SMT. M.V.ADHITHI, AGA FOR R2;
VIDE ORDER DATED 06.02.2012,
NOTICE TO R1(a) HELD SUFFICIENT
NOTICE TO R1(b & e) HELD SUFFICIENT
VIDE ORDER DATED 16.04.2012,
NOTICE TO R1(b & c) ARE HELD SUFFICIENT
VIDE ORDER DATED 06.03.2020,
R1(a to e & g) ARE TREATED AS LRS OF DECEASED R1(f)]

THIS R.S.A. IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DATED 10.11.2006 PASSED IN R.A.NO. 186/2004 ON THE FILE OF THE PRL.DISTRICT JUDGE, MANDYA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DATED 16.7.2004 PASSED IN OS.NO. 122/2000 ON THE FILE OF THE CIVIL JUDGE (SR.DN.), MADDUR.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.02.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**J U D G M E N T**

Heard the learned counsel for the appellants and learned counsel for the respondents.

2. The case of the plaintiff before the Trial Court is that the plaintiff is the native of Nidagatta Village, owning the agricultural lands bearing Sy.No.89/1, measuring 1.16 guntas, Sy.No.90/1 measuring 1.26 guntas, Sy.No.95 measuring 2 acres. 'A', 'B' and 'C' schedule properties are ancestral, apart from the land bearing Sy.Nos.110/3, 115/2 extending 2.06

guntas, which is also ancestral. 'A' and 'B' schedule properties fell to the share of late T. Thammaiah, the half brother of plaintiff as per the registered release deed dated 05.05.1943. The 'B' schedule was acquired out of the nucleus from 'A' schedule properties. Except Sy.No.95, all other properties mentioned above were ancestral properties which late Karigowda @ Kariyappa delivered to his share after separation from the brothers Puttaswamy Gowda and Pape Gowda. Late Karigowda, father of plaintiff had two wives by name late Thimmamma and Venkatamma. Through Thimmamma, one son late T. Thimmaiah was born. From second wife late Venkatamma, late K. Thammaiah and plaintiff Srinivasan were born. After the release deed dated 05.05.1943, late Thimmaiah was living separately along with wife Nanjamma, till his death in 1954. Late Karigowda, late K. Thammaiah and plaintiff lived as co-parceners till the death of father Karigowda, who died in 1950. Thereafter, late K. Thammaiah also died in the year 1964 intestate and issueless as a bachelor. Accordingly, plaintiff became the sole surviving co-parcener of the undivided family of late Karigowda @ Kariyappa. Late T. Thammaiah died issueless

in the year 1954, leaving behind him, his widow Nanjamma and plaintiff. Nanjamma entitled only for maintenance and plaintiff as a half brother entitled for succession to 'A', 'B' and 'C' schedule properties by virtue of the law as prevailed then. Plaintiff was taking care of widow Nanjamma and jointly enjoying 'A', 'B' and 'C' schedule properties and administering the properties. Plaintiff was in Government Service, visiting village periodically and taking care of late Nanjamma, till her death on 05.07.1995. The defendant happens to be the brother is son of late Nanjamma. Therefore, he purports to have taken advantage of his relationship and lonely life of late Nanjamma, he has manipulated some records to claim succession rights to 'A' and 'B' schedule properties. One Guruvaiah, father of the defendant, who is also brother of late Nanjamma created spurious adoption deed dated 30.05.1954, that shows late Nanjamma had taken defendant in adoption. A plain reading of the same establish that, it is in the nature of an agreement between Nanjamma and defendant, who was minor aged about 8½ years, who was not represented by a guardian. Adoption deed does not confer any right to the defendant. He remains only as the son of late

Guruvaiah. He cannot claim succession rights to the plaintiff schedule properties. Defendant applied for transfer of khatha in respect of suit schedule properties. The same was objected by the plaintiff.

3. After the release deed dated 16.03.1943, the khatha entries made in the name of late T. Thammaiah. However, the khatha was subsequently changed in the name of late Nanjamma in 1989. Defendant fraudulently got the khatha transferred in his name in collusion with revenue official. Late Nanjamma died on 05.07.1995 in private hospital at Mysore. She was cremated at Mysore and rituals also got performed at residence of the defendant for the sake convenience. On the 5th day ceremony, the plaintiff learnt about the clandestine movements of the defendant to sell away 'A' and 'B' schedule properties. He then brandished a purported adoption deed proclaiming that he is the successor to the schedule properties by virtue of adoption deed. Plaintiff waited till 15.07.1995 i.e., 11th day ceremony of late Nanjamma and given representation to the Tahsildar, Maddur. Then plaintiff issued legal notice to the

defendant. In the year 1954, Hindu Adoption Act had not come into vague and therefore, the Hindu Law then prevailing did not warrant an adoption deed as such, defendant was 8½ year old at that time, which was quite against the law then prevailing. There was no giver of the so called adopted child. The father of the defendant was not a party to the deed and the document is not valid. Hence, filed the suit seeking the relief that properties were reverted to the co-parcenery family of late T. Thammaiah i.e., the plaintiff, who is a half brother of the defendant. It is also contended that adoption deed is null and void and the plaintiff is in possession of the properties and hence, he is entitled for the relief of declaration and permanent injunction.

