

KACD020027722024



**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE &
JMFC, AT CHITRADURGA.**

**Presided Over by Smt. CHAITRA.A.M
B.Sc. LL.B
I Addl. Senior Civil Judge and JMFC.,
Chitradurga.**

Dated: 02nd Day of April, 2026

O.S. No.201 /2024

**Plaintiffs: 1. Megha S.,
D/o O. Shivamurthy,
Aged about 24 years,
2. Manjula S.,
D/o O. Shivamurthy,
Aged about 21 years,
3. Aruna S.,
S/o O. Shivamurthy,
Aged about 19 years,
All are R/o Hulluru Village,
Chitradurga Taluk.**

(By Sri. K.N.V., Adv)

V/s

**Defendants: 1. Sri O. Shivamurthy,
S/o Late Dodda Obappa,
Aged about 50 years,
Agriculturist,
R/at Hulluru Village,
Chitradurga Taluk.**

**2. Sri M.T. Yashavantah Reddy,
S/o M. Thimma Reddy,
Aged about 43 years,
Agriculturist,
Opp: Union Park,
B.D. Road, Chitradurga.**

(D-1 - Absent)

(D-2 – By Sri H.S.R., Adv)

Date of institution of suit	14.08.2024		
Nature of suit	Partition and separate possession		
Date of recording evidence	07.04.2025		
Date of pronouncement of Judgment	02.04.2026		
Total duration	Year/s 01	Month/s 07	Day/s 18

**I Addl. Senior Civil Judge,
Chitradurga.**

J U D G M E N T

The plaintiffs have filed the suit against the defendants for the relief of partition, separate possession and holding that the sale deed dated 14/16.12.2017 with respect to item No. 3 property is not binding on the share of plaintiffs, court costs and such other reliefs.

2. **The brief facts of the plaintiff's case:-**

It is a specific case made out by the plaintiffs that, the defendant No. 1 is the father of the plaintiffs. The suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendant No. 1 as the same was inherited by the defendant No. 1 under the registered partition deed dated 22.05.2003 which had taken place between the defendant No. 1, his father and brothers. Since from the date of partition the suit schedule properties are the joint family properties of plaintiffs and defendant No. 1 as they are in possession and enjoying the same as co parceners and enjoying the income from the same equally and as such the plaintiffs are having equal rights, interest, possession and share in the suit schedule properties and the plaintiffs are residing in the hut situated in item No. 1 land. Since about two years ago, the defendant No. 1 is mismanaging the suit schedule properties and neglecting the plaintiffs from giving the income and not use to respond the plaintiffs as the defendant No. 1 is addicted to bad habits like gambling, drinking alcohol and never cared to the advice given by the mother of plaintiffs and as such the defendant No. 1 use to reside with the plaintiffs and their mother regularly. Under these circumstances, the plaintiffs demanded with the defendant No. 1 to effect partition by giving their legitimate share but the defendant No. 1 did not hear and become deaf for the demands made by the plaintiffs. Under these

circumstances, during the first week of July 2024, the mother of plaintiffs viz., Chandramma informed the plaintiffs that the defendant No. 2 has filed a case against her and defendant No.1 relating to the suit schedule item No. 3 property claiming ownership over the same and about filing of some case by defendant No. 2 against the defendant No. 1. Then the plaintiffs enquired the matter and came to know that the defendant No.1 had executed an unregistered sale agreement deed dated 03.04.2013 to sell the suit item No. 3 property for Rs.2,05,000/- to the defendant No. 2 and on the basis of said sale agreement the defendant No. 2 had filed a suit for specific performance of contract in O.S. No. 330/2014 and obtained exparte decree and even obtained registered sale deed on 16.02.2017 in Ex.No. 7/2016 on the basis of the said decree with no possession and thereafter he filed the O.S. No. 162/2024 for declaration and possession of the suit item No. 3 property against the defendant No. 1 and mother of plaintiffs. The plaintiffs are having right even over the item No. 3 property and the defendant No. 1 has got no absolute right over the said property. The alleged sale of the suit item No. 3 property is not for the benefit and necessities of the joint family or in the interest and benefits of the plaintiffs. Further the boundaries mentioned in the said sale deed is not correct and the sale deed dated 16.12.2017 is not binding on the interest of the plaintiffs in the suit item No. 3 property. As the plaintiffs are having right over the suit schedule properties and as the

defendant No. 1 did not come forward to effect the partition being left with no other alternative, the plaintiffs have filed this suit.

