

KABD310026492021



**IN THE COURT OF THE PRL.CIVIL JUDGE &
JMFC, AT BASAVAKALYAN.**

:PRESENT:

Sri. Dynaneshwar Vittal Malagi,
B.A., L.L.B.,

**Prl. Civil Judge & JMFC,
Basavakalyan.**

Dated this the 28th day of August 2026.

ORIGINAL SUIT No. 121/2021

Plaintiff :-

Venkat S/o Late Mallappa Eglambi,
Age: 50 years, Occu: Agriculturist,
R/o : Mudbi Village, Tq: Basavakalyan,
Dist: Bidar. Now residing At-Akshaya
Garden, Sambhaji Nagar, Hatti Chowk
Dhanak wadi Pune (MS).

(By Sri. RVM., Adv.)

V/S

Defendants :-

1. Shivaraj s/o Late Mallappa Eglambi,
Age: 72 yrs, Occu: Agriculturist,
R/o: Village Ghatboral,

Tq: Humnabad, Dist: Bidar.

2. Chandrakanth s/o Late Mallappa
Eglambi,
Age: 65 years, Occu: Agriculturist,
R/o Village Mudbi,
Tq: Basavakalyan, Dist: Bidar.

(D1-Exparte)

(D2 by Sri. MPK., Adv.)

Date of Institution of the Suit	18-11-2021
Nature of the Suit	Declaration of ownership and perpetual injunction etc.,
Date of the commencement of recording of the evidence	19-09-2022
Date on which the Judgment was pronounced	28-08-2026
Total Duration	Year/s Month/s Day/s 04 09 10

J U D G M E N T

The plaintiff has filed this suit for declaration of ownership, rectification of revenue records and perpetual injunction against defendants in respect of suit schedule properties.

2. **The description of suit schedule properties:**

The land sy.no. 96/3 measuring 1 acre 17 guntas situated at village Mudbi, Tq: Basavakalyan, Dist: Bidar which is bounded as under:

East : Land of Malleshi S/o Bhimanna
Eglambi.
West : Road
North : Way
South : Jetteppa S/o Ramanna
Eglambi.

The land sy.no. 96/7 measuring 0-37 guntas situated at village Mudbi, Tq: Basavakalyan Dist: Bidar which is bounded as under:

East : Nala
West : Land of Malleshi S/o
Bhimanna Eglambi.
North : Nala
South : Jetteppa S/o Ramanna
Eglambi

3. **The case of the plaintiff in brief is as under:**

(a) The That plaintiff and defendants are real brothers to each other in relations and they are the divided. The parents of the plaintiff and defendants by name Mallappa and Bhimbai died and their 3rd by name son Babu predeceased to the Mallappa and Bhimbai about 30 years back without marriage and another son Ramchandra also died. During his life time he has partitioned the ancestral and joint family properties among his children in respect of properties bearing Sy.no. 106/6 measuring 3 acres 11 guntas and sy.no. 96 measuring 3 acres 7 guntas both situated at village Mudbi Tq: Basavakalyan and land Sy.no. 96 measuring 3 acres 7 guntas has fallen to the share of deceased Babu and plaintiff and non suit land is fallen to the share of defendant no.1 & 2 and deceased Ramchandra. The said partition written on 14/06/1979. Since the partition the plaintiff and defendants are in actual and physical

possession over their respective shares as owners. However the revenue records of suit land still appearing in the name of deceased Mallappa.

b) The plaintiff further contends that, his brother Babu died, and during his life he was with the plaintiff and the plaintiff has maintained his brother Babu. As per partition the plaintiff become absolute and exclusive owner and possessor of suit schedule properties. The defendants are no concerned to the suit schedule properties in any manner. The defendants are colluding each other by taking undue advantages of revenue records of suit land and they are causing illegally interference and obstruction into the peaceful possession over the suit schedule properties. The plaintiff approached the defendants and requested to them to admit his ownership and possession over the suit schedule properties and not to interfere and obstruction into the peaceful possession and enjoyment of the plaintiff over suit schedule properties and the plaintiff also

requested to the defendants to co-operate to get rectify the revenue records in his name by deleting existing name of his father. The defendants are flatly refused to the request of plaintiff. Hence, he constrained to file this suit.

