

KABG300006242018



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL.**

PRESENT:

Sri.Ravi Babu Chawan,
B.A. LL.B.,
Senior Civil Judge, Bailhongal.

Original Suit No.91/2018

Dated this the 17th Day of July, 2026

- 1) Smt. Nimala W/o Mahadev Bailappanavar,
Age: 46 years, Occ: Teacher,
R/o: Sankeshwar, Tq: Hukkeri.
- 2) Smt. Meenaxi W/o Shivalingappa Tigadi,
Age: 44 years, Occ: Household work,
R/o: Khodanpur, Tq: Bailhongal.
- 3) Smt. Shaila W/o Rudragouda Patil,
Age: 41 years, Occ: Household work,
R/o: Yarguddi, now in Kotambri Galli,
Bailhongal.
- 4) Shri. Nagappa Mallappa Koladur,
Age: 73 years, Occ: Agriculture,
R/o: Madanbhavi, Tq: Bailhongal.

.....Plaintiffs

(By Shri. R.K.P., Advocate)

- Vs.-

1) Shri. Basavaraj Veerabhadrapa
@ Basalingappa Koladar,
Age: 58 years, Occ: Agriculture and Service,
R/o: M.T.S. Colony Quarter No.A71,
Karwar Road, Hubli.

2) Smt. Shobha W/o Balappa Deshnur,
Age: 51 years, Occ: Household,
R/o: Devalapur, Tq: Bailhongal.

3) Smt.Renuka D/o Veerabhadrapa Koldur
@ Murkibhavi,
Age: 38 years, Occ: Household work,
R/o: Bailhongal Uppin Koot,
Tq: Bailhongal.

4) Smt. Sarojini W/o Kallangouda Patil,
Age: 44 years, Occ: Household work,
R/o: Gundenatti, Tq: Khanapur.

.....Defendants

(By Shri. A.F.P., Advocate for D1)

(D2 and D3: Exparte)

(By Shri. S.R.A., Advocate for D4)

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Date of Institution: : 05-10-2018

Nature of suit : Suit for partition and separate
possession.

Date of Commencement
of recording of Evidence : 29-08-2023

Date of the closing of
recording of evidence. : 07-07-2025

Date of Pronouncement of
Judgment : 17-07-2026
Year Months Days
Total Duration : 07 09 12

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

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JUDGMENT

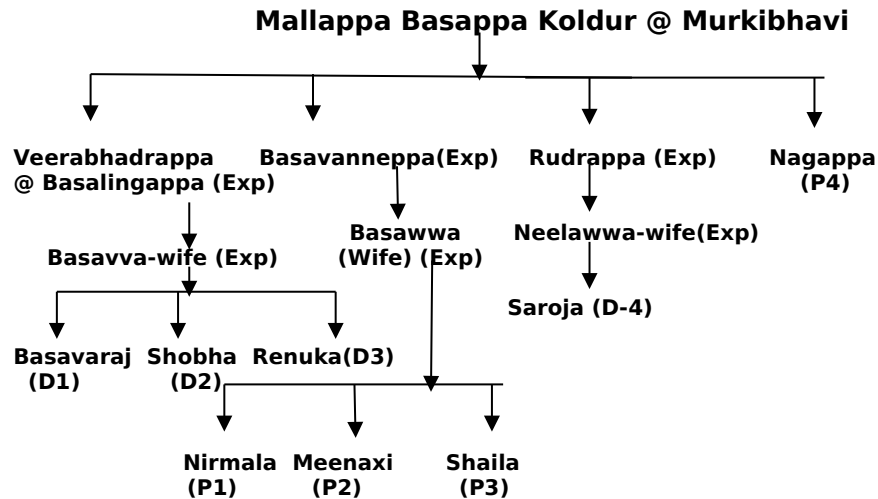
The plaintiffs have instituted the present suit seeking partition and separate possession of the suit properties by metes and bounds, praying for allotment of 1/ 4th shares jointly to the plaintiff No.1 to 3 and 1/4th share to plaintiff No.4 or such other legitimate share as may be determined by the court.

