

KADG620000322013



Presented on : 11-01-2013
Registered on : 11-01-2013
Decided on : 16-04-2026
Duration : 13 years, 3 months, 5 days

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C., AT
JAGALUR**

Present: - Sri. Chethan R

B.A.L, L.L.B.,

CIVIL JUDGE & J.M.F.C.,

JAGALUR.

O.S. No.05/2013

DATED THIS THE 16th DAY OF APRIL 2026

PLAINTIFFS:

K.G. Basavarajappa

Dead by LRs

1(a). Smt Basavannemma

W/o Late K.G. Basavarajappa

Age: 70 years, House wife,

R/o Kattigehalli village,

JagaluruTaluk.

1(b). Smt K.G. Jayasheelamma

D/oLateK.G.Basavarajappa

Age: 51 years, House wife,

1(c). Smt N.B. Leelavathi

D/o Late K.G. Basavarajappa

Age: 44 years, House wife,

Plaintiff No.1(b) and 1(c) are

R/o Sollapura village,

Siddapura post, Chitradurga Taluk and District.

1(d). Sri K.B.Manjunatha,

S/o Late K.G. Basavarajappa

Age: 47 years, Agriculturist ,

1(e). Sri N.B.Revanasiddappa

S/o Late K.G. Basavarajappa

Age: 43 years, School teacher,

Both are R/o Kattigehalli village,

JagaluruTaluk. Davanagere Distirct.

2. K.G.Sharanappa S/o Basappa,

Age: 67 years,

3. N.B.Shivakumar S/o Basappa,

Age: 52 years,

All are agriculturists,

R/o Kattigehalli village and post,

Jagaluru Taluk and Davanagere District.

4. Smt Basamma W/o Maheshwrappa

D/o Basappa, Age: 85 years, agriculturists,

R/o Rastemachikere village,

Jagaluru Taluk and Davanagere District.

5. Smt Rathnamma W/o Basavarajappa,

Age: 75 years, agriculturists,

R/o Rastemachikere village,

Jagaluru Taluk, Davanagere District.

6. Smt Soubhagyamma W/o Chandrappa,

Age: 68 years, agriculturist,

R/o Jammapura village,

Jagaluru Taluk and Davanagere District.

(By Sri. KB Advocate)

V/s.

DEFENDANTS:

1. Smt Basamma W/o Sannakallappa

(Murudaplara, Age: 74 years, Agriculturist,

R/o Kattigehalli village, Jagaluru Taluk.

2. Smt Bhadramma @ Subhadramma

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2(a), Sri Karibasappa

S/o Late Smt. Subhadramma,

Age: 52 years, Agriculturist,

R/o Devikere village, Jagaluru Taluk,

Davanagere District.

2(b), Sri Rudramuni

S/o Late Smt. Subhadramma,

Age: 49 years, Art Technicican,

R/o J.H.Patel Nagara, Naganur Road,

Shamnur village, Davanagere Taluk and District.

2(c), Sri Prabhu S/o Late Smt. Subhadramma,

Age: 47 years, Agriculrist,

R/o Devikere village, Jagaluru Taluk,

Davanagere District.

3. Smt Puttamma (Dead) (No Issues)

4. Smt Susheelamma W/o Late Nagalingappa,

Age: 60 years,

5. Smt Basavannemma W/o Ramesha

(Onera Mane, Age: 36 years,

R/o Hamapanuru village and post,

Bharamasagara Hobli, Chitradurga Taluk,

6. N.N.Shivakumar S/o Late Nagalingappa,

Age: 32 years,

7. N.N.Onkarappa S/o Late Nagalingappa,

8. Nagamma W/o Late Channabasappa,

Dead by LRs

9. K.G.Manjunatha S/o Late Channabasappa,

Age: 48 years,

10. Smt Suvarnamma S/o Late Channabasappa,

Age: 70 years,

11. K.G.Karibasavanagowda S/o Late Channabasappa,
Age: 35 years,
Deft No.1, 3, 4 and 6 to 11 are all agriculturists and
R/o Kattigehalli village and post,
Jagaluru Taluk and Davanagere District.
12. Smt Basavannemma W/o Veeranna
D/o Channabasappa,
Age: 50 years, R/o Lakshmisagara village,
Chitradurga Taluk and District.
13. Smt Lolakshamma W/o H.G.Manjunatha,
D/o Channabasappa,
Age: 48 years, R/o Kattigehalli village,
Jagaluru Taluk, Davanagere District.
14. Smt Basamma W/o Ramachandrappa,
Age: 85 years, R/o Thuppadahalli village,
Jagaluru Taluk, Davanagere District.
15. Smt Rathnamma W/o Mallappa,
Age: 80 years, R/o Bistuvalli village,
Jagaluru Taluk, Davanagere District.
16. Sri T. Channabasappa S/o Nanjappa,
Age: 76 years, R/o Rastemakunte village,
Jagaluru Taluk, Davanagere District.

