



Presented on : 15-10-2025
Registered on : 15-10-2025
Decided on : 17-08-2026
Duration : 0 years, 10 months, 2 days

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC, AT:HAVERI.**

:: Present :

SMT.SHOBHA, B.G., M.A., LL.B.,
Addl. Senior Civil Judge & JMFC, Haveri.
Dated this 17th day of August-2026
R.A.NO.17/2025

- Appellants:** 1. Smt. Jayashree
(Pltf No.1 to 3) W/o Subhas Dharajkar,
Age: 64 years, Occ: Household,
R/o Hattageri Oni, Haveri,
Tq and Dist: Haveri.
2. Manjunath
S/o Subhas Dharajkar,
Age: 40 years, Occ: Household,
R/o Hattageri Oni, Haveri,
Tq and Dist: Haveri.
3. Smt. Sunitha W/o Rahul Sulake,
Age: 37 years, Occ: Household,
R/o Hattageri Oni, Haveri,
Tq and Dist: Haveri

(By Sri. R.A.M., Adv.,)

-Vs-

- Respondents:** 1. Smt. Rekha
(Def No.1 to 6) D/o Mahanrao Dharajkar,
Age: 47 years, Occ: Household,
R/o Dyamavvana Gudi Oni,
Haveri, Tq and Dist: Haveri.



2. Smt. Sheela
D/o Mahanrao Dharajkar,
Age: 45 years, Occ: Household,
R/o Dyamavvana Gudi Oni,
Haveri, Tq and Dist: Haveri.
3. Smt. Shilpa
D/o Mahanrao Dharajkar,
Age: 43 years, Occ: Household,
R/o Dyamavvana Gudi Oni,
Haveri, Tq and Dist: Haveri.
4. Sunil S/o Mahanrao Dharajkar,
Age: 40 years, Occ: Business,
R/o Dyamavvana Gudi Oni,
Haveri, Tq and Dist: Haveri.
5. Prabhakar
S/o Laxmanrao Dharajkar,
Age: 68 years, Occ: Tailoring,
R/o Dyamavvana Gudi Oni,
Haveri, Tq and Dist: Haveri.
6. Suresh
S/o Laxmanrao Dharajkar,
Age: 66 years, Occ: Tailoring,
R/o Dyamavvana Gudi Oni,
Haveri, Tq and Dist: Haveri.

**[Deft No.1 to 4 Exparte]
[Deft No.5 and 6 by Sri. P. R. M.,Adv.,]**

J U D G M E N T

This is an appeal filed against the Judgment and
Decree passed in O.S.No.383/2023 dated 10.09.2025



by the learned Additional Civil Judge and J.M.F.C, Haveri.

2. The appellants are the plaintiffs and the respondents are the defendants in the original suit. For the sake of convenience they are referred to as they are referred in the original suit.

3. The brief facts of the suit are as follows:-

It is specific assertion of the plaintiffs/appellants that suit schedule property and CTS No1608 and CTS No.1428A are ancestral and joint family properties of plaintiffs and defendants. They are legal heirs of deceased Subhash Dharajkar. The plaintiffs and defendants got partitioned the suit schedule property and CTS No1608 and CTS No.1428A on 01-01-2021 before the elders of the locality. As per partition deed, schedule property has been fallen to the share of plaintiffs and property bearing CTS No.1608 and CTS.1428A have been fallen to share of defendants No.5 and 6 and defendants No. 1 to 4 have taken the cash



amount of Rs.3,00,000/- instead of family properties. Accordingly the plaintiffs are enjoying the suit properties without any obstructions from anybody. This fact are well within the knowledge of the defendants. They have no right, title and interest over the suit schedule property, despite that they are obstructing the plaintiffs' peaceful possession and enjoyment of the suit property. Hence the plaintiffs filed suit for declaration of title and permanent injunction against the defendants.

