

KAGD200000892016



IN THE COURT OF CIVIL JUDGE AND JMFC, NARAGUND
AT : NARAGUND

PRESENT: SRI. JINNAPPA CHOUGALA,

B.A., LL.B

Civil Judge & J.M.F.C., Naragund

Dated this 3rd day of June, 2026.

Original Suit No.24/2016

Plaintiff/s : 1. Shantavva W/o.Yallappa Chalachagudda @
Shantavva D/o.Chandrashekar Shirol,
Age: 52 years, Occ: House work,
R/o: Kempa Agasi, Nargund,
Tq: Nargund, Dist: Gadag.

(By Sri. V.S.D., Advocate)

-V/s-

Defendant/s: 1. Mallikarjun S/o.Chandrashekar Shirol
Age: 55 years, Occ: Agriculture,
R/o: Yaligar Oni, Dharwad, Tq: Dharwad.

2. Smt. Ratnavva S/o.Sangappa Shirol
Age: 50 years, Occ: House work,
R/o: Yaligar Oni, Hosayallapur,
Dharwad, Tq: Dharwad.

3. Santosh S/o.Sangappa Shirol
Age: 22 years, Occ: Business,
R/o: Yaligar Oni, Hosayallapur,
Dharwad, Tq: Dharwad.

4.

Anand S/o.Sangappa Shirol
Age: 22 years, Occ: Business,
R/o: Yaligar Oni, Hosayallapur,
Dharwad, Tq: Dharwad.

5.

Basavaraj S/o.Laxman Lakkaskoppad
Age: 30 yrs. Occ: Agriculture,
R/o: Chikkabadawadagi, Tq: Hunagund,
Dist: Bagalkot.

6.

Basavaraj S/o.Siddappa Hosur
Age: 35 years, Occ: Agriculture,
R/o: Hunagund, Tq: Hunagund,
Dist: Bagalkote.

(D-1 to 4 By Sri. V.C.P., Advocate

D-5 By Sri. S.S.K. Advocate

D-6 By Sri. S.A.H. Advocate)

Date of institution of suit	:	16-06-2016		
Nature of suit	:	Partition and Separate Possession		
Date of commencement of evidence	:	31-05-2018		
Date of pronouncement of judgment	:	03-06-2026		
Total duration	:	Year/s	Month/s	Day/s
		09	11	18

(Jinnappa Chougala)

Civil Judge & J.M.F.C, Nargund.

-:: J U D G M E N T ::-

Plaintiff has filed this suit by seeking a relief of partition

and separate possession of her 1/3rd share in suit properties and also for declaration that the gift deed dated 05-02-2014 and sale deed dated 03-02-2022 are not binding on her share.

2. **Brief facts of the case are as under;**

Landed property Sy.No.267/2A/1 measuring 4 acre of Dandapur village and opensite property CTS No.421 of Naragund Town are the suit properties of this case and same are ancestral properties of plaintiff and defendant No.1 to 4. Till today there is no partition between them hence, plaintiff is enjoying the properties with said defendants in joint. Suit properties are described in scheduled-"A" of plaint and genealogy of the parties is mentioned in scheduled 'B" of plaint. As per said genealogy, propositus Basappa and his wife Mallavva died long back and they had 3 children by name Chandrashekar, Virupakshappa and Mahantavva. Out of that, Chandrashekar died unmarried on 19-01-1978 at Naragund and Virupakshappa died on 27-02-2014 at Naragund and his wife Anasavva died on 01-06-2066. Son of Virupakshappa by name Manjunath died un-married on 18-04-1974 at Hubballi and plaintiff, defendant No.1 and Sangappa are his children. Out of that, Sangappa died on 05-09-2014 by leaving behind defendant No.2 to 4 as legal heirs. During life time, Mallavva has relinquished the suit property in favor of her grandson Manjunath on 23-08-1991, as per ME No.8021, but same is not binding on plaintiff. On 18-04-2001, Manjunath died and accordingly, his parents Virupakshappa and Anasavva have

illegally got entered their names as MR No.9331/2003-04 which is also not binding on plaintiff. As suit property is joint family property hence, Virupakshappa and Anasavva had no any absolute title over the suit property. But behind the back of plaintiff, on 05-02-2014, they created gift deed in favor of defendant No.5 and illegally entered his name as per MR No.438/2013-14 hence, same is not binding on plaintiff. House and open site CTS No.421 is appearing in the name of Chandrashekar and Virupakshappa in joint but plaintiff and defendant No.2 to 4 are in joint possession of the same. Defendant No.5 is no way relates to suit properties and also to the family of plaintiff and defendant no.1 to 4. But by taking undue advantage of revenue entries standing in his name, defendant No.5 is trying to alienate the suit properties in favor of others. When plaintiff has demanded the defendant No.1 to 4 for her 1/3rd share, they flatly refused. Hence, on 07-06-2016, at about 10.30 am, through elders of the village, plaintiff has requested the defendant No.1 to 4 for partition but said defendants have not properly responded. Hence, plaintiff has filed this suit and prayed to decree the suit.

