

KAHS200003252010



Presented on : 30-01-2010
Registered on : 30-01-2010
Decided on : 28-02-2023
Duration : 13 years, 0 months, 29 days

**IN THE COURT OF CIVIL JUDGE AND JMFC
AT Alur, HASSAN
(Presided Over by NIRMALA M C)**

Dated this the 28th day of February 2023

Present:

Smt. Nirmala M.C., B.Com., LL.B.,
Civil Judge and JMFC,
Alur, Hassan.

O.S./17/2010

Plaintiff/s :

1. Rangamma W/o Kullegowda,
Aged about 50 years,
Dead by LR's
 - 1(a). Rangegowda S/o late Kullegowda,
Aged about 43 years,
 - 1(b). Giddamma D/o late Kullegowda,
Aged about 43 years,
- plaintiff No. 1(a) and (b) are R/o
Singapattana Village, Kasaba Hobli,
Hassan Taluk, Hassan District.
2. Jayamma W/o Chandregowda,

Aged about 45 years,
R/o Singapura Village,
Palya Hobli, Alur Taluk,
Hassan District.

(By Sri. T.M., Advocate)

- V/s -

Defendant/s :

1. Hanumanthegowda S/o late Sakanegowda,
Aged about 40 years,
R/o Marasuhosahalli Village,
Kasaba Hobli, Alur Taluk.
2. Madhu S/o late Devaraju,
Aged about 45 years,
R/o Marasuhosahalli Village,
Kasaba Hobli, Alur Taluk.
3. Puttaswamy S/o late Sakanegowda,
Aged about 45 years,
R/o Beside Housing board,
Alur Town, Alur.
4. Puttaraju S/o late Sakanegowda,
Aged about 45 years,
R/o Rajanahalli Village, Kasaba
Hobli, Alur Taluk.
5. Lakshmi D/o late Papanna,
Aged about 40 years,
R/o Beside Guru mill, Old police
quarters, Hassan Town, Hassan.
6. Rajegowda S/o late Yalakkigowda,
Aged about 65 years,
Dead by LR's
- 6(a). Thangyamma W/o late Rajegowda,
Aged about 60 years,
- 6(b). Jayanna S/o late Rajegowda,

Aged about 45 years,

6(c). Manjegowda S/o late Rajegowda,
Aged about 35 years,

6(d). Nagaraju S/o late Rajegowda,
Aged about 33 years,

D6(a) to (d) are R/o House No.55,
Krishna Nagara, Thattekere Post,
Hassan Taluk, Hassan.

7. Krishnegowda S/o late
Yalakkigowda,
Aged about 62 years,
Dead by LRs:

7(a). Giddamma W/o late Krishnegowda,
Major,

7(b). Radha D/o late Krishnegowda,
Major,

7(c). Puttaswamygowda S/o late
Krishnegowda,
Major,

D-7(a) to (c) are R/o Bharatavalli
Village, Kasaba Hobli, Alur Taluk.

8. Thangyamma W/o late Papegowda,
Aged about 60 years,
R/o Marasuhosahalli Village,
Kasaba Hobli, Alur Taluk.

9. Thimmegowda S/o late
Yalakkigowda,
Aged about 58 years,
R/o Prasadihalli Village,
Bikkodu Hobli, Belur Taluk.
(Dead)

10. Jayalakshmi W/o late Manjegowda,
Aged about 56 years,
R/o Marasuhosahalli Village,

Kasaba Hobli, Alur Taluk.

11. Sanjeevegowda S/o late
Yalakkigowda,
Aged about 52 years,
R/o Thamalapura Village,
Kasaba Hobli, Hassan Taluk.
12. Sakamma W/o late Doddegowda,
Aged about 50 years,
13. H.R.Ranganatha S/o late
H.S.Rangappa,
Dead by LR's
- 13(a). Shoba W/o late H.R.Ranganatha
Aged about 49 years,
- 13(b). Lavanya H.R. D/o late
H.R.Ranganatha,
Aged about 25 years,
- 13(c). Rashi H.R. D/o late
H.R.Ranganatha,
Aged about 22 years,
14. H.P.Venugopal S/o
Puttaswamygowda,
Major,
15. Rathnamma W/o Devaraju,
Major,

Defendant No.13 to 15 are R/o
Marasuhosahalli Village, Kasaba
Hobli, Alur Taluk.

**(D-3,5,15 exparte, D2,6,8 to 13 by
Sri. K.G.N/B.D.S., D-1,4, 7 by Sri.
K.K.T., D-13 by M.S., D13(a) to (c)
by Sri. B.D.S, D-14 by Sri. T.S.S.,
Advocates)**

1. Nature of the Suit : Partition and Separate Possession
2. Date of commencement of Recording of evidence : 21.08.2012

(Smt. Nirmala M.C.)
Civil Judge & JMFC,
Alur

JUDGMENT

This is a suit filed by the Plaintiffs for Partition and Separate Possession by means and bounds of their father Thimmegowda's 1/3rd share in the suit schedule properties, further prays to registered sale deed dt: 03.02.2010 and 07.04.2011 with respect to the Item No.6 is not binding upon their share and such other reliefs.

