

KADG210005232019



Presented on : 24-04-2019
Registered on : 24-04-2019
Decided on : 06-08-2026
Duration : 7 years, 3 months, 12 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 06th DAY OF AUGUST-2026

O.S.NO.24/2019

PLAINTIFF

Shivalingappa S/o Late Ujjappa, Age: 60
years, Occ: Agriculturist, R/o:
Santhebennuru, Tq: Channagiri, Dist:
Davanagere.

(By Sri.G.M.Umapathi.,Adv.,)

V/s

DEFENDANTS

1. Rajappa S/o Late Ujjappa, Age: 70 years,
Occ: Agriculturist, R/o: Siddeshwara
Nilaya, House No.696, 10th main, 9th
Cross, Hadadi Road, Srinivas Nagar,
Davanagere.

2. Shivakumar S/o Late Ujjappa, Age: 62 years, Occ: Agriculturist, R/o: Alur, Tq: Channagiri.
3. Kamalamma W/o Late Chandrappa, Age: 62 years, Occ: Agriculturist, R/o: Alur, Tq: Channagiri.
4. Mahendra S/o Late Chandrappa, Age: 40 years, Occ: Agriculturist, R/o: Alur, Tq: Channagiri.
5. Sunanda @ Baby, W/o Sathish, Age: 38 years, Occ: Agriculturist, R/o: Hanumanahalli, Tq & Dist: Davanagere.
6. Roopa W/o Hanumanthappa, Age: 36 years, Occ: Agriculturist, R/o: Lokikere, Tq & Dist: Davanagere.
7. Manjappa S/o Late Chandrappa, Age: 35 years, Occ: Agriculturist, R/o: Alur, Tq: Channagiri.
8. Sadhashivappa S/o Late Siddappa, Age: 75 years, Occ: Agriculturist, R/o: Alur, Post: Kogalur, Tq: Channagiri.
9. Sanjeevamurthy S/o Late Siddappa, Age: 78 years, Occ: Agriculturist, Dead by LR's
- 9(a) Smt. Jayamma S W/o Late Sanjeevamurthy, Age: 76 years, dead by Lr's already on record, as 9(b) to 9(d).

- 9(b) G.S.Ravikumar S/o Late Sanjeevamurthy,
Age: 55 years,
- 9(c) G.S.Thippeshappa S/o Late
Sanjeevamurthy, Age: 53 years, All are R/
o: Alur, Post: Kogalur, Tq: Channagiri.
- 9(d) G.S.Rudresh @ Rudrappa S/o Late
Sanjeevamurthy, Age: 51 years, Occ:
Advocate, R/o: Ajjihalli, Tq: Channagiri.
- 9(e) Smt. G.S Netravathi D/o Late
Sanjeevamurthy, W/o Hanumanthappa,
Age: 45 years, R/o: Shyamenahallera
Mane, Kogaluru, Tq: Channagiri.
10. Shakunthalamma D/o Nagendrappa,
Age: 56 years, Occ: Agriculturist, R/o:
Kagathuru, Tq: Channagiri.
11. Shekharappa S/o Late Revanna
Siddappa, Age: 54 years, Occ:
Agriculturist, R/o: Alur, Tq: Channagiri.
12. Siddappa S/o Late Revanna Siddappa,
Age: 52 years, Occ: Agriculturist, R/o:
Alur, Tq: Channagiri.
13. Smt. Annapoornamma W/o
Jayadevappa, Age: 50 years, Occ:
Agriculturist, R/o: Bussenahalli, Tq:
Channagiri.

(D.1 to 7 By Sri.G.E.Shivakumar.,Adv.,)

(D.8 & 9(d) By Sri.H.M.Vijay.,Adv.,)

(D.10 to 13 By Sri.M.Thippeswamy.,Adv.,)

(D.9(a) to (c) & (e) Ex-parte)

Date of Institution of Suit.	24.04.2019		
Nature of Suit.	Partition & Separate possession.		
Evidence commencement date.	13.01.2020		
Date of Judgment.	06.08.2026		
Total Duration.	Year	Month	Days
	07	03	12

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

JUDGMENT

The present suit is filed by the plaintiff against the defendants seeking the relief of partition, separate possession and such other reliefs.

