

KAHS410004332010



Presented on : 18-01-2010

Registered on : 18-01-2010

Decided on : 14-07-2026

Duration : 16 years, 5 months, 27 days

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND
J.M.F.C. AT ARSIKERE**

:: PRESENT ::

**SMT.VEENA KOLEKAR, *B.A., LL.B.(Hons), LL.M.*,
Prl. Civil Judge & J.M.F.C., Arsikere**

DATED THIS 14th DAY OF JULY 2026

ORIGINAL SUIT No.28/2010

Plaintiff : Smt.Punitha
D/o Late D.P.Sadashivaiah
W/o Shivakumar,
Aged about 34 years,
R/o: Doddagollarahatti,
Near Airtel Tower,
Magadi Main Road,
Vishwanidam Post,
Bangalore – 91.

(By Sri.B.K.V., Advocate)

- Versus -

Defendants : 1. Chinnamma K.S.
W/o Late D.P.Sadashivaiah,
Aged about 55 years,

2. Girish
S/o Late Sadashivaiah,
Aged about 33 years,
Defendant No.1 and 2 are
R/o: 3rd Cross, Shivananda Colony,
Opposite to MRS Oil Mill,
Sri.Siddalingeshwara Nilaya,
Arsikere Town.
3. Smt.S.Tanuja
D/o Late D.P.Sadashivaiah,
W/o Megaraj,
Aged about 31 years,
R/o: Bhavani Shankar Medicals,
BH Road, Tiptur.
4. Smt.S.Shanthala
D/o Late D.P.Sadashivaiah,
W/o Niranjanamurthy
(Koochihalli Traders)
Aged about 27 years,
R/o: Changadihalli,
Sakaleshpura Taluk.

**(D-1, 3 & 4 by Sri.S.R.S., Advocate &
D-2 by Sri.P.V., Advocate)**

Nature of Suit	Partition & Separate possession
Date of Evidence	13.08.2010

**(SMT. VEENA KOLEKAR)
Prl. Civil Judge & J.M.F.C.,
Arsikere.**

:: JUDGMENT ::

The plaintiff has filed the present suit for the relief of partition and separate possession over the suit schedule properties.

2. The brief facts of the case of the plaintiff is as under:

The plaintiff and defendants are the joint family members and the suit schedule properties are joint family properties. One D.P.Sadashivaiah is the prepositus of the plaintiff and defendants. Defendant No.1 is the wife of said D.P.Sadashivaiah and defendant No.2 to 4 are the son and daughters of the D.P.Sadashivaiah. The said D.P.Sadashivaiah was working as Electrician in KSRTC and during his service he died on 16.05.1998 leaving behind the plaintiff and defendants as his legal heirs. While he was in service, he purchased the suit schedule properties and same were his self-acquired properties. After the death of said D.P.Sadashivaiah, the plaintiff and defendants are in joint possession of the suit schedule properties.

3. During the life time of D.P.Sadashivaiah the suit schedule properties were standing in his name and after his death, the khata of the suit schedule properties are

standing in the name of defendant No.1. The defendants are getting rentals and other income from the suit schedule properties and not giving any income to the plaintiff. The plaintiff used to visit suit schedule properties often and often and whenever she visited the suit schedule properties, the defendants neglected her. As such, the plaintiff fed up with the act and attitude of the defendants and demanding the defendants to effect partition. The defendants have refused to effect partition, as such she got issued legal notice to the defendants on 03.08.2009 and the same was served on the defendants. In spite of issuance of the notice, the defendants have not given any share to the plaintiff and not even replied to the said notice. Hence, the plaintiff has filed the present suit for the relief of partition and separate possession in the suit schedule properties.

4. After the service of summons, the defendant No.1 to 4 appeared before this Court through their respective counsels and defendant No.1, 3 and 4 filed the common written statement; wherein defendant No.2 filed separate written statement.

5. Defendant No.1, 3 and 4 admitted all the plaintiff averments in their written statement and prayed to allot their share in the schedule properties.

