



Presented on : 17-12-2022
Registered on : 17-12-2022
Decided on : 20-07-2026
Duration : 3 years, 7 months, 3 days

**IN THE COURT OF THE II ADDL. CIVIL JUDGE AND J.M.F.C.,
CHANNAGIRI**

:: Present ::

Vajresha

B.A., LL.B.,

**II Addl. Civil Judge & JMFC,
Channagiri.**

Dated: This the 20th Day of July 2026

ORIGINAL SUIT NO.485/2022

Plaintiffs.

1. Mahammed Samiulla
S/o Kaligar Sabjan Sab,
Aged about 45 years,
2. K.S.Nazima Banu
D/o Late K.S.Mahammed fazil,
Aged about 35 years,
3. Sigabathulla
S/o Kaligar Sabjan Sab,
Aged about 42 years,
All are R/o Sihineru Bavi road,
Fazil Beedi,
Channagiri Town and Taluk,
Davanagre and District.

(Shri. A.N.Lingamurthy, Advocate)

V/s.

Defendants.

1. Kaligar Sabjan Sab
S/o Late Kalaigar Dastageer Sab,
Aged about 75 years,



2. Smt.Pyarijan
W/o Kaligar Sabjan Sab,
Aged about 70 years,
3. Smt. Asmabanu
D/o Kaligar Sabjan Sab,
Aged about 32 years,
4. Sri. Mahammad Sanaulla
S/o Kaligar Sabjan Sab,
Aged about 35 years,
5. Sri. Nazrulla
S/o Kaligar Sabjan Sab,
Aged about 35 years,
6. Smt. Salma baanu
D/o Kaligar Sabjan Sab,
Aged about 30 years,
7. Sri. Jafrulla
S/o Kaligar Sabjan Sab,
Aged about 30 years,
All are R/o Sihi Neeru Bavi Road,
Fazil Beedhi,
Channagiri Town and Taluk,
Davanagere District.

**(Def No.1 to 3, 5 to 7 By Sri. Y.Ramachandra Rao., Advocate)
(Def No.4 by Sri. Basavarajappa P., Advocate)**

Sd/-
(Vajresha)
II Addl. Civil Judge & JMFC.,
Channagiri.

JUDGMENT

The plaintiffs have filed the suit for the relief of partition and separate possession and permanent injunction over the suit schedule properties.

**2. The brief facts of the plaintiffs case as follows:-**

The case of the plaintiffs is that Defendant No.1 is the father of Plaintiff Nos.1, 3 and Defendant Nos.3 to 7. According to the plaintiffs, the suit schedule properties are the joint family properties, though they stand in the name of Defendant No.1. It is further contended that Defendant No. 1 has eight children, out of whom one son, Mahammed Fazil, is deceased, and Plaintiff No.2 is his widow. The plaintiffs contend that, without effecting partition of the suit schedule properties, Defendant No.1, with an intention to deprive the plaintiffs of their lawful share, executed a Gift Deed bearing S.R.No.5273/22-23 in favour of Defendant No.6 in respect of land bearing Sy.No.139/1 measuring 30 guntas. On coming to know of the said transaction, Plaintiff No.1 submitted a representation before the Tahsildar, Channagiri, requesting that the khatha proceedings be withheld. It is further averred that the plaintiffs demanded partition of the suit schedule properties on 05.12.2022, but the defendants refused to effect the same. Hence, the plaintiffs have instituted the present suit seeking partition and separate possession of their alleged share in the suit schedule properties.



3. After the registration of the suit, this Court issued summons to the defendants. In response to the summons, the defendants appeared before the Court through their learned counsel. Despite sufficient opportunities being granted, Defendant Nos.2 to 7 failed to file their written statement. Defendant No.1, however, filed his written statement.

4. The contents of written statement of defendant No.1 is as follows:

The Defendant No.1 has specifically denied the entire plaint averments made by the plaintiffs. It is contended that land bearing Sy.No.139/2 measuring 34 guntas was purchased by him from vendors Anjaneya and another for a valuable sale consideration of Rs.3,40,000/- and a registered sale deed was executed in his favour vide S.R.No.1232/2011-12 dated 14.07.2011. Since the date of purchase, he has been in possession and enjoyment of the said property as its absolute owner. The khatha of the said property stands in his name. It is further contended that the property bearing Sy.No.142/3 measuring 21 guntas, shown as Item No.2 of the suit schedule property, is not a joint family property of the defendants. The said property has been sold to one Sri Saifuddin Atiq Pasha, S/o Khaji



Mohamed Shamshudin, who is in possession and enjoyment thereof as its absolute owner. It is stated that the said property is the self-acquired property of Defendant No.1. It is further contended that Item No. 3 of the suit schedule property bearing Sy.No.138/1 measuring 10 guntas situated at Channagiri stands in the name of Asma Banu who is Defendant No.3. The plaintiffs have no right, title, or interest over the said property. It is stated that Defendant No.3 purchased the said property from vendors Lakshmamma and two others for a valuable sale consideration of Rs.25,000/- under a registered sale deed bearing S.R.No.1664/2002-03 dated 30.07.2002. Since the date of purchase, Defendant No.3 has been in possession and enjoyment of the said property.

