

**IN THE COURT OF SENIOR CIVIL JUDGE &
J.M.F.C.,
AT: GOWRIBIDANUR.**

Present : Smt. Renuka D Raikar,
B.Sc.,LL.B.(Spl.),
Senior Civil Judge & J.M.F.C.,
Gowribidanur.

Dated this the 22nd day of June 2020

O.S.No.34/2019

PLAINTIFF/S:

1. Smt.Krishnamma, D/o.late
Chikkarangappa,
W/o.Pilla Venkateshappa, aged about 51
yrs,
R/at K.G.Pura village, Jangamakote Hobli,
Sidlaghatta Taluka.
2. Smt.Muniyamma, D/o.late Rangappa @
Chikkarangappa, w/o.Ramachandra,
aged about 46 yrs, Sathe beedhi,
Manchenahalli village, Gauribidanur Taluk.
3. Smt.Rangamma, D/o.late Rangappa @
Chikkarangappa, W/o.Pilla Venkateshappa,
aged about 38 yrs, R/at K.G.Pura village,
Jangamakote Hobli, Sidlaghatta Taluk.

V/s.

DEFENDANT/S:

1. Smt.Radhamma, W/o.late Venkataronappa,
Aged about 68 yrs, Keliginapete,
Manchenahalli village, Gowribidanur Taluk.
2. Smt.Rangamani, D/o.late Venkataronappa,
W/o.Prakash, aged about 45 yrs,
Tabasamakanahalli village, Thondebhavi
Hobli,

Gowribidanur Taluka.

3. Ramanji, S/o.late Venkataronappa,
aged about 36 yrs, Keliginapete,
Manchenahalli village, Gowribidanur Taluk.
4. Sri.Bala Nagappa, S/o.late Muniyappa,
Aged about 71 yrs, Keliginapete,
Manchenahalli village, Gowribidanur Taluk.
5. Sri.Gangappa, S/o.late Muniyappa,
aged about 69 yrs, Keliginapete,
Manchenahalli village, Gowribidanur Taluk.

(By Sri.D.M.Krishna, Adv. for plaintiffs)
By Sri.Dinesh Kumar, Adv. For defendants)

