

KACD320020552019



**IN THE COURT OF PRL. CIVIL JUDGE
AND JMFC, AT HIRIYUR**

Present :- **Shridhara, H.D.,**
B.A. L.L.B,
Prl. Civil Judge & JMFC,
Hiriyuru.

Dated: this 6th day of April, 2026

O.S. No.139/ 2019

- PLAINTIFF/S :** 1) Sri. Chandrappa
S/o Ramesh,
Aged about 22 years,
- 2) Sri. Manjunatha
S/o Ramesh,
Aged about 20 years,

Both are R/o Doddagatta Village,
Kasaba Hobli, Hiriyur Taluk,

(By Sri. B.N.T., Advocate)

//Versus//

- DEFENDANTS:** 1) Lingappa
S/o Mangappa,
Aged about 85 years,
- 2) Chandramma
W/o Mahalingappa,
Aged about 60 years,

- 3) Ramesha S/o Lingappa,
Aged about 50 years,
- 4) Erappa S/o Mangappa,
Aged about 78 years,
- 5) Sannappa S/o Mangappa,
Aged about 65 years,

All are R/o Doddagatta
Village, Kasaba Hobali,
Hiriyur Taluk,

(D-1 & 5 Abated)
(D-2 Exparte)
(D-4 by Sri.T.M., Advocate)
(D-3 Dismissed)

1.	Date of institution.	06.09.2019.		
2.	Nature of the Suit.	Partition and Separate possession,		
3	Date of commencement of recording evidence	22.02.2024.		
4.	Date of closing of recording evidence	22.02.2024.		
5.	Judgment pronounced	06.04.2026		
6.	Total duration.	Year/s 06	Month/s 07	Day/s 00

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

JUDGMENT

The plaintiffs have filed the present suit seeking the reliefs of partition and separate possession in respect of the suit schedule properties against the defendants.

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

It is the case of the plaintiff that one mangappa had six sons and after his death his sons succeeded to his estate and effected partition of the joint family properties. In the said partition suit schedule Item No. 1 and 2 fell into the share of defendant no. 1 and suit Schedule Item No. 3 Remained as joint family property of plaintiff and defendant no. 1 to 3. The suit schedule properties are ancestral joint family properties of the plaintiff and defendant no. 1 to 3 and are in joint possession and enjoyment of the suit Item No. 3 property. Defendant no. 1 is kartha of the joint family and he has not absolute ownership over the suit's properties. Defendant no. 3, the father of the plaintiff, left the village about 15 years back and his whereabouts are not known. Defendant no. 2 married and

residing in her husband's house. When such being the case, In order to defeat the rights of the plaintiff over the suit Schedule Item No. 3, the defendant no. 1, in collusion with the defendant no. 4 and 5, has created sale deed dated 14.11.2018 in their favour, without consent of the defendant no. 2 and 3, and the said sale deed is not binding upon the plaintiff's share. When the plaintiff's Demanded the partition. Defendant no. 1 refused to give their share. Hence, plaintiff has filed suit.

3. After service of summons, defendants No. 1, 4 and 5 appeared through counsel and filed written statement. Despite due service of summons the defendant No.2 not appeared before this court and consequently he is placed exparte. Since no proper stops has been taken, suit against defendant No.3 is dismissed.

4. Gist of the written statement is as follows:-

Defendant No.1, 4, 5 by filing written statement, have admitted the relationship of the plaintiffs with defendant no. 1. They contended that in the earlier partition, suit schedule Item No. 1 and 2 fell into the share of defendant no. 1 and he is

in exclusive possession and enjoyment of the same. It is further contented that the suit No. 3 is the self-acquired property of defendant no. 1, as the same was granted in his favour by the Government of Karnataka and he is the absolute owner in possession of the same. The defendant no. 3 left the house and village about 30 years back and his whereabouts are not known and defendant no.1 was living alone. For his legal and family necessities, the defendant no. 1 sold the suit schedule Item No. 3 in favour of defendant no. 4 and 5 under the registered sale deed dated 14.11.2018 and since then, the defendant no. 4 and 5 are in possession and enjoyment of the property and Kata stands in their name and they have developed the property. Hence, they pray to dismiss the suit with costs.

5. On the basis of pleadings and materials available on record, the issues are framed as under:-

ISSUES

1. Whether the plaintiffs prove that suit schedule properties are the joint family properties of themselves and

defendant No.1 to 3 and they constitute a Hindu undivided family?

2. Whether the plaintiffs proves that they are children of defendant No.3?

3. Whether the defendant No.1 proves that suit schedule property item No.3 is his self acquired property?

4. Whether the plaintiffs are entitle for the relief south for?

5. What Order or decree?

6. To prove their case, the plaintiff No.1 is examined as PW.1. In support of his oral evidence, he produced 08 document at Ex.P-1 to 8 and closed his side evidence. Per contra the defendants are not adduced any evidence.

