

Govt. of Kar.,
SUIT.

TITLE SHEET FOR JUDGMENT IN

Form No.9 (Civil) Title Sheet for Judgment in suit (R.P.91)	<u>IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC., HANGAL.</u>
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Present : **Shri. BALAPPA APPANNA JARAGU,**
B.Sc., LL.M.,
Senior Civil Judge & JMFC., Hangal.

ORIGINAL SUIT No.208/2017 (Old No.68/2011)
DATED THIS THE 12th DAY OF JANUARY 2018

PLAINTIFFS: 1. Pushpavati @ Pushpa W/o Rajappa
 Hulmani
 Age: 38 years, Occ: Household &
 Agriculture,
 R/o: Tq: Hanagal.

2. Kum Mahesh S/o Rajappa Hulmani,
 Age: 18 years, Occ: Student.

3. Madu @ Shivaraj S/o Rajappa Hulmani,
 Age: 23 years, Occ: Student.

4. Manohar @ Mohan S/o Rajappa Hulmani,
 Age: 21 years, Occ: Student.

All are R/o Hanagal, Tq: Hanagal.

(Plaintiffs by Sri. R.U.P, Adv.)

// Vs. //

DEFENDANTS: 1. Shekhappa S/o Mailarappa Hulmani,
 Age: 58 years Occ: Agriculture,
 R/o Ganganagar, Tq: Hangal, Dist: Haveri.

2. Nagaratna W/o Rajappa Hulmani
(Who falsely claiming wife of Rajappa Hulmani)
Age: 30 years, Occ: Household.
R/o: Ganganagar, Tq: Hangal, Dist: Haveri.
3. Mallari S/o Rajappa Hulmani
(Who falsely claiming son of Rajappa Hulmani)
Age: 9 years, Occ: Student.
R/o: Ganganagar, Tq: Hangal, Dist: Haveri.
4. Manjunath S/o Rajappa Hulmani
(Who falsely claiming son of Rajappa Hulmani)
Age: Major, Occ: Student.
R/o: Ganganagar, Tq: Hangal,
Dist: Haveri. [Defendant No.3 and 4 are minor
since represented by their mother]
5. Rukmanevva W/o Mahadevappa Hotanahalli.
Age: 60 years, Occ: Household.
R/o: Suraleshwar, Tq: Hangal,
Dist: Haveri.
6. Sumitra W/o Nagappa Kondoji,
Age: 52 years, Occ: Household.
R/o: Sheshagiri, Tq: Hangal,
Dist: Haveri.
7. Uma W/o Narayanappa Mattur,
Age: 50 years, Occ: Household.
R/o: Near Udashi Kalyana Mantapa Hanagal,
8. Savitramma W/o Basavaraj Sangur,
Age: 55 years, Occ: Household.
R/o: Adur, Tq: Hangal,
Dist: Haveri.

9. Puttappa S/o Neelappa Kabbur,
Age: 60 years, Occ: Agriculture.
R/o: Salageri, Tq: Hangal,
Dist: Haveri.
10. Shakunatala W/o Guddappa Goyikayi,
Age: 30 years, Occ: Household.
R/o: Ganganagar, Hanagal, Tq: Hangal,
Dist: Haveri.
11. Kalavati W/o Parashuram Mulimani,
Age: 40 years, Occ: Household.
R/o: Kallahakkala, Oni, Hanagal, Tq:
Hangal,
Dist: Haveri.
12. Jayalaxmi W/o Iranna Kalasad,
C/o Iranna Kalasad Doctor.
Age: 35 years, Occ: Household.
R/o: Tq: Hangal, Dist: Haveri.
13. Kumar S/o Laxman Kwati @ Koti,
Age: 30 years, Occ: Business.
R/o: Near Kallabhavi Hanagal, Tq: Hangal,
Dist: Haveri.
14. Basavaraj S/o Laxmanappa Kwati @ Koti,
Age: 26 years, Occ: Business.
R/o: Near Kallabhavi, Hanagal, Tq: Hangal,
Dist: Haveri.
15. Shivappa Bhimappa Mangannanavar,
Age: 50 years, Occ: Agriculture.
R/o: Araleshwar, Tq: Hangal,
Dist: Haveri.
16. Shankrappa S/o Chandrashekharappa
Aladakatti,
Age: 50 years, Occ: Agriculture.
R/o: Vivekananda Nagar, Tq: Hangal,
Dist: Haveri.

