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**IN THE COURT OF THE II ADDL.SENIOR CIVIL
JUDGE AND J.M.F.C. AT CHITRADURGA**

PRESENT: Shri.R. Natesha, B.Com.LL.B.,
II Addl. Senior Civil Judge and JMFC,
Chitradurga.

Dated: - This the 1st day of July 2026

O.S.No.188/2022

PLAINTIFF/S:

Smt.Shashikala, D/o late Kamalamma,
W/o Rajagopal, 44 years, residing at
No.2476, LIG-111 Stage. Yelahanka new
town, Bangalore 560 064
(By Sri.MP Advocate)

V/S

DEFENDANT/S:

- 1) Nagaraj, 52 years, S/o late Kariyappa @
Poojari Kariyappa, R/o Chikkabennur
village, Bharamasagara hobli,
Chitradurga taluk, Chitradurga 577 541
- 2) Thippeswamy, 46 years, S/o late
Kariyappa @ Poojari Kariyappa, R/o Near
Mailareshwara Rice mill, Opposite to
Nisarga hotel, H.M.road, Gurupura,
Shivamogga- 577 201
- 3) Premakka, 57 years. D/o late Kariyappa
@ Poojari Kariyappa W/o Neelappa, R/o
Near Mailareshwara Rice mill, Opposite
to Nisarga hotel, H.M.road, Gurupura,
Shivamogga- 577 201
- 4) Pushpa, 55 years D/o late Kariyappa @
Poojari Kariyappa W/o Ningapa, R/o NIL
hole road, near Jelly Machine road,

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Gurupura, Shivamogga- 577 201

- 5) Gangamma, 54 years, D/o late Kariyappa @ Poojari Kariyappa, W/o Haravi Basappa, R/o Halavagalu post and village, Harapanahalli taluk, Vijayanagara district 583 213
- 6) Nagappa, dead by Lrs.
- 6(a) Pushpa W/o late. K.Ningappa, 46 years.
- 6(b) Suma D/o late.K. Ningappa, 30 years.
- 6(c) Uma D/o late.K.Ningappa, 28 years.
- 6(d) Subash S/o late.K.Ningappa, 26 years.
All are R/o Jalli Mission road,
Vidhyanagar post, Holehonnur road,
Shivamogga town.

(Defendant No.1 to 3 by Sri.MGR, advocate, defendant No.4,5, ex-parte, defendant No.6, 6(a) to 6(d) by Sri.R.D. advocate)

Date of institution of petition	2.8.2022
Nature of the Suit	For partition and separate possession
Date of commencement of recording evidence	12.2.2023
Date of Closing of record evidence	10.3.2026

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Judgment pronounced
Total Duration.

1.7.2026
---Years-----Months----Days---
03 10 29

(R. NATESHA)
II Addl.Senior Civil Judge and JMFC
Chitradurga.

JUDGMENT

This is a suit filed by the plaintiff-Shashikala against the defendants for the relief, to declare that she is entitled to 1/3rd share in the suit schedule properties by metes and bounds with separate possession for costs and such other reliefs.

2) The brief facts of the plaintiff's case are that;

One Kariyappa and his wife Venkatamma are common propositus of the plaintiff and defendant No.1 to 6. They are three children to their common propositus they are Kariyappa @ Poojari Kariyappa, Gangamma, Kamalamma. The said Kariyappa @ Poojari Kariyappa married to Smt. Bhagavva, and out of their wedlock they got 5 children who are Smt. Premakka, Smt.

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Pushpa, Smt. Gangamma, Sri. Nagaraja and Sri. Thippeswamy. The 2nd daughter of Kariyappa got married to one Kotappa and they got a son Ningappa.

3) The 3rd daughter of common propositus Kariyappa who is Smt. Kamalamma and whose daughter is Smt. Shashilaka-the plaintiff herein. The said Kamalamma died on 9.4.2019 and her husband Ramappa also no more.

4) The plaintiff and defendants are the lineal decedents of common propositus Kariyappa whose wife is Venkatamma and they are governed by Hindu Mitakshara school of law and they are joint family members. The common propositus Kariyappa, his 3 sons in possession of land Sy. No.102/1 measuring 2 acre 24 guntas and Sy. No.6 measuring 4 acre 30.08 guntas , both are situated at Chikkabennur village, Bharamasagara hobli, Chitradurga taluk and accordingly the revenue documents standing in the name of Kariyappa @ Poojari Kariyappa by virtue of IHC. No.609 who is only male member of the family and also son of common propositus Kariyappa.