3. The summons sent to defendant No. 1 was served on his wife and the defendant No. 1 appeared and inspite of granting time for engaging counsel he did not engage counsel.

4. The defendant No. 2 appeared through his counsel and filed written statement denying the allegations made against him, but taken a specific contention that the defendant No. 2 is the owner of the suit item No. 3 property and the revenue entries standing in his name and he is paying the kadayam to the Government and he was in peaceful possession and enjoyment of the written statement schedule property as he acquired the same through registered sale deed dated 14.12.2017 executed on the basis of court decree in O.S. No. 330/2014 on 25.07.2015. Thus, after obtaining the decree the defendant No. 1 entered his name in revenue entries and defendant No. 2 is raising maize crops in the written statement schedule property. The plaintiffs and defendant No. 1 are permanent resident of Hulluru village and totally strangers to the written statement schedule property and they have not right, title and possession over the said property. In the 1st week of November 2022 the defendant No. 1 and his wife without any reasons tried to interference with the peaceful possession and enjoyment of the written statement schedule

property and also tried to obstruct from carrying agricultural operation in the written statement schedule property, therefore the defendant No. 2 filed a suit in O.S. No. 582/2022 for the relief of permanent injunction which was decreed in favour of defendant No. 2. The plaintiffs and defendant No. 1 are aware of the said facts. In spite of it, after passing judgment in O.S. No. 582/2022 the defendant No. 1 and his wife came near the written statement schedule property and started obstruction to defendant No. 2 from carrying agricultural operation wherein the defendant No. 2 has resisted the attempts made by the defendant No. 1 and his wife and on 10.01.2024 the defendant No. 2 has filed a complaint against the defendant No. 1 and his wife before the Kote Police Chitradurga, wherein the said police based on the complaint summoned the defendant No. 1 and his wife and advised not to interference and instructed the defendant No. 2 if necessary he can approach the civil court and based on the said advice, the Kote Police Station Chitradurga had issued an endorsement to the defendant No. 2. Thereafter the defendant No. 1 and his wife kept quiet for these months and in the 2nd week of May 2024 by taking advantage of the absence of defendant No. 2 in the written statement schedule property as he is residing in Chitradurga the defendant No. 1 and his wife virtually taken the possession of the written statement schedule property and carried out the ploughing work in the written statement schedule property. When this fact came to know the defendant No. 2 immediately

questioned the defendant No. 1 and his wife about the illegal act and requested to vacate their illegal occupation but the defendant No. 1 and his wife did not care and threatened by denying the ownership and possession of the defendant No. 2 in the written statement schedule property. The plaintiffs who are residing with the defendant No.1 and his wife, has got knowledge about the earlier court proceeding and colluding with defendant No. 1 has filed this suit in order to cause hardship and inconvenience to the defendant No. 2. The defendant No. 2 has got valid title over the written statement schedule property and as the same is executed by the court official on the direction of the court and the plaintiffs cannot claim any share over the written statement schedule property. Thus, the defendant No. 2 is the bonafide purchaser of the written statement schedule property for valuable consideration as he had purchased the same after making proper inquiries and looking into the revenue documents with due diligence. The plaintiffs have not come to the court with clean hands and suit filed by them is an after thought and unsustainable in law. The court fee paid by the plaintiffs is insufficient, the suit is not properly valued, the suit is barred by time and the suit is bad for non joinder of necessary parties. On these contentions, sought for dismissal of the suit.