17. Mallappa Yamanappa Koppal,
Age: 55 years, Occ: Teacher.
R/o: Ganganagar, Hanagal, Tq: Hangal,
Dist: Haveri.
18. Chandrappa Ningappa Chikkannanavar,
Age: 60 years, Occ: Agriculture.
R/o: Salageri Oni, Hanagal, Tq: Hangal,
Dist: Haveri.
19. Renuka W/o Shekappa Hulmani,
Age: 35 years, Occ: Household.
R/o: Ganganagar Hanagal, Tq: Hangal,
Dist: Haveri.
20. Ashok Maruti Ilagera,
Age: 35 years, Occ: Business.
R/o: Udashi Kalyana Mantapa, Tq: Hangal,
Dist: Haveri.
21. Prabhavati W/o Sadevappa Araleshwar
@Kannakkanavar, W/o Mallappa
Hullakkanavar
Teacher Hanagal.
Age: 40 years, Occ: Business.
R/o: Vivekananda Nagar, Tq: Hangal,
Dist: Haveri.
22. Suresh Gutteppa Araleshwar,
Age: 40 years, Occ: K.E.B.Employee.
R/o: Malagi, Tq: Mundagod,
Dist: Haveri.
23. T.S.Shashikala W/o T.B.Shashidhar,
C/o: T.B.Shashidhar KSRTC Conductor,
Age: 40 years, Occ: Household.
R/o: Vivekananda Nagar, Tq: Hangal,
Dist: Haveri.
24. Chandrappa S/o Bhimappa Agasibagil@
Totager, Age: 35 years, Occ: Agriculture.
R/o: Kamatageri Oni, Tq: Hangal,

Dist: Haveri.

25. Devappa Mallappa Aladakatti
Age: 50 years, Occ: Agriculture.
R/o: Near Mailaradevara Gudi, Tq: Hangal,
Dist: Haveri.
26. Vijaya W/o Hanumantappa Kadlikoppa
Age: 68 years, Occ: Household.
R/o: Alavagodi Tq; Navalagund,
Dist: Dharwad.
27. (Fakkirappa S/o Mailareppa Hulmani)
Died represented his Lr's.
Laxmibai W/o Fakkirappa Hulmani.
Age: 55 years, Occ: Household.
R/o: Ganga Nagar Hanagal, Tq: Hangal,
Dist: Haveri.
28. Uma W/o Siddppa Kadlikoppa.
Age: 32 years, Occ: Household.
R/o: Ganga Nagar Hanagal, Tq: Hangal,
Dist: Haveri.
29. Ravichandra S/o Fakkirappa Hulmani.
Age: 30 years, Occ: Agriculuture.
R/o: Ganga Nagar Hanagal, Tq: Hangal,
Dist: Haveri.
30. Shridevi @ Nirmala W/o Honnappa Barki.
Age: 28 years, Occ: Household.
R/o: Adur, Tq: Hangal,
Dist: Haveri.
31. Netravati D/o Fakkirappa Hulmani.
Age: 24 years, Occ: Household.
R/o: Ganga Nagar Hanagal, Tq: Hangal,
Dist: Haveri.
32. Devika D/o Fakkirappa Hulmani.
Age: 20 years, Occ: Household.

R/o: Ganga Nagar Hanagal, Tq: Hangal,
Dist: Haveri.

**[Defendants No.1 & 19 are
Sri.N.T.N- Adv]
[Defendants No.2 to 4 are Sri.D.G.T- Adv]
[Defendants No.6 to 8 are Sri.V.B.B.-Adv]
[Defendants No.5 by Sri.C.S.L.-Adv]
[Defendants No.16 by Sri.C.I.P.-Adv]
[Defendants No.10 to 15,17,18,20,22,
24 and 25 by Sri.F.B.M.-Adv]
[Defendants No.16 by C.I.P.-Adv]
[Defendants No.26 to 32 by Sri.A.R.P.-Adv]
[Defendants No.21 & 23 dismissed]
[Defendants No.9 placed ex-parte.]**

Date of Institution of Suit : 23.04.2011
Nature of Suit : Suit for partition and separate Possession.
Date of commencement of recording of evidence : 12.02.2016
Date of pronouncement of Judgment. : 12.01.2018
Total Duration : Year/s Month/s Day/s
06 08 19.

J U D G M E N T

This is a suit filed by the plaintiffs against the defendants for relief of partition and separate possession of their 1/2 share in suit schedule mentioned properties by metes and bounds.

