

**TITLE SHEET FOR JUDGMENT IN SUITS**

**Govt. of Karnataka**

**[C.R.P.67]**

Form No.9 (Civil)

Title sheet for  
Judgment in  
Suits (R.P.91)

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS, SAVANUR.**

Present : **SRI. MARUTHI. K,**  
**B.A., LL.B.**  
Civil Judge and JMFC,  
SAVANUR.

**ORIGINAL SUIT NO.129/2010**

**Dated this 8<sup>th</sup> day of October 2021**

- Plaintiffs** :1. Chandravva W/o Govindappa Lamani,  
(Since dead by LRS)
- 1A. Smt. Shivakka Ramanna Lamani,  
Age : 39 years, Occ : Coolie,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.
- 1B. Lalita W/o Parasappa Lamani,  
Age : 37 years, Occ : Coolie,  
R/o : Goudageri, Tq : Kundagol,  
Dist : Dharwad.
- 1C. Ramesh S/o Govindappa Lamani,  
Age : 35 years, Occ : Coolie,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.

- 1D. Iranna S/o Govindappa Lamani,  
Age : 32 years, Occ : Coolie,  
R/o : Goudageri, Tq : Kundagol,  
Dist : Dharwad.
2. Smt. Sangavva W/o Fakkirappa Lamani,  
Age : 48 years, Occ : Household work,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.
3. Smt. Neelavva W/o Mahadevappa  
@ Manappa Lamani, Age : 42 years,  
Occ : Household work, R/o : Bevinahalli,  
Tq : Savanur, Dist : Haveri.
4. Channappa S/o Lakkappa Lamani,  
Age : 70 years, Occ : Agriculture,  
R/o : Akkigunda, Tq : Shirahatti,  
Dist : Gadag.
5. Krishnappa S/o Channappa Lamani,  
Age : 45 years, Occ : Agriculture,  
R/o : Akkigunda, Tq : Shirahatti,  
Dist : Gadag.
6. Nagavva Ramachandra Lamani,  
Age : 43 years, Occ : Household work,  
R/o : Akkigunda, Tq : Shirahatti,  
Dist : Gadag.
7. Dharmappa S/o Channappa Lamani,  
Age : 40 years, Occ : Agriculture,  
R/o : Akkigunda, Tq : Shirahatti,  
Dist : Gadag.
8. Smt. Puttavva W/o Ningappa Lamani,  
Age : 38 years, Occ : Household work,  
R/o : Undalli, Tq : Shirahatti,  
Dist : Gadag.

**(By Sri. N.S. Patil, Advocate)**

**VS**

- Defendants:** 1. Smt.Gangavva W/o Balappa Bikkimatti,  
Age : 75 years, Occ : Household work,  
R/o : Shirabadagi, Tq : Savanur,  
Dist : Haveri.
2. Smt. Hiravva W/o Mallappa Lamani,  
Age : 42 years, Occ : Household work,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.
3. Nagavva D/o Mallappa Lamani,  
Age : 26 years, Occ : Household work,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.
4. Mahadevappa S/o Mallappa Lamani,  
Age : 24 years, Occ : Agriculture,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.
5. Smt. Mallavva @ Malavva D/o Mallappa  
Lamani, Age : 21 years, Occ : Household  
work, R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.
6. Santosh S/o Mallappa Lamani,  
Age : 20 years, Occ : Agriculture,  
R/o : Bevinahalli, Tq : Savanur,  
Dist : Haveri.

**(By Sri.S.A. Kamaraddi, Advocate)**

Date of institution of suit	23.04.2010
Nature of the suit	Suit for Partition & Separate Possession.

Date of commencement of recording of the evidence	31.05.2014		
Date on which the Judgment was pronounced	08.10.2021		
Total duration	Year/s	Month/s	Day/s
	11	05	15

**Civil Judge & JMFC,  
Savanur.**

### **J U D G M E N T**

The plaintiffs have filed this suit seeking for the relief of partition & separate possession of 1/6<sup>th</sup> share each to the plaintiff No.1 to 3, 1/6th share of plaintiff No.4 to 8 together, over the suit schedule properties.

