

Sri.M.Prashanth Kumar vs Smt. Triveni Shankar on 13 October, 2020

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O.S.8511/2012

IN THE COURT OF THE XXV ADDL. CITY CIVIL &
SESSIONS JUDGE
AT BANGALORE CITY - CCH NO.23.

DATED THIS THE 13 th DAY OF OCTOBER, 2020.

PRESIDING OFFICER

PRESENT : Sri.Mohan Prabhu,
M.A., L.LM.,
XXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BANGALORE.

O.S.No.8511/2012

PLAINTIFF/S: Sri.M.Prashanth Kumar,
S/o Late K.M.Mayanna Gowda,
Aged about 39 years,
R/at No.13, Sarakki main road,
Arya Nagar, J.P.Nagar I Phase,
Vysya Bank Colony,
Bangalore - 560 78.

(By Sri.N.Kumar, Advocate)

Vs.

DEFENDANT/S: 1. Smt. Triveni Shankar,
W/o late M.Ravishankar,
Aged about 45 years,
R/at No. 30,
"Silver Oak Street",

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O.S.8511/2012

Aravinda Layout,
J.P.Nagar 7 th Phase,
Puttenahalli,
Bangalore - 560 078.

2. Kum. Bindu
D/o late M.Ravishankar,
Aged about 21 years,
R/at No. 30,
"Silver Oak Street",
Aravinda Layout,
J.P.Nagar 7 th Phase,
Puttenahalli,

Bangalore - 560 078.

3. Chi.R.Jeevan
S/o late M.Ravishankar,
Aged about 15 years,
R/at No. 30,
"Silver Oak Street",
Aravinda Layout,
J.P.Nagar 7 th Phase,
Puttenahalli,
Bangalore - 560 078.

Since minor is represented
by his mother and natural
guardian,
Smt.Triveni Shankar,
W/o Late M.Ravishankar,
the defendant No. 1 herein above

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O.S.8511/2012

(By Sri.C.Rajanna, Advocate)

* * * * *

Date of institution of suit	:	30.11.2012		
Nature of suit	:	Declaration injunction & possession		
Date of commencement of recording of evidence	:	26.11.2013		
Date on which the judgment was pronounced	:	13.10.2020		
Duration of the suit	:Year/s	Month/s	Day/s	
	07	10	13	

JUDGMENT

1. This is a suit filed by the plaintiff for the relief of declaration of ownership and for recovery of possession and to direct the defendants to pay the damages of Rs.50,000/- each per month from the date of suit till handing over vacant possession of the suit schedule property.

Suit schedule property All that piece and parcel of house property bearing No. 30 measuring east to west towards northern side 27 feet, towards southern side 27 feet and north to south 40 feet. In all 1120 sq.ft. Situated at Silver Oak Street, Arvind layout, J.P.Nagar 7 th phase, Puttenahalli, Bangalore

consisting of 10 squares RCC roofed mosaic flooring house and bounded on the east by property No. 31, west by private property, north by 30 feet road and south by property No. 39.

2. In nutshell the contents of the plaint are as follows :

The plaintiff's father K.M.Mayanna Gowda had three sons namely (1) M.Ravishankar (2) M.Sridhar Babu (3) M.Prashanth Kumar (plaintiff). During the life time of K.M.Mayanna Gowda he has acquired many properties out of which he got purchased the suit schedule property in the name of plaintiff from G.S.Jayanna S/o late G.D.Subbe Gowda and H.A.Vijaya W/o G.S.Jayanna under sale deed dated 24.10.1994 registered in the office of Sub-Registrar, Kengeri, Bangalore. Thereafter the plaintiff's father K.M.Mayanna Gowda bequeathed all his movable and immovable properties in the name of his three sons through Will dated 16.4.1995 wherein the suit schedule property falls into the share of the plaintiff. Thus the plaintiff became the absolute owner of the suit schedule property. After bequeathing the suit schedule property, Khatha and revenue records stands in the name of plaintiff and he used to pay the taxes regularly. After the construction of the house in the suit schedule property the plaintiff has rented the same in favour of one Sri.Vengam Raju vide rental agreement dated 9.6.1997. The plaintiff's elder brother M.Ravi Shankar and his wife defendant No. 1 have sold their share of properties which was bequeathed by his father by way of Will dated 16.4.1995. After the sale of their properties, the plaintiffs brother M.Ravi Shankar and defendant No. 1 requested the plaintiff to allow them to stay in the suit schedule property by stating their financial difficulties, etc. The plaintiff being the brother conceded his request and permitted them to stay in the suit schedule property on humanitarian grounds. The defendant No. 1 and her husband assured the plaintiff that they would vacate the suit schedule property as and when required by the plaintiff. The husband of the defendant No. 1 died on 20.7.2012. After the death of her husband, the defendant No. 1 along with her children defendant No. 2 and 3 have requested the plaintiff that they may be permitted to continue to reside in the suit schedule property. Taking pity upon her and her family the plaintiff agreed to let them to live in the house free of any rent or any consideration as such like amount.

The plaintiff permitted the defendants to reside in the suit schedule property till defendant No. 2 was gainfully employed. The defendant No. 2 had already been selected in the campus interview. The defendant No. 1 sought some time in order to make some alternative arrangement and promised to vacate the suit schedule property as soon as such alternative arrangement were made. The plaintiff permitted her to continue in possession on humanitarian grounds. The plaintiff requested the defendants to vacate the suit schedule property for his personal bonafide requirement and use on 14.8.2012. Thereafter on 5.9.2012 to his shock and surprise the plaintiff received a letter by defendant No. 1 dated 3.8.2012 wherein the defendant No. 1 had requested the Member Secretary, KSLSA, Bangalore to settle the property problem through conciliation contending that the property distribution has not been done equally, even though there was a testamentary distribution of property by way of Will dated 16.4.1995 under which the defendant No.1's husband had been

bequeathed many valuable properties and for the reasons known to them, the defendant No. 1 and her husband have sold all the properties. The defendant No. 1 sent a legal notice dated 5.9.2012 seeking the plaintiff to effect partition of all immovable properties by metes and bounds and also claimed that she is the owner of suit schedule property. The plaintiff replied suitably by way of reply notice dated 8.10.2012. The plaintiff and defendants have appeared before the Legal Services Authority on 22.8.2012 wherein several rounds of negotiations have taken place and finally failed due to the insistence of the illegal demand of the defendant No. 1. Thereafter the plaintiff got issued a legal notice dated 10.10.2012 withdrawing the permission granted to the defendants to reside in the suit schedule property house with effect from mid night of 10.11.2012 and also calls upon the defendants to handover the vacant possession of the same on or before 10.11.2012. The defendants had also been directed to pay damages at the rate of Rs.50,000/- per month from the date of service of notice till the date of handing over the possession of the suit schedule property. The notice was duly served upon the defendants and the defendants have not bothered to reply the same. Hence on these grounds the plaintiff prayed to decree this suit.

