



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT SINDHANUR**

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M
Senior Civil Judge & J.M.F.C.
Sindhanur.

O. S. No. 146/2018

Dated: 01st day of July 2026

PLAINTIFF: - 1. Smt. Parvathamma W/o Basavarajswamy
aged about 56 years, Agri, & Household
R/o Goudanabhavi camp,
Tq.Sindhanur, Dist.Riachur.

(Represented by: Sri. UKY., Advocate)

- Vs -

DEFENDANTS:- 1. Hiremallayya S/o Peddayya
aged about 75 years, Occ. Agri.,
R/o Jalihal village, Tq. Sindhanur, Dist. Raichur

2. Amaragunjayya S/o Hiremallayya
aged about 54 years, Occ. Agri
R/o Venkateshwara Pai camp, Tq. Sindhanur

3. Smt. Gurulingamma W/o Basavarajaswamy
aged about 51 years, Occ: employee in irrigation
Dept. & Household, R/o PWD camp, Sindhanur
Tq. Sindhanur, died by LRs

3(a). Smt. Earamma D/o Basavaraj
Age: 31 years, Occ: Household
R/o Ward No.29, Near Govt. Junior college
PWD Camp, Sindhanur, Tq. Sindhanur
Dist.Raichur.



- 3(b). Smt. Siddamma D/o Basavaraj W/o Basavalingayya
Age: 28 years, Occ: Household
R/o Ward No.29, PWD irrigation quarters
PWD camp, Sindhanur, Tq. Sindhanur,
Dist.Raichur.
4. Smt. Nagaratnamma @ Ratnamma
W/o Veerayya Swamy Age: 45 years, Occ: Household
R/o Hullur village, Tq. Maski, Dist. Raichur
5. Shivakumar S/o Hiremallayya
Age: 42 years, Occ: Agri.,
R/o Jalihal village, Tq. Sindhanur, Dist. Raichur
6. Gurulingayya S/o Hiremallayya
Age: 39 years, Occ: Agri.,
R/o Jalihal village, Tq. Sindhanur, Dist. Raichur

(D1, 2, D3 (a, b) by:- Sri.SSK advocate)

(D3 dead)

(D4 by: Sri.GAG advocate)

Date of Institution of the suit : 18.09.2018
Nature of the suit : Partition and separate possession
Date of the commencement
of recording of evidence : 09.07.2019

Date on which the Judgment
is pronounced : 01.07.2026

Total duration : Year/s Month/s Day/s

07 09 13



J U D G M E N T

This suit is filed by the plaintiff, for the relief of partition and separate possession of her legitimate shares over the suit properties.

2. **The plaint in brief:-** One Hire Mallayya is the Kartha of the family. The plaintiff and defendant No.2 to 6 are the sons and daughter of defendant No.1. Thus the plaintiff and defendants do constitute of a joint family owning and possessing the plaint schedule "A" and "B" properties as their ancestral joint family properties. The suit properties the suit land sy No. 112/*/4 meg: 1-37 gunta of Jalihal village Tq: Sindhanur standing in the name of Gurulingayya S/o Hiremallayya. The suit land sy No. 75/*/1 paiki 3 meg: 2 acres 26 gunta of Gandhinagar village tq. Sindhanur standing in the name Amaragundayya S/o Hiremmallayya. The suit land sy No. 23/*/ paiki/2 meg: 1-00 acre of Gandhinagar village tq. Sindhanur standing in the name Hiremallayya. The suit land sy No. 94/*/1 meg: 2-24 gunta of Gandhinagar village Tq. Sindhanur, standing in the name Gurulingayya. The suit land sy No. 75/*/1 meg: 00-14 gunta of Belliganur village Tq. Sindhanur standing in the name Ratnamma D/o