#### **2. The brief facts of the plaintiffs case is that:**

The suit schedule properties A to C are the properties left behind by Fakkirappa S/o Jatreppa Lamani. The plaintiffs and defendants are Hindus governed under Principals of Hindu law. The propositus Fakkirappa S/o Jatreppa Lamani was absolute owner in possession of suit properties. Propositus had son by name Somappa @ Somaleppa Lamani, who died earlier to the death of his father. Wife of Somaleppa by name Lachhavva died long

back, leaving behind plaintiffs and defendants as their legal heirs. The Somappa @ Somaleppa and his wife Lachavva have given birth to five daughters and one son. The plaintiff No.1 to 3, defendant No.1 and deceased Paravva are the daughters and Mallappa is only son. Paravva died long back leaving behind plaintiff No.4 to 8 as her legal heirs. Mallappa died long back leaving behind defendant No.2 to 6 as his legal heirs. Hence, plaintiffs and defendants are the joint family members after death of propositus name of plaintiffs and defendants jointly entered in the revenue records of suit properties. The suit schedule properties are ancestral joint family properties of plaintiffs and defendants and they are in joint cultivation over the suit properties. There is no partition between plaintiffs and defendants in respect of suit properties. The plaintiffs and defendants have got their legitimate share in suit properties. The plaintiffs have asked defendants prior to institution of the suit to effect the partition and separate share in the suit properties by metes and bounds. But, defendants have totally denied to effect the partition. The plaintiffs are unable to continue in joint possession of suit properties with the defendants. Therefore, plaintiffs constrained to file present suit seeking partition and separate possession of their 1/6th share each in suit properties.

**3.** On service of suit summons defendants appeared through their counsels and defendant No.4 filed detailed

written statement by denying all the contents of the plaint specifically. Whereas defendant No.1 to 3 , 5 & 6 adopts the written statement of defendant No.4. It is the contention of defendants that suit properties were belongs to one Fakkirappa S/o Jatreppa Lamani who is not the ancestor of the plaintiffs and defendants. The said Fakkirappa has very much love and affection towards Mallappa i.e, the father of defendant No.3 & 6 and husband of defendant No.2. The said Mallappa was residing with the Fakkirappa. Thus, the said Fakkirappa was treating Mallappa as his son. The father of the plaintiffs No.1 to 3 i.e., Somappa @ Somaleppa had no ancestral or self acquired properties. The said Somappa was doing coolie and performed the marriage of his two daughters by name Gangavva and Neelavva i.e., plaintiff No.3 and defendant No.1. After death of Somappa there was no income to the family and therefore, the defendant No.1 and her husband Balappa performed the marriage of the plaintiff No.2 and deceased Paravva. The suit properties were at no point of time were belonging to Somappa. The said Mallappa i.e., father of defendants No.3 to 6 was residing with Fakkirappa as faster son. The said Fakkirappa during his lifetime, got entered the name of Mallappa to the suit properties. Accordingly, Mallappa has become the absolute owner of the suit properties by acquiring the rights in the property from Fakkirappa Lamani. Thus the suit properties are not the ancestral properties of

the plaintiffs and defendant No.1. Therefore, the plaintiffs and defendant No.1 have no right over the suit properties. The Mallappa died about 6 years back leaving behind his wife and children as his only Class-I legal heirs. The plaintiffs and defendant No.1 are the Class-II legal heirs of the deceased Mallappa. As per the Hindu law, the Class-I legal heirs i.e., defendant No.2 to 6 of the deceased Mallappa are excluded the Class-II heirs i.e., plaintiffs and defendant No.1 from inheriting or succeeding the interest of the deceased Mallappa. Thus plaintiffs and defendant No.1 are not entitled for any share in the suit properties. After death of Mallappa, the plaintiffs colluding with the Revenue Officers got entered their names to the suit properties stating that they are the legal heirs of the deceased Mallappa. No notice has been issued to the defendant No.2 to 6 before entering the name of plaintiff and defendant No.1 to the suit properties. Therefore, entering the name of plaintiffs and defendant No.1 to the suit properties as legal heirs of the deceased Mallappa is contrary to the law and null and void. The plaintiffs by such illegal entry will not acquire any right over the suit property. The propositus Somappa and his wife died about 50 years back without leaving any properties behind them. Therefore, the question of inheriting or succeeding the properties from Somappa does not arise at all. The son of the plaintiff No.2 i.e., Nagappa is the husband of defendant No.3. The said Nagappa ill-treated the defendant

No.3 and his son ousted them from his house. The defendants requested to Nagappa to lead married life with defendant No.3. The son of the plaintiff No.2 without heeding to the request of defendants undergone a second marriage with one Premavva of Kabbur village. The son of the plaintiff No.2 with an intention to harass the defendants filed false suit with the help of plaintiffs. On these grounds, the defendants have prayed for dismiss the suit with compensatory costs.

4. Thereafter defendant No.4 filed additional written statements on 02.12.2016, 12.03.2018, 12.10.2018 by denying amended genealogy of plaint, suit schedule item No.C property and by denying surviving members of deceased plaintiff No.1 during pendency of the suit.