2.Lacking expatiation of version of the parties, a vignette of facts as unveiled is as under:

Suit properties are the landed and site properties. The detailed description of the suit properties is given at schedule of the plaint. In order to show the relationship of the parties the genealogical tree is annexed to the plaint. The propositus one Ujjappa S/o Siddappa had got a wife by name Mallamma and they got 4 sons namely the plaintiff, the defendant No.1, 2 and Chandrappa. The said Ujjappa died in joint-ness on 06.09.1998

and his wife died on 27.05.2014. The 2nd son Chandrappa is also died in joint-ness in the year 2017. The plaintiff and the defendants are the Hindus by religion they are governed by Mitakshara school of law. That all the suit schedule properties are the ancestral joint family properties of both the plaintiff and the defendants and they have got right, joint possession. The suit item No.1 and 2 properties are came up to the father of the plaintiff, in a family partition held among himself and his brothers and these properties are irrigated and also the fertile lands. Every year the sufficient income derived from the above said lands and out of the income derived from the above said lands and also by the joint efforts of both the plaintiff and the defendants, the suit item No.3 property had been purchased in the name of the defendant No.1. So also with the income of the item No.1 to 3 properties and joint efforts of them the item No.4 property had been purchased in the name of the husband of the defendant No.3 in the year 1978. Again the suit schedule item No.5 property had been purchased in name of the defendant No.2 out of the income derived from the suit item No.1 to 4 properties in the year 1980. These properties had been acquired jointly with the aid of the joint family income in the name of the different persons. Only in order to get some benefits from the Government which will be introduce from time to time.

3. Further the land in Sy.No.43/1 had been purchased by the plaintiff father along-with others jointly. The Ujjappa had been purchased for himself and on behalf of his brothers only to the

extent of 1 acre 15 guntas in the above said survey number out of which only to the extent of 25 guntas morefully described in the suit item No.6, the Ujjappa had given the amount derived from the joint family property to the vendor, for the rest of the 30 guntas amount had been given by his brothers. Later on purchaser Ujjappa and his brothers orally partitioned the above said land and the 25 guntas suit item No.6 property is fallen to the share of the Ujjappa. Rest of the land fallen to the share of his brothers. Hence, both the plaintiff and the defendants have got joint right, joint possession over the suit item No.6 property. That the suit item No.7 to 9 had been granted by the agency of the Government to the family of the plaintiff and the defendants in the name of Ujjappa, The defendant No.1 and 3 on behalf of the joint family, since family of the plaintiff and the defendants shifted from the old village to the newly formed village on the basis of the Government notification. The upset price to acquire to the suit schedule item No.7 to 9 properties had been given out of the income derived from the joint family properties, so the plaintiff and the defendants have got joint possession over all the suit schedule properties. The plaintiff, the defendants and their father were residing jointly upto 1984, without any differences among themselves. Later on some difference could be raised in between the plaintiff and the defendants, so by the advise of the Ujjappa, all the plaintiff and the defendants have decided to live separately temporarily by enjoying the suit properties separately intending to divide all the suit schedule properties in future by metes and bounds. Accordingly, for the livelihood the plaintiff has

temporally cultivating the item No.2 and 5 properties. So the defendant No.1 has cultivating the half of the land in item No.1 property and also cultivating eastern portion of item No.2 property. So also the husband of the defendant No.3 had cultivating the suit item No.4 property and also cultivating northern partition of item No.2 property. The defendant No.2 has cultivating northern half of the land in item No.1 property and also cultivating western portion in item No.2 property. This was only the property arrangements made by the plaintiff and the defendants. That the plaintiff and the defendants have began to live separately in their separate houses by performing the pooja and mess separately since 1984 from the income the derived from the respective their cultivating lands till right now.

