



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,

B.A. LL.B.,

I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

O.S. No.141/2021

Dated this the 14th day of July, 2026

*Plaintiff/s : 1. Smt. Neelavva W/o
Kalmeshwar Savalagi,
Age:61 years,
Occ:Household Work,
R/o.Kotabagi, Tq.,
Dist:Dharwad.*

*(Transposed as defendant
No.11)*

*2. Smt. Basavva W/o
Madiwalappa Kalled,
Age:58 years,
Occ:Household work,
R/o.Madanabhavi, Tq.,
Dist:Dharwad.*

*3. Smt. Shantavva W/o Maruti
Kundaragi, Age:53 years,
Occ:Household work,
R/o.Salakinakoppa, Tq.,
Dist:Dharwad.*

(By Sri. M.B. Devalapur, Advocate)

Vs.

*Defendants : 1. Smt. Kallamma W/o
Ulavappa Avaradi, Age:86
years, Occ:Household*



- work, R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.
2. Shivaputrappa S/o
Ulavappa Avaradi, Age:63
years, Occ:Agriculture,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.
 3. Basavaraj S/o Ulavappa
Avaradi, Age:57 years,
Occ:Agriculture,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.
 4. Smt. Neelavva W/o
Kareppa Avaradi, Age:48
years, Occ:Housewife,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.
 5. Praveenkumar S/o
Kareppa Avaradi, Age:28
years, Occ:Agriculture,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.
 6. Smt. Shilpa W/o
Mahantesh Kundaragi,
Age:25 years,
Occ:Household work,
R/o.Salakinakoppa, Tq:,
Dist:Dharwad.
 7. Smt. Chanrakala W/o
Kallappa Kundaragi,
Age:30 years,
Occ:Household work,
R/o.Salakinakoppa, Tq:,
Dist:Dharwad.
 8. Lava S/o Ulavappa
Avaradi, Age:51 years,



*Occ:Agriculture,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.*

9. *Kush S/o Ulavappa
Avaradi
Since deceased by his Lrs.*

9a). *Smt. Rekha W/o Kush
Avaradi, Age:45 years,
Occ:Household,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.*

9b). *Pavitra D/o Kush Avaradi,
Age:29 years,
Occ:Household,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.*

9c). *Gangavati D/o Kush
Avaradi,
After marriage Gangavati
W/o Udaykumar Kalled,
Age:26 years,
Occ:Household,
R/o.Madanbhavi, Tq: &
Dist:Dharwad.*

9d). *Kavya D/o Kush Avaradi,
Age:24 years,
Occ:Household,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.*

10. *Parameshwarappa S/o
Ulavappa Avaradi, Age:49
years, Occ:Agriculture,
R/o.Gamanagatti,
Tq:Hubballi, Dist:Dharwad.*

11. *Smt. Neelavva W/o
Kalmeshwar Savalagi,
Age:61 years,*



*Occ:Household work,
R/o.Kotabagi, Tq: &
Dist:Dharwad.*

*(D.1 to 5, 8, 9(a) to 9(d) & D.10 by
Sri. K.S. Amminabhavi, Adv.,
D.6 & D.7 – Exparte,
D.11 by Sri. G.R. Kakkimani, Adv.,)*

*Date of institution : 07.07.2021
of the suit.*

*Nature of the suit : Suit for partition and
separate possession.*

*Date of : 24.11.2021
commencement of
the evidence.*

*Date on which the : 14.07.2026
judgment was
pronounced.*

*Duration of the suit. : Year/s Month/s Day/s
05 00 07*

JUDGMENT

*Initially this Suit is filed by the Plaintiff Nos.1 to
3 for the relief of Partition and separate possession in
respect of item Nos.1 to 3 of the suit schedule
properties.*

*Thereafter the plaintiff No.1 has transposed as
defendant No.11.*



Thereafter by way of amendment, the plaintiffs have inserted item Nos.4 to 10 of the suit schedule properties.

2. Brief facts of the case are as under:

2.01. One Uluvappa is the prepositious of the family of plaintiffs and defendants.

2.02. Uluvappa is having a wife by name Kallamma/ defendant No.1.

2.03. Uluvappa and Kallamma/ defendant No.1 is having 9 children viz., Shiva Putrappa/ defendant No.1, Basavaraj/ defendant No.3, Kareppa, Lava/ defendant No.8, Kusha/ defendant No.9, Parameshwar/ defendant No.10, Neelavav/ plaintiff No.1, Basavva/ plaintiff No.2 and Shantavva/ plaintiff No.3.

2.04. Uluvappa died long back leaving behind his wife and children as stated supra.

2.05. Kareppa died on 03.05.2011 leaving behind him, his wife Neelavva/defendant No.4, his children viz., Praveenkumar/ defendant No.5,



Shilpa/ defendant No.6 and Chandrakala/ defendant No.7.

2.06. During the pendency of suit, Kusha/ defendant No.9 died and his LRs are brought on record as defendant No.9(a) to 9(d).

2.07. After the death of Uluwappa, without the knowledge and consent of the plaintiffs, the defendants by creating some documents have entered their names alone in the record of rights of the suit schedule properties.

