REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2567 OF 2017

M.R. VINODA ..... APPELLANT(S)

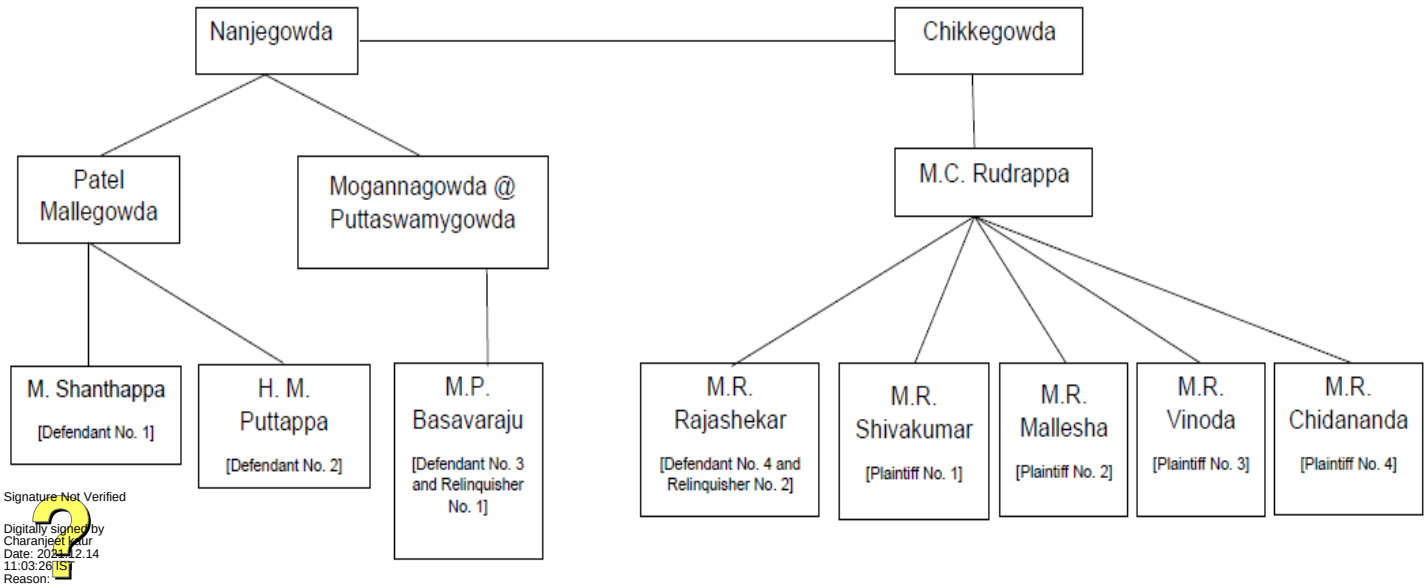
VERSUS

M.S. SUSHEELAMMA (D) BY LRS.
AND OTHERS ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

For convenience, we begin by reproducing the genealogy table as it stood at the time of filing the suit from which the present appeal arises:



We would refer to the parties before us as per the above table, *albeit* acknowledge many of the aforesaid parties having expired are represented by their legal representatives.

2. On 15th April 1961, M.C. Rudrappa, son of Late Chikkegowda and Patel Mallegowda and Mogannagowda @ Puttaswamygowda, both sons of Late Nanjegowda, being the eldest members of the respective branches executed a partition deed, marked Exhibit P-1, dividing the joint Hindu family properties *inter se* the three branches. The validity and legality of the partition deed, Exhibit P-1, is accepted and not under challenge.

3. On 13th March 1969, M.R. Rajashekar, the eldest among five sons of M.C. Rudrappa who had expired 1967, and M.P. Basavaraju, only son of Mogannagowda @ Puttaswamygowda, who it appears had also expired, executed a relinquishment deed, marked Exhibit P-2, of the property admeasuring 6 acres 34 guntas in Survey No. 29, Madenahalli Village (the suit property), in favour of Patel Mallegowda.

4. On 18th November 1994, M.R. Shivakumar (Plaintiff No. 1), M.R. Mallesha (Plaintiff No. 2), M.R. Vinoda (Plaintiff No. 3) and M.R.

