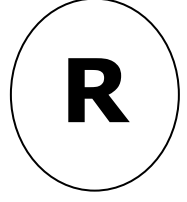


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH



R.S.A. NO.9/2018 (PAR)

BETWEEN:

- 1 . SRI N.UMESHA
S/O SRI NARAYANAPPA,
AGED ABOUT 28 YEARS,
AGRICULTURIST,
R/O MUGALI AT AND POST,
AJJAMPURA HOBLI,
TARIKERE TALUK. ... APPELLANT

(BY SRI A.MADHUSUDHANA RAO, ADVOCATE)

AND:

- 1 . SMT. BHAGYAMMA @ BHAGAMMA
W/O SRI GOVINDAPPAM,
AGED ABOUT 51 YEARS,
R/O BASOOR VILLAGE,
HIRENALLUR HOBLI,
KADUR TALUK,
CHIKKAMAGALURU DISTRICT.
- 2 . SMT. RADHAMMA
W/O SRI GIRISH,
AGED ABOUT 55 YEARS,
R/AT BIRUR TOWN,
KADUR TALUK,
CHIKKAMAGALURU DISTRICT.

- 3 . SMT. THAYAMMA
W/O SRI HANUMANTHAPPA,
AGED ABOUT 61 YEARS,
R/AT MUGALI AT AND POST,
AJJAMPURA HOBLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT.

NARAYANAPPA
SINCE DEAD BY HIS LR

- 4 . SMT. BHAGAMMA,
W/O LATE SRI NARAYANAPPA,
AGED ABOUT 59 YEARS,
R/AT MUGALI AT AND POST,
AJJAMPURA HOBLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT. ... RESPONDENTS

(BY SRI NARASIMHA PRASAD S.D., ADVOCATE FOR R4;
SRI CHANDRASHEKAR P. PATIL, ADVOCATE FOR R1 - R3)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 12.10.2017
PASSED IN R.A.NO.82/2014 ON THE FILE OF THE PRL. DISTRICT
JUDGE, CHIKKAMAGALURU, DISMISSING THE APPEAL AND
CONFIRMING THE JUDGMENT AND DECREE DATED 12.9.2014
PASSED IN O.S.NO.4/2009 ON THE FILE OF THE SENIOR CIVIL
JUDGE AND PRL. JMFC, TARIKERE.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 30.05.2024 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

J U D G M E N T

This second appeal is filed against the concurrent finding of dismissal of suit filed in O.S.No.4/2009 dated 12.09.2014 and an appeal filed in R.A.No.82/2014 dated 12.10.2017.

2. Heard the learned counsel appearing for the respective parties. The parties are referred to as per their original rankings before the Trial Court to avoid confusion and for the convenience of the Court.

3. The factual matrix of case of plaintiff before the Trial Court while seeking the relief of declaration, partition and possession, it is contended that late Nagappa is the father of the defendant Nos.1 to 3. The defendant No.4 is the father of the plaintiff. Defendant Nos.1 to 3 have filed suit in O.S.No.91/2006 for partition and separate possession of their shares. The defendant No.4 who is the father of the plaintiff never took interest in managing the family properties and he always yielded to the words of

defendant Nos.1 to 3 and addicted to all sort of bad habits. By taking advantage of weakness of defendant No.4, defendant Nos.1 to 3 managed to settle the suit by referring the matter to lok-adalath. The matter was compromised on 16.06.2007 and preliminary decree was passed on 29.06.2007 and final decree was drawn on stamp paper on 09.06.2008.

4. It is contended in the plaint that all these decrees were passed behind the back of the plaintiff by playing fraud and undue influence. There was already partition as per M.R.No.5/1986-87 between defendant No.4 and his cousins. The suit schedule properties are the ancestral properties. Defendant Nos.1 to 3 got married long back and residing in their matrimonial houses. They have lost their right in the schedule properties. The plaintiff being the only son of defendant No.4 has got equal half rights and interest over the suit schedule properties. It is also his contention that his mother has been managing the suit

schedule properties to safeguard the interest of plaintiff. It is also an allegation that in the compromise decree most fertile lands were taken to the share of defendant Nos.1 to 3 and compromise was not fair. The defendant Nos.1 to 3 have taken unfair advantage by getting consent of defendant No.4 by playing fraud, undue influence. The plaintiff came to know regarding compromise decree when the taluk surveyor visited the suit schedule properties for demarcation of suit schedule properties and immediately he lodged the complaint to the police and then he was able to get the zerox copy of the compromise petition. It is contended that immediately he has got issued the legal notice to the defendants. Hence, contend that compromise is not binding on the plaintiff and sought for the relief of declaration, partition and possession.