4. In spite of service of summons, the defendants No.1 to 4 remained absent. Hence they were placed exparte. In response to the summons the defendants No.5 and 6 appeared through their counsel and filed written statement, wherein they have admitted the assertion of the plaintiffs. They denied that the cause of action shown by the plaintiffs is false and imaginary one. The plaintiffs file this suit with an intention to harass the defendants. Hence prays for dismissal of the suit.



5. On the basis of above pleadings Trial Court had framed the following Issues:

1. **Whether the plaintiff prove that they are lawful owner in respect of suit schedule property?**
2. **Whether the plaintiffs prove that the defendants have illegally interfering with the peaceful possession and enjoyment of suit schedule property ?**
3. **Whether the plaintiffs are entitled for the relief permanent injunction sought for?**
4. **What order or decree?**

6. In order to prove the case, the plaintiffs, the plaintiff No.1 examined herself as PW.1 and one more witness examined as P.W.2 and got marked 4 documents as Ex.P.1 to Ex.P.4. On the other hand though the defendants No.5 and 6 filed written statement, they did not adduce evidence.

7. After hearing the arguments and perusing the materials placed on record Trial Court dismissed the suit.



Findings of the Trial court re-produced under:-

8. On perusal of Ex.P.3 it is clear that the parties themselves have resolved to effect partition under the said document. It is under this document the plaintiffs are trying to divide the properties among themselves. Even considering Sec.49 of Registration Act that a compulsorily registrable but an unregistered document is admissible in evidence for collateral purpose which means for any purpose other than that of creating, declaring, assigning, limiting or extinguishing their right to immovable property. In the instant case where the parties are creating and relinquishing their rights through a deed styled as partition deed which requires compulsory registration. Without registration of Ex.P.3 the ownership sought by the plaintiffs does not hold water. The learned Trial Court dismissed the suit and answered issue No.1 to 3 in the Negative.



9. Being aggrieved by the judgment and decree of the Trial Court, plaintiff has preferred this appeal on the following grounds:-

- 1). The impugned Judgment and Decree passed by the Learned Trial Court is not sound and sustainable in the eye of law. The Hon'ble Trial court hurriedly come to the conclusion and passed the impugned judgment and dismissed the suit, which is great miscarriage of justice.
- 2) The reasons assigned by the Hon'ble trial court is not sustainable, without applying its judicious mind which is great miscarriage of justice. The trial Court has not looked into in respect of payment of stamp duty and penalty on partition deed and discarded as the same is not registered under Registration Act. The conclusion of of the Hon'ble trial court is in a wrong perspective manner. Hence liable to be set aside.

10. In spite of service of the notice, the respondents remained absent. Hence they are placed exparte.



11. Heard the learned counsel for the plaintiffs/appellants and perused the appeal memo and materials placed on record.

12. The counsel for appellants vehemently argued that the plaintiffs and defendants have partitioned the suit schedule properties. In said partition, suit schedule properties have been allotted to the plaintiffs and the defendants No.1 to 4 have taken share by way of cash. In Registration Act, there is a exemption. The plaintiffs paid stamp duty. Hence un-registered partition can be looked into. The defendants No. 5 and 6 admitted the partition allotment of shares. The defendants have not appeared before the court. Hence prays for decreeing the suit as sought for.

13. The points that would arise for consideration of this Court are as follows :-



1. Whether the plaintiffs prove that they are absolute owners of suit schedule properties by virtue of un-registered partition deed dated 01-01-2021?
2. Whether the plaintiffs prove that they are in lawful possession and enjoyment over the suit schedule properties as on the date of suit?
3. Whether the plaintiffs prove the alleged interference by the defendants?
4. Whether the plaintiffs are entitled to relief of permanent injunction?
5. Whether the findings of the Trial Court requires interference by this Court?
6. What order?

14. Perused the pleadings, facts and materials placed on record, my findings on the above Points are as follows:

Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- In the Negative



Point No.4:- In the Negative

Point No.5:- In the Negative

Point No.6:- As per final order

for the following :

REASONS

15. POINT NO.1 AND 2: These two points are taken up together for discussion to avoid repetition as they are inter linked with each other.