4. Further averred that the mother of the plaintiff was living with the plaintiff upto her death. The father was living with one of his son Chandrappa upto his death. The plaintiff has started to live in Santhebennuru along-with his wife and children, so the defendants have began to live separately in the above said address as stated in the cause title. Such being the case the defendants without notice and knowledge of the plaintiff, secretly the obtained the loan on the suit properties and they utilized the loan amount for their personnel use, though they have no exclusive right, possession over the suit properties. After the death of one of the brother of the plaintiff, his wife and children i.e., the defendant No.3 to 7 have got mutated their names without notice and knowledge of the plaintiff. Hence, the same is

come to knowledge of the plaintiff recently. The defendants have no manner of right to get any loan from any bank and they have no right got it change the khata of the suit properties in their names, since there is no partition among the plaintiff and the defendants by metes and bounds at any point of time. As such, the plaintiff by suspected the attitudes of the defendants he demanded and called upon them to make partition of the suit properties by metes and bounds. Inturn the defendants had not cooperated with the plaintiff to make partition and they dragging on the matter since several years on one or other reasons. The defendants by taking the undue advantage of non-mentioning the name of the plaintiff in the revenue records in respect of suit properties, they are likely to alienate suit properties to somebody else same is came to the knowledge of the plaintiff by the villagers. That the elders in the village have advised the defendants to give the share of the plaintiff in the suit schedule properties, even otherwise the defendants have not heed the advice of the elders. In this regard the plaintiff had also approached the Dy.S.P but the concerned police have advised the plaintiff to get the relief through the Civil Courts. Hence, the plaintiff has constrained to file this suit.

5. Upon service of the suit summonses, the defendants have appeared through their respective counsels. The defendant No.4 and 12 have filed their separate written statements. During the pendency of the suit the defendant No.9 reported to be dead. Hence, his legal representative brought on record as the

defendant No.9(a) to (d). Further during the pendency of the suit the defendant No.9(a) reported to be dead. Hence, her legal representative are already on record as the defendant No.9(b) to (d). After service of the suit summons the defendant No.9(d) appeared through his counsel and failed to file written statement. The defendant No.9(a) to (c) and (e) remained absent inspite of valid service of summons and they have been placed ex-parte.

6. The defendant No.4 in the written statement has admitted the para 1 and 2 of the plaint and he has denied the remaining plaint allegation averments. The cause of action alleged in the plaint is false, fabricated, and does not exist in law or on facts. The plaintiff has deliberately suppressed the earlier transactions and has filed the present suit by creating false and misleading documents/allegations. The reliefs claimed by the plaintiff in the plaint are not maintainable either in law or on facts. The suit of the plaintiff is bad for non-joinder of necessary and proper parties, and therefore the suit is liable to be dismissed. He has specifically stated that the propositus of the plaintiff and the defendants was late Siddappa and the said Siddappa had 5 sons, namely Ujjappa, Jinakappa, Revanasiddappa, Sanjeevmurthy and Sadashivappa. He also had 5 daughters, namely Seethamma, Sarvamangalamma, Savithamma, Deviramma and Sharadamma. During his lifetime, Siddappa performed the marriages of all his daughters and sent them to their respective matrimonial homes. They have been living happily with their respective matrimonial homes. Out of the said

daughters, Sarvamangalamma and Deviramma have since died. The Ujjappa, and his brothers in the year 1965, under the guidance and mediation of the village elders, effected an oral partition of their ancestral joint family properties and thereafter started residing separately. As there were no female members entitled to a share in the family at the relevant time, each of them took possession and began enjoying the properties that had fallen to their respective shares as absolute owner, while maintaining separate residences and messes. Although the oral partition had already been acted upon, the parties subsequently executed a memorandum of partition deed in 1980 recording the earlier oral partition. Thereafter, in accordance with the said partition, the revenue records were duly mutated in the year 1989 in favour of respective sharers. Pursuant to the said partition, and for more than 12 years prior thereto and thereafter, each party has been in peaceful, separate, and exclusive possession and enjoyment of the properties allotted to their respective shares and corresponding mutations, khata entries, and RTC Pahani records have also been effected and continue to stand in their respective names in the records of the Channagiri Revenue Department and the Gram Panchayat.

