

KADW310000962022



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L. HONOLE., B.A., LL.B (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI**

DATED THIS 25TH DAY OF MARCH 2026

O.S. No.28/2022

PLAINTIFFS:

1. Poornima D/o Achuthrao Desai,
(After marriage called as Poornima V.
Kulkarni), Age: 42 Years,
Occ: Housewife, R/o H.No.2883/B,
14th main, Rajaji Nagar, 2nd stage, 'E' block,
Subramanya Nagar, Bengaluru-10.
2. Suman D/o Achuthrao Desai,
(After marriage called as Suman B.
Tapas), Age: 43 Years, Occ: Housewife,
R/o W/o Baladiskhit Tapas, Datta
Abhilasha, 6th cross, Malamaddi, Narayan
Residency, GTS, Dharwad-580007.
3. Anita D/o Achuthrao Desai,
(After marriage called as Anita W/o
Amar Kini), Age: 40 Years, Occ: Housewife,
R/o C/o Antonio Fernandis, H.No.818, St.
Agostinho, Near Happy Cement Agency,
Calaphor Santa Cruz, North Goa-403005.

(Sri. R.G.Naidu, Adv)

Vs

DEFENDANTS:

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1. Achuthrao Krishnarao Desai,
Age: 74 years, Occ: Agriculture,
R/o C/o Antonio Fernandis, H.No.818,
St. Agostinho, Near Happy Cement Agency,
Calaphor Santa Cruz, North Goa-403005.
2. Hanumanth S/o Raghavendra Gudi(since
deceased R/by his L.Rs.
 - 2(a). Jayashree w/o Vijayvittal Gudi,
Age: 50 years,
Occ: Housewife,
R/o: Machapur, Tq: Kalaghatagi,
Dist: Dharwad
 - 2(b). Vyasakumar s/o Hanumanthacharaya Gudi,
Age: Major, Occ: Agriculture,
R/o: Machapur, Tq: Kalaghatagi,
Dist: Dharwad
 - 2(c) Vadiraj s/o Hanumanthacharaya Gudi,
Age: 55 years, Occ: Agriculture,
R/o: Machapur, Tq: Kalaghatagi,
Dist: Dharwad
 - 2(d) Vasant s/o Hanumanthacharaya Gudi,
Age: Major, Occ: Agriculture,
R/o: Machapur, Tq: Kalaghatagi,
Dist: Dharwad
 - 2(e) Venkatesh s/o Hanumanthacharaya Gudi,
Age: Major, Occ: Agriculture,
R/o: Machapur, Tq: Kalaghatagi,
Dist: Dharwad
- 3 Madvacharaya s/o Ramachar Gudi,
(since deceased by his L.Rs.)
 - 3(a) Gururaj S/o Madhavacharya Gudi,
Age: Major, Occ: Agriculture,
R/o: Machapur, Tq: Kalaghatagi,
Dist: Dharwad

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- 3(b) Prema w/o Krishna Navaratna,
Age: Major, Occ: Household,
R/o Machapur, Tq: Kalaghatagi,
Dist: Dharwad.
- 3(c). Laxmi @ Subhadra w/o Vadiraj Bagali,
Age: Major, Occ: Household work,
R/o Machapur, Tq: Kalaghatagi,
Dist: Dharwad.
- 3(d). Damayanti s/o Madvacharaya Gudi,
Age: Major, Occ: Household
R/o Machapur, Tq: Kalaghatagi,
Dist: Dharwad
4. Ramesh s/o Timmaji Desai,
Age: 68 years, Occ: Private work,
R/o 1st cross, Gandhi Nagar, Dharwad
5. Umesh s/o Timmaji Desai,
Age: 63 years, Occ: Retired,
R/o Kelkar compound, Mahashi road,
Malamaddi, Dharwad.

(D-1 V.R. Patil, Adv)**(D-2(b) to (e) Sri. P.S.Naregall, Adv)****(D-4 & 5: Sri. S.I. Kumbar, Adv)**

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| 1. Date of suit | : 22.03.2022 |
| 2. Nature of suit | : Partition & Separate
possession & declaration |
| 3. Date of recording evidence | : 16.12.2022 |
| 5. Date of disposal | : 25.03.2026 |
| 6. Total duration | : Years / Months/ Days
04 / 00 / 03 |

(R.L.HONOLE)
SR.CIVIL JUDGE & JMFC,

O.S.No.28/2022
KALAGHATAGI

J U D G M E N T

The plaintiffs have filed this suit for partition of their legitimate 1/4th share in the suit property and declaration that defendant No.2(a) to (e) and 3(a) to (d) are not the absolute owners of suit property and for injunction.

2. Facts of the case of the plaintiffs' is that:

The agricultural land bearing Sy.No.89 measuring 6 acre 14 guntas situated at Machapur village, taluk Kalaghatagi is the suit property. One Narayanrao Desai was the propositus had sons by name Timmaji, Krishnaji, Shivaji, Venkaji and Bapu. All the sons of propositus are no more. The second son of propositus by name Krishnaji had two wives by name Vathasala first wife and Sattyabhama second wife. The sons of Krishnaji born through Vathasala are no more. Defendant No.1 and Srinivas are the sons of Sathyabhama. Plaintiff No.1 to 3 are the daughters of defendant No.1. Deceased Srinivas is no more and his daughters Mamata and Sima.

3. It is submitted that Srinivas had no interest in the suit property he has taken independent interest in other properties. The plaintiffs and defendant No.1 are the absolute owners of suit property. One Timmaji Deshpande and possession holder Timmaji Desai died on 15.12.1935 and his legal heirs names has been mutated and property is divided in between four brothers. The suit property fallen to the share of Krishnaji Narayanrao Desai along with some properties as per mutation entries dated 10.02.1943. The said Krishnaji died on 01.09.1984 who is grand father of plaintiffs and father of defendant No.1. It is submitted that one Madhvacharya Ramacharya Gudi died on 19.04.1968 leaving behind defendant No.3(a) to (d) as his heirs. Madhvacharaya is stranger to the family of Krishnaji Desai and they have no right in the suit property. The defendant No.3 (a) to (c) are not the owners and possessor of suit property in colluding with revenue authorities got changed records behind the back of plaintiffs.