5. On the basis of above pleadings, the predecessor in office and this court has framed the following issues:-

### **ISSUES**

1. Whether the plaintiffs prove that the suit properties are joint family properties as on the date of this suit ?
2. Whether the plaintiffs prove that they have each 1/6<sup>th</sup> share in the suit properties ?
3. Whether the defendants prove that the suit properties are not the ancestral properties of the plaintiffs and defendants ?

4. Whether the defendants prove that, the plaintiffs have illegally got their names entered in the revenue records of the suit properties claiming to be legal heirs of the deceased Mallappa ?
5. Whether the court fee paid is sufficient ?
6. Whether the plaintiffs are entitled for the relief as prayed for ?
7. What order or decree ?

**ADDITIONAL ISSUE DATED 18.01.2017 AND  
14.03.2018**

1. Whether the plaintiffs prove that the propositus Fakkirappa Jatreppa Lamani was absolute owner and possession of suit properties and the said Fakkirappa had a son by name Somappa @ Somaleppa Fakkirappa Lamani who died earlier to his father i.e., Fakkirappa and his wife Smt. Lachavva died long back leaving behind them to the plaintiffs and defendants ?
1. Whether the plaintiff No.1A to 1D proves that, they are the children of the deceased plaintiff No.1?

**ADDITIONAL ISSUE Dated 31.03.2021**

1. Whether defendant prove that Fakkirappa S/o Jatreppa Lamani is not the ancestor of plaintiffs and defendants?

2. Whether defendants further proves the contention of para No.10 of the written statement dated : 09.08.2010 ?

6. In support of the claim of the plaintiffs, plaintiff No.3 examined herself as PW.1. After death of plaintiff No.1 her son by name Ramesh Lamani examined as PW.2 and got marked Ex.P.1 to 27 and closed their side of evidence. On the other hand, the defendant No.4 examined himself as DW.1 and got marked Ex.D.1 to 9 and closed their side.

7. Heard arguments of plaintiffs counsel on merits. Counsel for defendants submits no oral arguments. In view of submission arguments of defendants is taken as heard. Perused pleadings, oral evidence and documentary evidence and material available on court record.

8. In view of the above facts and circumstances of the case my answer to the above issues are as here under:-

Issue No.1 : In the Affirmative.

Issue No.2 : 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 : In the Affirmative.

Addl Issue No.1 dtd : 18.01.2017 : In the Affirmative.

Addl Issue No.1 dtd : 14.03.2018 : In the Affirmative.

Addl Issue No.1 dtd : 31.03.2021 : In the Negative.

Addl Issue No.2 dtd : 31.03.2021 : In the Negative.

Issue No.7 : As per final order for the following

**: R E A S O N S :**

9. Before going to the facts in issue it is just and necessary to note the past history in the suit. Records speaks that on 05.01.2012 present suit was dismissed for non-prosecution. Against the order of dismissal present plaintiff preferred miscellaneous appeal NO. 25/2012 before Additional Senior Civil Judge, Haveri. The said miscellaneous appeal preferred by present plaintiffs was allowed on 07.03.2014. As such suit was restored to its original stage. Thereafter, the predecessor in office on 07.03.2015 dismissed the suit on the ground, plaintiffs failed to establish suit schedule properties are ancestral properties. Against said judgment present plaintiffs preferred RA No.45/2015 before Additional Senior Civil Judge, Haveri. The appeal preferred by plaintiffs was allowed on 27.02.2016 and remand the suit for fresh disposal and permitted to amend plaint and to produce additional documents and now present suit is taken for consideration on the changed scenario.

**10. ISSUES NO.1, 3, additional issue No.1 dated : 18.01.2017, additional issue No.1 dated : 31.03.2021 :-**

Since, these issues are inter connected with each other in order to avoid repetition of facts and evidence they are taken