5. In pursuance of suit summons, the defendant Nos.1 to 3 have appeared through counsel and filed written statement and defendant No.4 filed his separate written

statement and they denied all the allegations made in the plaint and contend that the plaintiff is not entitled for any relief. The defendant No.4 who is the father of the plaintiff also filed separate written statement but he supported the case of the plaintiff. During the pendency of the suit, defendant No.4 passed away.

6. The Trial Court given an opportunity to plaintiff and defendants. The plaintiff examined one witness as PW1 and got marked document Ex.P1 to P16. On the other hand, the defendant No.2 has been examined as DW1 and not produced any documents. The Trial Court having considered both oral and documentary evidence available on record, answered the issue No.1 as partly affirmative by taking note of the fact that the suit schedule properties are ancestral properties but not accepted the contention that those properties are not divided and answered issue No.2 as negative and comes to the conclusion that plaintiff is entitled for ½ share in the property of his father and not in

entire property of the suit schedule properties. The defendants have proved that they are entitled for the share in terms of the Central Amendment of 2005 to the Hindu Succession Act and dismissed the suit.

7. Being aggrieved by the judgment and decree of the Trial Court, the plaintiff filed an appeal in R.A.No.82/2014, the First Appellate Court having considered the grounds urged in the appeal memo, formulated the point whether the compromise decree entered between defendant Nos.1 to 4, the same is taking undue advantage of innocence of defendant No.4 and whether the judgment of the Trial Court requires interference. The First Appellate Court on re-appreciation of both oral and documentary evidence available on record confirmed the judgment of the Trial Court answering both the points as negative and dismissed the appeal. Hence, the present second appeal is filed before this Court.

8. The main contention of the counsel appearing for the second appeal is that the reasoning given by both the Trial Court as well as the First Appellate Court is erroneous and plaintiff is not a party in the suit which had been filed by the defendant Nos.1 to 3 against defendant No.4 and Courts have come to the conclusion that suit itself is not maintainable questioning the compromise decree in spite of plaintiff was not a party to the earlier suit. The counsel also would vehemently contend that plaintiff is minor and his interest has not been protected. This Court having considered the grounds urged in the second appeal, admitted the appeal and framed the following substantial question of law as follows:

1) Whether the Courts below were right in dismissing the suit on the ground that the compromise was recorded before the Lok-Adalath and that under Section 21(2) of the Legal Services Authorities Act, 1997 a separate suit is not maintainable, notwithstanding the fact

that the plaintiff was not a party to the said compromise?

2) Whether the Courts below committed an error in not entertaining the suit on the mere ground that pursuant to the compromise the parties had already taken possession of the suit property in Final Decree proceedings and the execution petition following thereafter?

9. The counsel appearing for the appellant in his argument re-iterating the grounds urged in the second appeal contend that no dispute with regard to the property derived to the Nagappa and the same is an ancestral property. The Counsel not disputes that the plaintiff's father is Narayanappa who is the defendant No.4 in the earlier suit. The counsel also not disputes that earlier there was partition between the brothers of the said Nagappa and father of the plaintiff and M.R came to existence to prove the said partition in M.R.No.5/1986-87. It is also not in dispute that the plaintiff's father got the same in a partition

between the father of the plaintiff and his uncles. The main contention of the counsel that there was no any adjudication, the present respondent No.4 is the mother of the plaintiff. The counsel also would vehemently contend that when there is no any adjudication, there cannot be any dismissal of the suit and confirmation of the appeal to be adjudicated.

10. Per Contra, the counsel appearing for the respondent would vehemently contend that no dispute with regard to the fact that property belongs to Nagappa and also Nagappa died even prior to the partition and also no dispute that the partition was taken place in terms of Ex.P16 and the plaintiff father taken share on behalf of his family. The counsel also not disputes the fact that earlier suit was filed in O.S.No.91/2006 and earlier also 1/4th share was granted in favour of the father of the plaintiff as the father of plaintiff is one of the heir of the said Nagappa and paternal aunts of the plaintiffs have also filed the suit in

O.S.No.91/2006 and the same was compromised. The counsel also would vehemently contend that even final decree was drawn. The counsel also brought to notice of this Court major share was given to the father of the plaintiff and he has given the details of compromise for having allotted the share in favour of the father of the plaintiff. The counsel also vehemently contend that both the Courts have given concurrent finding stating that the plaintiff is not entitled for 1/2 share as claimed in the plaint since paternal aunts were also having shares in respect of the suit schedule properties as they are the coparceners and the fact that Nagappa having 4 children including the father of the plaintiff and paternal aunts is not in dispute. When such being the case, when there was no any partition between the father of the plaintiff and his sisters, both the Courts held that the defendant Nos.1 to 3 are entitled for equal share along with the father of the plaintiff and not committed any error.