4. After service of suit summons the defendant no.2 appeared before Court through counsel and filed his written statement. In spite of service of suit summons the defendant no.1 remained absent. Hence, he was placed *exparte*. In the written statement the defendant no.2 admitted the relation between them and also admitted that, there is partition taken place between them. However he denied his interference and obstruction over the suit property.

5. On the basis of the above said pleadings and documents placed on record, the following issues have been framed :

:: ISSUES ::

1. Whether the plaintiff proves that, he is absolute owner and possessor of suit schedule properties?
2. Whether the plaintiff proves that, the alleged interference by the defendants in his possession over suit schedule properties?
3. Whether the plaintiff is entitled to the reliefs as sought for?
4. What order or decree?

6. To prove the case, the plaintiff has examined himself as PW.1 and got 11 documents marked as Ex.P1 to Ex.P11. Further other two witnesses were examined as PW2 & 3. On other hand the defendant no.2 not led any evidence.

7. Heard the arguments of both side and perused the material on record.

8. My findings to the above issues are as under:

Issue No.1 : In the Negative

Issue No.2 : In the Negative

Issue No.3 : In the Negative

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

:R E A S O N S:

9. **Issues No.1 to 3** :-These three issues are interlinked with each other. Therefore three issues are taken together for common discussion to avoid repetition facts and sake of convenience.

10. It is the specific case of plaintiff that he and defendants are real brothers to each other. The suit properties and non suit properties are ancestral joint family properties. Their father during his lifetime partitioned the said family properties among plaintiff and defendants. In said partition the suit properties were fell to share of plaintiff and deceased Babu and non suit properties were fell to share of defendant no.1 & 2 and

one Ramachandra. In this regard written partition has been made on 14-06-1979 and since the date of partition plaintiff and defendants are actual and physical possession over their respective shares. However the revenue records of suit lands still stands in the name of father of plaintiff. The brother of plaintiff namely Babu was died unmarried. So the plaintiff is absolute and exclusive owner and possessor of the suit properties as per partition.

11. The plaintiff himself has examined as PW1 by filling the affidavit in lieu of his examination in chief, wherein he reiterated the averments of plaint and got 11 documents marked as Ex.P1 to 11. Ex.P1 is the unregistered partition deed, Ex.P1(a) is the transaction copy of Ex.P1, Ex.P1(b) is the signature of father of plaintiff, Ex.P2 is the certificate issued by the Deputy commissioner of stamp and District registrar Bidar, Ex.P2(a) is the copy of chalan, Ex.P3 to 11 are the RORs. Further examined other two witnesses as PW2 & 3. The

PW2 & 3 deposed by supporting the case of the plaintiff . On other hand the defendant no.2 has not cross examined the the plaintiff's witnesses and not led any evidence in his behalf. The defendant No.1has not appeared to contest the suit of the plaintiff though suit summons served upon him.

12. During course of arguments learned counsel for plaintiff reiterated the contents of plaint and submitted that, the plaintiff has proved his case by providing oral and documentary evidence and the defendant no.2 being brother of plaintiff admitted the partition taken place between them. Further argued that, the plaintiff has deposited deficit stamp duty and penalty on partition deed as per order of this Court. Hence, prays to decree the suit of the plaintiff.

13. On other hand learned counsel for defendant no.2 during course of argument reiterated the averments of written statement and submitted to pass necessary judgment.