5. The defendant submits that the suit schedule property bearing Sy.No.138/3 measuring 17 guntas, being Item Nos.4 and 5 of the schedule property, was purchased by Defendant No.1 and is his self-acquired property. It is further stated that he has transferred the said property in favour of his daughters by way of Will and Gift Deed, and the said properties are in their possession. It is contended that the suit filed by the plaintiffs is not maintainable and is liable to be dismissed. It is further stated



that the suit schedule properties are not joint family properties. Under Muslim Law, the plaintiffs have no right to claim any share in the individual/self-acquired property of Defendant No.1, and the said properties are exclusively his self-acquired properties. Therefore, the plaintiffs have no right to institute the present suit against the defendant. It is further contended that I.A.No.I filed by the plaintiffs seeking temporary injunction against Defendant Nos.1, 2, and 5 in respect of the suit schedule properties is not maintainable and is liable to be rejected. On these grounds, Defendant No. 1 has sought for dismissal of the suit.

6. After completion of pleadings the learned predecessor in office has framed the following issues;

ISSUES

1. Whether the plaintiffs prove that, plaintiffs and defendants are the joint family members?
2. Whether the plaintiffs prove that, suit schedule properties are the joint family properties and purchased in the name of defendant No.1 out of the income generated from the joint family?
3. Whether the defendant No.1 proves that, suit schedule properties item No.1, 2, 4 and 5 are the self acquired properties of defendant No.1



and suit schedule item No.3 is self acquired properties of defendant No.3?

4. Whether the plaintiffs are entitled for the relief as sought for?

5. What order or decree?

7. In order to prove the case, Plaintiff No. 1 entered the witness box as PW.1 and has produced as many as 13 documents, marked as Ex.P1 to Ex.P13. On the other hand, the defendant No.1 entered the witness box as DW.1 and has produced as many as 12 documents, marked as Ex.D1 to Ex.D12.

8. Heard the learned counsels appearing for the plaintiffs and the defendants. Perused the oral as well as documentary evidence. On perusal of the same, my findings on the aforesaid issues are as under:

ISSUES

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



REASONS

9. **Issue No.1 to 4:-** As the issues are interlinked, they are taken up together for common discussion in order to avoid repetition of facts and circumstances of the case.

10. Before advertng to the facts of the case and the evidence adduced by both parties, it is relevant to discuss the property rights of Muslims under Mohammedan Law. Under Mohammedan Law, there is no concept of joint family property, as there is no right by birth. A son or daughter does not have any vested legal interest in the property of the father during his lifetime. The father is the absolute owner of his property and cannot be sued by the heirs for partition during his lifetime. The concepts of joint family, coparcenary, or khatha are entirely foreign to Islamic jurisprudence. Instead, the legal rights of heirs arise only at the moment of the father's death, and such heirs hold the property as tenants in common. Any disposition made by a father during his lifetime is legally classified as a gift (Hiba) and not as inheritance or partition. Thus, there is no concept of joint family property under Mohammedan Law.



11. Muslim law of succession constitutes four sources of Islamic law, namely: (a) the Holy Quran, (b) Sunnah, i.e., the practice of the Prophet, (c) Ijma, i.e., the consensus of learned men of the community on what should be the decision on a particular point, and (d) Qiyas, i.e., an analogical deduction of what is right and just in accordance with the principles laid down by God. Mohammedan law recognizes two types of heirs, namely Sharers and Residuaries. Sharers are those who are entitled to a specified share in the property of the deceased, and Residuaries are those who take the remaining property after the Sharers have taken their respective shares.

12. **Birth right:** Inheritance of property under Muslim law arises only after the death of a person. Any child born into a Muslim family does not acquire a right to property by birth. If an heir survives the ancestor, he becomes a legal heir and is entitled to a share in the property. However, if the apparent heir does not survive the ancestor, no right of inheritance or share in the property exists.

13. **Non-testamentary and testamentary succession under Muslim law:** In non-testamentary succession, the Muslim



Personal Law (Shariat) Application Act, 1937 is applicable. On the other hand, in the case of a person who dies testate, i.e., one who has executed a will before death, the inheritance is governed under the relevant Muslim Shariat law as applicable to Shias and Sunnis.

