

KABG410011882014



IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.

Present : SRI.ZAHEER ATANUR
B.Sc., LL.B.,

C/C II ADDL.CIVIL JUDGE & JMFC, CHIKODI.

Dated this the 10th Day of June, 2026

ORIGINAL SUIT No.292/2014

Plaintiff :

1. **Smt.Anusaya @ Annavva w/o Suresh
Gharabude,**
Age: 32 years, Occ: Agriculture &
Home Maker,
R/o: Jainapur, Tal: Chikodi.
(By **Shri.B.R.Y. Advocate**)

V/s

Defendants :

1. **Shri.Guruling Nijappa Chougala,**
Age: 60 years, Occ: Agriculture,
R/o: Donawad, Tal: Chikodi.
2. **Smt.Sushila Iragouda Patil,**
Calling herself as w/o Guruling Chougala,
[Since dead by her L.Rs.]

3. Shri.Raju Guruling Chougala,
Age: 25 years, Occ: Agriculture,
R/o: Donawad, Tal: Chikodi.

4. Smt.Manjula W/o Rajashekhar Bande,
Age: 28 years, Occ: Household work,
R/o: Near Bust-stand, Hukkeri.

5. Miss.Renuka D/o Guruling Chougala,
Age: 22 years, Occ: Household work,
R/o: Donawad, Tal: Chikodi.

**(D.1, 2, 4 – ex-parte
(D.3 & 5 by Shri.V.J.G. Advocate)**

Date of institution of suit	7.7.2014
Nature of suit	Partition and Separate Possession and Perpetual Injunction
Date of commencement of recording of evidence	8.8.2018
Date of closing of recording of evidence	1.7.2024
Date of pronouncement of judgment	10.6.2026
Total duration	Years Months Days 11 11 03

(Zaheer Atanur)
C/C II Addl. Civil Judge & JMFC,
Chikodi.

-:: JUDGMENT ::-

This is a suit filed by the plaintiff seeking relief of partition and separate possession of the half share in the suit schedule – A and B properties.

Suit Schedule – A

The suit property is the Eastern side 03 Acres 13 Guntas 12 Annas of agricultural land out of R.S.No.26/4 totally measuring 06 Acres 28 Guntas 9 Annas, (P.K. 01 Gunta), situated at Donawad village, Tal: Chikodi. There is a farmhouse in suit agricultural land.

Suit Schedule – B

The suit properties are the house and open space situated at Donawad village in Chikodi Taluka as described below:-

Sl.No	VPC No.	Nature of property	Share	Market Value
1	243	House	1/4th	Rs.40,000/-
2	244	House	1/6th	Rs.30,000/-
3	236A	Open space	1/4th	Rs.10,000/-

2. Brief facts of the case are as follows:-

That late Nijappa is the propositus of the family of plaintiff and defendant No.1. Defendant No.1 is the father of plaintiff and the mother of plaintiff Paravva is the legally wedded wife, who has died in the year 1993.

3. The defendant No.2 is legally wedded wife of Iragouda Ramagouda Patil of Bennihalli and during the subsistence of the wedlock of defendant No.2 with Iragouda Ramagouda Patil a son by name Ramagouda and a daughter by name Shivalavva are born.

4. During the subsistence of marriage of mother of plaintiff with defendant No.1, the defendant No.2 came in contact with defendant No.1 and out of bigamous relationship of defendant Nos.1 and 2, the defendant Nos.3 to 5 are born.

5. The suit schedule properties are ancestral joint family properties of plaintiff and defendant No.1, who are jointly enjoying the suit properties. The suit schedule properties are standing in the name of defendant No.1, as the relationship between the plaintiff and defendant Nos.2 to 5 is not cordial,

they are denying the rights of plaintiff in the suit schedule properties and refused to effect partition due to which the plaintiff is constrained to file the suit wherein she has prayed to allot half share in the suit schedule properties.

6. Pursuant to service of summons, defendants No.1, 2 and 4 remained *ex-parte*, defendant No.3 has appeared through his counsel and filed written statement, defendant No.5 has adopted the written statement of defendant No.3.

7. The contentions of defendant Nos.3 and 5 in the written statement are as follows:-

That the plaint averments are specifically denied by the defendants No.3 and 5 and it is contended that the genealogy stated by the plaintiff is not true and correct, it is also denied that the late Nijappa is propositus of the family of plaintiff and defendant No.1. Marriage of defendant No.1 with mother of plaintiff is also specifically denied.

8. It is further submitted that defendant No.2 is legally wedded wife of defendant No.1 and defendants No.3 to 5 are legitimate children of defendants No.1 and 2. The allegations

of bigamous relationship of defendant Nos.1 and 2 is denied, the defendant No.3 and 5 have also denied that the defendant No.2 is legally wedded wife of Iragouda Ramagouda Patil and in the said wedlock Ramagouda and Shivalavva are born to defendant No.2.

