

Smt. K. Nalani vs Sri. Anandraj. K on 1 April, 2022

Form No.9 (Civil)
Title Sheet for Judgment in suit
(R.P. 91)

IN THE COURT OF THE LXXII ADDL. CITY CIVIL &
SESSIONS JUDGE AT MAYO HALL BENGALURU,
(CCH-73)

Present:

Sri.Abdul-Rahiman. A. Nandgadi,
B.Com, LL.B., (Spl.,)
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 1st day of April, 2022.

O.S.No.25245/2019

Plaintiffs:-

1. Smt. K. Nalani,
D/o Late R. Krishnamurthy,
Aged about 52 years,
R/at No.P20, Vijayavinayaka Nivas,
2nd Cross, Nagappa Block,
Srirampura,
Bengaluru-560 021.

2. Smt. Kalavathi. K,
W/o Sri. N Manohar,
D/o Late Krishnamurthy,
Aged about 50 years,
R/at No.4251, 19th Main,

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Subramanyanagar,
Srirampura Post,
Bengaluru-560 021.

3. Smt. R Sudha,
D/o Late R. Krishnamurthy,
Aged about 47 years,
R/at No.8, Ammakara Street,
Arasamarapettai,
Vellore,
Tamil Nadu- 632004.

[By Sri. B. J. Janardhanan Reddy-Adv]

V/s

Defendant:- Sri. Anandraj. K,
S/o Late Krishnamurthy,
Aged about 55 years,
R/at No.4251, 19th Main,
Subramanyanagar,
Srirampura Post,
Bengaluru-560 021.

[By Sri. J. Ravi Suunder -Adv]

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O.S.No.25245/2019

Date of Institution of the suit	13.02.2019
Nature of the (Suit or pro-note, suit for declaration and possession, suit for injunction, etc.)	Partition Suit
Date of the commencement of recording of the Evidence.	02.07.2019
Date on which the Judgment was pronounced.	01.04.2022
Total duration	Year/s Month/s Day/s 03 01 19

LXXII ADDL.CITY CIVIL AND SESSIONS JUDGE,
Mayohall Unit: Bengaluru.

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JUDGMENT

Plaintiffs have filed the present suit for the relief of Partition and Separate Possession, seeking 1/4th share each in the Suit Schedule Properties, alongwith Mesne Profits.

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2. The brief facts of the Plaintiffs case are as under:

It is the case of the Plaintiffs that, the Plaintiffs are the sisters interse and the sisters of the Defendants. They and the Defendant are the children of R Krishnamurthy and Smt. Prema. Their father R Krishnamurthy died intestate on 25.06.2018 and their

mother Smt. Prema died intestate on 08.02.2017. They and the Defendant are the legal heirs, who have jointly succeeded the estate left by Smt. Prema and R Krishnamurthy.

Further contends that, the City Improvement Trust Board (CITB) Bengaluru, now Bengaluru Development Authority (BDA) had allotted Item No.1 of the Suit Schedule Property to their mother Smt. Prema. The CITB has executed a registered lease cum sale agreement infavour of their mother Prema on 05.09.1973 and she was put into possession of the said property. Their mother Prema has constructed a residential house building on the said site and she was in possession and enjoyment of the said house alongwith her family O.S.No.25245/2019 members, including the Plaintiffs and the Defendants. Khata was also issued in her name. She was paying taxes to the BBMP Authorities. At present the Khata of the said property is standing in the name of their mother Smt. Prema. BDA has executed an absolute Sale Deed dtd.11.12.2001 infavour of their mother Prema. The Defendant is in possession, custody and power of the said Registered Sale Deed dtd.11.12.2001.

Further contends that, the Plaintiff No.2 and the Defendant is occupying the Item No.1 of the Suit Schedule Property and the said property is fetching monthly rentals of Rs.21,000/-. Defendant alone is enjoying the entire rents, he is not parting with the rents received with them. They are having 1/4th share each in the rents received by the Defendant.

Further contends that, their mother Smt. Prema has acquired Item No.2 of the Suit Schedule Property under the Registered Sale Deed dtd.05.07.1995. The Plaintiff No.1 is in possession and enjoyment of the portion of the constructed house. The Plaintiff No.1 has constructed the said house on her own cost; she is O.S.No.25245/2019 paying property taxes to the concerned authority and revenue records stand in the name of their mother Smt. Prema.

Further contends that, during the lifetime of their father R Krishnamurthy he had purchased the Item No.3 of the Suit Schedule Property under the Registered Sale Deed dtd.06.12.2003 in the name of the Defendant. The Defendant is only the nominal party to the said Sale Deed, as the entire sale consideration amount under the said Sale Deed, was paid by their father. The original Registered Sale Deed and other documents withregard to Item No.3 of the Suit Schedule Property is in possession, custody and power of the Defendant.

After the death of their parents they have become joint owners and have succeeded jointly the Suit Schedule Properties alongwith the Defendant. They had requested the Defendant to make partition in the Suit Schedule Properties and to allot their share in the said properties alongwith Mesne Profits/ rents. The Defendant initially tried to mislead them saying that, the Sale Deed is not yet obtained from the BDA in O.S.No.25245/2019 respect of Item No.1 of the Suit Schedule Property; and the

partition be effected immediately on obtaining the same. Further he started coercing them to execute deed of release, in his favour, in respect of Item No.1 of the Suit Schedule Property, under the pretext that, the BDA will not execute the Sale Deed without their being any release deed. Accordingly he instructed them to come to the office of the Sub-Registrar Rajajinagar, Bengaluru for the execution of the Release Deed in his favour. But they have demanded the Defendant to furnish the copy of the Release Deed, to them, before they sign. The Defendant handed over the draft copy of the Release deed to them for their approval. On perusal of the said draft copy they found that, there were recitals with suggest that, the Defendant alone will be the absolute owner of the said property. Due to the same, they refuse to sign the deed of Release. On their refusal he started threatening them on dire consequences contending that, they will never get a share in the Suit Schedule Properties and they will be dispossessed from the said properties. Having no alternative they have O.S.No.25245/2019 issued a legal notice to the Defendant calling upon him to execute and registered a deed of Partition in respect of the Suit Schedule Properties, in their favour on 17.12.2018. the same was received by the Defendant.

He has replied the same evasively on 26.12.2018, claiming to be the absolute owner of the Suit Schedule Properties and confessed that, BDA has executed the Sale Deed in favour of their mother in respect of Item No.1 of the Suit Schedule Property. On receipt of the same, they have issued a rejoinder notice dtd.04.01.2019 denying the claim made by the Plaintiff in the reply notice. Thus, they were constrained to file the present suit for the relief of Partition; and to have separate possession in the Suit Schedule Properties, alongwith Mesne Profits.

3. Suit summons was issued to the Defendant. Defendant has appeared through his counsel on 06.03.2019 and has filed his Written Statement on 05.04.2019.

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4. The Defendant in his Written Statement has admitted his relationship with the Plaintiffs; and the relationship of the Plaintiffs with his parents. Further contended that, Plaintiffs have no right to claim any right in the Suit Schedule Properties, they are greedy and trying to make wrongful gain, even by claiming a share in Item No.3 of the Suit Schedule Property, which is his absolute and self acquired property. Neither his parents had any right over the said property, nor the Plaintiffs have any right over the said property.

Further contends that, Item No.1 and 2 of the Suit Schedule Properties were acquired by his father R Krishnamurthy, nominally in the name of his mother Smt. Prema, out of the joint labour and funds invested by him and his father. So the said properties have been acquired by him and his father jointly. His mother Prema was only a name lender, being a house maker, who was entirely depending on her husband and on her son i.e., the Defendant, as she was not having any independent income, of whatsoever nature.

O.S.No.25245/2019 Further contends that, they are four independent houses which are now rented and one duplex house in which he is residing alongwith his family, in Item No.1 of the Suit Schedule Property. During the lifetime of his parents they were residing with him in the said duplex house. He was taking care of his parents; he was providing all the medical treatments and all other comforts to his parents by spending huge amount periodically. The all the said four houses were constructed out of the funds jointly invested by him and his father; and the duplex house was solely constructed by him, in incurring cost of Rs.11,00,000/-. None of the Plaintiffs have contributed any amount, or labour either in purchase or construction or maintenance of any of the houses.

Further contends that, the Plaintiff No.2 is staying in one of the four houses in Item No.1 of the Suit Schedule Property, as a tenant. But she is not paying any rents, since inception, except paying water and electricity charges.

O.S.No.25245/2019 Further contends that, the original Registered Sale Deed pertaining to Item No.1 of the Suit Schedule Property is mislaid/misplaced during the lifetime of his parents. It is not available with him, inspite of best efforts. In such circumstances, he had applied for a duplicate Sale Deed with the BDA authority on 21.12.2018 and after continuous follow up for morethan 3 months; and on spending huge expenditure, he could secure the duplicate Sale Deed. There is no question of withholding any information from the knowledge of the Plaintiffs and even there was no necessity for him.

Further admits that, an amount of Rs.21,000/- was received as rents in Item No.1 of the Suit Schedule Property. During the lifetime of his father, he was receiving the said rents and after his death, he (Defendant) started receiving the rents. He (Defendant) on collecting the said rents, for applied for maintenance of entire building and for payment of property tax periodically. He has not committed any act of waste. So the Plaintiffs are not entitle to claim any share out of O.S.No.25245/2019 the rents inrespect of Item No.1 of the Suit Schedule Property.

The Plaintiff No.2 being one of the occupants has now started claiming a right, on failing to pay the rents, as agreed by her and thereby has squat upon the portion of Item No.1 of the Suit Schedule Property.

