

KADG320015522021



Presented on : 25-05-2021
Registered on : 25-05-2021
Decided on : 26-03-2026
Duration : 4 years, 10 months, 1 days

**IN THE COURT OF
II ADDL. CIVIL JUDGE AND JMFC HARIHAR,
AT HARIHAR**

**Presided Over by SMT. JYOTI ASHOK PATTAR
(B.E., LL.B.)**

**Prl. Civil Judge & JMFC, Harihar.
(C/c of II Addl. Civil Judge & JMFC, Harihar)**

O.S. No.83/2021

Dated this 26th day of March, 2026

Plaintiffs:

- 1) Sri. Umesh S/o Ramappa Itagi,
Aged about 25 years, Agriculturist,
R/o: Dittur village, Harihar Taluk.
- 2) Smt. Uma D/o Ramappa Itagi,
Aged about 25 years, Household,
R/o: Waddarahalli village,
Ranebennur Taluk.

Vs.

Defendants:

1. Sri. Basaateppa Itagi S/o Late. Karibasappa,
Aged about 61 years, Agriculturist,
R/o: Dittur village, Harihar Taluk.

2. Sri. Ramappa Itagi dead by LRs
3. Smt. Chanabasamma W/o Itagi Ramappa,
Aged about 58 years, Household,
R/o: Dittur village, Harihar Taluk.

For Plaintiff : Sri.M.R., Advocate

For Defendant No.1 : Sri. K.S.I., Advocate

For Defendant No.2 : Dead R/by LR's

For Defendant No.3 : Sri. K.R.S., Advocate

Date of institution of the suit	: 04.05.2021
Nature of the suit	: Partition and Separate Possession
Date of commencement of recording of evidence	: 24.07.2023
Date on which the Judgment is pronounced	: 26.03.2026
Total Duration	:Year/s Month/s Day/s
	04 10 01

(Jyoti Ashok Pattar)
C/c II Addl.Civil Judge &
J.M.F.C., Harihar.

JUDGMENT

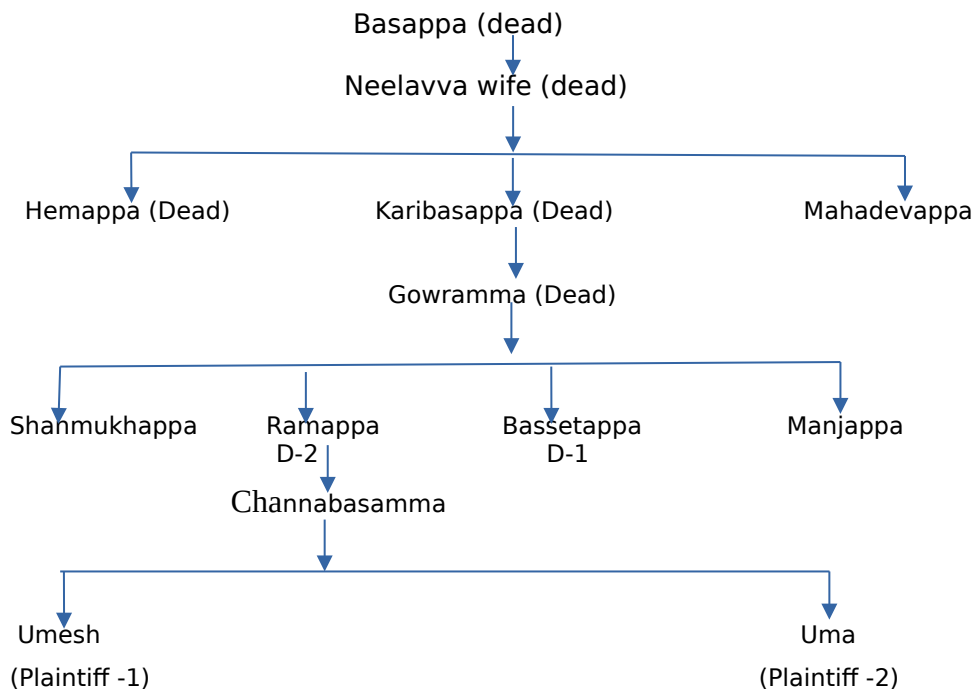
The plaintiffs have filed this suit against the defendants by seeking relief of partition and separate possession of the suit schedule properties by metes and bounds to the extent of plaintiff's 2/3rd share in the suit schedule properties.

