

KADG520001052015



Presented on : 23-01-2015  
Registered on : 23-01-2015  
Decided on : 24-04-2026  
Duration : 11 years, 3 months, 1 days

IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,  
AT HONNALI.

Dated: On this 24<sup>th</sup> day of April 2026

Present:

Sri.Devadas H. B.A., LL.B.,  
Prl.Civil Judge & JMFC.,  
Honnali.

O.S.No.29/2015

Plaintiff : Hemavathi  
D/o Late Channaveerappa Gowda  
W/o Panchaksharappa  
Aged about 35 Years  
R/o: Kuruva Village  
Honnali Taluk.  
Now R/o: Bhadravathi Town and Taluk  
Shivamogga District.  
(Rep.By Sri.MSS., Advocate)

-Vs-

Defendants : 1. Savithramma W/o Siddappa  
S/o Late Channaveerappa Gowda  
Aged about 65 years

R/o: Nandigavi Village  
Harihara Taluk.

2. Ramappa  
S/o Channaveerappa Gowda  
Aged about 60 Years  
R/o: Kuruva Village  
Honnali Taluk.

3. Basamma  
W/o Late Channaveerappa Gowda  
Aged about 64 years  
R/o: Kuruva Village  
Honnali Taluk.

4. Rathnamma W/o Siddappa  
D/o Late Channaveerappa Gowda  
Aged about 44 Years  
R/o: Nandigavi Village  
Harihara Taluk.

5. Halaswamy  
S/o Late Channaveerappa Gowda  
Aged about 43 Years  
R/o: Kuruva Village  
Honnali Taluk.

6. Sudha W/o Late Kotreshappa  
D/o Late Channaveerappa Gowda  
Aged about 38 Years  
R/o: Kuruva Village

Honnali Taluk.

(D1 is Rep.By Sri.PR/BU., Advocate,

D2 is Rep.By Sri.ABJ., Advocate,

D3 to D6 is Rep.By Sri.SH., Advocate)

1. Date of institution of the suit : 23.01.2015
2. Nature of the suit : Partition and separate Possession
3. Date of the commencement of recording of the evidence : 20.02.2017
4. Judgment pronounced on : 24.04.2026

\* \* \* \* \*

#### J U D G M E N T

The present suit is instituted by the plaintiff against the defendants seeking for the relief of Partition and separate possession of her 1/7th share over the suit schedule properties and for such other consequential reliefs.

2. The brief facts of the plaintiff's suit is as under :- One deceased Channaveerappa Gowda during his life time, he had three wives i.e., Halamma (first wife), Hiriyaamma (second wife) and Basamma (Third wife as defendant No.3). It is further averred that, deceased Channaveerappa Gowda out of the wedlock with Halamma had one daughter as (defendant No.1), out of the wedlock with Hiriyaamma had one son as (defendant No.2) and out of the wedlock with Basamma had one son and three daughters as (defendants No.4 to 6 and the plaintiff).

3. It is further averred that, deceased Channaveerappa Gowda during his life time had acquired the property bearing Sy No.92 measuring to an extent of 6 acre 29 guntas including 10 guntas Karab, the Mangalore tiled roofing house property bearing No.55 measuring to an extent of 45 X 130 feet, the property bearing Sy No.145/2 measuring to an extent of 13 acres 31 guntas including 5 acres 25 guntas Karab, the property bearing Sy No.192 measuring to an extent of 6 acres 6 guntas and the property bearing Sy No.132/1 measuring to an extent of 10 acres 12 guntas which all are situated at Kuruya Village, Honnali Taluk (Morefully described at the end of the plaint and hereinafter called as suit schedule property for brevity) and accordingly, one Channaveerappa Gowda was the absolute owner and was in peaceful possession and enjoyment over the suit schedule properties. It is further averred that, Channaveerappa Gowda died leaving behind the plaintiff and the defendants are succeeded to his estate by way of inheritance and succession.

4. It is further averred that, the plaintiff and the defendants are in peaceful possession and enjoyment over the suit schedule properties. It is further averred that, at that juncture there was dispute arise between the plaintiff and the defendants and then the plaintiff had approached the defendants and requested to allot her legitimate share over the suit schedule properties, but the defendants have refused to allot her legitimate share over the suit schedule properties. Hence, the plaintiff without having any alternative and efficacious remedy has approached this Court and filed the

present suit seeking for partition and separate possession over the suit schedule properties.