Hire Mallayya. The suit land sy No. 75/*/5 meg: 1-06 gunta of Belliganur village Tq. Sindhanur standing in the name Ratnamma D/o Hire Mallayya. The suit land sy No. 23//paiki 2 meg: 2-08 gunta 00-03 gunta phot kharab remaining land 2-05 gunta of Gandhinagar village tq. Sindhanur standing in the name Shivakumarayya S/o Hire Mallayya. The suit land sy No. 9/*/4 meg land 1-10 gunta of Shankarabandi (D) Village Tq. Sindhanur standing in the name Amarayya S/o Mallayya. The suit land sy No. 87/*/1 meg: 00-29 gunta of Jalihal village tq. Sindhanur standing in the name Amaragundayya S/o Hire Mallayya. The house Property panchayat No. 87/*/1 meg: 00-29 gunta of Jalihal village Tq. Sindhanur standing in the name Amaragundayya S/o Hire Mallayya. The house property panchayat No. 264/1 of Jalihal village comes under Grama Panchayat Jalihal Tq: Sindhanur standing in the name of Gurulingayya S/o Hiremallayya. The suit properties are the ancestral Hindu joint family properties of plaintiff and defendants. The plaintiff and defendants are members of Hindu undivided joint family, they are governed by the Hindu Mitakshara School of law. The suit properties are the ancestral joint family properties. That, the plaintiff and defendants are



personally cultivating the suit properties. The defendant No.1 is the Kartha of the family. The plaint schedule properties are the ancestral joint family properties of plaintiff and defendants herein. That, even to this day the plaintiff and defendants are in joint and constructive possession and enjoyment of the suit properties, enjoying the same as tenants in common. That, in the suit schedule properties the plaintiff and defendants are having equal share. About one year back some differences are arose in between the plaintiff and defendants. Due to these differences plaintiff is not in a position to continue in joint-ness, as such an immediate partition is inevitable. Accordingly the plaintiff did approached the defendants in the last week of August 2018 and request for effecting partition and to allot her share in the plaint schedule properties, for which the defendants have assured to effect the partition, but in vain. The plaintiff again on 5-9-2018 approached the defendants along with some elders and made similar request for effecting partition and for allotment of her share, for which the defendants have flatly refused to effect the partition. Under the circumstances, without any other go the plaintiff has been constrained to file this suit. That, the cause of action for the suit arose last week of



August 2018, and on 5-9-2018, when the demand for partition was made by the plaintiff and same was refused by the defendants, and the cause of action is continuing one within the jurisdiction of this court. Hence, plaintiff constrained to file the suit.

3. In pursuance of notice the defendants have appeared through their counsel. The defendants No.1, 2, 5 and 6 have filed written statement.

4. **The brief facts to written statements filed by the Defendant**

No.1, 2, 5 AND 6:- The defendants in their written statement submitted that the suit filed by the plaintiff is false, vexatious, frivolous and not maintainable either under law or on facts and the same is liable to be dismissed. The suit of the plaintiff is badly barred by law of limitation. On this count the suit of the plaintiff is liable to be dismissed. The contents of the plaint which have not been specifically admitted by these defendants are deemed to have been denied in toto. The plaintiff has not come to the court with clean hands, as such she is not entitle to seek any remedy against these defendants. The averments of para No. 1 of the



plaint are relating to address of the parties to the suit and of her advocates, as such no specific reply is required. The contents of para No. 2 of the plaint with regard the nature of the suit, description of the suit property, family pedigree and also the relief sought by the plaintiff. These defendants further submit that, the family pedigree furnished by the plaintiff is true and correct but the suit of the plaintiff is not maintainable. The plaintiff is not having any share in the suit property and suit of the plaintiff is not maintainable for the reasons stated herein below. Accordingly, these defendants answered para No. 2 of the plaint. The contents of para No. 3 of the plaint are all absolutely false and same are hereby denied in toto except the fact that, the plaintiff and defendant No. 2 to 6 are the sons & daughters of defendant No. 1. The defendant No. 1, 2, 5 & 6 further submit that, the defendant No. 1 is not the Kartha of the family. The suit properties are not joint family properties of plaintiff and defendants. The contents of para No. 4 of the plaint is with regard to properties standing in the name of defendant No. 2, 4, 5 & 6 to that extent the defendants admitting but the suit land Sy. No. 23/* /paiki/2 mg: 01-00 acres of Gandhinagar village not belongs to defendant No. 1, which is not



