. Suit item No.1 is a land granted by the Government. Suit item No.2 was purchased by the father of defendant Nos.1 to 5. After the death of their father, defendants have succeeded to the suit item Nos.1 and 2. Amongst the defendants, a suit came to be filed in O.S.No.7/1986 for partition and separate possession of their properties and it was ended in partition of the properties. It is alleged that, there has been no joint family at any time between plaintiffs and defendants nor the suit properties are the joint family properties or earned out of joint family income. Further alleged that, the plaintiffs have no right to claim partition and separate possession of the suit schedule property belonging to the defendants. 7. The trial court on the basis of these pleadings framed the following issues: 1. Whether the plaintiffs prove

that the suit schedule properties are the joint family properties of themselves and defendants? 2. Whether plaintiffs 1 and 3 prove that they have acquired item No.3 and 4 and 5 respectively independently? 3. Whether the suit is not properly valued? 4. Whether the defendants prove that the properties detailed in para-10 of the written statement, which are in the name of 1st plaintiff are also liable for partition? 5. To what decree or order? Additional Issue: 1. Whether the plaintiffs prove that the compromise decree in O.S.No.7/1986 is a collusive decree and it will not bind the rights of the plaintiffs? Before the trial court, plaintiff No.3 was examined as PW-1 and two witnesses were examined as PWs-2 and 3 whereas, on the defendants' side, third defendant was examined as DW-1 and three witnesses were examined as DWs-2 to 4. Plaintiffs got marked Exs.P1 to P33 whereas, defendants got marked Exs.D1 to D16. 8. The trial court on appreciation of the evidence has held that, the plaintiffs prove that suit item Nos.1 and 2 are the joint family properties of themselves and the defendants. However, negated the claim of the plaintiffs in respect of item Nos.3, 4 and 5 and held that the defendants have proved that they are self-acquired properties. It was further held that, the judgment and decree in O.S.No.7/1986 does not bind the plaintiffs. 9. As against granting of decree in respect of suit item Nos.1 and 2, the defendants are in R.F.A.No.683/2003. As against the rejection of the claim of the plaintiffs in respect of suit item Nos.3, 4 and 5, plaintiffs are in R.F.A.Cr.Ob.No.3/2004. 10. Heard Sri.Udaya Holla, learned Senior Counsel for the defendants and Sri.Yoganarasimha, learned Senior Counsel for the plaintiffs. 11. Sri.Udaya Holla, submitted that, the suit item No.1 admittedly is a 'Darkhast' land. It was granted on an upset price by the Government in favour of Panduranga Rao. It is a separate property of Panduranga Rao, the said property does not become joint family property. Suit item No.2 admittedly has been purchased by the father of the defendants under a registered sale deed dated 13.6.1934. Though the plaintiffs claim that, the suit schedule property is their joint family properties acquired out of the joint family income, however, PW-1 in his cross-examination has admitted that, the father of the plaintiffs and father of the defendants had no ancestral properties. He has further admitted that, there was no joint family income. Case of the plaintiffs was that, their father and the defendants' father were doing joint business, however, none of the documents produced by the plaintiffs prove that there was any joint business, or they had any joint income, defendants have specifically pleaded in the written statement that, there was no joint family nor any income. He relied on the documents produced by the plaintiffs viz., Exs.P1, P2, P3, P4, all relate to O.S.No.340/1966 and Ex.P5, which is the plaint copy in the said suit, these documents only suggest that, both Panduranga Rao and Mallaiah Rao had borrowed a sum of Rs.1,600/- on 14.10.1965 by agreeing to pay interest @ Re.1 per month. Nowhere in the plaint it is stated that, the plaintiffs' father and defendants' father were doing joint business. This document neither proves that Panduranga Rao and Mallaiah Rao had any joint income nor it proves that, they were having a joint business. He also relied on Ex.P7, which is another suit in O.S.No.268/1966. This suit is not filed against both brothers, but is filed only against Panduranga