17. Sri Revanna S/o Nanjappa,
Age: 70 years, R/o Rastemakunte village,
Jagaluru Taluk, Davanagere District.
18. Smt Sulochanamma W/o Jayanna,
Age: 58 years, R/o Hirearakere village,
Jagaluru Taluk, Davanagere District.
19. Sri Rajappa S/o Basavarajappa,
Age: 50 years,
20. Sri Naganagowda S/o Basavarajappa,
Age: 46 years,
21. Sri Hanumanthagowda S/o Basavarajappa,
Age: 48 years,
Deft No.19 to 21 all are Agriculrists
R/o Sagalagatte village,
Jagaluru Taluk, Davanagere District.
22. Smt K.B.Manjamma D/o Late Basavarajappa,
Age: 50 years, R/o Govt College,
Havinahatti village, Holalkere Taluk, Chiradurga District.
(D.1, 8 to11 Sri. PVK., Advocate)
(D.4 to 7 Sri. B S., Advocate)
(Deft No.3 dead) Deft No.12, 13, 14, 15, 16, 17,
18, 19, 20, 22 Exparte,

Date of Institution of the suit	11.01.2013
Nature of the Suit	Partition and separate

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	possession		
Date of commencement of recording of evidence	13.12.2024		
Date on which the Judgment was pronounced	16.04.2026		
Total Duration	Year/s	Month/s	Day/s
	13	03	05

-:: J U D G M E N T ::-

1. Suit filed by the plaintiff for the relief of partition and separate possession with respect to suit schedule property
- 2 The brief facts of the case of the plaintiffs are as follows:-

The plaintiffs are the sons of one Basappa. Defendant no. 1 and 2 are the daughters of Sangappa son of Doddappa. Defendant no. 3 and 4 are the wives of Nagalingappa s/o Doddappa. Defendant no. 5 to 7 are the children of Nagalingappa. Defendant no. 8 to 10 are the wives of Channabassappa. Defendant no. 9 is

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the S/o Nagamma the defendant no. 8 and Defendant no. 11 are the s/o Swarnamma. Defendant no. 10. The Doddappa s/o Channappa Gowda died long back leaving behind the children's by name Sangappa, Basappa, Nagalingappa and Channabasappa. They also died. The Dodappa S/o Channappa Gowda was a propositor of family, that the deceased Dodappa had acquired the properties from his ancestors at Kattigehalli Village in Jagalur Taluk, that the plaintiffs and defendants are Hindu joint family members of late Doddappa. The Sangappa, Basappa, Nagalingappa and Channabasappa have partitioned their properties orally except the suit schedule property. All the plaintiff and defendant's family are using the suit schedule property as thrashing floor till today. That the suit schedule property was mutated in the name of father of defendant no. 1 and 2, Sangappa as elder brother of their family. That the Nagalingappa had filed an application before the Tahsildar Jagaluru to change the katha in his name

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and the same is transferred in the name of Nagalingappa. The plaintiffs and defendants are enjoying the 30 guntas of land in Survey No.1/6 situated at Kattigenalli Village as Thrashing floor. After the death of Nagalingappa, the defendant no. 3 to 7 are changing the katha in their name as legal heirs of Nagalingappa. The plaintiffs have asked their 1/4th share in the suit schedule property to the defendant no. 3 to 7, but have refused for partition and denied their rights over the suit schedule property. The defendants no. 3 to 7 are intend to sell the suit schedule property and also obstructing the plaintiffs to use Thrashing floor in this land bearing Survey No.1/6. The defendant no. 3 to 7, having ill will to grab the suit schedule property have denied their rights and in the month of October 2012, There is no surveillance of status of joint family or joint family property and is not divided. Even till today the suit schedule property is belonged and enjoyed by the plaintiffs and members of joint family as co-owners.