2.08. The suit schedule properties are the Hindu Undivided family of ancestral.

2.09. There was no partition taken place in between the plaintiffs and defendants and till today the plaintiffs are defendants are jointly enjoying the suit schedule properties.

2.10. When the plaintiffs approached the defendants to effect partition in respect of the suit schedule properties, the defendants were not heeded



the words of plaintiffs. Hence, prays to allot their 1/9th share in the suit schedule properties.

2.11. Hence plaintiffs have constrained to file the present suit for the relief of partition and separate possession.

3. *Upon filing the Suit, this Court has issued Summons to the Defendants. Defendants have appeared before the Court through their counsel and defendant No.2 has filed his written statement.*

3.01.The Defendant No.1 in his written statement has admitted the relationship of the Plaintiffs with defendants.

3.02.The names of defendants entered into the records of rights of the item no.3 of the suit schedule properties in the year 1984 as per mutation entry No.2217 dated:05.01.1984. The names of defendants are entered as per the will and wish of the propositious of the suit properties.

3.03. The names of defendants entered into the records of rights of the item Nos.1 and 2 of the suit



schedule properties as per mutation entry No.3779 dated 25.09.2000 after the demise of the propitious.

3.04. The suit schedule properties are the self acquired properties of propitious Sri.Uluvappa S/o Shivappa Avardi.

3.05. During the life time of propitious Uluvappa, he has entered the names of his sons in respect of the item No.3 of the suit schedule properties and bequeathed item Nos.1 and 2 of the suit schedule properties by making a Will Deed dated 25.01.1998.

3.06. The suit schedule properties are not the ancestral properties and not constitutes the HUF of the plaintiffs and defendants. Hence, the question of partition and division of shares and joint enjoyment does not arise among the plaintiffs and defendants.

3.07. The plaintiffs have filed this suit only to harass the defendants.



3.08. The plaintiffs have no cause of action to file this suit and the valuation made by the plaintiffs is also not correct.

4. *As the plaintiffs have inserted item Nos.4 to 10 of the suit schedule property in the suit plaint by way of amendment, the defendant No.2 has filed addl. Written statement.*

4.01. The item Nos.4 to 9 of the suit schedule properties are the granted properties to the propositiuos Uluvappa Avaradi as per order No.KLR/SR/95, dated 21.10.1981. And the said propositious is having absolute ownership and right to enjoy/sell/gift or transfer of the said properties.

4.02. The propositious Uluvappa have divided the said properties (item Nos.4 to 9) among the defendant Nos.2 to 4 and 8 to 10 and their names have inserted in the revenue records of the said properties as per mutation entry No.1827 dated 22.12.1983.



4.03. *The said properties have been acquired by the KIADB on 16.08.2021 and presently the KIADB is in possession and enjoyment of the said properties and the name of KIADB is appearing in the records of the said properties.*

4.04. *The plaintiffs have not impleaded the said KIADB as party to the suit. Hence, suit of the plaintiffs is hit by non joinder of necessary parties.*

4.05. *Further the plaintiffs have not made the owner of the item No.10 of the suit schedule property as party to the suit. Hence suit of the plaintiffs is hit by non joinder of necessary parties.*

4.06. *Hence, prays to dismiss the suit.*

5. *The defendant No.9(a) to 9(d) adopted the written statement of defendant No.2 as their written statement.*

6. *On the basis of the pleadings of both the parties, this Court has framed 5 issues, which reads as under :*



1. *Whether the plaintiffs prove that the suit properties are ancestral and joint family properties as alleged ?*
2. *Whether the plaintiffs prove that they are entitled for 1/9th share each in the suit properties as alleged ?*
3. *Whether the defendant No.2 proves that the suit properties are self acquired properties of Ulvappa as alleged ?*
4. *Whether the 2nd defendant further proves due execution and attestation of the Will dated 25.01.1998 as alleged ?*
5. *Whether the suit is not property valued as alleged ?*
6. *Whether the plaintiffs are entitled for partition and separate possession as claimed ?*
7. *what order or decree ?*

Addl. Issue

1. *Whether suit is bad for non joinder of necessary parties as alleged ?*

7. *The Plaintiffs inorder to prove their case, got examined plaintiff No.3 as PW1 and got marked 30 documents as Ex.P1 to Ex.P30.*

Per contra, the Defendant No.2 got examined himself as DW1 and got marked 18 documents as Ex.D1 to Ex.D18.



8. *Learned Counsel for plaintiffs has filed his written arguments.*

Heard the Arguments of the Learned Counsel for defendants.

9. *Answers to the above Issues are as under:*

<i>Issue No.1</i>	<i>: In the negative</i>
<i>Issue No.2</i>	<i>: In the negative</i>
<i>Issue No.3</i>	<i>: In the affirmative</i>
<i>Issue No.4</i>	<i>: In the affirmative</i>
<i>Issue No.5</i>	<i>: In the negative</i>
<i>Issue No.6</i>	<i>: In the negative</i>
<i>Addl. Issue No.1</i>	<i>: In the affirmative</i>
<i>Issue No.7</i>	<i>: As per final orders, for the following:</i>

REASONS

10. *On the basis of contentions of the parties, the undisputed facts are :*

a) *Ulavappa is the Propositious of the family of plaintiffs and defendants;*

b) *Ulavappa and Kallamma/ defendant No.1 are the husband and wife;*



c) the plaintiffs and defendant Nos.2 to 10 are the children of Ulavvappa and Kallamma/ defendant No.1;

d) The defendant Nos.4 to 7 are the legal heirs of Kareppa;

11. Issue Nos.1 to 6 and Addl. Issue No.1:

Since, all these issues are inter-connected with each other so they are taken for joint discussion; to avoid repetition and confusion; and to have brevity, in the discussion.