**Nature of the suit for: Partition and
separate possession**

Date of Institution of suit : 02.04.2019

**Date of commencement of
Evidence : 14.10.2019**

**Date of pronouncement
of judgment : 00.00.2020**

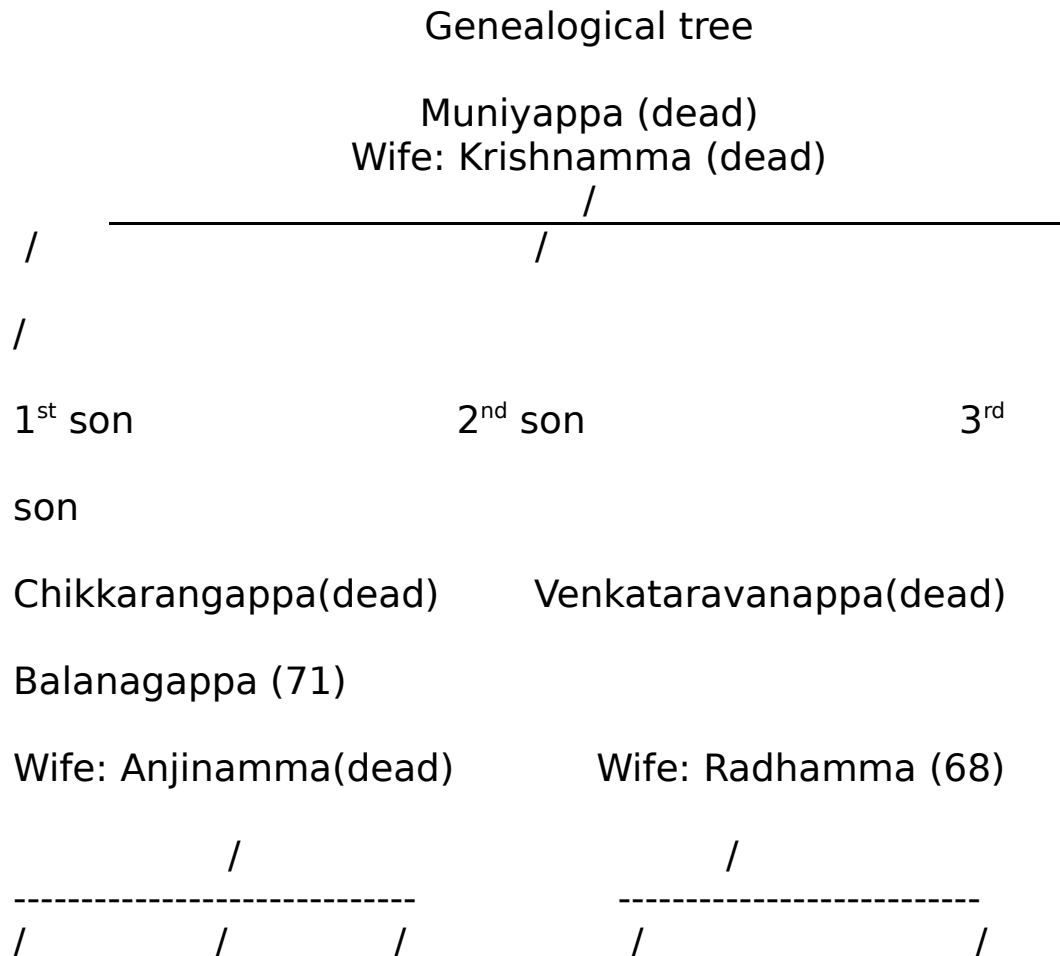
Total Duration.	Year/s	Month/s
Day/s		
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JUDGEMENT

Suit of the plaintiffs is for partition and
separate possession.

2. The factual matrix in the nut-shell is as
under:

It is averred that, one Muniyappa is the propositus of the family of plaintiffs and defendants 1 to 4. he died leaving behind his three sons i.e. Chikkarangappa, Venkataronappa and Balanagappa. Chikkarangappa and Venkataronappa died. Balagangappa as defendant No.4 in this case. Plaintiffs are the only children of late Chikkarangappa. S 1 to 3 are the wife and children of late Venkataronappa. The genealogical tree is shown as under:



Krishnamma	Muniyamma	Rangamma
Rangamani(40)		Ramanji (36)
(50)	(46)	(42)

3. It is averred that, suit property bearing Sy.No.359/3 measuring 0.07 guntas, Sy.No.200/1 measuring 2 acres 0.06 guntas, Sy.No.359/2 measuring 1 acre 0.38 guntas, Sy.No.360/2 measuring 1 acre 0.20 guntas are situated at Manchenahalli village and Hobli, Gauribidanur Taluk and they belonged to Muniyappa who is grand father of plaintiffs. After his death his three sons including defendant No.4 were in joint possession and enjoyment of the suit properties. Later Chikkarangappa died on 9.2.2000 leaving behind the plaintiffs as his legal heirs. Hence plaintiffs and defendants are in joint possession and enjoyment of suit schedule properties as coparceners.

It is averred that plaintiffs are the only female issues to their father Chikkarangappa. Hence to deprive the share of plaintiffs their uncle Venkataravanappa had filed an appeal before AC,

Chickballapur in RA No.46/2003-04 against defendants 4 and 5 questioning the orders of the Tahashildar dtd.10.2.2013, in case No.33/2002-03, pertaining to above said Sy.no.359/2 and said appeal is disposed of on 9.7.2004 wherein AC Chickballapur remanded the matter to Tahashildar to effect mutation by verification of revenue documents.

