

KADW050002082025



Presented on :21-01-2025
Registered on : 22-01-2025
Decided on : 08-04-2026
Duration : 1 year, 2 months, 18 days

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND CJM,
DHARWAD**

PRESENT

**Sri. Venkatesha Naika V, B.Com., LL.B.
Prl. Senior Civil Judge & CJM,
Dharwad**

Dated this the 08th day of April, 2026

O.S.No.24/2025

Plaintiff/s: 1. Shivanand S/o. Basavanneppa
Gorajanavar, Age: 45 yrs, Occ: Agriculture,
R/o.Gokul Road, Hubballi, Tq: Hubballi,
Dist:Dharwad.

(By Sri. SSN. Adv.,)

V/s

Defendants 1. Basavanneppa @ Basappa
S/o. Mallappa Gorajanavar, Age: 65 yrs,
Occ: Agriculture, R/o. Managundi,
Tq & Dist:Dharwad.

2. Smt. Parvatevva
W/o. Basavanneppa Gorajanavar,
Age: 67 yrs, Occ: Household work,
R/o. House No.91,
Nandagokul, Tq:Hubballi.

Contd...

3. Gouravva W/o. Kallanagouda
Jangaleppagoudra, Age: 64 yrs,
Occ: Household work,
R/o. Managundi, Tq & Dist:Dharwad.

***(Called herself as the wife of defendant
No.1)***

**(D-1&3 by Smt. KMH., Adv.,
(D-2 by Sri. IMH Adv.,)**

Date of institution of suit : 21.01.2025
Nature of suit : Partition & Separate
Possession
Date of commencement of evidence : 10.12.2025
Date of pronouncement of Judgment : 08.04.2026
Total duration : Year/s Month/s day/s
1 year, 2 months, 18 days

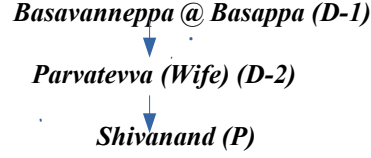
**(Venkatesha Naika V)
Prl. Senior Civil Judge & CJM.,
Dharwad.**

: J U D G M E N T :

The present suit is one for partition and separate possession and to declare the gift deed dated 05.01.2024 executed by defendant No.1 in favour of defendant No.3 is not binding towards the share of plaintiff in the suit properties.

2. The gist of the plaintiff's case is hereunder:

The genealogy of the plaintiff and defendants family hereunder:



3. The Basavanneppa @ Basappa S/o. Mallappa Gorajanavar/Def.No.1 was the wife of defendant No.1 and plaintiff was the son of defendants No.1 and 2.

4. The suit schedule properties described in Schedule 'B' and 'C' are ancestral as well as joint family properties of the plaintiff and defendant No.1. The plaintiff, defendant No.1 and 2 constituted a Hindu undivided family. The plaintiff was the son of defendant No.1 and 2 and had his legitimate share in the suit schedule properties.

5. Such being the facts on 05.01.2024 the defendant No.1 with an intention to evade the plaintiff created a gift deed and executed in favour of defendant No.3 in respect to Sl.No.2 of Schedule 'B' property even though he had no absolute right, title and interest over the said property. The plaintiff approached the defendant No.1 and requested to effect partition and

allot his share. Since the defendant No.1 denied to effect partition and give his share, thus the plaintiff was constrained to file this suit claiming aforementioned reliefs.

6. The defendant No.2 though she appeared before the court, however, did not resist the plaintiff's claim of plaintiff. The defendants No.1 and 3 have appeared before the court through their counsel and resisted the claim filing their respective written statement.

7. The defendant No.1 filed his written statement by admitting the averments that the genealogy, the nature of the suit schedule properties and the relationship between the plaintiff with defendant No.1 and 2. However, the rest of the facts averred in the plaint averments are denied. The defendant No.1 further contended that the suit schedule properties are inherited by the defendant No.1 through a registered partition deed that took place between himself and his siblings. Hence, the defendant No.1 has acquired an absolute right, title and interest over the suit schedule

properties. The plaintiff and defendant No.2 left the company of the defendant No.1 and they resided separately and thus they are not in use and enjoyment of the suit schedule properties as co-owners.

8. Since the suit schedule properties are absolute and separate properties of defendant No.1 thus as per the settled principles of law the defendant No.1 became an absolute owner of the suit properties thus he has transferred one of the suit property executing a registered gift-deed in favour of defendant No.3. Hence, the plaintiff precluded from claiming share in the suit schedule properties. Considering these grounds the defendant No.1 prays to dismiss the suit.

