



Presented on : 05.09.2017

Registered on : 05.09.2017

Decided on : 23.06.2026

Duration : 08Y.09M.18D

IN THE COURT OF CIVIL JUDGE AND JMFC,
HUKKERI.

Present: **ADITYA R. KALAL.,** B.A.L. LL.B. LL.M (Symbiosis)
Civil Judge and JMFC., Hukkeri.

Dated, on this 23rd day of June, 2026

ORIGINAL SUIT No.228/2017

PLAINTIFFS :

- 1. Akash Mallappa Ankalagi**
Age: 07 years, Occ: Education
R/o. Karaguppi Village, Tq: Hukkeri,
Dist: Belagavi
(Since Minor R/by his Minor Gaurdian
natural mother plaintiff No.1)
- 2. Kallawwa W/o Mallappa Ankalagi,**
Age: 32 years, Occ: Household/ Agriculture,
R/o. Karaguppi Village, Tq: Hukkeri,
Dist: Belagavi

(Represented by Sri. B.M.Jinarale, Advocate)

V/s.

DEFENDANTS :

- 1. Kallawwa W/o Adivappa Ankalagi**
(Since dead R/by his legal heirs)



- 2. Basavaraj Adivappa Ankalagi,**
Age: 48 years, Occ: Agriculture,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi
- 3. Mallappa Adivappa Ankalagi,**
Age: 45 years, Occ: Agriculture,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi
- 4. Akkawwa Iranna Ganiger,**
Age: 43years, Occ: Household,
R/o Sunadholi Village, Tq: Gokak
Dist: Belagavi
- 5. Shanta @ Madhuri D/o Adivappa Ankalagi,**
Age: 40 years, Occ: Household,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi
- 6. Basawwa Siddappa Ankalagi,**
Age: 66 years, Occ: Agriculture,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi
- 7. Suresh Siddappa Ankalagi,**
Age: 48 years, Occ: Agriculture,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi
- 8. Shivaleela Ashok Hukkeri,**
Age: 46 years, Occ: Household,
R/o Ankalgudiketar Village
Tq: Hukkeri, Dist: Belagavi

**9. Sumitra W/o Nagappa Yamakanamaradi**

Age: 44 years, Occ: Household,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi

10. Ramesh Siddappa Ankalagi,

Age: 40 years, Occ: Agriculture,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi

11. Mallappa Siddappa Ankalagi,

Age: 38 years, Occ: Agriculture,
R/o Karaguppi Village, Tq: Hukkeri
Dist: Belagavi

(Deft No. 1 dead)

(Defts No.2, 6 to 10 are placed Ex-parte)

(Defts No. 3 to 5 are represented by Shri. R.B.Chougala Advocate)

(Deft No.11 is represented by Shri. K.M.Bugadikatti Advocate)

Date of institution of suit : 05.09.2017

Nature of suit : Partition and separate
possession

Date of Recording of Evidence : 09.07.2019

Date of pronouncement of
Judgment : 23.06.2026

TOTAL DURATION : Years Months Days
08 09 18

**Civil Judge and JMFC,
Hukkeri**

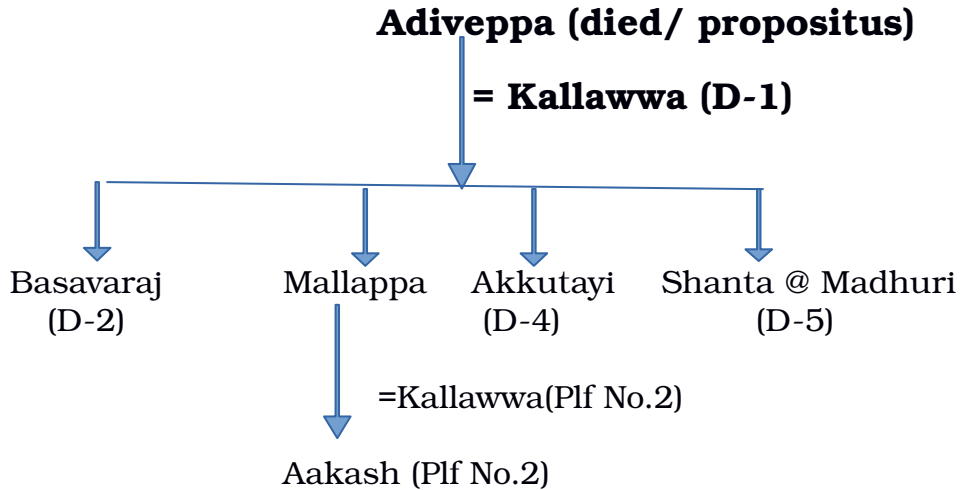


:: J U D G M E N T ::