Item No.2 of the Suit Schedule Property is a house constructed in an area measuring 30 feet X 40 feet by his father Krishnamurthy and the remaining area is kept vacant. His father out of generosity and at the request of the Plaintiff No.1, allowed her to stay in the said constructed house in a portion of Item No.2, but she has misused the good gesture of her father and she has letout the said portion on monthly rentals of Rs.8,000/- and getting enriched out of it. Infact, the Plaintiff No.1 is residing at Nagappa Block, Srirampura, Bengaluru, in her own property. She is not in possession and enjoyment of the portion of Item No.2 of the Suit Schedule Property. So also she has not constructed any house on her own cost, as alleged. Plaintiff No.1 has paid taxes of Item No.2 of the Suit Schedule Property in O.S.No.25245/2019 the year 2018-19, as an afterthought. It is, he who has paid the property taxes of Item No.2 of the Suit Schedule Property, since its inception.

Further contends that, he had no intention of obtaining Sale Deed in respect of Item No.1 of the Suit Schedule Property from BDA in his name, as alleged; and even he had never made any attempts to get the said Sale Deed executed in his favour, as the original Sale Deed had already been issued by the BDA in favour of his mother. The Plaintiffs are well aware about the fact of non availability of the original Sale Deed and they did not care for their parents, during their lifetime. The original documents relating to Item No.2 of the Suit Schedule Property has been taken away by the Plaintiff No.1 from the custody of her parents, under the false pretext and by inducing them in his absence, which she has never returned the said documents.

Item No.3 of the Suit Schedule Property which is consisting of two sides is his self acquired property, which he has acquired out of his own funds, under the O.S.No.25245/2019 Registered Sale Deed dtd.06.12.2003. The said fact is conveniently suppressed by the Plaintiffs, to defit his rights over the said property and if possible to make wrongful gains. Non of the Plaintiffs are having any right over Item No.3 of the Suit Schedule Property. Presently Item No.3 of the Suit Schedule Property is a vacant site. He is holding the custody of the original Sale Deed and other documents pertaining to the said property, as he is the absolute owner of the said property.

Further contends that, he at the age of 16 years was working as a trainee for stipend for the period of 1 years in BFW Company, which is a multi national company. Later on he joined Radha Industrial Works, for two years. After gaining substantial experience in other private Organizations/ Institutions, he become an employee of Kennametal Factory and he is working as a Technician, therein. He started assisting his father in all ways, possibly including financial matters, to acquire Item No.1 and 2 of the Suit Schedule Properties, besides acquiring Item No.3 of the Suit Schedule Property by O.S.No.25245/2019 himself, on his own hard work and labour. He being the elder brother of the Plaintiffs, stood by his father through out, in performing their marriages who were sufficiently given, both in terms and gold ornaments and in cash. All the expenses subsequent to their marriages relating to their matrimonial functions were borne by him, as and when occasion arose.

It is false for the Plaintiffs to contend that, he has coerced them to execute the deed of release in his favour, in respect of Item No.1 of the Suit Schedule Property, on the pretext of obtaining Sale Deed from the BDA. Thus, Plaintiffs are not entitle for any share in the Suit Schedule Properties.

Hence, prayed to dismiss the suit of the Plaintiffs with exemplary costs.

5. On the basis of the above said pleadings, this Court has framed the following Issues on 21.11.2019, as under:

ISSUES

1. Whether the Plaintiffs prove that, they and the Defendant being the legal heirs O.S.No.25245/2019 have jointly succeeded the estate left by their parents Late Smt. Prema and Sri. Krishnamurthy, as contended by them in para No.3 of the suit plaint?

2. Whether the Defendant proves that, his father R. Krishnamurthy has nominally acquired item Nos.1 and 2 of the suit schedule property, in the name of his mother Smt. Prema, acquired with his and his father's joint labour and investment of funds, as contended in para No.3 of his Written Statement?

3. Whether the Defendant proves that, four houses in item No.1 of the suit schedule property, were constructed out of his and his father's joint funds and investment and a duplex house in item No.1 of the suit schedule property, is constructed solely out of his own funds, as contended by him in para No. 4 of his written statement?

4. Whether the Defendant proves that, item No.3 of the suit schedule property is his self-acquired property, as contended by him in para No.8 of his written statement?

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5. Whether the Plaintiff are entitled for the relief of Partition to the extent of 1/4th share in the suit schedule property, by metes and bounds?

6. Whether the Plaintiffs are entitle for the relief of mesne profits as prayed for by them in prayer column-(iii) of the suit plaint?

7. What order or decree?

6. On the basis of the application filed by the Defendant at IA No.2/2021, below mentioned Addl Issue No.1 is framed on 23.09.2021.

Addl. Issue No.1:-

1. Whether the Plaintiffs prove that, Item No.3 of the Suit Schedule Property, was purchased by R. Krishnamurthy in the name of the Defendant and the Defendant was the nominal party to the said Sale Deed, as the entire Sale consideration was paid by R. Krishnamurthy, as contended in Para No.8 of the Suit Plaint?

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7. Inorder to prove the case, the Plaintiffs have got examined Plaintiff No.2 as PW1 and got marked 13- documents as ExP1 and Ex.P13. PW1 is cross examined on behalf of the Defendant on 16.10.2019.

Percontra, the Defendant inorder to prove his case got himself examined as DW.1 and got marked 31- documents, as Ex.D1 to Ex.D31. DW.1 was cross examined on behalf of the Plaintiffs on 19.02.2021.

8. Heard the Arguments of the Learned Counsel for the Plaintiffs and Defendant, respectively.

The Learned Counsel for the Defendant has filed synopsis alongwith 9 decisions.

I have carefully gone through the synopsis and the decisions relied by the Learned Counsel for the Defendant, in this case.

9. My findings on the above said issues are as under:

Issue No 1: Partly in the Affirmative; Issue No 2: In the Negative;

Issue No 3: In the Negative;

Issue No 4: In the Affirmative;

O.S.No.25245/2019 Issue No 5: Partly in the Affirmative;

Issue No 6:	In the Negative;
Addl. Issue No 1:	In the Negative;
Issue No 7:	As per final order for the following

REASONS

10. On the basis of the contentions of the parties, the undisputed facts are as under:

i) relationship inbetween the Plaintiffs and the Defendant, interse; and with R Krishnamurthy and Smt. Prema;

11. ISSUE NO.2:-

The Plaintiffs contend that, Item Nos.1 and 2 of the Suit Schedule Properties have been acquired by their mother. They contend that, their mother Prema has acquired, Item No.1 of the Suit Schedule Property from CITB, under the Registered Sale Deed dtd.10.2.2001; and Item No.2 of the Suit Schedule Property from K Mohan Das, under the Registered Sale Deed dtd.05.07.1995.

O.S.No.25245/2019 Percontra, the Defendant contends that, he and his father have acquired Item Nos1 and 2 of the Suit Schedule Properties in the name of his mother -Prema. She is not an earning hand. She is depending upon him and his father R Krishnamurthy, for her survival. She is only the name lender under the Sale Deeds, for acquiring Item Nos.1 and 2 of the Suit Schedule Properties.

The Learned Counsel for the Defendant has placed his reliance on the below mentioned decisions;

a) of the Hon'ble High Court of Madhya Pradesh in the case of, Gyarsibai and Ors., V/s Jamnalal Moolchand and Ors., reported in AIR 1973 MP 75, wherein it is observed in Para No.22, as under:-

"22. It appears that both the learned lower Courts had proceeded on the presumption that since a new construction was raised on the open plot of land which was family property, the construction also became the joint family property. This presumption is not justified in law. In *Periakaruppan Chetti v. Arunachalam Chetti*, AIR 1927 Mad 676 a similar question was considered. In that case some construction O.S.No.25245/2019 was made on an open plot of land, which was ancestral. It was contended that the new construction also became the ancestral property. It was held that:-

"The fact a house is built by one member of a joint family on joint family land cannot be regarded as sufficient by itself to show that he intends to waive his rights to the bouse as his separate property if he built it with his separate funds."

b) of the Hon'ble Apex Court, in the case of Mst. Rukhmabai V/s Lala Laxminarayan and Ors, reported in AIR 1960 SC 335, wherein it is observed in Para No.29, as under:-

"29. To summarize: There was no separation of the members of the family: all the members of the family continued to be joint and the family was doing business in different places. They had extensive properties and a fairly large income: they were also heavily indebted. The family was involved in debts in Ramasahai's life time and even after his death the position continued to be the same. Various attempts were made to salvage the properties of the family and to keep both the movable and immovable properties not mortgaged from the reach of the creditors. The relinquishment deeds, innumerable mortgages, sale deeds and the trust deed were all executed as parts of the O.S.No.25245/2019 same scheme. We, therefore, hold that the suit property was the joint family property and the respondent is entitled to the declaration he has asked for, namely, that the trust deed dated January 17, 1916, was a colourable and fictitious document and could not affect the respondent's right to ownership of the property in the suit."

c) of the Hon'ble Apex Court, in the case of D. S Lakshmaiah and Anr., V/s L Balasubramanayam and Anr., reported in 2003 AIR SCW 4347, wherein it is observed in Para No.18, as under:-

"The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, 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 and not out of joint family

nucleus that was available."