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5) There is no division between the plaintiff and defendant no. 1 to 6, who are the joint family members. But, the defendant no. 1 and 2, even having no independent right without consent of the plaintiff, they illegally got revenue entries, entered in their name by virtue of MR.No.H.No.22/2014-2015 and the revenue authorities without conducting any enquiry, they have mutated the revenue entries in their name and they have also obtained loan from the bank under MR.No.Y.18/18/2020 and intentionally the first defendant not paying the outstanding loan amount and it is came to her knowledge very recently the illegal act of first and second defendant, therefore, she immediately requested and demanded to effect division of the property by metes and bounds and put to her in a separate possession of her legitimate share. But, yielded no fruits. Therefore, she issued a legal notice against defendant no. 1 and defendant no. 2 on 24.06.2022. In spite of services of said notice, they have failed to comply her demand. On the other hand, they sent a reply on 16.07.2022 admitting the relationship, but badly denied the fact that the plaintiff is not the daughter of Kamamma. Therefore, she also

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given a complaint to the concerned police, but, being suggested that to approach the competent authority to redress her grievance, therefore, without any option she approached the court, accordingly, there is a cause of action to file the suit arose on 09.05.2022 when she came to know that the illegal entries are reflecting in the revenue records in respect of the suit schedule properties and after issuance of legal notice dated 24.06.2022 and also reply dated 16.07.2022. Therefore, suit subject matter situated within the jurisdiction of the court and the suit is filed well within time and also it is valued for the purpose of court fee and jurisdiction as per the annexed valuation slip. Accordingly, court fee is paid. Hence, prayed to decree the suit.

6) The defendant no. 1 to 3 have filed their common written statement and they are not disputing the fact that above said Kariyappa and Venkatamma are blessed with Kariyappa @ Poojari Kariyappa, Gangamma, Kamalamma, who are common propositus of the said three children and they died long back

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leaving behind them, the said three children.

7) So also not disputing the fact that Kariyappa @ Poojari Kariyappa got married to Smt. Bhagavva and they got five issues who are Smt. Premakka, Smt. Pushpa, Smt. Gangamma, Sri. Nagaraj and Sri. Thippeswamy.

8) They are also not disputed the fact that the said Gangamma got married Kotappa and they got Ningappa and Smt. Gangamma who are their children. Further, they have denied the fact that Kamalamma got married with Ramappa and out of their wedlock the plaintiff Smt. Shashikala is born and she is the daughter of Kamalamma. As such she is a joint family member and they are constituting a Hindu undivided joint family. These facts are all denied by the defendants.

9) The plaintiff though she is not a daughter of said Kamalamma, but in order to show the relationship she sworn to a false affidavit before the concerned notary public and on the basis of the same she is claiming that she belongs to the family

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of defendants. Further, they denied that Kariyappa @ Poojari Kariyappa during his lifetime being sole male family member got revenue entries in IHC No. 609. But, according to them the suit schedule properties are self acquired properties of the father of defendant no. 1 and 2 namely Kariyappa @ Poojari Kariyappa. Therefore, they denied the suit schedule properties are the joint family properties.

10) Further they denied that defendant no. 1 and defendant no.2 illegally obtained the revenue entries in MR.H.No.22/2014-2015 and the revenue authorities have also admitted the said revenue entries without conducting any enquiry. Therefore, these facts are not disputed by the defendants in their written statement.

11) Further, they have also denied that defendant no. 1 and defendant no. 2 availed loan by depositing title deeds of the suit schedule properties as per MR No.Y18/18/2020. Intentionally and purposefully they are not repaying the outstanding loan amount and also denied that a plaintiff demanded for her share

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and the defendants have complied to her demand to effect partition. Accordingly, the defendants no. 1 to 3 in their written statement denied the material facts that the plaintiff is daughter of Kamamma through Ramappa and the plaintiff is entitled for her share in the suit schedule properties as joint family member and there is no relationship with the defendants. Accordingly, denied the case of the plaintiff.