12. With regard to item Nos.1 and 2 of the suit schedule properties:

12.01. The Plaintiffs in the Suit Plaint have contended that the said properties are ancestral and joint family properties of plaintiffs and defendants. No partition was effected. The plaintiffs being the legal heirs of the propertious Uluvappa are having equal rights over the said properties.

12.02. On the other hand, the defendant No.2 has contended that the names of defendants came to



be entered in respect of item Nos.1 and 2 of the suit schedule properties as per mutation entry No.3779 dated 25.09.2000, after the death of propositous by virtue of Will Deed dated 25.01.1998 executed by Uluvappa in favour of defendants in respect of item Nos.1 and 2 of the suit schedule properties. The said properties are the self acquired properties of Uluvappa. Hence, Uluvappa is having every right to alienate the same in favour of any person. The said Will executed by Uluvappa during his life time and change of mutation has been effected during his life time.

12.03. In order to prove the case of plaintiffs, the plaintiff No.3 has examined herself as PW1 and got marked documents at Ex.P1 to Ex.P30. The Plaintiff has produced below mentioned documents :

a) RTC extract for the year 2020-21 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule



properties at Ex.P1. As per this document, it can be seen that the name of defendant No.2 to 5 and 7 are appearing as Kabzedar as well as in the Cultivation column. At column No.10 it is mentioned as MR H321/2018-19 dated 28.05.2019.

b) RTC extract for the year 1967-68 to 1973-74 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.P4. As per this document, it can be seen that the name of the propositious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

c) RTC extract for the year 1974-75 to 1981-82 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.P5. As per this document, it can be seen that the name of the propositious Uluvappa is



appearing as Kabzedar as well as in the Cultivation column.

d) RTC extract for the year 1981-82 to 1986-87 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.P6. As per this document, it can be seen that the name of the propitious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

e) RTC extract for the year 1987-88 to 1992-93 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.P7. As per this document, it can be seen that the name of the propitious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

f) RTC extract for the year 1993-94 pertaining to Sy.No.125, measuring 1 acre 34 guntas



situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.P8. As per this document, it can be seen that at column No.9 it is mentioned as “purvaniyu”.

g) RTC extract for the year 1993-94 to 2000-01 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.P9. As per this document, it can be seen that the name of the propositious Uluvappa has been rounded off and the names of Shivaputhra/ defendant No.2, Basavaraj/ defendant No.3, Kariyappa, Lava/ defendant No.8, Kusha/ defendant No.9 and Parameshwara/ defendant No.10 are jointly appearing as Kabzedar as well as in the Cultivation column. At column No.10 it is mentioned as varasa.

h) RTC extract for the year 1967-68 to 1974-75 pertaining to Sy.No.173, measuring 4 acres 35



guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.P10. As per this document, it can be seen that the name of the propitious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

i) RTC extract for the year 1974-75 to 1981-82 pertaining to Sy.No.173, measuring 4 acres 35 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.P11. As per this document, it can be seen that the name of the propitious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

j) RTC extract for the year 1981-82 to 1986-87 pertaining to Sy.No.173, measuring 4 acres 35 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.P12. As per this document, it can be seen that the name of the propitious Uluvappa is



appearing as Kabzedar as well as in the Cultivation column.

k) RTC extract for the year 1987-88 to 1991-92 pertaining to Sy.No.173, measuring 4 acres 35 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.P13. As per this document, it can be seen that the name of the propositious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

l) RTC extract for the year 1992-93 to 1993-94 pertaining to Sy.No.173, measuring 4 acres 35 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.P14 and Ex.P16. As per this document, it can be seen that at column No.9 it is mentioned as “purvaniyu”.

m) RTC extract for the year 1993-94 to 1998-99 pertaining to Sy.No.173, measuring 4 acres 35 guntas situated at Gamanagatti Village, Hubballi Tq.,



Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.P15. As per this document, it can be seen that the name of the propitious Uluvappa has been rounded off and the names of Shivaputhra/ defendant No.2, Basavaraj/ defendant No.3, Kariyappa, Lava/ defendant No.8, Kusha/ defendant No.9 and Parameshwara/ defendant No.10 are jointly appearing as Kabzedar as well as in the Cultivation column. At column No.10 it is mentioned as varasa.

n) Mutation register extract at Ex.P17. As per this document it can be seen that as per the order dated 25.09.2000, it is mentioned that Uluvappa Shivappa died on 29.09.1999. Said Uluvappa Shivappa had two wives. Out of two wives, first wife has died. Second wife and children are alive. They are 1) Kallavva W/o Uluvappa, 2) Shivaputhrappa, 3) Basavaraj, 4) Kariyappa, 5) Lava, 6) Kusha, 7) Parameshwra, 8) Neelavva, 9) Basavva, 10) Shanthavva. Since the daughters and second wife



Kallavva have no objection to mutate the names of the sons of Uluvappa Shivappa in respect of the properties bearing Sy.No.125 and 173, same has been mutated in the names of 1) Shivappa, 2) Basavaraj, 3) Kariyappa, 4) Lava, 5) Kusha, 6) Parameshwara, by deleting the name of Uluvappa.