4. It is contended that the as per mutation extract dated 17.07.1969, the relinquishment deed executed by defendant

No.3(a) to (d) in favour of Hanmanth S/o Raghavendra Gudi is without any right and same is illegal. Now defendant No.2(a) to (e) names were appearing in the revenue records which is false and bogus. They have no any right in the suit property. As per MR No.330 Madhavacharaya Gudi has no right in the suit property. It is submitted that Land Tribunal Mumbai in its order No.KLSR 4205 dated 07.03.1949 granted lavani only on condition to payment of five times lavani who was working as patil on 05.11.1956. The said order is not binding on plaintiffs and defendant No.1. The defendants neither the lease holders or possessors not claimed ownership to the suit property illegal way. The defendant No.2(a) to (e) or their ancestors are never in possession of suit property. It is contended that the father of defendant No.1 never executed lease deed in favour of defendant No.2(a) to (d) and 3(a) to (d).

5. It is contended that the partition taken place between defendant No.2(a) to (e) in respect of suit property is not binding on plaintiffs share. The defendants avoiding to give share of the plaintiffs and taking advantage of their name appearing in the records trying to alienate the suit property.

Therefore, they have filed the suit and prays for decree the suit as sought for.

6. In pursuance of summons, defendant No.1 to 5 appeared through their respective counsels. Defendant No.1 has filed written statement admitting the case of the plaintiffs. It is submitted that O.S.No.123/2016 against defendant No.2(a) to (e) to receive lease amount created over the suit property after the death of Krishnarao Desai. The defendants are not the owners. Vatni panch award ME No.223 dated 01.01.1943 including suit property and other properties reveals that in the partition took place between 1. Timmaji, 2. Krishnaji, 3. Shivaji, 4. Venkaji, 5. Bapu sons of Narayanrao Desai fallen the share to the said ancestors. The said Krishnaji and his father from 1943 to till today they are the owners and possessors of suit property. Therefore, prays for allotting his 1/4th share in the suit property by metes and bounds.

7. Defendant No.2(c) has filed written statement. In the written statement the contents of plaint are denied as false, frivolous and vexatious. The genealogy is denied as false. The

other averments of plaint are specifically denied as false. It is submitted that there is no cause action to file the suit and suit is barred by limitation. The suit is hit by principles of res-judicata as defendant No.1 filed suit in O.S.No.123/2016 on the file of this court and same has been rejected which has been attained finality. The suit is bad for non-joinder and mis-joinder of parties. The plaintiffs by suppressing material facts have filed the suit in respect of O.S.No.123/2016 which are within the knowledge of plaintiffs. It is contended that the plaintiffs have no locus standi to file the suit. It is submitted that defendant and his brothers defendant No.2(d) and 2(e) are the absolute owners and in possession of suit property. The father of late H.R. gudi i.e., Madhvacharya Gudi had executed relinquishment deed dated 02.01.1943 in favour of their father and same is registered document. The late H.R.Gudi had gone in adoption to the uncle of Madhvacharya Gudi. By virtue of relinquishment deed name of father of defendant has been mutated and the ancestors of defendants are kartha holders of suit property and they are in use and enjoyment of suit property. It is submitted that the legal heirs

of H.R.Gudi have succeeded to the estate. The contention of plaintiffs were nullified long back in earlier proceedings before Government of Mysore in between ancestors of defendants as per order No.RDC 8 WTN 57 dated 04.09.1957. The said order has been acted upon through Divisional Commissioner, Belgaum, D.C., Dharwad and Tahasildar, Kalaghatagi by issuing certificate on 04.08.1987.

8. It is submitted that the father of defendant by name H.R.Gudi died on 19.02.2012 and they being the heirs have inherited the property and suit property has been mutated in their name. It is submitted that defendant No.1 has filed in O.S.No.123/2016 on the file of this court and same was dismissed on merits and same was attained finality. The principles of res-judicata will apply to the case. The suit property is not the joint family property of plaintiffs or their ancestors. Late H.R.Gudi was the absolute owner and possessor of property from 1943 by his ancestors till today and they are cultivating the suit property. The revenue records are standing in the name of defendants. The plaintiffs have not come to the court with clean hands, they have

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suppressed the material facts within their knowledge. The suit is collusive between plaintiffs and defendant No.1 and to blackmail the defendants to extract money. The suit is false, frivolous and same is liable to be dismissed with cost.

9. During pendency of suit defendant No.4 and 5 are impleaded as party to the suit. The defendant No.4 has filed written statement admitting the case of the plaintiffs. It is submitted that relinquishment deed dated 04.01.1943 in the name of defendant No.3(a) by name Madhvacharaya s/o Ramacharaya Gudi has been executed in favour Hanmanth s/o Madvacharya Gudi but not in the name of Hanmanth Raghavendra Gudi is created one, bogus and fake deed, same is not binding on plaintiffs. It is submitted that as per MR No.191 dated 30.07.1935 legal heirs of Ramakrishna Mangesh Katle who expired on 19.07.1935 at Hubballi his elder son Mangesh Kadle has been entered in the records of suit property. The farmer name Channappa Ketavappa Gouli was farmer and he resigned to his work before pancha on 25.09.1957 and handed over the suit property to the

plaintiffs. In further contents he supported the case of the plaintiffs and prays to decree the suit in favour of plaintiffs.

10. On the basis of above pleadings, the following issues are framed:

ISSUES

1. Whether the plaintiffs prove that they and defendant No.1 constitute joint family?
2. Whether the plaintiffs prove that the suit properties are the joint family properties of them and defendant No.1?
3. Whether the plaintiffs prove that defendant No.2(a) to 2(e) and defendant No.3(a) to 3(d) are not the absolute owners of suit properties by virtue of mutation No.330?
4. Whether the plaintiffs prove that the partition between defendant No.2(a) to (e) dated 16.10.2021 is not binding on the share of the plaintiffs?
5. Whether the defendant No.2(a) to (e) prove that in view of the proceedings of Government of Mysore and order passed in O.S.No.123/2016, the plaintiffs have lost their right, title and interest in the suit properties as such there is no cause of action to file the suit, thereby suit of the plaintiffs is not maintainable?
6. Whether the suit is properly valued and court fee paid is sufficient?
7. Whether the suit of the plaintiffs is within the time of limitation?
8. Whether the suit is bad for non-joinder and mis-joinder of parties?

