



Presented on : 29-09-2017
Registered on : 29-09-2017
Decided on : 11-08-2026
Duration : 8Y-10M-13D

**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 this the 11th day of August, 2026

ORIGINAL SUIT No.243/2017

PLAINTIFF :

Bhimappa Lagamappa Medar @ Burud,
Age:70 years, Occ: Carpenter
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.

[Represented by Sri. C.B.Mathapati, Advocate for plaintiff]

V/s.

DEFENDANTS :

1. **Somappa Lagamappa Medar @ Burud,**
Age: 45 years, Occ: Bamboo weaver
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.
2. **Yallappa Lagamappa Medar @ Burud,**
Age: 75 years, Occ: Bamboo weaver
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.



3. **Bhimappa Lagamappa Medar @ Burud,**
Age: 70 years, Occ: Bamboo weaver ,
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.
4. **Tammanna Lagamappa Medar @ Burud,**
(Since deceased R/by his legal heirs)
 - 4(a) **Neelawwa W/o Tammanna Medar,**
Age: 50 years, Occ: Household
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.
 - 4(b) **Lokesh Tammanna Medar,**
Age: 36 years, Occ: Business,
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.
5. **Shivanand Lagamappa Medar @ Burud,**
Age: 55 years, Occ: Bamboo weaver ,
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.
6. **Dundappa Shankar Medar @ Burud,**
Age: 45 years, Occ: Bamboo weaver ,
R/o Badakundri Village,
Tq: Hukkeri, Dist: Belagavi.

[Defts No.1 by Shri. R.V.Joshi., Advocate]

[Deft No.2 to 4(a & b), 5 & 6 placed Ex-parte]



Date of institution of suit : 29.09.2017
Nature of suit : Partition and separate possession
Date of Recording of Evidence : 04.10.2023
Date of pronouncement of Judgment : 11.08.2026
TOTAL DURATION : Years Months Days
08 10 13

(ADITYA R. KALAL)
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 and further consequential relief of permanent injunction to restrain the defendant No. 1 from forcefully removing the plaintiff or his family members from the possession of the suit item No. 1 property.

2. DESCRIPTION OF THE SUIT PROPERTY:

The suit properties are the house and open site properties, situated at Badakundri village of Hukkeri Taluk which are as hereunder :



1) House and open property bearing VPC No. 138, measuring 32 feet East to West and 15 feet North to South, which is bounded by:

East: House of Virupakshappa Madari

West: Property of Gundappa Satteppa Medar

North: Passage

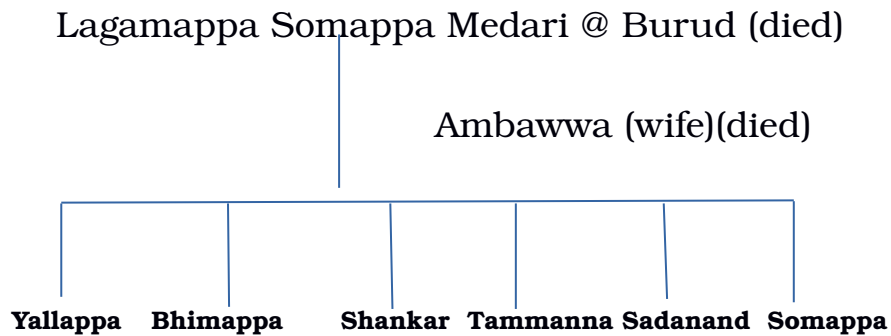
South: House of Balappa Ramappa Medar passage
and later the house of Sidramappa Guruwayya
Matapathi, which is situated at Badakundri village,
Tq: Hukkeri.

2) The item No. 2 property is bearing VPC No. 136/A, situated at Badakundri village, Tq: Hukkeri.

3) The item No. 3 property is bearing VPC 136/B, situated at Badakundri village, Tq: Hukkeri

4) The item No. 4 is property is bearing VPC number 136/B1, situated at Badakundri village, Tq: Hukkeri.

3. The genealogy tree as produced by the plaintiff is reproduced herewith :



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

4. It is the case of the plaintiff that item No. 1 to 4 properties are the ancestral joint family properties of the plaintiff and the defendants. It is said that Lagamappa Somappa Medar @ Burud was the propositus of the family of the plaintiff and the defendants. After the death of the propositus Lagamappa, his children have got divided the suit properties.