On the basis of illegal mutation, the defendant No.1 to 5 are trying to alienate the schedule property with sole intention to deprive the share of plaintiffs right in the same. The Tahashildar without considering the coparcenery right has passed orders to effect katha and mutation in favour of Venkataramanappa and defendants 4 and 5 by pavathi varasu. Defendants 1 to 4 colluding with each other started acting detrimental to the interest of plaintiffs. Hence plaintiffs requested the defendants on 20.3.2019 to effect an amicable partition of plaint schedule properties and to give them their separate share

by metes and bounds. But the defendants colluding with themselves bluntly refused to effect partition. In spite of the advice of elders defendants have refused to give their share in the suit schedule properties. Hence without there being any alternative, the plaintiffs are constrained to file this suit for partition and separate possession of their legitimate share in the suit schedule properties.

It is averred that defendant No.5 is totally stranger to the joint family properties and when plaintiffs perused the revenue documents pertaining to suit schedule properties, they found the name of defendant No.5 continuing in the RTCs pertaining to suit schedule properties. Defendant No.5 did not deprive right, title and possession by virtue of impugned revenue entries. Though revenue documents got obtained in favour of defendant No.5, plaintiff and defendants 1 to 4 are in possession and enjoyment of suit schedule property. now defendant No.5 is trying to create 3rd

party right over suit schedule property with an intention to deprive the plaintiffs right and share over the same.

The cause facton for filing this suit arose on 20.3.2019 when defendants 1 to 4 refused to effect an equitable division of the plaint schedule properties by allotting plaintiffs legitimate share in the suit schedule properties. Hence, prayed for decreeing the suit as prayed therein.

In pursuance of suit summons defendants have appeared through their Counsel and filed written statement by denying the plaint averments. The relationship of the parties is admitted. The averments of plaint para 3 to 7 are specifically denied and it is contended that no cause of action for the plaintiffs to file the present suit. it is contended that suit is not properly valued and is barred by limitation.

It is specifically contended that the husband of defendant No1. and father of defendants 2 and 3 i.e. late Venataravanappa purchased item No.1 ,

3 and 4 of suit schedule properties from father of plaintiffs late Chikkarangappa under registered sale deed dtd.22.2.1996 for valuable consideration of Rs.12,000/-. However plaintiffs father late Chikkarangappa sold suit schedule item No.2 property to 4th defendant under registered sale deed within the knowledge of plaintiffs. Plaintiffs father sold all the suit schedule item No.1 to 4 properties for his legal necessities and to clear the debts for performance of marriages of plaintiffs. Said Chikkaragnappa sold his share in the suit schedule properties and same is clearly described in registered sale deed dtd.22.2.1996. all these three plaintiffs are witnesses to the sale deed and they have very well participated during execution of sale deed itself. Plaintiffs by suppressing the real facts have filed the false and frivolous suit only to harass the defendants and to make wrongful gain.

It is contended that as per the sale deed the mutations and RTCs have been changed in the

name of late Venkataravanappa and accordingly the kathas and pahanies have been mutated in the name of defendant No.4. as defendant No.4 purchased the share of plaintiffs father in suit item properties. since from the date of sale deed till filing of the suit plaintiff did not question the transaction and have not disputed the defendants right over the suit schedule properties and have not claimed the share of their father Chikkarangappa as all these three plaintiffs are the witnesses to the sale deeds they have not questioned said sale transaction. Now only for the reason that the valuation of the lands are hiked, as per the advise of enemical persons without disclosing the true facts, plaintiffs have come up with the false case to make wrongful claim. Hence prayed for dismissing the suit with exemplary costs.

20. On the basis of rival contentions, following Issues are framed:

ISSUES

1. Whether plaintiffs prove that suit schedule properties are Hindu Undivided joint family properties pertaining to them and defendants 1 to 4?
2. Whether plaintiffs prove that they are entitled for share in suit schedule properties ? If so to what extent ?
3. Whether defendants 1 to 3 prove that the father of plaintiffs have no right, title or interest or share over the suit schedule properties ?
4. Whether plaintiffs are entitled for the reliefs as claimed ?
5. What order or decree?

21. In support of their case, plaintiff No.1 examined herself as PW 1, 2 independent witnesses are examined as PW 2 and 3 and totally 84 documents are marked on behalf of plaintiff as Ex P1 to P84. inspite of sufficient opportunities being given defendants have not chosen to cross examine PW 1 to 3 and even defendants have failed to lead evidence on their behalf.