12) Further, the defendant no. 1 to 3 are contented that the suit schedule properties are self acquired properties of father of defendant no. 1 and 2 namely Kariyappa son of Kariyappa. Accordingly, the khata of suit schedule property item No.1 and 2 standing in the name of father of defendant no. 1 and 2. In view of the reason after demise of their father the defendant no. 1 and 2 acquired rights and got revenue entries in their name in the IHC basis. Accordingly, they have been in peaceful possession and enjoying the suit schedule properties. Further, they denied that Kamamma, alleged daughter of Kariyappa and Venkatamma was not married at any point of time and they had

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no issues. The plaintiff is the daughter of said Kamalamma who is the daughter of Kariyappa and Venkatamma. Therefore, the plaintiff is not relating to the defendant's family, but she is making false claim against them. Accordingly, sought for dismissal of the suit with costs.

13) The defendant no.6. with his written statement, completely supporting the plaintiff's case, and he who admitted that the relationship with the plaintiff and the suit schedule properties are originally belongs to their common predecessor, Kariyappa, who had three children, namely Kariyappa @ Poojari Kariyappa, Gangamma and Kamalamma. He also admitted the case of the plaintiff that the plaintiff is legal heir of Kamalamma and the suit schedule properties item No. 1 and 2 are inherited by Kariyappa from his father more particularly according to the father of the plaintiff. Therefore, it is joint family properties. Hence, the defendant no. 6 is having his is legitimate 1/3rd share. On the other hand, the defendant no. 1 and defendant no. 2 got their name mutated in the revenue records. However, it does not take

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away the right of the legal heirs of Late Kariyappa. Therefore, defendant no. 6 is also having 1/3rd share to the branch of second daughter of Kariyappa who is Smt. Gangamma. Therefore, he has paid proper court fee along with separate violation slip and prayed to allot 1/3rd his separate share in the suit schedule properties.

14) The defendant no. 4 has been placed ex-parte. That the defendant no. 5 has not filed written statement. During the pendency of the suit, the defendant no. 6 was died. Therefore, his legal heirs have been brought on record and they have also filed their independent written statement which is nothing but a replica of the statement of Defendant no. 6.

15) On the basis of the pleadings of the parties the learned predecessor in office has framed the following;

ISSUES

- 1) Whether the plaintiff and defendant No.6 prove that they and defendant No.1 to 5 constitute a joint family and that the suit schedule properties

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are ancestral joint family properties and available for partition?

2) Whether the plaintiff and defendant No.6 are entitled for decree as sought for?

3) What Order or Decree?

16) The plaintiff in order to prove her case, she herself got examined as PW1 and in support of her case she produced Ex. P1 to Ex. P15 documents and also in support of her case she examined independent witnesses PW2 and PW3. They have been in detail cross examined by the learned counsel for the defendant no. 1 to 3. Thereafter, the 2nd defendant in support of their case himself got examined as DW1 and in his cross examination photographs which are confronted to him, got marked Ex. P16 to Ex. P22. Also examined the witness DW2 and in his cross examination photographs which are confronted to him, got marked Ex. P23 to Ex. P25.

17) After having heard arguments from both sides, my findings on the above issues are as follows;

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Issue No.1 : In the affirmative

Issue No.2 : In the affirmative

Issue No.3 : As per final order for the following:-

: R E A S O N S:

18) **ISSUE No.1** It is the specific case of the plaintiff that she is the daughter of Kamalamma and Ramappa. Her grand father is Kariyappa, her grand mother is Venkatamma. Her grand father and grand mother died leaving behind her 3 children Kariyappa @ Poojari Kariyappa, Gangamma and Kamalamma.

19) The said Kariyappa @ Poojari Kariyappa got married to Bhagavva and for them there are 5 issues who are defendant No.1 to 5.

20) The 2nd daughter of her grand father Kariyappa none-other Gangamma who is having a son Ningappa who is defendant No.6.

21) Her mother died on 9.4.2019. Her father Ramappa also no more. She and defendant No.1 to 6 are Hindu undivided joint

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family members governed by Hindu Mitakshara School of law. During the life time of her grand father, he was having suit schedule item No. 1 and 2, but, after his death, his only son Kariyappa @ Poojari Kariyappa during his life time got mutated the revenue entries in his name by virtue of IHC. No.609. Therefore, the defendant No.1 and 2 being the children of Kariyappa @ Poojari Kariyappa are having no absolute right, but without her knowledge, the 2nd defendant obtained revenue entries under MR.No.H.No.22/2014-2015 and the revenue authorities without conducting any enquiry, they have effected revenue entries in their name and by virtue of the same, the defendant No.1 and 2 raised loan in the bank under MR.No.Y18/18/2020 by depositing title deeds. But, intentionally and purposefully they have not repaid the loan and came into know all these facts, she admitted her partition also issued notice dated 24.6.2022. But, the defendant No.1 and 2 sent untenable reply on 16.7.2022 in which they denied her relationship with the defendants. But, she being the family member of the common propositus Kariyappa having 1/3rd share through Kamalamma.