12.04. The defendants contend that the item No.1 and 2 of the suit schedule properties is the absolute properties of their father Uluvappa; and he has executed a Will dated 25.01.1998, in favour of his wife and sons i.e., defendants.

12.05. The plaintiffs have not at all averred single word in respect of the Will in the suit plaint and in the cross-examination denied the event of execution of Will by their father Uluvappa.

12.06. The defendants contends that, Uluvappa has executed a Will in their favour on 25.01.1998; and by virtue of the said Will, they have become the owners of the item Nos.1 and 2 of the Suit Schedule Properties.



13. *In order to prove the case of the defendants, the defendant No.2 got examined himself as DW1 and produced below mentioned documents;*

a) *RTC extract for the year 2024-25 pertaining to Sy.No.125, measuring 1 acre 34 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.1 of the suit schedule properties at Ex.D1. As per this document, it can be seen that the names of defendant No.2 to 10 are jointly appearing as Kabzedar as well as in the Cultivation column. At column No.10 it is mentioned as MR H321/2018-19 dated 28.05.2019.*

b) *RTC extract for the year 2024-25 pertaining to Sy.No.173, measuring 4 acres 35 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.2 of the suit schedule properties at Ex.D2. As per this document, it can be seen that the name of the defendant Nos.2 to 10 are jointly appearing as Kabzedar as well as in the*



Cultivation column. At column No.10 it is mentioned as MR H321/2018-19 dated 28.05.2019.

c) Will deed dated:12.12.1997 at Ex.D12.

On perusal of the said document, it can be seen that one Smt. Gangavva W/o Uluvappa (first wife of Uluvappa) has executed the said document in favour of Shivaputhrappa/ defendant No.2, Basavaraj/ defendant No.3, Kareppa, Kusha/ defendant No.9, Lava/ defendant No.8 and Paramaeshwara/ defendant No.10 (who are the children of second wife of Uluvappa) in respect of the property bearing Sy.No.101/1 (Block No.173) measuring 4 acres 35 guntas i.e., item No.2 of the suit schedule property in presence of witnesses viz., Karebasappa Kallappa Kotabagi (who has been examined as DW2). The contents of the said Will also discloses that during the life time of Uluvappa, the said property was gifted to her under registered gift deed dated:14.06.1956. The contents of the same is reiterated as under:



ನಾನು ನನ್ನ ಗಂಡನಿಗೆ ಮೊದಲನೇ ಹೆಂಡತಿ ಇದ್ದು ನನ್ನ
ಲಗ್ನವಾದ ಕೆಲ ದಿವಸದ ಮೇಲೆ ನನ್ನ ಆರೋಗ್ಯ ಸರಿ ಇಲ್ಲದೆ
ಇದ್ದಾಗ ನಾನು ಒಬ್ಬಳೇ ಇರಲಿಕ್ಕೆ ಹತ್ತಿರುತ್ತೇನೆ. ನನ್ನ ಗಂಡನಿಗೆ
ಎರಡನೇ ಹೆಂಡತಿಯಾದ ಶ್ರೀಮತಿ ಕಲ್ಲವ ಕೋಂ ಉಳವಪ್ಪ
ಅವರಾದಿ ಇವಳ ಹೊಟ್ಟೆಯಲ್ಲಿ ಅರು ಜನ ಗಂಡು ಮಕ್ಕಳು
ಮೂರು ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳು ಇರುತ್ತಾರೆ.

*From the said document, it can be seen that
Smt. Gangamma W/o Uluvappa became the absolute
owner of the said property.*

*d) Will deed dated 25.01.1998 at Ex.D13.
On perusal of the said document, it can be seen that
during the lifetime Uluvappa has executed the said
document in favour of his two wives viz., Gangavva
and Smt. Kallavva in respect of the properties bearing
Sy.No.125 measuring 1 acre 34 guntas; and Block
No.173, measuring 4 acres 35 guntas i.e., item Nos.1
and 2 of the suit schedule properties.*

*Further on perusal of the said document, it can
be seen that the said item Nos.1 and 2 suit schedule
properties are the self acquired properties of
Uluvappa. Said Uluvappa has contended in the said*



document that after his death, the said properties has to be succeeded to his first wife Smt.Gangavva. Thereafter, it has to be succeeded to his second wife Smt.Kallavva/ defendant No.1. After the death of three members i.e., Uluvappa, Gangavva and Kallavva, the said properties has to be succeeded by his six sons viz., Shivaputhrappa/ defendant No.2, Basavaraj/ defendant No.3, Kareppa, Kusha/ defendant No.9, Lava/ defendant No.8 and Paramaeshwara/ defendant No.10. The said document has been executed in presence of witnesses viz., Kariyappa Bheemappa Menasindi (who has been examined as DW3).

