

KABG500000372018



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE,
GOKAK.**

**Present: Shri. Umesh S.Atnure
B.Com., LL.B.(Spl)
Prl. Senior Civil Judge, Gokak**

ORIGINAL SUIT No.26/2018

DATED THIS 18th DAY OF JUNE-2026

- Plaintiffs:
1. Smt. Gouravva W/o. Yallappa Sanadi @ Lakkanagol,
Age: 50 years, Occ: Household,
R/o: Godachanmalaki, Tq: Gokak, Dist: Belagavi.
 2. Siddappa S/o. Yallappa Sanadi @ Lakkanagol,
Age: 36 years, Occ: Agriculture,
R/o: Godachanmalaki, Tq: Gokak, Dist: Belagavi.
 3. Baasavaraj S/o. Yallappa Sanadi @ Lakkanagol,
Age: 34 years, Occ: Agriculture,
R/o: Godachanmalaki, Tq: Gokak, Dist: Belagavi.

-VERSUS-

- Defendants:
1. Yallappa S/o. Siddappa Sanadi @ Lakkanagol
Since deceased, Legal heirs on record as
plaintiffs No.1 to 3.
 2. Smt. Bangarevva W/o. Bhimashi Sanadi @ Lakkanagol,
Age: 48 years, Occ: Agriculture,
R/o: Godachanmalaki, Tq: Gokak, Dist: Belagavi.
 3. Ashok S/o. Arjun Dandin,
Age: 38 years, Occ: Agriculture,
R/o: Godachanmalaki, Tq: Gokak, Dist: Belagavi.

4. Basavaraj S/o. Shivamurteppa Gudaganatti,
Age: 50 years, Occ: Agriculture,
R/o: Godachanmalaki, Tq: Gokak, Dist: Belagavi.
5. Smt. Tangevva W/o. Shetteppa Kallatti,
Age: 65 years, Occ: Agriculture,
R/o: Chilabanavi, Tq: Hukkeri.
6. Smt. Basavva W/o. Dhulappa Adimani,
Age: 70 years, Occ: Household
R/o: Dasanatti, Tq: Gokak.
7. Smt. Gangawwa W/o. Yallappa Patil,
Age: 70 years, Occ: Household,
R/o: Khanapur, Tq: Belagavi.

=====

Plaintiffs By Sri.C.A.T., Advocate

Defendants No.1, 5 & 6 by Sri.M.B.H., Advocate

Defendants No.2 & 7 by Sri.D.B.A., Advocate

Defendant No.3 Sri. S.K.H., Advocate

Defendant No.4 Exparte

=====

Date of institution of the Suit	:	04-04-2018
Nature of the Suit	:	Declaration, Partition & Separate Possession
Date of commencement of recording of evidence	:	07-07-2018
Date of pronouncement of Judgment	:	18-06-2026
Total duration	:	Years /s Month/s Day/s 08 02 14

J U D G M E N T

1. This is a suit for partition and separate possession of plaintiffs 1/4th share in the suit schedule property in R.S.No.224 and 1/2 share in 1/4th share of defendant No.1 in R.S.No.242/1, R.S.No.242/2 and GPC.No.209 of Godachinamalaki village and also for the relief of

declaration to declare that sale deed dated 07.01.1980 and 13.06.2017 are not binding on them.

2. The brief facts of the plaintiffs case is as follows;

It is the case of the plaintiffs that the propositus Bhimappa and his wife died long back leaving behind them two sons namely Siddappa and Bhimasheppa. Siddappa died leaving behind him two sons namely Bhimappa, Yallappa i.e., defendant No.1 and one daughter by name Mallavva. The Bhimappa died leaving behind him in his son Bhimasheppa @ Bhimashi. The defendant No.1 is the husband of the plaintiff No.1 and father of the plaintiffs No.2 and 3. The daughter Mallavva died leaving behind her son by name Ashok i.e., defendant No.3. The Bhimasheppa @ Bhimashi died leaving behind him his wife Bangarevva i.e., defendant No.2. All of them are the co-parceners they constituted Hindu joint family and the suit schedule properties are their ancestral and joint family properties. During the lifetime of propositus Bhimappa, he was cultivating the suit schedule properties. After his death, the plaintiffs and defendants No.1 and 2 are started to cultivate the suit schedule properties jointly, till today no partition was effected in between them. After the death of propositus Bhimappa, the names of his two sons namely Siddappa and Bhimasheppa are mutated to the suit properties. During the lifetime of Bhimasheppa i.e., the uncle of defendant No.1, he sold his $\frac{1}{2}$ share in R.S.No.224 of Godachinamalaki village infavour of his brother's son by name

Yallappa i.e., defendant No.1 under registered sale deed dated 09.04.1969 and the said property was purchased by the father of the plaintiffs No.2 and 3 out of the income derived from the joint family properties. As per the said sale deed the name of defendant No.1 was mutated to the R.S.No.224. As the said property is purchased out of the joint family income, as such themselves and defendant No.1 are having 1/4th share each in the land bearing R.S.No.224. Further they contended that during the lifetime of Bhimasheppa i.e., husband defendant No.2, the said Bhimasheppa and defendant No.1 without having any independent right, title, interest over the suit land bearing R.S.No.242 they sold 1/3rd share in the said land infavour of defendant No.3 by making his mother as guardian on 07.01.1980 without the knowingly and consent of the plaintiffs and without any family and legal necessity as such the said sale deed is illegal, against the law, as such same is not binding on them. After execution of the sale deed in respect of R.S.No.242 it was renumbered as R.S.No.242/1 and 242/2. Now the name of the defendant No.3 is entered to R.S.No.242/1 measuring 02 acres 02 guntas instead of 01 acre 01 gunta as per the sale deed. Further the defendant No.1 by taking undue advantage of his name appearing in RTC extract of R.S.No.242/2 he illegally without their consent and knowingly and without having any independent right, title, interest over R.S.No.242/2 he sold 01 acre 05 guntas of land in R.S.No.242/2 infavour of defendant No.4 on 13.06.2017 the said sale deed is illegal and same is not binding on them. They approach the

defendants on 25.12.2017 for effecting the partition in the suit schedule properties and to allot their legitimate share in the suit schedule properties the defendants No.1 and 2 did not responded properly and refused to effect partition and defendant No.1 told them, he will not gave any share in the suit schedule properties as such they have filed this suit and accordingly they prayed to decreed the suit.

