

IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE, BALLARI

PRESENT:- SMT. SARVAMANGALA K.M., B.A. LL.B
II ADDL. SENIOR CIVIL JUDGE, BALLARI

DATED THIS 5TH DAY OF SEPTEMBER 2018

ORIGINAL SUIT No.40 OF 2012

PLAINTIFFS: -

- 1) Smt. K.Eramma W/o K.Dodda
Baappa, Hindu, aged about 75
years, R/o Veeniveerapura
village, Ballari(taluk and district),
since deceased by her legal heirs.
- 2) Smt. Lakshmi Devi W/o
Chanchamallappa, D/o K.Dodda
Basappa, Hindu, aged about 46
years, R/o Janekunta village,
Ballari (taluk and district)
- 3) Smt.K.Saraswathi @ Leelavathi
W/o K.Somappa, D/o K.Dodda
Basappa, Hindu, aged about 42
years, R/o Thalamandi village,
Ballari (taluk and district)

(By Sri. T.H.N, Advocate)

// V E R S U S //

DEFENDANTS :-

- 1) Smt.Shivamma W/o
Late.K.Gavisiddappa, Hindu,
aged about 65 years,
- 2) Sri.K.Jade Swamy S/o
K.Gavisiddappa, Hindu, aged
about 19 years,
- 3) Smt. Nageshwaramma W/o
Late.Shanumukappa, Hindu,
aged about 50 years,
- 4) Sri.K.Kamal Raja S/o
Late.K.Shanumukappa, Hindu,

aged about 28 years,

- 5) Sri.K.Mallikarjuna S/o
Late.K.Shanumukappa, Hindu,
aged about 26 years,
- 6) Sri.K.Dodda Basappa S/o
Late.K.Shanumukappa, Hindu,
aged about 24 years,
- 7) Sri.K.Nageshappa , S/o K.Dodda
Basappa, Hindu, aged about 44
years,
- 8) Sri.K.Basavana Gouda, S/o
K.Dodda Basappa, Hindu, aged
about 53 years,
- 9) Smt. K.Thayamma W/o
Basavarajappa, Hindu, aged
about 55 years,
- 10)Smt. Parvathamma W/o K.Sanna
Dodda Basavaraj, Hindu, aged
about 50 years.

The defendant No.1 to 10 are all
resident of Veeniveerapura village,
Ballari (taluk 7 district)

- 11)Sarada Devi D/o Dalichand, R/o
Flower Street, Bangalore Road,
Brucepet, Ballari.

(Sri. P.A.R Advocate for defendant No.1, 2 and 8)

(Sri. A.K.K. Advocate for defendant No. 3 to 6,7 & 10)

(Sri. T.S.K. Advocate for defendant No.9)

(Defendant No.11- Exparte)

(SMT. SARVAMANGALA K.M.)
II ADDL. SENIOR CIVIL JUDGE, BALLARI

This is a suit filed by the plaintiffs against the defendants for the relief of partition and separate possession of suit schedule property and seeking 1/9th share for each of the plaintiff through court process in the event of failure to division by the defendants by appointing a court commissioner with costs and such other reliefs.

The agriculture lands, situated in Veniveerapura village, in Kurugodu Hobli, Ballari (Taluk and District), situate within the Registration and Sub-registration District of

Ballari with following description.

Item No.	Survey No.	Extent in Acres and cents	Assessment in Rupees	Market Value
1.	258	14.00	9.36	23,00,000-00
2.	360/B	14.16	12.16	27,00,000-00
3.	361	09.60	22.92	10,00,000-00

SCHEDULE-'A'

The agricultural land bearing Sy.No.195, measuring 2 acres 31 cents out of the said measurements only 0.77 cents, situated at Veeniveerapura village, Ballari (Taluk & District)

SCHEDULE-'B'

Item No.1

The agriculture land bearing Sy.No.258/2, measuring 6 acres, situated at Veeniveerapura village, Ballari (Taluk & District)

Item No.2

The house property measuring 5 ½ ankana, situated at ward No.3, Veeniveerapura village, Ballari (Taluk & District)

2. Brief facts of the case :

It is the specific case of the plaintiffs that, the plaintiff No.1

is the wife of Late Dodda Basappa, plaintiff No.2 and 3 are the daughters of Late Dodda Basappa and defendant No.1 is the wife of Late K.Gavisiddappa son of Late Dodda Basappa, defendant No.2 is the son of K.Gavisidappa, defendant No.3 is the wife of Late Shanmukappa son of Late K.Dodda Basappa. The defendant No.4 to 6 are the sons of Late Shanmukappa and the defendant No.7 and 8 are the sons of Late Dodda Basappa. The defendant No.9 and 10 are the daughters of Late Dodda Basappa and they are the Hindu undivided joint family members.

