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IN THE COURT OF IV ADDITIONAL DISTRICT & SESSIONS JUDGE
SITTING AT DODDABALLAPURA, BENGALURU RURAL DISTRICT

Dated 17th Day of March 2026

: PRESENT:

SMT. NIRMALA .K, B.A. M.L.,
IV Additional District and Sessions Judge,
Doddaballapura, Bengaluru Rural District.

R.A.No. 10026 / 2021

APPELLANTS /
DEFENDANTS 5

- :**
- 1) Sri. Huchegowda @ Huchappa**
S/o. Late Siddappa
Aged about 65 years
 - 2) Smt. Siddalingamma**
W/o. Hucchegowda @ Huchappa
Aged about 60 years
 - 3) Sri. Puttaraju**
S/o. Hucchegowda @ Huchappa
Aged about 34 years
 - 4) Sri. H. Muniraju**
W/o. Hucchegowda @ Huchappa
Aged about 32 years
Appellnat no.1 to 4 are
R/at. Beerahanapalya Village
Madhure Hobli
Doddaballapura Taluk

- 5) **Smt. Munirathamma**
D/o. Hucchegowda @ Huchappa
Aged about 30 years
R/at. Karlapura Palya
Hesaraghatta Hobli, Byatha Post
Bengaluru North Taluk
- 6) **Smt. H. Chayadevi**
D/o. Hucchegowda @ Huchappa
Aged about 28 years
R/at. Koligere Village
Doddabelavangala Hobli
Doddaballapura Taluk

(Reptd. by Sri. B.S.V., Advocate)

V/s

RESPONDENTS /
PLAINTIFFS

- : 1) **Sri. H. Ashwathanarayana**
S/o. Huchegowda @ Huchappa
Aged about 38 years
- 2) **Sri. H. Nagaraju**
S/o. Huchegowda @ Huchappa
Aged about 36 years
R/at. No.2, Beerihanapalya
Village, Madhure Hobli
Doddaballapura Taluk

**(Resp.No.1 – Reptd. By Sri. H.M.M.,
Advocate,**

**Resp. No.2 – Reptd. By Sri. H.M.M.,
Advocate)**

Date and nature of the decree or order appealed against	The judgment and decree passed in O.S.No.126/2009 dated; 21-10-2021 on the file of Additional Senior Civil Judge & JMFC, Doddaballapura		
Date of Institution of Appeal	04.12.2021		
Date of Judgment	17.03.2026		
Duration of Appeal	Year/s	Month/s	Day/s
	04	03	13

J U D G M E N T

This regular appeal is preferred by the appellants/ defendant no.4 and 5 questioning the legality and correctness of the judgment and decree passed in O.S.No.126/2009 dated; 21-10-2021 by the Learned Additional Senior Civil Judge & J.M.F.C., Doddaballapura and set aside the said Judgment and decree and remand the matter for fresh disposal after providing the opportunity to leading evidence on behalf of appellants / defendants in the interest of justice and equity.

2. The parties referred to as to their ranks before trial court.

3. **Case of the plaintiffs in brief is as follows;**

The plaintiffs have filed this suit for partition and separate possession of their shares in the suit schedule properties. The suit schedule properties are described in the schedule of the plaint

consisting of suit Item no.1 to 8 properties. Further, plaintiffs and defendant no.3 to 6 are the children of defendant no.1 and 2 living under Hindu undivided Joint family governed under Mithakshara school of law. The plaintiff and defendant no.1 to 6 are in joint possession and enjoyment of the suit schedule property. It is pleaded that the suit schedule properties are the ancestral and Joint family properties of the plaintiffs and defendants . In a family partition the suit Item no.1 to 5 had fallen to the share of father of the plaintiff i.e. defendant no.1 suit Item no.6 and 7 were granted to the family in the name of defendant no.2. The suit Item no.8 is the joint family property purchased out of Joint family funds including the plaintiff and family members in the name of defendant No.2 and therefore all the suit schedule property Item No.1 to 8 are the ancestral and ancestral joint family property. There is no partition in respect of suit schedule property. The defendant no.1 and 2 being the father and mother of plaintiffs now are hostile to the plaintiff and acting deterrent to the interest of the plaintiff. The plaintiffs approached defendant no.1 and 2 to effect the partition but the defendants have refused to do so. Hence this suit for partition.