9. Averments of plaintiff being in joint possession of suit properties along with defendants is also specifically denied. It is also contended that the valuation made by the plaintiff in respect of suit schedule properties is undervalued, the suit schedule – A property is valued more than Rs.20,00,000/- and suit schedule – B properties are valued more than Rs.8,00,000/-, such being the facts this Court has no jurisdiction to try this case. Therefore it is prayed to dismiss the suit.

10. Based on plaint averments and contentions raised in written statement, this Court has framed following:

ISSUES

1. Whether the defendants No.3 and 5 prove that, this Court have no pecuniary jurisdiction to try the suit?

2. Whether the plaintiff proves that, the suit schedule properties are ancestral joint family properties of plaintiff and defendants and they are in joint possession of the same?

3. Whether the plaintiff proves that, she is entitled for the relief of partition? And if so, what share she is entitled to?

4. What order or decree?

11. My learned predecessor has decided Issue No.1 as preliminary Issue. Defendant No.3 has filed his affidavit in lieu of examination-in-chief and examined as DW1, produced 02 documents, marked as Ex.D1 and Ex.D2. Counsel for plaintiff has cross-examined DW1. After considering the Issue No.1 on merits, my learned predecessor has held the Issue No.1 in the Negative. Therefore, now it does not survive for consideration.

12. Further, in order to prove her case the plaintiff has filed her affidavit in lieu of examination-in-chief and examined herself as PW.1, produced 10 documents marked as Exs.P.1 to P.10. Another witness by name Kashavva Parappa Biskop

is examined as PW.2. The counsel for defendants No.3 and 5 has cross examined PWs.1 and 2 at length. The defendant No.3 has filed his affidavit in lieu of examination-in-chief and examined as DW.1, produced 03 documents got marked as Exs.D.3 to D.5. Counsel for plaintiff has cross examined DW.1.

13. Heard arguments of counsel for plaintiff and defendants No.3 and 5, perused the evidence available on record. Having given my anxious consideration to the pleadings, oral and documentary evidence available on record the findings of this Court to the above Issues are as follows:-

Issue No.1 : Does not survive for consideration

Issue No.2 : In the Negative

Issue No.3 : In the Negative

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

REASONS

14. Issue No.2:- Afore narrated facts are taken into consideration for discussion to avoid repetition of facts.

15. In order to substantiate her contentions plaintiff has filed her affidavit in lieu of examination-in-chief as PW1 and

reiterated the plaint averments, produced 10 documents marked as Exs.P.1 to P.10. Exs.P.1 to P.4 are the RTC extracts, Exs.P.5 to P.8 are the certificates issued by School, Ex.P.9 is the Death Certificate and Ex.P.10 is the Photograph (marked with subject to objection).

16. Based on these documents the plaintiff intends to prove that the suit schedule properties are standing in the name of defendant No.1 and she is in joint possession of suit properties alongwith defendant No.1. Defendant No.2 is legally wedded wife of Iragouda Patil and she is not the legally wedded of defendant No.1.

17. However, the mutation entries in the name of defendant No.1 as per Exs.P.1 to P.4 are not in dispute. The moot question in the *lis* is whether the mother of plaintiff i.e Paravva is legally wedded wife of defendant No.1 and whether the plaintiff being daughter of defendant No.1 is in joint possession of suit properties is to be taken into consideration.

18. Analysis of evidence as to relationship of plaintiff and defendant No.1:

18.1 At this stage, it is relevant to refer Sections 50 and 112 of Indian Evidence Act, Sections 44 and 116 of BSA respectively which are reproduced below:

Section 50 (section 44 BSA):- Opinion on relationship, when relevant.

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act (4 pf 1869), or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

Illustrations

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B.

The fact that A was always treated as such by members of the family, is relevant.

Section 112 (section 116 of BSA):- Birth during marriage, conclusive proof of legitimacy.

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

(emphasis supplied)

19. In order to prove her case the plaintiff examined herself as PW.1 and reiterated the plaint averments wherein she has produced the documents as stated above. The counsel for defendants No.3 and 5 has cross examined plaintiff/PW.1 wherein she has deposed in para No.1 of her cross examination dated 07.04.2022 that she do not know her date of birth, where she has born, the date on which her mother has married and further she has deposed that she has produced documents to show that marriage of her mother has taken place at Yadur. However, she has produced the photograph as per Ex.P10 marked subject to objection. The Ex.P10 is claimed to be clicked on the day of marriage of plaintiffs/PW1's mother Paravva with defendant No.1. Plaintiff/PW1 has deposed in para No.3 of her cross-examination dated: 17.04.2025 that Ex.P10 is captured about 50 Years ago and she has submitted it to her counsel at the time of filing this suit.