7. It is further stated that in respect of Sy.No.21/1 measuring 4 acres 10 guntas, including kharab land, situated within the revenue limits of the village, the revenue records came to be mutated in favour of the concerned persons. Aggrieved by the said mutation entries, one Revanasiddappa S/o Late

Siddappa, raised objections and filed a suit against the present plaintiff in O.S No.359/2001 seeking the relief of declaration, perpetual injunction, and other consequential reliefs. Upon full-fledged trial and after considering the pleadings and evidence adduced by both the parties, the Trial Court, by judgment and decree dated: 31.07.2003, decreed the suit in favour of the present plaintiff. Being aggrieved by the said judgment and decree, the said Revansiddappa preferred an appeal before the Hon'ble District and Sessions Court, Davanagere, in R.A No.59/2003. The Appellate Court, after hearing the arguments, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Still aggrieved, the said Revansiddappa preferred a Regular Second Appeal before the Hon'ble High Court in R.S.A No.648/2005. After hearing the parties on merits, the Hon'ble High Court dismissed the said appeal and thereby confirming the concurrent findings of the courts below. It is further submitted that Late Ujjappa S/o Siddappa, N.Gurudappa S/o Basanyappa, Anandappa S/o Basappa, and Late Shivalingappa S/o Veerabhadrappe, all being residents of the said village, jointly purchased agricultural land bearing Sy.No.43/1, measuring 5 acres 22 guntas, from one Rudramma and Vikramappa, for a valuable sale consideration of Rs.50,000/- under a registered sale deed. The plaintiff has suppressed the material facts that revenue proceedings and other litigation's are pending against the concerned persons in respect of the suit schedule properties. The existence and pendency of such proceedings have not been disclosed in the

plaint. The plaintiff has, therefore, approached this court without full and true disclosure of material facts. The valuation of the suit and the court fee paid thereon are incorrect.

8. Further contended that the plaintiff has intentionally omitted several joint family properties from the schedule and has included only the properties described in item No.6(a) to 6(c). The plaintiff has also failed to disclose the properties standing in the names of his wife and children. Those properties were acquired out of the income of the joint Hindu family, and consequently the plaintiff as well as the defendants have equal right, title, and interest therein. Hence, all such properties are liable to be included in the hotchpotch for the purpose of partition. The plaintiff has raised loans from various banks by creating encumbrances over the ancestral and joint family properties without the knowledge or consent of the defendants. The plaintiff alone is liable to discharge the said loans together with the accrued interest and cannot saddle the defendants with such liability. Further the plaintiff has taken possession of approximately 20 tolas of gold ornaments and ½ kilogram of silver articles belonging to the mother of the plaintiff and the defendants. These movable properties have not been disclosed in the plaint schedule. The defendants have equal right, share, title, and interest in the said movable properties, and the same are also liable to be brought into the common pool for partition. The defendants have been residing separately for a considerable period. Further the plaintiff is attempting to create a

false impression before this court by making frivolous and imaginary allegations. The plaintiff has no lawful or valid cause of action against the defendants. On the contrary, it is the plaintiff who has been interfering in the peaceful possession and enjoyment of the defendants and has filed the present suit with an oblique motive. The plaintiff has filed this false suit only with an intention to harassing the defendants and to obtain unlawful benefits in respect of the family properties. Further stated that on 15.04.2019, at the Office of the Sub-Registrar, Channagiri, a partition deed was duly executed and registered. When the plaintiff was requested to act in accordance with the said partition deed, he refused to honour the same and, instead, has filed the present false suit by suppressing the true and material facts before this court. Hence, he prays to dismiss the suit with costs.

