

KADW050030632024



Presented on : 05-07-2024

Registered on : 08-07-2024

Decided on : 30-07-2026

Duration : 2 years, 00 months, 25 days

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

PRESENT

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

Dated this the 30th day of July, 2026

O.S. No.297/2024

Plaintiff/s: 1. Durgappa S/o. Sannayallappa @ Yallappa
Halyal, Age: 46 years,
Occ: Agriculture, R/o.Varanagalavi,
Tq & Dist: Dharwad.

(By Sri.SHB., Adv.,)

V/s.

Defendants 1. Hanumanth S/o. Sannayallappa
@ Yallappa Halyal, Age: 52 years,
Occ: Agriculture, R/o.Varanagalavi,
Tq & Dist: Dharwad.

2. Somappa S/o. Sannayallappa @ Yallappa
Halyal, Age: 48 years,
Occ: Agriculture, R/o.Varanagalavi,
Tq & Dist: Dharwad.

3. Basavaraj @ Basappa S/o. Sannayallappa
@ Yallappa Halyal, Age: 46 years,
Occ: Agriculture, R/o.Varanagalavi,
Tq & Dist: Dharwad.

4. Madevi @ Mahadevi W/o. Ramanna Pujar,
Age: 40 years, Occ: Household,
R/o. Varanagalavi, Tq & Dist: Dharwad.
5. Yallavva W/o. Channappa Devaramani,
Age: 38 years, Occ: Household,
R/o. Tirlapur, Tq: Navalgund,
Dist: Dharwad.
6. Manjula W/o. Sanju Vaddar,
Age: 44 years, Occ: Household,
R/o. Haliyal, Tq : Haliyal,
Dist: Uttar Kannada
7. Durgavva @ Duragavva W/o.
Sannayallappa @ Yallappa Halyal,
Age: 70 years, Occ: Agriculture,
R/o. Varanagalavi, Tq & Dist: Dharwad.
8. Choudappa S/o. Tammanna Dandalakar,
Age: 65 years, Occ: Agriculture,
R/o. Ganesh Nagar, Belagavi.
9. The Chairman,
Tenant Farming Society, Nagalavi,
R/by Sri. Krishnappa S/o. Mahadevappa
Dhokale, Age: 62 years,
Occ: Agriculture, R/o. Varanagalavi,
Tq & Dist: Dharwad.

**(D-1-6,7&9 Ex parte,
D-8 By Sri.TTP.,Adv.)**

Date of institution of suit : 05.07.2024
Nature of suit : Partition &
Separate Possession
Date of commencement of evidence : 07.03.2025
Date of pronouncement of Judgment : 30.07.2026.
Total duration : Year/s Month/s day/s
2 years, 00 months, 25 days

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

: J U D G M E N T :

The present suit is one for partition, separate possession and for mandatory injunction filed by the plaintiff against the defendants.

The gist of the plaintiff's case is hereunder:

2. The suit schedule property bearing R.S.No.54 measuring 18 acres 32 gunta of of which 09 acres 12 gunta situated at Varavanagalavi village of Dharwad taluka, Dharwad District described in Schedule 'A' was the subject matter of the suit.

3. The genealogy of the plaintiff and defendants No.1 to 7 family annexed at Schedule 'B'.

4. One Yallappa @ Sannayallappa S/o.Somappa Haliyal was the propositus of the family of plaintiff and defendant No.1 to 7. The property was granted by the Land Tribunal, Dharwad in the name of propositus. The original propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal died intestate leaving behind the plaintiff and defendant No.1 to 7 as his heirs. Since there was no testamentary disposition of the suit property and after the demise of propositus, the

plaintiff and defendant No.1 to 7 are continued in joint family. Accordingly, the name of the plaintiff and defendant No.1 to 7 entered in the revenue record pertaining to suit property.