5. On the basis of the pleadings, the Court has framed the following Issues and additional issues :-

- Issue No.1:-** Whether the plaintiffs proves that the suit schedule properties are the joint family properties of plaintiffs and defendant No.1?
- Issue No.2:-** Whether the defendant No.2 proves that the suit is not properly valued and court fee paid is insufficient as contended in para No.7 of his written statement?
- Issue No.3:-** Whether the defendant No.2 further proves that the suit is barred by time as contended in para No.8 of his written statement?
- Issue No.4:-** Whether the defendant No.2 further proves that the suit is bad for non joinder of necessary party as contended in para No.9 of his written statement?
- Issue No.5:-** Whether the defendant No.2 further proves that he is the owner of suit item No.3 property as contended in para No.10 of his written statement?
- Issue No.6:-** Whether the plaintiffs are entitled for the relief as sought in the plaint?
- Addl. Issue No.1:-** Whether the defendant No.2 proves that he is bonafide purchaser of the written statement schedule property as contended in para No.20(a) of his written statement?
- Issue No.7:-** What order or decree?

6. The plaintiffs in order to prove their case examined plaintiff No. 1 as PW-1 and to prove their case by way of documentary evidence produced 6 documents marked at Ex.P-1 to 6 and closed their side evidence. The defendant No. 2 in order to prove his contention examined himself as DW-1 and

produced 7 documents at ExD-1 to 7 and closed his side evidence.

7. Heard arguments for plaintiffs and defendant No. 1 and also gone through the written arguments submitted by the defendant No. 2.

8. My findings to the above issues and Addl. Issue are as under:-

Issue No.1	:- In the Affirmative,
Issue No.2	:- In the Negative,
Issue No.3	:- In the Negative,
Issue No.4	:- In the Negative,
Issue No.5	:- In the Affirmative,
Issue No.6	:- In the Partly Affirmative,
Addl. Issue No.1	:- In the Affirmative,
Issue No.7	:- As per final order for the following:

REASONS

9. **Issue No. 1:-** The plaintiffs in order prove their case examined plaintiff No. 1 as PW-1 by filing evidence affidavit by reiterating the entire plaint averments. The PW-1 in order to prove their case by way of documentary evidence produced 06 documents at Ex.P-1 to 6. The Ex.P-1 to 4 are the RTC Extracts, Ex.P-5 is the certified copy of partition deed dated 22.05.2023 and Ex.P-6 is the online copy of sale deed dated 14.02.2017 obtained by filing execution No.7/2016.

10. The counsel for the plaintiffs has argued that, the suit schedule properties are the joint family properties of

plaintiffs and defendant No. 1, the plaintiffs in order to prove their allegations by way of documentary evidence produced Ex.P-1 to 4 RTC extracts wherein on perusal of the same, the name of the defendant No. 1 is appearing in column No. 9 with respect to item No. 1 and 2 properties. Further the PW-1 also produced Ex.P-5 certified copy of partition deed dated 22.05.2023. On perusal of the said partition deed in 2nd page it goes to show that the suit schedule properties are allotted to the share of defendant No. 1. Thus, in view of Ex.P-5 it clearly goes to show that the acquisition of the suit schedule properties by defendant No. 1 is under the registered partition deed which had entered into between himself, his parents and his brothers. The plaintiffs have stated that the defendant No.1 is their father. The defendant No. 1 appeared in person sought time for engaging the counsel but he did not engage counsel, it means the defendant No. 1 has not at all contested the case and even not disputed and denied the relationship. Under these circumstances, in view of the plaint allegations it goes to show that the defendant No. 1 is the father of the plaintiffs and as the father of the plaintiffs got the suit schedule properties in a partition and as the plaintiffs are the children of defendant No. 1 and no partition had entered into between the plaintiffs and defendant No. 1 it goes to show that the family of the plaintiffs and the defendant No. 1 is a joint family and the suit schedule properties are the joint family properties of the plaintiffs and defendant No. 1. Thus, the plaintiffs have proved

this issue and as such I answer this issue No. 1 in the **Affirmative**.