2. The case of the plaintiffs' in brief is as under:

That, the plaintiffs No.1 to 4 claims to be legal heirs of deceased Rajappa Mailarappa Hulmani. Propositus of family of plaintiffs Mailarappa had wife by name Siddavva. Both are no more. Propositus Mailarappa had three sons by name Fakkirappa, defendant No.1 herein by name Shekhappa and deceased Rajappa. Likewise propositus Mailarappa had six daughters by name Rukminavva, who is defendant No.5 herein, Vijaya, Sumitra, who is defendant No.6 herein, Uma, who is defendant No.7 herein, Savitramma, who is defendant No.8 herein and deceased Ratnavva. Vijaya and Fakkirappa were given in adoption to family of brother of Mailarappa, as such they are not made as parties to the present suit. Ratnavva who is one of daughter of Mailarappa had died issueless. The plaintiff No.1 is wife of deceased Rajappa, Plaintiffs No.2 to 4 are children of deceased Rajappa. The Rajappa Mailarappa Hulmani died on 24.10.2014. The plaintiffs are the only legal heirs of deceased Rajappa. The defendant No.2 falsely claiming she is wife of deceased Rajappa. Likewise defendants No.3 and 4 are also falsely

claiming they are children of deceased Rajappa through his wife defendant No.2 herein. The defendants No.2 to 4 are no way related to family of deceased Rajappa. As such, they have no right or interest in suit properties, which are an ancestral properties or plaintiffs and defendants No.1, defendants No.5 to 8. The defendant No.1 colluding with defendants No.2 to 4 has illegally entered names of defendants No.2 to 4 to suit properties. The defendants by taking undue advantage of illegal entries of their names of suit property have illegally sold portion of suit properties to the defendants No.9 to 23. Likewise defendants No.1 and 2 have executed an agreement of sale in respect of portion of suit properties in favor of defendants No.24 and 25 and other defendants. Such sale deeds or an agreement of sale in respect of portion of suit properties executed by defendants No.1 and 2 in favour of defendants No.9 to 25 are not binding on the plaintiffs. The plaintiffs and defendant No.1 alone got right or interest over suit properties. The defendants No.5 to 8 being the daughters of propositus Mailarappa since date of their marriage they are residing in their respective matrimonial houses, they are made as

formal parties to the suit. The plaintiffs and defendant No.1 are in joint possession and enjoyment of suit properties. When defendants have tried to defraud rights of plaintiffs over suit schedule properties and defendant No.1 has refused to effect partition so as to give share of plaintiffs, occasion arose for the plaintiffs to file present suit for relieves as prayed in plaint.

3. In response to service of suit summons, the defendants No.1 to 8, 10 to 20, 22, 24 to 32 have tendered their appearance before the Court through their respective counsels. Even after service of suit summons, the defendant No.9 has not tendered his appearance before the Court and contested the case, consequently he placed ex-parte. Suit against defendants No.21 and 23 is dismissed for non taking proper steps against them. The defendant No.1 has filed written statement admitting description of suit properties and genealogy of their family as mentioned in plaint. It is also contended by defendant No.1 that, Vijaya and Fakkirappa who are daughter and son of propositus Mailarappa were given in adoption to family of brother of Mailarappa. It is also admitted by defendant No.1, the

plaintiffs are the legal heirs of deceased Rajappa. It is specifically denied by defendant No.1 that, he colluding with defendant No.2 and revenue authorities behind the back of plaintiffs illegally got entered his name and names of defendants No.2 to 4 to the suit properties. It is specific contention of defendant No.1 that, during lifetime of Rajappa itself portion of suit properties were sold to defendants No.9 to 29. The defendant No.1 has further contended, he never denied share of plaintiffs in suit properties. False case has been filed by the plaintiffs, without their being any cause of action to file present suit. On these grounds, it is requested by the defendant No.1 to dismiss the suit filed by the plaintiff with cost. By filing memo defendants No.19 has adopted written statement of defendant No.1.

4. The defendant No.2 has filed written statement contending that, suit filed by the plaintiffs is false, frivolous, vexatious and same is not maintainable under law. It is specifically contended by defendant that, propositus Mailarappa had wife by name Siddavva. Mailarappa had 6 daughters and 3 sons. One of son of Mailarappa by name Rajappa is no more. Rajappa earlier had married one Pushpa.