4. On receipt of suit summons, defendant no.1 to 6 present through their respective counsels and defendant no.1 filed written statement and the defendant no.2 to 6 filed a memo adopting the Written statement of defendant No.1. During pendency of suit the defendant no.2 died and counsel for the plaintiff filed memo

stating that legal heirs of deceased defendant no.2 are already on record.

5. Defendants in the Written statement have denied the relationship between plaintiffs and the defendants. It is contended that plaintiff No.2 is not the family member of the defendants as he has been given in adoption to one Sri.Siddalingappa and Smt. Anjamamma long back and therefore the plaintiff no.2 is not coparcener in the family of plaintiff and the defendants. It is contended that there is no partition between Sri.Siddappa and his sons at any point of time and all the properties which belonging to Sri.Siddappa are not incorporated in the plaint schedule . All the legal heirs of deceased Sri.Siddappa are not made parties to the suit and therefore suit is barred for non-joinder necessary parties. It is further contended that the suit Item no.6 and 7 are granted in the name of defendant no.2 and the defendant no.2 was alone cultivating the said land and it was granted only to the defendant no.2. The suit Item no.7 property was granted in the name of the defendant no.2 and therefore the suit Item no.6 and 7 property are acquired by the defendant no.2 and therefore suit Item no.6 and 7 are the Stridhan properties. It is further contended that the plaintiffs have dishonestly suppressed about the properties and same are not incorporated in this suit which are acquired in the name of their wives. The said properties are acquired out of the earning of defendant no.1 and 3 in the name of wives of the plaintiffs. It is further contended there is house property with vacant site in khata No. 103 and 104 in the

name of Smt Latha wife of plaintiff No.1 and property no.53 standing in the name Smt.Sowbhagya wife of plaintiff no.2 and another property situated in Hurilichikkna Village, Bangalore North Taluk. This properties are to be brought into hotchpot for partition between all the members of Joint family of deceased Sri.Siddappa. It is further contended that the defendants have brought up the plaintiffs and defendant no.3 to 6 with love and care. The plaintiff no.1 being an irresponsible person wanted a city life and he never participated in the family activities. His marriage was performed by defendants no.1 and 2 by borrowing loans from family friends and since the marriage the plaintiff no.1 is living separately. The marriage of the two daughters was performed by borrowing loans and bore-well have been dug in suit Item no.1 to 5 by borrowing loans. The defendant no.1 is in debt of Rs.20,00,000/- and in case of partition the plaintiffs and defendant no.3 to 6 are to be made responsible for clearing family debts. The suit for partial partition is not maintainable and therefore on these grounds the defendants prayed to dismiss the suit.

6. Based on pleadings of both the parties, the trial court framed the following **Issues** :

- 1) Whether the Plaintiffs prove that they are the Joint family members along with defendants and the suit properties are their joint family ancestral properties ?
2. Whether suit is properly valued and court fee paid is sufficient ?

3. Whether suit is bad for non-joinder of necessary parties?
4. Whether 1st defendant proves that suit schedule Item no.6 and 7 are the absolute and Stridhan properties of defendant No.2.?
5. Whether defendants prove that family is out standing more than Rs.20,00,000/- loan payable?
6. Whether the Plaintiffs are entitled for relief sought by them?
7. What order or decree?

7. The plaintiffs in order to prove their case plaintiff no.1 got examined himself examined as P.W-1 and also examined another witness as P.W-2 and got marked the documents as Ex.P-1 to Ex.P-10. On the other hand, learned counsel for defendants cross-examined P.W-1 and P.W-2, but inspite of sufficient given they have not adduced any oral evidence or produced any documentary evidence on their behalf.

8. On hearing the matter on merits the trial court has passed the following order:

ORDER

Suit of the plaintiff is hereby decreed in the following terms:

It is hereby declared that plaintiffs are each entitled for 1/6th share in the suit properties.

The suit properties shall be partitioned as per
Section 54 of C.P.C.

Draw Preliminary decree accordingly.