5. The defendant No.9 i.e., the Chairman, Tenant Farming Society, Nagalavi name also reflected in column No.9 of the RTC. Similarly, the name of defendant No.8 is also reflected in RTC thus the defendant No.8 and 9 are also arrayed as parties to the suit. However, both defendant No.8 and 9 have no right, title and interest over the suit schedule property. Since the defendants No.1 to 7 are denied to effect partition thus the plaintiff without any option knocked the door of the Court by filing the present suit.

6. The defendant No.1 to 7 and 9 despite service of summons they did not appear before the court and resisted the claim of the plaintiff.

7. The defendant No.8 resists the claim of the plaintiff filing a detailed written statement contending that the suit of the plaintiff is false, frivolous and vexatious and not tenable either in the eye of law or on

facts. The present suit is bad for non-joinder of necessary parties. The plaintiff has filed the present suit suppressing true facts. This court has no jurisdiction to try the suit. The present suit is hopelessly barred by law of limitation. The suit was under valued and court fee paid there on is insufficient. On aforementioned grounds prays to dismiss the suit.

8. It is the specific contention of the defendant No.8 that the land bearing R.S.No.54 measuring 18 acres 32 guntas belongs to the defendant No.9. On 13.05.1999 the defendant No.9 passed a resolution passed in the committee by authorising the defendant No.8 to cultivate the land as a tenant. Accordingly, the defendant No.8 was in possession of the land bearing R.S.No.54 measuring 18 acres 32 guntas out of which 4 acres 26 guntas was in use and enjoyment of the defendant No.8. The plaintiff and defendants No.1 to 7 have no right, title and interest over the suit property in which the defendant No.8 was in use and enjoyment. The possession of the property by

defendant No.8 itself is not questioned either by the plaintiff and defendants No.1 to 7 and defendant No.9. As per the order of defendant No.9, the defendant No.8 was in use and enjoyment of the land measuring 4 acres 26 guntas in R.S.No.54 measuring 18 acres 32 guntas. Hence, the present suit is not sustainable and accordingly prays to dismiss the suit.

9. Based on the rival pleadings, my predecessor in office framed the following:

ISSUES

- 1. Whether the plaintiff proves that suit property bearing RS No.54 measuring 9 acres 12 guntas out of total measuring 18 acres 32 guntas is the ancestral property of the plaintiff and defendant No.1 to 7 and they are in joint possession of the same?***
- 2. Whether the plaintiff further proves that himself and defendant No.1 to 7 are the absolute owners of the suit property and the name of defendant No.8 has been illegally entered in column No.12 of RTC extract and hence the same may be deleted ?***
- 3. Whether the defendant No.8 proves that suit property belongs to defendant No.9 and as per the rules forming society has granted 4 acres 26 guntas of land to defendant No.8***

and he is in peaceful possession and enjoyment of the same ?

4. Whether the plaintiff is entitled for 1/7th share by way of partition and separate possession by metes and bounds?

5. Whether the plaintiff is entitled for the relief of declaration as prayed for?

6. Whether the plaintiff is entitled for the relief of Mandatory Injunction as prayed for?

7. What order or decree?

10. In order to substantiate their respective contentions, for the plaintiff, the plaintiff himself entered into the witness box and was examined as P.W-1. One independent witness was also examined as P.W-2. In addition to oral testimony the plaintiff produced as many as 4 documents and got exhibited as Ex.P1 to Ex.P4. On the other hand the defendant No.8 entered into the witness box and examined as D.W-1 and relied on 3 documents and got exhibited as Ex.D1 to Ex.D3.

