

KABR010024392014



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, BENGALURU RURAL DISTRICT,
BENGALURU.**

Present:

Smt. B.S.REKHA B.A(LAW)., LL.M.,
Prl. District & Sessions Judge,
Bengaluru Rural District,
Bengaluru.

Dated this the 21st day of April, 2026

R.A.No.89/2014

- Appellant:-**
1. S.V.Ramaswamy Reddy,
S/o Late S.M.Veranna Reddy,
Aged about 75 years,

Sri S.M.Eswara Reddy,
LRs of deceased.
 - 2(a) Smt.Jayamma P,
Aged about 67 years,
W/o Late Eswara Reddy,
 - 2(b) Ramesh S.E,
Aged about 50 years,
S/o Late Eswara Reddy,
 - 2(c) Ashok S.E,
Aged about 48 years,
S/o Late Eswara Reddy,
 - 2(d) Rajashekar S.E,

Aged about 48 years,

All residing at No.153,
Sulekunte Village,
Dommasandra Post,
Varthur Hobli,
Bengaluru East taluk.

Represented by their G.P.A Holder
Sri S.E.Ramesh.

(By Sri B.R.L- Advocate)

-VERSUS-

Respondents:- 1. S. M Narayan Reddy,
S/o Late Motappa,
Aged 82 years,

2. Sri S.N Krishna Reddy,
S/o Late Motappa,
Aged 75 years,

Both residing at Kalenahalli,
Chickmalur post,
Madugiri Taluk 572 132,
Tumkur District.

Since dead by Lrs

2a) Smt. Suvarna,
D/o Late Krishna Reddy,
aged 59 years,

2b) Smt Pushpa,
D/o Late Krishna Reddy,
aged 52 years,

3. Smt Akkamma,
W/o Timma Reddy @
Chikkapappanna,
Aged 71 years,
R/at Veerapura village,
Chikkamalur Post,
Madugiri Taluk 572 132.
4. Smt Earamma,
W/o Muniswamy,
D/o Late S.V Motappa,
Aged 69 years,
R/at Thyavakanahalli,
Bidaruguppa Post,
Anekal Taluk,
Bangalore District 562 017.
5. Smt Muniyamma @ Challamma,
W/o Venkatasway Reddy,
D/o S.V Motappa,
Aged about 67 years,
R/at Ramasagara Village,
Muthanallur Village,
Anekal Taluk,
Bangalore district 560099.
6. Sri S.B Nagaraju,
S/o Late Bhadraiah
since dead by LRs.
 - 6a) Sri. Manjunatha Reddy,
S/o Late S.B Nagaraju,
Aged 50 years,
 - 6b) Chandrashekar,
S/o Late S.B Nagaraju,

Aged 48 years,

- 6c) Smt. Shobha.
D/o Late S.B Nagaraju,
Aged 46 years
- 6d) Smt. Renuka,
D/o Late S.B Nagaraju,
Aged 44 years,
- 6e) Smt. Jyothi,
D/o Late S.B Nagaraju,
Aged 43 years,
- 7. Sri. Nagappa S.M,
S/o S.V Munishamaiah,
Since dead by LRs.,
- 7a) N.Rathna,
D/o Late Nagappa S.M,
Aged 69 years,
- 7b) S.N Rajappa,
S/o Late Nagappa S.M,
Aged 67 years,
- 7c) Smt Saraswathamma,
W/o Late Vamanna,
Daughter in law of Late K Nagappa,
Aged 45 years,
- 7d) Smt Vinoda,
W/o Late Lokesh,
S/o Late Nagappa S.M,
Aged 34 years,
- 7e) Smt Gowramma,

D/o Late Nagappa,
Aged 58 years,

7f) Smt Sathyamma,
D/o Late Nagappa S.M,
Aged 56 years,

7g) Smt Shyla,
D/o Late Nagappa S.M,
Aged 54 years,

7h) Smt. Manjula,
D/o Late Nagappa S.M,
Aged 50 years,

All residing at Sulikunte village,
Varthur Hobli,
Dommasandra Post,
Bangalore East Taluk

8. S.M Ramalinga Reddy,
S/o S.V Munishamaiah,
Since dead by Lrs,

8a) Suresh,
S/o Late Ramalinga Reddy,
Aged 53 years,

8b) Prabhakar,
S/o Late Ramalinga Reddy,
Aged 51 years,

All residing at Sulikunte Village,
Varthur Hobli,
Dommasandra Post,
Bangalore East Taluk.

