

KABK210019682022



Presented on : 28-09-2022
Registered on : 28-09-2022
Decided on : 07-03-2026
Duration : 3 years, 5 months, 9 days

**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC.,
MUDHOL AT: MUDHOL.**

**PRESENT: SRI. LAGAMA S. HUKKERI,
B.A.,LLB(Spl).**

DATED THIS THE 7TH DAY OF MARCH-2026

ORIGINAL SUIT NO.170/2022

PLAINTIFFS:

1. Smt. Roopa W/o Bhimashi Vaddar @ Patrot.
Age: 37 years, Occ: Household work & Agriculture,
2. Kum. Varsha D/o Bhimashi Vaddar @ Patrot.
Age: 12 years,
3. Kum. Amruta D/o Bhimashi Vaddar @ Patrot.
Age: 10 years, Plaintiff No.2 and 3 are minors
Represented by their natural guardian mother
plaintiff No.1 Smt. Roopa W/o Bhimashi Vaddar
@ Patrot, All are R/o: Ward No.4, Lonari Galli,
Mudhol, Tal: Mudhol, Dist: Bagalkot.

(By Sri.SYG. Adv.)

V/s.

DEFENDANTS:

1. Prakash S/o Kallappa Vaddar @ Patrot.
Age: 39 years, Occ: Agriculture,
2. Manjunath S/o Kallappa Vaddar @ Patrot.

Age: 35 years, Occ: Agriculture,

3. Smt. Pooja W/o Vittal Vaddar @ Patrot.
Age: 28 years, Occ: Household work & Agriculture,
4. Kum. Shravan S/o Vittal Vaddar @ Patrot.
Age: 6 years,
5. Kum. Supriya D/o Vittal Vaddar @ Patrot.
Age: 4 years,
6. Kum. Tejas S/o Vittal Vaddar @ Patrot.
Age: 2 years, Defendant No.4 to 6 are minors
Represented by their natural guardian mother
defendant No.3 Smt. Pooja W/o Vittal Vaddar
@ Patrot, All are R/o: Ward No.4, Lonari Galli,
Mudhol, Tal: Mudhol, Dist: Bagalkot.

(By Sri.ASY. Adv.)

Date of institution of the suit : 28.09.2022
 Nature of the Suit : For Partition and separate
 possession
 Date of the commencement : 25.05.2023
 of recording of the evidence.
 Judgment pronounced on : 07.03.2026
 Year/s Month/s Day/s
 Total Duration : **03 05 09**

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

The plaintiffs have filed present suit against the defendants for the relief of cancellation of registered partition deed by reopening the partition and allotment of

1/4th share to them in the suit schedule properties situated at Mudhol.

2. The description of the suit properties are as under:

The suit schedule landed and house properties as described in the plaint are as under.

Sl.No.	R.S.No.	Extent	Assessment	Village
		A-Gs	Rs.Ps	
01	20/1	2-30 K-14 2-16	3-95	Mudhol, Tal: Mudhol

Sl.No.	CTS.No.	Municipal	Measurement	Village
		No.	Sq.mtr.	
02	1509/1	620	114-58	Mudhol, Tal: Mudhol

3. The Brief facts of the plaintiffs case are as under:

It is contented that propositus of the family of the plaintiffs and defendants by name Kallappa expired on 14.06.2006 and his wife by name Smt. Shyamala also expired on 16.06.2007 leaving behind 4 sons by name defendant No.1 Prakash, defendant No.2 Manjunath, deceased Bhimashi and deceased Vittal. Further it is contented that plaintiffs are the wife and children of deceased Bhimashi and defendant No.3 to 6 are the wife

and children of deceased Vittal. Further it is contented that suit schedule properties are the ancestral joint family properties of plaintiffs and defendants and they are in joint possession, use and enjoyment of the same and they jointly use to cultivate the said properties and accordingly their names jointly appearing in the records of the item No.1 of suit schedule properties.