3. The defendant No. 1 to 3 entered appearance by engaging counsel and resisted the claim of the plaintiff by filing their written statement. In their written statement they have admitted the relationship. It is admitted that the father of the plaintiff late K.M.Mayanna Gowda had three sons namely M.Ravi Shankar, M.Sridhar Babu and plaintiff. It is admitted that during the life time of K.M.Mayanna Gowda he has acquired many properties out of which he had purchased the suit schedule property in the name of plaintiff under registered sale deed dated 24.10.1994. It is admitted that the husband of defendant No. 1 died on 20.7.2012. It is admitted that the 1st defendant had sent the legal notice to the plaintiff on 5.9.2012 seeking effect partition of all the immovable properties. But the plaintiff has sent untenable reply to the said notice on 8.10.2012. Except these admissions all other averments made in the plaint are denied as false. It is contended that the plaintiff has created false story that his father K.M.Mayanna Gowda bequeathed all his movable and immovable properties in favour of his three sons through Will dated 16.4.1995 wherein the suit schedule property fallen to the share of plaintiff. The contention of the plaintiff that he has rented the suit schedule property in favour of Sri.Vengam Raju under rental agreement dated 9.6.1997 is denied as false. It is denied that the elder brother of plaintiff and defendant No. 1 have sold their share of the properties which was bequeathed by his father by way of Will dated 16.4.1995. The contention of the plaintiff that his brother and defendant No. 1 requested him to allow them to stay in the suit schedule property by stating their financial difficulties, etc. and the plaintiff conceded their request and permitted them to stay in the suit schedule property on humanitarian grounds are all denied as false. The plaintiff is not the absolute owner of the suit schedule property.

4. The defendants have taken contention that the suit schedule property was purchased by late K.M.Mayanna Gowda out of his own earnings and savings in the name of plaintiff under registered sale deed dated 5.12.1994. Immediately after purchase of the suit schedule property by late K.M.Mayanna Gowda he informed the husband of 1st defendant, i.e., late Ravi Shankar to construct a residential building on the suit schedule property to live there with his family. Accordingly the defendant No. 1 and her husband late M.Ravi Shankar had constructed two floor building in the suit schedule property by investing huge amount and the defendant No. 1 contributed major share for the construction of house as she was the earning member of the family. They also made further

improvements of the suit schedule property from time to time by investing additional amount. The defendant No. 1 and her family has been living in the suit schedule property over a period of 18 years and even after the death of Ravi Shankar his family continued to live in the suit schedule property. The plaintiff has neither contributed any amount for purchase of suit schedule property nor had invested any amount for construction of building thereon. Right from 1994 the defendants have been in physical possession of the suit schedule property and they are residing peaceful till today. The plaintiff has no right or interest over the suit schedule property as the property belongs to the joint family of late K.M.Mayanna Gowda. The plaintiff by colluding with some real estate agents have filed this suit with false grounds with ulterior motive to gain illegally. The plaintiff is making his claim over the joint family properties which are not been partitioned. The plaintiff is trying to threshold the defendants from the suit schedule property with the aid and assistance of real estate agents. The plaintiff has not approached the court with clean hands. He has suppressed the true and material facts. Hence on these grounds the defendants prayed for dismissal of the suit.

5. Based on the said pleadings the following issues have been framed :

(1)Whether the plaintiff proves his right and title over the suit schedule property ?

(2)Whether the plaintiff proves the alleged act of the defendants ?

(3)Whether the plaintiff is entitled for the vacant possession of the suit schedule property ?

(4)Whether the plaintiff is entitled for damages at the rate of Rs.50,000/-

per month from the date of suit till the date of handing over the vacant possession of the suit schedule property?

(5)Whether the plaintiff is entitled for the reliefs as sought by him ?

(6)What order or decree ?

6. In support of his case the plaintiff examined himself as PW1 and got marked documents Ex.P1 to Ex.P18. During the course of cross-examination of DW1 one document Ex.P19 marked on the side of the plaintiff. On the side of the plaintiff two witnesses have been examined as PW3 and PW4. Even though plaintiff's brother M.Sridhar Babu has filed his affidavit for examination-in-chief and examined as PW2 while case posted to tender PW2 for cross-examination, PW2 remained absent and on 27.2.2019 the learned counsel for the plaintiff filed a memo that PW2 will not tender him for cross-examination. Hence memo is accepted and the evidence of PW2 is discarded as per order dated 27.2.2019.

7. On the side of the defendants 1 st defendant examined herself as DW1 and the documents Ex.D1 to Ex.D7 are marked. At the first instance on 4.6.2019 three documents were marked on the side of defendants as Ex.D1 to Ex.D3 and in further evidence of DW1 on 6.12.2019 four more documents

are marked as Ex.D4 to Ex.D7. In all Ex.D1 to Ex.D7 are marked on the side of the defendants.

8. I have heard the arguments on the side of the learned counsel for the plaintiff and the learned counsel for the defendants.

9. The learned counsel for the plaintiff relied upon the following decisions:

(1) Judgment of Hon'ble Supreme Court of India in Civil Appeal No. 6875/2008 in Bhagawath Sharan (dead their legal representatives) Vs. Purushottam and others (relevant para No. 24 and 25) (2) Judgment in Hon'ble Supreme Court of India in Civil Appeal No. 7528/2019 between Govindbhai Chotabhai Patel & others Vs. Patel Ramanbhai Mathrubhai (relevant para No. 21) (3) Judgment of Hon'ble Supreme Court of India in Civil Appeal No. Appeal (Civil)2971/1995 between B.L.Sreedhar & others Vs. K.M.Munireddy & others relevant para No. 40, 41, 42.

10. The learned counsel for the defendants relied upon the following decisions:

(1) ILR 2008 Kar 2115 in
Sri.J.T.Surappa and another Vs. Sri.

Satchidhanandendra Saraswathi Swamiji Public Charitable Trust and others.

(2) (2009)1 SCC 354 K.Laxmanan Vs. Thekkayil Padmini and others (3) (2010)5 SCC 274 in S.R.Srinivas and others Vs. S.Padmavathamma.

(4) (1995)1 SCC 144 Smt. Rukmini Devi and others Vs. Narendra Lal Gupta.