Chidananda (Plaintiff No. 4), all younger sons of late M.C. Rudrappa, filed a suit seeking a declaration that the relinquishment deed dated 13th March 1969, Exhibit P-2, executed by their eldest brother M.R. Rajashekar, Defendant No. 4, and their cousin M.P. Basavaraju, Defendant No. 3 in favour of their eldest uncle Patel Mallegowda, is null and void. Patel Mallegowda, having expired, his sons M. Shantappa and H. M. Puttappa were impleaded as Defendant Nos. 1 and 2.

5. The plaint, in a nutshell, states that the Plaintiff No. 4 being minor on 13th March 1969, their eldest brother M.R. Rajashekar, the fourth defendant, had no right to relinquish their shares.[1] The relinquishment deed dated 13th March 1969, Exhibit P-2, being void, the property remained the joint Hindu family property and should be partitioned equally amongst them.

6. The suit was resisted by Defendant Nos. 1 to 3 primarily on the ground that the relinquishment deed is valid and the suit is barred by limitation.

1 As per the Plaint, all the plaintiffs had attained majority at the time of execution of the relinquishment deed except Plaintiff No. 4. It is observed that there is some discrepancy with regard to the year of birth of four Plaintiffs. However, in the context of the present judgment this would not make any difference.

7. The trial court dismissed the suit as barred by limitation and that the Defendant No. 4, being the eldest male member, was entitled to execute the relinquishment deed on behalf of his branch of the family.

8. In the regular first appeal, the Additional Sessions Judge decreed the suit *inter alia* holding that Defendant No. 4 was not competent to execute the relinquishment deed, which being void, the suit was not barred by limitation.

9. Legal representatives of the Defendant No.1 preferred the Regular Second Appeal No. 1989 of 2006 and have succeeded by the judgment under challenge passed by the High Court of Karnataka at Bangalore on 19th November 2008 *inter alia* ruling that the relinquishment deed is not *void ab initio* and the suit having been filed beyond three years as stipulated under Article 58 and 59 of the Schedule to the Limitation Act, 1963 was barred by limitation. The prayer for the partition was rejected as the property had ceased to be a joint Hindu family property *inter se* the three branches.

10. Aggrieved by the decision, Plaintiff No. 3 has preferred this appeal. Plaintiff No. 1, who is represented by his legal representative, Plaintiff

Nos. 2 and 4, having not preferred this appeal are the proforma Respondent Nos. 8, 9 and 10. The Defendant No. 1, represented by his legal representatives are Respondents No. 1 to 4, and Defendant No. 2 represented by his legal representative is Respondent No. 5, and Defendant No. 4 is Respondent No. 7 in the present appeal. The Defendant No. 3, Respondent No. 6 herein, has been deleted from the array of parties.

11. Before we examine the question of the validity of the relinquishment deed, we must define the right and authority of the head of the branch or the *Karta* to deal with a joint Hindu family property as the Plaintiff No. 4, a coparcener in the joint family, it is admitted[2] was minor when the fourth defendant executed Exhibit P-2, the relinquishment deed on 13th March 1969.

12. The position in Hindu Law is well settled. In ***Sri Narayan Bal and Others*** v. ***Sridhar Sutar and Others***,[3] this Court interpreting

2 The Appellant in his Special Leave Petition, Ground (DD) states that the Appellant was minor at the time of execution of the relinquishment deed. Even the rejoinder affidavit *vide* paragraph 11, the Appellant states that he was not major at the time of execution of relinquishment deed. However, see note 1.
3 (1996) 8 SCC 54.

Sections 6[4] and 8[5] of the Hindu Minority and Guardianship Act, 1956 ("HMG Act", for short), has held that these two Sections are not to be viewed in isolation, *albeit* in harmony and conjunction, and when read together the intent is manifest that HMG Act does not envisage a

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4 6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(*a*) in the case of a boy or an unmarried girl—the father, and after him, the mother:

Provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(*b*) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(*c*) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(*a*) if he has ceased to be a Hindu, or

(*b*) if he has completely and finally renounced the world by becoming a hermit (*vanaprastha*) or an ascetic (*yati* or *sanyasi*).

Explanation.—In this section, the expressions "father" and "mother" do not include a stepfather and a stepmother.