11. In reply to this argument, the counsel for appellant would contend that whether daughters are entitled or not has to be adjudicated and the same has not been adjudicated in both the suit as well as the appeal. Hence, the matter requires interference.

12. In keeping the grounds urged in the second appeal as well as the substantial question of law framed by this Court, this Court has to analyze the material on record, whether the Courts below were right in dismissing the suit on the ground that compromise was recorded before the Lok-Adalat and that under Section 21(2) of Legal Services Authorities Act, 1997, a separate suit is not maintainable, notwithstanding the fact that the plaintiff was not a party to the said compromise while analyzing the said substantial question of law, this Court has to take note of facts, admittedly the plaintiff is not a party to the earlier suit in O.S.No.91/2006 for a partition and separate possession of the suit schedule property filed by the sisters of the

plaintiff's father, however, it is important to note that the plaintiff's father was arrayed as defendant No.4 and admitted fact that when the suit was filed in O.S.No.91/2006, the present plaintiff/appellant is the minor. It is also to be noted that there is no dispute between the parties with regard to there was a compromise between the sisters of the plaintiff's father as well as plaintiff's father and also preliminary decree was drawn in the year 2007 and final decree was drawn in the year 2008. It is also important to note that the present suit in O.S.No.4/2009 is filed after drawing of final decree and parties have put in possession over the suit schedule properties.

13. In view of framing of 1st substantial question of law, this Court has to consider the material on record, whether separate independent suit is maintainable or not, when the plaintiff was not a party to the said compromise. It has to be noted that a preliminary decree was drawn

based on the compromise entered between the parties. It is also not in dispute that compromise was entered between the parties.

14. The Andhra Pradesh High Court in the judgment reported in **2020 SCC online AP 3863 in case of Chintapanti Ramarao V/s Lok Adalat at Tiruvuru Constituted** held that when the writ petition was filed questioning the award passed by the lok-adalath alleging playing of fraud and misrepresentation, the detail discussion was made. In this judgment discussed the scope of article 227 of the constitution and Andhra Pradesh High Court also held that interference by exercising the writ jurisdiction is very limited in view of the judgment passed in State of Punjab V/s Jalour Singh and held that when the settlement arrived at between the parties which is duly signed by parties, it becomes final and binding on parties to the settlement and becomes executable as if it is a decree of a civil Court and no appeal lies against it to any Court

and that the same can be challenged on a very limited ground under Article 226 or Article 227 of Constitution.

15. This Court also would like to refer the judgment of Apex Court **1951 AIR 280 in case of Bishundeo Narain And Another vs Seogeni Rai And Jagernath on 4 May, 1951**, in this judgment it is held that it is well established that a minor can sue for partition and obtained a decree if his next friend can show that it is for the minor's benefit. It is also beyond dispute that an adult coparcener can enforce a partition by suit even when there are minors, even without a suit, there can be partition between members of the joint family when one of the members is a minor. In the case of such lastly mentioned partition, where a minor can never be able to consent to the same in law, if an minor an attaining majority is able to show that the division was unfair and unjust, the Court will certainly set it aside. Hence, it is clear that the suit can be entertained.

16. This Court also would like to rely upon the judgment of the High Court of Hyderabad reported in **2012 SCC Online Hyd 217 in case of Kothakapu Muthyam Reddy and others V/s Bhargavi Constructions Rep. by its Managing partner Sri.V.Ramachandra Rao and others**, in the judgment in detail discussed the scope of writ jurisdiction as well as filing of separate suit is concerned.