5. It is said that in item No.1 property, the eastern $\frac{1}{2}$ portion is given to the plaintiff and the western $\frac{1}{2}$ portion is given to the defendant No.1 in the house and the site property. In respect of item No.2, VPC 136/A the same has been allotted to the share of the defendant No.6. Whereas VPC No. 136/B (suit item No.3) and suit item No.4, VPC 136/B1 have been



allotted to defendant No.4. It is said that the defendant No.5 has sold the property which had fallen to his share, therefore he has no right over the suit properties.

6. It is stated that the defendant No. 1, without bringing to the knowledge of the plaintiff has got mutated the item No.1, VPC 138 in his name and is trying to dispossess the plaintiff. Even though the plaintiff requested the defendant No.1 not to do this illegal act, at the instigation of the people who are enimical to the plaintiff, he has denied the right of the plaintiff over the suit item No.1 property.

7. Therefore, the plaintiff has filed this suit seeking the relief of partition and permanent injunction to restrain the defendant No.1 not to forcefully evict the plaintiff from the suit item No.1 property. The plaintiff also prays for alternative relief. He says that if the court comes to the conclusion that, there has been no proper partition, he prays for division of the properties into three portions and 1/3rd share be allotted to him.



8. It is said that the cause of action arose on 02-02-2017 when the plaintiff asked the defendant No.1 to effect partition in item No.1 property and when the defendant No.1 denied his right over the property.

DEFENCE OF THE DEFENDANTS:

9. After the service of the suit summons, the defendant No.1 has appeared through his advocate and has filed his written statement, whereas the defendant No. 2 to 4(a & b), 5 and 6 are placed exparte.

10. The Defendant No. 1 has filed his written statement and denied the entire plaint averments as false. He submits that the averments made in the plaint are all false, and he also states that the plaintiff has no share in the item No. 1 property, i.e., bearing VPC 138, which consists of a house and an open site. He also denies the fact that item No.2 has been given to Defendant No. 6 and item No.3 and 4 have been given to the Defendant No. 4 by the Defendant No.5. He also denies the fact that the Defendant No.1 is making efforts to forcefully dispossess the plaintiff. The defendant No. 1 submits that



prior claim for partition and permanent injunction is not maintainable.

11. The Defendant No. 1 states that plaintiff and Defendant No. 3 are one and the same, therefore the suit is not maintainable and is liable to be dismissed. He also submits that Defendant No. 5, Shivanand, is not the son of Lagamappa and no such person as Lagamappa is in existence. He also submits that there is no relation between Defendant No. 5 and the plaintiff, therefore the suit is bad for mis-joinder of parties. The defendant submits that the suit is bad for non-inclusion of all the family properties, therefore the suit is liable to be dismissed on this ground also.

12. The Defendant No. 1 specifically contends that the plaintiff has not included the agricultural land bearing Sy No. 11/1 of Yaragatti village in this suit, therefore the suit is bad for non-inclusion of the other family properties. It is also stated that Defendant No. 6 Dundappa, has a sister by name Satyava w/o Ashok Burud, who is a resident of Navalihal village, Chikodi taluk. Therefore she also has not been made a



party and the suit is bad for non-joinder of necessary parties. It is said that the propositus Lagamappa had a son by name Shankar and he has not been made as a party in this case. He also states that the property bearing VPC No.151, which is standing in the name of Yallappa, has not been included in this suit. Therefore on all these grounds he submits that the suit is not maintainable. He also states that the plaintiff has not included the joint family properties of the plaintiff and the defendants which are bearing VPC No. 135 and 139 and that the suit is bad for non-inclusion of all the joint family properties. The Defendant No.1 further states that the plaintiff has not included VPC No.135 and the same has been sold illegally to one Virupakshaiya Palayya Ganachari and the said purchaser is a necessary party. He also submits that the plaintiff is residing in Sy No. 11/1 of Yaragatti village, and that property has not been included in this suit.

