

KABC010186362017



**IN THE COURT OF XX ADDITIONAL CITY CIVIL &
SESSIONS JUDGE, BENGALURU CITY (CCH-32)**

PRESENT:

Smt. Shirin Javeed Ansari, B.A.,LL.B(Hon`s), LL.M.
C/c XX Addl. City Civil and Sessions Judge City Civil Court,
Bengaluru (CCH-32)

Dated this the 10th day of August, 2026

O.S. No.5166/2017

Plaintiffs:-	1.	Smt. Hamsa @ Hamsavalli , Aged about 75 years D/o Late Muniswamy, W/o Chinnakannan R/at Jagadevi Post and Village, Krishnagiri, Tamil Nadu.
	2.	Smt. Sulochana , Since dead by her LR's.
	2(a)	Sri Ponnuswamy , S/o Late Muttu Husband of Sulochana Aged about 70 years.
	2(b)	Manjunath P. S/o Late Smt. Sulochana, Aged about 42 years.
	2(c)	Smt. Pamavathi , D/o Late Smt. Sulochana, Aged about 38 years.
	2(d)	Smt. Bhagya P. D/o Late Smt. Sulochana,

		Aged about 38 years.
	2(e)	Sridhara P. S/o Late Smt. Sulochana, Aged about 37 years.
	2(f)	Vijayakumar P. S/o Late Smt. Sulochana, Aged about 36 years. No.2(a) to (f) are residing at No.517, 4 th Main, 2 nd Cross, Vijayanandanagara, Nandini Layout, Bengaluru – 560 096. (Sri.Thimmaiah K.H., Advocate for Plaintiffs)

- Vs -

Defendant:	1	Smt. Anniyamma, Aged about 50 years, D/o Late Sri Muniswamy W/o Late Anbu, R/at No.4/101, Devasamudiram Village, Krishnagiri Post and Village, Tamil Nadu – 635 001.
	2	Smt. Malliga, Aged about 63 years W/o Late Sri Muniswamy R/at Door No.43A Kavamettyheru Old Pet, Krishnagiri Post and Village, Tamil Nadu – 635 001.

	3.	The Commissioner, Bangalore Development Authority, Chowdaiah Road, Bengaluru – 560 020. (D1 – by Sri/Smt. GVS, Advocate D2 – by Sri/Smt. V.S., Advocate D3 – by Sri/Smt. M.T., Advocate)
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Date of institution of the suit:	28.07.2017		
Nature of the suit:	Partition Suit		
Date of commencement of recording of evidence:	24.07.2019		
Date on which the judgment was pronounced;	10.08.2026		
Total duration:	Years	Months	Days
	09	00	13

J U D G M E N T

The present suit is instituted by the plaintiffs seeking the relief of partition and separate possession in respect of the suit schedule property by contending that, the schedule property was originally allotted by the Bangalore Development Authority in favour of late Sri C. Muniswamy, who was the father of the plaintiffs, defendant No.1 and late Sri M. Muniswamy, the husband of defendant No.2.

According to the plaintiffs, after the demise of late C.Muniswamy, all his legal heirs succeeded to the estate in equal proportions and, therefore, each of them became entitled to one-fourth share in the suit schedule property. The plaintiffs further contend that late Sri M.Muniswamy, taking advantage of his position as the only male member of the family, clandestinely obtained the Lease-cum-Sale Deed in his individual name by creating joint affidavits and indemnity bonds without the knowledge or consent of the plaintiffs and defendant No.1 and thereby attempted to deprive them of their legitimate shares. Consequently, the plaintiffs have sought partition and separate possession of their respective shares together with consequential reliefs.

2. The brief facts of the case, as pleaded in the plaint are that, themselves, defendant No.1, and one late M. Muniswamy are the children of late C. Muniswamy. It is their case that late M. Muniswamy died issueless and defendant No.2 is his widow. According to the plaintiffs, late C. Muniswamy had migrated from Krishnagiri to Bengaluru and had applied to defendant No.3 for allotment

of a residential site in Vijayanandanagara Slum. Pursuant thereto, defendant No.3 allotted Site No.517 under an allotment letter dated 16.01.1989. Though the allotment letter mentioned the dimensions of the site as 16 feet × 20 feet, the actual physical extent delivered was 19 feet × 20 feet. During his lifetime, late C. Muniswamy is stated to have submitted a representation to the competent authority seeking correction of the measurements, and consequently the lease-cum-sale deed and possession certificate reflected the corrected measurement of 19 feet × 20 feet.

3. It is further averred that after allotment, late C. Muniswamy constructed an asbestos-sheet-roofed residential house over the schedule property and resided therein with his family. The plaintiffs assert that they, defendant No.1, and late M. Muniswamy were born and brought up in the suit schedule property. Subsequently, late C. Muniswamy is said to have returned to his native place at Krishnagiri after entrusting possession of the property to plaintiff No.2. He died intestate on 14.03.1994,

leaving behind the plaintiffs, defendant No.1, and late M. Muniswamy as his legal heirs.

4. The plaintiffs further state that after the death of late C. Muniswamy, late M. Muniswamy applied to defendant No.3 for mutation of the property exclusively in his favour without disclosing the existence of the plaintiffs and defendant No.1 as legal heirs. It is pleaded that during the processing of the said application, the office of defendant No.3 conducted a mahazar and recorded the names of the plaintiffs, defendant No.1, and late M. Muniswamy as the legal heirs of deceased C. Muniswamy.

5. According to the plaintiffs, notwithstanding the above, late M. Muniswamy thereafter submitted another application before defendant No.3 claiming that the schedule property had been allotted to his father and requesting that the lease-cum-sale deed be executed exclusively in his favour on the ground that his father had died before obtaining such conveyance. The plaintiffs allege that, by taking advantage of their illiteracy and without

their knowledge or consent, late M. Muniswamy fabricated affidavits, a joint affidavit, an indemnity bond and other supporting documents as though the plaintiffs, defendant No.1 and their mother had relinquished or consented to the property being conveyed exclusively in his favour. On the strength of such documents, he is stated to have secured execution of the lease-cum-sale deed dated 21.03.2001 and the possession certificate dated 11.07.2001 solely in his name.

6. The plaintiffs further plead that their mother died on 12.10.2002 and thereafter late M. Muniswamy died on 19.03.2010 without leaving any children. After his death, plaintiff No.2 submitted a representation dated 05.08.2013 before defendant No.3 requesting that neither the khatha nor any further conveyance be made exclusively in favour of defendant No.2, asserting that the plaintiffs, defendant No.1 and the legal representatives of late M. Muniswamy were entitled to their respective shares in the property.

7. It is the further case of the plaintiffs that defendant No.2, after the death of her husband, submitted an application dated 18.07.2013 before defendant No.3 seeking transfer of the property and execution of an absolute sale deed exclusively in her favour. She is alleged to have supported her application by filing affidavits, indemnity bonds and other documents containing false statements, thereby inducing defendant No.3 to proceed with execution of the absolute sale deed while ignoring the rights of the plaintiffs and defendant No.1.

8. The plaintiffs specifically contend that the suit schedule property originally stood allotted in the name of late C. Muniswamy and, upon his death intestate, devolved equally upon all his legal heirs, namely the plaintiffs, defendant No.1 and late M. Muniswamy. They assert that the lease-cum-sale deed obtained by late M. Muniswamy did not confer any exclusive title upon him, but was only for the benefit of all the legal heirs. Consequently, defendant No.2, claiming through late M. Muniswamy, cannot assert exclusive ownership or seek execution of an

absolute sale deed solely in her favour.

