

KADW050011432019



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

PRESENT

Sri. Venkanna B. Hosamani, B.Com., LL.B.,(Spl.).
Prl. Senior Civil Judge & CJM,
Dharwad

Dated this the 4th day of August, 2026

O.S. No. 56/2019

- Plaintiff/s :**
- 1 Smt.Aminabi D/o Hasansab Kambarganavi,
Age: 78 years, Occ: Household work,
R/o Masjid Galli, Kotur village,
Tq: Dharwad.
 - 2 Smt.Imambi D/o Hasansab Kambarganavi
Age: 78 years, Occ: Household work,
R/o Shinganahalli Tq: Dharwad,
Dead represented by her L.Rs
 - 2(a) Smt.Bibijan W/o Munirsab Kambarganavi,
Age: 52 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
 - 2(b) Sri. Babajan S/o Lalsab Benachi,
Age: 49 years, Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
 - 2(c) Sri.Sayyedsab S/o Lalsab Benachi
Age: 45 years Occ: Agriculture,
R/o Shinganahalli Tq & Dt: Dharwad.
 - 2(d) Smt.Shamshad W/o Madarsab Nesaragi,
Age: 40 years Occ: Household work,
R/o Shinganahalli Tq & Dt: Dharwad.

(By Sri. S.S. Patil, Adv.)

Vs.

- Defendant/s**
1. Mahaboobsab S/o Maktumsab Kambarganavi,
Age: 60 years Occ: Agriculture,
R/o Shinganahalli Tq: Dharwad,
Dead on 23/01/2025 represented by his L.Rs
 - 1(a) Smt. Guduma W/o Mahabubasab
Kambarganavi, Age: 42 years
Occ: Household work, R/o Shinganahalli,
Tq & Dt: Dharwad.
 - 1(b) Smt. Jarina W/o Shahajan Pirjade,
Age: 42 years, Occ: Household work,
R/o Kittur Tq: Kittur Dt: Belagavi
 - 1(c) Abdul Khadar S/o Mahabubasab
Kambarganavi, Age: 40 years Occ: Agriculture,
R/o Shinganahalli Tq & Dt: Dharwad.
 - 1(d) Smt.Absida Begam W/o Imamsab Tahasildar,
Age: 38 years Occ: Household work,
R/o Shinganahalli Tq & Dt: Dharwad.
 - 1(e) Smt.Hussainbi W/o Mahabubbasab Choudri,
Age: 36 years, Occ: Household work,
R/o Navalur Tq & Dt: Dharwad.
 - 1(f) Smt.Huseena Begam W/o Mahabubasab
Kambarganavi, Age: 34 years Occ: Household
work, R/o Shinganhalli Tq & Dt: Dharwad.
 - 1(g) Maktumsab S/o Mahabubasab Kambarganavi,
Age: 25 years Occ: Agriculture,
R/o Shinganahalli Tq & Dt: Dharwad.
 - 1(h) Baseera S/o Mahabubasab Kambarganavi,
Age: 23 years Occ: Agriculture,
R/o Shinganahalli Tq & Dt: Dharwad.
 - 1(i) Smt.Saadiya D/o Mahaubasab Kambarganavi,
Age: 20 years Occ: Household work,
R/o Shinganahalli Tq & Dt: Dharwad.
 - 1(j) Smt.Muskan W/o Abdulkhadar
Kambarganavi, Age: 37 years Occ: Household

work, R/o Shinganahalli Tq & Dt: Dharwad.

- 1(k) Mayara S/o Abdulkhadar Kambarganavi
Age: 6 years R/o Shinganahalli,
Tq & Dt: Dharwad.
- 1(l) Umera S/o Abdulkhadar Kambarganavi,
Age: 4 years R/o Shinganahalli,
Tq & Dt: Dharwad.
- 1(m) Rayab S/o Abdulkhadar Kambarganavi
Age: 1 years R/o Shinganahalli,
Tq & Dt: Dharwad.
(Since defendants No.1(k) to (m) are minors
represented by their mother defendant No.1(j).
2. Sri. Peersab S/o Maktumsab Kambarganavi
Age: 55 years Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
3. Smt.Imambi W/o Maktumsab Kambarganavi
Age: 60 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
4. Smt.Husenbi S/o Maktumsab Kambarganavi
Age: 50 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
5. Hasansab S/o Hasansab Kambarganavi
Age: 92 years Occ: Agriculture,
R/o Venkatapur Tq & Dt: Dharwad.
6. Smt.Rabeeya W/o Aminsab Kambarganavi
Age: 75 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
7. Smt.Shareen D/o Aminsab Kambarganavi,
Age: 62 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
8. Smt.Shakeela D/o Aminsab Kambarganavi
Age: 60 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
9. Smt.Rihana D/o Aminsab Kambarganavi
Age: 58 years Occ: Household work,

R/o Shinganhalli Tq & Dt: Dharwad.

