

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC. BYADGI.

PRESENT:

SHRI. IBRAHIM M. MUJAWAR.

B.A.,L.L.B.(Spl.)

**Senior Civil Judge & JMFC,
Byadgi.**

Dated on this 26th day of September 2019

O.S. NO.49 of 2015

- PLAINTIFFS : 1) Shantamma W/o Jakanachari
Arkachari, Age: 57 years,
Occ: Household work, Doddapet,
Ranebennur, Tq: Ranebennur.
- 2) Smt. Rukmini W/o Jakanachari,
Arkachari, Age: 55 years,
Occ: Household work, Doddapet,
Ranebennur, Tq: Ranebennur.

(Reptd. by Sri. B.S.A. advocate)

VS.

- DEFENDANTS: 1) Bhagavantappa S/o Rudrappa Kammar,
Age: 70 years, Occ:Agriculture,
R/o: Anur post, Bisalahalli,
Tq: Byadgi, Dist: Haveri.
- 2) Prahladappa S/o Rudrappa Kammar,
Age: 65 years, Occ:Agriculture, near
Kanada house, R/o: Anur post,
Bisalahalli, Tq: Byadgi, Dist: Haveri.

- 3) Ganeshappa S/o Rudrappa Kammar @ Arkachari, Age: 62 years, Occ: Goldsmith, R/o: Anur, A/p: Mahaveera road, Doddapet, Ranebennur, Dist: Haveri.
- 4) Veerabhadrachari S/o Rudrappa Kammar, @ Arkachari, Age: 52 years, Occ: Goldsmith, R/o: Anur, A/p: Mahaveera road, Doddapet, Ranebennur, Dist: Haveri.
- 5) Smt. Kamalamma W/o Ganeshappa Arkachari, Age: 68 years, Occ: Household work, Vishwakarma Nilaya, 2nd main, 2nd cross, Vinayak Nagar, Ranebennur, Dist: Haveri.
- 6) Smt. Bhagamma W/o Jayappa Badiger Age: 60 years, Occ: Household work, C/o: Ganeshappa S/o Rudrappa Kammar @ Arkachari, Mahaveera road, Doddapet, Ranebennur, Dist: Haveri.

(D-1 is repled. by Sri. R.C.S. advocate)
(D-2 to 6 are ex parte)

Date of institution of the suit	26-02-2015
Nature of the suit	Suit for partition and separate possession

Date of commencement of Recording of evidence	28-01-2019
Date on which the judgment was pronounced	26-09-2019
Total Duration	Year/Months/Days
	04 07 00

(Ibrahim M. Mujawar)
Senior Civil Judge & JMFC.,
Byadgi.

JUDGMENT

The plaintiff No. 1 and 2 have filed the present suit against the defendant No. 1 to 6 for the relief of partition and separate possession of their 1/8th share each in the suit properties.

1. The brief facts of the plaintiffs case are as follows;

It is stated that the suit schedule-A-1 to 8 properties are landed properties and suit schedule-B-1 to 4 properties are VPC and CTS properties.

It is stated that the plaintiffs and defendants have a common propositus namely Rudrappa Kammar. The said

propositus Rudrappa has wife namely Subhadramma. The propositus Rudrappa has died on 31-01-2004. The Subhadramma has died on 08-06-2006. The plaintiffs and defendant No.1 to 6 are children of the propositus Rudrappa and Subhadramma. The suit schedule-A and B properties are ancestral and joint family properties of the plaintiffs and defendants. The plaintiffs and defendants have joint possession and enjoyment over the suit properties. The plaintiffs have their legitimate share in the suit properties. Yet no partition has taken place among the plaintiffs and defendants in respect of suit properties. The defendant No.1 to 4, in order to swallow the right of share of the plaintiffs, during the life time and at old age of the propositus Rudrappa, without notice to the plaintiffs, have got mutated their names in the records of the suit properties. The defendants after getting mutated their names in the revenue records of the suit properties, interfered with joint enjoyment of the suit properties of the plaintiffs. Then the plaintiffs asked their 1/8th share each in the suit properties to the defendants. But, the defendant No.1 to 4 have denied the right of share of the plaintiffs. Hence, the plaintiffs had to file the present suit for their legitimate share. Hence, prayed to decree the suit.