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d) of the Hon'ble High Court of Karnataka, in the case of Dasappa V/s State of Karnataka by H. D Kote Police Station, reported in ILR 2019 Kar 78, wherein it is observed in Para No.34, as under:-

"34. Section 114 of the Evidence Act empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of Crl.A. No.413/2014 reasoning and reaches a logical conclusion as the most probable position."

e) of the Hon'ble High Court of Karnataka, in the case of T. S Subbaraju V/s T A Shivarama Setty and Ors, reported in AIR 2004 Kar 479, wherein it is observed in Para Nos.45 and 50, as under:-

"45. It is by now well established in law that the initial burden to prove the existence of ancestral property which forms a nucleus for other acquisitions or for business of the O.S.No.25245/2019 brothers squarely lies on the plaintiff. This being a pure question of fact, can be proved by direct or circumstantial evidence. However, the circumstantial evidence should be clear, unequivocal and clinching, as otherwise, there is every chance of self-acquisition of a person being lost to another who claims a share in it.

50. The plaintiff having pleaded joint business, did not produce an iota of evidence in support of such claim. The plaintiff ought to have secured at least the licence or other such documents issued by the statutory authorities to carry on Provision Store's business in order to prove the commencement of the joint business. It has come in evidence that the plaintiff was 3 years of age in the year 1950 and therefore, he could not have had any personal knowledge of any of the facts asserted by him. It is in his evidence that the grandfather of the plaintiff did not accompany 1st defendant or his family members to Bangalore when the family shifted to Bangalore during 1950. In this view of the matter, the civil Court did come to a correct conclusion that the claim of the plaintiff of joint business was false."

f) of the Hon'ble High Court of Karnataka, in the case of Thimma and Ors., V/s Smt. Doddamma and Anr., reported in ILR 2014 Kar 4491, wherein it is observed in Para Nos.17, 20, 21 and 28, as under:-

O.S.No.25245/2019 "17. In the instant case, appellants-

defendants have produced Exs.D2, D4 and D5 registered sale deeds showing it was a sale transaction simpliciter in favour of the purchaser-Thimmappa during the period 1965-1968 as referred to above. Thus, it is clear from the records that Thimmappa was cultivating it as early as in the year 1965 and upon his demise, the name of the appellants have been updated, the suit was filed in the year 1987. There is no statement forth coming from the plaintiff as to why they did not seek or question such entries in the revenue records if she or her father had any subsisting right, title and interest or were cultivating it along with Thimmappa. On the other hand, there is categorical statement by her that her father died 10 years prior to the filing of the suit which takes us to 1977. At least prior to that period she should have been in a position to establish her father- Thayappa was cultivating the land along with Thimmappa. Such evidence is lacking. In this fact situation, in the absence of any material proof that their was joint family nucleus existing capable of generating funds and sale consideration is paid from and out of it to purchase item Nos. 2, 6 and 7 of the schedule, the transaction cannot be construed as one in favour of the joint family, but has to be understood as an individual transaction in favour of Thimmappa who was the purchaser.

20. What clearly emerges from the decision is, there is always primary burden O.S.No.25245/2019 on the one who asserts that the property which is the subject matter of acquisition is either joint family property or acquired from the estate as source but mere living in joint family as HUF does not lead to an inference that the property is always joint family property.

21. It must be noticed from the decision referred to above initial burden rests on the person who asserts existence of joint family and also to establish there was adequate nucleus from which acquisition could have been made. The nature and extent of nucleus is therefore to be established and it should be of such quantity or capable of generating funds adequate to pay consideration for other acquisitions.

28. While arriving at the above said conclusion, I have kept in mind the case laws cited by the Learned Senior Counsel, Mr. Srivatsa and various decisions cited by Mr. G.L Vishwanath. The legal proposition emerging from all the decisions is, even if it is shown that the parties to the suit were members of the joint family living in coparcenery, there is no presumption that the properties owned individually by coparceners are also to be treated as joint family properties unless material proof is laid, firstly about existence of nucleus of joint family sufficient to generate funds for acquisition of properties by individuals and secondly, that the properties were purchased in the name of O.S.No.25245/2019 one of the coparceners for and on behalf of the joint family. In short, merely living together in joint family leads to no presumption that the property acquired individually by coparceners or properties purchased in the name of individual coparceners are joint family properties."

12. Inrespect of Item No.1 of the Suit Schedule Property.

12.01. The Plaintiffs have produced

a) certified copy of the Registered Sale Deed dtd.10.12.2001 at Ex.P1. On careful perusal of the said document, it is seen that, CITB Bengaluru has conveyed the property bearing No.4251, measuring

East to West:

45 feet and North to South: 36 feet, bounded to the East: by Property No.4256; to the West: by Road; to the North: by Property No.4250; and to the South: Property No.4252, (said property is shown as Item No.1 of the Suit Schedule Properties) infavour of Smt. Prema W/o R Krishnamurthy, for the valuable consideration of Rs.1,440/-. This document indicates that the purchaser has been put into possession of the purchased property on 20.09.1973. Further this document suggest that the O.S.No.25245/2019 purchaser has paid the entire consideration amount to the vendor.

b) Khata extract and Khata certificate issued by BBMP dtd.08.02.2019, at Ex.P2 and Ex.P3, respectively. As per this documents Smt. Prema is shown to be the owner of property bearing Old No.424, New No.2, situate at 19th Main A Block, Subramanaya Nagar, Bengaluru.

c) Tax paid receipt issued by the BBMP dtd.20.04.2018 at Ex.P4. As per this document, Smt. Prema is shown to be the owner of property bearing Old No.424, New No.2, situate at 19 th Main A Block, Subramanaya Nagar, Bengaluru.

12.02. Coming to the ocular evidence, on this point, more specifically, cross-examination of DW.1, at Page No 11, Para No.3 and Page No.12, Para No.2, which reads as under:-

"It is true to suggest that on fulfillment of all the conditions, the BBMP authorities have executed a registered Sale Deed infavour of my mother on 10.12.2001 as per Ex.P1. It is true to O.S.No.25245/2019 suggest that the entire consideration amount of Rs. 1,440/- was paid at the time of execution of lease cum sale Agreement. It is true to suggest that my mother died on 08.02.2017. It is true to suggest that the katha pertaining to the item No.1 of the Suit Schedule Property still stands in the name of my mother, as can be seen in Ex.P2 - katha extract and Ex.P3- katha Certificate. Even tax of the said property is paid in her name."

As per this evidence, Defendant DW.1 admits that, on fulfillment of all the conditions, the BBMP authority have executed the Registered Sale Deed infavour of his mother on 10.12.2001, as per Ex.P1 and the entire consideration amount of Rs.1,440/- was paid at the time of execution of lease cum sale agreement; the Khata pertaining to Item No.1 of the Suit Schedule Property still stands in the name of his mother as can be seen in Ex.P2- Khata extract and Ex.P3- Khata certificate; and tax of the said property is paid in her name.

12.03. Though the Defendant contends that, he and his father have acquired Item No.1 of the Suit O.S.No.25245/2019 Schedule Property in the name of his mother; and both of them have contributed and paid the consideration amount for acquisition of the said property, but no any document is placed by the Defendant on record to prove the said fact.

Hence, the Defendant has failed to prove that, he and his father have acquired Item No.1 of the Suit Schedule Property is acquired in the name of his mother by investing funds and his mother was only a name lender for acquisition of the said property.

13. In respect of Item No.2 of the Suit Schedule Property.

13.01. The Plaintiffs have produced

a) certified copy of the Registered Sale Deed dtd.20.04.1995 at Ex.P5. On careful perusal of the said document, it is seen that, K Mohan Das S/o Ramachandrappa has conveyed the property bearing Site No.464, measuring East to West: 13 mtrs and North to South: 18 mtrs, (the said property is shown as Item No.2 of the Suit Schedule Properties), in favour of Smt. O.S.No.25245/2019 Prema W/o R Krishnamurthy, for the valuable consideration of Rs.40,000/-. This document indicates that the purchaser has been put into possession of the purchased property on the day of its purchase. Further this document suggests that the purchaser has paid the entire consideration amount to the vendor.

b) Tax paid receipt dtd.16.07.2018 at Ex.P6. As per this document, Smt. Prema is shown to be the owner of property bearing Site No.464.

13.02. Though the Defendant contends that, he and his father have acquired Item No.2 of the Suit Schedule Property in the name of his mother; and both of them have contributed and paid the consideration amount for acquisition of the said property, but no any document is placed by the Defendant on record to prove the said fact.

Hence, the Defendant has failed to prove that, he and his father have acquired Item No.2 of the Suit Schedule Property in the name of his mother by O.S.No.25245/2019 investing funds and his mother was only a name lender for acquisition of the said property.

14. In the absence of any cogent evidence from the side of the Defendant to support his contentions; and in the light of the above oral and documentary evidence, it can be concluded that, Item Nos.1 and 2 of the Suit Schedule Properties are acquired by Smt. Prema

- the mother of the Plaintiffs and the Defendant, independently.

Hence, I am constrained to answer ISSUE NO.2 IN THE NEGATIVE.

15. ISSUE NO.3:-

The Plaintiffs contend that, their father has constructed residential house in Item No1 of the Suit Schedule Property; and Plaintiff No.1 has constructed house in Item No.2 of the Suit Schedule Property. Further they contend that, Plaintiff No.2 is residing in one portion of the Item No.1 of the Suit Schedule Property; and the Defendant is residing in the duplex O.S.No.25245/2019 house constructed in Item No.1 of the Suit

Schedule Property. And the Plaintiff No.1 is residing in the house constructed in Item No.2 of the Suit Schedule Property.

Percontra, the Defendant contends that, Item No.1 of the Suit Schedule Property consist of four houses constructed by him and his father out of their funds and joint efforts. And Plaintiff No.2 is residing in one of the four houses constructed therein, as the tenant, but she is not paying any rents. He has constructed a duplex house in Item No.1 of the Suit Schedule Property out of his own funds, even without the contribution from his father. He alongwith his family is residing in the said duplex house. Even his parents were residing with him in the said duplex house. Further he contends that, he and his father have constructed a house in Item No.2 of the Suit Schedule Property, out of their funds and joint efforts. And his father has allowed to Plaintiff No.1 to reside in the said house, but she instead of residing in the said house, is residing in her house situate at Nagappa Block, Srirampura Bengaluru; and fetching O.S.No.25245/2019 monthly rents of Rs.8,000/- from the house located in Item No.2 of the Suit Schedule Property.