10. Sri. Altaf S/o Aminsab Kambarganavi ,
Age: 56 years Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
11. Smt.Shabana D/o Aminsab Kambarganavi
Age: 54 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
12. Smt.Kousar D/o Aminsab Kambarganavi,
Age: 52 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
13. Smt.Salma D/o Aminsab Kambarganavi,
Age: 50 years Occ: Household work,
R/o Shinganhalli Tq & Dt: Dharwad.
14. Sri. Rabbanisab S/o Aminsab Kambarganavi
Age: 48 years Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
15. Smt.Nagma D/o Aminsab Kambarganavi,
Age: 46 years Occ: Household,
R/o Shinganhalli Tq & Dt: Dharwad.
16. Smt.Begambi W/o Rahamansab
Kambarganavi, Age: 70 years,
Occ: Household, R/o Shinganhalli Tq & Dt:
Dharwad.
17. Sri. Mahabooba S/o Rehamansab
Kambarganavi, Age: 45 years Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
18. Sri. Dadapeer S/o Rehamansab Kambarganavi
Age: 42 years Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
19. Sri. Riyazahmed S/o Rehamansab
Kambarganavi Age: 40 years Occ: Agriculture,
R/o Shinganhalli Tq & Dt: Dharwad.
20. Sri. Mustaq S/o Rehamansab Kambarganavi
Age: 38 years Occ: Agriculture, R/o
Shinganhalli Tq & Dt: Dharwad.

21. Sri. Hasansab S/o Rehamansab Kambarganavi Age: 36 years Occ: Agriculture, R/o Shinganhalli Tq & Dt: Dharwad.
22. Smt. Paveenbanu D/o Rehamansab Kambarganavi Age: 34 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
23. Smt.Reshmabanu D/o Rehamansab Kambarganavi Age: 35 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
24. Smt.Haseena D/o Rehamansab Kambarganavi Age: 33 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
25. Smt.Afeen D/o Rehamansab Kambarganavi Age: 30 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
26. Smt.Papabi W/o Peersab Kambarganavi (Dead since deleted)
27. Smt. Haseena D/o Peersab Kambarganavi, Age: 40 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
28. Sri. Mahaboobsab S/o Peersab Kambarganavi Age: 38 years Occ: Agriculture work, R/o Shinganhalli Tq & Dt: Dharwad.
29. Smt.Maimum D/o Peersab Kambarganavi, Age: 36 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
30. Smt.Shakeera D/o Peersab Kambarganavi Age: 34 years Occ: Household work, R/o Shinganhalli Tq & Dt: Dharwad.
31. Sri. Hasansab S/o Hasansab Kambarganavi, Age: 55 years Occ: Agriculture work, R/o Shinganhalli Tq & Dt: Dharwad.
32. Sri. Mahammadsab S/o Hasansab Kambarganavi, Age: 52 years Occ: Agriculture, R/o Shinganhalli Tq & Dt: Dharwad.