3. The plaintiffs further contended that during the life time of Dodda Basappa acquired the properties through ancestral properties and self acquired properties bearing Sy.No.258, 360/B, and 361 situated at Veniveerapura village, Ballari and said lands are acquired to ancestral properties of Late dodda Basappa and he was in possession and enjoyment up to his demise. After the death of Late Dodda Basappa the plaintiffs and the defendant No.1 to 10 are the legal heirs and succeed the estate left by the deceased Dodda Basappa and

there is no other legal heirs except plaintiffs and defendants. After the demise of Dodda Basappa the plaintiff No.1 is the Khartha of the joint family, the deceased Dodda Basappa had 4 sons and 4 daughters and 2 sons are expired out of them, as such their sons and wife's are the defendants in the above case.

4. Further contended that after demise of Dodda Basappa the plaintiff No.1 performed the marriage of all childrens out of agricultural income of the suit schedule lands. Due to woman folk in the joint family and they are separated from each other but the properties are jointly cultivating and look after by plaintiff No.1 who is the mother of plaintiff No.2 and 3. In the year 1987 the defendant No.7 to 10, plaintiff No.1 and the sons of Late Dodda Basappa for the purpose of cultivating the suit schedule lands formerly for their convenient orally divided 8.00 acres for each son only and not executed any registered partition deeds. The suit schedule properties are in joint possession and enjoyment and there is no sub divisions. Recently there is a difference between the plaintiffs and defendants in respect of their shares in the suit schedule

properties. The plaintiff No.1 who is old aged women, the defendants are being the sons and not look aftering properly taking the advantage of the properties are stands in the name of plaintiff No.1, the defendants vehemently trying for dispossess the suit schedule properties, the plaintiff No.1 is illiterate and old aged women as refused to execute any sale deeds in that event the defendants are crooked up quarrel with the plaintiff No.1 the defendants dispossessed some portion of the properties through plaintiff No.1 and utilized the consideration amounts for their bad habits. Now the defendants refused to give anything to the plaintiff No.1 to 3.

5. The plaintiffs further contended in spite of several occasions demanded for division of the suit schedule properties on 10.12.2010 the plaintiffs are demanded agricultural income and also demanded division of the properties by conducting a panchayath before the elders and well wishers of the locality, in the said panchayaths the defendants are under taken to divide the suit schedule properties within 10.3.2011. The plaintiffs have waited up to march 2011 and again or demanded for

partition inspite of efforts made by the plaintiffs. The defendants are postponing the matter one or other reasons. Moreover the defendants are cultivating the suit schedule properties and out of the agricultural income the defendants are not paying anything to the plaintiffs, though the plaintiffs and defendants are continued the Hindu undivided joint family and all the properties are enjoying jointly as such the plaintiffs are having share in the suit schedule properties. In the year 2010 the defendants are distributed the agricultural income thereafter they have not distributed any agricultural income to the plaintiffs therefore it is very difficult to maintain themselves who is elder and aged persons. Hence the plaintiffs are entitle for $1/9^{\text{th}}$ share each in the suit schedule properties. The defendant No.1 and 2 are entitle one share i.e., $1/9^{\text{th}}$ share and defendant No.3 to 6 are together entitle for $1/9^{\text{th}}$ share, the defendant No.7 to 10 are entitle for $1/9^{\text{th}}$ each share in the suit schedule property. Hence the plaintiffs constrained to file the present suit.

6. The defendant No.1 to 6 and 8 to 10 are appeared

through their respective counsel and the defendant No.3 to 6, 9 and 10 have filed the written statement. Defendant No.1, 2 and 8 are not filed the written statements.

7. In the written statement of defendant No.3 to 6 have admitted the relationship shown in para No.1 of the plaint. As per the contention of them all the joint family properties were already divided during the life time of Sri. Kurubara Dodda Basappa except the land bearing Sy.No.258 measuring 6.00 acres of Veeniveerapura village and this fact is within the knowledge of the plaintiff and as per the partition 8.00 acres of land each were already changing the Khatha in their respective names and further admitted that family arrangement was made between the parties. The above 6.00 acres of land shall devolve among 4 sons of Kurubara Dodda Basappa.

