

KABG310013862013



IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C.,
AT: BAILHONGAL

:Present:

Smt. Rohini D. Basapur .,
LL.M.

Prl. Civil Judge & JMFC, Bailhongal.

DATED THIS THE 11th DAY OF AUGUST 2026

O.S.NO.295/2013

1. Shivanagouda Babagouda Patil
Age: 60 years, Occ: Agriculture
R/o: Madanabhavi, Tq: Bailhongal

.....Plaintiffs

[By Sri. MYS Advocate]

-V/s-

1. Basavantaray Babagouda Patil
(Since dead by his Lr's
- 1.a Smt. Kallavva W/o Basavataray Patil
Age: 65 years, Occ: Household work
R/o: Madhanabhavi, Tq: Bailhongal
- 2.b Shri. Ninganagouda S/o Basavantaray Patil
Age: 50 years, Occ: Private job
R/o: Basava Colony, Pant Nagar, Balekundri

Tq & Dist: Belagavi

- 1.c Shri. Shankaragouda S/o Basavantaray Patil
Age: 46 years, Occ: Agriculture
R/o:Madanabhavi, Tq: Bailhongal
- 1.d Shri. Iranagouda S/o Basavantaray Patil
Age: 42 years, Occ: Agriculture
R/o:Madanabhavi, Tq: Bailhongal
- 1.e Smt. Doddavva @ Drakshayani W/o Arjun Deyannavar
Age: 38 years, Occ: Household work
R/o: Mattikoppa, Tq: Bailhongal, Dist: Belagavi
Now residing at Basava colony, Pant nagar,
Balekundri, Tq & Dist:Belagavi
2. Vasanagouda Babagouda Patil
Age: 57 years, Occ: Agriculture
R/o:Madanabhavi, Tq: Bailhongal
3. Babagouda Vasanagouda Patil
Age: 29 years, Occ: Agriculture
R/o:Madanabhavi, Tq: Bailhongal
4. Naganagoda Vasanagouda Patil
Age: 26 years, Occ: Agriculture
R/o:Madanabhavi, Tq: Bailhongal
5. Ninganagouda Basavantaray Patil
Age: 38 years, Occ: Military Service
R/o:Madanabhavi, Tq: Bailhongal

6. Shankaragouda Basavantaray Patil
Age: 35 years, Occ: Agriculture
R/o: Madanabhavi, Tq: Bailhongal
7. Iranagouda Basavantaray Patil
Age: 32 years, Occ: Agriculture
R/o: Madanabhavi, Tq: Bailhongal
8. Smt. Sushila W/o Gurupadappa Dodamani
Age: 74 years, Occ: Housewife
R/: Yenagi, Tq: Saudatti

.....Defendants

[D-1 to 7 Shri. B. R Alasandi Advocate)

Date of Institution of the suit	27.08.2013		
Nature of the suit	Partition and separate possession		
Date of commencement of evidence	20.10.2014		
Date of judgment	11.08.2026		
Total duration	Year/s	Month/s	Day/s
	12	11	15

(SMT. ROHINI D BASAPUR)
Prl. CIVIL JUDGE & J.M.F.C.,
Bailhongal.

JUDGMENT

The plaintiff has instituted the present suit seeking partition and separate possession of his alleged share in the suit schedule properties contending that the properties are the ancestral joint family properties of himself and the defendants.

2. The case of the plaintiff, in brief, is that the propositus of the family was one Babagouda Basavantappa Patil, who had three sons namely Basavantaray (Defendant No.1), Shivanagouda (plaintiff) and Vasanagouda (Defendant No.2). Babagouda died about 38 years prior to the institution of the suit and his wife Kashawwa also died subsequently. According to the plaintiff, Defendant Nos.3 and 4 are the sons of Defendant No.2 whereas Defendant Nos.5 to 7 are the sons of Defendant No.1. Certain Gram Panchayat properties stand in their names and therefore they were impleaded as parties.

3. It is pleaded that the parties are governed by Hindu Mitakshara Law and that all the suit schedule properties constitute ancestral joint family properties. Babagouda is

stated to have acquired some properties from the income of the joint family while some other properties were purchased in the names of different family members from the income of the joint family.

4. The plaintiff further contends that there has never been any partition by metes and bounds and that all the members have continued as members of the joint family though residing separately. According to him, Defendant No.2 was managing the affairs of the family as Kartha. On 15.07.2013 the plaintiff demanded partition and separate possession of his legitimate share, but the defendants refused. Village elders also attempted reconciliation, which failed. Hence, the present suit came to be filed.