16. Inrespect of Item No.1 of the Suit Schedule Property.

16.01. Coming to the ocular evidence, on the point of construction of the houses in Item No.1 of the Suit Schedule Property.

a) cross-examination of DW.1, at Page No.11, Para No.2, Line Nos.6 to 8, which reads as under:-

"... It is false to suggest that my mother has subsequently constructed the front portion in Item No.1 of the Suit Schedule Property. Witness volunteers that he and his father has constructed the front portion in Item No.1 of the Suit Schedule Property."

As per this evidence, Defendant /DW.1 admits that, his mother has constructed a out house in Item No.1 of the Suit Schedule Property in the year 1977.

b) cross-examination of PW.1, at Page No.14, Para No.3 and Page No.15, Para Nos.2 and 3, which reads as under:-

O.S.No.25245/2019 "It is true to suggest that in the year 1977 my father had constructed an outhouse in Item No.1 of the Suit Schedule Property, measuring East to West 16 feet and North to South 36 feet. It is true to suggest that a duplex house measuring East to West 30 feet and North to South 20 feet, apart from the outhouse was constructed in Item No.1 of the Suit Schedule Property, in the year 1990. It is false to suggest that the said duplex house was constructed by my brother - the Defendant. It is true to suggest that in the year 2009, the said duplex house was renovated. About Rs.7,00,000/- was spent for renovation of said duplex house in the year 2009. It is false to suggest that Rs.11,00,000/- were spent for renovation of the

said duplex house in the year 2009. It is false to suggest that my brother - the Defendant had renovated the duplex house in the year 2009. Prior to constructing of the duplex house two residential blocks consisting of single bedroom, hall, kitchen were constructed in Item No.1 of the Suit Schedule Property. It is false to suggest that the said two residential blocks were constructed by my brother - the Defendant.

It is true to suggest that in the said duplex house, my parents were residing alongwith my brother - the Defendant. It is true to suggest that after the death of my parents my brother - the Defendant and his family is residing in it.

O.S.No.25245/2019 It is true to suggest that I am residing in one residential block consisting of single bedroom, hall, kitchen, out of two blocks situated in Item No.1 of the Suit Schedule Property. I am residing in the said residential block since 2008. I am residing in the said residential block in the capacity of an owner. Now a document is shown to the witness styled as Rental Agreement dt. 25.06.2008, wherein it is shown that it is inbetween the husband of the witness and the mother of the witness. Witness denies the said document." As per this evidence, Plaintiff No.2/ PW.1 admits that, her father has construed an out house in Item No.1 of the Suit Schedule Property measuring East to West:

16 feet and North to South: 36 feet. Further admits that, a duplex house measuring East to West: 30 feet and North to South: 20 feet was constructed in Item No.1 of the Suit Schedule Property, apart from the out house, constructed in the year 1990. She denies the suggestion made to her on behalf of the Defendant that duplex was constructed by her father- Defendant.

Further admits that, in the year 2009 the said duplex house was renovated, on incurring expenses of Rs.7,00,000/-. Further denies the suggestion made to her on behalf of the Defendant that, Rs.11,00,000/-

O.S.No.25245/2019 were spent for renovation of the said duplex house in the year 2009, by her brother- Defendant. She admits that, prior to construction of a duplex house, two residential blocks consisting of single bedroom, hall, kitchen, were constructed in Item No.1 of the Suit Schedule Property. And further denies that, the said two residential blocks were constructed by her brother - Defendant.

And further admits that, in the duplex house her parents were residing alongwith her brother; and after the death of her parents, her brother is residing with his family, in the said duplex house.

And further admits that, she is residing in one residential block consisting of single bedroom, hall, kitchen, out of the two blocks situated in Item No.1 of the Suit Schedule Property, since 2008. Further she contends that, she is residing therein in the capacity of a owner. Though a document was shown to her styled as rental agreement dtd.25.06.2008, contending that, the said rental agreement has been entered into O.S.No.25245/2019 inbetween her husband and her mother. But

the same is denied.

16.02. On the basis of the above ocular evidence, it can be concluded that, Item No.1 of the Suit Schedule Property consist of

- a) two out houses, out of which one is constructed by the father of the Plaintiffs and the Defendant; and another out house is constructed by the mother of the Plaintiffs and the Defendant;
- b) a duplex house, which as per the Plaintiffs, they contend that, it is constructed by their father; and as per the Defendant, he contends that, he has constructed out of his own funds;
- c) two residential blocks, constructed by the father of the Plaintiffs and the Defendant.

16.03. It remains an admitted fact from the side of the Plaintiffs and the Defendant that, Plaintiff No.2/PW.1 is residing in one residential block out of the two residential blocks in Item No.1 of the Suit Schedule O.S.No.25245/2019 Properties. And the Defendant and his family members are residing in the duplex house, constructed in Item No.1 of the Suit Schedule Properties, wherein he was residing with his parents, when they were alive.

16.04. Coming to the aspect of the construction of two residential blocks in Item No.1 of the Suit Schedule Property.

16.04.01. The Plaintiffs contend that, their father has constructed the said two residential blocks. Whereas the Defendant contends that, he has constructed the said two residential blocks, out of his own funds.

16.04.02. The Learned Counsel for the Defendant would contend that, the two residential blocks is constructed by the Defendant on obtaining loan from the Janatha Co-operative Bank Ltd., Malleshwaram, alongwith his parents; and the said loan was discharged by him.

O.S.No.25245/2019 16.04.03. Coming to the ocular evidence on this point, more specifically,

a) cross-examination of PW.1, at Page No.13, Para No.2, which reads as under:-

"It is true to suggest that on 06.09.2005, my parents alongwith my brother - the Defendant had availed loan facility of Rs.4,00,000/- from Janatha Co-operative Bank, Malleshwaram, Bengaluru. I do not know whether my parents alongwith my brother - the Defendant had availed loan facility of Rs.3,00,000/- from Janatha Co-operative Bank, Malleshwaram, Bengaluru, on 26.04.2006. I do not know, for what purpose both the loans were availed. It is false to suggest that the said loan was availed in order to pay the earlier loans obtained and for construction of small residential blocks in Item Nos.1 and 2 of the Suit Schedule Properties. It is false to suggest that both these loans were repaid by my brother - the Defendant. Witness volunteers that my father has repaid the said loan amount. It is false to suggest that

my father was not an earning hand as on the date of repayment of the said loan amounts i.e. in the year 2005."

As per this evidence, Plaintiff No.1/PW.1 admits that, on 06.09.2009 her parents alongwith her brother - Defendant had availed loan facility of Rs.4,00,000/-

O.S.No.25245/2019 from Janath Co-operative Bank Ltd., Malleshwaram, Bengaluru. Further she pleads her ignorance that, her parents and her brother had also availed loan facility of Rs.3,00,000/- from the said Co-operative on 26.04.2006; as to the purpose of availing the said loan, I.e., to pay earlier loans obtained for construction of small residential blocks in Item Nos.1 and 2 of the Suit Schedule Properties. She denies suggestion made to her on behalf of the Defendant that, both these loans were repaid by her brother - Defendant. But contends that, her father has repaid the said loan amount. Further she denies the suggestion made to her on behalf of the Defendant that, her father not an earning hand as on the date of repayment of the said loan amount i.e., in the year 2005.

b) cross-examination of DW.1, at Page No.12, Para No.3, which reads as under:-

"It is true to suggest that my mother had obtained loan from the Janatha Co-operative Bank Ltd., Malleshwaram, Bengaluru, for construction of a building in Item No.2 of the Suit Schedule Property, as per Ex.D9 and Ex.D10. It is true to suggest O.S.No.25245/2019 that my mother has repaid the loan amount availed from the Janatha Co-operative Bank Ltd., Malleshwaram, Bengaluru, as per Ex.D30. Witness volunteers that the said loan was discharged after the death of his mother."

As per this evidence, Defendant/DW.1 admits that, his mother obtained loan from Janath Co-operative Malleshwaram, Bengaluru for construction of building in Item No.2 of the Suit Schedule Properties, as per Ex.D9 and Ex.D10; and his mother has repaid the said loan amount availed from the said Co-operative Bank, as per Ex.D30. And further contends that, the said loan amount was discharged after the death of his mother.

16.04.05. Coming to the documentary evidence on this point, more specifically,

a) Mortgage Deed dtd.06.09.2005 at Ex.D9. As per this document, Smt. Prema W/o R Krishnamurthy has mortgaged her property - Item No.1 of the Suit Schedule Properties and has availed Rs.4,00,000/- as a Mortgage amount, in the form of loan from the Janatha Co-operative Bank Ltd.,; and had agreed to repay the O.S.No.25245/2019 said loan amount in 115 months from the said receipt of the said amount, with a monthly installments of Rs.5,200/-. And the father of the Plaintiffs and Defendant; and the Defendant were the consenting witness to the said Mortgage Deed.

b) Mortgage Deed dtd.26.09.2006 at Ex.D10. As per this document, Smt. Prema W/o R Krishnamurthy has mortgaged her property - Item No.1 of the Suit Schedule Properties and has availed Rs.3,00,000/- as a Mortgage amount, in the form of loan from the Janatha Co-operative

Bank Ltd.,; and had agreed to repay the said loan amount, with interest @ Rs.12% pa. And the father of the Plaintiffs and Defendant; and the Defendant were the consenting witness to the said Mortgage Deed.

c) Receipt issued by the Janatha Co-operative Bank Ltd., at Ex.D30. As per this document, it is seen that, R Krishnamurthy husband of Late Prema has cleared the entire loan in full and final settlement of the Mortgage Deeds dtd.16.01.2016, 19.11.1984, O.S.No.25245/2019 11.02.1992, 16.11.1989, 06.09.2005 and 27.04.2006. And the Defendant is shown to be the first witness to the said Receipt. This Receipt suggest that, the said Mortgages were done in respect of property No.4251/2 i.e., portion of Item No.1 of the Suit Schedule Property.

