



**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT CHINTAMANI.**

Dated this the 23rd day of June 2026

PRESENT

SMT. G. GEETHANJALI,

B.A., LL.B.,

SENIOR CIVIL JUDGE AND J.M.F.C., CHINTAMANI.

R.A No.26/2023

Appellant :

1. Smt. Venkatamma,
W/o Late.
Chikkanarayanappa
@ Chinnappaiah,
Aged about 67 years,

2. Sri. Ashok Reddy,
S/o Late.
Chikkanarayanappa
@ Chinnappaiah,
Aged about 47 years,

3. Sri. Anand Reddy,
S/o Late.
Chikkanarayanappa
@ Chinnappaiah,
Aged about 45 years,
All are r/at
Gandraganahalli Village,
Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapur District.



(By Sri S.B.R., Advocate).

- versus -

Respondent

1. Smt. Lakshamma,
W/o Late Chinnappaiah,
@ Chikkanarayanappa,
Aged about 83 years,
R/at Y.Kuruppalli Village,
Murugamalla Hobli,
Chintamani Taluk.

(By Sri R.C.S., Advocate).

Date of Institution of the Regular Appeal	13-09-2023
Judgment and decree against which the appeal was preferred:	Judgment and decree passed in O.S.No.83/2016 on the file of Prl. Civil Judge and JMFC, Chintamani.
Nature of the suit	For the relief of Partition and Separate possession.
Date on which the judgment was pronounced	23-06-2026

Duration of the Appeal : **Year/s** **Month/s** **Day/s**
02 09 10

Sd/-

(G. GEETHANJALI)
Senior Civil Judge &
JMFC, Chintamani.



J U D G M E N T

This is the Regular Appeal preferred by the appellant/ plaintiff Under Order 41 Rule 1 r/w sec.96 of CPC challenging the judgment and decree dated:17-12-2022 passed in O.S. No. 83/2016 for the relief of partition and separate possession on the file of the Prl. Civil judge and JMFC., Chintamani. decreed with a part the suit filed by the plaintiff.

Appellants were the defendants and respondent was the plaintiff before the trial court. For sake of convenience they are referred at their rank in the trial Court.

Grounds given before here:-

The judgment and decree of the trial court is illegal, arbitrary, perverse and liable to be set aside.

The trial court erred in not considering that the plaintiff was not at all married to deceased Chikkanarayanappa in fact she married to one Kadirappa of Kurupalli Village.



Further the trial court fails to consider the basic principles of partition, as there was no partition effected in between deceased Chikkanarayanappa and his brother Doddanarayanappa. And the trial court fails to consider that the relationship of plaintiff not at all proved with any oral or documentary evidence in spite of it the trial court come to the conclusion that the plaintiff was the wife of Chikkanarayanappa. on the basis of orders passed in the maintenance proceedings which is liable to be set aside. Further the trial court erred in considering that there is no evidence placed to prove the relationship by the plaintiff inspite of it the trial court allotted 1/3rd share along with defendant.

Therefore the judgment and decree of the trial court is contrary to the evidence on record and facts of the case and evidence of Dw.1 not appreciated by the trial court as such the judgment and decree of the trial court itself is



illegal, arbitrary, perverse and liable to be rejected.

Plaintiff case:-

The plaintiff has brought the suit for partition on 1/3rd share in the suit schedule property by projecting her case that, plaintiff and defendant are constituted an undivided joint family and defendant no.1 and 2 by colluding with each other trying to alienate the suit property by denying her legitimate 1/3rd share which resulted in the suit. The defendant who resisted the case of the plaintiff denied the relationship of the plaintiff with their family and raised specific contention that the plaintiff was the wife of Kadirappa of Y.Kurupalli Village and residing in the said Y.Kuruppalli village for the last 50 years and she is not co-parceners and having no manner of right in the suit property. Hence prays to dismiss the suit.