20. The maternal aunt of plaintiff/PW1 i.e, Kashavva Parappa Biskop is examined as PW2. In her affidavit in lieu of examination in chief has deposed that

‘The marriage of Paravva with defendant No.1 solemnized as per the custom and traditions prevailing in our community at Shri Veerabhadra Temple Yadur about 45 years back. I was personally present during the wedding ceremony of defendant No.1 with my sister. All the required ceremonies of valid marriage are performed’

Whereas, PW2 in para No.3 of her cross-examination dated:

17.11.2022 has deposed as extracted below:

ಪಾರವ್ವ ಇವಳನ್ನು ಗುರುಲಿಂಗ ನೀಜಪ್ಪ ಚೌಗುಲಾ ಇವರಿಗೆ ಮದುವೆ ಮಾಡಿಕೊಟ್ಟಿದ್ದು. ಅವರ ಮದುವೆಯು ಯಾವ ದಿನಾಂಕ, ತಿಂಗಳಲ್ಲಿ ಆಗಿದೆ ಎಂದು ಗೊತ್ತಿಲ್ಲ. ಅವರ ಮದುವೆಯು ಯಡೂರ ವೀರಭದ್ರ ದೇವಸ್ಥಾನದಲ್ಲಿ ಆಗಿದೆ. ಅವರ ಮದುವೆ ಯಾವ ವಿದಿ ವಿಧಾನದಲ್ಲಿ ಆಗಿದೆ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ಅವರ ಮದುವೆ ಯಾವ ಪದ್ಧತಿ ಪ್ರಕಾರ ಆಗಿದೆ ಎಂದು ಗೊತ್ತು. ಪರಾವ್ವಳ ಮದುವೆ ಯಾವ ಪದ್ಧತಿ ಪ್ರಕಾರ ಆಗಿದೆ ಎಂದು ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಬರೆಸಿರುತ್ತೇನೆ. ಪಾರವ್ವಳ ಮದುವೆಯನ್ನು ಯಾವ ಸ್ವಾಮಿಜಿ ಮಾಡಿದ್ದರು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಪಾರವ್ವನ ಮದುವೆಯಾದ ಬಗ್ಗೆ ತೋರಿಸಲು ಒಂದು ಫೋಟೋ ಇರುತ್ತದೆ. ಫೋಟೋ ಬಿಟ್ಟು ಕಾಗದ ಇರುವುದಿಲ್ಲ. ನನ್ನ ಉಳಿದ ಸಹೋದರಿಯರು ಹಾಗೂ ಸಹೋದರನ ಬಳಿ ಪಾರವ್ವನ ಮದುವೆಯಾದ ಬಗ್ಗೆ ತೋರಿಸಲು ಕಾಗದ ಪತ್ರ ಇರುವುದಿಲ್ಲ. ನನ್ನ ಬಳಿ ಇರುವ ಫೋಟೋವನ್ನು ಫೋಟೋಗ್ರಾಫರ್ ತೆಗೆದಿದ್ದು, ಆತನ ಹೆಸರು ಮತ್ತು ಊರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

20.1 PW2 has retracted her version in cross examination and deposed that she do not know as per which custom and

tradition the marriage was solemnized, she is not aware who were present during marriage and who had performed the marriage.

20.2 Another aspect that is to be taken into consideration is that PW2 has filed her affidavit in lieu of examination-in-chief on 13.09.2022 wherein she has specifically deposed that the marriage of defendant No.1 with Paravva was solemnized 45 years ago, if it is taken to be true, then it dates back to 1977. On the other hand, PW1 has filed her affidavit in lieu of examination-in-chief on 08.08.2018 and mentioned her age as 42 years. Upon calculation, the birth of PW1 dates back to 1976. Now, if the evidence of PW1 and PW2 is read conjointly, as per version of PW1 of she is born in the year 1976, and as per version of PW2, the marriage has taken place in the year 1977 which is one year after the birth of PW1. Further she has testified in the cross-examination that the PW1 is 31-32 years, if the testimony of PW2 in cross-examination as PW1 is 31-32 years is taken

into consideration and if calculated, then the birth year of PW1 dates back to year 1990.

20.3 All these aspect goes to show that the PW2 is unaware of the true and real facts. Therefore, the testimony of PW2 indicates that she is interested witness. In addition to that, the plaintiff/PW1 ought to have examined other independent witness of locality who has special means of knowledge. Except Ex.P10, the Plaintiff/PW1 or PW2 have not produced any single piece of document to show that the deceased Paravva was mother of plaintiff and wife of defendant No.1. Now in the era of deepfake, the photograph Ex.P10 cannot be held as gospel truth until its genuineness is proved. However, as already observed, Ex.P10 is marked subject to objection. Thus, in absence of corroborative documentary and oral evidence, Ex.P10 is not a conclusive proof to hold that the marriage of plaintiff's mother Paravva was solemnized with defendant No.1.

21. Plaintiff/PW1 has produced her Bonafide Certificate as per Ex.P8 which depicts the name of plaintiff/PW1 as

Anusuya Guruling Chougala, a bare perusal of recitals, it is evident that the name of her mother is not mentioned in Ex.P8. Again absence of relevant documentary evidence as to connect the relationship of deceased Paravva with defendant No.1 weakens the case of plaintiff.

