

KADW300027082022



IN THE COURT OF THE CIVIL JUDGE & JMFC,
KALAGHATAGI

PRESENT: Sri.G Sanjeev Kumar, MBA., LLB.,
Civil Judge & JMFC,
Kalaghatagi.

DATED THIS THE 29th DAY OF APRIL, 2026

O.S.No.: 267/2022

PLAINTIFF/S:

Sri. Mallappa S/o. Channappa Hosalli
Age: 62 years, Occ: Agriculture,,
R/o. Bagadgeri village,
Tq; Kalaghatagi, Dist; Dharwad.

- 2 Smt. Basavva W/o. Parameshappa
Tantakanavar, Age: 50 years,
Occ: Agriculture, R/o. Marewad,
Tq: Dharwad, Dist: Dharwad.

(By V.M.Khanapur., Advocate)

V/s

DEFENDANT/S:

Sri. Basavaraj S/o. Gulappa Hosalli,
Age; 62 years,
Occ; Agriculture, R/o. Bagadgeri
village, Tq; Kalaghatagi, Dist; Dharwad.

2. Smt. Iravva W/o. Basavaraj Hosalli

Age: 47 years, Occ: Agriculture,
R/o. Bagadgeri village,
Tq: Kalaghatagi, Dist: Dharwad.

(D1 & 2 By Sri. G.R.Hiremath., Adv)

Date of Institution of the suit:	24.11.2022						
Nature of the suit:	Partition and Separate possession and Declaration						
Date of commencement of recording of the evidence:	13.04.2023						
Date of which the Judgment was pronounced:	29.04.2026						
Total duration:	<table style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;"><u>Years</u></td> <td style="text-align: center;"><u>Months</u></td> <td style="text-align: center;"><u>Days</u></td> </tr> <tr> <td style="text-align: center;">03</td> <td style="text-align: center;">05</td> <td style="text-align: center;">05</td> </tr> </table>	<u>Years</u>	<u>Months</u>	<u>Days</u>	03	05	05
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03	05	05					

**Civil Judge & JMFC,
kalaghatagi.**

J U D G M E N T

The present suit is instituted by the Plaintiff seeking the relief of partition and separate possession of the suit schedule properties, claiming a one-half ($\frac{1}{2}$) share therein as against the defendants.

PART- A

1. Factual Trajectory of the plaintiff's case:

The case of the plaintiff's is encapsulated as per below:

(I) It is the case of the Plaintiffs that the suit property is the ancestral property of the Plaintiffs and the Defendants. According to the Plaintiffs, their deceased father had entered into an oral partition of the suit property with Defendant No.1 on 27.09.1990, pursuant to which the parties were enjoying their respective shares separately.

(ii) However, to the surprise of the Plaintiffs, they subsequently discovered that Defendant No.1 had relinquished his rights in respect of the suit property in favour of Defendant No.2 and had caused the entire suit property to be mutated in her name, thereby excluding the

Plaintiffs and denying their legitimate share in the suit property.

(iii) Despite repeated requests made by the Plaintiffs to effect partition of the suit property by metes and bounds and to allot their legitimate share therein, the Defendants failed and neglected to accede to the same. Consequently, the Plaintiffs were constrained to institute the present suit seeking partition and separate possession of their share in the suit property.

2. Written Statement filed by the Defendant:

The contentions raised in the written statement filed by defendant No. 2 and 4 are succinctly set out herein below:

(i) The Defendants, while traversing each and every averment made in the plaint, have specifically disputed the genealogical tree furnished by the Plaintiffs and the identity of the suit schedule property. It is their further contention

that the Plaintiffs have suppressed the existence of ten other ancestral properties and their respective prior partition.

(ii) The Defendants assert that, pursuant to an earlier oral partition (Afsat Watni) effected amongst the family members, several ancestral properties had fallen to the share of the Plaintiffs and that the Plaintiffs have, in fact, alienated some of the properties so allotted to them. It is further contended that the said oral partition was duly acted upon and given effect to through D-Mutation entries in the revenue records, thereby evidencing the severance of the joint status and enjoyment of the respective shares by the parties.

(iii) In the aforesaid circumstances, the Defendants contend that the present suit is bad for partial partition, non-joinder of necessary parties, and non-inclusion of all the joint family properties. On these grounds, the Defendants seek dismissal of the suit with costs.

3. Issues framed

Acting U/o 14 rule 1 of CPC and considering the materials on record, this court had framed the following issues for consideration:

ISSUES

Issue No.1: Whether the plaintiffs prove that they and defendants are members of Hindu undivided joint family?

Issue No.2: Whether the plaintiffs prove that suit schedule properties are ancestral properties of suit parties?

Issue No.3: Whether the plaintiffs prove that relinquishment deed executed by the defendant No.1 in favour of defendant No.2 is not binding on them?

Issue No.4: Whether the defendants prove that suit of the plaintiffs is bad for partial partition?

Issue No.5: Whether the defendants prove that suit of the plaintiffs is bad for non-joinder of necessary parties?

Issue No.6: Whether the plaintiffs are entitled for the relief of partition and separate possession of $\frac{1}{2}$ share as sought for?