3. On summons, defendant No.1 to 4 have appeared through counsel but not filed written statement. Hence their side written statement taken as not filed. Defendant No.5 has appeared through counsel and filed written statement by denying the whole case of plaintiff and also denied the right and share of the plaintiff over the suit properties. Defendant no.5

further admitted that the children of propositus are dead but shown ignorance about the relation of defendant No.1 to 4 with the family of propositus Basappa. Further contended that propositus had only two sons by name Chandrashekar and Virupakahsppa and they had no daughter by name Mahantavva. Said propositus Basappa died on 06-08-1952 much prior to Hindu Succession Act-1956 came into force hence, only sons became owners of suit properties. Wife of propositus by name Mallavva had only maintenance right over the suit properties. As one of the son by name Chandrashekar died un-married on 19-01-1978 hence, mother Mallavva has became owner of half share in the suit properties and later, she relinquished her $\frac{1}{2}$ share in favor of grandson Manjunath. After the death of Manjunath and Mallavva, Anasavva became owner of half share and accordingly, her name was entered to half share and the name of her husband Virupakshappa was entered to remianing $\frac{1}{2}$ share by way of succession to the suit properties as per MR No.9331/2003-04. Defendant No.5 is the grandson of Sharanavva who is the sister of Anasavva and after the death of Manjunath, said Virupakshappa and Anasavva brought defendant No.5 to Dandapur village to reside with them and since 2010, defendant No.5 was taking care of them. Suit landed property originally measures 8 acres 17 guntas and out of that Anasavva and Virupakshappa have sold 1 acre to Sharadha School and later 1 acre 20 guntas on 15-06-2004 and another 37 guntas on 03-04-2006 and another one acre on 18-02-2008 in total 3 acres 17 guntas to Ayyappa Gurappa

Dandin. Hence, now suit property measuring 4 acres is remaining and to grab the same, plaintiff has filed this false suit. As defendant No.5 was taking care of Virupakshappa and Anasavva, due to love and affection, they expressed their desire to gift the suit landed property to defendant No.5 and defendant No.5 has accepted the same. Hence, on 04-02-2014, Virupakshappa and Anasavva went to Sub-Registrar office Naragund, furnished information to the scribe to prepare Gift deed and after knowing its contents, in the presence of witnesses, they signed to each page of Gift deed. By accepting the same, defendant No.5 has also signed to said Gift deed. But on the same day, as office hours was over hence 05-02-2014, presented the same for registration and got registered at 4:28pm. After inquiring Virupakshappa and Anasavva and after satisfied with their free-will, Sub-Registrar Naragund had registered said document on 05-02-2014. On the basis of said Gift deed, defendant No.5 became owner of landed property and accordingly, he was in possession of said property. At the time of execution of Gift deed, Virupakshappa and Anasavva were healthy and were in sound state of mind hence, said Gift deed is a valid document. After the death of Virupakshappa and Anasavva, attesting witnesses of Gift deed by name S.C Lekkasakoppad and M.M. Hiladur have started to pressure defendant No.5 to relinquish half share in their favor but defendant No.5 has not agreed for the same. Hence, along with Ayyappa Dandin, they instigated the plaintiff to file this false suit. As said S.C Lakkasakoppad, his relatives by name

Basappa Yallappa Pujar, Yallappa S/o.Basappa Pujar and plaintiff have interfered with his possession over suit landed property, hence, defendant No.5 has filed OS No.21/2016. For that they filed this false suit. Defendant No.5 has took care of Virupakshappa and Anasavva and provided treatment to Anasavva in Nijalingppa and other Medical Colleges of Bagalkote during 2015-16 by spending huge amount but she died. Defendant no.5 has performed last rituals of Anasavva. Plaintiff is no way relates to said Virupakshappa and Anasavva and also to suit property and she has no right or share over the same and also not relates to the family of propositus Basavva. Hence, prayed to dismiss the suit of the plaintiff.