21.1 So far as the allegation of defendant No.2 being legally wedded wife of Iragouda Patil is concerned, the plaintiff/PW1 has alleged that defendant No.2 has begotten two children by name Shivalavva and Ramgouda in the wedlock of Iragouda Patil. To substantiate her contention plaintiff/PW1 has produced Bonafide Certificates as per Ex.P5 and P6 which depicts the names as Shivaleela Iragouda Patil and Ramgouda Iragouda Patil respectively. So also the Death Certificate of Ramgouda Patil is also produced as per Ex.P9, but a careful perusal of Ex.P5, P6 and P9, none of the documents bears the name of defendant No.2 as mother of Shivalavva and Ramgouda. However, there is no dispute with respect to Iragouda Patil whether he is father of Shivalavva and Ramgouda, but the question is whether defendant No.2

is their mother or not. To substantiate her contention, plaintiff/PW1 has not produced any document to show that the defendant No.2 is legally wedded wife of Iragouda and they were living together as husband and wife.

21.2 At this stage, the counsel for plaintiff argued that the plaintiff/PW1 and PW2 have categorically deposed in their oral evidence that the defendant No.2 is legally wedded wife of Iragouda Patil and they were treated as husband and wife and accepted by the society and submitted that as per 50 of Indian Evidence Act (Sec 44 of BSA) it is relevant fact. Further, in this aspect, the counsel for plaintiff has relied on judgment on Hon'ble Supreme Court of India in **Civil Appeal No.11330 of 2011 in Chowdamma (D) by LR and another V/s Venkatappa (D) by LRs and another**, wherein their Lordships have observed as under:

29. Though P.W.2 (Hanumanthappa) is not a blood relative of either party, he demonstrated long-standing familiarity with both the plaintiffs and deceased Dasabovi. His belonging to the same village as the plaintiffs reflects community-level proximity and sustained acquaintance with the familial relations in issue. This satisfies the statutory requirement of 'special means of knowledge' under Section 50 of Evidence Act. The specificity of his statements, particularly in

identifying the relationship of plaintiff's mother with the deceased Dasabovi, indicates that he speaks from personal observation and not speculative knowledge
30. *There is no material on record to suggest that P.W.2 (Hanumanthappa) is an interested witness. His deposition is free from embellishment and stood the cross-examination. There is no indication that his testimony was tailored to suit the litigation or introduced as afterthought (Post litem motem). The narrative appears to be rooted in long-standing village familiarity and reflects natural continuity.*

(emphasis supplied)

21.3 Relying upon said Judgment the counsel for plaintiff argued that the PW2 in instant case has also deposed about the marriage of defendant No.1 with deceased Paravva. However, in para No.3 of her cross examination PW2 has testified that she do not know on which day the marriage was solemnized, she do not know as per which customs and rites the marriage has taken place, she has further deposed that photo is produced to show the solemnization of marriage. With due respect to the Judgment referred by the counsel for plaintiff *supra*, wherein the PW2 (Hanumanthappa) is independent witness belonging to same village and he has withstood the cross examination and remained un impeached. But in the instant case, the PW2 is

alleged to be maternal aunt of plaintiff and she has retracted her evidence, whereas it is testified in her examination-in-chief that the marriage of deceased Paravva with defendant No.1 is solemnized as per customary rites and ceremonies prevailing in the community whereas, in her cross-examination, she has deposed that she is unaware of the customs and ceremonies as per which the marriage has taken place. Considering these aspects and relationship of PW1 and PW2, the interestedness of PW2 deposing in favour of PW1 can be ruled out. Therefore, the Judgment relied by counsel for plaintiff is not applicable to the case at hand. Further, the plaintiff ought to have examined independent witnesses of locality to prove her case. But it is not done so. Hence, the section 50 of IEA (44 of BSA) loses its significance in this case. Further the counsel for plaintiff has relied to catena of decisions as follows:

(i) Judgment of Hon'ble High Court of Jharkhand at Ranchi in **S.A.No.488 of 2017** in ***Rewti Devi and others V/s Gyani***

Mahto and others wherein their Lordship have observed as under:

12. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that Section 50 of the Evidence Act envisages that when the court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person, who, as a member of the family or otherwise has special means of knowledge on the subject, is a relevant fact. The essential requirements of Section 50 of the Evidence Act are that:-

(i) There must be a case where the court was to form an opinion on relationship with one person to another;

(ii) In such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact.

(iii) Where the person whose opinion expressed by conduct is relevant must be a person who is the member of the family or otherwise has special means of knowledge on the particular subject of relationship.

(emphasis supplied)

(ii) Judgment of Hon'ble Supreme Court of India in **SLP No.413 of 2025** between **Ivan Rathinam versus Milan Joseph** wherein their Lordships have observed as under:

The presumption of legitimacy comes from the maxim, "pater est quem nuptiae demonstrant"

which means, "he is the father whom the marriage indicates to be so." Since time immemorial, English Courts upheld that where a husband and wife cohabited and no evidence of impotency was forthcoming, the child is conclusively presumed to be legitimate even though the wife is known to have been guilty of infidelity.