33. Sri. Moulasab S/o Hasansab Kambarganavi,
Age: 50 years Occ: Agriculture work, R/o
Shinganhalli Tq & Dt: Dharwad.
34. Smt.Chandrabai W/o Shivagirao Pawar,
Age: 84 years Occ: Agriculture,
R/o Pawar Chawl, Tadakod Oni, Dharwad.
35. Smt.Jyoti Fakkirappa
Age: 50 y ears, Occ: Household work,
R/o Pawar Chawl, Tadakod Oni, Dharwad.
36. Sri. Aditya S/o Shivaji Rao,
Age: 30 years, Occ: Agriculture,
R/o Pawar Chawl, Tadakod Oni, Dharwad.
37. Sri. Manjunath S/o Fakkirappa Chavan,
Age: 30 years, Occ: Agriculture,
R/o Pawar Chawl, Tadakod Oni, Dharwad.
38. Smt. Pooja D/o Shivaji Rao Pawar,
Age: 30 Years Occ: Household work,
R/o Pawar Chawl, Tadakod Oni, Dharwad.
39. Smt. Pavitra D/o Shivaji Rao,
Age: 25 years Occ: Household work,
R/o Pawar Chawl, Tadakod oni, Dharwad.
40. The Commissioner,
(TECH & C.A for I.A.N.H.I Sattur Colony,
Vidyagiri, Dharwad.
41. The Commissioner,
National Highway Authority of India (NH-4)
Regional Office, 2nd cross, Sattur Colony,
Vidyagiri, Dharwad.
42. The special Land Acquisition officer/
Commissioner K.I.A.D.B., R/o Opp: O Zone
Hotel, Sattur Dharwad.

(D1(a) to D1(m), D2 to D25, D27 to D33
& D41 : Exparte.)

(D26 & D34 : Dead.)

(D35 to D39 By Sri. K.L. Patil., Adv.)

(D40 By Sri. M.V.K., Adv.)

(D42 By Sri. P.G.K., Adv.)

Date of institution of suit	:	01.03.2019
Nature of suit	:	Partition and separate possession.
Date of commencement of evidence	:	05.12.2023
Date of pronouncement of judgment	:	04.08.2026
Total duration	:	<u>Year/s Month/s day/s</u> 07 05 03

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.

: J U D G M E N T :

This is a suit filed by the plaintiffs against the defendants for partition and separate possession in the suit properties by metes and bounds. Further, they sought for declaration of sale deed dated 05/04/1999 executed by the defendants No.1 to 33 in respect of the suit properties in favour of defendants No.34 is not binding on the share of the plaintiffs and sale deed dated 25/08/2009 executed by defendant No.40 is also not binding on the share of the plaintiffs.

2. Description of the suit properties :

A. The suit property bearing Sy. No.58/1, measuring 09 acres 03 guntas situated at Shinganhalli village of Dharwad Taluk.

B. The suit property bearing Sy. No.58/2, measuring 08 acres 08 guntas situated at Shinganhalli village of Dharwad Taluk.

C. The suit property bearing Sy. No.59/1, measuring 04 acres 05 guntas situated at Shinganhalli village of Dharwad Taluk.

D. The suit property bearing Sy. No.59/2, measuring 03.11.7 annas situated at Shinganhalli village of Dharwad Taluk. Hereinafter called and referred to as suit properties.

3. The brief facts of the plaint are as follows:

The original propositus deceased Kaabushya @ Hasansab S/o Aminsab Kambarganavi was died on 03/01/1982 leaving behind two daughter and 7 sons. The mother of the plaintiffs was also died long back. The elder brother of Hasansab by name Modinsab S/o Aminsab Kambarganavi was also died long back and unmarried. Hasansab was the farmer of the suit properties and cultivating the lands since from 1946 till his death. After his death, the plaintiffs and defendants No.1 to 33 were cultivating the suit properties.

4. It is further case of the plaintiffs is that, the suit properties were granted by the Karnataka Government as per Karnataka Land Reforms Act in favour of Hasansab S/o Aminsab Kambarganavi. After demise of Hasansab, the plaintiffs and defendants No.1 to 33 were succeeded the suit properties as legal representatives. The names of defendants were entered in the revenue records, but some of the defendants name were not entered to the revenue records. The plaintiffs and defendants are entitled for equal share in the suit properties. The defendants No. 16 to 25 and 26 to 33 father was expired. The plaintiffs and defendants No.1 to 33 are governed by Mohammedan Law and they are entitled for share in the joint family properties. When the plaintiffs asked the defendants No.1 to 33 for effect partition in the suit properties, the said defendants have refused to effect the partition in the suit properties and also refused to give the share to the plaintiffs. Subsequently, the plaintiffs came to know that the defendants No.1 to 33 have acquired the land bearing Sy. No. 59/1 measuring 22 guntas 12 annas without the knowledge and consent of the plaintiffs and defendants No.1 to 33. The defendants No.1 to 33 illegally behind the

back of the plaintiffs sold the suit properties to the defendant No.34 by executing the registered sale deed dated 05/04/1999. The defendant No.34 without having right, title and interest over the suit properties transferred the suit properties in favour of defendants No.35 to 39 illegally. Hence, the said sale deeds pertaining to the suit properties are not binding on the share of the plaintiffs. Hence, the plaintiffs have filed the present suit and pray for decree the suit.