2. The brief facts of the case of the plaintiff in nutshell as follows:-

The plaintiff submitted that, the plaintiffs grandfather name is Venkategowda. He had 3 children by name Thimmegowda, Sakanegowda and Yalakkigowda. Plaintiffs father name is

Thimmegowda, mother name is Channamma. Defendant No.1, 3 to 5 are the children of Sakanegowda and Defendant No.6 to 12 are children of Yalakkigowda. Further submitted that, during the lifetime of plaintiffs father Thimmegowda and his brothers were enjoying the ancestral and joint family properties. During their lifetime there was no partition took place in their joint family. Therefore, plaintiffs father have 1/3rd share in the suit schedule and joint family properties. However, plaintiffs are having 1/3rd share of their father's in the suit schedule properties.

Further submitted that, plaintiffs were married long year back and residing their marital house. About 6 months back plaintiffs approached the defendants to give their father's 1/3rd share, but defendants refused the same. Thereafter, plaintiffs enquired the documents with respect to the suit schedule properties. It was noticed that defendants gave false information to the revenue officers as plaintiffs father Thimmegowda had no issues and get khata of the schedule properties in their names. The defendants in the malafide intention to deceive the rights of the plaintiffs over the suit schedule properties, illegally they have got khata in their names. Further submitted that, on 03.02.2010 6th

defendant executed the registered sale deed with respect to the Item No.6 in favour of the defendant No.13. Similarly, on 07.04.2011 the defendant No.13 executed the registered sale deed with respect to 05 guntas in Item No.6 in favour of the defendant No.14. Plaintiffs are having 1/3rd share of their father's in the suit schedule properties. Therefore, the above sale deeds are not binding upon the shares of plaintiffs. Hence, they have filed this suit.

3. In spite of suit summons issued by this court, the defendant No.3, 5 and 15 did not appear before the court, hence placed *exparte* on 14.06.2010, 07.04.2010 and 09.10.2019 respectively. The defendant No.2, 6 to 14 have appeared through their counsel, the defendant No.2, 6, 8 to 12 jointly filed their written statement. Though the defendant No.13 appear before the court, he has not filed any written statement. During the pendency of the suit defendant No.13 died, thus his legal heirs brought on records as defendant No.13(a) to (c) and 13(a) has filed his written statement and defendant No.13(b) and (c) filed a memo to adopt the written statement of defendant No.13(a), as their own written

statement. In this suit plaintiffs as many as 10 times amended the plaint.

4. The defendant No.2, 6, 8 to 12, wherein they have denied the case of the plaintiffs and put-forth their case as follows: Plaintiffs father late Thimmegowda and his wife Channamma had no male issues, Thimmegowda was suffering ill health, at that time 2nd plaintiff was six years old. Due to which said late Thimmegowda adopted the 6th defendant as per Hindu Customs, in the presence of well-wishers, relatives and villagers. After some times Thimmegowda was died, defendant No.6 performed all rituals as per Hindu Customs. Further submitted that, 6th defendant is son of Yalakkigowda, who is younger brother of the plaintiffs father. Plaintiffs father had no male issues. Due to which plaintiffs father and mother as per Hindu Customs, they adopted the defendant No.6. At that time defendant No.6 was 10 years old. Therefore, defendant No.6 is the adopted son of late Thimmegowda and Channamma. But plaintiffs have suppressed all these facts and filed false suit colluded with defendant No.1, 3, 4, 5 and 7. Further submitted that, before performing the 1st plaintiff marriage,

Thimmegowda was died, due to which Sakanegowda and Yalakkigowda jointly availed loan and performed the marriage of 1st plaintiff and 6th defendant as a adopted son, he performed the marriage of 2nd plaintiff. Till today in all the revenue records 6th defendant father mentioned as Thimmegowda, but plaintiffs suppressed all these facts. Further submitted that, some of the suit schedule properties sold to the other persons, but plaintiffs have not made the purchaser as a party to the suit. Hence suit is bad for non joinder of the necessary parties. Further plaintiffs have not filed this suit within a limitation prescribed under law. Hence suit is barred by limitation. Therefore, all these grounds prays to dismiss the suit.