Pushpa had left company of Rajappa and she started to reside with someone else in Mangalore. As per customs prevailing in their community Pushpa was divorced by the Rajappa. Thereafter the Rajappa had married defendant No.2 herein. Out of relationship in between Rajappa and defendants No.2, the defendants No.3 and 4 are born. Genealogy shown by plaintiffs is incorrect and incomplete. Suit of the plaintiffs is bad for non joinder of necessary parties. Vijaya and Fakkirappa are necessary parties to the present suit. The plaintiff No.1 colluding with defendant No.1 had sold 1 acre of land to defendants No.9 to 25 as such plaintiffs have no right or interest in suit properties. At the time of sale the property the plaintiff No.1 has acted as guardian of plaintiffs No.2 to 4, who were minors. The plaintiffs No.1 is also sold portion of suit property in favor of defendants No.9 to 23. Though plaintiffs are no way related to suit properties unnecessarily they have filed present false suit. On these grounds, it is requested by the defendant No.2 to dismiss the suit filed by the plaintiffs with cost.

5. The defendant No.6 has filed written statement. The defendants No.7 and 8 have adopted written statement of

defendant No.6 by filing necessary memo. These defendants have admitted suit properties are ancestral properties. They have also admitted genealogy of their family as mentioned in plaint. It is also admitted by defendants, the plaintiffs are legal heirs of deceased Rajappa. They have specifically contended they got share in suit schedule properties. They did not know about sale transactions entered between defendant No.1 and defendants No.9 to 23. On these grounds, it is requested by the defendants No.6 to 8 to allot their respective share in suit properties. On the other hand other contesting defendants as mentioned above even after sufficient opportunities have not filed written statements on their behalf and contested the case.

6. On the basis of the pleadings of contesting parties to the suit, the following issues have been framed by my pre-decessor in office, which are as follows:

ISSUES.

1. Whether plaintiffs prove that, the suit properties are ancestral joint family properties of plaintiffs and defendants No.1, 5 to 8?
2. Whether plaintiffs prove that, they are together entitled for $\frac{1}{2}$ share in the suit property?

3. Whether defendants prove that, suit of the plaintiffs is bad for non joinder of necessary parties?
4. Whether defendants No.2 to 4 prove that, plaintiff No.2 is not having any rights over the suit properties as she has left family of Rajapa and is living adulterous life with other person?
5. Whether the plaintiffs are entitled for relief sought for?
6. What order or decree?.

7. In support of the case of the plaintiffs, the plaintiff No.1 has been examined as PW.1. In support of oral evidence, the plaintiffs have produced documents which are got marked as Ex.P.1 to Ex.P.14. Whereas defendant No.2 has been examined as DW.1. Ex.D.1 to Ex.D.6 got marked on behalf of defendants.

8. Heard the arguments of counsel for plaintiffs and defendants. Perused the records placed before the court.

9. My answers to the above issues are as follows:

Issue No.1 : Partly in the Affirmative.

Issue No.2 : Partly in the Affirmative.

Issue No.3 : In the Negative.

Issue No.4 : In the Negative.

Issue No.5 : Partly in the Affirmative.

Issue No.6 : As per final order, for the following:

R E A S O N S

10. Issue No.1 and Issue No.4:- As these issues are inter related to each other, involve common appreciation of facts and evidence on record, findings on one issue are bearing on other issue, hence in order to avoid repetition of facts and convenience sake, these issues are taken together for common discussion.

11. On proper appreciation of pleadings and material on record, absolutely there is no dispute that, suit schedule mentioned properties are joint family properties of plaintiffs and defendants No.5 to 8. The defendants No.1 and 6 have filed their written statement. Written statement filed by defendant No.6 is adopted by defendants No.7 and 8 by filing memo. These contesting defendants have admitted the pleadings of plaintiffs as mentioned in para 7 of the plaint.

12. The plaintiffs have stated in para 7 of the plaint that, suit schedule mentioned properties are ancestral properties of their family, originally these properties were belong to propositus Mailarappa.

13. It is well accepted propositions of law that, admissions in pleadings are standing higher footing than

admission of parties in their evidence. In view of admission of defendants No.1, 6 to 8 in their written statement, wherein they have admitted suit properties are joint family and ancestral properties of plaintiffs and themselves, without there any hesitation right conclusion can be arrived that, these suit properties are originally belong to propositus Mailarappa.

14. Genealogy of family of plaintiffs and defendants No.1, 5 to 8 is produced in para 3 of the plaint. As could be seen in genealogy, the propositus Mailarappa had wife by name Siddavva. Both are no more. Mailarappa got three sons and six daughters. The plaintiffs herein are claiming as wife and children of deceased Rajappa, who is one of son of propositus Mailarapa.

