



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

-: P R E S E N T :-

Sri.YOGESHA M.R.,B.A.LLB.,
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

*Dated this the **06th day of AUGUST, 2026.***

OS.No.117/2023

PLAINTIFF/S

: Smt.Pavithra.D.M,
Aged about 33 years,
D/o D.S.Moganna Gowda,
W/o Sathisha,
R/at Anedibba,
Gonibeedu Village & Hobli,
Mudigere Taluk.
(Represented by Smt.KV., Advocate)

V/s

DEFENDANT/S

- :1.** D.S.Moganna Gowda,
S/o late D.A.Somgowda,
Aged about 56 years.
- 2.** Sri.Prasanna.D.M,
Aged about 35 years,
S/o D.S.Moganna Gowda.

Both are R/at Devavrunda Village
& Post, Gonibeedu Hobli,
Mudigere Taluk.

- 3.** A.J.Adharsha,
Aged about 49 years,
S/o late B.M.Jayashankar,
R/at Bettagere Village & Post,
Banakal Hobli,
Mudigere Taluk.
(Dft-1 & 2 - **Ex-parte**)
(Dft-3 Represented by Sri.**DS.**, Adv)

Date of Institution of the suit : **21.11.2023**
Nature of the suit : **PARTITION AND SEPARATE
POSSESSION & DECLARATION.**
Date of Commencement of
evidence : **11.06.2025**
Date of pronouncement of
Judgment : **06.08.2026**
Total Duration : **YEAR/S MONTH/S DAY/S**
02 08 18

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

∴ J U D G M E N T ∴

The plaintiff has filed the present suit against the defendants for the relief of partition and separate possession in respect of the suit schedule property and for declaration about cancellation of the sale deed dated 02.11.2015.

2. The brief facts of plaintiff's case is that;

(a). The plaintiff and defendants No.2 are the children of defendant No.1 and grand children of late, D A.Sannegowda., the plaintiff is married and she is residing with her husband in the above address address as given in the cause title. In proof of the same the plaintiff is producing the genealogical tree. That during the life time of the D A Sanne gowda he was acquired some immovable properties. the said D A Sanne gowda is died on 20-5-2000, The photo copy of the same is produced herewith. The property more fully detailed in the schedule have been acquired by the

grandfather of the plaintiff and defendant No.2. Hence the suit schedule property is the ancestral property of the plaintiff and defendants, to show that the plaintiff herewith producing the certified copies of the RTC pahani and M R extract an certified copy of the partition deed.

(b). During the life time of the grandfather of the plaintiff late, D A Sanne gowda the defendant No: 1 and his brother DS Manjunatha and said D A Sanne gowda have partitioned the family properties through partition deed SR No: 116/1990-91 dated: 25-05-1999 In the said partition the suit schedule property was fallen to the share of the DA sannae gowda who is the grandfather of the plaintiff and defendant No: 2 who is the father of the plaintiff and defendant No: 1 as per the recital of the above said partition deed after the death of the DA Sanne gowda his share of the

property shall go to the defendant No: 1. after the death of the said D A Sanne gowda the schedule property mutated to the name of the defendant No: 1 hence the schedule property is the ancestral property of the plaintiff and defendant No: 2.

(c). After the death of the grandfather of the plaintiff and defendant No: 2 the suit schedule property is in possession, occupation, cultivation and enjoyment of the joint family of the plaintiff and defendants since the schedule property was fallen to the share of the late, D A Sanne gowda, after his death transferred to the name of the defendant No:1 the plaintiff and defendants are the legal heirs of late D A Sanne gowda, hence the plaintiff has got $1/3^{\text{rd}}$ share in the suit schedule property. That since from the child hood of the plaintiff, the defendant No: 1 is not

properly managing his share property and schedule property and also defendant No: 1 is not looking after the plaintiff and her late mother Smt, Kasturi, the defendant No: 1 was deserted the late mother of the plaintiff and plaintiff and defendant No: 2, the plaintiff was took marriage in the year in the expenses of her grandmother who was the aunt of the plaintiff late mother. the defendant No:1 is not doing his duty as a father in his life, The defendant No: 1 neglected the plaintiff therefore the plaintiff has requested the defendants No: 1 to partitioned the schedule property and give her legitimate share in the schedule property in spite of the repeated request and demand the defendant No: 1 have not come forwarded to effect the partition of the schedule property. But intentionally the defendant No: 1 prolonging the same by one or the other pretext. Hence, that on 10-9-2015 the plaintiff has demanded for partition the schedule

property with the defendant No: 1 but the defendant No: 1 have not taken any steps in this regard. the plaintiff and defendant No: 2 has got 1/3rd share in the schedule property.