9. The plaintiffs further assert that the suit schedule property continues to remain joint family property in the joint possession and enjoyment of the plaintiffs and defendants, there having been no partition by metes and bounds. They allege that after the death of late C. Muniswamy, all the original title documents came into the custody of late M. Muniswamy, and after his death, the same came to be retained by defendant No.2. According to the plaintiffs, on obtaining information under the Right to Information Act in the year 2017, they secured certified copies of the relevant records from defendant No.3 and thereafter came to know about the documents allegedly created by late M. Muniswamy and the efforts made by defendant No.2 to obtain an absolute sale deed exclusively in her favour.

10. It is also pleaded that after learning about the application filed by defendant No.2 before defendant No.3, the plaintiffs demanded partition of the suit schedule

property and sought allotment of their legitimate one-fourth share each. Despite intervention by family members and well-wishers during the second and third weeks of July 2017, defendant No.2 allegedly refused to effect partition and continued to assert exclusive rights over the property with an intention to obtain an absolute sale deed and alienate the same to third parties, thereby defeating the lawful shares of the plaintiffs and defendant No.1.

11. The plaintiffs contend that the cause of action arose during the second week of July 2017 when they demanded partition and separate possession of their shares, during the subsequent negotiations held among the family members in the third week of July 2017, and on the refusal of defendant No.2 to effect partition, which according to them continues to subsist.

12. On these averments, the plaintiffs have instituted the present suit seeking partition and separate possession by allotment of one-fourth share each to the plaintiffs in the suit schedule property, a direction to

defendant No.3 to execute the absolute sale deed jointly in the names of all the legal heirs, namely the plaintiffs and defendants, besides mesne profits, costs and such other reliefs as this Court deems fit in the circumstances of the case.

13. Pursuant to suit summons, Defendant No.1 has filed a written statement substantially supporting the case of the plaintiffs. Defendant No.1 admits that the plaintiffs have instituted the present suit seeking partition and separate possession of the suit schedule property by claiming one-fourth share each therein. The averments contained in paragraphs 1 and 2 of the plaint are stated to be formal in nature and, therefore, require no specific reply.

14. Defendant No.1 unequivocally admits the relationship pleaded by the plaintiffs and states that the plaintiffs, Defendant No.1 and late M. Muniswamy are the daughters and son of late C. Muniswamy, who died intestate. It is further admitted that late M. Muniswamy

died issueless and that Defendant No.2 is his widow. Defendant No.1 also admits that late C. Muniswamy had migrated from Krishnagiri to Bengaluru and had obtained allotment of the suit schedule property bearing Site No.517 from Defendant No.3 under an allotment letter dated 16.01.1989. It is further admitted that although the allotment letter mentioned the dimensions of the site as 16 feet × 20 feet, the actual physical possession delivered measured 19 feet × 20 feet, and that during his lifetime late C. Muniswamy had sought correction of the measurements before the Bangalore Development Authority. Consequently, the lease-cum-sale deed and possession certificate were issued showing the corrected measurement of 19 feet × 20 feet, which, according to Defendant No.1, represents the actual physical extent of the suit schedule property.

15. Defendant No.1 further admits that the suit schedule property stood allotted in the name of late C. Muniswamy, who constructed an asbestos-sheet-roofed residential house thereon and resided therein with his

family members. It is also admitted that plaintiff No.2 is presently residing in the said house along with her family members.

16. Defendant No.1 further admits that the plaintiffs, Defendant No.1 and late M. Muniswamy were born and brought up in the suit schedule property and that late C. Muniswamy subsequently returned to Krishnagiri after handing over possession of the property to plaintiff No.2. It is admitted that late C. Muniswamy died intestate on 14.03.1994 leaving behind the plaintiffs, Defendant No.1 and late M. Muniswamy as his legal heirs.

17. It is further admitted that after the death of late C. Muniswamy, late M. Muniswamy submitted an application before Defendant No.3 seeking mutation of the property in his favour without disclosing the names of the plaintiffs and Defendant No.1 as legal heirs. Defendant No.1 admits that during the enquiry conducted by Defendant No.3, the office records and mahazar disclosed that the plaintiffs, Defendant No.1 and late M. Muniswamy

were the legal heirs of deceased C. Muniswamy. The documents produced by the plaintiffs in this regard are not disputed.

18. Defendant No.1 further admits that late M. Muniswamy sought execution of the lease-cum-sale deed exclusively in his favour without including the names of the other legal heirs, though the suit schedule property had been allotted to late C. Muniswamy and the allotment amount had been paid by him during his lifetime. Defendant No.1 specifically admits that the request made by late M. Muniswamy for execution of the lease-cum-sale deed exclusively in his favour was made by excluding the other legal heirs.

19. Defendant No.1 further contends that late M. Muniswamy, taking advantage of the illiteracy of the plaintiffs and Defendant No.1, created joint affidavits, affidavits and an indemnity bond without their knowledge or consent and thereby obtained execution of the lease-cum-sale deed in his exclusive favour. According to

Defendant No.1, such documents were fraudulently created behind the back of the plaintiffs and Defendant No.1 with an intention to deprive them of their legitimate shares in the suit schedule property.

20. Defendant No.1 also admits that on the strength of the aforesaid affidavits and indemnity bond, late M. Muniswamy obtained the lease-cum-sale deed dated 21.03.2001 and possession certificate dated 11.07.2001 exclusively in his name. The documents relied upon by the plaintiffs in this regard are not disputed.

21. Defendant No.1 further admits that the mother of the parties died on 12.10.2002 and that late M. Muniswamy died on 19.03.2010. The death certificates produced by the plaintiffs are admitted.

22. With regard to the subsequent events, Defendant No.1 states that plaintiff No.2 had submitted a representation before Defendant No.3 requesting that the khatha should not be transferred exclusively in favour of late M. Muniswamy or Defendant No.2 and asserting the

rights of all the legal heirs in the suit schedule property. Defendant No.1 admits that the plaintiffs, Defendant No.1 and late M. Muniswamy were all entitled to equal shares in the property and does not dispute the documents produced by the plaintiffs in this regard.

23. Defendant No.1 further admits that late M. Muniswamy had, behind the back of the plaintiffs and Defendant No.1, created documents and obtained the lease-cum-sale deed and possession certificate exclusively in his own name, though he had no independent right to secure such documents. According to Defendant No.1, the suit schedule property having originally stood in the name of late C. Muniswamy, all the legal heirs were jointly entitled thereto and their names ought to have been entered jointly in the records maintained by Defendant No.3.

24. Defendant No.1 further states that after the death of late M. Muniswamy, Defendant No.2 appears to have submitted an application before Defendant No.3

seeking execution of an absolute sale deed exclusively in her favour by furnishing false information supported by affidavits and indemnity bonds. It is alleged that Defendant No.3 proceeded with the process of executing the absolute sale deed in favour of Defendant No.2 while ignoring the lawful rights of the plaintiffs and Defendant No.1.