14. I have perused the oral and documentary evidence and materials on record. The plaintiff contended that, the suit land is ancestral and joint family properties of himself and defendants. The suit properties fallen to his share in family partition and he is absolute owner and possessor of suit properties. On perusal of oral and documentary evidence adduced by the plaintiff it is reveals that the entire claim of the plaintiff rests upon the partition deed dated 14-06-1979. It is an admitted fact that this document is unregistered. Under Section 17(1)(b) of the Registration Act, 1908, any document which purports or operates to create, declare, assign, limit, or extinguish any right, title, or interest in immovable property worth Rs.100 and upwards must be compulsorily registered. Furthermore, Section 49 of the Registration Act explicitly states that a document required to be registered under Section 17 shall not affect any immovable property comprised therein, nor be received as evidence of any transaction affecting such property,

unless it has been registered. While an unregistered partition deed can be looked into for the limited, collateral purpose of proving a severance of joint family status, it cannot be used to prove the actual division of properties by metes and bounds, nor can it be used to claim valid title over a specific share. Consequently, the plaintiff cannot claim ownership or title over the suit property based on this inadmissible document.

15. Further to get a decree of permanent injunction under Section 38 of the Specific Relief Act, 1963, the plaintiff must establish two essential elements one is Clear lawful title or settled legal possession over the property and another one is an actual or threatened invasion of that right by the defendant. In the present case, the plaintiff has failed to prove his title due to the invalidity of the unregistered partition deed. Furthermore, the plaintiff has failed to produce any independent, credible evidence such as revenue records, mutation entries, or tax receipts to demonstrate his exclusive,

settled possession over the suit property. It is a settled principle of law that a plaintiff seeking an injunction must stand on the strength of his own case, not on the weaknesses of the defendant's case. The fact that Defendant No. 1 admitted to the partition, and Defendant No. 2 remained ex-parte, does not waive the operation of law. There can be no estoppel against a statute. An admission cannot validate a document that is fundamentally inadmissible in law to prove title..

16. During Course of argument the learned counsel for plaintiff argued that Defendant No. 2 admitted to the partition and other, and Defendant No. 1 remained ex-parte. However an admission cannot validate a document that is fundamentally inadmissible in law to prove title. Further, the plaintiff examined two independent witnesses as PW-2 and PW-3 to corroborate the execution of the partition deed. While their testimonies may successfully prove that a physical separation or oral understanding

took place, oral evidence cannot override the statutory bar created by Section 49. The court cannot recognize the legal transfer of ownership based on an inadmissible document.

17. The plaintiff further produced the RTC of suit properties and non suit properties which are stands in the name of father of the plaintiff and defendants. Since the plaintiff has failed to prove his owner ship. When the plaintiff has not entitled for main relief, then question of granting an ancillary relief of injunction does not arise and it is well settled that against co-owner injunction order cannot be granted. Therefore I am of the view that, the plaintiff has failed to prove the said issues. **Accordingly, I answer Issue no.1 to 3 in the negative.**

18. **Issue No.4:** In light of the aforesaid discussion on issues No.1 to 3, this Court proceeds to pass the following;

ORDER

The suit of plaintiff is hereby
dismissed.

No order as to cost.

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her, revised, and then pronounced by me in the open court on this the **28th day of August 2026**).

(Dynaneshwar Vittal Malagi)
Prl. Civil Judge & JMFC,
Basavakalyan.

:: ANNEXURES ::**List of Witnesses examined for the Plaintiffs :**

PW1 : Venkat S/o Mallappa

PW2 : Ramanna S/o Malleshappa

PW3 : Laxuman S/o Saibanna

List of Witnesses examined for the Defendants:

-Nil-

List of Documents marked for the plaintiffs :

Ex.P1 to 3 : Ex.P1 is the unregistered partition
deed

Ex.P1(a) : Copy of Ex.P1

- Ex.P1(b) : Signature of father of plaintiff
- Ex.P2 : Certificate issued by the Deputy
commissioner of stamp and District
registrar Bidar.
- Ex.P2(a) : Copy of chalan
- Ex.P3 to 11 : RORs

List of Documents marked for the defendants :

-Nil-

(Dynaneshwar Vittal Malagi)
Prl. Civil Judge & JMFC,
Basavakalyan.