5. After service of summons, the defendants No.1(a) to 1(m), 2 to 25, 27 to 33 and 41 are not appeared before this Court. Hence, the said defendants were placed exparte. Defendants No.35 to 39 appeared before the Court and filed the written statement through their advocate. The defendants No.40 and 42 also appeared before this Court through their counsel.

6. The defendant No.40 filed the written statement wherein he has contended that the defendant No.40 is the Project Director for National Highways Authority of India, Project Implementation Unit, Dharwad entrusted with the task of acquisition of lands through Special Land Acquisition Officer, Dharwad for the purpose of widening, 4/6 laning

National Highway No.4 (Harihar Belgaum Bypass Section of NH-4), which is also passing through Shinganahalli village of Dharwad Taluk.

7. The defendant No.40 further stated that while carrying out the said widening and development of National Highway, has issued 3D Notification on 17/06/2002 for the acquisition of lands situated in Shinganahalli. The acquisition of lands vide 3D Notification among other lands also includes 2326 sq. meters of irrigated land in Sy. No. 59/1-2 owned by Smt. Jyoti W/o Fakkirappa Chavhan. For the said acquisition compensation of Rs.1,05,614/- was determined which includes Rs.90,714/- for land and Rs.14,000/- for trees. Apart from the said acquisition vide consent sale deed dated 25/08/2009 entered between Smt. Jyoti W/o Fakkirappa Chavhan and Competent Authority for Land Acquisition NHAI on behalf of President of India, have also acquired to the extent of 1520 Sq Mtrs situated R.S/Sy No 59/1+2 of Shinganahalli village. The said consent sale deed was also registered with the office of the Sub Registrar, Dharwad. They are nothing to do with the suit properties.

8. The defendant No.40 further contended that the said compensation amount has been given to Smt. Jyoti W/o Fakkirappa Chavhan. Further it is stated that this defendant is not aware of the ownership of plaintiffs over the suit properties and he pray for dismissal of the suit.

9. The defendants No.35 to 38 and 39 were also filed the written statement and denied the averments made in the plaint and contended that the present suit has been filed after lapse of 25 years. These defendants have purchased the suit property on 05/04/1999. Only just to harass and trouble to these defendants, the plaintiffs have filed the present suit and pray for dismissal of the suit.

10. On the basis of the pleadings, my learned predecessor-in-office has framed the following issues and Addl. Issues :

ISSUES

- 1. Whether the plaintiffs prove that themselves and the defendants No.1 to 3 are tenants in common in respect of the suit properties ?***
- 2. Whether the plaintiffs are entitled for partition and separate possession of the suit properties ? If so, what would be their share?***

3. Whether the cause of action arose to file the suit in the present form?

4. What order or decree?

Addl. Issues:

1) Whether the defendant No.34 proves that the suit schedule A to D properties were his self acquired properties?

2) Whether the defendant Nos. 36 to 39 prove that they are the absolute owners of the suit schedule A to D properties?

11. In order to prove the case of the plaintiffs, the plaintiff No.2(b) examined as PW-1 and got marked the documents as Ex.P.1 to P.22. On the other hand, the defendant No.35 herself examined as D.W.1 and got marked the documents at Ex.D1 to D11.

12. The learned counsel for the plaintiffs filed the written argument on 15/07/2026. Heard the arguments of Sri. K.L. Patil advocate for the defendants No.35 to 39 and rest of the defendants have not argued their case. I have examined the materials placed on record.

13. The issues are answered as under;

Issue No.1 : In the Negative,

Issue No.2 : In the Negative,

Issue No.3 : In the Negative,
Addl. Issue No.1: In the Affirmative,
Addl. Issue No.2: In the Affirmative,
Issue No.4 : As per final order for the
following,

: REASONS :

14. Issues No. 1 to 3 and Addl. Issues No.1 and 2 :

Since these issues and Addl. Issues are inter-linked with each other, they are taken together for common discussion in order to avoid repetition of facts and reasons.