8. Further contended that the plaintiff No.1 in collusion with defendant No.2, 7 and 8 alienated the land bearing Sy.No.258 measuring 6.00 acres to one Sharada Devi W/o Late Sri Dalichand of Jain under registered sale deed dated 23.4.2004 for an amount of Rs.3,30,000/-. Hence it is not

binding on the defendant No.3 to 6. Even though there is a registered sale deed but as on today the above 6.00 acres of land is in joint and constructive possession of the defendant No.2 to 8. Hence they prayed for 1/3rd share in item No.1 of the plaint schedule properties.

9. Further they have taken contention that the entire Sy.No.258 was measuring 13.56 acres and out of 7.56 acres was fallen to the share of defendant No.7 and remaining 6.00 acres in the above said land was kept intact for use and occupation of Kurubara Dodda Basappa and the plaintiff No.1 jointly. The defendant No.4 to 6 filed a partition suit in respect of 6.00 acres of land in Sy.no.258 of Veeniveerapura village, later it was withdrawn by them with a liberty to file a fresh suit on same cause of action. Since the plaintiffs have filed the unholy suit suppressing the materials facts therefore the suit of the plaintiffs except 6.00 acre in Sy.No.258 is to be dismissed in limine and they prayed for 1/3rd share in item No.1 of suit schedule property.

10. In the written statement the defendant No.7

categorically denied all the allegations made in the plaint and call the plaintiff to prove the each and every allegations made in his plaint. But he has clearly admitted regarding relationship between the parties and status of the joint family. Further taken contention that the plaintiff No.1 along with her children sold the land bearing Sy.No.258 measuring 6.00 acres out of 14.00 acres i.e., item No.1 of the schedule property to one Sharda Devi dated 23.4.2004 for the valid sale consideration. But the plaintiffs has not made the Smt. Sharada Devi as proper and necessary party to the above suit. Therefore suit is not maintainable for non-joinder of necessary party. Further they have not included the house property of the defendant No.8. Therefore suit is bad for non inclusion of the necessary properties. Further the plaintiffs have not included 5 ½ ankanas house situated at ward No.3 of Veeniveerapura Village it was rented to one Chandranna by the defendant No.8 and it is also ancestral property. Moreover the land to an extent of 1.00 situated at Veeniveerapura village in Sy.No.361/3 being given up to the defendant No.3 . Therefore the plaintiffs have no iota of rights in the above said land. Hence they prayed for dismiss

the suit with exemplary costs.

11. In the written statement the defendant No.9 categorically admitted entire allegations made in the plaint para No.1 to 10 and he is also claiming 1/9th share in the suit schedule properties and also the schedule mentioned in the written statement. Hence he prayed for allot 1/9th share in favour of her in the suit schedule and written statement schedule properties.

12. In the written statement the defendant No.10 categorically denied all the allegations made in the plaint but he has admitted that relationship between the parties and further taken contention that since there is already partition took place decades ago and as per the partition, the mutations were also effected and parties acquired the properties under family partition and enjoying the properties in their individual capacity. Hence the question once again partitioning the schedule mentioned properties does not arise at all.

13. Further he has taken contention that landed property

bearing Sy.No.361/3 measuring 1.00 acres is concerned, he is enjoying the same from past several years. However the defendant No.3 brother has executed a deed in favour of the defendant No.2 and the defendant No.3 is enjoying the above property without any interruption whatsoever over the same.

14. Further taken contention that the brother of the defendant No.10 and elder son of the plaintiff No.1 namely K.Gavisiddappa has given the above 1.00 acres of land out of his share in Sy.no.361part of Veeniveerapura village, Kurugodu hobli in the year 1999 itself from past several years the defendant No.10 is personally cultivating the above landed property without there being any interruption whatsoever over the same. Therefore the plaintiffs have no iota of rights, title and interest in over the above said property and there is no joint family status existing as allowed by the plaintiffs. Hence they prayed to dismiss the suit with exemplary costs.

15. On the basis of above pleadings my predecessor in order sheet dated 9.2.2015 have framed the following:-

ISSUES

- 1) Whether the plaintiffs prove that they are the members of Hindu undivided joint family?
- 2) Whether the plaintiffs prove that the suit schedule properties are Hindu undivided joint family properties?
- 3) Whether defendant No.3 to 6, 7 and 10 prove that the joint family properties of plaintiffs and defendants had already got partitioned during the life time of Kurubara Doddabasappa except the property comprised by Sy.No.258(portion) measuring 6.00 acres?
- 4) Whether defendant No.2 to 8 prove that the property comprised in Sy.No.258 (portion) measuring 6.00 acres is the only property belonging to their joint family?
- 5) Whether the defendants prove that the brother of defendant No.10 and elder son of plaintiff No.1 have given 1.00 acre in Sy.No.161 of Veniveerapura village to defendant No.10 under a document?