13. The Defendant No. 1 states that he has filed a suit in respect of Sy No. 11/2 of Yaragatti village against the plaintiff/ Bhimappa in O.S. No. 33/2013 and the said suit has been decreed on 22-10-2016. Therefore this suit is filed as a



counter-blast. The Defendant No. 1 further states that he has been residing with his family members in VPC No.138 from last 40 years, and he has also been paying the kadayam over the same. He also says that plaintiff is not in possession and enjoyment of the item No.1 property and even in the assessment extract, the name of the Defendant No. 1 has been shown. All these facts are within the knowledge of the plaintiff. Even then, only with an intention to give trouble to the Defendant No. 1, he has filed this false suit. Therefore, he states that the suit has to be dismissed with exemplary cost of Rs. 5,000/-.

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

:: ISSUES ::

1. Whether the plaintiff proves that suit schedule properties are joint and ancestral to him and defendants and they are in joint possession ?



2. Whether the plaintiff further proves that the defendant No.1 tried to ouster him from the house at VPC No. 138 as stated ?

3. Whether the suit is bad for non-joinder of necessary parties and non-inclusion of other family properties ?

4. Whether the defendant No.1 proves the Judgment and Decree in OS No.33/2013 in respect of RS No.11/2 between him and plaintiff as contended ?

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

6. What order or decree ?

15. In order to prove their case, the plaintiff has got examined himself as PW.1 and got marked 4 documents as Ex.P.1 to P.4 and closed his side. On the other hand the defendants have not chosen to lead the evidence and closed their side.



16. I have heard the arguments advanced by the learned advocates for the plaintiff and defendants. Perused the pleadings and the evidence and other materials placed on record.

17. After going through the oral and documentary evidence and the pleadings, this Court answers the above issues for the reasons stated below as hereunder :

Issue No. 1: In the Negative

Issue No. 2: In the Negative

Issue No. 3: In the Affirmative

Issue No. 4: In the Negative

Issue No. 5: In the Negative

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

:REASONS:

18. Issues No. 1 to 5 :- The Advocate for the defendant No.1 submits that the burden of proving issue No.1 and 2 is on the plaintiff and the defendant No.1 is bed ridden and he is unable to attend the court. Hence he says that he says that the defendant has no oral evidence to lead.

19. In order to prove the said issues, the plaintiff has got



examined himself as PW1 and he has filed his affidavit in lieu of his examination-in-chief and has reiterated the contentions taken in the plaint. He has produced documents which have been marked as Ex.P-1 to P4. Ex.P-1 is the certificate issued by the PDO of Badakundri Gram Panchayat, Badakundri village, Tq: Hukkeri which shows that VPC No. 138 is standing in the name of the defendant No.1 Somappa Lagamappa Medar, and the said property has been mortgaged for Rs. 40,000/-. Ex.P-2 is the certificate issued by the PDO, Gram Panchayat, Badakundri which shows that VPC 138/A is the vacant space and it is standing in the name of the defendant No.1 Somappa Lagamappa Medar. Ex.P-3 is the assessment register of the Gram Panchayat, Badakundri, Tq: Hukkeri which shows that VPC No. 138, which is the suit item No.1 is standing in the name of Somappa Lagamappa Medar which is measuring 24 ft X 20 ft. In the Ex.P-3 it is also seen that the item No.2 VPC No. 136A is standing in the name of Shankar Lagamappa Medar and Tammanna Lagamappa Medar to the extent of their individual $\frac{1}{2}$ share. The said Shankar is the father of defendant No.6. Tammanna is defendant No.4,



whereas suit item No.3 again VPC number 136/B which is a house property, is standing in the name of defendant No.4 Tammanna Lagamappa Medar, and it is measuring 28 ft X 21ft. Whereas the VPC 136/B1 which is an open space is measuring 28 ft X 24 ft and it is standing in the name of Tammanna Lagamappa Medar. Ex.P-4 is the assessment extract of the year 1979 to 1982 of the Gram Panchayat, Badakundri, which shows that VPC No. 138 which is a black tiled house and it was standing in the name of the propositus, Lagamappa Somappa Medar. Whereas the Ex.P-5 is of the year 2000-01.