2. On service of suit summons, the defendant No.1 has appeared to the court through his counsel and filed his written statement opposing the suit of the plaintiffs. But, inspite of service of summons, the defendant No. 2 to 6 have not appeared to the court. Hence, they were ordered to be placed exparte. The brief facts of the written statement of the defendant No.1 are as follows;

In written statement, it is admitted that the plaintiffs and defendants have a common propositus namely Rudrappa. It is also admitted that the propositus Rudrappa had wife namely Subhadramma. It is also admitted that the propositus Rudrappa has died on 31-01-2004. It is also admitted that the Subhadramma has died on 08-06-2006. It is also admitted that the plaintiffs and defendants are children of the propositus Rudrappa and Subhadramma.

In written statement, it is denied that the plaintiffs and defendants constitute Hindu joint family and suit properties are their joint family properties. It is also denied that yet no partition has taken place in respect of suit properties. It is also denied that the plaintiffs are having any right of share in the suit properties. It is also denied that the defendant No.1 to 4

have got mutated their names in the records of the suit properties without notice to the plaintiffs.

In the written statement, it is contended that in the joint family of the plaintiffs and defendants, in the year 1981, in respect of suit schedule-A properties, partition has taken place by meets and bounds. It is further contended that at the time of that partition, the plaintiffs have received Rs. 1,00,000/- each towards their share in the suit properties. It is further contended that from the date of that partition, the defendants have their respective separate possession in the suit properties. The mutation has been effected in the name of the defendant No.1 to 4 in pursuance of the said partition about 37 years back. It is further contended that since the plaintiffs having not challenged 37 years old mutation, their suit is barred by law of limitation. It is further contended that the defendant No.2 Prahladappa had filed suit in OS No. 156 of 2003 before the court of Senior Civil Judge at Ranebennur against the plaintiffs and other defendants of this case for partition. In that suit, the plaintiffs were as defendant No.8 and 9 respectively. The said OS No. 156 of 2003, after full pledged trial, has been dismissed on 26-11-2008 holding that already partition has taken place in the family in relation to suit properties. It is further contended

that the OS No. 156 of 2003 having been dismissed with a finding that already partition has taken place in the family of the plaintiffs and defendants in respect of suit properties, the present suit filed by the plaintiffs is hit by the principle of res-judicata. Hence, ultimately, the defendant No.1 has prayed to dismiss the suit of the plaintiffs with costs.

3. Based upon the above pleadings, the following issues have been framed.

ISSUES

1. Whether the plaintiffs prove that themselves and defendants constitute joint Hindu family, and suit properties are their ancestral and joint family properties?
2. Whether the defendant No.1 proves that the partition among plaintiffs and defendants has taken place in the year 1981, and the plaintiffs have taken their shares in the form of money as contended in the written statement?
3. Whether the defendant No. 1 proves that the suit is bad for non impleading of all the properties belongs to the joint family in the suit?
4. Whether the defendant No.1 proves that the suit is hit by the principle of res-judicata as contended in written statement?

5. Whether the plaintiffs prove that they are having 1/8th share each in the suit properties?
6. Whether the plaintiffs are entitled for partition and possession?
7. What order or decree?

4. The plaintiffs in order to prove their case have got examined the plaintiff No.2 as PW-1, and a independent witness as PW-2, and got marked 14 documents as Ex.P-1 to 14.

5. Likewise, the defendant No.1 has got examined his GPA holder as DW-1, and two independent witnesses as DW-2 and 3, and got marked 11 documents as Ex.D-1 to 11.

6. I have heard the arguments from both the side, and perused the entire case file.

7. The counsel for plaintiffs in support of his arguments has referred to the following citations.

1. ILR 1998 KAR. 681

Sri. Tukaram Vs. Sri. Sambhaji and others.

2. ILR 1989 KAR. 1895

Janardhan Jog Vs. Srikrishna

3. ILR 1998 KAR. 1

State of Himachal Pradesh Vs. Keshav Ram and others.