17. The Hyderabad High Court held in detail which reads as follows:

" The award passed by the Lok Adalath in a pending litigation, or in a pre-litigation case, is not, ordinarily, amenable to judicial review. But, when an award of the Lok Adalat is obtained by misrepresentation, fraud or without due compliance with the provisions of the Act and that it was not preceded by a compromise/settlement, it can be challenged in a writ petition. The challenge to the award of the Lok Adalat, in proceedings under Article 226 of

the constitution of India, can be entertained only at the behest of parties to the settlement/compromise before the Lok Adalat, and not by anyone else. The parties to the compromise or settlement, which is the basis for the award of a Lok Adalat, are entitled to challenge the award. Ordinarily, a third party cannot challenge the award in a writ petition, even if such an award causes prejudice. The remedy of such party would be to institute a separate suit within the period of limitation prescribed under law for necessary redressal, and seek an appropriate decree. As a civil Court can even declare that an earlier decree of the Court is not binding on the party before it, there can be no objection for a third party to institute a suit in a civil Court seeking a declaration that the award of Lok Adalat is not binding on him. There may, however, be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties who may have obtained an award of the Lok Adalat by fraud or misrepresentation only to defeat the rights of a third party. In such cases,

there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of the Lok Adalat. Even if such allegations are made, and the question involves complicated questions of fact requiring voluminous evidence, the third party should be left to seek the remedy in a civil Court, rather than invoking the extraordinary jurisdiction of the High Court under Article 226 of Constitution ”

(Emphasis applied)

18. Having considered the detail discussion made in respect of Section 22-E(1) of the Act in chapter VI-A of the Act, stipulates that every award made by the permanent Lok-Adalath under this Act, shall, on merits or in terms of a settlement agreement, be final and binding on all the parties thereto and on persons claiming under them and the same shall not be called in question in any original suit, application or execution proceeding. Section 22E(4) prohibits an award made by a permanent Lok Adalat to be called in question in original suit also. It is also very clear

that when the award passed by the Lok Adalat in a pending litigation or in a pre-litigation is not, ordinarily, amenable to judicial review. But, when an award of Lok Adalat is obtained by misrepresentation, fraud or without due compliance with the provisions of the act and that it was not preceded by a compromise/settlement, it can be challenged in a writ petition, the same can be entertained under Article 226 of the constitution of India, the same can be entertained only at the behest of parties to the settlement/compromise before the Lok Adalat and not by anyone else. Ordinarily, a third party cannot challenge the award in a writ petition, even in such an award causes prejudice. The remedy of such party would institute a separate suit within the period of limitation described under law for necessary redressal and seek an appropriate decree. As a civil Court can declare that an earlier decree of the Court is not binding on the party before it, there can be no objection for a third party to institute a suit in a civil Court

seeking a declaration that award of Lok Adalat is not binding on him, there may, however, be the extraordinary cases where a third party is meted with injustice at the behest of 2 or more conniving and colluding parties who may have obtained an award of Lok Adalat by fraud or misrepresentation only to defeat the rights of a third party. In such cases, there should be prima facie evidence of fraud and misrepresentation or collusion in obtaining the award of a Lok Adalat. Even if such allegations are made, the questions involve complicated questions of fact requiring voluminous evidence, the 3rd party should be left to seek the remedy in a civil Court rather than invoking the extraordinary jurisdiction of the High Court under article 226 of the constitution. The judicial review is available to test the validity of the awards passed by the Lok Adalat on limited grounds, one of which when a party alleges that there was no settlement enabling an award being passed. Hence, it is clear that the judgment and award passed by

the Lok Adalat can be challenged by a 3rd party to the suit by filing the suit for declaration and, in order to avoid multiplicity of proceeding and to put an end to the litigation once and for all, the best course open to petitioner was to approach jurisdiction civil Court for redressal.

19. Having considered the principles laid down in the judgment referred supra and also considering the material available on record, first of all the plaintiff is not a party to the compromise but his father was a party to the compromise and there cannot be any writ proceedings under Article 226 of Constitution and only fraud and misrepresentation is played while getting the decree. A 3rd party can file a suit for adjudication seeking the relief of declaration. Admittedly, the plaintiff is not a party to the compromise and also relevant provision is also extracted above. When such being the case, the parties can seek the relief under writ jurisdiction, but here is not a case of parties have challenged the same. Even father of the

plaintiff also not challenged the same, alleging fraud and misrepresentation and only son had filed the suit after drawing of preliminary decree and final decree. The Courts below were not right in dismissing the suit on the ground that compromise was recorded, a separate suit is not maintainable notwithstanding the fact that plaintiff was not a party to the said compromise. Hence, I answered the point above as affirmative.