9. The defendant No.12 in the written statement has admitted the blood relationship amongst the plaintiff and the defendant No.1 to 7. He has denied the entire plaint allegation averments. The plaintiff and the defendant No.1 to 7 colluded together have purposefully omitted to plead the particulars of their propositus Ujjappa and his brother so as to deceive them from their legitimate shares in the suit property. It is stated that the suit schedule item No.4 property purchased in the name of husband of the defendant No.3 when the aforesaid Ujjappa and his brothers were in the joint family including the father of this defendant and as such this defendant representing the branch of

his father Revanasiddappa-brother of Ujjappa, has got equal share in the said property. Further stated that amongst Ujjappa and his brothers, no partition was effected in relation to the suit schedule item No.2 and 4 properties. In the same way the suit schedule item No.5 property purchased from the joint family income of Ujjappa and his brother including the father of this defendant and thus this defendant is having share in the said property also. In the same way the facts pleaded in respect of suit schedule item No.7 to 9 site properties are concerned they are also acquired to the joint family of Ujjappa and his brothers. The description of property narrated in suit schedule item No.6(a) to 6(c) is not correct. Infact in the said schedule the house and kana properties of the father of this defendant purposeful included in this suit. Infact this defendant as legal heir of Revanasiddappa got house property in Sy.No.43/1 in 5 guntas bounded by East: Road and Panchayathi C.C road with Shankarappa Master House with site, West: Land of Gurubasappa, North: Kogalur to Kashipura Main Road and South: House of Sanjeevamurthy. This defendant got 9 ½ guntas Kana in Sy.No.43/1 bounded by East: Road and Panchayathi CC road with Kantappa Master House with site, North: Land of Gurubasappa, South: Kana of Sanjeevamurthy and South: Kana of Ujjappa. But the plaintiff while describing the boundaries to suit schedule item No.6(a) to 6(c) wrongly mentioned the boundaries. Therefore, the claim for partition made by the plaintiff in the suit properties on the facts pleaded by him is not at all tenable in law and thus the suit is to be dismissed with costs.

In the event, if this court comes to the conclusion of decreeing the suit claim for partition it is submitted that this defendant is having equal $\frac{1}{5}$ th share in suit schedule item No.3 to 5 and 7 to 9 properties and this defendant is ready to pay the court fee for the said share.

10. On the strength of rival contentions in pleadings and documents placed on record by the parties, my predecessor has been framed the following;

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are joint family properties?
2. Whether the plaintiff are entitled $\frac{1}{4}$ th share in the suit schedule property ?
3. Whether there was an oral partition and the same has been acted upon in the year 1980 and therefore no joint family status?
4. What other relief is the plaintiff entitled to?
5. What order or decree?

11. In order to prove his case, the plaintiff examined himself as PW.1 and 16 documents were marked at Ex.P.1 to 16. Per contra, the defendant No.9(d) is examined himself as DW.1 and 8 documents were marked at Ex.D.1 to 8.

12. Heard the arguments on both the sides and perused the oral as well as documentary evidence placed on record. My findings to the above issues are as under;

Issue No.1: In the Affirmative.
Issue No.2: In the Affirmative.
Issue No.3: In the Negative.
Issue No.4: In the Affirmative.
Issue No.5:As per the final order, for the following;

:REASONS:

13.ISSUE NO.3: The defendant No.4 has contends that there was an oral partition and the same has been acted upon in the year 1980 and therefore no joint family status as narrated at the written statement. It is sufficient for him to prove with preponderance of probabilities that there was an oral partition. Admittedly, in the present case, he has not at all entered into witness box to prove an oral partition. Therefore, adverse inference is to be drawn against him for non-entering into witness box in view of Section 114(g) of Indian Evidence Act. In this connection, it is beneficial to place reliance on the decision of Hon'ble Supreme Court of India reported in **1999 SAR (CIVIL) 431 (Iswar Bhai C.Patel @ Bachu Bhai Patel V/s Harihar Behera & Another)**, which reads as under:

16. Admittedly defendant No.1 had an account in the Central Bank of India Limited. Sambalpur Branch which his father, namely, respondent No.2 was authorised to operate. It is also an admitted fact that it was from this account that the amount was advanced to the appellant by respondent No.2. It has been given out in the statement of respondent No.2 that when the appellant had approached him for a loan of Rs. 7,000/-, he had explicitly told him that he had no money to lend whereupon the appellant had himself suggested to advance the loan from the account of respondent No.1 and it was on his suggestion

that the respondent No.2 issued the Cheque to the appellant which the appellant, admittedly, encashed. This fact has not been controverted by the appellant who did not enter the witness box to make a statement on oath denying the statement of defendant (respondent No.2) that it was at his instance that respondent No.2 had advanced the amount of Rs. 7,000/- to the appellant by issuing a Cheque on the account of defendant (respondent) No.1. Having not entered into the witness box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of principles contained in illustration (g) Section 114 of the evidence Act.

17. As early as in 1927, the Privy Council in *Sardar Gurbakhash Singh V/s Gurudial Singh and Another* (AIR 1927 Privy Council 230), took note of a practice prevalent in those days of not examining the parties as a witness in the case and leaving it to the other party to call that party so that the other party may be treated as the witness of the first party. Their Lordships of the Privy Council observed as under:

“Notice has frequently been taken by this Board of this style of procedure. It is sometimes takes that form of manocuvre under which counsel does not call his own client, who is an essential witness, but endeavors to force the other party to call him to force the other party to call him, and so suffer the discomfiture of having him treated as his, the other party” own witness.

This is thought to be clever, but it is a bad and degrading practice. Lord Atkinson dealt with the subject in *Lal Kunwar Vs Chiranji Lal* (1), calling “a vicious practice, unworthy of a high-toned or reputable system of advocacy.”

"But in any view her non-appearance as a witness, she being present in Court, would be the strongest possible circumstance going to discredit the truth of her case."

18. Their Lordships also took note of the High Court finding which was to the following effect:

"It is true that she has not gone into the witness box, but she made a full statement before Chaudhri Kesar Ram, and it does not seem likely that her evidence before the Subordinate Judge would have added materially to what she had said in the statement".

They observed:

"Their lordships disapprove of such reasoning. The true object to be achieved by a Court of justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination."

14. The same view has been reiterated in 1999 SAR (Civil) 442 (Vidhyadhar V/s Mankikrao & Another), wherein it is held as under:

"17. Where a party to the suit does not appear into the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbksh Singh Vs. Gurdial Singh and another (AIR 1927 Privy Council 230). This was followed by the Lahore High Court in Kirpa

Singh Vs. Ajaipal Singh and Others. (AIR 1930 Lahore 1) and the Bombay High Court in Martand Pandharinath Chaudhari V/s Radhabai Krishnarao Deshmukh (AIR 1931 Bombay 97). The Madhya Pradesh High Court in Gulla Kharagjit Carpenter Vs. Narsingh Nandkishore Rawat, (AIR 1970 Madhya Pradesh 225) also followed the Privy Council decision in Sardar Gurbaksh Singh's case (supra). The Allahabad High Court in Arjun Singh V/s Virender Nath and another (AIR 1971 Allahabad 29), held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass Vs. Bhaishan Chand and others (AIR 1974 Punjab & Haryana 7), drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box."

15. Even apart from these, the defendant No.4 has not at all produced any iota of evidence to prove that there was an oral partition. Except filing written statement, he has not at all produced any documentary evidence in support his contention. Therefore, viewed from any angle, the contention raised by the defendant No.4 in this connection remained unproved. The defendant No.4 has failed to prove the oral partition. Therefore, as a necessary corollary, adverse inference is drawn against the defendant No.4. Therefore, the contention raised on behalf of the defendant No.4 is sans merit. Hence, I answered the issue No.3 in the Negative.