standing in the name of defendant No. 1. The defendants further submit that, the defendant No. 1 out of joint family income had purchased the land Sy. No. 75//1 mg: 00-14 guntas of Belliganur village and land bg. Sy. No. 75/ mg: 01-06 acres of Belliganur village Tq: Sindhanur in the name of defendant No. 1 and in the same manner the defendant No. 1 purchased the land bg. Sy. No. 10/*/hissa-B-paiki mg: 01-20 acres of Jawalagera in the name of defendants No. 3 in the year 1995 and subsequently she sold out the same to one Durgappa S/o. Venkoba Dibbanakeda through the reg. sale deed bg. Doc. No. 00259/08-09 dated: 11-04-2008. As the plaintiff is colluded with defendant No. 3 intentionally not brought that property in the suit and also the said purchaser has not been arrayed as defendant. On this count the suit of the plaintiff is not maintainable for non-joinder of proper and necessary party, and defendant No. 1 also purchased the plot mg: 00-02 guntas of NA potential land situated at Belliganur village from the income of family in the name of plaintiff's son by name Basalingayya as per the request of plaintiff, through the reg. sale deed bg. Doc. No. 1391/05-06 dated: 22-06-2005 for valid consideration of Rs. 8,000/-from one Sambashivayya



S/o. Raghavayya, G. Venkataratnayya S/o. Raghavayya, Koteswararao
S/o. Subbayya & B. Rosharao S/o. Venkateswararao. Wherein the son of
plaintiff by name Basalingayya has already constructed the 2 houses
therein from the money provided by these defendants. The plaintiff
having had the knowledge intentionally not brought the said houses in the
suit. The plaintiff has filed the suit at the ill instigation of defendants No.
3 & 4 having colluded each other as such they have not brought the above
said properties in the suit. Therefore the suit of the plaintiff is liable to be
dismissed for want of hotchpots. The said purchased properties were
allotted to the share of plaintiff and defendant No. 3 & 4 accordingly the
plaintiff and defendant No. 3 & 4 have no right or share over the rest of
the properties. The plaintiff and defendant No. 3 & 4 have taken the said
properties as offered said to their respective share in the year 1996.
Thereafter the defendant No. 1, 2, 5 & 6 have continued with joint family
and the defendants No. 1, 2, 5 & 6 partitioned in the family properties in
the year 2003 by making meets and bounds but the mutation not effected
immediately. In the said partition the suit schedule A item No. 1, 4
properties suit schedule B property fallen to the share of defendant No. 6.



In the said partition the suit schedule A item No. 2, 8 & 9 properties fallen to the share of defendant No. 2. In the said partition the suit schedule A item No. 7 property fallen to the share of defendant No. 5. The contents of para No. 5 & 6 of the plaint are absolutely false and bogus and same are specifically denied in toto and the plaintiff is hereby called upon to strict proof of the same. The defendants further submit that there is no joint family or joint family properties in between the plaintiff and defendants. The contents of para No. 7 of the plaint are false, baseless and hereby denied in toto and the plaintiff is hereby called upon to strict proof of the same. The plaintiff falsely cooked up the said facts only in order to show the false cause of action to file the suit. The said properties purchased in the name of son of plaintiff and also purchased in the name of defendant No. 3 are not brought to the hotchpots of this suit. On this count the suit of plaintiff is liable to be dismissed. Therefore, the defendants have prayed to dismiss the plaintiff's suit with costs.

5. On the basis of above pleadings this court framed the following issues:-



ISSUES

1. Whether the plaintiff proves that the suit schedule properties are their ancestral joint family properties?
 2. Whether the plaintiff proves that she is entitled for 1/7th share in the suit schedule properties?
 3. Whether the defendants proves that the plaintiff has not included all the properties?
 4. Whether the plaintiff proves that she is entitled for the reliefs claimed in the suit?
 5. What order or decree?
6. To substantiate his claim the plaintiff herself examined as Pw-1 and examined two witnesses as Pw-2 and Pw-3 and all documents produced by the plaintiffs marked as Ex.P1 to Ex.P11 and closed her side evidence. The defendant No.2 himself examined as Dw-1 and defendant No.5 himself examined Dw-2 and all documents produced by the defendants got marked Ex.D1 to Ex.D112 and closed their side evidence and case posted for arguments.