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9. Whether the plaintiffs are entitled for the relief as sought for?

10. What order or decree?

11. In order to prove their case, the plaintiff No.3 stepped into witness box and got examined as PW.1. In support of their case got marked Ex.P.1 to 73 and closed their side.

12. In order to prove the case of the defendants, defendant No.1 stepped into witness box and got examined as DW.1. In support of their case got marked Ex.D.1 to 23. Defendant No.2(c) has got examined as DW.2 and got marked Ex.D.24 to 36. Defendant No.4 has got examined as DW.3 and closed their side.

13. Heard the arguments.

14. My answers to the above issues are as under:

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	: In the negative
ISSUE No.8	: In the negative
ISSUE No.9	: In the negative
ISSUE No.10	: As per the final order for the following:

REASONS

15. **ISSUES No.1 TO 3:** In order to avoid repetition of facts, I have taken up these issues together for common discussion.

16. It is case of the plaintiffs that propositus Narayanrao Desai died leaving behind his five sons by name 1. Timmaji, 2. Krishnaji, 3. Shivaji, 4. Venkaji and 5. Bapu. The second son Krishnaji had two wives by name Vatsala (first wife) and Sattabhama (second wife). The sons of Vatsala are no more. Defendant No.1 is the elder son of Sattabhama and Srinivas younger son who died leaving behind his two daughters Mamta and Sima. The plaintiffs are the daughters of defendant No.1.

17. It is contended that the suit schedule property Sy.No.89 measuring 6 acre 14 guntas situated at Machapur village, belongs to Timmaji Desai and in the partition took place between his brothers it was fallen to the share of Krishnaji Narayanrao Desai. The said Krishnaji died on 01.09.1984 who is grand father of plaintiffs and father of defendant No.1 was the absolute owner and possessor of suit property. After his death his heirs are owners and posseoors of suit property. It is further contended that, defendant

No.2(a) to (e) and defendant No.3(a) to (d) are not way concerned to the suit property and they are not in possession and enjoyment of suit property. It is further case of plaintiffs that, Madhavacharya Gudi is stranger to the family of plaintiffs and defendant No.1 and he has no right in suit property and relinquishment deed and mutation are created documents. This fact has been disputed by defendant No.2(a) to (e). Therefore, it is burden upon plaintiffs to prove their case.

18. Learned counsel for plaintiffs in the written arguments narrated the contents of plaint. It is submitted that as per MR No.330 Madhvacharya Gudi has no right, title or interest or absolute owner of suit property. Defendant No.2(a) to (e) neither owners nor in possession of suit property. The contention of defendant No.2(a) to (e) that they are the owners is illegal. It is submitted that as per relinquishment deed dated 02.01.1943 name of defendant No.3(a) Madhavacharya Gudi has executed in favour of Hanmanth S/o Raghavendraachrya Gudi is created document and same is not binding on share of the plaintiffs. It is

submitted that as per MR No.675 dated 17.07.1969 name of defendant No.3(a) to (d) is shown inside extract they never executed any relinquishment deed along with his father defendant No.3(a). The entries in the records is fake and bogus. The name of defendant No.3(a) to (d) has been entered on lavani basis and defendant No.3 is continued is possessor of suit property. As per revenue records partition took place between ancestors of plaintiffs, the suit property is absolute property of plaintiffs. It is submitted that revenue entries from 1943 to 2023 and mutation entries continued in the name of Krishnaji Desai, the grand father of plaintiffs and father of defendant No.1.

19. It is submitted that as per management made by the Timmaji defendant No.3(a) was only priest of two temples i.e., Venkatesh temple and Vithoba temple and for the purpose of performing pooja both the temples property was given. The deceased Timmaji is also right, title and interest over the suit property as a share holder. The contention of defendant No.2(a) to (e) and defendant No.3(a) to (d) that property was given for lighting the lamp of temple is not correct. He also

reiterated the cross examination of DW.1. The documents relied by plaintiffs and defendants. It is submitted that the entries in Ex.D.34 are false. He reiterated the cross examination of DW.2 and 3. It is submitted that the evidence of DW.1 is contrary to the contents of written statement and same is liable to be dismissed. It is submitted that as per MR No.334 dated 31.03.1943 and other records shows that defendants are not the owners and have no right over the suit property. Therefore, prays for decree the suit as prayed for.

20. Per contra, learned counsel for defendant No.2(a) to (e) argued that the plaintiffs have sought negative relief of declaration without seeking declaration of ownership, on this count itself the suit of the plaintiffs is liable to be dismissed. Madhvacharaya Gudi executed gift deed in favour of his son in the year 1943. The dispute is of 1857. It is submitted that Ramabai taken suit property in court proceedings and executed gift deed in favour of ancestors of defendants by name Madhvacharaya Gudi. The said Madhvacharaya Gudi has executed relinquishment deed on 01.02.1943 as per ME No.635. It is argued that Desai family lost its right over suit

property then his great grand daughters cannot claim property. The suit property was gifted for lighting the lamp of Vittaldevar temple. There is no violation of gift deed as contemplated u/sec. 127 of T.P. Act and same is executed for legal purpose. Ramabai during her life time has not challenged the gift deed. The plaintiffs or defendant No.1 are not in possession of suit property, question of claiming it as joint family property does not arise. It is argued that the suit of the plaintiffs is barred by limitation under Article 58 of Limitation Act. Since 1870 plaintiffs ancestors have executed gift deed, question of claiming it as absolute property is not maintainable. It is argued that the entries in the revenue records are having presumptive value under law. The entries in the revenue records establishes that defendant No.2(a) to (e) are the owners and possessors of suit property. It is submitted that defendant No.2 is stranger to the family of plaintiffs and defendant No.1, question of possession as co-owner does not arise. The suit property is not at all joint family property and the revenue entries are not challenged. The suit of the plaintiffs is collusive with defendant No.1. The

plaintiffs have failed in their attempt in all the proceedings have filed this suit. Ex.P.36 is 30 years old document and having presumptive value under law and establishes right and ownership of defendant No.2(a) to (e). The negative relief is sought by the plaintiffs is barred by limitation. The plaintiffs have filed this suit to harass the defendant No.2(a) to (e). Therefore, prays for dismissal of suit with cost.

