

KADG620000512022



Presented on : 24-01-2022

Registered on : 28-02-2022

Decided on : 10-06-2026

Duration : 4 years, 4 months, 17 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.26/2022

DATED THIS THE 10th DAY OF JUNE 2026

PLAINTIFFS:

1. E.Sujatha @ E.Sbubbamma
W/o Thimmappa D/o Bheemappa
Age 38 years, House wife,
R/o Thogarikatte village,
Harapanahalli Taluk,
Vijayanagara District.
2. E.Yashodha W/o Guruswamy
D/o Bheemappa,
Age 36 years, Household work,
R/o Choranuru village,

Sonduru Taluk,
Bellary District.

...Plaintiff

V/s

1. Thimmanna S/o Melaigala Dodda Siddappa
@ Siddappa, Age 40 years, Agriculturist,
R/o Jagaluru Town (Camp),
Jagaluru Taluk, Davanagere District.
2. Smt Shankaramma W/o Late Bheemappa,
Age 58 years, Household work,
C/o R. Sridhara S/o Late Ramappa,
Imam Badavane, Ladies hostel road,
Jagaluru Town, Jagaluru Taluk,
Davanagere District.

...Defendants

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Plaintiff by Sri.PVK- Advocate.

Deft no.2 Sri.GSL., Advocate.

Deft No.3 Sri.EN., Advocate.

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Date of Institution of Suit : 28/02/2022

Nature of Suit : Partition and Separate
possession.

Date of commencement : 04/11/2024
of recording of evidence

Date on which Judgment

was Pronounced : 10/06/2026

Total duration : Year/s Month/s Day/s

04 04 17

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

1. Suit filed by the plaintiffs seeking the relief of partition and separate possession with respect to suit schedule property.
2. Brief facts of case of the both parties: -

The case of the plaintiff is that, suit schedule property is their joint ancestral property. They are entitled for their legitimate share in the suit schedule property. It is further case of the plaintiff is that one J.N.Hanumanthappa S/o Narasimappa Edigara is ancestor to the plaintiffs and defendant no. 2. The said person acquired the Survey No.88/ P Measuring 12 acres 28 guntas of Jagaluru Village through his ancestors. The said Hanumanthappa S/o Narasimhappa Edigara had 4 sons by name Narasimhappa, Ramappa, Bhimappa and Basavarajappa. The above persons are joint family members of Hindu undivided family till 1998-1999. After the death of Hanumanthappa S/o Narasimappa Edigara, his sons have got oral partition among the elders of the village. Through which is noticed in MR.No. 35/1998-99 upon the said partition, the plaintiff's father, Bheemappa, acquired the suit schedule property extent of 2 acres 25 guntas in Survey No. 88/P. The plaintiffs are only daughters of his father Bheemappa. The

defendant no. 2 is the wife of Bheemappa. The suit schedule property acquired by their father Bheemappa through ancestors. The suit schedule property belonged to plaintiffs. After the death of plaintiff's father, Bheemappa, the defendant no. 1, being the stranger to their family came to the plaintiffs and demanded possession of the suit schedule property by showing a sale deed in March 2021. The defendant no. 2 also replied an ignorance about the sale deed shown by the defendant no.1. The defendant no. 1 is an habitual money lender. He is forceing on poor persons and habitual drinkers to lend money for loan by taking their properties as security. The plaintiff's father is also having a habit of drinking alcohol and he is also not listening to the advice of family. The defendant no. 1 taking undue advantage of very nature of plaintiff's father and played fraud against the plaintiff's father and having an ill will over the valuable schedule property obtained the sale deed registered under SR No.333/2009-10. The said sale deed executed between the plaintiff's father, defendant no. 2, and between defendant no. 1 is not binding upon the shares of the plaintiffs. The plaintiffs are entitled for their absolute rights over suit schedule property for their 2/3rd share. Plaintiffs

having absolute right and possession. The sale deed executed between the plaintiff and the SR.No.333/2009-10 is not binding upon the plaintiffs. Hence, they constrained to file this suit seeking the relief of partition and separate possession and to declare the sale deed as null and void.