It is the specific case of the plaintiffs/appellants that the suit schedule property and property bearing CTS No.1608 and CTS NO. 1428A are ancestral and joint family properties of themselves and defendants. They have partitioned said properties through unregistered partition deed on 01-01-2021, whereby the suit schedule property was allotted to the plaintiffs and another one property bearing CTS No.1608 and CTS NO. 1428A were allotted to the defendants No. 5 and 6 and defendants No. 1 to 4 received an amount of Rs.3,00,000/- in lieu of their share. Now the defendants



are trying to obstruct their peaceful possession and enjoyment of suit schedule properties.

16. In order to prove the case of the plaintiffs, the plaintiff No.1 examined herself as PW-1 before the trial court. In support of their case they have produced documents which were marked as Ex.P.1 to 4. I have perused the documents produced by the plaintiffs. Ex.P.1 reveals that 41-81 square meter of land in CTS No.1607 jointly stands in the name of one Muralidher and plaintiffs and defendants and one Chandrabai MohanRao Dharajker. Ex.P.2 reveals that 41-80 square meter of land in CTS No.1608 jointly stands in the name of one Mohan, Muralidher, Prabhaker, Suresh S/o Lakshmanrao Dharajker, Pundaleeka Nagappa and Subhash Ramanna Dharajker. Ex.P.3 is un-registered partition deed, wherein it is mentioned that the Prabhaker, Suresh, Rekha, Sheela, Shilps, Sunil, Jayashree, Manjunath and Sunitha who are plaintiffs



and defendants in present suit have partitioned their family properties i.,e CTS No.1608,1428A and 475. Ex.P.4 reveals that Muralidher S/o Lakshmanrao Dharajker died on 29-12-2014.

17. However on considering all the material placed before the court it disclose that the plaintiffs are claiming right of ownership of suit schedule properties based on unregistered partition deed dated 01-01-2021. Under Section 17(1)(b) of the Registration Act 1908, a partition deed which by itself effects division of immovable property of value of Rs.100 or more is compulsorily registrable. Sec.49 of the said Act provides that no such document, be received as evidence of any transaction affecting such property except for a collateral purpose. It is well settled that an unregistered partition deed is inadmissible to prove the allotment of properties or to declare exclusive right and title in favour of any party. It can be looked into for a collateral



purpose such as severance of status or nature of possession. The plaintiffs are claiming declaration that they are absolute owners of the suit schedule properties on the basis of allotment made in the unregistered partition deed/Ex.P3. The said deed cannot be the foundation for a declaration of exclusive title to the suit schedule properties.

18. It is true that the plaintiffs examined one witness said to be attesting witness as P.W.2 and paid stamp duty and penalty on Ex.P.3. However, Section 68 of Indian Evidence Act only governs proof of due execution and attestation, it does not remove the bar under section 49 of the Registration Act against receiving and unregistered compulsorily registrable document as evidence of transaction affecting immovable property. The payment of stamp duty does not cure the defect of non- registration. Consequently, the unregistered partition deed remains inadmissible to



prove allotment of properties. I have relied upon citation reported in AIR 1968 SC 1299 (Siromani V/s Hemakumar and Ors.) wherein Hon'ble Apex Court has held that the "document effecting partition of joint family properties and value of more than Rs.100 /- by metes and bounds registration is compulsory. In the absence of such registration it is inadmissible to prove title of any of the coparcener to any of the property."