5. After service of summons, defendant No.1 to 7 appeared through their counsel. Defendants No.1 and 2 filed their written statement. During pendency of suit, defendant No.1 dead. Hence his L.R's are brought on record.

Defendant Nos.1 and 2 filed a common written statement denying the plaint averments. They contend that the suit is

not maintainable either in law or on facts. It is specifically pleaded that several suit properties have not been properly described and that some survey numbers are incapable of identification for want of complete particulars.

6. It is further contended that the genealogy furnished by the plaintiff is incomplete as Babagouda had one daughter namely Smt. Sushila, who has been deliberately omitted from the genealogy though she is a Class-I heir. The defendants specifically deny that all the suit schedule properties are ancestral joint family properties. According to them, several properties are self-acquired properties of different defendants. The defendants further contend that after the death of Babagouda, an oral partition took place in the year 1982 in the presence of village elders, whereunder all the agricultural lands and house properties were divided and each brother entered into separate possession of his respective share. Subsequently, mutation entries were effected on the basis of the said partition and the parties have been separately enjoying their respective properties for several decades.

7. It is further pleaded that Smt. Sushila, being the daughter of Babagouda, is a necessary party and in her absence the suit is bad for non-joinder of necessary parties. The defendants have also pleaded that the plaintiff has deliberately omitted Gram Panchayat Property No.210/B and a tractor standing in his own name from the hotchpot and therefore the suit for partial partition is not maintainable.

8. They further contend that Gram Panchayat No.1147/6, GP No.55/D and GP No.370/8 are self-acquired properties purchased after the partition and the plaintiff has absolutely no right over them. Accordingly, they sought dismissal of the suit.

9. On the basis of the pleadings, the following issues were framed:

ISSUES

1. Whether the plaintiff proves that the suit properties are ancestral joint family properties?

2. Whether the plaintiff proves that he is entitle for the share in the suit properties? If so, what would be his share?

3. Whether the defendants prove that there was an earlier partition between the parties?

4. Whether the defendants prove that the suit suffers from non-joinder of necessary parties and non-inclusion of the other properties of the joint family?

5. Whether the plaintiff is entitle for the relief as sought for?

6. What Order or Decree?

10. In support of his case, the plaintiff examined himself as PW-1 and relied upon Ex.P1 to Ex.P18.

11. On behalf of the defendants, Defendant No.2 examined himself as DW-1 and relied upon Ex.D1 to Ex.D71.

12. This Court answers the above issues as under:

Issue No.1: In the Negative

Issue No.2: In the Negative

Issue No.3: In the affirmative

Issue No.4 : Partly in the affirmative

Issue No.5 : In the Negative

Issue No.6 : As per final order, for the following:

REASONS

13. Issue No.1: Whether the plaintiff proves that the suit properties are ancestral joint family properties?

The burden of proving this issue squarely rests upon the plaintiff. It is the specific case of the plaintiff that all the suit schedule properties are the ancestral joint family properties of late Babagouda Basavantappa Patil and his sons and that there has never been any partition by metes and bounds. On the contrary, the defendants have denied the said contention by asserting that there had already been an oral partition in the year 1982, which was subsequently acted upon by all the parties, and that some of the suit schedule properties are their exclusive self-acquired properties.

14. In order to establish his case, the plaintiff has examined himself as PW-1 and relied upon Ex.P1 to Ex.P18. Ex.P1 to Ex.P10 are RTC extracts standing in the name of

Vasanagouda Babagouda Patil. Ex.P11 is the RTC extract wherein the name of **Nanjegiri Mallappa Fakkirappa** is also entered jointly. Ex.P12 to Ex.P18 are tax paid receipts. PW-1 has reiterated the averments made in the plaint and deposed that all the suit schedule properties are ancestral joint family properties inherited from their father Babagouda and that there has never been any partition among the parties. According to him, although the parties have been residing separately, they have continued to remain members of a joint Hindu family and have been jointly enjoying the suit properties. He further stated that despite his demand for partition and intervention of the village elders, the defendants refused to allot his legitimate share.

15. However, the cross-examination of PW-1 assumes considerable significance. PW-1 admitted that after the death of his father, the brothers have been residing separately and are maintaining **separate ration cards and separate voter identity cards**. He also admitted that separate Gram Panchayat numbers have been assigned to different residential

portions occupied by the parties. Though separate residence by itself may not constitute partition, such long-standing separate enjoyment is undoubtedly a relevant circumstance while appreciating the rival contentions regarding previous partition.