2. The brief facts of the plaintiff's case are as under:

The case of the plaintiff is that the plaintiffs are

twins i.e., brother and sister. The defendant No.2 and 3 are their father and mother. The defendant No.1 is brother of defendant No.2. The plaintiffs and the defendant No.2 and 3 are Hindu Joint family members. The schedule properties are their family properties. The defendant No.1 is being a brother of defendant No.2 who had separated from defendant No.2 and other brothers through registered partition. The schedule A and B item are exclusive property of plaintiffs and defendant No.2 and 3. The G-Tree of the plaintiffs and defendant No.2 and 3 family is as below.

GENELOGICAL TREE



The defendant No.2 and 3 being the father and mother of the plaintiff's performed their duties to the

plaintiffs. The schedule A landed property acquired by the defendant No.2 through registered partition deed. The schedule B item No.1 property acquired by the defendant No.2 through Jubani Partition deed dated: 06.07.2002. In this partition deed the defendant No.1 is also a party, the defendant No.1 and 2 and their other brothers Sri Shanmukhappa and Manjappa were parties. The original house i.e. house of Karibasappa was allotted to defendant No.1 and Manjappa. The schedule B item No.1 vacant site allotted to defendant No. 2. After the partition khatha of properties are mutated in their names. The schedule B item No. 1 is now standing in the name of defendant No.1. The schedule B Item No.2 is allotted to the defendant No.2 family by Indira Awas Scheme, presently the khata is standing in the name of the defendant No. 3. That at the time of marriage of plaintiff No.2 there was negotiation regarding the allotment of her share for her bright marital life. The plaintiff No.1 has the consented to the same. But, the defendant No. 2 and 3 with intention to engulf the share of the plaintiffs miss-managed the family and not ready to disclose family affairs and also the defendant No.1 without having right, title, interest trying to encroach the property schedule B item No.1. On 20.04.2021 at about 10.30 a.m the defendant No.1 came near the schedule B item No.1 and tried to dig the foundation pit. The plaintiff with the help

of neighbors resisted the defendant No.1. The plaintiffs have arranged the panchayath at Dittur village. Under the leadership of village heads, the plaintiffs asked the defendant No.2 to effect the partition of schedule properties, but they denied the share of plaintiffs. The plaintiffs has approached to the jurisdiction polices and intimated the illegal act of the defendant No.1 on 25.04.2021. But, the police have declined to take any action as matter is in civil nature. Hence, the plaintiffs constrained to file the suit.

3. After service of summons defendants appeared through their counsels and the defendant No.1 filed written statement. Wherein the defendant No.1 denied the plaint averments and specifically denied the genealogy shown in the plaint. The defendant No.1 contended that there are other properties which are deliberately suppressed in the plaint with an ulterior motive to knock of the schedule B item No.1 property which is in actual possession and enjoyment of the defendants No.1 and 2's sister by name Neelamma. The said Neelamma W/o Shankarappa is daughter of the Karibasappa and Gowaramma who is in actual possession and enjoyment and she is actually residing by tethering cattles in said schedule B item No.1 of the plaint. Therefore the suit of the plaintiffs is not maintainable both under law and facts. It is also contended that the sons and

daughter of Karibasappa and Gowaramma are necessary parties to the suit who are entitled for equal shares, therefore the suit of the plaintiffs as brought against the defendants is not maintainable both under law and facts. Therefore the suit is false frivolous and vexatious. Hence prays to dismiss the suit.

4. Based on the material pleadings of the both parties and materials available on record, the learned predecessor in office then has framed the following issues:

1. Whether the plaintiffs prove that, the suit schedule properties are the joint family properties of plaintiffs and defendant No.2 and 3?
2. Whether the suit of the plaintiff is bad for non joinder of necessary parties?
3. Whether the defendant No.1 proves that, the suit is not maintainable for no inclusion of all family properties?
4. Whether the defendant No.1 proves that, the suit schedule 'B' item No.1 is in actual possession and enjoyment of Neelamma W/o Shankrappa?
5. Whether the plaintiff entitled share in the suit schedule properties?
6. What order or decree?