15. It is specifically pleaded in plaint and same is deposed by P.W.1 before the Court, persons by name Vijaya and Fakkirappa, who are also children of propositus Mailarapa were given in adoption to family of brother of Mailarappa.

16. Fact to be noted here that, the defendant No.2 in her written statement has denied and disputed said fact. It is

pertinent to note here that, other contesting defendants No.1, 6 to 8 in their written statement have admitted that, Vijaya and Fakkirappa were given in adoption to the family of brother of propositus Mailarappa. No doubt adoption deed pertains to Vijaya and Fakkirappa not produced before the Court but in view of admission of defendants No.1, 6 to 8, who are brother and sisters of Vijaya and Fakkirappa, wherein they have clearly admitted in their written statement these persons were given in adoption to another family, it can be presumed that, Vijaya and Fakkirappa who are also legal heirs of propositus Mailarappa were given in adoption to another family.

17. As per Sec.12 of Hindu Adoption and Maintenance Act, from the date of valid adoption, adopted child becomes the member of adoptive family and snaps all his relationship with its biological family. Hence adopted children Vijaya and Fakkirappa who are already given in adoption to another family are not entitle for any share in suit properties.

18. As a abundant caution, it is made very much clear that, in case these legal heirs of propositus Mailarappa, who are Vijaya and Fakkirappa are disputing their adoption and

they intended to claim their share in suit properties as legal heirs of Mailarappa, Judgment and Decree passed in present suit may not bind on them, as they are not parties to the present suit.

19. The plaintiffs are claiming that, they are legal heirs of deceased Rajappa. Death certificate of Rajappa has been produced before the Court as per Ex.P.5. As per contents of death certificate, Rajappa died on 24.10.2004. The plaintiff No.1 is claiming that, she is legally wedded wife of Rajappa. The plaintiffs No.2 to 4 are the children of Rajappa through his wife who is plaintiff No.1.

20. The defendants No.2 to 4 are contending that, first wife of Rajappa by name Pushpa, after her marriage with Rajappa had developed illicit relationship with someone. As such she left the company of Rajappa and started to reside in Mangalore with her paramour. As such Rajappa has divorced her wife Pushpa in the presence of panchas as per customs prevailing in their community and thereafter he married defendant No.2 herein. Out of wedlock of defendant No.2 and deceased Rajappa, these defendants No.3 and 4 are born. Though plaintiffs are aware of all these facts,

intentionally not mentioned these defendants No.2 to 4 as legal heirs of deceased Rajappa in family genealogy.

21. It is material to note here that, defendants No.6 to 8, who are the sisters of Rajappa and defendant No.1 herein, who is Shekhappa, in their written statement have admitted that, plaintiffs are the legal heirs of deceased Rajappa.

22. The defendant No.2 has been examined before the Court as D.W.1. In her cross examination has clearly admitted, these plaintiffs No.1 to 4 are legal heirs of deceased Rajappa. It is further admitted by defendant No.2 in her cross examination that, after her marriage with Rajappa she came to know that, she is second wife of Rajappa.

23. In view of evidence of D.W.1 as mentioned above, coupled with contents of written statement of defendants No.6 to 8, who are admitted these plaintiffs are legal heirs of deceased Rajappa, it can be held that, the plaintiffs have proved their relationship as legal heirs of deceased Rajappa.

24. In addition, the plaintiffs have produced birth certificate of plaintiff No.2 as per Ex.P.6, birth certificate of plaintiff No.3 is produced as per Ex.P.7 and birth certificate of

plaintiff No.4 is produced as per Ex.P.8. All these documents issued by public authority, name of Rajappa Hulamani is mentioned as father of these plaintiffs No.2 to 4. Likewise in these documents name of their mother is shown as Pushpavati, who is plaintiff No.1 herein.

25. Likewise school certificates issued by school authorities pertains to plaintiffs No.2 and 3 are produced as per Ex.P.9 and Ex.P.10 respectively. In these documents also, name of father of plaintiffs No.2 and 3 is mentioned as Rajappa Hulamani.

26. The defendants No.2 to 4 in order to establish their relationship with deceased Rajappa have produced school certificate of defendant No.3 as per Ex.D.1. In said document name of father of defendant No.3 is shown as Rajappa Hulamani. Likewise school certificate of defendant No.4 is produced as per Ex.D.2. In said document also name of father of defendant No.4 is mentioned as Rajappa Hulamani.

27. Identity card issued by election commission of India pertains to defendant No.2 is produced as per Ex.D.3. In said document the name of husband of defendant No.2 is

mentioned as Rajappa Hulamani. Adhar card pertains to defendants No.2 to 4 produced as per Ex.D.4 to Ex.D.6.