- 6) Whether the plaintiffs are entitled to the relief of partition as sought?
- 7) What order or decree?

ADDITIONAL ISSUES FRAMED ON 11.12.2015

- 1) Whether the defendant No.9 is entitle for the relief as sought for?

16. In order to substantiate their case the plaintiff No.2 examined as PW.1 and got marked the documents as Ex.P.1 to P.30. behind that one Sri. Ramaniji, K.Chandrappa and Sri. Hemagiriappa examined as PW.2 to PW.4. On the other hand no evidence and no documents and no cross examination of PW.1 to PW.4.

17. Written arguments filed on behalf of the plaintiffs . On the other hand no arguments.

18. My answer to the above issues are as follows :

Issue No.1	: in the Affirmative
Issue No.2	: Partly in Affirmative
Issue No.3	: in the Negative
Issue No.4	: in the Negative

Issue No.5 : in the Negative

Issue No.6 : Partly in Affirmative

Additional issue No.1: Partly in Affirmative

Issue No.7 : As per final order for the following:

REASONS

19. Issue No.1 to 6 and additional issue No.1:- Said issue issues are inter linked with each other , hence I have taken all these issues together for discussion at one stretch in order to avoid repetition of facts and circumstances of the above case.

20. The burden of proving the issue No.1, 2, and 6 are on the plaintiffs and burden of proving the issue No.3, 4 and 5 are on the defendants.

21. In order to prove the above issue No.1, 2 and 6 the plaintiff No.2 Lakshmi Devi examined as PW.1 by way of affidavit contemplated under law. In the chief affidavit she has averred entire materials available on plaint and got marked as Ex.P.1 to P.30. None of the defendants have not cross examined the PW.1. Further the plaintiffs examined 3 witnessess namely G.Ramanijini and K.Chandrappa and Hemagiriappa as PW.2 to

Pw.4 they have averred in their chief affidavit that they know the plaintiffs and defendants who are related to each other and said suit was filed by the plaintiffs seeking for partition and also averred regarding the genetic tree of the plaintiffs and defendants and further averred that during the life time of Doddabasappa acquired the properties through ancestral and self acquired i.e., bearing Sy.No.258, 360/B and 361 situated at Veeniveerapura village, Ballari and said Doddabasappa was in possession and enjoyment of the said properties up to his demise. After the death of Dodda Basappa the plaintiff No.1 to 3 and the defendant No.1 to 10 are the legal heirs succeed the estate left by the deceased late Doddabasappa and no other heirs to him. After the demise of Doddabasappa the plaintiff No.1 is the kartha of the joint family and the deceased Dodda Basappa had 8 children out of which 2 sons are expired and wife and childrens of the two sons are on record.

22. Further they have averred that after demise of Dodda Basappa the plaintiff No.1 performed the marriage of all childrens out of agricultural income of the suit schedule lands

due to woman folk and the joint family they are separated from each other but the properties are jointly cultivating and look after by the plaintiff No.1. In the year 1987 for the purpose of cultivating the suit schedule lands to their convenient and orally divided 8.00 acres for each son only for the purpose of agricultural works but not executed any registered partition deed. The suit schedule properties are in joint possession and enjoyment and there is no sub divisions. Recently there is a difference between the plaintiffs and defendants in respect of their shares in the suit schedule properties. The plaintiff No.1 who is old aged women, the defendants are being the sons and not look aftering properly taking the advantage of the properties are stands in the name of plaintiff No.1, the defendants vehemently trying for dispossess the suit schedule properties, the plaintiff No.1 is illiterate and old aged woman as refused to execute any sale deeds in that event the defendants are crooked up quarrel with the plaintiff No.1 the defendants dispossessed some portion of the properties through plaintiff No.1 and utilized the consideration amounts for their bad habits. Now the defendants refused to give anything to the plaintiff No.1 to 3.

23. The witnesses further averred that in spite of several occasions demanded for division of the suit schedule properties on 10.12.2010 the plaintiffs are demanded agricultural income and also demanded division of the properties by conducting a panchayath before the elders and well wishers of the locality, in the said panchayaths the defendants are under taken to divide the suit schedule properties within 10.3.2011. The plaintiffs have waited up to march 2011 and again or demanded for partition inspite of efforts made by the plaintiffs. The defendants are postponing the matter one or other reasons.. Moreover the defendants are cultivating the suit schedule properties and out of the agricultural income the defendants are not paying anything to the plaintiffs, though the plaintiffs and defendants are continued the Hindu undivided joint family and all the properties are enjoying jointly as such the plaintiffs are having share in the suit schedule properties. In the year 2010 the defendants are distributed the agricultural income thereafter they have not distributed any agricultural income to the plaintiffs therefore it is very difficult to maintain themselves who

is elder and aged persons. Hence the plaintiffs are entitle for 1/9th share each in the suit schedule properties. The defendant No.1 and 2 are entitle one share i.e., 1/9th share and defendant No.3 to 6 are together entitle for 1/9th share, the defendant No.7 to 10 are entitle for 1/9th each share in the suit schedule property.

