



Form No. 9 (Civil) Title
Sheet for Judgment in suits
(R P 91)

GOVERNMENT OF KARNATAKA
TITLE SHEET FOR JUDGMENT IN SUITS

**IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.,
AT GOWRIBIDANUR**

Dated this 11th day of August 2026

:: PRESENT ::

SRI. GANESHA.N

M.A., L.L.B.,

**Prl. Civil Judge and J.M.F.C.,
Gowribidanur**

ORIGINAL SUIT NO.311/2020

Plaintiff/s :

- 1.** Sri. T.Muniyappa
S/o Venkataramanappa,
Aged about 67 years,
R/at B.Bommasandra Village,
D. Palya Hobli,
Gowribidanur Taluk.
- 2.** Sri. R.Subramani
S/o Late. Ramachandra,
Aged about 55 years,
- 3.** Sri. R.Gopi
S/o Late. Ramachandra,
Aged about 55 years,
- 4.** Sri. Venkatanarayanappa
S/o Late. Gopalappa,



Aged about 80 years,

- 5.** Sri. T.G.Muniyappa
S/o Late. Gopalappa,
Aged about 80 years,

All are residing at
B.Bommasandra Village,
D. Palya Hobli,
Gowribidanur Taluk.

(Rep. by learned counsel Sri. M.R.L)

// Versus //

- Defendant/s :**
- 1.** Sri. K.Sathyanarayana
S/o Krishnappa,
Aged about 66 years,
R/at 46th Cross,
7th Main Road,
Opposite to Muneshwara Temple,
4th Block, near SBI Bank,
Beside Kanyakaparameshwari Temple,
Rajajinagara, Bangalore,
Mob No.9448532358.
- 2.** Sri. K.Venkataravanappa
S/o Kurla Venkatappa,
Aged about 75 years,
R/at KottaKota, Kasaba Hobli,
Paragodu Post, Bagepalli Taluk,
Chikkaballapura District.

(Rep. by learned counsel Sri. R.R)



Date of institution of the suit : 06.10.2020

Nature of the suit : Declaration and
Perpetual Injunction

Date of the commencement of
Recording of the evidence : 03.01.2026

Date of which the judgment
was Pronounced : 11.08.2026

Total Duration : Year/s Month/s Day/s
05 10 05

(GANESHA.N)
Prl. Civil Judge and J.M.F.C,
Gowribidanur.

J U D G M E N T

The plaintiffs have instituted the present suit against the defendants seeking the following reliefs:

- a) To declare that the suit schedule property, together with the land bearing Sy.No.177/2, is required to be preserved and maintained as a "Tapovana" in its original nature and character as a joint family property of the descendants of Tapovanada Muniyappa, to be jointly enjoyed, protected and developed for the purpose for which it was originally reserved; and



- b) To grant a decree of permanent injunction restraining the defendants, their legal heirs, successors, assigns, attorneys or any person claiming through or under them from alienating the suit schedule property, except dealings among the members of the family for preserving, maintaining and developing the Tapovana in accordance with its original object and character.

SUIT SCHEDULE PROPERTY

All that piece and parcel of the immovable property situated at B. Bommasandra Village, D. Palya Hobli, Gowribidanur Taluk, originally bearing Sy.No.177/2, measuring 6 acres 02 guntas, excluding 1 acre 22 guntas of kharab land. Out of the said land, the suit property comprises the newly phoded Sy.No.177/7, measuring 1 Acre 20 Guntas and 08 Annas, excluding 1 Acre 17 Guntas of kharab land, being part and parcel of the original Sy.No.177/2, and bounded as follows:

East by : Lands of Muralular and
Chinnamma, (earlier Agasara
Dasappa);

West by : Lands of Lakshamma and
Channarayappa,
(Shamannana Kere Gadi)

North by : Lands of Suban Sabi and
Gapur Sabi, (A.K. Kare



Thimmappa and Kapa
Adimurthy)

South by : Road

2. The plaintiffs' case in compendious:

The suit schedule property originally belonged to the senior ancestor of plaintiffs namely, Muniyappa, who came to be known as "Tapovanada Muniyappa" because he developed the land bearing Sy.No.177/2 as a Tapovana. He planted different varieties of trees, such as mango, neem, jackfruit, Indian beech, tamarind and gooseberry trees. He also formed a pond in the lower portion of the land for storing water and for watering the trees. The stored water was also allegedly used by cattle coming from surrounding places. The property was not developed for commercial exploitation, but it was developed for charitable, spiritual and philanthropic purposes and with the passage of time, the land became a habitat for birds, animals and other living creatures. Tapovanada Muniyappa had four sons, namely, Venkatasamappa, Narayanappa, Gopalappa and Krishnappa. The eldest son, Venkatasamappa, predeceased his father, leaving behind his son Venkataramaiah. On 13.10.1954, the surviving sons and the representative of the deceased eldest son entered into a registered partition deed.