19. The principle laid down in aforesaid citation is aptly applicable to the case on hand as in the instant suit the plaintiff relied upon said unregistered partition deed to prove his title over the suit schedule property. Mere marking of document as exhibit is not a conclusive proof. In view of above discussion this court is of the opinion that unregistered partition deed dated 01-01-2021 is inadmissible. It is also true that the defendants No. 1 to 4 have not appeared before the court. But the plaintiffs cannot take advantage of absence of the



defendants. The absence of defendants would not amount the plaintiffs discharged burden lies on them. In this regard I have relied upon the citation reported in **AIR 2014 SC 937** (Union of India and others V/s. Vasavi Co-operative Housing Society Ltd., and others.) wherein the Hon'ble Apex court held that "decreeing the suit by finding weakness in evidence of defendant, improper". In **ILR 2014 KAR 1311**, the Hon'ble High Court of Karnataka held that "weakness of the defendants case would not strengthen plaintiff's case. The plaintiff has to prove his case to the satisfaction of the court by means of convincing and cogent evidence."

20. 2008 (1) KCCR 385 (Ramchandra Sakharam Mahajan V/s Damodar Trimbak Tanksale (D) & Ors.) wherein it is held that "The burden of proof is on the party who pleads has to prove, weakness of the other side would not amount that the person who has pleaded has discharged his burden." In view of above reasons this court is of the opinion that the plaintiffs/ appellants



failed to prove that they are absolute owners of the suit schedule properties. Accordingly point No.1 and 2 are answered in the **Negative**.

21. POINT No.3: Further the plaintiffs stated that the defendants are trying to obstruct the peaceful possession of the plaintiffs' over the suit schedule properties. They have denied the right, title and interest of the plaintiffs over the suit schedule properties. However, no material placed before the court to show that the defendants obstructed the plaintiffs' peaceful possession over the suit schedule properties. Moreover, when the plaintiffs failed to prove their exclusive ownership and possession over the suit schedule properties, the alleged interference by the defendants do not arise at all. Moreover Ex.P.1 and 2 themselves show that the suit schedule properties stand in the joint names of plaintiffs and defendants and two other persons who are not parties to the suit and reflect joint



possession. Accordingly point No.3 is answered in the **Negative.**

22. POINT NO.4: When the plaintiffs sought relief of declaration of title and permanent injunction, the burden lies on them to prove that they have to prove the same producing source of title. They have to prove that they are in lawful possession over the suit schedule properties as on the date of the suit and alleged interference by the defendants. In the instant suit, the plaintiffs have failed to prove the same. As per Ex.P1 and 2, the plaintiffs and defendants are joint owners of said properties. Admittedly, the defendants are brothers and sisters of plaintiffs. When the defendants are also joint owners of suit schedule properties, permanent injunction cannot be granted against them. Therefore the plaintiffs are not entitled for any relief. Accordingly, point No.4 is answered in the **Negative.**



23. POINT No.5: The Trial Court was justified in holding that the without registration of partition deed the plaintiffs cannot obtain any individual and independent right over the suit schedule properties. The trial Court correctly concluded that the plaintiffs have failed to prove the case for declaration and permanent injunction. No error, illegality or perversity is made out in the reason assigned by the Trial Court. The do not raise any substantial question of law or any issue warranting interference. The grounds taken by the appellants essentially seek to re argue the same issue that the unregistered partition deed should be accepted to prove title and allotment of share to the plaintiffs, which is impermissible in law. Hence argument of appellants cannot be accepted. Therefore, this court is of the opinion that no material illegality or perversity is made out. Accordingly point No.5 is answered in the **Negative.**



24. POINT NO.6:- In view of above findings on points No.1 to 4, I proceed to pass the following:

ORDER

Regular Appeal filed by the appellants under Order XLI Rule 1 read with Section 96 of Code of Civil Procedure, 1908 is hereby DISMISSED.

Judgment and decree passed by the Ld Additional Civil Judge and JMFC Court at Haveri in O.S.No. 383/2023 dated 10-09-2025 is hereby CONFIRMED.

Considering the the relationship between the parties of the case, no order as to costs.

Office is directed to transmit the Trial court records to the trial court along with the copy of this judgment forthwith.

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her, corrected by me, then pronounced in the open court on this the 17th day of August, 2025)

(SMT.SHOBHA B.G)
I. Addl. Senior Civil Judge
and JMFC, Haveri.