4. [2012] SCCR 44 (SC)

Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another.

5. [2018] SCCR 332 (SC)

Danamma @ Suman Surpur and another Vs. Amar and others.

8. The counsel for defendant No.1 in support of his arguments has referred to the following citation.

1. ILR 2005 KAR. 5838

Smt. Gangubai Basappa Hadapad @ Dhanakshirur and others Vs. Mahagundappa Shankrappa Hadapad @ Dhanakshirur and others.

9. I have gone through the citations referred to by the counsels for the both side parties.

10. On the basis of material available on the record, and arguments advanced by the counsels for the parties, and in the light of rulings referred to by the parties, my findings to the above issues are as follows;

Issue No.1	:	In the affirmative.
Issue No.2	:	In the negative.
Issue No.3	:	In the negative.

Issue No.4 : In the negative.
Issue No.5 : Partly in the affirmative.
Issue No.6 : In the affirmative.
Issue No.7 : As per the final order,
for the following reasons;

REASONS

11. ISSUE NO.1 AND 2:- Issue No.1 is as to that whether the plaintiffs prove that themselves and defendants constitute joint Hindu family, and suit properties are their ancestral and joint family properties?

12. Likewise, the issue No.2 is as to that whether the defendant No.1 proves that the partition among plaintiffs and defendants has taken place in the year 1981, and the plaintiffs have taken their shares in the form of money as contended in the written statement?

13. Since the issue No.1 and 2 are being inter connected to each other, in order to avoid repetition of discussion, I took them together for common discussion.

14. The plaintiffs in order to prove their case have got examined the plaintiff No. 2 as PW-1 and a independent witness as PW-2, and got marked the documents as Ex.P-1 to 14.

15. The PW-1 has filed her affidavit in lieu of her oral chief examination. The PW-1 has reiterated the contents of the plaint in her affidavit.

16. The PW-2 also has filed his affidavit in lieu of his oral chief examination. He has deposed that the plaintiffs and defendants are joint family members, and suit properties are their ancestral and joint family properties, and the plaintiffs and defendants are having joint possession and enjoyment over the suit properties, and yet no partition has taken place among the plaintiffs and defendants in relation to suit properties.

17. The plaintiffs have relied upon the documents of Ex.P-1 to 14. The Ex.P-1 is RTC of suit schedule-A-1 property standing in the name of defendant No.1. Ex.P-2 is RTC of suit schedule-A-2 property standing in the name of defendant No.2. Ex.P-3 is RTC of suit schedule-A-3 property standing in the name of defendant No.3. Ex.P-4 is RTC of suit schedule-A-4 property standing in the name of defendant No.4. Ex.P-5 is RTC of suit schedule-A-5 property standing in the joint names of the defendant No.1 to 4. Ex.P-6 is RTC of suit schedule-A-6 property standing in the joint names of the defendant No.1 to 4. Ex.P-7 is RTC of suit schedule-A-7 property standing in the name of propositus Rudrappa. Ex.P-8 is RTC of suit schedule-

A-8 property standing in the name of propositus Rudrappa. Ex.P-9 is death certificate of propositus Rudrappa. Ex.P-10 is genealogy tree related to the family of the plaintiffs and defendants. Ex.P-11 is property extract of suit schedule-B-1 property standing in the name of defendant No.3. Ex.P-12 is property certification letter in respect of suit schedule-B-2 property standing in the name of propositus Rudrappa. Ex.P-13 is property certification letter in respect of suit schedule-B-3 property standing in the name of defendant No.2. Ex.P-14 is property certification letter in respect of suit schedule-B-4 property standing in the name of defendant No.2.

18. The counsel for defendant No.1 has cross examined the PW-1 and 2, and condemned their evidence.

19. Likewise, the defendant No.1 in support of his case, has got examined his GPA holder as DW-1, and got examined two independent witnesses as DW-2 and 3, and got marked the documents as Ex.D-1 to 11.

20. The DW-1 has filed his affidavit in lieu of his oral chief examination. The DW-1 has reiterated the contents of written statement of the defendant No.1 in the affidavit.