24. Admittedly the defendants have not cross examined the PW.2 to 4 also.

25. On the other hand no evidence and no documents.

26. Apart from the oral evidence the plaintiff No.2 got marked as Ex.P.1 to P.30. Ex.P.1 is the records of rights pertaining to the property bearing Sy.No.361 measuring 20.83 cents of Veeniveerapura village, Wherein this document the name of K.Gavisiddappa is forthcoming in column No.9 measuring 4.72 cents, in column No.12 name of Smt. Nagamma W/o Late Shanmukappa, Gavisiddappa, K.Shanmukappa, K.Basavanagouda, K.Parvathi K.Sanna Dodda Basappa, Channappa's names are forthcoming in the year 2003-04.

Ex.P.2 is the records of rights pertaining to the property bearing Sy.No.361 measuring 20.83 cents of Veeniveerapura village, Wherein this document the name of K.Basavanna gouda S/o Dodda Basavanana gouda, Parvathi W/o Sanna Dodda Basappa, K.Sanna Dodda Basappa wife of Late Channappa, Kurubura Channappa W/o Dodda Basappa, Smt. Nagamma wife of Late Shanmukappa is forthcoming in column No.9, measuring 4.72 cents, 1.00, 3.85 cents, 1.82 cents and 4.72 cents , in column No.12 name of the above said persons are forthcoming. Ex.P.3 is the records of rights pertaining to the property bearing Sy.No.360/B measuring 11.05 cents of Veeniveerapura village, Wherein this document the name of Kurubara Basappa son of Channa Basappa measuring 1.21 cents, K..Gavisiddappa measuring 3.28 cents, K.Basavanna Gouda S/o Dodda Basappa measuring 3.28 cents, Smt. Nagamma W/o Late Shanmukappa measuring 3.28 cents is forthcoming in column No.9 and, in column No.12 the name of the above said persons are forthcoming. Ex.P.4 is the continuation of Ex.P.3, Ex.P.5 is the records of rights pertaining to the property bearing Sy.No.195 measuring 2.31 cents of

Veeniveerapura village, Wherein this document the name of Honnurappa S/o Late Malleshappa measuring 2.31 cents jointly forthcoming with Hemagiriappa and Nagesh @ Nagappa in column No.12 also the name of the above said persons are forthcoming. Ex.P.6 is the continuation document of Ex.p.5. Ex.P.7 is the records of rights pertaining to the property bearing Sy.No.258 measuring 13.56 cents of Veeniveerapura village, Wherein this document the name of K.Eramma W/o Dodda Basappa and K.Nagesh S/o Dodda Basappa measuring 6.00 acres and 7.56 cents respectively is foirthcoming in columnn No.9 of the said document and in column No.12 is the name of the above said persons are forthcoming. Ex.P.8 and P.9 are the continuation of Ex.P.7. Ex.P.10 is the records of rights pertaining to the property bearing Sy.No.361 measuring 30.83 cents of Veeniveerapura village, Ex.P.11 is the records of rights pertaining to the property bearing Sy.No.360 measuring 13.25 cents of Veeniveerapura village, Ex.P.12 is the records of rights pertaining to the property bearing Sy.No.258 measuring 13.53 cents of Veeniveerapura village, Ex.P.13 is the records of rights pertaining to the property bearing Sy.No.258 measuring 13.56

cents of Veeniveerapura village, in column No.9 name of K.Eramma W/o Dodda Basappa and K.Nagesh son of Dodda Basappa is forthcoming and in column No.12 also the name of said persons are forthcoming in the year 1999-2000. Ex.P.14 is the records of rights pertaining to the property bearing Sy.No.258 measuring 13.56 cents of Veeniveerapura village, in column No.9 name of K.Eramma W/o Dodda Basappa and K.Nagesh son of Dodda Basappa is forthcoming and in column No.12 also the name of said persons are forthcoming in the year 1993-1994. Ex.P.15 is the records of rights pertaining to the property bearing Sy.No.258 measuring 13.56 cents of Veeniveerapura village, in column No.9 name of K.Eramma W/o Dodda Basappa and K.Nagesh son of Dodda Basappa is forthcoming and in column No.12 also the name of said persons are forthcoming in the year 1993-1994. Ex.P.16 is the records of rights pertaining to the property bearing Sy.No.361 measuring 20.83 cents of Veeniveerapura village, in column No.9 name of Kurubura Channappa S/o Dodda Basappa and Gavisiddappa Basavanna gouda Dasari Venkateshappa are is forthcoming and in column No.12 also the name of said persons are forthcoming