4. The defendant No.2 was a formal party and he has not appeared and placed exparte. The defendant No.1 appeared through counsel and filed written statement, wherein he admitted that the properties were taken by T. Thammaiah and executed release deed and also admitted the relationship as stated by the plaintiff. It is denied that plaintiff and late Nanjamma, the widow of late T. Thammaiah were enjoying the

'A', 'B' and 'C' schedule properties and administering the properties. It is contended that the suit is barred by limitation. Schedule 'C' item is self-acquired property of deceased Nanjamma. T. Thammaiah died in 1964 leaving behind him, his wife Nanjamma without issues. She succeeded to the properties as sole heir prior to his death. T. Thammaiah has given authority to Nanjamma to adopt defendant No.1, who was already under the care of T. Thammaiah. Accordingly, Nanjamma adopted defendant No.1 and continued to live as mother and son. The 'B' and 'C' schedule properties are self-acquired properties of Nanjamma, which she got under Darkasth and by purchase respectively. T. Thammaiah became separate from his family and began to cultivate lands he took under release deed. They were succeeded to by Nanjamma and his adopted son by defendant No.1. Defendant No.1 and adoptive mother Nanjamma sold three items of property under three different sale deeds dated 29.02.1956. Defendant No.1 performed all the rituals of Nanjamma. He succeeded to the suit schedule properties. Plaintiff is stranger to the family of Nanjamma and is

not in possession of these properties. Hence, prayed the Court to dismiss the suit.

5. The plaintiff, after filing of written statement, filed rejoinder and contended that after the death of late T. Thammaiah, the suit schedule items were reverted back to the co-parcenery family members of late T. Thammaiah. Nanjamma had only maintenance rights as per Karnataka Hindu Law Womens Rights Act, 1933 and therefore, the plaintiff as the sole surviving co-parcener of the family of late T. Thammaiah succeeded to his estate i.e., 'A' and 'B' schedule properties. It is contended that obsequious performed at the cost of plaintiff and remained by contribution from relatives.

6. The Trial Court, taking note of the pleadings of the plaintiff and the defendants, framed the following issues:

> *"1. Whether the suit properties were reverted back to the co-parcenery family members of late T. Thammaiah?*
>
> *2. Whether the plaintiff proves that the alleged adoption deed dated 30.05.1954 relating to defendant No.1 is null and void?*

3. *Whether the plaintiff further proves that he is the absolute owner in possession of A and B schedule properties?*
4. *Whether the plaintiff proves the alleged interference of the defendant No.1 over the 'A' and 'B' schedule properties?*
5. *Whether the plaintiff is entitled for the relief of declaration?*
6. *Whether the plaintiff is entitled for the relief of permanent injunction?*
7. *To what order or relief, the plaintiff is entitled for?"*

7. In order to prove the case, the plaintiff examined himself as P.W.1 and examined three witnesses as P.Ws.2 to 4 and got marked the documents as Exs.P1 to P28. On the other hand, the defendant No.1 examined himself as D.W.1 and examined one witness as D.W.2 and got marked the documents as Exs.D1 to D18.

8. The Trial Court, having considered both oral and documentary evidence placed on record, answered all the issues as 'affirmative', in favour of the plaintiff and granted the relief of

declaration declaring the plaintiff as the absolute owner of 'A' and 'B' schedule properties and further declared the alleged adoption deed as null and void and not binding on the plaintiff. The Trial Court also directed the defendant No.1 or any person on his behalf is restrained from interfering over plaintiff's peaceful possession and enjoyment over 'A' and 'B' schedule properties.

9. Being aggrieved by the judgment and decree of the Trial Court, the present appellant has filed an appeal before the First Appellate Court in R.A.No.186/2004 and considering the grounds urged in the appeal, the First Appellate Court formulated the following points for consideration:

> "*1) Whether the defendant has proved that he is duly adopted son of Nanjamma and T. Thammaiah and that original of Ex.D2 is the duly and validly executed adoption deed?*
>
> *2) Whether the defendant has proved that suit is barred by limitation, particularly as regards prayer for cancellation of adoption deed?*
>
> *3) Whether the plaintiff has proved that he is the owner in possession of the suit properties*

*being the reversioner of the family of T. Thammaiah?*

*4) Whether the impugned judgment and decree call for interference in this appeal?*

10. The First Appellate Court answered both point Nos.1 and 2 as 'negative', point No.3 as 'affirmative and point No.4 as 'negative', in coming to the conclusion that the judgment and decree of the Trial Court does not call for interference and dismissed the appeal. Being aggrieved by the judgment and decree of the Trial Court and dismissal of appeal by the First Appellate Court, the present second appeal is filed before this Court by the appellant/defendant No.1.