11. Written argument/Synopsis filed for the plaintiff.

12. Heard argument for the defendant No.8.

13. Perused the available materials.

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

Issue No.1 : In the Negative,

Issue No.2 : In the Negative,

Issue No.3 : In the Negative,

Issue No.4 : In the Negative,

Issue No.5 : In the Negative,

Issue No.6 : In the Negative,

Issue No.7 : As per final order for the following;

: REASONS :

15. **Issue No.1 to 3:** *Since the issues are interlinked with each other and having the same set of facts hence to avoid repetition the issues taken together for common discussion.*

16. The present suit is one for partition and separate possession simpliciter as well as equitable relief of mandatory injunction filed by the plaintiff against the defendants. as per the materials placed on record, it is clear that there was no dispute in respect to the relationship between the plaintiff and defendant No.1 to 7. The defendant No.8 also did not deny and disputed that one Yallappa @ Sannayallappa S/o. Somappa Haliyal was the propositus of the family of plaintiff and defendant No.1 to 7 and he died intestate leaving behind his wife i.e., defendant No.7 and his children i.e., defendant No.1 to 6. Hence, it is clear that

the relationship between the plaintiff and defendant No.1 to 7 concerned absolutely there is no dispute.

17. According to the plaintiff the land bearing R.S.No.54 measuring 9 acres 12 guntas out of 18 acres 32 guntas was their ancestral as well as joint family property and the plaintiff and defendant No.1 to 7 are succeeded to the estate of deceased Yallappa @ Sannayallappa S/o. Somappa Haliyal as propositus died intestate and the plaintiff and defendant No.1 to 7 as a successor to the estate of Yallappa @ Sannayallappa S/o Somappa Haliyal succeeded to the estate accordingly they are in use and enjoyment of the land measuring 9 acres 12 guntas. But the defendant No.8 has taken specific contention that the plaintiff and defendants are no way concerned with the suit property. The defendant No.8 himself was a tenant under ownership of defendant No.9. As per such a specific contention, the initial burden shifts on the plaintiff to prove that the suit property was granted by the Land Tribunal, Dharwad pursuant to their application submitted by the propositus Yallappa @

Sannayallappa S/o. Somappa Haliyal and the same was continued by the plaintiff and defendant No.1 to 7.

18. So as to decide the right acquired by the propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal and after his death, the plaintiff and defendant No.1 to 7 are succeeded to the estate of the propositus concerned now the court is required to analyse the available materials coupled with the evidence on record. The RTC pertaining to suit property for the year 1987-88 goes to show that the suit property stands in the name of defendant No.9. The name of father of plaintiff and defendant No.6 and husband of defendant No.7 shown as a cultivator at column No.12 of the RTC. Those entries continued till 1979-80. The certified copy of the RTC is produced and marked as Ex.P1. Further the RTC from 2023-24 also reveals the name of defendant No.9 shown as owner and accordingly entered in column No.9 of the RTC. The name of the plaintiff and defendant No.1 to 7 are reflected in column No.12 of the RTC. The certified copy of M.R.No.605 also produced and marked as Ex.P2.

Certified copy of Form No.9D (Notice) issued by the office of the Tahasildar, Dharwad, certified copies of the affidavit, Form No.9D (Notice) issued by the office of the Tahasildar, Dharwad, Form No.8A and Form No.7A are also produced and marked as Ex.P4. On the other hand the defendant No.8 produced the certificate issued by the office of the defendant No.9 and got marked as Ex.D1 and also produced a certified copy of the M.R.No.605 and got marked as Ex.D2. The RTC pertaining to the suit property for the year 2025-26 situated at Varavanagalavi village of Dharwad taluka and was exhibited as Ex.D3. As per Ex.D3 the Government of Karnataka was the owner of the land and accordingly the name of Government reflected in Ex.D3 at column No.9. The name of the plaintiff and defendants are reflected in column No.12 of the RTC.

19. In this case on the basis of Ex.D1 the defendant No.8 claiming his right over the suit property. The mutation entries Ex.P2/Ex.D2 goes to show that the office of the defendant No.9 passed a resolution and accordingly requested the Tahasildar,

Dharwad to mutate the names of defendant No.8 to an extent of 4 acres 26 guntas. Hence, the Waradi of defendant No.9 was considered and mutation effected and accordingly the name of the defendant No.8 is reflected in the RTC produced and marked as Ex.P1/Ex.D3.

