

KAKB210004372023



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,**

**AT: ALAND**

Present: Shri. **Abdul Rahaman Pathan,**  
B.A. LL.M.,  
II Additional Senior Civil Judge & JMFC.,  
Kalaburgi.  
**& C/C Senior Civil Judge & JMFC.,**  
**ALAND**

**O.S. No. 141/2023**

Dated this 01<sup>st</sup> day of April 2026

- PLAINTIFFS:**
1. Bharatbai W/o Revansidappa Beleamgi (D/o Chandu @ Chnadappa Biradar), Age: 50 years, Occ: Household, R/o Muddadga, Tq: Aland, Now at Kamalapur, Dist: Kalaburagi.
  2. Sharadabi W/o Laxman Kawalaga (D/o Chandu @ Chandappa), Age: 48 years, Occ: Household, R/o Chitali, Tq: Aland, Biradar, Dist: Kalaburagi.
  3. Kalpana W/o Apparao Hatagunda, (D/o Chandu @ Chnadappa Biradar), Age: 45 years, Occ: Household, R/o Hetagunda, Tq: Aland, Dist: Kalaburagi.
  4. Deepika @ Chitrabai W/o Sanjay Mane, Age: 44 years, Occ: Household, R/o near Datta Mandir, 499, Plot No. 13, Shastri Nagar, Kumbar Galli Solapur, Maharashtra.

**(By Shri. S.B.P. Adv.,)**

**// Versus //**

**DEFENDANTS:**

1. Sundrabai W/o Chandu @ Chandappa Biradr, Age: 85 years, Occ: Nil, R/o Siroor (G), Tq: Aland, Dist: Kalaburagi. Since deceased through his Lr's.
2. Vishwanath S/o Chandu @ Chandappa Biradar, Age: 50 years, Occ: Agriculture,
3. Sharanawwa W/o Late Sharanappa Biradar, Age: 47 years, Occ: Household,
4. Pooja D/o Late Sharanappa Biradar, Age: 25 years, Occ: Household,
5. Arti D/o Late Sharanappa Biradar, Age: 21 years, Occ: Household,
6. Mahesh S/o Late Sharanappa Biradar, Age: 19 years, Occ: Household, All are R/o Siroor (G), Tq: Aland, Dist: Kalaburagi.

**(D1 by Shri. R.M.T. Adv.,)**

**(D2 by Shri. S.S.C. Adv.,)**

**(D3 to 6 Ex-Parte)**

Date of Institution of Suit	29.09.2023
Nature of Suit	Partition & Separate Possession
Date of Commencement of Recording of evidence	29.07.2024
Date on which judgment is Pronounced	01.04.2026
Total Duration:	<b>Year/s      Month/s      Day/s</b> <b>02                      06                      03</b>

## **JUDGMENT**

This is a suit for partition and separate possession of 1/7<sup>th</sup> share in the Suit Schedule Properties.

### **2. The brief facts of the case of plaintiffs are as under:**

It is the case of plaintiffs that, one Chandu @ Chandappa S/o Laxman Biradar is the propositus of plaintiffs and defendants. He was owner of land bearing Sy. No. 7/3 measuring 01.38 acres, Situated at Siroor (G) Village and House Property Situated at Siroor Village (**Hereinafter referred as Suit Schedule Properties**). He and his wife viz., Sundra Bai died leaving behind defendant No. 1 as his legal heir. Plaintiff No. 1 to 4 are daughters and defendant No. 2 and one Sharanappa are sons of defendant No. 1. The said Sharanappa died leaving behind defendant No. 3 to 6 as his legal heirs. During his life time, said Chandappa mutated Khata of an area of 02.00 acres in Sy. No. 7/3 out of total extent of 05.30 acres in favor of defendant No. 1 and after his demise, Khata of remaining extent has been mutated in favor of defendant No. 1 vide M.R. No. H17/2014-2015. The Suit Schedule Properties are ancestral and joint family properties of plaintiffs and defendants and they have equal share therein. Due to old age, defendant No. 1 is residing with defendant No. 2 and 3 as such, defendant No. 2 being eldest male member is managing affairs of the family. This being the case, defendant No. 2 started to neglect defendant No. 1 and treat him inhumanly. The plaintiffs recently visited defendant No. 1 and came to know that, defendant No. 2 and 3 are hot hurry to get mutate Khata of the Suit Schedule Properties in their names. Being infuriated by the same, plaintiffs demanded him their share in the Suit Schedule Properties but they refused to budge to their request. Thus, they constrained to file instant suit for a relief of partition and separate possession of their 1/7<sup>th</sup> share each in the Suit Schedule Properties.