11. The main contention of the appellant/defendant No.1 in this appeal is that there is no dispute with regard to the fact that original propositus of the family is one Karigowda. Learned counsel also would submit that no dispute with regard to the fact that he had two wives by name Thimmamma and Venkatamma. The first wife Thimmamma had no issues through Karigowda and through second wife Venkatamma, Karigowda had two sons i.e.,

the plaintiff and another son by name Srinivasan, who died as bachelor and plaintiff is the only son, who remained to said Karigowda through second wife. It is also the contention that there was a release deed of the year 1943 and no dispute to that effect. The very contention of the plaintiff before the Trial Court is that the adoption was not brought to the notice of the plaintiff and date on which the adoption was made is also not pleaded and the ceremony in this regard and the persons who were present is not pleaded and proved. Learned counsel for the appellant would vehemently contend that the Trial Court accepted the case of the plaintiff without considering both oral and documentary evidence placed on record. The counsel would vehemently contend that Ex.D2 is the document of adoption deed and natural father is the attester of the said document. The defendant No.1 being an adopted son became the absolute owner of the suit schedule properties. It is also not in dispute that adoption deed was registered in the year 1954 itself and the same is prior to Hindu Adoption and Maintenance Act, 1956. Learned counsel also would vehemently contend that the revenue records also reveal that after the death of Nanjamma's

husband, the property is transferred in the name of Nanjamma and thereafter, the property was changed in the name of the defendant No.1.

12. The counsel also would vehemently contend that the very judgment and decree of the Trial Court is erroneous and failed to take note of the fact that deed of adoption came into existence in the year 1954 itself. The counsel also would vehemently contend that very Nanjamma sold three properties under different sale deeds on 29.02.1956, wherein a reference was made with regard to defendant No.1 is her adopted son. Learned counsel would vehemently contend that the certified copy of the adoption deed and three sale deeds are also produced before the Court as Exs.D2 to D5 and contend that the very approach of the Trial Court and the First Appellate Court is erroneous. The counsel would vehemently contend that Hindu Womens Rights to Property Act, 1937 is very clear that a widow can take adoption. Learned counsel in his argument would vehemently contend that under Section 9 of the Karnataka Hindu Law Women's Rights Act, 1933 viz., Authority to adopt, a

provision is made that in the absence of an express prohibition in writing, by the husband, his widow, or, where he has left more widows than one, the senior most of them shall be presumed to have his authority to make an adoption. It is contended that both the Courts have failed to take note of the Hindu Womens Rights to Property Act, 1937 and the Karnataka Hindu Law Women's Rights Act, 1933. The counsel would contend that Section 9 of the Hindu Women's Rights to property Act permits a widow to take adoption. The counsel also would vehemently contend that suit is barred by limitation and Section 14 applies subsequent to Hindu Succession Act, 1956. It is contended that both the Trial Court and the First Appellate Court not considered the pleadings and the fact that certified copies are produced before the Court, since originals were not available. The counsel also would vehemently contend that both the Courts failed to take note of the material available on record i.e., both oral and documentary evidence placed on record.

13. Learned counsel for the appellant/accused No.1 in support of his argument, relied upon the judgment of the Apex

Court in ***ERAMMA AND OTHERS VS. MUDDAPPA*** reported in ***AIR 1966 SC 1137*** and brought to notice of this Court Para No.4, wherein the Apex Court has discussed on the question of authority the law in the State of Mysore is to be found in Mysore Act 10 of 1933 entitled Hindu Law Womens Rights Act, 1933.

14. The counsel also relied upon the judgment of the Apex Court in ***SRI LAKHI BARUAH AND OTHERS VS. SRI PADMA KANTA KALITA AND OTHERS*** reported in ***AIR 1996 SC 1253*** and brought to notice of this Court Para Nos.15 to 17 with regard to Section 90 of the Evidence Act i.e., presumption as regards genuineness of the document of 30 years old.

15. The counsel also relied upon the judgment of the Apex Court in ***GOSWAMI SHREE VALLABHALAJI VS. GOSWAMINI SHREE MAHALAXMI BAHUJI MAHARAJ AND ANOTHER*** reported in ***AIR 1962 SC 356*** and brought to notice of this Court Para No.24 of the judgment, wherein the Apex Court has observed that adoption is invalid in the absence of consent by the husband's sapindas must be rejected, for the simple reason that the letter Ex.115 and the evidence of the

plaintiff's own witnesses justify the conclusion that in his life time Annirudhalalji authorized Mahalakshmi Bahuji Maharaj to make an adoption after his death though at the same time indicating his preference for one particular boy. The necessity of consent of the husband's sapindas would arise if the Madras School of Mitakshara law was applicable only where there was no authority from the husband.