14. *The defendants have placed reliance on the Will Ex.D13. The defendants claims to be the beneficiary under the said Will -Ex.D13.*

15. *When the plaintiffs have denied the execution of the Will by Uluvappa infavour of the defendants, then it is for the defendants to prove the Execution, condition and contents of the Will dated*



25.01.1998. I find force to the above view as per the decision of the **Hon'ble Apex Court in the case of H. Venkatachala Iyengar V/s B.N. Thimmajamma and Others, reported in AIR 1959 SC 443**, wherein it is held that,

“Onus of proof to prove the Will is on propounder”.

16. As per the decision of the **Hon'ble High Court of Karnataka, in the case of Sharanana Basappa & Others V/s Shivakumar & Others, reported in ILR 2007 Kar. 5160**, wherein it is held that,

“Onus of proof is on propounder. Duty of the propounder is to discharge discrepancies pointed out to take away the genuineness or validity of the Will. And the Will propounded should inspire the confidence of the Court.”

17. As per the guiding principles laid down by the **Hon'ble Apex Court, in the case of Niranjan Umesh Chandra Joshi vs Mrudula Jyothi Rao and others, reported in (2006) 13 SCC 433**, wherein it is held that,



“Will should be proved by primary evidence, except where proof by leading secondary evidence, is permitted.”

18. *The said Will-ExD13 is to be proved by the defendants, who claims to be the beneficiary, under it. The defendants has to satisfy five steps “Pancha Padi” as per the guiding principles laid down by the Hon'ble High Court of Karnataka; in the case of Sri. J.T.Surappa & Another V/s Sri. Satchidhanandendra Saraswathi Swamiji Public Charitable Trust and Others, reported in ILR 2008 Kar. 2115, to prove the said Will, they are;*

Pancha Padi

1) Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witnesses is examined to prove the Will.

19. *As per the first step, the defendants have to show that,*

a) the Will-Ex.D13 bears the signature or mark of Uluvappa, the testator of the said Will;



b) Will-Ex.D13 is attested by two witnesses;

c) One of the attesting witness to the said

Will has been examined.

20. *In this case, the executor of the said Will/ Ex.D13 has put his signature to the said document. None of the parties to the suit have not disputed the said signature.*

The DW1 has led the evidence of the attesting witness viz., Kariyappa Bheemappa Menasindi/DW3. He has identified the Signature of Uluvappa and also identified his signature on the Will/ Ex.D13 as Ex.D13(a).

So it can be said that the DW1 has shown that the Will/ Ex.D13 bears the signature of the Testator/ Uluvappa.

21. *Further, on perusal of Ex.D13, two persons are shown to have acted as the attesting witnesses, to the said Will.*



22. *Further DW1 claims that DW3 is one of the attesting witnesses to the said Will-Ex.D13; and he has been examined as DW3 by the defendant No.2/DW1.*

23. *So the first requirement that, the Will-ExD13 bears the signature or mark of the testator; the said Will is attested by two or more attesting witnesses; and one of the attesting witnesses is examined, is satisfied.*

24. *The second step is to see, Whether the natural heirs have been disinherited? If so, what is the reason?*

In this case, it is an admitted facts from the side of the Plaintiffs that, the Uluvappa is having two wives viz., Gangavva and Kallavva/ defendant No.1. Admittedly Gangavva has expired. As per the said Will/Ex.D13, after the death of Uluvappa, the properties shown in the said will has to be succeeded first to his first wife Gangavva. After her death, the



same has to be succeeded to the second wife of Uluvappa i.e., Kallavva/ defendant No.1. So after the death of Uluvappa and his first wife, the properties shown in the said document has to be succeeded to Kallavva/ defendant No.1.

25. *Further on perusal of the said document, it can be seen that since Uluvappa and Gangavva had no issues/heirs, to succeed the estate of Uluvappa, Uluvappa had married defendant No.1. So Uluvappa has given life interest to his first wife/Gangavva in the Will/Ex.D13.*

26. *So, the mode of receipt of the Property (Item No 1 and 2 of the suit schedule properties) by Kallavva and her sons from Uluvappa, under the Will/Ex.D13 is not in dispute.*

27. *So, on the basis of the above documentary evidence, it is crystal clear that Item Nos.1 and 2 of the suit schedule properties is the self acquired properties of Uluvappa. Uluvappa had given life*



interest in the said properties to his first wife, second wife and the sons of his second wife Kallavva/defendant No.1 by virtue of the Will dated 25.01.1998; and after the death of the first wife of Uluvappa, the said property has been succeeded by second wife and sons by virtue of testamentary succession under the Will dated 25.01.1998. So, the Item Nos.1 and 2 of the suit schedule properties will be the absolute property of defendants. Hence, the plaintiffs have failed to prove that the said properties are Ancestral properties of Uluvappa. When the said properties are self acquired properties of Uluvappa, then he has every right to alienate/gift or sell the said properties. The plaintiffs have not right to challegne the same. That too, the said transacatin has taken place during the life time of Uluvappa. The plaintiffs have not challenged the said transacation during the life time of Uluvappa. Hence, plaintiffs are not entitle for any relief in the said properties.



28. With regard to item No.3 of the suit schedule properties.

The Plaintiffs in the Suit Plaint have contended that the said property is ancestral and joint family property of plaintiffs and defendants. No partition was effected. The plaintiffs being the legal heirs of the propitious Uluvappa are having equal rights over the said property.