3. In pursuance of the service of the suit summons the defendants No.1 to 3 and 5 to 7 are appeared through their respective counsels. The defendant No.4 is placed exparte. During the pendency of the suit defendant No.1 died.
4. The defendant No.1 filed his written statement by denying entire contentions of the plaintiffs. Further defendant No.1 contended that the propositus died leaving behind him two sons namely Siddappa and Bhimasheppa. The Bhimasheppa married Yallavva, both of them died issueless. The first son of propositus by name Siddappa has got two sons by name Bhimappa and Yallappa i.e., defendant No.1 and four daughters namely Gangavva, Basavva, Tangevva and Mallavva. The plaintiffs have not impleaded Gangavva, Basavva, Tangevva in this suit, as such suit is bad for non-joinder of necessary parties. Further he specifically contended that he is not married any one. The plaintiff No.1 is not his wife, plaintiffs No.2 and 3 are not his sons. He is residing at Godachinamalaki village and he has got ration card and voter ID in his name since long back. The plaintiffs are residing in

Mallapur PG village they are also having ration card, aadhar card and voter cards at the address of the Mallapur PG village independently. Hence, the plaintiff No.1 is not his wife and the plaintiffs No.2 and 3 are not his sons and they never resided with him at any point time and they never recognized as his wife and sons as such, the plaintiffs are not having right to claim partition in the suit schedule properties. He further contended that the son of propositus by name Bhimasheppa died issueless, during his lifetime he sold his portion in R.S.No.224 i.e., 01 acres 02 guntas 08 annas in his favour under registered sale deed dated 09.04.1969 and accordingly his name was mutated to the said land and he being the absolute owner of the said properties, he is in possession and enjoyment of the same. Further he contended that on 07.01.1980, himself and husband of defendant No.2 by name Bhimasheppa sold R.S.No.242 now new number as R.S.No.242/1 for their family and legal necessity and to pay the hand loan infavour of defendant No.3 on 07.01.1980. At the time of execution of the said sale deed he independently leading his life as such for his day today expenses and for his treatment, he sold the said property infavour of defendant No.3 along with husband of defendant No.2 and defendant No.3 was put in possession of the above said properties, till today the defendant No.3 is in possession of R.S.No.242/1. Further on 13.06.2017 for his family and legal necessity, he sold .R.S.No.242/2 infavour of defendant No.4 at that time also he was residing independently for his medical treatment i.e., for eye operation and other expenses he sold the

said property infavour of defendant No.4, since then the defendant No.4 is in possession and enjoyment of the said property. Now he is aged about 66 years and he is not having any wife and children, the defendant No.3 being his son-in-law i.e., sister's son taking his care providing food, clothing and medicine and shelter to him, as such out of love and affection he executed a Will deed infavour of defendant No.3 on 07.03.2018 in respect of R.S.No.224 of Godachinamalaki village in the presence of the witnesses by name Ningappa Siddappa Magadumand Yallappa Satteppa Obi. The defendant No.2 filed a suit in OS.No.342/2015 before I Additional Civil Judge and JMFC, Gokak for partition and separate possession, the said suit is still pending. This fact is suppressed by the plaintiffs and in this suit and in OS.No.342/2015 the suit properties and parties are one and the same as such, this court is not having entertain this suit and there is no cause of action arose to the plaintiff. Hence, he prayed to dismiss the suit.

5. The written statement of defendant No.1 was adapted by the defendants No.5 and 6.
6. The defendant No.2 filed the written statement by denying contention of the plaintiffs. Further the defendant No.2 contended that the plaintiffs are wife and sons of defendant No.1, they have got share in the share of the defendant No.1 but unnecessarily the plaintiffs have filed suit against her without any cause of action and the sale deed are

more than 50 years old, there is no right to challenge the said sale deed inspite of it only with an intention to give harassment to her, the plaintiffs have filed this suit. As such, the suit is not maintainable in the eye of law hence, prayed to dismiss the suit.

7. The defendant No.3 filed the written statement by denying entire contention of the plaintiffs. Further the defendant No.3 also took the contention that the plaintiffs have not impleaded the other three daughters of deceased Siddappa i.e., Gangavva, Basavva and Tangevva, as such the suit is bad for non-joinder of necessary parties. Further he also contended that for the family and legal necessity the defendant No.1 and husband of the defendant No.2 were sold R.S.No.242 new survey number R.S.No.242/1 in his favour under registered sale deed dated 07.01.1980 and put him in possession of the said property, as such he is in possession and enjoyment of the land bearing R.S.No.242/1 and the said property is his self acquired property and he is the bonafide purchaser of the above said land. Further he contended that the defendant No.2 filed a suit in OS.No.342/2015 before I Additional Civil Judge and JMFC Gokak for partition and separate possession, the said suit is still pending hence, this court has no jurisdiction to entertain this suit. Further as per the Hindu Succession Amendment Act, 2005 the sale deeds made prior to 20.12.2004 are unaffected as such his sale deed dated 07.01.1980 is saved by Amendment of Section 6A of Hindu Succession Amendment

Act 2005 as such, the suit is not maintainable one. Hence, he prayed to dismiss the suit.

8. Based on the above pleadings the following issues have been framed:

ISSUES

1. Whether the plaintiffs prove that the suit properties are ancestral joint family properties of themselves and defendants No.1 and 2?
2. Whether the plaintiffs prove that the sale deed dated 07.01.1980 is illegal and not binding upon their shares?
3. Whether the plaintiffs prove that the sale deed dated 13.06.2017 is illegal and not binding upon their shares?
4. Whether the defendant No.2 proves that the suit is mis-joinder of party?
5. Whether the plaintiffs are entitled for share in the suit properties?
6. What order or decree?