(d). The defendant No: 1 has got no absolute right over the suit schedule property, yet the defendant No:1 has fraudulently executed a register sale deed with respect to the suit schedule property, in favor of the defendant No: 3 under register sale deed bearing SR.No: 1492/2015-16 illegally behind the back of the plaintiff the defendant No:1 has no exclusive right to sell the suit schedule property. the plaintiff and defendant No: 2 have also got share in the suit schedule property. Recently the plaintiff came know about the illegal act of the defendant No: 1 immediately after coming to know the same when the plaintiff approached the revenue authorities and obtained the revenue records then

it was learnt that the defendant No: 1 has sold the suit schedule property in favor of defendant No: 3, immediately the plaintiff has enquired with the defendant No:1 but he has given evasive reply to the plaintiff, for which the defendant No: 3 and his men are threatened the plaintiff. as such the alleged sale deed is illegal, void and same is null and void and the said sale deed is not binding on the plaintiff. Therefore the said sale deed is liable to be cancelled, Hence this suit filed for partition of the schedule property. *Hence, this suit.*

3. On service of summons, the defendant No.3 appeared through his counsel and filed written statement from his side by denying the plaintiff's claim. In spite of service, the defendant No.1 & 2 remained absent, hence they were placed Ex-parte.

4. The brief facts of the written statement of the defendant No.3 is as follows:-

(a). The uncle of the plaintiff i.e., D.S.Manjunath has filed suit against the defendant No.1 before Addl. Civil Judge, Mudigere in OS.No.16/2008 with respect to the suit schedule property and which is dismissed and further the said judgment was challenged by D.S.Manjunath before the 1st Addl. Senior Civil Judge, Chikkamagaluru in RA.No.50/2009 and the same is also dismissed and confirmed the judgment of the trial court. The grandfather of plaintiff D.A.Sannegowda, her uncle D.S.Manjunath and defendant No.1 D.S.Moganngowda have partitioned the properties on 25/05/1990 under a registered Partition Deed bearing document No. 116/90-91 and under which the suit schedule property was allotted to the share of D.A.Sannegowda grandfather of plaintiff and father of

defendant No.1 D.S.Mogannagowda. Further it is recited in the said Partition Deed that the suit schedule property shall go to defendant No.1 D.S.Moganngowda after the death of D.A.Sannegowda. That the said recital is a last WILL of late D.A.Sannegowda and after the death of D.A.Sannegowda the property is mutated to the name of defendant No.1 and hence either the plaintiff or defendant No.2 have no right over the suit schedule property.

(b). It is submitted that Grandfather of plaintiff, defendant No.2 and father of defendant No.1 has partitioned the property and share which is allotted to the grand father D.S.Sannegowda has become his absolute property. That the share which is allotted to the share of D.S. Moganna gowda under the Partitioned deed mentioned above are the ancestral property of plaintiff and defendant and not the

property which is allotted to the share of grand father of plaintiff. Since the properties are severed and divided the share which is allotted to the grand father is his own property and upon which none i.e., plaintiff, defendant No.1 and 2 have no right whatsoever. That the grandfather of plaintiff has on his own will and accord as his last wish has bequeathed the suit schedule property to his son Defendant No.1 and the said property is considered to be self-acquired property and which will not classify as ancestral property.

(c). That the plaintiff has claimed the relief of declaration to declare the sale deed is not binding on them and it amounts to relief of cancelation of sale deed and for which the plaintiff ought to have paid the court fee on the market value of the item No.1 of suit schedule property and plaintiff has not paid the court fee and hence the court fee

paid is insufficient and hence the suit is not maintainable. That the plaintiff has no right to file the present suit as she has not inherited any property which is already partitioned between her father, grandfather and uncle. That any right vest with her to get any share in the property she has to file suit against her father and brother only to the properties which her father has inherited and not to the properties which are allotted to the share of her grandfather. That this defendant has purchased the property from the defendant No.1 as the same is acquired by him through a last willingness of his father D.A.Sannegowda and hence the same is legally valid. *Hence, prayed to dismiss the suit of the plaintiffs with cost.*

5. On the basis of the above pleadings, this court has framed the following issues;

-. ISSUES :-

- 1. Whether plaintiff proves that the plaint schedule property is the ancestral property of herself and defendants No.1 and 2 ?*
- 2. Whether plaintiff proves that she has got 1/3rd share in and over the plaint schedule property ?*
- 3. Whether the plaintiff proves that the defendant No.1 has sold the plaint schedule property in favour of defendant No.3, without having got absolute right over the said property ?*
- 4. Whether the plaintiff is entitled for the reliefs as claimed in the plaint ?*
- 5. Whether order or decree ?*

6. In order to prove the case, the plaintiff examined herself as PW.1 and adduced as many as 9 documents as per Ex.P1 to P9. On the other hand, defendant No.3 examined himself as DW.1 and adduced as many as 14 documents as per Ex.D1 to D14.