4. Further it is contended that plaintiffs being the legal heirs of deceased Bhimashi, who is the son of propositus Kallappa, are entitled to 1/4th share in the suit schedule properties and till today there was no partition taken place between the plaintiffs and defendants with respect to said properties by metes and bonds. Further it is contented that defendant No.1 to 4 behind the back and in order to cheat the plaintiffs, got created false partition deed with respect to item No.2 of suit schedule property and submitted application and after colluding with revenue officials got changed names on the basis of created partition deed as per order No.RE.12889/20-21 dated 05.02.2021 and said

alleged partition deed is not binding on the 1/4th share of the plaintiffs in the said property. Further it is contended that joint family of plaintiffs and defendants own suit properties and till today they are in joint possession of the same and therefore alleged created partition deed and entries taken on the basis of said alleged created partition deed are not binding on the plaintiffs and they may be allotted 1/4th share in the suit schedule properties by reopening the partition.

5. Further it is contended that on 01.09.2022, defendants have denied the joint ownership of the plaintiffs over the suit schedule properties and defendant No.2 after colluding with other defendants are trying to disturb the joint possession of the plaintiffs over the suit schedule properties. Hence, plaintiffs personally as well as through elders, requested the defendants for effecting partition with respect to suit schedule properties and to allot legitimate share to them in the said properties and defendants have refused for the same. Hence, plaintiffs have filed present suit for the

cancellation of the registered partition deed by reopening of partition and to allotment them 1/4th share in the suit schedule properties.

6. In response to suit summons, defendants have put their appearance before the court through their learned counsel and filed detail written statement. The defendants have filed written statement admitting the description of the suit properties is described in the plaint and propositus of the plaintiffs and defendants by name Kallappa expired on 14.06.2006 and his wife by name Smt. Shyamala also expired on 16.06.2007 by leaving behind four sons by name defendant No.1 Prakash, defendant No.2 Manjunath, deceased Bhimashi and deceased Vittal and plaintiffs are the wife and children of deceased Bhimashi and defendant No.3 to 6 are the wife and children of deceased Vittal. Further defendants have admitted that the joint family of the plaintiffs and defendants have inherited the suit properties from the propositus Kallappa and accordingly their names jointly appearing in the records of item No.1 of

suit schedule properties and denied all other averments of the plaintiff.

7. The defendants have contended that after the death of husband of plaintiff No.1, plaintiffs and defendants have entered into mutual partition and in the said partition, plaintiffs have been allotted with house property bearing CTS No. 1509/1, its Municipal No.620 of Mudhol and said partition deed was duly registered before the Sub-Registrar, Mudhol on 05.02.2021 and it is a final partition. Further it is contended that plaintiffs knowing fully well and after reading all the recitals of the partition deed put the signature before the Sub-Registrar, Mudhol and therefore said partition is final and under these circumstances, suit of the plaintiffs is not at all maintainable either in law or on facts. Further it is contended that in spite of same, plaintiffs have chosen to file present suit just to cause loss and harassment to the defendants and there is no cause of action arose to the present suit and one mentioned in the

plaint is false and imaginary. On these grounds defendants prayed to dismiss the suit of the plaintiffs with costs.

8. On the basis of the pleadings of the parties, my learned predecessor has framed the following issues...

:: I S S U E S ::

- 01 Whether plaintiffs prove that suit schedule properties are the Hindu undivided joint family properties of the plaintiffs and defendants?
- 02 Whether plaintiffs prove that plaintiffs and defendants are in joint possession and enjoyment of the suit schedule properties?
- 03 Whether plaintiffs prove that there is no prior partition between plaintiffs and defendants with respect to suit schedule properties?
- 04 Whether plaintiffs prove that defendant No.1 to 4 to cheat plaintiffs legitimate share created false registered partition deed and thereby colluding with revenue officials created false M.E.No.12889/2020-21?
- 05 Whether plaintiffs are entitled for the relief sought for?
- 06 What order or decree?

9. In order to prove their case, plaintiffs have got examined plaintiff No.1 as PW.1 and also got examined one more witness as PW.2 and produced 5 documents as per Ex.P.1 to 5 and closed their side evidence. In order to disprove the case of the plaintiffs, defendants have got defendant No.2 as DW.1 and did not choose to produce any document on their behalf and closed their side evidence.

10. Heard arguments of the both sides. Perused the pleadings as well as oral and documentary evidence, written arguments and other materials on record.