20. Now, the question before this Court is whether the Courts below have committed an error in not entertaining the suit on the mere ground that pursuant to the compromise, parties had already taken possession of the suit schedule property in final decree proceedings and execution petition following thereafter. The Court has to take note of material on record and also the grounds urged in the original suit. On perusal of the plaint paragraph No.4 an allegation is made in the plaint that taking the advantage of the weakness of the defendant No.4 i.e., his

father, the defendant Nos.1 to 3 managed to get the suit compromised. Thereafter, final decree was also drawn. The plaintiff not disputes the fact that suit schedule properties are ancestral properties of the plaintiff and the defendant No.4, but not the fact that they are the ancestral properties of the plaintiff and the defendant No.4. The plaintiff also not disputes the fact that earlier there was a partition and properties are mutated in terms of Ex.P16 and father of the plaintiff represented on behalf of his family as his father was no more. The fact that defendant Nos.1 to 3 are the sisters of his father, but he claims that defendant Nos.1 to 3 got married long back and lived in the house of respective matrimonial houses and they lost their right in the suit schedule properties and the same cannot be accepted. But, he claims that the plaintiff being the only son of defendant No.4 has got equal rights and interest over the suit schedule properties and his mother has been managing the suit schedule properties to safeguard the interest of the

plaintiff, as the defendant No.4 never took interest in looking after the family nor the schedule properties. But, the very contention that there was a fraud and misrepresentation in getting the decree Court has to look into, whether the same has been proved. It is also settled law that if decree is obtained by fraud and misrepresentation and the same is not justifiable and Court can entertain the same. The Trial Court also framed an issue whether he is entitled for an 1/2 share, the same has been answered as negative. The Trial Court comes to the conclusion that suit schedule properties are the ancestral and undivided joint family properties of family and not belongs to the exclusively plaintiff and the defendant No.4. It is also important to note that the plaintiff has been examined as PW1. He categorically admitted that during the life time of his father, the father was residing along with him. But, he claims that mother was taking care of all the properties and also he claims that he was also taking care

of the family affairs. He categorically admits that all of them are residing together. It is also important to note that it is the contention that fertile lands are given to the defendant Nos.1 to 3, but he categorically admits having allotted the share in Sy.No.62/2, 62/2E-P3 and claims that only 37 guntas they have got. He categorically denies suggestion giving of land in Sy.No.100/5 1 acre 10 guntas out of 20 guntas given to his father, in an ingenious method he says that he is not aware of the same and so also made suggestion that in respect of Sy.No.118/1P6-P2 18 guntas was given to his father and also intelligently he says that he is not aware of the same. He categorically admits that when the partition was taken place before the Court among his paternal aunts and his father and his father has given the consent and only on the consent of his father only the said property is given to his father, but only he says that mother has not given the consent, but the fact that mother was not

the coparcener when the father was alive and he is party to the settlement.

21. It is also important to note that though he denies as not aware of allotting of property Sy.No.100 as well as Sy.No.118 but he categorically admits the boundaries in respect of those properties and also categorically admits that those properties are in their possession. Hence, it is clear that the plaintiff has not approached the Court with clean hands and his evidence falsifies his claim. He also categorically admits in his evidence that the properties which were allotted in favour of defendant Nos.1 to 3 no coconut trees are located in that property. Hence, it is clear that the very contention of the plaintiff that properties are not fertile land, fraud and misrepresentation was taken place has not been established, the same is taken note of by the Trial Court as well as First Appellate Court on re-appreciation of both oral and documentary evidence available on record and no

perversity is found in dismissing the suit. The Trial Court while answering issue No.1 partly comes to the conclusion that the same is not the exclusive property of the plaintiff and defendant No.4 and suit schedule properties are the ancestral properties and joint family properties of his paternal aunts as well as his father. The fact that already preliminary decree was drawn on 29.06.2007 and the final decree was also drawn on 09.06.2008 and thereafter, he has filed the suit. But, the Trial Court rightly comes to the conclusion that he is entitled for ½ share in the property allotted to his father. He cannot claim ½ share in respect of the entire properties. The fact that already there was a partition between his uncles and also his father in terms of Ex.P16 is not in dispute and also not in dispute with regard to the relationship between the parties also and the Nagappa died leaving behind his legal heirs and partition has taken place among them through consent as per compromise decree. When such being the case, when the

