

KABK710036932024

**O.S./225/2024****IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT: JAMKHANDI.****PRESENT :**

**SHRI.BASAVARAJ,
B.A., LLB (Spl),
Prl. Civil Judge & JMFC,
Jamkhandi.**

Dated this the 03rd day of July – 2026**O. S. No.225/2024**

1. Shri.Irabasappa S/o Muttappa Patil,
Age: 66 years, Occ: Agriculture,
R/o. Goudar Tot Farm House,
Hullayl, Tq: Jamkhandi, Dist: Bagalkot.
2. Shri.Hanamant S/o Muttappa Patil,
Age: 24 years, Occ: Agriculture,
R/o. Goudar Tot Farm House,
Hullayl, Tq: Jamkhandi, Dist: Bagalkot.

.....Plaintiffs.**(By Shri.G.G.N., Advocate)****- Vs -**

1. Shri.Muttappa S/o Irabasappa Patil,
Age: 60 years, Occ: Agriculture,
R/o. Goudar Tot Farm House,
Hullayl, Tq: Jamkhandi, Dist: Bagalkot.

2. Shri.Lakshman S/o Irabasappa Patil,
Age: 60 years, Occ: Agriculture,
R/o. Goudar Tot Farm House,
Hullayl, Tq: Jamkhandi, Dist: Bagalkot.

..... Defendants.

(D-1 - By Shri.S.G.T., Advoate)

(D-2 - Ex-parte)

Date of institution of suit	:	30-07-2024
Nature of suit	:	"Suit for Partition and Separate Possession"
Date of the commencement of recording of the evidence	:	03-06-2026
Date on which the judgment Was pronounced	:	03-07-2026
Total duration	:	Year/s Month/s Day/s 01 11 04

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J U D G M E N T

This is a suit filed by plaintiffs against defendants for the relief of Partition and Separate Possession along with costs of the suit.

2. The brief facts of the plaintiffs' case as under:

The plaintiffs have filed this suit against the defendants for the relief of Partition and Separate Possession. The propositus Irabasappa died long back living behind his wife deceased Rukmawwa who also died on 21-12-2002 and sons

as defendants and grand sons as a plaintiffs. There is a ancestral house property bearing VPC No.570 measuring 34 feet North-South and 19 feet East-West which is situated at Hullyal village in Jamkhandi. There is no partition between plaintiffs and defendants by metes and bounds or any registered documents and property is shown in the schedule for availing problems.

3. The plaintiffs further averred that, the plaintiffs and defendants are in joint possession over the suit property. Plaintiffs are residing in the suit property and not entered the names of defendants and not rectified the records of the property. They have enquired the record of rights in June-2024 and also plaintiffs requested the defendants to enter their names also in the record of rights but the defendants are quarreling with the plaintiffs and denied the legal share of the plaintiffs. After that plaintiffs through village elders demand the share in the joint family property, but the defendants are not ready to give share or settled the dispute. Hence, plaintiffs no other go constrained this suit.

4. Upon service of suit summons to the defendant No.1 appeared through his counsel, but not filed any written statement. Defendant No.2 remained absent placed ex-parte.

5. Upon perusing the materials on record, the following points arise for my consideration:

: P O I N T S :

- 1)** Whether the plaintiffs prove that, suit schedule house property is ancestral property of plaintiffs and defendants?
- 2)** Whether plaintiffs are entitled for the relief as sought for?
- 3)** What order of decree?

6. In support of the claim of plaintiffs, plaintiff No.1 examined as PW-1 and documents got marked as Ex.P-1 to P-4. In-spite of opportunities given to the defendants have not cross-examined the PW-1. Hence cross-examination of PW-1 is taken as nil.

7. Heard arguments on plaintiffs side and perused pleadings, oral, documentary evidence and material available on record.

8. In view of the above facts and circumstances of the case my answer to the above points are as here under;

: A N S W E R S :

Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- As per final order
for the following;

: R E A S O N S :

9. **POINTS NO.1 AND 2:-** Since both these points are inter related to each other, I have taken up together for discussion to avoid repetition of facts.

10. in order to substantiate plaintiffs case plaintiff No.1 examined as PW-1 reiterated entire plaint averments and documents got marked Ex.P-1 to 4. On the other side in spite of service of summons the defendant No.1 appeared but not filed any written statement. The defendant No.2 placed ex-parte.

11. The plaintiffs counsel vehemently submit their argument that, the suit property previously standing in the name of Irabasappa who is the grand-father of plaintiffs. After the death of propositor one Rukmawwa name appeared in the records, she is the wife of deceased Irabasappa grandmother of plaintiffs. Therefore the plaintiffs sought for partition in the property as a right over the said property as per Hindu Law. Further submit that the defendant No.1 is the father of plaintiffs and defendant No.2 is the uncle of plaintiffs. They have claiming their share to the extent of $1/3^{\text{rd}}$ i.e., their father share over the suit property, when they denied ultimately no other go the plaintiffs constrained this suit. The plaintiff by orally and by producing documentary evidence they are proved their case. Hence prays to decreetal of the suit.