1. The plaintiff has filed this suit seeking the relief of partition and separate possession.

2. The suit properties are the agricultural lands situated at Karaguppi and Bannibagi villages, which are as shown in the plaint 'A' schedule.

3. The Genealogical Tree as furnished by the plaintiff is as under:



4. The brief facts of the case is projected by the plaintiff is as under:

The propositus of the family was Adivappa and he has died about many years back. He has a wife by name



Kallavva, who is the defendant No.1 in this case. The said Adivappa and Kallavva had four children by name Basavaraj who is the defendant No.2, Mallappa who is the defendant No.3, Akkautai, who is the defendant No.4 and Shanta @ Madhuri, who is the defendant No.5 in this case. The plaintiff No.1 is the son of Mallappa and plaintiff No. 2 is the wife of Mallappa. It is stated that the plaintiffs and the defendants No. 1 to 5 are in joint possession and enjoyment of the suit properties. It is stated that in the RTC extracts, the names of the plaintiffs and some of the defendants are entered and all of them are in joint possession as co-owners.

5. It is stated that the plaintiffs are having 2/15th share and defendant No. 1 is having 1/5th share and defendant No. 2 is having 1/5th share, defendant No. 3 is having 1/15th share and defendant No. 4 is having 1/5th share, and defendant No. 5 is having 1/5th share. It is further alleged that in order to deprive the share of the plaintiffs, the defendants No. 1 to 5 are obstructing to the possession and enjoyment of the plaintiff's share. It is stated



that the suit properties are not compatible to be cultivated jointly. Therefore, the plaintiffs have sought for partition. It is averred that on 26-8-2017 the plaintiffs demanded the defendants No.1 to 5 to effect partition by metes and bounds, but their request was turned down by the other defendants. Therefore, the plaintiffs have sought for the partition of their 2/15th share in the suit properties.

6. It is stated that the defendants No.6 to 11's names are entered in the RTC extracts, and they are made as formal parties. The cause of action is said to have arisen on 26-8-2017 when the plaintiffs demanded for partition of their 2/15th share in the suit properties.

DEFENCE OF THE DEFENDANTS

7. After the service of the suit summons, the defendants No. 3 to 5 appeared through their advocate and have filed their written statement. Whereas the defendant No. 11 also has appeared through his advocate and has filed his written statement. The defendant No.1 has died during the pendency of the case. The defendants No. 2, 6 to 10 have



not appeared before the Court, even though they were served with the summons and they are placed ex-parte.

8. The defendants No.1, 3 to 5 have filed their common written statement. In their written statement, they have denied the entire plaint averments as false, and they state that this suit is filed only to harass the defendants No. 1, 3 to 5 by suppressing the true material facts. It is stated that the G-tree is not complete and they also deny that the defendants No.1, 3 to 5 are in the joint possession and enjoyment of the suit properties and they are paying the kadayam over the same. They also deny that the plaintiffs are having 2/15th share in the suit properties. The defendants specifically state that the propositus Adivappa, who died 20 years back, had a wife by name Kallavva and four children by name: Basavaraj (defendant No. 2), Mallappa (defendant No. 3), Sumitra and Madhuri (defendant No. 5). It is said that Mallappa (defendant No. 3) had a wife by name Mahadevi and children by name Deepa and Somaling. It is stated that the defendant No. 3 had



married to Mahadevi of K.K.Koppa village of Belagavi taluk at Veerabhadreshwar Temple of Hattaragi village as per the Hindu rites and customs prevailing in their community.