15. It is the specific case of the plaintiffs is that, the plaintiffs and defendants No.1 to 33 are tenants in common and they are legal representatives of propositus deceased Kaabushya @ Hasansab S/o Aminsab Kambarganavi who died on 03/01/1982 intestate. The propositus was farmer of the suit lands from the year 1946 till his death. The propositus was filed the application before the Land Tribunal seeking grant of occupancy rights. Upon conducting the enquiry, the Land Tribunal by its order granted the occupancy rights in favour of the propositus.

16. After the death of propositus the legal representatives had got mutated their names to the suit properties and alienated the suit properties on 05/04/1999 in favour of defendant No.34. The said sale deeds are not binding upon the shares of the plaintiffs. Hence, the plaintiffs have filed the present suit, seeking their legitimate shares in the suit properties and pray for decree the suit.

17. The counsel for the defendants No. 35 to 39 Sri. K.L. Patil, Advocate argued that in collusion with the defendants No.1 to 33, the plaintiffs have filed the present suit after lapse of 25 years, the plaintiffs are not the legal heirs of Hasansab. By seeing the enormous increase of value of the properties, to grab valuable properties of the defendants and to harass the defendants No.35 to 39 the present suit has been filed by the plaintiffs without cause of action and pray for dismissal of the suit.

18. In order to prove the case of the plaintiffs, the plaintiff No.2(b) was examined as P.W.1 and filed his affidavit evidence and reiterated the averments made in the plaint. The P.W.1 has got marked as many as 22 documents as Ex.P1 to P22 in support of his case.

19. As per provisions of Bharatiya Sakshya Adhiniyama / Indian Evidence Act, the heavy burden lies on the plaintiffs to prove that themselves and defendants No.1 to 33 are tenants in common in respect of the suit properties and the plaintiffs are entitled for partition and separate possession in the suit properties.

20. It is further argument of Sri. K.L.P Advocate is that the plaintiffs willfully filed the false suit to grab the valuable properties of the defendants No.35 to 39 without including the 15 acres of land situated at Singhanahalli village, still the said property is standing in the name of grand-father of P.W.1 and said fact was admitted by the P.W.1 during the course of cross-examination. Hence, conduct of the plaintiffs itself shows that they want to grab the properties of defendants No.35 to 39.

21. The plaintiffs and defendants No.1 to 33 are governed by Mohammedan Law. It is well settled principles of law is that the Mohammedan can file suit for partial partition. It is not mandatory on the part of the plaintiffs to seek partition in all properties.

22. The heavy burden lies on the plaintiffs to establish that they are legal representatives/legal heirs of propositus Hasansab. If the plaintiffs are succeeded in proving this fact, definitely they will be entitled for share in the suit properties as per Mohammedan Law.

23. Let me see how the plaintiffs are established their case and if the plaintiffs are succeeded to discharge the burden lies on them. The plaintiffs have relied the Ex.P7 issued by the Revenue authorities on 01/02/2019. Basing on the Ex.P7, the plaintiffs are stating that they are the legal representatives or successors of late Hasansab Aminsab Kambarganavi who died on 03/01/1982. On perusal of the said document, there are 9 names appearing.

24. The counsel for the defendants No. 35 to 39 Sri. K.L.Patil argued that the said document is not the succession certificate issued by the competent Court or Competent authority. On the basis of Ex.P7, it cannot be decided that the names appearing in the said document are the legal heirs of late Hasansab Aminsab Kambarganavi.

25. On perusal of the said document, it is stated that:

“ಶ್ರೀ ಹಸನಸಾಬ ಅಮಿನಸಾಬ ಕಂಬಾರಗಣವಿ ಅವರು 03/01/1982 ದಿನಾಂಕದಂದು ಮೃತಪಟ್ಟಿದ್ದು ಅವರ ಕುಟುಂಬದ ಜೀವಂತ ಸದಸ್ಯರ ವಿವರಗಳು ಈ ಕೆಳಕಂಡಂತೆ ಇರುತ್ತದೆಯೆಂದು ಧೃಢೀಕರಿಸಿದೆ ಅದನ್ನು ವಾರಸಾ ಪತ್ರವೆಂದು ಪರಿಗಣಿಸತಕ್ಕದ್ದಲ್ಲ.”