29. *On the other hand, the defendant No.2 has contended that the names of defendants came to be entered in respect of item No.3 of the suit schedule property in the year 1984 as per mutation entry No.2217 dated 05.01.1984 during the lifetime of his father Uluvappa. The said property is the self acquired properties of Uluvappa. Hence, Uluvappa is having every right to alienate the same in favour of any person.*

30. *In order to prove the case of plaintiffs, the Plaintiffs have produced below mentioned documents:*



a) *RTC extract for the year 2020-21 pertaining to Sy.No.345, measuring 9 acres 24 guntas situated at Gokul Village, Hubballi Tq., Dharwad Dist., i.e., item No.3 of the suit schedule properties at Ex.P3. As per this document, it can be seen that the name of defendant No.2 to 4 and 7 are appearing as Kabzedar as well as in the Cultivation column. At column No.10 it is mentioned as MR H194/2018-19 dated 28.05.2019.*

b) *RTC extract for the year 1967-68 to 1974-75 pertaining to Sy.No.345, measuring 9 acres 35 guntas situated at Gokul Village, Hubballi Tq., Dharwad Dist., i.e., item No.3 of the suit schedule properties at Ex.P18. As per this document, it can be seen that the name of the propositious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.*

c) *RTC extract for the year 1977-78 to 1981-82 pertaining to Sy.No.345, measuring 9 acres 35 guntas situated at Gokul Village, Hubballi Tq.,*



Dharwad Dist., i.e., item No.3 of the suit schedule properties at Ex.P19. As per this document, it can be seen that the name of the propositious Uluvappa is appearing as Kabzedar as well as in the Cultivation column.

d) RTC extract for the year 1981-82 to 1985-86, 1987-88 to 1999-2000, 1994-95 to 2000-01 pertaining to Sy.No.345, measuring 9 acres 35 guntas situated at Gokul Village, Hubballi Tq., Dharwad Dist., i.e., item No.3 of the suit schedule properties at Ex.P20 to Ex.P22. As per these documents, it can be seen that the name of the propositious Uluvappa has been rounded off and the names of Shivaputhra/ defendant No.2, Basavaraj/ defendant No.3, Kariyappa, Lava/ defendant No.8, Kusha/ defendant No.9 and Parameshwara/ defendant No.10 are jointly appearing as Kabzedar as well as in the Cultivation column. At column No.10 it is mentioned as varasa.



e) *Mutation register extract at Ex.P23. As per this document it can be seen that as per the order dated 05.01.1984, it is mentioned that the propositious Uluvappa has executed the Will in respect of property bearing Sy.No.354 measuring 9 acres 24 guntas in favour of 1) Shivaputhrappa, 2) Basavaraj, 3) Kariyappa, 4) Lava, 5) Kusha, 6) Parameshwra. As per the said Will, the name of Uluvappa has been removed by inserting the names of 1) Shivappa, 2) Basavaraj, 3) Kariyappa, 4) Lava, 5) Kusha, 6) Parameshwara.*

31. *On the other hand, the defendants have produced below mentioned documents:*

a) *RTC extract for the year 2024-25 pertaining to Sy.No.345, measuring 9 acres 24 guntas situated at Gokul Village, Hubballi Tq., Dharwad Dist., i.e., item No.3 of the suit schedule properties at Ex.D3. As per this document, it can be seen that the name of defendant No.2 to 10 are appearing as Kabzedar as well as in the Cultivation*



column. At column No.10 it is mentioned as MR H194/2018-19 dated 28.05.2019.

32. Admittedly the plaintiffs have not produced any documents before the Court to show that the said property (i.e., item No.3 of the suit schedule property) is the Ancestral property of plaintiffs and defendants. Even during the course of cross-examination, the PW1 has clearly stated that no any documents have been produced by the plaintiffs before the Court to show that the item Nos.1 to 3 properties are Ancestral properties. So in the absence of any document before the Court, it is very hard to believe that the item Nos.1 to3 properties are the Ancestral properties. On the other hand, the documents itself clearly shows that the item No.1 to 3 properties are the absolute properties of Uluvappa.

33. Admittedly during the lifetime of Uluvappa, the mutation has been changed in favour of defendant Nos.2 to 10 i.e., in the year 1988. None of the plaintiffs have challenged the said mutation.



34. *So, on the basis of the above documentary evidence, it is crystal clear that Item No.3 of the suit schedule properties is the self acquired properties of Uluvappa. During the life time of Uluvappa he has bequeathed the said property in favour of defendant nos.2 to 10. Hence, the plaintiffs have no any right to seek share in the said properties.*

35. With respect to item Nos.4 to 9 of the suit schedule properties.

Initially the plaintiffs have not impleaded the said properties in the suit plaint. Thereafter, the plaintiffs by way of amendment has impleaded the said properties in the suit plaint.