3. On issuance of summons, defendant no. 1 appeared through his counsel and filed written statement. In spite of given opportunity to defendant no. 2 has not filed any written statement and contest the matter on merits. On going through the written statement of defendant no.1, he denied entire averments made in the plaint and further contended that the defendant no. 1, the suit schedule property originally belonged to one Narasimappa who had two wives by name Gangamma and Siddhamma. The first wife has no issues, The Narasimappa married to Siddhamma, during lifetime of Gangamma out of wedlock of Narasimappa and Siddhamma, they got three sons and three daughters by name Hanumantappa, Thippanna, Devendrappa, Hulemma, Lakshamma and Seethamma. They are the illegitimate issues of Narasimappa. The defendant no. 1 further case is Narasimappa along with his sons enjoyed the property owned

by him. The said sons Narasimappa were living separately. The property is Survey No.78/3. The said Narasimappa divided the said property through a registered Partition deed no: 56/74-75 dated 10.06.1974 for extent of 12 acres 28 guntas allotted to Hanumanthappa the said property Sy No.83/1 measuring 12 acres 28 guntas allotted to the Hanumanthappa S/o Narasimappa is his self-acquired property. The defendant no. 1 further contended that the plaintiff's father Bheemappa have not owned any joint family property. The schedule property is the self-acquired property of Hanumanthappa. The said Hanumanthappa had four sons by name Narasimappa, Ramappa, Bheemappa and Basavarajappa. The Hanumanthappa died leaving behind his wife, son and his self-acquired property. Since the wife and son are inherited the property, the Hanumanthappa enjoying the property jointly. The said Hanumanthappa in year 1999 orally partitioned between their brothers and later registered partition deed dated 22.05.2003 was executed. Accordingly, the suit schedule property allotted in the name in the share of father of plaintiffs Bheemappa. Hence the schedule property at the hands of Bheemappa became his self-acquired property and not his

ancestral property. Since partition said Bheemappa is in possession over the suit schedule property. Later Bheemappa who was absolute owner of the suit schedule property sold the same in favour of defendant no 1 under registered sale deed dated 08.06.2009 for valuable consideration of Rs.1,00,000/- for his personal necessities. In pursuance of said sale deed, the defendant no. 1 put into actual possession of the suit schedule property. Since the date of purchase, the defendant no. 1 is in possession of the suit schedule property. The plaintiffs are not in joint possession of the suit schedule property. The plaintiffs have filed the suit in order to knock the suit schedule property from the defendants no. 1. In fact, the defendant no. 2 is being a signatory to the said deed. The plaintiffs are well aware of the alienation done by their father. Therefore, suit filed by the plaintiffs is not maintainable. Accordingly, the defendant no. 1 prays to dismiss the suit.

4. With this rival contention, this court has framed following Issues:

ISSUES

- 1. Whether plaintiffs prove that schedule property is**

their ancestral and joint family property ?

2. Whether plaintiffs prove that the sale deed S.R.No.333/2009-10 is not binding on their shares?

3. Whether defendant No.1 proves he is the bonafide purchaser?

4. Whether plaintiffs are entitle for relief for partition?

5. What order or decree?

7. The plaintiff no. 2 got examined as PW1 and got marked Exhibit P1 to P18 documents. In contra, the defendant no. 1 got examined as DW1 and got marked Exhibit D1 to D14 documents.

8. Heard arguments of both counsels the plaintiffs and defendant no 1. The counsel for plaintiff filed written arguments and also relied decision of Hon'ble supreme court in Shyam Narayan Prasad versus Krishna Prasad reported in (2018) 7 SCC 646. The defendant had relied upon the decision of Hon'ble Supreme Court in Angadi Chandranna V/s Shankar And Others in Civil Appeal No. 5401/2025.

9. On the materials available on record, this court has answered the above issues as follows:

ISSUES NO.1	: IN AFFIRMATIVE
ISSUES NO.2	: IN AFFIRMATIVE
ISSUES NO.3	: IN NEGATIVE
ISSUES NO.4	: PARTLY AFFIRMATIVE
ISSUES NO.5	: AS PER FINAL ORDER

for the following:

REASONS

10. **ISSUE NO.1 to 3:** As all these issues are interconnected to each other, hence they are taken for consideration together.
11. The specific case of the plaintiff is that, suit schedule property is their joint and ancestral property. The plaintiffs being the daughters of their coparcenor father Bheemappa is entitled for their legitimate share over the suit schedule property. As such the specific case of the plaintiff is that, their father Bheemappa acquired the suit schedule property by partition. The originally property belonged to Narasimappa, their grandfather. After their grandfather Hanumanthappa acquired the said suit schedule property in Survey No.88 to the extent of 12 acres and among the 12 acres the grandfather of plaintiffs Hanumanthappa divided the said 12 acres and the suit schedule property in the partition amongst his children. Accordingly the plaintiff's father Bheemappa acquired the suit schedule property in his share as

ancestral property. As such in contra the defendant no 1 contended that since the property belonged to one Narasimappa, later the property inherited to his son Hanumantappa. Later Hanumantappa sons got partitioned among them. The said Hanumantappa acquired the said property. Survey No.88/P over extent of 12 acres as self-acquired property. Later among his 4 sons, he died intestate his 4 sons got partitioned in the year 1999 and registered partition in year 2003. Later as such the Bheemappa acquired the suit schedule property which is his self acquired property not as ancestral property.

