



Presented on : 23-11-2018
Registered on : 23-11-2018
Decided on : 01-07-2026
Duration : 07 years, 07
months, 08 days

**IN THE COURT OF I ADDL.CIVIL JUDGE & JMFC,
HIREKERUR
(SITTING ITINERARY COURT AT RATTIHALLI)**

Present:

**Sri. Basavaraj Nesaragi,
B.Sc., LL.B.(Spl.)
1st Addl. Civil Judge & JMFC, Hirekerur.**

Dated this the 01st day of July - 2026

O.S. NO.339/2018

Plaintiff:

1. Abdul Rehamansab S/o Khasimsab Hediyaal,
Age: 56 years, Occ: Agriculture,
R/o Doddagubbi, Rattihalli Taluk,
Haveri District.

(By Sri. D.T.T., Advocate,)

//Versus//

Defendant:

1. Subhansab S/o Abdul Rehamansab Hediyaal,
Age: 23 years, Occ: Agriculture,
R/o Doddagubbi, Rattihalli Taluk,
Now R/at: Ragavendra Colony,
Balambida Road, Hirekerur.
2. Shankrappa S/o Mallappa Naykar,
Age: 34 years, Occ: Agriculture,
R/o Doddagubbi, Rattihalli Taluk,
Haveri District.



(D-2 by Sri. V.V.M., Advocate,)
(D-3 by Sri. L.H.K., Advocate,)

Date of institution : 23-11-2018
Nature of the Suit : Declaration
Date of commencement
of recording evidence : 12.02.2020
Judgment pronounced : 01.07.2026
Total duration : Year/s Month/s Day/s.
-07- -07- -08-

I Addl.Civil Judge & JMFC,
Hirekerur.
(Sitting Itinerary court at Rattihalli)

:: J U D G E M E N T ::

This is a suit filed by the plaintiff against the defendants seeking relief of declaration of absolute ownership over the suit's scheduled property.

2. The plaint averments in brief are as under:

Khasimsab is the common ancestor of plaintiff and defendant no. 1 and he has died 4 years ago and his wife Chamanbi has also died and they had children's namely



Jamaluddinsab and Abdul Rehmanab, who is the present plaintiff in this suit and Jamaludinsab has died and his wife Hussainbi is the legal heir of him. It is further averred by the plaintiff that, suit landed property was not divided during the lifetime of his father and after the death of his ancestor himself and his elder brother have orally partitioned and have been enjoying half share each in the suit schedule property and plaintiff is in possession of suit schedule property.

3. It is further averred by the plaintiff that, defendant no. 1 taking undue advantage of his illiteracy and innocence has got entered his name in the suit land property as absolute owner excluding his name by colluding with revenue officials and it is learnt that, he is about to sell the suit property to one Shankarappa Mallappa Talwar and suit schedule landed property is the ancestral property and defendant no.1 has no absolute right to alienate the said property as plaintiff has right and share in it. It is further averred by the plaintiff that, defendant no.1 with malicious intent to deceive his share has got entered his name in the suit schedule property and he is



about to alienate the said property, which is likely to cause irreparable damage and loss to him. It is further averred by the plaintiff that, suit property is inherited by the plaintiff through his father and he is the absolute owner of the suit property by way of inheritance and defendant no.1 has no any kind of right to alienate the suit property. Hence, it necessitated the plaintiff to file the present suit seeking relief of declaration.

4. After registering, the suit summons were issued to the defendants. In pursuance of suit summons issued to the defendant no. 1, he has appeared through his advocate and filed his written statement, totally denying the entire averments made in the plaint and has contended that himself and plaintiff are Muslims and under mohammedan law, there is no any concept of ancestral and joint family, and suit property is the self-acquired property of Khasimsab and plaintiff ignored his 1st wife Mehboobi and he was living with another woman and was wondering from town to town and due to torture of plaintiff his mother died when he was 10 years old and he was staying with



his grandfather Khasimsab and his grandfather Khasimsab brought him up and during his old age he looked him after and took care of him and the said Khasimsab has gifted the suit property to him on 11.05.2009 through registered gift deed in presence of witnesses and since from the date of gift, he is the absolute owner and in possession of suit property and his name has been mutated in the suit property thereafter, due to his family's necessities, he has alienated the suit land property in favour of defendant no.2 on 10.12.2018 for sale consideration amount of Rs.2,08,000/- and since from the date of purchase, defendant No.2 is the absolute owner and in possession of suit property enjoying the same and his name has been mutated in the revenue records of suit property as the absolute owner.