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Plaintiffs are entitled for their 1/4th share in the suit schedule property. Accordingly, since the defendant no. 3 to 7 have denied their rights, hence they constrained to file this suit.

3. On issuance of summons, the defendant no. 1 to 11 appear through their counsels. The defendant no. 1 and 2 and 8 to 11, and defendant no 3 to 7 have filed their separate written statements. On perusal of same, the defendant no.1 and 2 and defendant no. 8 to 11 have admitted the claim of plaintiffs and also stated that, the defendant no. 1 and 2 are in possession of 7.5 guntas in the suit schedule property bounded by east land of Shekharappa, west road and land belonged to Manjunath, East property kana belongs to plaintiffs, south kana of defendant no. 8 to 11. The defendant no. 8 to 11 also are in possession of measuring 7.5 guntas as Thrashing floor which is bounded land belonging to Shekharappa, West Road and land belonging to Manjunath, North Kana of defendant no. 1 and 2, South Kana belonging to

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defendant no. 4 to 7. Since their father's, the plaintiff and defendants are in possession and enjoyment jointly. The defendants no. 4 to 7 are well aware that the suit schedule property is their ancestor joint family property. The total measurement of Survey No.1/1 measuring 4 acres 4 guntas land out of which the defendant no. 3 to 7 sold the 2 acres land to one M. C. Basavaraj middle portion of the property after phoded the suit schedule property was re-numbered as Survey No.1/6 measuring 30 guntas which the plaintiff and defendants are using as thrashing floor. Remaining 1.14 acres are as renumbered as Survey No.1/1 is cultivated by defendant no. 3 to 7 as their share till today. The defendant no. 1 and 2 and 8 to 11 are also entitled for their 1/4th legitimate share. Therefore they prays to pass the decree.

4. The defendant no. 4 to 7 has filed their separate written statement and by denying the entire averments made in plaint, further they admitted the relationship between the parties and also admitted

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the nature of the property as the suit schedule property originally belonged to one Doddappa and further contended that, there was a partition between the plaintiffs father Basappa, father of defendant no. 1 and 2, Sangappa, father of defendant no. 6 and 7 Nagalingappa and father of defendant no. 4 and 7 Channabasappa were partitioned their ancestral property orally in the year 1975-76 from the date of partition, katha was mutated in the names including the suit schedule property from the date of partition, father of defendant no. 6 and 7 is in peaceful possession of the suit schedule property which was acquired by him through partition. The total measurement of Survey No.1/1 measuring 4 acres 4 guntas allotted to the share of father of defendant no. 7 husband of defendant no. 6, Sushilamma, the defendant no. 3 to 7 are the legal heirs of Nagalingappa, who died in the year 1990 leaving behind the defendant no.3 to 7. After the death of Nagalingappa, Katha was being mutated in the

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mother of defendant no. 7 as minor guardian through IHC No.51/1996 and 1997 by mutating the property in the name of as Karta in the name of defendant no. 7. The defendant no. 4 and 7 are owners and having peaceful possession and enjoyment of the suit schedule property since from 3 decades. Out of 4 acres 4 guntas, defendant no. 4 and 7 have sold 2 acres to one M.C.Basaravarajappa through Sale deed dated 15.04.2002, remaining 2 acres 4 guntas, the defendant no. 4 to 7 are in possession and enjoyment with the full knowledge of the plaintiffs and other defendants, without any obstruction and the plaintiffs are stopped from raising any claim whatsoever over the suit schedule property without having any legal right over the property. The said alienation by the defendant no. 4 and 7 are also within knowledge of the plaintiffs. They have not obstructed the same. The defendant no. 7 has filed an application for survey. The surveyor measured the property and phodded bearing Survey No.1/1 measuring 1 acre 14 guntas,

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Survey No.1/6 measuring 30 guntas which is schedule property. The survey, the katha have transferred in the name of defendant no. 4 and defendant no. 7. They are absolute owners and possession over the suit schedule property without any obstruction. The defendant no. 4 and 7 are paying tax regularly to the government. The plaintiffs and defendant no. 1 and 2, 8 to 11 have colluded and filed this false suit to grab the property belonging to defendant no. 4 and 7. The plaintiffs and defendants were living separately and enjoying their property allotted in their partitioned respective shares. The plaintiffs have come upon now with the false suit in order to harass the defendant no. 3 to 7. It is also further contention of the defendant no. 3 to 7 that there are separate other properties in Survey No. 55/4P1, 55/5P3, 54/2P2, 55/4P3 and 54/2A1 and 66/4P2 and which are allotted to defendant no. 1 and defendant no. 9. These properties were allotted to the plaintiffs and defendants through a partition which

were not included by this suit. In this case therefore the suit filed by the plaintiff's partial partition not maintainable. Accordingly, the defendant prays to dismiss the suit.