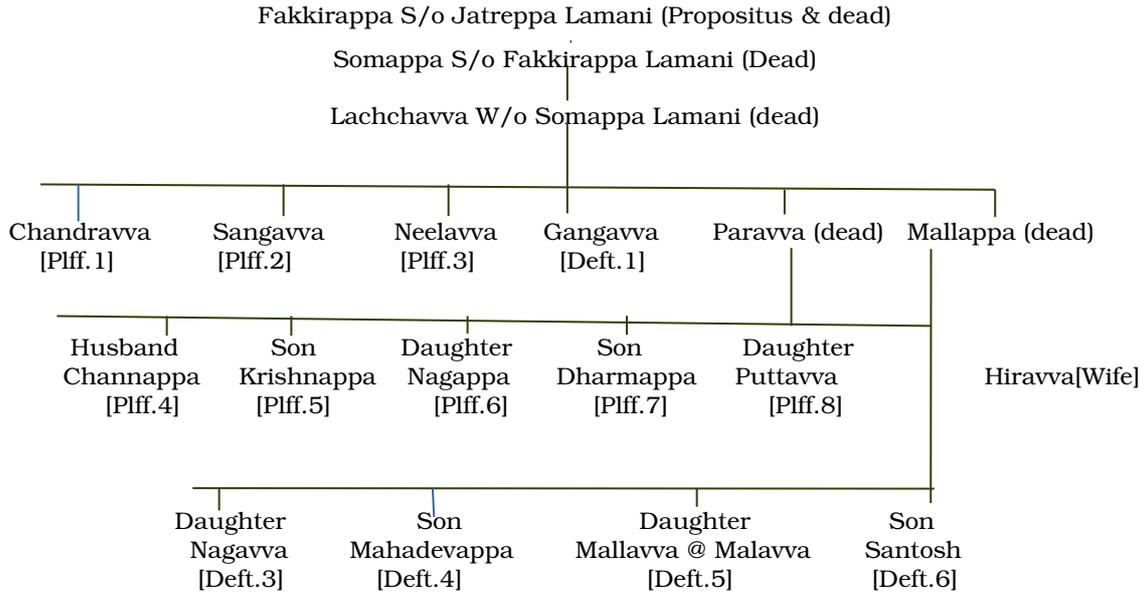
together for common consideration. The relief sought by the plaintiffs is governed U/Sec.22 of Specific Relief Act, 1963.

**11.** The burden to prove the issue No.1, 3 and additional issue No.1 dtd : 18.01.2017 is upon plaintiffs and additional issue No.1 dtd : 31.03.2021 is upon defendants as per Sec.101 of Evidence Act, 1872. In order to prove their claim the plaintiff No.3 examined as PW.1 and she examined one witness by name Ramesh Lamani as PW.2 and got marked Ex.P.1 to 27 and closed their side of evidence. Ex.P.1 is the certified copy of Appeal Memo in RTS/APSR/115/92-93. Ex.P.2 is the certified copy of order passed in RTS/APSR/115/92-93 dated : 08.02.1994. Ex.P.3 & 8 are the endorsement issued by Tahashildar on 14.09.2011 and 16.04.2010 respectively. Ex.P.4 to 7 are the RTC extracts of suit properties standing in the joint name of plaintiff No.1 to 3, defendant No.1 deceased Paravva defendant No.3 to 6 and Lachchavva W/o Somappa Lamani. Ex.P.9 to 11 are the study certificates issued by Head master government Higher Primary School, Bevinahalli regarding date of birth of plaintiff No.1, 3 and defendant No.1. Ex.P.12 & 13 are the RTC extracts of suit properties which were standing in the joint name of defendant No.4 and 6 in the year 2016-2017. Ex.P.14 is the mutation extract MR H1 dtd : 25.07.2016. Ex.P.15 is the order passed by Assistant Commissioner, Savanur in RTS SR49/2016-17 dated : 09.07.2018. Ex.P.16 is survival certificate issued by Deputy Tahashildar Kundagol

Taluk on 17.07.2018. Ex.P.17 and 20 are the death certificates of plaintiff No.1. Ex.P.18 is the VPC extract of suit schedule item No.C standing in the name of deceased Mallappa Lamani. Ex.P.19 is the certificate issued by Secretary Gram Panchayath Shirabadagi on 03.07.2018 regarding boundaries of suit C schedule property. Ex.P.21 is the death certificate of Govindappa Lamani. Ex.P.22 is the survival certificate issued by Village Accountant Gudageri dated : 01.06.2018. Ex.P.23 to 27 are the RTC extracts of suit landed properties.

**12.** In order to prove the version of defendants, defendant No.3 examined himself as DW.1 and got marked Ex.D.1 to 9 and closed his side of evidence. Ex.D.1 is the Receipt Patta book. Ex.D.2 to 6 are the RTC extracts of suit properties for the year 1981 stood in the name of propositus Fakkirappa and thereafter in the name of Mallappa Somleppa Lamani. Ex.D.7 is khata extract village form No.24 which is standing in the name of deceased Mallappa. Ex.D 8 & 9 are the RTC extracts of suit properties stood in the name of defendant No.4 and 6.