Issue No.7: Whether the plaintiffs are entitled for the relief of declaration as sought for?

Issue No.8: What Order or Decree?

4. Plaintiff's Evidence :-

Plaintiff No.1 had examined himself as PW1 and had filed an affidavit in lieu of his examination-in-chief and got marked Ex.P1 to Ex.P9. The detailed description of the documents are as per below:

Sl.No	Description of Document	Exhibits
1.	Certificate issued by PDO	Ex.P1
2.	Applications	Exs.P2 to 4
3.	Endorsement	Ex.P5
4.	Application	Ex.P6
5.	Sale deed	Ex.P7
6.	Apsat Vatni List	Ex.P7
7.	Application	Ex.P8
8.	Death certificates	Exs.P9 & 10
9.	Panchayath Property Register	Ex.P11
10.	Property Tax register	Ex.P12

11.	Details of custodian list	Ex.P13
12.	Tax paid receipts	Exs.P14 to 16
13.	Panchayath Map	Ex.P17
14.	Aadhar cards	Exs.P18 & 19

5. Defendants' Evidence :-

Defendant No.1 had examined himself as DW1 and had filed an affidavit in lieu of his examination-in-chief and got marked Ex.D1 to Exs.D21. The detailed description of the documents are as per below:

Sl.No	Description of Document	Exhibits
1.	Certificate	Ex.D1
2.	Computerized M.R No.370 dtd: 29.03.1975	Ex.D2
3.	Computerized M.R No.505 dtd: 30.03.1984	Ex.D3
4.	Computerized M.R No.761 dtd: 17.07.1988	Ex.D4
5.	Computerized M.R No.498 dtd: 02.09.1943	Ex.D5
6.	Computerized M.R No.1523 dtd:	Ex.D6

	01.03.1967		
7.	Computerized No.2217 14.11.1998	M.R dtd:	Ex.D7
8.	Computerized No.2651 11.03.1967	M.R dtd:	Ex.D8
9.	Computerized No.1243 09.01.1949	M.R dtd:	Ex.D9
10.	Endorsement dated 17.05.2023, 27.05.2023 & 06.04.2022		Exs.D10 to 12
11.	Certified copy of resolution Book		Ex.D13
12.	Copy of Tax paid receipt		Ex.D14
13.	Certified copy oif Tax register		Ex.D15
14.	Computerized copy of RTC extracts		Exs.!6 to 18
15.	Computerized copy of Sale deed dated 30.03.2007		Ex.D19
16.	Computerized copy of RTC extracts of Sy.No.271		Ex.D20
17.	Computerized copy of Sale deed dated 18.04.2013		Ex.D21

6. Findings on the Issues:-

Heard the arguments of the plaintiffs and the Defendants and perused the materials on record. This Court had arrived at the following findings :-

Issue No.1 : In the **Affirmative**

Issue No.2 : In the **Negative**

Issue No.3 : In the **Negative**

Issue No.4 : In the **Affirmative**

Issue No.5 : In the **Affirmative**

Issue No.6 : In the **Negative**

Issue No.7 : In the **Negative**

Issue No.8 : As per final order for the following:

PART- B**REASONS**

7. Issue No. 1: This issue is framed casting the burden upon the Plaintiffs to establish that they and the Defendants constitute members of a Hindu Undivided Joint Family.

8. The defendants have admitted their relationship with the Plaintiffs but have disputed the geneological representation made by the Plaintiffs in their pleading on the count of suppression of the other branches of the family. Admission made through pleadings are known as Judicial admissions which does not require any further proof of the same. In this regard it is pertinent to refer to the decision of hon'ble supreme court in *Nagindas Ramdas v. Dalpatram Ichharam*, **(1974) 1 SCC 242**, **an excerpt of the relevant portion of the judgement is reiterated as per herein below:**

"27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in

the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

9. Applying the aforesaid principle to the case on hand, the admission of the Defendants regarding their relationship with the Plaintiffs constitutes a clear judicial admission within the meaning of Section 58 of the Evidence Act. Though the Defendants contend that certain branches have not been reflected in the genealogical tree, such

contention does not detract from their categorical acknowledgment of the familial relationship inter se between the parties. The dispute, at best, pertains to the completeness of the genealogical representation and not to the existence of the relationship itself.

10. Therefore, in view of the unequivocal admissions contained in the written statement and the settled legal position governing judicial admissions, this Court is of the considered opinion that the Plaintiffs have successfully established the genealogical relationship pleaded by them to the extent necessary for determination of the present issue. The admitted relationship between the parties stands proved by virtue of the Defendants' own pleadings and does not require any further independent proof.

11. Accordingly, this Court answers **Issue No.1 in the Affirmative**, holding that the Plaintiffs and the Defendants are members of the same Hindu family.

However, the effect of the Defendants' contention regarding omission of certain branches and its bearing on the maintainability of the suit, if any, shall be considered while dealing with the subsequent issues arising for determination.

12. Issue No.2: This issue is raised casting burden on the Plaintiff to prove that, the suit property is an ancestral property.