5. On the above pleadings, the following issues have been framed by this court as follows:

ISSUES

- 1. Whether plaintiffs prove that, themselves and defendant No.1 to 11 are members of the Hindu Joint family?**
- 2. Whether plaintiffs prove that, suit schedule property is Hindu Joint Family property?**
- 3. Whether plaintiffs prove that, oral partition has been taken between themselves and defendant no.1 to 11 joint family properties except suit schedule property?**
- 4. Whether plaintiffs prove that, themselves and defendant's family using suit schedule property as thrashing flour till today?**

5. Whether 7th defendant proves that, suit schedule property is allotted as share of his father at the time of family partition?
6. Whether 7th defendant proves that, properties mentioned in para No.7(d) of his written statement are joint family properties?
7. Whether 7 defendant proves that present suit of the plaintiff is not maintainable for non-inclusion of all joint family properties in the suit?
8. Whether 7th defendant proves that, plaintiffs have not paid proper court fees?
9. Whether 7th defendant proves that, suit of the plaintiffs is barred by limitation?
10. Whether plaintiffs are entitled share in the suit schedule property?
11. Whether plaintiffs are entitled for mesne profit?
12. What order or order?

ADDITIONAL ISSUES.

1. Whether defendant no.1 proves that she is also have a share in suit schedule property?

6. In order to prove the case of plaintiffs, the Plaintiff no. 3 got himself examined as PW1 and got marked Exhibit P1 to Exhibit P15 documents. In support of the plaintiff's case, they also examined three witnesses by them Basavarajappa Sathyamurthy and Veeresh as PW.2 and PW4. In contra the defendant no.7 got himself examined as DW.1 and got marked Ex.D.1 to D100, in support of the defendants case they also examined 2 witnesses by name K.B.Kalleshappa and H.N. Basavarajappa as DW.2 and DW.3. The defendant no 1 and 2 and 8 to 11 not lead their defence evidence.
7. Heard arguments of counsels of both sides.
8. Perused the records, this court has answered the above issues as follows:

ISSUES NO.1	: IN NEGATIVE
ISSUES NO.2	: IN NEGATIVE
ISSUES NO.3	: IN NEGATIVE

ISSUES NO.4	: IN NEGATIVE
ISSUES NO.5	: IN AFFIRAMATIVE
ISSUES NO.6	: IN NEGATIVE
ISSUES NO.7	: IN NEGATIVE
ISSUES NO.8	: IN NEGATIVE
ISSUES NO.9	: IN NEGATIVE
ISSUES NO.10	: IN NEGATIVE
ISSUES NO.11	: IN NEGATIVE
ADDL ISSUE NO.1	: IN NEGATIVE
ISSUES NO.12	: AS PER FINAL ORDER

for the following

REASONS

9. **ISSUES NO.1 TO 5 ADDL ISSUE No 1:** Since these points are inter related to each other to avoid the repetition, these issues have taken together for consideration.
10. As the specific case of the plaintiff is that, the suit schedule property belongs to one Doddappa who has acquired the property through ancestors and after the death of Doddappa. The plaintiffs and defendants have partitioned the properties belonging to the Doddappa and Except the suit schedule property Survey No.1/6 30 guntas. The defendant no. 1 and 2 and defendant no. 8 to 11 also have

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supported the claim of the plaintiffs and also sought the relief of partition of their 1/4th share in the suit schedule property. As per the specific claim of the plaintiffs that the suit schedule property was left out of earlier partition as the plaintiffs and defendants are using the property as thrashing floor for 30 guntas and earlier the property was standing in the name of Sangappa, later the father of defendant no. 7 Nagalingappa have applied the transfer of katha and revenue authorities transferred the katha in the name of Nagalingappa. After the death of said Nagalingappa, defendant no. 7 has mutated the suit schedule property in his name through inheritance. Since the suit schedule property is joint family property, it is not partitioned. There is a severance of status. Hence the plaintiffs are entitled for their 1/4th share in the suit schedule property.