20. The defendant No. 1 advocate has filed a memo on 19/1/2026 stating that the burden of proving the issues No. 1 and 2 is on the plaintiff and that the defendant No. 1 is bed ridden and therefore he is unable to attend the court and he has not evidence to lead To avoid repetition of facts and for harmonious appreciation of evidence, these issues are taken up together for consideration. The burden of proving Issues No. 1 and 2 rests squarely upon the plaintiff. To substantiate his pleadings, the plaintiff examined himself as PW-1 and



produced documentary evidence marked as Ex.P-1 to Ex.P-4. On a meticulous perusal of Ex.P-4 (Assessment Extract for the years 1979–1982), it is evident that the suit item No. 1 property bearing VPC No. 138 initially stood in the name of the common ancestor/propositus, Lagamappa Somappa Medar @ Burud. Furthermore, Ex.P-3 establishes that the ancestral properties were subsequently recorded in the names of the respective co-sharers. Thus, the said records establish that there was earlier partition and that the suit properties are not the joint family properties of the plaintiff and defendants.

21. In the cross-examination of the PW1 , he admits that his family name is called as Burad and also Medar and that he is living at Yaragatti village and he has ancestral property at Badakundri village. He admits that Tamanna has died and his son is alive and Tamanna has daughters by name Lalitha and Manjula and they are not made parties in this case. He admits that in respect of VPC 136/B , the names of Tamanna and Shankar is entered and the name of Tamanna is entered about 20 years back and Tamanna has taken loan at



Yamakanamaradi Co-Op Bank. He admits that VPC 136 was purchased and he further admits that VPC 138 is the ancestral property and the names to VPC 136 and 138 are entered about 40 years back. He admits that those persons have got their names entered and are enjoying the properties separately. He admits that during the life time of his father, there was partition. He admits that the electricity connection is also taken separately in their names. He admits that his brothers, Tamanna , Yalappa, Lagamappa, Shivanand, Dundappa have got separated and have taken their shares separately. He admits that Dundappa's father Shankar had a son by name Dundappa and a daughter by name Satyavva. And Satyavva is given in marriage to Navanihal village of Chikkodi taluk. He admits that they are not made parties in this case. He admits that his brother Shivanand is also called by name Sadanand. He admits that his father Lagamappa has died about 38 years back . He denies that there is a land in Sy.No. 11 to their family. But he states that the said land is purchased in his name about 50 years back. He admits that during the said purchase his father was alive. He admits that



Somappa had filed a suit against him in respect of that land. He admits that in OS 33/2013 , an injunction was granted stopping him from making construction of the house. He denies that being aggrieved by the said filing of the case, he filed this case. He further admits that VPC 135 was standing in his name and he has sold it to Virupakshi Ganachari. He admits that during the life time of his father, he got separated and Sadanand and Somappa were living together . He states that he was doing medarike work and he purchased it out of his own income. He admits that he has constructed a house in the land in Sy.No. 11 in the portion which he got in the partition. He admits that the said house is not included in this case and now his son is living in that house. He denies the suggestion that all the properties are divided long back during the life time of his father.

22. From the oral and documentary evidence it is clear from the evidence that the said properties are no more the joint family properties. There has been severance of the status and there is no existence of joint family between the plaintiff and the defendants. The defendant No. 1 had filed a suit



against the plaintiff in respect of the construction of the house in Sy.No.11 and there was also injunction against the plaintiff. All the evidence goes to show that there was no joint family in existence. The plaintiff and the brothers had divided the joint family properties long back about 40 years back. Therefore the joint status has severed long back. Therefore the **issue No. 1 is answered in the negative.**

23. In the Case of **Kenchegowda (Since Deceased) by LRs. v. Siddegowda alias Motegowda (1994) 4 SCC 294** it is held that a suit for partition filed for only a portion of the joint family properties without bringing the entire joint family *hotchpotch* into the common pool is not maintainable. A suit seeking partial partition is liable to be dismissed outright.