12. As such on going through the specific contention of both parties as it appears that, there is no dispute with respect to relationship of the plaintiffs and defendant no. 2 and one Bheemappa, The defendant no 1 admitted that the plaintiffs are the daughters of Late Bheemappa and the defendant no 2 is his wife and mother of plaintiffs. The defendant no 1 not disputed that the suit schedule property acquired by the plaintiff's father Bheemappa by partition and it was earlier belonged to their great grandfather Narasimappa and after the death of Narasimappa inherited the property among grandfather of

plaintiffs Hanumanthappa through Exhibit D1 partition deed dated 10/06/1974. Accordingly Hanumanthappa died intestate leaving behind the plaintiffs father and other his three brothers. They got divided and partitioned among them and the suit schedule property allotted to the plaintiff's father Bheemappa. As such the flow of titles of suit schedule property to the plaintiff's father Bheemappa is not disputed by the defendant no 1. As per the defendant no 1 have contented that the suit schedule property received by hands of the said Bheemappa, father of the plaintiff is his self-acquired property not as his ancestral property. Since the suit schedule property is the self-acquired property of the plaintiffs father Bheemappa he has very right to alienate the suit schedule property. Hence, accordingly he has alienated the suit schedule property through a registered sale deed dated 05.06.2009 Exhibit D3 and ever since he is in peaceful possession over the suit schedule property, the plaintiffs have no right to challenge Exhibit D3.

13. As such on going through the evidence on record, plaintiff no 2 herself examined as PW1. In her chief examination she has reiterated entire plaint averments. In her cross-examination she has admitted that their grandfather Hanumanthappa has

received Survey No.88/3 extent of 12 acres 28 guntas through a partition dated 10.06.1973 the Exhibit D1 and she also admitted that after the death of their grandfather Hanumanthappa, his sons inherited the schedule property by oral partition in the year 1999 and also through registered partition deed dated 25.02.2003 the Exhibit D2. She had denied other suggestions put to her.

14. In contra, the defendant no. 1 got examined as DW1 and also got produced Exhibit D1 to D14 documents. In his chief examination, he has reiterated entire written statement averments. In his cross-examination, he has admitted that the suit schedule property was earlier ancestral property of the plaintiff and his father Bheemappa, who has received through earlier partition deed Exhibit D2 and also the earlier the property belonged to the grandfather of plaintiff Hanumanthappa who has received the property through Exhibit D1. In the cross-examination DW1 also admitted that he also knows every member of the plaintiff's family and he also knows the nature of acquisition of suit schedule property to the father of plaintiffs. As such there is no dispute with respect to relationship and property nature of the suit schedule property.

However, the defendants have contended that since the suit schedule property acquired by the Bheemappa father of plaintiffs has separate property and it is his self-acquired property. The plaintiffs cannot challenge the Exhibit D3 sale deed and hence the plaintiffs are not entitled for partition and separate possession in the suit schedule property.

15. During the course of arguments the counsel for defendant no. 1 have vehemently argued that the plaintiffs have admitted in cross examination of PW1 that the nature acquisition of suit schedule property by his father Bheemappa through a earlier partition among his brothers through Exhibit D2 partition deed. Therefore, since there is an admission of partition and their father Bheemappa received the suit schedule property. The Bheemappa got the suit schedule property has his separate property and he has every right to alienate the suit schedule property to the third parties. He has also relied upon the decision of Hon'ble Supreme Court **Angadi Chandranna V/s Shankar and Others in Civil Appeal no 5401/2025**.
16. On going through the above decision of Hon'ble Supreme Court, as it appears that **Angadi Chandranna V/s Shankar and others noted supra**, as it appears that the said facts in the

decision of Hon'ble Supreme Court, there is a sale deed purchased by plaintiff's father in the said suit. Therefore upon consideration of the sale deed by Hon'ble Supreme Court have considered that the said schedule property in the said case has been a self-acquired property and plaintiffs in the said case cannot claim the property as ancestral property. However the facts in the decision re-laid by the counsel for defendant no. 1 is different from the facts in present suit. As such with due respect the judgment relaid by the counsel for defendant no. 1 would not be applicable to the facts of present suit.

