

KADG210005512025



Presented on : 29-07-2025
Registered on : 29-07-2025
Decided on : 08-06-2026
Duration : 0 years, 10 months, 10 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: CHANNAGIRI**

Present:
Soubhagya.B.Bhusher
B.A.,LL.M
Senior Civil Judge & J.M.F.C.,
Channagiri

DATED; THIS THE 08th DAY OF JUNE 2026

R.A.NO.50/2025

**Appellants/
Defendant No.2 & 3**

1. Smt.Lakkamma W/o Late Veerappa, Age: 60 years,
2. Thimmappa S/o Late Rangappa, Age: 69 years, Both are R/o: Yarehalli, Tq: Channagiri, Dist: Davanagere.

(By Sri.H.Thippeshi.,Adv.,)

V/s

**Respondents/
Defendant No.1 &
Plaintiffs**

1. Smt.Thimmakka W/o Late Gadrappa, Age: 74 years,
2. Smt.Gowramma W/o Late Basappa, Age: 62 years,

3. Smt.Rudramma W/o Late Thimmappa,
Age: 56 years, All are R/o: Yarehalli,
Tq:Channagiri, Dist: Davanagere.

(By Sri.B.Rudrappa.,Adv.,)

1.	Date & nature of decree appealed against.	Judgment and decree passed in O.S.No.243/2022 dated: 20.03.2024 on the file of II Addl. Civil Judge & J.M.F.C., Channagiri.		
2.	Date of Institution of the appeal.	29.07.2025		
3.	Date of Judgment.	08.06.2026		
4.	Duration of the Appeal.	Year	Month	Days
		0	10	10

(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C.,
Channagiri

JUDGMENT

The present appeal is preferred by the appellants/defendant No.2 & 3 under Order 41 Rule 1 of C.P.C., against the respondents/defendant No.1 and the plaintiffs to set aside the judgment and decree passed in O.S.No.243/2022 dated: 20.03.2024 on the file of II Addl. Civil Judge and J.M.F.C.,

Channagiri by allowing the appeal.

2. The appellants were the defendant No.2 and 3 and the respondents were the defendant No.1 and the plaintiffs before the trial court. Thus, they are referred to by the same rank, in this case.

3. The summary of the suit that was filed by the plaintiffs against the defendants for the relief of partition and separate possession of 1/5th each share in the suit schedule property. The suit schedule property is landed property, which is described as plaint suit schedule. It is averred that the Rangappa S/o Siddappa and his wife Tulsamma are parents of the plaintiffs and the defendant No.1 to 3. The Rangappa S/o Siddappa and his wife Tulsamma were died intestate. The said Rangappa is the original propositors of joint family and he died intestate leaving behind the plaintiffs and the defendants as his legal heirs. The said Rangappa enjoyed the suit schedule property during his lifetime along-with his family. After his death his children who are the plaintiffs and the defendants continued with the peaceful possession and enjoyment of the suit schedule property by cultivation. After the death of their father/Rangappa the khata and the mutation of the suit property got mutated in the name of Erappa and Thimmappa, who are brothers of the plaintiffs by inheritance. Such being the case the Erappa also died leaving behind his wife who is the defendant No.2. Further averred that on 21.05.2022, the plaintiffs demanded their legitimate share in the suit schedule property with the defendants, but the defendants refused to effect partition. Hence,

the plaintiffs have constrained to file this suit.

4. In the trial court the defendant No.2 and 3 have appeared through their counsel and contest the suit. The defendant No.1 inspite of service of the suit summons did not appear before the court. Hence, the defendant No.1 placed exparte. In the written statement the defendants admitted the genealogy as pleaded in the plaint para No.2 and admits the relationship. The defendants have denied the other averments pleaded by the plaintiffs. It is specifically pleaded that the plaintiffs and the defendant No.1 are given to marriage by incurring all marriage expenditures by the husband of the defendant No.2 and the defendant No.3. To incur the said expenditure they have made loans. The plaintiffs left their marital home and resided in the defendants village with an intention to give trouble and harassment to these defendants. The plaintiffs and the defendant No.1 have no any right over the suit property. Hence, prayed to dismissal of the suit with cost.

5. Based upon the above pleadings, the trial court has framed the following;

ISSUES

1. Whether the plaintiffs prove that the plaintiffs and defendants are the members of the joint family and suit schedule property is belong to joint family property?
2. Whether the plaintiffs prove that they are entitled for the 1/5th share in the suit schedule property?