11. In contra the defendant no. 3 to 7 filed their written statement and denied the claim of the plaintiff has contended that the earlier partition happened between the plaintiff and defendant's fathers. The suit schedule property

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were allotted in favour of defendant no. 7, father Nagalingappa. Ever since, the said Nagalingappa is in possession over the suit schedule property and plaintiffs and defendants are well aware of the said. In order to grab the property from the defendant no. 7, they filed the suit. As per the above contention, there is no dispute with respect to relationship between the parties, as the plaintiffs and defendants are the children of one Doddappa and the said Doddappa is the propositus of their family and it is also the admitted fact that the suit schedule property was earlier belonging to Doddappa who has acquired the property by ancestors. It is also admitted by the plaintiff and defendant no. 1 and 2 and 8 to 11 that there was a earlier partition with respect to properties belonging to belonging to Doddappa who is the propositus except the suit schedule property.

12. In order to prove the contention of the plaintiff, the plaintiff no. 3 got himself examined as PW1 and got marked Exhibit P1 to Exhibit P15 documents. In support of the plaintiff's case, they also examined three witnesses by them –

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Basararajappa, Sathyamurthy and Veeresh. On going through the depositions of PW1 has reiterated entire averments made in the plaint in his chief examination. In his cross-examination, he has admitted that there was earlier partition with respect to properties belonging to their joint family of Doddappa, but he has further stated that Except the suit schedule property, other properties were being partitioned in the year 1951. On going through the documents re-laid by the plaintiff, the mutation entries of Exhibit P3 MR No. 5/60-61 where it appears that the mutation has been transferred in the name of Nagalingappa, father of defendant no. 7 and Sangappa, father of defendant no. 1 and 2 with respect to Survey No. 1/1 and Sy no 116/1 and they acquired the property through R.R no 1087 and 1088. As such, it appears that through the Exhibit P3 MR.No. 5/60-61, the father of defendant no. 7 has acquired the total measurement of property 1/1 that is 4 acres 3 guntas in his name. On the basis of said mutation entries the RTCs were being transferred in the name of Nagalingappa which is also

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evident by looking into Exhibit P2 RTC with respect to suit schedule property, Survey No.1/1, which is pertaining to year 1987-1988. As per the said revenue records, the suit schedule property Survey No.1/1, measuring entire 4 acres 3 guntas standing in the name of Nagalingappa, the father of defendant no. 7.

13. As such, the specific contention of the plaintiffs that suit schedule property is their joint family property and it was been left over the earlier partition and they are in joint possession over the suit schedule property and they are entitled for their 1/4th share as per the contention of the defendant no. 1 and 2 and 8 to 11 who has filed their specific claim written statement by admitting the claim of the plaintiff and further stated that the plaintiffs and defendant no. 1 and 2, defendant no. 8 to 11 are in possession over the extent of 7.5 guntas each and they are entitled for their 1/4th share.
14. But on going through the revenue records produced by the plaintiffs themselves, as it appears that the said Nagalingappa, who is the father of defendant no. 7, who has

acquired the suit schedule property through partition, In the year 1960 through Exhibit P3 mutation register. As per the plaint averments itself, it appears that the suit schedule property, after the death of Durgappa, the suit schedule property was been transferred in the name of Sangappa. Later the father of defendant no. 7 Nagalingappa has applied the katha and transferred in his name. But on going through the Exhibit P3 the plaintiffs has failed to produce any documents to show that earlier the suit schedule property was standing in the name of Sangappa and later the property was been transferred in the name of Nagalingappa. As per Exhibit P3 itself, it appears that through mutation MR-5/60-61.