5. The defendant No.13(a) to (c), wherein they have denied the case of the plaintiffs and put-forth their case as follows: Defendant No.6 is the adopted son of the Plaintiffs father Thimmegowda and Channamma. Defendant No.6 alienated the Item No.6 to the defendant No.13 by way of registered sale deed. However, subsequently defendant No.13 alienated the 05 guntas in Item No.6 to the defendant No.14. At that time there is no any injunction

order to alienate the property. Hence, defendant No.13 and 14 have purchased the property, therefore they are bonafide purchaser. Further submitted that, in case, if this case will be decreed, it is necessary to consider as defendant No.13 is bonafide purchaser and allot the Item No.6 to share of the defendant No.6. Further submitted that, plaintiffs have not inserted all ancestral and joint family properties. Some properties of the joint family were already sold, but plaintiffs have not made the purchaser as a necessary parties and they have left some properties and filed this false suit. Hence, suit is bad for non joinder of necessary parties and properties. On these grounds prays to dismiss the suit.

6. Based upon the above said pleadings the following issues have been framed by my learned predecessor:

ISSUES

1. Whether the defendant No.2, 6, 8 to 12 proves that, 6th defendant had been validly adopted by parents of plaintiff and have 6th defendant is adopted son of the parents?
2. Whether suit is bad for non-joint of necessary parties?

3. Whether plaintiff is entitled share in the suit schedule property?
4. What order or decree?

ADDITIONAL ISSUES

1. Whether the plaintiffs prove that schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 11?
2. Whether the plaintiffs prove that sale deed in favour of defendant No.13 and 14 is not binding on them?
3. Whether the defendants prove that suit is bad for non-joinder of other properties?

ADDITIONAL ISSUE

4. Whether the defendant No.13 and 14 prove that, 6th defendant alienated the schedule property for family necessity and to develop joint family properties?

7. In order to prove the case, the GPA holder of plaintiffs himself examined as PW-1 and got marked Ex.P-1 to Ex.P-25 documents. On the other hand the defendant No.14 and defendant No.13(c) themselves examined as DW-1 and 2 and got marked Ex.D1 to 28 documents on their behalf.

8. By considering the pleadings, evidence and arguments presented by learned counsel for plaintiffs and defendants my answer to the above issues are as under:

Issue No.1 : In the Negative
Issue No.2 : In the Negative
Issue No.3 : In the Affirmative
Addl. Issue No.1 : In the Affirmative
Addl. Issue No.2 : In the Affirmative
Addl. Issue No.3 : In the Negative
Addl. Issue No.4 : In the Affirmative
Issue No.4 : As per final order
for the following

//REASONS//

9. **ISSUE NO.1:** It is the contention of the defendant No.2, 6, 8 to 12 is that, the plaintiffs father late Thimmegowda and his wife Channamma had no male issues, Thimmegowda was suffering ill health, at that time 2nd plaintiff was six years old. Due to which said late Thimmegowda adopted the 6th defendant in the presence of well-wishers, relatives and villagers as per Hindu Customs. At that time defendant No.6 was 10 years old, who was son of

Yalakkigowda, younger brother of the Thimmegowda. Therefore, defendant No.6 is the adopted son of late Thimmegowda and Channamma. But plaintiffs have suppressed all these facts and filed false suit colluded with defendant No.1, 3, 4, 5 and 7. Therefore, firstly we have to see as to whether the 6th defendant had been validly adopted son of parents of the plaintiffs.

10. In the instant suit defendant No.2, 6 and 8 to 12 jointly filed their written statement. Wherein they taken defence as stated above. But none of the defendants i.e., 2, 6 and 8 to 12 have not come forwarded to prove their contention through cogent oral and documentary evidence. Mere submission made in the written statement is not sufficient. Further in the instant suit defendant No.13 and 14 are the purchaser. They are strangers to the family of the plaintiffs and defendant No.1 to 12 and 15, even though they have taken the defence that, defendant No.6 is the adopted son of the plaintiffs parents. During the pendency of the suit, defendant No.13 is died. Thereafter, legal heirs brought on records as defendant No.13(a) to (c). Defendant No.13(c) examined as DW2, during her chief examination deposed that, plaintiffs father

Thimmegowda and mother Channamma had no male children. Due to which plaintiffs parents adopted the defendant No.6 as their son, as per Hindu Customs. She subjected to cross examination, during her cross examination, she deposed that, I did not produce any document about that plaintiffs parents adopted the defendant No.6 as their son. I heard, from my father about that plaintiffs family, after that I did not see any document about that plaintiffs parents adopted the defendant No.6. She deposed that, about 70 years back plaintiffs parents adopted the defendant No.6. She denied the suggestion that, plaintiffs father had not adopted the defendant No.6 as their son. The above version shows that, DW2 heard about the details of plaintiffs family from her father, she has not personally having knowledge about the family of the plaintiffs. But now her father is no more.