Rao in his individual capacity and the said suit was for recovery of a sum of Rs.1,969/- and the plaint copy Ex.P7 discloses that the deceased Panduranga Rao had a transaction with the plaintiffs therein and he was due to them. This document shows that, Panduranga Rao was independently doing business. He also relied on Ex.P10 - sale deed dated 29.8.1966 executed by Panduranga Rao. Though the said sale deed refers to the liability of himself and Mallaiah Rao and for the purpose of discharge of the said liability, he had executed the sale deed, nevertheless, it will not prove that, the said property was a joint family property. He submitted that, it is but natural one brother may sell his property for discharge of the liability of himself and his brother, merely because Panduranga Rao sold his property for discharge of liability including his brother, it does not become joint family property. The property sold under Ex.P10 was a property acquired by Panduranga Rao alone. He also relied on Ex.P11 and submitted that, in Ex.P11, portion of schedule item No.1 was sold by both Panduranga Rao and Mallaiah Rao wherein it is mentioned that, the khatha is in their names. A family member joining the sale deed of the property belonging to another member of the family, even the member of joint family, same will not make the property as a joint family property. Suit Schedule item No.1 is a granted land in favour of Panduranga Rao, it was a separate property. The sale deed Ex.P11 will not make it joint family property. Ex.P12 shows that, business was in his individual capacity. He relied on Exs.P14 and P15 and submitted that, Ex.P14 is a notice as regard to the liability of Panduranga Rao and Mallaiah Rao, but that is also does not refer to any liability in connection with joint business. In Exhibit P15, the business establishment is mentioned as M/s Panduranga Rao and Brothers, but is shown as proprietorship and not a firm nor Mallaiah Rao was partner. Learned Senior Counsel referring to the documents produced by the plaintiffs themselves submitted that the said documents do not prove that there was any joint business or joint family income or prove that, the family was joint family. He submitted that, Exs.P24, P25 and P26 - the record of rights of suit item No.1 property show the name of Panduranga Rao alone apart from the order of grant in favour of the Panduranga Rao. 12. Even in case some of the properties were standing in the name of the member of the joint family, such properties will not become joint family property unless it is proved that, the joint family had an income nucleus to acquire such properties, in this case, it is not proved the existence of joint family and when it is admitted that, there was no ancestral property nor joint family income. Merely because the brother of Panduranga Rao joined the sale deed with Panduranga Rao, such separate property will not become joint family property. Plaintiffs have neither proved the existence of joint family or joint business or joint income of Panduranga Rao and Mallaiah Rao. 13. The evidence on record show that, Panduranga Rao individually was doing the business and he had the income, and had acquired suit item Nos.1 & 2. To support his argument, he further relied on Ex.D1, the Grant Certificate (Darkast) granting suit item No.1. Any grant made even in favour of a member of joint family, it becomes his separate property unless it is shown that the grant was intended on behalf of the joint family. Even if the

grantee is a Kartha of the joint family, such grant in favour of the Kartha will not become joint family property, it will be his separate property unless it is shown that the grant was intended in favour of joint family. Ex.D1 is a separate property of Panduranga Rao and the same property was acquired in a public auction by paying upset price. Ex.D2 is a sale deed of suit item No.2. The sale deed stands in the name of Panduranga Rao. He has been described as doing cloth business. To prove that in 1934 there was a joint family income and out of the contribution or the nucleus, suit item No.2 property was acquired in the name of Panduranga Rao, the plaintiffs have not placed any evidence. 14. It is not in dispute that, suit schedule item Nos.3, 4 and 5 were acquired by the defendants much after the suit is filed. Any acquisition of the property after the suit is filed, it cannot become a property of the joint family. To show that, Panduranga Rao had independent income, he referred to Ex.D5, a demand notice issued to Panduranga Rao for payment of instalment towards the loan amount. Similarly, Ex.D6 - notice for recovery, Ex.D7 - khata in the name of Panduranga Rao, Ex.D8 - confirmation of the same. Ex.D9 shows that, Panduranga Rao as a Khatedaar. Ex.D11 shows the borrowing by Panduranga Rao. Ex.D10 also shows the name of Panduranga Rao as Pattedaar. Referring to these documents, he submitted that, even at an undisputed point of time, Panduranga Rao had dealt with the suit item Nos.1 and 2 properties not only as an absolute owner but even his business and loan transaction were all in his individual capacity. Relying on these documentary evidence and the admission of PW-1 that there was no joint family property and joint family income, he submitted that, when there is no joint family income, acquisition of property by a member of the family would not become the joint family property. When plaintiffs have failed to show any nucleus, or any joint income, the properties admittedly acquired by Panduranga Rao, such properties will not become joint family properties. 