15. On going through the depositions of PW2 to PW4, the PW2 in his chief examination stated that in suit schedule property the plaintiffs are in possession from past 70 years, But on perusal of the age of the PW2 as it shows that he is aged about 69 years. Therefore very contention of the PW2 that he knows the plaintiffs who are in possession for more than 70 years cannot be considered. In the chief

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examination of PW3 and PW4 also, they have contended that the plaintiffs are in possession for more than 50 years and 60 years. Therefore, very contradiction to their chief examination would also create doubts over the possession of the plaintiff over the schedule property. Though they have supported the case of the plaintiffs, are in joint possession of the suit schedule property. But as such, in their cross-examination, they have admitted that they did not know what are the properties belonging to the plaintiff and defendant family and they also admitted that they did not know when the plaintiff and defendants have been partitioned in their family. They also admitted that the suit schedule property extent of 1 acre, suit schedule property is standing in the name of defendant no. 7 and after his death they transferred in the name of defendant no. 7. The very contention of the defendant no. 4 to 7 that the suit schedule property was earlier partitioned and the entire extent of 4 acres 4 guntas was been transferred in the name of Nagalingappa, the father of defendant no. 7 and ever since

he is in possession over the said entire extent of 4 acres 4 guntas.

16. As it admitted fact that out of Survey No. 1/1 extent of 2 acres were been alienated by the defendant no. 4 and 7 in favour of one MC. Basavarajappa and the said extent of 4 acres after the alienation the plaintiff also admitted that the Survey No.1/1 extent of 1 acre 14 guntas has been repoded as Sy no 1/1 and 2 acres has been repoded as Sy no 1/5 and remaining extent of 30 guntas has been repoded as Sy no 1/6. As per the documents produced by the defendants, Exhibit P3. D1 to D10 as it appears that the properties Survey No. 1/1 and Survey No.69/1, Survey No. 60, Survey No. 60/ 2, Survey No. 66/ 3, 66/ 4 and No. 54/2, No. 55/4, which are the properties earlier belonging to the joint family of plaintiff and defendants, were being partitioned and the said properties are standing in their respective names of plaintiffs and defendants. The defendants have admitted the earlier partitions happened between the plaintiffs and defendants, but with specific contention that during the earlier partition the suit schedule property was leftover,

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they are using the property as Thrashing floor. As it appears that the plaintiffs also not challenged the earlier mutation entries either in the name of father of Defendant No. 7 nor in the name of Defendant No. 7. Under these circumstances, the plaintiffs have failed to show that the suit schedule property extent of 30 guntas was left out in the earlier partition and they are in joint possession over the suit schedule property and they are entitled for their legitimate share. In contra, the defendants no. 7 have proved that the suit schedule property was been partitioned and allotted to the share of his father. Though the sufficient opportunity granted to defendant no. 1 and 2 and 8 to 11, they have not led their defence evidence nor cross examined the DW1. Since the defendant no. 1 and 2 and 8 to 11 have also failed to show that they are having their legitimate share in the suit schedule property. Under these circumstances, this Court would answer Issue No. 1 to 4 in **Negative**, Issue No. 5 in **Affirmative**, Additional Issue No. 1 in **Negative**.

17. **ISSUE NUMBER 6 AND 7:** The specific contention of defendant no. 4 to 7 is that in the para No. 7 d of his written statement contended that the survey number property bearing survey number 55/4P1, 55/5P3, 54/2P2, 55/4P3 and 54/2A1 and 66/4P2 are the joint family properties and the present suit filed by the plaintiff is not maintainable for non-inclusion of all the joint family properties. The suit is barred for partial partition. As such the specific contention of the plaintiffs that all the joint family properties belonging to their propositus Durugappa had been partitioned and only the suit schedule property was left out by the earlier partition. As per the documents laid by the defendant and deposition of Exhibit DW1 itself, it shows that the properties which had been pleaded in the written statement of defendant no 4 to 7 all the properties were been partitioned and there is no dispute with respect to both parties that the properties which are earlier joint family properties are been partitioned and which were been divided among the plaintiffs and defendants respectively and revenue records also transferred in their name. Under

these circumstances, Issue No. 6 and 7 are answered in **Negative.**

18. **ISSUE No 8:** The specific contention of defendant no. 7 is that plaintiff has not paid proper court fees. On going through the valuation slip, the suit is been valued under Section 35(2) of Karnataka Court Fees and Suit Valuation Act and the court fees has been paid Rs.250 for the 1/4th share of the plaintiffs. As per Section 35(2) of Karnataka Court Fees and Suit Valuation Act, the suit schedule property being agricultural property as such plaintiff averments, the plaintiffs has pleaded that they are in joint possession over the suit schedule property. Under these circumstances, the court's fees paid among the share of the plaintiffs, as per Section 35(2) of Court Fees Act is proper. Therefore, under these circumstances, this Court would answer Issue No. 8 in **Negative.**