**13.** As stated above it is the definite case of plaintiff that suit schedule properties are the ancestral joint family properties of plaintiffs and defendants. For the sake of convenience I would like to extract the genealogy as stated in plaint.,



**14.** In the light of above said genealogy it is submitted by counsel for plaintiff that propositus by name Fakkirappa S/o Jatreppa Lamani and his wife had only son by name Somappa S/o Fakkirappa Lamani. Somappa had wife by name Lachchavva, both died long back leaving behind plaintiffs and defendants as their legal heirs. It is submitted that said Somappa had five daughters and a son as stated in genealogy. Daughter of propositus Paravva died long back leaving behind plaintiff No.4 to 8 as her legal heirs. Likewise Mallappa died long back leaving behind defendant No.2 to 6 as his legal heirs. After death of propositus name of plaintiffs and defendants jointly entered in revenue records of suit properties and it is submitted that suit schedule properties are ancestral joint family properties of plaintiffs and defendants and they are jointly cultivating the suit schedule properties as on the date of suit and there was no partition by metes and bounds.

**15.** On the other hand the defendants have seriously opposed the claim of plaintiffs stating that originally the suit schedule properties were belongs to one Fakkirappa S/o Jatreppa Lamani and he was not the ancestor of plaintiffs and defendants. The said Fakkirappa had very much love and affection towards Mallappa. The said Fakikirappa Lamani has treated Mallappa as his faster son. During his life time Fakkirappa got entered the name of father of defendant No.2 to 6 by name Mallappa in the suit schedule properties. Accordingly, Mallappa became absolute owner of suit properties. As such the suit schedule properties are not ancestral properties of plaintiffs and defendants.

**16.** Before advertng to the area of controversy it is just and necessary to note about some admitted facts by the parties. At the outset, there is no dispute with regard to the relationship between the plaintiffs and defendants. The only contention of defendants is that Fakkirappa Lamani had love and affection towards Mallappa and thereby Fakkirappa Lamani got entered the name of Mallappa to the suit properties. Somappa Lamani was not the propositus of family of plaintiffs and defendants. However, defendants have admitted that Somappa and his wife Lachchavva Lamani had five daughters and one son, they are plaintiff No.1 to 3, defendant No.1, deceased Paravva and deceased Mallappa.

**17.** In order to prove the case of plaintiffs the plaintiff No.3 was examined as PW.1 she deposed inconsonance with the averments of plaint. On perusal of Ex.P.2 it reveals that one Lachchavva Lamani who was none other than mother of plaintiff No.1 to 3, defendant No.1 and grand mother of defendant No.3 to 6 preferred an appeal before Assistant Commissioner, Savanur challenge the entries which are in the name of respondents therein in respect of suit schedule properties. But as per the consent given by the respondents therein who are the defendant No.1, 3 to 5 deceased Paravva and plaintiff No.1 to 3 in this suit name of Lachchavva wife of Somappa Lamani was entered in respect of suit schedule properties. Moreover, the documents produced by the defendants which are marked at Ex.D.2 & 3 discloses that in Serial No.9 of RTC extract name of propositus Fakkirappa Jatappa Lamni was rounded off and name of Mallappa is entered on the basis of inheritance vide ME NO.283 and 998. Though the plaintiffs filed application before revenue authorities to get mutation entries but they have issued endorsement regarding non-availability. If at all the suit schedule properties are not the ancestral properties of Somappa Lamani, then why the defendants have given their consent to enter the name of Lachchavva in a revenue records of suit properties and this is the very important point to decide the facts in issue. As per the consent of defendants name of Lachchavva who is none other than the mother of

plaintiff No.1 to 3, defendant No.1 and deceased Mallappa was entered in the suit schedule properties. If Lachchavva's name is entered in RTC extract of the suit properties the plaintiff No.1 to 3 defendant No.1, deceased Mallappa are the children of Somappa and Lachchavva Lamani. Though defendants have taken contention that Fakkirappa S/o Jatreppa Lamani is not the ancestor of plaintiffs. But, however they admitted that Mallappa is the son of Somappa and Lachchavva Lamani. If Mallappa is son of the Somappa then the Fakkirappa is the grandfather of said Mallappa. Hence, contention of defendants holds no water. It is the specific contention of plaintiffs that their father Somappa died earlier to the death of propositus. As such their father name is not entered in RTC extract of suit properties. From the documents placed by the defendants on record at Ex.D.2 to 6 they clearly disclose that name of Mallappa is entered in RTC extract of suit properties on the basis of inheritance excluding the name of female members of Somappa Lamani. Name of Mallappa is entered in revenue record of suit property as he is the grandson of Fakkirappa Jatreppa Lamani. Being the only son of Somappa Jatreppa Lamani his name is entered to the suit properties in view of death of his father earlier to the death of propositus Fakkirappa. Men may lie but not the documents. The documents produced by defendants itself clearly reveals that the name of Mallappa is entered to the suit properties

on the basis of inheritance. Further it is relevant to note that defendant No.4 who was examined as DW.1 clearly admitted about the relationship between plaintiffs with the defendants and also deposed that Fakkirappa had bequeathed all his properties in favour of his father. However he has not placed any documents before court to demonstrate the alleged fact of bequeathing of property by Fakkirappa in favour of Mallappa.