3. It appears from Order Sheet dated, 02.12.2023 that, despite sufficient time, defendant No. 3 to 6 did not appear as such, are placed ex-parte. Defendant No. 1 and 2 filed their separate Written Statements:

**Gist of Written Statement filed by defendant No. 1 is as under:**

4. It is admitted that, one Chandu S/o Laxman Biradar is the propositus of plaintiffs and defendants. It is also admitted that, said Chandu Biradar was owner of the Suit Schedule Properties. It is further admitted that, said Chandu Biaradar and his wife viz., Sundra Bai died leaving behind defendant No. 1 as their legal heir. Furthermore, it is admitted that, during his life time, said Chandu Biradar mutated Khata of an area of 02.00 acres in Sy. No. 7/3 out of total extent of 05.30 acres, Situated at Siroor Village and after his demise, Khata of remaining extent has been mutated in favor of defendant No. 1. It is also admitted that, plaintiff No. 1 to 4 are daughters and defendant No. 2 and one Sharanappa are sons of defendant No. 1. The said Sharanappa died leaving behind defendant No. 3 to 6 as his legal heirs. It is further admitted that, plaintiffs are looking after defendant No. 1. Thus, prayed to allot her share in the Suit Schedule Properties and also to decree the suit.

**Gist of Written Statement filed by defendant No. 2 is as under:**

5. It is contended that, instant suit is not maintainable either in law or on facts as such, liable to be dismissed at the threshold. It is admitted that, one Chandu Biaradar is the propositus of plaintiffs and defendants. It is also admitted that, during his life time, said Chandu Biradar mutated Khata of an area of 02.00 acres in Sy. No. 7/3 of Siroor Village in favor of defendant No. 1. It is further admitted that, after demise of said Chandu Biardar Khata of remaining extent has been mutated in favor of defendant No. 1. It is

further admitted that, plaintiffs, defendant No. 2 and one Sharanappa are the children of defendant No. 1. It is also admitted that, said Sharanappa died leaving behind defendant No. 3 to 6 as his legal heirs. Furthermore, it is denied that, plaintiffs demanded for their share in the suit properties but defendant No. 2 and 3 refused to budge to their request. It is flatly denied that, Suit Schedule Properties are ancestral and joint family properties of plaintiffs and defendants and they have been in joint possession and enjoyment of the same.

6. It is specifically contended that, during 2015-2016, defendant No. 1 divided suit land. Wherein an area of 02.00 acres was given to defendant No. 1 towards her maintenance. Defendant No. 2 and 3 were given equal share. Defendant No. 1 is getting cultivated said land on crop sharing basis. The plaintiffs though aware about said fact but have filed instant suit only with an intention to gulp suit land. The plaintiffs took defendant No. 1 with them and reaping benefit of said land as such, they are not entitle for any share in the suit properties. Thus, prayed to dismiss this suit with costs.

7. On the basis of pleadings and documents produced at initial stage, my learned predecessor in office framed following:

**:ISSUES:**

- 1. Whether the plaintiffs are entitled for their 1/7<sup>th</sup> each share in the Suit Schedule Properties by metes and bounds?.**
- 2. Whether the defendant No. 1 entitled for her legitimate share in the Suit Schedule Properties as claimed in her Written Statement?.**
- 3. Whether the plaintiffs are entitled for the relief as sought for?.**
- 4. What Order or decree?.**

**ADDITIONAL ISSUES FRAMED ON 02.04.2024**

- 1. Whether the plaintiffs prove that, the suit schedule properties are joint Hindu family properties of themselves and defendants and they are members of Hindu Undivided Joint Family?**
- 2. Whether the defendant No. 2 proves that, there was already partition has been taken place in between defendant No. 1 to 3 and the plaintiffs have consented to the said partition as contended in their written statement?**

8. So as to prove their case, plaintiff No. 1 examined herself as PW-1 and plaintiff No. 2 examined as PW-2. In support of oral evidence got marked Ex.P1/RTC Extract, Ex.P2/M.R. No. 78/2003-20024 and Ex.P3/H17/2014-2015. Per contra, defendant No. 1 examined herself as DW-1 and defendant No. 2 is examined as DW-2 and no documents are marked. It appears from Order Sheet dated, 16.08.2025 and 2308.2025 that, defendant No. 1 died and her legal heirs are already on record.