4. Earlier, plaintiff has filed this suit against defendant No.1 to 5 only. As during the pendency of suit, defendant No.6 has purchased the landed property therefore, plaintiff has impleaded him as defendant no.6 in this case. On summons, defendant No.6 has appeared through counsel and filed written statement by supporting the whole defense of defendant No.5 and further contended that defendant No.5 has brought the suit landed property for sale and he shown interest to purchase the same. Therefore, he made preliminary enquiry about flow of title and possession over said property and after satisfied with enquiry, offered highest price of Rs.13,00,000/- to said property. Defendant No.5 has accepted the said offer and accordingly, on 03-02-2022, executed the registered sale deed and on same day, delivered the possession of said property to

defendant No.6. Accordingly, defendant No.6 became absolute owner of said property. During preliminary enquiry, defendant No.6 came to know that suit land was originally measuring 8 acre 17 guntas in the name of propositus Basappa and after his death, sons have succeeded the said property and after the death of son Chandrashekar, mother Mallavva succeeded half share and relinquished the same in favor of grandson Manjunath. Further came to know that Manjunath died un-married hence, mother Anasavva succeeded to half share of Manjunath and accordingly, Virupakshappa and Anasavva became absolute owners of said property. Defendant No.6 has also supported the defense of defendant No.5 with respect of sale of 3 acre 17 guntas to Ayyappa Dandin and 1 acre to Sharadha School by Virupakshappa and Anasavva and also supported the defense that defendant No.5 took care of said Anasavva and Virupakshappa hence, they gifted the suit property to defendant No.5. Further contended that at the time of purchase, defendant No.5 has concealed about this litigation, therefore, without notice, he purchased the suit property. He came to know about litigation only when plaintiff filed objection to enter his name to suit property. As per objection of plaintiff, Tahashildar Court has conducted enquiry under RTS/CR No.8/2022-23 and certified the mutation entry in favor of defendant No.5. After knowing about this suit, defendant No.6 inquired the defendant No.5 and for that, defendant No.5 has stated that plaintiff is noway concerned to the family of Basappa hence, this suit is not maintainable and also assured

that he will take responsibility to clear this litigation. Hence, defendant No.6 has appeared through counsel. Further contended that before purchase, he took all necessary steps to ensure title and possession of defendant No.5 over the suit property and after getting clarification, purchased the same, hence, he is a bonafide purchaser for valuable consideration. Therefore, this suit is not maintainable. Hence, prayed to dismiss the suit of the plaintiff.

5. On the basis of pleadings of parties, this Court has framed the following;

-: ISSUES :-

- 1. Whether plaintiff proves that suit properties are the joint family properties?***
- 2. Whether plaintiff further prove that relationship between the party as stated in the genealogy?***
- 3. Whether defendant no.5 prove that suit property 'A' was gifted to him by Virupakshappa and Anasavva under register gift deed dated 05.02.2014 and such he is the owner of the suit property 'A' ?***
- 4. Whether plaintiff is entitled for the 1/3rd share in the suit properties?***
- 5. Whether plaintiff is entitled for the relief as sought for in the suit?***
- 6. What order or decree ?***

:- ADDITIONAL ISSUES :-

- 1. Whether plaintiff proves that the Gift deed dt.05-02-2014 is not binding on her share?***
- 2. Whether plaintiff proves that the sale deed dtd. 03-02-2022 executed in favor of defendant No.6 is not binding on her share?***
- 3. Whether plaintiff is entitled for the relief of declaration as prayed?***

6. To prove the case, plaintiff has deposed as PW-1 and got marked Ex.P1 to P9 documents. Plaintiff has also examined 2 witnesses as PW-2, PW-3 and closed her side. To prove the defense, defendant No.5 has deposed as DW-1 and got marked Ex.D1 to D13 documents and closed his side. To prove his defense, defendant No.6 has deposed as DW-2 and got marked Ex.D14 to 19 documents and closed his side. Hence, posted for arguments.

7. Advocate for plaintiff has submitted to take arguments as heard. In-spite of sufficient opportunities, defendant No.5 has not submitted their arguments, hence arguments from defendant No.5 side taken as not advanced. Heard arguments from defendant No.6 side. Perused the materials available on record.