15. In support of his case, he relied on a judgment reported in AIR 2003 SC 3800 in the matter of D.S.Lakshmaiah and another - vs- L.Balasubramanyam and another and submitted that, there is no legal presumption of a property being joint family property only on account of existence of joint Hindu Family. The one who asserts that it is a joint family property must prove that there was a nucleus with which the property was acquired. In case there is joint family nucleus, the burden shifts on the one who claims that the property is a self- acquired property to prove that it is a self-acquired property of his own. He further relied on another judgment of this Court reported in 1960 Mys.L.J. 1056 in the matter of G.B.Mallikarjuniah -vs- J.S.Kanniah Setty & Others and submitted that, a business commenced or carried on by a member of a joint Hindu family is a joint family business and such a presumption would be unavailable even if that member was the Manager of that joint family. A member of a joint family also can have a separate acquisition of property for his own unless it is shown that the business grew on the basis of joint family property and the same is blended with the joint family income. He further relied on another decision reported in AIR 1962 MYSORE 38 in the matter of Sidramappa Veerabhadrapa and another -vs- Babajappa Balappa and others and submitted that, in identical case where the claim was

made that the business was a joint family business, this Court held that the evidence is insufficient to prove that, it was a joint business or treating the said business as joint family business. Even individual would like to maintain their individual identity and individual business, such business of the member of the family will not become a joint family business. In the decision of the Apex Court reported in AIR 1968 SC 1276 in the matter of G.Narayana Raju (dead) by his legal representative -vs- G.Chamaraju and others it is held that, the self-acquired property of a member of the joint family can become coparcenery, if the coparcener voluntarily thrown the property in the joint stock of the joint family property. In this case, there is no such claim nor any joint family or joint family property. 16. Nextly, he relied on the judgment of this Court reported in AIR 1995 KAR 35 in the matter of The Vijaya College Trust vs- The Kumta Co-operative Arecanut Sales Society Limited and another to show that, if the son joins the father in executing the sale deed, it does not become the property of the son merely because he had joined the sale deed. This judgment he relied to show that, the portion of self- acquired property of Panduranga Rao was sold jointly by Panduranga Rao and Mallaiah Rao. Merely because Mallaiah Rao joined Panduranga Rao, it will not become joint family property. 17. On these submissions, learned Senior Counsel submits that, the judgment and decree of the trial court treating suit property item Nos.1 and 2 as a joint family property and partitioning the same, is perverse, as neither there is any evidence nor any law to support such finding. 18. As far as suit property item Nos.3, 4 and 5 are concerned, he submitted that, they were all acquired subsequent to the suit and such acquisition of the properties subsequent to the suit cannot be treated as a joint family property. 19. On the other hand, Sri.Yoganarasimha, learned Senior Counsel submitted that, facts, which are not in dispute are that, Mallaiah Rao and Panduranga Rao were brothers. Both were living in Sira. Panduranga Rao was elder to Mallaiah Rao. To show that they were living together in status and were doing business, apart from the pleadings in the plaint, it is necessary to see as to how both of them conducted themselves at an undisputed point of time. He submitted that, both were having joint business and were having joint earning, such status continued till the death of Panduranga Rao. He submitted that, though PW-1 has stated that, there was no joint family property, if Panduranga Rao and Mallaiah Rao together had a joint business and the properties are acquired out of the income from the joint business, it would become the joint property of Mallaiah Rao and Panduranga Rao. To support his contention, he relied on Exs.P1 to P5 and submitted that, Ex.P5 is a plaint copy in O.S.No.340/1966. The suit is filed by a third party against Panduranga Rao and Mallaiah Rao. In the said suit, plaintiff has alleged that, defendants viz., Panduranga Rao and Mallaiah Rao had borrowed an amount of Rs.1,600/- by agreeing to pay interest @ Re.1/- per month. If Panduranga Rao and Mallaiah Rao had no joint business and they were doing separate business and earning separately, there could not have been occasion to jointly borrow the money and suit could have been filed against both. These documents would prove that both Panduranga Rao and Mallaiah Rao were jointly doing business, and for the purpose of business, they had incurred