36. *It is the specific case of the plaintiffs that the said properties are the ancestral and joint family properties of plaintiffs and defendants. No partition was effected. The plaintiffs being the legal heirs of the propitious Uluvappa are having equal rights over the said properties.*



37. *On the other hand, it is the specific case of the defendant No.2 that the said properties are the granted properties to his father Uluvappa vide order No.KLR/SR/95 dated:21.10.1981 and same got mutated in the name of Uluvappa vide mutation entry No.1784. During the lifetime of Uluvappa, Uluvappa got divided the said properties among the defendant Nos.2 to 4 and 8 to 10 in the year 1983. As per the said partition/division, the names of defendant Nos.2 to 4 and 8 to 10 got mutated in the revenue records of the said properties vide mutation entry No.1827 dated:22.12.1983. Thereafter KIADB got acquired the said properties on 16.08.2021. Now the said properties are in possession of KIADB. The said properties are not available for partition. Though the plaintiffs are having knowledge with regard to the aspect, the plaintiffs intentionally not impleaded the KIADB as party to the suit. Hence, suit of the plaintiffs is bad for non joinder of necessary parties.*



38. *It is very important to note here that the pleadings with regard to acquiring of said properties by KIADB is not averred by the plaintiffs in the suit plaint.*

39. *In order to prove the case of the plaintiffs, PW1 has produced below mentinoed documents:*

a) RTC extract for the year 2020-21 pertaining to Sy.No.211/5, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.4 of the suit schedule properties at Ex.P25. As per this document, it can be seen that the name of the Shivaputrhappa/defendant No.2 is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR H28/2015-16 dated 18.08.2015.

b) RTC extract for the year 2020-21 pertaining to Sy.No.211/6, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.5 of the suit schedule



properties at Ex.P26. As per this document, it can be seen that the name of the Kusha/ defendant No.9 is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR H28/2015-16 dated 18.08.2015.

c) RTC extract for the year 2020-21 pertaining to Sy.No.211/7, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.6 of the suit schedule properties at Ex.P27. As per this document, it can be seen that the name of the Lava/ defendant No.8 is appearing as Kabzedar as well as in the Cultivation column.

d) RTC extract for the year 2020-21 pertaining to Sy.No.211/8, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.7 of the suit schedule properties at Ex.P28. As per this document, it can be seen that the name of KIADB is appearing as Kabzedar as well as in the Cultivation column to the



extent of 2 acres 27 gunats; and the name of Neelavva/ defendant No.11, Chandrakal/ defendant No.7, Praveen Kumar/ defendant No.5, Shilpa/ defendant No.6 are appearing jointly to the extent of 0.37 guntas. At Column No.10 is the mentioned as per MR 266/2011-12 dated 10.10.2011; and MR H321/2018-19 dated 28.05.2019.

e) RTC extract for the year 2020-21 pertaining to Sy.No.211/9, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.8 of the suit schedule properties at Ex.P29. As per this document, it can be seen that the name of the KIADB is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR 266/2011-12 dated 10.10.2011.

f) RTC extract for the year 2020-21 pertaining to Sy.No.211/10, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.9 of the suit schedule



properties at Ex.P30. As per this document, it can be seen that the name of the KIADB is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR 266/2011-12 dated 10.10.2011.

40. *On the other hand, the defendant No.2/DW1 has produced the below mentioned documents:*

a) RTC extract for the year 2024-25 pertaining to Sy.No.211/5, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.4 of the suit schedule properties at Ex.D4. As per this document, it can be seen that the name of the KIADB is is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR T16/2021-22, dated 16.08.2021.

b) RTC extract for the year 2024-25 pertaining to Sy.No.211/6, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq.,



Dharwad Dist., i.e., item No.5 of the suit schedule properties at Ex.D5. As per this document, it can be seen that the name of KIADB is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR T16/2021-22, dated 16.08.2021.

c) RTC extract for the year 2024-25 pertaining to Sy.No.211/7, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.6 of the suit schedule properties at Ex.D6. As per this document, it can be seen that the name of the KIADB is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR T16/2021-22, dated 16.08.2021.

d) RTC extract for the year 2024-25 pertaining to Sy.No.211/8, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.7 of the suit schedule properties at Ex.D7. As per this document, it can be



seen that the name of KIADB is appearing as Kabzedar as well as in the Cultivation column to the extent of 2 acres 27 gunats; and the name of Neelavva/ defendant No.11, Chandrakal/ defendant No.7, Praveen Kumar/ defendant No.5, Shilpa/ defendant No.6 are appearing jointly to the extent of 0.37 guntas. At Column No.10 is the mentioned as per MR 266/2011-12 dated 10.10.2011; and MR H321/2018-19 dated 28.05.2019.

e) RTC extract for the year 2024-25 pertaining to Sy.No.211/9, measuring 3 acres 24 guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.8 of the suit schedule properties at Ex.D8. As per this document, it can be seen that the name of the KIADB is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR 266/2011-12 dated 10.10.2011.

f) RTC extract for the year 2024-25 pertaining to Sy.No.211/10, measuring 3 acres 24



guntas situated at Gamanagatti Village, Hubballi Tq., Dharwad Dist., i.e., item No.9 of the suit schedule properties at Ex.D9. As per this document, it can be seen that the name of the KIADB is appearing as Kabzedar as well as in the Cultivation column. At Column No.10 is the mentioned as per MR 266/2011-12 dated 10.10.2011.

g) Mutation Register extract at Ex.D10. As per this document, it can be seen that as per MR No.1827, dated 20.12.1983, as per partition taken place in between Uluvappa and his sons, the names of the sons of Uluvappa has been mutated to the extent of 3 acres 29 guntas in Sy.No.211/2 in the name of Shivaputrappa/ defendant No.2; 3 acres 24 guntas in Sy.No.211/2 in the name of Basvaraj/ defendant No.3; 3 acres 24 guntas in Sy.No.211/2 in the name of Lava/ defendant No.8; 3 acres 24 guntas in Sy.No.211/2 in the name of Kusha/ defendant No.9; 3 acres 24 guntas in Sy.No.211/2 in the name of Parameshwarappa/ defendant No.10.