5 8. Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(*a*) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(*b*) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890, shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining

natural guardian of an undivided interest of a Hindu minor in a joint Hindu family property. A natural guardian of a Hindu minor in respect of the individual property alone is contemplated under Section 8, whereunder the powers and duties of a natural guardian are defined. The provisions of the HMG Act with the object of saving the minor's separate individual interest from being misappropriated require a natural guardian to seek permission from the Court before alienating any part of the minor's estate, do not affect the right of the *Karta* or the head of the branch to manage and from dealing with the joint Hindu family property. In terms of Section 12[6], ordinarily no guardian shall be appointed for minor's interest in joint Hindu family. Only when

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the permission of the court under Section 29 of that Act, and in particular—

(*a*) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of Section 4-A thereof;

(*b*) the court shall observe the procedure and have the power specified in sub-sections (2), (3) and (4) of Section 31 of that Act; and

(*c*) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section "court" means the city civil court or a district court or a court empowered under Section 4-A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

6 12. Guardian not to be appointed for minor's undivided interest in joint family property.—Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

there is no adult member in the management of the joint family property in which the minor has an undivided interest - and then alone - a guardian may be appointed. Further, the adult family member in the management of the joint family property may be a male or female, not necessarily the *Karta*. Therefore, Section 8 of the HMG Act that requires a guardian of a Hindu minor to seek the permission of the Court before he disposes of any immovable property of the minor will have no application when a *Karta or* adult head of the family alienates joint Hindu property even if one or more coparceners are minor. The reason is that Section 8, in view of the express terms of Sections 6 and 12, would not apply where a joint Hindu family property is sold/disposed of by the *Karta* or head of the family even when a minor has an undivided interest in the said joint Hindu family property. ***Sri Narayan Bal*** (supra) observes:

> "5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need to be viewed in a single glimpse, simultaneously in conjunction with each other. Each provision, and in particular Section 8, cannot be viewed in isolation.....The joint Hindu family by itself is a legal entity capable of acting through its *Karta* and other adult members of the family in management of the joint Hindu family property. Thus Section 8 in view of

> the express terms of Sections 6 and 12, would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property…"

13. Thus, a *Karta* of a joint Hindu family can dispose of joint family property involving the undivided interest of the minor of the family therein. Therefore the proposition of the Plaintiff No. 3/ the Appellant on the limitation of the power of the *Karta* to manage and sell the joint Hindu family property on behalf of the joint family comprising of a minor is misplaced, as a coparcener has no right to interfere in the act of management of the joint family affairs.[7] This being the position, a coparcener cannot seek an injunction restraining the *Karta* from alienating joint Hindu family property, but has a right to challenge alienation, as the alienation is not beyond the scope of challenge by other members of the joint family, and thereby scrutiny of the court. Latter right entails the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrances, whereas the former embraces the right to interfere with the act of management of the joint family affairs. We shall subsequently examine the grounds and circumstances in which alienation can be challenged.

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7 *Sunil Kumar and Another* v. *Ram Parkash and Others*, (1988) 2 SCC 77.

14. A Hindu family may have different branches within it. From the perspective of Hindu Law, such branches of a family are separate bodies, with the eldest of that branch representing it within a larger joint Hindu family. Father and in the absence of the father the eldest member of the branch is entitled to act as the *Karta* and in that capacity represent the branch. In ***Bhagwan Dayal (since deceased) and thereafter his heirs and legal representatives Bansgoal Dubey and Another*** v. ***Mst. Reoti Devi (deceased) and after her death, Mst. Dayavati, her daughter***,[8] this Court decoded the law as:

> "47. In Mayne's Hindu law, 11th Edn., the legal position has been neatly stated thus at p. 347:
>
> > "So long as a family remains an undivided family, two or more members of it, whether they be members of different branches or of one and the same branch of the family, can have no legal existence as a separate independent unit; but all the members of a branch, or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of the members of the branch inter se, but will be separate property of that branch in relation to the larger family.
> >
> > The principle of joint tenancy is unknown to Hindu law except in the case of the joint

8 (1962) 3 SCR 440.

property of an undivided Hindu family governed by the mitakshara law."