23. I have heard the arguments of Learned Counsel for plaintiffs. Learned Counsel for

defendants submitted as no arguments on behalf of defendants.

24. On considering the materials placed before me my findings on the above Issues and Additional Issues is as under:

Issue No.1: In the Negative

Issue No.2: In the Negative

Issue No.3: Does not survive for consideration

Issue No.4: In the Negative

Issue No.5: As per final order;
for the following:

REASONS

25. **Issue No.1to 4:-** As these issues are interlinked with each other, to avoid repetition of facts and evidence, they are taken together for common discussion.

26. Here the present suit is filed by the plaintiffs against the defendants seeking the relief of partition and separate possession of their 1/3rd share in the suit schedule properties. It is the specific case of plaintiffs that one Muniyappa is

the propositus of their family and he died leaving behind three sons i.e. Chikkarangappa, Venkataronappa and Balanagappa(defendant No.4). plaintiffs are the only children of Chikkarangappa. Defendants are the wife and children of late Venkataravanappa. It is further the case of plaintiffs that suit property bearing Sy.No.359/3 measuring 0.07 guntas, Sy.No.200/1 measuring 2 acres 0.06 guntas, Sy.No.359/2 measuring 1 acre 0.38 guntas, Sy.No.360/2 measuring 1 acre 0.20 guntas are situated at Manchenahalli village and Hobli, Gauribidanur Taluk are the properties pertaining to Muniyappa and after his death plaintiffs and defendants are in joint possession and enjoyment of suit properties. Earlier plaintiffs father Chikkarangappa was in possession and enjoyment of suit schedule properties and after death of Chikkarangappa on 9.2.2000 plaintiffs being his legal heirs are in possession and enjoyment of suit schedule

properties along with defendants as coparceners and there is no partition till this day.

It is further the specific case of plaintiffs that as they are the female issues to their father, their uncle Venkataronappa in order to deprive their right filed appeal before A.C. Chickballapur in RA 46/2003-04 and got mutated their names in the records of suit schedule properties and under the guise of said entry defendants 1 to 5 are trying to alienate the suit schedule properties with sole intention to deprive the share of plaintiffs over the same. In spite of sufficient requests and demands made to the defendants, defendants have failed to effect partition and give them their share in the suit schedule properties.

27. In support of their contention plaintiff No.1 Smt.Krishnamma W/o.Chikkarangappa got herself examined as PW 1 and filed her examination in chief affidavit in consonance with the plaint averments and got marked the Genealogical tree, RTC extracts pertaining to suit schedule properties

for various years, mutation extracts and death certificate of Chikkarangappa as per Ex.P1 to P84. further two independent witnesses Sathyappa and Chinnappaiah are examined themselves as PW 2 and 3 and filed their examination chief affidavit and stated that one Muniyappa died leaving behind Chikkarangappa, Venkataronappa and Balanagappa as his children and Venkataravanappa died and Balanagappa i.e. defendant No.4 is alive. Plaintiffs are the legal heirs of late Chikkarangappa and defendants 1 to 3 are the wife and children of late Venkataravanappa. It is stated by them that plaintiffs and defendants 1 to 3 are in joint possession and enjoyment of suit schedule properties and there is no partition among them till this day itself. Defendant No.5 is stranger to the family of plaintiffs and defendants 1 to 4 and also to the suit schedule properties.

28. It is pertinent to note that defendants have appeared through their Counsel and also filed their

written statement by denying the plaintiffs case and by taking contention that plaintiffs have no right or share over suit schedule properties and though defendants took the contention that plaintiffs father Chikkarangappa has sold the suit schedule property to defendant No.4 vide registered sale deed for the sake of his legal necessities and to clear the debts he sold all his properties to defendants etc, they have not chosen to prove their contention by leading evidence on their behalf. Furthermore it is pertinent to note that inspite of several opportunities being given said defendants have even failed to cross examine PW 1 to 3.