25. Defendant No.1 specifically contends that the suit schedule property was allotted to late C. Muniswamy, who died intestate, and consequently the plaintiffs, Defendant No.1 and late M. Muniswamy succeeded equally to his estate. It is further contended that even if late M. Muniswamy obtained the lease-cum-sale deed and possession certificate in his individual name, such documents did not confer exclusive ownership upon him or upon Defendant No.2, but would enure to the benefit of all the legal heirs, there having been no partition among them.

26. Defendant No.1 further asserts that the suit schedule property is the self-acquired property of late C. Muniswamy and that upon his death intestate, the

plaintiffs, Defendant No.1 and late M. Muniswamy each became entitled to one-fourth share therein. It is alleged that Defendant No.2 has been making attempts to secure an absolute sale deed exclusively in her favour by influencing the officials of Defendant No.3 with a view to alienating the property and defeating the lawful rights of the plaintiffs and Defendant No.1.

27. Defendant No.1 further admits that the suit schedule property continues to remain in the joint possession of the parties and that no partition has taken place either during the lifetime of late C. Muniswamy or thereafter. It is further admitted that all the original title documents were initially in the custody of late C. Muniswamy and, after his demise, came into the possession of late M. Muniswamy without the knowledge of the plaintiffs and Defendant No.1. The documents relied upon by the plaintiffs are not disputed.

28. Defendant No.1 also admits that the plaintiffs had approached Defendant No.3 seeking joint mutation of

the property and, upon learning about the efforts made by Defendant No.2 to obtain an absolute sale deed exclusively in her favour, demanded partition and separate possession of their respective shares. Defendant No.1 admits the demand and refusal pleaded by the plaintiffs and supports their claim that Defendant No.2 refused to effect partition.

29. Defendant No.1 further asserts that she has never executed or signed any affidavit, relinquishment or other document relinquishing her share in the suit schedule property. According to her, late M. Muniswamy fraudulently created such documents solely for the purpose of obtaining the lease-cum-sale deed in his own name. It is contended that merely because late M. Muniswamy succeeded in obtaining the lease-cum-sale deed and other documents from Defendant No.3, neither he nor Defendant No.2 acquired absolute title over the suit schedule property, particularly when no partition had taken place among the legal heirs of late C. Muniswamy.

30. On the aforesaid pleadings, Defendant No.1

claims that she is one of the Class-I legal heirs of late C. Muniswamy and is entitled to one-fourth share in the suit schedule property on par with the plaintiffs and Defendant No.2. Accordingly, Defendant No.1 has prayed that the suit be decreed by allotting and putting her in separate possession of her one-fourth share in the suit schedule property by metes and bounds, together with such other reliefs as the Court deems fit in the facts and circumstances of the case.

31. Defendant No.2 has entered appearance and filed a detailed written statement contesting the suit in its entirety. Defendant No.2 contends that the suit instituted by the plaintiffs is false, frivolous, vexatious and not maintainable either in law or on facts. According to Defendant No.2, the plaintiffs have made a futile attempt to lay a false claim over the suit schedule property and the suit has been instituted only with an intention to harass and coerce Defendant No.2 into yielding to their unlawful demands. It is further pleaded that the suit lacks bona fides and is liable to be dismissed in limine.

32. It is the specific contention of Defendant No.2 that the plaintiffs have approached the Court by suppressing material facts and by making false averments, thereby attracting the principles of *suppressio veri* and *suggestio falsi*. According to Defendant No.2, the plaintiffs are not entitled to any equitable relief on account of such suppression and falsehood.

33. Defendant No.2 has further raised a preliminary objection that the suit is barred by limitation. It is contended that the plaintiffs had knowledge of all the material facts and transactions relating to the suit schedule property long prior to the institution of the present suit but failed to challenge the same within the period prescribed under the Limitation Act. According to Defendant No.2, there is an inordinate and unexplained delay in filing the suit and the alleged cause of action is imaginary and artificially created only for the purpose of instituting the present proceedings. On these grounds, Defendant No.2 contends that the suit deserves to be dismissed as being barred by limitation and for want of

cause of action.

34. Defendant No.2 has generally and specifically denied all the allegations made in the plaint except those expressly admitted, and has put the plaintiffs to strict proof of each and every allegation.

35. Defendant No.2 further contends that the suit schedule property was granted by the Bangalore Development Authority in favour of her husband, late M. Muniswamy, who was issued the possession certificate. According to Defendant No.2, after obtaining possession, her husband constructed a thatched house over the suit schedule property and resided therein along with Defendant No.2 till his death. Thereafter, Defendant No.2 continued to remain in possession and enjoyment of the suit schedule property as its absolute owner. It is specifically pleaded that neither the plaintiffs nor Defendant No.1 ever had any right, title, interest or possession over the suit schedule property at any point of time. On the said premise, Defendant No.2 contends that

the plaintiffs were required to value the suit under Section 35(1) of the Karnataka Court Fees and Suits Valuation Act and not under Section 35(2), and therefore the suit is liable to be dismissed for insufficiency of court fee.

36. Defendant No.2 further pleads that the thatched structure standing on the suit schedule property collapsed due to heavy rains and thereafter she started residing at her parental house situated at Krishnagiri, Tamil Nadu. According to Defendant No.2, the asbestos-sheet structure measuring 16 feet × 18 feet has also collapsed and presently the site remains vacant, where she stores household articles and waste materials. It is specifically denied that plaintiff No.2 or any member of the plaintiffs' family has ever been residing in the suit schedule property. Defendant No.2 alleges that the plaintiffs are influential persons in the locality and have been making repeated attempts to dispossess her and unlawfully grab the property. It is her specific case that the suit schedule property is the exclusive and self-acquired property of her husband and that after his demise she has succeeded to

the property as his sole successor.

37. Defendant No.2 has specifically denied each and every material averment contained in paragraphs 3 to 17 of the plaint. She has denied that late C. Muniswamy obtained allotment of the suit schedule property, denied the alleged discrepancy in the measurements of the site, denied that any representation was submitted before the Bangalore Development Authority for correction of the measurements, and denied that the lease-cum-sale deed and possession certificate were issued by correcting the dimensions as alleged by the plaintiffs.

38. Defendant No.2 has further denied that late C. Muniswamy was residing in the suit schedule property after its allotment or that plaintiff No.2 is presently residing therein. She has also denied that the plaintiffs, Defendant No.1 and her husband were born and brought up in the suit schedule property or that late C. Muniswamy handed over possession of the property to plaintiff No.2 before his death.

39. Defendant No.2 has categorically denied the allegation that her husband had applied for mutation or execution of the lease-cum-sale deed without disclosing the names of the plaintiffs and Defendant No.1 as legal heirs or that the office of Defendant No.3 conducted any mahazar recognising the plaintiffs and Defendant No.1 as legal heirs entitled to the property.

40. Defendant No.2 has also specifically denied the allegations that her husband fabricated or created any affidavits, joint affidavits, indemnity bonds or other documents without the knowledge of the plaintiffs and Defendant No.1 for obtaining the lease-cum-sale deed in his favour. She has denied that the lease-cum-sale deed dated 21.03.2001 and the possession certificate dated 11.07.2001 were obtained by fraud or by practising deception upon the authorities.

41. Defendant No.2 has further denied the allegations relating to the death of the plaintiffs' mother, the representations allegedly submitted by plaintiff No.2

before Defendant No.3 objecting to mutation, the alleged fraudulent acts attributed to her husband, and the contention that her husband had no independent right to obtain the lease-cum-sale deed and possession certificate.