21. The DW-2 and 3 also have filed their affidavits in lieu of their oral chief examination. They have deposed that the suit properties are related to the family of the defendants, and in the year 1981 partition has taken place among the plaintiffs and defendants, and in said partition, the plaintiffs have been given Rs. 1,00,000/- each towards their share in the suit properties, and since then, the defendants have been in possession and enjoyment of their respective share of the suit properties.

22. The defendant No.1 has relied upon the documents of Ex.D-1 to 11. The Ex.D-1 is GPA executed by the defendant No.1 in favour of his son DW-1. Ex.D-2 is ME No. 1224 in respect of suit schedule-A properties which shows that a Apasth Vatni has taken place among the defendant No.1 to 4 and their father propositus Rudrappa in the year 1981. Ex.D-3 and 4 are certified copies of plaint in OS No. 156 of 2003 which is said to have been filed by the defendant No.2 against the plaintiffs and other defendants of the present suit for the relief of partition and separate possession in respect of suit schedule-A-5 and 6 properties and suit schedule-B-1 and 2 properties. Ex.D-5 is copy of written statement filed by the defendant No.3 Ganeshappa in OS No. 156 of 2003. Ex.D-6 is judgment copy of OS No. 156 of 2003 whereby the suit filed

by the defendant No.2 Prahladappa has been dismissed. Ex.D-7 is copy of decree in OS No. 156 of 2003. Ex.D-8 is RTC of suit schedule-A-3 property. Ex.D-9 is RTC of suit schedule-A-1 property. Ex.D-10 is suit schedule-A-4 property. Ex.D-11 is RTC of suit schedule-A-2 property.

23. The counsel for the plaintiffs has cross examined the DW-1 to 3 and condemned their evidence.

24. On going through the pleadings and material available on the record, it reveals that it is not in dispute between the parties that the plaintiffs and defendants have a common propositus namely Rudrappa. It is also not in dispute that the said propositus Rudrappa had wife namely Subhadramma. It is also not in dispute that the propositus Rudrappa has died on 31-1-2004 and his wife Subhadramma has died on 8-6-2006. It is also not in dispute that the plaintiffs and defendant No.4 to 6 are daughters and defendant No.1 to 4 are sons of the propositus Rudrappa and Subhadramma.

25. Though, the defendant No.1 has denied in his written statement that the suit schedule properties are ancestral and joint family properties of the plaintiffs and defendants, but the DW-1 has clearly admitted in his evidence that the suit

properties have come to them from his grand father. The grand father of the DW-1 is none but the propositus Rudrappa. This deposition of the DW-1 clearly proves that the suit properties have come to the family of the plaintiffs and defendants from their father propositus Rudrappa.

26. Since the fact that the plaintiffs and other defendants are sisters and brothers of the defendant No.1 having been admitted by the defendant No.1 in his written statement, and since the DW-1 having admitted in his evidence that the suit properties have come to them from propositus Rudrappa, it has to be presumed that the joint family of the plaintiffs and defendants has continued in joint unless such presumption is rebutted by the defendant No.1.

27. The PW-1 and 2 have clearly deposed that the plaintiffs and defendants constitute Hindu Joint family, and suit properties are their ancestral and joint family properties, and yet no partition has taken place among the plaintiffs and defendants in respect of suit properties.

28. Since the defendant No.1 having taken contention that already partition has taken place among the plaintiffs and all the defendants, at this stage, the defendant No.1 has to prove

that the joint family of the plaintiffs and defendants has not remained in joint, and in the year 1981 partition has taken place and in that partition the plaintiffs have been given their share in the form of money of Rs.1,00,000/- each.

29. The defendant No.1 in order to prove the above contention has relied upon the oral evidence of the DW-1 to 3, and the documents of the Ex.D-1 to 11.

30. The Ex.D-1 is GPA executed by the defendant No.1 in favour of his son DW-1. This document would not prove that the partition has taken place as pleaded by the defendant No.1.