16. PW-1 has further admitted that Gram Panchayat Property No.210/B standing in his own name has not been included in the suit schedule. Though he attempted to contend that the said property was purchased out of his independent cattle business, he has candidly admitted that he has not produced any document whatsoever relating to such business, nor has he produced the sale deed under which the property was allegedly acquired. A person seeking partition is expected to bring all the alleged joint family properties into the common hotchpot. The omission of valuable immovable and movable properties without satisfactory explanation casts serious doubt on the bona fides of the plaintiff.

17. On the other hand, Defendant No.2 examined himself as DW-1 and produced Ex.D1 to Ex.D71. His evidence

consistently discloses that after the death of Babagouda, an oral partition took place in the year 1982 in the presence of village elders, pursuant to which the agricultural lands and residential houses were divided among the three brothers and each branch has been separately cultivating and enjoying its respective share. He has further deposed that nearly five years thereafter, the said partition was reported to the revenue authorities and mutation entries were effected accordingly. The documentary evidence produced by the defendants lends considerable support to this version. Ex.D69, being the Mutation Register extract, clearly indicates that mutation entries were effected recognizing the partition among the brothers. Though mutation entries do not by themselves confer title, they are relevant evidence to show long-standing possession and enjoyment. Significantly, the plaintiff has admitted during that he has never challenged Ex.D69 before any competent authority. The unchallenged mutation entry, which has remained in force for decades, carries considerable

evidentiary value in appreciating the defence plea of prior partition.

18. It is also relevant to note that prior to the statutory amendment making registration compulsory for certain partition instruments, an oral partition under Hindu Law followed by separate possession and consequential mutation was legally recognized. Therefore, merely because the defendants have not produced a registered partition deed, the plea of oral partition cannot be rejected outright. The subsequent conduct of the parties and the contemporaneous revenue records become highly relevant. In the present case, the admitted separate residence, separate ration cards, separate voter identity cards, separate Gram Panchayat numbers and the unchallenged mutation entry at Ex.D69 together probabilise the defence version.

19. The defendants have further relied upon Ex.D66 to Ex.D68, which are registered sale deeds executed subsequent to the death of Babagouda and after the alleged oral partition. Particularly, Ex.D66 relates to property earlier bearing GP

No.53/C and subsequently renumbered as GP No.55/D, which admittedly stands in the individual name of Defendant No.2 and not in the name of the Kartha or the joint family. Likewise, Ex.D67 and Ex.D68 also disclose independent acquisitions made after the alleged partition. The plaintiff has not produced any evidence whatsoever to establish that these acquisitions were made from the income of any subsisting joint family nucleus. Mere relationship between the parties does not give rise to a presumption that every acquisition made by a coparcener is joint family property. The burden lies upon the plaintiff to establish the existence of a sufficient joint family nucleus capable of acquiring those properties, which burden has not been discharged in the present case.

20. In some of the RTC's extracts produced by plaintiff, the mode of acquisition is shown as '*afsaat vatni*' and tax paid receipts stand in different persons and not just in the name of Karta. Thus, upon an overall appreciation of the oral and documentary evidence, this Court is of the considered opinion that the plaintiff has failed to establish that all the suit

schedule properties continued to remain ancestral joint family properties available for partition on the date of the suit. On the contrary, the evidence placed by the defendants probabilises the existence of an earlier partition and establishes that certain properties were independently acquired after such partition. Accordingly, **Issue No.1 is answered in the Negative.**

21. Issue No.3: Whether the defendants prove that there was an earlier partition between the parties?

The burden of proving this issue squarely rests upon the defendants. It is the specific defence of Defendant Nos.1 and 2 that after the demise of the propositus Babagouda in the year 1980, disputes arose among the brothers and, therefore, in the year 1982, an oral family partition was effected in the presence of the respectable elders of the village. According to the defendants, under the said partition, the agricultural lands as well as the residential houses were divided among the three brothers, each of them took possession of his respective share and thereafter they have been residing and enjoying

their respective properties independently. It is further contended that the said partition was subsequently reported to the revenue authorities and mutation entries were effected in accordance with the partition.

22. In support of the said contention, Defendant No.2 has entered the witness box as DW-1 and has categorically deposed regarding the oral partition of the year 1982. He has further deposed that after the partition, separate possession of the properties was delivered to each brother and the revenue records were subsequently mutated in their respective names. During his cross-examination, nothing substantial has been elicited to discredit his testimony regarding the earlier partition. Mere suggestions denying the partition have been made, which have been specifically denied by the witness. No material contradiction has been brought on record to render his testimony unreliable.

