

KADG310005302022



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
HARIHAR**

PRESENT: Smt. Padmashri A. Munnoli,
B.A.L, LL.B.
SENIOR CIVIL JUDGE AND JMFC, HARIHAR

Dated this the 13th day of February, 2026

O.S. No. 165 / 2022

Plaintiff / s : 1. Shivappa, S/o Basappa, Aged 72
years.
2. Channappa, S/o Basappa, Aged 70
Years.
3. Govindappa, S/o Basappa, Aged 65
years.
4. Erappa S/o Basappa, Aged 63
years.
5. Beerappa S/o Basappa, Aged 58
years.
Petitioner No.1 to 5 are
agriculturist, all are residing at
Nagenahalli village, Harihar taluk,
Davangere District.

(By Sri. A. Vamanamurthy, Advocate.)

:: VERSUS ::

- Defendant / s : 1. Smt. Hiriyamma, W/o Late Channabasappa, Aged about 70 years.
2. Maheshappa S/o Channabasappa, (Gajinera Ningappana mane), Aged about 52 years, Dituru village, Harihar taluk.
3. Smt. Lakshmamma, W/o Late Ningappa, Aged about 49 years.
4. Hanumanthappa, S/o Channabasappa, Aged about 47 years,
5. Smt. Basamma, W/o Nagappa, Aged about 45 years, R/o Near Anjaneyaswami temple, Kurubara Nagappanavara maneyavaru, Gutturu village, Harihar taluk, Davangere District.
6. Basavarajappa, S/o Channabasappa, Aged about 43 years.
7. Beeresh, S/o Channabasappa, Aged about 40 years, Defendants No.1, 3, 4, 6 and 7 are residing at Nagenahalli village, Harihar taluk, Davangere District.

(D.1 to 7 by Sri. S.A. Kulkarni, Adv.)

Parties in IA No.IV

Applicants/Plaintiffs : Shivappa and others

Vs.

Applicants /
Proposed Defendant No.8 : Sri. G. Ramappa, S/o Siddappa,
Aged 60 Years, R/o Nagenahalli
village, Harihar taluk.

Opponents/ Defendants : Smt. Hiriyaamma and others

**ORDER ON IA NO. IV FILED U/O 1 RULE 10 (2)
R/W SEC. OF CPC**

The present application is filed by the plaintiffs to implead the proposed defendant No.8 by name Sri. G. Ramappa S/o Siddappa as a defendant in this suit stating that he is a necessary party.

2. In the affidavit sworn to in support of the application plaintiff No.1 states that the suit schedule item No.3 property which is Sy. No. 3/10 measuring 8 gunta of Nagenahalli village is a joint family property. That the proposed defendant No.8 has got entered his name to an extent of 4 guntas in this Sy. No. 3/10 under MR No. T53/2022-23. That the plaintiffs have a right in this 8 guntas of land. That any documents executed in favor of proposed defendant No.8 are not binding on the plaintiffs. Hence, it was prayed that the application be allowed.

3. Notice of I.A. No.4 was issued to proposed defendant No.8. He appeared through a counsel and filed his statement of objections to IA No. IV.

4. It is contended by proposed defendant No.8 that one Channabasappa S/o Basappa who is the husband of defendant No.1 and father of defendants No.2 to 7 was the absolute owner of land bearing Sy. No. 3/10 measuring 4 guntas out of the total extent of 10 guntas of Nagenahalli village with boundaries as to the East: Land of Vanajakshamma, West: road, North: Land of Channabasappa and South: Land of K. Basappa. That Channabasappa was in possession and enjoyment of the said Sy. No. 3/10 till his death. That on 22.02.2018 said Channabasappa bequeathed an extent of 4 guntas of land to proposed defendant No.8 under a registered Will. That Channabasappa died on 12.11.2021. Therefore, after the death of Channabasappa it is proposed defendant No.8 who has become a owner of the said property. That on the basis of the Will name of proposed defendant No.8 is mutated in the revenue records. That proposed defendant No.8 and his family members are in possession and enjoyment of said 4 guntas of land. That it is proposed defendant No.8 who is absolute owner of the said properties. Hence, it was prayed that the application be dismissed.

5. Heard, perused the material on record. The following points arise for my consideration.

Point No.1 : Whether the proposed defendant No.8 can be permitted to be brought on record as a necessary party to the suit?