2. The brief facts of the plaint averments are as under:

According to the plaintiffs, the suit properties are the ancestral joint family properties of the propositus late Mallappa Basappa Koldur, who had four sons, namely: (1) Veerabhadrappe @ Basalingappa, (2) Basavanneppa, (3)

Rudrappa and (4) Nagappa. Out of them, only Nagappa, who is plaintiff No.4, is alive. The defendant Nos.1 to 3 are the legal representatives of deceased Veerabhadrappe @ Basalingappa. The second son, Basavanneppa, and his wife Basavva died leaving behind plaintiff Nos.1 to 3 as their legal heirs. The third son, Rudrappa, and his wife Neelavva also expired leaving behind their only daughter, Saroja, who has been arrayed as defendant No.4.

3. To better illustrate the relationship between the parties, the plaintiffs have shown the genealogy at Para No.2 of the plaint as follows:



4. The plaintiffs contend that all the parties, constitute the members of Hindu undivided family and

that the suit properties are ancestral joint family properties. It is specifically pleaded that during the life time of propositus Mallappa no partition by metes and bounds had ever taken place and, therefore, all the coparcener continued to possess and enjoy the properties jointly. The plaintiffs have further averred that defendant No.4 had earlier instituted O.S. No.168/2012 against the present plaintiffs and sons of plaintiff No.4 claiming 1/4th share in certain family properties, namely, Sy. No.28/2 (subsequently renumbered as Sy.No.28/7), Sy.No.18/5, Sy.No.17/3 and Sy.No.10/2A/1 of Madanbhavi village, Bailhongal taluka. According to the plaintiffs, they did not contest the said suit as they were assured that the family dispute would be amicably settled through compromise and that an overall partition of all the family properties would be effected. Believing such assurance they neither filed the written statement nor contested proceedings, as a result of which the suit came to be decreed ex-parte granting defendant No.4 a 1/4th share in the suit properties.

5. It is plaintiffs' further case that the defendant No.4, without initiating the final decree proceedings, got her name entered in the revenue records in respect of

Sy.No.28/7 behind the back of the plaintiffs. The plaintiffs state that they came to know of such mutation only recently when defendant No.4 obstructed them from jointly cultivating the said land. According to them, it was only then that the intention of defendant No.4 to assert exclusive rights became known.

6. The plaintiffs further submit that plaintiff No.4 is more than 73 years of age and that till the said dispute arose, all the parties had been jointly cultivating and enjoying the suit properties without any misunderstanding. After learning about the mutation entry, the plaintiffs requested the defendants to effect partition by metes and bounds. Such request was also made through elders of the village. However, the defendants failed and neglected accede to the request.

7. The plaintiffs contended that the decree passed in O.S. No.168/2012 does not specifically determine or allot the shares of the present plaintiffs in all the family properties and, therefore, they are constrained to file the present suit seeking partition and separate possession of all the suit properties. It is also pleaded that although some of the revenue records stand in the names of

different persons, such entries were made only for convenience in cultivation of the lands and do not as per the partition by metes and bounds. According to the plaintiffs, the cause of action first arose on 2-4-2018, when they, along with the village elders, demanded partition of the suit properties and the defendants refused to effect such partition. The cause of action is stated to be continuing thereafter, giving rise to the present suit. Hence the suit.

8. Upon service of summons, defendant No.1 and 4 appeared through their respective counsel and contested the suit. Despite due service of summons, the defendant Nos.2 and 3 failed to appear before the Court and are accordingly placed ex-parte.

9. The defendant No.1 filed his written statement along with a counter-claim. At the outset, he contended that the suit is not maintainable either in law or on facts and that the plaintiffs have approached the court by suppressing the true and material facts. Defendant No.1 specifically disputed the character of Item No.5 and 6 of the suit properties, namely R.S. No.12/4+5+3 measuring 2 acres 30 guntas and R.S. No.11/2+3a measuring 1 acre 12 guntas situated at Devalapur village. According to him, the

said properties are not ancestral or joint family properties of the plaintiffs and defendants. He pleaded that the said lands originally belonged to Karibasavva, the mother of defendant No.1 to 3, who had inherited the same from her father. After the death of Karibasavva, the said properties fell to the share of defendant No.1 under a family partition effected in the year 1997, and since then he has been in exclusive ownership and possession thereof. Hence, according to him, neither the plaintiffs nor defendant No.2 to 4 have any right, title or interest over Item Nos.5 and 6 of the suit properties. On these grounds, he sought dismissal of the suit insofar as the said properties are concerned.