24. However, the plaintiff has failed to produce cogent and convincing evidence to establish that Defendant No. 1 attempted to illegally oust him from the suit property bearing VPC No. 138, or that he remains in joint physical possession of the same. The revenue records (Ex.P-1 to Ex.P-3) demonstrate that Defendant No. 1 has been in exclusive possession and



enjoyment of VPC No. 138 and has exercised acts of ownership over it, including mortgaging the property. Consequently, **Issue No. 2 is answered in the Negative.**

25. Regarding Issue No. 3, it is a settled principle of Hindu Law that a suit for partition must encompass all joint family properties and array all necessary co-sharers/coparceners as parties. In the present case, the record reveals that the plaintiff has failed to implead Shankar (a son of the propositus Lagamappa) and Satyavva (daughter of the late Dundappa / sister of Defendant No. 6), both of whom are necessary parties entitled to a share in the coparcenary property. Agricultural land bearing Sy. No. 11/1 of Yaragatti village has been omitted. Joint family house properties bearing VPC Nos. 135, 139, and 151 have been excluded. VPC No. 135 was illegally alienated to one Virupakshaiya Ganachari, who is also a necessary party. Shankar (son of the *propositus*) and Satyavva (daughter of late Dundappa / sister of Defendant No. 6) have not been arrayed as parties to the suit. Daughters of late Tammanna (Lalitha and Manjula) were also omitted.



26. The plaintiff has failed to include agricultural land bearing Sy. No. 11/1 of Yaragatti village, as well as joint family house properties bearing VPC No. 135, VPC No. 139 and VPC No. 151. It is trite law that a suit for partial partition without bringing the entire hotchpotch of joint family properties into the suit pool, and without arraying all legitimate co-sharers, is legally unsustainable. Therefore, the suit suffers from the vice of non-joinder of necessary parties and non-inclusion of all joint family properties. Accordingly, **Issue No. 3 is answered in the Affirmative.**

27. In the case of *Nagindas Ramdas v. Dalpatram Ichharam*, (1974) 1 SCC 242 it is held that judicial admissions made by a party during examination/cross-examination stand on a higher footing than evidentiary admissions. They are fully binding and dispense with the requirement of further proof by the opposing party.

28. With respect to Issue No. 4, though Defendant No. 1 contended in his written statement that O.S. No. 33/2013 was decreed in respect of RS No. 11/2. The Defendant No. 1 failed to step into the witness box or tender the certified copy of the



judgment and decree in evidence. In the absence of primary or secondary documentary evidence, Defendant No. 1 has failed to prove the said contention. Thus, **Issue No. 4 is answered in the Negative.**

29. ISSUE NO. 5 : PW-1 admitted that a complete partition of joint family properties took place during the lifetime of his father, Lagamappa, approximately 40 years prior to the suit. PW-1 admitted that all brothers (Tammanna, Yallappa, Lagamappa, Shivanand, and Dundappa) separated and have been enjoying their respective properties independently with separate electricity connections and independent tax assessments. PW-1 admitted that VPC No. 135 stood in his name and was sold by him independently to Virupakshshi Ganachari. He further admitted constructing a residential house on Sy. No. 11 (allotted to him in partition), where his son currently resides, and that this property was intentionally omitted from the suit hotchpotch. In light of the findings on Issue No. 3, the suit filed by the plaintiff for partial partition without bringing all joint family properties into the common pool and without impleading all legal heirs is hit by



the doctrine of partial partition and non-joinder of necessary parties. Hence, the plaintiff is not entitled to the discretionary relief of partition, separate possession, or permanent injunction as prayed for. Ex.P-1 to Ex.P-3 show that Defendant No. 1 exercised exclusive ownership acts over VPC No. 138 including mortgaging it for RS. 40,000/- The plaintiff failed to lead any cogent evidence to establish joint physical possession or any act of illegal dispossession by Defendant No. 1.

30. ISSUES NO. 6 : In view of the answers to the above issues No. 1 to 5, this Court proceeds to pass the following :

:O R D E R:

**The suit of the plaintiff is hereby
dismissed.**

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

Draw decree accordingly.

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

**(Aditya R. Kalal)
Civil Judge and JMFC
Hukkeri.**



:ANNEXURE:

I. List of witnesses examined from plaintiff side.

P.W.1 - Bhimappa Lagamappa Medar @ Burud

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

Ex.P.1 to 4 : VPC extracts

III. List of witnesses examined from defendants:-

Nil

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

Nil

**(Aditya R. Kalal)
Civil Judge and JMFC
Hukkeri.**