13. In order to discharge the said burden, the Plaintiff has examined himself as PW1 and got marked ExP1 to 19. The documents relevant for discussion for this issue is ExP1 and 5 being the endorsements issued by the PDO regarding the suit property. ExP7 being the original sale deed for a non suited property with an annexed Memorandum of oral partition marked as 7A (Partly defaced due to water spillage on it). it is pertinent to note that, the documents marked as Exhibit P1 and 5 are the endorsements issued by PDO

Grampanchayath. Further, neither Exhibit P1 nor Exhibit P5 traces the flow of title in favour of the Plaintiffs from any predecessor-in-interest. The documents do not refer to any grant, conveyance, partition, inheritance, or any other legally recognized mode of acquisition of title. In the absence of such foundational material, these endorsements cannot be relied upon to establish the Plaintiffs' proprietary claim over the suit property.

14. It is also significant to note that title to immovable property must ordinarily be established through cogent documentary evidence evidencing lawful acquisition and devolution of rights. Administrative endorsements, unsupported by title deeds or other substantive evidence, cannot substitute proof of title. Therefore, the evidentiary value of Exhibits P1 and P5 is confined only to showing that certain entries or information existed in the records maintained by the Gram Panchayat, and nothing beyond that.

15. Accordingly, this Court is of the considered view that Exhibits P1 and P5, being mere administrative endorsements issued by the PDO, do not confer any title upon the Plaintiffs, nor do they establish the flow of title in respect of the suit property. Consequently, these documents are of no evidentiary assistance in proving the Plaintiffs' proprietary entitlement over the suit schedule property.

16. The other document relevant for consideration is Exhibit P7, the original sale deed produced by the Plaintiffs. Upon a careful perusal of the said document, it becomes evident that the property described therein does not correspond to the suit schedule property. The boundaries, survey particulars, and description contained in Exhibit P7 are distinct from those of the suit property and, therefore, the document cannot be said to relate to the property which forms the subject matter of the present suit.

17. In the absence of any nexus between the property conveyed under Exhibit P7 and the suit schedule property, the said document loses its probative value for the purpose of establishing the Plaintiffs' claim over the suit property. Merely producing a sale deed pertaining to a different property cannot advance the Plaintiffs' case or substantiate their alleged right, title, or interest in the suit schedule property.

18. It is further significant to note that the Plaintiffs have not produced any revenue records such as RTC extracts, mutation entries, mutation register extracts, or any other contemporaneous documents evidencing the devolution and continuity of title in respect of the suit property. Such records, though not documents of title by themselves, often constitute important corroborative evidence reflecting possession, enjoyment, and the manner

in which rights over the property have been recognized in public records over a period of time.

19. The absence of such foundational revenue records assumes greater significance when the Plaintiffs seek to assert proprietary rights over the suit property. In the absence of any documentary evidence tracing the flow of title from the original owner to the Plaintiffs, and in view of the fact that Exhibit P7 does not pertain to the suit schedule property, the Plaintiffs have failed to place before the Court any cogent material capable of establishing their ownership or proprietary entitlement over the suit property.

20. Therefore, this Court is of the considered opinion that Exhibit P7 does not lend any support to the Plaintiffs' claim in respect of the suit schedule property and that the non-production of relevant revenue records further weakens the Plaintiffs' attempt to establish the flow of title and their alleged proprietorship over the suit property.

21. It is also necessary to examine Exhibit P7(a), which is stated to be a Memorandum of Oral Partition annexed to Exhibit P7. A careful scrutiny of the document reveals that substantial portions of its contents have become illegible and obliterated owing to the spillage of a liquid upon the document. The defacement is of such a nature that material recitals, particulars, and descriptions contained therein cannot be deciphered with reasonable certainty.

22. The evidentiary value of a document necessarily depends upon its contents being capable of being read, understood, and appreciated by the Court. Where the contents of a document have become substantially obliterated and are incapable of proper interpretation, the Court would be constrained in placing reliance upon the same. In the present case, the condition of Exhibit P7(a) renders it difficult to ascertain the exact terms of the alleged oral partition, the identity of the properties said to

have been partitioned, the shares allotted to the respective parties, and the persons amongst whom such partition is alleged to have taken place.

23. In the absence of a legible and complete recital, the Court cannot resort to conjectures or assumptions to infer the contents of the document. Any finding based upon a document whose material portions are unreadable would be inherently unsafe and contrary to the settled principles governing appreciation of documentary evidence.

24. In this regard, it is pertinent to reproduce an excerpt of the cross examination of PW1 dated: 19/02/2025.

"ನಿಪಿ7(ಎ) ನೋಂದಣಿಯಾಗಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ7(ಎ) ನ

ಮೊದಲನೇ ಪುಟವನ್ನು ನಾನೇ ನೀರು ಹಾಕಿ ಹಾಳು ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ

ಸರಿಯಲ್ಲ. ನಿಪಿ7(ಎ)ನಲ್ಲಿ ಅಳಸಿ ಹೋದಂತಹ ಅಕ್ಷರಗಳ ವಿಚಾರಗಳನ್ನು ನನಗೆ

ಹೇಳಲು ಬರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ವಾಟ್ಸಿ ಬಗ್ಗೆ ವಿವರಣೆ ಇದೆ ಎಂದು