42. Defendant No.2 has also specifically denied that after the death of her husband she submitted any false affidavits, indemnity bonds or other documents before Defendant No.3 with a view to secure execution of the absolute sale deed by suppressing the rights of the plaintiffs or Defendant No.1.

43. Defendant No.2 has emphatically denied the contention of the plaintiffs that the suit schedule property was allotted to late C. Muniswamy or that the same devolved equally upon all his legal heirs. She has also denied the allegation that the lease-cum-sale deed and possession certificate obtained by her husband enured to the benefit of the plaintiffs and Defendant No.1 or that she cannot claim exclusive ownership over the suit schedule property.

44. Defendant No.2 has further denied that the suit schedule property is the self-acquired property of late C. Muniswamy or that the plaintiffs and Defendant No.1 are entitled to one-fourth share each therein. She has denied that she made any attempt to secure execution of an absolute sale deed by influencing the officials of Defendant No.3 or that she intended to alienate the property in order to defeat the rights of the plaintiffs.

45. Defendant No.2 has also denied that the suit schedule property is in the joint possession and enjoyment of the parties or that the original title documents were taken by her husband without the knowledge of the plaintiffs and Defendant No.1. She has further denied the allegations relating to the RTI proceedings, the supply of documents by Defendant No.3, and the alleged demand for partition made by the plaintiffs during July 2017.

46. Defendant No.2 has specifically denied that the plaintiffs ever demanded partition or that she refused to effect partition. She has also denied the allegation that she

has made attempts to obtain an absolute sale deed with an intention to alienate the property and deprive the plaintiffs and Defendant No.1 of their alleged shares.

47. Defendant No.2 has further pleaded that the plaintiffs have neither any right, title, interest nor possession over the suit schedule property and that the property has never been the joint family property of the parties. According to Defendant No.2, the suit is therefore liable to be dismissed.

48. Defendant No.2 has also raised objections regarding valuation and court fee by contending that the valuation adopted by the plaintiffs is incorrect and insufficient, that the provisions of Section 35(2) of the Karnataka Court Fees and Suits Valuation Act are inapplicable, and that the plaintiffs ought to have valued the suit under Section 35(1) of the said Act. It is further contended that the suit is bad for partial partition as the plaintiffs have deliberately omitted other movable and immovable properties allegedly standing in their names.

Defendant No.2 has also contended that the suit is bad for non-joinder and misjoinder of necessary parties.

49. Lastly, Defendant No.2 reiterates that the plaintiffs have no cause of action whatsoever to institute the present suit, that the alleged cause of action is imaginary and created solely for the purpose of litigation, and that all other averments in the plaint not specifically admitted are denied. On these grounds, Defendant No.2 has prayed for dismissal of the suit with costs and such other reliefs as the Court deems fit in the interest of justice and equity.

50. Defendant No.3 has entered appearance and filed its written statement contesting the claim of the plaintiffs. Defendant No.3 contends that the suit, insofar as it is directed against it, is not maintainable either in law or on facts and is liable to be dismissed in limine. It is further contended that the plaintiffs are not entitled to any of the reliefs sought in the plaint. According to Defendant No.3, the plaintiffs have not complied with the mandatory

provisions of Section 64 of the Bangalore Development Authority Act and have not exhausted the statutory remedy available under the said enactment. It is also pleaded that there is no cause of action against Defendant No.3 and that the cause of action pleaded by the plaintiffs is imaginary and artificially created.

51. Defendant No.3 further contends that the plaintiffs have not approached the Court with clean hands and have suppressed material facts. On that ground also, it is contended that the plaintiffs are not entitled to any equitable relief against Defendant No.3. It is further pleaded that the plaintiffs have no legal right to maintain the present suit against Defendant No.3.

52. With regard to the averments contained in paragraph No.3 of the plaint, Defendant No.3 submits that the relationship among the parties is not within its personal knowledge. However, it admits that one Sri M. Muniswamy had submitted an application for allotment of the suit schedule property and that the Bangalore

Development Authority had issued an allotment letter dated 16.01.1989 in respect of the suit schedule property.

53. With reference to paragraph No.4 of the plaint, Defendant No.3 states that it may be true that the allottee had put up construction over the suit schedule property and resided therein during his lifetime. However, the allegation that plaintiff No.2 and her family members are presently residing in the suit schedule property is specifically denied, and the plaintiffs are put to strict proof thereof.

54. In respect of paragraph No.5 of the plaint, Defendant No.3 submits that the allegations relating to the upbringing of the plaintiffs and the husband of Defendant No.2 in the suit schedule property and the alleged handing over of possession by late C. Muniswamy to plaintiff No.2 are not within its knowledge. However, it states that late C. Muniswamy appears to have died on 14.03.1994.

55. With regard to paragraph No.6 of the plaint, Defendant No.3 admits that an application was submitted

by the husband of Defendant No.2 seeking transfer of the khatha in his name.

56. With regard to paragraph No.7 of the plaint, Defendant No.3 admits that late M. Muniswamy had submitted an application stating that the suit schedule property had been allotted to late C. Muniswamy, that the entire sital value had been paid by him, that he had died before execution of the lease-cum-sale deed, and requesting execution of the lease-cum-sale deed in his own favour.

57. Defendant No.3 has, however, denied the allegations contained in paragraph No.8 of the plaint that late M. Muniswamy had fabricated joint affidavits, indemnity bonds and other documents without the knowledge or consent of the plaintiffs and Defendant No.1 for the purpose of securing execution of the lease-cum-sale deed. The plaintiffs are put to strict proof of the said allegations.

58. Defendant No.3 admits the averments contained

in paragraph No.9 of the plaint to the extent that the lease-cum-sale deed and possession certificate were issued in favour of late M. Muniswamy.

59. In respect of paragraph No.10 of the plaint, Defendant No.3 submits that the facts relating to the death of the plaintiffs' mother and the death of late M. Muniswamy are not within its knowledge.

60. Defendant No.3 has denied the allegations contained in paragraphs Nos.11 and 12 of the plaint regarding the application said to have been submitted by plaintiff No.2 and has also denied the allegation that late M. Muniswamy fabricated documents for obtaining the lease-cum-sale deed and possession certificate. The plaintiffs have been put to strict proof of the said allegations.

61. With regard to paragraph No.13 of the plaint, Defendant No.3 admits that Defendant No.2 had submitted an application along with an affidavit and indemnity bond. However, it specifically denies the allegation that it had

taken any steps to execute an absolute sale deed in favour of Defendant No.2.

62. Defendant No.3 states that the averments contained in paragraph No.14 of the plaint are merely repetitive of the earlier pleadings and therefore do not require a separate reply. It further submits that it may be true that the suit schedule property is the self-acquired property of late C. Muniswamy and also admits that Defendant No.2 had submitted an application seeking execution of the sale deed in her favour.

63. With regard to paragraph No.16 of the plaint, Defendant No.3 specifically denies that the plaintiffs and Defendants Nos.1 and 2 are in joint possession and enjoyment of the suit schedule property. However, it admits that Defendant No.2 had submitted an application seeking execution of the sale deed in her favour and that plaintiff No.2 had obtained documents relating to the suit schedule property under the Right to Information Act.