ADDITIONAL ISSUES FRAMED ON 10.12.2018

1. Whether the defendant No.3 proves that the suit is bad for non-joinder of necessary parties?
2. Whether the defendant No.3 proves that the defendant No.1 and husband of defendant No.2 have sold R.S.No.242 new No.242/1 for their family and legal necessity?
3. Whether the defendant No.3 proves that the suit is barred by the Hindu Succession (Amendment) Act, 2005?

ADDITIONAL ISSUES FRAMED ON 18.03.2020

4. Whether the plaintiffs prove that plaintiff No.1 is the legally wedded wife and plaintiffs No.2 and 3 are the children of defendant No.1?
 5. Whether the defendants No.1, 5 and 6 prove that the defendant No.1 is owner in possession of the land bearing R.S.No.224 measuring 01 acre 2.8 guntas?
 6. Whether the defendants No.1, 5 and 6 prove that the suit is bad for non-joinder of necessary parties?
9. In support of the case of the plaintiffs, the plaintiff No.3 got examined himself as PW1 and got marked Ex.P1 to 19 and closed their side. The defendant No.2 is examined as DW1 and defendant No.6 is examined as DW2 and she got marked Ex.D1 to 8 and she also got examined two witnesses as DW3 and 4 and through DW3 Ex.D9 is marked. The defendant No.3 is examined as DW5 and he got marked Ex.D10 and 11 and closed his side.
10. Heard the arguments of both side.
11. My answer to the above issues are as follows;

Issue No.1	:-	In the Negative
Issue No.2	:-	In the Negative
Issue No.3	:-	In the Negative
Issue No.4	:-	In the Negative
Addl.Issue No.1 framed on 10.12.2018	:-	In the Negative
Addl.Issue No.2 framed		

on 10.12.2018	:-	In the Affirmative
Addl.Issue No.3 framed		
on 10.12.2018	:-	In the Negative
Addl.Issue No.4 framed		
on 18.03.2020	:-	In the Negative
Addl.Issue No.5 framed		
on 18.03.2020	:-	In the Affirmative
Addl.Issue No.6 framed		
on 18.03.2020	:-	In the Negative
Issue No.5	:-	In the Negative
Issue No.6	:-	As per final order for the following;

REASONS

12. Issue No.1 and Additional Issue No.4 framed on 18.03.2020:-

The plaintiffs contended that themselves and defendants No.1 to 3 are the members of the joint family and the suit schedule properties are their ancestral and joint family properties. During the lifetime of the propositus he was cultivating the suit properties and managing the family. After the death of propositus his son namely Siddappa and Bhimasheppa were mutated their names to the suit properties and they were cultivating the suit schedule properties and till today no partition was effected in between them, they being the members of the joint family and the suit schedule properties are their ancestral joint family properties.

13. The defendant No.1 contended that he is unmarried. The plaintiff No.1 is not his wife, plaintiffs No.2 and 3 are not his sons born through the plaintiff No.1 and further it is the contention of the

defendant No.1 that the plaintiffs are not related his family inspite of it they have filed this false suit. He is residing at Godachinamalaki village and he is having the ration card and voter card independently in his name at Godachinamalaki village address and the plaintiffs are residing at Mallapur PG village and they are having ration card, aadhar cards and voter cards at the address of Mallapur PG village as such, the plaintiff No.1 is not his wife, plaintiffs No.2 and 3 are not his sons and the plaintiff No.1 never resided with him and she never recognized as his wife and plaintiffs No.2 and 3 are never recognized as his children.

14. The defendant No.2 contended that the plaintiffs are the wife and children of defendant No.1.
15. As the defendant No.1 has seriously disputed the relationship of plaintiffs No.1 to 3 with him and he specifically contended that the plaintiff No.1 is not his wife and the plaintiffs No.2 and 3 are not his sons. Until and unless the plaintiffs establishes their relationship with him, the plaintiffs cannot contend that themselves and defendants No.1 to 3 are the members of the Hindu joint family and suit schedule properties are ancestral and joint family properties to them.
16. The burden is on the plaintiffs to prove that the plaintiff No.1 is the legally wedded wife of defendant No.1 and out of their wedlock the plaintiffs no.2 and 3 are born through the defendant No.1 and plaintiff No.1. In support of the case of the plaintiffs, the plaintiff

No.3 is examined as PW1, in his examination-in-chief he deposed as per contentions taken by them. He got marked RTC extracts of the suit properties as per Ex.P1 to 3, Form No.9 as per Ex.P4, mutation registers extracts as per Ex.P5 to 11, sale deeds dated 09.04.1969, 07.01.1980, 13.06.2017 as per Ex.P12 to 14, aadhar cards as per Ex.P15 to 17, school leaving certificate as per Ex.P18 and surviving family members certificate as per Ex.P19.

17. In order to prove the marital status of plaintiff No.1 and defendant No.1, the plaintiff No.1 and defendant No.1 are the competent witnesses. During the pendency of the suit the defendant No.1 died and even though the plaintiff No.1 is alive she has not entered the witness box to deposed her marital status with the defendant No.1. the plaintiff No.3 is examined as PW.1 to prove the marital status of the plaintiff No.1 with defendant No.1. The plaintiffs are alleging that the plaintiff No.1 is the legally wedded wife of defendant No.1. By perusing the entire plaint averments no where it is stated by the plaintiffs on which date the marriage of the plaintiff No.1 was solemnized with the defendant No.1 and what are the rituals and customs performed at the time of marriage, who have attended the marriage but nothing is forthcoming from the plaint averments and the PW1 is the plaintiff No.3 in this suit, he is alleging that he is the son of defendant No.1 and plaintiff No.1. He has given evidence with regard to the marriage of the plaintiff No.1 and defendant No.1. In his cross-examination he deposed that he don't know on which date

the marriage of defendant No.1 and plaintiff No.1 was performed and he has not produced the marriage yadi or photographs and he has also not produced any documents to prove the marriage of defendant No.1 and plaintiff No.1. In the absence of acceptable material evidence with regard to the marriage of the plaintiff No.1 with the defendant No.1 the contention of the plaintiffs that the plaintiff No.1 is the legally wedded wife of defendant No.1 and the plaintiffs No.2 and 3 are their children is not acceptable one.