9. It is said that after the marriage, the wife of defendant No. 3, Mahadevi came to the Karaguppi village, and out of their wedlock, on 24.04.2000 a daughter was born and she was named as Deepa. And on 01.08.2003 a son was born, and he was named as Somaling. And both Deepa and Somaling are studying in Government Higher Primary School of K.K.Koppa village. It is stated that except the above-said persons, there are no other legal heirs to defendant No. 3, and he has not married to any other person and he has not got no other issues.

10. It is stated that the plaintiffs are not related to the family of the defendant No. 3 and the defendant No. 3 has not married to the plaintiff No. 2 at any point of time, and the plaintiff No.1 is not born out of the wedlock of defendant No. 3 and plaintiff No. 2. It is stated that even though plaintiffs are not related to the family of the defendant No. 3



in order to make unlawful gain to themselves and to gulp the properties, they have created false stories.

11. It is stated that the suit properties are the ancestral properties which are inherited by defendants No.1, 3 to 5 from their ancestors and except the defendants No.1, 3 to 5 no other persons or the plaintiffs are having any right, title, or interest over the said properties. It is also stated that the Court Fee is not properly paid and the plaintiffs are not in possession of the suit properties. It is also stated that the defendants No. 1, 3 to 5 are only in the possession and they are growing cotton, maize, groundnut every year and they state that the plaintiffs have created false narrative only to gulp the property.

DEFENCE OF THE DEFENDANT NO. 11

12. The defendant No.11 has filed a separate written statement and he has admitted the claim of the plaintiff and he stated that the averments made in the plaint are all correct. The defendant No.11 admits that the plaintiff No.2 is the wife of defendant No.3 and out of their wedlock



plaintiff No.1 was born.

13. On the basis of above pleadings, the following issues were framed by my predecessor-in-office :

:: ISSUES ::

1. Whether the plaintiffs prove that they are son and wife to defendant No.3 and joint family members ?
2. Whether the plaintiffs further prove that the suit schedule property are joint and ancestral properties to them and defendants and they are in joint possession ?
3. Whether the suit is maintainable ?
4. Whether the plaintiffs are entitled for partition and separate possession of 2/15th share in the suit schedule properties ?
5. What order or decree ?

14. In order to prove their case, the plaintiff No.2 has got examined herself as PW.1 and got marked 10 documents as Ex.P.1 to P.10 and closed their side. On the other hand, on behalf of the defendants, defendant No.3



himself got examined as D.W.1 and has got marked 9 documents at Ex.D-1 to D-9 and closed their side.

15. I have heard the arguments advanced by the learned advocates appearing for the plaintiffs and defendants. Perused the pleadings , evidence both oral and documentary of both sides and other materials on record.

16. After going through the evidence and pleadings , this Court answers the above issues as hereunder :

Issue No.1 : In the Affirmative

Issue No.2 : In the Affirmative

Issue No.3 : In the Affirmative

Issue No.4 : In the Affirmative

Issue No.5 : As per final order or the following:

:REASONS:

17. Issues No.1 to 4 :- All these are taken for common discussion as they all revolve around a common issue , whether the plaintiff No. 2 is the legally wedded wife of the defendant No. 3 and plaintiff No.1 is the legitimate son of the defendant No.3.



18. The plaintiffs have filed this suit seeking the relief partition and separate possession against the defendants. To prove their case, the plaintiff No.2 has got examined herself as P.W.1 and got marked Ex.P-1 to 10 documents. The plaintiff No.2 by name Kallawwa has filed here affidavit in lieu of hre examination-in-chief and she has reiterated the contentions taken in her plaint. She states that she is the legally wedded wife of the defendant No.3, Mallappa and out of their wedlock, plaintiff No.1 Akash, was born and that the suit properties are the ancestral joint family properties of the plaintiffs No.1 and 2 and that they have a share in the said property. The case of the plaintiff No.2 is that she was married to defendant No. 3. The plaintiff No.1 was minor at the time of filing of the suit and his age is mentioned as 7 years in the cause title. The defendant No. 6 to 11 are formal parties as their names are appearing in the Record of Rights of the suit property. Therefore the defendants No.1 to 5 are the only contesting defendants. The defendant No. 4 and 5 are the daughters and the defendants No.2 and 3 are the sons of the propositus. Whereas the defendant No. 3 denies



the relationship with the plaintiff No.2. He says that he was married to one Mahadevi of KK Koppa village of Belagavi Taluk. And that the defendant No. 3 has the children by name Deepa and Somalinga who are now studying at Govt School of KK Koppa village.