The other properties of the family were divided under separate schedules with identifiable boundaries and extents. However, according to the plaintiffs, Sy.No.177/2 was not divided by metes and bounds. A common recital was inserted in all four schedules of the registered partition deed concerning Sy.No.177/2. The material recital reads as “ಈ ನಾಲ್ಕು ಜನವು ಸಮಭಾಗದಂತೆ ಅನುಭವಿಸಬೇಕು. ಈ ಜಮೀನಿನಲ್ಲಿ ಹಿರಿಯರು ತಪೋವನ ಹಾಕಿ ಮರಗಳು ಬೆಳೆಸಿದ್ದಾರೆ. ಈ ಜಮೀನು ನಾಲ್ಕು ಜನಕ್ಕೂ ಅಮಾನತ್ತು ಇದೆ”. The said recital shows that the land was consciously kept undivided for the common benefit of all four branches. The trees standing therein were required to be jointly enjoyed. The land itself was kept in “ಅಮಾನತ್ತು” so that the nature and character of the Tapovana could be preserved. The first plaintiff is stated to be the great-grandson of Tapovanada Muniyappa and grandson of Narayanappa, the second son of Tapovanada Muniyappa. The defendants represent the branch of Krishnappa, the fourth son of Tapovanada Muniyappa. Krishnappa died leaving behind his wife Akkayamma and his daughters Sarojamma and Kamalamma. The first defendant claims through Sarojamma, while the second defendant is the husband or successor-in-interest of Kamalamma. The plaintiffs allege that the defendants, in collusion with the revenue authorities, obtained separate revenue entries and caused the creation of



a new sub-survey number, namely Sy.No.177/7, in respect of approximately 1 Acre 20.08 Guntas. The defendants are attempting to treat the said portion as their absolute and exclusively demarcated property and are attempting to alienate it to third parties. Such acts are alleged to be contrary to the express recital in the registered partition deed and destructive of the original Tapovana. The plaintiffs also contend that customary activities, including mass feeding during the Karthika month, were performed in the property. It is further alleged that the graves of the elders are situated in the Tapovana, which constrained the plaintiffs to institute the present suit seeking relief of declaration and permanent injunction.

3. The defendants appeared and filed their written statement denying the material allegations. They admit that Tapovanada Muniyappa had four sons and that the family properties were divided under the registered partition deed dated 13.10.1954. However, they deny that Sy.No.177/2 was permanently reserved as an inalienable Tapovana or that the respective branches were prohibited from transferring their shares and each branch acquired and enjoyed a one-fourth interest in Sy.No.177/2. Krishnappa died leaving behind his wife Akkayamma. Akkayamma continued in possession and



enjoyment of the one-fourth share belonging to the branch of Krishnappa. For family and legal necessities, Akkayamma sold the one-fourth share in favour of V.C. Venkataramanappa under a registered sale deed dated 05.02.1971. The name of V.C. Venkataramanappa was entered in the revenue records on the basis of the registered sale deed. After his death, his legal representatives sold the said one-fourth share in favour of Sarojamma and Kamalamma under the registered sale deed dated 27.03.2000. The names of Sarojamma and Kamalamma were thereafter entered in the revenue records. After their death, the names of the defendants were entered in respect of Sy.No.177/7, measuring approximately 1 Acre 20.08 Guntas and that they are in peaceful possession and enjoyment of the suit schedule property. They further contend that even the plaintiff's predecessor Narayanappa purchased the one-fourth share belonging to another branch under a registered sale deed dated 21.08.1961. According to the defendants, this transaction demonstrates that the branches were entitled to transfer their respective one-fourth shares. The defendants contend that the plaintiff was aware of the sale executed by Akkayamma in 1971. Therefore, the suit instituted after several decades is barred by limitation. They further contend that all the descendants and legal



representatives of the four sons of Tapovanada Muniyappa have not been impleaded. Hence, the suit is bad for non-joinder of necessary parties. Accordingly, the defendants prayed to dismiss the suit.

4. Having regard to the pleadings and other materials on record, this Court has framed the issues as follows:

ISSUES

1. Whether the plaintiff proves that the suit schedule property was solely reserved to be maintained by the family members as a “Tapovana” or forest of austerities under the partition deed dated 13.10.1954?
2. Whether the plaintiff proves that the suit schedule property consists of a variety of trees such as mango, neem, jackfruit, Indian beech, tamarind and gooseberry?
3. Whether the defendants prove that the suit is barred by limitation?
4. Whether the defendants prove that the suit is bad for non-joinder of necessary parties?
5. Whether the plaintiff is entitled to the reliefs sought for?
6. What order or decree?



5. In order to prove the case of the plaintiffs, among the plaintiffs, the plaintiff No.1 was examined as P.W.1. The documents at Exs.P.1 to P.31 were marked. On the other hand, the defendants in order to prove their defence, defendant No.1 was examined as D.W.1. The documents at Exs.D.1 to D.10 were marked.

6. Heard arguments advanced by the Learned counsel for suit parties and this Court perused entire materials on record.

7. Having heard arguments and having perused entire materials on record, this Court answered issue Nos.1, 2, 4 and 5 **Partly** in the **Affirmative**, Issue No.3 in the **Negative** and issue No.6 as per final order for the following:

: R E A S O N S :

8. **ISSUE NO.1:** Contending that they are absolute joint owners in possession and enjoyment of undivided suit schedule property and complaining that the defendants having no independent right have been attempting to alienate the suit schedule property, the plaintiffs have instituted the present suit seeking relief of declaration as well as perpetual injunction.