**18.** At the cross-examination of PW.1 it is suggested by counsel for defendants that suit schedule properties originally belongs to Fakkirappa Lamani the same was admitted by PW.1. In plaint averments and all along in cross-examination PW.1 has deposed that her father died prior to the death of her grandfather. Further it is suggested during cross-examination of PW.1 that plaintiffs are the sisters of Mallappa S/o Somaleppa Lamani same is also admitted by PW.1. On the other hand defendant No.4 filed chief examination affidavit twice on 03.09.2014 and 02.01.2019. Wherein he has admitted that his grandfather and grandmother had five daughters and one son they are plaintiff No.1 to 3, defendant No.1, deceased Paravva and father of defendant No.3 to 6. Though he had deposed at the time of cross-examination that Fakkirappa executed some documents in favour of Mallappa regarding relinquishment but he had not chosen to produce any documents to that effect to show the relinquishment made by

Fakkirappa in favour of Mallappa. During pendency of the suit defendant No.4 and 6 succeeded in entering their names in respect of suit properties on the basis of MRH-1/2016/2017 on the basis of gift deed. But however plaintiff No.1 to 3 by preferring an revenue appeal before Assistant Commissioner, Savanur as per Ex.P.15 deleted the name of defendant No.4 and 6 which are entered beyond the back of plaintiffs. Viewed from any angle defendants failed to prove that propositus Fakkirappa is not the ancestors of plaintiffs and defendants. Though they have taken specific contention that the Fakkirappa is not the grandfather of plaintiffs and defendant No.1, why they have consented to enter the name of Lachchavva W/o Somappa Lamani who is the grandmother of defendants No.3 to 6 in the suit schedule properties, that itself clearly goes to show that suit schedule properties are ancestral and joint family properties of plaintiffs as well as defendants. Accordingly, I answered issue No.1, 3 & additional issue No.1 dated : 18.01.2017 **in the Affirmative** and additional issue No.1 dated : 31.03.2021 **in the Negative.**

**19. Issue NO.4 :-** Defendants have taken specific contention that plaintiffs got entered their names illegally in the revenue records of suit properties claiming to be legal heirs of deceased Mallappa. During cross-examination DW.1 denied the fact of giving consent in the revenue proceedings

held before Assistant Commissioner, Savanur to enter the name of Lachchavva W/o Somaleppa Lamani. Though he being respondent No.2 in that proceeding even after giving consent to enter the name of Lachchavva Lamani in the RTC extract of suit properties he denied the very fact of giving consent. Hence, defendant No.2 to 6 are estopped from denying the fact of giving consent to enter the name of their grandmother in the RTC extract. But, the consent given by respondents is supported by the order of Assistant Commissioner as per Ex.P.2. As per consent given by respondents name of Lachchavva, plaintiff No.1 to 3, defendant No.1 to 6 names were entered in RTC extract of suit property vide MR No. 21/2009-10. Though the names of plaintiffs entered in RTC extracts of suit properties vide MR No.21 the defendants have not challenged the said entries before revenue authorities. On the basis of consent given by respondent therein in the revenue proceedings name of Lachchavva and plaintiffs entered in revenue records of suit properties. Moreover, in view of reasons assigned in issue NO.1 the plaintiffs and defendant NO.1 became co-parceners to the properties left behind by propositus Fakkirappa S/o Jatreppa Lamani. Hence, this court held that defendants failed to prove that the plaintiffs have illegally got entered their names in a revenue records of suit properties. Accordingly, this court answered Issue No.4 **in the Negative.**