9. Heard learned counsel for plaintiffs and defendants. Perused the oral and documentary evidence placed on record. My answer to above issues is as under:

**Issue No. 1: In the Affirmative**

**Issue No. 2: In the Affirmative**

**Issue No. 3: In the Affirmative**

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

**ADDITIONAL ISSUES FRAMED ON 02.04.2024**

**Additional Issue No. 1: In the Affirmative**

**Additional Issue No. 2: In the Negative**

**:: REASONS ::**

10. **ISSUE No. 1, 2 & ADDITIONAL ISSUE NO. 1 and 2:** These issues are related to ancestral character of the Suit Schedule Properties, prior partition and quantum of share claimed by plaintiffs as such have been taken for common discussion to avoid repetition. It is well settled law that, the proof of existence of joint family does not lead to the presumption that, it possesses joint family property. The party claiming share should prove ancestral character of such property. The said preposition of law is supported by decision of Hon'ble Supreme Court reported in **(2007) 10 S.C.C. 602, (MAKHAN SINGH (DEAD) BY LRS., VS., KULWANT SINGH)**. Wherein at Paragraph No. 7 and 8 it is held as under:

**7. "The question to be determined in the present case is as to who is required to prove the nature of property whether it is joint Hindu family property or self – acquired property of the first appellant".**

**8. The query was answered in the following terms:**

***"18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims, it to be self acquired property to prove that he purchased the property with his own funds and no out of joint nucleus that was available.***

It appears from sacred ratio laid down in the above extracted decision that, if any coparcener claims any property as joint family property and proves existence of sufficient nucleus then burden is on the person, who claims such property as his self acquisition. The said preposition of law has been reiterated by Hon'ble High Court of Karnataka in a decision reported in **I.L.R. 1990 KAR 2303,**

**(M.R. RAJASEKHARAPPA VS., H.N. SIDDANANJAPPA).** Wherein at Paragraph No. 24 it is held as under:

**24. Now it is settled law that the proof of existence of a joint family does not lead to the presumption that it possesses joint property. The property held by a member of a joint family cannot also be presumed to be the joint family property. In a suit for partition, a party who claims that any item of suit property is joint family property, the burden of proving that it is so, rests on the party who asserts it. However, in a case where it is established that the joint family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property claimed to be the joint family property may have been acquired, the presumption arises that it was joint family property and the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family.**

**Underlined by me**

It appears from sacred ratio laid down in the above extracted decision that, existence of joint family does not lead to presume that, it possesses joint family property. The property held by any of the members of the joint family cannot be presumed as joint family property unless it is shown with clinching evidence that, same has been purchased out of aid of joint family. Thus, initial burden is on plaintiffs to prove ancestral character of suit properties. If they discharge their burden, then it is incumbent upon party claiming the same as self acquisition.

11. In view of above, this Court carefully perused oral and documentary evidence placed on record. It is undisputed fact that, one Chandu Biradar is the propositus of plaintiffs and defendants. It is also undisputed fact that, plaintiff No. 1 to 4, defendant No. 2 and Sharanappa are the children of defendant No. 1. It is further undisputed fact that, said Sharanappa died leaving behind defendant No. 3 to 6 as his legal heirs. Furthermore, it is

undisputed fact that, originally Suit Schedule Properties belonged to deceased Chandu Biradar and after his demise, have been mutated in favor of defendant No. 1. It is specific defense of defendant No. 2 that, defendant No. 1 has already divided suit properties as such, instant suit is not maintainable. With these admitted facts, this Court carefully perused material placed on record. So as to prove their case, plaintiff No. 1 examined herself as PW-1 and filed affidavit in lieu of examination in chief reiterating plaint averments. In cross examination, she admitted that, originally suit properties belonged to her grandfather and after his demise, Khata thereof has been mutated in the name of her father and thereafter, in the name of defendant No. 1. It is denied that, defendant No. 1 divided suit land between defendant No. 1 and 3 and out of total extent an area of one and half acre has been given to defendant No. 1 towards her maintenance, which has been denied by PW-1. Except this, there is nothing in the cross examination to dislodge claim of plaintiffs about ancestral character of the suit properties.