5. In order to prove the case of the plaintiffs, the plaintiff No.1 himself examined as PW.1 by filing affidavit in lieu of his examination-in-chief and got marked 9 documents as Ex.P.1 to Ex.P.9. Ex.P.1 is the Partition deed dated: 06.02.2002, Ex.P.2 is the Endorsement, Ex.P.3 to Ex.P.6 are the Tax paid receipts, Ex.P.7 is the Certified copy of Tax Register No.296/2 of the year 2002-03, Ex.P.8 is the House list register extract No.296/2, Ex.P.9 is the House sanction letter dated: 01.06.2011.

6. In order to disprove the case of the plaintiff, the defendant No.1 himself examined as DW.1 by filing affidavit in lieu of his examination-in-chief and got marked documents as Ex.D.1 to Ex.D.5. Ex.D.1 to Ex.D.4 are the Photos and Ex.D.5 is the C.D.

7. Heard the Ld. counsel for the plaintiff and defendants. Perused the pleadings, oral and documentary evidence.

8. This Court findings to the above issues are as under:

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 : Partly Affirmative

Issue No.6 : As per final order,
for the following;

REASONS

9. Issue No.1 : The case of the plaintiff is that the suit schedule properties are the join family properties of plaintiffs and defendant No.2 and 3. But the defendant No.1 without having right title, interest over the suit schedule property trying to encroach it. Per contra the defendant No.1 contended that suit is bad for non-joinder of necessary parties and all the family property. It is specifically contended that the suit schedule B item No.1 is in actual possession and enjoyment of Neelamma W/o Shankarappa.

10. The initial burden to prove their case is on the plaintiffs and in order to prove their case the plaintiff No.1 is examined as PW.1 by filling affidavit in lieu of his examination-in-chief and got marked Ex.P.1 to Ex.P.9. On the other hand the defendant No.1 is examined as DW.1 by filling affidavit in lieu of his examination-in-chief and got marked Ex.D.1 to Ex.D.5. Both the parties have been cross-examined by other side.

11. That the PW.1 in his examination-in-chief reiterated the contents of plaint averments and relied on Ex.P.1 to Ex.P.9. The Ex.P.1 is the Jubani partition deed dated: 06.07.2002 wherein it reveals that a vacant site bearing katha No.264 measuring 12X52 feet of Dittur village, Harihar Taluk has fallen to the share of Ramappa who is

the father of plaintiffs. And the Ex.P.2 and Ex.P.7 substantiate the same. Thus it can be said that the father of the plaintiffs by name Ramappa has got suit schedule B item No.1 property to his share in the family partition as per Ex.P.1. Therefore in the absence of pleading regarding birth of the plaintiffs at the time of execution of Ex.P.1, the share fallen to the Ramappa is considered to be his separate property. When admittedly there was partition among the father of the plaintiff and his brothers the question of seeking partition in respect of entire properties of the family does not arise as there is no existence of Hindu Undivided Family against the siblings of father of the plaintiffs. Moreover plaintiffs have not produced any single document in respect of suit schedule A and suit schedule B item No.2 property. When there is no document, the mere pleadings and self serving oral evidence is not sufficient to establish the case of plaintiffs. Therefore the plaintiffs failed to establish that suit schedule properties are joint family properties of plaintiffs and defendant No.2 and 3. Accordingly Issue No.1 is answered in the Negative.

12. Issue No.2 : The contention of the defendant No.1 is that the suit is bad for non-joinder of necessary parties. It is pertinent to note that the plaintiffs themselves pleaded that there was a partition among their father Ramappa and brothers of Ramappa as per Ex.P.1 and the

defendants have neither specifically denied nor challenged the said partition. And in view of the same the plaintiffs are seeking share in the suit schedule properties. When admittedly there was a partition among the Ramappa and his brothers and the said partition also admitted by the plaintiffs the question of seeking partition against the siblings of Ramappa does not arise and such claim is not sustainable. Therefore the claim of the plaintiffs is tenable only against defendant No.2 and 3. Thus no other parties are necessary to decide the matter. Accordingly Issue No.2 answered in the Negative.