9. The P.W.1 in his examination-in-chief has recapitulated the averments of plaint and Exs.P.1 to 31 documents got marked. Ex.P.1 is the certified copy of partition deed dated 13.10.1954, Ex.P.2 is the certified copy of sale deed dated 04.02.1971, Ex.P.3 is the certified copy of encumbrance certificate, Ex.P.4 is the certified copy of mutation register extract, Exs.P.5 to 19 are the RTC extracts, Ex.P.20 is the certified copy of mutation register extract and Exs.P.21 to 31 are the photographs.

10. On the other hand, the D.W.1 in his examination-in-chief has recapitulated the averments of written statement and Exs.D.1 to 10 documents got marked. Ex.D.1 is the certified copy of partition deed dated 13.10.1954, Ex.D.2 is the certified copy of sale deed dated 21.08.1961, Ex.D.3 is the certified copy of sale deed dated 04.02.1971, Ex.D.4 is the original sale deed dated 10.03.2000, Exs.P.5 to 9 are the RTC extracts and Ex.P.10 is the mutation register extract.

11. Before commencing the discussion on the issues framed in the present suit, it is appropriate to notice the cultural and philosophical significance attached to the concept of a “Tapovana”, particularly because the very foundation of the plaintiffs’ case rests upon the recital



contained in the registered partition deed that the ancestors had developed the land as a Tapovana and had planted trees therein.

12. The Bhagavad Gita, in Chapter III, Verse 14, states as follows:

“अन्नाद्भवन्ति भूतानि पर्जन्यादन्नसम्भवः।
यज्ञाद्भवति पर्जन्यो यज्ञः कर्मसमुद्भवः॥”

**“Annād bhavanti bhūtāni,
parjanyaādanna-sambhavaḥ;
yajñād bhavati parjanya,
yajñaḥ karma-samudbhavaḥ.”**

The substance of the verse is that living beings are sustained by food; food depends upon rain; rain is sustained through harmonious and responsible action; and such action forms part of the larger order governing life. The said verse reflects the ancient Indian understanding of the interdependence of human beings, vegetation, water, rainfall and all forms of life. A grove containing trees, water sources and habitats for birds and animals was therefore not merely viewed as land capable of economic exploitation, but also as part of a wider ecological and social order.

13. A similar sentiment is found in the Atharva Veda in the well-known expression as follows:-



“माता भूमिः पुत्रोऽहं पृथिव्याः।”

“Mātā bhūmiḥ putro'haṁ pṛthivyāḥ.”

Meaning: **“The Earth is my mother and I am her child.”** The concept of a “Tapovana” in the Indian tradition is therefore associated not merely with a forest or grove, but with a place of austerity, contemplation, learning, protection of nature and harmonious coexistence with living beings. The above scriptural references are noticed only for the limited purpose of understanding the historical and cultural significance of the expression “Tapovana” employed by the ancestors in the registered partition deed. The rights of the parties in the present suit are, however, required to be determined strictly on the basis of the pleadings, admissible oral and documentary evidence, the terms of the registered instruments and the applicable principles of civil law.

14. The primary question is whether Sy.No.177/2 was reserved under the registered partition deed as a common Tapovana and whether the defendants could claim exclusive ownership over a separately demarcated portion of that land. The plaintiffs rely principally upon Ex.P.1. Ex.D.1 is another certified copy of the same registered partition deed dated 13.10.1954. The relevant recital reads as follows:-



“ಸರ್ವೆ ನಂಬರ್ 177/2, 5 ಎಕರೆ 24 ಗುಂಟೆ ಜಮೀನು. ಇದರಲ್ಲಿ ಇರತಕ್ಕ ಜಾತಿವಾರು ಮರಗಳು ನಾಲ್ಕು ಜನರೂ ಸಮಭಾಗದಂತೆ ಅನುಭವಿಸಬೇಕು. ಈ ಜಮೀನಿನಲ್ಲಿ ಹಿರಿಯರು ತಪೋವನ ಹಾಕಿ ಮರಗಳು ಬೆಳೆಸಿದ್ದಾರೆ. ಈ ಜಮೀನು ನಾಲ್ಕು ಜನಕ್ಕೂ ಅಮಾನತ್ತು ಇದೆ.”

The recital has three significant components. Firstly, it records that the elders had developed a Tapovana and planted trees in the land. Secondly, it expressly states that the trees standing in the land were to be enjoyed equally by all four branches. Thirdly, it states that the land was kept in “ಅಮಾನತ್ತು” for all four. The above recital cannot be treated as an insignificant historical statement. It is an operative recital incorporated in all four schedules of the registered partition deed. The very fact that the recital was repeated in the schedules relating to each branch indicates that the parties to the partition deed intended to retain a common and continuing interest in Sy.No.177/2. The expression “ಅಮಾನತ್ತು” occurring in a family partition deed must be understood in the context in which it was used.