5. It is further averred by the defendant no.1 that, his grandfather, Khasimsab, died on 06-02-2013 and he has performed his funeral & final last rites and plaintiff having married second wife, is permanently residing in Hubballi with his second wife for about 30 years and he has never been in possession and enjoyment of the suit property in question. It is



further averred by defendant no.1 that, Khasimsab was the absolute owner of suit property during his lifetime under Mohammeden law until his death, his heirs do not have any right or share over the suit property. Accordingly during his lifetime, Khasimsab has gifted the said suit landed property in his favour through gift and has delivered the possession of suit property to him and thereafter due to family legal necessities, he has alienated the said suit property to defendant no.2. Hence, plaintiff has no any kind of right or share in the suit property and for all these reasons, he prayed to dismiss the suit with costs.

6. During the pendency of suit, the plaintiff has impleaded the purchaser of suit property.

7. The written statement of defendant no. 2 averments in brief are as under :-

The defendant no. 2 has denied the entire averments made in the plaint as false and has contended that, during the year 2017-18 the defendant no.1 for his family legal necessities had put the suit property for sale and he after verifying the title and ownership of suit property has purchased the said suit property



for highest value from defendant no.1 through registered sale deed on 10.12.2018 for sale consideration amount of ₹ 2,08,000 and since from the date of purchase, he is the absolute owner and in possession and enjoyment of the said suit property and his name has been mutated in the revenue records of the suit property as absolute owner and plaintiff do not have any right, interest or share in the property in question and plaintiff with the malicious intention, have filed the false suit, which is not maintainable. Hence, for all these reasons, he prayed to dismiss the suit with costs.

8. On the basis of pleadings and documents placed on record and the rival contention of the parties, my learned predecessor in office has framed the following issues ;

ISSUES

1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property by virtue of inheritance ?
2. Whether the defendant No.2 proves that he is the bonafide purchaser of the suit schedule property for valuable consideration ?



3. Whether plaintiff is entitle for relief sought for in the plaint ?
4. What order or decree ?

9. In order to substantiate the case of the plaintiff, plaintiff has examined himself as PW.1 and got marked the documents at Ex.P.1 & 2 and have got examined 02 independent witnesses as PW2 & 3 and closed. To rebut the evidence of plaintiff, defendant No.1 & 2 have examined themselves as DW-1 & 2 and got marked documents at Ex.D.1 to 12 and closed their side.

10. Heard the arguments of the learned counsel for plaintiff and defendants and perused the material documents, evidence and written arguments placed on record.

11. Upon hearing the argument and on perusal of material documents and evidence placed on record, my answers to the above issues are as under;

Issue No.1: In the Negative.

Issue No.2: In the Affirmative.



Issue No.3: In the Negative.

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

:: R E A S O N S ::

12. ISSUES NO.1 & 3: As these issues are interlinked with each other, I have taken these issues together for common discussion in order to avoid repetition of facts and circumstances of the case and for common appreciation of evidence.

13. The plaintiff, in order to substantiate his case, himself examined as PW1 and examined two witnesses as PW2 & PW3. Further, plaintiff has filed affidavit in lieu of his examination-in-chief and he has reiterated the facts averred in the plaint and got marked the documents at Ex.P1 and Ex.P2. Ex.P1 is the record of rights of land bearing Survey No. 103/1² of the year 2019-2020. Ex.P2 is the record of rights of land bearing Survey No. 103/1² of the year 2017-18.

14. On the contrary, in order to disprove the case of plaintiff, defendant no. 1 has got himself examined as DW1 and has filed affidavit in lieu of his examination-in-chief and has reiterated the



averments made in his written statement and has got marked documents at Ex.D1 to D6 and closed his side. Similarly, defendant no. 2 has got examined himself as DW-2 and have filed affidavit in lieu of his examination-in-chief and has reiterated the averments made in his written statement and have got marked documents at Ex.D7 to 12. Ex.D1 is the record of rights of land bearing Survey No.103/1 ω , situated at Doddagubbi Village of the year 2016-2017, Ex.D2 is the record of rights of the land bearing Survey No. 103/1 ω , situated at Doddagubbi Village of the year 2008-2009, Ex.P3 is the registered gift deed. Ex.D4 is the mutation register copy, Form No. 12 bearing MR No. 7/2009-10. Ex.D5 is the Form No. 12 mutation register bearing MR No. 16 of 2005 to 2006, Ex.D6 is the mutation register copy of MR No. 33/2006-2007, Ex.D7 is the registered sale deed, Ex.D8 is the Form No.9, Ex.D9 is the record of rights of land bearing Survey No.103/1 ω situated at Doddagubbi Village of the year 2025-26, Ex.D10 is the mutation register copy, Ex.D11 is the record of rights of land bearing Survey No.103/1 ω situated at the Doddagubbi village of 2017-2018 and Ex.D12 is mutation register copy bearing M.R. No.29/2017-18.