28. It is specific contention of defendants No.2 to 4 and same is deposed by D.W.1 before the Court, as plaintiff No.1 had left company of Rajappa and she started to reside in Mangalore with her paramour, the deceased Rajappa had married defendant No.2 herein. According to defendants No.2 to 4 Raajapa in the presence of panchas had divorced plaintiff No.1, there after he married defendant No.2 herein.

29. It is worth to note here that, admittedly Hindu Marriage Act was codified during the year 1955 itself. Even assuming for a moment such customary practice of effecting divorce was prevailing in his community, whether such customary practice of divorce is valid after coming into force of Hindu Marriage Act 1955 or not has to be looked into.

30. After coming into force of Hindu Marriage Act 1955 under what circumstances, how divorce between parties can be effected and its effect after divorce are elaborately enumerated in Sec.11 to 15 of Hindu Marriage Act.

31. At the same time as per Sec.4 of Hindu Marriage Act 1955 wherein it is stated, A) any text rule or interpretation of

Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act: B) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

32. In view of clear provisions as mentioned above, even there was such customary practice of divorcing in family or community of Rajappa, such practice is inconsistent with provisions as contained in Hindu Marriage Act 1955. Hence same is not legal or valid one. Once contention of these defendants are not acceptable as same has no force of law, for all practical purpose, it can be held that, till today the plaintiff No.1 is legally wedded wife of Rajappa. Likewise other plaintiffs No.2 to 4 are the children of Rajappa thorough his legally wedded wife Pushpa.

33. It is material to note here that, records of rights pertains to suit properties are produced as per Ex.P.1 to 3. In these records of rights names of defendants No.2 to 4 along

with other joint family members shown as owners and occupiers of suit properties.

34. Fact to be noted here that, names of these defendants No.2 to 4 in respect of suit properties effected as per M.R.No.264/2004-2005 which was certified on 21.03.2005. The P.W.1 in her cross examination has stated it came to her knowledge that, defendant No.1 colluding with defendant No.2 has created revenue records pertains to suit properties. It is further stated by P.W.1 that, when she enquired defendant No.1 about who are these defendants No.2 to 4 at that time, the defendant No.1 has informed they are wife and children of deceased Rajappa.

35. The P.W.1 in her examination in chief has deposed the defendant No.1 colluding with defendant No.2 has entered their names to suit property and taking undue advantage of the entries of their names to suit properties have sold portion of suit schedule properties to defendants No.9 to 23.

36. Fact to be noted here that, the D.W.1 in her examination in chief at para 4 has deposed the plaintiff No.1 has also sold about 1 acres of land in total extent of

R.S.No.330/B in favour of defendants No.9 to 25. This fact is not denied by plaintiff No.1.

37. In view of portion of property in R.S.No.330/B sold by plaintiff No.1 as well as defendant No.2, contents of Ex.D.1 to Ex.D.6 coupled with non producing of any documents by the plaintiff to show she resided with deceased Rajappa, such as ration card, voter list etc., safe inference can be drawn that, the deceased Rajappa and defendant No.2 have resided under same roof and out of their relationship, these defendants No.3 and 4 are born.

38. As already discussed above there is no legal material on record to show the Rajappa had divorced plaintiff No.1. Such being the real facts, the defendant No.2 cannot be construed as legally wedded wife of deceased Rajappa. The children born out of relationship in between Rajappa and defendant No.2, at the most they are considered as illegitimate children of Rajappa through defendant No.2 herein.

39. Now point for consideration is whether these defendants No.2 and 3 being illegitimate children of Rajappa, whether they got share in suit properties are not? **The Hon'ble Supreme Court in case of *Revenasiddappa v. Mallikarjun*, reported**

in **(2011) 11 SCC 1**, wherein it is held that, when the amended Act, removed the stigma of illegitimacy from the children of void or voidable marriages and having regard to the concept of legitimacy of the child, with the changing socio-economic norms and values and having regard to the equity of the statute and Articles 39(f) and 300-A of the Constitution of India, has referred the issue, to a larger Bench of the Apex Court, as to whether, such children born of void or voidable marriages are also entitled to rights in the ancestral properties also. As there is subsequent decision which has contra view as expressed in above decision, ratio laid down in above decision hold good till today.