23. The oral evidence of DW-1 receives substantial corroboration from the documentary evidence produced by the defendants. Ex.D69, the Mutation Register Extract, clearly

discloses that the names of the parties came to be entered separately pursuant to the partition. Admittedly, the plaintiff has neither challenged the said mutation entry before the competent revenue authorities nor sought any declaration in the present suit that the said mutation is illegal, void or not binding upon him. Though a mutation entry by itself does not confer title, it is a relevant piece of evidence to show the manner in which the parties have been enjoying the properties. An unchallenged mutation entry which has remained in force for decades certainly carries considerable evidentiary value while appreciating the plea of an earlier partition.

24. The defendants have also relied upon Ex.D70, the General Meeting Records of the Gram Panchayat, which indicates that separate Gram Panchayat numbers came to be assigned to the residential portions occupied by the respective branches of the family. This documentary evidence lends further assurance to the defence version that the oral partition had already been acted upon and implemented by the parties.

The admissions made by PW-1 during his cross-examination also assume significance. PW-1 has admitted that the brothers have been residing separately for several years and are maintaining separate ration cards, separate voter identity cards and separate kitchens. He has also admitted that separate Gram Panchayat numbers have been assigned to the houses occupied by the different branches. Though he denied that these arrangements were made pursuant to the partition of 1982, these admitted circumstances unmistakably establish that the parties have not been living as members of a joint family for a long period. Such conduct is wholly consistent with the defence plea that the oral partition had already been effected and acted upon.

25. The defendants have further produced Ex.D66, Ex.D67 and Ex.D68, the registered sale deeds, to establish that after the partition each branch independently acquired properties out of its own earnings. Significantly, Ex.D66, relating to the property earlier bearing GP No.53/C and subsequently renumbered as GP No.55/D, stands exclusively

in the name of Defendant No.2 and not in the name of the Kartha or the joint family. Likewise, the properties covered under Ex.D67 and Ex.D68 were also purchased after the demise of Babagouda and after the alleged partition. The plaintiff has failed to establish that these acquisitions were made from any joint family nucleus. On the contrary, the subsequent acquisitions by individual members probabalise the defence case that the joint family status had already been severed.

26. If really no partition had taken place, the plaintiff would have challenged the mutation entry reflected in Ex.D69, which has remained unquestioned for several decades. The failure of the plaintiff to question the mutation proceedings at the earliest opportunity lends further support to the defence version. It is true that the defendants have not produced a registered partition deed. However, merely because there is no registered instrument, the plea of partition cannot be rejected. The defendants have specifically pleaded an oral partition. It is well settled that prior to the amendment requiring compulsory

registration of certain partition instruments, an oral partition under Hindu Law, if subsequently acted upon, was legally valid and binding. Therefore, the absence of a registered partition deed is not fatal to the defence, particularly when the oral partition is corroborated by long-standing mutation entries, separate possession, separate residential arrangements and subsequent independent acquisitions.

27. On an overall appreciation of the oral and documentary evidence, this Court is satisfied that the defendants have successfully established that an oral partition took place in the year 1982 and that the same has been acted upon by all the parties. Hence, the plaintiff has failed to produce any convincing evidence to rebut the same. Accordingly, Issue No.3 is answered in the Affirmative.

28. Issue No.4: Whether the defendants prove that the suit suffers from non-joinder of necessary parties and non-inclusion of the other properties of the joint family?

The burden of proving this issue lies upon the defendants. It is their specific contention that the suit is not

maintainable as all the necessary parties have not been impleaded and all the alleged joint family properties have not been brought into the common hotchpot. According to the defendants, unless all the necessary parties and all the joint family properties are included in a suit for partition, an effective and complete decree cannot be passed. It is relevant to note at the outset that the defendants had originally contended that Smt. Sushila, the daughter of late Babagouda, had not been impleaded in the suit. However, the records disclose that during the pendency of the proceedings, she was subsequently brought on record. Therefore, the objection regarding her non-joinder no longer survives for consideration and the said contention cannot be accepted.

29. However, the defendants have raised another substantial objection regarding Ex.P11. The RTC extract produced by the plaintiff itself discloses that the property covered under Ex.P11 stands jointly in the name of Nanjegiri Mallappa Fakkirappa. During his cross-examination, PW-1 has admitted that there is no dispute between their family and

Nanjegiri. Despite such admission and despite producing Ex.P11, the plaintiff has not chosen to implead Nanjegiri Mallappa Fakkirappa as a party to the present suit. Since any decree passed in respect of a jointly held property would directly affect the rights and interests of the said person, he is undoubtedly a proper party. In his absence, no effective adjudication can be made regarding the property covered under Ex.P11. Therefore, to that extent, the suit suffers from non-joinder of a proper party.