11. **Issue No. 2 :-** The defendant No. 2 has taken a contention that the suit is not properly valued and the court fee paid is insufficient. But the counsel for the plaintiffs has argued that, the plaintiffs have properly valued the suit and paid the proper court fee. I have gone through the plaint relief and valuation slip. On going through the plaint relief, it goes to show that the plaintiffs have sought for a relief of partition, separate possession, to hold that the registered sale deed dated 14/16.12.2017 is not binding on the share of the plaintiffs. On going through the valuation slip it goes to show that the plaintiffs have valued their share in the suit schedule properties for Rs.37.50 lakhs and as per Section 35(2) of KCF and SV Act they have paid Rs.200/- for their 3/4th share. As the suit is for partition and as the plaintiffs have valued their share as per section 35(2) of KCF and SV Act, and as Rs.200/- is paid it goes to show that the plaintiffs have properly valued the suit for the relief of partition and separate possession as claimed in the suit and paid the court fee properly to the relief of partition and separate possession. Thus the suit valued by the plaintiffs and court fee paid by the plaintiffs appears to be proper, correct and sufficient and as such I answer this issue No.2 in the **Negative**.

12. **Issue No. 3 :-** The counsel for the defendant No. 2 has argued that the suit is barred by time. The suit is filed by the plaintiffs for the relief of partition. When the suit for partition is claimed, there will be no limitation to file a partition suit in a specific time. Therefore the suit filed by the plaintiffs for partition is not barred by any time and the defendant No. 2 has not proved this issue, and as such I answer this issue in the **Negative**.

13. **Issue No. 4 :-** The counsel for the defendant No. 2 has argued that the suit is bad for non joinder of necessary parties. Even though a specific contention is taken by the defendant No. 2 but in order to accept his contention, no cogent oral or documentary evidence is furnished by the defendant No.2 to show that the suit is suffering from non joinder of necessary parties. However the counsel for the defendant No. 2 has cross examined the PW-1 wherein in para-2 the PW-1 has admitted that, there are 5 members in their family. There are 3 plaintiffs and defendant No. 1 is their father and as the suit is filed for partition by the children of defendant No. 1 against the defendant No. 1 it do not goes to show that there are other members for whom the plaintiffs did not implead. However no doubt the mother of plaintiffs is alive, but as the father of plaintiffs is alive, the question of impleading the mother of plaintiffs during the life time of her husband is not required. Thus, it do not goes to show that the suit is suffering from non joinder of necessary parties and the defendant No. 2 has not

proved this issue as per law and as such I answer this issue No. 4 in the **Negative**.

14. **Issue No. 5 and Addl. Issue No. 1:-** The counsel for the defendant No. 2 has argued that the defendant No. 2 is the bonafide purchaser and absolute owner of the suit item No. 3 property. The defendant No. 2 in order to prove his contention examined himself as DW-1 by filing evidence affidavit by reiterating the entire written statement averments. The DW-1 in order to prove his contention by way of documentary evidence produced 7 documents at Ex.D-1 to 7. The Ex.D-1 is the RTC Extract, Ex.D-2 is the M.R. Extract, Ex.D-3 is the receipt patta, Ex.D-4 is the Tax paid receipt, Ex.D-5 is the certified copy of Sale deed dated 14.12.2017 obtained in Ex. No. 7/2016, Ex.D-6 is the certified copy of the judgment passed in O.S. No. 585/2022 and Ex.D-7 is the certified copy of decree passed in O.S. No. 585/2022.

15. The counsel for defendant No. 2 has argued that the defendant No. 2 purchased the suit item No. 3 property and by virtue of the same, the defendant No. 2 is the absolute owner and bonafide purchaser of the said property. The counsel for the plaintiffs produced 5 documents by giving notice under Order 12 Rule 4 of CPC, wherein on going through the certified copy of sale agreement dated 03.04.2013 it goes to show that the defendant No. 1 had executed the unregistered sale agreement in favour of defendant No. 2 with respect to the suit