Now coming to the documentary evidence produced on behalf of plaintiffs. Here defendants have not disputed the relationship between them and plaintiffs. Hence the genealogical tree produced as per Ex P1 is not disputed. Ex P2 to 5 are the record of rights pertaining to Sy.No.359/3 which are in the name of Muniyappa. Ex P6 to P18

are the computerized record of rights of Sy.No.359/3 and in said RTCs the name of Balanagappa and Venkataravanappa s/o.Muniyappa has been entered and mode of acquisition is mentioned as ancestral as per MR 37/2002-03. Ex P19 is the certified copy of MR 37/2002-03. Ex P20 to 23 are the record of rights pertaining to Sy.no.200/1 which are in the name of Muniyappa, Chikkarangappa, Venkataravanappa and Balanagappa. Ex P24 to 44 are the computerized record of rights of Sy.No.200/1 measuring 2 acres 0.06 guntas same are in the name of Gangappa S/o.Muniyappa, Balanagappa, S/o.Muniyappa. Ex P45 is the MR No.H6/2015-16.

Ex P46 to 49 are the record of rights pertaining to Sy.No.359/2 which are in the name of Muniyappa, Chikkarangappa and Venkataravanappa. Ex P50 to 60 are the computerized record of rights of Sy.No.359/2 which are in the name of Venkataravanappa S/o.Muniyappa and Gangappa S/o.Muniyappa. Ex

P61 is the certified copy of MR 24/2004-05. Ex P62 to 65 are the hand written record of right pertaining to Sy.No.360/2 wherein the name of Chikkarangappa, Rangappa and Balanagappa was entered. Ex P66 to 83 are the computerized record of rights of Sy.No.360/2 from the year 2002-03 upto 2018-19, wherein the name of Chikkarangappa, S/o.Muniyappa, Venkataravanappa, Rangaiah and others are jointly entered. Ex P84 is the death extract of Chikkarangappa wherein the date of death of Chikkarangappa is forthcoming as 9.2.2000.

As per genealogy produced and marked as per Ex P1 wherein Muniyappa and his wife Krishnamma are the propositus of plaintiffs and defendants family and Chikkarangappa is the elder son, Venkataravanappa is the 2nd son and Balanagappa is another son. Further it is clearly forthcoming in genealogy that the plaintiffs Krishnamma, Muniyamma and Rangamma are the children of Chikkarangappa and his wife

Anjinamma and defendant No.1 Radhamma is the wife of deceased Venkataravanappa, defendant No.2 Rangamani and defendant No.3 Ramanji are the children of Venkataravanappa and Radhamma, defendant No.4 Balanagappa is the brother of deceased Chikkarangappa and Venkataravanappa and younger son of propositus Muniyappa

Here the specific contention of plaintiffs is that defendant No.5 Gangappa S/o.late Muniyappa is not at all concerned to their family and that he is not the coparcener and he is not related to family of Muniyappa and suit schedule properties. Here defendants 4 and 5 are placed exparte in this case inspite of service of suit summons. Only defendants 1 to 3 appeared through their Counsel and have filed the written statement. However in para 1 of the written statement they have clearly admitted the relationship between the parties and have contended that the relationship of the parties as shown in the written statement is proper and correct. Even said defendants 1 to 3 have not

stated anything as to who is defendant No.5 and how his name is entered in the records of the suit properties.

It is well settled principle of law that mere entry in the record of rights or revenue records will not confer any right or interest over the immovable properties. Further from the records it is clearly forthcoming that Sy.No.359/3 measuring 0.07 guntas is the ancestral property acquired by propositus Muniyappa and after his death succeeded by his children. Moreover defendants have not produced any documents nor lead any oral evidence to substantiate their contention taken in the written statement regarding selling of his share in all the suit schedule properties by plaintiffs father Chikkarangappa in favour of defendants in order to overcome their financial necessities etc., though the defendants have taken specific contention that plaintiffs father sold all the items of suit schedule properties in favour of Venkataravanappa as per sale deed