10. The defendant No.1 further denied the averments made in para No.2 of the plaint regarding the existence of a Hindu undivided family, the alleged joint status of the parties and the assertion that all the suit properties are ancestral joint family properties jointly possessed and enjoyed by the plaintiffs and defendants. He reiterated that Item No.5 and 6 are his exclusive and self acquired properties inherited through his mother, and therefore, they are not liable for partition. He also denied the cause of action pleaded by the plaintiffs and contended that no

cause of action had arisen for filing the present suit and that the cause of action stated in the plaint is false, imaginary and created only for the purpose of litigation.

11. Along with the written statement, defendant No.1 prepared a counter claim. In the counter claim, he admitted that in respect of Item Nos.1 to 4 and 7 to 9 of the suit properties, his father Veerabhadrappa @ Basalingappa was entitled to 1/ 4th share. He further pleaded that defendant Nos.2 and 3 had relinquished their rights in the said 1/ 4th share in his favour and consequently, he has become entitled to and is in joint possession and enjoyment of the entire 1/ 4th share of his father's branch in those properties. However, he maintained that Item No.5 and 6 exclusively belonged to him and are outside the purview of partition. Accordingly, the defendant No.1 prayed for dismissal of the plaintiffs' suit in respect of Item Nos.5 and 6 of the suit properties and by way of counter claim, sought decree for partition and separate possession of 1/ 4th share in Item Nos.1 to 4 and 7 to 9 of the suit properties excluding item No.5 and 6.

12. The defendant No.4 filed her written statement resisting the suit in its entirety. At the outset, she contended that the suit filed by the plaintiffs is false, frivolous, vexatious and based on incorrect and misleading facts, therefore, is liable to be dismissed with costs.

13. Defendant No.4 specifically pleaded that she had earlier instituted O.S. No.168/2012 before the court of Prl. Civil Judge, Bailhongal, against the present plaintiffs and other family members seeking partition and separate possession of her legitimate share in the joint family properties. The said suit came to be decreed in her favour and she was declared entitled to 1/ 4th share in the suit properties covered under the said decree. According to her, the present suit has been instituted by the plaintiffs only to harass her, obstruct the execution of the preliminary decree passed in O.S. No.168/2012 and indirectly nullify or defeat the effect of the said decree.

14. The defendant No.4 denied the discretion and nature of the suit properties as stated in Paragraph No.1 of the plaint. According to her, a mere assertion that the properties are ancestral joint family properties does not

confer any right upon the plaintiffs unless they establish that the properties are jointly owned and possessed by the members of the family. She further contended that the plaintiffs have deliberately included the certain properties in the present suit which are neither ancestral nor joint family properties and which were not the subject matter of O.S. No.168/2012. According to the defendant No.4, inclusion of such additional properties cannot give rise to a fresh cause of action for filing another partition suit.

15. The defendant No.4 has specifically contended that if the plaintiffs were aggrieved by the judgment and preliminary decree passed in O.S. No.168/2012, the proper remedy available to them was to challenge the said judgment and decree before the competent Appellate court or seek appropriate relief in accordance with law. Instead of availing such statutory remedy, the plaintiffs have filed the present suit claiming substantially the same relief against the substantially the same parties. Therefore, according to the defendant No.4, the present suit is barred by the principles of *res-judicata* embodied under Section 11 of C.P.C., as the matter directly and substantially in issue had already been adjudicated between the same parties litigating under the same title.

16. The defendant No.4 further contended that, the plea of plaintiffs that they remained ex-parte in O.S. No.168/2012 on the assurance of amicable family settlement is wholly false and invented only for the purpose of the present litigation. She submits that sufficient opportunities had been afforded to all the defendants in the earlier suit to contest proceedings. According to her, plaintiff No.4 and defendant Nos.1 and 3 had even entered appearance in the said suit, but failed to file their written statement, while the remaining parties also neglected to contest the proceedings. Therefore, the plaintiffs cannot now avoid legal consequences of the decree passed therein by putting forth false explanations. Defendant No.4 further stated that the plaintiffs had remained silent in the earlier proceedings because they were in possession of a larger portion of the suit properties involved in O.S. No.168/2012 and, having failed to contest the matter despite adequate opportunity, they cannot be permitted to reopen the issues by instituting the present suit.