11. My findings to the above issues are as under:

Issue No.1	:	In the Negative
Issue No.2	:	In the Negative
Issue No.3	:	In the Negative
Issue No.4	:	In the Negative
Issue No.5	:	In the Negative
Issue No.6	:	As per the final order for the following:

REASONS

12. Issue No.1: In this suit while addressing the arguments the learned counsel for the plaintiff as well as the learned counsel for the defendants high-lighted the undisputed facts in this suit. The relationship between the parties is not in dispute. It is not in dispute that plaintiff's father K.M.Mayanna Gowda had three sons namely M.Ravishankar, M.Sridhar Babu and M.Prashanth Kumar (plaintiff). The defendant No. 1 is the wife of late M.Ravishankar, defendant No. 2 is the

daughter, defendant No. 3 is the son of defendant No. 1 and late M.Ravishankar. It is undisputed fact that M.Ravishankar, husband of 1 st defendant died on 20.7.2012. It is also not in dispute that during the life time of plaintiff's father K.M.Mayanna Gowda he had purchased the suit schedule property in the name of plaintiff under registered sale deed dated 24.10.1994. Thus it is admitted by the plaintiff that the suit schedule property was the joint family property. It is the specific contention of the plaintiff is that during the life time of his father K.M.Mayanna Gowda he bequeathed all his movable and immovable properties in favour of his three sons through Will dated 16.4.1995. It is the contention of the plaintiff is that under this Will dated 16.4.1995 the suit schedule property fallen to the share of the plaintiff. It is the contention of the plaintiff is that as his father K.M.Mayanna Gowda bequeathed the suit schedule property through Will dated 16.4.1995 the plaintiff became the absolute owner of the suit schedule property. The plaintiff has taken specific contention that during the life time of his brother M.Ravishankar he requested the plaintiff to allow him and his wife and children to stay in the suit schedule property stating their financial difficulties. Hence the plaintiff on humanitarian grounds allowed his brother M.Shankar and the defendants to stay in the suit schedule house on the condition that they should vacate the suit property as and when the suit property required to the plaintiff. It is the contention of the plaintiff is that after the death of his brother he requested the defendants to vacate the suit schedule property. At that time the defendants requested the plaintiff to allow them to continue to reside in the suit schedule property till some alternative arrangement was made and also promised that they will vacate the suit property after defendant No. 2 gainfully employed. The plaintiff has taken contention that the suit property is required for his bonafide requirement and use. Hence he has issued notice to the defendants withdrawing the permission and calling upon the defendants to vacate and handover the vacant possession of the suit schedule property. The plaintiff has taken contention that the defendant No. 1 is falsely contending that there was no equal distribution of the properties. The defendant No. 1 also sent legal notice dated 5.9.2012 seeking the plaintiff to effect partition of immovable properties by metes and bounds and also claiming that she is the owner of suit schedule property.

13. On the other hand the defendants have taken contention that Sri.K.M.Mayanna Gowda after purchasing the suit schedule property informed his son Ravishankar to construct a residential building in the suit schedule property. Accordingly M.Ravishankar and the defendant No. 1 had constructed two floor building in the suit schedule property by investing huge amount and also made further improvements from time to time by investing additional amount. The defendants have denied the execution of alleged Will dated 16.4.1995 by K.M.Mayanna Gowda. The defendants have taken contention that the plaintiff is not the absolute owner of the suit schedule property.

14. On perusal of the rival contentions this suit mainly revolves upon the documents Ex.P16 alleged Will dated 16.4.1995. If the plaintiff proves this documents Ex.P16 then only the plaintiff will succeed in this suit.

15. Admittedly the plaintiff has not examined the attesting witnesses of the document Ex.P16. Even though the application filed by the plaintiff under Order 16 Rule 1 of C.P.C. was allowed by this court and summons was issued to the witnesses of this document Ex.P16 and summons was duly served upon one of the witness, the plaintiff has not examined any attesting witness of the document

Ex.P16. The learned counsel for the plaintiff vehemently argued that the plaintiff's brother late M.Ravishankar and his wife 1 st defendant have sold their share of the properties which was bequeathed by K.M.Mayanna Gowda under Will dated 16.4.1995. He argued that the document Ex.P18 is the certified copy of the sale deed executed by M.Ravishankar and M.Sridhar Babu in respect of the property situated at Malawalli taluk, Halagur hobli, Halagur village which has come into their share on the basis of the Will as per Ex.P16. He argued that in 4 th sheet of Ex.P18 there is clear recital that the said property situated at Halagur village fallen to the share of the vendor M.Ravishankar and M.Sridhar Babu under will executed by K.M.Mayanna Gowda. He submitted that this property situated at Halagur village of Malawalli taluk which is mentioned in Ex.P18 sale deed dated 21.11.2001 was allotted to the plaintiff's brothers M.Ravishankar and M.Sridhar Babu under Will as per Ex.P16. He argued that by selling the property by M.Ravishankar and M.Sridhar Babu brothers of plaintiff the Will Ex.P16 is acted upon and it need not be proved by examining the attested witnesses. He argued that the Khatha of the suit schedule properties standing in the name of the plaintiff. The defendants are the permissive possession in the suit schedule property. He relied upon the judgment of Hon'ble Supreme Court in Civil Appeal No. 6875/2008 wherein in para No. 24 and 25 it is held as follows:

Para 24. It is also not disputed that the plaintiff and defendant No.1-3 herein filed suit for eviction of an occupant in which he claimed that the property had been bequeathed to him by Hari Ram. According to the defendants the plaintiff having accepted the Will of Hariram and having taken benefit of the same, cannot turn around and urge that the Will is not valid and that the entire property is a joint family property. The plaintiff and defendant No.1-3 by accepting the bequest under the Will elected to accept the Will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of Wills, this doctrine has been held to mean that a person who takes benefit of a portion of the Will cannot challenge the remaining portion of the Will. In The Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond and Gem Development Corporation Ltd. and Anr., this court made an observation that a party cannot be permitted to blow hot and cold, "fast and loose"

or approbate and reprobate". Where
one party knowingly accepts the

benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.

Para 25. The doctrine of election is a
facet of law of estoppel. A party
cannot blow hot and blow cold at the
same time. Any party which takes
advantage of any instrument must

accept all that is mentioned in the said document. It would be apposite to refer to the treatise 'Equity-A course of lectures' by F.W.Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:

"The doctrine of Election may be thus stated: That he who accepts a benefit under a deed or Will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it....."

This view has been accepted to be the correct view in Karam Kapahi and Ors.

Vs. Lal Chand Public Charitable Trust and Ors. The plaintiff having elected to accept the Will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect.

16. He relied upon the judgment of Hon'ble Supreme Court in Civil Appeal No. 7528/2019 wherein para No. 21 reads as follows:

In view of the undisputed fact, that Ashabhai Patel purchased the property, therefore, he was competent to execute the Will in favour of any person. Since the beneficiary of the Will was his son and in the absence of any intention in the Will, beneficiary would acquire the property as self-acquired property in terms of C.N.Arunachala Mudaliar case. The burden of proof that the property was ancestral was on the plaintiffs alone. It was for them to prove that the Will of Ashabhai intended to convey the property for the benefit of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of Donor has to be treated as self-acquired property.