64. Defendant No.3 further submits that the

allegations contained in paragraph No.17 of the plaint regarding the alleged demand for partition are not within its knowledge.

65. Defendant No.3 has also set out what it describes as the true facts of the case. According to Defendant No.3, the suit schedule property was originally allotted in favour of Sri C. Muniswamy, son of Channappa, under allotment letter dated 16.01.1989. It is stated that late C. Muniswamy paid the entire sital value but died on 14.03.1994 before execution of the lease-cum-sale deed. Thereafter, his son, Sri M. Muniswamy, submitted an application seeking transfer of the allotment in his favour. Defendant No.3 states that after obtaining affidavits, joint affidavits, indemnity bond, ration card, death certificate and other requisite documents, the suit schedule property was transferred in favour of Sri M. Muniswamy. It is specifically pleaded that at the time of such transfer, all the legal heirs of late C. Muniswamy had executed an indemnity bond and a joint affidavit expressing their no objection for transfer of the property in favour of Sri M.

Muniswamy. Accordingly, the lease-cum-sale deed was executed in favour of Sri M. Muniswamy on payment of the prescribed charges, subject, however, to the civil rights, if any, of the other legal heirs.

66. Defendant No.3 further states that subsequently, on 20.07.2014, Defendant No.2 submitted an application seeking transfer of the suit schedule property in her favour consequent upon the death of her husband. During the pendency of the said application, one Manjunath submitted a representation requesting that the property be regularised in his favour on the ground that he was in possession thereof. Defendant No.3 states that upon conducting a spot inspection it found that the said Manjunath was in possession of the suit schedule property and that Defendant No.2 was residing at Krishnagiri. Consequently, the request made by Defendant No.2 for transfer of the property was kept pending. It is further stated that, in the meanwhile, the plaintiffs obtained copies of the relevant records under the Right to Information Act and thereafter instituted the present suit.

67. Defendant No.3 reiterates that there is no cause of action for filing the present suit and that the alleged cause of action pleaded by the plaintiffs is false and untenable. It is further contended that the plaintiffs are not entitled to any relief against Defendant No.3 and that the reliefs sought are vexatious, mischievous, arbitrary and devoid of legal basis.

68. Lastly, Defendant No.3 contends that the suit is opposed to the settled principles of law, equity and good conscience and denies all other averments in the plaint which have not been specifically admitted. On these grounds, Defendant No.3 has prayed for dismissal of the suit with exemplary costs.

69. Having regard to the rival pleadings of the parties, the following issues have been framed:

- 1. Whether the plaintiffs prove that
plaint schedule property is their
joint family property?**
- 2. Whether the plaintiffs further prove
that they have got 1/4th share each**

in the plaint schedule property?

3. Whether the plaintiffs are entitled for the relief claimed?

5. What Order or Decree?

ADDITIONAL ISSUES FRAMED ON 26.03.2025

- 1. Whether the plaintiffs prove that, in order to obtain lease-cum-sale deed from the defendant No.3 the husband of the defendant No.2 without the knowledge of the plaintiff and 1st defendant got created joint affidavit?**
- 2. Whether the defendant No.2 proves that the suit schedule property was granted by the BDA in favour of her husband late M. Muniswamy?**
- 3. Whether the defendant No.2 proves that after the death of her husband late M. Muniswamy the defendant No.2 is absolute owner and in possession of the suit schedule property?**
- 4. Whether the court fees paid is sufficient?**

**5. Whether the suit of the plaintiff is
barred by law of limitation?**

70. In order to establish their case, the second plaintiff examined herself as PW-1 and reiterated the averments made in the plaint. She relied upon Ex.P1 to Ex.P7.

71. During the pendency of the proceedings, PW-1 died and her legal representatives were brought on record. Thereafter, one of her legal representatives, namely Sri Manjunath P., entered the witness box as PW-2 and further substantiated the case of the plaintiffs. He also produced additional documentary evidence in support of the plaintiffs' possession and the proceedings before the Bangalore Development Authority.

72. On the other hand, Defendant No.1 examined herself as DW-1. Though arrayed as a defendant, she substantially supported the case of the plaintiffs and categorically admitted that the schedule property originally belonged to late C.Muniswamy, that no partition had taken

place and that each of the legal heirs was entitled to an equal share.

73. The evidence of PW-1, PW-2 and DW-1 shall be appreciated in detail while answering the issues framed by this Court.

74. On the basis of the materials available on record, my finding on the above issues are as under;

Issue No.1:- In the Affirmative

Issue No.2:- In the Affirmative

Issue No.3:- In the Affirmative

Addl. Issue No.1:- In the Affirmative

Addl. Issue No.2:- In the Negative

Addl. Issue No.3:- In the Negative

Addl. Issue No.4:- In the Affirmative

Addl. Issue No.5:- In the Negative

**Issue No.4:- As per final order
for the following:**

REASONS

75. **Issue Nos.1 to 3**:- Since Issue Nos.1 to 3 and Additional Issue Nos.1 to 3 arise out of the same set of pleadings, documentary evidence and oral testimony and

are intrinsically interconnected, they are taken up together for common discussion to avoid repetition of facts and evidence. However, separate findings shall be recorded on each issue at the conclusion of the discussion.

76. Before embarking upon the appreciation of evidence, this Court considers it appropriate to advert to the settled principles governing adjudication of a suit for partition and separate possession. A partition suit is fundamentally different from an ordinary declaratory suit. In a partition action, the Court is expected not merely to determine title but also to ascertain the nature of the property, the source of acquisition, the status of the parties, their relationship with the original owner, the extent of their respective shares and whether any subsequent transaction has legally extinguished or affected such rights. The Court is under a legal obligation to comprehensively appreciate the entire evidence, both oral and documentary, so as to render a decree that finally settles the rights of all co-sharers.

77. The burden of proof initially rests upon the plaintiffs under Sections 101 to 103 of the Indian Evidence Act, 1872, to establish that the suit schedule property originally belonged to late C. Muniswamy and that, upon his death intestate, they succeeded to the property as Class-I legal heirs. Once such foundational facts are established by cogent evidence, the burden shifts to the contesting defendants to prove any special plea, such as exclusive ownership, relinquishment, estoppel, adverse possession or any other circumstance defeating the plaintiffs' claim.

78. It is equally well settled that mutation entries, khatha transfers, revenue entries or municipal records are maintained primarily for fiscal purposes. Such entries neither create nor extinguish title. Likewise, a Lease-cum-Sale Deed executed by a statutory authority in favour of one legal heir, if founded upon succession to the original allottee, cannot by itself divest the lawful inheritance rights of the remaining legal heirs unless there is a valid relinquishment, partition or other legally recognised mode

of extinguishment.

79. The Hon'ble Supreme Court has consistently held that succession to the estate of a Hindu dying intestate is governed by Sections 8 and 10 of the Hindu Succession Act, 1956, and administrative transfers or revenue mutations cannot override substantive rights flowing from the statute. Equally, the law recognises that possession of one co-owner is ordinarily deemed to be possession on behalf of all co-owners unless hostile ouster is specifically pleaded and strictly proved.

80. Bearing these settled principles in mind, the evidence on record requires appreciation.

81. At the outset, one significant aspect deserves mention. The relationship between the parties is virtually undisputed. PW-1 has categorically deposed that late C. Muniswamy was the father of Plaintiff Nos.1 and 2, Defendant No.1 and late M. Muniswamy, who was the husband of Defendant No.2. The genealogy pleaded in the plaint has remained substantially unchallenged.