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Hence, the suit is filed for declaration to declare her 1/3rd share in the suit schedule item No. 1 and 2.

22) In detailed written statement of defendant No.1 to 3 they have denied the relationship with the plaintiff and according to her, she is not their family member and she never born to Kamamma, even though there is no relationship, she is falsely claiming that she is the daughter of Kamamma, she filed a false suit. Accordingly, sought for dismissal of the suit.

23) The defendant No.4 and 5 remained absent and have not filed any written statement.

24) The defendant No.6 during his life time, he who filed his detailed written statement in which he clearly admitted relationship, the origin of the property and according to him being legal heir of 2nd daughter Gangamma he is also having 1/3rd share over the suit schedule properties, accordingly, he is ready to pay the court fee and sought for allotment of 1/3rd share. But, during the pendency of the suit, he died, therefore, his lrs defendant No.6(a) to 6(d) have been brought on record

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and they have also filed their written statement which is replica of written statement of defendant No.6. Therefore, they together seeking 1/3rd share of their father.

25) Now it is burden on the plaintiff to prove that she is lineal decedents of common propositus of Kariyappa and Venkatamma and also she is daughter of Kamalamma. She herself got examined as PW.1 along with her affidavit in lieu of examination-in-chief therein she reiterated the entire plaint averments. In support of her case, she produced Ex. P.1 to Ex. P.15. Ex. P.1 is the genealogical affidavit, Ex. P.2 to Ex. P.4 are pahanies, Ex. P.5 is mutation register, Ex. P.6 to Ex. P.8 are pahanies, Ex. P.9 is mutation register, Ex. P.10 is legal notice, Ex. P.11 and Ex. P.12 are postal receipts, Ex. P.13 is the postal acknowledgment, Ex. P.14 is the reply notice dated.16.7.2022 and Ex. P.15 is the school transfer certificate issued by the Vice Principal of Karnataka Public school, B.H. road, Shivamogga. In her cross examination, the contesting defendant No.1 and 2 have tried to elicit their case that the plaintiff is not daughter of Kamalamma.

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Therefore, some question relating to family relationship has been asked to PW.1 therein she stated that she knows Kariyappa @ Poojari Kariyappa and he who her family member and a son of grand father Kariyappa, but she do not know when he was died. But, according to her, his death occurred in Chikkabennur, she also knows his wife Bhagamma, but she do not know when she was died.

26) It is elicited from her that she do not know the parents of Ramappa and she was also not enquired about the family properties of Ramappa. She clearly denied that Ramappa never married Kamalamma, she also denied that she is not daughter of Kamalamma. She further denied the suggestion that she is deposing falsehood that she born to couple Kamalamma and Ramappa. She clearly admits that she is not having birth certificate. It is also denied that she is deposing falsehood that Kamalamma got married with Ramappa.

27) She admits that she is having a good relationship with defendant No.4 to 6. She further admits that she do not know

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where the marriage of their parents took place, she also admits that there is no reference in her plaint regarding the fact that when she was born. Therefore, it is a suggestion that as she is not born to couple Ramappa and Kamalamma. Therefore, there is no reference with respect to said fact in her plaint. However, she denied it.

28) Further, according to her she has produced documents to show that suit schedule item No. 1 and 2 were in the name of common propositus Kariyappa. She denied the suggestion that the pahani which are produced by her are reflecting the name of father of defendant No.1. She also denied the suggestion that suit schedule item No. 1 and 2 are self acquired properties of defendant No.1 and 2. Further, she also denied the suggestion that suit schedule item No. 1 and 2 are not joint family properties of the plaintiff and defendant No.1 and 2.

29) Further, she denied that in Ex. P.3 by oversight it is mentioned as IHC. No.609. But, she admits that she did not went to examine how the entry is reflecting as IHC. No.609 in

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pahanies.

30) She further denied the suggestion that except the defendant No.1 and 2, no other parties to the said land having right over the suit schedule properties. She also denied the suggestion that only after the death of Kariyappa @ Poojari Kariyappa, the mutation entries taken place in the name of defendant No.1 and 2. she also denied the suggestion that she has produced a false genealogical tree with affidavit. She also admits that Ex. P.15 do not show the name of her mother Kamalamma. According to her, her mother Kamalamma died in the year 2015 and she produced her death certificate. She also denied the suggestion that she is deposing falsehood that she is daughter of Kamalamma.