14. There is no concept of a joint family under Mohammedan law. If a family continues as a joint family and the properties are acquired in the name of the managing member of the family, and if it is proved that such acquisition was made with the consent of all members of the joint family, the presumption is that the properties belong to the family and not to the individual in whose name they stand. If the sons of a deceased Mulla retain his assets in business, they are deemed to stand in a fiduciary relationship to the other heirs of the deceased and are liable to account for the profits made by them in the business. The concept of a joint family or coparcenary property as recognized under Hindu law is not applicable to Muslims. When a Muslim dies, his property devolves upon his heirs in definite shares, and each heir becomes an absolute owner of his share. Upon the death of such heir, his property is again inherited by his legal heirs, and this process continues. There is no concept of



ancestral or joint family property. Accordingly, under Muslim law of inheritance, no distinction is made between self-acquired and ancestral property. All properties, whether acquired by a Muslim or inherited from his ancestors, are regarded as individual property and may be inherited by his legal heirs. Keeping these principles of Mohammedan law in view, it is necessary to consider whether the plaintiffs are entitled to partition of the suit schedule properties.

15. It is the specific case of the plaintiffs that all the suit schedule properties are the joint family properties of the plaintiffs and defendants. The said suit schedule properties were purchased by all the male children of Defendant No.1 in his name under registered sale deeds. The defendant No.1, however, contends that he is the absolute owner and purchaser of the suit schedule properties from his vendor and that, during his lifetime, he sold some of the properties to one Saifuddin Atiq Pasha S/o Khaji Mohamed Shamshudin, and gifted some properties to his daughters.

16. In order to establish their case, PW1, along with oral evidence, has produced 13 documents, which are marked as



Ex.P1 to Ex.P13. Ex.P1 and Ex.P2 are RTC extracts pertaining to Sy.No.139/1, which is suit schedule item No.1, standing in the name of Sabjan Saab K., S/o Kalaigar Dastagir Saab. Ex.P3 is the RTC extract relating to Sy.No.142/3, standing in the name of Saifuddin Atiq Pasha, S/o Khaji Mohamed Shamsudin. Ex.P4 is the RTC extract relating to Sy.No.138/1, standing in the name of Ashma Baanu, W/o Mohammad Ashmatulla. Ex.P5 and Ex.P6 are RTC extracts relating to Sy.No.138/3, standing in the name of Sabjan Saab K., S/o Kalaigar Dastagir Saab. Ex.P7 to Ex.P13 are mutation extracts. Ex.P8 is the genealogical tree.

17. On perusal of the RTC extracts and mutation records, it appears that suit schedule item Nos.1, 4 and 5 stand in the name of Defendant No.1. Suit schedule item No. 2 stands in the name of Saifuddin Atiq Pasha, S/o Khaji Mohamed Shamsudin. However, the plaintiffs have not impleaded Saifuddin Atiq Pasha as a party to the suit. Suit schedule item No. 3 stands in the name of Defendant No.3. As per Ex.P10 mutation register, Defendant No. 1 has sold suit schedule item No. 2, measuring 21 guntas, in favour of Saifuddin Atiq Pasha, S/o Khaji Mohamed Shamsudin, and the khatha also stands in his name. Surprisingly, the plaintiffs have not made him a party to the suit.



Failure to implead a purchaser of a suit schedule property in a partition suit amounts to non-joinder of a necessary or proper party, which may render the suit defective for non-joinder of parties and the decree, if any, passed therein may not be binding on such purchaser.

18. The plaintiffs contended that all the male children of Defendant No.1 have purchased the suit schedule properties from their earnings in the name of their father, i.e., Defendant No.1, on the belief that their father would not alienate the said properties to anyone except them. However, in order to prove that they have purchased the suit schedule properties, the plaintiffs have not produced any sale deeds. On the other hand, Defendant No.1 contended that he had purchased suit schedule Item Nos.1, 2, 4 and 5 properties from his own income and asserted that all the properties are his self-acquired properties. In order to establish his defence, the defendant has produced the sale deeds, RTC extracts and mutation registers, which are marked as Exs.D1 to D12. On perusal of Exs.D1, D7 and D10, it is clear that Defendant No. 1 has purchased suit schedule Item Nos.1, 2, 4 and 5 properties. There are no recitals in the sale deeds to show that the children of Defendant No.1 have



purchased the schedule properties in the name of their father. There is no evidence to show that the male children have purchased the suit properties in the name of Defendant No.1. It is a settled principle of law that oral evidence cannot override the contents of documentary evidence.