The legal position may be stated thus: Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily, the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property, subject to the limitations laid down by the said law, for or on behalf of the family. Such business or property would be the business or property of the family……"

(Emphasis supplied)

In 1901, the High Court of Madras ***Sudarsanam Maistri*** v. ***Narasimhulu Maistri and Another***,[9] had observed as follows:

".....But so long as a family remains an undivided unit, two or more members thereof — whether they be members of different branches or of one and the game branch of the family,—can have no legal existence as a separate independent unit; but if they comprise all the members of a branch, or of a sub-branch, they can form a distinct and separate corporate unit within the larger corporate unit and hold property as such, Such property may be the self-acquisition or 'obstructed heritage' of a paternal ancestor of that branch, as distinguished from the other branches which property has come to that branch and that branch alone as 'unobstructed heritage' or it may be the self-acquisition of one or more individual members of that branch, which by act of parties has been impressed with the character of joint property, owned by that branch and that branch alone, to the exclusion of the other branches."

9 1901 SCC OnLine Mad 91

In the light of the above position, the father or the eldest member is the *Karta* of a branch of the smaller joint family within the larger joint Hindu family, such branch being subordinate or separate unit within the larger body.

15. In the partition of 1961, the three branches of the family were represented by the senior-most member, i.e., father as heads of the respective branches, namely, Patel Mallegowda, Mogannagowda @ Puttaswamygowda and M.C. Rudrappa. The partition is valid and binding on the members/coparceners of the three branches. Similarly, the *inter se* partition amongst Defendant No. 4, i.e., M.R. Rajashekar and four plaintiffs, was done by their respective representatives since they were the father or eldest in their branches.

16. At this stage, we may refer to a recent decision of this court in ***M. Arumugam*** v. ***Ammaniammal and Others,***[10] wherein after referring to Section 6 of the Succession Act, 1956, it was observed as under:

> "19. A *Karta* is the manager of the joint family property. He is not the guardian of the minor members of the joint family. What Section 6 of the Act provides is that the natural guardian of a minor Hindu shall be his guardian for all intents and purposes except so far as the undivided

10 (2020) 11 SCC 103.

> interest of the minor in the joint family property is concerned. This would mean that the natural guardian cannot dispose of the share of the minor in the joint family property. The reason is that the *Karta* of the joint family property is the manager of the property. However, this principle would not apply when a family settlement is taking place between the members of the joint family. When such dissolution takes place and some of the members relinquish their share in favour of the *Karta*, it is obvious that the *Karta* cannot act as the guardian of that minor whose share is being relinquished in favour of the *Karta*. There would be a conflict of interest. In such an eventuality it would be the mother alone who would be the natural guardian and, therefore, the document executed by her cannot be said to be a void document. At best, it was a voidable document in terms of Section 8 of the Act and should have been challenged within three years of the plaintiff attaining majority."

In our view this judgment does not lay down a different law, and is not contra the ratio in ***Sri Narayan Bal*** (supra). In ***M. Arumugam*** (supra), the Court was dealing with the situation governed by pre-amended Section 6 of the Hindu Succession Act, which postulates deemed partition on the death of a coparcener. Under the Hindu Succession Act, inheritance to the estate of the deceased coparcener on a deemed partition is by way of succession, and not by way of survivorship. Therefore, the property inherited is individual and not joint Hindu family property. Consequent to which the plaintiff therein, who was a minor, had inherited the share on her father's death, who

was a *Karta*. The inherited property belonged to the minor. In this context, the Court held that the mother alone would be the natural guardian, and the relinquishment made by her on behalf of her minor daughter, i.e., the plaintiff therein, would not be void.

17. In the light of the aforementioned proposition of law, the Plaintiff No. 3 cannot argue that their mother, as a natural guardian, being alive at the time of execution of the relinquishment deed, Defendant No. 4 being the eldest brother did not have the right and authority to represent and manage their branch. Plaintiff No. 3's father, having died in 1967, Defendant No. 4, as the eldest brother of the branch being the *Karta,* alone could have managed the property on behalf of the joint Hindu family branch of which he was the head.

18. The second question for consideration is whether as a *Karta* or the head of the branch, M.R. Rajashekar, i.e., Defendant No. 4, could have validly executed the relinquishment deed, marked Exhibit P-2, on behalf of his branch? The answer to this issue is well settled, and for that reference is to be made to ***Thamma Venkata Subbamma (Dead) By LR*** v. ***Thamma Rattamma and Others***,[11] which decision

11 (1987) 3 SCC 294.

refers to the legal position in the Hindu law in great depth and detail. After adverting to Mayne's *Treatise on Hindu Law & Usage*, Eleventh Edition, Article 382[12] and Mulla's *Hindu Law*, Fifteenth Edition, Article 258,[13] it has been held thus:

> "17. It is, however, a settled law that a coparcener can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid."