ನುಡಿಯುತ್ತಾರೆ. ನಿಪಿ7(ಎ)ನಲ್ಲಿ ಚಕಬಂದಿ ಬರೆದಿದೆ. ನಿಪಿ7(ಎ) ಖೊಟ್ಟಿ ಕಾಗದ

ಪತ್ರ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ7(ಎ) ನಲ್ಲಿ ಆಸ್ತಿ ನಂಬರನ್ನು ಬರೆದಿಲ್ಲ ಎಂದರೆ
ಸರಿಯಲ್ಲ. ನಿಪಿ7(ಎ) ನಲ್ಲಿ 1 ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು ಆತನ ತಂದೆಯ ಸಹಿಗಳು
ಇಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ7(ಎ) ನಲ್ಲಿ ನನ್ನ ತಂದೆಯ ಸಹಿ ಇಲ್ಲ ಎಂದರೆ
ಸರಿಯಲ್ಲ. "

25. Upon a perusal of the aforementioned portion of the cross-examination of PW.1, it becomes evident that specific suggestions were put to the witness regarding the defaced condition of Exhibit P7(a) and the consequent illegibility of its contents. The witness was confronted with the fact that substantial portions of the document had become unreadable owing to the damage caused thereto, thereby rendering its contents incapable of proper verification.

26. The significance of such suggestions lies in the fact that the condition of the document was not merely a matter apparent on its face but was also specifically

brought to the notice of the witness during cross-examination. Despite being afforded an opportunity to clarify the contents of the defaced portions or to furnish any satisfactory explanation regarding the missing recitals, no material was elicited from the witness that would enable the Court to ascertain the contents of the obliterated portions with any degree of certainty.

27. Therefore, the cross-examination of PW.1 lends further support to the conclusion that Exhibit P7(a) suffers from substantial defects on account of its illegibility. Consequently, the evidentiary value of the document stands considerably diminished.

28. In view of the foregoing discussion, this Court finds that the Plaintiffs have failed to produce any reliable and cogent documentary evidence establishing that the suit schedule property is ancestral in nature. Exhibits P1 and P5, being mere administrative endorsements issued by the

Gram Panchayat authorities, do not disclose the source or devolution of title and are wholly insufficient to establish either ownership or the ancestral character of the property. Likewise, Exhibit P7 does not pertain to the suit schedule property and, therefore, has no evidentiary bearing on the question under consideration. Further, the memorandum of oral partition marked as Exhibit P7(a) suffers from substantial illegibility owing to the defacement of its contents, rendering it unsafe to place reliance upon the same for determining the nature and character of the property. The evidence of PW.1, including his cross-examination, does not remedy these deficiencies nor does it furnish any satisfactory basis for ascertaining the contents of the obliterated portions of the document.

29. More importantly, the Plaintiffs have failed to produce any revenue records, mutation entries, RTC extracts, genealogical records connected with the property, or any other contemporaneous documents capable of

tracing the flow of title from the common ancestor to the present generation. In a suit where the ancestral nature of the property is specifically asserted, the burden squarely rests upon the Plaintiffs to establish not merely their relationship inter se, but also that the property descended from a common ancestor and retained its character as ancestral property. Mere assertions in the pleadings, unsupported by credible documentary evidence, cannot discharge such burden.

30. Consequently, this Court is of the considered opinion that the Plaintiffs have failed to establish, by satisfactory and legally admissible evidence, that the suit schedule property is ancestral property. The materials placed on record fall short of proving either the origin of the title or the continuous devolution of the property through successive generations so as to impress it with the character of ancestral property. Accordingly, Issue No.2 is answered in the **Negative.**

31. Issue No.3: This issue is raised casting the burden upon the Plaintiffs to prove that the Relinquishment Deed executed by Defendant No.1 in favour of Defendant No.2 is not binding on the Plaintiffs.

32. A perusal of the plaint discloses that the Plaintiffs themselves have pleaded at paragraph No.6 that Defendant No.1 had executed a Relinquishment Deed in favour of Defendant No.2. Having specifically founded a part of their cause of action upon the existence of such a document and having sought a declaration regarding its non-binding nature, the primary burden lay upon the Plaintiffs to place the said document before the Court and establish the circumstances under which it allegedly affects their rights.

33. However, despite such specific pleadings, the Plaintiffs have neither produced the original Relinquishment Deed nor a certified copy thereof. No explanation has been

forthcoming as to why the said document, which forms the very foundation of the present issue, has been withheld from the Court. In the absence of the document itself, this Court is deprived of the opportunity to examine its contents, recitals, extent of property covered, nature of rights relinquished, and the parties bound thereby.

34. It is a settled principle of evidence that the burden of proving a fact rests upon the party who asserts it. Equally well settled is the principle that where documentary evidence constitutes the best evidence of a fact in issue, the party relying upon such fact is expected to produce the document itself. Mere pleadings or oral assertions cannot be treated as a substitute for primary documentary evidence, particularly when the dispute directly concerns the legal effect and binding nature of a written instrument.