20. In this case the plaintiff has taken a specific contention that the entire 09 acres 12 guntas land in R.S.No.54 much less suit property was granted by the Land Tribunal in the name of propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal. In order to substantiate and prove the said facts concerned, the plaintiff produced Ex.P4/Certified copy of Form No.9D (Notice) issued by the office of the Tahasildar, Dharwad, certified copy of the affidavit filed by the Yallappa @ Sannayallappa S/o. Somappa Haliyal, Certified copy of Form No.9D (Notice) issued by the office of the Tahasildar, Dharwad, certified copy of Form No.8A and certified copy of Form No.7A. So far as to decide the controversy between parties to the suit concerned, in my view the documents as relied and

produced for both the parties play an important role. The name of defendant No.8 reflected in revenue records as per M.E.No.605 as produced and marked as Ex.P2/Ex.D2. The RTC for the previous year produced and marked as Ex.P1 that itself indicates that the name of the propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal and after his demise the names of Lrs/heirs of Yallappa @ Sannayallappa S/o. Somappa Haliyal entered at column No.12. Similarly the name of defendant No.8 also entered in column No.12 of the RTC. But so far as to declare the share of plaintiff and defendant No.1 to 7 in land bearing R.S.No.54 measuring 09 acres 12 gunta out of 18 acres 32 gunta concerned, except the notice issued by the Office of the Tahasildar, Dharwad and the certified copy of Form No.7A submitted by the propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal itself cannot be construed as a material evidence that creates interest and title either in the name of the propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal or his heirs in the suit schedule property.

21. The learned counsel representing for the plaintiff vehemently argued that the suit property entire 09 acres 12 guntas was granted by the Land Tribunal, Dharwad in the name of father of the plaintiff and defendant No.1 to 6 and the husband of defendant No.7 by name, Yallappa @ Sannayallappa S/o. Somappa Haliyal. Such being the facts the plaintiff has not tried to produce any material evidence which throws light about the father of the plaintiff acquired his right as the Land Tribunal confirmed the occupancy right in the suit property. As per the materials placed on record it appears that the plaintiff and the defendant No.1 to 8 are tenants, according to their name reflected in column No.12 of the RTC.

22. Further pertinent to note that, since the suit property itself is not granted in favour of the plaintiff and defendants No.1 to 7 or in the name of Yallappa @ Sannayallappa. Hence the question of division and distribution by metes and bounds does not arise. The entries in the RTC itself goes to show that the plaintiff and defendant No.1 to 8 are still tenants and the

property stands in the name of Government of Karnataka and that any rights in suit property not yet confirmed in the name of plaintiff or his father. Hence, the suit property cannot be held as ancestral or joint family property of plaintiff and defendants No.1 to 7. Hence, the plaintiff was miserably failed to prove the fact that the Land Tribunal, Dharwad confirmed an occupancy right in the land bearing R.S.No.54 measuring 18 acres 32 gunta out of which 09 acres 12 guntas/suit property in favour of the propositus of the family of plaintiff and defendant No.1 to 7. No documentary evidence as placed on record that speaks or whispers about the acquisition of right, title and interest in respect to land bearing R.S.No.54 measuring 09 acres 12 guntas out of 18 acres 32 guntas. The material placed on record by the plaintiff does not speak about the right and interest of the plaintiff.

23. The defendant No.8 contended that on the basis of Ex.D1 mutation effected vide Ex.D2 thus he became the owner of the land measuring 04 acres 26

guntas out of 18 acres 32 guntas in R.S.No.54. The materials relied by the defendant No.8 also not whispers about confirmation of occupancy right in his name and it appears that still he was a tenant. Hence, the documentary evidence placed on record for the defendant No.8 also not throwing light that the defendant No.8 acquired the right, title and interest over the suit property.

24. From over all consideration and appreciation of evidence on record it is abundantly clear that the plaintiff miserably failed in his attempt to prove that the suit property was granted in the name of his father. During his cross examination also stated that he was not aware about the date of grant. Further admitted that the entire 18 acres 32 guntas of land belonged to the defendant No.9. Similarly, the witness examined for the plaintiff as PW.-2 also categorically admitted that the father of the plaintiff by name, Yallappa @ Sannayallappa S/o. Somappa Haliyal was not the owner of the suit schedule property.