11. However, defendant No.14 examined as DW1, During his chief examination he deposed that, defendant No.6 is the adopted son of plaintiffs father. He subjected to cross examination, during his cross examination, deposed that his paternal uncle said that, Thimmegowda during his lifetime, adopted a male child as per

customs. In this regard DW14 has not examined his paternal uncle to prove his contention. In the absence of the evidence it cannot be say that, plaintiffs parents adopted the defendant No.6. Therefore, defendant No.2, 6 and 8 to 12 fail to prove their contention defendant No.6 is adopted son of plaintiffs parents. Hence, I answer **Issue No.1 in the Negative.**

12. **Issue No.2 and Addl. Issue No.3:-** Defendant No.13(c) and 14 filed their written statement separately, but they have taken same defence that, some of the joint family properties sold to other third parties, but plaintiffs have not inserted all joint family properties. However, they have not made purchaser as necessary parties. Therefore, they have taken the defence that, suit is bad for non joinder for necessary parties and necessary properties. In this regard they have produce RTCs and MR which are marked as Ex.D1 to 27. Further to prove their condention defendant No.14 examined as DW1, during his cross examination, he deposed that, " ಮಂಗಳೂರು ಹೆಂಚಿನ ಮನೆ ದಾವೆಗೆ ಸೇರಿಸಿಲ್ಲ ಎಂದು ಹೇಳಿರುವ ಮನೆ ಯಾರಿಗೆ ಸೇರಿದ್ದು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಸದರಿ ಮನೆ ನಂಬರ್ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ರತ್ನಮ್ಮ ವಾಸವಿದ್ದಾರೆ ಎಂದು ಹೇಳುವ ಹೆಂಚಿನ ಮನೆಯ ನಂಬರ್ ಗೊತ್ತಿಲ್ಲ. ಅದು ಯಾರಿಗೂ ಸೇರಿದ್ದು ಎಂದು ಗೊತ್ತಿಲ್ಲ.

ಪುಟ್ಟರಾಜೇಗೌಡ ಬಿನ್ ಸಕನೇಗೌಡ ವಾಸವಿದ್ದಾರೆ ಎಂದು ಹೇಳುವ ಹೆಚ್ಚಿನ ಮನೆಯ ನಂಬರ್ ಗೊತ್ತಿಲ್ಲ. ಅದು ಯಾರಿಗೂ ಸೇರಿದ್ದು ಎಂದು ಗೊತ್ತಿಲ್ಲ. ಹನುಮಂತೇಗೌಡ ವಾಸವಿದ್ದಾರೆ ಎಂದು ಹೇಳುವ ಹೆಚ್ಚಿನ ಮನೆಯ ನಂಬರ್ ಗೊತ್ತಿಲ್ಲ. ಅದು ಯಾರಿಗೂ ಸೇರಿದ್ದು ಎಂದು ಗೊತ್ತಿಲ್ಲ. "

The above version of the DW1 shows that, he did not know about the details of joint family properties of the plaintiffs and defendant No.1 to 12 and 15. However, defendant No.13(c) examined as DW2 and subjected to cross examination, wherein deposed that, "ದಾವಾ ಐಟಂ ನಂ.3, 28 ಗುಂಟೆ ಯಾರ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದು ನನಗೆ ತಿಳಿದಿಲ್ಲ. ಸದರಿ ಸರ್ವೆ ನಂಬರಿನಲ್ಲಿ ಒಟ್ಟು ಎಷ್ಟು ವಿಸ್ತೀರ್ಣದ ಜಮೀನು ಇತ್ತು ಹಾಗೂ ಆ ನಂತರ ಯಾರ್ಯಾರಿಗೆ ಎಷ್ಟೆಷ್ಟು ವಿಸ್ತೀರ್ಣದ ಜಮೀನು ಸಿಕ್ಕಿದೆ ಎಂದು ನಾನು ತಿಳಿದುಕೊಂಡಿಲ್ಲ. ಸದರಿ ಸರ್ವೆ ನಂಬರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಯಾವುದೇ ಕ್ರಯಪತ್ರಗಳನ್ನು ನಾನು ಹಾಜರುಪಡಿಸಿಲ್ಲ. ಐಟಂ ನಂ.4 ಸರ್ವೆ ನಂ. 53/3 ಯಾರ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದು ನಾನು ತಿಳಿದುಕೊಂಡಿಲ್ಲ. ಸದರಿ ಸರ್ವೆ ನಂಬರಿನಲ್ಲಿ ಒಟ್ಟು ಎಷ್ಟು ವಿಸ್ತೀರ್ಣದ ಜಮೀನು ಇತ್ತು ಹಾಗೂ ಆ ನಂತರ ಯಾರ್ಯಾರಿಗೆ ಎಷ್ಟೆಷ್ಟು ವಿಸ್ತೀರ್ಣದ ಜಮೀನು ಸಿಕ್ಕಿದೆ ಎಂದು ನಾನು ತಿಳಿದುಕೊಂಡಿಲ್ಲ. ಸರ್ವೆ ನಂ. 53/4 ಮೂಲತಃ ಯಾರ ಹೆಸರಿನಲ್ಲಿತ್ತೆಂದು ನಾನು ತಿಳಿದುಕೊಂಡಿಲ್ಲ. ಸರ್ವೆ ನಂ. 53/4 ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪಹಣಿಯನ್ನಾಗಲೀ ಅಥವಾ ಯಾವುದೇ ದಾಖಲೆಯನ್ನಾಗಲೀ ನಾನು ತೆಗೆಸಿ ನೋಡಿಲ್ಲ. ದಾವಾ ಐಟಂ ನಂ.10, 12 ಮೂಲತಃ ಯಾರಿಗೆ ಸೇರಿದ್ದು ಮತ್ತು ಯಾರಿಗೆ ಎಷ್ಟು ಜಮೀನು ಹಂಚಿಕೆಯಾಗಿದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಅದು ಮಾರಾಟವಾಗಿರುವ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಎಂ.ಹೊಸಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 70/5 ರ ಜಮೀನು ಯಾರಿಗೆ ಸೇರಿದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿಯ ಬಗ್ಗೆ ನಾನು ನನ್ನ ವಕೀಲರ ಕಡೆಯಿಂದ ಕೇಳಿ ತಿಳಿದುಕೊಂಡಿದ್ದೇನೆ." The above version of the DW2 shows that, she