16. ISSUE NO.1, 2 AND 4: These issues are interrelated to each other and finding on issue No.1 will have bearing on the other. Hence, to avoid repetition of facts and evidence, these

issues are taken together for common consideration. It is the thrust of contention of the plaintiff that suit schedule properties are joint family properties of the plaintiff and the defendant No.1 to 7. In order to establish his case, the plaintiff examined himself as PW.1 and reiterated the plaint contents in his examination-in-chief affidavit. In addition to ocular evidence, the plaintiff has also placed on record Ex.P.1 is the notarized copy of G-Tree. Ex.P.2 to 8 are the Record of Rights. Ex.P.9 to 11 are the DCB registers in respect of item No.6 to 9 properties. Ex.P.12 to 16 are the Mutation register extracts. On perusal of these Record of Rights clearly reveals that the names of the plaintiff and the defendant No.1 to 3 and 7 depicted in respect of landed properties as owners, possessors and cultivators. Ex.P.9 to 11 are DCB extracts in respect of item No.6 to 9 properties, wherein also names of the defendant No.1 and Ujjappa are appeared as owners and possessors.

17. In rebuttal, the defendant No.9(d) examined himself as DW.1. But he has not filed any written statement. He has marked documents at Ex.D.1 to 8. Ex.D.1 and 2 are the certified copies of plaint and written statement in O.S No.94/11. Ex.D.3 is the certified copy of judgment and decree. Ex.D.4 is the certified copy of written statement in O.S No.152/2002. Ex.D.5 is the certified copy of order sheet in O.S No.152/2002. Ex.D.6 is the certified copy of Vakalath. Ex.D.7 are the photos. Ex.D.8 is the sketch. The defendant No.(d) without filing a written statement, his oral or documentary evidence holds no value in law regarding any new

or positive assertions of law. It is a settled principle of Civil Law that evidence cannot be looked into in the absence of pleadings. Hence, DW.1 evidence cannot be considered by this court to prove any new facts. Therefore, the independent evidence adduced by the defendant No.9(d) is legally impermissible and is hereby brushed aside as non-est in the eye of law.

18. It is also well-settled legal principle that the partition depicted in revenue records is not conclusive proof of actual partition. Only on the strength of entries in revenue records, the factum of partition cannot be inferred. In this connection it is relevant to refer the decision of Hon'ble High Court of Karnataka in **1985 (2) KLJ 312 (Fakirappa Bailappa Kambar V/s Kristappa Bailappa Kambar)**, as under:

“(A). Hindu Law-Partition-separate possession and enjoyment of family properties without effecting partition-Whether held in partition or under arrangement as to possession ascertained from intention of parties-Mere separate living for whatever duration and enjoyment and entry in records per se not sufficient to hold partition.

HELD:

It is open to the members of the coparcener to arrange amicably separate possession and enjoyment of the family properties without effecting partition or disruption of the joint family, but at the same time whether co-owners in exclusive possession of different portions of joint family property held the same in the partition or under an arrangement as to the

possession depends upon the intention of the parties which has to be gathered from the facts and circumstances of each case. Where direct evidence of intention is available, there is wanting, the fact that the members have been living separately and enjoying the properties, separately may be taken into consideration in arriving at the conclusions but that is not conclusive. Where exclusive possession of land by co-owners is not in conformity with the shares of respective parties, generally, the indication is that, it is not a partition, but it may be an arrangement not intended to be permanent. Therefore, the fact that the parties were in possession of different properties and different properties have been entered in their individual names in the record of rights is not by itself sufficient to hold that there was such a partition. Nothing turns out from the long duration. It depends upon the affinity and nature of relationship of the parties. A provisional arrangement which for some reason continued for a long time without objections does not take away its provisional character and make it permanent. There must be some other evidence indicating that the parties have been living separately under a permanent arrangement or partition.”

19. During the cross examination of PW.1 the defendants nothing has been elicited in his mouth. As the testimony of PW.1 remained unchallenged on this point, Ex.P.2 to 11 establishes that only for nominal purpose, suit properties are transferred in the names of the plaintiff and the defendant No.1 to 3 and 7. If at all partition had already taken place, there would be division of properties allotting shares to all the members. Admittedly that has

not been done. Therefore, it is safely be concluded that suit properties are undivided joint Hindu family properties of the plaintiff and the defendant No.1 to 7.