15. Let us see the oral evidence adduced by both the parties. Plaintiff has got examined himself as PW1 and have filed affidavit in lieu of his examination-in-chief and have reiterated the facts averred in the plaint and he in his cross-examination has deposed that his elder brother's name is Jamaluddin Sab and he has a wife by name Husainbi and Kyirumbi and Shahjabi are his elder sisters. Further, he has deposed that, Shahjabi has died and she has 11 childrens, out of it, 8 are sons and 3 are daughters. He has further deposed in his cross-examination that, his elder brother's wife is alive and his elder brother has one daughter and he has not included his sisters and their childrens in the present suit. He has further deposed that, there is no partition between his elder brother and himself and defendant No.1 is the son of his first wife and Mehaboobi is the name of his first wife. He has further admitted in his cross-examination that, Lalitamma is the name of his second wife and he is permanently residing with his second wife at Hubballi. Further he has admitted in his cross-examination that, defendant No.1 is the son of his first wife and was residing at Doddagubbi village with his father and his father Khasimsab took care of defendant No.1.



It is further admitted during cross-examination of PW1 that, during old age of Khasimsab, defendant No.1 has taken care of Khasimsab. Further, he has shown ignorance of date of death of his father Khasimsab. Further, he has shown ignorance in respect of registered gift deed executed by Khasimsab during his lifetime in favour of his son ie., defendant No.1. Further, he has admitted that, after the execution of gift deed, defendant No.1 was cultivating and making use and enjoyment of the said suit property. Further, he has shown ignorance in respect of loan of defendant no. 1 and alienation of suit property in favour of defendant No.2 to clear off loan and possession of suit property by defendant No.2. Further, he has denied the suggestion that, he has no any right or share in the suit property as Khasimsab during his lifetime has gifted the suit property in favour of defendant No.1. Further, he has denied the suggestion that, defendant no.1 for his family's legal necessities and to clear off loan availed by him, he has alienated the suit property to defendant No.2 through registered sale deed and defendant No.2 after verifying the ownership of suit property has purchased the suit property through registered sale deed by paying sale



consideration amount. Further, he has denied the suggestion that, before institution of the suit by him, the suit property neither belonged to deceased Khasimsab nor defendant No.1.

16. PW2 is resident of Doddagubbi village he has deposed in his examination-in-chief that, he is acquainted with plaintiff & defendants and he further deposed that, 06 years ago Khasimsab has died and he had a wife by name Chamalabi and he has also died and they had a elder son by name Jamaluddinsab and he had a wife by name Husainbi and they are now dead. Further, he has deposed in his examination-in-chief that, Khasimsab had another son who is the present plaintiff in the suit and the said Khasimsab has died without making any partition in respect of joint family properties and after the death of Khasimsab plaintiff and his elder brother orally partitioned themselves and they are in possession & enjoyment of their respective shares and plaintiff is in possession of suit schedule property. He has further deposed in his examination-in-chief that, defendant No.1 being the son of plaintiff have got entered his name in the suit property and have alienated it to defendant No.2, but plaintiff is in



possession & enjoyment of the suit schedule property. But, he in his cross-examination has deposed that, he has not seen the wife of Khasimsab and he do not know whether Khasimsab had daughters or not and he do not know in regard to which property suit is filed by the plaintiff and he do not know the description of suit property and from 40 years plaintiff is permanently residing at Hubballi. Further, he has admitted in his cross-examination that, plaintiff has deserted his wife and defendant No.1 and Khasimsab took care of defendant No.1 and during the old age of Khasimsab defendant No.1 took care of Khasimsab and Khasimsab have gifted the suit property in favour of defendant No.1. It is further admitted by PW2 in his cross-examination that, to clear off loan availed by defendant No.1 the defendant No.1 has alienated the suit property in favour of defendant No.2 and defendant No.2 is cultivating the said suit property. Further, PW2 has admitted in his cross-examination that, plaintiff has helped him and PW3 financially whenever they were in need and plaintiff & himself are friends.