82. More importantly, Defendant No.1, while entering the witness box as DW-1, has unequivocally admitted the same relationship. She has specifically deposed that the plaintiffs are her sisters, late M. Muniswamy was her brother and that all of them are the children of late C. Muniswamy. Such evidence constitutes an admission within the meaning of Sections 17 and 21 of the Indian Evidence Act.

83. Even Defendant No.3, namely the Bangalore Development Authority, in its written statement has not disputed the identity of the original allottee or the relationship between late C. Muniswamy and his legal heirs. Thus, the genealogy pleaded by the plaintiffs stands duly established by pleadings, oral evidence and admissions.

84. The next question is whether the plaintiffs have proved that the suit schedule property originally belonged to late C. Muniswamy. To establish this fact, the plaintiffs have relied upon Ex.P1, namely the allotment letter dated

16.01.1989. The said document clearly demonstrates that the Bangalore Development Authority allotted Site No.517 in Vijayanandanagar Slum Area in favour of late C. Muniswamy. Ex.P2 further evidences payment of the sital value by the original allottee. These documents are certified copies secured under the Right to Information Act from the official records of Defendant No.3. Their genuineness has never been challenged by Defendant No.3. No evidence whatsoever has been adduced to demonstrate that the allotment was made in favour of any person other than late C. Muniswamy.

85. Significantly, Defendant No.3 itself, in paragraph 5 of its written statement, has expressly admitted that late C. Muniswamy had applied for allotment and that the suit schedule property was allotted in his favour under the allotment letter dated 16.01.1989. Again, paragraph 19 of the written statement of Defendant No.3 unequivocally reiterates that the suit schedule property was originally allotted to late C. Muniswamy and that he paid the entire sital value. Admissions contained in

pleadings are substantive evidence. An admitted fact requires no further proof. Therefore, the origin of title to the suit schedule property stands conclusively established.

86. An argument appears in the pleadings describing the property as “joint family property.” Simultaneously, the evidence of PW-1, PW-2 and DW-1 consistently describes it as the self-acquired property of late C.Muniswamy. This distinction assumes significance. The evidence unmistakably demonstrates that the allotment was made exclusively in the individual name of late C.Muniswamy by the Bangalore Development Authority pursuant to his personal application. There is absolutely no evidence suggesting that the allotment emanated from any ancestral nucleus, coparcenary funds or joint Hindu family property.

87. On the contrary, PW-1 herself has repeatedly stated that the property was allotted in the name of her father. DW-1 also admitted during cross-examination that the suit property was the self-acquired property of her

father. Thus, although the plaint occasionally uses the expression “joint family property,” the substance of the evidence unmistakably establishes that the property was the separate acquisition of late C. Muniswamy.

88. However, after the death of late C. Muniswamy intestate, the property devolved upon all his Class-I legal heirs by operation of Sections 8 and 10 of the Hindu Succession Act. Consequently, while the property was not ancestral or coparcenary property during his lifetime, it became jointly inherited property among his heirs after his demise. This distinction is legally important because inheritance under the Hindu Succession Act is entirely different from acquisition by birth under Mitakshara coparcenary law. Accordingly, the Court holds that the suit schedule property was the self-acquired property of late C. Muniswamy and, after his intestate death, devolved jointly upon his legal heirs in equal shares.

89. The plaintiffs have examined Plaintiff No.2 initially as PW-1 and subsequently her legal heir

Manjunath P. as PW-2. The evidence of PW-1 is by way of affidavit under Order XVIII Rule 4 of the Code of Civil Procedure, wherein she has reiterated the entire plaint averments. PW-1 has specifically deposed that late C. Muniswamy was allotted the suit schedule property by Defendant No.3 under allotment letter dated 16.01.1989 and that he had constructed an asbestos sheet roofed house over the said property. She has further stated that she, Plaintiff No.1, Defendant No.1 and late M. Muniswamy were the children of late C. Muniswamy and that late M. Muniswamy died without leaving behind any issues.

90. The material portion of her evidence relates to the subsequent events after the death of late C. Muniswamy. According to PW-1, late M. Muniswamy, husband of Defendant No.2, applied before Defendant No.3 for change of khatha without disclosing the names of other legal heirs. She has further stated that Defendant No.3, upon noticing the omission of the names of daughters of late C. Muniswamy, conducted mahazar and recorded the names of all legal heirs. This portion of the evidence

assumes significance because the same is not merely a self-serving statement but finds corroboration from the pleadings and conduct of Defendant No.3. Defendant No.3, being the statutory authority maintaining the records, has admitted that the transfer was made subject to the civil rights of other legal heirs. PW-1 has also stated that the husband of Defendant No.2 obtained the Lease-cum-Sale Deed in his name alone by producing joint affidavit and indemnity bond allegedly executed by the other legal heirs without their knowledge.

91. During cross-examination, PW-1 remained consistent regarding the essential facts, namely: The property was allotted in the name of late C. Muniswamy. Late C. Muniswamy died intestate. There was no partition among the legal heirs. The plaintiffs and Defendant No.1 continued to claim their respective shares. Nothing substantial has been elicited in her cross-examination to discredit the above material aspects.

92. PW-2 Manjunath P., legal heir of Plaintiff No.2,

has also reiterated the case of the plaintiffs. His evidence is relevant because after the death of Plaintiff No.2, he continued the proceedings on behalf of the legal heirs. PW-2 has specifically stated that Defendant No.3 allotted the suit schedule property in favour of late C. Muniswamy and that the allotment charges were paid by him. He has produced documents obtained under the Right to Information Act. The most important admission elicited from PW-2 during cross-examination by Defendant No.1 is as follows:

“The suit schedule property is standing in the name of my grandfather C. Muniswamy. My grandfather C. Muniswamy died in the year 1994. My grandfather had three daughters namely Homsavalli, Sulochana and Anniyamma and one son by name M. Muniswamy. During the lifetime of my grandfather no partition was taken place.”

93. This admission substantially strengthens the case of the plaintiffs. It clearly establishes: identity of the original owner; relationship between parties; absence of partition; entitlement of legal heirs. Further, during cross-

examination by Defendant No.3, PW-2 has admitted that he is residing at Krishnagiri and not continuously residing in the suit schedule property. However, such admission by itself does not defeat the claim of the plaintiffs. In a partition suit, physical residence or possession of one co-sharer does not determine title unless there is proof of ouster.

94. Defendant No.1 has entered the witness box as DW-1. Her evidence is of considerable importance because she is also one of the legal heirs of late C. Muniswamy. DW-1 has completely supported the case of the plaintiffs. She has stated that: late C. Muniswamy was her father; the plaintiffs are her sisters; late M. Muniswamy was her brother; Defendant No.2 is the wife of late M. Muniswamy; there was no partition during the lifetime of their father.

95. DW-1 has further admitted that the suit schedule property was allotted by BDA in the name of her father. The most significant admission made by DW-1 during cross-examination is *"It is true to suggest that the*

suit schedule property is self acquired property of my father C. Muniswamy.” This admission completely rules out the defence that the property exclusively belonged to late M. Muniswamy or Defendant No.2. DW-1 has also categorically stated that, *“I had not executed any document in favour of my elder brother M. Muniswamy. Even the plaintiffs No.1 and 2 had also not executed any document in favour of my brother.”* This evidence directly touches upon Additional Issue No.1 regarding the alleged creation of joint affidavit and indemnity bond.