This judgment draws a distinction between gifts and relinquishment by a coparcener of his share; and the head of the branch or *Karta* as the representative or eldest member of the branch. Former is valid and legal, provided the relinquishment is in favour of all other coparceners. The gift or relinquishment would also be valid if it is with the prior consent of another coparcener. Equally, a coparcener may make a gift of his undivided interest in the coparcenary property to another coparcenary with the prior consent of other coparceners.

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12 Relevant part of the Mayne's *Treatise on Hindu Law & Usage*, Eleventh Edition, Article 382 reads: "It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid.... A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purposes warranted by special texts."

13 Relevant part of the Mulla's *Hindu Law*, Fifteenth Edition, Article 258 reads as: "Gift of undivided interest.—(1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners."

19. Mulla's *Hindu Law*, 22nd Edition vide Article 262, states that a coparcener may renounce his interest in favour of the other coparceners as a body, but not in favour of one or more of them. When he renounces in favour of one or more of them, the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. A similar exposition *vide* Article 407 in Mayne's *Treatise on Hindu Law & Usage*, 17th Edition, states that a gift by a coparcener of his entire undivided interest in favour of the other coparcener or coparceners is valid whether it is regarded as one made with the consent of the other or others or as a renunciation of his interest in favour of all. Referring to the judgment in ***Thamma Venkata Subbamma*** (supra), Mayne's *Treatise on Hindu Law & Usage* observes that renunciation in the form of ostensible gift may have the effect of relinquishment and if it enures for the benefit of all the coparceners, such gift would be construed as valid. In addition, Mulla's *Hindu Law,* 22nd Edition recognises that a father or other

managing member of the ancestral immovable property can make gifts within reasonable limits for “pious purposes”.[14]

20. Read in this light, it can be validly argued that the relinquishment deed dated 13th March 1969, Exhibit P-2, executed by the fourth defendant would be invalid. However, in the present case, other aspects have to be noticed to decide the relinquishment deed’s validity. First, we must again refer to the superior power that the *Karta* enjoys and, consequently, his greater rights and duties than other members. A *Karta* can alienate the property when other coparceners have given consent. It is also settled that a *Karta* may alienate the joint family property for value, either for legal necessity or for the benefit of the estate, to bind the interests of all the undivided members of the family, whether they are adults or minors or widows.[15] There are no specific grounds to prove the existence of legal necessity, and it must therefore depend on the facts of each case. A *Karta* has wide discretion in the decision over the existence of legal necessity and as to in what way such legal necessity can be fulfilled.[16] However, it is observed this exercise of power and rights by *Karta* is

14 See Articles 223 and 224 at pages 332 and 333, Mulla’s *Hindu Law,* 22nd Edition.
15 Mayne’s *Treatise on Hindu Law and Usage*, 17th Edition, Article 385.
16 Mulla’s *Hindu Law*, 22nd Edition, Article 242A.

not beyond challenge on the limited ground of lack of existence of legal necessity or absence of benefit to the estate.

21. This Court in ***Kehar Singh (Dead) Through Legal Representatives and Others v. Nachittar Kaur and Others***,[17] analysing the concept of legal necessity had relied on Mulla's *Hindu Law* to observe:

> "20. Mulla in his classic work Hindu Law while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:
>
> "Article 254
>
> 254. Alienation by father.— A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:
>
> (1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;
>
> (2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes (Article 294)."
>
> 21. What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:
>
> "Article 241

17 (2018) 14 SCC 445.

241. What is legal necessity. —The following have been held to be family necessities within the meaning of Article 240:

(a) payment of government revenue and of debts which are payable out of the family property;
(b) maintenance of coparceners and of the members of their families;
(c) marriage expenses of male coparceners, and of the daughters of coparceners;
(d) performance of the necessary funeral or family ceremonies;
(e) costs of necessary litigation in recovering or preserving the estate;
(f) costs of defending the head of the joint family or any other member against a serious criminal charge;
(g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity."