in the year 1986-87 to 1990-91. Ex.P.17 is the records of rights pertaining to the property bearing Sy.No.360/B measuring 11.05 cents of Veeniveerapura village, in column No.9 name of Kurubara Channappa S/o Dodda Basappa and Gavisiddappa Basavanna gouda Dasari Venkateshappa are is forthcoming and in column No.12 also the name of said persons are forthcoming in the year 1986-87 to 1990-91. Ex.P.18 is the records of rights pertaining to the property bearing Sy.No.361 measuring 20.83 cents of Veeniveerapura village, in column No.9 name of Kurubara Basappa S/o Hosageriappa is forthcoming. Ex.P.19 is the records of rights pertaining to the property bearing Sy.No.360/B measuring 11.05 cents of Veeniveerapura village, in column No.9 name of Basappa S/o Hosageriappa is forthcoming. Ex.P.20 is the records of rights pertaining to the property bearing Sy.No.361 measuring 20.83 cents of Veeniveerapura village, in column No.9 name of Dodda Basappa, Gavisiddappa, Shanmukappa, Basavana Gouda is forthcoming. The name of persons are forthcoming in column No.12 also in the year 1981-82 to 1985-86. Ex.P.21 is the records of rights pertaining to the property bearing Sy.No.360/B measuring

11.05 cents of Veeniveerapura village, in column No.9 name of Basappa, S/o Channa basappa is forthcoming , in The name of persons is forthcoming in column No.12 also in the year 1981-82 to 1985-86. Ex.P.22 is the records of rights pertaining to the property bearing Sy.No.361/B measuring 20.83 cents of Veeniveerapura village, in column No.9 name of Kurubara Channappa, Gavisiddappa Shanmukhappa, Basavana Gouda are forthcoming, in the name of same persons are forthcoming in column No.12 also in the year 1991-92 to 1995-96. Ex.P.23 is the records of rights pertaining to the property bearing Sy.No.360/B measuring 11.05 cents of Veeniveerapura village, in column No.9 name of Kurubara Basappa, Gavisiddappa Shanmukappa, Basavana Gouda are forthcoming, in the name of same persons are forthcoming in column No.12 also in the year 1991-92 to 1995-96. Ex.P.24 is the records of rights pertaining to the property bearing Sy.No.361 measuring 20.83 cents of Veeniveerapura village, in column No.9 name of Kurubara Channappa, Gavisiddappa Shanmukappa, Basavana Gouda are forthcoming , in the name of same persons are forthcoming in column No.12 also in the year 1996-97 to 2000-

2001. Ex.P.25 is the records of rights pertaining to the property bearing Sy.No.360/B measuring 11.05 cents of Veeniveerapura village, in column No.9 name of Kurubara Basappa, Gavisiddappa, Shanmukappa, Basavana Gouda are forthcoming, in the name of same persons are forthcoming in column No.12 also in the year 1996-97 to 2000-2001. Ex.P.26 is the certified copy of mutation in respect of Sy.No.258, 360/B, 361 and 360. Wherein this document it has been mentioned that as per partition deed dated 11.12.1987 khatha of the said property has been mutated in the name of K.Eramma and 4 children of Kurubara Dodda Basappa namely Gavisiddappa, Shanmukappa, Basavanagouda and Nagesh. Ex.P.27 is the encumbrance certificate issued by the Sub-registrar Ballari in respect of bearing Sy.no.258 measuring 6.00 acres, wherein this document it is mentioned that one K.Eramma W/o Late Doddabasappa had executed sale deed in favour of Sharada Devi D/o Dalichand in respect of he above said property dated 23.4.2004 for sale consideration amount of Rs.3,30,000/-. Ex.P.28 is the records of rights pertaining to the property bearing Sy.No.258/2 measuring 6.00 acres which is stands in

the name of Sharada devi's D/o Late Dalichand is none other than the defendant No.11 in the present suit on hand and said property is fallen to her share as per sale dated 12.11.2004 in the year 2017-18 the name of the defendant No.11 is forthcoming in the column No.12 of the said document. Ex.P.29 is also records of rights pertaining to Sy.No.258/1 measuring 7.56 cents which is stands in the name of K.Nagesh S/o Dodda Basappa in the year 2017-18. Ex.P.30 is the certified copy of sale deed pertaining to property bearing Sy.No.258 measuring 6.00 acres dated 23.4.2004 which has been executed by Smt. K.Eramma who is none other than the plaintiff No.1 in the present suit on hand in favour of defendant No.11 namely Sharada Devi for sale consideration amount of Rs.3,30,000/-.