11. My answers to the above issues are as under:

Issue No.1 : In the Partly Affirmative,

Issue No.2 : In the Partly Affirmative,

Issue No.3 : In the Partly Affirmative,

Issue No.4 : In the Negative,

Issue No.5: In the Partly Affirmative,

Issue No.6 : As per final order,

for the following...

:: R E A S O N S ::

12. **Issue No.1 to 4:** Since these issues are interlinked with each other and they require common discussion, hence in

order to avoid repetition of facts, they are taken up together for common discussion.

13. In order to prove their case, plaintiffs have got examined plaintiff No.1 as PW.1. The PW.1 filed affidavit in lieu of her examination-in-chief and reiterated the plaint averments. The plaintiffs have also got examined one more independent witness as PW.2. PW.2 filed affidavit in lieu of his examination-in-chief and deposed as deposed by PW.1 and supported the case of the plaintiffs. In addition to oral evidence, in order to substantiate their case, plaintiffs have produced 5 documents as per Ex.P.1 to 5. **Ex.P.1** is the RTC extract of item No. 1 of suit schedule property bearing R.S.No.20/1 for the year 2022/23 measuring 2 acres 16 guntas jointly standing in the name of plaintiffs, defendant No.1, defendant No.2 and deceased Vittal, **Ex.P.2** is the certified copy of mutation diary No.5628, **Ex.P.3** is the certified copy of MR.No.367/2006-07, **Ex.P.4** is the certified copy of CTS No.1509/1 measuring 114-58 square metres jointly standing in the name of plaintiffs, defendant No.1

and 2 and **Ex.P.5** is the certified copy of application submitted to the CTS Office-Modhol for entering the names as per registered partition deed and **Ex.P.5(a)** is the certified copy of registered partition deed dated 05.02.2021.

14. In order to disprove the case of plaintiffs, defendant No.2 got examined himself as DW.1. The DW.1 filed affidavit in lieu of his examination-in-chief and reiterated the written statement averments. The defendants in order to substantiate their defence, have not chosen to produce any document on record.

15. On perusal of pleadings of the parties, it reveals that there is no dispute with regard to the relationship between the parties. Further it reveals that there is no dispute that plaintiffs and defendants have inherited the suit properties after the death of propositus Kallappa and accordingly their names came to be entered in the revenue records of the item No.1 of the suit schedule property.

16. It is the specific case of the plaintiffs that suit schedule properties are joint family properties of plaintiffs and

defendants and they are in joint possession, use and enjoyment of the same. Further it is the specific case of the plaintiffs that plaintiffs being the legal heirs of deceased Bhimashi Patrot are entitled to 1/4th share in the suit schedule properties and till today, there was no partition effected between plaintiffs and defendants with respect to the said suit schedule properties. Further it is the specific case of the plaintiffs that defendant No.1 to 4 without their knowledge and in order to cheat them, got created one false registered partition deed and on the basis of the same, they have got changed names in the revenue records of item No.2 of the suit schedule property and they have not allotted 1/4th legitimate share to them in the item No.2 of suit schedule property and till today, plaintiffs and defendants are the members of joint family and therefore, said partition deed is not binding on the plaintiffs. Therefore, plaintiffs prayed to reopen the partition by setting aside Ex.P.5(a) registered partition deed with respect to item No.2 of suit

schedule property and allot them 1/4th share in the suit schedule properties.

17. The defendants have denied that plaintiffs are entitled to 1/4th share in the suit schedule properties and there is no partition effected between plaintiffs and defendants. The defendants have specifically contended that after the death of husband of plaintiff No.1, plaintiffs and defendants entered into mutual partition and in that partition, plaintiffs have been allotted with house property bearing CTS No.1509/1, its Municipal No.620 of Mudhol and said partition deed came to be registered on 05-02-2021 and plaintiffs knowing fully well and after reading all the recitals of the said partition deed, put her signature before the Sub Registrar, Mudhol and therefore said partition is final.