19. In order to prove the case, the PW1 has produced Ex.P-1 to 10 documents. Ex.P-1 is the RTC extract of the land bearing Sy No. 528, measuring 2 acres 2 guntas situated at Karaguppi village and it shows that 1 acre 39 guntas is jointly standing in the name of defendant No.1, 2 and 3 along with his cousins. Ex.P-2 is the RTC extract of the agricultural land bearing Sy No. 507 measuring 1 acre 23 guntas wherein 1 acre 16 guntas is jointly standing in the name of Ankalagi Kallawwa (defendant No.1) and Mallappa (defendant No.3) and Basavaraj (defendant No.2) along with other persons namely Basavva Siddappa Ankalagi, Suresh Siddappa Ankalagi, Shivaleela Ashok Hukkeri, Sumitra Nagappa Yamakanamaradi, Ramesh Siddappa Ankalagi and Mallappa Siddappa Ankalagi. Ex.P-3



is the RTC extract of the agricultural land bearing Sy No. 41/1, measuring 1 acre 2 guntas, which is of the year 2017-18 and it is jointly standing in the name of defendants No.1, 2 and 3 and Basavva Siddappa Ankalagi, and Suresh Siddappa Ankalagi, Shivaleela Ashok Hukkeri, Sumitra Nagappa Yamakanamaradi, Ramesh Siddappa Ankalagi, Mallappa Siddappa Ankalagi. Ex.P-4 is the RTC extract of the land bearing Sy No. 28, situated at Bannibagi village measuring 1 acre 27 guntas, wherein 1 acre 26 guntas, excluding 1 gunta of kharab is standing in the name of defendants No. 1 to 3.

20. Ex.P-5 is the tax assessment extract with respect to property bearing VPC No.121 which is vacant space situated at Karaguppi village and it is standing in the joint names of Kallappa, Basavaraj and Mallappa, who are the defendants No. 1, 2, 3 with respect to $\frac{1}{2}$ portion and another $\frac{1}{2}$ portion is standing in the name of Siddappa Basavantappa Ankalagi. Ex.P-6 is the tax assessment extract with respect to house bearing VPC No. 54 of



Karaguppi village, wherein $\frac{1}{2}$ portion is jointly standing in the name of defendants No. 1, 2, 3 and another $\frac{1}{2}$ portion is standing in the name of Siddappa Basavantappa Ankalagi. Ex.P-7 is the school certificate of plaintiff No.1 Aakash Mallappa Ankalagi, which shows his date of birth as 3-5-2010 issued by Headmaster of Fateh Khan Desai High School, Paschapur. Ex.P-8 is the fee paid receipt of plaintiff No.1, Akash. Ex.P-9 is the Aadhaar card of plaintiff No.1 Akash which shows his father's name as Mallappa Aralikatti (Defendant No. 3) . Ex.P-10 is the bank passbook of Akash Mallappa Ankalagi maintained at Karnataka Bank, Paschapur branch, wherein the said account being minor's account, it is operated by the guardian, mother who is the plaintiff No 2.

21. In the cross-examination, the PW1 states that she has filed this case for the relief of partition against her mother-in-law and brothers-in-law in respect of 6 acres of the agricultural land, but she cannot state the survey numbers of all the 6 acres and except the 6 acres she has