25. Since the plaintiff knocked the door of the temple of justice claiming reliefs thus the plaintiff required to establish their case with an aid of documentary evidence as the plaintiff claiming his right in immovable property thus the documents speaks about acquisition of right, title and interest are not produced and established his case.

26. Similarly, the defendant No.8 was a tenant under defendant No.9 also took such a specific plea that he was granted the land as per Ex.D1 and D2. Mere the name of defendant No.8 reflected in the revenue records that itself does not create any right and interest over the suit property much less immovable property. Hence, over all consideration and on appreciation of both oral and documentary evidence, I am of the view that the plaintiff miserably failed to prove the fact that the suit property was their family property and the Land Tribunal confirmed the occupancy right in the name of his father and after demise of his father himself and defendant No.1 to 7 being the heirs constituting a Hindu undivided family

and accordingly they are in use and enjoyment of the suit property.

27. The defendant No.8 also failed in his attempt to prove his right over the suit property to an extent of 04 acres 26 guntas in R.S.No.54. Hence, **Issue No.1 to 3** are answered in the **Negative**.

28. **Issue No.4 to 6:** So far as to grant the reliefs as claimed concerned, the findings and conclusions of the court arrived at while deciding Issue No.1 to 3 are playing a significant role. The court held that the plaintiff miserably failed to prove the facts that the entire land measuring 09 acres 12 guntas in R.S.No.54 was granted by the Land Tribunal, Dharwad in the name of propositus Yallappa @ Sannayallappa S/o. Somappa Haliyal. Form No.7A/Ex.P4 as relied on by the plaintiff itself does not create any right and interest unless and until the application was considered by the Land Tribunal and confirmed the occupancy right. The application submitted by the father of the plaintiff itself is not a proof of valid title. Absolutely, there was no clinching evidence on record to hold that the plaintiff

and defendant No.1 to 7 are entitled for their share in the suit schedule property.

29. As per the findings recorded by the court the plaintiff miserably failed in his attempt to prove the facts of the case. Such being the facts the plaintiff is certainly not entitled for any reliefs. So far as to grant the mandatory injunction concerned, the concerned authorities are not arrayed as a party. From overall appreciation of both oral and documentary evidence on record it is abundantly clear that the plaintiff miserably failed in his attempt to prove the disputed facts with an aid of reliable and cogent evidence. Hence, **Issue No.4 to 6** are answered in the **Negative**.

30. **Issue No.7:** In view of my findings and conclusions to the aforementioned issues, I proceed to pass following;

ORDER

***The suit of the plaintiff is hereby
dismissed with costs.***

Draw the decree accordingly.

(Dictated to the stenographer, transcription typed by her, corrected and Judgment is pronounced in the open court by me on the 30th day of July, 2026).

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

: ANNEXURE :

1. List of witnesses examined for plaintiffs:

PW-1 : Durgappa S/o. Sannayallappa @ Yallappa Haliyal

PW-2 : Muttanna S/o. Timmanna Amblikoppa

2. List of documents marked for plaintiffs:

Ex.P-1 : RTC bearing R.S.No.54 of 1987-1979-80, 2023-24

Ex.P-2 : C.C of Waradi dated 13.05.1999

Ex.P-3 : C.C of death certificate of Sannayallappa Somappa
Haliyal

Ex.P-4 : C.C of Form No.D, Affidavit, Form No.D,
Form No.8A and Form No.7A

3. List of witnesses examined for defendants:

DW-1 : Choudappa S/o. Tammanna Dandalakar

4. List of documents marked for defendants:

Ex.D-1 : Certificate issued by Varavanagalavi Society

Ex.D-2 : C.C of M.E.No.605 (Waradi)

Ex.D-3 : RTC bearing Block No.54 of Varavanagalavi village
for the year 2025-26.

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