40. In view of ratio laid down in above decision, the defendants No.3 and 4 are also entitled for share in suit schedule properties in the share of deceased Rajappa. Such being the real facts, the plaintiffs are not permitted to contend they themselves, defendants No.1, 5 to 8 are the only legal heirs of propositus Mailarappa and suit schedule properties are only their ancestral and joint family properties. **Hence I answer Issue No.1 Partly in the affirmative and Issue No.4 in the Negative.**

41. Issue No.3:- The defendant No.2 has taken specific contention that, suit is bad for non joinder of necessary parties.

According to contention raised by defendants No.2 to 4 Vijaya and Fakkirappa are also necessary parties to the present suit.

42. On the other hand, the plaintiffs have pleaded these Vijaya and Fakkirappa were already given in adoption to another family. Such fact is admitted by defendant No.1, defendants No.6 to 8 who are brother and sister of Vijaya and Fakkirappa.

43. As already discussed above, in case of these persons are disputing their contention and they are claiming, they are also legal heirs of deceased Mailarappa, Judgment and Decree passed in present suit not binding on them as they are not parties to the present suit.

44. In view of admitted facts, if it is accepted these Vijaya and Fakkirappa have already given in adoption, from date of adoption they have no right in properties of their genetic father. Hence contention of defendants No.2 these Vijaya and Fakkirappa are also necessary parties to the present suit cannot be acceptable one.

45. It is specifically pleaded in plaint that, another daughter of propositus Mailarappa by name Ratnavva died issueless. This fact is admitted by other contesting defendants.

It is not case of other contesting defendants Ratnavva had left with her legal heirs. Such being the material on record the contention of defendant No.2 that, suit is bad for non joinder of necessary parties cannot be sustainable one. **Hence I answer issue No.3 in the Negative.**

46. Issue No.2 and 5:- As these issues are inter related to each other, involve common appreciation of facts and evidence on record, findings on one issue are bearing on other issue, hence in order to avoid repetition of facts and convenience sake, these issues are taken together for common discussion.

47. As per pleadings and evidence on record it is not in dispute that, propositus Mailarappa died long back. Wife of Mailarappa by name Siddavva was also died long back. It is not case of either all parties the propositus Mailarappa alive on 09.09.2005, when amendment to Sec.6 of Hindu Succession Act, 2005 came in to force. Hence the daughters of Mailarappa who are defendants No.5 to 8 are not entitle for equal share to that of sons of Mailarappa. They are entitle for only notional partition.

48. If it is presumed that, just prior to death of propositus Mailarappa there was partition effected, deceased Mailarappa and his son Shekhappa, who is defendant No.1 and deceased Rajappa are only the co-parceners. Hence Mailarappa, defendant No.1 herein Shekhappa and deceased Rajappa are entitled for $1/3^{\text{rd}}$ share each in suit schedule mentioned properties. $1/3^{\text{rd}}$ share that may be allotted deceased Mailarappa again divided in between all his legal heirs, who are defendant No.1, deceased Rajappa, defendants No.5 to 8. If that is so each will get $1/18^{\text{th}}$ share of Mailarappa.

49. The Rajappa will get $1/3^{\text{rd}} + 1/18^{\text{th}} = 7/18^{\text{th}}$ share in suit schedule mentioned properties by metes and bounds. The defendant No.1 will get $1/3^{\text{rd}} + 1/18^{\text{th}} = 7/18^{\text{th}}$ share in suit schedule mentioned properties by metes and bounds. The defendants No.5 to 8 being the daughters of propositus Mailarappa they will get $1/18^{\text{th}}$ share each in suit schedule properties by metes and bounds.

50. There is material on record that, these defendants No.6 to 8 have filed compromise petition and thereby they have given up their share in suit properties in favour of plaintiff No.1.

51. The plaintiff No.1 to 4 and defendants No.3 and 4 they are entitled for equal share in share of Rajappa. If that is so, $7/18^{\text{th}}$ share of Rajappa in suit schedule properties has to be divided equally in between plaintiffs No.1 to 4, defendants No.3 and 4 equally. If that is so each will get $7/108^{\text{th}}$ share each in suit schedule property by metes and bounds.

52. As during pendency of suit as per compromise petition filed these defendants No.6 to 8 they have given up their shares in suit properties to plaintiff No.1, the plaintiff No.1 entitled for $7/108 + 3/18 = 25/108$ share in suit properties by metes and bounds.

53. The plaintiffs No.2 to 4, defendants No.3 and 4 are entitled for $7/108$ share each in suit properties by metes and bounds.