17. PW3 is also the resident of Doddagubbi village he has deposed in his examination-in-chief that, he is acquainted with plaintiff & defendants and he further deposed that, 06 years ago Khasimsab has died and he had a wife by name Chamalabi and he has also died and they had a elder son by name Jamaluddinsab and he had a wife by name Husainbi and they are now dead. Further, he has deposed in his examination-in-chief that, Khasimsab had another son who is the present plaintiff in the suit and the said Khasimsab has died without making any partition in respect of joint family properties and after the death of Khasimsab plaintiff and his elder brother orally partitioned themselves and they are in possession & enjoyment of their respective shares and plaintiff is in possession of suit schedule property. He has further deposed in his examination-in-chief that, defendant No.1 being the son of plaintiff have got entered his name in the suit property and have alienated it to defendant No.2. But plaintiff is in possession & enjoyment of the suit schedule property but the said witness has not been cross-examined by the defendants.



18. On the contrary to disprove the case of plaintiff, defendant No.1 got examined himself as DW1 and have filed affidavit in lieu of his examination-in-chief and got marked the documents at Ex.D1 to 6 and the said witness has not been cross-examined by the plaintiff. Similarly, defendant No.2 got examined himself as DW2 and have filed affidavit in lieu of his examination-in-chief and got marked the documents at Ex.D7 to 12 and the said witness has not been cross-examined by the plaintiff.

19. Before delving into the facts of the case, it is pertinent to note that parties to the suit are Muslim and they are governed by Mohammedan Law and under Mohammedan Law doctrine of partial partition is not applicable because the heirs are tenants in common. Mohammedans are never joint in estate but only tenants in common and succession in Mohammedan law is in specific sharers as tenants in common. Generally properties held by deceased Muslim upon his death his heirs inherit the properties simultaneously with males and females but the share of the male is double. The shares of heirs under Mohammedan law are definite and known before actual partition. The concept



of joint family or ancestral property is alien to Mohammedan law. Inheritance of property in Muslim comes only after the death of a person and there is no birth right. Succession under Muslim law opens upon death of person. In the instant case plaintiff and defendant have not disclosed to which sect they belong to and which school of law is governed relating to succession. The present suit is for declaration of ownership over the suit property through inheritance. Admittedly parties are Muslim and they are governed under Mohammedan law. Mohammedan law does not recognize joint family property and ancestral property as it is alien to it. Partial partition is not applicable under Mohammedan law.

20. Relation between plaintiff & defendants is not in dispute. Parties are Muslim and they are governed by Mohammedan law it is also not in dispute. Suit schedule property is of deceased Khasimsab is also not in dispute and plaintiff is the son and defendant No.1 is the grandson of deceased Khasaimsab is also not in dispute. Deceased Khasimsab was the absolute owner of the suit schedule property is also not in dispute. Plaintiff claims



declaration over the suit property by way of inheritance and defendants deny the same contending that, deceased Khasimsab during his life time has gifted the said suit property in favour of defendant No.1 and since then the defendant No.1 is the absolute owner of the suit property and he to clear off his loans he has alienated the suit property in favour of defendant No.2 and defendant No.2 has purchased the suit property through registered sale deed dated: 10-12-2018 for sale consideration amount of Rs.2,08,000/- and accordingly his name has been mutated in the revenue records of suit property and he is in possession of the suit property. Under Mohammedan law succession opens only after death of the ancestor. In the instant case, Khasimsab being the ancestor of plaintiff & defendant No.1 has died on 06-02-2013 and Khasimsab during his life time that is on 11-05-2009 had gifted the suit property in favour of his grandson i.e., defendant No.1 and under Mohammedan Law there is no birth right as birth right is not recognized. The right of an heir apparent or presume to comes into existence for the 1st time on the death of ancestors and he is not entitled until to any interest in the property to which he would succeeded as an heir if



he survived the ancestor and under Mohammedan Law gift to minor can be made other than his father or guardian it needs only delivery of possession of the suit property and a gift is completed when a minor has attained majority himself take possession. Under Mohammedan Law gift is nothing but a Hibba that is transfer of property made immediately and without any exchange by one person to another and accepted by or on behalf of the later and a gift may be made of the whole of the owners property and it may be made even to an heir. In the instant suit deceased Khasimsab was the absolute owner of the suit property which is evident through Ex.D6/mutation register copy and during his life time he has gifted the suit property to his grandson defendant No.1 through registered gift deed dated: 12-05-2009 which is evident through Ex.D3 and since then his name has been mutated in the suit property which is evident through Ex.D4/Form No.12 mutation register copy, Ex.D11 ROR of suit property, Ex.D12 mutation register copy bearing M.R. No.T-29/2017-18 and thereafter he has alienated the suit property to defendant No.2 through registered sale deed on 10-12-2018 for sale consideration amount of Rs.2,08,000/- which is