16.04.06. Thus, on the basis of the above ocular evidence and documentary evidence, it can be concluded that,

a) the mother of the Plaintiffs and the Defendant Smt. Prema had obtained loan from the Janath Co-operative Bank Ltd., Malleshwaram, Bangalore construction of a building in Item No.1 of the Suit Schedule Property; and not the construction of two residential blocks in Item No.1 of the Suit Schedule Property, as contended by the Defendant;

b) the said Mortgage loan amount is repaid by the father of the Plaintiffs and the Defendant by name R Krishnamurthy, as per Ex.D30- Receipt; and not by the Defendant, as contended by Defendant.

O.S.No.25245/2019 16.04.07. Therefore, two residential blocks in Item No.1 of the Suit Schedule Property is constructed by Smt. Prema - the mother of the Plaintiffs and the Defendant; and she has obtained loan for construction of a house in Item No.2 of the Suit Schedule Properties, which is repaid by R Krishnamurthy- the father of the Plaintiffs and the Defendant.

17. Coming to the aspect of the construction of the duplex house in Item No.1 of the Suit Schedule Property.

17.01. The Plaintiffs contend that, their father has constructed the said duplex house. Whereas the Defendant contends that, he has constructed the said duplex house, out of his own funds.

17.02. The Learned Counsel for the Defendant would contend that, initially the Defendant has incurred Rs.7,00,000/- to construct a duplex house in Item No.1 of the Suit Schedule Property; and subsequently he has incurred Rs.11,00,000/-, to renovate the said duplex house.

O.S.No.25245/2019 17.03. Coming to the ocular evidence, on this point, more specifically,

a) cross-examination of PW.1, Page No.14, Para No.3, which reads as under;-

"It is true to suggest that in the year 1977 my father had constructed an outhouse in Item No.1 of the Suit Schedule Property, measuring East to West 16 feet and North to South 36 feet. It is true to suggest that a duplex house measuring East to West 30 feet

and North to South 20 feet, apart from the outhouse was constructed in Item No.1 of the Suit Schedule Property, in the year 1990. It is false to suggest that the said duplex house was constructed by my brother - the Defendant. It is true to suggest that in the year 2009, the said duplex house was renovated. About Rs.7,00,000/- was spent for renovation of said duplex house in the year 2009. It is false to suggest that Rs.11,00,000/- were spent for renovation of the said duplex house in the year 2009. It is false to suggest that my brother - the Defendant had renovated the duplex house in the year 2009. Prior to constructing of the duplex house two residential blocks consisting of single bedroom, hall, kitchen were constructed in Item No.1 of the Suit Schedule Property. It is false to suggest that the said two residential blocks were constructed by my brother - the Defendant."

O.S.No.25245/2019 As per this evidence, Plaintiff No.2/PW.1 denies the suggestion made to her on behalf of the Defendant that, the Defendant has constructed a duplex house; and the said duplex house was constructed by incurring Rs.7,00,000/- and the same was renovated by incurring an amount of Rs.11,00,000/-.

b) cross-examination of DW.1, at Page No.16, Para No.2, which reads as under:-

"It is false to suggest that I have not constructed a duplex house in Item No.1 of the Suit Schedule Properties, but my parents have constructed the same."

As per this evidence, Defendant /DW.1 denies the suggestion to him on behalf of the Plaintiff that he has not constructed a duplex house in Item No.1 of the Suit Schedule Properties, but his parents have constructed the same.

17.04. Coming to the documentary evidence, on this point, more specifically,

a) No claim certificate issued by the Arms Engineering and Contractors at Ex.P24, which includes O.S.No.25245/2019 construction Contractor Agreement. As per this document, it is seen that, the Defendant has entered into an agreement with the Contractor for construction of a structure, by demolishing the building and staircase. The estimated costs is Rs.11,80,300/-, which is shown to be paid by the Defendant to the said Contractor, as per the No claim certificate, issued by the Contractor.

Firstly, neither Smt. Prema - the mother of the Plaintiffs and the Defendant, who is the owner of Item No.1 of the Suit Schedule Properties is the party to this Contractor Agreement, nor Sri. R Krishnamurthy - the father of the Plaintiffs and the Defendant, is the party to this Contractor Agreement, nor the Plaintiffs are the parties to this Contractor Agreement.

Secondly, it is not made clear in the said Contractor Agreement as to what is the position of the Defendant, to enter the said agreement with the said Contractor. In other words, whether the Defendant has entered into the said Contract as the Power Of Attorney holder of his mother -Smt. Prema, or in the capacity of the owner of the said property.

O.S.No.25245/2019 Thirdly, the Defendant is not the owner of Item No.1 of the Suit Schedule Properties.

Under such circumstances, the agreement said to have entered into by the Defendant with the said Contractor, will neither bind Smt. Prema- the mother of the Plaintiffs and the Defendant, nor Sri. R Krishnamurthy- the father of the Plaintiffs and the Defendant, nor the Plaintiffs.

So, the said Contractor Agreement will have no bearings on the fact of construction of the duplex house in Item No.1 of the Suit Schedule Properties.

Thus, the Defendant has failed to prove that, four houses in Item No.1 of the Suit Schedule Property were constructed by him and his father with joint funds and investments; and a duplex house in Item No.1 of the Suit Schedule Property is constructed by him solely out of his own funds, as contended in Para No.4 of his Written Statement.

Hence, I am constrained to answer ISSUE NO.3 IN THE NEGATIVE.

O.S.No.25245/2019

18. ISSUE NO.4 and Addl. Issue No.1:-

Since both these Issues are interrelated to each other, they are taken for joint discussion, in order to avoid repetition, confusion and to have brevity in the discussion.

The Plaintiffs contend in Para No.8 of the Suit Plaint that, Item No.3 of the Suit Schedule Properties was purchased by their father R Krishnamurthy in the name of their brother - the Defendant, under the Registered Sale Deed dtd.06.12.2003; the Defendant was a nominal party to the said Sale Deed; and the entire sale consideration amount under the said Sale Deed is paid by their father.

Per contra, the Defendant contends that, he has purchased the Item No.3 of the Suit Schedule Property out of his own funds, as he was an earning hand right from the year 1991. He had purchased the said property in the year 2003, when his father was not a working hand, as he had retired from his services on 31.03.1995.

O.S.No.25245/2019 18.01. The Learned Counsel for the Plaintiffs would contend that, the father of the Plaintiffs and the Defendant by name R Krishnamurthy has received sale proceeds of Rs.4,00,000/- towards his share in the property - Plot bearing No.5254, situate at Subramanyanagar, Bengaluru, belonging to his father

-Raghavareddy, in Partition in between him and his brothers. And out of the said sale proceeds, he has purchased Item No.3 of the Suit Schedule Properties, under the Sale Deed dtd.06.12.2003-Ex.P7.

Percontra, the Learned Counsel for the Defendant would contend that, as the Defendant was an earning hand and as the father of the Defendant was not an earning hand, as on the date of acquisition of Item No.3 of the Suit Schedule Properties, the said property is purchased by the Defendant under the Registered Sale Deed dtd.06.12.2003.

18.02. Coming to the ocular evidence on this point, more specifically, cross-examination of PW.1, at Page No.12, Para No.2, which reads as under:-

O.S.No.25245/2019 "It is true to suggest that my brother -

the Defendant was serving as an apprenticeship / trainee in HMT Ltd. Company Bengaluru from 07.03.1981 to 06.03.1985. I donot know whether Ministry of Labour has issued Certificate of Apprenticeship to my brother - the Defendant.

It is true to suggest that my brother - the Defendant was serving as a assembly fitter with BFW (Bharath Fritz Werner) Pvt. Ltd., Bengaluru from 23.12.1985 to 22.12.1986. I do not know whether my brother - the Defendant joint the services with Radha Industrial Works Bengaluru, on contract bases for two years. I do not know whether my brother - the Defendant was serving with WIDIA India Ltd., Bengaluru,from 1989. Witness volunteers that he was serving in the said company in the year 1993 as an permanent employee. I do not know whether my brother - the Defendant was receiving basic salary of Rs.1,025/- in the year 1993. I do not know whether the said company had provided housing allowance and other allowances to my brother - the Defendant. It is true to suggest that WIDIA India Ltd.,Bengaluru was converted to Kenna Metal Factory (MNC Company) in the year 2002. It is true to suggest that since then till today my brother - the Defendant is serving as a Technician Grade-I."