18. The plaintiffs in order to prove the marital status of plaintiff No.1 and defendant No.1 they relied on the aadhar cards marked as per Ex.P15 to 17 and surviving family members certificate marked as per Ex.P19 and transfer certificate of plaintiff No.3 marked as per Ex.P18. No doubt in the aadhar card marked as per Ex.P15 to 17 the husband of the plaintiff No.1 is mentioned as Yallappa Sanadi, father of the plaintiffs No.2 and 3 is mentioned as Yallappa Sanadi, so also in transfer certificate of plaintiff No.3 marked as per Ex.P18 the father of the plaintiff No.3 is mentioned as Yallappa Sanadi. Further in Ex.P19 it is mentioned that the plaintiffs No.1 to 3 are the surviving family members of deceased Yallappa Sanadi. These documents which are relied by the plaintiffs does not establishes the valid marriage in between defendant No.1 and plaintiff No.1. No doubt in these documents the name of Yallappa Sanadi is shown as husband of plaintiff No.1 and father of the plaintiffs No.2 and 3 but these documents does not prove the factum of valid marriage as per

the provisions of Hindu Marriage Act, 1955. Apart from the evidence of the PW1, the plaintiffs are not examined any other independent witnesses to say about the marital status in between the defendant No.1 and plaintiff No.1. In the cross-examination of PW1 he clearly deposed that they are residing in Mallapur PG village, the defendant No.1 is residing at Godachinamalaki village. In the aadhar cards of the plaintiffs No.1 to 3 marked as per Ex.P15 to 17 the address of the plaintiffs No.1 to 3 is shown as Mallapur PG. Hence it is clear that the plaintiffs are not residing at Godachinamalaki where the defendant No.1 is residing and the plaintiffs have not taken any efforts to get examine any persons from the Godachinamalaki village to show that the plaintiff No.1 and defendant No.1 are resided in one roof as husband and wife, out of their wedlock they have begotten plaintiffs No.2 and 3. Without there being any acceptable material evidence merely based on the aadhar cards marked as per Ex.P15 to 17, transfer certificate marked as per Ex.P18 and surviving family members certificate marked as per Ex.P19 it cannot be said that the plaintiff No.1 is the legally wedded wife of defendant No.1. In the cross-examination of PW1 by the defendant No.1 nothing worth is brought on record to show that the plaintiff No.1 is the legally wedded wife of defendant No.1 and further in the cross-examination of PW1 by the defendant No.1 they clearly suggested that the plaintiff No.1 is not the legally wedded wife of defendant No.1 and the plaintiffs No.2 and 3 are not the sons of defendant No.1 and plaintiff

No.1. From the oral and documentary evidence adduced by the plaintiffs nothing worth is brought on record to show that the plaintiff No.1 is the legally wedded wife of defendant No.1 and plaintiffs No.2 and 3 are legitimate children of defendant No.1 and plaintiff No.1.

19. The PW1 is cross-examined by counsel for defendant No.2 and 7, wherein he deposed that the plaintiff No.1 is the wife of defendant No.1 and they are the children of defendant No.1 and plaintiff No.1 but by perusing the contentions of the defendant No.2 it is clear that she is colluding with the plaintiffs. Hence, the cross-examination of PW1 by defendant No.2 is not helpful for the plaintiffs to prove the marital status of the plaintiff No.1 and defendant No.1.

20. During the pendency of this suit the defendant No.1 died and the defendants No.5 to 7 who are the sisters of defendant No.1 are brought on record during the pendency of the suit by filing an application U/o I rule 10(2) of CPC at IA. No.IX the defendant No.5 6 got impleaded them in this suit and the plaintiff by filing an application U/o I Rule 10(2) of CPC got impleaded the defendant No.7. the defendant No. 5 to 7 are the sisters of defendant No.1 and deceased Bhimappa.

21. The defendant No.2 is examined as DW1, the defendant No.2 is the wife of defendant No.1's brother. In her written statement she denied the contentions of the plaintiffs but she contended that plaintiff No.1 is the wife of defendant No.1, plaintiffs No.2 and 3 are the sons of plaintiff No.1 and defendant No.1 and the suit schedule properties

are their ancestral joint family properties, she is also having share in the suit properties. In her cross-examination by the plaintiff she fully supported the case of the plaintiffs. The defendants are not chosen to cross-examine the DW1. From the cross examination of the DW.1 by the plaintiff it clearly goes to show that the defendant No.2 is colluded with the plaintiffs hence her evidence is not believable one. Further the defendant No.6 is examined as DW.2 and she got marked the certified copy of the plaint in O.S.No.342/2015 the said suit is filed by the present defendant No.2 for the relief of partition and separate possession, in the said suit she has not shown the present plaintiffs as wife and children of present defendant No.1. Further by perusing the Ex.D.5 which is the order sheet in O.S.No.342/2015 by perusing the same it is clear that the suit filed by the present defendant No.2 was came to be dismissed for non prosecution and after dismissal of the said suit the present plaintiffs colluding with the present defendant No.2 have filed this suit. Hence the cross examination of the Dw.1 by the plaintiffs is not helpful for the plaintiff to prove the marital status of the plaintiff No.1 with the defendant No.1.

22. The defendant No.6 is examined as DW2, she adapted the written statement of defendant No.1 and in her examination-in-chief she deposed as per contentions taken by them. She got marked ration card of the defendant No.1 as per Ex.D1, aadhar card and voter ID card of defendant No.1 as per Ex.D2 and 3, original copy of the sale

deed dated 09.04.1969 as per Ex.D4, certified copy of the order sheet, plaint and written statement and issues in OS.No.342/2015 as per Ex.D5 to 8. By perusing the Ex.D1 to 3 which are the ration card, aadhar card and voter ID card of the defendant No.1 wherein it shows that these documents are issued at the address of Godachinamalaki where the defendant No.1 was residing. If at all the plaintiff No.1 is the legally wedded wife of defendant No.1 and plaintiffs No.2 and 3 are their children, their names would have also appeared in the ration card of the defendant No.1 but in the ration card the names of plaintiffs are not at all appeared. Further in the aadhar card and voter ID card the address of the defendant No.1 is mentioned as Godachinamalaki village Gokak taluka. Whereas in the aadhar card of the plaintiffs marked as per Ex.P15 to 17 the address is shown as Mallapur PG village, it shows that at no point of time the plaintiffs and defendant No.1 are residing together at Godachinamalaki vilalge and it also probalises that the plaintiffs are not at all related to the defendant No.1 and they are not the wife and children of defendant No.1.