27. On careful perusal of the entire materials available on record it is noticed to the court that, as per the contention of the plaintiffs the property bearing Sy.No.258/2 measuring 6.00 acres situated at Veeniveerapura village i.e., none other than the item No.1 of 'B' schedule property is the joint family property of the plaintiffs and the defendants, but on perusal of the Ex.P.30

it is noticed to the court that the plaintiff No.1 itself sold the said property in favour of defendant No.11, hence she cannot claim any right over the item No.1 of the 'B' schedule property. Further item No.2 i.e., house property measuring 5 ½ ankanas situated at ward No.3 Veeniveerapura village is also taken as joint family property. But in this aspect and in order to prove that said property is available for partition, nothing has been produced before the court by the plaintiff, when the plaintiffs have utterly fails to prove the existence of the said property, question of seeking partition in respect of the said property does not arise at all. Because first of all in a suit for partition the parties has to prove that the properties are available for partition. Therefore the plaintiffs have utterly failed to prove the existence of item No.2 of 'B' schedule property. Therefore they have not entitle for any relief in respect of item No.2 of 'B' schedule property.

28. Further in order to prove the schedule properties are the ancestral and joint family property i.e., Sy.No.258 measuring 14.00 acres. This court already observed that the

deceased plaintiff No.1 already sold 6.00 acres out of 14.00 acres in Sy.No.258 remaining 7.56 cents is stands in the name of K.Nagesh S/o Dodda Basappa who is none other than the son of the plaintiff No.1 who is the defendant No.7 in the present suit on hand that on the basis of records of rights only. Any how Ex.P.8 and P.9 are clearly discloses the fact that the above said property bearing Sy.No.258 measuring 14.00 acres is ancestral property. admittedly already 6.00 acres has been sold by the kartha of the family who is none other than the deceased plaintiff No.1 in the present suit on hand and remaining 7.56 cents is available and it is stands in the name of Nageshappa who is none other than the defendant No.7. Further in respect of property bearing Sy.No.360/B measuring 14.16 cents is concerned, Ex.P.3 i.e., records of rights depicts that in Sy.No.360/B total extent is 11.05 cents . No doubt said property is stands in the name of Kurubara Basappa S/o Channabasappa, Gavisiddappa, Nagamma, Shanmukappa, Basavana Gouda. But how the property is fallen to their name is not confirmed on the said document. In respect of property bearing Sy.No.361 measuring 9.60 cents, Ex.P.16 discloses that

the property bearing Sy.No.361 is measuring 20.83 cents. But 9.60 cents does not disclose in the above said document. Any how Ex.P.24 and P.26 are clearly discloses the fact that the property bearing Sy.No.258, 360/b, 361 are the properties belongs to Doddabasappa and pouthikatha changed in the name of Eramma, Gavisiddappa, Shanmukappa, Basavanagouda and Nagesh. But as per Ex.P.26 it has been mentioned that as per partition deed Khatha of said item No.1 to 3 of the schedule properties were changed n the name of the above said persons. But in this aspect no partition deed available on record. In the absence of said partition deed this court cannot come to the conclusion that the said properties are already partitioned between the parties.

29. In respect of schedule 'A' property bearing Sy.No.195 measuring 77 cents, out of 2.31 cents is concerned, the plaintiff produced only records of rights as per Ex.P.5 and P.6 wherein this document name of Honnurappa S/o Malleshappa, Hemagiriappa son of Late Hosagerrappa and Nagesh @ Nagappa S/o Late Dodda Basappa are forthcoming in column No.9 and

12. No doubt Nagesh @ Nagappa is none other than the defendant No.7, remaining two members are not parties to the said suit. Moreover the above said Ex.P.5 clearly discloses the fact that as per the order passed by the II Addl. Civil Judge and JMFC court dated 30.10.2014 mutation was effected in the name of above 3 members. Therefore the plaintiffs cannot seek any relief in respect of the above said property unless and until challenging the order passed by the learned court. Hence the plaintiffs are not entitled for any relief in respect of suit 'A' schedule property.