not made the suit against any other property. She states that her original name was Kallavva Siddappa Bendwadi and she was resident of Aralikatti and she was given in marriage to Bendwadi village of Chikodi taluk. She states that in her Aadhaar card and the election identity card, her name is written as Kallava Mallappa Ankalagi and she was given in marriage about 28 years back. She admits that she has a son who is at Bendwadi village. She also states that she has not taken divorce at Bendwadi village. She states that she does not know who was the priest/poojari at the time of her marriage at Aralikatti and she cannot state who wrote the document with respect to the marriage engagement before the marriage. She admits that at the time of the marriage, photos were taken and invitation card was printed. She states that she has produced the invitation card as well as the photos to show that her marriage was performed at Aralikatti village. She states that she is casting her vote at Karaguppi village and at the time of the marriage, the panchas were Appayya Bhimgouda Patil and Kenchgouda Bhimgouda Patil. She states that about 500



people had gathered during the marriage and the marriage took place at Lakshmi Devi Temple of Aralikatti village as there was no marriage hall there. She states that she is married to defendant No. 3. She states that Adivappa the propositus, had four children. The daughters are Akkavva and Shanta and one of them is given in marriage to Belagavi and another to Suladala village. She states that she does not know in which year Akkavva and Shanta's marriage had taken place. She states that defendant No.1 Kallavva has died but she did not go to the cremation as during that time, she was suffering from disease and she was operated.

22. The PW 1 states that she has not given any application after the death of Kallavva to enter her name as the wife of Mallappa before the Tahsildar or the Village Accountant. She also states that she has not made any case for maintenance against Mallappa before any other court. She states that she was living both at Aralikatti and Karaguppi villages and she was residing in a rented house at Karaguppi. She further states that she was living in the



rented house of one Siddappa for about 5 to 6 years and she was giving Rs.1,000/- as the monthly rent. She states that she has entered agreement, and that there is a rent agreement but she has not produced the same before the court. She states that in order to show that she is the resident of Karaguppi village, she has not produced the ration card or the election identity card. The PW1 states that in respect of Sy No. 507, the said land is standing in the name of Kallava Adivappa Ankalagi, the defendant No.1. She further states that there was an order by the Hon'ble High Court of Karnataka in respect of Sy No. 507, VPC 121 and VPC 54 and she knows about the said order by her advocate. She denies that VPC No.121 and VPC 54 and Sy No. 507 have been ordered to belong to the family of one Payannavar. After that, the said three properties were purchased by Durdundi Mallappa Patil and now they are standing in the name of Durdundi Mallappa Patil. She admits that the suit properties are the inherited properties by the ancestors. She states that Gangavva Payannavar and Durdundi Mallappa Patil are not made as parties. She



denies that Dhurdundi Mallappa Patil has sold the land in Sy No. 507 to Malagouda Patil. She denies that the defendant No.3 Mallappa has two children by name Deepa and Somalinga and a wife by name Mahadevi.

23. The PW-1 has admitted the photographs taken during the marriage which are marked as Ex.D-1 to D-3. She further denies that wife of Mallappa is Mahadevi who belongs to K.K. Koppa village, but she asserts that she is the wife of Mallappa. She states that she can produce the photographs and the documents to show that her marriage was performed with Mallappa (Defendant No. 3). The PW 1 denies that on 24-4-2000 Mallappa's first daughter Deepa was born and Somalinga was born on 1-8-2003 and their marriage was performed at Veerabhadreshwar Temple of Hattargi village. She also states that she has not filed any suit for restitution of conjugal rights against the defendant No.3. She denies that she is not the legally wedded wife of Mallappa and Mallappa was married to one Mahadevi. She denies the suggestion that she is not related to the family of



Mallappa Adivappa Ankalagi. She also denies that she has no right over the suit properties. She further states that all the lands at Karaguppi are irrigated lands and as there is Markandeya River flowing at Karaguppi the said lands fetch about 20 to 25 lakhs per acre. She states that she cannot state the boundaries of VPC No. 121 and VPC No. 54 and also their measurements. She states that each house is worth about 5 to 6 lakhs. She denies the suggestion that Mallappa is not married to her at any point of time and Akash was not born out of their wed-lock.