5. In response to the suit summons, the defendants have appeared before this Court through their learned counsels and the defendants No.1 and 2 have filed their written statement respectively and subsequently, inspite of given the sufficient opportunities, the defendants No.3 to 6 have neither appeared and nor filed their written statement and thereby, the written statement on behalf of the defendants No.3 to 6 is taken as not filed.

6. Further the defendants No.1 and 2 in their written statement they have admitted the relationship between them and the plaintiff and also admitted that the suit schedule properties are the joint family properties. It is further contend that, the plaintiff has not included the some of the joint family properties and thereby they have mentioned the some of the properties which are the joint family properties in the written statement and also contend that, the properties which are mentioned in the written statement are the joint family properties. It is further contend that, the plaintiff and the defendants are entitled to equal share, right, title and interest over the suit schedule properties as well as written statement schedule properties. Hence prays to decree the suit with respect to the suit schedule properties as well as written statement schedule properties.

7. Per contra, the plaintiff has filed the rejoinder to the written statements filed by the defendants No.1 and 2

respectively and wherein denied the contentions stated in the written statement and in addition to denial taken specific defence that, the written statement schedule properties are not joint family properties and prays to dismiss the present suit with respect to the written statement schedule properties. Subsequently, the plaintiff has filed an interlocutory application seeking for include the written statement schedule properties as the suit schedule properties and that interlocutory application was allowed and accordingly, the written statement schedule properties are included as suit schedule properties.

8. Based on the rival pleadings of the parties, the following issues has been framed:-

1. Whether the plaintiff is entitled to 1/7th share over the suit schedule properties?
2. Whether the defendant No.1 is entitled to 1/7th share over the suit schedule properties and written statement schedule properties as prayed in the written statement?
3. What order or decree?

Addl.Issue No.1:- Whether the plaintiff proves that, the existence of joint family and suit schedule properties are joint family properties of her and defendants?

Addl.Issue No.2:- Whether the defendant No.2 proves that, he is entitled for 1/3rd

share in the plaint schedule property as well as property mention in his written statement?

9. In order to prove the suit of the plaintiff, the plaintiff herself got examined as PW1 and produced 11 documents which have been marked as Ex.P1 to Ex.P11. Similarly, in order to prove their defence, the GPA holder of defendant No.1 and defendant No.2 have themselves got examined as DW1 and DW2 and through them got marked 12 documents as Ex.D1 to Ex.D12.

10. Heard arguments on both sides.

11. On perusal of the records, oral and documentary evidence placed before the Court, this Court findings to the above issues are as under :-

Issue No.1 : In the Affirmative  
Issue No.2 : In the Affirmative  
Addl.Issue No.1: In the Affirmative  
Addl.Issue No.2: In the Affirmative  
Issue No.3 : As per the final order  
for the following:-

**:: R E A S O N S ::**

12. Issue Nos.1 and 2 and Addl.Issue Nos.1 and 2 :- Since these issues are inter linked with each other, which are taken up together for common discussion to avoid repetition of appreciation of evidence.

13. The plaintiff has instituted the present suit seeking for a relief of partition and separate possession. It is specific case of the plaintiff is that the plaintiff and the defendants are the joint family members and the suit schedule properties are the joint family properties. Further in order to substantiate the same, the plaintiff has examined himself as PW1 by way of filing chief affidavit in lieu of her examination-in-chief wherein reiterated the contentions stated in the plaint and does not require to summarize again those facts and in support of his oral evidence produced 11 documents which have been marked as Ex.P1 to Ex.P11 i.e., Ex.P1 is the genealogical tree, Ex.P2 is the mutation extract, Ex.P3 is the RTC extract, Ex.P4 is the House/land tax assessment list, Ex.P5 is the death certificate, Ex.P6 to Ex.P9 are the RTC extracts and Ex.P10 and 11 are the tax paid receipts. In order to disprove the suit of plaintiff and to substantiate the defence urged by the defendants the learned counsel for defendants cross-examined PW1 at length.