7. Heard arguments on both sides. My answer to the above issues is as follows:

- Issue No.1 : In the Negative
- Issue No.2 : In the Negative
- Issue No.3 : In the Affirmative
- Issue No.4 : In the Negative
- Issue No.5 : As per final Order for the following:

REASONS.

8. **ISSUE No.1 AND 3**:- These issues taken together for common discussion to avoid the repetition.

It is the specific case of the the plaintiff that, One Hire Mallayya is the Kartha of the family. The plaintiff and defendant No.2 to 6 are the sons and daughter of defendant No.1. Thus the plaintiff and defendants do constitute of a joint family owning and possessing the plaint schedule "A" and "B" properties as their ancestral joint family properties. The suit properties the suit land sy No. 112/*/4 meg: 1-37 gunta of Jalihal village Tq: Sindhanur standing in the name of Gurulingayya S/o Hiremallayya. The suit land sy No. 75/*/1 paiki 3 meg: 2 acres 26 gunta of Gandhinagar village tq. Sindhanur standing in the name Amaragundayya S/o



Hiremmallayya. The suit land sy No. 23/*/ paiki/2 meg: 1-00 acre of Gandhinagar village tq. Sindhanur standing in the name Hiremallayya. The suit land sy No. 94/*/1 meg: 2-24 gunta of Gandhinagar village Tq. Sindhanur, standing in the name Gurulingayya. The suit land sy No. 75/*/1 meg: 00-14 gunta of Belliganur village Tq. Sindhanur standing in the name Ratnamma D/o Hire Mallayya. The suit land sy No. 75/*/5 meg: 1-06 gunta of Belliganur village Tq. Sindhanur standing in the name Ratnamma D/o Hire Mallayya. The suit land sy No. 23//paiki 2 meg: 2-08 gunta 00-03 gunta phot kharab remaining land 2-05 gunta of Gandhinagar village tq. Sindhanur standing in the name Shivakumarayya S/o Hire Mallayya. The suit land sy No. 9/*/4 meg land 1-10 gunta of Shankarabandi (D) Village Tq. Sindhanur standing in the name Amarayya S/o Mallayya. The suit land sy No. 87/*/1 meg: 00-29 gunta of Jalihal village tq. Sindhanur standing in the name Amaragundayya S/o Hire Mallayya. The house Property panchayat No. 87/*/1 meg: 00-29 gunta of Jalihal village Tq. Sindhanur standing in the name Amaragundayya S/o Hire Mallayya. The house property panchayat No. 264/1 of Jalihal village comes under Grama Panchayat Jalihal Tq: Sindhanur standing in the



name of Gurulingayya S/o Hiremallayya. The suit properties are the ancestral Hindu joint family properties of plaintiff and defendants. The plaintiff and defendants are members of Hindu undivided joint family, they are governed by the Hindu Mitakshara School of law. The suit properties are the ancestral joint family properties. That, the plaintiff and defendants are personally cultivating the suit properties. The defendant No.1 is the Kartha of the family. The plaint schedule properties are the ancestral joint family properties of plaintiff and defendants herein. That, even to this day the plaintiff and defendants are in joint and constructive possession and enjoyment of the suit properties, enjoying the same as tenants in common. That, in the suit schedule properties the plaintiff and defendants are having equal share.