Once the property in the hands of Donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family.

17. The learned counsel for the plaintiff also argued that the doctrine of acquiescence is also applies to the present case. He relied upon the judgment of Hon'ble Supreme Court in Appeal (Civil) No. 2971/1995 wherein at para No. 40 to 42 discussed above doctrine of acquiescence.

18. On the other hand the learned counsel for the defendants argued that the suit property is the self acquired property of late K.M.Mayanna Gowda. He argued that the suit schedule property is the joint family property of the plaintiff, defendants and plaintiff's another brother M.Sridhar Babu. He argued that the contention of the plaintiff that he became the owner of the suit schedule property based on Ex.P16

alleged Will is not acceptable because the plaintiff has not proved the document Ex.P16 by examining the attesting witness of this document. He submitted that the plaintiff at the first instance when he was examined before this court on 28.2.2014 has not produced Ex.P16 alleged Will. The plaintiff has produced the document Ex.P16 subsequently on

22.6.2018 at the time of his further chief examination. He argued that the contention of the plaintiff is that item No. 4 in Ex.P16 under the heading of the share allotted to M.Prashanth is the subject matter of this suit. He argued that the plaintiff has failed to establish the document Ex.P16 as per section 68 of Indian Evidence Act. He argued that the arguments of learned counsel for the plaintiff that in Ex.P18 there is recital regarding the alleged Will is not acceptable. He submitted that in page No. 4 of Ex.P18 there is no date of alleged Will is mentioned. In Ex.P18 there is no specific mention under which Will the said property was fallen to the share of M.Ravishankar and M.Sridhar Babu. He argued that merely because there is some reference about some Will in Ex.P18 that does not pre-supposes that the said alleged Will with reference to the document Ex.P16. He argued that in Ex.P18 the address of M.Ravishankar and M.Sridhar Babu is mentioned as Sarakki Extension, Sarakki main road, J.P.Nagar I Phase house. He submitted that the plaintiff in the cause title also has mentioned the same address of Sarakki main road, Arya Nagar, J.P.Nagar I Phase. He submitted that if at all Sri.M.Ravishankar was separated after alleged Will dated 16.4.1995 what was the necessity to him to mention the same address of the plaintiff which is mentioned in the cause title. He argued that admissions if any in the sale deed Ex.P18 does not absolve the liability of the plaintiff to prove the Will as per law. He argued that in Ex.P16 is is mentioned that there is sites of measurement 30 x 40 each of Bharath Housing Society was bequeathed in the name of M.Ravishankar. He argued that the document Ex.D5 is the sale deed issued by the Bharath Housing Co-operative Society Limited in favour of M.Ravishankar on 23.3.1998. In this document Ex.D5 the reference is also made that the approved plan of BDA was under resolution No. 19/1995 dated 9.1.1995. He submitted that when the layout of Bharath Housing Co-operative Society Limited itself was formed on 9.1.1995 how can it possible to bequeath this property in favour of Ravishankar even prior to forming the layout. He argued that the documents Ex.P16 is created document. He argued tht the defendants have produced the document Ex.D4 share certificate issued by the Bharath Co-operative Credit Society in the name of M.Shankar Babu wherein the signature of K.M.Mayanna Gowda who was Executive Director is found. He submitted that even if we compare the signature of K.M.Mayanna Gowda found in Ex.D4 with the signature found on Ex.P16 these two signatures are entirely different. He argued that the plaintiff has failed to prove the document Ex.P16 as per the provisions of section 68 to 71 and Indian Evidence Act under section 63 of Indian Succession Act. He argued that even though the plaintiff has examined his brother by filing affidavit for chief examination of PW2 subsequently the plaintiff has not pressed the same as such the same was discarded. He argued that except in the case of probate in no other case it would bind the parties with regard to proof a Will. He submitted that grant of probate and the judgment and order probate court is judgment in rem which would not only be binding on the parties to the proceeding but would be binding on the whole world. He argued that the defendants are not the parties to the document Ex.P18. The document Ex.P18 cannot be conclusive proof of the allged Ex.P16 Will. He has relied upon the judgment of Hon'ble Supreme Court which is reported in (1985)1 SCC 144 to contend that grant of probate - judgment and order of probate court - binding nature. He relied upon the judgment of Hon'ble

Supreme Court which is reported in (2010)5 SCC 274 wherein the Hon'ble Supreme Court clearly held regarding mode and manner of proof of Will. He relied upon the judgment of Hon'ble Supreme Court reported in (2009) 1 SCC 354, wherein it is clearly held that onus of proof will lies on the propounder. The learned counsel for the defendants also relied upon the judgment of Hon'ble High Court of Karnataka reported in ILR 2008 Kar 2151 wherein in para 24 the Hon'ble High Court of Karnataka clearly held that the court has to tread carefully both in the enquiry admitted with regard to the suit. The said path consists of five steps, panchapadi. The Hon'ble High Court of Karnataka also mentioned that the steps to be traversed.

19. I have appreciated the rival contentions. Having gone through the pleadings and evidence adduced by the parties one thing is very clear that even though the suit schedule property was purchased by K.M.Mayanna Gowda in the name of plaintiff it was to enure the benefit of entire family and it was joint family property. It is undisputed fact that defendant No. 1 is the wife of plaintiff's brother M.Ravishankar. The plaintiff M.Prashanth Kumar, M.Ravishankar (husband of defendant No. 1) and M.Sridhar Babu are all sons of K.M.Mayanna Gowda. The plaintiff who is examined as PW1 in his examination-in-chief itself has deposed that his father K.M.Mayanna Gowda acquired many properties out of which he got purchased the suit property in the name of the plaintiff. During the course of cross-examination of PW1 he has deposed that in the year 1996 when the building was constructed in the suit property he was aged 23 years and he was completed his engineering graduation at the age of 21 years. He has deposed that he was joined the private company for job in the year 1995. According to the plaintiff he was completed his engineering graduation at the age of 21 years but the building was constructed in the suit property in the year 1996 when he was aged 23 years. PW1 admitted the suggestion that his brother Ravishankar was Civil Engineer. PW1 deposed that his brother and father designed the building for construction. PW1 even though has taken contention that he was given the suit house for lease from June 1997 to February 1998 in order to substantiate this contention he has not produced the lease agreement. The document Ex.P17 receipt is not believable without examining the author of this document. PW1 has deposed that since 1997 the 1 st defendant and her husband residing in the suit house. It is not the contention of the plaintiff is that he was residing in the suit schedule house at any time from the date of construction. The defendants have produced the document Ex.D1 certificate issued by the contractor to show that M.Ravishankar Babu was working under him as a site engineer from August 1985 to 1987. Ex.D2 is the certificate issued by the Project Manager of Kere Tech Engineers wherein it is mentioned that M.Ravishankar Babu was working as Project Engineer from June 1987 to December 1992. These documents coupled with the admission given by PW1 in his cross-examination unerringly points out that his brother M.Ravishankar was working as Civil Engineer.