31. The Ex.D-2 is ME No. 1224 dated 14-08-1981. As per the said Ex.D-2, the propositus Rudrappa and his four sons viz the defendant No.1 to 4 have effected Apasth Vatni in respect of suit schedule-A properties, and got mutated their names in the revenue records of the suit schedule-A properties.

32. The plaintiffs are not parties to the document of Ex.D-2. If the partition had taken place among the plaintiffs and defendants in respect of suit schedule-A properties, then the names of the plaintiffs also would have been mentioned in the said Ex.D-2. Further, in the said Ex.D-2 nowhere has been

stated that the plaintiffs have been given any share either in the form of money or properties. Therefore, based upon the document of Ex.D-2, it can not be said that the plaintiffs have been given any share in the suit properties in any form.

33. Further, in Ex.D-2, only with regard to the suit schedule-A properties have been stated. But, nothing has been stated therein about the suit schedule-B properties. If actually partition had taken place among the plaintiffs and defendants, then the defendant No.1 would have produced documents to show that in relation to suit schedule-B properties also partition has taken place. But, no such documents have been produced by the defendant No.1. Hence, it can not be said that the partition has taken place among the plaintiffs and defendants by meets and bounds.

34. Further, the defendant No.1 has not produced even the Varadi based upon which the mutation of Ex.D-2 is effected. It is settled law that the mere entry in revenue records would not confer any right over the immovable properties. Hence, based upon the Ex.D-2, it can not be held that the propositus Rudrappa has effected any partition during his life time.

35.The Ex.D-3 and 4 are copies of the plaint in OS

No.156 of 2003 filed by the defendant No.2. These documents also would not prove that partition has taken place among the plaintiffs and defendants in relation to suit properties by meets and bounds in the year 1981 as pleaded by the defendant No.1.

36. The Ex.D-5 is written statement filed by the defendant No.4 in OS No.156 of 2003. This document also would not prove that partition has taken place among the plaintiffs and defendants in relation to suit properties by meets and bounds in the year 1981 as pleaded by the defendant No.1.

37. The Ex.D-6 is judgment copy of OS No.156 of 2003. In this judgment at issue No.5, it has been held that already partition has taken place among the plaintiffs and defendants of this suit in relation to their family properties in the year 2003. But, since the defendant No.1 having contended that the partition has taken place in the year 1981, this fact would not be proved by the Ex.D-6.

38. The Ex.D-7 is copy of decree in OS No.156 of 2003. This document also would not prove that the partition has taken place among the plaintiffs and defendants in the year 1981.

39. The Ex.D-8 to 11 are being RTCs of the suit properties, these documents also would not prove that the partition has taken place among the plaintiffs and defendants by meets and bound in the year 1981.

40. Further, the Ex.P-5 which is RTC of suit schedule-A-5 property, is standing in joint names of the defendants No.1 to 4. Likewise, the Ex.P-6 which is RTC of suit schedule-A-6 property, is standing in joint names of the defendants No.1 to 4. Likewise, the Ex.P-7 which is RTC of suit schedule-A-7 property, is standing in the name of the propositus Rudrappa. defendants No.1 to 4. Likewise, the Ex.P-8 which is RTC of suit schedule-A-8 property, is standing in the name of the propositus Rudrappa. Likewise, the Ex.P-12 which is document with regard to suit schedule-B-2 property, is standing in the name of the propositus Rudrappa.

41. If really partition has taken place among the plaintiffs and defendants in respect of all the properties belongs to the joint family of the plaintiffs and defendants, by meets and bounds, then the documents of Ex.P-5 to 8 and 12 would not have been in the joint names of the defendants No.1 to 4 and in the name of the propositus Rudrappa.

42. It is not in dispute that the plaintiffs have not been given any share in the suit properties. The defendant No.1 has contended that the plaintiffs have been given share in the form of money instead of the suit properties. But, the defendant No.1 has not produced any documentary evidence in this regard. Hence, without believable evidence, it can not be held that the plaintiffs have been given share in the suit properties in the form of money.