9. The defendant No.3 resisted the claim of plaintiff by filing a written statement by denying the averments of the plaint and taken specific contention that the defendant No.2 deserted voluntarily to Defendant No.1 thus the defendant No.3 and defendant No.1 are living together/living in relationship thus the defendant No.1 having love and affection towards defendant No.3 executed a gift deed. Further contended

that though the plaintiff was the son of defendant No.1, but, had no absolute right, title and interest to claim any share or right over the suit property transferred in the name of defendant No.3. Considering these grounds the defendant No.3 prays to dismiss the suit with exemplary cost.

10. Based on the rival pleadings, this court framed the following :

I S S U E S

1. Does the plaintiff proves that himself and defendant No.1 are constituted Hindu undivided family ?
2. Does the plaintiff further proves that suit schedule property are their ancestral and joint family properties ?
3. Does the plaintiff further proves that gift deed executed by defendant No.1 in favour of defendant No.3 dtd. 05.01.2024 is not binding towards his legitimate share?
4. Does the defendant No.3 proves that since defendant No.2 willfully deserted defendant No.1, thus defendant No.1 led his life with her and accordingly begotten female child through their relationship, thus she acquired right in the suit schedule property by virtue of gift deed ?
5. Does the plaintiff entitled for the reliefs as claimed?
6. What order or decree?

ADDITIONAL ISSUE

- 1. Whether the defendant No.1 proves that the suit schedule properties are his self acquired and an absolute property?**

11. In order to substantiate their respective contentions concerning the plaintiff himself examined as P.W-1. One more independent witness was examined as P.W-2. as documentary evidence, the plaintiff produced as many as 9 documents and got exhibited as Ex.P1 to Ex.P9. Per contra, the defendant No.1 was examined as D.W-1 in support of his contention, produced as many as 11 documents and got exhibited as Ex.D1 to Ex.D11. Defendant No.3 was examined as D.W-2.

12. Heard the arguments.

13. Perused the available materials.

14. My findings to the aforementioned issues are as follows:

Issue No.1	: In the Affirmative.,
Issue No.2	: In the Affirmative.
Issue No.3	: In the Affirmative.
Issue No.4	: In the Negative.
Issue No.5	: In the Affirmative.

Addl. Issue No.1 : In the Negative.

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

: R E A S O N S :

15. Issue No.1, 2 and Additional Issue No.1:

Since these issues are interlinked, hence to avoid repetition, these issues are taken together for common discussion.

16. In this case the plaintiff averred that he was the son of defendant No.1 and 2 and the suit properties are inherited through their common propositus and they are living together as members of a Hindu undivided family. The facts that are averred by the plaintiff are not denied and disputed by the defendants. Thus it is clear that defendant No.1 and 2 are husband and wife and the plaintiff was their son.

17. The plaintiff further averred that himself, defendants No.1 and 2 constituted a Hindu undivided family and the suit schedule properties are inherited by the plaintiff and defendant No.1 from their common ancestors as the suit schedule properties are their ancestral as well as joint family properties. The said facts are also not denied and disputed by the defendants No.1 and 2. Per contra, it is the specific

contention of the contesting defendant No.1 that he had acquired right title and interest over the suit properties through a registered partition took place between himself and his siblings accordingly the nature of the suit schedule properties became his self acquired and absolute properties and wherein the plaintiff though he was the son of defendant No.1 had no right to seek any right over such properties and thus he was precluded from claiming the share or exercise right over the suit properties. In this context I am of the view that, it is not necessary to discuss the facts that are not in dispute rather focussed to discuss the disputed facts.

18. Apart from their oral testimony parties to the suit also relied on the documentary evidence in respect to admitted and disputed facts. Hence, I am of the view that it is just and necessary to discuss the documentary evidence to decide the fact in issue effectively and judiciously. The plaintiff produced the RTCs pertaining to suit lands bearing [Sy.No.373/6](#), Sy.No.373/10, Sy.No.372/8 and Sy.No.283/1 and marked

as Ex.P1 to 4 respectively. The column No.9 and 12 at Ex.P1 to 4 goes to show that the name of defendant No.1 entered into RTC as per the registered partition deed. The plaintiff also produced the copy of the partition deed dated 06.09.2013 and got exhibited as Ex.P5.