7. Heard the arguments and perused the materials available on record.

8. On the basis of oral and documentary evidence put forth by parties, this court findings on the above issues are as under;

ISSUE NO.1	: NEGATIVE
ISSUE NO.2	: NEGATIVE
ISSUE NO.3	: NEGATIVE
ISSUE NO.4	: NEGATIVE
ISSUE NO.5	: As per the final order for the following;

-. R E A S O N S :-

ISSUE NO.1 TO 3:-

9. Since these issues are interrelated to each other, they are taken up together in order to avoid the repetition of facts and better appreciation of evidence.

10. There is no dispute between the relationship of plaintiff and defendants No.1 and 2. The plaintiff herself admitted the suit schedule property is acquired by her father through partition as per the Ex.P2 i.e., registered partition deed and thereafter, the father of the plaintiff i.e., defendant No.1 sold the suit schedule property in favour of defendant No.3 through registered sale deed dated 02.11.2015 i.e., Ex.P8.

11. The plaintiff claiming 1/3rd share in and upon the suit schedule property. At this juncture it is necessary to refer Section 8 of Hindu Succession Act.

8.General rules of succession in the case of males

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter.

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

12. As discussed above, the father of the plaintiff by name Mogannagowda acquired the suit schedule property from his father late Sannegowda as per the Ex.P2 and the said Mogannagowda sold the suit schedule property to the defendant No.3 as per Ex.P8. The plaintiff and the defendant No.2 are the children of above said Mogannagowda i.e., defendant No.1.

13. Mogannagowda and Manjunathagowda are the Class I Legal Heirs of the deceased Sannegowda are equally entitled for the half share in the suit schedule property. But,

as per the Ex.P2-registered partition deed, the above said Sannegowda willing to transfer the suit schedule property to the Mogannagowda, after his demise. Accordingly, the suit schedule property is absolute property of the above said Mogannagowda. The above said Manjunathagowda is no more any rights in the suit schedule property. The same is decided by respective Addl. Civil Judgment Mudigere and Hon'ble Addl. Senior Civil Judge, Chikkamagaluru in OS.No.16/2008 and RA.No.50/2009. The above said judgments and decree and other documents are marked as Ex.D1 to 14. Moreover, the plaintiff not cross-examine the DW1.

14. Further, plaintiff and defendant No.2 are no rights or any share in the suit schedule property as per the above partition deed i.e., Ex.P2. Accordingly, defendant No.1

is absolute right to dispose the suit schedule property. Hence, defendant No.3 is the absolute right over the suit schedule property as per the Ex.P8 i.e., sale deed dated 02.11.2015 executed by the Mogannagowda in favour of defendant No.3. *Accordingly, this Court answered issues No.1 to 3 in the **Negative**.*

ISSUE No.4:-

15. As per discussion issue No.1 to 3, plaintiff is failed to prove that suit schedule property is the ancestral property of the herself and defendants No.1 and 2 and she has share in the suit schedule property and defendant No.1 without having absolute right sold the suit schedule property in favour of defendant No.3. Further, this is the third round litigation before this court and defendants No.1 and 2 are not appeared before the Court and also plaintiff is examined as PW1 and marked Ex.P1 to 9 documents, but

later she is not tender for cross-examination herself. As per the conduct of the parties, it appears that the suit is in the nature of vexatious. Hence, *this court answered the Issue No.4 in the **Negative.***

ISSUE No.5 :-

16. In view of findings on above issues, this court proceeds to pass the following;

ORDER

The suit of the plaintiff is hereby dismissed with the cost of Rs.5,000/-.

Draw decree accordingly.

*(Dictated to the Stenographer directly in computer, revised, corrected by me and then pronounced in the open court on this the **06th day of AUGUST, 2026.**)*

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

:- ANNEXURES :-**List Of Witnesses Examined On Behalf Of Plaintiff:-**

PW.1 : PAVITHRA.D.M

List Of Documents Got Marked On Behalf Of The Plaintiff:-

Ex.P1 : Genealogical Tree

Ex.P2 : Certified copy of registered partition deed
Dt:25.05.1990

Ex.P3-5 : Certified copies of mutation register extracts

Ex.P6, 7 : Certified copies of ILR & RR extracts

Ex.P8 : e-Certified copy of sale deed

Ex.P9 : RTC Extract in respect of Sy.No.102

List Of Witnesses Examined On Behalf Of Defendants:-

DW.1 : B.J.ADARSH

List Of Documents Got Marked On Behalf Of Defendants:-

Ex.D1 : Certified copy of plaint in OS.No.49/2016

Ex.D2, 3 : Certified copies judgment & decree in
OS.No.16/2008

Ex.D4, 5 : Certified copies judgment & decree in
RA.No.50/2009

Ex.D6 : Certified copy of plaint in OS.No.49/2016

- Ex.D7 : Certified copy of WS in OS.No.49/2016
- Ex.D8 : Certified copy of amendment plaint in
OS.No.90/2012
- Ex.D9-12 : Certified copies of amendment plaint in
OS.No.90/2012
- Ex.D13, 14: Certified copies judgment & decree in
OS.No.90/2012

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