**20. Issue No.5 :-** With regard to payment of court fee is concerned. On perusal of valuation made in plaint it clearly discloses that the suit is valued at Rs.188/- as per Sec.35 (2) R/W Sec.7 (2)(b) of Karnataka Court Fee and Suit Valuation Act for the purpose of court fee and the market value of suit properties is fixed at Rs.3,00,000/- out of that plaintiff share is 1/6th and it comes to Rs. 50,000/- for the purpose of jurisdiction and for the purpose of court fee 1/6th share of plaintiffs comes to Rs.32/-. Hence, court fee of Rs.15/- was paid. Plaintiffs claiming that suit properties are joint family properties and they are in joint possession and enjoyment over suit properties with defendants. In view of submission the plaintiff ought have paid Rs.200/- if the value of suit properties exceeds RS.10,000/-. But, the counsel for plaintiff does submits that if the court directs the plaintiffs to pay deficit court fee. The plaintiffs are ready to pay the deficit court fee. In view of Sec.35(2) of KCF and SV Act the plaintiffs have pay maximum court fee of Rs.200/- on plaint. In this suit plaintiffs have paid court fee of Rs.15/-. As such there is a deficit court fee of Rs.185/-. At belated stage of case merely on the ground of deficit court fee suit cannot be dismissed. In turn direction is to be given to the plaintiffs to pay deficit court fee to the court within 15 days from today. Accordingly, I answered issue No.5 **Partly in the Affirmative.**

**21. Additional issue No.1 dated : 14.03.2018 :-** It is pertinent to note that during pendency of suit plaintiff No.1 died leaving behind plaintiff No.1 (a) to (d) as her legal heirs. The said fact is also denied by defendants. In order to substantiate this issue plaintiffs got examined PW.2 and produced survival certificates marked at Ex.P.16 and 22 and 21 death extract of Govindappa S/o Dajappa Lamani. As per Ex.P.22 plaintiff No.1 died leaving behind Govindappa as husband, plaintiff No.1 (a) to (d) as her children. The husband of plaintiff No.1 by name Govindappa died on 24.05.2010 at Goudageri village, in Kundagol Taluk. After death of Govindappa plaintiff No.1 (a) to (d) are the surviving family members of deceased plaintiff No.1 as per Ex.P.16. Husband of plaintiff No.1 died prior to her i.e. on 24.05.2010. Mere denial of relationship by the defendants is not sufficient in the presence of documentary evidence placed by plaintiff at Ex.P.16 and 22. DW.1 during cross-examination has admitted that plaintiff No.1 (a) to (d) are the sons and daughters of deceased Chandravva. Chandravva is none other than plaintiff No.1 in this suit. As such this court held that, plaintiffs proved that plaintiff No.1 (a) to (d) are the children of deceased plaintiff No.1. Accordingly, I answer this issue **in the Affirmative.**

**22. Additional Issue No.2 dated : 31.03.2021 :-** It is the contention of defendants as made out from the written

statement that, Fakkirappa Jatreppa Lamani had love and affection towards Mallappa. Said Mallappa was residing with Fakkirappa. Fakkirappa treating Mallappa as his son. During lifetime of Fakkirappa he got entered the name of Mallappa to the suit properties as faster father. Accordingly, father of defendant No.3 to 6 and husband of defendant No.2 became absolute owner of suit proeprties. Though the defendants have taken specific contention during cross-examination DW.1 has deposed that he had seen documents regarding relinquishment made by Fakkirappa and he has given said documents before his advocate and he had produced the same before court. He has further deposed that the said relinquishment was not registered document. It is well settled law that relinquishment of property values more than Rs.100/- is to be compulsorily registered as per Registration Act. Though DW.1 has deposed he has produced relinquishment document before court but, however on perusal of documents produced by defendants, alleged relinquishment deed is not available and not got exhibited. Moreover, in order to establish the contention of defendants they not chosen to examine supporting independent witnesses and not produced any documents exhibiting the name of Fakkirappa as faster father of Mallappa Lamani. As such self serving testimony of DW.1 is not sufficient to prove the contention taken by defendants. Moreover, after framing of additional issue on 31.03.2021 the

defendants have not chosen to lead any evidence on the additional issue framed. When defendants failed to establish their contention this court without any hesitation held that defendants failed to prove the specific contention pleaded at para No.10 of written statement. Accordingly, I answered this issue **in the Negative.**

**23. Issue No.2 & 6 :-** Plaintiffs have claiming that plaintiff No.1 to 3 had 1/6th share each and plaintiff No.4 to 8 together entitled for 1/6th share in suit schedule properties. Though the defendants denied the relationship of plaintiffs in the written statement. But, in cross-examination DW.1 has categorically deposed that plaintiffs No.1 to 3, defendant No.1, deceased Paravva are the sisters of Mallappa S/o Somappa Lamani and he also specifically admitted that there was no partition between family members by metes and bounds. Though the defendants denied the age of plaintiffs and taken the specific contention that the plaintiffs have born prior to Hindu Succession Act, 1956. However they have not chosen to produce any documents to substantiate their defense. But on the contrary the plaintiffs have produced study certificates marked at Ex.P.9 to 11 they discloses that plaintiff No.1 born in the year 1957, defendant No.1 born in the year 1965 and plaintiff No.3 born in the year 1967. The defendants have not seriously disputed these documents. The school documents marked at Ex.P.9 to 11