24. On the other hand the defendant No.3 Mallappa, is examined as DW1 and he has filed his affidavit in lieu of his examination-in-chief. He denies the relationship of the plaintiffs No. 1 and 2 and he states that he is married to Mahadevi and out of their wedlock Deepa and Somalinga are born who are studying in government high school at K. K. Koppa village. He states that his marriage was performed with Mahadevi at Hattaragi village in Veerabhadreshwar temple. He has produced Ex.D-1 to D-6 documents. Ex. D-1 to D-3 are the photos that were confronted at the time of cross-



examination, and the said Ex.D1 to D3 are the marriage photos of the defendant No. 3 with the said wife Mahadevi. Ex.D-4 is the RTC extract of the land bearing Sy No. 507/2 measuring 31 guntas 8 annas situated at Karaguppi village which is standing in the name of Irawwa w/o Mallappa Payannavar, as per ME No. MRT 10/2018-19, vide order dated 17-10-2018. Ex.D-5 is the certified copy of the order passed in OS No.153/18 which was filed by Mallappa as plaintiff against Siddappa Basawantappa Ankalagi as the defendants. It is pertinent to note that the said OS No.153/18 was filed after this suit. Ex.D-6 is the certified copy of the RSA No. 42/2005 passed by the Honorable High Court of Karnataka, Dharwad bench on 4-4-2018 against defendant No.1, 2 and 3 which was a suit filed by Gangawwa w/o Parappa who is the grandmother of the present defendants No. 2 and 3. The present defendants No. 2 and 3 in this case were arrayed as defendants No.3 and 4 in that suit and in that suit . It was declared that the defendants No. 1, 2 and 3 i.e. Kallawwa, Basavaraj, and Mallappa are owners of one-half share in the property which was the subject matter of the suit. Ex.D-7 is the school certificate of Deepa Mallappa Ankalagi which shows



that she was born on 24-4-2000 and Ex.D-8 is the school certificate of Somaling Mallappa Ankalagi which shows that he was born on 1-8-2003 which are issued in the year 2017 and 2018 respectively. Ex.D-9 is the ration card consisting of the family of defendant No.3 Mallappa, and his wife Mahadevi and children Deepa & Gajanan.

25. In the cross-examination, the DW1 states that his father Adivappa had four children and defendants No. 2 to 5 are the children of Adivappa. He states that he does not know the contents of his examination-in-chief and he admits that the properties inherited from his father have not been divided between himself and defendants No. 1, 2, 4, and 5. He states that Siddappa is his uncle and he admits that the suit properties are standing in the names of the legal heirs of his father and his uncle Siddappa. And he states that with respect of Sy No. 507 and 78, the properties have been divided. He admits that there has been no partition between his father and his uncle and the suit properties are the ancestral joint family properties. He admits that he is residing alone in Karaguppi village. He also admits that he has not filed any



suit for declaration to declare that plaintiff No. 2 is not his wife and plaintiff No. 1 is not his son. He states that he has not understood the documents produced by the plaintiff. He states that he does not know that plaintiff No.1 Akash is studying in Fateh Khan Desai High School and he is having the Aadhaar card and his residence is shown as Karaguppi village, and he is having a joint account at Bank of India. The DW 1 states that he does not know that his wife - Kallavva is receiving the benefits from the government and his son Akash is receiving the benefits from the government. He denies the suggestion that after the differences between himself and the plaintiff, the plaintiffs have started residing at Karaguppi village and there was a panchayat convened in the presence of the villagers of Karaguppi and also Aralikatti village villagers. He states that the partition was done between his brothers and sisters. He states that he has no difficulty in producing the invitation card and also the agreement made at the time of marriage with one Mahadevi. He further states that he has not produced any documents to show that Somaling, Mahadevi, and Deepa are residing at Karaguppi villages. He also states that he has no difficulty in examining the said Mahadevi, Deepa and



Somaling before the court . He also states that he has no difficulty in producing the Aadhaar card, voter ID card and ration cards of Mahadevi, Deepa, and Somaling.

26. The DW-1 admits that he has not made any suit for declaration denying the relationship of the plaintiff. He denies that on 26-08-2017 the plaintiff demanded to effect partition. He denies that the marriage between himself and plaintiff No. 2 was performed as per the customs prevailing in Ganiga community at Aralikatti village. He states that in the photo, he and his mother and his relatives are seen. He denies that out of the wedlock of himself and Kallavva, Akash was born. He denies the suggestion that plaintiff No. 1 is the legitimate son and plaintiff No. 2 is his legally wedded wife.