8. Answer to the above mentioned issues are as follows;

Issue No.1 : In the Negative

Issue No.2 : ***In the Negative***
Issue No.3 : ***In the Affirmative***
Issue No.4 : ***In the Negative***
Issue No.5 : ***In the Negative***
Addl. Issue No.1 : ***In the Negative***
Addl. Issue No.2 : ***In the Negative***
Addl. Issue No.3 : ***In the Negative***
Issue No.6 : ***As per the final order***
on the basis of following;

:- REASONS :-

9. **Issue No.2:-** In chief examination affidavit, PW-1 has reiterated the contents of plaint and DW-1 and 2 have reiterated their defense. PW-1 has got marked Ex.P1 to P9 documents and DW-1 and 2 have got marked Ex.D1 to D-19 documents in total. In plaint, plaintiff has contended that she is the grandson of propositus Basappa, hence, she has share in suit properties. In the written statement, defendant No.5 and 6 have admitted that propositu Basappa had 3 children by name Chandrashekar and Virupakshappa and Mahantavva and also admitted that all these 3 children are dead. But at later portion of written statement, defendant No.5 has denied the very relation of Mahantavva with propositus Basappa. Hence, defense of defendant No.5 with respect of relation of Mahanataavva and Basappa are contrary to each other.

10. To prove her relation with the family of propositus Basappa, plaintiff has produced Ex.P1 and P2 school certificates. Ex.P1 is the school certificate of Mahantavva and it shows her name as Mahantavva Bassappa Chikkoppa and her

date of birth 22-05-1940. By way of Ex.P1 document, plaintiff has proved that Mahantavva is the daughter of propositus Basappa. Ex.P2 is the school certificate of plaintiff and it shows her name as Shantavva Chandrashekar Shirol and her date of birth as 27-05-1964. It is pertinent to note here that in Ex.P2 certificate, the name of plaintiff is mentioned as daughter of Chandrashekar. But plaintiff has not produced any document to show that said Chandrashekarappa is the husband of deceased Mahantavva. Because, in Ex.P1 certificate, the name of Mahantavva is appearing with her father name. Plaintiff has not produced any document to show that said Mahantavva is the wife of Chandrashekar. Hence, Ex.P2 document is not supportive to the plaintiff to prove her relation with family of propositus Basappa or with his daughter Mahantavva.

11. As defendant No.5 has specifically disputed the relation of plaintiff with family of propositus Basappa therefore, initial burden is on the plaintiff to prove her relation with family of said Basappa. But, plaintiff has failed to discharge the said initial burden. Hence, on this count alone the suit is not maintainable. Therefore, **Issue No.2** is answered in the **Negative**.

12. Issue No.1 and 3:- As these issues are inter-linked with each other, both these issues are taken together for common consideration, to avoid repeated discussion. Ex.P7 mutation entry ME No.8021 dated 23-08-1991 is the oldest document of landed property in this case. Defendant No.5 has

also produced the same and it is marked as Ex.D11. Said document shows that due to old age, wife of propositus by name Mallavva has relinquished the suit property bearing Sy.No.267/2 in favor of grandson Manjunath and at that time, said Manjunath was minor, hence, presented by father Virupakshappa. Accordingly, the name of Manjunath was entered to suit landed property as absolute Katha holder.

13. In the plaint, plaintiff has contended that suit property is ancestral property of her family. To take the nature of ancestral, property has to be inherited from more than 3 generations. As per Ex.P7, originally, suit landed property was in the name of Mallavva. Plaintiff has not produced any document to show that Mallavva has inherited the property from propositus Basappa. At the same time, under Section 14 of Hindu Succession Act, property held by Hindu female will be considered as her absolute property. As per said provision of law, and as per Ex.P7 mutation entry, it is clear that suit landed property is the absolute property of deceased Mallavva. As she has relinquished the said property in favor of Manjunath, therefore, said property became separate property of Manjunath but not ancestral or joint family property of family. Ex.P7 document alone disproved the whole case of plaintiff.

14. Ex.P5 mutation entry ME No.9331/2003-04 dated 26-03-20047 shows that after the death of absolute owner Manjunath, the name of his parents by name Virupakshappa

and Anasavva were entered to whole 8 acres 17 guntas of Sy.No.267/2 of Dandapur village. In written statement, defendant No.5 and 6 have contended that after the death of one of the son Chandrashekar, Mallavva has got half share and she gifted said half share in favour of Manjunath. But as per Ex.D11 mutation entry, Mallavva has relinquished whole Sy.No.267/2 in favor of grandson. Hence, Ex.D11 document is contrary to the defense of defendant No.5 and 6.

15. At the same time, defendant No.5 and 6 have contended that after the death of propositus Basappa, Virupakshappa has inherited half share and after the death of Manjunath, mother Anasavva has inherited remaining half share therefore, they became joint owners of suit landed property. But as per Ex.P5 mutation entry, Manjunath alone was absolute owner and after his death, Virupakshappa and Anasavva have inherited the same. Therefore, Ex.P5 mutation entry is also contrary to the defense of defendant No.5 and 6 with respect to flow of title of Virupakshappa and Anasavva.