12. This Court also perused evidence of PW-2 deposed in line with evidence of PW-1. In cross examination, she admitted that, defendant No. 2 and 3 each are cultivating half share in the suit land and some portion was also given to defendant No. 1 towards her maintenance and she is getting cultivated said land on crop sharing basis. It is denied that, defendant No. 1 is taking said lease amount. It is flatly denied that, defendant No. 1 divided suit land property equally between defendant No. 2 and 3. It is also denied that, plaintiffs voluntarily did not claim any share in the suit land. It is worthwhile to note that, virtually, there is nothing in the evidence of PW-2 also to show that, defendant No. 1 divided said landed property and plaintiffs have relinquished their rights therein. In such eventuality, claim of plaintiffs that, suit properties are

ancestral and joint family properties of themselves and defendants appears to be probable.

13. This Court also perused evidence of DW-1/defendant No. 1 filed affidavit in lieu of examination in chief reiterating contentions raised in the Written Statement filed on her behalf. In cross examination, she admitted that, suit properties belonged to her husband and plaintiffs have got equal share therein. It is worthwhile to note that, defendant No. 2 though claimed that, suit properties have already been divided but did not cross examine DW-1 as such, her evidence about ancestral character of suit properties remained unchallenged.

14. This Court further perused evidence of DW-2/defendant No. 2 also filed affidavit in lieu of examination in chief reiterating contentions raised in the Written Statement. In cross examination, he admitted that, plaintiffs have also have got share in the suit properties. Defendant No. 2 though claimed that, suit land has been divided amongst defendant No. 1 to 3 and they are in possession of their respective shares but did not produce any independent evidence. In absence of such material, contention relating thereto cannot be sustained. Apart from this, it is not the case of defendant No. 2 that, plaintiffs have relinquished their rights in the suit properties through any registered instrument.

15. This Court carefully perused Ex.P2/M.R. No. 78/2003-2004 and Ex.P2/M.R. No. H17/2014-2015. Wherein it appears that, defendant No. 1 inherited suit land from her husband. It is not the case of anyone that, said landed property is her self acquired property. In such eventuality, plaintiffs being daughters of defendant No. 1 will be having right therein. It is worthwhile to note that, defendant No. 2 though claimed suit properties have already been orally divided but there is no material to show that, revenue

records based thereon have been mutated. Admittedly, partition claimed by defendant No. 2 is not through any registered instrument. In such eventuality, his contention about prior oral partition does not receive assent of law unless revenue records based thereon are mutated. The said preposition of law is supported by Full Bench decision of Hon'ble Supreme Court reported in **(2020) 9 S.C.C. 1, (VINEETA SHARMA VS., RAKESH SHARMA AND OTHERS)**. Wherein at Paragraph No. 137.5 it is held as under:

**137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a Court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evidenced in the same manner as if it had been affected (sic effected) by a decree of Court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected out rightly.**

**Underlined by me**

It appears from sacred ratio laid down in the above extracted decision that, plea of oral partition can only be entertained, if same is evidenced by mutation entries. In this case, admittedly, revenue records have not been mutated based on oral partition claimed to have been taken place amongst defendant No. 1 to 3 as such, plea of oral partition by defendant No. 2 cannot be accepted. Apart from this, it is not the case of defendant No. 2 that, plaintiffs have relinquished their rights in the suit properties through any registered instrument. In such eventuality, defense of defendant No. 2 that, suit properties have already been divided does not appear to be probable. On cumulative reading of evidence of PW-1, PW-2, DW-1 and 2 and Ex.P1 to 3 that, Suit Schedule Properties are

ancestral and joint family properties of themselves and defendants appears to be probable. **Accordingly, I answer Issue No. 1 and 2 in the Affirmative, Additional Issue No. 1 in the Affirmative and Additional Issue No. 2 in the Negative.**

16. **ISSUE No. 3:** This issue is framed with respect to entitlement of the relief claimed in this suit. The plaintiffs filed instant suit for a relief of partition and separate possession of their 1/7<sup>th</sup> share each in the Suit Schedule Properties. While answering Issue No. 1, this Court has concluded that, Suit Schedule Properties are ancestral and joint family properties of plaintiffs and defendants. It is undisputed fact that, plaintiffs, defendant No. 2 and one Sharanappa are the children of defendant No. 1. Thus, plaintiffs, defendant No. 1 and 2 each are entitle for 1/7<sup>th</sup> share in the Suit Schedule Properties. It is undisputed fact that, said Sharanappa died leaving behind defendant No. 3 to 6 as his legal heirs as they inherit said share. Thus, defendant No. 3 to 6 together are entitle for 1/7<sup>th</sup> share in the Suit Schedule Properties. It is worthwhile to note that, during pendency of suit defendant No. 1 died leaving behind plaintiffs and defendants as her legal heirs as such, share of deceased defendant No. 1 is to be divided amongst them. Thus, plaintiff No. 1 to 4 and defendant No. 2 each are also entitle for 1/42<sup>nd</sup> share along with their each 1/7<sup>th</sup> share. Defendant No. 3 to 6 together are entitle for 1/42<sup>nd</sup> along with their 1/7<sup>th</sup> share.