112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

(emphasis supplied)

(iii) Judgment of Hon'ble Supreme Court of India in **SLP (Civil) No.9855/2022** in the case of **Aparna Ajinkya Firodia V/s Ajinkya Arun Firodia**, wherein it is observed as under:

112. Birth during marriage, conclusive proof of legitimacy.- The fact that any person was born during the continuance of valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried shall be

conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at the time when he would have begotten.

According to Sarkar on Law of Evidence, 20th Edition, in the interest of health, order and peace in society, certain axiomatic presumptions have been to be drawn. One such presumption is the conclusive presumption of paternity under Section 112 of Evidence Act. Section 112 embodies the rule of law that the birth of a child during the continuance of a valid marriage or within 280 days, (i.e. within the period of gestation) after its dissolution shall be “conclusive proof” that the child is legitimate unless it is established by evidence that the husband and wife did not or could not have any access to each other at any time when the child could have been conceived. The object of this provision is to attach unimpeachable legitimacy to children born out of a valid marriage. When a child is born during the subsistence of lawful wedlock, it would mean that the parents had access to each other. Therefore, the Section speaks of the “conclusive proof” of legitimate birth of a child during a period of lawful wedlock.

(emphasis supplied)

(iv) Judgment of Hon'ble Supreme Court of India reported in **1993 AIR 2295** between **Goutam Kundu V/s State of West Bengal and another**, wherein it is observed as under:

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(emphasis supplied)

(v) Judgment of Hon'ble Supreme Court of India in **Civil Appeal No.2888 of 2001** between **Shyam Lal @ Kuldeep V/s Sanjeev Kumar and others**, wherein their Lordships have observed as under:

16. Reliance has also been placed in Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor) AIR 1971 SC 2352 where the parties, i.e., the husband and wife were living separately long before the birth of the child. It was held that unless the husband is able to establish absence of access, presumption raised under section 112 of the Indian Evidence Act will not be displaced. The proof of non-access must be clear and satisfactory.

39. The findings of the High Court on the interpretation of Section 112 of Evidence Act are based on correct analysis of Indian and English cases for the last more than a century. According to the legislative intention and spirit

behind Section 112 of Evidence Act it is abundantly clear that once the validity of marriage is proved then there is strong presumption about the legitimacy of children born out of that wedlock. The presumption can only be rebutted by a strong, clear satisfying and conclusive evidence. The presumption cannot be displaced by mere balance of probabilities or any circumstance creating doubt.
(emphasis supplied)

(vi) Judgment of Hon'ble of Karnataka reported in **ILR 1994 KAR 1078** between **Smt.Nirmala and others V/s Smt.Rukminibai and others**, wherein his Lordship has observed as under:

In Mahadervan v Mahadervan reported in All England Law Reports, (Volume 3) 1992 page their lordships sitting in Probate, Divorce and Admiralty Division have held as follows:

Where a ceremony of marriage is proved and is followed by cohabitation as man and wife, a presumption is raised which cannot be rebutted by evidence that merely goes to show on a balance of probabilities that there was no valid marriage; the evidence must be such as proves beyond reasonable doubt that there was no valid marriage.

In S.P. S. Balasubramanyam v. Suruttayan alias Andali Padayachi the Supreme Court has held that where a man and a woman are living under the same roof and cohabiting for a number of years a presumption arises that they lived as husband and wife; and such presumption cannot be destroyed by the circumstance and evidence

proved; and that the children born to them are not illegitimate.
(emphasis supplied)

(vii) Judgment of Hon'ble Supreme Court of India in **Civil Appeal No.3410 of 2007** between **Dhannulal and others V/s Ganeshram and another**, wherein their Lordships have observed as under:

14. In the case of **Golak Chand vs. Parvin Kumari** AIR. 1952 SC 231, this Court observed that continuous cohabitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.
(emphasis supplied)

22. On the other hand, the counsel for defendant No.3 and 5 argued that mere contending about solemnization of marriage is not sufficient, it is for the plaintiff to prove that the marriage has taken place in accordance with section 7 of Hindu Marriage Act. In the entire oral testimony of PW1 and PW2 and also the documentary evidence, nothing is placed on record to show as per which rites and customs the marriage was solemnized. Therefore, the plaintiff has failed to

prove the marriage of her mother with defendant No.1 and so also she has failed to prove that she is daughter of defendant No.1. In support of his arguments, the counsel has placed his reliance on various judgments of Hon'ble Supreme Court and Hon'ble High Courts as follows:

(i) Judgment of Hon'ble Supreme Court of India reported in **AIR 2020 SC 541** between **Rathnamma and others V/s Sujathamma and others**, wherein their Lordships have observed as under:

**Hindu Marriage Act, 1955, Section 5, 7–
Special Marriage Hindu Marriage Act, 1955,
Section 5, 7 —Special Marriage Act, 1954,
Section 24 - Partition —Customary marriage**
- Plaintiff has not led any evidence of solemnization of marriage as provided under sub-clause (2) of Section 7 of the Act or by leading any evidence of customary rites and ceremonies - The burden to prove marriage was on the Plaintiff alone - The defendants have denied marriage of the Plaintiff, therefore, the burden to prove marriage was on the plaintiff alone. Apart from such fact, the marriage cannot be said to be taken place in terms of Section 5(v) of the Act which is to the effect that the parties are not sapindas to each other, unless the custom or usage governing each of them permits of a

marriage between the two - Such marriage is a void marriage but, on a petition, preferred by either party thereto - Plaintiff has not proved custom of marriage to her mother's brother and/or judicial precedent recognizing such marriage - In the absence of any precedent or custom of such marriage, no judicial notice can be taken of a custom as argued by the learned counsel for the plaintiff - In the absence of any pleading or proof of custom, the argument that in Vokkaliga community, such marriage can be performed cannot be accepted as no judicial precedent was brought to the notice of the Court 'that such a custom exists in the Vokkaliga community nor there is any instance quoted in evidence of existence of such custom - The burden to prove the marriage was on the plaintiff - The plaintiff has failed to prove the marriage - The entire case is based upon an agreement of marriage in which there is no assertion regarding solemnization of the customary ceremonies or the rites or that the parties had performed saptpadi in the manner contemplated under Section 7 of the Act, therefore, the plaintiff cannot succeed the estate of 'H' on the basis of a marriage which she has failed to prove - Appeal is allowed while restoring the judgment and decree of the learned Trial Court.

(emphasis supplied)

(ii) Judgment of Hon'ble Supreme Court of India reported in **AIR 1994 SC 135** between **Surjit Kaur V/s Garja Singh and Others**, wherein their Lordships have observed as under:

Hindu Marriage Act, 1955 Sections, 5, 7 – Reliance placed on Charan Singh's case (AIR 1961 Punjab 301) (FB) (supra) is not correct because that will apply only if the widow were to marry the brother of the husband. But, here Gulaba Singh is a stranger. As rightly contended the respondent, mere living as husband and wife does not, at any rate, confer the status of wife and husband. In B.S.Lokhande's case (AIR 1965 SC 1564) (supra) it was laid down that the bare fact that the man and woman living as husband and wife does not at any rate, normally give them the status of husband and wife even though they may hold themselves out before the society as husband and wife and the society treats them as such. The following extract is useful for this purpose (at p. 1565 of AIR):

"Prima facie, the expression 'whoever..... marries' must mean 'whoever..... marries validly' or 'whoever..... marries and whose marriage is valid one. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law. The bare fact of a man and woman living as husband and wife does not, at

any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife”

(emphasis supplied)

(iii) Judgment of Hon'ble High Court of Panjab reported in **AIR 2007 P & H 74** between **Balwinder Kaur V/s Gurmukh Singh**, wherein his Lordship has observed as under:

12. The consequences of declaring a marriage as void are serious and far-reaching. Such declaration not only effects parties to the marriage but it also effects the innocent persons, such as children born from the marriage. Therefore, the question of declaring a marriage nullity should not be lightly taken and decided until and unless it is clearly established that a ground provided under section 11 of the Act for declaring the marriage void exists. Section 11 of the Act provides that a marriage can be declared null and void on petition presented by either of the parties, if it was performed in contravention of any of the conditions specified in clause (i), (iv) and (v) of section 5. Clause (i) of section 5 provides that the time of solemnization of marriage between two Hindus, neither of the party should have a spouse living at the time of the said marriage. Thus, if a spouse is already married and performs second marriage during the subsistence of the first marriage, the second

marriage will be void marriage and either party to the said marriage can get declared the said marriage as void. When in a petition for declaring a marriage nullity, the factum of previous marriage is denied by the respondent. The burden lies on petitioner to their valid marriage was subsisting between the spouse and the third person at the time of marriage in question. To establish that there was a previous valid marriage, he is required to plead and prove the essential ceremonies of the said marriage. To prove a valid marriage under the Hindu Law, it has to be established that marriage was performed in accordance with the customary rites and ceremonies, as required under Section 7 of the Act. The customary rites and ceremonies must be shown to have been followed and performed at the time of marriage to prove a marriage to be valid. The evidence regarding the performance of marriage according to Hindu Law must be brought on record to show that there had been a valid marriage. In order to perform a valid marriage under the provisions of the Act, two essential ceremonies had to be performed, namely, (1) Invocation before the seared fire and (2) Saptapadi, and the absence of these two essential ceremonies invalidates the marriage. Such invalidity could not be cured simply by registration of marriage. If there was a valid marriage, registration of that marriage under section 8 of the Act becomes a proof of the valid marriage under the Act. If there was no valid marriage, the registration also does not come to the rescue of the respondent to claim that there had been a valid marriage because of registration. It is well settled that under the Hindu Law, for a valid marriage, a marriage should be established to be solemnized with

proper ceremonies either by Saptapadi or by any other ceremony sanctioned by custom. In Mausami Chakraborty v. Sabrata Guha Roy (supra) it has been held that where the factum of marriage is disputed, essential. ceremonies constituting the marriage must be pleaded and proved. The evidence regarding performance of the marriage according to Hindu rites must be brought on record to show that the marriage was valid. The registration certificate of the marriage issued by the authority itself is no proof of valid marriage, until and unless it is proved that the said marriage was validly performed in accordance with the provisions of the Act.