The said transaction has not been challenged till today by the plaintiffs. Further it is very important to note here that the said mutation has been taken place during the life time of father of defendants i.e., Uluvappa. Even after the said mutation, Uluvappa was alive more than 16 years (since Uluvappa died in the year 1999). The plaintiffs have not challenged the said mutation even during the life time of Uluvappa.

41. *Anyhow, the item Nos.4 to 9 of the suit schedule properties are acquired by the KIADB and possession of the same has been delivered to KIADB and mutation has also been effected in the name of KIADB. Admittedly the said properties are not available for partition. It is very important to note here that when the plaintiffs are seeking relief in respect of the said properties, when the plaintiffs are having knowledge with regard to acquire of the said properties by the KIADB, then also the plaintiffs have not averred a single word in the suit plaint with*



regard to the said acquisition by the KIADB. When the plaintiffs are seeking the relief in respect of the said properties, more particularly when the said properties are acquired by the KIADB, then the plaintiffs would have implead KIADB as party to the suit. But in the instant case, the plaintiffs have not included the KIADB as party to the suit.

42. *Hence, suit of the plaintiffs is hit by non joinder of necessary parties; and the plaintiffs are not entitle for any relief in respect of said properties.*

43. With regard to item No.10 of the suit schedule property:

It is the specific case of the plaintiffs that the item No.10 of the suit schedule property is the ancestral property of the plaintiffs and defendants. The plaintiffs are having equal right over the suit schedule property. Hence prays for 1/9th share over the said property.



44. *Though the plaintiffs have stated so, no piece of document are produced by the plaintiffs in respect of the said property. When the plaintiffs have failed to produce the documents with regard to the said property, then the plaintiffs are not entitled for any relief as sought for.*

45. *Any how, on the other hand, the defendant No.2/DW1 has produced the certified copy of the registered sale deed dated 11.02.2021 at Ex.D17. The said document is pertaining to the item No.10 of the suit schedule property.*

46. *On perusal of the said document, it can be seen that the defendant No.9(a)/Rekha W/o Kusha Avaradi has sold the said property in favour of one Smt.Vonoda W/o Guddappa and Guddapap S/o Jamalappa for valid sale consideration of Rs.11,00,000/-. Further this document also speaks that the purchaser has been put into actual*



possession of the purchased property on the day of its purchase.

47. So, it can be seen that as on the date of filing of the suit, the item No.10 of the suit schedule property is not available for partition. When the plaintiffs are seeking relief in respect of the said property, then the purchaser who has purchased the said property is also the necessary party to the suit. But the plaintiffs have not impleaded the said purchaser as party to the suit. Hence, suit of the plaintiffs is hit by non joinder of necessary parties.

*Hence, I answer Issue **Nos.1 and 2 in the negative; issue No.3 and 4 in the affirmative; issue No.5 and 6 in the negative; and Addl. Issue no.1 in the affirmative.***

*48. **Issue No.7:** For having answered Issue No.1 and 2 in the negative, issue No.3 and 4 in the affirmative, issue No.5 and 6 in the negative and*



Addl. Issue No.1 in the affirmative, I proceed to pass the following:

ORDER

The Suit of the Plaintiffs is hereby dismissed.

No order as to costs.

Office to Draw Decree accordingly.

(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the 14th day of July, 2026)

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.*

ANNEXURE

1. List of witnesses examined on behalf of Plaintiff:

*P.W.1 : Shantavva Kundaragi W/o Maruti
Kundaragi.*

2. List of documents exhibited on behalf of Plaintiffs:

*Ex.P.1 to : Record of Rights.
P.16*

Ex.P.17 : Mutation Extract.

*Ex.P.18 to : Record of Rights.
P.22*



Ex.P.23 : Mutation Extract.

Ex.P.24 : Transfer Certificate.

*Ex.P.25 to : Record of Rights.
P.30*

*3. List of witnesses examined on behalf of
Defendants:*

*D.W.1 : Sri. Shivaputrappa S/o Ulavappa
Avaradi.*

D.W.2 : Karabasappa S/o Kallappa Kotabagi.

D.W.3 : Kariyappa S/o Bheemappa Menasindi.

*4. List of documents exhibited on behalf of
Defendants:*

*Ex.D.1 to : Record of Rights.
D.9*

*Ex.D.10 & : Mutation Extracts.
D.11*

*Ex.D.12 & : Will.
D.13*

*Ex.D.12(a) : Signature.
& 13(a)*

Ex.D.14 : Sale Deed dated:28.02.1952.

Ex.D.15 : Sale Deed dated:25.06.1957.

Ex.D.16 : Sale Deed dated:23.04.1959.

Ex.D.17 : Sale Deed dated:12.02.2021.

Ex.D.18 : Aadhaar Card.

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.*