20. The main contention of the plaintiff is that his father K.M.Mayanna Gowda bequeathed all the properties under Will dated 16.4.1995 in favour of three sons out of which suit property was fallen to the share of the plaintiff. No doubt the Khatha of the suit schedule property is standing in the name of the plaintiff. It is not the contention of the plaintiff is that the Khatha of the suit schedule property transferred to the name of the plaintiff on the strength of the Will executed by his father. The plaintiff has produced the documents Ex.P1 certified copy of the sale deed dated 24.10.1994 which would go to show that the plaintiff's father purchased the suit schedule property in the name

of the plaintiff. Since the plaintiff has not claimed that in view of this sale deed he became the absolute owner of the suit schedule property mere change of Khatha in the name of the plaintiff based on the sale deed ipso facto does not give absolute right to the plaintiff over the suit schedule property. In this suit the document Ex.P16 is the main document based on which the plaintiff is claiming his right over the suit schedule property. The plaintiff has not examined any attesting witnesses of this document Ex.P16. PW2 M.Sridhar Babu even though has filed his affidavit for examination-in-chief he was not tendered himself for cross-examination and his evidence was discarded based on the memo filed by the learned counsel for the plaintiff. Hence oral evidence of PW2 cannot be looked into.

21. PW3 Kishore M.N. is the cousin brother of the plaintiff in his affidavit filed for examination-in-chief deposed that the plaintiff's father K.M.Mayanna Gowda bequeathed his entire movable and immovable properties equally in favour of his three sons through Will dated 16.4.1995 wherein the suit schedule property fallen into the share of the plaintiff. PW2 has deposed that the plaintiff's elder brother and defendant No. 1 have sold their share of properties which were bequeathed by his father by way of Will dated 16.4.1995. During the course of cross-examination by the learned counsel for defendants PW3 deposed that he do not know which were all properties sold by the 1 st defendant and her husband. PW3 has admitted the suggestion that on the date of execution of Ex.P16 on 16.4.1995 he was not present. Since PW3 has clearly admitted the suggestion that he was not present at the time of execution of document Ex.P16 his oral evidence is not helpful to decide the document Ex.P16.

22. PW4 Anasuya Nagaraj is the maternal aunt of PW1 in her examination-in-chief has deposed in similar fashion to that of PW3. During the course of cross-examination by the learned counsel for the defendants PW4 has also admitted the suggestion that she was not present at the time of execution of the Will dated 16.4.1995. She admitted the suggestion that she was not the attesting witnesses to the Will. PW4 has deposed that she do not know which properties were sold by the 1 st defendant and her husband. She states that she was not seen the Will to say which properties were mentioned in that Will. Since PW4 is also not attesting witness to the alleged Will and also not deposed about the contents of Ex.P16 her oral evidence is also not helpful to the plaintiff to prove the document Ex.P16 Will. Hence only document available to the plaintiff is the document Ex.P18 certified copy of the registered sale deed dated 21.11.2001. The document Ex.P2 is the copy of notice dated 7.9.2012 issued on behalf of the 1 st defendant by the counsel to the plaintiff wherein she has claimed that she and her husband were constructed the house in the suit property and the plaintiff has not contributed any amount either to purchase the suit schedule property or to construct the building therein. In this notice she also claimed the share in all the immovable properties belongs to Mayanna Gowda. The document Ex.P3 is the reply notice dated 8.10.2012 issued by the plaintiff to the counsel for the 1 st defendant, Ex.P4 is the postal receipt, Ex.P5 is the postal acknowledgment, Ex.P6 and Ex.P7 are the postal receipts, Ex.P8 is the postal acknowledgment. There is no dispute regarding the exchange of notice prior to filing of this suit. Ex.P9 is the property register extract of the suit schedule property standing in the name of the plaintiff, Ex.P10 to Ex.P15 are the property tax paid receipts are all standing in the name of the plaintiff. There is no dispute between the parties that the suit schedule properties standing in the name of the plaintiff. It is not the contention of the plaintiff is that based on Ex.P16 Will the suit property transferred to his name. The main argument

of the learned counsel for the plaintiff is that in the document Ex.P18 certified copy of the registered sale deed dated 21.11.2001 executed by M.Ravishankar and M.Sridhar Babu in page No. 4 it is clearly mentioned that the suit property situated at Halasur village was got by them under the Will executed by K.M.Mayanna Gowda. It is pertinent to note that the defendants have not admitted this document Ex.P18. During the course of cross- examination of DW1 nothing is elicited from her mouth to suggest that her husband and her husband's brother were sold the property situated at Halagur village as per Ex.P18.

23. Defendant No. 1 who is examined as DW1 in her examination-in-chief affidavit reiterated the written statement contentions. The document Ex.D1 to Ex.D7 are marked on the side of the defendants. During the course of cross-examination of DW1 she has denied the suggestion that during the life time of her father-in-law he executed the Will in favour of his sons. She has admitted the suggestion that on 5.9.2012 she was issued the notice to the plaintiff calling him to give share in the properties. When the learned counsel for the plaintiff confronted the document Ex.P18 to DW1 she has pleaded that she do not know anything about this document. During the course of cross-examination of DW1 nothing is elicited from her mouth to show that her father-in-law K.M.Mayanna Gowda executed the Will in favour of his sons. The defendants not only in their written statement denied the Will but also even prior to filing of this suit also the defendant No. 1 by issuing notice to the plaintiff claimed the share in the properties belongs to K.M.Mayanna Gowda. The defendants out-rightly denied execution of any Will by Mayanna Gowda. Under such circumstances the heavy burden is upon the plaintiff to prove that Mayanna Gowda executed the Will on 16.4.1995 in favour of his sons and in that Will the suit schedule property was fallen to the share of the plaintiff. Now the question is whether the document Ex.P18 can be relied to prove all the alleged Will Ex.P16. The learned counsel for the plaintiff by relying upon the decision of Hon'ble Supreme Court reported in Civil Appeal No.6875/2008 would contend that since the plaintiff's brothers by accepting the Will executed the sale deed as per Ex.P18, now the defendants are estopped from claiming that Mayanna Gowda was not executed any Will. I have gone through this cited decision. In my humble view this cited decision can be distinguished on facts. In that cited decision the admission made in the proceedings. In the present suit the dispute is in respect of the property belongs to the deceased K.M.Mayanna Gowda. The defendants of this suit no where admitted the execution of Will by K.M.Mayanna Gowda. The plaintiff by contending that during the life time of his brother M.Ravishankar he was executed the sale deed in respect of property situated at Halagur village of Malavalli taluk, thereby he admitted the Will. This argument of the learned counsel for the plaintiff is not acceptable for the simple reason that in the document Ex.P18 even though there is recital that the vendors have got the property under the Will of K.M.Mayanna Gowda but there is no specific mention in Ex.P18 that under which Will the vendors were got the property sold by them. It is settled principle of law that a person can execute any number of Will during his life time but the only last Will prevail. Since in the document Ex.P18 there is no specific reference with respect to which Will it was referred. Mere recital in the document Ex.P18 is not sufficient to hold that the deceased M.Ravishankar by admitting the Will dated 16.4.1995 executed the sale deed as per Ex.P18. The admissions made in Ex.P18 is not judicial admission. The defendants have not admitted this document Ex.P18. If at all the defendants admitted the document Ex.P18 matter would have been different. In this suit the defendants not only in their written statement even prior to filing of their written statement in the notice issued to the plaintiff they