35. In the present case, the Plaintiffs seek a finding that the Relinquishment Deed is not binding upon them.

Yet, without producing the document, the Court cannot examine whether the deed pertains to the suit schedule property, whether Defendant No.1 possessed any transferable interest at the time of its execution, whether the Plaintiffs were parties thereto, or whether the recitals contained therein in any manner prejudice their alleged rights. Any adjudication on the validity or binding nature of a document not produced before the Court would necessarily rest upon conjecture and surmise, which is impermissible in law.

36. Further, the conduct of the Plaintiffs in withholding the very document upon which they have founded their challenge attracts the principle embodied in Illustration (g) to Section 114 of the Indian Evidence Act, namely that evidence which could be and is not produced would, if produced, be unfavourable to the person withholding it. The Hon'ble Supreme Court in *Vidhyadhar v. Manikrao* [(1999) 3 SCC 573] observed that where a party withholds the best available evidence and fails to

substantiate the case set up by him, the Court is entitled to draw an adverse inference against such party.

37. Therefore, when the Plaintiffs themselves assert the existence of the Relinquishment Deed but fail to produce the same, this Court is constrained to draw an adverse inference against them. The non-production of the document strikes at the very root of their challenge and leaves the Court with no reliable material to assess its legal effect or binding nature.

38. In view of the foregoing discussion, this Court is of the considered opinion that the Plaintiffs have failed to discharge the burden cast upon them. The absence of the Relinquishment Deed from the evidentiary record renders it impossible to examine its contents or determine its effect upon the rights of the parties. Consequently, the Plaintiffs have failed to establish that the Relinquishment Deed allegedly executed by Defendant No.1 in favour of Defendant No.2 is not binding upon them. Accordingly, Issue No.3 is answered in the **Negative.**

39. Issue No.4: This issue is raised casting burden upon the Defendants to prove that, the suit is bad for partial partition.

40. The Defendants have specifically contended in their written statement that the Plaintiffs have suppressed the material fact regarding the existence of several other ancestral properties and the factum of prior partition in respect thereof. It is their specific case that the suit schedule properties do not constitute the entirety of the joint family estate and that several ancestral properties have been deliberately omitted from the scope of the present suit.

41. In order to substantiate their contention, Defendant No.1 entered the witness box as DW.1 and produced Exhibits D1 to D21. The said documents comprise computerized copies of Mutation Register Extracts, RTC

extracts, and administrative endorsements issued by the concerned Panchayat Development Officer pertaining to the properties alleged to have been omitted from the present proceedings. Significantly, the authenticity and contents of these documents were not seriously challenged during the cross-examination of DW.1. No material contradictions were elicited so as to discredit the evidentiary value of the said documents.

42. Apart from the documentary evidence, the Defendants have also elicited material admissions from PW.1 concerning the existence of other ancestral properties which have either been subjected to prior partition or have not been included in the present suit. In this regard, the relevant excerpt from the cross-examination of PW.1 dated 07.01.2025 is reproduced hereunder:

‘ನನ್ನ ತಂದೆ ಮತ್ತು ಆತನ 3 ಜನ ಸಹೋದರರು ಸೇರಿ ಡೈರಿ ನಮೂದು

ಸಂಖ್ಯೆ 370, 761 ಮತ್ತು 505 ರ ಪ್ರಕಾರ ವಾಟ್ಸಿ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆ ಎಂದರೆ

ಸರಿ. ದಾವಾ ಆಸ್ತಿಯು ಸಹ ಸದರಿ ವಾಟ್ಸಿಯಲ್ಲಿ ವಿಭಾಗವಾಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ತನ್ನ ತಂದೆಗೆ ಮತ್ತು ಗುಳಪ್ಪನಿಗೆ ಕಡಿಮೆ ವಿಸ್ತೀರ್ಣ ಬಂದ ಕಾರಣ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಪಾಲು ಕೇಳುತ್ತಿರುವುದಾಗಿ ನುಡಿಯುತ್ತಾರೆ . ದಾವಾ ಆಸ್ತಿಯು ಈಗಾಗಲೇ ವಿಭಾಗವಾಗಿರುವುದರಿಂದ ಈ ದಾವೆಯನ್ನು ಹೂಡಲು ಬರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. 1 ನೇ ಪ್ರತಿವಾದಿಯು ತನ್ನ ಆಸ್ತಿಯನ್ನು 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ಕಾನೂನಾತ್ಮಕವಾಗಿ ಬಿಟ್ಟು ಕೊಟ್ಟಿದ್ದಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ . ಪ್ರತಿವಾದಿಗಳಿಗೆ ಇಬ್ಬರು ಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ಪ್ರತಿವಾದಿಗಳ ಮಕ್ಕಳು ಚಾಲಕರು ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ವ್ಯಾಪಾರ ಮಾಡುತ್ತಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಪ್ರತಿವಾದಿಗಳ ಮಕ್ಕಳ ಅಂಗಡಿಯ ವ್ಯಾಪಾರ ಚೆನ್ನಾಗಿ ನಡೆಯುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಪ್ರತಿವಾದಿಗಳ ತೊಂದರೆ ಕೊಡುವ ಉದ್ದೇಶದಿಂದ ಮತ್ತು ಅವರ ಏಳಿಗೆಯಿಂದ ಹೊಟ್ಟೆಕಿಚ್ಚುಪಟ್ಟು ಈ ದಾವೆ ಹೂಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ."