43. Further, since the defendant No.1 having not pleaded anything about the suit schedule-B properties that already partition has taken place in relation to those properties also, it clearly reveals that the defendant No.1 is impliedly admitting that no partition has taken place in relation to suit schedule-B properties. Hence, it clearly would be proved that no partition has taken place by meets and bounds among the plaintiffs and defendants in relation to all the suit properties.

44. Since the plaintiffs having not been given any share in the suit properties, and since the defendant No.1 having failed to prove that the plaintiff have been given their share in the form of money, and since the plaintiffs are not being parties to the ME No.1224, and since the defendant No.1 having not

pleaded any previous partition as to suit schedule-B properties and no partition having taken place in respect of suit schedule-B properties, and since some of the suit properties are standing jointly in the name of the defendant No.1 to 4, and since some of the suit properties are still standing in the name of the propositus Rudrappa, it would be clearly proved that no partition has taken place among the plaintiffs and defendants by meets and bounds in relation to all the suit properties.

45. Hence, in view of above observations, I hold that the plaintiffs have succeeded in proving that themselves and defendants constitute Hindu joint family and suit schedule properties are their joint family properties. Likewise, I hold that the defendant No.1 has failed to prove that partition has taken place among the plaintiffs and defendants in respect of suit properties in the year 1981 by meets and bounds as pleaded in the written statement. **Hence, I have answered issue No.1 in the affirmative and issue No.2 in the negative.**

46. ISSUE NO.3:- The defendant No.1 has taken contention that the property of CTS No. 957/A/1 situated at Ranebennur is standing in the name of the defendant No.3, and the said property is also joint family property, and likewise, the

VPC No. 100 of Anur village is also joint family property, and since those two properties having not been included in the suit by the plaintiffs, the suit of the plaintiffs is not maintainable for non-joinder of all the joint family properties.

47. Initially, the plaintiffs had not included the above properties in the plaint. But, after the defendant No.1 having taken contention as to non-including of those properties in the suit, the plaintiffs have got impleaded those properties in the suit. Hence, since the plaintiffs having got impleaded those properties in the suit subsequently, the contention of the defendant No.1 that the plaintiffs have not included the above properties in the suit and therefore the suit of the plaintiffs is not maintainable for non-joinder of all the joint family properties, would not survive for consideration. Hence, I hold that the defendant No.1 has failed to prove that the suit of the plaintiffs is not maintainable for non-joinder of all the joint family properties in the suit. **Hence, I have answered issue No.3 in the negative.**

48. **ISSUE NO.4:-** It is case of the defendant No.1 that the defendant No.2 of the present suit had filed suit in OS No. 156 of 2003 against the plaintiffs and other defendants of the present suit for the relief of partition in relation to family

properties, and the said suit has been dismissed with a finding that already partition has taken place among the members of the family, and now the plaintiffs can not once again file the suit for partition in relation to family properties, and thus the suit of the plaintiffs is hit by the principle of res-judicata.

49. The defendant No.1 in order to substantiate his above contention, has relied upon the documents of Ex.D-3 to 7.

50. The Ex.D-3 and 4 are the certified copies of the plaint in OS No. 156 of 2003. The Ex.D-3 and 4 reveal that the defendant No.2 Prahladappa had filed suit against the plaintiffs and other defendants for the relief of partition and separate possession in relation to family properties.

51. Likewise, the Ex.D-5 is written statement filed by the defendant No. 4 Ganeshappa in OS No. 156 of 2003 taking contention that on 21-05-2003 already partition has taken place in respect of family properties.

52. Ex.D-6 is copy of judgment in OS No. 156 of 2003. This document reveals that the suit in OS No. 156 of 2003 has been dismissed holding that on 21-05-2003 already partition has been taken place among the plaintiffs and defendants in

relation to that suit properties. Likewise, the Ex.D-7 is copy of decree in OS No. 156 of 2003.

53. The perusal of the documents of Ex.D-3 to 7 reveal that the plaintiffs of the present suit were placed exparte in OS No. 156 of 2003. It further reveals that the defendant No.3 and 4 of the present suit only had filed their written statement opposing the suit of OS No. 156 of 2003.