19. On the other hand the defendant No.1 produced the copy of the mutation entries No.689, 1757, 1758, 2342, 4038, 4055 and got exhibited as Ex.D1 to D5. Perusal of the entries in mutation registers it appears that the suit schedule properties originally belonged to the father of defendant No.1 and subsequently the properties mutated in the name of respective holders after the demise of the owner of the suit schedule properties as per succession and inheritance. The certified copy of the RTC pertaining to land bearing Sy.No.373 for the year 1929-30 to 2002-2003/Ex.D6 goes to show that the land bearing Block/Sy.No.373 was belongs to the family of Basappa Gorajanavar and after demise of Basappa Gorajanavar the property mutated in the name of the heir of

Basappa Gorajanavar The RTC and mutation entries produced and relied on by the defendant No.1 in respect to land bearing Sy.Nos.372, 372/2, 267/8, 268/6, 373/10 further clinches that the said properties are inherited by defendant No.1 and his brothers through their common ancestors.

20. In this case the defendant No.1 has not produced the certified copy of the registered partition deed or original partition deed dated 06.09.2013. According to the defendant No.1 the said partition deed itself is proof of acquisition of his right, title and interest over the suit schedule properties. But the plaintiff had produced the certified copy of the partition deed and got exhibited as Ex.P5. perusal of the said document it appears that the defendant No.1 arrayed and shown as sharer No.5. Perusal of the recitals of Ex.P5 it appears that the suit schedule properties have fallen to the share of defendant No.1. During cross examination D.W.1 categorically and unequivocal terms admitted that the suit schedule properties are their ancestral properties. Such being the facts it is the

duty of the defendant No.1 to establish before the court of law that the suit schedule properties are his self acquired and absolute moreover his independent properties. The oral and documentary evidence placed on record clinches that the defendant No.1 has no independent right, title and interest over the suit schedule properties as he was acquired the right even through the registered partition, but the properties reflected in Ex.P5 are inherited by the defendant No.1 and his brothers from their common ancestors. Further it is pertinent to note that the defendant No.1 acquired the property in the year 2013 and as on the date of partition vide Ex.P5 the plaintiff was born and these material facts are not denied and disputed by the defendant No.1. Hence, the presence of plaintiff as on the date of partition vide Ex.P5 that itself nullified the contention of defendant No.1 that he was the sole owner of the suit properties. Hence, the contention of the defendant No.1 holds no water and such contention cannot be accepted as the defendant alone acquired right title and interest over the suit properties

on the basis of Ex.P5 excluding the plaintiff. The presence of the plaintiff as on the date of partition vide Ex.P5 cannot be ignored to decide the fact in issue. Since the plaintiff was born and was there at the time of partition vide Ex.P5 thus, the contention of the defendant No.1 that he became the sole owner of the suit properties has no force in the eye of law. Further the material placed on record clinches that the plaintiff being a coparcener also acquired his legitimate right, title and interest to an extent of 1/2 share in the suit schedule properties which are inherited by defendant No.1 from their common ancestors. Hence, the plaintiff successfully established the nature of the suit schedule properties as ancestral as well as joint family properties.

21. To decide the controversy between parties to the suit concerned it is just and necessary to refer and quote the relevant provision of law having regard to separate property and presumption as to coparcenary and self-acquired property.

Where a suit is brought by a Hindu to recover property, alleging that it is his self-acquired property, and the defendant contends that it is joint family property, or where a suit is brought by a Hindu on partition of property, alleging that it is joint family property and the defendant contends that it is his self-acquired property, the question arises upon whom the burden of proof lies. The following are the leading rules on the subject;

(1) Presumption that a joint family continues joint- Generally speaking, 'the normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption'.

(2) No presumption that a joint family possesses joint property.

22. The defendant No.1 particularly so far as the proof of his specific contention mainly relied on the previous partition but unfortunately the defendant No.1 did not try to produce any document that creates right, title and interest over the suit schedule properties in his favour. Per contra, the plaintiff has produced the certified copy/computerized copy of partition deed dated 06.09.2013 and marked as Ex.P5 and said document whisper that the defendant No.1 and his siblings got divided their properties even after birth of the plaintiff. The plaintiff acquired his right, and interest over the suit schedule properties at the moment of his birth. The contested defendant No.1