9. Chandra Reddy,
S/o Venkata Reddy and
Ammayamma,
Aged about 72 years,
10. Shanthamma,
D/o Venkata Reddy and
Ammayamma,
Aged about 62 years,
11. Pushpa,
D/o Venkata Reddy and
Ammayamma,
Aged about 72 years.
12. Prakash Reddy,
S/o Yella Reddy and
Narayanamma,
Aged about 62 years,
13. Murali,
S/o Yella Reddy and
Narayanamma,
Aged about 56 years.
14. Sudha,
S/o Yella Reddy and
Narayanamma,
Aged about 50 years,
15. Srinivasa Reddy,
S/o Rama Reddy and Ramakka,
Aged about 68 years,
16. Rajendra Reddy,
S/o Rama Reddy and Rammaka,
Aged about 60

All are residents of Muthanallor
Village, Sajapura Hobli,
Anekal Taluk,
Bengaluru District

(R1, 6(a) to (d), R7(a) to (h), R8(a)(b)
- Absent)
(R2 by Sri S.V.R-Advocate)
(R3 to 5 by Sri V.R.N-Advocate)
(R9 to 16 by Sri V.C.-Advocate)

Date and nature of the decree or order appealed against.	Judgment and decree dated 05.04.2012 passed in O.S.No.1613/2005 on the file of II Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru for partition and other reliefs against defendants.		
Date of institution of the Appeal.	10.07.2014		
Duration of Appeal.	Year/s	Month/s	Day/s
	11	09	11

J U D G M E N T

Appellants/plaintiffs have filed this appeal Under Section 96 of CPC praying for setting aside the judgment and decree passed in O.S.No.1613/2005,

dated 05.04.2012 on the file of II Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru and decree the suit as prayed for in the interest of justice and equity.

2. Parties would be referred with their ranks, as they were before trial Court for sake of convenience and clarity.

3. The plaintiffs have filed the suit before trial Court for the relief of partition.

4.1. The case of plaintiffs before trial Court is that one Veerappa had three sons namely S.V.Muniswamaiah, S.V.Motappa and S.V.Nagappa Reddy. The plaintiff No.2 to 4 are the children and the 1st plaintiff is the grandson of S.V.Muniswamaiah. The 1st plaintiff's father Vema Reddy is no more; the defendant No.1 to 6 are the children of Motappa and the 6th defendant is the grandson of Nagappa Reddy. During

the lifetime of Veerappa, his 1st son Nagappa Reddy took his share in the joint family property and living separately.

4.2 Veerappa and his other two sons S.V.Muniswamaiah and S.V.Motappa were living in the joint family and after the death of Veerappa, S.V.Muniswamaiah and S.V.Motappa got divided the joint family properties under the registered partition deed dt.1.8.1972-73. According to the plaintiffs, the suit property was purchased by Veerappa, earlier to the registered partition deed and both S.V.Muniswamaiah and S.V.Motappa were in the joint possession. The suit property was not divided and it is still the joint family property. After the death of Muniswamaiah and Motappa, the plaintiffs and the defendants continued in joint possession of the suit property, but when the plaintiffs demanded the partition, the defendants refused to effect the same. Now the defendants are

trying to alienate the suit property. Hence, the suit for appropriate reliefs.

5. On the other hand, defendant No.1, 4, 5 and 6 appeared through their counsel, but failed to file written statement. As the defendant No.2 and 4 failed to appear before the Court they were placed *exparte*.