9. On the contrary it is the specific case of the the plaintiff that , the suit land Sy. No. 23/*paiki/2 mg: 01-00 acres of Gandhinagar village not belongs to defendant No. 1, which is not standing in the name of defendant No. 1. The defendants further submit that, the defendant No. 1 out of joint family income had purchased the land Sy. No. 75//1 mg: 00-



14 guntas of Belliganur village and land bg. Sy. No. 75/ mg: 01-06 acres of Belliganur village Tq: Sindhanur in the name of defendant No. 1 and in the same manner the defendant No. 1 purchased the land bg. Sy. No. 10/*/hissa-B-paiki mg: 01-20 acres of Jawalagera in the name of defendants No. 3 in the year 1995 and subsequently she sold out the same to one Durgappa S/o. Venkoba Dibbanakeda through the reg. sale deed bg. Doc. No. 00259/08-09 dated: 11-04-2008. As the plaintiff is colluded with defendant No. 3 intentionally not brought that property in the suit and also the said purchaser has not been arrayed as defendant. On this count the suit of the plaintiff is not maintainable for non-joinder of proper and necessary party, and defendant No. 1 also purchased the plot mg: 00-02 guntas of NA potential land situated at Belliganur village from the income of family in the name of plaintiff's son by name Basalingayya as per the request of plaintiff, through the reg. sale deed bg. Doc. No. 1391/05-06 dated: 22-06-2005 for valid consideration of Rs. 8,000/-from one Sambashivayya S/o. Raghavayya, G. Venkataratnayya S/o. Raghavayya, Koteswararao S/o. Subbayya & B. Rosharao S/o. Venkateswararao. Wherein the son of plaintiff by name Basalingayya



has already constructed the 2 houses therein from the money provided by these defendants. The plaintiff having had the knowledge intentionally not brought the said houses in the suit.

10. Thus the defendants No.1, defendant No.2, the defendant No.5, defendant No.6 have set-up their defense that the lands referred at para No.8 of their written statement referred to above are not included. Further the the defendants No.1, defendant No.2, the defendant No.5, defendant No.6 have set-up their defense that the lands referred to above are allotted to their respective shares. Thus there is no joint status among the parties.

11. Now this court has to make an enquiry with regard to the fact that whether the parties to the suit are in joint status or not. Further this this court has to make an enquiry with regard to the fact whether the suit is not maintainable for no inclusion of the properties as shown at para No.8 of the written statement of the defendants No.1, defendant No.2, the defendant No.5, defendant No.6.



12. This court perused the cross examination-dated-29-03-2022 of the PW-1-plaintiff. A perusal of the cross examination-dated-29-03-2022 of the PW-1-plaintiff make it clear that she has categorically admitted that there is already partition held and after the partition the he defendant No.5 has already constructed a house at Pai camp Sindhanoor Taluka. Interestingly the said house is not included in the suit schedule.

13. Further a perusal of the the cross examination-dated-29-03-2022 PW-1 make it clear that the her father the defendant No.1, has purchased land survey number 75/*/1 measuring 14 guntas and land survey number 75/*/ measuring 01 acres 06 acres in her name. Thus taking into consideration of he cross examination-dated-29-03-2022 of PW-1 it is clear that the father of the the plaintiff the the defendant No.1 has purchased land survey number 75/*/1 measuring 14 guntas and land survey number 75/*/ measuring 01 acres 06 acres in her name. But unfortunately the the plaintiff did not include the said land land survey number 75/*/1 measuring 14 guntas and land survey number 75/*/



measuring 01 acres 06 guntas in the suit as plaint schedule property since the said land is purchased out of the joint family funds. Thus the land survey number 75/*/1 measuring 14 guntas and land survey number 75/*/ measuring 01 acres 06 guntas has become the joint family property.

14. Therefore, it is established that the 75/*/1 measuring 14 guntas and land survey number 75/*/ measuring 01 acres 06 guntas is also the joint and ancestral properties as the father of the the plaintiff who is the the defendant No.1 has purchased the said lands in her name. Thus the 75/*/1 measuring 14 guntas and land survey number 75/*/ measuring 01 acres 06 guntas have become the joint family properties as per own own admission of the the plaintiff.