15. The other properties were allotted separately under distinct schedules. Sy.No.177/2 was dealt with differently. Instead of assigning four identifiable portions with separate boundaries, the document directed all four branches to enjoy



the trees equally and stated that the land was kept in common “ಅಮಾನತ್ತು”. This supports the plaintiffs’ contention that Sy.No.177/2 was excluded from physical division by metes and bounds. At the same time, the recital does not expressly state that no branch could ever transfer its undivided fractional interest. It does not use words imposing an absolute and perpetual prohibition upon alienation. Therefore, the proper interpretation is that the land was retained undivided, subject to equal rights of the four branches in the trees and in the property. The recital did not necessarily extinguish the proprietary interests of the branches. However, it prevented any one branch from unilaterally treating a specific physical portion as its exclusive property without a lawful partition.

16. P.W.1 admitted that Tapovanada Muniyappa had four sons. Though P.W.1 denied that the entire suit property had been partitioned, he clarified that the properties other than the Tapovana land had been divided. P.W.1 admitted that the one-fourth interest belonging to the branch of Krishnappa was sold by Akkayamma in favour of V.C. Venkataramanappa. The relevant portion of cross-examination of P.W.1 reads as follows:-



“ಕೃಷ್ಣಪ್ಪನ ಪಾಲಿಗೆ ಹೊದಂತಹ $\frac{1}{4}$ ನೇ ಪಾಲನ್ನು
ಆತನ ಹೆಂಡತಿ ಅಕ್ಕಾಯಮ್ಮ ರವರು ದಿನಾಂಕ 05-02-
1971 ರಂದು ವಿ.ಸಿ. ವೆಂಕಟರವಣ್ಣಪ್ಪ ರವರಿಗೆ ಮಾರಾಟ
ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ”.

This admission proves the execution of the sale deed. However, the admission does not prove that the property had been partitioned by metes and bounds before the sale. The transaction described by P.W.1 was in respect of a one-fourth share. It was not shown to have conveyed a separately demarcated portion with independent boundaries.

17. P.W.1 further stated that the sale deed itself referred to the common or “ಅಮಾನತ್ತು” character of the property. P.W.1 admitted that he knew about the sale from 1971. The relevant portion of cross-examination of P.W.1 reads as “ದಾವಾ ಆಸ್ತಿಯನ್ನು ಅಕ್ಕಾಯಮ್ಮ ರವರು ಮಾರಾಟ ಮಾಡಿರುವ ವಿಚಾರ ನನಗೆ 1971 ರಲ್ಲಿ ಗೊತ್ತಿತ್ತು ಎಂದರೆ ಸರಿ.” This admission of knowledge is relevant to limitation, but it must be understood in relation to the nature of the present suit. The plaintiffs do not seek cancellation of the sale deed dated 04.02.1971. They challenge the defendants’ subsequent claim of exclusive title over an identified and separately phoded portion.

18. P.W.1 also admitted that the names of Sarojamma and Kamalamma and thereafter the first defendant were entered in the revenue records. The relevant portion of cross-



examination of P.W.1 reads as “ನಂತರ ಸರೋಜಮ್ಮ ಮತ್ತು ಕಮಲಮ್ಮನ ಹೆಸರಿಗೂ ಖಾತೆ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. 1 ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರಿಗೂ ಸಹ ಪ್ರತ್ಯೇಕವಾಗಿ ಖಾತೆ ಬರುತ್ತಿದೆ ಎಂದರೆ ಸರಿ, ಸದರಿ ಖಾತೆಗಳನ್ನು ಕಂದಾಯ ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿ ಪ್ರಶ್ನೆ ಮಾಡಿಲ್ಲ”. The revenue entries support the defendants’ claim that they succeeded to an interest in the property. Nevertheless, mutation entries do not, by themselves, prove a partition by metes and bounds or exclusive title over a specified physical portion.

19. P.W.1 also admitted that the present suit was instituted only in respect of approximately 1 Acre 20.08 Guntas, though the original Sy.No.177/2 measured approximately 6 Acres 02 Guntas. That circumstance requires the Court to mould the relief carefully. A declaration binding the entire extent and all four branches cannot be granted in the absence of all the representatives of those branches. However, the rights asserted by the defendants over Sy.No.177/7 can be examined inter parties.

20. The admissions of D.W.1 materially support the core of the plaintiffs’ case. D.W.1 admitted that Tapovanada Muniyappa had four sons, namely, Venkatasamappa, Narayanappa, Gopalappa and Krishnappa. He admitted that Ex.D.1 is the registered partition deed dated 13.10.1954 and



that the contents thereof are correct. Most significantly, D.W.1 admitted the recital concerning Sy.No.177/2. The relevant portion of cross-examination of D.W.1 reads as follows:-

“ನಿಡಿ-1 ರ ಎ ಷೆಡ್ಯೂಲ್ ನಲ್ಲಿ ‘ಸರ್ವೆ ನಂಬರ್ 177/2 5 ಎಕರೆ 24 ಗುಂಟೆ ಜಮೀನಿನಲ್ಲಿ ಇರುವ ಎಲ್ಲಾ ಜಾತಿವಾರು ಮರಗಳು 4 ಜನ ಸಮಭಾಗದಂತೆ ಅನುಭವಿಸಬೇಕು. ಈ ಜಮೀನಿನಲ್ಲಿ ಹಿರಿಯರು ತಪೋವನ ಹಾಕಿ ಮರಗಳು ಬೆಳೆಸಿದ್ದಾರೆ. ಈ ಜಮೀನು 4 ಜನಕ್ಕೂ ಅಮಾನತ್ತು ಇದೆ’ ಎಂದೆ ಬರೆಸಿದ್ದು ಅದು ಸರಿ ಇದೆ”.