18. The plaintiffs have contended that suit schedule properties are the joint family properties of plaintiffs and defendants and therefore burden lies on the plaintiff to prove the same. However, defendants in their written statement have admitted that after the death of propositus

Kallappa, plaintiffs and defendants have inherited the suit properties and accordingly, their names came to be entered in the revenue records of item No.1 of suit property. Further DW.1 during in his cross examination admitted that suit schedule properties are their ancestral properties. Further on perusal of Ex.P.2 certified copy of mutation dairy No.5628, it reveals that propositus Kallappa Rajappa Waddar was the landless labour and therefore, Assistant Commissioner, Jamakhandi granted item No.1 of suit schedule property bearing R.S.No.20/1 to said propositus. Further on perusal of Ex.P.3 certified copy of MR.No.366/2006-07, it reveals that propositus Kallappa Rajappa Waddar expired on 14-06-2006 and after his death, name of his wife by name Shyamala Patrot and names of his son defendant No.1, 2, deceased Bhimashi and deceased Vittal came to be entered in the revenue records of item No.1 of the suit schedule property by way of Warsa. Further on careful perusal of Ex.P.1 RTC extract, it reveals that presently item No.1 of the suit schedule property is jointly

standing in the name of plaintiffs, defendant No.1, 2 and deceased Vittal, who is the husband of defendant No.3 and father of defendant No.4 to 6.

19. Therefore, it becomes very clear that earlier item No.1 of the suit schedule property was standing in the name of propositus Kallappa Rajappa Waddar and after his death, names of children came to be entered and presently said property is jointly standing in the name of plaintiffs and defendant No.1 and 2 and deceased Vittal Patrot. Hence, it can be safely concluded that item No.1 of the suit schedule property is the joint family property of the plaintiffs and defendants.

20. PW.1 in her evidence deposed that defendant No.1 to 4 without the knowledge and in order to cheat the plaintiffs, got created one false registered partition deed as per Ex.P5(a) with respect to item No.2 of suit schedule property and got changed names in the revenue records of the said property and under said alleged Ex.P.5(a) registered partition deed, they have not been allotted 1/4th legitimate

share in item No.2 of suit schedule property and therefore, said partition deed is not binding on them and they are entitled to 1/4th share in the suit schedule properties. The plaintiffs simply pleaded and PW.1 simply deposed that defendant No.1 to 4 without their knowledge in order to cheat them, got created one false registered partition deed as per Ex.P.5(a) with respect to item No.2 of suit schedule property and under the said partition deed, they have been not allotted equal share in the said property. **Order 6 Rule 4 of CPC requires that “in all cases, in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence etc particulars with dates and items shall be stated in the pleading”.** General allegations without particulars are not sufficient. The particulars of alleged fraud, which are the required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard. In the present suit, plaintiffs have not pleaded and deposed that how and in what manner or way

defendants have played fraud on them and got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule property.

21. Though PW.1 in her examination-in-chief deposed that defendants without their knowledge fraudulently got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule property, but in her cross examination she admitted that on 04-02-2021, they have got partitioned their family properties through Ex.P.5(a) registered partition deed before the Sub Registrar, Mudhol, Further PW.1 admitted her signature appearing on Ex.P.5(a) certified copy of registered partition deed. Further PW.1 admitted that on 04-02-2021 after reading and understanding the contents of Ex.P.5(a) registered partition deed, they got registered the same before the Sub Registrar, Mudhol. Further PW.1 admitted that she after knowing how much share allotted to whom under the deed and after reading and understanding the same, she has put her signature on the same in the presence of the witnesses and Sub Registrar, Mudhol also

read over the contents of the said partition deed to them at the time of registration.

22. Therefore from the aforesaid admissions of PW.1 in her cross examination, it can be gathered that plaintiff No.1 after going to the contents of Ex.P.5(a) registered partition deed and understanding the said contents and further understanding the how much property allotted to whom under the said deed, she has put her signature on the same. If at all, defendants fraudulently got created Ex.P.5(a) registered partition deed, then plaintiffs could have pleaded that how and in what manner or way defendants played fraud on them and got created the alleged registered partition deed with respect to item No.2 of the suit property, but plaint is very silent about these facts. The PW.2 in his examination-in-chief deposed that about 3 years back, brother-in-laws of plaintiff No.1 took her to Sub Register Office with an intention of registering the house in their name and for correction of documents relating to the said house and got created Ex.P.5(a) registered partition deed

and in the said partition, defendants without allotting equal area to the plaintiffs by cheating got mentioned less area. The plaintiffs have not pleaded in their plaint that defendants took plaintiff No.1 to Sub Register Office with an intention of registering the house in their name and for correction of documents relating to the said house and got created Ex.P.5(a) registered partition deed and in the said partition, defendants without allotting equal area to the plaintiffs by cheating got mentioned less area. Hence said evidence of PW.2 is not admissible.