6. Defendant No.2 in his written statement admitted the relationship of the plaintiff and other defendants. He further admitted that the said D.P.Sadashivaiah was working as Electrician in KSRTC and during his service he died on 16.05.1998 leaving behind the plaintiff and defendants as his legal heirs. During the life time of D.P.Sadashivaiah the suit schedule properties were standing in his name and after his death, the khata of the suit schedule properties are standing in the name of defendant No.1.

7. The defendant contended that the plaintiff and defendant No.1 to 4 are the joint family members and the suit schedule properties are joint family properties. Then he is also entitled to $\frac{1}{2}$ share and mesne profits in the suit schedule properties from the plaintiff and defendant No.1, 3 and 4, as they are enjoying the suit schedule properties. It is further contended that the defendant No.1 has taken the gold ornaments belongs to wife of the defendant No.2. Thereafter, the defendant No.1 pledged some gold ornaments and given some gold ornaments to the plaintiff and other defendants without the knowledge of the defendant No.2. When the defendant No.2 came to know about the act of the defendant No.1, he questioned the same. Then the defendant No.1 along with plaintiff and other defendants filed a private complaint before the

Hon'ble Sr. Civil Judge and JMFC, Arsikere in CC No.26/2015. But the said case is disposed off and acquitted the defendant No.2. Therefore, in order to give trouble to the defendant No.2, the plaintiff and other defendants filed this present false suit on the basis of the false allegations. Accordingly, prayed to dismiss the suit.

8. Based on the pleadings and materials available on record, my predecessor in office then has framed the following issues:

:: ISSUES ::

1. Whether the plaintiff proves that plaintiff and defendants are the joint family members?
2. Whether the plaintiff further proves that the suit schedule property is the joint family property of plaintiff and defendants?
3. Whether the plaintiff is entitled for the relief of Partition and mesne profits as prayed for?
4. What order or decree ?

9. In order to prove the case, the plaintiff examined herself as PW-1 and got marked 8 documents as per Ex.P1 to Ex.P8. To disprove the case of the plaintiff, the defendant No.2 got examined himself as DW-1 and defendant No.3 got examined herself as DW-2 and got marked one document as per Ex.D1.

10. Heard both side and perused the documents, pleadings, evidence of both parties.

11. My findings on the above issues are

Issue No.1 : In the Affirmative,

Issue No.2 : In the Affirmative,

Issue No.3 : Partly in the Affirmative,

Issue No.4 : As per final order for the following :

:: REASONS ::

12. **Issue No.1 and 2** : Both the issues are inter connected to each other, they are taken together for common discussion to avoid repetition of the facts and appreciation of evidence.

It is the case of the plaintiff that, herself and defendants constitute joint Hindu family and suit properties are their joint family properties. Accordingly they are in joint possession and enjoyment of the same. There is no partition taken place between themselves by meets and bounds. Hence, the plaintiff has filed the present suit for the relief of partition and separate possession of her 1/5th share in the suit schedule properties.

13. The plaintiff has specifically pleaded that herself and defendants are the joint family members and the suit schedule properties are joint family properties. On the other hand, the defendant No.1, 3 and 4 admitted the

same but defendant No.2 has admitted the relationship of the plaintiff and other defendants. But denied that the plaintiff and defendants are in joint possession and enjoyment of the suit schedule properties.

14. In order to prove her case, the plaintiff examined herself as PW-1. In her evidence she has reiterated the plaint averments. The plaintiff also has got marked 8 documents. Ex.P1 is the property tax register extract relating to Item No.1 of the suit schedule property, Ex.P2 is the Genealogical Tree, Ex.P3 is the Notice dated 03.08.2009, Ex.P4 to 6 are the Postal acknowledgments, Ex.P7 is the Postal Receipt and Ex.P8 is the certified copy of Sale Deed dated 19.03.1982 relating to Item No.2 of the suit schedule property executed in favour of late D.P.Sadashivaiah father of the plaintiff, defendant No.2 to 4 and husband defendant No.1. On perusal of the Ex.P1 and 8, it reveals that the suit schedule properties originally belongs to late D.P.Sadashivaiah and after his death the plaintiff and defendants as a legal heirs are in joint possession of the suit schedule properties.