3. What order or decree?

6. In the trial court, the plaintiff No.1 herself examined as PW.1 and 3 documents were marked at Ex.P.1 to 3. Per contra, the learned counsel for the defendants has submitted that they have no defendant evidence. Hence, there is no defendants evidence. Except cross examination of PW.1.

7. After trial, the trial court has answered the issue No.1 and 2 the Affirmative and consequentially decreed the suit of the plaintiffs. Feeling aggrieved by the said impugned judgment and decree, the defendant No.2 and 3 have preferred this appeal on the grounds that trial court has failed to properly examine the documents and passed the judgment and decree. Further the trial court has failed to properly examined the plaint and written statements. It is stated that suit schedule property originally belonged to the appellants' father Rangappa S/o Siddappa, and was granted to him under a grant order. However, the boundaries of the said property were not properly described. At the time of filing the original suit the respondent No.2 and 3 failed to furnish correct and consistent boundaries and instead submitted incorrect boundaries relating to the land granted to the appellant No.2. The boundaries mentioned in the plaint clearly indicate that the suit property has always been in the possession and enjoyment of the appellants. From then till date, the appellants have been in lawful possession and enjoyment of the said property and are its

absolute owners and title holders. The appellants are the recorded khatedars and are in actual possession. The respondents, by suppressing these material facts, have obtained an order, and the trial court has failed to properly appreciate these aspects. Despite the respondents having no boundary documents relating to the suit property, they have filed the suit with an intention to encroach upon the appellants' lawful property, which has not been properly considered by the trial court.

8. The respondents have failed to produce the true and correct genealogical tree of both the plaintiffs and the defendants before the trial court. In the present case, the husband of the appellant No.1 had five legal heirs, namely Rudramma, Siddappa, Basavarajappa, Parameshwarappa and Mamata. Among them, the second son Siddappa is deceased. He is survived by his wife. Further pleaded that the said five children are the lawful legal heirs of Erappa and his wife Lakkamma, and each of them are entitled to an equal share in the suit schedule property. However, the respondents have failed to implead them as necessary parties before the trial court and have also not included them in the genealogical tree. The respondent No.2 and 3 suppressing these material facts, the respondents filed the suit and obtained an order. The Trial Court has failed to properly examine these aspects. Further though the respondents led evidence, the trial court has not duly considered the testimony of the said witnesses. Trial court has also failed to consider the contentions raised by the defendants in their written statement. Moreover the trial court has

not properly appreciated the statements made by the appellants and has not provided an opportunity for adducing evidence. The case was disposed off without conducting proper evidence, which is not in accordance with law. Further examination of the appellant's evidence is essential. Thus, the trial Court, without properly considering the above aspects and without appreciating the pleadings, has passed the impugned judgment and decree, which is erroneous. The documents relied upon by the respondents appears to be created documents, and the same has not been properly addressed. Hence, the judgment of the trial court is unsustainable in law. The trial court has passed the judgment without properly examining the documents and the statements made by the respondents. Therefore, the judgment of the trial court is contrary to the principles of social justice, causing irreparable loss and injustice to the appellants. Hence, prays to allow the appeal.

9. Along with the appeal IA No.I was also filed under section 5 of Limitation Act seeking condone the delay of 494 days in filing the appeal.

10. After the appeal was registered, though notices were served on the respondents, the respondents are appeared through their counsel and contested the appeal. The trial court records were secured.

11. Heard the arguments on both the sides and perused the entire trial court records. The following points that arise for my consideration;

1. Whether the appellants have made out sufficient cause for condoning the delay in filling this appeal?
2. Whether the trial court was justified in concluding that the parties are entitled for 1/5th shares each in the suit property?
3. Whether the judgment and decree under appeal are illegal, perverse and against the facts of the case thereby warranting interference by this court? If so to what extent
4. What order or direction?

12. My findings on the above points are as under;

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Negative.

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

:REASONS:

13. POINT NO.1: The impugned judgment was passed by the trial court on 20.03.2024. The present appeal has been filed on 29.07.2025. As per the provisions of the limitation act the appeal has to be filed within 30 days from the date of judgment by excluding copying date if any. On perusing the certified copy of the

judgement, it is disclosed that copy was applied by the defendant No.2 and 3 on 01.07.2025 and it was received by them on 03.07.2025. So, copying days cannot be excluded. The appeal should have been filed on or before 19.04.2025 but it has been filed on 29.07.2025.