31) The PW.2 and PW.3 also examined by the plaintiff to show that she is daughter of Kamalamma and Ramappa. According to PW.2, the plaintiff and defendants are all far relatives and he knows the mother of the plaintiff, she who got married with Ramappa. He also narrated his relationship with the plaintiff and

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defendant No.6. In his cross examination it is elicited that about 7 to 8 years back Kariyappa and Venkatamma were passed away, but he do not know the date of death. Further, according to him about six years back Kariyappa died. He further stated that he do not know when Kamalamma got married with Ramappa and also stated that he is having no information in respect of Ramappa, but he denied the suggestion that he is deposing falsehood that Kamalamma married with Ramappa and also plaintiff born to couple Kamalamma and Ramappa.

32) PW.3 is as she resident of Bangalore and in her affidavit, she stated that the 1st defendant's mother Bhagamma is her close relative, since brother of Bhagamma who is Thimmappa is her father. Therefore, the plaintiff is a close relative to her and she also knows about the mother of plaintiff and whose common ancestor is Kariyappa and the plaintiff is grand daughter of Kariyappa.

33) In her cross examination she stated that she is residing in Bangalore from 1995 and she studied in Shivamogga district and

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her date of birth is 28.9.1972. Therefore, she able to see Venkatamma. But, Kariyappa was passed away earlier to Venkatamma. She also stated that Kamalamma is no more and also Gangamma was died. She also stated that Ramappa is n o more and denied the suggestion that Kamalamma never married with Ramappa and the plaintiff is not daughter of couple Kamalamma and Ramappa. Therefore, the entire cross examination of PW.2 and PW.3 shows that even the defendant No.1 and 2 tried to elicit their case that the plaintiff is not born to Kamalamma and she is not family member. However, there is no such effect in the cross examination of PW.2 and 3 to elicit that the plaintiff is not daughter of Kamalamma.

34) Ex. P.15 is the school certificate produced by PW.1 therein her father name is sh own as Ramappa as admitted by her, her mother name is not reflecting in Ex. P.15. It is also reflects she failed in SSLC examination. Therefore, Ex. P.15 is not showing the name of her mother. According to the learned counsel for plaintiff they examined the close relatives of plaintiff and

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defendants and move over the PW.3 is having knowledge of relationship of the plaintiff with Kamalamma, since she is a very close relative through 1st defendant mother Bhagamma. Therefore, her evidence cannot be discredited.

35) In the above background on going through the evidence of Cw.1 who is Sri. Nagaraja in his affidavit he stated the entire written statement averments and in his cross examination, he admitting the relationship of defendant No.6 and defendant No.6(a).It is also elicited that the legal heirs of the defendant No.6 Ningappa re on record, he denied the suggestion that marriage of Kamalamma performed with Ramappa and also denied that the plaintiff Shashikala is daughter of Kamalamma and Ramappa. The DW.1 admits that Kamalamma is her father's sister and she remained in the house of defendant No.3 till her death and said Kamalamma recently passed away about 2 years back.

36) He denied the suggestion that he is falsely deposing that Kamalamma never got married with Ramappa, and also denied

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the suggestion that grand father Kariyappa himself performed the marriage of Kamalamma with Ramappa after the marriage they were some time in Shivamogga district and eh also denied the suggestion that suit schedule item No. 1 and 2 acquired by his father under IHC. No.609. Therefore, it is his ancestral properties. On the other hand, according to DW.1 it is self acquired properties of his father.

37) In his further cross examination he admits the relationship between defendant No.6, defendant No.3 and also the marriage taken place in between their family. Therefore, Ex. P.16 as photo was confronted to him to show that the plaintiff is appearing in Ex. P.16, but he denied it. However, he identified his mother Bhagyamma in Ex. P.16. He also identified his relatives. Further he denied that in Ex. P.17 also he can see the plaintiff's mother Kamalamma. But, he denied it. Further, he identified his brother 2nd defendant in Ex. P.18 photograph and denied that the plaintiff and a witness Geetha can be seen in Ex. P.18. On the other hand, he admits his other relatives can be seen in Ex. P.18.