17. The defendant No.4 also contended that the mutation of her name in respect of Sy.No.28/7 was

effected strictly in accordance with law by following the prescribed procedure before the revenue authority. If the plaintiffs were aggrieved by such mutation, they had an effective statutory remedy of filing objections or preferring an appeal before the revenue authorities, which they failed to avail.

18. The defendant No.4 denied the averments that the parties had been jointly cultivating the properties without any dispute and that only after noticing the mutation entry in respect of Sy.No.28/7 the plaintiffs requested for partition through village elders. She asserted that such allegations are false and have been made only to create cause of action. She further denied the allegation that the decree in O.S. No.168/2012 did not determine the shares of plaintiffs and contended that the plaintiffs have other legal remedies, if any, under the decree passed in the earlier suit and cannot maintain a fresh suit on the same cause of action. She also denied the allegation that the revenue entries standing in the names of different persons were made merely for convenience of cultivation and not pursuant to any partition. According to her, such pleadings of the plaintiffs are false, frivolous and intended to mislead the

court. On all these grounds, the defendant No.4 contended that the present suit is barred by Section 11 of C.P.C., has been filed within an ulterior motive to circumvent and frustrate the decree passed in O.S. No.168/2012, and therefore prayed that the suit be dismissed with costs while upholding the judgment and decree passed in O.S. No.168/2012.

19. Based on the pleadings of the parties, my learned predecessor in the office was pleased to frame the following issues for determination:

- 1) Whether the plaintiffs prove that suit properties are the ancestral joint family are themselves and defendants?
- 2) Whether the plaintiffs further prove that they have got 1/ 4th share in the suit properties?
- 3) Whether defendant No.1 proves that he is the joint owner and joint possession of 1/ 4th share in suit item No.1 to 4 and 7 to 9?

4) Whether defendant No.1 further proves that he is the absolute owner in possession of suit item No.5 and 6?

5) Whether the defendant No.4 prove that the suit of the plaintiffs is hit by principle of resjudicata?

6) Whether the plaintiffs and defendant No.1 entitle for the relief claim in their respective pleadings?

7) What order?

20. In order to substantiate the case of the plaintiffs, plaintiff No.1 entered the witness box and examined herself as PW.1. She filed her examination-in-chief by way of affidavit reiterating the averments made in the plaint and got marked 77 documents as Ex.P1 to P77. PW.1 was thoroughly cross-examined by the learned counsel appearing for defendant No.1. On the other hand, the defendant No.1 examined himself as DW.1 in respect of his defense as well as the counter claim. He produced and got marked four documents as Ex.D1 to D4.

21. Though, the defendant No.4 had filed her written statement contesting the suit, but neither entered the witness box to substantiate her pleadings nor subjected PW.1 and DW.1 to cross-examine. Consequently, the pleadings taken by defendant No.4 remains unsupported by any oral evidence.

22. Heard the learned counsel appearing for the plaintiffs and the learned counsel appearing for defendant No.1. The defendant No.4 did not come forward to address her arguments in spite of sufficient opportunities being granted.

23. My findings on the above issues are as under:

Issue No.1	: Partly in the Affirmative
Issue No.2	: Partly in the Affirmative
Issue No.3	: Partly in the Affirmative
Issue No.4	: In the Negative
Issue No.5	: In the Negative
Issue No.6	: In the Negative
Issue No.7	: As per the final order for the following:

REASONS:

24. **Issue No.1:-** This issue relates to the nature and character of the suit properties. Hence the burden

squarely lies upon the plaintiffs to establish that all the suit properties are the ancestral joint family properties of the parties and that the parties continued to remain members of a undivided Hindu joint family.