3. The trail on the basis of the above pleadings of both parties, the following issues have been framed as:



Issues

1. Whether the plaintiff proves that she is the legally wedded wife of Chikkanarayanappa as alleged ?
2. Whether he plaintiff proves that the suit schedule properties are joint and ancestral properties?
3. Whether the plaintiff is entitled for the relief sought for?
4. What decree or order?

05. The trial court answered issues as under:

Issue No.1 & 2 : In the affirmative

Issue no.3 : In the partly affirmative

Issue No. 4 : **As per final**

In order to prove plaintiff's case, the plaintiff herself as Pw.1 and got marked the 9 documents as Ex.P1 to Ex.P9. On the other hand, in order to disprove the case of the plaintiff, the defendant no.2 got examined himself as Dw.1, but no documents were marked.



After conclusion of trail the suit got decreed with a part , being aggrieved by the same the plaintiff preferred this appeal.

06. In response of notice the respondent appeared before the court through his counsel.

07.The entire records of O.S.No.83/2016 have been called for and the same has been perused by me.

08. Heard the arguments along with the records.

09. The points that arise for consideration are:

1. Whether the Appellants proves the alleged interference as set out in the appeal memorandum ?
2. Whether the judgment and decree passed by the trial Court is capricious, perverse and illegal?
3. Whether the judgment and decree of the trial Court needs interference?
4. To what relief and decree the parties are entitled for?



10.The findings on the above Points are as follows:

Points No.1 to 3 : In the Negative

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

REASONS

11.Points No.1 to 3 :- This points are interconnected with each other therefore in order to avoid repetition of fact these points were taken up for joint discussion.

12. The first and foremost ground urged in the appeal is, proof of relationship as the defendant strongly disputed the relationship of the plaintiff with their family and in spite of it the trial court decreed the suit and allotted to the 1/3rd share of the plaintiff which is the root cause in this appeal as enlighten in ground no.13, 15, 16 and 17.

13. And the 2nd ground is there is no partition effected in between the Chikkanarayanappa



under whom the branch of defendants are comes and his brother Doddanarayanappa.

14. And the 3rd ground is non giving much important to the evidence defendant no.1.

15. So these are the main grounds urged in this appeal . With this now let us taken up the matter for discussion on oral and documentary evidence of both parties with comprehensive analysis of trial court findings.

16. This being the suit for partition and separate possession, of course the initial burden always lies upon the plaintiff and as already narrated the case that the specific case of the plaintiff that she is the joint family member and the defendant no.1 and 2 by colluding with each other denied her legitimate share and no doubt in spite of strong denial of the relationship by defendant , the plaintiff chosen to rely upon Ex.P1 the G-tree and she has not at all examine any one of the witness in proof of her relationship with Chikkanarayanappa .



17.However it is also crucial to note here that, the G-tree marked in the evidence of the plaintiff at Ex.P1 without any objection raised from the other side who have strongly disputed G-tree and the defendant who since from the beginning disputes the relationship of the plaintiff, contrary to Ex.P1 they have not placed any material documents to rebut the evidence of the plaintiff in establishing relationship since, according to the defendant plaintiff was wife of Kadirappa of Y. Kurappalli village, therefore when the plaintiff has relied upon Ex.P1 the G-tree which has been marked without any objection from the other side it mean the initial burden of the plaintiff has been lifted successfully and now the preponderance of probabilities shift upon the defendant to rebut the evidence of the plaintiff and contrary to the Ex.P1 no other material documents placed by the defendant except oral contention taken in the written statement and the defendant could have examine any of the witnesses from Y.Kurupalli village where the plaintiff was alleged to be residing for the past 50 years with her husband kadirappa as alleged by the defendant or their own relative to show that plaintiff totally



stranger to their family as provided under section 50 of Indian Evidence Act , wherein no such effort also made by the defendant.