16. The counsel also relied upon the judgment of this Court in ***R.S.A.NO.200036 OF 2014*** dated ***10.10.2023*** with regard to presumption that in the absence of any material evidence of giving and taking ceremony as mandate under Section 11 of the Hindu Adoption and Maintenance Act, 1956 as well as Section 16 of the Hindu Adoption and Maintenance Act, 1956 with regard to presumption as to the registered documents relating to adoption and comes to the conclusion that, except the genitive parents, adoptive parents and the adoptive son, others have no *locus standi* to question the validity of the adoption deed. The counsel referring this judgment would vehemently contend that the plaintiff cannot question the adoption deed,

since he is not a genitive parent or an adoptive parent or an adoptive son and he has no *locus standi* to question the same.

17. Learned counsel for the appellant referring these judgments and Hindu Womens Rights to Property Act, 1937 and Section 9 of the Karnataka Hindu Law Women's Rights Act, 1933, would vehemently contend that the very approach of the Trial Court and the First Appellate Court is erroneous and it requires interference at the hands of this Court.

18. Per contra, learned counsel for the respondents would vehemently contend that the propositus of the family Karigowda had two wives i.e., Thimmamma and Venkatamma and through first wife had a son by name T. Thammaiah and through the second wife, he had two sons i.e., a son by name Srinivasan, who died as bachelor and the plaintiff. The counsel would vehemently contend that in terms of the release deed, two items of the properties had fallen to the share of T. Thammaiah. The counsel also would vehemently contend that the adoption and the date on which adoption was made was not brought to the notice of the plaintiff at any point of time and

with regard to the ceremony of adoption and the persons who were present, nothing is pleaded and proved. The document of Ex.D2 is relied upon by the defendant No.1 as a natural father and attester of the document and he is not a party to adoption. The defendant No.1 was aged 8 years at the time of alleged adoption and document of Ex.D2 is not a valid document and no pleadings with regard to the consent and any ceremony of giving and taking the adoption. Hence, it is contended that the Trial Court has appreciated both oral and documentary evidence placed on record and contend that under Karnataka Hindu Law Women's Rights Act, 1933, a widow can take adoption but, elder son cannot be given as adoptive son and both the Courts have extensively considered the material on record. It is also contended that the First Appellate Court in Para Nos.14 to 21 of the judgment discussed in detail as regards the venue where the adoption had taken place and ceremony of adoption has not been stated. The adoption is not considered in other matter and based on the earlier documents, the defendant cannot prove the adoption and none were having personal knowledge i.e., either the D.W.1 or the D.W.2 and no iota of evidence to prove the

adoption. Hence, the adoption was not in the knowledge and therefore, no limitation arises and the defendant No.1 is a stranger. It is contended that though Nanjamma as a widow is entitled, but when there is no material to prove the adoption, the question of considering the defendant No.1 as an adopted son does not arise and both the Courts have considered the same in detail and there is no merit in the second appeal.

19. In reply to the arguments of the learned counsel for the respondents, learned counsel for the appellant would vehemently contend that adoption was made prior to 1954 and the document of Ex.D2 came into existence in the year 1954 itself and the very document of Ex.D2 speaks about the consent and an authority given to Nanjamma to take adoption. Learned counsel would vehemently contend that plaintiff cannot question the adoption and he was not having any *locus standi* to challenge the same.

20. This Court, having considered the grounds urged, while admitting the appeal, framed the following substantial questions of law which reads as hereunder:

i) Whether the Courts below are right in rejecting the adoption deed and the adoption of the appellant by Nanjamma for and on behalf of her husband T. Thammaiah when the appellant has produced in support of his plea of adoption documents Exs.D1 to D18?

ii) Whether the Courts below are right in putting the plaintiff in strict burden of proof for an adoption which has taken place in the year 1954 and the same came to be challenged before the Court after a lapse of 42 years in the year 1996?

iii) Whether the Courts below are right in insisting the appellant to prove the fact of adoption with the strict rules of evidence after a lapse of more than 50 years when all the oral evidence and other evidences are not available due to lapse of time?

iv) Whether the Courts below are right in holding that the respondent is a coparcener entitled for ownership of the Plaint Schedule 'A' and 'B' properties when there was partition between the coparceners in the year 1943 which is evidenced by way of a registered release deed executed by T. Thammaiah the adoptive father of the appellant?

v) Whether the Courts below are right in declaring the ownership rights of the plaint schedule 'A' and 'B' properties in favour of the First Respondent when Section 14 of the Hindu Succession Act gives an absolute right to Nanjamma after 1956 over the properties held by her?