16. Ex.D9, D5 and D6 are the sale deeds executed by Virupakshappa and Anasavva in favor of one Ayyappa Dandin in respect of some portion of suit landed property. By virtue of Ex.D9 sale deed, Virupakshappa and Anasavva have sold 1 acre 20 guntas out of 8 acres 17 guntas in Sy.No.267/2 on 15-06-2004 for Rs.15,000/-. By way of Ex.D6 sale deed, they sold 37 guntas out of 5 acres 37 guntas on 03-04-2006 for

Rs.58,000/- and finally, by way of Ex.D5 sale deed, they sold another 1 acre out of remaining 5 acre for Rs.50,000/- on 18-02-2008. After all these sale deeds, only 4 acre remain in the name of Virupakshappa and Anasavva, which is suit land of this case.

17. During the cross-examination, PW-1 has clearly admitted that by virtue of Ex.D7 mutation entry, Manjunath became absolute owner of landed property and after his death, his parents by name Virupakshappa and Anasavva became absolute owners of whole 8 acres 17 guntas of Sy.No.267/2. Relevant portion of said deposition is cited below;

ರಿ ಸ ನಂ **267/2** ಅ/1 ಇದರ ಮೂಲ ರಿ ಸ ನಂ **.267/2** ಇತ್ತು ಮತ್ತು ಅದರ ಕ್ಷೇತ್ರ **8** ಎಕರೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಅಜ್ಜಿಯಾದ ಮಲ್ಲಮ್ಮ ಇವಳು ದಿನಾಂಕ: **23-08-1991** ರಂದು ರಿಸ ನಂ: **267/2** ಕ್ಷೇತ್ರ **8** ಎಕರೆ ಜಮೀನು ತನ್ನ ಗಂಡ ಮೊಮ್ಮಗನಾದ ಮಂಜುನಾಥ ವೀರುಪಾಕ್ಷಪ್ಪ ಚಿಕೊಪ್ಪ ಇವರಿಗೆ ಬಿಟ್ಟುಕೊಟ್ಟಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಆ ಪ್ರಕಾರ ಡಿ ನಂಬರ **8021** ಪ್ರಕಾರ ಸದರಿ ಮಂಜುನಾಥ ಇವರ ಹೆಸರು ದಾಖಲು ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಮಂಜುನಾಥ ದಿನಾಂಕ: **18-4-2001** ರಂದು ತೀರಿಕೊಂಡಿರುತ್ತಾನೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಮಂಜುನಾಥ ಇವನಿಗೆ ಮದುವೆ ಯಾಗಿರಲಿಲ್ಲ ಮತ್ತು ಮಕ್ಕಳು ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ಮಂಜುನಾಥ ತೀರಿಕೊಂಡ ನಂತರ ವಾರಸಾ ಪ್ರಕಾರ ಸದರಿ ಮಂಜುನಾಥ ಇವರ ತಂದೆ ತಾಯಿಯಾದ ವೀರುಪಾಕ್ಷಪ್ಪ ಮತ್ತು ಅನಸವ್ವ ಇವರ ಹೆಸರು ರಿ ಸ ನಂಬರ **2672** ಕ್ಕೆ ದಾಖಲು ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಅನಸವ್ವ ಮತ್ತು ವೀರುಪಾಕ್ಷಪ್ಪ ಇವರ ಹೆಸರು ರಿ ಸ ನಂಬರ **2672** ಕ್ಕೆ ದಾಖಲಾದಾಗ ಅದರ ಕ್ಷೇತ್ರ **8** ಎಕರೆ **17** ಗುಂಟೆ ಇತ್ತು ಎಂದರೆ ಸರಿ.

18. At the same time, PW-1 has also admitted that before execution of Ex.P9 Gift deed, Virupakshappa and Anasavva

have sold 4 acres 17 guntas and also admitted that she has not made the said purchaser as party to this suit. Finally, PW-1 has clearly admitted that before sale transactions, Anasavva and Virupakshappa had absolute title over the whole 8 acre 17 guntas of Sy.No.267/2 which is suit landed property of this case. Thereby, plaintiff has clearly admitted the absolute title and possession of Virupakshappa and Anasavva over the suit property and also over remaining portion which has been sold by them through different sale deeds. Relevant partition of said deposition is cited below;