As per this evidence Plaintiff No.2/PW1 admits that, her brother - the Defendant was serving as a O.S.No.25245/2019 apprenticeship/trainee in HMT Ltd., Company, Bengaluru from 07.03.1981 to 06.03.1985. She pleads her ignorance that, the Ministry of Labour has issued certificate of Apprenticeship to her brother - the Defendant. But admits that, her brother - Defendant has serving as a Assembly fitter with BFW(Bharath Fritz Werner) Pvt. Ltd., Bengaluru from 23.12.1985 to 23.12.1986. She pleads her ignorance that, her brother- the Defendant joined the services with the Radha Industrial Works Benglauru, on Contract basis for two years; and her brother was serving with WIDIA India Ltd., Bengaluru from 1989. She contends that, her brother was serving in WIDIA India Ltd., Bengaluru Company in the year 1993 Permanent Employee. She pleads her ignorance that, her brother - the Defendant was receiving basic salary of Rs.1,025/- in the year 1993 and he was provided with housing allowances and other allowance. She admits that, WIDIA India Ltd., Bengaluru was converted to Kannametal Factory (MNC Company) in the year 2002; and her brother is O.S.No.25245/2019 serving in the said company as a Technician Grade-I, till date.

b) cross-examination of DW.1, at Page No.13, Para No.3 and Page No.14, Para Nos.2 and 3, which reads as under:-

"Name of my paternal grandfather (father's father) is Raghava Reddy. It is true to suggest that my grandfather was possessing plot bearing No. 5254, situate at Subramanya Nagar, Bengaluru, as the same was allotted to him by the CITB. It is true to suggest that after the death of my grandfather, the said plot was purchased by my Uncles viz., Govinda Swamy and Kodandaram and the sale proceeds was distributed amongst the 5 sons and 2 daughters of my grandfather Raghava Reddy, including my father Krishna Murthy. My father has received his share in the said sale proceeds, but I do not know whether he had received Rs. 4,00,000/-, towards his share. It is false to suggest that the said settlement had taken place in the year 2003. Witness volunteers that the said settlement might have been taken place in the year 2005.

Purchase under Ex.P7 Sale Deed dt. 06.12.2003, was a cash purchase. It is false to suggest that purchase made under Ex.P7 Sale Deed dt. 06.12.2003, was made out of the share amount received by my father, in O.S.No.25245/2019 the sale proceeds of the plot bearing No.5254, belonging to my grandfather.

It is false to suggest that I am a nominal purchaser of the Item No.3 of the Suit Schedule Property under Ex.P7 Sale Deed dt. 06.12.2003."

As per this evidence, Defendant DW.1 admits that, his grandfather was possessing a Plot bearing No.5254, situate at Subramanaya Nagar, Bengaluru, which was allotted to him by the CITB; after his death the said plot was purchased by his uncles Govindaswamy and Kodandaram; and the sale proceeds was distributed among the five sons and two daughters of his grandfather - Raghavareddy, including his father Krishnamurthy, wherein his father received an amount of Rs.4,00,000/- towards his share. But denies the suggestion made to him that, the said settlement inbetween his father and his uncles has taken place in the year 2003. He contends that, the said settlement might have taken place in the year 2005.

Further Defendant/DW.1 denies the suggestion made to him on behalf of the Plaintiff that, purchase made under Ex.P7 - Sale Deed dtd.06.12.2003 was O.S.No.25245/2019 made out of the share received by his father; and he is a nominal purchaser of Item No.3 of the Suit Schedule Property under the Sale Deed dtd.06.12.2003- Ex.P7.

18.03. Coming to the documentary evidence, on this point, I) the Plaintiffs have produced below mentioned documents,

a) Certified copy of the Sale Deed dtd.06.02.2003. As per this document, it is seen that, Sri. C Varadaraju has conveyed the Property bearing Nos.11 and 12, Thippanahalli Grama Khata No.773, Assessment No.72/8, within the boundaries to the East: by Road; to the West: Properties Nos.17 and 18; to the North:

Property No.13; and to the South: Property No.10, measuring East to West: 40 feet and North to South: 60 feet, to K Anandaraj S/o K Krishnamurthy- the Defendant, for the valuable consideration of Rs.60,000/-. This document also suggest that, the

purchaser has paid the consideration amount to his vendor, and the purchaser has been to into actual O.S.No.25245/2019 possession of the purchased property on the day of its purchase.

II) the Defendant has produced the below mentioned documents,

a) Property register extract in Form-B at Ex.D11.

As per this document, K Anandaraj is shown to be the owner of the Site Nos.11 and 12 in Sy No.72/8 of Doddabidahalli.

b) Property tax receipts for the years 2008-09, 2009-10, 2010-11, 2011-12, 201-13, 2015-16, 2016-17, 2017-18, 2019-20 pertaining to Property No.72/8; Corresponding Nos.11 and 12, at Ex.P15 to Ex.P23. As per these documents, K Anandraj - the Defendant is shown to be the owner of the property bearing Site Nos.11 and 12.

c) Training certificate issued by the HMT Ltd., dtd.06.03.1985, at Ex.D3. As per this document, it is seen that, HMT Ltd., Machine tools division has certified that, K Anandraj has obtained Apprenticeship training with it from 07.03.1981 to 06.03.1985 and he was O.S.No.25245/2019 allotted with the stipend of Rs.130/- pm to Rs.350/- pm. He was having a good conduct.

d) Certificate issued by HMT dtd.17.07.1985 at Ex.D4. As per this document, HMT Ltd., Machine Tools division has certified that, K Anandraj has completed his training as Apprenticeship in the trade of Miliwright Machine for four years, held during April 1985.

e) Nation Apprenticeship Certificate issued by the Ministry of Labour at Ex.D5. As per this document, the Secretary and National Council for Vocational Training has certified that, Mr. K Anandraj has received Apprenticeship training at HMT Ltd., Machine Tools division Benglauru from 07.03.1981 to 06.03.1985, in the Trade of Milliwright Mechanic (Maintenance), held in April 1985.

f) Service certificate issued by the Bharat Fritz Werner Pvt. Ltd., dtd.06.03.1987, As per this document, it is seen that, the President, Bharat Fritz Werner Pvt. Ltd., Machine Tool manufactures has certified that, K Anandraj having token No.2577, under designation as Trainee fitter- Assembly as served from O.S.No.25245/2019 23.12.1985 to 22.12.1986 for the consolidated training allowance of Rs.350/- pm., he is having good conduct.

g) Letter of appointment issued WIDIA India Ltd., dtd.12.01.1993 at Ex.D7. As per this document, it is seen that, WIDIA India Ltd., has appointed Mr. K Anandraj has a Fitter-B, with effect from 01.01.1993, on a basic salary of Rs.1,025/.

h) Certificate issued by Kennametal dtd.11.06.2019. As per this document, the HR Shared Service team Leader for K M T India Ltd., has certified that, the Monthly pay description alongwith allowance of Mr. K Anandraj, totally comes to Rs.7,92,638.64/-.

18.04. The Learned Counsel for the Defendant would contend that, the father of the Plaintiffs and the Defendant was receiving salary of Rs.2,921/- from his services; he was retired on 31.03.1995 and he had received total amount of Rs.1,23,703/- , in which he has performed the marriage of his daughter- Sudha - Plaintiff No.3.

O.S.No.25245/2019 18.04.01. Coming to the ocular evidence, on this point, more specifically,

a) cross-examination of PW.1, at Page No.11, Para No.1, which reads as under:-

"It is true to suggest that my father was working with H.M.T. Ltd., Bengaluru, as worker. It is true to suggest that my father retired from his services on 31.03.1995. I do not know as to what is the quantum of last salary drawn by my father, from his services. My father received retirement benefits amounting to Rs.4,50,000/-. It is false to suggest that at the time of retirement my father received salary to the tune of Rs.2,921/- and he had received Rs.1,00,000/- towards gratuity on his retirement. It is false to suggest that my father has received an amount of Rs.23,703/- towards LTC and encashment of earned leave. It is false to suggest that my father did not receive any provident fund out of his services. I do not know as to how much amount my father received as provident fund on his retirement. It is true to suggest that my father was not receiving any pensionary benefits after his retirement. It is false to suggest that marriages expenses of our marriages were borne by my father and my brother - the Defendant. Witness volunteers that all marriage expenses of we 3 sisters were borne by my father only."

O.S.No.25245/2019 As per this evidence, Plaintiff No.2/PW.1 admits that, her father was working with HMT Ltd., Bengaluru as worker and he retired from his services on 31.03.1995, but pleads her ignorance about of quantum of last salary drawn by him, from his services. Further contends that, her father has received retirement benefits amounting to Rs.4,50,000/-. And denies the suggestion to made to her on behalf of the Defendant that, at the time of retirement of her father, he received a salary of Rs.2,921/-, Rs.1,00,000/- towards gratuity and Rs.23,703/- towards LTC and encashment of earned leave. Further admits that her father was not receiving any pensionary benefits after her retirement. And denies the suggestion made to her on behalf of the Defendant that, marriage expenses of all the sisters were borne by her father and her brother - the Defendant. She contends that, her marriage expenses and marriage expenses of her sisters were borne by her father alone.

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b) cross-examination of PW.1, at Page No.11, Para No.2, which reads as under:-

"It is true to suggest that marriage of Plaintiff No.1- Smt. K.Nalini was performed on 18.01.1985. It is true to suggest that my marriage was performed on 06.03.1992. It is true to suggest that marriage of my sister R.Sudha - Plaintiff No.3 was performed on 26.11.1995. It is true to suggest that my father has performed the marriage of my sister R.Sudha - Plaintiff No.3, out of the receipt of gratuity amount received by him.

It is false to suggest that my brother - the Defendant has extended financial support to my father in performing our marriages."

As per this evidence, Plaintiff No.2/PW.1 admits that, marriage of PW.1 K Nalini was performance on 18.01.1985; her marriage was performed on 16.03.1992; and marriage of his sister Sudha - Plaintiff No.2 was performed on 26.11.1995. Marriage of Sudha was performed by her father, by incurring expenses out of the receipt of gratuity amount received by him. Further denies the suggestion made to her on behalf of the Defendant that, the Defendant has extended financial support to his father in performing their marriages.