15. Further the a perusa of the the cross examination-dated-29-03-2022 of PW-1 make it clear that the the father of the the plaintiff who is the the defendant No.1 has purchased the land survey number 2/*/ measuring 01 acres 10 guntas of village Jawalgera Taluka Sindhanoor. Taking into consideration of admission of he cross examination-dated-29-03-2022 of



PW-1 it is established that the survey number 2/*/ measuring 01 acres 10 guntas of village Jawalgera Taluka Sindhanoor is purchased the said land in the name of the the defendant No.3 during the year 1995. Therefore, taking into consideration of he cross examination-dated-29-03-2022 it is established that the the said survey number 2/*/ measuring 01 acres 10 guntas of village Jawalgera Taluka Sindhanoor is also the joint ancestral properties. Thus the survey number 2/*/ measuring 01 acres 10 guntas of village Jawalgera Taluka Sindhanoor becomes the joint family properties. But un-fortunately the the plaintiff did not include deliberately the survey number 2/*/ measuring 01 acres 10 guntas of village Jawalgera Taluka Sindhanoor as the plaint schedule properties. If the the plaintiff does not include the joint family properties the suit is not maintainable as it is hit by the principle of hotch-pot. Own admissions made in the he cross examination-dated-29-03-2022 of PW-1 it is clear that the the lands referred to above are the joint family properties. But un-fortunately the the plaintiff did not include these lands as the the suit properties.



16. Further the defendant have specifilly set-up their defense that the properties as shown at para No.8 of the plaint are also the joint family properts. But the the plaintiff did not include the properties as shown at para No.8 of the written statement of the the defendants No.1,defendant No.2, he defendant No.5, defendant No.6. It is not that the the plaintiff is not aware of the joint family properties as shown at para No.8 of the plaint. On the contrary the the defendants No.1,defendant No.2, he defendant No.5, defendant No.6 have specifically set-up their defense that their father the the defendant No.1 has purchased the lands shown at para No.8 of the written statement as they are the joint family properties. But un – fortunately the the plaintiff did not include those properties as the plaint schedule properties.

17. In a suit for partition and separate possession all the properties of the joint family are necessarily to be included else the very suit itself would not be maintainable. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in ILR 1998 KARNATAKA 681 = [1998 (6) KarLJ - 386] in between Sri -Tukaram



V/s Sri Sambhaji and others, the para No.19 reads as under. which reads as under:

Regular Second Appeal No. 586 of 1994

connected with Regular

Second Appeal No. 1030 of 1994.

Dated . 24.10.1997

19]. IT has been contended by the learned Counsel for the appellants that the finding of the I Appellate Court to the effect that the suit by one of the coparceners for partition with respect to one ,of the items of the joint Hindu Family property is maintainable in the special circumstances is not proper. During the course of the order, the I Appellate court has observed that Section 261 of Mulla's Hindu Law, 15th Edn. , at pages 351 and 352 makes it clear that non-alienating coparceners are entitled in Bombay, Madras and Allahabad to sue the purchaser for partition of the alienated property without bringing a suit for a general



partition. In the present case on hand all the non-alienating coparceners have not filed the suit. The mere fact that the other non-alienating coparceners viz, defendants 7 to 9 did not join the plaintiff in filing the suit is not material. The right of non-alienating coparcener in Bombay area does not depend upon the whims and fancies of remaining non-alienating coparceners who for reasons best known to them, may not join the plaintiff in filing suit. Patna and Andhra Pradesh High Courts held that one of the several non-alienating coparceners cannot sue the purchaser for his own share of the alienated property. It has been observed by the I Appellate Court the law applicable in Bombay area does not prohibit the suit by one of the several non-alienating coparceners. The I appellate Court considered the ruling in Khemchand Shankar Choudhary and Another v Vishnu Hari Patil and Others, 1983 AIR SC 124 wherein it has been



held that a purchaser can be impleaded even when decree for partition of agricultural lands is pending before the Collector for effecting partition. But it is not the case in the present suit. In Janardhan Jog v shrikrishna and Others, 1989 (3) KLJ 65 = [1989 ILR KAR 1895 it is held that a partition suit should comprise of all the available properties, as far as possible. That decision has been distinguished by the I Appellate Court as that was not a case of nonalienating coparcener filing a suit for partition of alienated property. The view that has been taken by the I Appellate Court cannot be stated to be a correct one in the circumstances of the case. It is to be seen that the plaintiff, defendant 1 and defendants 7 to 15 are the members of joint Hindu Family there is no partition by metes and bounds of the family properties. The present suit is filed in respect of the suit land only. There are other lands in other villages