21. D.W.1 also admitted that a similar recital appeared in all the other three schedules. This admission proves that the elders had developed the land as a Tapovana, trees of different varieties existed in the land, all four branches were entitled to equal enjoyment of the trees and the land was retained in a common arrangement described as “ಅಮಾನತ್ತು”. D.W.1 admitted that no separate boundaries or extents were assigned to the respective one-fourth interests under the partition deed. He was confronted with the suggestion that the absence of separate boundaries in Ex.P.1 and in the subsequent sale deeds showed that the land remained joint for the purpose of the Tapovana. D.W.1 stated that he did not know. The relevant portion of cross-examination of D.W.1 reads as follows:-



“ಸರ್ವೆ ನಂಬರ್ 177/2 ರ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಿಡಿ-1 ಮತ್ತು ತದನಂತರದ ಕ್ರಯ ಪತ್ರಗಳಲ್ಲಿ ಯಾವುದೇ ಪ್ರತ್ಯೇಕ ಚಿಕ್ಕಬಂದಿ, ವಿಸ್ತೀರ್ಣ ಮತ್ತು ಪ್ರತ್ಯೇಕ ಜಮೀನಿನ ನಮೂನೆಗಳನ್ನು ನಮೂದಿಸದೇ ಇರುವುದು ಸದರಿ ಜಮೀನನ್ನು ವೆಲ್ಲರೂ ಒಟ್ಟಾಗಿ ತಪೋವನದ ಉದ್ದೇಶಕ್ಕಾಗಿ ಅಮಾನತ್ತಿನಲ್ಲಿ ಇಟ್ಟಿರುವುದನ್ನು ತೋರಿಸುತ್ತದೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ”.

The answer “I do not know” does not amount to an admission of the suggestion. Nevertheless, it fails to explain how a separately identifiable 1 Acre 20.08 Guntas came into existence if the original partition deed and the earlier conveyances dealt only with an undivided one-fourth share.

22. D.W.1 further admitted the registered sale made by Akkayamma. The relevant portion of cross-examination of D.W.1 reads as follows:-

“ದಿನಾಂಕ 04-02-1971 ರಂದು ನನ್ನ ಅಜಿಯಾದ ಅಕ್ಕಾಯಮ್ಮ ರವರು ಸರ್ವೆ ನಂಬರ್ 177/2 ರ ಪೈಕಿ 1/4 ಭಾಗದ ಆಸ್ತಿಯನ್ನು ವಿ.ಸಿ. ವೆಂಕಟರಮಣಪ್ಪ ರವರಿಗೆ ಮಾರಾಟ ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ”.

23. D.W.1 also admitted that V.C. Venkataramanappa was the brother of Akkayamma. The sale deed was therefore an intra-family or closely related transaction concerning an undivided one-fourth share. It did not, by itself, prove that one particular physical portion had fallen exclusively to the branch of Krishnappa. D.W.1 admitted that his mother and aunt repurchased the one-fourth share from the legal



representatives of V.C. Venkataramanappa. He further admitted that the kharab portion was also included in Ex.D.4. D.W.1 denied that the references to “ಬಾಗಾಯತ್” and “ಋಷಿ” in the subsequent documents were deliberately introduced contrary to the original object. However, the subsequent description of the property in a sale deed cannot override the express common arrangement contained in the prior partition deed, unless it is established that the property had thereafter been lawfully partitioned.

24. D.W.1 also admitted that the land had not been used for cultivation. The relevant portion of cross-examination of D.W.1 reads as “ಸದರಿ ಜಮೀನನ್ನು ಬೇಸಾಯಕ್ಕೆ ಬಳಸಿಲ್ಲ ಎಂದರೆ ಸರಿ.”. This admission is relevant. It is consistent with the original recital that the land was developed with trees as a Tapovana and not treated as ordinary agricultural land cultivated separately by the respective branches.

25. Ex.D.2 is the registered sale deed dated 21.08.1961. It shows that the widow or representative of the branch of Venkatashamappa conveyed a one-fourth share in Sy.No.177/2 in favour of Narayanappa. Ex.P.2 and Ex.D.3 relate to the sale deed dated 04.02.1971 executed by Akkayamma in favour of V.C. Venkataramanappa. Ex.D.4 is



the registered sale deed dated 10.03.2000 executed by the legal representatives of V.C. Venkataramanappa in favour of Sarojamma and Kamalamma. These documents show that undivided fractional interests were transferred. They do not conclusively establish that Sy.No.177/2 was divided by metes and bounds.