**Substantial Questions of law (i) to (v):**

21. Having taken note of the substantial questions of law framed by this Court and the material available on record, this Court would like to make a mention of undisputed facts. It is not in dispute that there was a release deed in the year 1943 executed by T. Thammaiah and the properties were vested with T. Thammaiah after 1943 and he was in possession of the properties and living separately. It is also not in dispute that the original propositus of the family had two wives and T. Thammaiah had no issues through his wife Nanjamma. It is the case of the plaintiff that property reverts back to him, since said Nanjamma died in the year 1995. It is the claim of the plaintiff that after the death of said T. Thammaiah, he has taken care of Nanjamma throughout her life and he was in joint

possession with said Nanjamma and he was cultivating the suit 'A' and 'B' schedule properties. It is also not in dispute that since the 'C' schedule property is self-acquired property of Nanjamma, no relief is granted in respect of 'C' schedule property in favour of the plaintiff.

22. The plaintiff in order to prove the case, examined himself as P.W.1 and also examined three witnesses as P.Ws.2 to 4 to establish that he is in possession of the properties. On the other hand, the defendant No.1, who claims that he is an adopted son of Nanjamma, in order to prove his contention, relied upon Exs.D1 to D18 that adoption had taken place in the year 1954 itself i.e., prior to Hindu Succession Act, 1956. It is also his contention that immediately after the adoption, three properties were sold by Nanjamma in the year 1956 i.e., on 29.02.1956 itself, wherein she has mentioned that defendant No.1 is her adopted son and documents are produced before the Court to that effect as Exs.D3 to D5. It is also the contention of the learned counsel for the appellant that the Trial Court committed an error in considering the strict compliance of

adoption and failed to take note of the fact that adoption has taken place in the year 1954 itself. The counsel also would vehemently contend that in terms of the Karnataka Hindu Law Women's Rights Act, 1933, Nanjamma has right to take adopt defendant No.1 as her son. The very conclusion reached by both the Courts that a widow has no right to adopt is against law.

23. The other contention is that suit is barred by limitation is not properly considered and Section 14 applies subsequent to Hindu Succession Act, 1956. Having considered the reasoning given by the Trial Court and the First Appellate Court and also the contention urged by the learned counsel for the appellant, the counsel mainly relied upon Karnataka Hindu Law Women's Rights Act, 1933. This Court would like to refer Section 9 of the said Act, which reads as hereunder:

> *"9. Authority to adopt:- (1) In the absence of an express prohibition in writing, by the husband, his widow, or, where he has left more widows than one, the senior most of them shall be presumed to have his authority to make an adoption*
>
> *(2) No adoption made by widow shall,-*

*(a) divest her of her estate in any stridhana property, other than such as she may have taken by inheritance from her husband; or*

*(b) affect her right to obtain at any time, at her option, either maintenance charged upon the property inherited from her husband, or a separate share therein equal to one-half of the share of the adopted son; or*

*(c) affect her right to manage such property, as well as to act as the guardian of the person of the adopted son, during his minority.*
*(3) An arrangement made prior to or at the time of an adoption as aforesaid, whereby the adopted son if he be a major, or his natural father or mother if he be a minor, agrees to his rights in or over the property of the adoptive father being limited, curtailed, or postponed in the interests of the adoptive mother, shall be valid and binding on the adopted son".*

24. Learned counsel for the appellant in support of this provision, relied upon the judgment of the Apex Court in ***ERAMMA AND OTHERS VS. MUDDAPPA*** reported in ***AIR 1966 SC 1137,*** wherein the Apex Court has held with regard to authority of a widow for adoption under Hindu Law, law in State of Mysore, under Mysore Hindu Law Women's Rights Act (10 of 1933), Section 9 presumption is that widow has authority and

held that the said presumption is not rebutted. The Mysore Hindu Law Womens Rights Act (10 of 1933) and Section 9 is very clear that, in the absence of an express prohibition in writing by husband, his widow or where he has left more widows than one, the senior most of them shall be presumed to have his authority to make an adoption. Ordinarily authority to adopt will be presumed. The law in this respect is thus in line with the law in the Bombay State. Ordinarily this presumption can be rebutted by establishing that the husband had expressly prohibited her from making an adoption. Such a prohibition could be established either by direct evidence or by circumstantial evidence. Long delay in making the adoption is explicable by reason of the fact that the widow was in her twenties when her husband died and it was natural that at such an early age she would not take the risk of divesting herself of her interest in the property by making an adoption and leave herself at the mercy of the adopted son, and the fact that later the Mysore Hindu Law Women's Rights Act came into force, under Section 8 of which the widow of a deceased co-parcener belonging to the joint Hindu family was given a right to share in