did not know about the details of the joint family properties of the plaintiffs and defendant No.1 to 12 and 15. Further defendant No.13 and 14 relied upon the documents which are marked as Ex.D-1 to 28. Ex.D1 is the RTC extract for Sy.No.48/1 measuring 2 acres 4 guntas stands in the name of 1st defendant, Ex.D-2 is the RTC extract for Sy.No.48/1 measuring 2 acres 04 guntas and 5 guntas stands in the name of 1st defendant and 2nd defendant father. Ex.D-3 is the RTC extract for Sy.No.48/28 measuring 34 guntas stands in the name of 1st defendant. Ex.D-4 is the RTC extract for Sy.No.40 stands in the name of defendants, Ex.D-5 is the RTC extract for Sy.No.40/1 stands in the name of defendants, Ex.D-6 is the RTC extract for Sy.No.40/2 measuring 10 guntas stands in the name of defendant No.11. Ex.D-7 is the RTC extract for Sy.No.40/3 measuring 06 guntas stands in the name of Thimmegowda S/o Hanumegowda, Ex.D-8 is the RTC extract for Sy.No.40/4 measuring 06 guntas stands in the name of defendant No.11. Ex.D-9 is the RTC extract for Sy.No.40/5 measuring 8 guntas stands in the name of Manju S/o Rangegowda, Ex.D-10 is the RTC extract for Sy.No.40/6 measuring 05 guntas stands in the name of Yalakkigowda S/o Lakkegowda, Ex.D-11 is the certified

copy of mutation extract in MR No.1/2002-03, Ex.D-12 is the certified copy of mutation extract in MR No.8/1994-95, Ex.D-13 is the RTC extract for Sy.No.53/3 measuring 14 guntas stands in the name of Rathnamma W/o late Devarajegowda, Ex.D-14 is the RTC extract for Sy.No.53/3 measuring 14 and 16 guntas stands in the name of 2nd defendant father and Rangegowda S/o Thimmegowda. Ex.D-15 is the certified copy of mutation extract in MR No.7/94-95, Ex.D-16 and 17 are the RTC extract for Sy.No.70/5 measuring 11guntas stands in the name of H.P.Manjegowda S/o Puttaswamygowda, Ex.D-18 is the RTC extract for Sy.No.70/11 measuring 8 guntas stands in the name of Chikkamma W/o Narasegowda. Ex.D-19 is the certified copy of mutation extract in MR No.//91-92, Ex.D-20 is the RTC extract for Sy.No.53/6 measuring 21 guntas stands in the name of H.Subbegowda S/o Puttaswamygowda, Ex.D-21 is the RTC extract for Sy.No.69/2 measuring 0.07.08 guntas stands in the name of H.D.Jayarama S/o late Dasegowda, Ex.D-22 is the RTC extract for Sy.No.54/3 measuring 01 gunta stands in the name of Krishnegowda S/o Yalakkigowda, Ex.D-23 is the RTC extract for Sy.No.55/2 measuring 19 guntas stands in the name of Thimmegowda S/o