(Underlined by me)

The document relied by the plaintiffs i.e., Ex.P7 itself discloses that it should not be considered as a succession certificate. The Ex.P7 has been issued by the Deputy Tahasildar, Garag Hobli, Dharwad Taluk on 01/02/2019 on request of Smt. Amina W/o Shoukatali Langadi who is none other than the plaintiff No.1. As on the date of filing of the suit, the age of the plaintiff No.1 is 78 years. The date of death of Hasansab is 03/01/1982. The plaintiffs have not furnished any other documents to show that on what basis the Deputy Tahasildar has issued the Ex.P7. In the absence of other relevant documents, it cannot be held that the Ex.P7 is the succession certificate.

26. At this stage, I intend to quote the relevant portion of written arguments filed by Sri. S.S. Patil, Advocate for the plaintiff which is culled out and runs thus:

*“6. It is further submitted that the occupancy rights were granted by the Land Tribunal on 28/09/1981 and thereafter form No.10 was issued and **the names of the legal heirs were entered in the revenue records on 09/03/1984.**”*

(Underlined by me)

The above culled out contention taken in the written arguments, it discloses that names of the legal heirs were entered in the revenue records on 09/03/1984. If really, the plaintiffs are also legal heirs of deceased Hasansab, in the written argument it should have been written specifically that names of all legal heirs of Hasansab not entered in the revenue records. When the Advocate for the plaintiffs himself admitting in writing that the names of legal heirs were entered in the revenue records on 09/03/1984. It discloses that after the demise of Hasansab, names of his legal heirs were entered in the revenue records on 09/03/1984. The said contention is helpful to the case of the defendants No.34 to 39. Therefore, the contention taken by the plaintiffs that, they are legal representatives of late Hasansab is creates the doubt in the mind of this Court.

27. If really, the names of the plaintiffs have not entered in the revenue records, the plaintiffs ought to have take appropriate steps to get mutate their names to the suit properties at earliest point of time after the demise of Hasansab. But, the plaintiffs have not taken any steps since 10/03/1984 to till filing of the suit i.e., on 01/03/2019 for the best reasons known to them. This fact also creates the doubt in the mind of this Court, whether really the plaintiffs were tenants in common along with defendants No.1 to 33.

28. The P.W.1 in his cross-examination admitted the most of suggestions put by the counsel for the defendants No.35 to D39. The relevant portion of cross-examination of P.W.1 is culled out and runs thus:

“ನಿಪಿ-14 ರನ್ವಯ ನನ್ನ ಅಜ್ಜ ದಿ:03.01.1982 ರಲ್ಲಿ ಮರಣ ಹೊಂದಿರುವುದಾಗಿ ವರದಿ ಮಾಡಿ ಆ ಪ್ರಕಾರ ಅರ್ಜಿಯಲ್ಲಿ ಉಲ್ಲೇಖಿಸಿದ ವ್ಯಕ್ತಿಗಳ ಹೆಸರಿಗೆ ಖಾತೆ ಮಾಡಲು ಕೋರಿಕೊಂಡಿದ್ದೆವು ಎಂದರೆ ಸರಿ. ಹಸನಸಾಬ ಇವರ ಮಗ ಮಕ್ಕುಂಸಾಬ ಇವರು ದಿ: 14.09.1989 ರಂದು ಮರಣ ಹೊಂದಿರುವುದಾಗಿ ಉಲ್ಲೇಖಿಸಿ ಅವರ ವಾರಸುದಾರರ ಹೆಸರಿಗೆ ನಿಪಿ-15 ರನ್ವಯ ಖಾತೆಯಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ನಿಪಿ-14 ಮತ್ತು 15 ರಲ್ಲಿ ಉಲ್ಲೇಖಿಸಿರುವ ವ್ಯಕ್ತಿಗಳು ಮಾತ್ರ ವಾರಸುದಾರರು ದಾವಾ ಸ್ವತ್ತುಗಳ ಮಾಲೀಕರು ಎಂದು ಉಲ್ಲೇಖಿಸಿ ಖಾತೆಯಾಗಿದೆ ಎಂದರೆ ಸರಿ.”