27. The DW 1 denies the suggestion that he has not been married to Mahadevi and that Deepa and Somaling are not his children. He states that Deepa is given in marriage to Inchal village of Bailhongal taluk and Somaling is studying in 12th standard at K.K. Koppa college. He admits that Mahadevi's parents' house is at K.K. Koppa village and he denies the suggestion that only because of the reason that he



has to give a share to plaintiffs No. 1 and 2, he is denying their relationship. He admits that his mother's name and his uncle's name are entered jointly in the RTC and there has been no partition.

ANALYSIS OF EVIDENCE

28. After going meticulously through the evidence lead by both the parties it is seen that the plaintiffs have the Aadhar card and school certificates which show that defendant No. 3 is the father of the plaintiff No. 1. Whereas the defendant No 3 denies the relationship of the plaintiffs with him and states that he is married to Mahadevi and he has begotten children from him. It is seen that the defendant No. 4 was married to one Mahadevi and he has two children from that wedlock. The said marriage with the Mahadevi got strained. As a result , Mahadevi started residing in KK Koppa village of Belagavi taluk. Later he married to the plaintiff No. 2 and that being a second marriage, the said marriage may not be legally recognized. But the plaintiff No. 1 is the son of the defendant No. 3. The plaintiff No. 1 is entitled for a share in the separate share of the defendant No. 3.



29. In this case, the plaintiffs are claiming to be the legal heirs of Mallappa (defendant No. 3) , whereas defendant No.3 Mallappa denies that plaintiff No.2 is his wife and plaintiff No. 1 is his son. The defendant No. 3 states that he was married to one Mahadevi, and their marriage was performed at Veerabhadreshwar Temple of Hattargi.

30. It is seen that Mallappa-defendant No. 3, has two wives and plaintiff No. 1 is the son born from the wedlock of Kallavva and his date of birth is 01.01.2014, whereas the date of birth of Deepa and Somalinga who are said to be the children from the first wife is 24.04.2000 and 01.08.2003, and they are studying at K.K. Koppa village, which is the parental house of Mahadevi. The plaintiffs have produced the Aadhaar card to show that she is the legally wedded wife of Mallappa. In VPC No. 34 house as well as in VPC No. 121 vacant space, the family of Adivappa has ½ share and the other half is belonging to Siddappa and Basavantappa Ankalagi.

31. It is seen that one Parappa Payannavar is the propositus and he died in 1938 leaving behind his widow Gangavva, who succeeded to the estate of the deceased which



consisted of 1 acre 23 guntas of agricultural land, a house and open space. As the propositus Parappa died issueless, his widow Gangavva adopted one Mallappa S/o Basavantappa Ankalagi in 1940 and the adopted son Mallappa died issueless on 03.05.1961 leaving behind his wife widow Irawwa and Gangavva as the mother and Irawva as the widow succeeded to the estate of the said Mallappa. And there was an earlier case with regard to it.

CONCLUSION

32. Now the consideration before the court is whether the plaintiffs are successful in proving their relationship with the defendant No. 3. As could be seen from the evidence, the inference is that the defendant No. 3 is the husband of the plaintiff No. 2 and that the plaintiff No. 1 was born out of their wedlock. As the first wife of the defendant No. 3 left him and started residing separately at KK Koppa Village, he entered into marriage with the plaintiff No. 2 and has begotten the plaintiff No. 1 . Even after the marriage with the plaintiff No. 2 , the said marriage got strained due to various reasons, and as a result, she also started residing separately and now this case



is filed by the plaintiffs.