7. Heard both sides and perused the materials available on record.

8. After careful scrutiny of evidence and material available on record, the findings of this Court to the above Issues are as follows:-

ISSUE No.1 : In the Negative,

ISSUE No.2 : In the Negative,

ISSUE No.3 : In the does not survive for consideration.

ISSUE No.4 : In the Negative,

**ISSUE No.5 : As per final order,
for the following: -**

REASONS

9. ISSUE No.1 :- To prove their case, the plaintiff No.1 himself is examined as PW.1. In support of his oral evidence, he produced 07 documents at Ex.P-1 to 8. Ex.P.1 is the copy Genealogical tree, Ex.P.2 is the certified copy of sale deed dated 14.11.2008, Ex.P.3 is the Certified copy of partition deed dated 20.07.2015, Ex.P.4 is the copy of M.R.No.H13/2018-19. Ex.P.5 is the copy of M.R.No.H1/2015-16, Ex.P.6 is the RTC extract of Sy.No.151 for the 2018-19, Ex.P.7 is the RTC extract of Sy.No.108/9 for the 2018-19, Ex.P.8 is the RTC extract of Sy.No.108/7 for the years 2018-19, but he did not offer himself for cross-examination. Therefore, his cross-examination was taken as nil as per order dated 10.12.2024.

10. The plaintiffs pleaded that the suit schedule properties are the joint family properties of themselves and

defendant no. 1 to 3 and they are members of the Hindu undivided family. But during the pendency of the suit, defendant No.1, 4, 5 died and their legal representatives Are not brought on record. The suit against defendant No. 3 is already dismissed for not taking proper steps. In the absence of necessary parties, this Court cannot decide whether the suit properties are joint family properties or not. Therefore, the plaintiffs have not proved that the suit properties are joint family properties. The plaintiffs are the undivided family members. Hence, **point No.1** answered in the **Negative**.

11. Issue No. 2 :- The plaintiffs pleaded that they are the children of defendant no. 3. To prove, the plaintiffs have produced the genealogy tree at Ex.P-1 issued by the Tashildar, Hiriyyuru. Moreover, the defendants have not disputed the relationship between the plaintiffs and defendant No.1 to 3 and no contrary evidence is placed before this court by the defendants. But the P.W.1 has not offered for cross examination. As such an adverse inference can be drawn against the P.W.1 and his evidence cannot be relied upon.

Therefore, the plaintiffs have failed proved that they are the children of defendant No. 3. Accordingly, **Issue No.2** is answered in the **Negative**.

12. Issue No. 3 :- The defendant no. 1 contended that the suit under Item No. 3 is his self-acquired property and he sold the same in favour of defendant no. 4 and 5. But the defendant no. 1, 4 and 5 died during the pendency of the suit and the plaintiffs have not brought their legal representatives on record. Hence the suit against them has abated. Therefore This issue does not survive for consideration.

13. Issue No. 4:- The plaintiffs have sought for partition and separate possession. In a suit for partition, all co-sharers and purchasers are necessary parties. In this case, defendant No.1 and 3 to 5 are the necessary parties. But the suit against defendant no. 1, 4 and 5 abated and the suit against defendant no. 3 is dismissed. Therefore necessary parties are not before this court. Therefore, this Court cannot pass an effective decree. Hence, the plaintiffs are not entitled for the relief of

partition and separate possession. Hence, **Issue No.4** and is answered in the **Negative**.

14. ISSUE No.5:- In view of discussion on issue No 1 to 4, this Court proceed to pass the following :-

ORDER

The suit of the Plaintiff is hereby dismissed with costs.

Draw decree accordingly.

(Dictated to the stenographer directly on Desk-top, the same is corrected by me and then pronounced by me in the open Court on this the 6th day of April, 2026)

(Sri.Shridhara. H.D.)
Prl Civil Judge & JMFC,
Hiriyur.

ANNEXURES

List of the Witnesses examined on behalf of Plaintiff

P.W.1 : Chandrappa,

List of the Documents marked on behalf of Plaintiff:

Ex.P.1 : Copy of Genealogical tree,

Ex.P.2 : Certified copy of sale deed dated 14.11.2008.

Ex.P.3 : Certified copy of partition deed dtd.20.07.2015.

Ex.P4 : Copy of M.R.No.H13/2018-19.

- Ex.P.5 : Copy of M.R.No.H1/2015-16,
Ex.P.6 : RTC extract of Sy.No.151 for the 2018-19,
Ex.P.7 : RTC extract of Sy.No.108/9 for the 2018-19,
Ex.P.8 : RTC extract of Sy.No.108/7 for the years 2018-19,

List of the Witnesses examined on behalf of Defendants:

-----NIL-----

List of the Documents marked on behalf of Defendants:

-----NIL-----

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