21. Keeping in mind the pleadings of parties, written argument and oral arguments I have gone through the evidence of parties. In order to prove their case plaintiff No.3 stepped into witness box and got examined as PW.1. In her examination-in-chief filed in the form of affidavit reiterated the contents of plaint. In support of their case got marked Ex.P.1 to 73 and closed their side. Ex.P.1 to 3, 8 and 9 are the RTCs from 2015-16 to 2017-18 of suit property bearing Sy.No.89*/* measuring 6 acre 14 guntas of Machapur village jointly standing in the name of defendant No.2(a) to (e) as owners and possessors. In column No.11 other rights name of Krishnaji Narayan Desai is appearing wherein it is mentioned that "ಕಲಘಟಗಿ ವಿಲೋಬಾ ನಂದಾ ದೀವಿಗೆ ಹಚ್ಚಲಿಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತಾರೆ." (given for

lightening the lamp of Kalaghatagi Vithoba temple) Ex.P.4 to 6 are the RTCs of suit property from the year 1939-40 to 1943-44, 1951-52 to 1966-67. The entries in the records speaks that in possessor (kabjedar) column name of Mangesh Ramakrishna Kade has been rounded off and name of Madhavacharya Ramachandracharya Gudi was appearing. In other rights column name of Krishnaji Narayan Desai was appearing and it is also mentioned about property was given for lighting the lamp of Vithoba temple and encumbrance created over the suit property.

22. Ex.P.7 is the MR No.121 dated 07.01.1935 discloses that, After death of Narayan Desai name of Timmaji has been entered. Ex.P.11 is MR No.330 dated 28.05.1949, the entries discloses that as per order of revenue Tribunal Mumbai and Assistant Commissioner, Dharwad in KLSR 4205 dated 07.03.1949, kabjedar (possessor) has to pay lavani amount to Patil who is working in the land. Ex.P.12 is the akarband utar MR No.639. Ex.P.13 to 20 are the mutation registers discloses that after death of Hanmanth Raghavedra Gudi name of his

heirs has been mutated in the revenue records i.e., defendant No.2(a) to (e).

23. Ex.P.21 to 48 and 71 to 73 are the RTCs of Sy.No.37, 38 and 39 which are not the subject matter of suit property. Ex.P.49 to 56, 60, 61,65 are mutation registers, not related to the suit property.

24. The revenue entries of suit property are crystal clear that land was given to the ancestors of Madhvacharaya Ramacharya Gudi for lighting the land of Vithoba temple. The contention of defendant No.2(a) to (e) that gift deed was executed in the year 1870 and in the court proceedings it was fallen to the property of deceased Ramabai is not supported by documentary evidence. But DW.1 in his cross examination clearly admits that his great grandmother Ramabai had gifted the suit property to the ancestors of Madhvacharaya Ramacharya Gudi. The oral evidence of DW.1 who is material witness know the truth and his evidence corroborated with entries in the revenue records and supports the contention taken by defendant No.2(a) to (e). The evidence of DW.1 about

gift deed executed by deceased Ramabai in favour of ancestors of Gudi family is believable and accepted.

25. Now the question is whether the gift deed was executed for limited purpose of use and enjoyment? No. Because once the gift deed has been executed by donor and accepted by Donee, their ends the matter. Gift cannot be revoked, therefore, contention of plaintiffs that suit property was given for limited purpose of use and enjoyment is not accepted.

26. Ex.P.57 is the MR No.331 dated 31.03.1943. The contents of document reveals that Madvacharaya Ramacharaya Gudi has relinquished his $\frac{1}{2}$ share by receiving Rs.1000/- on 02.01.1943 has executed relinquishment deed in favour of Hanmanth Madvacharaya Gudi minor guardian Sitabai in respect of Sy.No.37, 38, and 39 and other properties.

27.Ex.P.59 is MR No.369 dated 08.09.1945 disclose that Tulsabai Bhrutar Raghavendracharya Trivikrambhattanavar @ Gudi adopted one Hanmanth S/o Raghavendra Acharaya Trivikramabhat @ Gudi on

04.01.1945 under registered gift deed. Accordingly, mutation has been certified in respect of Sy.No.37, 38 and 39.

28. Ex.P.66 is MR No.441 disclose that one Katavappa Fakkirappa Gouli was the tenant of Sy.No.89 and after his death name of his son Channappa has been entered as tenant. Ex.P.67 is the MR No.98 dated 29.02.1932 disclose that Madvacharaya Ramacharacharya Trivikrama Bhat has mortgaged the Sy.No.89 to one Ramakrishna Mangesh Kadle for three years. Ex.P.68 is MR No.645 dated 25.05.1968 disclose that Madhavacharaya Ramachandracharya Gudi died on 19.04.1968 at Sonda, Sirsi taluk. After his death name of his legal heirs i.e., Gururaj Madvacharaya Gudi and daughters 1. Prema w/o Krishna Navaratna,2. Laxmi @ Subhadra w/o Vadiraj Bagal, 3. Damayanti d/o Madvacharaya Gudi have given consent for entering name of Gururaj as the Manager of the joint family. Ex.P.69 is MR No.131 disclose that after death of possessor Ramakrishna Kadle name of his son Mangesh has been entered as Manager of joint family. Ex.P.70 is MR No.470 dated 25.09.1957 disclose that tenant by name Channappa Ketvappa Gouli has

resigned since he was unable to cultivate land. Therefore, possession of property bearing Sy.No.89 was handed over to its owner as per order No.TSR 421 56-57 dated 29.05.1957.