15. To disprove the case of the plaintiff, the defendant No.2 got examined himself as DW-1 and defendant No.3 got examined herself as DW-2 and got marked one document as per Ex.D1 which is the RTC Extract

pertaining to the land bearing Sy.No.29/1 standing in the name of the defendant No.1.

16. The defendant No.2 has denied the joint possession of the plaintiff and defendants in the suit schedule properties, a mere denial does not amount to proof of the severance of the joint family status. Under Hindu Law, severance of joint family status cannot be presumed merely because the members are residing separately or not enjoying the properties jointly. There must be reliable and cogent evidence to show severance of family status.

17. The contentions taken up by the defendant No.2 regarding gold ornaments of his wife and the criminal case in CC No.26/2015 are entirely independent disputes and have no relation with the nature of the suit schedule properties. It is not the contention of the defendant No.2 that the suit schedule properties are his self-acquired properties. Further after the death of late D.P.Sadashivaiah, the suit schedule properties devolved upon the plaintiff and defendant No.1 to 4 as Class-I legal heirs. Since no partition has been taken place and no evidence of severance has been produced, the plaintiff and defendants are joint family members and they are in joint possession of the suit schedule properties. The plaintiff has proved that herself and

defendants are joint family members and the suit schedule properties are joint family properties of the plaintiff and defendants. Accordingly, Issue No.1 and 2 answered in the ***“Affirmative”***.

18. **Issue No.3** : The plaintiff has proved that the suit schedule properties are joint family properties of the plaintiff and defendants as discussed in Issue No.1 and 2. After the death of D.P.Sadashivaiah, the plaintiff and the defendants succeeded to the share of the deceased D.P.Sadashivaiah. The husband of defendant No.1 died leaving behind the plaintiff and defendant No.2 to 4. The defendant No.1 who is widow of D.P.Sadashivaiah, plaintiff and defendant No.2 to 4 are the children of D.P.Sadashivaiah who are Class-I heirs of the deceased. Hence, the plaintiff, defendant No.1 to 4 will get 1/5th share each in the suit schedule properties as Class-I heirs as per Sec.8 of Hindu Succession Act, 1956.

19. The Plaintiff has sought for mesne profits in respect of the suit schedule properties. The plaintiff examined as PW-1, but the evidence of PW-1 is silent regarding the mesne profits. The Plaintiff has simply sought for future mesne profits. When there is no specific pleading and evidence on record, this Court is of the opinion that the separate enquiry as per Order 20 Rule 18 of CPC is required in order to ascertain the mesne profits. The

plaintiff is at liberty to initiate the separate proceedings for ascertaining mesne profits in accordance with law. Accordingly, Issue No.3 is answered ***“Partly in the Affirmative”***.

20. **Issue No.4** : For the aforesaid discussion on Issues No.1 to 3, this Court proceed to pass the following:

:: ORDER ::

The suit of the plaintiff is hereby partly decreed.

The plaintiff and the defendant No.1 to 4 are entitled to 1/5th share each in the suit schedule properties.

The Plaintiff is at liberty to initiate separate proceedings for mesne profits as sought for under Order 20 Rule 18 of Code of Civil Procedure.

By considering the relationship between the parties, no order is passed regarding cost.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, typed by her, corrected, signed and then pronounced by me in the open court this 14th day of July, 2026)

(SMT. VEENA KOLEKAR)
Prl. Civil Judge & J.M.F.C.,
Arsikere.

:: ANNEXURE ::**A) Witness examined on behalf of the plaintiff:**

PW-1 : Smt.Punitha

B) Documents marked on behalf of the plaintiff:

Ex.P1 : Property tax register Extract
Ex.P2 : Genealogical Tree
Ex.P3 : Notice
Ex.P4-6 : Postal acknowledgments
Ex.P7 : Postal Receipt
Ex.P8 : C/c of Sale Deed

C) Witness examined on behalf of defendants:

DW-1 : Girish
DW-2 : S.Tanuja

D) Documents marked on behalf of defendants:

Ex.D1 : RTC Extract

**Prl. Civil Judge & J.M.F.C.,
Arsikere.**