

KACD220030652021



Presented on : 18-11-2021
Registered on : 18-11-2021
Decided on : 30-04-2026
Duration : 12D-05M-04Y

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

Present: **Smt. HEMA H.R.**

B.A.L., L.L.B.,
Pri. Civil Judge and JMFC., Challakere

Dated on the 30th day of April 2026

O.S. No.239/2021

PLAINTIFF:

1. Balaraj @ Bhoothappa s/o Balappa,
aged about 64 years, Agriculturist,
R/o N.Devarahalli village,
Nayakanahatti Hobli, Challakere Taluk.

(By Sri K.M.Nagaraj, Advocate)

-V/s-

DEFENDANTS:

1. Gowramma w/o Jambanna,
aged about 50 years, housewife.
2. Katamma w/o Balappa @ Sannaiah,
aged about 70 years, housewife.
3. Santhamma w/o Balappa @ Sannaiah,
aged about 45 years.
4. Rathnamma w/o G.Thippanna,

aged 60 years, housewife.

Defendants No.3 & 4 are residents of
Thimmappaiahahalli Gollarahatti village,
Nayakanahatti Hobli, Challakere Taluk.

5. Doddakengappa s/o Channappa, 85 years.

6. Balappa s/o Doddakengappa, 50 years.

7. G.K.Thippeswamy s/o Doddakengappa, 45 years.

8. Channappa s/o Doddakengappa, 40 years.

Defendants No.1, 2 & 5 to 8 are Agriculturists
and residents of Karichannajjara Kapile,
N.Devarahalli village, Nayakanahatti Hobli,
Challakere Taluk.

9. Shivanna s/o Balappa, 55 years.

10. Shankranna s/o Balappa, 52 years.

11. Thippeswamy s/o Balappa, 50 years.

12. Channappa s/o Balaiah
@ Gummanna, 70 years,
Dodda Ullarthi village, Challakere Taluk.

13. Karibalappa s/o Balaiah
@ Gummanna, 60 years.

14. Bootha Balappa s/o Balaiah
@ Gummanna, 55 years.

15. Eeranna s/o Channappa, 60 years.

16. Gopalappa s/o Channappa, 55 years.

17. Thippeswamy s/o Channappa, 50 years.

18. Balaraja s/o Sanna Kengappa, 40 years.

19. Thippeswamy s/o Sanna Kengappa, 35 years.

20. Balaraja s/o Sanna Balappa, 40 years.

Defendants 9 to 20 are Agriculturist and residents of N.Derarahally village, Nayakanahatti Hobli, Challakere Taluk.

(D.1 to 8 by Sri D.Jayaseela Reddy, Advocate)
(D.9 to 20 - Exparte)

Date of Institution of suit	:	18.11.2021		
Nature of suit	:	Partition and separate possession		
Date of commencement of recording of Evidence	:	27.06.2022		
Date of pronouncement of Judgment	:	30.04.2026		
TOTAL DURATION	:	Days	Months	Years
		12	05	04

: J U D G M E N T :

The plaintiff has filed this suit against the defendants for the relief of partition and separate possession of 2/3rd share in the suit schedule property and for such other reliefs.

2. The brief facts of the plaintiff's case are as follows:

One Karichannajja of Devarahalli village had three sons, they are Balaiah, Giddaiah and Channappa. The defendant No.1 is granddaughter and defendants No.2 and 3 are wives of Balaiah. Plaintiff and defendants No.9 to 19 are grandchildren of Giddaiah.

Defendant No.5 is son and defendant No.6 to 8 and defendant No.20 are grandsons of Channappa. There was a registered partition among the descendants of Karichannajja's sons by name Balaiah, Giddaiah and Channappa on 30.04.1994. In the said partition, the defendants No.1 and 2 are 1st sharer, plaintiff is 2nd second sharer, Gondamma w/o Channappa was 3rd sharer and Doddakengappa and Sannabalappa were 4th sharer. In the above said registered partition deed dated:30.04.1994, 1st, 2nd and 4th sharers are allotted 10 acres 20 guntas of land each in sy.no.14/1 of N.Devarahalli village. In the same partition, 2 acres 20 guntas including 11 guntas kharab was kept jointly. The said 2 acres 20 guntas is the suit schedule property herein. The suit schedule property is in joint possession and enjoyment of plaintiff and defendants No.1, 2, 5 to 8 and other sharers by constructing residential houses in it. In the revenue records of defendant No.1 and 2, instead of showing their allotted land of 10 acres 20 guntas, the extent of land is mentioned as 12 acres 29 guntas without the knowledge of plaintiff. The said entry of excess land is against to law and fact. Taking advantage of unlawful entry in revenue records, the defendant No.1 by colluding with revenue authorities have transferred 6 acres of land in the name of defendant No.4. Defendant No.4 is neither coparcenor nor sharer or joint possessor of properties of plaintiff's family. Defendants No.1 and 2 do not have any absolute and independent right, title or possession over the suit schedule property which is kept jointly in registered partition deed dated:30.04.1994. Plaintiff has started construction of house about 4 years back, but due to paucity of funds it is incomplete. Now the plaintiff started the further