And section 50 runs as follows ,

50. Opinion on relationship, when relevant.

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act ([4 of 1869](#)), or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

The principle underlying Section 50 of the Evidence Act has been explained by this Court in *Dolgobinda Paricha v. Nimai Charan Misra and Ors.*², **AIR 1959 SC 914** wherein the Honble apex Court observed thus:

“(6)....when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as



to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the section clearly bring out the true scope and effect of the section. It appears to us that the essential requirements of the section are —

(1) there must be a case where the court has to form an opinion as to the relationship of one person to another;

(2) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact;

(3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfil the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means



judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the “belief” or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. ...”

18.In the present case as already discussed the defendant except denying the relationship not at all made any effort to prove the same by examining any member of the family or otherwise has special means of knowledge on the particular subject of relationship in proof of relationship of plaintiff with deceased Chikkanarayanappa, although the trial court has discussed about the order sheet in maintenance case i.e., CMC No.5/1995 and formed its opinion in favour of the plaintiff however, the plaintiff had not produced the said documents, wherein, at the same time the evidence of the Dw.1 grab the attention of this court since the defendant no.2 /Dw.1 who strongly disputed relationship of the plaintiff, in his cross examination he admits about filing maintenance petition against his father by the plaintiff and later plead ignorance with respect to



the quantum of maintenance awarded in the said court, further plead ignorance about awarding amount of Rs.500/- as maintenance to the plaintiff and also admission by his father about the relationship of the plaintiff as being his 1st wife further Dw.1 deposed that he had not verified any documents showing the plaintiff as wife of one Kadirappa and all these facts in detail clearly discussed by the trial court in para 17 of its judgment , and this court also agree with the finding of the trial court, Since Dw.1 pleads ignorance with respect to those above said suggestions as he since from the beginning contended that the plaintiff is stranger to their family and rather than strongly denying the said suggestions he plead ignorance which itself sufficient to infer that the plaintiff have successfully established the relationship with deceased Chikkanarayanappa. Therefore the ground urged by the appellant/defendant that the trial court in the absence of any oral or documentary evidence erred in holding issue no.1 in favor of the plaintiff, does not hold water and the trial court also clearly discussed and appreciated the evidence of the Dw.1



in the light of section 50 of Indian Evidence Act which also made it clear that, there is no illegality and irregularity committed by the trial court in appreciation of evidence of Dw.1 as objected in appeal memorandum.

19. As for as not effecting partition in between Chikkanarayanappa and Doddanarayanappa is concerned, it is the contention taken by the defendant and they have to prove the said fact and they have not placed any documents in this regard , therefore the contention of the defendant is not sustainable under law with respect to non effecting of partition the absence of material evidence.

20. That apart the nature and character of the suit schedule properties except item no.8 not at all disputed by the defendant though it has been contended that the item no.8 is not the joint family property however, to prove the nature and character of the item no.8 no material has been placed, as such it can be infer that in the absence of any material document disproving the nature and



character of item no.8, all the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant. therefore this court is of the opinion that there is no grounds made out to interference with the trial court findings. Accordingly I answered point no.1 to 3 in the negative.

21. **Point No.4:-** For the foregoing reasons, I proceed to pass the following:-

ORDER

The appeal filed by the appellant under order 41 Rule 1 r/w 96 of CPC challenging the Judgment and Decree passed in O.S. No. 83/2016 dated:17-12-2022 on the file of Prl. Civil Judge and JMFC., Chintamani is hereby dismissed.

Consequently, the judgment and decree passed in O.S. No. 83/2016 dated:17.12.2022 on the file of Prl. Civil Judge and JMFC., Chintamani is hereby confirmed.

No order as to costs.

Draw decree accordingly.



Send back the records to the trial court along with copy of judgment and keep the original in appeal record.

(Dictated to the stenographer, computerized transcript revised and then pronounced by me in the open court on this the 23rd day of June 2026).

Sd/-

(GEETHANJALI G.)

Senior Civil Judge and
J.M.F.C., Chintamani.