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So also on his own admission Ex. P.19, 20, 21 photographs got marked he admits in the said photographs some of his relatives can be seen and particularly he admits in Ex. P.21 he could able to see the plaintiff. Therefore, the cross examination portion in para No.12 is extracted for better appreciation of evidence and it reads thus;

"ಈಗ ನನಗೆ ತೋರಿಸುತ್ತಿರುವ ಫೋಟೋದಲ್ಲಿ ನನ್ನ ಅಕ್ಕ ಪುಷ್ಪ ಹಾಗೂ ಅವರ ಗಂಡ ನಿಂಗಪ್ಪ ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಫೋಟೋವನ್ನು ನಿಡಿ-
4 ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಫೋಟೋವನ್ನು ನಿಂಗಪ್ಪನ ಮಗಳ ಮನೆಯ ಗೃಹ ಪ್ರವೇಶದ ಸಮಯದಲ್ಲಿ ತೆಗೆಯಲಾಗಿದೆ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ಫೋಟೋದಲ್ಲಿ ನನ್ನ ಸಂಬಂಧಿಗಳು ಇರುತ್ತಾರೆ. ನಿಪಿ **19** ಅಲ್ಲಿ ವಾದಿ ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಈಗ ನನಗೆ ತೋರಿಸುತ್ತಿರುವ ಫೋಟೋದಲ್ಲಿ ನನ್ನ ಅಕ್ಕ ಗಂಗಮ್ಮ ಹಾಗೂ ಅವರ ಮಕ್ಕಳು ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಫೋಟೋವನ್ನು ನಿಪಿ **20** ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಫೋಟೋವನ್ನು ಗಂಗಮ್ಮನ ಮಗಳ ಮದುವೆಯ ಸಮಯದಲ್ಲಿ ತೆಗೆಯಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಫೋಟೋದಲ್ಲಿ ವಾದಿ ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಈಗ ನನಗೆ ತೋರಿಸುತ್ತಿರುವ ಫೋಟೋದಲ್ಲಿ ನನ್ನ ತಮ್ಮ

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ತಿಪ್ಪೇಸ್ವಾಮಿ ಹೆಂಡತಿ ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಫೋಟೋವನ್ನು ನಿಷಿ

21 ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಫೋಟೋದಲ್ಲಿ, ವಾದಿ ಇರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ”.

38) The entire cross examination of DW.1 reflects that only to some extent in Ex. P.1 he identified the plaintiff. But, he clearly denied that she is daughter of Kamalamma.

39) The DW.2 is examined to show that the daughter of Kariyappa who is Kamalamma was residing with them for about six months. But, she was suffering from illness in the year 2019 she died in their house and they performed her last rites and according to him the plaintiff is not born to Kamalamma. In his cross examination he admits that when he was in Shivamogga district, Kamalamma was having a petty shop. But, he denied that she was independently earning income and residing separately and he also denied that, when Kamalamma was running a petty shop he was residing with her and after getting job, he shifted his residence to Shivamogga. He also denied that plaintiffs mother Kamalamma got married with Ramappa and

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also denied that when the plaintiff was in the age of 4 years her father went out from the house. She identified the photographs Ex. P.23, but she denied that in Ex. P.3 he can see the plaintiff, so also he denied that in Ex. P.24 he could able to see the plaintiff. But, he also denied the suggestion that Kamalamma until her death was living separately and independently, in spite of it, he is deposing falsehood that on her last days she was suffering from illness and due to which she passed away. He also denied the suggestion that he himself deposing falsehood that the said Kamalamma remained unmarried.

40) The defendant No.1 has specifically denied the relationship of plaintiff with Kamalamma and the defendant, however, he is not denying the relationship with the defendant No.6. Therefore, if it is given due consideration to the statement of defendant No.6, he who in his written statement clearly admitted the relationship of plaintiff with Kamalamma and according to him she is also, grand daughter of Kariyappa.

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41) Any of the legal heir of defendant No.6 though they have filed their written statement by admitting the relationship and supporting the plaintiff, but, they never entered the witness box to adduce evidence. The Ex. P.15 is school transfer certificate also not showing the name of mother of plaintiff. In view of these facts and circumstances of the case, in order to find out the relationship of plaintiff with Kamamma and with the defendants, the evidence is available on record is that the evidence of PW.2 and 3 also the photographs which were confronted in the cross examination of DW.1. He is admitting his close relatives in the photographs shown to him marked as Ex. P.16 to Ex. P.21, but only in Ex. P.21 he could able to identify the plaintiff . However, he is denying her relationship with Kamamma.