54. It is material to note here that, names of defendants No.9 to 32 is shown as purchaser of portion of suit properties. As per evidence of P.W.1 and D.W.1 coupled with pleadings of parties, it is averred that, gunta wise property sold in favour of defendants No.9 to 25 and some agreement of sale were executed in favour of other defendants. Though except defendants No.9, 21 and 23, other purchasers who have

appeared before the Court, they have not contested the case. Further these defendants have not produced sale deed executed in respect of suit properties in their favour. It is material to note here that, sale of agricultural property below 10 guntas is not allowed under law. The P.W.1 as well as D.W.1 have stated before the Court gunta wise property sold to purchasers who are defendants No.9 to 32. Even there is no material on record to show, suit property or portion purchased by these defendants No.9 to 32 is converted for non agricultural purpose. Such being the real facts, alleged sale deed said to have been executed by either plaintiff No.1, defendants No.1 and 2 in favour of defendants No.9 to 32 have no force of law, they are against the law. Hence the defendants No.9 to 32 will not get any right over portion of suit properties based on alleged sale deeds executed by plaintiff No.1, defendants No.1 and 2 in their favour in respect of portion of suit properties. **Hence I answer issue No.2 and 5 in the Partly affirmative.**

55. Issue No.6: In view of the above said findings on Issues No.1, 2 and 5 in the **Partly affirmative** and issues No.3 and 4 in the **Negative**, I proceed to pass the following:

ORDER

Suit of the plaintiffs is hereby partly decreed.

The plaintiff No.1 is entitled for 25/108 share in suit schedule mentioned properties by metes and bounds.

The plaintiffs No.2 to 4, defendants No.3 and 4 are entitle for 7/108th share each in suit schedule mentioned properties by metes and bounds.

The defendant No.1 is entitled for 7/18th share in suit schedule mentioned properties by metes and bounds.

The defendant No.5 is entitled for 1/18th share in suit schedule mentioned properties by metes and bounds.

It is made very much clear that, alleged sale deed in respect of portion of suit properties in favour of defendants No.9 to 20, 22, 24 to 32 are not binding on plaintiffs and defendants No.1 to 8.

Suit against defendants No.21 and 23 is dismissed for non taking proper steps against them.

Looking in to nature of suit, relationship between parties, time consumed in disposal of same, the parties are directed to bear their own cost.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and typed by him, the same is corrected, signed and then pronounced by me in the open court on this the 12th January 2018).

(BALAPPA APPANNA JARAGU)
Senior Civil Judge & JMFC, Hangal.

ANNEXURE

1. **List of witness examined on behalf of plaintiff :**

PW.1 : Smt.Pushpavati @ pushpa W/o Rajappa
Hulmani.

2. **List of documents exhibited on behalf of plaintiffs**
:

Ex.P.1 to 3 : RTC's extract.
Ex.P.4 : Mutation register extract.
Ex.P.5 : Death certificate.
Ex.P.6 to 8 : Birth certificate.
Ex.P.9 & 10 : School certificate.
Ex.P.11 : Election identity card.
Ex.P.12 : Postal acknowledgement.
Ex.P.13 : Postal receipts.
Ex.P.14 : Notice.

3. **List of witness examined on behalf of defendants**
:

DW.1 : Nagaratna Rajappa Hulmani.

4. **List of documents exhibited on behalf of**
defendants

Ex.D.1 & 2 : School certificate.
Ex.D.3 : Election Identity card.
Ex.D.4 to 6 : Aadhar card.

JMFC,

SENIOR CIVIL JUDGE &

HANGAL.

(Judgment pronounced in the
open court vide separate sheet)

ORDER

Suit of the plaintiffs is hereby partly decreed.

The plaintiff No.1 is entitled for 25/108 share in suit schedule mentioned properties by metes and bounds.

The plaintiffs No.2 to 4, defendants No.3 and 4 are entitled for 7/108th share each in suit schedule mentioned properties by metes and bounds.

The defendant No.1 is entitled for 7/18th share in suit schedule mentioned properties by metes and bounds.

The defendant No.5 is entitled for 1/18th share in suit schedule mentioned properties by metes and bounds.

It is made very much clear that, alleged sale deed in respect of portion of suit properties in favour of defendants No.9 to 20, 22, 24 to 32 are not binding on plaintiffs and defendants No.1 to 8.

Suit against defendants No.21 and 23 is dismissed for non taking proper steps against them.

Looking in to nature of suit, relationship between parties, time consumed in disposal of same, the parties are directed to bear their own cost.

Draw preliminary decree accordingly.

(BALAPPA APPANNA JARAGU)
Senior Civil Judge & JMFC,
Hangal.