23. In the cross-examination of DW2 by the plaintiffs, she deposed that now the defendant No.1 died and she has produced the death certificate of defendant No.1 and for obtaining the death certificate of defendant No.1, she has given information to the concerned authority, thereafter his death certificate was issued and she deposed her ignorance that in the death certificate the name of defendant

No.1 wife is mentioned. Further she deposed that she don't know that after the death of defendant No.1, his wife and children has submitted application before the Tahashildar for issuing surviving family members certificate. Further when it was suggested to her that to the said application she has filed objections, she admitted the same. Further she deposed her ignorance that the Tahasildar has issued surviving family members certificate mentioning the names of the plaintiffs as the surviving family members of deceased defendant No.1. Further when it was suggested to her whether the marriage of the plaintiff No.1 solemnized first or her marriage she deposed that the defendant No.1 has not married and she further denied that only to avoid the share of the plaintiffs in the suit schedule properties, she is deposing falsely.

24. From the evidence of DW2 nothing worth is brought on record to show that the plaintiff No.1 is the legally wedded wife of defendant No.1 and their marriage was solemnized in accordance with Hindu Marriage Act, 1955. In the cross-examination of DW2 it was contended by the plaintiffs that in the death certificate of defendant No.1 his wife name is mentioned as Gouravva and the Tahasildar has issued surviving family members certificate by mentioning the names of plaintiffs as surviving family members of defendant No.1. The plaintiffs nor the defendants have produced the death certificate of the defendant No.1. Further in surviving family members certificate marked as per Ex.D19 the names of plaintiffs are shown as surviving

family members of the deceased defendant No.1 and they are wife and children of deceased defendant No.1. Further it is also clear from cross-examination of DW2 that when the plaintiffs are filed application for issuing surviving family members certificate to that application the defendant No.6 filed her objections. It shows that the defendant No.6 was objected for issuing the surviving family members certificate to the plaintiffs but the surviving family members certificate was issued by the Tahasildar, Gokak but the plaintiffs are not produced any other documents to show that prior to issuing surviving family members certificate the revenue authorities have conducted enquiry and only after satisfying that the plaintiff No.1 is the wife and plaintiffs No.2 and 3 are the sons of defendant No.1 then only the Tahasildar, Gokak was issued surviving family members certificate as per Ex.P19. Hence, from the oral and documentary evidence adduced by both the parties they does not prove that the plaintiff No.1 is the legally wedded wife of the defendant No.1 and the plaintiffs No.2 and 3 are their legitimate children.

25. Further in the cross-examination of PW1 by counsel for defendant No.1, he deposed that as per the information given by them to the Tahasildar, the Tahasildar issued the surviving family members certificate it appears that the plaintiffs are giving false statement before the revenue authorities have obtained the surviving family members certificate by mentioning their names as husband and

children of defendant No.1 they have obtained the same and further apart from Ex.P19 the plaintiffs are not produced any other documents to show that prior to issuing Ex.P19 an enquiry was conducted by the revenue authorities. Under such circumstances, Ex.P19 is not helpful for the plaintiffs to prove that the plaintiff No.1 is the legally wedded wife of defendant No.1 and out of their wedlock the plaintiffs No.2 and 3 are born.

26. In this case the defendant No.1 during his lifetime by filed his written statement disputed his marital status with the plaintiff No.1 and later on during the pendency of the suit he died. Now the burden is on the plaintiffs to prove their marital status with the defendant No.1. The plaintiff No.1 alleging to be the wife of defendant No.1 still she is alive but the plaintiffs are not adduce the evidence of plaintiff No.1 in this suit. They have prevented the plaintiff No.1 from entering the witness box and deposing about her marital status with the defendant No.1. The plaintiff No.3 is examined as PW1 is not a competent person to deposed about the marriage of plaintiff No.1 and defendant No.1. Hence, the whatever oral and documentary evidence adduced by the plaintiffs in support of their contentions are not helpful for them to prove that the plaintiff No.1 is the legally wedded wife defendant No.1 and plaintiffs No.2 and 3 are the children of plaintiff No.1 and defendant No.1. Hence, I am of the considered view that the plaintiffs are failed to prove that the plaintiff No.1 is

the legally wedded wife and the plaintiffs No.2 and 3 are the children of defendant No.1.

27. The plaintiffs contended that originally the suit properties were held by propositus Bhimappa, after his death they are succeeded by his two sons namely Siddappa and Bhimasheppa. Now Siddappa died leaving behind him two sons namely Bhimappa, Yallappa i.e., defendant No.1 and one daughter Mallavva. After the death of Siddappa, themselves and defendants are succeeded the suit properties from the ancestors Bhimappa and they are in joint possession and enjoyment of the suit properties and they are the members of the Hindu joint family. The status of the plaintiffs is clearly denied by the defendant No.1, 5 and 6 and the plaintiffs are failed to prove that the plaintiff No.1 is the legally wedded wife of defendant No.1 and the plaintiffs No.2 and 3 are their children. When the plaintiffs are not at all related to the deceased defendant No.1 then they cannot say that themselves and defendants No.1 to 3 being the members of the Hindu joint family, they constituted Hindu joint family and the suit properties are their ancestral and joint family properties. When the plaintiffs are failed to prove that the plaintiff No.1 is the legally wedded wife of defendant No.1 and plaintiffs No.2 and 3 are their heirs then the question of forming joint family with the defendants and succeeding the ancestral properties along with the defendants does not arise at all and whatever oral and documentary evidence adduced by the plaintiffs to prove that they are

members of the joint family and suit schedule properties are ancestral and joint family properties is not at all acceptable one. Hence, from the oral and documentary evidence adduced by the plaintiffs it is clear that the plaintiffs are failed to prove that the suit schedule properties were succeeded by them from their ancestors and till today they being the members of the Hindu joint family, they are in joint possession and enjoyment of the suit schedule properties as on the date of the suit.