29. I have gone through the oral evidence of PW.1. In the cross examination she deposed that their relationship with defendant No.1 is good. It is stated that she know their family little bit. It is stated that she do not know the proceedings took place prior to 1940 during life time of their great grandfather. She stated that they have produced documents to show the name of their ancestors, his father and his brothers names appearing in the revenue records. She stated that name of Madhavacharaya Ramachandracharaya Gudi was appearing in Ex.P.4 to 6. On perusal of revenue entries for the year 1939-40 to 1966-67 name of Madhavacharaya Ramachandracharya Gudi who is ancestor of defendant No.2 and 3 was appearing in the revenue records as cultivator. In other rights column name of Timmaji Narayanrao Desai and Krishnaji Narayanrao Deasi were appearing. In Ex.P.1 to 3 also in other rights column name of Krishnaji Narayanrao Desai was appearing. The

names appearing in other rights column are the not the proof of ownership of possession of property. Therefore, the evidence of PW.1 that to show their possession they have produced revenue records is not acceptable. The documents got marked by the plaintiffs are not sufficient to prove their possession enjoyment over the suit property. In further cross examination PW.1 deposed that they have not challenged the revenue entries. It is denied that prior to 1943 Smt. Rukminibai Timmaji Desai gifted the suit property to the ancestors of Madhavacharaya Gudi for the purpose lightening the lamp of Vithoba temple. It is denied that from 1943 to till his death name of Madhavacharaya was appearing in revenue records as owner and possessor. This portion of evidence of PW.1 is contrary to the entries in the revenue records. It shows that PW.1 intentionally avoiding name of Madhavacharaya Gudi appearing in revenue record as owner and cultivator.

30. In further cross examination PW.1 deposed that Hanmanthrao Gudi is son of Madvacharaya Gudi. It is denied that Madvacharaya Gudi has relinquished property in favour

of H.R. Gudi under registered document and she voluntarily deposed that said document is wrong. It is deposed that they have not challenged the said document. It is admitted that name of H.R. Gudi was appearing in the revenue records. Though PW.1 admits that name of Madvacharaya Gudi was appearing in the records but denied that it was created document. The oral evidence of PW.1 is contrary to the registered document Ex.D.32 relinquishment deed and her evidence is not supported with documentary evidence. In further cross examination there was denial suggestion which are not helpful to prove the case of the plaintiffs.

31. The material oral as well as documentary evidence placed on record by the plaintiffs is not sufficient to prove that suit schedule property is joint family property of plaintiffs and defendant No.1. Absolutely no evidence has been placed on record to prove that the plaintiffs and defendant No.1 are in joint possession and enjoyment of suit property.

32. I have also gone through the evidence of defendant No.1 who supports the case of the plaintiffs. The defendant

No.1 stepped into witness box and got examined as DW.1. In his examination-in-chief reiterated the contents of plaint and got marked Ex.D.1 to 23. I have gone through the documents. Ex.D.1 to 17 are the RTCs of suit property and Sy.No.97. Ex.D.18 is the MR No.471 dated 26.10.1957. Ex.D.19 is MR No.417. Ex.D.20 is MR No.449 dated 30.07.1956. Ex.D.21 MR No.631. Ex.D.22 is MR No.222 dated 01.01.1943. Ex.D.23 MR No.121. The entries in revenue records Ex.D.22 disclose that there was partition took place between sons of Narayanrao Desai in respect of family properties wherein suit property land bearing Sy.No.89 measuring 6 acre 14 guntas and other properties are fallen to the share of Krishnaji Narayanrao Desai. No doubt revenue records establishes suit property was fallen to the share of Krishnaji Desai. No doubt revenue records establishes that suit property was fallen to the share of Krishnaji Desai in the partition. The further entries in the revenue records and order passed by Mamalatdar in WTN SR 63 (Ex.D.31), request of payment of rent by cultivator (servant) and request of possession of property by K.N. Desai has been rejected by the authority and

there was no challenge of said order. Therefore, contention of plaintiffs and defendant No.1 that by virtue of partition took place between father of defendant No.1 and grandfather of plaintiffs by name Krishnaji Desai and his brothers, the suit property was belongs to them is not correct. By virtue of order passed by the revenue authority possession of property was not taken from the hands of Madhvacharaya Ramacharya Gudi.

33. In the cross examination DW.1 deposed that plaintiffs are his daughters and he had good relationship with them and suit has been filed by all. It shows that the plaintiffs in collusion with defendant No.1 have filed the present suit. In further cross examination deposed that his grandfather Narayanrao Desai and their ancestor Timmaji Desai. It is admitted that the said Timmaji had wife by name Ramabai. It is admitted that they had no childrens, therefore, adopted their grandfather Narayanrao Desai and he voluntarily deposed that Narayanrao Desai is the own son of Timmaji Desai. It is admitted that Ramabai was the last right holder of suit property. It is suggested that as per decree

passed in the year 1961 Ramabai become the owner of suit property and same was denied. It is denied that in the year 1870 Ramabai Desai gifted the suit property to ancestors of Madvacharaya Gudi. It is denied that in the revenue records of suit property name of ancestors of Madhvacharya, Madhvacharaya and Hanmanthacharaya were appearing. He stated that he had not verified documents from the 1861 to till day. It is deposed that, do not know that in the year 1898 great grandmother Ramabai died. It is admitted that suit property was given to the ancestors of Madvacharaya Gudi for lightening the lamp of Vithoba temple by Ramabai and he voluntarily deposed that his father had given the suit property for lightening the lamp, but he do not know the date. This portion of evidence of DW.1 is supported with contention of defendant No.2(a) to (e) and it is supported with entries in the revenue records. Further evidence of DW.1 that his father has given the suit property is not supported with documentary evidence.