(Underlined by me)

The above culled out deposition of P.W.1, it is crystal clear that only the names of legal heirs have been mutated to the properties as per Ex.P14 and 15. The P.W.1 himself admitted that the names of the legal heirs of deceased Hasansab and Maktumsab were mutated to the suit properties. If really, the plaintiffs are also legal heirs of deceased Hasansab, the P.W.1 ought to have deposed that except the names of plaintiffs other legal heirs names have been mutated, but the P.W.1 has not deposed that except the names of the plaintiffs, other names were mutated. He has specifically deposed that the names of legal heirs were mutated to the suit properties by virtue of Ex.P14 and P15. On the basis of above culled out deposition of P.W.1, I am of the opinion that his evidence is supports the case of the defendants and also Ex.P7 wherein it is specifically stated that the Ex.P7 is not succession certificate. Hence, considering the evidence of P.W.1, Ex.P7, P14 and P15, I am of the opinion that the names of legal heirs of deceased Hasansab have been mutated and they are only tenants in common. There is no single document produced before this Court to establish that the plaintiffs are tenants in common.

29. Admittedly, the suit properties have been granted in the year 28/09/1981, thereafter form No.10 was issued, the names of the legal heirs of plaintiffs entered in the revenue records on 09/03/1984. Before grant of the suit properties, marriage of P.W.1 and P.W.2 had solemnized as per the evidence of P.W.1. The P.W.1 in his cross-examination deposed that her mother marriage might be solemnized in the year 1960 and marriage of the plaintiff No.1 was solemnized in the year 1980 i.e., much prior to the grant of suit lands.

30. Admittedly, the defendants No.1 to 33 had sold the suit properties on 05/04/1999. If really, the plaintiffs were tenants in common and cultivated the suit lands, they ought to have challenged the said sale deeds within 3 years from the date of alienation i.e., from 06/04/1999 to 05/04/2002. The plaintiffs have not disclosed that why they have not taken any appropriate steps within a period of limitation. The plaintiffs have stated that the cause of action in the plaint i.e., on second week of February 2019 when the defendants have denied the shares of the plaintiffs and refused to effect the partition by metes and bounds.

31. The suit properties were sold out in the year 1999 i.e., on 05/04/1999 by the defendants No.1 to 33, question of effecting the partition by metes and bounds and allotting the shares of the plaintiffs does not arise. If really, the plaintiffs were tenants in common they ought to have taken appropriate steps by mutating their names. But they have not taken any steps as quoted supra. In my opinion, the cause of action shown in the plaint is only for the purpose of filing of this suit.

32. As on the date of purchase of the suit properties by the defendant No.34, the suit properties were standing in the names of legal heirs of deceased Hasansab, after due enquiry the defendant No.34 had purchased the suit properties and defendants No.35 to 39 are also purchased the suit properties from defendant No.34 after due enquiry.

33. As per the arguments of Advocate for the defendants No.35 to 39 Sri. K.L. Patil, the P.W.1 in his cross-examination himself admitted that they are not in possession of the suit properties. On the basis of document furnished by plaintiffs the Ex.P7, it cannot be held that the plaintiffs were cultivating the suit properties. After alienation of the suit properties, the defendants No.1 to 33 had also not cultivated the suit

properties. The sale deeds furnished by the plaintiffs i.e., Ex.P19 to P22 discloses that the vendor of the said properties sold the said properties for their family legal necessities and the said purchasers have purchased the suit properties by paying valuable sale consideration. This fact is also admitted by the P.W.1 in his cross-examination. The relevant portion is culled out and runs thus:

“ ಖರೀದಿ ಪತ್ರದನ್ವಯ ಮಾರಾಟ ಮಾಡಿದವರ ಹೆಸರನ್ನು ತೆಗೆದು ಖರೀದಿ ಮಾಡಿದ ಪ್ರತಿವಾದಿ 34 ರವರ ಹೆಸರಿಗೆ ಖಾತೆಯಾಯಿತು ಎಂದರೆ ಸರಿ . ಖರೀದಿ ಮಾಡಿದ ಪ್ರಕಾರ 34 ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು ಅವರ ಮರಣದ ತರುವಾಯ ಪ್ರತಿವಾದಿ 35 ರಿಂದ 39 ರವರು ಖರೀದಿ ಮಾಡಿದ ಸ್ವತ್ತುಗಳ ಕಬ್ಬಾ ವಹಿವಾಟು ಹೊಂದಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ . ನಿಪಿ-14 ರಿಂದ 16 ನ್ನು ನಾವು ಪ್ರಶ್ನೆ ಮಾಡಿಲ್ಲ . ಪ್ರತಿವಾದಿ 34 ರವರು 1999 ರಲ್ಲಿ ತಾವು ಖರೀದಿ ಮಾಡಿದ ಸ್ವತ್ತುಗಳ ಮಾಲೀಕರು ಯಾರು ಎಂಬುವುದನ್ನು ವಿಚಿತಪಡಿಸಿಕೊಂಡು ಖರೀದಿ ಬಾಬು ಹಣ ಪಾವತಿಸಿ ಖರೀದಿ ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ .”