6. Based on the above pleadings, the learned trial Judge has framed the following points:

1. *Whether the plaintiffs are entitled to the relief of partition?*
2. *What order or decree?*

7. On behalf of plaintiff, SP Holder of the plaintiffs examined as P.W.1 and got marked documents at Ex.P.1 to 7 and closed their side before trial court.

8. After recording evidence of plaintiffs and on the basis of the material available on record, the learned trial Judge held that plaintiffs have failed to prove that

the suit schedule property is the ancestral/joint family property of Veerappa and dismissed the suit.

9. Aggrieved by the said judgment and decree, the appellant/plaintiffs have preferred the present appeal stating that the trial Court ought to have decreed the suit holding that the plaintiffs had 1/3:6 share each in the suit schedule property, but the trial Court holds that suit schedule property belongs to the Government, which is absolutely perverse and the judgment and decree is liable to be set aside. The trial Court failed to consider the law prevailing that unless suit is barred by limitation and that the suit of the plaintiff if there being no contest or being exparte, had to be decreed. The trial Court erroneously presumes that the suit schedule property was not purchased by Veerappa, the propositus of the plaintiffs and defendants family and it is liable to be set aside. Hence, prayed to set aside the

judgment and decree of the trial Court and decree the suit in the interest of justice.

10. Order sheet dated 06.03.2026 reveals that learned counsel for respondent No.9 to 16 filed objections to main petition. Order sheet dated 18.03.2026 reveals that counter claim taken on record. On 04.04.2026, the learned counsel for the appellant filed objections to counter claim.

11.1. In the objections, the respondent No.9 to 16 have stated that the suit filed by the plaintiffs under the current framework is not proper and it is not maintainable in law and on the facts and deserves to be dismissed by granting or passing a decree on the relief(s) prayed for as a counterclaim against the plaintiffs and defendants 1 to 8 and others.

11.2. Themselves, the plaintiffs and the defendant Nos.1 to 8 are part of Veerappa's lineage and are members of undivided joint family.

11.3. The children of Veerappa, i.e., S. V. Munishamiah and S. V. Motappa divided the family properties through a registered partition deed dated 01.08.1972, wherein the property bearing Sy No.77/1, measuring 1 acre and 34 guntas situated at Sulikunte village, Varthur Hobli, Bengaluru East Taluk was kept as joint enjoyment or was not subjected to division and till date it has not subjected to division and it is to be included in this suit for partition among the parties involved. Therefore, the suit seeking specific properties is barred by the principle of partial partition.

11.4. That in the partition deed dated 01.08.1972, several properties have been allocated to the share of S. V.Munishamiah. During Munishamiah's lifetime, a

family partition occurred between him and his male children as per the registered partition deed, wherein certain properties are retained by S.V. Munishamiah, or not all properties allotted to his share are subject to division. Instead, some properties are allotted to his male children. They assert that these properties should be divided among the lineage of S. V. Munishamiah. These properties are not subject to this suit.

11.5. They have stated that the land bearing Survey No.114/ measuring 8 Acres 14 guntas situated at Sulikunte Village, Varthur Hobli, Bangalore East Taluk is the joint family property purchased and possessed by Kalanayakanahalli Veerappa, but it was left out in the earlier Partition Deed between S.V. Muniswamaiah and S.V.Motappa. S.V. Motappa started enjoying the said landed property jointly and cultivating the same as a joint family property only. That apart from this property, the children of Veerappa

have jointly cultivated the property in Sy.No.77/1 of Sulikunte village, which is purposely not included by the plaintiffs in this suit.

11.6. According to these respondents, they are the legal heirs of Ammayamma, also known as Chikka Ammayamma, daughter of the late S. V. Munishamiah; respondents Nos.12 to 14 are the children of late Narayanamma, daughter of the late S. V. Munishamiah; respondents Nos.15 and 16 are also children of Late Ramakka, daughter of the late S. V. Munishamiah. The said daughters of Munishamiah being members of the lineage of Munishamiah are entitled to share in all the properties retained by Munishamiah, as well as in the properties listed in counter statement schedule. Further, it is stated that the respondent No.9 to 11 being the legal heirs of Ammayamma are together entitled to a 1/13 share. The respondents No.12 to 14, being the legal heirs of Narayanamma are together

entitled to a 1/13th share; the respondents Nos.15 and 16 being the legal heirs of Ramakka are together entitled to a 1/13th share in the suit schedule properties. Hence, they pray for judgment and decree as against the appellants and respondent No.1 to 8 and to partition the counter claim schedule properties by metes and bounds and put them in separate possession of their 3/13th share in the counter claim schedule properties.