14. According to the appellant No.1 they were completely unaware of the trial court judgement and decree. Further they are elderly, suffer from health issues, and frequently travel to out of station location for daily wages labour/coolie work in arecanut plantations along-with their children. Due to their financial struggles, health, and being away for work, they could not meet their advocate in time to file the appeal within legally prescribed window. Further stated that they only discovered that a final order had been passed when the respondents filed a final decree proceedings against them, and the court subsequently issued a notice to their address. After receiving this notice, they consulted their lawyer and initiated this appeal. Hence, there is delay of 494 days in preferring the appeal. The respondents after appearing before this court have strongly resisted this application by filing their written objections. The learned counsel for the respondents has contends that applicants were parties to the original suit and cannot pleaded ignorance of the final outcome. It is argued that the reason assigned, such as out of station labour and illness, are generalized excuses without specific dates or documents and do not constitute sufficient cause under the law.

15. This court cannot turn a blind eye to the socio-economic realities of rural litigants. The statements show the applicants belong to a marginalized, migratory labor class. Legal technicalities should not be rigidly applied to deny justice to the poor who are forced to migrate for survival. Further the record indicates that the appellants took immediate action following the service of the notice in Final decree proceedings. This substantiates their bonafied claim that they lacked active, prior knowledge of the main suit's final decree. Further adhering to the settled principles laid down by the Hon'ble Supreme Court of India, the words "sufficient cause" must receive a liberal construction to advance substantial justice when no gross negligence or deliberate inaction is imputable to the party. Thereby the reasons assigned by the appellants are found satisfactory, and the ground urged constitute sufficient cause to condone the delay. Refusing to condone the delay would cause irreparable hardship to senior citizens involved. It is settled principle that when any appeal has been filed the delay if negligible has to be condoned and the matter has to be heard on merits. In this case, since appeal involves right over immovable property and there has been delay of 466 days. Therefore, the said delay if condoned no prejudice will be caused to the respondents. Therefore, this court is of the opinion that the appellants have made out sufficient cause to condone the delay caused in filing the present appeal. Accordingly, I answered point No.1 in the Affirmative.

16. POINT NO.2 AND 3: These points require common discussion. Hence, to avoid repetition of facts and evidence they are taken up for common consideration. It is the case of the plaintiffs is that this suit schedule property is granted to their father under Darkasthu. Further averred that Rangappa S/o Siddappa and his wife Tulsamma are parents of the plaintiffs and the defendants. The Rangappa S/o Siddappa and his wife Tulsamma were died intestate leaving behind the plaintiffs and the defendants as their legal heirs. The said Rangappa enjoyed the suit schedule property during his lifetime along-with his family. After his death his children who are the plaintiffs and the defendants continued with the peaceful possession and enjoyment of the suit schedule property by cultivation. After the death of Rangappa the khata and the mutation of the suit property got mutated in the names of Erappa and Thimmappa, who are brothers of the plaintiffs by inheritance. Such being the case the Erappa also died leaving behind his wife who is the defendant No.2. Further on 21.05.2022, the plaintiffs demanded their legitimate share in the suit schedule property with the defendants, but the defendants refused to effect partition. Hence, the plaintiffs have constrained to file this suit. In ordered to prove their case, the plaintiff No.1 herself examined as PW.1 and had marked 03 documents before the trial court at Ex.P.1 to 03.

17. On the other hand the defendant No.2 and 3 have appeared and contest the suit. In the written statement they

admitted the genealogy as pleaded in the plaint para No.2 by the plaintiffs and admits the relationship. The defendants have denied the other averments pleaded by the plaintiffs. It is specifically pleaded that the plaintiffs and the defendant No.1 are given to marriage by incurring all marriage expenditures by the husband of the defendant No.2 and the defendant No.3. To incur the said expenditure they have made loans. The plaintiffs left their marital home and resided in the defendants village with an intention to give trouble and harassment to these defendants. The plaintiffs and the defendant No.1 have no any right over the suit property. Hence, prayed to dismissal of the suit with costs. In order to prove their defence, the defendants not adduced any evidence. The learned counsel for the defendants had submitted no defendant evidence.