43. A careful reading of the aforesaid testimony makes it abundantly clear that PW.1 has admitted the existence of other ancestral properties and has further acknowledged that certain properties had already been

divided amongst the family members under an oral partition. These admissions assume considerable significance, as they emanate from the Plaintiffs' own witness and directly support the defence plea regarding the incompleteness of the suit.

44. It is a settled principle of law that a suit for partition should ordinarily encompass the entire joint family estate. A co-sharer seeking partition cannot selectively include only such properties as may be advantageous to his claim while excluding other joint family properties without furnishing any satisfactory explanation. Where a plaintiff seeks partition of only a portion of the joint family properties and suppresses the existence of the remaining properties, the suit becomes vulnerable to the objection of partial partition.

45. In the case on hand, the evidence on record, particularly the admissions of PW.1 coupled with Exhibits D1

to D21, clearly establishes the existence of other ancestral properties which have not been brought within the ambit of the present suit. The Plaintiffs have neither sought partition of such properties nor have they assigned any plausible reason for their exclusion. The evidence further indicates that some of the ancestral properties were already the subject matter of prior oral partition, a material fact which has not been candidly disclosed in the plaint.

46. The law relating to partial partition is no longer *res integra*. It is a settled principle that a coparcener seeking partition must ordinarily bring into the common hotchpotch all available joint family properties and seek a comprehensive division of the entire joint family estate. A suit for partition confined to only a portion of the joint family properties, while deliberately excluding other joint family assets, is generally not maintainable unless the plaintiff establishes special circumstances justifying such exclusion.

47. The rationale behind the said principle is that the Court, while determining the shares of the parties, is required to take into consideration the entirety of the joint family estate. Exclusion of any part of the joint family properties may result in an inaccurate determination of shares, multiplicity of proceedings, and inconsistent decrees. The law, therefore, discourages piecemeal partition and insists upon a complete and final adjudication of the rights of all co-sharers in respect of the entire joint family estate.

48. The Hon'ble Supreme Court in *Kenchegowda (Dead) by LRs v. Siddegowda alias Motegowda [(1994) 4 SCC 294]* has reiterated that where a plaintiff seeks partition of joint family properties while excluding other available joint family properties, the Court is justified in examining whether the suit suffers from the vice of partial partition. The principle underlying such scrutiny is to ensure

that there is a complete and effective partition of the joint family estate and to prevent repeated litigation amongst the same parties.

49. In the present case, the admissions of PW.1 unmistakably establish the existence of other ancestral properties. The documentary evidence produced by the Defendants through Exhibits D1 to D21 further corroborates the defence plea that the suit schedule properties do not constitute the entire joint family estate. Despite such evidence, the Plaintiffs have neither included the omitted properties in the present suit nor offered any satisfactory explanation for their exclusion. On the contrary, the evidence suggests suppression of material facts concerning the existence and prior partition of other ancestral properties.

50. Therefore, this Court is constrained to hold that the Plaintiffs have approached the Court without disclosing

the complete corpus of the joint family properties. Such omission strikes at the root of a suit for partition and renders the present proceedings one for partial partition. Consequently, the suit, in its present form, is not maintainable. Accordingly, this Court is of the considered opinion that the Defendants have successfully established that the present suit suffers from the vice of partial partition. Hence, Issue No.4 is answered in the **Affirmative**.

51. Issue No.5: This issue is raised casting burden upon the Defendants to prove that the suit is bad for non joinder of necessary parties.

52. At the outset, it is pertinent to note that, the Defendants have disputed the very representation of the genology by the Plaintiffs in the plaint and have provided a distinct genological tree in the written statement. In furthrance to this, few admissions were elicited form the mouth of the PW1 during his cross examination. An excerpt

of the said elicitation dated 3/4/2024 is reproduced as per herein below:

‘ನನ್ನ ತಂದೆಯವರು ಒಟ್ಟು 4 ಜನ ಅಣ್ಣತಮ್ಮಂದಿರು ಅಂದರೆ ಸರಿ. ಅವರೆಂದರೆ ಬರಮಪ್ಪ, ರಾಮಪ್ಪ, ಚಿನ್ನಪ್ಪ ಮತ್ತು ಗೂಳಪ್ಪ . ಸದರಿ 4 ಜನ ಅಣ್ಣ ತಮ್ಮಂದಿರಿಗೆ ಬಗಡಗೇರಿ ಗ್ರಾಮದಲ್ಲಿ ಪ್ರತ್ಯೇಕವಾಗಿ ಮನೆ ಮತ್ತು ಹಿತ್ತಲ ಆಸ್ತಿಗಳು ಇವೆ ಅಂದರೆ ಸರಿ. ವಿ ಪಿ ಸಿ ನಂ. 204-2 ಆಸ್ತಿಯಲ್ಲಿ ಬರಮಪ್ಪನ ಮಕ್ಕಳು ಮತ್ತು ಮೊಮ್ಮಕ್ಕಳು ವಾಸವಾಗಿದ್ದಾರೆ ಅಂದರೆ ಸರಿ. ವಿ ಪಿ ಸಿ ನಂ.204-1 ಆಸ್ತಿಯಲ್ಲಿ ರಾಮಪ್ಪನ ಮಕ್ಕಳು ಮತ್ತು ಮೊಮ್ಮಕ್ಕಳು ವಾಸವಾಗಿದ್ದಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ವಿ ಪಿ ಸಿ ನಂ.208-3 ಆಸ್ತಿಯಲ್ಲಿ ನಾನು ಮತ್ತು ನನ್ನ ಕುಟುಂಬ ವಾಸವಾಗಿದ್ದಾರೆ ಅಂದರೆ ಸರಿ. ಸದರಿ ಆಸ್ತಿ ನನ್ನ ಹೆಂಡತಿಯ ಹೆಸರಿನಲ್ಲಿದೆ ಅಂದರೆ ಸರಿಯಲ್ಲ . ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನನ್ನ ತಂದೆಯ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.’