12. On going through the pleadings of the plaintiffs, it came to light that the plaintiffs are the sons of defendant No.1 and defendant No.2 is the uncle of plaintiffs. The propositor by name Irabasappa head of the family the

Rukmawwa who is the wife of deceased Irabasappa and she was also passed away on 21-12-2002 leaving behind two male children by name Muttappa and Laxman who is the defendants No.1 and 2 in the present case. No doubt the defendants not contest the case and the plaint averments not challenged only this aspect court cannot come to the conclusion that they are the family members and the suit property is ancestral property. Hindu Succession Act clearly applicable if the plaintiffs are proved by producing cogent and sufficient documents to show the property flowing from propositus to their father'. In this regard very much necessary what is the nature of the property how to determine in this regard in Hindu Succession Act clearly define and also mentioned who is the legal heirs. Four generation rule is very important in Hindu Law. When property standing in the name of main ancestor until 4 degree if property continuously flowing at that time the property may be considered as ancestral property. If 5th generation enter and claiming ancestral property when

propositus is survive. At that time suit itself is not maintainable. The nature of the suit property not changed as a ancestral property. Four degree means great grand father, grand father, father and son.

13. Ancestral property is a species a co-parcenory property. Ancestral property is acquired by unobstructed heritage. The essential features of ancestral property according to Mitakshara Law is that the sons, grand sons and great grand sons of the person who inherit it, acquired an interest and the rights attached to such property at the movement of their birth. The share which a co-parcener obtains on partition of ancestral property is ancestral property as regards his male issues.

14. If a Hindu inherits unobstructed heritage i.e., property from his father, it becomes ancestral in his hands as regards his son. In a such situation it is stated that the son becomes a coparcener with the father as regards the property so inherited, and the coparcenary consists of the

father and the son. However this does not mean that coparcener can consist only of the father and his sons. It is not only the sons but also the grand-sons and great grant sons, who acquire an interest by birth in coparcenery property.

15. Further Hon'ble Apex court held that Rohit Chavan Vs. Surindra Singh reported in (2013) 9 SC 419 page 423 para 11 expressed view that on partition the ancestral property comes into the hands of individual persons/coparceners, then it has to be treated as a separate property and such a person shall be entitle to dispose of the coparcenery property treating it to be his separate property, but if a son is subsequently born, the alienation made before the birth cannot be questioned. But the movement a son is born, the property still intact with such individual, then such property becomes a coparcenery property and the son would acquire an interest in that and become a coparcener. Further Hon'ble Apex court held that in Pushpalata N.V. Vs. V.P.Padma and Others reported in ILR 2019 KAR 3205 (DB)

at page 3220 para 21 expressed view that whenever a partition of ancestral takes place, the share that a coparcener gets continuous to be ancestral if on date of partition he has a son. Further held that he holds such property as his absolute property if no son exists on the date of partition, but if a son is born subsequently, the ancestral character revives. After commencement Hindu Succession Amendment Act, 2005, the presence of a daughter or birth of a daughter subsequently has the same effect, but her entitlement to a share being a coparcener is subject to the riders found in the amended Section 6 of the Hindu Succession Act. Further looking to the another land mark judgment and also clarify all the issues regarding partition the Hon'ble Apex court expressed view in the Vineeta Sharma Vs. Rakesh Sharma and Others at page 35 para 28 by referring the decision rendered between Sheeladevi Vs. Lalchand (2006) 8SCC 581, M Yogendra and Others Vs. Leelamma N. and Others (2009) 15 SCC 184, Smt.Sitabai and Others Vs. Ramachandra AIR 1970 SC 343 and Dharma

Shamrao Agalawe Vs. Pandurang Miragu Agalwe and others (1988) 2 SCC 126 held that in a coparcenary property comes to the hands of single person temporarily, it would be treated as his property, but once a son is born, coparcenary would revive in terms of Mitakshar School of Law. After going through the all the judgment passed by the Apex court it clearly come to the view that when propositus of the family leaving behind his LRs i.e., son, grandson, great grand son they are continuously acquire property at that time the property treated as a ancestral property if 5th generation claiming ancestral property does not arise it is not authorize to that person claiming rights over property. In the present case no doubt the relation ship not denied by the defendants by approaching this court it means the plaintiffs are not automatically proved their case. The court step in to the shoe of the defendants place and scrutinize entire averments of the pleadings, oral and documentary evidence. After scrutinize the document i.e., Ex.P-1 produced by the plaintiff's grand mother and their uncle i.e., defendant No.2

name appeared. As per the version of the plaintiff No.1 that after the death of propositus property by way of succession suit property transferred in the name of their grand mother. In this regard the plaintiff not produced any old documents and mutation to show the property previously was standing in the name of Irabasappa. The plaintiff not proved the suit property is ancestral property. When the nature of the property is not proved the question of allotment of share to them does not arise at all. In view of the **discussion I answer Point No.1 and 2 in the 'Negative'.**

16. **Point No.3:-** For the findings and reasoning given to Point No.1 and 2, I proceed to pass the following:

: O R D E R :

The suit of the plaintiff is hereby
dismissed with costs.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the 03rd day of July - 2026)

(BASAVARAJ),
Prl. Civil Judge & JMFC,
Jamkhandi.

:: ANNEXURES ::**List of witnesses examined on behalf of Plaintiffs:-**

PW-1 : Shri.Irabasappa S/o Muttappa Patil.

List of documents marked on behalf of Plaintiffs:-

Ex.P-1 : Extract of property bearing VPC No.570.

Ex.P-2 : Death certificate of Rukmawwa Irabasappa Patil.

Ex.P-3 : Adhar card of Irabasappa Patil.

Ex.P-4 : Adhar card of Hanamant Patil.

List of witnesses examined on behalf of Defendants:-

: - Nil -.

List of documents marked on behalf of Defendants:-

: - Nil -.

(BASAVARAJ),
Prl. Civil Judge & JMFC,
Jamkhandi.