liability and a suit came to be filed against both. He further submitted that, Ex.P5 coupled with Ex.P10, the sale deed dated 29.8.1966 proves beyond doubt that, both brothers were living jointly, earning jointly, enjoying the properties jointly and they had joint income. Panduranga Rao sold the property standing in his name for discharging the joint liability of both for which suit was filed against them in O.S.No.340/1966 as per Ex.P5, further, for discharging the loan outstanding in respect of Sira Industrial Society for which there was a suit in O.S.No.268/1966. These documents prove the existence of the joint family of Panduranga Rao and Mallaiah Rao. Dealings of these two brothers at an undisputed point of time further establishes that, they had dealt with property as joint family property. 20. In respect of suit item No.1 property, though it was granted in the name of Panduranga Rao, the sale deed - Ex.P11, it is mentioned that, the said land was in joint possession and joint khatha of both brothers and portion of which was sold together by both the brothers. Hence, it cannot be said that, when both the brothers at an undisputed point of time, they dealt with these properties as a joint family property or jointly acquired properties, they cannot become separate properties of Panduranga Rao. He further relied on Ex.P14 wherein notice is issued for discharge of loan jointly against Panduranga Rao and Mallaiah Rao. Though Ex.P15, a notice is addressed to M/s.Bhavani Cloth Stores, Proprietors, but it is shown as M/s. Panduranga Rao and Brothers and it is also shown as Cloth Merchants. When at an undisputed point of time, business establishment was treated as a business of the brothers, any income that is derived and the properties are acquired from the income of the joint business, a presumption arises that these properties are acquired out of the income from the said business. Thus, the trial court, when it has appreciated that suit item Nos.1 and 2 are joint family properties, in the absence of any other evidence to prove that there was a separate income of defendants, the acquisition of property by the defendants thereafter would also become a joint family property or acquisition out of the joint family income. 21. In support of his contentions, he relied on the judgment of the Apex Court reported in AIR 1966 SC 411 in the matter of Achuthan Nair -vs- Chinnammu Amma and others and submitted that, when a property stands in the name of a member of the joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. 22. He also relied on another judgment of the Apex Court reported in AIR 1972 SC 2531 in the matter of Baikuntha Nath Paramanik (dead) by his L.Rs. and heirs -vs- Sashi Bhusan Paramanik (dead) by his L.Rs. and others and submitted that, if the joint family is found to be in possession of nucleus sufficient to make the acquisition, in such case, presumption arises that acquisition standing in the name of the member of the family is an acquisition by the joint family. He submitted that, when both brothers were having a joint business, presumption arises that the income was

the only income from the said business for acquisition of the property, as it is not the case of the defendants that there was any other property. All earnings were made jointly and if the property are acquired from out of the joint family income or joint income, acquisition even in the name of individual would be an acquisition by the joint family. He submitted that, the trial court was not justified in rejecting the suit in respect of suit property item Nos.3, 4 and 5. 23. In the light of the above contentions, the point that arises for consideration in this appeal and cross-objection is: "Whether suit item Nos.1 and 2 were acquired by Panduranga Rao out of the income from the joint family business and consequently, the defendants acquired suit item Nos.3, 4 and 5 out of the income of the joint business or joint family income?" 24. Facts, which are not in dispute are that, father of plaintiffs and defendants were the brothers. They were in the same town. It is also not in dispute that, suit item Nos.1 and 2 were acquired during the life time of Panduranga Rao. Suit item Nos.3, 4 and 5 were acquired subsequent to the filing of the suit. 25. Suit item No.1 is a Darkhast land granted in favour of Panduranga Rao as per Ex.D1. It is not in dispute that, grant is made in favour of Panduranga Rao on upset price. Under Article 228 of the Hindu Law, grant of property by Government to a member of the joint family is a separate property of the grantee unless it appears from the grant that it is intended for the benefit of the family. Ex.D1 does not refer that the grant was intended in favour of the joint family, but it specifically states that, the land was granted in favour of S.B.Panduranga Rao, son of Buddojappa. He had acquired this property in a public auction on payment of upset price. By virtue of this grant, presumption arises in favour of Panduranga Rao that it was his separate property. To rebut the same, plaintiffs were required to prove that it was intended for the benefit or on behalf of the family. Though law requires that grant itself must show that, it was intended for the joint family, even otherwise to hold that, Panduranga Rao paid the upset price out of joint income, the plaintiffs were required to show that there was a joint income in 1950-51. 