26. A co-sharer is ordinarily entitled to transfer his or her undivided interest. However, the transferee does not acquire an exclusive right over a specific portion merely because the share is arithmetically equivalent to a particular extent. The transferee steps into the shoes of the transferor and becomes entitled to seek partition. Thus, the purchasers under the registered conveyances acquired the undivided fractional interest of the respective transferors. They could not acquire a better or larger right than the transferors themselves possessed. The revenue documents show that approximately 1 Acre 20.08 Guntas was subsequently assigned a separate sub-survey number and entered in the names of the defendants or their predecessors. However, the plaintiffs' challenge is not merely to the correctness of mutation entries. Their contention is that the defendants are attempting to use the phodi and revenue entries as proof of exclusive title over a specific physical portion. Revenue



authorities may carry out phodi and subdivision proceedings for fiscal and administrative purposes. Such proceedings do not create title where none otherwise exists. Nor can they substitute a partition deed among all co-sharers. No registered partition deed executed after 1954 has been produced. No decree of partition has been placed before the Court. No document showing the consent of all four branches to an allotment of the suit schedule portion exclusively to Krishnappa's branch has been produced. Therefore, inspite the defendants have purchased an undivided one-fourth interest, but they have not established an exclusive title over the specific demarcated land described as Sy.No.177/7.

27. Thought the registered partition deed, the absence of division by metes and bounds, the equal right of the four branches, the admissions of D.W.1 and the absence of any subsequent lawful partition, the plaintiffs have proved that Sy.No.177/2 which includes the suit schedule property was consciously retained undivided under the partition deed and that the trees therein were reserved for equal enjoyment by the four branches. The plaintiffs have also proved that the defendants' predecessors acquired only an undivided one-fourth interest and that the defendants cannot claim exclusive title over a separately identified portion merely on



the basis of revenue phodi and mutation entries. However, the plaintiffs have not proved that the partition deed completely prohibited every transfer of an undivided share for all time. Therefore, Issue No.1 is answered **Partly** in the **Affirmative**.

28. ISSUE NO.2:- The plaintiffs contend that the property contains mango, neem, jackfruit, Indian beech, tamarind and gooseberry trees and also contains a pond. Ex.P.1/D.1 itself records that the elders developed a Tapovana and planted trees of different varieties in Sy.No.177/2. D.W.1 has admitted the correctness of that recital. P.W.1 stated in his cross-examination that Exs.P.21 to P.31 depict tamarind, neem, mango and other trees, graves and a water body. The relevant portion of cross-examination of P.W.1 reads as “ನಿಪಿ-21 ರಿಂದ 31 ರಲ್ಲಿ ಹುಣಸೆ, ಬೇವು, ಮಾವು, ಹತ್ತಿ ಮರಗಳು ಮತ್ತು ಸಮಾಧಿಗಳು ಇವೆ.” P.W.1 denied that the photographs relate to some other land. He also stated that there is a pond in the property in which water is stored. The photographs at Exs.P.21 to P.31 show the existence of trees, vegetation and a water-filled depression or pond-like feature.



29. It is true that no photographer, surveyor, horticultural officer or independent local witness has been examined to identify each tree or establish the exact location of each photograph. The relevant portion of cross-examination of P.W.1 reads as “ನಾನು ಮೇಲೆ ಹೇಳಿದ ಮರಗಳನ್ನು ಪಹಣಿಯಲ್ಲಿ ನಮೂದಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ.”. The absence of entries regarding individual trees in the RTCs is not decisive. Revenue records ordinarily contain details relating to cultivation, possession and assessment. They are not necessarily botanical inventories.

30. D.W.1 denied that all varieties of trees continue to exist. He also denied the existence of the ancestral graves and ponds. However, he admitted that the land had not been used for cultivation. That admission is consistent with the presence of tree growth and the non-agricultural Tapovana character of the land. The historical existence of trees is conclusively supported by Ex.P.1/Ex.D.1. The present existence of at least some trees and a water body is supported by the photographs. Nevertheless, the plaintiffs have not proved with precision that every botanical variety pleaded in the plaint presently exists within the specific boundaries of Sy.No.177/7. The plaintiffs have therefore proved that the suit property contains substantial tree



growth and that the original Sy.No.177/2 was developed as a Tapovana. They have not strictly proved the continued existence of every particular species pleaded. Accordingly, Issue No.2 is answered Partly in the **Affirmative**.

31. ISSUE NO.3:- The defendants contend that the suit is barred by limitation. P.W.1 has admitted knowledge of the registered sale deed executed by Akkayamma in 1971. If the plaintiffs had sought cancellation of the sale deed dated 04.02.1971 or a declaration that the said sale deed was void, the admission regarding knowledge from 1971 would have presented a serious bar of limitation. However, the plaintiffs do not seek cancellation of the sale deed. Their case, properly understood, is that the sale deed conveyed only an undivided one-fourth interest and that the defendants are presently attempting to treat a specific demarcated portion as their exclusive property. A sale by one co-sharer of an undivided share does not by itself amount to a denial of the rights of the remaining co-sharers in every part of the property. The purchaser acquires the transferor's undivided interest and may seek partition. The actionable denial alleged in the present suit arises from the creation and reliance upon a separate sub-survey number. The defendants' assertion of exclusive title over Sy.No.177/7, the threatened alienation of



that specific portion as absolute property and the alleged threat to change the common Tapovana nature of the land. The defendants have not established the precise date on which the plaintiffs first acquired knowledge of a clear and unequivocal denial of their common rights through the defendants' assertion of exclusive title. The sale of an undivided share in 1971 is different from the present assertion of exclusive ownership over a demarcated portion.