Point No.2 : What order?

6. My finding on point No.1 is in the Affirmative and point No.2 as per final order for the following:

REASONS

7. Point No.1: Learned counsel for the plaintiffs would argue that the proposed defendant No.8 has got entered his name to the property Sy. No. 3/10. That plaintiffs have a right in the said property and therefore, it was prayed that the application be allowed.

8. On the other hand the learned counsel for proposed defendant No.8 would argue that the application is not maintainable. The proposed defendant No.8 is not a necessary party. That plaintiffs have no right in the property which is bequeathed to him and accordingly prayed for dismissal of the application.

9. Perusal of the material on record discloses that plaintiffs have instituted the suit against defendants for the relief of partition and separate possession in respect of two items of agricultural lands in Sy. No. 33/1D each measuring 38 gunta

situated at Nagenahalli village of Harihar taluk, as described in the plaint schedule.

10. Plaintiffs have shown their relationship with defendants No.1 to 7 in the genealogical tree as shown at para No.2 of the plaint. Plaintiffs and deceased Channabasappa are the children of one Gowdrabasappa and Basamma. Defendants No.1 to 7 are the wife and children of Channabasappa. Plaintiffs have averred that suit schedule properties are ancestral and joint family properties. That the propositus Goudrabasappa died on 24.06.1973. That deceased Channabasappa was the karta of the family. He died on 12.11.2021. That deceased Channabasappa and plaintiffs, on 23.11.2016 got partitioned some of the joint family lands. Further on 04.07.2018 again got partitioned other landed properties under a registered partition deed except survey number 33/1D measuring 1 acre 36 gunta.

11. That during the lifetime of Channabasappa, plaintiffs had demanded for partition of this Sy. No. 33/1D also but, the same was postponed. But, later on 09.12.2020, Channabasappa got effected a partition between his wife and children under a registered partition deed in respect of this land without the knowledge of the plaintiffs. That defendants No.6 and 7 are given 38 guntas each in this survey number also the revenue entries are changed. That plaintiffs challenged the revenue entries before the Assistant Commissioner, Davangere but, the revenue authorities

have given a endorsement that the dispute is civil in nature. Therefore, the present suit.

12. Defendants No.1 to 7 in the written statement filed denied the plaint averments. That the suit schedule property is in possession of defendants for more than 50 years. This fact is known to the plaintiffs. That as suit schedule property was owned by Channabasappa, by excluding that property on 23.11.2016 the partition was effected in respect of other family properties. Therefore, the suit is not maintainable. Hence, it was prayed that the suit be dismissed.

13. This court had allowed IA No.III filed by the plaintiffs on 02.06.2025 and had permitted them to include the properties mentioned in the application as suit properties. The proposed defendant No.8 with a memo dated: 30.07.2024 has produced the photocopy of the Will dated: 22.02.2018 which is stated to be executed by Channabasappa. The property bequeathed is an extent of 4 guntas out of the total extent of 8 guntas in Sy. No. 3/10. This Sy. No. 3/10 is permitted to be added as a suit property as per the order passed on IA No. III. Whether the plaintiffs have any right in this survey number 3/10 or not has to be decided later. The plaintiffs in the plaint alleged that Channabasappa was the manager of the joint family. The suit properties are claimed to be ancestral and joint family properties. Therefore, the suit being one for partition and separate possession and when it appears

there is no much dispute about the relationship between the parties, in my opinion when a Will is executed in favor of proposed defendant No.8 and when plaintiffs claimed right to the said property, in my opinion proposed defendant No.8 is a necessary party to the suit. Accordingly, for theses reasons I answer **point No.1 in the Affirmative.**

14. Point No.2: For the finding on point No.1 and the reasons stated therein, I proceed to pass the following:

ORDER

IA No.IV filed by the plaintiffs U/o 1 Rule 10(2)
R/W Sec.151 of CPC is hereby allowed.

The proposed defendant No.8 by name G.
Ramappa S/o Siddappa is permitted to be brought
on record as defendant No.8.

(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, signed and then pronounced by me in the open court on this the 13th day of February 2026).

(Smt. Padmashri A. Munnoli)
Senior Civil Judge & JMFC,
Harihar