53. A careful perusal of the aforesaid testimony reveals that PW.1 has admitted the existence of certain family members whose names find place in the genealogy pleaded by the Defendants. The admissions so elicited

substantially corroborate the genealogical tree set up by the Defendants and expose the incompleteness of the genealogy furnished by the Plaintiffs.

54. The evidence on record demonstrates that several members of the family, who trace their lineage from the common ancestor and who possess a direct and substantial interest in the subject matter of the suit, have not been arrayed as parties to the proceedings. Significantly, no satisfactory explanation has been forthcoming from the Plaintiffs regarding the omission of such persons from the array of parties.

55. The deliberate exclusion of these family members assumes greater significance in view of the nature of the present proceedings. Any adjudication rendered in their absence is likely to affect their rights and interests without affording them an opportunity of being heard. Consequently, an effective, complete, and binding

adjudication of the dispute cannot be achieved in the absence of such persons.

56. The admissions of PW.1 clearly establish that the genealogy projected by the Plaintiffs does not disclose the entire body of co-sharers and interested family members. By suppressing the existence of such persons and failing to implead them, the Plaintiffs have instituted the present suit in a defective form. Therefore, this Court is of the considered opinion that the omitted family members are necessary parties to the proceedings, and their non-impleadment renders the suit bad for non-joinder of necessary parties.

57. The Hon'ble Supreme Court in **Kasturi v. Iyyamperumal** laid down the well-settled test for determining whether a person is a necessary party. The Court held that: (i) there must be a right to some relief against such party in respect of the controversies involved

in the proceedings, and (ii) no effective decree can be passed in the absence of such party.

58. Applying the aforesaid principles to the case on hand, the admissions elicited from PW.1 clearly disclose the existence of other descendants and co-sharers who have a direct and subsisting interest in the suit property. In a suit involving determination of rights inter se among members of a family, particularly where the claim pertains to joint family property and partitionary rights, every co-sharer whose share may be affected by the adjudication is a necessary party. Any decree passed in their absence would neither bind them nor result in a complete and final adjudication of the dispute.

59. It is trite law that a partition suit is a suit for complete separation of shares among all co-sharers, and therefore all persons having a share in the property are necessary parties. The omission of even one co-sharer is

capable of rendering the adjudication incomplete and exposing the decree to further litigation. In the present case, despite being aware of the existence of such family members, the Plaintiffs have consciously omitted them from the array of parties and have presented an incomplete genealogy before the Court.

60. Therefore, this Court is satisfied that the persons omitted by the Plaintiffs are not merely proper parties but necessary parties, in whose absence an effective and binding adjudication of the controversy cannot be made. Consequently, the suit is liable to be held bad for non-joinder of necessary parties. Accordingly, Issue No.5 is answered in the **Affirmative.**

61. Issue Nos.6 & 7: These issues are taken up together for common discussion as they pertain to the Plaintiffs' entitlement to the reliefs of partition, separate

possession, and declaration in respect of the suit schedule property.

62. The burden of proving these issues squarely rests upon the Plaintiffs. It is a settled principle of law that a party seeking the relief of partition must first establish the existence of a legally enforceable right in the property sought to be partitioned. Likewise, a party seeking a declaration that a particular document or transaction is not binding upon him must lay a proper factual and evidentiary foundation enabling the Court to examine the nature and legal effect of the challenged transaction.

63. In the case on hand, while considering Issue No.2, this Court has already recorded a categorical finding that the Plaintiffs have failed to establish that the suit schedule property is ancestral property. The Plaintiffs have not produced any reliable documentary evidence tracing the flow of title from a common ancestor or demonstrating that

the property retained the character of ancestral property. Exhibits P1 and P5 were found to be mere administrative endorsements lacking any evidentiary value regarding title, while Exhibit P7 was held to be unrelated to the suit schedule property. Further, Exhibit P7(a), upon which considerable reliance was sought to be placed, was found to be substantially illegible and incapable of proving the contents of the alleged oral partition. Consequently, the Plaintiffs have failed to establish the foundational fact upon which their claim for partition rests.