12. Statement of objections is filed by the counsel for the appellant to the above counter claim stating the reasons therein and prayed to reject the same.

13. During the pendency of the appeal, the counsel for the appellants filed application under Order XLI rule 27 of CPC and prayed to permit them to produce the document No.1 to 4 mentioned therein and sought to mark the same by condoning the delay.

14. Per contra, the respondent No.5 filed objections to the application filed U/O XLI Rule 27 of CPC stating that the application is not maintainable in law and the permission to mark additional documents on the part of the appellant deserves to be dismissed.

15. Heard arguments.

16. From the above facts, the points that arise for consideration are:

1. *Whether the application U/O XLI rule 27 of CPC filed by the appellants deserves to be allowed?*
2. *Whether the appellants prove that the judgment of the trial Court is not proper and erroneous?*
3. *Whether the interference of this Court on the above said judgment and decree is required?*
4. *What order or decree?*

17. Finding of this Court on the above points are as under:-

Point No.1 : In ***Affirmative***;

Point No.2 : ***Partly allowed***;

Point No.3 : In ***Affirmative***.

Point No.4 : As per final order for the following:-

REASONS

18. **Point No.1 to 3:-** These points are considered together, as they require common discussion.

19.1. In the evidence of P.W.1, he has categorically stated on par with the plaint averments that plaintiffs are the children of S.V.Muniswamappa. 1st plaintiff is the grandson of S.V.Muniswamy i.e., son of S.M.Vema Reddy who is the son of S.V.Muniswamaiah. Defendant No.1 to 5 are the children of S.V.Motappa; defendant No.6 is the grandson of Nagappa Reddy, who is the son of Kalanayakanahalli Veerappa. The defendant No.6 is the son of Bhadraiah. Kalanayakanahalli Veerappa has three sons by name S.V.Muniswamaiah,

S.V.Motappa and Nagappa Reddy. During the life time of Kalanayakanahalli Veerappa, Nagappa Reddy took his share in the Joint family properties long ago and was living separately away from the Joint Family. Subsequent to the death of Kalanayakanahalli Veerappa, S.V. Muniswamaiah and S.V.Motappa got divided the Joint family properties through a Registered Partition Deed dated 01.08.1972 registered before Sub Registrar, Bangalore. Pursuant to the said Partition, the said S.V.Muniswamalah and BW Motappa started living separately from the joint family.

19.2. The land in question i.e., Survey No.114 measuring 8 Acres 14 guntas situated at Sulikunte Village, Varthur Hobli, Bangalore East Taluk is the Joint family property purchased and possessed by Kalanayakanahalli Veerappa was left out in earlier partition between S.V.Muniswamaiah and S.V.Motappa. The said S.V.Muniswamaiah, S.V.Motappa started

enjoying the said property. They are in joint possession and are cultivating the same as Joint family property. The suit schedule property was not divided amongst sons of Kalanayakanahalli Veerappa at any point of time as such, the suit schedule property is the Joint family property of the plaintiffs and the defendants. The sons and grandsons of S.V.Muniswamaiah have equal right, title and interest over the suit schedule property. The plaintiffs requested the defendants to effect the partition, but the defendants were postponing the same. On 29.06.2005, the defendants without the knowledge and consent of the plaintiffs started alienating the suit schedule property to some third parties and virtually defendants brought some purchasers near the suit schedule property. The plaintiffs rushed to the spot and resisted the illegal acts of the defendants. The defendants have no

exclusive and absolute right to sell or create any encumbrance over the schedule property.