26. Plaintiff No.3 has been examined as PW-1. In unequivocal terms, in his evidence he admits that, Panduranga Rao and Mallaiah Rao had no ancestral property and they were tailors by profession. Further they were also doing cloth business. However, plaintiffs alleged that, both were jointly doing tailoring and cloth business. However, even in case of joint family, a member of joint family acquires property, initial presumption arises that, it was acquired out of his own income unless it is shown that, there exists joint family and nucleus which would be sufficient to acquire. There is no material to show that, there was a nucleus, however, if there was a joint business and out of the income of the joint business, if the property is acquired, it could be possible to hold that, it was acquired though in the name of one of the members but from out of the joint income. But plaintiffs have not produced any evidence to prove the same. 27. Plaintiffs relied mainly on the document Ex.P5, the plaint in O.S.No.340/1966. No doubt, this document shows that, both Panduranga Rao and Mallaiah Rao had jointly incurred the liability. It was a loan transaction. The plaint is silent as to for what purpose the loan was borrowed by both the brothers. It only proves that, they

were jointly liable to pay the said amount. So also Ex.P14, a notice issued for recovery of the loan amount against both Panduranga Rao and Mallaiah Rao. This also does not show that, both had borrowed money in connection with business. Much was stated relying on Exs.P10 and P11. Ex.P10 is a sale deed executed by Panduranga Rao. Ex.P10 shows that, the said property was standing in the name of Panduranga Rao, the purpose of the sale of the said property was for the discharge of the liability of Sira Industrial Society, which had issued notice to both Panduranga Rao and Mallaiah Rao and to discharge the liability in O.S.No.340/1966. Can this evidence be held sufficient to hold that, there was a joint family or joint business? Even in case of joint family, a member of the joint family can acquire a separate business and can have also a separate income? In this case, admittedly, the plaintiffs have not stated that, there was any joint family income or nucleus. The evidence such as Exs.PP5, P7, P10, P11, P14 and P15, they do not prove the existence of joint family. At the best, it only shows that there some was liability of loan against both the brothers. These joint liability neither prove the joint family nor prove the joint business. None of these documents refer to any joint business. No other document show any business conducted jointly by both. 28. Neither there were ancestral properties nor joint family income nor any evidence of joint business, in the absence of the evidence, the trial court has proceeded to hold that the suit item No.1 and 2 though acquired by Panduranga Rao as joint family property on the ground that both together sold the land standing in the name of Panduranga Rao as per Exhibit P11. This finding is perverse as not based on evidence or law. 29. Acquisition of a property by a member of the joint family in the absence of nucleus would not become a joint family property and this aspect of the matter is well settled by many of the judgments of this Court and the Apex Court. In the matter of D.S.Lakshmaiah (supra), the Apex Court has reiterated the principle of separate acquisition by member of the joint family inter alia observing that, there is no presumption of a property being joint family property only on account of existence of Hindu joint family. The one who asserts has to prove that the property is a joint family property. However, if the person so asserting proves that, there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds. This judgment makes it clear that, if it is acquired by member of the joint family, it would be separate property till it is proved that, the joint family had sufficient nucleus to acquire the same. One who asserts must prove that there was a nucleus and would be sufficient to acquire such property, only the burden would shift on the other who claims it as separate property. The initial burden of proving the nucleus itself is not proved. 30. In this case, it is admitted that there is no nucleus, no joint family income, such assertion would only become only mere statement without the support of any evidence. Ex.P11 was relied to show that, though the property was in the name of Panduranga Rao, but it was sold jointly by Panduranga Rao and Mallaiah Rao stating therein that, they were in possession and Khatha was standing in their name