claim there was no division in the properties. The plaintiff who has taken contention that his brother M.Ravishankar and defendant No. 1 have sold all the properties fallen to the share of M.Ravishankar under the Will dated 16.4.1995 in order to substantiate this contention has not produced all such documents for alienation. On perusal of Ex.P16 there is mention regarding six properties which was stated to be allotted to M.Ravishankar, seven properties stated to be allotted to M.Sridhar and seven properties allotted to M.Prashanth (plaintiff). If at all the document Ex.P16 was acted upon what prevented the plaintiff to produce the document to show that based on this document Ex.P16 the Khatha of the properties mentioned to the respective persons changed to their name. The document Ex.P19 is the certified copy of the sale deed dated 28.7.2005 executed by M.Ravishankar in favour of B.V.Puttaswamy in respect of the property allotted to the name of M.Ravishankar by the Bangalore City Municipal Corporation Employees House Building Co- operative Society Limited. In this document Ex.P19 there is no such mention regarding the Will. This document Ex.P19 marked through DW1 during the course of her cross-examination. The defendants have produced the document Ex.D5 sale deed executed by Bharath Housing Co-operative Society Limited in favour of M.Ravishankar on 23.3.1998. On perusal of the document Ex.D5 and Ex.P19 there is some force in the arguments of the learned counsel for the defendants that it was not possible to bequeath this property by K.M.Mayanna Gowda even prior to execution of sale deed by Bharath Housing Co-operative Society in favour of M.Ravishankar. The plaintiff has not produced any document to show that during the life time of K.M.Mayanna Gowda two sites of Bharath Housing Society was standing in the name of K.M.Mayanna Gowda. In Ex.P16 item No. 2 it is shown allotted to M.Ravishankar is the property two sites measuring 30 x 40 feet each. If at all K.M.Mayanna Gowda had such two sites in his name during his life time what prevented the plaintiff to produce the documents of these sites is not explained. The plaintiff except producing the document of the suit schedule property and the property situated at Halagur village of Malawalli taluk, property allotted by the Bangalore City Municipal Corporation Employees House Building Co-operative Society has not produced any other documents of the properties which are all mentioned in Ex.P16. As I already stated there are six items of properties allegedly given to M.Ravishankar seven items allegedly given to Sridhar and seven item properties allegedly given to the plaintiff M.Prashanth as per Ex.P16. But the plaintiff except producing the document with regard to the suit schedule property and two other properties, i.e., property mentioned in Ex.P18 and Ex.P19 has not produced the document of any other properties mentioned in Ex.P16. If at all Ex.P16 alleged Will was acted upon in respect of other properties what prevented the plaintiff to produce the document with regard to remaining properties is not explained. Even though the plaintiff has taken the contention that his brother M.Ravishankar and defendant No. 1 have sold all the properties mentioned in Ex.P16 in order to substantiate this contention the plaintiff has not produced the documents. The defendants have specifically denied the allegation made by the plaintiff that defendant No. 1 and her husband were sold all the properties fallen to their share under the Will dated 16.4.1995. The recital of Ex.P18 is not sufficient to hold that based on the document Ex.P16 as the property was fallen to the share of M.Ravishankar and M.Sridhar Babu they have jointly sold the property situated at Halapur village of Malawalli. The recital in Ex.P18 does not comes within the purview of section 58 of Evidence Act. The recital in Ex.P18 is not the judicial admission.

24. I have gone through the principles of decision cited by the learned counsel for the plaintiff which is reported in Civil Appeal No. 7528/2019 and Civil Appeal No.2971/1995. In my humble view these

two cited decisions can be distinguished on facts.

25. The learned counsel for the defendants relied upon the decision of Hon'ble High Court of Karnataka reported in ILR 2008 Kar 2115 wherein para No. 24 the Hon'ble High Court of Karnataka held while dealing with the documents Will Panchapadi, i.e., five steps to be traversed are as under:

(1) Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witness is examined to prove the Will ?

(2) Whether the natural heirs have been dis-inherited ? If so what is the reason.

(3) whether the testator was in the sound state of mind at the time of executing the Will ?

(4) whether any suspicious
circumstances exists surrounding the
execution of the Will ?

(5) whether the Will has been

executed in accordance with section 63 of the Indian Succession Act, 1925 r/w section 68 of the Evidence Act ?

26. By relying upon this decision of Hon'ble High Court of Karnataka the learned counsel for the defendants submitted that in this suit the plaintiff has not proved any ingredients of Will.

27. The learned counsel for the defendants also relied upon the decision of Hon'ble Supreme Court reported in (2010)5 SCC 274 to contend that atleast one attesting witness must be examined to prove the Will. He relied upon the decision of Hon'ble Supreme Court reported in 2009(1) SCC 354 wherein the Hon'ble Supreme Court held that onus to prove the Will lies on the propounder. The learned counsel for the defendants relied upon the judgment of Hon'ble Supreme Court reported in (1985) 1 SCC 144 to contend that only in the case of judgment and order of probate court it is binding nature. The decision of the probate courts would be the judgment in rem which would not only be binding on the parties to the probate proceeding but would be binding on the whole world.