O.S.No.25245/2019 18.04.02.Coming to the documentary evidence, on this point,

a) Employment certificate of R Krishnamurthy at Ex.D1. As per this document, it is seen that, R Krishnamurthy was a worker supervisor in the Department of heavy parts in HMT Ltd., Machine Tools Division, Bengaluru and he was having basic of Rs.2,921/-; V.D.A of Rs.1,415/-; FDA of Rs.520.10/-; and HRA of Rs.730.25/-; and CCA of Rs.100/-.

b) Salary certificate of R Krishnamurthy for the month of March 1995. As per this document, R Krishnamurthy was drawing basic pay of Rs.2,921/-; DA (F) of Rs.520/-; DA (V) of Rs.1,415/-; washing allowance of Rs.15/-, HRA of Rs.730.25/-; CCA of Rs.100/-, shift allowance of Rs.3/-, his net pay was Rs.23,703/- excluding the gratuity amounting to Rs.1,00,000/-.

18.04.03.On the basis of the above ocular and documentary evidence, it is seen that, R Krishnamurthy was the employee HMT Ltd., who has been retired on O.S.No.25245/2019 31.03.1995 and has received net pay on the date of his retirement of Rs.23,703.48/-; and gratuity of Rs.1,00,000/-. He was not receiving pensionary benefits. As per the ocular evidence of the Plaintiff her father had spent the gratuity amount received by him to perform the marriage of her sister Sudha- Plaintiff No.3.

18.05. Further as per Ex.P7, it is seen that, the Item No.3 of the Suit Schedule Property was acquired on 06.12.2003. Admittedly, on the date of acquisition of the said property, the father of the Plaintiffs and the Defendant by name R Krishnamurthy had retired from his services. There was a gap of about 7 years 9 months from the date of his retirement, to acquisition of the Item No.3 of the Suit Schedule Property.

18.06. Further the Learned Counsel for the Defendant would contend that, the Plaintiffs have not specifically pleaded as to how their father has acquired Item No.3 of the Suit Schedule Property, in the name of the Defendant. Further he would contend that, in the O.S.No.25245/2019 absence of such plea, no amount of evidence can be entertained. He has placed his reliance on the below mentioned two decisions viz.,

a) of the Hon'ble Apex Court, in the case of Bondar Singh V/s Nihal Singh and Ors., reported in ILR 2003 Kar 2253, wherein it is observed in Para No.7, as under:-

"7. As regards the plea of sub tenancy (shikmi) argued on behalf of the defendants by their learned counsel, first we may note that this plea was never taken in the written statement the way it has been put forth now. The written statement is totally vague and lacking in material particulars on this aspect. There is nothing to support this plea except some alleged revenue entries. It is settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into. Therefore, in the absence of a clear plea regarding sub tenancy (shikmi) the defendants cannot be allowed to build up a case of sub tenancy (shikmi). Had the defendants taken such a plea it would have found place as an issue in the suit. We have perused the issues framed in the suit. There is no issue on the point."

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b) of the Honb'le High Court of Karnatakan, in the case of Janatha Dal Party, Bangalore V/s The Indian National Congress and Ors., reported ILR 2014 KAR 4726, wherein it is observed in Para Nos.41 to 43, as under:-

"41. Order 6 Rule 1 of the Code of Civil Procedure 1908, defines what the pleading means. Pleadings shall mean plaint or written statement. Order 6 Rule 2 of CPC states what the pleadings should contain. Every pleading shall contain and contain only a statement in a concise form of the material facts on which the party pleadings relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Therefore pleading must state facts and not law. It must state material facts and material facts only. It must state only the facts on which the party pleading relies for his claim or defence and not the evidence by which they are to be proved. The material facts on which the party pleading relies for his claim or defence are called *facta probanda*. The evidence or the facts by means of which they are to be proved are called *facta probantia*. Every pleading should contain only *facta porbanda*, and not *facta probantia*. The distinction is taken in the very rule itself between the facts on which the party relies and the evidence to prove those facts.

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42. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. Provisions relating to pleadings are meant to give each side intimation of the case of the other so that it may be met, to enable the court to determine what is the real issue between parties and to prevent deviation from the course which litigation, on particular of causes of action, must take. It is to ensure that the litigants came to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. To ensure that each side is fully alive to the question that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by

surprise.

43. When the facts necessary to make out a particular claim, or to seek particular relief, are not found in the plaint, the Court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. The general rule, is that the relief should be founded on pleadings made by the parties. It is equally well settled that in the absence of pleadings, evidence if any produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel O.S.No.25245/2019 beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

18.06.01. On careful perusal of the Suit Plaint, more specifically, Para No.8, wherein the Plaintiffs have contended that, their father purchased Item No.3 of the Suit Schedule Property in the name of their brother- the Defendant; the consideration amount under the said Sale Deed is paid by their father; and their brother - Defendant is only a nominal party to the Sale Deed.

18.07. On considering the above ocular and documentary evidence, it is seen that, firstly, the father of the Plaintiffs and the Defendant had retired from his services on 31.03.1995;

secondly, the Plaintiffs have not brought any materials on record to show that, their father was holding sufficient funds as on the date of acquisition of Item No.3 of the Suit Schedule Property i.e., on 06.12.2013;

O.S.No.25245/2019 thirdly, it remains an admitted facts from the side of the Plaintiffs through the Plaintiff No.2/PW.1 that their brother- Defendant was serving from 07.03.1981 initially as a Apprenticeship from 07.03.1981 to 06.03.1985; later on as Assembly Fitter from 23.12.1986 to 22.12.1986; then serving with WIDIA India Ltd., from 1993; and the said company was converted as Kenna Metal Factory in 2002 and still he is working in the said factory. So as per the said version of PW.1, Defendant was working with WIDIA India, which was later on converted to Kenna Metal, at the time of acquisition of Item No.3 of the Suit Schedule Property.

18.08. Secondly, the Learned Counsel for the Plaintiffs would contend that, the father of the Plaintiffs and the Defendant by name R Krishnamurthy received the sale proceeds of Rs.4,00,000/- from his ancestral property, in the year 2003, which is denied by the Defendant.

O.S.No.25245/2019 18.08.01. Firstly, the said contention has not been pleaded by the Plaintiffs in the Suit Plaint, more specifically, while contending in Para No.8 of the Suit Plaint, about acquisition of Item No.3 of the Suit Schedule Property.

18.08.02. Secondly, though the Plaintiffs contend that, their father had received sale proceeds of Rs.4,00,000/- from his ancestral property, but the Plaintiffs have not placed any materials to show that, as to when the said ancestral property was purchased by two uncles of the Plaintiffs; as to when Rs.4,00,000/- were paid to their father R Krishnamurthy; and their father R Krishnamurthy has utilized the said funds for purchase of Item No.3 of the Suit Schedule Property.

18.08.03. Thirdly, on perusal of Ex.P7- Sale Deed dtd.06.12.2003, it is seen that, the said Sale Deed contains of recital about payment of the consideration amount by the purchaser to the seller i.e., K Anandraj O.S.No.25245/2019 S/o R Krishnamurthy to Sri. C Varadaraj S/o Chennappa.

Said Sale Deed dtd.06.12.2003-Ex.P7 is produced by the Plaintiffs and it is a documentary evidence. Section 91 and 92 of Indian Evidence Act comes into play.

The Plaintiffs have not placed any materials on record to disbelieve the said recitals found in the Sale Deed dtd.06.12.2003-Ex.P7, about payment of consideration amount by K Anandraj - Defendant to C Varadaraj - the vendor.

18.09. Thus, the Plaintiffs have failed to show that, their father R Krishnamurthy was possessing certain funds either of his own; or has received under the settlement as a sale proceeds of ancestral property; and he has paid the consideration amount for purchase of Item No.3 of the Suit Schedule Property, that too in the name of his son K Anandraj - the Plaintiff.

O.S.No.25245/2019 Consequently, the Defendant has shown that, he has purchased Item No.3 of the Suit Schedule Property and it is his Self Acquired Property.

Hence, I am constrained to ADDL. ISSUE NO.1 IN THE NEGATIVE AND ISSUE NO.4 IN THE AFFIRMATIVE.

19. ISSUE NO.1:-

The Plaintiffs contend that, they and the Defendant are the legal heirs of their parents Late Prema and Sri. Krishnamurthy, to succeed their estate.

19.01. It is an undisputed fact that the Plaintiffs and the Defendant are the children of Sri. R Krishnamurthy, born to Smt. Prema. It is further an undisputed from the side of the Plaintiffs and the Defendant that, R Krishnamurthy died on 25.06.2018, as per Death certificate-Ex.P9 and Smt. Prema died on 08.02.2017, as per Ex.P8.

So Smt .Prema has predeceased her husband R Krishnamurthy.

O.S.No.25245/2019 of the Suit Schedule Properties are the properties belonging to Smt. Prema.

19.02.01. Admittedly, R Krishnamurthy, Smt. Prema, the Plaintiffs and the Defendant are Hindus.

19.02.02. So succession in case of Hindu female is governed by Secs.15 and 16 of Hindu Succession Act, 1956. And as per the same, the husband of Smt. Prema and her children - the Plaintiffs and the Defendant, receive equal share, in the estate left by deceased Prema.

19.02.03. Inview of death of R Krishnamurthy, subsequent to the death of his wife Prema, the share to be received by R Krishnamurthy is to be devolved upon his heirs as per the provisions of Secs.8 to

10 of the Hindu Succession Act, 1956.