construction, but the defendants No.1 and 2 by colluding with defendants No.5 to 8 and taking advantage of illegal revenue records they are trying to obstruct for construction of house by the plaintiff. When the plaintiff questioned the said act, the defendant No.1 revealed the factum of katha standing in her name. Then only plaintiff came to know about the mutation of suit schedule property in the name of defendants No.1. Plaintiff questioned the said illegality and demanded his legitimate share in suit schedule property. Defendant No.1 initially agreed, but subsequently with the active support of defendants No.5 to 8 have refused for it. Defendant No.1 do not have absolute right over the suit schedule property. In spite of it, defendant No.1 has denied the share of plaintiff. Hence, the present suit is filed. On these grounds, plaintiff prays to decree the suit.

3. After registering the suit, summons was issued to the defendants. Summons was served to the defendants. Defendants No.1 to 8 have appeared through their counsel. Defendant No.9 to 20 have not appeared before the Court and hence, they are placed ex parte. Defendant No.1 to 3 and 6 to 8 have filed their written statement. Defendant No.4 & 5 have filed a memo adopting the written statement of defendants No.1 to 3 and 6 to 8.

4. The defendant No.1 to 8 in their written statement have admitted their relationship with the plaintiff and have also admitted the factum of partition dated:30.04.1994 and the allotment of shares as per the said partition deed and the keeping of suit schedule property jointly. They have taken contention that the all the descendants of three sons of Karichannajja have got equal share in suit property and all of them have already constructed

their residential houses very long back and are enjoying it. Not only the plaintiff and defendants No.1, 2, 5 to 8, but others legal heirs have also constructed their houses. Defendants No.1 to 8 have admitted that they do not have absolute and independent right over the suit schedule property. All the plaintiff and defendants have got equal rights over the suit schedule property. There is no cause of action for the suit. On these grounds, defendants No.1 to 8 prays to dismiss the suit.

5. Based on the pleadings of both the parties, the following issues have been framed:

- 1) Whether the plaintiff proves that the suit schedule property is in joint possession and enjoyment of the plaintiff and defendants No.1, 2, 5 to 8?
- 2) Whether the plaintiff further proves that the plaintiff is entitled for 4/9th share in the suit property?
- 3) Whether the plaintiff is entitled for the reliefs as claimed?
- 4) What Order or Decree?

ADDITIONAL ISSUE No.1

- 1) Whether the defendants prove that, suit of the plaintiff is bad for non-joinder of necessary parties?

6. In order to prove the case of plaintiff, he got examined himself as P.W.1 and got marked 02 documents as Ex.P.1 and 2.

On the other hand, defendants have not adduced evidence on their behalf.

7. Heard arguments by learned counsel for plaintiff and defendants. Perused the materials placed on record.

8. My findings to the above issues are as follows:

Issue No.1 : In affirmative

Issue No.2 : In partly affirmative

Issue No.3 : In partly affirmative

Addl. Issue No.1: In negative

Issue No.4 : As per final order for the
following;

: REASONS :

9. **Issue No.1 to 3:** Since these issues are interrelated to each other, in order to avoid repetition of facts and discussion, they are taken up together for consideration.

10. It is the case of plaintiffs that the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants. A partition took place among the family members of the propositus Karichannajja on 30.04.1994. In the said partition, the suit schedule property was kept jointly in the name of plaintiff, defendants No.1, 2, 5 and father of defendant No.20. According to the plaintiff, the suit property has not been partitioned till today and the plaintiff and defendants continue to be in joint possession and enjoyment thereof. The defendant No.1 and 2 got the katha mutated in their names for an extent of 12 acres 29 guntas instead of 10 acres 20 guntas. Further, the defendant No.1 in collusion with revenue authorities and in

association with defendant No.4 has illegally transferred 6 acres of land in favour of the defendant No.4. Therefore, the plaintiff claims that he entitled to a legitimate share in the suit schedule property.