34. In further cross examination DW.1 admits that himself or their ancestors have not challenged the gift deed

executed by Ramabai Desai in favour of ancestors of Madvacharaya Gudi in the year 1872. He admits that his grandfather Narayanrao Desai has filed application before the Deputy Commissioner for delivery of possession of property in the year 1930 and same was dismissed. This portion of evidence of DW.1 shows that the grandfather of defendant No.1 by name Narayanrao Desai who is propositus of family of plaintiffs and defendant No.1 was not in possession of property from the year 1930. The oral evidence of DW.1 is also clear that the great grandmother of defendant No.1 has gifted the suit property in favour of ancestors of Madvacharaya Gudi for lightening the lamp of Vithoba temple. It is also clear that the ancestors of defendant No.2 and 3 Madvacharaya Gudi are in possession and enjoyment of suit property from their ancestors. In further cross examination DW.1 admits that himself or his ancestors have not challenged the order of Deputy Commissioner and entries in the revenue records of the year 1870. He denied that they have no any right in the suit property. In further cross examination he admits that Madvacharaya Gudi has

relinquished the suit property under registered relinquishment deed in the year 1943. He stated that he do not know that from the year 1870 till today defendant No.2 and their ancestors are in possession and enjoyment of suit property. This portion of evidence of DW.1 shows that either the plaintiffs or defendant No.1 are not in possession of suit property. The oral evidence of DW.1 is not helpful to prove that he was in possession and enjoyment of suit property along with plaintiffs.

35. The contention of plaintiffs that the suit property was gifted for the limited purpose of lightening the lamp only and the ancestors of Madvacharaya Gudi or defendant No.2 and 3 have no right over the said property is not sustainable. Once the gift is always the gift and gift cannot be given by putting conditions. As rightly argued by learned counsel for defendant No.2(a) to (e), there was no violation of conditions of gift revoking or canceling the gift does not arise.

36. Hon'ble Supreme Court of India in the decision reported in (2021) 3 SCC 459 in the case of Doulatsingh Vs. State of Rajasthan and others held that, " A. Property Law-TP

Act 1882, Sections 122 and 123-gift of immovable property when becomes complete-Acceptance of gift-Acceptance by or on behalf of donee must be made during life time of donor and while he was still capable of giving-Execution of gift deed and attested in accordance Sec.123 of TP Act, and acceptance of such gift makes gift of immovable property complete-Thereafter, donor is diverted the title or interest being gifted, and donee becomes owner of gifted property, estate or interest". In the present case on hand none of the parties have produced gift deed or copy of gift deed. However, the revenue entries of suit property clearly indicates that suit property was gifted to ancestors of Madhvacharaya Ramacharya Gudi and thereafter, Madhvacharaya Ramacharya Gudi has relinquished the suit property under registered relinquishment deed in the year 1943 in favour of defendant No.2. Revenue entries shows that gift of suit property was accepted by ancestors of Madhvacharaya Ramacharya Gudi and by virtue of gift deed family of Gudi are in possession and enjoyment of suit property from time immemorial. By virtue of gift deed executed by ancestors of

Desai family they have lost their right, title or interest over the suit property and it was extinguished.

37. Defendant No.4 stepped into witness box and got examined as DW.3. In his evidence affidavit reiterated the contents of written statement. In the cross examination denied that suit property was originally belongs to Rukminibai and she had gifted the said property prior to 1943 in favour of ancestor of Madvacharaya Gudi. It is suggested that from 1943 name of Madvacharaya was appearing till his death and he voluntarily deposed that land was gifted for lightening lamp of temple and pooja. This portion of evidence of DW.3 shows that he know that suit property was gifted to Gudi family. He admits that defendant No.1 and their ancestors know the gift deed was executed in respect of suit property. He admits that by virtue of relinquishment deed from the year 1943 name of Hanmanthacharaya Gudi was appearing in the records till his death and the said documents have not been challenged. In further cross examination he admits that in the suit between ancestors of defendant No.1 and Madhvacharya Gudi it was

ordered that suit property belongs to Madhvacharya Gudi. He admits that after execution of gift deed by Ramabai right of Desai family over suit property is extinguished. He admits that from the year 1943 Madvacharaya Desai was cultivating and after his death his son H.R. Gudi and thereafter defendant No.2 legal heirs were cultivating the suit property. From this it is crystal clear that the plaintiffs or defendant No.1 are not in possession and enjoyment of suit property at any point of time and it was not their joint family property. It is also clear that right of Desai family was extinguished by lapse of time and they are not the owner and possessors of suit property. The oral evidence of DW.3 is not helpful to the case of plaintiffs and defendant No.1. On the other hand, it supports the case put forth by defendant No.2(a) to (e).

38. I have also gone through the oral evidence of DW.2. The defendant No.2(c) stepped into witness box and got examined as DW.2. In his examination-in-chief filed in the form of affidavit reiterated the contents of written statement. In support of their case got marked Ex.D.24 to 36. I have gone through the documents. Ex.D.31 is the certified copy of

intimation issued by Mamlatadar, Kalaghatagi in respect of case No.WTN./SR 63 dated 18.10.1957 and 20.10.1957. The contents of intimation discloses that 1. K.N.Desai has filed application for taking possession of property and 3. T.U.Jois has filed application for recovery of rent amount. As per order passed by Government of Mysore in RDC 8 WTN. 57 dated 04.09.1957, the claim for seeking possession by K.N.Desai and claim of rent by T.U. Jois have been canceled and possession of property has been retained with cultivator. Ex.D.33 is the MR No.471 dated 26.10.1957 discloses that as per order passed by Government in WTN No.57 mutation has been certified.