25. There is no serious dispute with regard to the relationship between the parties. The genealogy pleaded by the plaintiffs has not been specifically denied. It is admitted that late Mallappa Basappa Koldur was the propositus and had four sons, namely, Veerabhadrappa @ Basalingappa, Basavanneppa, Rudrappa and Nagappa. The defendant Nos.1 to 3 represent the branch of Veerabhadrappa @ Basalingappa, plaintiff Nos.1 to 3 represent the branch of Basavanneppa, defendant No.4 represent the branch of Rudrappa and plaintiff No.4 is Nagappa himself. Therefore, the relationship among the parties stand substantially admitted.

26. The principle controversy is with regard to the nature of the suit properties particularly Item Nos.5 and 6. The plaintiffs have specifically pleaded that no partition by metes and bounds and had taken place during the life time of propositus Mallappa and that all the suit properties continue to remain joint family properties. PW.1 has

reiterated the very same facts in her examination-in-chief. Her evidence is supported by several revenue records produced by the plaintiffs. PW.1 has deposed that all the suit schedule properties are ancestral joint family properties and that no partition by metes and bounds had taken place during the life time of propositus Mallappa. Her evidence also discloses that the parties had been cultivating the properties jointly.

27. Significantly, the defendant No.1 has not disputed the ancestral character of Item Nos.1 to 4 and 7 to 9. On the contrary, in his written statement as well as counter claim, he himself admits that his father Veerabhadrappa had 1/4th share in those properties and has himself sought partition and separate possession of his share therein. Such admission constitutes substantive evidence against him under the provisions of the Indian Evidence Act and dispenses with further proof regarding nature of those properties. However, the defendant No.1 specifically pleaded that Item No.5 and 6 are not ancestral joint family properties, but are the separate properties inherited by his mother Karibasavva from her parental family. In support of the said contention, the defendant No.1 has produced Ex.D1 death certificate of Karibasavva, Ex.D2 Mutation

Entry No.6304, Ex.D3 and D4, the Judgment and Decree in O.S. No.110/2018.

28. Significantly, the plaintiffs themselves have produced the Ex.P68 and P69 namely, Mutation Entry Nos.6128 and 4208 respectively. These mutation entries clearly reveal that Item No.5 and 6 originally belonged to the parental family of Karibasavva, the mother of defendant No.1 to 3 and that she had inherited the said properties from her father. Thus, the plaintiffs' own documentary evidence corroborates the defence of defendant No.1 regarding the source of title of Item No.5 and 6.

29. Further, Ex.D2 discloses that after the death of Karibasavva on 18-03-1997, the revenue records were mutated in favour of defendant No.1. Though, the mutation entries by themselves do not confer title, they are relevant for determining the manner in which succession was recognized by the revenue authorities. However, most importantly, Ex.D3 and D4, namely, Judgment and decree passed in O.S. No.110/2018. In the said suit the defendant No.3 herein sought partition against the defendant Nos.1 and 2 in respect of Item Nos.5

and 6 and obtained a decree declaring her entitled to 1/ 3rd share therein. The Judgment clearly negatives the contention of the defendant No.1 that he is the exclusive owner of those properties. Thus, the defendant No.1 cannot now contend that he is exclusive owner of those properties. Nevertheless, the fact remains that Item No.5 and 6 originated from the parental family of the Karibasavva and not from the ancestral estate of propositus Mallappa Basappa Koldur. The plaintiffs have not produced any convincing evidence to establish that those two items were ever blended with the joint family nucleus or thrown into the common hotchpotch. In the absence of such evidence, Item No.5 and 6 cannot be treated as ancestral joint family properties of all branches descended from Mallappa. Therefore, after considering the oral and documentary evidence on record, this court is of the considered opinion that though the plaintiffs have successfully proved that Item No.1 to 4 and 7 to 9 are ancestral joint family properties, but they have failed to establish that the Item No.5 and 6 are also ancestral joint family properties. Hence Issue No.1 is answered ***partly in the Affirmative.***