28. In support of the case of the plaintiffs, the plaintiff No.3 is examined as PW1, he got marked the RTC extracts of the suit properties as per Ex.P1 to 3. The Ex.P1 is the RTC extract of R.S.No.224 for the year 2017-18 wherein the said property is jointly standing in the name of defendants No.1 and 2. The Ex.P2 is the RTC extract of R.S.No.242 for the year 2017-18 wherein 02 acres 02 guntas 11 annas is independently standing in the name of defendant No.3. The Ex.P3 is the RTC extract of R.S.No.24/2 wherein the said property is standing in the name of defendant No.4. The plaintiffs have produced the tax assessment register extract of property bearing GPC.No.209 as per Ex.P.4. The said property is jointly standing in the name of husband of defendant No.2 and defendant No.1.
29. Further the plaintiffs are produced ME.No.813 dated 02.02.1962 as per Ex.P5 in respect of R.S.No.242, wherein by perusing the same it goes to shows that Siddappa Bhimappa Sanadi died on 13.11.1961 leaving behind him, his son Bhimappa and his brother Yallappa i.e.,

defendant No.1, accordingly the name of the Bhimappa who is the father-in-law of defendant No.2 and defendant No.1 are jointly mutated. Hence, it shows that the land bearing R.S.No.242 was standing in the name of Siddappa Bhimappa Sanadi, after his death his daughter-in-law and his another son i.e., defendant No.1 succeeded the said property. Further the plaintiffs have produced the ME.No.957 as per Ex.P6, by perusing the same it shows that Bhimasheppa S/o. Bhimappa Sanadi i.e., uncle of the defendant No.1 sold his $\frac{1}{2}$ share in R.S.No.224 infavour of defendant No.1. Further by perusing ME.No.958 marked as per Ex.P6 it shows that Bhimappa Siddappa Sanadi i.e., father-in-law of defendant No.2 died on 30.06.1971 leaving behind his son Bhimasheppa and brother Yallappa and their names are jointly mutated to R.S.No.242 on 05.07.1971. Further the plaintiffs are produced the ME.No.865 as per Ex.P7, by perusing the same it shows that when the Bhimappa Siddappa Sanadi died his only son Bhimasheppa @ Bhimashi, he succeeded to the land bearing R.S.No.242 and accordingly his name was mutated. Further by perusing the MR.No.H-10/2014-15 marked as per Ex.P8 it shows that after the death of Bhimappa Siddappa Sanadi, the name of defendant No.2 is jointly mutated with the name of defendant No.1 to R.S.No.224 and Ex.P9 is the MR.No.10/2010-11 in respect of R.S.No.242 measuring 03 acres 04 guntas and it has divided as R.S.No.242/1 measuring 02 acres 01 gunta 11 annas, 242/2 measuring 01 acre 05 guntas 05 annas in all it shows that 03 acres 04

guntas 16 annas. Further the plaintiffs have produced MR.No.3/2011-12 as per Ex.P10 wherein by perusing the same after attaining the majority of defendant No.3, the name of defendant No.3 was mutated to R.S.No.242/1. The plaintiffs are produced MR.No.H-15/2016-17 as per Ex.P11 . After alienation of land in R.S.No.242/2, 01 acre 01 gunta 05 annas the name of defendant No.4 was mutating to an extent of 01 acre 01 gunta 05 annas it shows that after alienation of land in R.S.No.242 infavour of defendant No.3, the defendant No.1 is having 01 acre 01 gunta 05 annas in R.S.No.242. Further the plaintiffs have produced the sale deed dated 09.04.1969 as per Ex.P12 which pertains to R.S.No.224 wherein by perusing the same it shows that the Bhimasheppa sold his $\frac{1}{2}$ share in R.S.No.224 infavour of defendant No.1 under registered sale deed dated 09.04.1969. Hence, it is clear that whatever share was held by the second son of propositus by name Bhimasheppa, he sold the same infavour of his brother's son i.e., defendant No.1 under registered sale deed dated 09.04.1969. Further the plaintiffs are produced sale deed dated 07.01.1980 as per Ex.P13 wherein it clearly goes to shows that the Bhimasheppa S/o. Bhimappa Sanadi i.e., husband of the defendant No.2 and Yallappa S/o. Siddappa Sanadi i.e., defendant No.1 were jointly sold $\frac{1}{3}^{\text{rd}}$ share in R.S.No.242 infavour of defendant No.3. Further the plaintiffs are produced sale deed dated 13.06.2017 as per Ex.P14 wherein by perusing the same it is clear that the defendant No.1 sold R.S.No.242/2 infavour of the defendant No.4. By

perusing all these documentary evidence it is clear that the properties were succeeded by the present defendants No.1 and 2 from their ancestors and further by perusing Ex.P12 and 13 they probablises that in between the sons of propositus by name Bhimappa and Yallappa an oral partition was effected in between them and accordingly they have sold their respective shares infavour of defendants No.3 and 4. Hence, it is clear that the suit schedule properties are not the ancestral properties of the plaintiffs and defendants No.1 to 3.

30. The plaintiffs contended that till today no partition was effected in between them and defendants No.1 to 3. The plaintiffs produced the mutation register extracts and RTC extracts as per Ex.P5 to 10, these documents clearly goes to shows that the properties which are acquired by the defendant No.1 and 2 are their joint family properties and they have acquired the same under the sale deeds. Accordingly their names are appearing in the RTC extracts marked as per Ex.P1 to 3. The none of the documents there is no mentioned about the plaintiffs.
31. In the cross-examination of PW1 by the defendant No.2, the PW1 has admitted the case of the plaintiffs. Further the defendant No.2 contended that the suit schedule properties are their ancestral properties and in those properties the defendant No.2 is also having her legitimate share. No doubt the defendant No.2 has admitted the entire case of the plaintiffs but the defendant No.2 has not at all

produced any documents in support of her contentions. Without there being any acceptable evidence the contentions which are taken by the defendant No.2 in her cross-examination is not helpful of the plaintiffs to prove that themselves and defendants No.1 to 3 constituted Hindu joint family and suit schedule properties are their ancestral properties. Hence, I am of the considered view that the plaintiffs are not the members of the joint family and the suit schedule properties are not the ancestral joint family properties of the plaintiffs and defendants No.1 to 3. **Hence, I answered the Issue No.1 and Additional Issue No.4 framed on 18.03.2020 in the Negative.**