23. DW.1 during his cross examination admitted that prior to the filing of present suit, they have not got partitioned suit schedule properties. Hence learned counsel for the plaintiffs vehemently argued that DW.1 admitted in his cross examination that prior to filing of present suit, they have not got partitioned suit properties and therefore, said admission of DW.1 substantiate their contention that defendants fraudulently got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule

property and allotted unequal share to the plaintiffs and therefore said registered partition deed is not binding on the plaintiffs and they are entitled to equal share in the item No.2 of the suit schedule property. No doubt, DW.1 in his cross examination admitted that there was no partition effected between plaintiffs and defendants with respect to the suit schedule properties, but on perusal of Ex.P.5(a) registered partition deed, it reveals that plaintiffs, defendant No.1 and 2 and husband and father of defendant No.3 to 6 by name Vittal Patrot have got partitioned item No.2 of suit schedule property as well as joint family income of Rs.5,00,000/-, through registered partition deed dated 05-02-2021 and in the said partition, Rs.5,00,000/- were allotted to the share of deceased Vittal Patrot, who is husband and father of defendant No.3 to 6 and an area measuring 17 Sq meters each out of item No.2 of suit schedule property came to be allotted to the share of plaintiffs and defendant No.1 and remaining area of 80.58 Sq meters out of item No.2 of suit schedule property came to

be allotted to the share of defendant No.2. The said registered partition deed was entered by the plaintiffs and defendant No.1 and 2 and deceased Vittal Patrol with respect to item No.2 of suit schedule property and Rs.5,00,000/- joint family income. The item No.1 of suit schedule property is not included the said Ex.P.5(a) partition deed and therefore, it appears that DW.1 in his cross examination admitted that prior to filing of present suit, they have not got partitioned suit schedule properties. Moreover, Ex.P.5(a) is the registered partition deed and therefore as per Sec.91 of Indian Evidence Act, documentary evidence excludes oral evidence and hence said admission of DW.1 is not relevant. Further the **Hon'ble Supreme Court of India, in a decision reported in (2021) 15 SCC 300 between Rattan Singh and others Vs. Nirmal Gill and others** in Para No.33 observed as under.

“33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the dispute documents are registered. We are,

therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this court in Prem Singh Vs. Birbal. The relevant portion of the said decision reads as below;

There is a presumption that a registered document is validity executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.

In view thereof, in the present cases, the initial onus was on the plaintiff, who has challenged the stated registered document.

24. In the present suit, plaintiffs have contended that defendants without their knowledge by cheating got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule property and allotted unequal share to the plaintiffs and on the basis of the said alleged partition deed, they have changed names in the revenue records of the said

property. Since Ex.P.5(a) partition deed is registered one, therefore, this court guided by the settled legal principle that a document presumed to be genuine if the same is registered. The initial burden was on the plaintiff, who had challenged alleged partition deed and plaintiffs by leading cogent and reliable evidence have failed to prove that defendants by playing fraud got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule property and allotted them unequal share in the said property because PW.1 during her cross examination categorically admitted that after reading and understanding the contents of Ex.P.5(a) registered partition deed, she has put her signature on the same. Therefore from Ex.P.5(a) registered partition deed, it reveals that the plaintiffs and defendant No.1 and 2 and deceased Vittal Patrol have got partitioned their joint family properties consisting of item No.2 of suit schedule property and joint family income of Rs.5,00,000/-. Therefore item No.2 of suit schedule property no longer remained as joint family property of plaintiffs and

defendants and as per said partition deed. plaintiffs and defendant No.1 and 2 are in separate possession, use and enjoyment of their respective shares.