(See Hindu Law by Mulla "22nd Edition")

XX XX XX

26. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal

> necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all."

22. In the present case, the partition deed, Exhibit P-1, states that owing to lack of harmony in the family members, the members had decided to separate from the joint Hindu family status. The joint Hindu properties were divided amongst the three groups represented by the three brothers, Patel Mallegowda, Mogannagowda @ Puttaswamygowda and M.C. Rudrappa. The partition deed, Exhibit P-1, acknowledges that during the joint family status, "all properties" were mortgaged to one Suranashetty for Rs. 32,000/-, which outstanding loan amount stood ascertained. The loan would be paid by Mallegowda to the extent of approximately 10 annas and by M.C. Rudrappa to the extent of approximately 6 annas, whereas Mogannagowda had no responsibility.

23. It is an accepted position that the repayments were made, and the joint Hindu family properties mortgaged were freed shortly before the execution of the relinquishment deed on 13th March 1969, Exhibit P-2.

We would now refer to the evidence and material on record to show the circumstances and reason for the execution of the relinquishment deed on 13th March 1969, Exhibit P-2.

24. The trial court judgment refers to the cross-examination of M.R. Vinoda, PW-1, who affirmed that when the joint Hindu properties were partitioned in 1961, Patel Mallegowda had retained the property in his share. Further as Patel Mallegowda had got the property when the partition took place in 1961, after his death the same came to the share of his son Shantappa, i.e. Defendant No.1 in the suit. The court of regular first appeal appraised the evidence of Shanthappa (DW-1) on repayment of the loan to Suranashetty. As per DW-1, his father, Patel Mallegowda, had filed a suit before the Mysore Court for the redemption of mortgage, which was compromised for Rs. 33,000/-. Patel Mallegowda had paid Rs. 25,000/- and Rs.8,000/- was paid by M.C. Rudrappa to redeem the mortgage.[18] Thus, Patel Mallegowda had paid substantial amount, much more than the stipulation in the partition deed (Exhibit P-1).

18 During the arguments before the Trial Court, Defendant Nos. 1 and 3 have argued that Patel Mallegowda looked after the court proceedings for redemption. Further, it was argued that whoever looked after the court affairs was to be given the suit land.

25. Defendant Nos. 2[19] and 3 in their examination-in-chief accepted that at the time of partition in 1961, a suit was pending regarding the loan taken from Suranashetty, which was later decided in the Mysore court. Further, the Plaintiffs did not have any right over the suit property because the same belonged to those who borne the court expenses for the redemption suit. To repay the amount, Defendant No.1's father, Patel Mallegowda, had paid the entire expense, except for Rs. 8,000/- that was paid by M.C. Rudrappa. Thereafter to clarify the position and doubts the relinquishment deed, Exhibit P-2, was executed in 1969.

26. The trial court also relied upon Exhibit D-2, the record of rights, which mentions that M.R. No.1: 62-63, the mortgage was released in 1968 and Patel Mallegowda, father of M. Shanthappa, had got the rights in the property since 1962-63 itself. In Exhibit D-3, Index of lands, in column number 18, it is mentioned that Patel Mallegowda and Mogannagowda, son of Nanjegowda, had got the property released from Suranashetty, and the rights were redeemed in favour of Patel Mallegowda as per the terms agreed between them. The trial court,

19 Although Defendant No. 2, i.e., H.M. Puttappa, corroborated the plaintiff's contentions before the court of first regular appeal, it will bear no consequences on his statement before the trial court and hence, no ramifications for the present appeal.

on further perusal of the said documents, in Exhibits D-2 and D-3, the mortgage release letters, observed that the property had come to the share of Patel Mallegowda.

27. The relinquishment deed, Exhibit P-2, states that M.P. Basavaraju and M.R. Rajashekar were paid Rs. 1,000/- for leaving any right or interest to which they had consented and accepted, and that even before the relinquishment, they and their family had no right or interest in the suit property. The relinquishment deed, Exhibit P-2, was an acknowledgment of the rights and interest of the Patel Mallegowda branch.