30. **Issue No.2:-** The plaintiff Nos.1 to 3 seek allotment of 1/4th share jointly to plaintiffs Nos.1 to 3 representing the branch of deceased Basavanneppa and 1/4th share to plaintiff No.4. The evidence already discussed while answering the Issue No.1 clearly establishes that the suit properties Nos.1 to 4 and 7 to 9 are the ancestral joint family properties. Defendant No.1 himself has admitted that his father branch is entitled to 1/4th share in those properties. Thus, the existence of four branches descending from propositus Mallappa stands admitted. So far as, Item Nos.5 and 6 are concerned, this court has already held under Issue No.1 that the plaintiffs have failed to prove them to be joint family properties. Hence Issue No.2 is answered ***partly in the Affirmative.***

31. **Issue No.3:-** The burden of this issue lies upon defendant No.1, he has sought affirmative relief by way of counter claim. In the counter claim, defendant No.1 has contended that his father late Veerabhadrappa @ Basalingappa was entitled to 1/4th share in the ancestral joint family properties, namely, Item Nos.1 to 4 and 7 to 9. It is further pleaded that the defendant No.2 and 3, who are his sisters have relinquished their rights in his favour and consequently he has become entitled to the entire 1/

4th share of his branch. DW.1 has reiterated these pleadings in his examination-in-chief. However, except making bald assertion, he has not produced any registered relinquishment deed, release deed, family settlement partition deed or any other legal admissible documents evidencing the alleged relinquishment by defendant Nos.2 and 3. Under Section 17 of the Registration Act, relinquishment of an interest in the immovable property of the value exceeding Rs.100/- requires compulsory registration. In the absence of a registered release deed mere oral assertion that defendant Nos.2 and 3 relinquished their right cannot confer conclusive title upon the defendant No.1.

32. The defendant Nos.2 and 3 remained ex-parte in the present proceedings. However, merely because they have not contested the suit, court cannot presume that they have relinquished their legal rights. Such relinquishment has to be proved by cogent documentary evidence. At the same time, defendant No.1 has consistently admitted that Item Nos.1 to 4 and 7 to 9 are ancestral joint family properties that his father branch is entitled to 1/ 4th share. The plaintiffs have also asserted the same. Thus, there is absolutely no dispute with the

branch Veerabhadrappe @ Basalingappa is entitled to 1/4th share in those properties. The only question is whether defendant No.1 alone is entitled to the said share. Since there is no legal admissible evidence proving relinquishment by defendant No.2 and 3, the defendant No.1 cannot claim exclusive ownership over the entire 1/4th share. At the most he can represent the branch of Veerabhadrappe @ Basalingappa subject to the rights of the defendant Nos.2 and 3. Therefore, the contention of defendant No.1 that he alone has become exclusive owner of entire 1/4th share cannot be accepted. Accordingly, Issue No.3 is answered partly in the affirmative, holding that defendant No.1 has proved that the branch of late Veerabhadrappe @ Basalingappa is entitled to 1/4th share in Item Nos.1 to 4 and 7 to 9. But he failed to prove that he alone is exclusively entitled to the entire said share. Accordingly, Issue No.3 is answered in the ***party in the Affirmative.***

33. **Issue No.4:-** This issue pertains to the exclusive ownership claimed by the defendant Nos.1 and 4 over the Item Nos.5 and 6. The specific defence of defendant No.1 that these properties originally belonged to his mother, Karibasavva, who inherited them from her parental family.

After her death on 18-03-1997, he claims to have succeeded to the said properties and therefore contends that the plaintiffs and defendant No.4 have right over them.

34. To substantiate his defence, defendant No.1 has relied upon Ex.D1 to D4. Ex.D1 is the death extract of Karabasavva. Ex.D2 is the Mutation Entry No.6304 showing mutation of the revenue records in favour of defendant No.1 after the death of his mother Karibasavva. More importantly, Ex.P68 and P69, which are produced by the plaintiffs themselves, establish beyond doubt that Item Nos.5 and 6 originally belonged to the paternal family of Karibasavva and that she inherited the same from her father. Thus, the source of succession of Item No.5 and 6 stands proved. Consequently, this court has already held under Issue No.1 these properties cannot be treated as ancestral joint family properties of the family of Mallappa Basappa Koldur. However, further contention of defendant No.1 that, he became absolute owner of Item Nos.5 and 6 cannot be accepted.