property belongs to the joint family and his paternal aunts also having share in the property, the very claim of the plaintiff is not accepted. No doubt already preliminary decree and final decree was also drawn. I have also discussed the evidence and admission on the part of the PW1 regarding compromise. He categorically admits that his father has given consent for the compromise. In terms of the compromise only possession was taken by the defendant Nos.1 to 3 and final decree was also drawn. It is also important to note that partition was taken place between his father and brothers of his father and document came into existence in the year 1986-87 evidencing the fact of partition. It is also rights of the daughters also declared in Vineeta Sharma's case reported in **(2020) 9 SCC 1**. Even Apex Court also in the recent judgment also in **(2023) 9 Supreme Court Cases 641 in case of Prasanta Kumar Sahoo and others V/s Charulata Sahoo and others** held that litigation related to the

partition of ancestral properties even if any preliminary decree is drawn and final decree has not been drawn and in view of change in law, making an amendment to Hindu Succession Act, 1956 which came into effect on 09.09.2005 which has been substituted adding Section 6 giving equal rights to daughters as coparceners equal to any son, from her birth law is also summarized. Admittedly, there is no partition between the father of the plaintiff and his sisters before filing the suit in O.S.No.91/2006 and suit is also filed subsequent to the amendment and also it is admitted one of the sister of his father was got married even subsequent to the 1994 i.e., after Karnataka Amendment.

22. The counsel appearing for the appellant contend that the earlier amendment 1994 is very clear that unmarried daughters are entitled for share, the said contention also cannot be accepted when the central enactment was brought into force. When there is no partition between the father of the plaintiff as well as his

sisters in respect of the joint family properties. The judgment of Apex Court in Vineeta Sharma's case and also the judgment which has been referred above is very clear sisters as well as the father of the plaintiff are equally entitled for a share. It is also important to note that equal share has been given to the father of the plaintiff as well as paternal aunts of the plaintiff out of the ancestral joint family properties. When such being the law, the appellant's counsel cannot contend that there is an error committed by both the Courts. I have already pointed out the discussions and admission given by the plaintiff before the Trial Court while giving his answer, his father has given the free consent for compromise. When the rights of the parties has been adjudicated in the compromise decree, the fraud and misrepresentation and injustice has not been proved by the plaintiff in view of his categorical admission and though he made an attempt, in an ingenious method gives an answer with regard to the some of the properties allotted to his

father as he is not aware of the same. But, he categorically admitted in the cross-examination that though Sy.No.100 as well as Sy.No. 118 also they are in possession of the property and also his allegation is that his father was not taking care with supervising and managing the property also not been established, but he categorically admits in the cross-examination that till the death of his father, he was living along with the family and also with the plaintiff. Now, he cannot question the same that father was not taking care of the family. I have already pointed out that there is no dispute with regard to the relationship between the parties and he also not denies that they are not the sisters of his father. When such being the case, both the Courts have not committed an error in considering the material on record. The other contention that the plaintiff's father as well as his sisters were also the daughters of Narayanappa is not in dispute. When such being the case, when the Nagappa was great grand father of the plaintiff and

property belongs to the Nagappa is not in dispute and also there was a partition among the legal heirs of Nagappa and father of the plaintiff has represented his deceased father Narayanappa at the time of partition in respect of the property of the Nagappa. The plaintiff cannot claim ½ share in the entire suit schedule properties and entire suit schedule properties is not exclusive property of his father. The defendant Nos.1 to 3 and his father are the legal heirs of Narayanappa, when such being the case, when the document Ex.P16 –mutation also discloses evidencing the fact of earlier partition among legal heirs of said Nagappa which has been mutated in M.R.No.5/1986-87 and plaintiff cannot claim ½ share in the entire property. He is entitled for ½ share in the property of his father since he being only one son of his father. Both the Courts have not committed any error in dismissing the suit.

23. The counsel appearing for the appellant would vehemently contend that there was no any adjudication

cannot be accepted and the same has been taken note of by both the Trial Court both question of fact and question of law. Hence, I answered the 2nd substantial question of law that both Courts have not committed an error in not entertaining the suit, not only on the mere ground that pursuant to the compromise the parties have already taken possession of the suit schedule properties and drawn the final decree, the same is in accordance with law considering question of fact and question of law and law of Succession and defendant Nos.1 to 3 are also coparceners in view of advent of new amendment to the Hindu Succession Act. They are entitle for equal share along with the father of the plaintiff and the same is also in accordance with law. The fraud and misrepresentation as contended by the plaintiff has not been established. Hence, I do not find any merit and answered the 2nd substantial question of law accordingly.

24. In view of the discussions made above, I pass the following:

ORDER

The Second Appeal is *dismissed*.

**Sd/-
JUDGE**

RHS