20. To support the case of the plaintiffs, they relied upon Ex.P.1 to Ex.P.7.

21. In the judgment of the trial Court, it is observed that P.W.1 deposed that Veerappa had three sons Viz.,Nagappa, Muniswamappa and Motappa. One Vema Reddy and plaintiff No.2 to 4 are the children of Muniswamaiah, defendants 1 to 5 are the children of Motappa and 6th defendant is the grandson of Nagappa. He further stated that during the lifetime of Veerappa, his son Nagappa took his share in the joint family properties and Muniswamappa and Motappa were continued in the joint family together with their father Veerappa. After the death of Veerappa, Muniswamappa and Motappa got divided the joint family properties through registered partition deed dated 01.08.1972.-73.

Ex.P.1 is the certified copy of partition deed, which discloses that there was a partition among S.V.Muniswamappa and S.V.Motappa, wherein 'A' schedule devolved to the share of Muniswamaiah and 'B' schedule was allotted to Motappa.

22. However, P.W.1 has stated that suit schedule property was purchased by Veerappa. Earlier to partition deed, Muniswamappa, Motappa and Veerappa were enjoying the said property and till today there is no partition in respect of the suit property. However, it is observed that there is no such sale deed produced to show that the property was purchased by Veerappa. Ex.P.2 is the RR extract which shows the name of Veerappa and after his death, the katha was transferred in the name of Motappa. That Veerappa was cultivating the suit schedule property as katheddar, which means the suit property was not purchased by Veerappa. It is further observed that Ex.P.2 reveals that Sy.No.114 of

Sulikunte village is the Government land and that Veerappa was in unauthorized occupation of the suit proeprty during his lifetime. Thus, the suit property is neither the self-acquired or the ancestral property of Veerappa.

23. However, the contention of the P.W.1 is that the suit property was not included in the partition deed. Ex.P.1 shows that the suit schedule property is not included. It is observed that since it is not the exclusive or joint family property of Veerappa, there was no occasion to include the suit property in that partition deed. Ex.P.3 to Ex.P.5 are the Akarbandh and survey sketch. It is observed that the documents show that the suit property is not the ancestral or joint family property. Even though the defendants have failed to contest the suit, but the burden is on the plaintiff to prove their case and the plaintiffs have not

established their case and the suit came to be dismissed.

24. In this case, the observation of the trial Court is that this property was not the joint family property or the ancestral property of the said Veerappa. The relationship between the parties is undisputed. The earlier partition is also undisputed. It is further undisputed that this suit property is not included in the earlier partition deed.

25. However, before this Court, the counsel for appellant has produced MR extract. So also produced the RTC and other relevant documents along with the application Under Order XLI Rule 27 of CPC. However, all these documents are to be produced and proved before the trial Court. Hence, under these circumstances, all these documents are to be produced in evidence. Therefore, it is necessary to remand the

matter to the trial Court, so that both the parties can establish their case. Hence, with this observation the appeal is disposed off. Therefore, the interference of this Court is necessary in view of above discussion. Accordingly, the point No.1 is answered in the ***affirmative***; point No.2 in ***partly affirmative*** and point No.3 in ***Affirmative***.

26. **Point No.3:-** In view of findings on point No.1 to 3, this Court proceeds to pass the following:-

O R D E R

Appeal filed by the appellants Under Section 96 of CPC is allowed by setting aside the judgment and decree passed in O.S.No.1613/2005 dated 05.04.2012 by the II Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru.

I.A.No.IX filed by the appellants U/OXLI rule 27 of CPC is allowed.

The matter is remanded back to the trial Court with the direction to dispose a

fresh by giving reasonable opportunity to both the side to establish their case by considering the documents produced in this appeal.

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

Send back the records of the Trial Court with copy of this judgment.

(Dictated to the Stenographer Grade-1. Transcribed and computerized by him. Script corrected, signed and pronounced by me in the open Court on this the 21st day of April, 2026)

(B.S.Rekha)

Prl. District & Sessions Judge,
Bengaluru Rural District,
Bengaluru.