14. Likewise, in order to substantiate the defence of the GPA holder of defendants No.1 and defendant No.2 have themselves stepped into the witness box and got examined as DW1 and DW2. The affidavits evidence of DW1 and DW2 are nothing but a replica of averments of the written statement. In order to corroborate their oral testimony they have produced twelve documents as per Ex.D1 to 12 i.e., Ex.D1 is the GPA, Ex.D2 to Ex.D5 are the RTC extract, Ex.D6 is the GPA, Ex.D7 to Ex.D9 are the RTC extracts, Ex.D10 and Ex.D11 are the mutation extracts and Ex.D12 is the RTC extract. In order to nullify the contentions of the defendants and to prove the suit of the plaintiff, the learned counsel for the plaintiff has cross examined

DW1 and DW2 at length. But, nothing worth has been elicited in the cross-examination to disbelieve their testimony.

15. The learned counsel for the plaintiff vehemently argued that the plaintiff and defendants are the joint family members and the suit schedule properties are the joint family properties and they are entitled to equal share over the suit schedule properties. Further argued that, the plaintiff and the defendants are entitled to equal share over the suit schedule properties. Further argued that, deceased Channaveerappa Gowda had got married the defendant No.3 after the death of his two wives. Further argued that, in support of her relief, the plaintiff herself examined as PW1 and produced Ex.P1 to Ex.P11. Hence prays to decree the suit. Further argued that, deceased Channaveerappa Gowda had got married the defendant No.3 after the death of his two wives.

16. On the other hand the learned counsel for the defendants No.1 and 2 argued that, the suit schedule properties are the joint family properties and they are in peaceful possession and enjoyment over the suit schedule properties and they are entitled to equal share over the suit schedule properties. Further argued that, in support of their defence, the GPA holder of the defendants No.1 and 2 have themselves got examined as DW1 and DW2 and produced Ex.D12. Hence, prays to dismiss the suit with exemplary costs.

17. In the light of the above oral and documentary evidence as well as the arguments canvassed by the rival

counsels let this Court examine whether the plaintiff could able to genealogical tree discharge her burden. Before discussing further let this Court discuss the concept of partition. The 'Partition' is a re-distribution or adjustment of per-existing rights, among co-owners/coparcener, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severally. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. Separation of share' is a species of 'partition'. When all co-owners get separated, it is a partition. Separation of share/s refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties, but also division of his share by metes and bounds. This involves three issues: (i) whether the person seeking division has a share or interest in the suit property/properties; (ii) whether he is entitled to the relief of division and separate possession; and (iii) how and in what manner, the property/properties should be divided by metes and bounds?

18. Keeping the above concept in mind let this Court know the oral as well as documentary evidence adduced by the parties to the suit. The first and foremost the plaintiff has to

prove that she and defendants are constituted as Hindu Undivided Joint family members and they are in joint possession of the suit schedule properties. The plaintiff in her pleading stated that the plaintiff and the defendants are the joint family members and the suit schedule properties are the joint family properties.

19. On perusal of the oral evidence as well as documentary evidence there is no dispute that one deceased Channaveerappa Gowda during his life time, he had three wives i.e., Halamma (first wife), Hiriamma (second wife) and Basamma (Third wife as defendant No.3) and out of the wedlock with Halamma had one daughter as (defendant No.1), out of the wedlock with Hiriamma had one son as (defendant No.2) and out of the wedlock with Basamma had one son and three daughters as (defendants No.4 to 6 and the plaintiff) and thereby, the plaintiff and the defendants No.1, 2, 4 to 6 are the children of the deceased Channaveerappa Gowda and the defendant No.3 is wife of the deceased Channaveerappa Gowda and thereby, the plaintiff and the defendants are the joint family members and the suit schedule properties are the joint family properties and same has admitted by the defendants. Further during the course of arguments the learned counsel for the plaintiff addressed that the deceased Channaveerappa Gowda got married the defendant No.3 as third wife after the death of his two wives and same has not been disputed by the defendants.