the family property, would not rebut the presumption. The law as it stood in Mysore at the relevant time did not require a widow to proclaim to anyone that she had an authority to adopt a son to her husband. The law on the other hand was that she could make an adoption unless she was expressly prohibited from doing so. The fact that no mention of authority was made in the deed, therefore would not go to rebut the presumption. Similarly the mere existence of a daughter is not sufficient to rebut the presumption and detailed discussion was made in Para No.4 of the judgment on the question of authority, the law in the State of Mysore is to be found in Mysore Act 10 of 1933 entitled Hindu Law Woman's Rights Act, 1933 and Section 9(1) of the Act.

25. Having read Section 9 of the Hindu Law Womans Rights Act, 1933 as well as the judgment of the Apex Court, it is clear that under Mysore Act 10 of 1933, a widow has authority for adoption and presumption has to be rebutted. The principle is also very clear that the law as it stood in Mysore at the relevant time did not require a widow to proclaim to anyone that

she had an authority to adopt a son to her husband. The law on the other hand was that she could make an adoption unless she was expressly prohibited from doing so, there was no express prohibition in taking adoption of defendant No.1, who is none other than the son of brother of Nanjamma. The fact that no mention of authority was made in the deed, therefore would not go to rebut the presumption.

26. In the case on hand, there is a specific averment in the document of Ex.D2 that adoption has taken place in the year 1954 itself, when her husband gave authority to take defendant No.1 in adoption and it is also stated that the defendant No.1 was living along with them, even prior to adoption in the year 1954. It is also important to note that the main contention of the appellant/defendant No.1 before the Trial Court is that immediately after the adoption deed came into existence in the year 1954, Nanjamma had sold three items of property vide sale deeds dated 29.02.1956 itself, wherein reference is made that the defendant No.1 is her adopted son. It is also important to note that the document of sale deeds are also marked as Exs.D3

to D5 which came into existence in the year 1956 itself. Having referred those documents, there is a clear recital that Nanjamma had adopted the defendant No.1 and reference is made with regard to sale of properties on her behalf and on behalf of her adopted son and the said sale is also not in dispute and the only contention is that original sale deeds were not summoned. When the documents are registered in the year 1956 and are not in the custody of the defendant No.1, the question of producing the original primary evidence does not arise, since certified copies are marked and the said transactions have taken place in the year 1956 itself and the presumption of documents and presumption of adoption are not rebutted. There is no any express provision of prohibition in taking adoption.

27. Learned counsel for the appellant also relied upon the judgment of the Apex Court in ***SRI LAKHI BARUAH AND OTHERS VS. SRI PADMA KANTA KALITA AND OTHERS*** reported in ***AIR 1996 SC 1253*** and brought to notice of this Court Para No.15, wherein the Apex Court has observed that Section 90 of the Evidence Act is founded on necessity and

convenience because it is extremely difficult and sometimes not possible to lead evidence to prove handwriting, signature or execution of old documents after lapse of thirty years. In order to obviate such difficulties or improbabilities to prove execution of an old document. Section 90 has been incorporated in the Evidence Act, which does away with the strict rule of proof of private documents. Presumption of genuineness may be raised if documents in question is produced from proper custody. It is, however, the discretion of the Court to accept the presumption flowing from Section 90. There is, however, no manner of Court that judicial discretion under Section 90 should not be exercised arbitrarily and not being informed by reasons. In Para No.17 also, the Apex Court held the position since the aforesaid Privy Council decisions being followed by later decisions of different High Courts is that presumption under Section 90 does not apply to a copy or a certified copy even though thirty years old : but if a foundation is laid for the admission of secondary evidence under Section 65 of the Evidence Act by proof of loss or destruction of the original and the copy which is thirty years old is produced from proper custody, then only the signature

authenticating the copy may under Section 90 be presumed to be genuine.

28. The Apex Court in the judgment in ***GOSWAMI SHREE VALLABHALAJI VS. GOSWAMINI SHREE MAHALAXMI BAHUJI MAHARAJ AND ANOTHER*** reported in ***AIR 1962 SC 356*** in Para No.24, which I have already discussed (supra) observed that is clear that the necessity of consent of the husband's sapindas would arise, if the Madras School of Mitakshara law was applicable only where there was no authority from the husband. I have already pointed out that in the document of Ex.D2, it is specifically mentioned with regard to the fact that authority was given to Nanjamma and it is also stated that even prior to execution of document, formalities were done and the same is also spoken by P.W.1 in his evidence. It is also clear that though the adoption deed which is marked as Ex.D2 is not by both the parents, the fact that the natural father had attested the document of registered adoption deed executed in the year 1954 is not disputed. Though the said document is not in terms of giving and taking ceremony consequent upon the

Hindu Succession Act, 1956, but the very attestation by the natural father is clear that he gave consent for adopting defendant No.1 as the son of Nanjamma and the same has taken place prior to 1956. The principles laid down in the judgments of the Apex Court in ***SRI LAKHI BARUAH's*** case and ***GOSWAMI SHREE VALLABHALALJI's*** case have to be taken note of while appreciating the material available on record.