and as such, they had treated the said property as a joint family property. Title of the property has to be decided on the basis of source of acquisition. Under Ex.P11, portion of the land granted to Panduranga Rao was sold. It is not pleaded and proved by the plaintiffs that, suit item No.1 property was granted in favour of joint family. Even if such pleading was there, that will not prove it as a joint family property. It is settled law that, even in case of joint family or coparcenery, any property granted in favour of one of the coparcener or even in favour of the Kartha, it would become his separate property unless it is shown from the grant itself that it was intended to be for the joint family. Ex.D1 is the grant made in favour of Panduranga Rao, the said grant is made in favour of Panduranga Rao alone, there is nothing to suggest that, it was intended to be granted in favour of the joint family. Once it is individual grant, it becomes the separate property of the grantee. Just because Mallaiah Rao also joined the sale deed ExP11, wherein a portion of land granted to Panduranga Rao was sold, the grant or the said property will not become property of both. This Court in a judgment reported in ILR 1991 KAR 4506 in the matter of Thammegowda -vs- Siddegowda held that, if the property is required on upset price and the upset price is not paid out of the joint family fund, it will not become a joint family property. A member of the family joining the sale deed of a property belonging to another member of the family, this Court in a judgment reported in AIR 1995 KAR 35 (supra) has observed that, if the son joins the sale deed along with his father, it does not mean that, property held by the father was an ancestral property. In the said case, it was contended that, it was an ancestral property on the basis of the sale deed, in which son also joined with father to execute the sale deed, hence, it is held that it will not become joint family property or ancestral property. It is common experience that in case of sale, the purchaser by way of abundant caution also makes other close relations like sons, etc., to join in that sale deed. Merely because the other relatives join the sale deed, they do not become the owners of the said property or the property becomes joint family or the ancestral property. 31. Apart from this, the evidence adduced by the defendants also shows that, Panduranga Rao at an undisputed point of time had borrowed money from the Bank and he was issued with notice for discharge. Even the documents produced by the plaintiffs themselves also indicate that, Panduranga Rao alone dealt with the property. Exs.P24, P25, P26, P27, P28 and P29 - revenue records show the name of Panduranga Rao. Notice - Ex.P30 issued to Panduranga Rao also shows that it is issued to Panduranga Rao and loan was to be paid by Panduranga Rao. In addition to this, Panduranga Rao had borrowed money from the Bank for which the properties were mortgaged. In this regard, a notices as per Ex.D6, D7, D8, D9 and D10 were issued to him. 32. It is the plaintiffs' case that, suit item Nos.1 and 2 though stood in the name of Panduranga Rao, they were the joint family property. Thus, it is the plaintiffs, who had asserted that the properties though stand in the name of a member of the family, still they are joint family property. Hence, in the light of the decision of the Apex Court, the burden was on the plaintiffs to prove that either it was acquired out of the nucleus or the income from the joint family.

It is not the case of the plaintiffs that, there was any joint family income, but it is sought to be made out that, there was a joint family business. None of the documents disclose that, there was any joint business or joint family business, at the best the documents only show that, both Panduranga Roa and Mallaiah Rao incurred joint liability beyond which it will not prove any joint income or joint business. In the absence of any document to show that, there was any joint income by both Panduranga Rao and Mallaiah Rao, it cannot be held that, in the year 1934 suit item No.2 property could have been purchased out of the joint family income. As far as suit item No.1 is concerned, law itself makes it clear that, it is a grant in individual capacity and there is no evidence that it is intended in favour of joint family. 33. The trial court misreading the evidence has held the suit item Nos.1 and 2 as joint family property without looking into the relevant provisions, without even looking into the evidence and without even looking into the proposition of law as laid down by this Court and this Apex Court. Hence, those findings being perverse, contrary to law and the evidence, are required to be set aside. 34. As far as Cross Objection is concerned, admittedly, suit item Nos.3, 4 and 5 are acquired by the defendants after the suit is filed. When it is not proved that there was a joint family or joint income, such acquisition cannot be construed even as the joint family acquisition. When I have held that, suit item Nos.1 and 2 themselves are not joint family properties, the question of acquisition of suit item Nos.3, 4 and 5 out of joint family income, does not arise. 35. Having regard to these findings, I find that, the judgment and decree of the trial court requires to be interfered. Hence, I pass the following; ORDER R.F.A.No.683/2003 is allowed. The judgment and decree in O.S.No.75/1995 dated 27th March 2003 on the file of Civil Judge (Sr.Dn.), Madhugiri, is hereby set aside. Suit of the plaintiffs stands dismissed. Consequently, R.F.A.Cr.Ob.No.3/2004 filed by the plaintiffs also stands dismissed. However, there shall be no order as to the cost in this appeal. Sd/- JUDGE KNM/-