and also other house properties which have not been included in the suit which are admittedly the joint family properties. It has been observed in Mulla's Hindu Law, 13th edn. regarding the rights of purchaser of coparcener's interest. It has been stated that the non-alienating coparceners are entitled in Bombay, madras and Allahabad to sue the purchaser for partition of the alienated property without bringing a suit for general partition. It is to be noted that in Vemavarapadur's case, supra, it has been held that normally a suit instituted for partition should be one for partition of the entire joint family properties and all the interested co-sharers should be impleaded. The suit for partition of specified items can only be an exception. In the present case on hand, the 1st defendant has alienated the suit land in favour of defendants 2 to 6. The 1st defendant is the member of the Joint Hindu Family. As already stated



that the family has got other several lands and house properties which are the joint family properties. It has been contended by the learned Counsel for the alienees while allotting the share to defendant 1 in the family properties equitable rights of purchasers on partition has to be considered and those rights can be considered only when all the joint family properties are included in the suit for partition. Otherwise, it would be difficult to apply principles of equitable partition. **The inclusion of all the joint family properties in the instant suit for partition was necessary and without bringing all the joint family properties into the hotchpot, the suit for partition of the shares of the members of the joint family in one property which amounts to partial partition is not maintainable. This contention in the circumstances of the case, has force and the same has to be upheld.** The



reason being, the present suit has been filed by one of the non-alienating coparceners of the joint family property. The suit has been filed by the non-alienating coparcener with respect to the only property which has been alienated. This is not a suit for general partition. The contention of the alienees is to the effect that if the share of the plaintiff to be worked out if all the joint family properties had been included in the schedule then, at a partition, the share of the 1st defendant would have been worked out in order to give equitable relief to the alienees also as they have purchased the property by the 1st defendant. In that view of the matter, the present suit filed by the plaintiff without including all the joint family properties and which prejudices the rights of the alienees who have also been impleaded as parties to the suit, in the circumstances of the case, has to be held that **the suit filed by the plaintiff for**



partial partition without including all the joint family properties is bad in law. The finding given by the Trial Court with respect to the sixth issue has to be maintained and the finding given by the I appellate Court that the suit is maintainable without including all the joint family properties cannot be held to be proper in the circumstances of the case. Hence, the finding of the I Appellate Court holding that the suit of the plaintiff for partial partition is maintainable should be set aside and the finding of the Trial Court with respect to the sixth issue that the suit is bad for non-joinder of necessary properties to be included in the suit has to be upheld.

The ratio [underline emphasized by me] laid down by the Hon'ble High Court of Karnataka reported in ILR 1998, Karnataka, Page 681, in between Sri Tukaram V/s Sri Sambhaji and others that in a suit for partition of the properties, movable and immovable share included. Otherwise the suit will be hit by the principle of hotchpot. Since in the present case for partition and separate possession, all the properties of



the family had not been included the present hence suit for partition is hit by the principles of hotchpot. Therefore, in the considered opinion of the Court, in view of the law laid down by the Hon'ble High Court of Karnataka reported in ILR 1998, Karnataka, Page 681, in between Sri Tukaram V/s Sri Sambhaji and others in the above said decision, the relief of partition cannot be granted.

18. In this regard it is beneficial to refer to the decision of the Hon'ble High Court of Karnataka reported in 2012 KCCR (5) 4082] =[(2012) 3 Kant LJ 30] =[2012 SCC OnLine Kar 8802] in-between Smt. T.Rathna vs Smt. T.N. Rathnammma and others the para No.7 which reads as under.

R.S.A No. 1070 of 2009

with

R.S.A No. 1071 of 2009

Dated-20-03-2012

7]. It is needless to say when the alienation of one of the property in favor of the appellant herein was challenged by the plaintiffs in the two suit filed as mentioned above, contending that they are also entitled for a share in that



property, necessarily the plaintiff there in ought to have included the other properties available to the joint family.