28. In my humble view the principles of the decisions cited by the learned counsel for the defendants is aptly applicable to the present suit. The defendants have specifically denied the Will. The plaintiff has failed to examine the attesting witness of the document Ex.P16. The documents have produced document Ex.D4 share certificate to show that the signature of Mayanna Gowda found in Ex.D4 is different than that of signature which is found on Ex.P16. The defendants have also produced the document Ex.D5 certified copy of the sale deed executed by Bharath Housing Co-operative Society Limited in favour of Sri.M.Ravishankar. On comparison of the signature found on Ex.P16 with the signature found in Ex.D4 it is entirely different. Hence it is one of the suspicious circumstances surrounding the document Ex.P16 alleged Will. It is not the contention of the plaintiff is that witnesses who have signed on Ex.P16 are not alive. On perusal of Ex.P16 we can see the name and addresses and signature of two persons. The document Ex.P16 also containing the seal and signature of C.Diwakar, Advocate and notary. If at all the defendant Mayanna Gowda executed this

document Ex.P16 before the advocate and notary what prevented the plaintiff to examine the advocate and notary who has put the seal and signature on Ex.P16 is not explained by the plaintiff. Section 68 of the Indian Evidence Act provides for the mode and manner in which execution of the Will is to be proved. In the present suit, the plaintiff has failed to prove the document Ex.P16 as per section 68 of Indian Act. The document Ex.P19 certified copy of the sale deed is not sufficient to hold that K.M.Mayanna Gowda executed the Will dated 16.4.1995 as per Ex.P16. In Ex.P19 there is no mention regarding date of 'Will' in page No. 4 so typed.

29. It is important to note that the plaintiff nowhere in his plaint averred that his brothers M.R.Ravishankar and M.Sridhar Babu while selling the property situated at Halagur village of Malawalli taluk mentioned in the sale deed that they have acquired the property in view of the Will dated 16.4.1995 executed by their father K.M.Mayanna Gowda. There is absolutely no pleadings on the side of the plaintiff regarding admissions regarding the Will if any made by his brother M.Ravishankar in the earlier sale deeds. PW1 in his examination-in-chief also not deposed anything about the admissions regarding the Will dated 16.4.1995 if any made by his brother in the sale deed. The document Ex.P18 marked through PW1 in his further chief-examination on 22.6.2018. Mere marking of Ex.P18 without their being pleading and oral evidence with regard to this document is not sufficient to hold that plaintiff's brother M.Ravishankar admitted regarding the Will dated 16.4.1995 in the sale deed dated 21.11.2001. The log regarding the admission dealt in provision under section 17 to 23 of Indian Evidence Act the necessary ingredients of a proper admission is there must be clarity and certainty in admission. It is also settled principle of law is that even though the admission by itself is substantive evidence in view of section 17 and 20 of the Evidence Act, though it is not conclusive proof of the matter admitted. The initial burden is upon the plaintiff to show that his brother admitted the document Ex.P16 Will in the sale deed but in the present suit there is no pleading on the side of the plaintiff that his brother M.Ravishankar in the sale deed admitted regarding the Will dated 16.4.1995. PW1 also not deposed regarding the admissions made by his brother in the sale deed. Under such circumstances mere marking the document Ex.P18 certified copy of the sale deed is not sufficient to hold that the plaintiff's brother M.Ravishankar admitted the Will dated 16.4.1995 in this sale deed. Admittedly the defendants are not parties to the document Ex.P18 sale deed. The defendants have specifically denied the contention of the plaintiff that his brother and defendant No. 1 have sold their share of the properties which was bequeathed by his father by way of Will dated 16.4.1995. DW1 in her cross-examination also not specifically admitted the document Ex.P18 in her cross-examination. The plaintiff has not made any efforts to examine the witnesses of the sale deed dated 21.11.2001. Even though the plaintiff's brother filed his affidavit for examination-in-chief and examined as PW2 but for obvious reasons best known to the plaintiff he has not pressed the chief-examination of PW2. In view of memo filed by the learned counsel for the plaintiff the chief-examination affidavit of PW1 was discarded. Since the defendants are not the parties to the document Ex.P18, hence mere marking of document Ex.P18 is not sufficient to hold that plaintiff's brother admitted the Will dated 16.4.1995 in Ex.P18, more than that there is no mention regarding the date of the alleged Will in Ex.P18.

30. The plaintiff has also not produced the revenue document of all the properties which are mentioned in Ex.P16 to show that on the basis of this Will the revenue document changed in the name of respective sons of K.M.Mayanna Gowda and thereby this document Ex.P16 was acted upon.

The plaintiff has failed to prove that his father K.M.Mayanna Gowda executed the Will dated 16.4.1995 in respect of suit schedule property and thereby the plaintiffs became the absolute owner of the suit schedule property. Since the plaintiff has failed to prove the document Ex.P16, automatically the suit property became the joint family property of the plaintiff and his brothers. The defendants are representing the branch of deceased M.Ravishankar. When that being the case on the death of K.M.Mayanna Gowda the succession opens the plaintiff and plaintiffs brothers succeeds the property as per section 8 of Hindu Succession Act as they are the class I heirs. The defendants who represented the estate of Ravishankar also entitled equal share in the suit schedule property as the class I legal heirs of M.Ravishankar. The plaintiff has failed to prove that he is the absolute owner of the suit schedule property. Hence I answered issue No. 1 in the Negative.

31. Issue No. 2 & 3: While discussing issue No. 1 I held that the plaintiff has failed to prove that his father K.M.Mayanna Gowda executed the Will dated 16.4.1995 and bequeathed the suit schedule property in favour of the plaintiff and thereby the plaintiff became the absolute owner of the suit schedule property. While discussing issue No. 1 this court held that the plaintiff has failed to prove the document Ex.P16 Will. Hence the suit schedule property became the joint family property of the plaintiff and his brothers. The defendants are representing the branch of M.Ravishankar who are entitled to the share of the deceased in the suit schedule property. The plaintiff has taken contention that the defendants are in permissive possession of the suit schedule property. Admittedly the defendants are in possession of the suit schedule property from the year long back. The plaintiff has taken contention that he was given permission to his brother M.Ravishankar and defendant No. 1 to reside in the suit schedule property on humanitarian grounds. The plaintiff in his plaint has not specifically stated in which year the defendant No. 1 and her husband started to reside in the suit schedule property. PW1 has taken contention that the construction work of the house in the suit schedule property was completed in the year 1996. The plaintiff has taken contention that he was given the suit schedule property on rent to one Vengam Raju vide rental agreement dated 9.6.1997. The plaintiff has not produced any such rental agreement to show that he was given the suit schedule property on rent. The document Ex.P17 produced by the plaintiff is one receipt dated 7.2.1998. In Ex.P17 it is mentioned that one Krishnamma who was the lessee of the house No. 30 has received Rs.50,000/- towards the advance being returned by the owner Sri.M.Prashanth Kumar. It is not the contention of the plaintiff is that one Krishnamma was the tenant under him. More than that the author of Ex.P17 is not examined in this suit. There is absolutely no document on the side of the plaintiff to show that from the date of construction of the house in the suit schedule property he was in possession of the suit house. On the other hand the oral evidence of DW1 would go to show that after construction of the house in the suit schedule property the defendant No. 1 and her husband M.Ravishankar started to reside in the suit schedule property. The defendants have taken contention that M.Ravishankar and defendant No. 1 have constructed a residential building in the suit schedule property by investing huge amount. DW1 has deposed that she is an MBA graduate and also holding a diploma in commercial practice. She was working as Secretary in Financial Department and was earning around Rs.20,000/- per month in the year 1995. The defendant has produced the document Ex.D6 agreement entered into between M.Ravishankar and K.Padmavathi. Ex.D7 is the certificate, Ex.D1 and Ex.D2 are also certificates. All these documents would go to show that M.Ravishankar was working as Civil Engineer. The defendants have also not produced the documents to show that the house in the suit schedule property was constructed by the 1 st