evident through Ex.D7, which is registered sale deed and thereafter his name came to be mutated in the revenue records of suit property which is evident through Ex.D8 to 10. Thus, defendant No.2 is the absolute owner & in possession of the suit property and not the plaintiff. The plaintiff has relied only on 02 documents marked at Ex.P1 & 2, which are nothing but the ROR of the suit property and on perusal of Ex.P1 it is the ROR of land bearing Sy.No.103/1^w measuring 01 acres 22 guntas standing in the name of the defendant No.2 pertaining to the year 2019-20. Ex.P2 is the ROR of land bearing Sy.No.103/1B measuring 01 acres 22 guntas standing in the name of the defendant No.1 pertaining to the year 2017-18 and there are no any documents to show title & ownership of plaintiff over the suit property except mere pleadings of the plaintiff. Hence, he is not entitled for declaration of ownership over the suit property through inheritance. **Accordingly, I answer Issue No.1 & 3 in the Negative.**

21. Issue No.2: The defendant No.2 in order to prove this issue he himself has got examined as DW2 and have filed affidavit in



lieu of his examination-in-chief and he has reiterated the facts averred in his written statement and have got marked the Ex.D7 to 12. Ex.D7 is the registered sale deed. Ex.D8 is the Form No.9. Ex.D9 is the record of rights of land bearing Survey No.103/1^w situated at Doddagubbi Village of the year 2025-26. Ex.D10 is the mutation register copy. Ex.D11 is the record of rights of land bearing Survey No.103/1^w situated at the Doddagubbi village of 2017-2018 and Ex.D12 is mutation register copy bearing M.R. No.29/2017-18. On perusal of Ex.D11 & 12 which are the ROR and mutation register copy disclose the name of defendant No.1 in the ownership & possession column and his name mutated in the ROR of suit property and Ex.D7 is the registered sale deed, which shows the suit property purchased by defendant No.2 from defendant No.1 for valuable sale consideration amount of Rs.2,08,000/- and on the basis of said sale deed his name came to be mutated in the ROR of suit schedule property which is evident through Ex.D8 to 10. The evidence of DW2 has remained unchallenged & controverted. In view of no any contrary evidence lead by the plaintiff and on perusal of Ex.D7 to 12, it reveals that, defendant No.2 has verified the title & ownership of the suit



property before purchase and have purchased the suit property for valuable sale consideration amount through registered sale deed. Hence, defendant No.2 is the bonofide purchaser of suit property having purchased the suit property for sale consideration amount of Rs.2,08,000/-. **Accordingly, I answer Issue No.2 in the Affirmative.**

22. ISSUE No.4: In view of detailed discussion made while answering issues No.1 to 3 and for the reasons thereunder, I proceed to pass the following:

:: O R D E R ::

The suit of the plaintiff is hereby dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by him, corrected by me, then pronounced in the open court on this the **01st day of July - 2026**)

(BASAVARAJ NESARAGI)
I Addl. Civil Judge, JMFC
Hirekerur.
(Sitting Itinerary court at Rattihalli)



:: A N N E X U R E ::

WITNESSES EXAMINED ON BEHALF OF plaintiff:

PW-1 : Abdulrehamansab S/o Khasimsab Hediya
PW-2 : Raju S/o Girijavva Harijan
PW-3 : Ramesh S/o Hanumantappa Chikkamattur

DOCUMENTS MARKED ON BEHALF OF plaintiff:

Ex.P.1 & 2 : Record of Rights

WITNESSES EXAMINED ON BEHALF OF defendants:-

DW-1 : Subhansab S/o Abdulrehamansab Hediya
DW-2 : Shankrappa S/o Mallappa Naykar

DOCUMENTS MARKED ON BEHALF OF THE defendants:-

Ex.D.1 & 2 : Record of Rights
Ex.D.3 : Gift deed
Ex.D.4 to 6: Mutation registers
Ex.D.7 : Sale deed
Ex.D.8 : Form No.9
Ex.D.9 : Record of Rights
Ex.D.10 : Mutation register copy
Ex.D.11 : Record of Rights
Ex.D.12 : Mutation register

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