19. **ISSUE NO 9:** The specific contention of the defendant no 7 that suit filed by the plaintiff is barred by limitation. As it is well settled that there is no point of limitation for filing the suit for the relief of partition and separate possession. As

per the specific contention of the plaintiff in the para number 8 of plaint that the cause of action for filing the suit arose in the month of October and December 2012, when the plaintiffs had demanded their partition and separate possession of their share in the suit schedule property with the defendant no. 3 to 7. When the defendant no. 3 to 7 have denied their share, they constrained to file the suit. Therefore, the suit is filed by the plaintiffs within the law of limitation on occurrence of cause of action as pleaded. Hence under these circumstances, the defendants have failed to show that under what provision and what law the suit is barred by limitation. Therefore, though the defendants have admitted the contention that the plaintiffs are challenging the earlier partition, the suit is barred by limitation. But the specific contention of the plaintiffs that the suit schedule property was been left over in the earlier partition. Therefore under these circumstances, the Issue No. 9 is answered in **Negative**.

20. **ISSUE NO 11:** The specific claims by the plaintiffs that the plaintiffs are entitled for mesne profit. In the plaint as the

specific contention of the plaintiff that they are in joint possession over the suit schedule property under these circumstances this court would refer the provision of Section 2 (12) of CPC hereby reproduced

" mesne profits " of property means those profits actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;

As per the above section, mesne profit means a profit which was being gained under a wrongful possession over the property. As per the specific averments of the plaint, the plaintiffs pleaded that they are in joint possession over the suit schedule property, then the question of wrongful possession would not arise as such the plaintiff pleaded themselves that they are in joint possession of the suit schedule property and in this circumstance the plaintiffs are not entitled for mesne profit therefore the issue number 11 is answered in **Negative**.

21. **ISSUE No 10:** As per the reasons arise by this Court upon above Issue no 1 to 5 As such, the plaintiff's has failed to show that suit schedule property is their joint family property which is left out in earlier partition and they are entitled for their respective shares in the suit schedule property. Therefore plaintiff is not entitled for share in the suit schedule property. Under these circumstances, this Court would answer the Issue No. 10 in **Negative**.

22. **ISSUE NO.12:-** In the result, for the foregoing reasons and findings, this court proceed to pass the following:

: O R D E R :

The suit of the plaintiffs is hereby dismissed with cost.

Draw decree accordingly.

(Dictated to the stenographer, directly on computer, then corrected by me and pronounced in open court on this the 16th day of April 2026)..

(Chethan R.)
CIVIL JUDGE & JMFC.,
JAGALURU.

: A N N E X U R E :

LIST OF WITNESSES EXAMINED FOR PLAINTIFF:

PW.1 : N.B.Shivakumar

PW.2 : Basavarajappa

PW.3 : Sathyanurthy

PW.4 : Veeresh

LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P1 & 2 : 2 Nos RTCs

Ex.P3 & 4 : 2 Mutation registers

Ex.P5 & 6 : 2 Nos RTCs

Ex.P7 : Endorsment of Tahasildar

Ex.P8 : RTC

Ex.P9 : C/c of Tippani

Ex.P10 & 11 : C/c of 2 Nos Hissa Tippani

Ex.P12 : C/c of Pakka book

Ex.P13 : C/c of Akar bund

Ex.P14 & 15 : 2 Nos photographs

LIST OF WITNESSES EXAMINED FOR DEFENDANT:

DW.1 : N.N.Onkarappa

DW.2 : K.B.Kalleshappa

DW.3 : H.N Basavarajappa

LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT:

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Ex.D1 to 77 : 77 Nos RTCs

Ex.D78 and 79 : Two applications

Ex.D80 : MR No.65/1984-85

Ex.D81 : 2 pages MR No.12/1993-94

Ex.D82 : MR No.12/1992-93

Ex.D83 : MRH No.35/2017-18

Ex.D84 to 98 : 16 Nos tax paid receipts

Ex.D99 and 100 : 2 Nos Pakka books

(Chethan R.)
CIVIL JUDGE & JMFC.,
JAGALURU.

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