himself admitted that the partition took place in the year 2013 after the birth of plaintiff. Under the facts and circumstances of the case it is clear that the name of defendant No.1 reflected in Ex.P5 as head of the branch that itself ipso facto not a proof that the suit schedule properties are an absolute and self acquired properties of the defendant No.1. The defendant No.1 appears to be head of the family and thus his name is find place as a sharer at the time of effect partition accordingly the shares have been categorized, divided and distributed for the benefit of defendant No.1 and his family members i.e., defendant No.2 and plaintiff. . under the facts and circumstances of the case and on appreciation of evidence on record I am of the view that the defendant No.1 has not established his contention with an aid of reliable and cogent evidence in consonance with his specific contention in written statement. On the other hand the plaintiff produced ample evidence in support of his claim. Absolutely no iota of documents as forthcoming for the defendant No.1 to substantiate his specific plea. Further it is

pertinent to note that the presumption having regard to the existence of the joint family comprising plaintiff and defendant No.1 and 2 is not rebutted by the contesting defendant No.1 and 3 producing reliable and cogent evidence. The evidence placed on record for the defendants that itself not rebutted the statutory presumption of existence of joint family. From appreciation of evidence on record I am of the view that, the plaintiff successfully established their relationship between parties to the suit, nature of the suit schedule properties and they constituted an undivided family. On the other hand the defendant No.1 failed in his attempt to discharge the burden. Hence, **Issue No.1 and 2** are answered in the **Affirmative** and **Addl. Issue No.1** is answered in the **Negative**.

23. **Issue No.3 &4:** In the light of the discussions and conclusion to Issue No.1,2 and Addl.Issue No.1 now it is just and necessary to decide where the defendant No.1 have a right, title and interest to transfer the suit schedule property bearing

Sy.No.373/3 measuring 00 acres 13 guntas situated at Managundi village in favour of defendant No.3. In this case the plaintiff has produced the copy of the gift deed and got exhibited as Ex.P6. The defendant No.1 and 3 though they are entered into the witness box and took shelter under partition deed as well as gift deed but no such documents are placed in support of their claim. Since the plaintiff himself has claimed that the gift deed dated 05.01.2024 executed by defendant No.1 in favour of defendant No.3 is not binding towards his right, title and interest over suit properties. Such being the fact the court required to analyze the available evidence on record for just decision of the case.

24. It is held that the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 and further held that the plaintiff and defendant No.1 and 2 are constituted a Hindu undivided family. Apart from those facts the plaintiff further proved and established that the plaintiff being a sharer/coparcener having interest in the coparcenary property i.e., the suit properties. Such being the facts

now it is just and necessary to decide the right of defendant No.1 to transfer the property in favour of the defendant No.1. The defendant No.1 did not establish his absolute right, title and interest over the suit property. Further the purpose to transfer the joint family property by way of gift by the defendant No.1 being a Kartha itself is not specified and established. It is pertinent to note the the defendant No.1 being a Kartha/Manager of the family having right to transfer the joint family property for the charitable of pious purpose and the law does not permit to transfer other than the purpose as specified supra. In this case the defendant No.1 transferred the property by way of a gift in favour of the defendant No.3. Such transfer not for the pious purpose or charitable purpose. Hence, such transfer is voidable and it is not recognizable. Further it is pertinent to note that, the defendant No.1 sole executed gift deed without consent or authority of the plaintiff as in which the plaintiff having his legitimate share. Hence, such transfer does not create any right and title in favour of the donee/defendant No.3. To

justify the findings and reason concerned the court would like to rely on the decision reported in **2000 LiveLaw (SC) 381 K.C. Laxmana V/s. K.C.Chandrappa Gouda and another**. The Hon'ble Apex Court held that:

13. In the instant case, it is admitted by the second defendant that the settlement deed dated 22.03.1980 (Ex.P1) is, in fact, a gift deed which was executed by the first defendant in favour of the second defendant 'out of love and affection' and by virtue of which the second defendant was given a portion of the joint family property. It is well-settled that a Hindu father or any other managing member of a HUF has power to make a gift of ancestral property only for a 'pious purpose' and what is understood by the term 'pious purpose' is a gift for charitable and/or religious purpose. Therefore, a deed of gift in regard to the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'. It is irrelevant if such gift or settlement was made by a donor, i.e. the first defendant, in favour of a donee who was raised by the donor without any relationship, i.e. the second defendant. The gift deed in the instant case is not for any charitable or religious purpose.