18. This is a simple suit for partition and separate possession and the plaintiffs had sought for 1/5th each shares over the suit schedule property. In the trial court, after full pledged trial the trial court has made an observation that the suit schedule property was the joint family property of the plaintiffs and the defendant No.1 to 3 and the plaintiffs are the members of the joint family and therefore, decreed the suit of the plaintiffs.

19. On perusal of the judgment, it is apparent that the trial court has considered the pleadings as well as materials on record. The trial court has also considered the aspects whether the suit schedule property has been granted in favour of the Rangappa.

Further on perusal of the judgment, the trial court has also considered the aspect whether the plaintiffs and the defendant No.1 were given to marriage by incurring all marriage expenditure by the husband of the defendant No.2 and the defendant No.3 in lieu of their shares. Infact on perusal of the evidence and documents on record, it apparent that the defendants not produced there is account or documents to show that the plaintiffs and the defendant No.1 was given to marriage by incurring all marriage expenditure and the plaintiffs and the defendant No.1 not claim any rights in the suit property. Infact on perusal of the evidence and documents on record, it apparent that the defendants have not disputed that the suit schedule property is granted in favour of Rangappa. The defendants also not disputed the genealogical tree as placed by the plaintiffs as per Ex.P.1. The defendants also not disputed the relationship as pleaded by the plaintiffs in their plaint.

20. The documents relied by the plaintiffs, clearly reveals that originally the suit schedule property was in the name of their father Rangappa and later it was changed in the names of the defendant No.3 and the Erappa. As per the pleadings the deceased Rangappa is survived by 5 children as the plaintiffs and the defendant No.1, 3 and one Erappa, who is none other than the husband of the defendant No.2/appellant No.1. The plaintiffs have produced Genealogical tree, RTC and mutation extract in respect of the suit schedule property-Ex.P.1 to 3 which shows that the suit schedule property earlier in the name of Rangappa for different

periods and in column No.9 and 12 as per grant. The documentary evidence reveals that the suit schedule property was granted to the Rangappa. The defendants have not disputed the said aspect of grant of the property. Ex.P.2 and 3 goes to show that the suit schedule property is mutated in the names of the defendant No.3 and one Erappa on the basis of inheritance proceedings. It is not the case of the defendants that through that mutation entry parties got partitioned the suit schedule property or oral partition was held prior to the said mutation register No.18/2011-12. In view of these admitted facts, the said mutation entry is nothing but entry with reference to the inheritance proceedings of Late Rangappa. Thus the said property was the joint property of the parties to the suit. Thus, the trial court has correctly observed these documents and granted relief to the parties.

21. The trial court has relied on Section 8 of the Hindu Succession Act and holding that the suit schedule property acquired by the father of the plaintiffs and the defendant No.1 and 3. As per the available evidence on record, he died intestate. Admittedly the parties belong to Hindu Religion and are governed by the Hindu Succession Act. As per the Section 8 of the Hindu Succession Act, the property of a male Hindu, who died intestate, his estate would be devolved upon his Class-I legal heirs. As is held above, the relationship is undisputed fact. The plaintiffs and the defendant No.1 to 3 are Class-I legal heirs to the late Rangappa. Therefore, they entitled equal share in it. Therefore, the

plaintiffs being the daughters of late Rangappa are also entitled equal share in the suit property along-with male issues and their heirs. Further it was held that the available oral as well as documentary evidence reveal that no such partition had taken place amongst, the plaintiffs and the defendant No.1 to 3. Under such circumstance what remains is, the suit schedule property is still in the jointness of the all the Class-I legal heirs of late Rangappa and it is their joint property. Accordingly, the trial court is of the opinion that the suit schedule property is the joint family property of the plaintiffs and the defendant No.1 to 3. As such the plaintiffs are entitled legitimate 1/5th share each in the suit schedule property. It is needless to say that mere oral evidence without being backed up by any documents is of no help to prove that the daughters were given any cash or gold at the time of their marriage or after in lieu of their shares. If at all, if the plaintiffs and the defendant No.1 were given any share in the form of cash or gold then there ought to have been some documentary evidence or at least some witnesses who had seen handing over of the shares. There is no such evidence in the trial court.