dtd.22.2.1996, they have not made any efforts to produce the sale deed or to lead their evidence in support of the contention taken by them. Moreover from MR 37/2002-03 which is marked as per Ex P19, it is clear that after Muniyappa, Balagangappa and Venkataravanappa entered their names in Sy.No.359/3. even as discussed above it is clearly forthcoming that Sy.No.200/1 is also originally belongs to Muniyappa. However from the year 1987-88 names of one Gangappa S/o.Muniyappa has been entered. However nothing is forthcoming as to who is said Gangappa S/o.Muniyappa. even in the record of right pertaining to Sy.No.359/2 originally the name of Chikkarangappa, Venkataravanappa and Muniyappa was entered. However from the year 1998-99 the name of one Gangappa S/o.Muniyappa has been entered. Though said Gangappa S/o.Muniyappa is not made as party in this case and the suit summons is also very well

served on him, he has remained absent before this Court and has placed exparte.

In the record of right pertaining to Sy.No.360/2 the name of one Rangaiah is entered along with the name of Chikkarangappa and Venkataravanappa. Nothing is pleaded who is said Rangaiah how he is related to the family of plaintiff and defendants what is the right acquired by said Rangaiah over the suit schedule properties etc,. Even said Rangaiah is not arrayed as party in this suit and there is no pleadings in the plaint as to for what reason the name of Rangaiah has been entered in the records of suit schedule property bearing Sy.No.360/2. Furthermore it is pertinent to not that the total extent of Sy.No.360/2 is 1 acre 0.20 guntas out of which 1 acre of land is entered in the name of said Rangaiah. In col.no.10 the mode of acquisition of said 1 acre of land by Rangaiah is mentioned as by virtue of RR 920 M.No.37/1988-89. However plaintiffs have not produced said RR 920, M.No.37/1988-89 and even

they have not arrayed said Rangaiah as party in this suit. since without there being any proper clarification of explanation as to who is Rangaiah whose name is entered in the record of right pertaining to Sy.No.360/2 with respect to 1 acre of land etc, no relief can be granted in favour of plaintiffs with respect to suit schedule property bearing Sy.No.360/2 as the plaintiffs have failed to prove their contention that it is the ancestral property pertaining only to the family of Muniyappa and present plaintiffs and defendants.

Furthermore, as discussed above though defendants 1 to 3 took specific contention that father of plaintiffs has sold his right and share in suit schedule properties in favour of Venkataravanappa. Hence plaintiffs have no right, title or interest of share in the suit schedule properties etc,. To prove the said contention said plaintiffs have not lead any oral evidence on their behalf nor produced any documents more specifically the sale deed dtd.22.2.1996 said to

have been executed by Chikkarangappa in favour of Venkataravanappa with respect to his share in the suit schedule properties etc.,. hence in this regard it is beneficial to refer the decision reported in **AIR 1999 SC 1441- between Vidyadhar VS Mankik Rao and another, wherein it is held that,**

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.”

Here as defendants have not lead any evidence in support of the defense taken by them, adverse inference can be drawn against them. Moreover the genealogical tree and relationship between the parties is not disputed even by the defendants, hence from the over all oral and documentary evidence available on record, plaintiffs have succeeded to prove that the suit schedule properties bearing Sy.No.359/3

measuring 0.07 guntas, Sy.No.200/1 measuring 2 acres 0.06 guntas, Sy.No.359/2 measuring 1 acre 0.38 guntas, Sy.No.360/2 measuring 1 acre 0.20 guntas are situated at Manchenahalli village and Hobli, Gowribidanur Taluk are Hindu Undivided joint family properties pertaining to them and defendants 1 to 4. however in not explaining properly regarding Rangaiah whose name is entered in the records of Sy.No.360/2 and by nor arraying Rangaiah as party in this suit, plaintiff have failed to prove that Sy.No.360/2 is also joint family property pertaining to their family.