25. Further the defendants No.1 and 3 have not produced such document/gift deed for the proof or to justify their contentions. In the absence of material evidence the contention of the defendants have no force. The purpose of transfer of property in favour of defendant No.3 is contrary to well settled principles of law. Hence Ex.P6 itself did not extinguish the right of the plaintiff to claim his share in the property bearing

[Sy.No.373*](#) measuring 00 Acre 10 Guntas. On the other hand the defendant No.3 certainly cannot get or acquire right over the suit property by virtue of Ex.P6. Since the document executed by defendant No.1 appears to be arbitrary and beyond the well settled principles of law. Hence, the defendant No.1 being a member of a joint family has no right, title and interest over the suit property to transfer subject to the provision and limitations to gift the joint family properties. Hence, Ex.P6 itself cannot create right, title and interest over the suit schedule property in favour of defendant No.3. On the other hand the plaintiff established that the gift deed dated 05.01.2024 executed by the defendant No.1 in favour of defendant No.3 certainly not binding towards his right and interest. Thus **Issue No.3** is answered in the **Affirmative** and **Issue No.4** answered in the **Negative**.

26. **Issue No.5:** As per the discussions to aforementioned issues the court held that the plaintiff successfully established his case placing reliable and cogent evidence. Further it is established that there

was no partition between plaintiff and defendant No.1 and they constituted a Hindu undivided family. The plaintiff established that being a one of the sharers having his legitimate 1/2 share in the suit schedule properties by metes and bounds like defendant No.1. The plaintiff further established that the gift deed executed by the defendant No.1 in favour of defendant No.3 is not binding towards his right, title and interest over suit properties. From over all consideration of the material available on record I am of the view that the plaintiff successfully established his case and discharged the burden with an aid of reliable and cogent evidence. On the other hand the defendant No.1 and 3 have failed to discharge their burden by placing reliable and cogent evidence. Since, the rights of the plaintiff are prejudiced thus knocked the door of the court of law to claim his share. Hence, the plaintiff and defendant No.1 are entitled for their 1/2 share each in the suit schedule properties by metes and bounds. Hence, **Issue No.5** is answered in the **Affirmative.**

27. **Issue No.6:** In view of my findings I proceed to pass the following;

ORDER

The suit of the plaintiff is decreed.

The plaintiff is entitled for his 1/2 share in the suit schedule properties by metes and bounds.

The gift deed dated 05.01.2024 executed by defendant No.1 in favour of defendant No.3 is not binding towards the right, title and interest of the plaintiff.

The defendant No.1 entitled for 1/2 share in the suit schedule properties at par with the plaintiff by metes and bounds.

No order as to cost.

Draw the preliminary decree accordingly.

(Dictated to the stenographer, transcription typed by her, corrected and Judgment is pronounced in the open court by me on the 08th day of April, 2026).

(Venkatesha Naika V)
Prl. Senior Civil Judge & CJM.,
Dharwad.

: ANNEXURE :

1. List of witnesses examined for plaintiffs:

- PW-1 : Shivanand S/o. Basavanneppa Gorajanavar
PW-2 : Basavaraj S/o. Gurupadappa Gorajanavar
PW-3 : Mahadev S/o. Ningappa Doddamani **(Discarded)**

2. List of documents marked for plaintiffs:

- Ex.P-1-4 : RTCs
Ex.P.5 : Watni Patra dated 06.09.2013
Ex.P.6 : C.C of Gift deed dated 05.01.2024
Ex.P.7 : Endorsement
Ex.P.8 : Caste/Birth/School admission certificates
of Kasturi Kallanagouda Jangaleppagoudra
Ex.P.9 : Death certificate of Kallanagouda
Jangaleppagoudra

3. List of witnesses examined for defendants:

- DW-1 : Basavanneppa @ Basappa S/o. Mallappa
Gorajanavar
DW-2 : Gouravva W/o. Basavanneppa
Gorajanavar

4. List of documents marked for defendants:

- Ex.D-1-5 : C.C. of M.E.Nos.689, 1757, 1758, 2342,
4038, 4055
Ex.D-6 : Certified copy of RTC bearing Sy.No.373
Ex.D-7 : Certified copy of RTC bearing Sy.No.372
Ex.D-8 : Certified copy of RTC bearing Sy.No.372/2
Ex.D-9-11 : Certified copies of RTCs bearing
Sy.Nos.267/8, 268/6, 373/10

(Venkatesha Naika V)
Prl. Senior Civil Judge & CJM.,
Dharwad.