32. Further, as long as the property remains undivided and the rights of the co-sharers continue, one co-sharer's mere possession of a portion does not become adverse to the others unless there is clear ouster and hostile denial brought to their knowledge. The Hon'ble Supreme Court in **Jai Singh and others v/s. Gurmej Singh** reported in **(2009) 15 SCC 747**, has held as follows:-

"9. It is to be noted that in the subsequent Full Bench judgment in Bhartu case[1981 PLJ 204], the earlier decision in Lachhman Singh case [AIR 1970 P&H 304] was distinguished on facts. The principles relating to the inter se rights and liabilities of co-sharers are as follows:

- (1) A co-owner has an interest in the whole property and also in every parcel of it.*
- (2) Possession of joint property by one co-owner is in the eye of the law, possession of all even if all but one are actually out of possession.*
- (3) A mere occupation of a larger portion or even of an entire joint property does not*



necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.”

Therefore, there should be cogent evidence to prove the factum of ouster. In this case, no sufficient evidence of an open and hostile ouster of the plaintiffs or the other branches for the statutory period has been placed before the Court. The revenue entries are relevant, but mutation does not amount to conclusive proof of ouster or adverse possession. The present suit is therefore maintainable to the limited extent of seeking a declaration that the defendants hold only



an undivided interest and an injunction against their alienating a specific portion as their exclusive property. The wider relief of questioning the validity of the old registered conveyances would be barred. However, no such cancellation has been sought. Hence, suit is not barred by limitation. Accordingly, Issue No.3 is answered in the **Negative**.

33. ISSUE NO.4:- The defendants contend that the suit is bad for non-joinder of necessary parties. The plaintiffs seek a declaration relating not merely to Sy.No.177/7 but also to the entire original Sy.No.177/2. The registered partition deed states that all four branches have an interest in the trees and in the common property. Therefore, the representatives of all four branches would ordinarily be necessary parties for a comprehensive declaration binding the entire Sy.No.177/2. The plaintiffs have not impleaded every descendant or representative of the branches of Venkatashamappa, Narayanappa, Gopalappa and Krishnappa. A declaration that the entire property must forever be preserved and that every member of every branch is permanently restrained from alienation cannot be passed in their absence. However, non-joinder does not necessarily require dismissal of the entire suit if an effective decree can be passed inter parties without adjudicating the rights of



absent persons. The defendants are before the Court. They claim an exclusive right over Sy.No.177/7. The Court can determine whether the documents relied upon by them establish such exclusive right or only an undivided interest.

34. A decree declaring that the defendants cannot convey a better title than they possess and cannot alienate a specific portion as exclusive owners can operate between the parties without finally determining the exact shares of the absent branches. The decree must therefore be confined to the rights of the parties before the Court and must expressly preserve the rights of all absent co-sharers. Accordingly, Issue No.4 is answered Partly in the **Affirmative**.

35. ISSUE NO.5:- The plaintiffs seek declaration and permanent injunction. The evidence establishes that Sy.No.177/2 was dealt with separately from the other partitioned properties; It was not divided into four specific portions with distinct boundaries; The trees therein were reserved for equal enjoyment by all four branches; The property was described as a Tapovana developed by the elders; The subsequent sale deeds conveyed fractional one-fourth interests; No subsequent registered partition deed or decree of partition has been produced; The defendants rely



substantially upon phodi, mutation and RTC entries to claim exclusive ownership over Sy.No.177/7 and revenue proceedings do not by themselves confer exclusive title over a specific portion of undivided property. The plaintiffs are therefore entitled to a declaration that the defendants and their predecessors acquired only the undivided one-fourth interest belonging to the branch of Krishnappa. They are also entitled to a declaration that the creation of a separate sub-survey number or mutation entry does not, by itself, confer exclusive title upon the defendants over a specific physical portion in the absence of a lawful partition by metes and bounds.

36. The defendants cannot alienate Sy.No.177/7 as though it were their absolute and exclusively allotted property. Any transfer by them can operate only to the extent of their undivided interest and will remain subject to the rights of the other co-sharers. The plaintiffs have sought a total restraint against sale, mortgage, gift, lease and every other mode of transfer to third parties. Such a blanket and perpetual restraint cannot be granted. The registered partition deed does not contain a clear and express prohibition against every transfer of an undivided interest. The defendants, as holders of an undivided fractional



interest, cannot be completely prohibited from transferring that interest in accordance with law. However, they can be restrained from representing that Sy.No.177/7 is their exclusive and absolute property. Alienating a specific demarcated portion as though it had been allotted to them under a lawful partition, creating third-party rights exceeding their undivided fractional interest, cutting or removing the common trees in a manner prejudicial to the rights of the other co-sharers, destroying the pond or materially changing the existing Tapovana character without lawful partition, consent or statutory permission. This form of injunction does not impose an absolute restraint on transfer. It merely ensures that the defendants do not transfer a better title than they possess or prejudice the rights of the co-sharers.