item No. 3 property. I have also gone through the Certified Copy of judgment passed in O.S. No. 330/2014 which goes to show that the defendant No. 2 herein by virtue of the said sale agreement filed a suit for specific performance of contract in O.S. No. 330/2014 wherein the defendant No. 1 herein placed *ex parte* and the suit for specific performance was decreed directing the defendant No. 1 herein to execute the registered sale deed in favour of defendant No. 2 herein by receiving balance sale consideration amount. Further, I have also gone through the Ex.D-5 Certified Copy of sale deed dated 14.12.2017 obtained in Ex.No. 7/2016 which goes to show that the I Addl. Civil Judge & JMFC Court had executed the sale deed in favour of defendant No. 2 in pursuance of decree passed in O.S. No. 330/2014. Thus in view of the above discussed documents, it clearly goes to show that the defendant No. 1 executed the sale agreement then did not come forward to execute the sale deed therefore, the court had executed the sale deed after obtaining the decree by the defendant No. 2. Thus, it clearly goes to show that the suit item No. 3 property was obtained by the defendant No. 2 through court proceedings. At the first instance as the defendant No. 1 has executed the unregistered sale agreement, under these circumstances if the defendant No. 1 had not executed the sale agreement then the defendant No. 1 ought to have appeared and contest the suit. But, he did not appeared and contest the suit. It means the defendant No. 1 has admitted about the execution of the sale

agreement. As the rights available to the defendant No. 1 to the suit item No. 3 property and as the defendant No. 1 did not challenge the said sale agreement and even not contested the suit, under these circumstances the person who has rights over the said property has not at all disputed and denied the execution of sale agreement. Therefore, in absence of challenge the sale agreement, the defendant No. 1 has indirectly admitted about the sale agreement. Further I have gone through the sale agreement produced by the plaintiffs wherein on perusal of the said sale agreement it goes to show that the defendant No. 1 had executed the sale agreement in favour of defendant No. 2 for the purpose that no proper income derived from the said land, in order to develop the other properties and for household necessities. It means the reasons for executing the sale agreement is for the purpose of household necessities, to develop the other properties and not getting proper income from the said land. As the relationship is not disputed by the parties, it means as the defendant No. 1 is the father of the plaintiffs and as the defendant No. 1 being a kartha of the family of plaintiffs he has sold the suit item No. 3 property for benefit of his family, any property selling for the benefit of the family do not amounts to illegal sale because the purpose of the said sale is not for any illegal or immoral purposes. Therefore, the sale obtained by the defendant No. 2 as per Ex.D-6 amounts to valid sale and the defendant No. 2 is considered as a bonafide purchaser of the said property. Further, the

defendant No. 2 has also produced Ex.D-1 to 4 ie. RTC Extracts, M.R. Extracts and Tax paid receipts which goes to show that the defendant No. 2 exercised his rights over the suit item No. 3 property by entering his name in the revenue records. Thus, it goes to show that the defendant No. 2 is the absolute owner and bonafide purchaser of the suit item No. 3 property.

16. The counsel for the defendant No. 2 has argued that, as the defendant No. 1 acquired the property which he had entered into sale agreement is by virtue of a partition deed, which had taken place between himself and his family members the property acquired in a partition becomes their self acquired property and they have absolute right over the said property and they can sell, transfer or bequeath as their wish and in order to substantiate his arguments he has relied a judgment passed in **Civil Appeal No. 5401/2025**, wherein in this judgment it is held that as per Hindu Law after partition each party gets a separate and distinct share and this share becomes their self acquired property and they have absolute rights over it and the property can bequeath as it becomes self acquired property of the respective sharers. If the facts and circumstances of the present case is considered, even in this case the defendant No. 1 acquired the suit item No. 3 property in a family partition. As the defendant No. 1 had acquired the property under a family partition it becomes his absolute property and he can bequeath the property as it is his self

acquired property. Thus, as the defendant No. 1 entered into an agreement to sell the property it goes to show that the defendant No. 1 has absolute right over the said property and as such the defendant No. 1 being having absolute right over the said property is also having right to execute any documents and the plaintiffs being the children of the defendant No. 1 are not having any right to question as the said property is the self acquired property of the defendant No. 1. Thus the judgment furnished by the defendant No. 2 is aptly applicable to this case.