39. Ex.D.32 is the certified copy of registered relinquishment deed dated 02.01.1943. The contents of document discloses that Madhvacharaya Ramacharaya Gudi has executed relinquishment deed in respect of property belongs to him including the suit schedule property in favour of his son Hanmanth s/o Madhvacharya Gudi by receiving Rs.1000/-. Ex.D.34 MR No.625 dated 17.07.1969, Name of Hanmanth Raghavendra Gudi has been entered in the

revenue records of suit property. Learned counsel for plaintiffs argued that the name stated in the relinquishment deed Ex.D.32 and Ex.D.34 are not similar. In Ex.D.32 name of father is mentioned as Madhvacharaya and in Ex.D.34 father name is mentioned as Raghavendra and same is not belongs to same person. It is alleged that, the defendant No.2 and their ancestors have got created said document and same is not believable. At this stage I have gone through the oral evidence of DW.2 wherein he explained that his father was given in adoption to Madhvacharaya to Raghavendraacharaya, therefore, his father name has been changed. From this it is clear that deceased defendant No.2 was given in adoption to Raghavendraacharaya, therefore, in Ex.D.34 name of father of Hanamanth is mentioned is Raghavendra Gudi. I find no grounds to suspect the revenue entries by mentioning name of adoptive father and it was not a ground to disbelieve document.

40. Ex.D.35 and 36 are the RTCs of suit property R.S.No.89*/1 measuring 5 acre 12 guntas standing in the name of defendant No.2(b) to (e) and R.S.No.89*/2 measuring

1 acre 2 guntas standing in the name of defendant No.2(a) as owners and possessors. As on the date of suit, name of defendant No.2(a) to (e) were appearing in suit schedule property as owners and possessors. Absolutely, no evidence has been placed by plaintiff to disprove the case of defendant No.2(a) to (e).

41. In the cross examination DW.2 stated that originally suit property belonged to Ramachari. It is denied that lease amount (lavani) of Rs.14/- was fixed to Madhvacharaya Ramacharya Gudi for lighting lamp. It is denied that for patilki Rs.14/- was fixed to Madhvacharaya Ramacharya Gudi. I would like to make it clear that lease of property and Patiliki are entirely different. Revenue records of suit property are clear that name of Madhvacharaya Ramacharya Gudi was appearing as kabjedar (possessor) and name Krishnaji Narayan Desai was appearing in other rights column. In farmer and lavani column name of one Shetvappa Gouli, 4 bags of paddy and Rs.14/- is mentioned. From this it is clear that Madhvacharaya Ramacharya Gudi was not the lease

holder or he was not doing work of Patilki (Manager), therefore, I find no merits in the suggestion made to DW.2.

42. In further cross examination it is suggested that Timmaji died in the year 1935 and his legal heirs name was mutated as per Ex.P.7 and it was denied. It is true that as per Ex.P.7 name of legal heirs of timmaji was entered in respect of property left out by Timmaji excluding suit property. In Ex.P.7 suit property was not mentioned, which shows that Timmaji or his heirs are no way concerned to suit property. DW.2 denied that Madhvacharaya Ramacharya Gudi was not the owner of suit property and he had no right to execute relinquishment deed. He denied that plaintiffs are the owners of suit property.

43. In further cross examination there was denial suggestions made. He was cross examined at length but nothing contrary has been elucidated from his mouth. The oral evidence of DW.2 is supported with documentary evidence and establishes the possession and enjoyment of defendant No.2(a) to(e) over the suit property. In view of above discussion, I answer issue No.1 to 3 in the negative.

44. **ISSUE No.4** : The plaintiffs contended that partition took place between defendant No.2(a) to (e) dated 16.10.2021 is not binding on their share. The material evidence on record establishes that from the year 1939-40 name of M.R.Gudi till 1943 and name of defendant No.2 was appearing 1943 to till his death and after death of defendant No.2 name of defendant No.2(a) to (e) were appearing in the revenue records as owners and possessors. To disbelieve or discard the documentary evidence placed on record the plaintiffs have not produced single piece of document. The deceased defendant No.2 was the owner and possessor by virtue of relinquishment deed executed by his father and after his death his legal heirs was appearing as owners and possessors are in possession and enjoyment of suit property. Ex.P.15 to 20 establishes that defendant No.2(a) to (e) have got divided properties and name of defendant No.2(a) was appearing in respect of Sy.No.89*/2 measuring 1 acre 2 guntas and Sy.No.89*/1 measuring 5 acre 12 guntas jointly standing in the name of defendant No.2(b) to (e) were separately appearing. The plaintiffs or defendant No.1,4 and 5

are no way concerned to the suit properties and they have locus standi to challenge the partition took place between defendant No.2(a) to (e). Accordingly, I have answered issue No. 4 in the negative.

45. **ISSUE NO.5 AND 7:** The defendant No.2(a) to (e) contended that as per order of Government of Mysore and O.S.No.123/2016 the plaintiffs have lost their right over the suit property and there is no cause of action to file the suit. It is further contended that suit of the plaintiffs is barred by limitation.

46. In order to prove their case defendant No.2 got marked Ex.D.31 intimation issued by the Mamlatdar, Kalaghatagi in WTN SR 63 dated 18.10.1957, the Government has canceled the application filed by the K.N.Desai for recovery of possession of property and T.U.Jois for recovery of rent. By virtue of order passed by the Government of Mysore, the ancestors of plaintiffs and defendant No.1 have lost their right over the suit property. The order passed by the Government has attained finality and there was no appeal to the said order. As per Ex.P.7 name of legal heirs of Krishnaji

Desai was entered in record either them suit property, which shows suit property was not belongs to Desai family and they lost their right over suit property.

47. The material evidence on record speaks that Madhvacharaya Ramacharya Gudi has executed registered relinquishment deed on 02.01.1943 (Ex.D.32) and name of deceased defendant No.2 was entered in revenue records of suit property and it was not challenged. Ex.D.32 is registered document and it was within the knowledge of ancestors of plaintiffs and defendant No.1. As per Article 58 of Limitation Act for declaration suit is three years, when the right to sue accrues. Ex.D.32 is registered document and public document believed to be within the knowledge ancestors of plaintiffs and defendant No.1. No action or challenge to the said document, therefore, it can be said that suit of the plaintiffs is hopelessly barred by law of limitation.

48. Ex.D.24 to 30 are the copy of plaint, written statement, order sheet and orders passed on I.A.No.2 , I.A.No.1, 2 and objection to I.A.No.2 filed in O.S.No.123/2016 on the file of this court by the present defendant No.1 for

claiming lease amount of defendant No.2(a) to (e) who are defendant No.1 to 5 in the said suit. The said suit was contested by defendants and same was dismissed as barred by law. The order passed by this court in O.S.No.123/2016 is attained finality and there was no challenge to the said order. The said order is also applicable to the present plaintiffs and they cannot deny the earlier proceedings initiated by their father i.e., defendant No.1 under whom they are claiming right over the suit property.