The validity of the marriage does not depend on registration or omission to make any entry in the register. The registration certificate itself is not a conclusive proof of a valid marriage. Similarly, in Joyita Saha v. Rajesh Kumar Pandey (AIR 2000 Cal 109) (supra), a Division Bench of Calcutta High Court held that a certificate issued under Section 16 of the Special Marriage Act is not conclusive proof of marriage solemnized 'under the Act. The marriage under the Act can be said to be solemnized only if ceremonies of marriage are performed as per Section 7 of the Act.

(emphasis supplied)

(iv). Judgment of Hon'ble High Court of Madhya Pradesh reported in **AIR 1993 MP 54** between **Sanjay Mishra V/s Miss.Eveline Jobe**, wherein their Lordships have observed as under:

22. So far as fulfillment of conditions, the Trial Court has completely overlooked the pleaded case of the respondent. It has not considered the

validity of marriage as pleaded by her in accordance with S. 5 of the Hindu Marriage Act. The Trial Court has merely gone by the registration certificate; but such registration is valid only when it is found that there is a valid marriage. Where the factum itself is disputed, essential ceremony constituting the marriage in the instant case in accordance with Hindu rites must be pleaded and proved and the performance of such rites must be brought on records.

(emphasis supplied)

(v). Judgment of Hon'ble Gauhati High Court reported in **AIR 1991 Gouhati 61** between **Khiteswar Phukan V/s Smt.Sowala Gogoi alias Phukan**, wherein his Lordship has observed as under:

It is for the party claims to have been married to a person to show that the customary rites and ceremonies were performed. The mere conduct of a person indicating that he had accepted the other party as his wife is not enough to grant the relationship the status of legal marriage. It is not a substitute for the solemnization of marriage according to customary rites and ceremonies. Besides, observation of customs and ceremonies applicable to the community must be specifically pleaded and proved. In the absence of pleadings, it might not be open to the party concerned to even lead evidence in that regard.

(emphasis supplied)

(vi). Judgment of Hon'ble Allahabad High Court reported in **AIR 1982 Allahabad 248** between **Smt.Bibbe V/s Smt.Ram Kali and others**, wherein his Lordship has observed and the relevant portion of para No.4 is reproduced as under:

Section 7 of the H.M. Act provides that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. Sub-sec. (2) of Sec. 7 of the Act provides that where such rites and ceremonies include the 'saptapadi' (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventy step is taken. So a Hindu marriage may be solemnized by the performance of ceremonies and customary rites which are recognized by the caste to which the parties belong. In other words, ceremony of marriage must be in accordance with the custom or usage applicable to either party and the ceremony must be such which is allowed by the custom of the caste to which the parties belong.

(emphasis supplied)

23. Relying on the aforesaid judgments, the counsel for defendant No.3 and 5 further argued that the plaintiff has not pleaded about the *saptapadi* or other customary rites prevailing in their community and in absence of pleadings, evidence cannot be led in that regard.

23.1 Even though otherwise, PW2 who is claiming to have witnessed the marriage has retracted her version in cross-examination as already observed above. Admittedly, the plaintiff/PW1 and PW2 have not proved the solemnization of marriage of Paravva and defendant No.1 as per customary rites and ceremonies prevailing in the community of plaintiff.

24. On careful reading of section 112 of Indian Evidence Act and observations made by their Lordships in catena of decisions relied by the counsel for plaintiff, it is clear that valid marriage is a condition precedent or it must be proved that the man and woman have cohabited as husband and wife, such man and woman must have access to each other, then the presumption would come into picture. Unless the primary requirement is not fulfilled, there cannot be presumption as to paternity of child. With due respect to judgments rendered by Hon'ble Supreme Court and Hon'ble High Courts with respect to paternity of child, in the instant case, unless the valid marriage of defendant No.1 with Paravva is proved, the question of paternity of defendant

No.1 that he is father of plaintiff does not arise. Further the paternity of defendant No.1 in respect of defendant No.3 to 5 is concerned, there is no dispute in it. Though the counsel for plaintiff has cross-examined defendant No.3/DW1 at length and suggested that plaintiff is daughter of defendant No.1 born through Paravva and defendant No.2 is legally wedded wife of Iragouda Patil, nothing is elicited from DW1 to discredit his testimony. Therefore, the arguments of counsel for plaintiff as to paternity of defendant No.1 with respect to plaintiff cannot be accepted. Hence the judgments referred *supra* by the counsel for plaintiff are not applicable to the facts of this case.

25. Another set of arguments of counsel for plaintiff is that the defendant No.1 though being aware of pendency of suit has remained *ex-parte* and did not contest the suit, therefore adverse inference has to be drawn against the defendant No1 and in this regard he has placed his reliance on judgment rendered by Hon'ble Supreme Court reported in **(1999) 3**

SCC 573 between **Vidyadhar v. Manikrao and Anr,**

wherein, their Lordship have observed as under:

17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by other side, a presumption could arise that the case set up by him is not correct.