37. The recital in Ex.P.1/Ex.D.1 imposes a common obligation concerning the trees. The trees were not allotted separately. They were expressly retained for equal enjoyment by the four branches. Therefore, no single branch can destroy the common subject matter or materially alter it to the prejudice of the others. Even a co-owner who is in possession of a portion cannot commit destructive acts resulting in substantial injury to the common property or change its nature before partition. The defendants must



therefore be restrained from cutting or removing the trees and from destroying the pond or materially changing the property's existing nature, except in accordance with law and subject to the rights of all co-sharers.

38. The Court is not required to either grant the entire prayer exactly as framed or dismiss the suit altogether. Where the evidence establishes a lesser or qualified right arising from the same pleadings and cause of action, an appropriate relief can be moulded. The plaintiffs' principal assertion is that the property remained common and that the defendants cannot claim a specific portion as their absolute property. That assertion is substantially proved. The broader assertion that the property is completely and perpetually inalienable is not proved and cannot be granted. Therefore, the suit deserves to be partly decreed. Accordingly, Issue No.5 is answered Partly in the **Affirmative**.

39. ISSUE NO.6:- In view of the findings recorded on Issue Nos.1 to 5, the suit deserves to be partly decreed. Thus, this court proceeds to pass the following:

ORDER

The suit of the plaintiffs is hereby
partly decreed.



It is hereby declared that the land originally bearing Sy.No.177/2, situated at B. Bommasandra Village, D. Palya Hobli, Gowribidanur Taluk, was retained undivided under the registered partition deed dated 13.10.1954, with the trees standing therein reserved for the equal and common enjoyment of the four branches of Tapovanada Muniyappa.

It is further declared that the defendants and their predecessors-in-interest acquired only the undivided one-fourth interest originally belonging to the branch of Krishnappa in Sy.No.177/2.

It is further declared that the registered sale deeds relied upon by the defendants did not, in the absence of a lawful partition by metes and bounds, confer exclusive title upon the defendants or their predecessors over the specific demarcated land subsequently described as Sy.No.177/7, measuring approximately 1 Acre 20.08 Guntas.

The defendants, their legal heirs, successors, assigns, agents, attorneys and every person claiming through or under them are hereby permanently restrained from alienating, selling, mortgaging, gifting, leasing or otherwise creating any third-party interest in the specific and demarcated suit schedule property bearing Sy.No.177/7 by



representing the same to be their exclusive and absolute property, until the original Sy.No.177/2 is lawfully partitioned by metes and bounds.

The defendants and persons claiming through them are further permanently restrained from cutting, uprooting or removing the trees standing in the suit schedule property, destroying or filling the existing pond or water-storage area, or materially changing the existing nature and character of the property, except with the consent of all persons legally entitled to the property and in pursuance of a lawful partition by metes and bounds.

The wider prayer seeking a declaration that the entire property is absolutely and perpetually inalienable and that no undivided interest can ever be transferred is hereby rejected.

It is made clear that this decree is confined to the parties before the Court.

It shall not finally determine the respective shares or independent rights of the descendants or representatives of the other branches who are not parties to this suit.

The rights of the absent co-sharers to seek partition, declaration, possession or any other appropriate relief in



accordance with law are expressly kept open.

Considering the relationship between the parties and the nature of the dispute concerning ancestral property, both parties shall bear their own costs.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by her, then corrected and pronounced by me in the open court on this the 11th day of August 2026).

(GANESHA.N)
Prl. Civil Judge and J.M.F.C,
Gowribidanur.

ANNEXURE

List of witnesses examined on behalf of plaintiffs:

P.W.1 : T.Muniyappa

List of witnesses examined on behalf of defendants:

D.W.1 : K.Sathyanarayana

List of documents exhibited on behalf of plaintiffs:

Ex.P.1 : Certified copy of partition deed
dated 13.10.1954

Ex.P.2 : Certified copy of sale deed
dated 04.02.1971



- Ex.P.3 : Certified copy of encumbrance certificate
- Ex.P.4 : Certified copy of mutation register extract
- Exs.P.5 to 19 : RTC extracts
- Ex.P.20 : Certified copy of mutation register extract
- Exs.P.21 to 31 : Photographs.

List of documents exhibited on behalf of defendants:

- Ex.D.1 : Certified copy of partition deed dated 13.10.1954
- Ex.D.2 : Certified copy of sale deed dated 21.08.1961
- Ex.D.3 : Certified copy of sale deed dated 04.02.1971
- Ex.D.4 : Original sale deed dated 10.03.2000
- Exs.P.5 to 9 : RTC extracts
- Ex.P.10 : Mutation register extract

(GANESHA.N)
Prl. Civil Judge and J.M.F.C,
Gowribidanur.