49. In the cross examination PW.1 and DW.1 have clearly admits that their ancestors have not challenged the orders passed by the Government. The said order was passed in the year 1957. In the plaint para No.12 cause of action it is contended that plaintiffs after obtaining documents from the revenue court and Sub-Registrar in the last week of January-2022 came to know that there was changes in the records, therefore, they have demanded defendant No.1 to give their share and same was refused. It was stated to be the alleged cause of action to file the present suit. Defendant No.1 was not in possession of the suit property and demanding share

by the plaintiffs over the suit property does not arise. It appears that the plaintiffs in order to bring the suit within the period of limitation have shown alleged cause of action and there is no such cause of action arose to plaintiffs to file the present suit. The suit is also hopelessly barred by limitation. Accordingly, I have answered No.5 and 7 in the negative.

50. **ISSUE NO.6:** The plaintiffs have filed suit for partition, declaration and injunction. The suit is valued u/sec.35(2),7(b) and 24(d) of Karnataka Court Fees and Suit Valuation Act and paid court fee of Rs.200/-. The material evidence on record shows that the plaintiffs are not in possession of suit property and suit property is not the ancestral joint family of plaintiffs and defendant No.1. Therefore, the valuation made by the plaintiffs in respect of their share and maximum court fee of Rs.200/- paid u/sec. 35(2) of Karnataka Court Fees and Suit Valuation Act is not correct and court fee is not sufficient. Accordingly, I have answered issue No.6.

51. **ISSUE NO.8:** Defendant No.2(a) to (e) contended that the suit of the plaintiffs is bad for non-joinder and mis-

joinder of parties. In the genealogy produced along with plaint, it is shown that propositus Narayanrao Desai had five sons. Except heirs of Krishnaji other heirs of propositus were also interested persons are not made as party to the suit. Even in the genealogy they have not disclosed that the legal heirs of deceased Timmaji, Shivaji, Venkaji and Bapu are alive or not. The suit property is alleged to be belongs to the propositus and all the heirs of propositus are necessary party to the suit. Further the daughters of deceased Srinivas the elder son of second wife of Krishnaji by name Sattyabhama are shown in the genealogy but they are not arrayed as party to the suit. The daughters of deceased Srinivas are also necessary party to the suit and in their absence suit cannot effectively heard and decided. On this count also suit of the plaintiffs is liable to be dismissed. It is pertinent to note that during pendency of suit the sons of Timmaji the elder son of propositus appeared and contested the matter but other heirs are not included. The defendant No.2(a) to (e) proved that the suit of the plaintiffs bad for non-joinder of parties. Accordingly, I have answered issue No.8 in the negative.

52. **ISSUE NO.9:** The plaintiffs have filed suit for partition, declaration and injunction. Plaintiffs have sought negative relief that defendant No.2(a) to (e) are not the owners. They have not sought declaration that plaintiffs are the owners and possessors of suit property. The negative relief cannot be granted when there was right of property is involved. It appears that to over come the period of limitation which bars the plaintiffs to file the suit have sought negative relief.

53. The plaintiffs have failed to prove that suit schedule property is their joint family property and they are in joint possession and enjoyment of suit property. The plaintiffs have no locus standi to challenge the partition took place between defendant No.2(a) to (e). The suit of the plaintiffs is also bad for non joinder of necessary parties for not including all the heirs of Krishnaji Desai. The suit is barred by limitation. The plaintiffs having knowledge of all the facts have filed this suit colluding with defendant No.1 to harass the defendant No.2 and 3. The plaintiffs have filed the without having right, title or interest over the suit property and same

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is liable to be dismissed with cost. Accordingly, I have answered issue No.9 in the negative.

54. **ISSUE NO.10:** In view of above discussion, court proceed to pass the following...

ORDER

Suit of the plaintiffs is hereby dismissed with cost.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by him, then printed, corrected, pronounced by me in open court on this **25th day of March 2026**)

(R.L.HONOLE)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI

ANNEXURE

WITNESSES EXAMINED FOR PLAINTIFFS:

PW-1 : Anita d/o Achuthrao Desai

DOCUMENTS EXHIBITED FOR PLAINTIFFS:

Ex.P-1 to 3: R of Rs

Ex.P-4 to 7 : Mutations

Ex.P-8 to 9 : RTCs

Ex.P-10 to 20: Copy of mutations

Ex.P-21 to 24: Gram namune No.7 Utars

Ex.P-25 to 37: RTCs

Ex.P-38 to 39: Gram namune No.7 Utars

Ex.P-40 to 48: RTCs

Ex.P-49 to 70: Mutation registers

Ex.P-71 to 73: RTCs

WITNESSES EXAMINED FOR DEFENDANTS:

DW.1 : Achuthrao s/o Krishnarao Desai
DW.2 : Vadiraj s/o Hanumanthacharya Gudi
DW.3 : Ramesh s/o Timmaji Desai

DOCUMENTS EXHIBITED FOR DEFENDANT:

Ex.D.1 to 17 : RTCs
Ex.D.18 to 23 : Copy of mutations
Ex.D.24 : C.C. of plaint in O.S.No.123/2016
Ex.D.25 : C.C. of written statement in
O.S.No.123/2016
Ex.D.26 : C.C. of order sheet in
O.S.No.123/2016
Ex.D.27 : C.C. of interim order in
O.S.No.123/2016
Ex.D.28 & 29 : C.C. of interim application
O.S.No.123/2016
Ex.D.30 : C.C. of objection O.S.No.123/2016
Ex.D.31 : Copy of order of Taluka office, Kalaghatagi
Ex.D.32 : Hakkubitta patra
Ex.D.33 & 34 : Hakku patra
Ex.D.35 & 36 : RTCs

(R.L.HONOLE)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI