



IN THE COURT OF THE SENIOR CIVIL JUDGE
AND JMFC., CHITTAPUR

PRESENT : Sri Kishan B. Madalagi; B.Com.; LL.B.(Spl.,)
Senior Civil Judge & JMFC, Chittapur

DATED THIS THE 28th DAY OF MARCH, 2026

O.S.NO.116/2017

- Plaintiff/s:**
1. Meerasab S/o Mahaboobsab,
Age: 48 Years, Occ: Agriculture,
 2. Abdul Gani S/o Mahaboobsab,
Age: 45 Years, Occ: Agriculture,
 3. Malanbee W/o Qamruddin (Mehaboobsab),
Age: 52 Years, Occ: Household,
 4. Iqbal Ahemad S/o Late. Khajamiya,
Age: 34 Years, Occ: Agriculture,
 5. Akbarsab S/o Late. Khajamiya,
Age: 27 Years, Occ: Agriculture,
 6. Akram S/o Late. Khajamiya,
Age: 25 Years, Occ: Agriculture,
 7. Aslam S/o Late. Khajamiya,
Age: 22 Years, Occ: Agriculture,
All R/o Kalgurti, Tq: Chittapur.
 8. Sahen Bee W/o Late. Khajamiya,
Age: 54 Years, Occ: Household,



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R/o Kalgurti, Tq: Chittapur.

9. Ammerun Begum W/o Syed Meharaj
(D/o Khaja Miya), Age: 30 Years,
R/o Khanalak Galli, Rajeshwar, Tq: Basavkalyan

(Plaintiffs By Smt. M.V.L. Advocate)

V/S

Defendant/s:

1. Lalahmed S/o Mehaboobsab,
Age: 42 Years, Occ: Agriculture,
2. Sohal miya S/o Lalahemad,
Age: 18 Years, Occ: Agriculture,
3. Mumtaz Begum W/o Late. Imamuddin,
Age: 40 Years, Occ: Agriculture,
all above R/o house No.1/133/3,
Kalgurti village, Tq: Chittapur.
4. Vishwanath S/o Bheemraya, Dandin,
Age: 28 Years, Occ: Agriculture,
R/o plot No. 17, Om Nagar 2nd Block
Sedam Road, Kalaburagi.

(Defendant No.1 to 3 - By Sri. S.N.J. Advocate)
(Defendant No.4 Advocate- Retired)



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Date of institution of the suit	14.12.2017						
Nature of the (suit on pronote, suit for injunction etc.)suit	Suit for Partition and Separate Possession and declaring sale deed as Null an void						
Date of the commencement of recording of evidence	15.09.2021						
Date on which Judgment was pronounced	28.04.2026						
Total duration	<table><tr><td><u>Year/s</u></td><td><u>Month/s</u></td><td><u>Day/s</u></td></tr><tr><td>08</td><td>03</td><td>14</td></tr></table>	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>	08	03	14
<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>					
08	03	14					

(KISHAN B MADALAGI)
Senior Civil Judge
& JMFC, Chittapur

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(Delivered on 28-04-2026)

1. This suit is brought for partition and separate possession.

2. The facts of the plaintiff's case can be summarized as under:



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That the plaintiffs have filed suit for partition and separate possession and cancellation of sale deed executed by defendant No.2 and 3 in favour of defendant No.4. On the ground that plaintiffs and defendant No.1 to 3 have common ancestor by name Mehaboobsab S/o Meerasab. He had two wives, first wife is Mashakbee and second wife is Yasanbee. Further out of wedlock between Mashakbee and Mehaboobsab, plaintiff No.1 is born, further out of wedlock between Yasanbee with Mehaboob sab plaintiff No.2, 3, defendant No.1, one Khajmiya and Imamuddin were born. Further Khajamiya died about 20 years back leaving behind plaintiff No.4 to 9, as his legal heirs and Imamuddin died on 03-06-2014 leaving behind defendant No.3 as his legal heir. Further it is allegations of plaintiffs that suit properties are owned and possessed by Mehaboobsab S/o Meerasab, who was common ancestor of plaintiff No.1 to 3. Further plaintiffs got surprised when they found name of defendant No.1 and 2 appearing in Sy.No.170/1. Further in the RTC name of defendant No.2 appearing



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as Sohail S/o Imamuddin instead of son of Lalahemad. Further

they got knowledge that defendant No.2 and 3 behind their back without their consent they have sold Sy.No.170/1 in favour of defendant No.4. Further they have obtained certified copy of sale deed executed by defendant No.2 and 3 in favour of defendant No.4. Further their common ancestor Mehaboobsab S/o Meerasab was owner and possessor of suit properties, who died on 8-11-2017 leaving behind plaintiff No.1 to 3 and defendant No.1. Further son of Mehaboobsab, said Khajamiya died leaving behind plaintiff No.4 to 9 and another son Imamuddin died leaving behind defendant No.3. Further plaintiffs have requested elders of village on 10-12-2017 to effect partition amicably but defendant No.1 denied the same. Thereby present suit is came to be filed.

3. On the other hand, defendant No.1 to 3 have filed written statement. Defendant No.4 appeared through counsel but he has not filed written statement. Further defendant No.1 to 3 have admitted that plaintiff No.2 to 9 and defendant No.1 to 3 had



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common ancestor by name Mehaboobsab S/o Meerasab. Further admitted suit properties were owned and possessed by Mehaboobsab S/o Meerasab. Further they have specifically denied that Mehaboobsab S/o Meerasab had two wives and denied mother of plaintiff No.1 by name Mashakbee is first wife of Mehaboobsab S/o Meerasab. Further admitted that Yasanbee is wife of Mehaboobsab S/o Meerasab, and out of their wedlock plaintiff No.2, 3, defendant No.1, Khajamiya and Imamuddin were born. Further they have admitted Mehaboobsab S/o Meerasab died on 08-11-2017. Further denied that out of wedlock between Mehaboobsab S/o Meerasab with Mashakbee plaintiff No.1 is born. The defendants have specifically contended that Mashakbee never married to Mehaboobsab. They have specifically contended that Mashakbee married to one Bandagi Sab resident of Pala village and out of their wedlock plaintiff No.1 is born. Further defendants contended that plaintiff No.1 and his mother Mashakbee are no way concern to the family of Mehaboobsab. Further admitted that



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Khajamiya died about 20 years back leaving behind plaintiff No.4 to

4. Further admitted Imamuddin died on 03-06-2014 leaving behind defendant No.3. Further they have denied plaintiffs got surprised by obtaining ROR pertaining to Sy.No.170/1, wherein they have found name of father of defendant No.2 is shown as Imamuddin instead of Lalahemad. Further admitted sale deed executed by defendant No.2 and 3 in favour of defendant No.4. Further contended that the second son Imamuddin, had no issues, thereby he had taken defendant No.2 at the age of 6 months brought and grownup as son of defendant No.3 and residing along with defendant No.3. Further contended that for family and private necessity Mehaboobsab has sold Sy.No.170/1 in favour of defendant No.4 by executing registered sale deed. Further contended that plaintiff No.1, 4 to 7 and defendant No.3 have no share in the suit properties. Further contended that plaintiff No.3 at the time of her marriage Mehaboobsab had given 10 Tola of Gold and Rs.2,00,000/- towards her share, so she is not entitled for any



share. **Further contended that during lifetime of Mehaboobsab**

in Sy.No.170/1 measuring 05 acres 30 gunta given land in

favour of defendant No.2 and 3. Further contended that suit is

bad for non-joinder necessary parties. Further contended that ,

where Mehaboobsab has purchased Sy.No.157 situated at

Kalgurthi in the name of first son by name Khajamiya. Further

contended that wife and daughter of Khajamiya were not made

party. Hence suit is bad for non-inclusion necessary parties. Hence

prays to dismiss the same.

5. Based on these pleadings, the following issues are framed as under:

- 1. Whether the plaintiffs proved that, they and defendants are tenants in common over the suit properties?**
- 2. Whether the plaintiffs further proved that the sale deed executed by defendants No.2 and 3 in favour of defendant No.4 is void ab-initio?**
- 3. Whether the defendants proved that the suit is bad for non-joinder of necessary parties?**

**4. Whether the plaintiffs are entitled for the relief?****5. What Order or Decree?**

6. The plaintiffs in order to prove that plaintiff No.1 to 9, defendant No.1 to 3 had common ancestor and he had two wives by name Mashakbee and Yasanbee, further they are tenants in common. In order to prove the same, plaintiff No.2 is examined as PW.1 and got marked Ex.P.1 to Ex.15. Besides got examined one witness as PW-2. On the side of defendants, defendant No.1 got examined himself as DW-1 and got marked documents as per at Ex.D.1 to Ex.D.12. Besides got examined three witnesses as DW-2 to DW-3.

7. Heard the arguments canvased by the learned counsel for the defendants and the learned counsel for the plaintiffs. Perused the material on record.

8. My findings to above issues are as under:

ISSUE NO.1: Partly in the Affirmative.



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ISSUE NO.2: In the Negative.

ISSUE NO.3: In the Negative.

ISSUE NO.4: Partly in the Affirmative.

ISSUE NO.5: As per final order for the following;

REASONS:

9. **ISSUES NO.1:** That the plaintiffs have filed suit for partition and separate possession against defendants and declaration of sale deed executed by defendant No.2 and 3 in favour of defendant No.4 is null and void.

10. The plaintiffs in order to prove that suit properties owned and possessed by their father their commons ancestor by name Mehaboobsab S/o Meerasab, plaintiff No.2 is examined himself as PW-1 and got marked Ex.P-1 to P-15 documents. Ex.P-1 to 7 are RTCs, Ex.P-8 to 11 are Khata Extracts, Ex.P-12 is sale deed executed by defendant No.2 and 3 in favour of defendant No.4, Ex.P-13 is endorsement issued by school authority, Ex.P14 is Aadhar Card and Ex.P-15 is Election ID Card.



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11. Further plaintiffs have examined one witness by name Siddanna S/o Shivasharanappa as PW-2.

12. On the other hand in order to prove their contentions that Mehaboobsab had married only Yasanbee, mother of plaintiff No.1 by name Mashakbee is not the wife of Mehaboobsab, further Khajamiya and another son Imamuddin died prior to Mehaboobsab and they are not having any share. In order to prove the same defendant No.1 examined himself as DW-1 and got marked Ex.D-1 to D-12. Ex.D-1 is Ration Card, Ex.D-2 is Aadhar Card, Ex.D-3 is Nikhanama, Ex.D-3(a) is Translation of Nikhanama, Ex.D-4 is Affidavit of Translator, Ex.D-5 is Voters List, Ex.D-6 is sale deed in respect of Sy.No.157, wherein defendant No.1 has contended that Mehaboobsab purchased said land in the name of Khajamiya which is not included as suit property. Ex.D-7 is Translation of Ex.D-6, Ex.D-8 is sale deed in respect of Sy.No.157, Ex.D-9 is Translation of Ex.D-8, Ex.D-10 is Affidavit of Translator, Ex.D-11 is RTC and Ex.D-12 is Translation of Nikhanama. Further defendants in order to prove



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that Mehaboobsab has only married to Yasanbee and mother of plaintiff No.1 is not wife of Mehaboobsab examined witnesses by name Mehaboobsab S/o Ladlesab as DW-2. Further examined another witness by name Chanbasappa S/o Bandappa as DW-3, further examined another witness Qhaji Hameed S/o Qhaji Md. Hussain as DW-4 who has furnished Nikhanama.

13. On going through the rival pleadings, oral and documentary evidence from both sides, it is undisputed that Mehaboobsab was owner and possessor of suit lands. Further they have admitted that Mehaboobsab was died on 08-11-2017. Further it is undisputed that father of plaintiff No.4 to 9 Khajamiya died about 20 years back leaving behind plaintiff No.4 to 9. Further it is undisputed that another son of Mehaboobsab, ie, Imamuddin died on 03-06-2014 leaving behind defendant No.3. The plaintiffs have contended that Mehaboobsab had married Mashakbee, out of their wedlock plaintiff No.1 is born. On the other hand defendants have contended that Mehaboobsab had not married to Mashakbee. The



defendants in order to prove the same they have relied on Ex.D-3

and its translation copy Ex.D-3(a), it clearly goes to show that Mashakbee D/o Mohiuddin sab has married to Bandagisab. Further defendants in order to prove Ex.D-3 Nikhanama obtained from Khazi, which they have obtained copy of register of marriage, the defendants examined Qhaji as DW-4, he deposed that as per request of defendant No.1, he has furnished copy of Nikhanama and as per their records Mashakbee married to one Bandagisab. Further deposed Mashakbee is not wife of Mehaboobsab. DW-4 was cross examined by plaintiffs he deposed he do not know who is Mehaboobsab. Further admitted he do not know, how many wives he had. Further deposed he do not know personnel knowledge about their life. On the other hand defendants have cross examined PW-1 with respect to dispute of marriage Between Mehabobab and Mshakbee and plaintiff No.1 is no way concern to their family. On going through cross examination of PW-1, he deposed that Mehaboobsab had two wives i.e. Yasanbee and



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Mashakbee. Further he admitted that they have not produced Nikhanama of Mashakbee with Mehaboobsab. Further admitted that in order to show that plaintiff No.1 is son of Mehaboobsab they have not produced any document. Further it was suggested that Mashakbee married to Bandagisab, who is resident of Pala village same is denied by PW-1.

14. Further it was admitted that before death of their father i.e. Mehaboobsab, Khajamiya and Imamuddin were died " ಸದರಿ ಖಾಜಾಮಿಯಾ ಮತ್ತು ಇಮಾಮುದ್ದೀನ ಇವರು ನನ್ನ ತಂದೆಗಿಂತ ಮೊದಲೇ ತೀರಿಕೊಂಡಿದ್ದರು ಎಂದರೆ ಸರಿ. " Hence on going through cross examination of PW-1, it clearly goes to show that the plaintiffs have not produced Nikhanama of Mashakbee with Mehaboobsab. Further plaintiffs in order to prove that plaintiff No.1 is born to Mashakbee out of wedlock with Mehaboobsab, they have examined witness by name Siddanna as PW-2 he deposed as per version of PW-1. On going through his



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cross examination he deposed that Mehaboobsab had 2 wives

Mashakbee and Yasanbee. Further he deposed that he has not attended marriage of Mashakbee. Further admitted he has not seen any document related to marriage of Mashakbee with Mehaboobsab. Further it was suggested Mashakbee is not wife of Mehaboobsab, same is denied by PW-2. Further it was suggested that plaintiff No.1, is not son of Mashakbee, he is son of Bandagi Sab, same is denied by PW-2. Further in order to prove that plaintiff No.1 is born to Mehaboobsab, and his mother married to Mehaboobsab and he has born out of their wedlock, they relied Ex.P-14 and 15. The plaintiffs have argued that as per Aadhar Card, plaintiff No.1's father name is shown as Mehaboobsab. Further as per Ex.P.15 election ID card, plaintiff No.1's father name is shown as Mehaboobsab. The Plaintiffs by relying Ex.P-14 and 15 argued that Mehaboobsab had two wives by name Mashakbee and Yasanbee and plaintiff no.1 born to Mehaboobsab.



15. On the other hand defendants by relying Nikhanama, as per Ex.D-3, they have argued that Khazi has furnished copy of Nikhanama, who is examined as DW-3. Hence on going through Ex.D-3 and oral evidence of DW-3, it clearly goes to show that mother of plaintiff No.1, Mashakbee had married to one Bandagi Sab who is resident of Pala village. Now question arises whether there was Talaknama or divorce between Mashakbee and Bandagi sab or after death of Bandagi sab, mother of plaintiff No.1 had married to Mehaboobsab, to believe the version of plaintiff No.1, he has not produced Nikhanama. Further he has not produced Talaknama or divorce between Mashakbee and Bandgisab. After death of Bandagi sab, his mother had married to Mehaboobsab. At this stage, it is undisputed fact, and it is admitted that plaintiff No.2, 3, father of plaintiff No.4 to 9, defendant No.1 and husband of defendant No.3 were born to Mehaboobsab out of wedlock with Yasanbee. But children of Yasanbee have joined with son of Mashakbee i.e. plaintiff No.1, the defendant No.1 who is son of



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Yasanbee has disputed marriage of mother of plaintiff No.1 with his

father but brother of defendant No.1 have joined hands with

plaintiff No.1. At this stage it is relevant to note **Principles of**

Mohammedan \$ 250 Wherein " Definition of Marriage: -

Marriage (nikah) is defined to be a contract which has for its object

the procreation and legalization of children."

On going through above provision as per Mohammedan Law

marriage is civil contract to legalize the children there must be

Nikah. Further as per **Principles of Mohammedan \$ 268 wherein**

it is held that " Presumption of Marriage : Marriage will be

presumed, in the absence of direct proof, from,

(a) prolonged and continual cohabitation as husband and wife, b)

fact of the acknowledgment by the man of the paternity of the child

born to the woman, provided that the conditions of valid marriage

acknowledgment mentioned in \$ 344 below are fulfilled c) the fact

of the acknowledgment by the man of the woman as his wife."



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As per the above provision of marriage, since Mashakbee was continual cohabitation with Mehaboobsab, but as per Ex.D-3 marriage of Mashakbee was solemnized with Bandagi sab same cannot be denied. Further plaintiff No.1 has not produced any document to show, that there was divorce between Mashakbee and Bandagi sab. Further plaintiff No.1 has not produced any document to show that after death of Bandgi sab, his mother Mashakbee married to Mehaboobsab. Even though there is a presumption in respect of marriage, but as per Ex.D-3 there was marriage solemnized between Mashakbee and Bandagisab. Hence plaintiffs have not shown any document to show that there was Nikah or marriage between Mashakbee with Mehaboobsab. Further plaintiff contended that by filing I.A.No.11 for DNA test of himself and other plaintiffs but this court has rejected application, since as per Mohammedan law even plaintiff No.1 is born to Mehaboobsab, there must be Nikah or marriage. Hence plaintiff No.1 has not produced talaq/divorce between Mashakbee with Bandagisab,



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neither he has produced death certificate of Bandagisab. Further

plaintiffs have contended that Mehaboob-sab married with

Mashakbee but as per **Principles of mohemmdan \$ 256 of**

Mohammadean Law wherein it is held that: " Plurality of husbands:

- It is not lawful for a Mahomedan woman to have more than one

husband at the same time. A marriage with a woman, who has her

husband alive ad who has not been divorced by him is void. A

Mahomedan woman marrying again in the lifetime of her husband

is liable to be punished under section 494 of Indian Penal Cove

1860. The off spring of such marriage is illegitimate and cannot be

legitimated by acknowledgment."

On going through the above provision, plaintiffs have not

produced divorce between Mashakbee with Bandagisab, neither he

has produced death certificate of Bandagisab. Hence marriage

between Mashakbe and Mehaboobsan is void marriage. Further on

going through **Principles of Mohammedan \$266 Effects of**

Void(batil) marriage: A void marriage is no marriage at all. It does



not create civil rights or obligations between the parties. The off spring of a void marriage are illegitimate."

Further on going thorough the above provision the marriage between Bandagisab with Mashakbee and off springs of a void marriage is illegitimate.

Further on going through **Principles of Mohammedan § 339**
Paternity how established: -1) The paternity of a child can only be established by marriage between its parents. The marriage may be valid(Sahib), or irregular(fasid), but it must not be void(batil).

Marriage may be established by direct proof. If there be no direct proof it may be established by indirect proof, that is, presumption drawn from certain facts. It may presumed from prolonged cohabitation combined with other circumstances(\$268), or from acknowledgment of legitimacy in favour of child.

2. When paternity of child is established, its legitimacy is also established."



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Hence in the absence of Nikha between Mashakbee and Mehaboobsab, it cannot be proved paternity of plaintiff No.1.

16. Hence from the above discussion in respect of principles of Mahommdean law, oral and documentary evidence, it clearly goes to show that mother of plaintiff No.1 Mashakbee had married to Bandagisab. Further even there is presumption of marriage of mother of plaintiff No.1 with Mehaboobsab, but plaintiff No.1 has not produced Nikhanama between Mashakbee with Mehaboobsab or divorce between Mashakbee with Bandagisab. Even though prolong cohabitation between Mashakbee and Mehaboobsab and plaintiff No.1 is born but he has not produced after death of Bandagisab her mother married to Mehaboob sab or there was divorce between Mashakbee with Bandagisab. Hence as per **principles of Mahommdean law \$256** marriage between Mashakbee and Bandagi sab is void marriage. **As per \$ 266 plaintiff No.1 is off spring of a void marriage are illegitimate.**



Hence plaintiff No.1 is not tenant in common with plaintiff No.2 and 3.

17. The plaintiffs No.4 to 9 and defendant No.3 have also contended that they are tenants in common but as per **Principles of Mohammedan \$ 53 theory of representation is not recognized in Mohammedan law.** On going through rival pleadings, it is undisputed that plaintiff No.2 to 9 and defendant No.1 to 3 have common ancestor Mehaboobsab. Further it is undisputed that Mehaboobsab was owner and possessor of suit lands. Further it is undisputed that common ancestor Mehaboobsan died on 03-06-2014. Further as per pleadings of plaintiffs the Khajamiya i.e. father of plaintiff No.4 to 9 died 20 years back before the death of Mehaboobsab, as per \$53 of Mohammedan law they are not tenants in common. Hence they are excluded from inheritance, since father of plaintiff No. 4 to 9 died before death of Mehaboobsab, hence they were excluded. Further defendant No.3 who has sold Sy.No.170/1 in favour of defendant No.4, she is also claims tenant in



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common, but on going through pleadings and admissions in written statement of defendant No.3, the husband of defendant No.3 Imamuddin, who is son also died prior to the death of Mehaboobsab. Hence defendant No.3 is also not tenant in common. Hence from the above discussion plaintiff No.2 and 3 have proved they tenants in common, plaintiff No.1, 4 to 9 are not tenants in common. **Accordingly I answered Issue No.1 Partly In the Affirmative.**

18. **ISSUE NO.2:** The plaintiffs have contended that Sy.No.170/1 is owned and possessed by their common ancestor Mehaboobsab, but defendant No.2 and 3 behind their back without their knowledge and consent executed sale deed in favour of defendant No.4 on 27-10-2017. Hence sale deed executed by defendant No.2 and 3 in favour of defendant No.4 is Null and void. On the other hand defendant No.1 to 3 in their written statement at para No.5 they have contended that Mehaboobab has sold Sy.No.170/1 to defendant No.4 by executing registered sale deed



for their family necessities. Further defendants have contended that Imamuddin died issue less, after his death defendant No.3, who is wife of Imamuddin has taken defendant No.2 who is son of defendant No.1 at the age of 6 months old and defendant No.2 is grownup as son of defendant No.3. Further defendants argued that during lifetime of Mehaboobsab Sy.No.170/1 was transferred in the name of defendant No.2 and 3. Further defendants have contended that during lifetime of Mehaboobsab, he has given Sy.No.170/1 to defendant No.2 and 3 and they are owners and possessors of said land. Before going to discussion on whether Mehaboobsab has given Sy.No.170/1 to defendant No.2 or not, it has to be discussed whether defendant no.2 is son of defendant no.3.

19. The defendant No.1 has contended that Imamuddin had no issues, the defendant No.2 is son of defendant No.1. Further defendant No.3 is wife of Imamuddin, defendant No.1 has contended that after death of his brother Imamuddin, his son was



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taken by defendant No.3. Accordingly father's name of defendant

No.2 is mentioned as Imamuddin, in support of their contention they relied Ex.D-1, Ration Card family of Imamuddin wherein name of defendant No.2 is shown as family member of Imamuddin as son and defendant No.3 as wife. Further they relied Ex.D-2 Aadhar card of defendant No.2, wherein father's name of defendant No.2 is shown as Imamuddin instead of his natural father defendant No.1. Further defendant No.1 examined Mehaboobsab S/o Ladlesab as DW-2 and Chanbasapp S/o Bandeppa as DW-3, they deposed that since Imamuddin has no issues his wife defendant No.3 has taken son of defendant No.1 at the age of 6 months and he was grownup as son of defendant No.3. Hence by relying evidence of DW-1 to 4 defendants have argued that defendant No.2 is son of defendant No.1 and he is grownup as son of defendant No.3. Hence defendant No.2 is son of defendant No.3. Hence as son of defendant No.3, defendant No.2 and 3 sold Sy.No.171/1 in favour of defendant No.4. Whether defendant No.3 has taken defendant No.2



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as son in adoption or not whether it is not recognized by

Mohammadean Law. As per **Principles of Mohammedan §347**

“Adoption not recognized: The Mohammdean Law does not recognize adoption as a mode of filiation.” Even though defendant

No.3 has taken son of defendant No.1, i.e. defendant No.2 as son, it will not recognized by the Mohammadean Law. Since defendant No.1 to 3 are Mahommdeans.

Next question arises during lifetime of Mehaboobsab, whether he has given Sy.No.170/1 to defendant No.2 and 3. Further whether Mehaboobsab has sold Sy.No.170/1 in favour of defendant No.4 for their family necessities. It has to be discussed, on going through the entire material on record the defendant No.1 who has contended that during lifetime of his father Mehaboobsab has given Sy.No.170/1 to defendant No.2 and 3 by mode of any registered document. But defendant no. 1 to 3 have not produced any registered document, but mere entry of name in the ROR does not creates any rights. Further defendant No.1 in order to prove that



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during lifetime of his father Mehaboobsab has given Sy.No.170/1 to defendant No.2 and 3 have executed agreement for sale dated: 23-08-2017 in favour of defendant No.4, it was signed by Mehaboobsab as consenting witness but said agreement for sale dated: 23-08-2017 document is not marked by defendants. Hence even though agreement for sale dated 23-08-2017, it is signed by Mehaboobsab as consenting witness same cannot be considered by this court.

20. On the other hand defendant No.1 to 3 have contended that at para No.5 of written statement, Mehaboobsab himself sold Sy.No.170/1 to defendant No.4 by executing registered sale deed. On going through registered sale in respect of Sy.No.170/1 executed by defendant No.2 and 3 in favour of defendant No.4 marked as Ex.P-12. On going through Ex.P-12, it is certified copy of sale deed executed by defendant No.2 and 3 in favour of defendant No.4 in respect of Sy.No.170/1, wherein defendants have contended that Mehaboobsab sold property to defendant No.4. But on going through Ex.P-12 neither name of Mehaboobsab nor his signature is



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found on Ex.P-12, in the absence of any registered document executed by Mehababoobsab in favour of defendant No.2 and 3 in respect of Sy.No.170/1. It cannot be considered that defendant No.2 and 3 are owners and possessors of Sy.No.170/1. Hence from the above discussion sale deed executed by defendant No.2 and 3 in favour of defendant No.4 is Null and Void. **Hence I answered Issue No.2 in the Negative.**

21. **ISSUE NO.3:** The defendants have contended that suit is bad for non joinder of necessary parties that plaintiffs have not included children of Khajamiya, but during pendency of the suit plaintiffs have impleaded children of Khajamiya as plaintiff No. 4 to 9. Hence defendants have failed to prove that suit is bad for non-joinder of necessary parties. **Accordingly I answered this issue in the Negative.**

22. **ISSUE NO.4:** The plaintiffs have filed suit for partition and separate possession and declaration of sale deed as null and void.



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since plaintiffs have alleged that they have common ancestor by name Mehaboobsab, he had 2 wives by name Mashakbee and Yasanbee, and out of wedlock between Mashakbee with Mehaboobsab plaintiff No.1 is born. Further out of wedlock between Yasanbee with Mehaboobsab, plaintiff No.2, 3 and father of plaintiff No.4 to 9 and husband of defendant No.3 and defendant No.1 were born. Since plaintiff No.1 has failed to prove that her mother is married to Mehaboobsab. Hence he is not entitled for any share in suit properties. Further it is undisputed that the father of plaintiff No.4 to 9 Khajamiya, ie son of Mehaboobsab died about 20 years back.. Further on going through pleadings, themselves have alleged that father of plaintiff No.4 to 9 by name Khajamiya, died about 20 years back prior to death of Mehaboobsab, accordingly plaintiff No.4 to 9 are not entitled for any share. Further defendant No.3 wife of Imamuddin, it is undisputed that said Imamuddin died on 03-06-2014 prior to death of Mehaboobsab, hence she is also not entitled for any share in suit property. Before coming to conclusion



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defendants contended that Mehaboobsab had purchased Sy.No.157

in the name of Khajamiya, who is father of plaintiff No.4 to 9 and it is also their family property. On going through Ex.D-6 and 8 at the time of purchase of property Sy.No.157, the age of Khajamiya was 28 years. Further in Mohammadean Law there is no concept of joint family. Hence contention taken by the defendants Mehaboobsab has nominally purchased Sy.No.157 in the name of Khajmiya is ruled out. Hence from the above discussion plaintiff No.2, 3 and defendant No.1 are only entitled for share in suit properties. Further sale deed executed by defendant No.2 and 3 in favour of defendant No.4 is null and void. **Accordingly, I answered Issue No. 4 Partly in the Affirmative.**

23. **ISSUE NO.5:** In view of my answers to issue No. 1 to 4 as above I proceed to pass the following:

ORDER

Suit of the plaintiffs is hereby decreed.



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No order as to costs.

The plaintiff No.2 and defendant No.1 are entitled for 2/5th each share and plaintiff No.3 is entitled for 1/5th share in suit schedule properties with reference to good and bad soil.

Further plaintiff No.1 and plaintiff No.4 to 9 and defendant No.2 and 3 are not entitled for any share in suit properties.

Further it is hereby declared that sale deed executed by defendant No.2 and 3 in favour of defendant No.4 through sale deed document No.4366/2017-18 dated: 27-10-2017 is null and void.

Draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed by him on computer, corrected by me, print out is taken by him, signed and then pronounced by me in the open Court on this the 28th day of March, 2026)

(KISHAN B MADALAGI)
Senior Civil Judge
& JMFC, Chittapur

**ANNEXURE**1. List of witnesses examined on behalf of the Plaintiffs:

- PW.1. : Abdul Gani S/o Mehaboob Sab
PW.2. : Siddanna S/o Shivasharanappa

2. List of documents marked on behalf of the Plaintiffs:

- Ex.P.1 to 7 : RORS
Ex.P.8 to 11 : Khata Extracts
Ex.P.12 : Sale deed
Ex.P.13 : Endorsement issued by school Authority
Ex.P.14 : Aadhar Card
Ex.P.15 : Election ID Card

3. List of witnesses examined on behalf of the Defendants:

- DW.1. : Lal Ahemad S/o Maheboob Sab
DW.2. : Maheboobsab S/o Ladle Sab
DW.3. : Chanbasappa S/o Bandappa
DW.4. : Qhaji Hameed S/o Qhaji Md. Hussain

4. List of Exhibits marked on behalf of the Defendants:

- Ex.D.1 : Ration Card
Ex.D.2 : Aadhar Card
Ex.D.3 : Nikha Nama
Ex.D.3(a) : Translation of Ex.D-3
Ex.D.4 : Affidavit of Translator
Ex.D.5 : Voters List
Ex.D.6 : C/c of Sale Deed
Ex.D.7 : Translation of Ex.D-6 Dt: 11-04-1977
Ex.D.8 : C/c of Sale Deed



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Ex.D.9 : Translation of Sale Deed Dt: 26-04-1976
Ex.D.10 : Affidavit of Translator
Ex.D.11 : RTC
Ex.D.12 : Translation of Nikhanama

Senior Civil Judge & JMFC,
Chittapur.

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