96. The defence raised by Defendant No.3 requires careful consideration. Defendant No.3 is not claiming independent title over the suit schedule property. Its role is only that of an allotting authority. The written statement filed by Defendant No.3 contains several important admissions. In paragraph No.5, Defendant No.3 admits that late C. Muniswamy applied for allotment and the suit schedule property was allotted in his favour. In paragraph No.19, Defendant No.3 has stated that after the death of the original allottee, the son of late C. Muniswamy

submitted an application and after obtaining affidavit, joint affidavit, indemnity bond, ration card and death certificate, the property was transferred in his name. However, Defendant No.3 has specifically stated that, "*the same is transferred subject to civil rights of the other legal heirs if any.*" This statement is of immense legal significance. The statutory authority itself recognised that transfer of the site in favour of one legal heir did not adjudicate or extinguish the civil rights of other heirs. The administrative action of Defendant No.3 was only for the purpose of completing formalities and cannot be construed as a decree of declaration of exclusive ownership.

97. The next question is whether execution of Lease-cum-Sale Deed in favour of late M. Muniswamy conferred exclusive ownership upon him. The answer is in the negative. The Lease-cum-Sale Deed was not granted on the basis of any independent allotment made in favour of late M. Muniswamy. The root of the transaction continued to be the original allotment made in favour of late C. Muniswamy. Late M. Muniswamy derived his claim only

through succession from his father. Therefore, he could not have acquired a better title than what was available to him as one of the legal heirs. It is a settled principle of law that a co-heir cannot enlarge his share merely by obtaining mutation or administrative documents in his exclusive name. Such documents may enable him to deal with the authority but cannot extinguish the lawful shares of other heirs. *The Hon'ble Supreme Court has repeatedly held that revenue records, mutation entries and similar administrative documents neither create nor confer title.* Therefore, the Lease-cum-Sale Deed and Possession Certificate standing in the name of late M. Muniswamy cannot be interpreted as conferring absolute ownership upon him to the exclusion of plaintiffs and Defendant No.1. Hence, **Issue Nos.1 to 3 are answered in the Affirmative.**

98. **Additional Issue No.1:-** The burden of proving this issue is upon the plaintiffs. The specific case of the plaintiffs is that after the death of late C. Muniswamy, his son late M. Muniswamy, who was the husband of Defendant No.2, approached Defendant No.3 for execution

of Lease-cum-Sale Deed by suppressing the names of other legal heirs. It is alleged that he created joint affidavit and indemnity bond without the knowledge and consent of the plaintiffs and Defendant No.1 and thereby obtained Lease-cum-Sale Deed exclusively in his name. At the outset, it is necessary to observe that the allegation of fraud is a serious allegation. A person alleging fraud is required to establish the same by placing convincing and acceptable evidence. Fraud cannot be presumed merely on the basis of suspicion or conjecture. However, the standard of proof in civil proceedings is preponderance of probabilities and not proof beyond reasonable doubt.

99. In the present case, the surrounding circumstances require careful consideration. The admitted facts are: The suit schedule property was allotted in the name of late C. Muniswamy. Late C. Muniswamy died intestate leaving behind plaintiffs, Defendant No.1 and late M. Muniswamy. There was no partition among the legal heirs. Late M. Muniswamy subsequently obtained Lease-cum-Sale Deed in his individual name. Defendant No.3

itself noticed that the names of other legal heirs were not reflected initially.

100. PW-1 has specifically stated that the husband of Defendant No.2 obtained the Lease-cum-Sale Deed by creating documents behind the back of other legal heirs. PW-2 has also stated that the documents were obtained without the knowledge of plaintiffs and Defendant No.1. DW-1, who is an independent legal heir and has no dispute with the plaintiffs, has categorically stated that she had not executed any document in favour of her brother late M. Muniswamy. She has further stated that even the plaintiffs had not executed any such document. This admission assumes importance. If, in fact, the joint affidavit was genuinely executed by all legal heirs voluntarily relinquishing their rights or giving consent for transfer in favour of late M. Muniswamy, the natural conduct would have been to produce such documents before this Court and establish their voluntary execution. However, no such original documents have been produced by Defendant No.2. Defendant No.2, who was the beneficiary of such

transaction, remained absent and did not enter the witness box to prove the genuineness of the alleged documents. An adverse inference has to be drawn under Section 114 illustration (g) of the Indian Evidence Act against the party who withholds the best evidence available.

101. Further, Defendant No.3 in its written statement itself has stated that transfer was effected subject to the civil rights of other legal heirs. This clearly demonstrates that the transfer before Defendant No.3 was not treated as a final adjudication of ownership. The conduct of late M. Muniswamy in obtaining the Lease-cum-Sale Deed solely in his name, without ensuring recognition of the rights of other heirs, therefore creates a strong probability that the transaction was intended to secure administrative title in his favour rather than a declaration of exclusive ownership. However, this Court is conscious that a finding of fraud cannot be lightly recorded merely because one legal heir obtained the document in his name. The crucial question is not whether fraud is proved in the strict sense, but whether such document has the effect of

extinguishing the rights of other heirs. On appreciation of the entire evidence, this Court is of the opinion that the plaintiffs have established that the Lease-cum-Sale Deed was obtained without participation of all legal heirs and that the alleged consent documents cannot be treated as relinquishment of their inheritance rights. Accordingly, Additional Issue No.1 is answered **in the Affirmative**.

102. **Additional Issue Nos.2 and 3:-** Both these issues are interconnected and hence are taken together. The specific defence of Defendant No.2 appears to be that the suit schedule property was granted by BDA in favour of her husband late M. Muniswamy and therefore after his death she became the absolute owner. The said contention cannot be accepted for more than one reason. *Firstly*, the documentary evidence clearly establishes that the original allottee was not late M. Muniswamy but late C. Muniswamy. Ex.P1 allotment letter is in the name of late C. Muniswamy. Ex.P2 payment challan also relates to late C. Muniswamy. Therefore, the foundation of title itself originates from late C. Muniswamy. *Secondly*, late M.

Muniswamy did not obtain the property by an independent grant. His name came into the records only after the death of his father and by virtue of his status as one of the legal heirs. *Thirdly*, the evidence of DW-1 clearly establishes that late M. Muniswamy was only one among the legal heirs and that there was no partition or relinquishment by other heirs. The law relating to succession is well settled. When a Hindu male dies intestate, his property devolves upon his Class-I heirs. A son inherits along with daughters and each heir obtains a defined share. One heir cannot claim exclusive ownership merely because his name appears in subsequent records. The right of inheritance is a statutory right and cannot be defeated by unilateral administrative proceedings.

103. The contention regarding possession also does not assist Defendant No.2. Even assuming that Defendant No.2 or her family members are in possession of the property, such possession cannot be treated as exclusive possession against co-heirs. The possession of one co-owner is ordinarily deemed to be possession of all co-

owners unless there is clear evidence of hostile assertion of title and knowledge of such hostile assertion by other co-owners. In the present case, there is no pleading or proof of ouster. On the contrary, the plaintiffs have approached Defendant No.3 and Defendant No.2 asserting their rights and seeking partition. Therefore, the possession, if any, of Defendant No.2 is only referable to the rights inherited through her husband and not as absolute owner.