ವಿರುಪಾಕ್ಷಪ್ಪ ಮತ್ತು ಅನಸವ್ವ ಕೊಂಡು ರಿ ಸ ನಂಬರ **267/2** ರಲ್ಲಿ ಕ್ಷೇತ್ರ **8** ಎಕರೆ **17** ಗುಂಟೆ ಜಮೀನದಲ್ಲಿ **4** ಎಕರೆ **17** ಜನಮೀನನ್ನು ನಿಷಿಃ **9** ಭಕ್ಷಿಸ ಪತ್ರ ಮಾಡುವಕ್ಕಿಂತ ಮುಂಚೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಆಸ್ತಿಯನ್ನು ಖರೀದಿ ಹಿಡಿದವರನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ಪಕ್ಷಗಾರನ್ನಾಗಿ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅನಸವ್ವ ಮತ್ತು ವಿರುಪಾಕ್ಷಪ್ಪ ಇವರು ಖರೀದಿ ಕೊಟ್ಟಿರುತ್ತಾರೆ ಆದ್ದರಿಂದ ಅವರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಅನಸವ್ವ ಮತ್ತು ವಿರುಪಾಕ್ಷಪ್ಪ ಇವರಿಗೆ ರಿ ಸ ನಂಬರ **267/2** ಕ್ಷೇತ್ರ **8** ಎಕರೆ **17** ಗುಂಟೆ ಮೇಲೆ ಖರೀದಿ ಕೊಡುವಕ್ಕಿಂತ ಮುಂಚೆ ಸಂಪೂರ್ಣ ಮಾಲ್ಕಿ ಹಕ್ಕು ಇತ್ತು ಎಂದರೆ ಸರಿ.

19. As per above cited deposition of PW-1, it is clear that plaintiff is fully aware about absolute title and possession of Virupakshappa and Anasavva over the suit property. In-spite of knowing the true facts, filing this suit shows that she has not approached the Court with clean hands. In the plaint, plaintiff has contended that suit property is only property and she has birth right in the said property. If that is true then during cross-

examination PW-1, at least, she could have tried to deny absolute title and possession of Virupakshappa and Anasavva over the property. But she has clearly admitted said fact. Hence, now she has no right to seek partition. On this ground also, suit of the plaintiff is not maintainable.

20. Plaintiff has examined two witnesses as PW-2 and PW-3 in support of her case. In the chief-examination affidavit, PW-2 and PW-3 have deposed about genealogy of propositus Basappa by including plaintiff and also deposed about joint possession and enjoyment of plaintiff over the suit properties. But in the cross-examination, PW-2 has also admitted about relinquishment of suit landed property by Mallavva in favor of grandson Manjunath and also admitted about sale transactions of Anasavva and Virupakshappa and lastly, clearly admitted that said Anasavva and Virupakshappa had absolute title to alienate the said property. Thereby, PW-2 has also failed to prove the case of plaintiff. Because, if Anasavva and Virupakshappa had absolute title over the sold out properties then they have same power and right over the remaining property also which is suit landed property. Therefore, PW-2 has also failed to support the case of plaintiff.

21. At the same time, PW-3 has also admitted about relinquishment of entire property by Mallavva in favor of grandson Manjunath and also admitted that after the death of Manjunath, said Anasavva and Virupakshappa became

absolute owners of said property. Further deposed that plaintiff has also right and share over the suit property. But, plaintiff has failed to prove her relation with the family of propositus Basappa and also failed to prove that Mallavva has inherited the said property from Basappa. Therefore, oral evidence of PW-3 has no much value to decide this case. Hence, oral and documentary evidence of plaintiff are not supportive to her case.

22. More importantly, if the suit property is the ancestral property of her family then plaintiff could have disputed the sale transactions made by Virupakshappa and Anasavva, under Ex.D5, D6 and D9 sale deeds, thereby, she could have impleaded the purchasers and sold out properties in this case. But without challenging said sale deeds and without impleading the purchasers and sold out properties, plaintiff has filed this suit with respect to remaining property only. Therefore, in present form suit is bad for non-joinder of necessary parties and also for non-inclusion of properties. On this count also the suit of the plaintiff is defective.

23. Ex.D2 is the death certificate of Anasavva, Ex.D-3 is the death certificate of propositus Basappa. Death of both these family members is not in dispute, hence, said death certificates are also not in dispute. Ex.D4 is the certified copy of Gift deed executed by Virupakshappa and Anasavva in favor of defendant No.5 in respect of suit landed property. In said document, Virupakshappa and Anasavva have clearly mentioned that

defendant No.5 is their grandson by relation and he took care of them therefore, they gifted the suit landed property in his favor on 14-02-2014. Ex.P9 is the copy of Gift deed produced by plaintiff.