28. From the evidence on record, it is apparent, Patel Mallegowda had paid the larger share in the redemption of the mortgage and had managed the legal proceedings in the redemption suit. The repayment so made by Patel Mallegowda served the interest for the entire family since, and as recorded in the Partition Deed dated 15th April 1961, “all properties” of the family were mortgaged. Thus, the relinquishment made by M.R. Rajashekar and M.P. Basavaraju in favour of Patel Mallegowda was on account of the repayment of the

debt made by Patel Mallegowda, on basis of an understanding between the three branches vide the partition deed 15th April,1961, Exhibit P-1. The relinquishment made by M.R. Rajashekar, as the eldest of the family, enured benefit for all the members of that branch as it settled accounts *inter se* three branches of the family. Since there was a legal necessity to settle the account with Patel Mallegowda who had made significant payments to redeem the properties that had fallen in the share of M.R. Rajashekar branch, M.R. Rajashekar was entitled to relinquish the share in the property in such exercise of his managerial power. The relinquishment deed dated 13th March 1969, Exhibit P-2, having been executed by the fourth defendant being the head of his branch of the joint family was for legal necessity and for the benefit of the estate belonging to his branch of the family.

29. The question of a transaction being void or, for that matter, the validity of the relinquishment in this case, much depends on the facts. It is an inquiry into the determination of relevant facts bought onto the record for the perusal of the court. The nature of transaction is required to be determined based on the substance and not the nomenclature of the

deed. Documents are to be construed having regard to the context thereof whereof labels given to them will not be of much relevance. In the light of the factual position of this case as discussed above, we do not think that the relinquishment deed, even if there be a debate as to the legal necessity or lack of benefit, can be declared and treated as null and void.

30. The Plaintiffs, including the present appellant, in the plaint, did not predicate their case on the ground of inheritance of the share on the death of their father, M.C. Rudrappa in 1967. Plaintiff No. 3 has not raised the plea of deemed partition in the present appeal. Even otherwise, we would not allow Plaintiff No. 3 to raise this contention before us for the first time, as it would deprive and deny the contesting defendants from raising defences founded on facts in nature of estoppel, acquiescence and right to restitution; apart from the plea that the suit is barred by limitation, which aspect has been considered below.

31. This brings us to the question of limitation. The validity of the relinquishment deed dated 13th March 1969, Exhibit P-2, was challenged vide the suit filed on 18th November 1994.

32. On the said aspect we would like to reproduce and refer to Articles 58, 59, 60 and 109 of the Schedule of the Limitation Act, which read:

Description of suit	**Period of limitation**	**Time from which period begins to run**
58. To obtain any other declaration.	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
60. To set aside a transfer of property made by the guardian of a ward— (*a*) by the ward who has attained majority; (*b*) by the ward's legal representative— (*i*) when the ward dies within three years from the date of attaining majority; (*ii*) when the ward dies before attaining majority.	Three years Three years Three years	When the ward attains majority When the ward attains majority. When the ward dies.
109. By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.

33. In our opinion, Article 60 would not apply as this is not a case of transfer of property made by a guardian of a ward. Article 109 applies to a plaint for setting aside the father’s alienation of ancestral property

governed by Mitakshara law. As per Article 109, the suit must be filed within 12 years when the alienee takes possession of the property. When we apply Article 109, the suit would be barred by limitation as it was filed in 1994, nearly 24 years after the relinquishment deed (Exhibit P-2) was executed to the fourth defendant in favour Patel Mallegowda branch and nearly 21 years after the Plaintiff No.3 attained majority in 1973. For the same reason, the suit would be barred under Articles 58 and 59 of the Limitation Act as it had been filed post three years from the date the right to sue first accrued as per Article 58 and when the facts entitling the plaintiffs to have the instrument or decree cancelled or set aside or the contract rescinded first came to the knowledge of the plaintiffs as per Article 59. The High Court, in our opinion, rightly rejected the specious and untrue plea of the plaintiffs that till two months before the filing of the suit, they were unaware and did not know about execution of the relinquishment deed by their elder brother, the fourth defendant.

34. For the aforesaid reasons we dismiss this appeal, and uphold the judgment of the High Court dismissing the suit as barred by limitation.

Decree will be drawn up accordingly. There would be no order as to costs.

.....J.
L. NAGESWARA RAO

.....J.
SANJIV KHANNA

NEW DELHI;
DECEMBER 13, 2021.