33. In cases of the disputes relating to the marriage, the burden of proof would be upon the person who is in the dominant position in the marriage, which would be obviously the husband. Therefore in this case, also when the plaintiffs proved by way of cogent evidence such as Aadhar card and ration cards and school certificates , immediately the onus has shifted upon the defendant No. 3 to prove the said case. In a fiduciary relationship , such as that of husband and wife, the burden would be on the person , who denies the relationship , rather than the person who asserts the relationship . Therefore the burden of proof was shifted on the defendant No. 3 to prove that the plaintiff No 1 is not the son and the plaintiff No. 2 is not the wife of the defendant No. 3. Under section 111 of the Indian Evidence Act, 1872 when there is a question about the good faith of a transaction between parties, and one party is in a position of "active confidence" over the other, the burden of proving the good faith of the transaction lies on the party in the fiduciary position. Here also the defendant No. 3 is denying the relationship and the plaintiff is



asserting to be his wife . Therefore the burden of proof to prove the said relationship would shift on the party who is in a fiduciary relationship.

34. Now coming back to the case in hand, there are documentary evidences such as the school records which show that the father of the plaintiff No. 1 is the defendant No 3. In my opinion, such a document is enough to prove the relationship with the defendant No. 3, that he is the father of the plaintiff No. 1. Hence I hold that the plaintiffs have proved their relationship with the defendant No. 3 . With regard to the nature of the properties, there is no dispute that the said suit properties are the ancestral joint family properties. The defendant No. 3 himself has stated that there is no partition between him and his brother, even though a case was formally filed. It is also to be appreciated that when this case came to be filed by the plaintiffs in 2017, immediately the defendant No. 3 filed a collusive suit for partition, against his brother and sisters , in OS No 153/2018. The major portion of the property is shifted or in other terms diverted to the brother, in order to safeguard the property, from being partitioned or to



deprive the plaintiffs from claiming a share in the property. It is needless to state that such a suit for partition, would not be binding on the plaintiffs. Therefore , for the above stated reasons and discussions made herein above, I answer the issue No. 1 to 4 in the Affirmative and hold that plaintiffs are the son and wife of the defendant No. 3 and they are the joint family members along with the defendants No. 1 to 5. The suit is also maintainable, as illegitimate son is also entitled to a share in the property, which falls separately to the share of the defendant No. 3, at a partition. In this case, the defendant No. 3 is entitled for 1/4th share each in the suit properties. Therefore defendant No. 3 has an earlier wife and 2 children and they are also entitled for a share . And the defendant No. 3 would get 1/16th share in the suit property. The plaintiffs are entitled for their share in that 1/16th share , which would be 1/48th share. Hence the above issues are answered accordingly.

35. Issue No. 5:- For the above stated reasons, I proceed to pass the following:



:O R D E R:

The suit of the plaintiffs is partly decreed with cost.

The plaintiffs No.1 and 2 are entitled for 1/48th share in the suit properties.

The defendant No. 3 is entitled for 1/16th share in the suit properties.

The defendants No. 2, 4, 5 are entitled for 1/4th share each in the suit properties, respectively.

Draw preliminary decree accordingly.

Put up the case for drawing final decree on 01.07.2026.

(Dictated to the Stenographer, transcribed by her and after corrections pronounced by me in the open Court on this the 23rd day of June 2025).

**(ADITYA R. KALAL)
CIVIL JUDGE AND JMFC
HUKKERI.**

**:A N N E X U R E:****I. List of witnesses examined from plaintiffs side.**

P.W.1 - Kallavva Mallappa Ankalagi

II. List of documents exhibited on behalf of plaintiffs: -

Ex.P.1 to 4 : RTC extracts
Ex.P.5 & 6 : VPC extracts
Ex.P.7 : Certificate
Ex.P-8 : School Fee paid receipt
Ex.P-9 : Aadhar card
Ex.P-10 : Bank Pass Book

III. List of witnesses examined from defendants:-

D.W.1 : Mallappa Adiveppa Ankalagi

IV. List of documents exhibited on behalf of defendants:-

Ex.D-1 to 3 : Photos
Ex.D-4 : RTC
Ex.D-5 : Copy of Order in OS No.153/2018
dated 15.10.2019
Ex.D-6 : Copy of Judgment and Decree
Ex.D-7 & 8 : School certificates
Ex.D-9 : Ration card

(ADITYA R. KALAL)
CIVIL JUDGE AND JMFC
HUKKERI.



(Order pronounced in open court, vide separate Judgement)

ORDER

(ADITYA R. KALAL)
Civil Judge & JMFC
Hukkeri