54. The further perusal of the documents of Ex.D-3 to 7 reveal that, in the suit of the OS No. 156 of 2003, the present suit schedule-A-5 and 6, and suit schedule-B-1 and 2 properties only had been included. The present suit schedule-A-1 to 4, 7 and 8 properties, and suit schedule-B-3 and 4 properties were not included in the suit of OS No. 156 of 2003. Since the present suit schedule-A-1 to 4, 7 and 8 properties, and schedule-B-3 and 4 properties are also being joint family properties, and those properties having not been included in the suit of OS No. 156 of 2003, that suit can not be said to be comprehensive suit.

55. In OS No. 156 of 2003, based upon the statement of the plaintiff (defendant No.2 of this suit) the court has held that

the partition has already taken place among the plaintiffs and defendants on 21-05-2003.

56. The defendant No.1 of the present suit has not contended in his written statement that the partition in relation to suit properties has taken place on 21-05-2003 as held in the judgment of OS No. 156 of 2003. The defendant No.1 has contended that the partition has taken place in the year 1981. The contention taken by the defendant No.1 itself reveals that the defendant No.1 himself is not with agreement that the partition has taken place on 21-05-2003.

57. Since the plaintiffs of the present suit were exparte in the OS No. 156 of 2003, and since all the joint family properties having not been included in the OS No. 156 of 2003, and the rights of share of the all legal heirs of the propositus Rudrappa having not been decided in OS No. 156 of 2003, the OS No. 156 of 2003 can not be said to be comprehensive suit binding on the plaintiffs. Since the plaintiffs are also having their right of share in the suit properties, they are entitled to get their share by filing suit. Hence, the principle of res-judicata will not be applicable to the facts and circumstances of the case on hand. Hence, I hold that the defendant No.1 has failed to

prove that the suit of the plaintiffs is hit by the principle of res-judicata. **Hence, I have answered issue No.4 in the negative.**

58. ISSUE NO.5:- The plaintiffs have contended that they are entitled for 1/8th share each in the suit property.

59. The plaintiffs have clearly pleaded in their plaint that the suit properties have come to them through their ancestors. Likewise, the counsel for the plaintiffs at the time of cross examination of the DW-1 has suggested that the suit properties have come to the propositus Rudrappa from his grand father. Hence, by the pleadings pleaded in the plaint and the suggestion made by the counsel for the plaintiffs it clearly would be proved that the plaintiffs have admitted that the suit properties are ancestral properties.

60. Now the question would arise that whether the plaintiffs are entitled for equal share with the defendants in the suit properties or not.

61. It is not in dispute that the plaintiffs and defendant No.5 and 6 are daughters and the defendant No.1 to 4 are sons of the propositus Rudrappa. It is also not in dispute that the propositus Rudrappa has died on 31/1/2004. As per section 6 of

amended Hindu Succession Act, the daughter in order to become a coparcner along with her father and brothers, her father and herself should be alive as on the date of commencement of amending Hindu Succession Act. The date of commencement of Amending Hindu Succession Act is 9/9/2005. In the instant case, the father of the plaintiffs who is propositus Rudrappa has died on 31/1/2004. Hence, the father of the plaintiffs having died prior to the date of commencement of amending Hindu Succession Act, the plaintiffs can non be said to be coparceners with their father propositus Rudrappa and brothers the defendant No.1 to 4. Prior to the date of commencement of amending Hindu Succession Act, the daughters were entitled for only notional partition. Hence, the plaintiffs are being daughters of the propositus Rudrappa and the said propositus Rudrappa having died prior to 9/9/2005, the plaintiff are entitled for notional partition in the share of the propositus Rudrappa.