11. As per Section 101 to 103 of Indian Evidence Act, it is the burden bestowed on the plaintiffs to prove their case. Even the legal maxim which reads as “actori incumbit onus probandi” also sheds more light in this aspect. It is settled preposition of Law that the plaintiff has to prove his case on his own strength and he cannot take advantage of weakness of the defendant’s case to succeed.

12. In order to substantiate the case of the plaintiff, he himself stepped into the witness box and examined as P.W.1 by filing affidavit in lieu of oral examination in chief and in the affidavit of chief examination, he reiterated the averments of plaint. In support of oral evidence, he has produced 02 documents and marked as Ex.P.1 and P.2.

13. Per contra, Defendant No.1 to 8 have not disputed the relationship between the parties and have admitted that the suit schedule property is ancestral in nature. They have further admitted factum of partition. Therefore, there is no dispute with respect to the nature of the suit schedule property or relationship between the parties. The defendants have further admitted that legal heirs of three sons of propositus Karichannajja are each entitled to equal share in the suit schedule property. It is also admitted that plaintiff and other legal heirs have constructed houses on the portion of the suit schedule property.

14. The Ex.P1 and Ex.P2 substantially support and corroborate the admissions made by the both parties. The content

of Ex.P2 is consistent with the oral admission placed on record and thus reinforce the case of the plaintiff. In the absence of any material contradiction or rebuttal, these exhibits carry significant evidentiary value and can be safely relied upon for the purpose of adjudication. It is a settled principle of law that admitted facts need not be proved as provided under Section 58 of Indian Evidence Act. Therefore, in view of the clear admission made by both parties, suit schedule property is held to be the ancestral and joint property of the plaintiff and defendants and said fact does not require further proof.

15. The controversy arises with respect to the extent reflected in the revenue records. Though it is admitted that an extent of 2 equals 20 was kept in joint under the partition, no documentary evidence is forthcoming to substantiate the said claim. On the contrary, Ex.P1 does not support the existence of such extent as a separately identifiable joint property. Ex.P1 reveals that the total extent of the land in Survey No.14 measures 12 acres 29 guntas including kharab of 11 guntas. Out of this extent, defendant No.1 and 2 are entitled only to 10 acres 20 guntas as per the partition deed and admitted by both parties. Therefore the remaining extent available works out to 1 acre 38 guntas. Accordingly, upon excluding the share of defendant No.1 and 2, the remaining extent of 1 acres 38 guntas alone is available for consideration for further partition among the parties. Accordingly, the description of extent and measurement of the suit schedule property as furnished by the plaintiff is not accurate and requires correction in terms of the revenue records.

16. The plaintiff has asserted 4/9th share in the suit

schedule property. The defendants have also admitted that all the legal heirs of propositus Karichannajja are entitled to equal share in the suit schedule property. Thus, the entitlement of the lawful heirs to claim partition is not in dispute. However, the plaintiff has specifically contended that defendant No.4 is a stranger to joint family and therefore not entitled to any share in the suit schedule property. Though defendant No.4 has denied the said contention, no documentary evidence has been produced to establish that defendant No.4 is a member of the joint family. Further, defendant No.4 has failed to explain the basis on which she claims membership in the joint family or entitlement to a share in the suit schedule property. In the absence of any cognate evidence or material to substantiate such claim, the plea of defendant No.4 cannot be accepted. Accordingly, it is that defendant No.4 has failed to prove the membership in the joint family and is therefore not entitled to any share in the suit schedule property.