17. As it is well settled law that a property which is inherited by any male Hindu from his father or father's father or father's father's father's is his ancestral property and his sons, grandsons and great grandsons, acquired the interest and rights in the said property from the moment of their birth. As per Section 6 of Amendment Act, which was came to be effect from 24.02.2004, the daughters by birth would also being the co-parceners as same as sons would also have equal rights over the ancestral property.

18. Under these circumstances this Court would rely upon the decision, Hon'ble Supreme Court in **M.Yogendra & Ors vs**

Leelamma N. & Ors reported in **AIR ONLINE 2009 SC 499**

held as follows:

It is now well-settled in view of several decisions of this Court that the property in the hands of sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid.

By relying the above decision, the Hon'ble supreme court held in

Rohit Chauhan V/s Surinder Singh reported in **AIR 2013 SC**

3529 as follows:

In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the

alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

19. In the decision relied by the counsel for the plaintiff in **Shyam Narayan Prasad versus Krishna Prasad** reported in (2018) 7 SCC 646 held as follows :

12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to

be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.

and in the decision of division bench of **Hon'ble High Court of Karnataka** in **Pushpalatha V/s V.Padma** reported in **ILR 2019 Karnataka 3205** held in para no 21 as follows :

21. Therefore from the above referred decisions, it becomes quite clear that whenever a partition of ancestral property takes place, the share that a coparcener gets continues to be ancestral if on the date of partition he has a son. He holds such property as his absolute property if no son exists on the date of partition, but if a son is born subsequently, the ancestral character revives.

20. As per the principles laid in the above decisions as it appears that in this suit also the defendant no. 1 have admitted that the suit schedule property received by the father of plaintiff Bheemappa earlier is ancestral property, though he has contended that Bheemappa has

received the property as his separated property and it is his self-acquired property, but in his cross-examination, he has admitted that the nature of the suit schedule property is ancestral property and he knows every facts and as per the pleadings and written statement of defendant no. 1 as it appears that the defendant no. 1 is having very well knowledge about the nature of acquisition of suit schedule property and every transaction happened in the plaintiffs family with respect to suit schedule property.

21. It is pertinent to note that as per admitted age of the plaintiffs shown in the plaint cause title, that the plaintiff no. 1 is aged about 38 years and plaintiff no. 2 is aged about 36 years. As it appears that both plaintiff no. 1 and 2 would born before the partition happened in the plaintiff's family as per Exhibit D2 partition deed. Therefore the plaintiffs being the co-parceners would entitle for their respective shares, as such the partition opened in the year 2003. As per admitted fact that the said Bheemappa father of plaintiffs received the schedule property through partition deed Exhibit D2. Therefore the plaintiffs being the daughters as per Section 6 of Hindu Succession Amendment

Act, 2005 the plaintiffs being the daughters of co-parcener Bheemappa would also having pre-existing rights and entitled for their respective share in the suit schedule property. It is also pertinent to note that on application of the Section 6 A of Hindu Succession Karnataka Amendment Act 1990 which was came to effect from 30/07/1994 which was eclipsed with central amendment, the plaintiffs were very much born during the time of execution of partition deed ExD2 dated 22.05.2003 to the Bheemappa.

22. As such the defendant no. 1 who is well aware of every transaction happened in the schedule property in the family of the plaintiffs, he has obtained the signature of defendant no. 2 who is the mother of the plaintiffs. But the defendant no. 1 has failed to obtain the consent and signature by the plaintiffs during the alienation as per Exhibit D3 sale deed. Therefore, as such the plaintiffs were very much alive, and they are having interest over the suit schedule property during the execution of Exhibit D3. Therefore, the said sale deed which is entered between defendant no. 1 without the consent of the plaintiffs is not proper and bad in law. As such it is not the case of defendant no. 1 that the plaintiff's father has alienated the suit

schedule of property for his family's necessities as being the kartha of their family. But as such in his written statement pleadings in para 8F he has pleaded that the plaintiff's father Bheemappa have alienated the schedule property for valuable consideration of Rs1,00,000/- for his personal necessities. Therefore, as it appears that the plaintiff's father Bheemappa without obtaining consent from the plaintiffs who being his coparcenar's have alienated the suit schedule property for his personal necessities which is not proper and bad in law. Therefore, Exhibit D3 sale deed would not binding upon the shares of the plaintiffs. The defendant no. 1 has failed to show that the suit schedule property is the self-acquired property of plaintiff's father, and also failed to show he been a bonafide purchaser of schedule property. During the course of arguments the counsel for the defendant no 1 have vehemently argued that the suit filed by the plaintiffs challenging the ExD3 sale deed dated 05/06/2009 to declare as not binding is barred by law of limitation as per Article 109 Limitation Act as plaintiff filed suit is year 2022 is barred by limitation, On going through the article 109 Limitation act as it appears the suit for challenging the alienation by the father of Hindu governed under