O.S.No.25245/2019 19.03. Since Item No.3 of the Suit Schedule Property is held to be the Self Acquired of the Defendant under Issue No.4 and Addl. Issue No.1, so the Plaintiffs being the sisters of the Defendant, will not be entitle to succeed in the said property.

19.04. Therefore, the Plaintiffs have shown that, they and the Defendant have succeeded the estate left by their parents i.e., Item Nos.1 and 2 of the Suit Schedule Properties, but they have failed to show that, they have succeeded Item No.3 of the Suit Schedule Property, from their parents, more specifically, from their father R Krishnamurthy.

Hence, I am constrained to answer ISSUE NO.1 PARTLY IN THE AFFIRMATIVE.

20. ISSUE NO.5:-

In continuation of my discussion on Issue No.1, the Plaintiffs and the Defendant will succeed jointly, to an equal extent in Item Nos.1 and 2 of the Suit Schedule Properties, but the Plaintiffs will not succeed in Item No.3 of the Suit Schedule Property.

O.S.No.25245/2019 20.01. As per Secs.15 and 16; and Secs.8 to 10 of Hindu Succession Act, 1956, the Plaintiffs and the Defendant will get 1/4th share each, in Item Nos.1 and 2 of the Suit Schedule Property.

20.02. Since Item No.3 of the Suit Schedule Property is held to be the self acquired property of the Defendant, so the Plaintiffs will not get any share in the said property.

Hence, I am constrained to answer ISSUE NO.5 PARTLY IN THE AFFIRMATIVE.

21. ISSUE NO.6:-

The Plaintiffs contend that, there are four houses in Item No.1 of the Suit Schedule Property, apart from a duplex house, wherein an amount of Rs.21,000/- per month is received as rents.

Percontra, the Defendant contends that, there are two out houses; two residential blocks, in which Plaintiff No.2 is in occupation of one residential block; and one duplex house, which is in his occupation. Further he would contend that, there is a house constructed in Item O.S.No.25245/2019 No.2 of the Suit Schedule Property, which is in occupation of the Plaintiff No.1. both the Plaintiff No.1 and Plaintiff No.2 are not paying any rents for their respective occupation.

21.01. Coming to the ocular evidence, on this point, more specifically,

a) cross-examination of PW.1, at Page No.16, Para No.2, which reads as under:-

"As on the date of death of my father, an amount of Rs.21,000/- per month was received as a rent out of Item No.1 of the Suit Schedule Property. It is true to suggest that during the lifetime of my father the said rental amount was received by my father. Witness volunteers that till the lifetime of her mother, she was receiving the said rent and after her death, her (witness) father use to received the said rents. Witness further volunteers that, after the death of her mother, her (witness) brother - the Defendant was receiving the rent. It is false to suggest that my brother - the Defendant used to receive the rents derived from Item No.1 of the Suit Schedule Properties, after the death of my father. It is false to suggest that my brother - the Defendant use to pay the assessment tax and maintenance charges pertaining to the Suit Schedule Properties. Witness volunteers that till the O.S.No.25245/2019 lifetime of my mother she used to look after all the maintenance expenses and use to pay the assessment in respect of the Suit Schedule Properties. It is true to suggest that after the death of my parents my brother - the Defendant is paying the assessment to the BBMP authorities, in respect of the Suit Schedule Properties. So also, my brother - the Defendant is looking after maintenance of the Suit Schedule Properties."

b) cross-examination of DW.1, at Page No.15, Para No.6, which reads as under:-

"It is true to suggest that rents are received from the building situated in Item No.1 of the Suit Schedule Properties. Till the death of my parents they were receiving the said rents."

As per this evidence, it is clear that, the rents were received by the father of the Plaintiffs and the Defendant during his lifetime till his death; and subsequent to his death the Defendant is receiving the said rents and he has apportioned the said rents towards repairs, renovation of the property; and for payment of the taxes of the property.

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22. As per Sec 2(12) of CPC, "Mesne Profit means those profits, which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

When a person is deprived of his possession, he is not only entitled to recover possession but also damages for wrongful possession of another. So the important ingredient is Wrongful possession.

In the present case, the Plaintiffs and the Defendant are the co-owners / co sharers Item Nos.1 and 2 of the Suit Schedule Properties, so the possession of any of one of them over the Item Nos.1 and 2 of the Suit Schedule Properties, cannot be held to be Wrongful possession.

Therefore the Plaintiffs are not entitled to have Mesne Profits, in respect of the Item Nos.1 and 2 of the Suit Schedule Properties, from the Defendant. I find support to my above view as per the decision of the Hon'ble High Court of Patna in the case of O.S.No.25245/2019 Shambhu Dayal Khetan Vs Motilal Murarka, reported in AIR 1980 Pat 106, wherein it is held that, "mesne profits can be claimed only where there is a wrongful possession".

HENCE I ANSWER ISSUE NO 6 IN THE NEGATIVE.

23. ISSUE NO.7:-

For having answered Issue No.4 in the Affirmative; Issue Nos.1 and 5 Partly in the Affirmative; and Issue Nos.2, 3, 6 and Addl. Issue No.1 in the Negative, I proceed to pass the following:

ORDER The suit of the Plaintiffs is hereby Decree in part.

It is declared that, the Plaintiffs are entitled to have 1/4th share each in Item Nos.1 and 2 of the Suit Schedule Properties; and the Defendant has 1/4th share in Item Nos.1 and 2 of the Suit Schedule Properties.

O.S.No.25245/2019 The claim of Partition of the Plaintiffs in respect of Item No.3 of the Suit Schedule Property, is rejected.

The claim of the Plaintiffs for grant of Mesne Profits is also rejected.

Partition be effected	in Item
Nos.1 and 2 of the Suit	Schedule
Properties, in between the	Plaintiffs
and Defendant, as per the	Partition
Act.	

Looking to the special facts and

circumstances of the case, both the parties are directed to bear their respective costs.

Draw	Preliminary	Decree
accordingly.		

(Dictated to the Stenographer directly on computer system, computerized by her and print out taken by her, after correction, signed and pronounced by me in the open court on this the 1st day of April, 2022) (Abdul-Rahiman. A. Nandgadi.) LXXII Addl.City Civil & Sessions Judge, Bengaluru. (CCH-73) O.S.No.25245/2019 Schedule Property Item No.I:-

All that piece and parcel of Residential Site and building formed by the BDA bearing No.4251, BBMP No.2, PID No.9-29-2, situated at 2nd Stage, A-Block, 19th Main Road, Subramanyanagar, Bengaluru, measuring East to West 45 feet and North to South 36 feet, totally measuring 1620 Sq.ft with building thereon, bounded on the:

East by: Site No.4256,
West by: Road,
North by: Site No.4250,
South by: Site No.4252.

Item No.II:-

All that piece and parcel of Residential Site bearing No.464, Khaneshumari No.238/464, situated at Aadarsha Nagar Layout, formed in Arasinakunte Village, Kasaba Hobli, Basavanahalli Mandal Panchayat, Nelamangala Taluk, Bengaluru Rural District; measuring East to West 12 meters and North to South 18 meters, totally measuring 216 Sq.meters together with building thereon, bounded on the:

East by: Site No.463, West by: Site No.465, North by: Site No.451, South by: Road.

O.S.No.25245/2019 Item No.III:-

All that piece and parcel of Residential Vacant Site bearing Site Nos.11 and 12, Khata No.773, Assessment No.72/8, situated at Tippenahalli, Yeshwanthpura Hobli, Bengaluru North Taluk, measuring East to West 40 feet and North to South 60 feet, bounded on the:

East by: Road,
West by: Site Nos.17 and 18,
North by: Site No.13,
South by: Site No.10.

[Abdul-Rahiman. A.Nandgadi]
LXXII Addl.City Civil & Sessions
Judge, Bengaluru. (CCH-73)

O.S.No.25245/2019

ANNEXURES:-

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:

PW.1: Smt. Kalavathi.

LIST OF EXHIBITS MARKED FOR THE PLAINTIFFS:

Ex.P1: Certified copy of Registered Sale Deed dtd.10.12.2001.

Ex.P2: Khata extract.

Ex.P3: Khata Certificate.

Ex.P4: Property tax receipt for the years 2018-19. Ex.P5: Certified copy of Registered Sale-Deed dtd.05.07.1995.

Ex.P6: Receipt dtd.06.07.2018. Ex.P7: Certified copy of Registered Sale-Deed dtd.06.12.2003.

Ex.P8 & 9: Death certificates.

Ex.P10: Office copy of Legal Notice dtd.17.12.2018. Ex.P11: Reply Notice dtd.26.12.2018. Ex.P12: Rejoinder Notice dtd.04.01.2019.

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS: DW.1: Sri. Anandraj K. **LIST OF EXHIBITS MARKED FOR THE DEFENDANTS:** Ex.D1: Service Certificate.

Ex.D2: Statement of final Settlement. Ex.D3: Training Certificate.

Ex.D4: Certificate of Apprenticeship. Ex.D5: National Apprenticeship Certificate. Ex.D6: Service Certificate.

Ex.D7: Letter of appointment.

Ex.D8: Payslip.

O.S.No.25245/2019 Ex.D9 & 10: 2 Registered Mortgage Deeds. Ex.D11: Property register extract Form B. Ex.D12 to 23: 12 Property tax paid receipts. Ex.D24: No Due Certificate with constructions contract. Ex.D25 to Ex.28: 4 positive photographs with CD. Ex.D30: Receipt for discharge of the loan issued by the The Janatha Co-operative Bank Ltd,. Ex.D31: Rental Agreement dtd.25.06.2008.

[Abdul-Rahiman. A.Nandgadi] LXXII Addl.City Civil & Sessions Judge, Bengaluru. (CCH-73)