Yalakkigowda and Rajamma W/o Thimmegowda, Ex.D-24 is the RTC extract for Sy.No.7/5 measuring 36 guntas stands in the name of Rajegowda S/o late Thimmegowda, Ex.D-25 is the RTC extract for Sy.No.7/5 measuring 36 guntas stands in the name of H.R.Ranganath S/o late H.S.Rangappa, Ex.D-26 is the RTC extract for Sy.No.7/5 measuring 31 guntas stands in the name of H.R.Ranganath S/o late H.S.Rangappa, Ex.D-27 is the certified copy of mutation extract in MR No.21/2009-10, Ex.D-28 is the certified copy of plaint in OS No.43/2015. The above RTCs and MR are not showing as to how much measurement properties have been family of the plaintiffs and defendant No.1 to 12 and 15 and there is no any proper details in that document in which survey number, how much measurement properties were sold to the third parties. Therefore, mere production of the RTC's and MR is not sufficient to believe the contention of the defendant No.13(c) and 14 that, plaintiffs have not inserted all joint family properties. Further RTC and MR not clearly showing the total measurement and details of the survey number properties.

13. Further the learned counsel for the defendant No.13 and 14 vehemently argued that, Ex.D-19 is sufficient document to believe the contention of the defendants that, plaintiffs have not inserted all joint family properties. In this regard perused the Ex.P19, it is MR extract, it shows that, defendant No.1, 3, 4 and father of the defendant No.2, partitioned the family property and changed the khata in their names respectively. But it is not the defence of the defendant No.1 to 12 and 15 that, there was partition took place in their family with respect to the joint family properties of the plaintiffs and defendants. This document produce by the defendants No.13 and 14. But this document is not clearly shows as to how much properties are their in the joint family of the plaintiffs and defendant No.1 to 12 and 15. Therefore, the defendant No.13 and 14 have fail to prove their contention that, plaintiffs have not inserted all joint family properties.

14. Further learned counsel for the defendant No.13 and 14 vehemently argued that, in this suit all the purchaser of the joint family properties are not parties in this suit. Hence suit is bad for non joinder of the necessary parties. In this regard he relied upon

the decision 2013(3) KCCR 1277 at para 10, wherein Hon'ble High Court of Karnataka held as follows: "All the sharers who are entitled to a definite share in the properties are not made parties in the proceedings, the plaintiff in his evidence admits existence of these persons, It is settled principle of law that partition suit should include all the joint family properties and also all persons who are entitled for a share are to be impleaded as parties, Otherwise, such a suit is not maintainable." In the above decision the Hon'ble High Court of Karnataka held that, "all persons who are entitled to a definite share in the joint family properties all or to be impleaded as a parties. According to the above decision, who are entitled a share in the joint family properties are all necessary parties to the partition suit. Here, in this suit defendant No.13 and 14 have taken the defence that, some of the suit schedule properties sold to third parties, but they (purchaser) have not parties in this suit, therefore suit is bad for non joinder of necessary parties. According to the above decision purchaser are not necessary parties. Further it is not defence of the defendant No.13 and 14 that, plaintiffs have not made all co-sharer of the joint family properties. Therefore, purchasers are not a necessary

parties in the partition suit. Hence defendants have fail to prove their contention. Hence, I answer **Issue No.2 and Addl. Issue No.3 are in the Negative.**

15. **Addl. Issue No.1 and 2:-** It is the case of the plaintiff is that suit schedule properties are ancestral and joint family properties of the plaintiffs and defendant No.1 to 12. In this regard they are relied upon the RTC's and MR with respect to the suit schedule properties which are marked as Ex.P3 to 23. In support of their contention, GPA holder of the plaintiffs filed affidavit, wherein reiterate the all averments of the plaint and examined as PW1 and produced documents which are marked as Ex.P1 to 25. Ex.P-1 is the G.P.A dt: 25.06.2011 executed by the plaintiffs by name Rangamma and Jayamma in favour of Chandregowda, Ex.P-2 is the Genealogy, Ex.P-3 is the Index of Lands, Ex.P-4 is the Records of Rights, Ex.P-5 is the certified copy of mutation extract in MR No.1/91-92. Ex.P-6 is the certified copy of mutation extract in MR No.1/84-85, Ex.P-7 is the certified copy of mutation extract in MR No.8/94-95, Ex.P-8 is the certified copy of mutation extract in MR No.2/99-2000, Ex.P-9 is the RTC extract for Sy.No.53/3 measuring