Here from the undisputed genealogical tree produced by plaintiffs it is clearly forthcoming that there are 3 branches pertaining to the family of propositus Muniyappa and they are the branch of Chikkarangappa i.e. the present plaintiffs, the branch of Venkataravanappa i.e. defendants 1 to 3 and another branch is defendant No.4 Balangappa. Hence as Muniyappa has left behind all his three children will take equal share in the suit schedule

properties. Hence plaintiffs being the children of Chikkarangappa are together entitled for partition and separate possession of 1/3rd share pertaining to the share of their father Chikkarangappa. Defendants 1 to 3 being the wife and children of Chikkarangappa are together entitled for 1/3rd share in the suit schedule properties except Sy.No.360/2 and defendant No.4 being one of the sons of propositus Muniyappa is entitled for partition and separate possession of his 1/3rd share in the suit schedule properties except Sy.No.360/2 measuring 1 acre 0.20 guntas as the defendants 1 to 3 have failed to lead any evidence in support of their contention and to put forth sufficient materials in support of the defense taken by them, they have absolutely failed to prove that plaintiff have no right, title or share over the suit schedule properties.

Here as the plaintiffs have succeeded only to prove that suit schedule properties bearing Sy.No.359/3, Sy.No.200/1, Sy.No.359/2 are the

Hindu undivided joint family properties pertaining to their family, they are entitled for share only in said properties. Since the plaintiffs have failed to prove that suit schedule property bearing Sy.No.360/2 is also ancestral joint family property pertaining to them and as Rangaiah is not arrayed as party in this suit, they are not entitled for any share in respect of Sy.No.360/2. Hence in view of my above discussions, **I answer issue No.1, 2 and 4 partly in the Affirmative and issue No.3 in the Negative.**

9. **Issue No.5:-**In view of my above discussions and findings on above Issues, I proceed to pass the following:

ORDER

Suit of the plaintiffs is hereby partly decreed.

It is declared that plaintiffs are together entitled for partition and separate possession of their legitimate 1/3rd share in suit schedule properties bearing Sy.No.359/3 measuring 0.07 guntas, Sy.No.200/1 measuring 2 acres 0.06 guntas and

Sy.No.359/2 measuring 1 acre 0.38 guntas all situated at Manchenahalli village and Hobli of Gowribidanur Taluk by metes and bounds.

The claim of plaintiffs with respect to Sy.No.360/2 measuring 1 acre 0.20 guntas is hereby rejected.

Since the parties to the suit are the members of same family, they shall bear their own costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and typed by her, corrected by me and then pronounced in the Open Court this the 22nd day of June 2020.)

(Renuka D. Raikar)
Senior Civil Judge & J.M.F.C.
GOWRIBIDANUR.

ANNEXURE

List of witnesses examined on behalf of the Plaintiff:

PW.1 : S.N.Shashikumar

List of witnesses examined on behalf of the defendant:

DW.1: Chikkugrappa

DW.2: Suvarnamma

DW.3: Nagaraju

List of documents marked on behalf of the Plaintiff:

NIL

List of documents marked on behalf of the Defendant:

Ex.D.1 Genealogical tree

Ex D.2 to 7: RTC extracts

(Renuka D Raikar)
Senior Civil Judge and JMFC,
Gowribidanur.

Judgment pronounced in the open Court
Vide separate judgment

ORDER

Suit of the plaintiffs is hereby partly decreed.

It is declared that plaintiffs are together entitled for partition and separate possession of their legitimate $1/3^{\text{rd}}$ share in suit schedule properties bearing Sy.No.359/3 measuring 0.07 guntas, Sy.No.200/1 measuring 2 acres 0.06 guntas and Sy.No.359/2 measuring 1 acre 0.38 guntas all situated at Manchenahalli village and Hobli of Gowribidanur Taluk by metes and bounds.

The claim of plaintiffs with respect to Sy.No.360/2 measuring 1 acre 0.20 guntas is hereby rejected.

Since the parties to the suit are the members of same family, they shall bear their own costs.

Draw preliminary decree accordingly.

(Renuka D. Raikar)
Senior Civil Judge & J.M.F.C.
GOWRIBIDANUR.