29. The Trial Court and the First Appellate Court, while considering the material on record with regard to the adoption is concerned, failed to take note of the document of Exs.D1 to D18 and this Court considering the grounds which have been urged in the second appeal, framed the substantial questions of law with regard to rejection of adoption deed and adoption of appellant by Nanjamma for and on behalf of her husband T. Thammaiah and the document of Ex.D2 is very clear that authority was given to wife i.e., Nanjamma and this Court has discussed with regard to the Karnataka Hindu Women's Rights Act, 1933 and the documents produced before the Court evidence the fact that defendant No.1 was the adopted son of Nanjamma. It is

important to note that document of adoption deed came into existence long back in the year 1954 and sale deeds are executed in the year 1956 with respect to sale of three items of properties. Thus, both the Courts committed an error in coming to the conclusion that the adoption is not proved only on the ground that there is no giving and taking ceremony being held and both the Courts failed to take note of the registered documents of the year 1954 and 1956 and when the documents are registered documents, both the Courts ought to have taken note of Section 90 of the Evidence Act and the same is not considered.

30. The principles laid down in the judgment of the Apex Court in ***SRI LAKHI BARUAH's*** case with regard to Section 90 of the Evidence Act provides that if original documents are in the custody of the owners, who purchased the property in the year 1956, securing the said documents executed in the year 1956 is very difficult and hence, the appellant has secured the certified copies of the same before this Court and the document of the year 1956 cannot be disputed after lapse of 40 years. This Court

also in the judgment in ***R.S.A.NO.200036 OF 2014*** dated ***10.10.2023*** relied upon by the learned counsel for the appellant framed the substantial question of law, in the absence of any evidence as regards the giving and taking of the adoption, whether the Court below could have accepted the adoption deed and the same is answered by looking into the provisions of Sections 11 of the Hindu Adoption and Maintenance Act, 1956. This Court would like to refer Section 11 of the Hindu Adoption and Maintenance Act, 1956, which reads as hereunder:

> ***"11. Other conditions for a valid adoption.—****In every adoption, the following conditions must be complied with:—*
>
> *(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;*
>
> *(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;*
>
> *(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least*

*twenty-one years older than the person to be adopted;*

*(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;*

*(v) the same child may not be adopted simultaneously by two or more persons;*

*(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:*

*Provided that the performance of data homam shall not be essential to the validity of an adoption."*

31. Having considered Section 11 of the Hindu Adoption and Maintenance Act, 1956, it lays down some vital rules relating to the law of adoption and the rules and conditions stated in the section are absolute and non-compliance with any of them will render an adoption invalid. Clause (vi) of Section 11 in express terms states that there must be the actual giving and

taking of the child with intent to transfer the child from the family of its birth to the family of its adoption. The physical act of giving and receiving was absolutely necessary for the validity of an adoption under the law as it existed before coming into force of the present Hindu Adoption and Maintenance Act, 1956, and the position under the Act is identical and the Apex Court in the case of ***JAISINGH VS. SHAKUNTALA*** reported in (2002) 3 SCC 634 has categorically held that actual giving and taking is essential. It is relevant to state that this Section, however, does not prescribe any particular mode or manner for the act of giving and taking, what is essential is that there should be some overt act to signify delivery of child from one family to another.

32. In the case on hand, it has to be noted that adoption has taken place in the year 1954 and there is an overt act to signify delivery of the child from one family to another and in the document of registered sale deeds executed in the year 1956, the very adoptive mother recognized the defendant No.1 as her adopted son and disposed of the properties on 29.02.1956 itself recognizing the right of defendant No.1 as adopted son and the

same is nothing but some overt act to signify the delivery of child from one family to another and acted upon in terms of the said adoption deed of the year 1954 which is a registered document. This Court would like to extract Section 16 of the Hindu Adoption and Maintenance Act, 1956, which reads as hereunder:

> *"**16. Presumption as to registered documents relating to adoption.—** Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved".*