42) The learned counsel or plaintiff in their arguments submitted that they have examined the close relatives of defendant since PW.3 is a close relative to defendant No.1 as she is daughter of brother of Bhagamma she who mother of

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defendant No.1. In her evidence, she stated the relationship of the plaintiff with Kamalamma. Therefore, it is also necessary to give due consideration to the contention of the defendant No.6 and whose legal heirs that they are not denying the relationship of the plaintiff with the defendants.

43) Since the defendants No.1 to 3 in their written statement seriously denying the relationship of the plaintiff with Kamalamma and Ramappa. Therefore, it is settled possession of law that always it is burden on the person who denying the relationship to prove it, at the same time in view of provisions of Sec.50 of the Indian Evidence Act, 1872, according to the plaintiff, she examined the close relative of 1st defendant and she who supporting her case is that she is daughter of Kamalamma in view of the reason the PW.3 being the close relative of defendant No.1 has withstood the touch stone of cross examination of contesting defendant No.1 that she firmly stated that the plaintiff is daughter of Kamalamma. Therefore, even though in Ex. P.15 the name of mother of plaintiff is absent.

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However, her father name is reflecting as Ramappa. But, the evidence of PW.2 and 3 also the contention of defendant No.6 are in supportive nature to the case of plaintiff that she is daughter of Kamalamma.

44) The contesting defendant No.1 to 3 though they have adduced evidence, except cross examination of PW.1 to PW.3 there is no documentary evidence from their side for completely denial of relationship of plaintiff with Kamalamma. To some extent it can be believed that DW.2 very well knows the Kamalamma, since it is not disputed that for some time Kamalamma was residing in Shivamogga district and the DW.23 was also resided in Shivamogga district. But, he is not completely denied that the plaintiff is not daughter of Kamalamma though he contended that during last days of Kamalamma she was suffering illness and she died unmarried, but the evidence of PW.2 and PW.3 would go to show that Kamalamma is a married person and they are also supporting the case of the plaintiff that Kamalamma got married with

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Ramappa. Under such circumstances, even though there is no clinching documentary evidence ie., on the basis of Ex. P.15 that her mother name is not reflecting in Ex. P.15. However, the close relatives of DW.1 who themselves supporting that the plaintiff is the daughter of Kamalamma. Under such circumstances, their evidence of opinion are well within scope of **Sec.50 of Indian Evidence Act, 1872**. Hence, simply it cannot be discarded. Since evidence of PW.3 is not wholly discredited; as PW.3 is a close relative to defendant No1 is deposing that the plaintiff is daughter of Kamalamma. Under such circumstances, in the absence of clinching evidence, however, the plaintiff is able to show that she is a daughter of Kamalamma by examining his close relatives. Under such circumstances, it cannot be believed that she is not daughter of Kamalamma since the evidence of PW.2 and 3 and also to some extent confrontation of, photographs to DW.1 inspires the confidence of the court that the defendant No.1 in h is cross examination intentionally avoided the identification of plaintiff that she is the daughter of Kamalamma. Therefore, on the basis of oral evidence of PW.2

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and 3 and to some extent the photographs confronted to PW.1 in his cross examination would go to show that the plaintiff is grand daughter of Kariyappa and the daughter of Kamalamma. Therefore, the defendant No.1 and 2 have failed to establish that the plaintiff is not the daughter of Kamalamma and whose husband is Ramappa. Hence, the plaintiff is a family member of defendants through Kamalamma.

45) Since, it is not disputed that the defendant No.1 to 6 are lineal decedents of common propositus Kariyappa and also establish that the plaintiff is a daughter of Kamalamma. Accordingly, the plaintiff, the defendants No.1 to 6 are shown to be they are joint family members.