(emphasis supplied)

26. With due respect to the observations made by Hon'ble Supreme Court, in the judgment referred *supra* the party in that particular case has appeared before the Court and then abstained from further appearance. In the instant case, the defendant No.1 has remained *ex-parte* since beginning, had he been filed written statement or if he had filed his affidavit in lieu of examination-in-chief and then remained absent, then adverse inference could have been absolutely drawn and the said judgment *supra* would be applicable. But, section 114 of Evidence Act cannot be applied to draw adverse inference due to reason defendant No.1 remaining *ex-parte*.

27. Analysis of evidence as to ancestral/self acquired property and rights of daughter in the property:

Plaintiff/PW1 has admitted in her cross examination that land bearing RS No.26 is granted land and to corroborate his contention, the defendant No.3/DW1 has produced 03 documents, marked as Ex.D3 to D5. Ex.D5 depicts that Late Nijappa applied Form No.7 before Land Tribunal in the year 1974. Subsequently, the Nijappa died and as per Ex.D4 the Land Tribunal, Chikodi passed an order dated: 29.06.1981 and allotted 1/5th share each to defendant No.1 and his siblings. Pursuant to said order, the said defendant No.1 and his siblings filed Form No.10 as per Ex.D3 and their names were mutated in the land bearing RS No.26 accordingly. So such being the facts, the suit property bearing RS No.26 which is allotted to defendant No.1 and his siblings cannot be termed as ancestral property for the reason that the said land is granted after the death of Nijappa. Thus the same is self acquired property of defendant No.1. Further, if the version of plaintiff as the granted land is

also ancestral property and she has the share in it is considered, then on conjoint reading of Ex.P4 and Ex.D3 to D5, it is evident that the suit property land bearing RS No.26 is not ancestral property. Counsel for plaintiff argued that the daughter is equally entitled in the granted lands. No doubt as per the recent judgments of our own Hon'ble High Court even a married daughter is entitled to equal share in granted lands.

27.1 So far as suit schedule B properties are concerned, the plaintiff has not produced any title flow or contemporaneous documents to show that the said properties are ancestral properties. In addition to that it is also seen that the suit schedule B properties as per Ex.P1 to P3, the names of brothers of defendant No.1 are also appearing as co-owners. This being the facts, the plaintiff has not arraigned them as necessary parties to suit. On this count also, the suit of plaintiff is not maintainable.

28. Considering the entire materials placed on record and upon detail analysis of oral and documentary evidence, this

Court is of considered view that the plaintiff has failed to prove that she is daughter of defendant No.1 born through Paravva. Thus, it cannot be held that the suit schedule properties are ancestral joint family properties of plaintiff and defendants. Accordingly, this Court answers Issue No.2 in the **Negative**

29. ISSUE NO.3: As already discussed above in detail, when the plaintiff has *prima facie* failed to prove that her mother Paravva had married defendant No.1, as such she was the legally wedded wife of defendant No.1 and plaintiff is born in their wedlock, under such circumstances, the plaintiff is not entitled to relief of partition and separate possession as sought for. Therefore, this Court answers Issue No.3 in the **Negative**.

30. Issue No.4: In view of the afore stated reasons, this Court proceeds to pass the following:

ORDER

The suit filed by the plaintiff is hereby dismissed with cost.

IAs pending if any, stands disposed off.

Draw decree accordingly.

(Dictated to the Stenographer, the transcript thereof is corrected and revised by me and then pronounced in the Open Court on this the 10th day of June, 2026).

(Zaheer Atanur)
C/C II Addl. Civil Judge & JMFC,
Chikodi.

ANNEXURES**List of witness examined on behalf of plaintiff:**

Plaintiff/PW1: Smt.Anusaya @ Annavva Suresh Gharabude
P.W.2 : Smt.Kashavva Parappa Biskop.

List of documents marked on behalf of plaintiff:

Exs.P.1 to P.3/P.W.1 :	VPC Extracts
Ex.P.4/P.W.1 :	Record of Rights
Exs.P.5 to P.8/P.W.1 :	School Certificates
Ex.P.9/P.W.1 :	Death Certificate of Ramgouda Iragouda Patil
Ex.P.10/P.W.1 :	Photograph.

List of witness examined on behalf of Respondent:

DW.1 : Raju Guruling Chougala.

List of documents marked on behalf of Respondent.

- Ex.D.1/D.W.1 : Valuation Certificate
Ex.D.2/D.W.1 : Certificate issued by Village Accountant,
Donawad
Ex.D.3/D.W.1 : Certified Copy of Form No.10
Ex.D.4/D.W.1 : Certified Copy of order passed by Land
Tribunal, Chikodi
Ex.D.5/D.W.1 : Certified Copy of Form No.7.

Place: Chikodi
Date: 10/06/2026

(Zaheer Atanur)
C/C II Addl. Civil Judge & JMFC,
Chikodi.