24. In the cross-examination PW-1 has clearly admitted that till their death, Anasavva and Virupakshappa are in sound state of mind. Thereby, PW-1 has clearly admitted that Virupakshappa and Anasavva have voluntarily and with free-consent, executed the said Gift deed in favor of defendant No.5. Hence, now plaintiff has no right to challenge said gift deed. As PW-1 to PW-3 have clearly admitted about absolute title of Virupakshappa and Anasavva over the suit property, therefore, neither plaintiff nor any other person has any right to challenge the said Gift deed. Hence, said document also denied the case of plaintiff.

25. Ex.P4 and Ex.D12 mutation entry MR No.438/2013-14 dated 05-02-2014 show that by virtue of said Gift deed, said mutation entry was certified to enter the name of defendant No.5 to suit landed property. Accordingly, Ex.P3 and Ex.D1 RTC of suit landed property of the year 2015-16 show the name of defendant No.5 as absolute owner. All these documents denied the case of plaintiff. Ex.P6 is incomplete document hence not considered. Ex.D10 mutation entry is not relates to suit property hence not relevant to this case. Ex.D7 and D8 are the certified copy of Aadhar card of Anasavva and defendant No.5. The same are not relevant to this case.

26. In written statement, defendant No.5 has contended about interference of plaintiff, attested witnesses of Ex.D4 Gift deed to his possession and enjoyment over the suit property and also about filing injunction suit against them. Ex.D13 is the endorsement issued by Naragund Police on 09-06-2016. Said document shows that defendant No.5 has filed complaint against present plaintiff and others for their interference, but police have issued said endorsement by stating that the dispute is civil in nature. Hence, defendant No.5 has filed suit as No.21/2016 against present plaintiff and others by seeking relief of permanent injunction in respect of present suit property. Ex.D14 is the certified copy of judgment and Ex.D15 is the certified copy of decree passed in said case.

27. On going through Ex.D14 and D15 documents Court finds that in the said suit, present defendant No.5 has pleaded about his title and possession over the suit property by virtue Gift deed and interference of present plaintiff and others. It is pertinent to note here that in the said case also present plaintiff has filed written statement and taken defense that suit properties are ancestral and she has share in the said property, but, this Court has overruled the said dfense and by confirming the possession of defendant No.5 over the suit properties, passed permanent injunction order against present plaintiff. After filing the said suit, plaintiff has filed this suit. But in the plaint, nothing has been whispered about said proceedings. So

it clearly goes to show that plaintiff not approached the Court with clean hands.

28. Ex.D16 is the original sale deed executed by defendant No.5 in favor of defendant No.6 in respect of suit landed property. As already held, by virtue of Ex.D4 Gift deed, defendant No.5 has absolute title over the suit landed property therefore, said sale transaction confirms absolute title in favor of defendant No.6 in respect of suit property. No doubt, during the pendency of this case, defendant No.5 has sold said property in favor of defendant No.6 by violating the terms of under-taking submitted by counsel. But that itself will not invalidate the sale transaction. Because, plaintiff has failed to prove her case, therefore, said sale deed confirms absolute title and possession of defendant No.6 over the suit property.

29. Ex.D17 is the order passed by Tahashildar Court in RTS CR No.8/2022-23 on 25-07-2022. Said document shows that by virtue of sale deed, defendant No.6 has filed application to mutate his name to suit landed property but plaintiff has filed objection by claiming share in the said property. Hence, Tahashildar Court has registered the case and conducted an inquiry and finally, passed order to mutate the name of defendant No.6 to suit property. This document also against the case of plaintiff.

30. In Ex.D18 encumbrance certificate also there is entry about sale deed of defendant No.6. Accordingly, Ex.D19 RTC of

suit landed property of the year 2025 shows the name of defendant No.6 as absolute Katha holder. All these documentary evidence of defendant No.5 and 6 supported their defense.

31. During cross-examination of DW-1, Advocate for plaintiff has suggested that Virupakshappa and Anasavva had no absolute title to gift the suit property in favor of defendant No.5. But it is pertinent to note here that during their cross-examination, PW-1 and PW-2 have clearly admitted about absolute title of Virupakshappa and Anasavva over the suit landed property, hence, said suggestion is against the admission of PW-1 and PW-2. At the same time, in the cross examination, DW-2 has clearly deposed that before purchase, he had no knowledge about pending of this suit, thereby, reiterated that he has purchased the property for valuable consideration without notice. Even though, Advocate for plaintiff has cross-examined DW-1 and DW-2 in detail but nothing has been elicited from the mouth of witnesses to support their case.