35. Ex.D2 mutation in the revenue records it is well settled that, mutation entries neither creates nor

extinguish title. They are maintained only for fiscal purpose. The defendant No.1 himself admits Karibasavva left behind the defendant Nos.2 and 3 in addition to herself. Therefore, under the provisions of Hindu Succession Act, all Class-I heirs succeeded simultaneously unless there exist in valid testamentary dis-possession or registered family arrangement. In the present case on hand, the defendant No.1 himself has produced Ex.D3 and D4 namely, Judgment and Decree in O.S. No.110/2018. Ex.D3 and D4 assumes considerable significance. These documents are the certified copies of judgment and decree in O.S. No.110/2018 instituted by defendant No.3 against the defendant Nos.1 and 2 seeking partition in respondent of Item No.5 and 6 properties. The competent Civil court has already adjudicated the rights of the parties and declared defendant No.3 entitled to 1/3rd share in those properties. The said judgment has neither been challenged nor shown to have been set aside. Therefore, it has attained finality and binds defendant No.1. Once a competent Civil Court has already declared defendant No.3 entitled to 1/3rd share, defendant No.1 cannot once again contend in the present proceedings that he is the exclusive of Item Nos.5 and 6. The plea of exclusive ownership taken by the defendant No.1 is therefore

contrary to the decree already in O.S. No.110/2018. Consequently, though defendant No.1 has successfully established that Item Nos.5 and 6 are not ancestral joint family of the plaintiffs' family, he has failed to prove that he alone is the absolute owner thereof. The evidence on record rather establishes that Item No.5 and 6 constitute the inherited properties of late Karibasavva in which her legal rights have succession right in accordance with law. Hence Issue No.4 is answered in the **Negative**.

36. **Issue No.5:-** It is specific contention of defendant No.4 the present case is barred by principle of *res-judicata* in view of the Judgment and Preliminary decree passed in O.S. No.168/2012. However, the burden of proving said plea squarely rests upon defendant No.4. It is a settled principle of law that, a plea of *res-judicata* cannot be accepted merely on the basis of the pleadings. The parties raising such plea is require to produce the pleadings, issues and judgment of the former suit so as to enable the court to ascertain whether the matter directly and substantially in issue in the subsequent suit was directly and substantially in issue in the former suit and whether it was finally decided between the same parties or their privies.

37. In the present case, though the plaintiffs and defendant No.4 have referred to O.S. No.168/2012 in their respective pleadings, neither party has produced the certified copies of the plaint, written statement, issues, judgment and decree passed in the said suit. Therefore, in the absence of said records, this court unable to ascertain all the suit properties in the present suit were the subject matter of OS No.168/2012, whether the issues raised therein are identical to those raised in the present suit and whether the present relief is completely covered by the earlier decree. Therefore, in the absence of the best evidence, this cannot record finding on that the present suit is wholly barred by the principle of *res-judicata* under Section 11 of C.P.C. Hence Issue No.5 is answered in the **Negative.**

38. **Issue No.6:-** In the present case, the plaintiffs have sought a decree for partition and separate possession in respect of all the suit properties contending that the properties are the ancestral joint family properties of descendants of late Mallappa Basappa Koldur. In a suit for partition, it is a settled principle of law that all co-sharers and coparceners and persons having an apparent in the suit properties are necessary parties. Any decree

passed in their absence would neither be complete nor binding upon them and would result in multiplicity of proceedings.

39. In the present case, on careful scrutiny of the documentary evidence produced by the plaintiffs themselves, particularly the RTC extracts relating to suit Item Nos.8 to 10, it is noticed that apart from the names of the present parties, the names of Shri. Adivappa S/o Basavanneppa Koladur, Sri. Basangouda S/o Channappa Koladur and Shri. Rudrappa S/o Goudappa Koladur are also entered in the revenue records. Hence, the existence of their names in the RTC extracts prima facie indicates that they have some rights, title or interest in the said properties.

40. Surprisingly, the plaintiffs have neither disclosed the identity and relationship of the aforesaid persons in the genealogy furnished in the plaint nor they explained as to how their names came to be entered in the revenue records. There is absolutely no pleading regarding the status of these persons or the nature of their interest in the suit properties. PW.1 has also not offered any explanation in her evidence regarding the omission to

implead them as parties to the suit. When the plaintiffs themselves have produced the revenue records disclosing the names of persons other than the parties to the suit, the burden was upon them to explain their relationship with the family and to establish why they were not impleaded. However, the plaintiffs have remained completely silent in this regard. Such suppression of material facts creates serious doubt of about the completeness of the genealogy and the constitution of the alleged joint family pleaded by them.

41. It is trite that a Court cannot pass an effective preliminary decree for partition in the absence of all necessary parties. As such, a decree would directly affect the rights of person who have not been afforded an opportunities of being heard. Hence any decree passed in their absence is likely to be become inexecutable and would inevitably lead to further litigation.

42. Though, the defendant No.4 has taken the plea that the suit is barred by the principle of *res-judicata*, neither party has produced the certified copies of the pleadings, Judgment and decree passed in O.S. No.168/2012 to establish that all the suit schedule

properties involved in the present suit were the subject matter of the earlier proceedings. Therefore, the plea of *res-judicata* cannot be accepted for want of proof. Nevertheless, the omission on the part of the plaintiffs to implead the persons whose name are reflected in the RTC extracts of Item No.8 to 10 goes to the root of the matter. In the absence of those persons, no complete and effective adjudication of the rights of all the interest parties is possible. The suit, therefore suffers from the defect of non-joinder of necessary parties. Therefore, this court is of the considered opinion that the plaintiffs have failed to establish their entitlement to the relief of partition and separate possession in the manner sought. On these grounds the suit is liable to be dismissed, leaving it open to the plaintiffs, if so advise to seek appropriate relief in accordance with law by impleading all necessary parties. Hence Issue No.6 is answered in the **Negative.**

43. **Issue No.7:-** In view of my findings on Issue No.1 to 6, I proceed to pass the following:

ORDER

The suit filed by the plaintiffs is
hereby dismissed.

The counter claim filed by the defendant No.1 is also dismissed.

In the circumstances of the case, there shall no order as to costs.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and computerized by him, corrected by me, signed and pronounced in the open Court on this the 17th Day of July, 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

ANNEXURE

I) LIST OF WITNESS EXAMINED BY THE PLAINTIFFS:

PW-1: Smt. Nirmala W/o Mahadev Bailappanavar

II) LIST OF DOCUMENTS MARKED BY THE PLAINTIFFS:

Ex.P1 to P10: RTC extracts

Ex.P11: ME No.1443

Ex.P12: ME No.6647

Ex.P13: MR No.T6/2017-18

Ex.P14 to P24: Form No.7, 7-A and 12

Ex.P25 to P45: RTC extracts

Ex.P46: ME No.6304

Ex.P47: ME No.2162

Ex.P48: ME No.1155

Ex.P49: ME No.1130

Ex.P50: ME 1419 and 1420

Ex.P51: ME No.1580

Ex.P52: ME No.683
Ex.P53: ME No.1598
Ex.P54: ME No.1891
Ex.P55: ME No.4207
Ex.P56: ME No.1086
Ex.P57: ME No.1506
Ex.P58 : ME No.317
Ex.P59 : ME No.2162
Ex.P60 : ME No.3547
Ex.P61 : ME No.280
Ex.P62 : ME No.521
Ex.P63 : ME No.3657
Ex.P64 : ME No.1103
Ex.P65 : ME No.1626
Ex.P66 : ME No.1454
Ex.P67 : ME No.6076
Ex.P68 : ME No.6128
Ex.P69 : ME No.4208
Ex.P70 to P75: Form Nos.7, 2-A and 12
Ex.P76 : MR No.T6
Ex.P77 : RTC extract

III) LIST OF WITNESSES EXAMINED BY THE DEFENDANTS:

DW.1: Shri. Basavaraj Veerabhadrapa @ Basalingappa
Koladur

IV) LIST OF DOCUMENTS MARKED BY THE DEFENDANTS:

Ex.D1: C.C. of death certificate of Karabasavva
Ex.D2: C.C. of ME No.6304
Ex.D3: C.C. of Judgment in OS No.110/2018
Ex.D4: C.C. of Decree in O.S. No.110/2018

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