17. It is worthwhile to note that, Hon'ble Supreme Court in a decision reported in **2022 SCC ONLINE 737, (KATTUKANDI EDATHIL AND ANOTHER VS., KATTUKANDI EDATHIL VALSAN AND OTHERS)** at Paragraph No. 33 held as under:

**33. We are of the view that, once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The Courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless, to state that, the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo-motu and without requiring initiation of any separate proceedings.**

It appears from sacred ratio laid down in the above extracted decision that, Hon'ble Supreme Court has directed all the trial Courts to initiate final decree proceedings suo motu once preliminary decree is passed in a suit for partition. *The Hon'ble High Court of Karnataka has also directed all the Courts to follow said guidelines scrupulously vide Circular No. DJA-I/105, dated, 21-10-2022.* Thus, it is necessary to direct the Office to register the final decree proceedings based on the preliminary decree passed in this case. Considering facts of this case, it would not be just to impose costs on any of the parties to this suit. **Accordingly, I answer Issue No. 3 in the Affirmative.**

18. **ISSUE No. 4:** In view of discussion and conclusion arrived at Issue No. 1 to 3 and Additional Issue No. 1 and 2, this Court proceeds to pass following:

**ORDER**

**The suit of plaintiffs is DECREED**

**It is ordered and decreed that, plaintiff No. 1 to 4 are entitle for 1/7<sup>th</sup> share each in the Suit Schedule Properties.**

**It is also ordered and decreed that, defendant No. 1 and 2 each are entitle for 1/7<sup>th</sup> share in the Suit Schedule Properties.**

**It is further ordered and decreed that, defendant No. 3 to 6 together are entitle for 1/7<sup>th</sup> share in the Suit Schedule Properties.**

**Item No. 1 of the Suit Schedule Property is agricultural land as such, is to be divided appointing Court Commissioner U/Section 54 the Code of Civil Procedure and Item No. 2 of the Suit Schedule Property is House Property as such, is to be divided by appointing Court Commissioner as per Order XXVI rule 13 of the Code of Civil Procedure.**

**Furthermore, it is ordered and decreed that, plaintiff No. 1 to 4 and defendant No. 2 each are also entitle for 1/42<sup>nd</sup> share and defendant No. 3 to 6 together are also entitle for 1/42<sup>nd</sup> share in the 1/7<sup>th</sup> share of deceased defendant No. 1.**

**The Office shall register Final Decree Proceedings as per Order XX rule 18 of the Code of Civil Procedure based on the preliminary decree passed in this case and to keep Certified Copy of said preliminary decree in the final decree proceedings.**

**Draw Preliminary Decree accordingly**

**Parties to bear their own costs.**

(Dictated to the Stenographer directly on laptop, corrected and then pronounced by me in Open Court on this 01<sup>st</sup> day of April 2026).

**(Abdul Rahaman Pathan)**  
II Additional Senior Civil Judge  
& JMFC., Kalaburagi &  
C/C Senior Civil Judge & JMFC,  
ALAND.

**:: ANNEXURE ::****LIST OF WITNESSES EXAMINED FOR PLAINTIFFS:**

PW-1 : Bharatbai D/o Chandappa Biradar  
PW-2 : Sharadabai D/o Chandappa Biradar

**LIST OF DOCUMENTS MARKED FOR PLAINTIFFS:**

Ex.P1 : RTC Extract,  
Ex.P2 : M.R. No. 78/2003-20024  
Ex.P3 : H17/2014-2015.

**LIST OF WITNESSES EXAMINED FOR DEFENDANTS:**

DW-1 : Sundarabai W/o Chandu @  
Chandappa Biradar  
DW-2 : Vishwanath S/o Chandu @  
Chandappa Biradar

**LIST OF DOCUMENTS MARKED FOR DEFENDANTS:**

-----NIL-----

Date: 01-04-2026  
Place: Kalaburagi

**(Abdul Rahaman Pathan)**  
II Additional Senior Civil Judge  
& JMFC., Kalaburagi.  
C/C Senior Civil Judge & JMFC,  
ALAND.