(Underlined by me)

The P.W.1 admitted that from the date of purchase of the suit properties, the purchasers are in possession of the suit lands and they have not questioned the sale deeds. On the basis of this deposition it can be held that the owners of the said properties have sold out their properties for valuable consideration for their family legal necessities.

34. Therefore, it can be held on the basis of evidence of P.W.1 that, the plaintiffs have not questioned the alienation made by the owners of the said properties. Hence, I am of the opinion that the plaintiffs are not entitled for the shares in the suit properties.

35. The defendant No.40 has filed his written statement and stated that they have issued notice to the person whose name was appearing in the revenue records and awarded the compensation. As per defendant No.40 in the year 2002 National High Way Authority of India issued the Preliminary 3-A notification as well as final 3-D notification duly following all the provisions of National Highways Act, 1956. If really, the plaintiffs were cultivating the suit properties in the year 2002 as a tenant in common they ought to have questioned the acquisition made by the National Highway and to file appropriate application before the National Highway Authority seeking compensation for acquisition of portion of the suit properties. This fact is also discloses that in the year 2002 itself the National Highway had acquired the portion of the landed properties and awarded the compensation to the owners of the suit properties.

26. In the year 2002, the plaintiffs have also not initiated any legal action against the defendant No.34 to 39 and not challenged the sale deeds executed by the defendants No.1 to 33 in favour of defendant No.34. Hence, considering all the oral as well as documentary evidence, I am of the opinion that the plaintiffs are not tenants in common in respect of the suit properties and they are not entitled for partition and separate possession in the suit properties and there is no cause of action arose to the plaintiffs to file the present suit. On the other hand, earlier the defendant No.34 was purchased the suit properties thereby she became the absolute owner and in possession of the said properties. As per Section 14 of the Hindu Succession Act, the said suit schedule A to D properties were self acquired properties of defendant No.34 Smt. Chandrabai and she has got every right to alienate her properties as per her wish and will and she had alienated the said properties in favour of defendants No.35 to 39. Subsequently, the defendants No.35 to 39 became the owners of the suit schedule A to D properties. Therefore, I have answered Issues No.1 to 3 in the **Negative** and Additional Issues No.1 and 2 in the **Affirmative** .

37. **Issue No.4:** In view of the above discussions and my answers to the above issues and additional issues, I am of the opinion that the plaintiffs are not entitled for any relief as sought in the plaint. Hence, suit is liable to be dismissed with costs. Accordingly, I proceed to pass the following :

ORDER

The suit of the plaintiffs is hereby dismissed
with costs.

Draw decree accordingly.

(Dictated to the stenographer, transcription typed by him, corrected and Judgment is pronounced in the open court by me on the 4th day of August, 2026).

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.

: ANNEXURE :

List of witnesses examined for plaintiff:

PW-1 : Sri. Babajan S/o Lalsab Benachi @ Mandyal.

List of documents marked for plaintiff:

Ex.P-1 to P6 : M.E extracts.

Ex.P-7 : Survival certificate.

Ex.P-8 : Certified copy of sale deed.

Ex.P-9 to P12 : RTC extracts.

Ex.P-13 to P18 : M.E extracts.

Ex.P-19 to P22 : Certified copies of Sale deeds.

List of witnesses examined for defendant:

DW-1 : Smt. Jyothi W/o Fakirappa Chavan.

List of documents marked for defendant:

Ex.D-1 : Death certificate.

Ex.D-2 : Survival certificate.

Ex.D-3 to D6 : RTC extracts.

Ex.D-7 to D10 : Sale deeds.

Ex.D-11 : RTC extract.

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.