104. Late M. Muniswamy himself had only an undivided share in the estate of late C. Muniswamy. Consequently, Defendant No.2, as the widow of late M. Muniswamy, could inherit only the share that belonged to her husband. She cannot claim rights over the entire suit schedule property. The principle *nemo dat quod non habet* (no person can transfer a better title than he himself possesses) squarely applies. Late M. Muniswamy could not have conveyed or created absolute rights over the entire property because he himself was not the exclusive owner. Hence Defendant No.2 cannot claim a better title. Accordingly, **Additional Issue Nos.2 and 3 are answered**

in the Negative.

105. **Additional Issue No.4:-** The burden of proving this issue lies upon the defendants. The defendants have taken a specific contention that the suit filed by the plaintiffs is not properly valued and that the court fee paid is insufficient. However, except making a bald averment in the written statement, no specific evidence has been produced by any of the defendants to establish that the valuation made by the plaintiffs is incorrect or that the court fee paid is insufficient. It is a settled principle of law that the question of court fee depends upon the averments made in the plaint and not upon the defence raised by the defendants. The plaintiff, being a co-sharer claiming partition and separate possession of his/her share, is entitled to value the suit in accordance with the applicable provisions of the Karnataka Court Fees and Suits Valuation Act.

106. In the present case, the plaintiffs have specifically pleaded that they are in joint possession and

enjoyment of the suit schedule property along with the defendants and that there was no partition by metes and bounds. When a co-owner asserts joint possession, the suit for partition is governed by the relevant provision applicable to a co-sharer in joint possession. The defendants have failed to establish either ouster or exclusive possession adverse to the plaintiffs. In the absence of proof of ouster, the presumption of joint possession continues. Therefore, the valuation adopted by the plaintiffs cannot be said to be improper merely because the defendants dispute their entitlement. Hence, this Court holds that the court fee paid by the plaintiffs is sufficient. Accordingly, **Additional Issue No.4 is answered in the Affirmative.**

107. **Additional Issue No.5:-** The defendants have contended that the suit is barred by limitation. The burden of establishing limitation is upon the defendants. A suit for partition stands on a distinct legal footing. The right to seek partition is a continuing right available to a co-owner until there is a clear and unequivocal denial of title coupled

with hostile assertion amounting to ouster. The law does not presume exclusion of one co-sharer merely because another co-sharer is in possession or because documents stand in the name of one co-sharer.

108. In the present case, the material on record reveals that: The suit schedule property was allotted to late C. Muniswamy. He died intestate. There was no partition among his legal heirs. The plaintiffs have consistently asserted their right over the property. The plaintiffs approached Defendant No.3 objecting to transfer of the property exclusively in favour of Defendant No.2. The plaintiffs thereafter filed the present suit.

109. There is no material placed before this Court to establish that the plaintiffs were ever specifically excluded from enjoyment of the property or that there was any open hostile denial of their title for the statutory period. The mere fact that late M. Muniswamy obtained the Lease-cum-Sale Deed in his name cannot be treated as commencement of limitation against the plaintiffs because

the same transaction itself originated from the estate of late C. Muniswamy and was not accompanied by a declaration that other heirs had been excluded. It is well settled that possession of one co-owner is possession of all co-owners unless ouster is proved by clear and convincing evidence. *The Hon'ble Supreme Court has repeatedly held that limitation in a partition suit begins only when there is clear repudiation of the co-owner's right and knowledge thereof.* In the present case, such plea of ouster has neither been pleaded with necessary particulars nor proved by acceptable evidence. Therefore, the suit cannot be said to be barred by limitation. Accordingly, **Additional Issue No.5 is answered in the Negative.**

110. **Issue No.4:-** Before recording final findings, this Court considers it necessary to observe that the entire controversy has arisen because of the manner in which the records of Defendant No.3 came to be transferred after the death of the original allottee. The evidence on record clearly demonstrates that late C. Muniswamy was the person who applied for and obtained allotment of the suit schedule

property. He paid the allotment charges and continued to enjoy the property during his lifetime. After his demise, the property devolved upon his legal heirs. The subsequent execution of Lease-cum-Sale Deed in favour of late M. Muniswamy was only a continuation of the rights flowing from the original allotment. It cannot be interpreted as creation of an independent title in favour of late M. Muniswamy excluding other heirs.

111. Defendant No.3, being a statutory authority, could only recognise and transfer records for administrative purposes. It could not decide questions of inheritance or extinguish civil rights of legal heirs. The written statement filed by Defendant No.3 itself supports this conclusion, as it expressly states that the transfer was subject to the civil rights of other legal heirs. The evidence of DW-1 is also significant. Defendant No.1, being one of the daughters of late C. Muniswamy, has supported the claim of the plaintiffs and has asserted her own right of share. Her evidence has remained unshaken. Defendant No.2, though the principal beneficiary of the subsequent

transfer, has chosen not to contest the proceedings by entering the witness box. Therefore, the allegations regarding exclusive ownership remain unsubstantiated. The Court cannot permit technical entries or administrative documents to defeat substantive rights of inheritance guaranteed under law. In view of the above observations, I proceed to pass the following:

ORDER

The suit filed by the plaintiffs is hereby **decreed.**

It is hereby declared that the plaintiffs and Defendant No.1 together with Defendant No.2 are entitled to their respective shares in the suit schedule property.

A preliminary decree is hereby passed declaring that:

1. Plaintiff No.1 is entitled to **1/4th share** in the suit schedule property.
2. The legal heirs of deceased Plaintiff No.2 are entitled to **1/4th share** in the suit schedule property.
3. Defendant No.1 is entitled to **1/4th share** in the suit schedule

property.

4. Defendant No.2 is entitled only to the share inherited through her deceased husband late M. Muniswamy, being subject to determination of succession rights.

The parties are directed to effect partition by metes and bounds in accordance with the preliminary decree.

The relief of permanent injunction, if sought, shall follow the declaration of rights and shall be considered in accordance with law.

In the circumstances of the case, parties shall bear their own costs.

Draw preliminary decree accordingly.

(Dictated to the SG-I, transcribed by her, revised, corrected, signed and pronounced by me in open court on this the 10th day of August, 2026)

(Shirin Javeed Ansari)
C/c XX Addl.C.C. & Sessions Judge,
Bengaluru.

A N N E X U R E**List of witnesses examined for plaintiffs:**

PW.1 : Smt. Sulochana

PW.2 : Sri Manjunath P.

List of documents exhibited for plaintiffs:

Ex.P.1 Allotment letter dated 16.01.1989

Ex.P.2 Challan obtained under RTI

Ex.P.3 Possession letter dated 11.07.2001

Ex.P.4 Lease / sale deed dated 02.03.2001

Ex.P.5 Statement of parties

Ex.P.6 Office copy of application

Ex.P.7 Endorsement dated 20.03.2019

Ex.P.8 Original GPA

Ex.P.9 Certified copy of of the proceedings of the BDA in file No.517

List of witnesses examined for defendants:

DW.1 : Smt. Anniyamma

List of documents exhibited for defendant: NIL

(Shirin Javeed Ansari)
C/c XX Addl.C.C. & Sessions Judge,
Bengaluru.