Mitakshara law must file such suit within 12 years from the date when alienee takes possession. For the sake of discussion if it is consider that the defendant no 1 taken possession of the schedule property on date of execution of ExD3 sale deed dated 05/09/2009, then the plaintiffs must have file the suit within period of 12 yrs that is on or before 05/09/2021, But as per the directions given by the **Hon'ble Supreme Court in Suo Moto WP (Civil) 03/2020** the limitation period between 15th March 2020 to 28th February 2022 is exempted due to impact of Covid-19 epidemic. Since the plaintiff filed this suit on 24/01/2022 is within the prescribed period of time and not barred by law of limitation as contented by the counsel for defendant no 1.

23. Since the plaintiffs has proved that the suit schedule property is their coparcenary property and the plaintiffs are entitled for their legitimate share and sale deed Exhibit D3 is not binding upon the plaintiff's share. Therefore under these circumstances this Court answers Issue No. 1, Issue No. 2 in **Affirmative**, Issue No. 3 in **Negative**.

24. **Issue No. 4:** As such in this case the plaintiffs have filed the suit for the relief of partition and separate possession and to declare

the Exhibit D3 sale deed as null and void and not binding upon their shares. As such the reasons arise by this court on the above issues, as such the plaintiffs have proved that suit schedule property is their ancestral property and they are entitled for their legitimate share. As such the plaintiffs claimed the schedule property they are entitled for 2/3rd share. As such the plaintiffs, it is admitted fact that their father has received the suit schedule property through his ancestor and plaintiffs being the daughters as co-parceners are entitled for their partition of 1/3rd share each. However, the defendant no. 2 is being the wife of defendant no. 1 have also joined with her husband Bheemappa to alienate the suit schedule property in favour of defendant no. 1 through Exhibit D3 sale deed. Therefore, the share of the defendant no. 2 and father of the plaintiffs Bheemappa, would vest with defendant no. 1 being the purchaser of the schedule property. The Exhibit D3 sale deed is not binding upon the shares of the plaintiffs. Under these circumstances, this Court would answer Issue No. 4 in **Affirmative.**

25. **ISSUE NO.5:-** In the result, for the foregoing reasons and findings, this court proceed to pass the following:

: O R D E R:

The Suit filed by the plaintiffs is hereby decreed as follows.

- The plaintiffs are entitled for 1/3rd share each and separate possession in the suit schedule property by metes and bonds.
- The sale deed dated 05/06/2009 is hereby declared as not binding upon the shares of the plaintiffs in the schedule property.
- The 1/3rd share of the Plaintiff's father Bheemappa, would be more or less vested with the defendant no. 1.
- No order and cost as lis is between the family members.
- Draw preliminary decree accordingly.
- Office to Put up for drawing final decree after appeal period is over.

(Dictated to the stenographer, directly on computer, then corrected by me and pronounced in open court on this the 10th day of June 2026)

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

:A N N E X U R E:**LIST OF WITNESSES EXAMINED FOR PLAINTIFF:**

PW.1 : E.Yashodha

LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P1 : Sale deed dated 05.06.2009
Ex.P2 : Death Certificate
Ex.P3 &4 : Mutation registers
Ex.P5-11 : 7 Nos RTCs
Ex.P12 : Genealogical tree
Ex.P13 to 18 : 6 Nos RTCs

LIST OF WITNESSES EXAMINED FOR DEFENDANT:

DW.1 : Thimmanna

LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT:

Ex.D1 : C/c of partition deed dated 10.06.1974
Ex.D.2 : Partition deed dated 22.05.2003
Ex.D3 : Sale deed dated 05.06.2009
Ex.D4 to 10 : 7 Nos RTCs
Ex.D11 : MRH No.45/1975-76
Ex.D12 : MRH No.29/2009-10
Ex.D13 : form No.15 EC
Ex.D14 : Survey Sketch

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