30. No doubt the property bearing Sy.No.258/2 measuring 6.00 acres, i.e., item No.1 of 'B' schedule property and item No.2 of 'B' schedule property and 'A' schedule property the plaintiffs cannot seek relief and they have not proved that said properties are available for partition. In respect of property bearing Sy.no.258 measuring 8.00 acres in Sy.No.360/B measuring 11.05 cents and in Sy.No.361 measuring 9.60 cents the plaintiffs are entitled for their respective shares.

31. On perusal of the entire materials it is admitted fact

that none of the defendants have not chosen to neither lead evidence nor cross examining the PW.1 to 4 in such circumstances there is no reasons to disbelieve the contention of the plaintiffs in respect of above said 3 properties bearing Sy.No.258 measuring 8.00 acres in Sy.No.360/B measuring 11.05 cents and in Sy.No.361 measuring 9.60 cents. Moreover the defendants No.3 to 6, 7, 9 and 10 are clearly admitted regarding relationship between the parties. Therefore my answer to the issue No.1 in the affirmative, issue 2 and 6 and Additional issues No.1 are partly in affirmative. So far as issue No.3, 4, 5 and additional issue No.1 are concerned, the defendant No.2 to 10 have not chosen to lead their evidence before the court in order to establish their contention. They have neither lead evidence nor cross examined the PW.1 to PW.4 and no documents are got marked. Therefore in the absence of materials on behalf of the defendants. This court is of the opinion that the defendants have utterly fails to prove the issue No.3, to 5 and additional issue No.1 before the court. Because mere filing of written statement is not sufficient to prove their contentions except filing the written statement they did not

come forwarded to proceed the case in such circumstances the pleading and proof relied by the plaintiffs for some extent is uncontraverted and undisputed. More over if the parties taken specific contention in the written statement but he has not stepped into the witness box in such circumstances court can draw adverse inference against the some party who assert it that the assertion by the parties itself is not correct. In this aspect I would like to refer a decision reported in **AIR 1999 SC 1441 (Vidyadhar Vs Manik Rao) Evidence Act Section 114 :** Adverse inference – party to suit not entering the witness box give rise to inference adverse against him where the party to the suit does not appearing to the witness box and stated his own case on oath and does not offer himself to the cross examined by the other side a presumption would arise that the case set up by him is not correct. The above dictum is rightly applicable to the case on hand. Hence no doubt the defendants are utterly failed to prove the issue No.3 to 5. Therefore I answer to the above said issues are in the Negative.

32. Issue No.7- On the basis of my reasons on issues

Nos.1 to 6. I proceed to pass the following :

ORDER

The suit of the plaintiffs is hereby partly decreed with costs as follows:

The plaintiff No.2 and 3 defendant No.9 are entitle for 1/8th share in the suit item No.1 to 3 property i.e., 8.00 acres in Sy.No.258, 11.05 cents in Sy.No.360/B and measuring 9.60 cents in Sy.No.361 of Veeniveerapura village.

In respect of 'A' schedule and 'B' schedule is concerned suit of the plaintiffs is hereby dismissed.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, directly on computer and corrected by me and then pronounced in the open court on 5th Day of September 2018.)

(SMT. SARVAMANGALA K.M.)
II ADDL. SENIOR CIVIL JUDGE, BALLARI

ANNEXURE

LIST OF WITNESSES EXAMINED FOR PLAINTIFFS: -

PW.1	:	Lakshmi Devi
PW.2	:	G.Ramanjini
PW.3	:	K.Chandrappa

PW.4 : Yema Giryappa

LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFFS :-

Ex.P.1 to P.25 : Records of Rights
Ex.P.26 : Certified copy of mutation extract
Ex.P.27 : Encumbrance certificate
Ex.P.28 & P.29 : Records of Rights
Ex.P.30 : Certified copy of sale deed dated
23.04.2004

LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANTS:-

-NIL-

LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANTS:-

-NIL-

(SMT. SARVAMANGALA K.M.)
II ADDL. SENIOR CIVIL JUDGE, BALLARI

(Judgment pronounced in the
open Court vide separate)

ORDER

The suit of the plaintiffs is hereby
partly decreed with costs as follows:

The plaintiff No.2 and 3
defendant No.9 are entitle for 1/8th
share in the suit item No.1 to 3
property i.e., 8.00 acres in Sy.No.258,
11.05 cents in Sy.No.360/B and
measuring 9.60 cents in Sy.No.361 of
Veeniveerapura village.

In respect of 'A' schedule and 'B' schedule is concerned suit of the plaintiffs is hereby dismissed.

Draw preliminary decree accordingly.

(SMT. SARVAMANGALA K.M.)
II ADDL. SENIOR CIVIL JUDGE, BALLARI