20. Further on perusal of the Ex.P1 is the genealogical tree wherein reveals that, the plaintiff and the defendants No.1, 2, 4 to 6 are the children of the deceased Channaveerappa Gowda and the defendant No.3 is wife of the deceased Channaveerappa Gowda. Further on perusal of the Ex.P2 is the mutation extract wherein reveals that the suit schedule item No.1 property which is stand in the name of the deceased Channaveerappa Gowda, Ex.P3 is the RTC extract and Ex.D5 is the RTC extract wherein reveals that the suit schedule item No.1 property which is stand in the name of defendant No.1. Further on perusal of the Ex.P4 is the House/land tax assessment extract wherein reveals that, the suit schedule item No.2 property which is stand in the name of the deceased Channaveerappa Gowda. Further on perusal of the Ex.P9 and Ex.D3 are the RTC extracts wherein reveals that, the suit schedule item No.3 property which is stand in the name of the defendant No.1. Further on perusal of the Ex.P6 and Ex.D2 are the RTC extracts wherein reveals that the suit schedule item No.4 property which is stand in the name of the defendant No.1. Further on perusal of the Ex.P8 and Ex.D7 are the RTC extracts wherein reveals that, the suit schedule item No.5 property which is stand in the name of the defendant No.1. Further in the instant suit there is no dispute that, the plaintiff and the defendants are the joint family members and the suit schedule properties are the joint family properties.

21. Further on perusal of the oral as well as documentary evidence, this Court has presumed that, the plaintiff and the defendants No.1, 2, 4 to 6 are the children of the deceased

Channaveerappa Gowda and the defendant No.3 is the wife of the deceased Channaveerappa Gowda and they are succeeded to his estate by inheritance/succession. Further during the cross of examination of DW1 and DW2 have also admitted that, the plaintiff and the defendants are the joint family members and the suit schedule properties are the joint family properties and the plaintiff and the defendants are entitled to share over the suit schedule properties. Further there is no dispute that, the suit schedule properties are the joint family properties and also there is no dispute that the plaintiff and the defendants are entitled to equal share over the suit schedule properties.

22. Under such circumstances this Court has presumed that, the plaintiff and the defendants have successfully establish that the plaintiff and the defendants No.1, 2, 4 to 6 are the children of deceased Channaveerappa Gowda and the defendant No.3 is the wife of the deceased Channaveerappa Gowda and they are the joint family members and the suit schedule properties are the joint family properties and they are entitled to share over the suit schedule properties. Further the deceased Channaveerappa Gowda, plaintiff and the defendants No.1, 2, 4 to 6 are entitled to equal  $1/7$ th share each over the suit schedule properties. Further the defendant No.3 is the wife of the deceased Channaveerappa Gowda and thereby, she is entitled to notional share out of the  $1/7$ th share allotted to the deceased Channaveerappa Gowda over the suit schedule properties. Hence the plaintiff and the defendants No.1, 2, 4 to 6 are entitled to  $8/49$ <sup>th</sup> share each and the defendant No.3 is entitled to  $1/49$ th share over the suit schedule properties.

Accordingly, this Court has answered the Issues No.1 and 2 and Additional Issues No.1 and 2 are in the Affirmative.

23. Issue No.3 :- In view of the discussions and reasons stated in the above, this Court proceed to pass the following:-

**ORDER**

The suit of the plaintiff's is hereby decreed.

It is held that, plaintiff and the defendants No.1, 2, 4 to 6 are entitled to 8/49th share each and the defendant No.3 is entitled to 1/49th share over the suit schedule properties.

Office is hereby directed to put up the file on 03.06.2026 for the purpose of final decree proceeding. The parties are hereby directed to appear on 03.06.2026 without excepting any prior notice from this Court.

Considering the relationship of the parties there shall be no order as to costs.

Draw preliminary decree accordingly.

[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this 24<sup>th</sup> day of April 2026]

(Devadas H.)  
Prl.Civil Judge and JMFC.,  
Honnali.

**ANNEXURE**

1. Witness examined on behalf of plaintiff :-

PW1 : Hemavathi

2. Documents marked on behalf of plaintiff :-

- Ex.P1 : Genealogical Tree  
Ex.P2 : Mutation register extract  
Ex.P3 : RTC extract  
Ex.P4 : House/Land tax assessment list  
Ex.P5 : Death certificate  
Ex.P6 to 9 : RTC extracts  
Ex.P10 & 11 : Tax paid receipts

3. Witnesses examined on behalf of defendants:

- DW1 : S.Siddamma  
DW2 : Manjunatha Patil G.R.

4. Documents marked on behalf of defendants:

- Ex.D1 : GPA  
Ex.D2 to 5 : RTC Extracts  
Ex.D6 : GPA  
Ex.D7 to 9 : RTC extracts  
Ex.D10 & 11 : Mutation extracts  
Ex.D12 : RTC extract

(Devadas H.)  
Prl.Civil Judge and JMFC.,  
Honnali.