19. The important aspect to be noted here is that the plaintiffs have contended that all the suit schedule properties are the joint family properties of the plaintiffs and defendants and that all the male children have purchased the schedule properties in the name of Defendant No.1. However, suit schedule Item No.3 bearing Sy.No.138/1 measuring 10 guntas stands in the name of Defendant No.3. As per Ex.D3, the sale deed, Defendant No.3 has purchased Item No.3 property from the vendor Lakshamma and her family members. The khatha also stands in the name of Defendant No.3. In such circumstances, it cannot be held that the male children of Defendant No.1 have purchased Item No.3 property. Hence, the plaintiffs have utterly failed to prove that the suit schedule properties are the joint family properties and that they were purchased in the name of Defendant No.1 out of the income generated from the joint family.



20. At this stage, it is pertinent to note that, as per Mohammedan Law, as discussed above, there is no concept of joint family property, whether acquired through joint family efforts or otherwise. Moreover, under Muslim Law, property rights devolve upon the death of the father or mother who owns the properties in their names. However, in the present case, the Karta and father of Plaintiff No.1, Plaintiff No.3, and Defendant Nos.3 to 7 is alive, who is none other than Defendant No.1. In such circumstances, the plaintiffs cannot seek partition of the suit schedule properties against Defendant No.1. Further, on perusal of the RTC extracts, it is seen that Sy.No.139 stands in the name of Sabjan Sab, Sy.No.142/3 stands in the name of Saifuddin Atiq Pasha, Sy.No.138/1 stands in the name of Asma Banu as per Ex.P4, and Sy.No.1138/3 stands in the name of Sabjan Sab as per Ex.P5. According to the pleadings Sabjan sab is none other than the defendant No.1. When the properties item No.2 and 3 are not standing in the name of Defendant No.1, it cannot be said that the plaintiffs are entitled to any share therein. Moreover, when Defendant No.1 is alive, the plaintiffs cannot seek partition treating the properties as joint family properties. The suit itself is not maintainable for the above discussed reasons. Such being



the fact, much discussion are not required to be considered in respect of remaining documents and oral evidence adduced in this case in the backdrop of the findings given aforesaid. Hence, the plaintiffs have failed to prove their case under Mohammedan Law. Hence, the **Issue No.1 to 4** held in the **Negative**.

21. **Issue No.5:-** In view of the answers given to the issue No.1 to 4, I proceed to pass the following:

ORDER

**The suit of the plaintiffs is hereby
dismissed with cost.**

Draw decree accordingly.

(Dictated to the stenographer and corrected and then pronounced by me in the open court on this **20th Day of July, 2026.**)

Sd/-

(Vajresha)

**II Addl. Civil Judge & JMFC.,
Channagiri.**

:-ANNEXURE:-

1. List of witnesses examined on behalf of plaintiff/s:-

PW.1 : Mahammed Samiulla

2. List of documents marked on behalf of plaintiff/s:-

Ex.P-1 : RTC of Sy.No.139/1 for the year 2022-23

Ex.P-2 : RTC of Sy.No.139/1 for the year 2018-19

Ex.P-3 : RTC of Sy.No.142/3 for the year 2022-23



- Ex.P-4 : RTC of Sy.No.138/1 for the year 2022-23
Ex.P-5 : RTC of Sy.No.138/3 for the year 2022-23
Ex.P-6 : RTC of Sy.No.138/3 for the year 2018-19
Ex.P-7 : MR No.H24/2019-2020
Ex.P-8 : Genealogical tree dated 14.12.2022
Ex.P-9 : MR No.10/2011-12
Ex.P-10 : MR No.H50/2020-21
Ex.P-11 : MR No.T5/2022-2023
Ex.P-12 : MR No.58/2005-06
Ex.P-13 : MR No.13/2002-03

3. List of witnesses examined on behalf of defendant/s:-

DW.1 : Kaligar Sabjan Sab

4. List of documents marked on behalf of defendant/s:-

- Ex.D-1 : Original sale deed dated 21.12.2000
Ex.D-2 : RTC of Sy.No.142/3 for the year 2024-25
Ex.D-3 : Original sale deed dated 30.07.2002
Ex.D-4 : RTC of Sy.No.138/1 for the year 2024-25
Ex.D-5 : MR No.58/2005-06
Ex.D-6 : RTC of Sy.No.138/3 for the year 2024-25
Ex.D-7 : Original sale deed dated 11.07.2011
Ex.D-8 : MR No.T66/2022-23
Ex.D-9 : RTC of Sy.No.139/1 for the year 2024-25
Ex.D-10 : C/c of sale deed dated 23.02.2006
Ex.D-11 : RTC of Sy.No.138/3 for the year 2024-25
Ex.D-12 : MR No.T5/202-23

Sd/-

(Vajresha)
II Addl. Civil Judge & JMFC.,
Channagiri.