13. Issue No.3 and 4 : These two issues are interlinked therefore the same are taken together for discussion in order to avoid repetition of facts and appreciation of evidence. The another contention of the defendant No.1 is that the suit is not maintainable for non-inclusion of all the family properties and the suit schedule B item No.1 property is in actual possession and enjoyment of one Neelamma. In order to prove his contention the defendant No.1 himself examined as DW.1 by filling affidavit in lieu of his examination-in-chief and got marked Ex.D.1 to Ex.D.5. The DW.1 in his examination-in-chief reiterated the contents of written statement averments and deposed in consonance with his written statement. The Ex.D.1 to Ex.D.4 are the photos and Ex.D.5 is a C.D. The defendant No.1 has not produced any other documents to show that

there are properties left out by the plaintiffs. And also not produced any single document to show that the one Neelamma W/o Shankarappa is in actual possession of the suit schedule B item No.1 property. But Ex.P.1 reveals that suit schedule B item No.1 property is fallen to the share of Ramappa. And the documentary evidence holds more value than the oral evidence lead by the defendant No.1. That even though the defendant No.1 contended that the Ex.P.1 is not binding on him as the same is concocted one. But the DW.1 in his cross-examination himself has admitted that Ex.P.1(a) is his signature, but not offered any explanation how his signature has been obtained. Moreover there is no any counter claim by the defendant No.1 except the mere denials of the contents of the plaint. Therefore the preponderance of probability is lies in favour of plaintiffs. Thus the defendant No.1 failed to establish his contentions to disprove the case of plaintiffs. Accordingly Issue No.3 and 4 answered in the Negative.

14. Issue No.5 : That as discussed above in Issue No.1 it is clear that the suit schedule B item No.1 property was fallen to the share of Ramappa i.e., father of the plaintiffs and the said property was his separate property. However the Ramappa died during the pendency of the suit leaving behind his wife and children i.e., defendant No.3 and plaintiffs. Therefore the defendant No.3 and plaintiffs being the class-I heirs of Late. Ramappa are entitled to

equal share in the suit schedule B item No.1 property as per Sec.8 of Hindu Succession Act. Therefore the plaintiffs and defendant No.3 are entitled to 1/3rd share each in the suit schedule B item No.1 property. And as discussed above in Issue No.1 plaintiffs have not lead cogent evidence in respect of other suit schedule properties and thereby failed to prove that they are entitled to share in the said properties. Accordingly Issue No.5 is answered in Partly Affirmative.

15. Issue No.6 : That considering the facts and circumstances of the case and relationship of the parties, this Court is of the opinion that the parties have to bear their own cost. In view of the above discussions on Issue No.1 to 5, this Court proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby partly decreed.

It is declared that the plaintiffs and defendant No.3 are entitled to 1/3rd share each in the suit schedule B item No.1 property.

The respective sharers shall pay the Court fee in respect of their share.

No order as to costs.

Draw preliminary decree accordingly.

(Dictated to the stenographer, script translated by her on the computer, corrected and signed by me and then order is pronounced in the open Court on the 26th day of March, 2026)

(Jyoti Ashok Pattar)
C/c II Addl. Civil Judge & JMFC.,
Harihar.

ANNEXURE

A) Witness examined for the Plaintiffs:

PW.1 : Umesh

B) Documents marked for the Plaintiffs:

Ex.P.1 : Partition deed dated: 06.02.2002
Ex.P.2 : Endorsement
Ex.P.3-6 : Tax paid receipts
Ex.P.7 : Certified copy of Tax Register No.296/2
of the year 2002-03
Ex.P.8 : House list register extract No.296/2
Ex.P.9 : House sanction letter dated: 01.06.2011

C) Witness examined for the Defendants:

DW.1 : Bassateppa

D) Documents marked on behalf of Defendants:

Ex.D.1-4 : Photos
Ex.D.5 : C.D.

C/c II Addl. Civil Judge & JMFC.,
Harihar.