9. Being aggrieved by the judgment and decree of the trial court, the defendant no.1 to 6 / appellants preferred appeal on the following grounds:-

Grounds of appeal:

The appellants submit that, Learned Trial Judge has given sufficient opportunity to cross-examine PW-1 and to lead their evidence. Respondent no.2 is not at all the family member of appellants and he was given in adoption to one Siddalingappa and Smt. Anjinamma. All the legal heirs of deceased Siddappa are not made as parties to the suit and the family properties are not included. Therefore, the suit is bad for non-joinder of necessary parties and properties. Trial Court has not considered the fact that, suit Item No.6 and 7 properties were granted in the name of Appellant No. 2 and she was cultivating the same is her stridhana property. The marriage of daughters were performed by borrowing loan and bore-well was dug in the suit Item No. 1 to 5 properties by borrowing loan. So, there is a debt of ₹ 20,00,000 and respondents also should be made liable to clear family debts. The appellants were prevented by genuine reason to contest the case on merits. Therefore, the impugned Judgment needs to be set aside by allowing the appeal and the matter may be remanded back to the trial Court for fresh disposal.

10. On the other hand, respondent no.1 and 2 represented by Advocate and contested the appeal.

11. Heard the **arguments** of learned counsels for appellants and respondents.

12. In the light of the submissions made by the Learned counsel appearing for the appellants and the respondents, the following **points arose for my consideration to determine** in this appeal.

- 1) Whether the Plaintiffs prove that they are the Joint family members along with defendants and the suit properties are their joint family ancestral properties ?
- 2) Whether the Plaintiffs are entitled for relief sought by them?
- 3) Whether defendants prove their defence as urged in their written statement?
- 4) Whether the judgment and decree passed by the Learned Senior Civil Judge & JMFC, Doddaballapura decreed the suit of the plaintiffs in O.S.No.126/2009 dated; 21-10-2021 is erroneous, illegal, perverse and liable to be set aside?
- 5) Whether the impugned order calls for any interference from this Court?
- 6) What order?

13. My answer to the above points are as follows:

Point No.1	:	In the Affirmative,
Point No.2	:	In the Affirmative,
Point No.3	:	In the Negative,
Point No.4	:	answered accordingly,
Point No.5	:	answered accordingly,
Point No.6	:	As per final order,

for the following reasons.

REASONS

14. **Point No.1 to 3:-** Since these points are interlinked with one another, they are taken up together for consideration, for avoiding repetition of discussion on the facts of the case and also regarding point of law.

15. It is the case of plaintiffs that one Siddhappa is the father of defendant no.1, defendant no. 2 is the wife of defendant no. 1. Plaintiff no. 1 and 2 and defendant no. 3 to 6 are the children of defendant no. 1 and 2. They constitute joint Hindu family with regard to the said relationship is concerned plaintiffs have produced Exhibit P-1 genealogy and lead the oral evidence of PW-1 which clearly establishes the said relationship.

16. Further, plaintiffs submit that, suit schedule properties are ancestral and joint family properties of plaintiffs and defendants. Item No. 1 to 5 properties were acquired by the grandfather of plaintiffs and defendants no. 3 to 6 by name Siddappa. There was partition between Siddappa and his sons, wherein Item No. 1 to 5 fell

to the share of father of plaintiffs i.e. defendant no. 1 and Item No. 6 and 7 were granted in the name of defendant no.2. Item number 8 property was purchased out of the joint family funds in the name of mother of plaintiffs. Therefore, they contend that the suit schedule properties are the joint family properties.

17. Plaintiffs in support of their above contention have produced Exhibit P-2 is the record of rights of land bearing Sy.No.169/6 i.e., suit Item No.1 property measuring 0.6 guntas standing in the name of defendant no.1, Ex.P-3 is the record of rights of land bearing Sy.No.90/1 i.e., suit Item No.2 property measuring 0.16 guntas standing in the name of defendant no.1, Ex.P-4 is the record of rights of land bearing Sy.No.134/9 i.e., suit Item No.3 property measuring 0.21 guntas standing in the name of defendant no.1, Ex.P-5 is the record of rights of land bearing Sy.No.157/4 i.e., suit Item No.4 property measuring 1 acre standing in the name of defendant no.1, Ex.P-6 is the record of rights of land bearing Sy.No.92/P6 i.e., suit Item No.6 property measuring 2 acres 0.8 guntas standing in the name of defendant No.2, Ex.P-7 is the mutation register extract, Ex.P-8 is the Hakku patra in respect of suit Item No.7 property standing in the name of defendant no.2, Ex.P-9 is the property register extract of suit Item no.5, Ex.P-10 is the property register extract of suit Item no.5 standing in the name of defendant no.1.