25. The learned counsel for defendants vehemently argued that plaintiffs and defendant No.1 and 2 and husband and father of defendant No.3 to 6 by name Vittal Patrot have got partitioned their joint family properties through registered partition deed as per Ex.P.5(a) and plaintiff No.1 by understanding its contents put her signature with her consent and volition and therefore plaintiffs failed to prove that defendants have played fraud on her and got created registered partition deed as per Ex.P.5(a) and therefore, plaintiffs cannot seek reopening of partition and in support of his argument, he relied on a decision reported in **1999 (4) KCCR SN 435 between A. Ganapathi Nayak Vs. Sri. Devanath.** This court carefully gone through the aforesaid ruling of Hon'ble High Court of Karnakata relied by the learned counsel for the defendants and finds that said decision aptly applicable to the facts and circumstances of

the present case, wherein Hon'ble High Court of Karnataka held that "*A partition effected between the members of the Hindu undivided family by their volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the court should require a strict proof of facts because an act Inter Vivos cannot be lightly set aside*".

26. Moreover on perusal of Ex.P.5(a) registered partition deed, it reveals that plaintiff No.1 on behalf of herself as well as on behalf of minor plaintiff No.2 and 3 entered said partition deed with respect to item No.2 of suit schedule property and now plaintiff No.1 has filed present suit on behalf of herself as well as on behalf of minor plaintiff No.2 and 3 seeking the relief of reopening of partition with respect to item No.2 of suit schedule property and sought partition and separate possession with respect to one more joint family property i.e. item No.1 of suit schedule property. The plaintiff No.1 herself is the party to the aforesaid

Ex.P.5(a) registered partition deed and plaintiff No.1 on behalf of herself as well as on behalf of minor plaintiff No.2 and 3 has filed present suit and she failed to plead and prove that how and in what manner or way defendants playing fraud got created Ex.P.5(a) registered partition deed. Hence under law plaintiff No.1 cannot be permitted to seek reopening of partition with respect to item No.2 of the suit schedule property.

27. The learned counsel for plaintiffs vehemently argued that no reasons are mentioned in Ex.P.5(a) registered partition deed, why the landed properties are not included in the said partition deed and it is settled position of law that partial partition is not maintainable in the Hindu undivided ancestral joint family properties and in support of his argument, he relied on a decision of **Hon'ble Supreme Court of India reported in 2022 LiveLaw (SC) 165**, This court carefully gone through the aforesaid ruling of Hon'ble Supreme Court of India. It is settled principle of law that suit for partial partition is not maintainable and therefore

all the ancestral joint family properties shall be included in the suit. However, there are exception to the partial partition. In the present suit plaintiffs, defendant No.1 and 2 and deceased Vittal already got partitioned their joint family property bearing CTS No.1509/1 and joint family income of Rs.5,00,000/- and plaintiffs failed to prove that defendants by playing fraud got created Ex.P.5(a) registered partition deed with respect to the item No.1 of suit schedule property. But as per pleadings of both the parties, no partition was took place between the plaintiffs and defendants with respect to the item No.1 of suit schedule property and therefore said property is available for partition among the plaintiffs and defendants. Therefore the dictum laid down in the aforesaid decision is not applicable to the facts of the present case.

28. Hence plaintiffs by leading cogent and reliable evidence have proved that item No.1 of suit schedule property is the joint family property of plaintiffs and defendants and they are entitled to share in the same. However, plaintiffs failed

to prove that item No.2 of suit schedule property is also joint family property of plaintiffs and defendants because as on the date of suit already plaintiffs and defendants have got partitioned said property among themselves through registered partition deed as per Ex.P.5(a). Further plaintiffs failed to prove that no prior partition was entered between plaintiffs and defendants with respect to item No.2 of suit schedule property and defendants fraudulently got created registered partition deed with respect to the said property and said Ex.P.5(a) registered partition deed is not binding on them. **Hence this court answers issue No.1 to 3 in the Partly Affirmative and issue No.4 in the Negative.**