64. Further, while dealing with Issue No.3, this Court has already held that the Plaintiffs failed to produce the alleged Relinquishment Deed executed by Defendant No.1 in favour of Defendant No.2. In the absence of the document itself, the Court was unable to examine its contents, scope, legal effect, or binding nature. Consequently, the Plaintiffs failed to discharge the burden of proving that the said document is not binding upon them.

The finding recorded under Issue No.3 directly undermines the declaratory relief sought in the present suit.

65. The difficulties confronting the Plaintiffs' case do not end there. Under Issue No.4, this Court has found that the present suit suffers from the vice of partial partition. The evidence on record clearly discloses the existence of other ancestral properties which were either previously partitioned or deliberately omitted from the scope of the present proceedings. The Plaintiffs have failed to furnish any satisfactory explanation for excluding such properties from the suit. Since a suit for partition ordinarily requires inclusion of the entire joint family estate, the omission of substantial properties renders the present claim legally defective and incapable of effective adjudication.

66. Moreover, under Issue No.5, this Court has held that the suit is bad for non-joinder of necessary parties. The evidence on record establishes the existence of other co-

sharers and descendants having a direct and substantial interest in the subject matter of the suit. Their absence from the proceedings prevents this Court from rendering a complete, effective, and binding adjudication of the rights claimed by the parties. Any decree passed in their absence would be susceptible to further challenge and would not attain finality.

67. Thus, the cumulative effect of the findings recorded on Issues Nos.2, 3, 4, and 5 is fatal to the Plaintiffs' claim. The Plaintiffs have failed to establish the ancestral character of the suit property; they have failed to prove that the impugned Relinquishment Deed is not binding upon them; the suit has been found to be one for partial partition; and the proceedings have further been found to suffer from non-joinder of necessary parties. Each of these findings independently disentitles the Plaintiffs to the reliefs sought. Collectively, they completely erode the foundation of the suit.

68. It is trite that a decree for partition cannot be granted in the absence of proof of title, in the absence of all necessary parties, and in respect of only a fragment of the alleged joint family estate. Similarly, a declaratory relief cannot be granted when the document sought to be declared non-binding has not even been produced before the Court. Granting the reliefs sought by the Plaintiffs despite these deficiencies would amount to decreeing the suit on mere conjectures and assumptions rather than on legally admissible evidence.

69. Therefore, in view of the foregoing discussion and the findings already recorded on the preceding issues, this Court is of the considered opinion that the Plaintiffs have failed to establish their entitlement either to partition and separate possession of the suit schedule property or to the declaratory relief sought against the Defendants.

Accordingly, **Issue Nos.6 and 7 are answered in the Negative.**

70. Issue No.8: For the forgoing reasons, this Court is inclined to pass the following:

ORDER

The suit filed by the plaintiff for the relief of partition and separate possession is hereby **DISMISSED WITH COSTS.**

Office is hereby directed to draw decree accordingly.

(Dictated to Adalat Ai, auto transcribed by Adalat Ai formatted by Stenographer corrected by me and then pronounced by me in the open court on this **29th day of April, 2026**)

(G. Sanjeev Kumar)
Civil Judge & JMFC,
Kalaghatagi,

ANNEXURE**List of witnesses examined on behalf of Plaintiff :**

PW.1 : Mallappa Channappa Hosalli

List of documents marked on behalf of plaintiff;

Ex.P1 : Certificate
Exs.P2 to 4 : Applications
Ex.P5 : Endorsement
Ex.P6 : Application
Ex.P7 : Sale deed
Ex.P8 : Apsat Vatni list
Exs.P9 & 10 : Death certificates
Ex.P11 : Panchayath property register
Ex.P12 : Property Tax register
Ex.P13 : Details of custodian list
Exs.P14 to 16 : Tax paid receipts
Ex.P17 : Panchayath Map
Exs.P18 & 19 : Aadhar cards

List of witnesses examined on behalf of Defendant:

DW.1 : Sri. Basavaraj Gulappa Hosalli

List of documents marked on behalf of Defendant:

Ex.D1 : Certificate

- Exs.D2 : Computerized MR No. 370 dtd 29.03.1975
Ex.D3 : Computerized M.R.No.505 dtd: 30.03.1984
Ex.D4 “ Computerized M.R.No.761 dtd: 17.07.1988
Ex.D5 : Computerized M.R.No.498 dtd: 02.09.1943
Ex.D6 : Computerized M.R.No.1523 dtd: 01.03.1967
Ex.D7 : Computerized M.R.No.2217 dtd: 14.11.1998
Ex.D8 : Computerized M.R.No.2651 dtd: 11.03.1967
Ex.D9 : Computerized M.R.No.1243 dtd: 09.01.1949
Ex.D10 to 12 :Endorsements
Ex.D13 : Certified copy of resolution Book
Ex.D14 : Copy of Tax paid receipts
Ex.D15 : Certified copy of Tax register
Exs.D16 to 18: Computerized copy of RTC extracts
Ex.D19 : Computerized copy of sale deed dtd
30.03.2007
Ex.D20 : Computerized RTC extracts Sy.No.271
Ex.D21 : Computerized copy of sale deed
dated 18.04.2013.

(G. Sanjeev Kumar)
CIVIL JUDGE & JMFC,
KALAGHATAGI