17. The counsel for the defendant No. 2 has also argued that, when the male co-parcener has succeeded to the property upon partition the said property would become his exclusive share and none including a son or daughter could claim share in the same during the life time of father and in order to substantiate his arguments, he has relied the order passed in **CRP No. 121/2021 passed by the Hon'ble High Court of Karnataka on 29.11.2021**. On going through the same, it has clearly stated that, if the property is acquired under the partition, the said property becomes individual and exclusive property and the person who had acquired the property will be having absolute right to alienate. I have gone through the order produced by the defendant No. 2. In the present case the defendant No. 1 acquired the properties under a partition deed dated 22.05.2003. It means before amendment itself the defendant No. 1 acquired the properties. Further the plaintiffs

have not disputed about the partition deed dated 22.05.2003. As the defendant No. 1 had acquired the property by virtue of partition deed dated 22.05.2003, it means before amendment to Section 6 of Hindu Succession Act, the partition had taken place in the family of the defendant No. 1, his parents and brothers. Therefore, in view of the partition deed dated 22.05.2003, the property acquired by the defendant No. 1 becomes his absolute property and the children of defendant No. 1 will succeed to the property upon a partition and the said property would become his exclusive share and none including the son or daughter could claim a share in the same during the life time of their father. As in the present case also as the defendant No. 1 is the father of plaintiffs it means as the defendant No. 1 is alive, the plaintiffs being the son and daughters of defendant No. 1 are not having any rights to question or claim share in the property of defendant No. 1 and as such the order furnished by the defendant No. 2 is applicable to the present case.

18. Thus, in view of oral and documentary evidence produced by the defendant No. 2 it goes to show that the defendant No. 2 is the bonafide purchaser and absolute owner of the suit item No. 3 property and the defendant No. 2 has proved these two issues and as such these two issues are in the **Affirmative**.

19. **Issue No. 6:-** The plaintiffs have sought for the relief of partition and separate possession and also hold that the sale deed dated 14/16.12.2017 is not binding on their share with respect to item No. 3 property. At the first instance in view of documents produced by both the parties as well as in view of above discussion, as the suit item No. 1 and 2 properties are standing in the name of defendant No. 1 and as the plaintiffs are the son and daughters of defendant No. 1, they are having equal share ie., 1/4th share each in suit item No. 1 and 2 properties only.

20. The defendant No. 2 had purchased the suit item No. 3 property through Ex.D-5 through court proceedings, the plaintiffs are not having any right and share in suit item No. 3 property because the said property was not sold for any illegal or immoral purpose by the defendant No. 1. Therefore the said sale deed is binding on the share of plaintiffs and as such the plaintiffs are not having any share in the suit item No. 3 property. Thus the plaintiffs have proved this issue in part and as such I answer this issue No.6 in the **Partly Affirmative**.

21. As the plaintiffs and defendant No. 1 are family members ie., father, son and daughters, in order to maintain cordial relationship, the court costs is not awarded.

22. **Issue No.7:-** In view of the above discussion, I proceed to pass the following:-

:ORDER:

The suit of the plaintiffs is hereby partly decreed against the defendant No. 1.

The suit of the plaintiffs against defendant No. 2 with respect to suit item No. 3 property is hereby dismissed.

The plaintiffs and defendant No. 1 are entitled for 1/4th share each in the suit schedule item No. 1 and 2 properties.

No order as to costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, typed by him directly on the computer, script corrected, signed and then pronounced by me in the Open Court on this the 02nd of April 2026).

**(Chaitra A.M)
I Addl. Senior Civil Judge,
Chitradurga.**

ANNEXURES**List of witnesses examined on behalf of the plaintiff:-**

PW-1 Megha S.

List of the documents marked on behalf of the plaintiff:-

Ex.P-1 to 4 RTC Extracts,

**Ex.P-5 Certified Copy of Partition Deed datd
22.05.2023,**

**Ex.P-6 Online Copy of Sale Deed dated
14.02.2017 obtained by filing
Execution No.7/2016.**

List of witnesses examined on behalf of the defendants:-

DW-1 Sri M.T. Yashavantah Reddy.

List of the documents marked on behalf of the defendants:-

Ex.D-1 RTC Extracts,
Ex.D-2 M.R. Extract,
Ex.D-3 Receipt Patta,
Ex.D-4 Tax Paid Receipt,
Ex.D-5 Certified Copy of Sale Deed dated
14.12.2017 obtained in Ex.No.7/2016,
Ex.D-6 Certified Copy of the Judgment
passed in OS No.585/2022,
Ex.D-7 Certified Copy of the Decree passed
in OS No.585/2022.

**I Addl. Senior Civil Judge,
Chitradurga.**