20. Now turning to the shares of the plaintiff and the defendants. Indisputably, the plaintiff and the defendant No.1, 2 and deceased Chandrappa are the sons of Ujjappa. The defendant No.3 to 7 are the wife and children of the deceased Chandrappa. The defendant No.8 and 9 are the brothers of the Ujjappa and the defendant No.10 to 13 are the legal heirs of brother of the Ujjappa. As per the admission of PW.1 during his cross-examination the defendant No.10 to 13 and the defendant No.9(b) to (e) are in possession of purchased property of Revanasiddappa and the Sanjeevappa. Further the plaintiff in his plaint specifically pleaded that their father is only having 25 guntas land in Sy.No.43/1 i.e., the item No.6. Hence, the plaintiff and the defendant No.1 to 7 are only having 25 guntas land in item No.6 property. Hence, in this property the plaintiff and the defendant No.1 to 7 are entitled share in 25 guntas only. The defendant No.12 in order to prove his defence not adduced any oral as well as documentary evidence. Therefore, the plaintiff and the defendant No.1 and 2 are entitled $\frac{1}{4}^{\text{th}}$ each share and the defendant No.3 to 7 together entitled $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties. With these observations, I answered issue No.1, 2 and 4 in the Affirmative.

21. ISSUE NO.5: In view of discussion made in detail while answering issue No.1 to 4, I proceed to pass the following:

:ORDER:

Suit of the plaintiff is decreed in following terms:

The plaintiff is entitled $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties. Further the plaintiff is entitled $\frac{1}{4}^{\text{th}}$ share in item No.6 measuring 25 guntas property.

Further the defendant No.1 and 2 are also entitled $\frac{1}{4}^{\text{th}}$ each share in the suit schedule. Further the defendant No.1 and 2 are entitled $\frac{1}{4}^{\text{th}}$ each share in item No.6 measuring 25 guntas property.

Further the defendant No.3 to 7 are also entitled $\frac{1}{4}^{\text{th}}$ together share in the suit schedule. Further the defendant No.3 to 7 are entitled $\frac{1}{4}^{\text{th}}$ share in item No.6 measuring 25 guntas property.

In view of non payment of court fees, the defendant No.1 to 7 are entitled to decree, after payment of requisite court fees.

Suit properties shall be partitioned as per Section 54 of Code of Civil Procedure,

1908.

Draw preliminary decree accordingly.

Facts and circumstances of the case
there is no order as to costs.

Both parties are at liberty to initiate final
decree proceedings after completion of
appeal period or else, the office is directed
register Final Decree proceedings after
completion of appeal period in accordance
with law.

(Dictated to the typist directly on computer, typed by him,
corrected by me and then pronounced in the open court
on this the 06th day of August 2026)

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

ANNEXURE

LIST OF WITNESSES EXAMINED BY THE PLAINTIFF:

PW.1 : Shivalingappa.

LIST OF DOCUMENTS MARKED BY THE PLAINTIFF:

Ex.P.1 : Notarized copy of G-Tree affidavit.

Ex.P.2 to 8 : Record of Rights.

Ex.P.9 to 11 : DCB Register Extracts.

Ex.P.12 to 16 : Mutation Register Extracts.

LIST OF WITNESSES EXAMINED BY THE DEFENDANTS:

DW.1 : G.S.Rudrappa.

LIST OF DOCUMENTS MARKED BY THE DEFENDANTS:

Ex.D.1 & 2 : C/copies of plaint & W.S in O.S.No. 94/2011.
Ex.D.3 : C/copy of judgment & decree.
Ex.D.4 : C/copy of written statement in O.S No.152/2002.
Ex.D.5 : C/copy of order-sheet in O.S.No. 152/2002.
Ex.D.6 : C/copy of Vakalath.
Ex.D.7 : Photos.
Ex.D.8 : Sketch.

**Senior Civil Judge & J.M.F.C.,
Channagiri**