46) According to the defendant no. 1 to 3, the suit item No. 1 and 2 are self-acquired properties of Kariyappa @ Poojari Kariyappa and not the properties of their grandfather Kariyappa. But, the disputed entries in pahanies which is as reflecting IHC. No.609, since it shows that Kariyappa s/o Kariyappa. Therefore, at any stretch of imagination, if the suit item No. 1 and 2 are self

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acquired property of the male son Kariyappa, then there should have been some entries to show that the male son Kariyappa acquiring suit item No. 1 and 2 out of his own funds. On the other hand the very meaning IHC showing that it is inherited by his father Kariyappa. Under such circumstances the defendant no. 1 and 2 cannot have a contention that the suit schedule item No.1 and 2 are self acquired properties of male son Kariyappa. Therefore, they have failed to prove that, it is a self-acquired property of male son Kariyappa, on the other hand, the entries in revenue records itself shows that the property was standing in the name of common propositus Kariyappa and after whose death it has been inherited by his male son Kariyappa. Therefore it is the joint property of the plaintiff, defendant no. 1 to 6. Hence plaintiff able to establish that the suit schedule item No. 1 and 2 are joint family properties, at the same time, the defendant no. 1 to 3 failed to establish that the schedule item No. 1 and 2 are self acquired property of male son Kariyappa. Therefore, without any hesitation, **I answer Issue No. 1 in the affirmative.**

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47) **Issue No. 2:** It is the specific contention of the defendant no.6 that he being grandson of Kariyappa through first daughter Gangamma also entitled to 1/3rd share, since he is only a son to Gangamma and there is no dispute in respect of relationship of defendant no. 6 with other defendants and it is also established that the plaintiff is also a joint family member and apart from that the defendant no. 6 and his legal heirs as per their written statement clearly admitted the relationship with the plaintiff. Therefore, the defendant no. 6, since he is no more whose legal heirs all are on record are all together entitled 1/3rd share in the schedule item No. 1 and 2. **Therefore, I answer issue No.2 in the affirmative**

48) **Issue No.3:** Since the plaintiff able to establish that she is the daughter of Kamamma and the Kamamma is daughter of grandfather Kariyappa. Under such circumstances there is no evidence to show that during the lifetime of Kariyappa there was a partition or division. On the other hand there is also no evidence to show that, the father of defendant No.1 to 3, the

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daughters of Kariyappa, got divided schedule item No. 1 and 2 in their lifetime. Therefore, there is no division taken place in respect of suit schedule item No.2 among the joint family members and under such circumstances the plaintiff being the daughter of Kamamma is entitled to 1/3rd share and at the same time the defendant no. 1 to 5 being the children of male son Kariyappa together entitled to 1/3rd share and at the same time the defendant no. 6 now he is no more, but his legal heirs together are entitled to 1/3rd share. Accordingly, schedule item No. 1 and 2 is to be divided by metes and bounds. Hence, the suit of the plaintiff is required to be decreed. Accordingly, I proceed to pass the following;

: ORDER:

The suit of the plaintiff is hereby decreed holding that the plaintiff is entitled to 1/3rd share by metes and bounds in the suit schedule item No. 1 and 2, at the same time the legal heirs of defendant No.6 together entitled to 1/3rd share and the defendant

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No.1 to 5 being the legal heirs of Kariyappa, are together entitled to 1/3rd share by metes and bounds with separate possession

Looking into, the relationship of the parties and facts and circumstances of the case there is no order as to costs.

Office to draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed and typed by him, corrected and order is pronounced in the open Court on this the 1st day of July 2026)

(R. NATESHA)
II Addl.Senior Civil Judge and JMFC
Chitradurga.

:A N N E X U R E:

List of witnesses examined on behalf of plaintiff/s:

PW-1 : Shashikala
PW-2 : Sreenivasa
PW-13 : Geetha

List of exhibited documents marked on behalf of plaintiff/s:

Ex P.1 Genealogy
Ex P.2 Pahani

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Ex P.3	Pahani
Ex P.4	Pahani
Ex P.5	Mutation extract
Ex P.6	Pahani
Ex P.7	Pahani
Ex P.8	Pahani
Ex P.9	Mutation extract
Ex P.10	Notice copy
Ex P.11	Postal receipt and acknowledgment
Ex P.12	Postal receipt and acknowledgment
Ex P.13	Postal receipt and acknowledgment
Ex P.14	Reply notice
Ex P.15	School T.C.
Ex P.16	Photo
Ex P.17	Photo
Ex P.18	Photo
Ex P.19	Photo
Ex P.20	Photo
Ex P.21	Photo
Ex P.22	Invitation
Ex P.23	Photo
Ex P.24	Photo
Ex P.25	Photo

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List of witnesses examined for defendant/s.

DW-1 : Nagaraja

DW-2 : H.Neelappa

List of documents marked for the defendant/s.

----- NIL -----

(R. NATESHA)
II Addl.Senior Civil Judge and JMFC
Chitradurga.