14 guntas stands in the name of 2nd defendant father. Ex.P-10 is the RTC extract for Sy.No.53/1 measuring 38 guntas stands in the name of 2nd defendant father, Ex.P-11 is the RTC extract for Sy.No.7/5 measuring 3836 guntas stands in the name of 6th defendant, Ex.P-12 is the RTC extract for Sy.No.54/3 measuring 1 and 19 guntas stands in the name of 7th and 11th defendants. Ex.P-13 is the RTC extract for Sy.No.55/2 measuring 19 and 20 guntas stands in the name of 9th defendant and Rajamma W/o Thimmegowda and 11th defendant, Ex.P-14 is the RTC extract for Sy.No.70/11 measuring 8 guntas stands in the name of Chikkamma W/o Narasegowda. Ex.P-15 is the RTC extract for Sy.No.69/2 measuring 20 guntas stands in the name of defendants. Ex.P-16 is the RTC extract for Sy.No.53/6 measuring 21 guntas stands in the name of H.Subbegowda S/o Puttaswamygowda, Ex.P-17 is the RTC extract for Sy.No.53/2 measuring 26 guntas stands in the name of Thirumalegowda S/o Hanumegowda, Ex.P-18 is the RTC extract for Sy.No.48/28 measuring 34 and 30 guntas stands in the name of 1st and 4th defendants. Ex.P-19 is the RTC extract for Sy.No.48/1 measuring 2 acres 04 guntas and 05 guntas stands in the name of 1st

defendant and 2nd defendant father. Ex.P-20 is the RTC extract for Sy.No.48/28 measuring 34 and 30 guntas stands in the name of 1st and 4th defendants, Ex.P-21 is the RTC extract for Sy.No.40 measuring 23 guntas stands in the name of Rajegowda S/o Themmegowda, Ex.P-22 and 23 are the RTC extract for Sy.No.40 stands in the name of defendants. Ex.P-24 is the certified copy of sale deed dt: 03.02.2010 executed by 6 the defendant and his LR's in favour of defendant No.13. Ex.P-25 is the certified copy of sale deed dt: 07.04.2011 executed by defendant No.13 in favour of defendant No.14. These documents shows that, suit schedule properties are joint family properties of the plaintiffs and defendant No.1 to 12 and 15.

16. On the other hand defendant No.2, 6 and 8 to 12 filed their written statement. But they have not denied the contention of the plaintiff's that, the suit schedule properties are ancestral and joint family properties. Defendant No.13 and 14 are the purchaser of the suit schedule properties. Defendant No. 14 and 13(c) themselves examined as DW-1 and 2 respectively. During their cross examination they have clearly admitted that, originally suit

schedule properties belongs to the plaintiffs grandfather Venkategowda. Further DW1 clearly admitted that, I have purchased the property, which is belongs to Thimmegowda, Yalakkigowda, Sakanegowda. The above admission is cleared that suit schedule properties are belongs to plaintiffs and defendants father by name Thimmegowda, Yalakkigowda, Sakanegowda.

17. It is further contention of the plaintiffs is that, the suit schedule properties originally belongs to Venkategowda, who was grandfather of plaintiffs. He died intestate, after his death, suit schedule properties were not partitioned in between his legal heirs i.e., Thimmegowda, Yalakkigowda, Sakanegowda. Therefore, plaintiffs claims their fathers 1/3rd share in the suit schedule properties. On the other hand defendant No.2, 6, 8 to 12 filed their written statement but they have not denied the contention of the plaintiffs. Hence it is believable there was no any partition in between the legal heirs of the Venkategowda with respect to the suit schedule properties.

18. Further contention of the plaintiffs is that, on 03.02.2010 6th defendant executed the registered sale deed with respect to the Item No.6 in favour of the defendant No.13. Similarly, on 07.04.2011 the defendant No.13 executed the registered sale deed with respect to 05 guntas in Item No.6 in favour of the defendant No.14. They having 1/3rd share in the suit schedule properties. Therefore, the above sale deeds are not binding upon their shares with respect to the suit schedule properties. In this regard plaintiffs relied upon the certified copy of sale deed dt: 03.02.2010 and 07.04.2011, which are marked as Ex.P-24 and 25 respectively. Ex.P24 shows that, defendant No.6 and his legal heirs i.e., 6(a) to (d) jointly executed the registered sale deed in favour of the defendant No.13 with respect to Item No.6. Ex.P-25 shows that, defendant No.13 executed a sale deed himself and on behalf of 13(b) and (c) executed the registered sale deed in favour of defendant No.14 with respect to 05 guntas in Item No.6. These documents shows that, plaintiffs are not parties in that sale deeds. In the instant suit plaintiffs and defendant No.1 to 12 and 15 are the joint family members, but defendant No.1,3,4, 5 and 7 have not appear before the court. Defendant No.2, 6 and 8 to 12 appeared

and filed their written statement. But they have not denied the contention of the plaintiffs that, Ex.P-24 and 25 are not binding upon their shares. Hence plaintiffs clearly proves that, Ex.P24 and 25 are not binding upon their shares. Hence, I answer **Addl. Issue No.1 and 2 are in the Affirmative.**