29. Issue No.5: The plaintiffs have filed present suit against the defendants for the relief of partition and separate possession with respect to suit schedule properties by reopening the partition entered with respect to the item No.2 of suit schedule property by contending that suit schedule properties are joint family properties of the plaintiffs and defendants and they are entitled to 1/4th

share in the same and defendants by cheating plaintiffs, fraudulently got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule property. The plaintiffs by leading cogent and reliable evidence have failed to prove that defendants by playing fraud got created Ex.P.5(a) registered partition deed with respect to item No.2 of suit schedule property and therefore reopening of partition with respect to said property is necessary. However, plaintiffs by leading cogent and reliable evidence proved that item No.1 of the suit schedule property is the joint family property of plaintiffs and defendants and they are entitled to share in the same. Moreover, defendants have not disputed that item No.1 of suit schedule property is the joint family property of plaintiffs and defendants. Presently, as per Ex.P.1 RTC extract item No.1 of suit schedule property is jointly standing in the name of plaintiffs and defendant No.1 and 2 and deceased Vittal Patrot and hence item No.1 of suit schedule property has to be divided into four equal shares. The plaintiffs being the wife and children

of deceased Bhimashi are entitled to 1/4th share, defendant No.1 and 2 are entitled to 1/4th share each and defendant No.3 to 6 being the wife and children of deceased Vittal are together entitled to 1/4th share in the item No.1 of suit schedule property. Therefore this court is of the opinion that plaintiffs are only entitled for the relief of partition and separate possession with respect to item No.1 of suit schedule property. **Hence this court answers issue No.5 in the Partly Affirmative.**

30. The Hon'ble Supreme Court of India in Kattukandi Edathi Krishnan and another -Vs- Kattukandi Edathi Valsan and others, 2022 SCC Online SC 737, while reiterating the observations made in the earlier ruling in Shub Karan Bubna (cited supra), has laid down as follows:

“33. We are of the view that once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts

should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo-motu and without requiring initiation of any separate proceedings.

Therefore as per the above decision & directions of Hon'ble Supreme Court of India, it is the bounden duty of this court to direct the office to register suo-moto FDP for taking steps U/Or. XX Rule 18 of CPC.

31. Issue No.6- In view of my foregoing reasoning and conclusion arrived at by me during the discussion of above issues, I proceed to pass the following:

:: O R D E R ::

The suit of the plaintiffs is hereby partly decreed.

It is hereby declared that plaintiffs are together entitled to 1/4th share in the item No.1 of suit schedule property bearing R.S.No.20/1 measuring 2 acre 30 guntas including pot kharab land of 14 guntas situated at Mudhol, Taluka Mudhol, Dist: Bagalkot.

Further it is hereby declared that defendant No.1 and 2 are entitled to 1/4th share each and defendant No.3 to 6 being wife and children of deceased Vittal Patrot are together entitled to 1/4th share in the item No.1 of suit schedule property bearing R.S.No.20/1 measuring 2 acre 30 guntas including pot kharab land of 14 guntas situated at Mudhol, Taluka Mudhol, Dist: Bagalkot

To curve out their shares, the defendant No.1 to 6 are liable to pay separate court fee.

Looking into relationship between parties and nature of the suit, the parties are directed to bear their own cost.

Office to draw preliminary decree accordingly.

Further the office is directed to register suo moto FDP and put up entire Records of this suit in the said FDP, after expiry of appeal period, for taking STEPS U/Or. XX Rule 18 of CPC.

(Dictated to the Stenographer directly on the computer, typed by her, corrected & signed by me & then pronounced in open Court on this 7th Day of March-2026).

(LAGAMA S. HUKKERI)
C/c Addl. Civil Judge & JMFC,,
Mudhol.

A N N E X U R E

I. LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF:

PW.1 : Smt. Roopa Bhimashi Vaddar @ Patrot.
PW.2 : Hanamant Basappa Madarakhandi.

II. LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P.1 : RTC extract of R.S.No.20/1.
Ex.P.2 : Certified copy of M.R.No.5628.
Ex.P.3 : Certified copy of M.R.No.367/2006-07.

- Ex.P.4 : Certified Copy of City Sy No.1509/1.
Ex.P.5 : Certified copy of application submitted to
City Survey Office, Mudhol.
Ex.P.5(a) : Certified copy of registered partition deed.
Ex.P.5a(a): Signature of PW.1.

**III. LIST OF WITNESSES EXAMINED ON BEHALF OF
DEFENDANTS:**

DW.1 : Manjunath Kallappa Vaddar @ Patrot.

**IV. LIST OF DOCUMENTS MARKED ON BEHALF OF
DEFENDANTS:**

-- Nil --

**(LAGAMA S. HUKKERI)
C/c Addl. Civil Judge & JMFC,,
Mudhol.**