32. **Issue No.2 and 3:-** The plaintiffs contended that the sale deed dated 07.01.1980 and sale deed dated 13.06.2017 are not binding on their share. It is the contention of the plaintiffs that the land bearing R.S.No.242 is ancestral property to them and defendants No.1 to 3. During the lifetime of husband of the defendant No.2 and the defendant No.1 sold their 1/3rd share infavour of defendant No.3 in R.S.No.242 without there being any family or legal necessity and the defendant No.1 taking undue advantage of his name appearing in the revenue records he sold his 1/3rd share in R.S.No.242 infavour of defendant No.4 under registered sale deed dated 13.06.2017 without there being any family and legal necessity as such, same are not binding on them. Firstly the plaintiffs are failed to prove that the plaintiff No.1 is the legally wedded wife of the defendant No.1 and

plaintiffs No.2 and 3 are their children. Hence, the plaintiffs cannot be the members of the family of defendants No.1 to 3 and further by perusing Ex.P5 it is clear that after the death of Siddappa Bhimappa Sanadi, the name of his sons i.e., Bhimappa and Yallappa are entered to R.S.No.242 and they are the joint owners of the said land. The defendant No.3 is none other than the son of sister of defendant No.1 and deceased Bhimappa who is the father-in-law of the defendant No.2 and they have alienated $1/3^{\text{rd}}$ share in R.S.No.242 infavour of defendant No.3 under registered sale deed dated 07.01.1980. The plaintiffs are produced the said sale deed as per Ex.P13 by perusing the recitals of the said sale deed it is clear that the husband of the defendant No.2 and defendant No.1 for their family and legal necessity they have sold $1/3^{\text{rd}}$ share infavour of defendant No.3 and further by perusing the sale deed dated 13.06.2017 marked as per Ex.P14 it is clear that after alienation of $1/3^{\text{rd}}$ share in R.S.No.242 still $1/3^{\text{rd}}$ share is retained by defendant No.1 and he being the only person and none were there to look after him for his day today expenses and for his family necessity he sold his $1/3^{\text{rd}}$ share i.e., 01 acre 01 gunta 05 annas infavour of defendant No.4 under registered sale deed dated 13.06.2017. When the plaintiffs are failed to prove their status with the defendant No.1 the contentions of the plaintiffs that the sale deeds dated 07.01.1980 and 13.06.2017 are illegal and not binding on them is not acceptable one and from the recitals of these two sale deeds it is clear that for the family and legal necessity

the defendant No.1 and husband of defendant No.1 have sold R.S.No.242 infavour of defendant No.3 and 4. Hence, I am of the considered view that the plaintiffs are failed to prove that the sale deeds dated 07.01.1980 and 13.06.2017 are illegal and not binding on them. **Hence, I answered the Issue No.2 and 3 in the Negative.**

33. **Issue No.4, Additional Issue No.1 framed on 10.12.2018 and Additional Issue No.6 framed on 18.03.2020 :-** The defendants No.1, 3, 5 and 6 contended that the Siddappa died leaving behind him two sons and four daughters i.e., deceased Bhimappa, defendant No.1, Tangevva, Basavva and Gangavva. The plaintiffs are not impleaded the sisters of defendant No.1 namely, Tangevva, Basavva and Gangavva, as such the suit is bad for non-joinder of necessary parties. By perusing the records it is clear that during the pendency of the suit, the three sisters of defendant No.1 namely Tangevva, Basavva and Gangavva are impleaded as defendant No 5 to 7. Hence, these issues does not survive for consideration. **Hence, I answered Issue No.4, Additional Issue No.1 dated 10.12.2018 and Additional Issue No.6 dated 18.03.2020 in the Negative.**

34. **Additional Issue No.2 framed on 10.12.2018:-** The defendant No.3 contended that the defendant No.1 and husband of the defendant No.2 have sold R.S.No.242 new R.S.No.242/1 in his favour for their family and legal necessity. In support of this contention, the defendant No.3 got examined himself as DW5 and in his examination-in-chief he deposed as per contentions taken by him. He

got marked the sale deed dated 07.01.1980 as per Ex.D10 and another sale deed dated 17.01.1993 as per Ex.D11. By perusing the recitals of Ex.P10 it is clear that after the death of Siddappa his two sons i.e., Bhimappa and Yallappa were succeeded the land bearing R.S.No.242 and by perusing the Ex.D10 it is clear that the defendant No.1 and husband of defendant No.2 have clearly stated that for the family and legal necessity they have alienating their joint $\frac{1}{3}$ rd share in R.S.No.242 infavour of defendant No.3. As the plaintiffs are not being the members of the family of the defendants No.1 to 3 and by perusing the recitals of Ex.D10 it clearly goes to shows that for the family and legal necessity of defendant No.1 and husband of defendant No.2, they have sold their joint $\frac{1}{3}$ rd share of R.S.No.242 infavour of defendant No.3. Further by perusing the recitals of Ex.D11 it is also clear that the Bhimasheppa S/o. Bhimappa Sanadi who is the husband of defendant No.2 has sold his $\frac{1}{3}$ rd share for his family and legal necessity infavour of defendant No.3. Hence, it is clear that the defendant No.3 has purchased total $\frac{2}{3}$ rd share in R.S.No.242. Further the plaintiffs have produced the RTC extract of R.S.No.242/1 as per Ex.P2 and 242/2 as per Ex.P2 wherein by perusing the same it goes to shows that the defendant No.3 purchased 02 acres 02 guntas 11 annas from the husband of the defendant No.2 and defendant No.1, accordingly his name was appearing in the RTC extract of R.S.No.242/1. Hence, it is clear that the husband of the defendant No.2 and defendant No.1 have sold

their joint 1/3rd share each in R.S.No.242 infavour of defendant No.3 for their family and legal necessity. In the cross-examination of the DW5 by the plaintiff nothing worth is brought on record to show that there was no any family or legal necessity for the husband of defendant No.2 and defendant No.1 for alienating R.S.No.242 infavour of defendant No.3. Hence, I am of the considered view that the defendant No.3 has proved that the defendant No.1 and husband of defendant No.2 have sold R.S.No.242 new R.S.No.242/1 in his favour for the their family and legal necessity. **Hence, I answered the Additional Issue No.2 dated 10.12.2018 in the Affirmative.**