19. **Addl. Issue No.4:-** The defendant No.13 and 14 are the purchaser, they have filed their written statement separately. They have taken the contention that, the 6th defendant alienated the Item No.6 in favour of the defendant No.13 for family necessities and develop the joint family properties. Subsequently, defendant No.13 alienated the 05 guntas in Item No.6 in favour of the defendant No.14 by virtue of registered sale deed. In this regard they are not produce any document, but they have relied upon Ex.P-24 and 25. Perused the Ex.P24, in that document mentioned as to develop the other agricultural land and for domestic expenses, defendant No.6 and 6(a) to (d) executed the sale deed in favour of the defendant No.13. Ex.P24 and 25 are the registered sale deeds. These documents are believable documents until and unless disproved that documents in accordance with law or canceled the

said documents by concerned authority. Therefore defendant No.13 and 14 have clearly established that, defendant No.6 and his legal heirs alienate the Item No.6 of the suit schedule property to develop the other agricultural land and for domestic expenses. Hence, I answer **Addl. Issue No.4 in the Affirmative.**

20. **Issue No.3:-** As above discussion plaintiffs are clearly established that, plaintiffs and defendant No.1 to 12 are joint family members and suit schedule properties are joint family properties and there was no any partition in between the legal heirs of the Venkategowda i.e., Thimmegowda, Saganegowda and Yalakkigowda. Therefore plaintiffs are entitled for together 1/3 rd share, defendant No.1 to 5 are altogether 1/3rd share, defendant No.6 to 12 are altogether 1/3rd share in the suit schedule properties. Further in the instant suit defendants No.13 and 14 submitted in their written statement that, they are bonafide purchaser of Item No.6 of the schedule properties. In case, if this court decreed the suit, allot the Item No.6 of the suit schedule property in the share of defendants No.6. Perused the same, this suit is only for partition, in this suit, only declare the shares of the

joint family members. In the final decree proceedings, will be consider the defence of the defendant No.13 and 14. Accordingly, I answer **Issue No.3 in the Affirmative.**

21. **Issue No.4:** In view of my above discussion, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed.

The plaintiff No.1 and 2 are together entitled for 1/3rd share in the suit schedule properties

The defendant No.1 to 5 are altogether entitled for 1/3rd share in the suit schedule properties.

The defendant No.6 to 12 are altogether entitled for 1/3rd share in the suit schedule properties.

No order as to costs.

Draw preliminary decree accordingly.

Office is directed to register final decree proceedings, after completion of appeal period.

(Dictated to the stenographer directly on the computer, corrected, revised and then pronounced by me in the open court on this the 28th day of February 2023)

(Smt. Nirmala M.C.)
Civil Judge & JMFC,
Alur.

::ANNEXURES::

LIST OF WITNESS EXAMINED BY THE PLAINTIFFS:

P.W.1 : Chandregowda

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFFS:

Ex.P-1 : GPA
Ex.P-2 : Genealogy
Ex.P-3 : Index of lands
Ex.P-4 : Records of Rights
Ex.P-5 : Mutation extract in MR No.1/91-92
Ex.P-6 : Mutation extract in MR No.1/84-85
Ex.P-7 : Mutation extract in MR No.8/94-95
Ex.P-8 : Mutation extract in MR No.2/99-2000
Ex.P-9 to 23 : 15 RTC extracts for Sy.No.53/3, 53/1, 7/5, 54/3, 55/2, 70/11, 69/2, 53/6, 53/2, 48/28, 48/1, 40.

- Ex.P-24 : Sale deed dt: 03.02.2010.
Ex.P-25 : Sale deed dt: 07.04.2011

LIST OF WITNESS EXAMINED BY THE DEFENDANT:

- DW-1 : Venugopal
DW-2 : Raashi

LIST OF DOCUMENTS MARKED FOR THE DEFENDANT:

- Ex.D-1 to 10 : Ten RTC extracts for Sy.No.48/1, 48/28, 40, 40/1, 40/2, 40/3, 40/4, 40/5, 40/6.
Ex.D-11 & 12 : Mutation extracts in MR No.1/2002-03 and 8/94-95
Ex.D-13 & 14 : Two RTC extracts for 53/3 and 53/3
Ex.D-15 : Mutation extract in MR No.7/94-95
Ex.D-16 to 18 : Three RTC extracts for Sy.No.70/5, 70/11, 40
Ex.D-19 : Mutation extract in MR No.1/91-92
Ex.D-20 to 26 : Seven RTC extracts for Sy.No.53/6, 69/2, 54/3, 55/2, 7/5.
Ex.D-27 : MR extract in MR No. 21/2009-10
Ex.D-28 : Certified copy of plaint in OS No.43/2015

Civil Judge & JMFC,
Alur.