62. The defendant No.1 to 4 are being sons of the propositus Rudrappa, they only would be coparceners with the propositus Rudrappa at the time of his death. The propositus Rudrappa and the defendant No.1 to 4 would be entitled for equal shares in the suit properties. The suit properties will have

to be divided into 5 equal shares among the propositus Rudrappa and the defendant No.1 to 4. Only in 1/5th share of the propositus Rudrappa, the plaintiffs would be equally entitled for share in the suit properties along with the defendants. Since the propositus Rudrappa is having total 8 children, the 1/5th share of the propositus Rudrappa will have to be equally divided into 8 parts. The said 8 parts will have to be distributed among the plaintiffs and the defendants equally. Hence, the plaintiffs will get 1/8 share each in the 1/5 share of the propositus Rudrappa. Thus the plaintiffs would get total 1/40th share each in the suit properties. Likewise, the defendant No.5 and 6 are also being daughters of the propositus Rudrappa, they are also entitled for 1/40th share each in the suit properties. Likewise, the defendant No.1 to 4 are being sons of the propositus Rudrappa, they are entitled for 9/40th share each in the suit properties.

63. Hence, in view of above observations, I hold that the plaintiffs are not entitled for 1/8th share each, but they are entitled for 1/40th share each in the suit properties. **Hence, I have answered issue No.5 partly in the affirmative.**

64. ISSUE NO.6:- The plaintiffs have proved that themselves and the defendants constitute Hindu joint family

and the suit properties are their ancestral and joint family properties. Likewise, the plaintiffs have proved that they are having 1/40th share each in the suit properties. Hence, the plaintiff are entitled for partition and separate possession of their respective share in the suit properties. There is no impediment to the plaintiffs for partition and to get separate possession of their respective share in the suit properties. Hence the plaintiffs are entitled for partition and separate possession of their respective share in the suit properties. **Hence, I have answered the issue No.6 in the affirmative.**

65. ISSUE NO.7:- For the reasons assigned on issue No.1 to 6 and findings given thereon, I proceed to pass following order;

ORDER

The suit of the plaintiffs is partly decreed with costs.

In the result, it is held that the plaintiff No.1 and 2 are entitled for 1/40th share each in the suit schedule properties.

Likewise, it is held that the defendant No.1 to 4 are entitled for 9/40th share each in the suit schedule properties.

Likewise, it is held that the defendant No.5 and 6 are entitled for 1/40th share each in the suit schedule properties.

Draw preliminary decree accordingly.

(Dictated to the steno, typed by her, corrected and then pronounced by me in the open court on this 26th day of September 2019)

(Ibrahim M. Mujawar)
Senior Civil Judge & JMFC.,
Byadgi.

Annexures:

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS:

PW.1	:	Rukmini W/o Jakanachari Arkachari.
PW.2	:	Erappa Kariyappa Basannanavar.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFFS:

Ex.P.1	:	RTC of Sy. No. 140/1+2A/2D.
Ex.P.2	:	RTC of Sy. No. 140/1+2A/2A.
Ex.P.3	:	RTC of Sy. No. 140/1+2A/2B.
Ex.P.4	:	RTC of Sy. No. 140/1+2A/2A/K.
Ex.P.5	:	RTC of Sy. No. 8.
Ex.P.6	:	RTC of Sy. No. 9.
Ex.P.7	:	RTC of Sy. No. 12.
Ex.P.8	:	RTC of Sy. No. 7.
Ex.P.9	:	Death certificate of Rudrappa Kammar.

Ex.P.10 : Genealogy tree.
Ex.P.11 : Property extract.
Ex.P.12 to 14 : Property certification letters.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:

DW.1 : Raghavendra S/o Bhagavantappa
Kammar.
DW.2 : Malleshappa S/o Chandrashekharappa
Katenahalli.
DW.3 : Erappa S/o Shiddappa Koti.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANTS:

Ex.D.1 : GPA.
Ex.D.2 : ME No. 1224.
Ex.D.3 & 4 : Certified copy of plaint in OS No.
156/03.
Ex.D.5 : Copy of written statement in OS No.
156/03.
Ex.D.6 : Judgment copy of OS No. 156 of 2003.
Ex.D.7 : Copy of decree in OS No. 156 of 2003.
Ex.D.8 : RTC of Sy. No. 140/1+2A/2B.
Ex.D.9 : RTC of Sy. No. 140/1+2A/2D.
Ex.D.10 : RTC of Sy. No. 140/1+2A/2A/K.
Ex.D.11 : RTC of Sy. No. 140/1+2A/2A.

Sd/-
Senior Civil Judge & JMFC.,
Byadgi.