are the public documents as per Sec.74 of Indian Evidence Act and they got presumptive values regarding contents of documents. Ex.P.9 to 11 are helpful to consider the age of plaintiffs as on the date of suit and as per Sec.35 of Indian Evidence Act they are relevant documents and the public documents made in the performance of duty. Hence the entries in the documents itself is a relevant fact to consider the age of plaintiffs. As such the contention raised by defendants will not survive for consideration. Though the father of plaintiffs, defendant No.1 and Mallappa died long back in view of dictum laid down by Hon'ble Apex Court in Vinita Sharma Vs. Rakesh Sharma and others plaintiff No.1 to 3, defendant No.1, deceased Paravva and Mallappa became co-parcener to the suit properties and they are entitled for 1/6th share each in the suit schedule properties. During pendency of suit plaintiff No.1 died her legal heirs i.e., plaintiff No.1 (a) to (d). As such legal heirs of deceased plaintiff No.1 are entitled to get share of their mother. Accordingly, I answer issue No.2 & 6 **in the Affirmative.**

**24. ISSUE NO.7 :-** In view of foregoing discussions & reasonings, I proceed to pass the following:-

### **ORDER**

**The suit filed by the plaintiffs is hereby  
DECREED against defendants with cost.**

**The plaintiff No.1 (a) to (d) together entitled for 1/6<sup>th</sup> share, plaintiff No.2, 3 are entitled for 1/6<sup>th</sup> share each, plaintiff No.4 to 8 together will get 1/6<sup>th</sup> share in the suit schedule properties by metes and bounds.**

**Further defendant No.1 is entitled for 1/6<sup>th</sup> share in all the suit schedule properties by metes and bounds.**

**Likewise defendant No.2 to 6 together entitled for 1/6<sup>th</sup> share in all the suit schedule properties by metes and bounds.**

**Since, the suit schedule 'A' and 'B' properties are the landed properties, they are to be divided by metes and bounds as per Section 54 of C.P.C by appointing Court Commissioner.**

**Suit schedule 'C' property is the house property same is to be divided by appointing Engineer/Court Commissioner by metes and bounds.**

**Plaintiffs are hereby directed to pay deficit court fee of Rs.185/- in the court within 15 days from today.**

**Draw Preliminary Decree accordingly.**

(Dictated to the Stenographer on computer, corrected and initialed by me and then pronounced in the open court on this day of 8<sup>th</sup> October 2021)

**(SRI. MARUTHI.K.)  
Civil Judge & JMFC.,  
Savanur.**

**: ANNEXURE :**

**LIST OF WITNESS EXAMINED FOR THE PLAINTIFFS :**

- PW.1 : Neelavva W/o Mahadevappa @ Manappa Lamani.  
PW.2 : Ramesh S/o Govindappa Lamani.

**LIST OF DOCUMENTS MARKED FOR THE PLAINTIFFS :**

- Ex.P.1 : Certified copy of Appeal in RTS /APSR  
No.115 /92-93.  
Ex.P.2 : Certified copy of order passed in RTS/ APSR  
No.115/92-93  
Ex.P.3 : Endorsement issued by Tahashildar  
Ex.P.4 to 7 : RTC extracts  
Ex.P.8 : Endorsement issued by Tahashildar  
Ex.P.9 to 11 : Certified copies of Study certificates  
Ex.P.12 & 13 : RTC extracts  
Ex.P.14 : Certified copy of Mutation Extract  
Ex.P.15 : Order passed by Assistant Commissioner  
on 09.07.2018

- Ex.P.16 : Survival certificate  
Ex.P.17 : Death certificate of Chandravva  
Ex.P.18 : VPC extract  
Ex.P.19 : Boundaries Map  
Ex.P.20 : Death certificate of Chandravva  
Ex.P.21 : Death certificate of Govindappa Lamani  
Ex.P.22 : Survival certificate  
Ex.P.23 to 27 : RTC extracts

**LIST OF WITNESS EXAMINED FOR THE DEFENDANTS :**

- DW.1 : Mahadevappa S/o Mallappa Lamani.

**LIST OF DOCUMENTS MARKED FOR THE DEFENDANTS :**

- Ex.D.1 : Receipt Patta book.  
Ex.D.2 to 6 : RTC Extracts.  
Ex.D.7 : Form No.24.  
Ex.D.8 & 9 : RTC Extracts.

**(SRI. MARUTHI.K.)  
Civil Judge & JMFC.,  
Savanur.**

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