32. Plaintiff has filed this suit in respect of another property bearing CTS No.421 of Naragund Town. Ex.P8 is the property card of said house property and it shows the name of Channabasappa and Virupakshappa as joint katha holders in the order 1955. But already both these persons are dead. More importantly, plaintiff has failed to prove her relation with the

family of propositus Basappa. Hence, she has no right to seek for partition to said house property also.

33. Therefore, on going through oral and documentary evidence of both parties, Court comes to the conclusion that plaintiff has failed to prove that suit properties are ancestral or joint family properties of her family and she is in joint possession of same with defendant No.1 to 4 as alleged. On the other hand, defendant No.5 and 6 have successfully proved that Virupakshappa and Anasavva had absolute title over the suit property therefore, gift deed executed by them in favor of defendant No.5 on 05-02-2014 in respect of suit landed property is a valid document and said transaction, confirmed valid title in favor of defendant No.5. Hence, **Issue No.1** is answered in the **Negative** and **Issue No.3** is answered in the **Affirmative**.

34. Addl. Issue No.1 and 2:- As both these addl. issues are inter-linked with each other, both these issues are taken together for common consideration, to avoid repeated discussion. Plaintiff has failed to discharge her initial burden to prove that she is the granddaughter of propositus Basappa, hence, she has no right to seek any relief in respect of suit properties belonging to the family of propositus Basappa. At the same time, in the cross-examination, PW-1 has clearly admitted about absolute title of Virupaksahppa and Anasavva over the suit property. Therefore, plaintiff has no right to challenge the Gift deed executed by them in favor of defendant No.5 and also the sale deed executed by defendant No.5 in favor of defendant

No.6. Hence, **Additional Issue No.1 and 2** are answered in **Negative**.

35. Addl. Issue No.3:- As already held, Gift deed executed by Virupakshappa and Anasavva in favor of defendant No.5 and the sale deed executed by defendant No.5 in favor of defendant No.6 are valid documents, therefore plaintiff is not entitled for the relief of declaration in respect of said documents. Hence, **Additional Issue No.3** is answered in the **Negative**.

36. Issue No.4 and 5:- Both these issues are inter-linked with each other, both these issues are taken together for common consideration, to avoid repeated discussion. Plaintiff has filed to prove her case, hence, she is not entitle for any relief sought in the suit. Therefore, **Issue No.4 and 5** are answered in the **Negative**.

37. Issue No.6:- In view of findings to the above issues, Court proceeds to pass the following;

-:: ORDER ::-

Suit of the plaintiff is hereby dismissed.

Looking to the nature of dispute, no order as to cost.

Draw decree accordingly.

(Dictated to the stenographer, corrected and then signed and pronounced by me in the open Court on this **03rd day of June, 2026**)

(JINNAPPA CHOUGALA)
Civil Judge & J.M.F.C., Naragund.

-:: ANNEXURE ::-

1. List of witnesses examined for plaintiff :-

PW-1 : Shantavva W/o.Yallappa Chalachagudda
 PW-2 : Panchaksharappa P Belavatagi
 PW-3 : Payappa Y. Muttin.

2. List of documents marked for plaintiff :-

Ex.P1,2 : School certificate
 Ex.P3 : ROR RS No.267/2A/1
 Ex.P4 : CC of MR No.H38
 Ex.P5 : MR No.9331/2003-04
 Ex.P6 : MR No.135/2004-05
 Ex.P7 : CC of ME No.8021
 Ex.P8 : CC of CTS No.421
 Ex.P9 : Gift deed.

3. List of witnesses examined for Defendants : -

DW-1 : Basavaraj Laxman Lakkaskoppad
 DW-2 : Basavaraj Siddappa Hosur

4. List of documents marked for Defendants : -

Ex.D1 : RTC extract of RS No.267/2A/1
 Ex.D2,3 : Death certificates
 Ex.D4 : CC of Gift deed
 Ex.D5 : CC of Sale deed of RS No.267/2A
 Ex.D6 : CC of Sale deed of RS No.267/2A
 Ex.D7,8 : Adhar cards
 Ex.D9 : CC of Sale deed of RS No.267/1
 Ex.D10 : CC of ME No.6039
 Ex.D11 : CC of ME No.8021
 Ex.D12 : CC of MR No.H38
 Ex.D13 : CC of Endorsement

Ex.D14 : CC of Order sheet
Ex.D15 : CC of decree
Ex.D16 : Original Sale deed
Ex.D17 : CC of order sheet
Ex.D18 : Certificate of encumbrance
Ex.D18(a) : Certificate
Ex.D19 : Record of Rights.

sd/-

(JINNAPPA CHOUGALA)
Civil Judge & J.M.F.C., Naragund.