35. **Additional Issue No.3 framed on 10.12.2018:-** The defendant No.3 contended that the suit is barred by Hindu Succession (Amendment) Act, 2005 as his sale deed is prior to 20.12.2004. No doubt the sale deeds executed infavour of defendant No.3 by husband of defendant No.2 and defendant No.1 are prior to 20.12.2004 but the amended provisions of Section 6 of Hindu Succession (Amendment) Act, 2005 are applicable only to the daughter's right. Hence, the contention of the defendant No.3 is not acceptable one. Hence, I am of the considered view that the defendant No.3 is failed to prove that the suit is barred by Hindu Succession (Amendment) Act, 2005. **Hence, I answered the Additional Issue No.3 framed on 10.12.2018 in the Negative.**

36. **Additional Issue No.5 framed on 18.03.2020:-** The defendants No.1, 5 and 6 contended that the defendant No.1 is the owner in

possession of land bearing R.S.No.224 measuring 01 acre 02 guntas 08 annas. In support of this contention the defendant No.6 is examined as DW2. In her examination-in-chief she deposed as per contentions taken by her. It is the contentions of the defendants that R.S.No.224 was succeeded by the defendant No.1 and husband of defendant No.2 from their ancestors and the father-in-law of defendant No.2 and defendant No.1 have got $\frac{1}{2}$ share in the land bearing R.S.No.224. By perusing the RTC extracts marked as per Ex.P1 it is clear that the land bearing R.S.No.224 is jointly standing in the name of defendants No.1 and 2 and further by perusing Ex.P.6 it clearly goes to show that the defendant No.1 has purchased $\frac{1}{2}$ share in R.S.No.224 from Bhimasheppa Bhimappa Sanadi and accordingly his name was appearing in the RTC extract of R.S.No.224. As the plaintiffs are failed to prove that they are the wife and children of defendant No.1 as such, the defendant No.1 who has purchased the land bearing R.S.No.224 from his uncle, he become absolute owner of the land bearing R.S.No.224 and the said property is jointly belongs to the defendant No.1 and defendant No.2 as such their names are jointly appearing in the RTC extract of R.S.No.224. In the said property the defendant No.1 and 2 are having equal share. As the said property was independently purchased by the defendant No.1 as the defendant No.1 is unmarried, nobody is there look after to him, as such out of his Will and wish he bequeathed the said property i.e., his $\frac{1}{2}$ share in R.S.No.224 totally measuring 02

acres 05 guntas infavour of defendant No.3 under registered Will deed dated 07.03.2018. The defendants have produced said Will as per Ex.D9 through the one of the attesting witness to the Will deed i.e., DW3 and they have got examined two attesting witnesses as DW3 and 4. From the recitals of Ex.D9, contention of defendant No.1 in his written statement and evidence of DW2 it is clear that as the defendant No.1 being the absolute owner of 01 acre 02 guntas 08 annas in R.S.No.224, during his lifetime itself by exercising his absolute rights over the said property he bequeathed the same infavour of defendant No.3. Hence, it is clear that the defendant No.1 is the absolute owner in possession of R.S.No.224 to its $\frac{1}{2}$ extent i.e., 01 acre 02 guntas 08 annas. As the plaintiffs are failed to prove their status with the defendant No.1 and whatever contentions taken by the plaintiffs are not acceptable one. Hence, I am of the considered view that the defendants No.1, 5 and 6 are proved that the defendant No.1 is owner in possession of R.S.No.224 measuring 01 acre 02 guntas 08 annas. **Hence, I answered the Additional Issue No.5 dated 18.03.2020 in the Affirmative.**

37. **Issue No.5:-** The plaintiffs are failed prove their status with the defendant No.1. Under such circumstances, the plaintiffs are not entitled for the relief sought by them. **Hence, I answered the Issue No.5 in the Negative.**
38. **Issue No.6:** In view of above discussions made on the above issues, I proceed to pass the following;

ORDER

The suit is dismissed with costs.

Draw decree accordingly.

(Dictated to the stenographer, typed and translated by him and same is corrected, signed and then pronounced by me in the open court on this the **18th DAY OF JUNE-2026**)

(Umesh S. Atnure)
Prl. Senior Civil Judge, Gokak

ANNEXURES**LIST OF WITNESSES EXAMINED BY THE PLAINTIFF/S :**

P.W-1 : Basavaraj S/o. Yallappa Sanadi @ Lakkanagol

LIST OF DOCUMENTS EXHIBITED BY PLAINTIFF/S :

Ex.P1 to 3 : RTC extracts
Ex.P4 : Form No.9
Ex.P5 to 11 : Mutation register extracts
Ex.P12 to 14 : C/C copies of sale deeds
Ex.P15 to 17 : Aadhar cards
Ex.P18 : School leaving certificate
Ex.P19 : Family members surviving certificate

LIST OF WITNESSES EXAMINED BY DEFENDANT/S :

D.W-1 : Bangarewwa W/o. Bhimashi Sanadi @ Lakkanagol
D.W-2 : Basavva W/o. Dhulappa Adimani
D.W-3 : Ningappa Siddappa Magadum
D.W-4 : Yallappa Satteppa Obi
D.W-5 : Ashok Arjun Dandin

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF DEFENDANT/S :

Ex.D1 : Ration card
Ex.D2 : Aadhar card
Ex.D3 : Election identity card
Ex.D4 : Sale deed
Ex.D5 to 8 : C/C copies of order sheet, plaint, written statement
& issues in OS.No.342/2015

Ex.D9 : Will deed
Ex.D9(a), (b) & (c) : Signatures
Ex.D10 and 11 : Sale deeds

(Umesh S.Atnure)
Prl. Senior Civil Judge, Gokak