defendant and husband of defendant without using the money of K.M.Mayanna Gowda. Neither the plaintiff nor the defendants have produced the cogent evidence to show who was invested the money to construct the house in the suit schedule property. But the fact remains that the suit schedule property originally belongs to K.M.Mayanna Gowda, the father of plaintiff and deceased M.Ravishankar. No doubt the plaintiff had equal share in the suit schedule property. The defendants are also having right over the suit schedule property as they represent the estate of the deceased M.Ravishankar. Under such circumstances unless and until the suit schedule property is divided by metes and bounds the plaintiff has no right to claim exclusive right over the suit schedule property. The defendants are having every right to reside in the suit schedule property till the suit schedule properties are divided by metes and bounds. The plaintiff has failed to prove that the defendants are in permissible possession. The plaintiff has failed to prove that he is the absolute owner of the suit schedule property. Hence the plaintiff is not entitled for vacant possession of the suit property as the suit property not divided divided by metes and bounds. Hence I answered issue No. 2 and 3 in the Negative.

32. Issue No. 4: In this suit the plaintiff has sought for the relief to direct the defendants to pay damages of Rs.50,000/- per month from the date of suit till the date of handing over the vacant possession of the suit schedule property. The plaintiff has taken contention that he has got issued the legal notice dated 10.10.2012 withdrawing the permission granted to the defendants to reside in the suit schedule house with effect from mid night of 10.11.2012 and also calls upon the defendants to handover the vacant possession of the suit property on or before 10.11.2012. The plaintiff has produced the copy of legal notice dated 8.10.2012 which is marked at Ex.P3. The defendants not only in the written statement but also prior to filing this suit in the notice issued to the plaintiff claimed that they are having 1/3rd share in the suit schedule property. PW1 in his cross-examination at page No. 16 admitted the suggestion that there is no basis to claim damages at the rate of Rs.50,000/- per month. During the course of cross-examination of DW1 the learned counsel for the plaintiff put a suggestion to DW1 that the suit schedule property fetches rent of Rs.25,000/- if it let out to any other third parties. The plaintiff at one stretch has taken contention that he is entitled for damages at the rate of Rs.50,000/- per month but in the other stretch during the course of cross-examination of DW1 it is contended that if the suit property is let out to any other third parties it will fetch rent of Rs.25,000/-. In the cross- examination of PW1 he admitted that there is no basis to claim the damages at the rate of Rs.50,000/- per month. While discussing issue No. 1 it is held that the plaintiff has failed to prove he is the absolute owner of the suit schedule property. It is held that the suit schedule property is the joint family property of the plaintiff and his brothers. Under such circumstances the plaintiff is not entitled for any damages at the rate of Rs.50,000/- per month as claimed by him. Hence I answered issue No. 4 in the Negative.

33. Issue No. 5: The plaintiff has filed this suit praying to declare that he is the absolute owner of the suit schedule property and praying to direct the defendants to handover the vacant possession of the suit schedule property and also prayed to direct the defendants to pay damages of Rs.50,000/- per month from the date of suit till the date of handing over vacant possession of the suit property. While discussing issue No. 1, 3 and 5 this court held that the plaintiff is not the absolute owner of the suit schedule property. The suit schedule property is the joint family property of the plaintiff and his brothers. The plaintiff and his brothers are entitled equal share in the suit schedule property. The

defendants who are representing the estate of the deceased M.Ravishankar are entitled for the share of deceased Ravishankar in the suit schedule property. The plaintiff has failed to prove the alleged Will Ex.P16. In this suit all the sharers of the suit schedule property are not the parties. Another brother of the plaintiff namely M.Sridhar Babu is not the party to this suit. Hence this court cannot mould the relief by granting partition. All the properties are also not subject matter of this suit. In this suit this court cannot exercise the power to modify the relief in the absence of all the co-sharers and all the joint family properties in this suit. The plaintiff who sought for the declaration of ownership and vacant possession of suit property and damages is not entitled for the same. The plaintiff can claim the share in the suit schedule property by filing the suit for partition and separate possession. The plaintiff is not entitled for the relief as sought for in this suit. Hence I answered issue No. 5 in the Negative.

34. Issue No.6: In view of my findings to the above issues, I proceed to pass the following:

ORDER The suit of the plaintiff is dismissed.

Parties shall bear their own cost.

Draw decree accordingly.

(Dictated to the Judgment-Writer, transcribed, computerized and printout taken by her, revised and then pronounced by me in the open court on this the 13th day of February 2020.) (Mohan Prabhu) XXV ADDL. CITY CIVIL & SESSIONS JUDGE, BANGALORE.

ANNEXURE Witnesses examined for the plaintiff/s :

PW1	-	M.Prashanth Kumar
PW2	-	M.Sridhar Babu
PW3	-	Kishore M.N.
PW4	-	Anasuya Nagaraj

Witness examined for the defendant/s :

DW1 - Triveni Shankar Documents marked for the plaintiff/s :

Ex.P1 - certified copy of Registered sale deed dated 24.10.1994 Ex.P2 - Copy of notice dated 7.9.2012 Ex.P3 - Copy of notice dated 8.10.2012 Ex.P4 - Postal receipt Ex.P5 - Postal acknowledgment Ex.P6,7 - 2 Postal receipts Ex.P8 - Postal receipt Ex.P9 - Property register card Ex.P10-15 - 6 Postal receipts Ex.P16 - Post mortem dated 16.4.1995 Ex.P16(a) - Signature of K.M.Mayanna Gowda Ex.P17 - Receipt Ex.P18 - certified copy of sale deed dated 21.11.2001 Ex.P19 - Absolute sale deed dated 28.7.2005 Documents marked for the defendant/s :

Ex.D1 - Certificate issued by contractor Ex.D2 - Certificate issued by Project Manager
Ex.D3 - Telephone Bill Ex.D4 - Share certificate of society Ex.D5 - sale deed dated
23.3.1998 Ex.D6 - Agreement Ex.D7 - Certificate (Mohan Prabhu) XXV ADDL. CITY
CIVIL & SESSIONS JUDGE, BANGALORE.

Judgment pronounced in the open
court (vide separate detailed
Judgment)

ORDER

The suit of the plaintiff is
dismissed.

Parties shall bear their own
cost.

Draw decree accordingly.

XXV ADDL. CITY CIVIL & SESSIONS JUDGE, BANGALORE.