The suit filed by the daughter and daughter - in - law of late Channaiah in this for without including the other properties ought not to have been maintained.

The ratio [underline emphasized by me] by the Hon'ble High Court of Karnataka reported in 2012 KCCR (5) 4082 in-between Smt. T.Rathna vs Smt. T.N. Rathnammma is that in a suit for partition and separate possession if any of the joint family properties are non – included the entire suit would not be maintainable.

19. In this regard it is beneficial to refer to the un-reported decision of the Hon'ble High Court of Karnataka, Bangaluru in REGULAR SECOND APPEAL NO. 466/2009, dated 23-01-2013 the para No.18 of the judgment of the Hon'ble High Court of Karnataka, Bangaluru reads as under.



REGULAR SECOND APPEAL NO. 466/2009,
dated 23-01-2013

18. The dicta laid down by Hon'ble Apex Court and the Division Bench of this Court as well as Co- ordinate Bench of this Court would clearly establish the fact that a suit for partition would not be maintainable when filed seeking partition of alienated item only particularly when the joint family owned number of properties and non inclusion of all other properties belonging to the family in the plaint would be fatal. In that view of the matter, it has to be held that a **suit for partial partition was not maintainable when admittedly joint family possessed other properties and plaintiff being conscious of this fact did not include those properties in the suit and as such the very frame of the suit itself was not maintainable.**

The ratio (underline emphasized by me) laid down in the un-reported decision of the Hon'ble High Court of Karnataka, Bangaluru in REGULAR SECOND APPEAL NO. 466/2009, dated 23-01-



2013 is that a suit for partial partition is not maintainable when admittedly joint family possessed other properties and plaintiff being conscious of this fact did not include those properties in the suit and as such the very frame of the suit itself was not maintainable. On this ground also the suit of the plaintiff is not maintainable.

20. As discussed above, in a suit for partition and separate possession all the properties of the joint family are necessarily to be included else the very suit itself would not be maintainable, consequently suit would not be maintainable . In view of the law laid down by the the Hon'ble High Court of Karnataka reported in 2012 KCCR (5) 4082 in-between Smt. T.Rathna versus Smt. T.N. Rathnammma and also the Hon'ble High Court of Karnataka reported in ILR 1998, Karnataka, Page 681, in between Sri Tukaram Vs Sri Sambhaji and others the present suit is not maintainable for not including the joint family properties. Hence issue No.1 answered in Negative and issue No.3 are answered in Affirmative.



21. **ISSUE NO.2 AND ISSUE NO.4:-** This court is already discussed in detail that the suit is not maintainable as the all the joint and ancestral properties are not included in the suit thus they cannot constitute the joint family properties. Further this court already discussed in detail that the plaintiff herself has admitted that the properties as shown at para No.8 of the defendants No.1, 2, 5 and 6 are not included in the plaint as the schedule properties. “Thus the suit is not maintainable. Hence issue No.2 and issue No.4 are answered in Negative.

55. **ISSUE No.5:-** Foregoing reasons and answering above issues I proceed to pass the following:-

ORDER

Suit of the plaintiff is dismissed with costs

Draw preliminary decree accordingly.

(Dictated to the Stenographer directly on computer, computerized by him and corrected and then pronounced by me in open court on 01st day of July 2026)

(Lakshmikanth J Miskin)
Senior Civil Judge & JMFC.,
Sindhanur



ANNEXURE

1. List of witnesses examined on behalf of plaintiff.

PW-1 : Basanagouda

2. List of documents marked on behalf of plaintiffs.

Ex.P1 to 9 : RTC extracts
Ex.P10 : Certificate dated 03.09.2018
Ex.P11 : Notarized copy of family pedigree

3. List of witnesses examined on behalf of defendants:

DW-1 : Amaragundayya
DW-2 : Shivakumar

4. List of documents marked on behalf of defendants:

Ex.D1 to 105 : RTC extracts
Ex.D106 to 112 : Mutation extracts

(Lakshmikanth J Miskin)
Senior Civil Judge & JMFC.,
Sindhanur