17. It is admitted by both plaintiff and defendants that the legal heirs of propositus Karichannajja are entitled to equal share in the suit schedule property. As per genealogical tree, the propositus Karichannajja had three sons namely Balaiah, Giddaiah and Channappa. Accordingly each branch of the said three sons is entitled to 1/3rd share in the suit schedule property. Therefore, the Defendant No.1 to 3, being the legal heirs of Balaiah (the first son of Karichannajja), are together entitled to 1/3rd share. The second son of Karichannajja i.e. Giddaiah had 4 sons namely Balappa, Sannabalappa, Channappa and Sanakengappa. The 1/3rd share allotted to the branch of Giddaiah is therefore divided equally among his 4 sons each being entitled

to 1/12th share in the suit schedule property. Accordingly the plaintiff and defendant No.9 to 11 being the legal heir of Balappa who is the first son of Giddaiah are 4 in number and each is entitled to 1/48th share and defendant No.12 to 14 being the legal heirs of Sanna Balappa who is the second son of Giddaiah are 3 in numbers and each is entitled to 1/36th share, defendant No.15 to 17 being the legal heir of Channappa who is the third son of Giddaiah are 3 in numbers and each is entitled to 1/36th share and defendant No.18 and 19 being the legal heir of Sannakengappa who is the fourth son of Giddaiah are in two numbers and hence each is entitled to 1/24th share. The third son of Karichannajja i.e. Channappa had 2 sons namely Defendant No.5 and Sannabalappa. The 1/3rd share allotted to the branch of Channappa is therefore divided equally among his 2 sons each being entitled to 1/6th share in the suit schedule property. Accordingly the defendant No.5 and his sons i.e defendant No. 6 to 7 are together entitled to 1/6th share and defendant No.20 being the legal heir of Sanna Balappa who is the second son of Channappa is entitled to 1/6th share. Accordingly, the plaintiff and defendant No.1 to 3, 5 to 20 are entitled to share in the suit schedule property, subject to the extent and measurements being determined in accordance with the relevant revenue records. Hence, Court answers **issue No.1 in the affirmative and issue No.2 and 3 in the partly affirmative.**

18. **Additional issue No.1:** The contention of defendants No.1 to 8 is that all the legal heirs of Giddaiah and Channappa were not impleaded in the suit. Therefore, according to them, the suit is bad for non-joinder of necessary parties. However, the

records reveal that subsequently the plaintiffs have impleaded all the legal heirs of Giddaiah and Channappa as defendant No.9 to 20 in the present suit. Thus the necessary parties have already been brought on record. When such being the case, the defect if any regarding non-joinder of necessary parties has been cured by impleading them during pendency of the proceedings. Therefore, it cannot be said that the suit is bad for non-joinder of necessary parties. Accordingly, Court proceeds to answer the **Additional Issue No.1 in the negative.**

19. **Issue No.4:-** In view of aforesaid discussion and reasons on issue No.1 to 3 and additional issue No.1, court proceeds to pass the following:-

ORDER

The suit of plaintiff is partly decreed.

It is hereby declared that, the plaintiff, defendant No.9 to 11 are entitled for 1/48 share each, defendants No.12 to 17 are entitled for 1/36 share each, defendant No.18 and 19 are entitled for 1/24 share each, defendants No.1 to 3 are together entitled for 1/3rd share, defendants No.5 to 8 are together entitled for 1/6th share and defendant No.20 is entitled to 1/6th share in suit schedule property with an extent of 1 acre 38 guntas by partition by metes and bounds.

The defendants are directed to pay necessary Court fee to engross their shares.

No Order as to cost.

Draw preliminary decree accordingly.

Office is hereby directed to register FDP proceedings suo moto and put up after 30 days in terms of decisions of the Hon'ble Supreme Court of India in the matter of Kattukandi Edathil Krishnan and another V/s Kattukandi Edathil Valsan and others in Civil Appeal No.(S).6406-6407/2010 decided on 13.06.2022.

The plaintiff is directed to take necessary steps under Order XX Rule 18 of the Code of Civil Procedure, 1908 for final Decree in the Final Decree Proceedings and further directed to furnish copy of Judgment and Preliminary Decree and other necessary documents for the purpose of Final Decree Proceedings.

The parties are directed to appear on 01.07.2026 without waiting for further notice from the Court.

(Dictated to the stenographer directly on computer, typed by him and corrected by me, then pronounced in the open Court on this the 30th day of April 2026)

(Hema .H.R.)
Prl. Civil Judge & JMFC.,
Challakere

ANNEXURE**I. Witnesses examined on behalf of plaintiff/s:-**

P.W.1 : Balaraja @ Bhoothappa

II. Witness examined on behalf of defendant/s:-

-Nil-

III. Documents marked on behalf of plaintiff/s:-

Ex.P.1 : RTC

Ex.P.2 : Copy of partition deed

III. Documents marked on behalf of defendant/s:-

-Nil-

**Prl. Civil Judge & JMFC.,
Challakere.**