22. If loans are raised then repayment is must. When parties take share in lands it goes with the rights and also liabilities attached to it and it is deemed. Further even for the sake of arguments, it is considered that the defendant No.3 and the husband of the defendant No.2 raised various loans and that loans are outstanding to the family, the said property as a joint family

property, that person is equally entitled to share the liabilities, but the defendants have not given an account of the income from the land and have not given the plaintiffs its profit. Therefore, the plaintiffs and the defendant No.1 cannot be held liable for debt. Further even for the sake of arguments, it is considered that the marriage of the plaintiffs and the defendant No.1 were performed by giving dowry or by raising loan as contended it is an altogether different aspect. Because performance of marriage is a moral as well as legal obligation of parents and only for the fulfilment of the such responsibility shares in the joint family property cannot be denied. Therefore, there is no error apparently committed by the trial court in holding that the plaintiffs were entitled for a share.

23. The defendants have taken the contention that the suit of the plaintiffs is bad for non-joinder of necessary parties. All the legal heirs of Erappa are also necessary parties to the suit for partition. As per Order 1 Rule 13 of CPC, all objections regarding non-joinder must be taken at the earliest possible opportunity, specifically at or before the settlement of issues. In this case, the appellants/defendants filed a written statement and participated in the trial without raising this contention. Therefore, the objection is deemed to have been waived. Further the estate of the deceased Erappa was substantially represented by his wife, who was a party to the suit as defendant No.2. In partition suits, while all heirs are necessary, the participation of one primary heir without objection from other co-sharers justifies the decree unless a failure of justice

is proven. Further a decree cannot be reversed on technical grounds of non-joinder unless it affects the merits of the case. Here, the 1/5th share is allotted to Erappa's branch remains secured; how that 1/5th is internally distributed among his 5 heirs can be settled among them without disturbing main decree. The appellants failed to raise the issue of non-joinder at the trial stage and can not be permitted to spring a surprise at the appellate stage to frustrate the decree. The judgment of the trial court is sound and based on the evidence presented. Therefore, there is no error apparently committed by the trial court.

24. The trial court has correctly appreciated the facts and evidence and has applied its mind and come to just and right conclusion that the suit schedule property is the joint family property of the plaintiffs and the defendant No.1 to 3 and decreed the suit of the plaintiffs.

25. Regarding shares allotted to the parties this court is of the opinion that due to changed legal scenario, the allotment of shares have to be reconsidered. As per the documents on record the Rangappa had granted the property. After his death the defendant No.3 and one Erappa got mutated their names as per MR No.18/2011-129. As per the Section 8 of the Hindu Succession Act, the property of a male Hindu, who died intestate, his estate would be devolved upon his Class-I legal heirs. As is held above, the relationship is undisputed fact. The plaintiffs and the defendant No.1 to 3 are Class-I legal heirs to the Late Rangappa. Therefore,

they are each entitled 1/5th shares in the estate of the said deceased person. Therefore, the plaintiffs and the defendant No.1 to 3 are the joint holders of the suit property. Thereby the trial court was justified in allotting 1/5th share each holding that even daughters are entitled for equal shares. Therefore, there is absolutely nothing erroneous on the part of the trial court in calculating the shares. In this case the Rangappa died intestate. Hence, as per section 8 of Hindu Succession Act, all the sons and the daughters became the Class-I legal heirs and all are entitled equal share. Thus there is no merit in the appeal. Therefore, I answered the point No.2 in the Affirmative and point No.3 in the Negative.

26. POINT NO.4: In view of the above stated facts and circumstance, I proceed to pass the following;

ORDER

I.A.No.1 filed by the appellants/defendant No.2 and 3 under section 5 of Limitation Act is hereby allowed. The delay of 466 days in filing this appeal is hereby condoned.

The appeal filed by the appellants/defendant No.2 and 3 under Order 41 Rule 1 of C.P.C., is hereby dismissed with costs throughout.

Consequently, the judgment and decree passed by the II Addl. Civil Judge & J.M.F.C., Channagiri in O.S.No.243/2022 dated: 20.03.2024 is hereby confirmed.

Office is directed to draw decree accordingly.

The office is hereby directed to send back the Trial Court Records along with copy of this judgment and decree.

(Directly dictated on computer script to stenographer, typed by her, corrected by me, signed and then pronounced in open court on 08th day of June 2026)

**(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C
Channagiri**