33. Section 16 of the Hindu Adoption and Maintenance Act, 1956 is also very clear that whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and his signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and

until it is disproved. I have already pointed out that the natural father has attested the adoption deed which was executed in the year 1954 and there is no rebuttal evidence, except the say of the plaintiff that he has taken care of said Nanjamma, but admission given by P.W.1 is very clear that after the death of husband of Nanjamma, she has been in possession of the property. However, the plaintiff claims that he was in joint possession, but none of the document disclose that he was in joint possession with said Nanjamma. Apart from that the records reveal that when Nanjamma died in the year 1995, the defendant No.1 himself has conducted the obsequious and the plaintiff also claims that he has attended 5$^{th}$ day ceremony and it is not his case that he performed the last rituals. Further, the said Nanjamma herself performed the marriage of daughter of defendant No.1 and the ration card and other documents reveal that defendant No.1 continued along with said Nanjamma throughout her life. These documents are not taken note by the Trial Court and the First Appellate Court and when there is a presumption with regard to validity of the adoption and when the adoption deed is registered, and in such circumstances, the

adoption is in conformity with the Act as held by the Apex Court in the case of ***SAROJA VS. SENTHIL KUMAR*** reported in (2011) 11 SCC 483.

34. It is also important to note that the adoption is challenged after more than 42 years in the year 1996 and adoption has taken place in 1954, strict rules of Evidence after a lapse of 50 years cannot be insisted when both oral and documentary evidence are available before the Court, particularly the registered documents and due to lapse of time, it is highly difficult to prove giving and taking ceremony of adoption and the same is not considered by the Trial Court and the First Appellate Court. No doubt, it is the contention of the plaintiff that property reverts back to co-parcener, the said contention cannot be accepted and it has to be noted that there was a partition between co-parcener in the year 1943 itself by way of registered release deed executed by T. Thammaiah i.e., adoptive father of the appellant and subsequently, adoption deed came into existence in the year 1954 and the property was sold

in the year 1956 recognizing the right of the adopted son and there was reference in the document of Exs.D3 to D5.

35. It is also important to note that in view of Hindu Succession Act, 1956, when an adoptive mother inherits property from her mother and consequent upon Section 14 of the Hindu Succession Act, 1956, she becomes the absolute owner of the property and she has an absolute right after 1956, since property is held by her. When such being the case, when all the material on record discloses that plaintiff was not in possession of the property and when there is a clear admission on the part of P.W.1 that plaintiff was not in possession and Nanjamma was in possession, however an attempt is made to claim that he was in joint possession, though nothing is placed on record to prove the same. Hence, both the Courts committed an error in coming to the conclusion that the plaintiff is in possession of the suit schedule properties and both the Courts failed to take note of the revenue documents and subsequent to the death of her husband, the revenue documents were standing in the name of Nanjamma and that too, in the year 1989, khatha

has been transferred in the name of Nanjamma and also there was an admission that she was in possession of the properties after the death of her husband and thereafter, she also died in the year 1995 and immediately after 1995, present suit is filed.

36. It is important to note that when the document is registered in the year 1954 and the sale deeds were executed in the year 1956 in favour of the prospective purchasers, the very contention of the plaintiff that he came to know about the same when claim was made based on the adoption deed cannot be accepted and registration of the document itself is a notice to the all and both the Courts failed to take note of the fact that suit is filed after lapse of 40 years of adoption and erroneously comes to the conclusion that suit is barred by limitation and the very approach of both the Courts is erroneous and committed an error in declaring the ownership right in respect of suit schedule 'A' and 'B' properties in favour of the plaintiff and failed to consider Section 14 of the Hindu Succession Act, 1956 as well as both oral and documentary evidence available on record, particularly the documents of Exs.D1 to D18.

37. The adoption is also challenged by the plaintiff, who is the brother of the husband of Nanjamma and this Court in the judgment in ***VEERABHDRAYYA R. HIREMATH (D) BY L.Rs. VS. IRAYYA A.F. BASAYYA HIREMATH*** reported in ***2006 A I H C 1734***, held that except the adoptive parents and adoptive son, others have no *locus standi* to question the validity of the adoption deed. The principles laid down by co-ordinate *Bench* of this Court is squarely applicable to the instant case which has been considered in the judgment of this Court in ***R.S.A.NO.200036 OF 2014*** dated 10.10.2023. Hence, the plaintiff cannot question the adoption and validity of the adoption deed and the plaintiff has no *locus standi* to question the same. Hence, I answer the substantial questions of law framed by this Court accordingly that both the Courts committed an error in rejecting the claim of defendant No.1 that he is an adopted son and failed to consider both oral and documentary evidence and after a long time i.e., 42 years, strict burden of proof for an adoption cannot be insisted when presumption is available under Section 16 of Hindu Adoption and Maintenance Act, 1956 which I have already discussed.

38. In view of the discussion made above, I pass the following:

ORDER

(i) The appeal is allowed.

(ii) The impugned judgment and decree of the Trial Court passed in O.S.No.122/2000 and the First Appellate Court passed in R.A.No.186/2004 are set aside and consequently, the suit is dismissed.

**Sd/-**
**JUDGE**

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