18. Apart from these documents, PW-1 has got himself examined as PW-1 and reiterated the above aspects in his evidence. Therefore, the above oral and documentary evidence produced by the plaintiffs clearly go to substantiate their contention. On the other hand, defendants contend that petitioner no.2 was given in adoption to one Siddalingappa and Anjinamma. Further, they contend that Item No. 6 and 7 properties were granted in the name of defendant no.2, which were stridhana properties. With regard to the said contention is concerned, no documents are produced by the defendants nor, they have led their evidence. To consider that the property is stridhana property, defendants have to prove that defendant no.2 was having independent source of income. There is no pleadings to this effect nor any documents. Just because the grant certificate stands in the name of defendant no. 2, it cannot be considered as her self-acquired property. If the above contention of defendants had any merit consideration, then they ought to have contested the suit.

19. Thus, from the above discussion, I am of the clear opinion that the plaintiffs have produced sufficient oral and documentary evidence on record and proved that the suit schedule properties are the joint family properties. Under such circumstances, plaintiffs and defendant no. 1 to 6 who are the legal heirs of Late Siddappa are entitled for share. **Accordingly, point no. 1 and 2 are answered in the Affirmative and point no. 3 is answered in the Negative.**

20. **Point No.4 and 5:-** Since these points are interlinked with one another, they are taken up together for consideration, for avoiding repetition of discussion on the facts of the case and also regarding point of law.

21. Appellants/defendants contend that trial Court has not given sufficient opportunity for them to contest the case on merits. Therefore, they could not cross examine PW-1 and nor lead their defence evidence. But, on perusal of the trial Court Order sheet, it is seen that from 05.11.2018 till 06.09.2021 opportunity was given for appellants/defendants to cross-examine PW-1 and to lead defence evidence. Almost 3 years defendants had opportunity to contest this suit. Therefore, considering the trial Court Order sheet the above grounds of appeal is baseless.

22. Further, learned counsel for the appellants submitted that deceased Siddappa and his two children Siddalingaiah and Huchegowda partitioned the properties about 45 to 50 years back and after partition, Siddappa adopted two children from their second son Huchegowda. They both lived with their grandparents since 1982. Therefore, registered Will was executed in their favour. They could not produce the material documents before the trial Court. But, as said earlier, though sufficient opportunity was given, appellants have not utilised the said opportunity. It is seen that, original suit is of the year 2009 and by now already 24 years have elapsed and at this stage, the matter cannot be remanded. Moreover, no valid grounds

are made out by the appellants. On the other hand, trial Court has rightly taken into consideration the entire oral and documentary evidence available on record and it has given ample opportunities to both the parties to contest the case on merits and finally decreed the suit. Therefore, I find no reason to interfere with the impugned judgment.

23. However Learned counsel for the respondent submitted that trial Court has not allotted share to defendant no. 1. Therefore, the decree may be modified allotting 1/7th share instead of 1/6th share. On perusal of the trial Court's order and its re-appreciation of the entire materials available on record, I am of the clear opinion that, the trial Court has missed to allot share to defendant no. 1. Therefore, it is fit case to exercise discretion in modifying the relief and grant 1/7th share. Therefore, to this extent, judgment of Trial Court needs to be modified. Admittedly defendant no. 2 is dead. Therefore to this extent judgment of trial Court needs to be modified. **Hence, these points no.4 and 5 are answered accordingly.**

24. Point No.6:- In view of my findings given on point No.1 to 5, I proceed to pass the following;

ORDER

**Regular Appeal filed by the appellants /
defendants is hereby partly allowed.**

The Impugned Judgment and Decree passed by learned Additional Senior Civil Judge & J.M.F.C., Doddaballapura in O.S.No.126/2009 dated 21-10-2021 is hereby modified as hereunder:

Plaintiffs and defendant no.1 and 3 to 6 are entitled for 1/7th share each in the suit schedule properties.

Parties to bear their own costs.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open Court dated this day the 17th Day of March 2026)

**(NIRMALA .K.)
IV Addl. Dist. & Sessions Judge,
Doddaballapura**