30. The defendants have further contended that the plaintiff has deliberately omitted certain joint family properties from the hotchpot. The evidence on record lends considerable support to this contention. PW-1 has unequivocally admitted that Gram Panchayat Property No.210/B stands in his name. Though he attempted to explain that the said property was purchased out of his independent cattle trading business, he has admitted that he has not produced the sale deed, accounts, licence or any other documentary evidence to establish either the alleged business or the independent

source of income. Mere oral assertion is wholly insufficient to hold that the said property is his exclusive self-acquired property.

31. If, according to the plaintiff, the family continued to remain joint till the institution of the suit, omission of such valuable assets from the hotchpot assumes significance. A suit for partition should ordinarily include all the joint family properties so that a comprehensive and final partition can be effected. Suppression or omission of material properties without satisfactory explanation renders the claim doubtful and disentitles the plaintiff to the equitable relief of partition. The defendants have also contended that certain properties standing in their names are their self-acquired properties. In this regard, Ex.D66, Ex.D67 and Ex.D68 assume significance. These registered sale deeds disclose that the properties were purchased after the demise of late Babagouda and after the oral partition pleaded by the defendants. Particularly, Ex.D66 relates to property which was earlier assigned GP No.53/C and subsequently renumbered as GP No.55/D. The said

property admittedly stands in the exclusive name of Defendant No.2 and not in the name of the Kartha or the joint family. The plaintiff has failed to establish that these acquisitions were made from any existing joint family nucleus. Consequently, the defendants have successfully established that these properties cannot be treated as joint family properties merely because of the relationship between the parties.

32. Accordingly, this Court holds that the defendants have partly proved this issue. They have failed to establish non-joinder so far as Smt. Sushila is concerned, since she has subsequently been impleaded. However, they have successfully proved that the suit suffers from the non-joinder of Nanjegiri Mallappa Fakkirappa in respect of the property covered under Ex.P11 and that the plaintiff has failed to include all the properties in the common hotchpot. **Accordingly, Issue No.4 is answered Partly in the Affirmative.**

33. Issue 2 and 5: as both issues are interlinked to each other, they are taken up together common consideration.

In view of the findings recorded on Issue Nos.1 to 4, this Court holds that the plaintiff has failed to establish that the suit schedule properties are liable for fresh partition. The defendants have successfully proved the earlier partition and the plaintiff has failed to include all the proper parties and properties in the hotchpot. Consequently, the plaintiff is not entitled to the relief of partition and separate possession as sought. Hence, Issue No.2 and 5 is answered in the Negative.

34. Issue No.6: In view of the above discussion I proceed to pass the following:

ORDER

The suit of the plaintiff for partition and separate possession is dismissed.

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

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer, typed by her, corrected by me and then pronounced in the open court on this the 11th day of August 2026).

(SMT. ROHINI D.BASAPUR)
PRL. CIVIL JUDGE & J.M.F.C., BAILHONGAL

ANNEXURE**1. Witnesses examined on behalf of the plaintiff/s**

P.W.1 : Shri. Shivanagouda Babagouda Patil

2. List of the documents exhibited on behalf of plaintiff/s

Ex.P-1 to 11 : RTC's

Ex.P.12 to 18 : Tax paid receipts

List of witnesses examined on behalf of defendant/s:

DW-1: Sri. Vasanagouda Babagouda Patil

List of exhibits marked on behalf of defendant/s:

Ex.D.1 & 2 : Certificate issued by Murakibavi Primary

Agricultural Credit Cooperative Society Limited

Ex.D.2 to 65 : Tax paid receipts

Ex.D. 66 to 68 : Sale deed

Ex.D.69 : MR extract

Ex. D.70 : General Meeting Records

Ex.D. 71 : Kabuli Patra

Sd/-

(SMT. ROHINI D. BASAPUR)

PRL CIVIL JUDGE & J.M.F.C., BAILHONGAL

(Judgment pronounced in the open court vide separate order)

ORDER

The suit of the plaintiff for partition and separate possession is dismissed.

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

Draw decree accordingly.

**(SMT. ROHINI D.BASAPUR)
PRL. CIVIL JUDGE & J.M.F.C., BAILHONGAL**