



Presented on : 19-12-2019
Registered on : 21-12-2019
Decided on : 28-03-2026
Duration: 6 years 2 months 27 days.

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

PRESENT:- Smt. Tayyaba Sultana, B.A., LL.B.,
Senior Civil Judge & JMFC.,
Jewargi.

Dated this the 28th day of March-2026

ORIGINAL SUIT No.91/2019

PLAINTIFF:-

Basamma W/o Basannagouda Biradar,
(D/o Basappagouda Sadnapur)
Age: 55 years, Occ: Agriculture and
Household,
R/o Banatti (P.A) village,
Taluk Sindagi, District Vijayapura.

[By Sri J. V. H., Advocate]

//Versus//

DEFENDANTS:

1. Bapugouda S/o Basappagouda Sadnapur,
Age: 60 years, Occ: Agriculture,
R/o Shivapur village,
Taluk Jewargi, District Kalaburagi.
2. Siddamma W/o Sanganagouda Sadnapur,
Age: 45 years, Occ: Agriculture & Household,



R/o Shivapur village, Taluk Jewargi,
District Kalaburagi.

3. Basavaraj S/o Sanganagouda Sadnapur,
Age: 19 years, Occ: Agriculture,
R/o Ambarkhed village,
Taluk Jewargi, District Kalaburagi.
4. Annapurnamma D/o Basannagouda,
Occ: Agriculture and Household,
R/o Shivapur village,
Taluk Yadrami, District Kalaburagi.
5. Prabhavati W/o Gurulingappagouda,
(D/o Basappagouda)
Occ: Agriculture and Household,
R/o Shivapur village, Taluk Yadrami,
District Kalaburagi.

[D.1 & D.3 by Sri B.S.K., Advocate]

[D.4 & D.5 by Sri S.L.K., Advocate]

Date of institution of the Suit	21-12-2019		
Nature of the suit	Partition and Separate Possession.		
Date of commencement recording of evidence	29-01-2024		
Date on which the judgment was pronounced	28-03-2026		
Total Duration	Years	Months	Days
	6	2	27

(Smt.Tayyaba Sultana)
Senior Civil Judge & JMFC,
Jewargi.



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

1. The plaintiff has filed this suit against the defendants for the partition and separate possession of suit schedule properties.

2. **The case of the plaintiff in brief is as under:**

A) The agriculture land bearing Sy.No.2/2, measuring 10 acres, 14 guntas. B) The agriculture land bearing Sy.No.15/2, measuring 3 acres 32 guntas, C) The agriculture land bearing Sy.No.15, measuring 3 acres, 22 guntas. D) The agriculture land bearing Sy.No.38, measuring 9 acres, 1 guntas. E) The agriculture land bearing Sy.No.10, measuring 11 acres, 32 guntas. F) The agriculture land bearing Sy.No.29/1/A, measuring 7 acres, 21 guntas. G) The agriculture land bearing Sy.No.33/1, measuring 6 acres, 35 guntas. The plaintiff is the younger sister of defendant No.1. The defendant No.1 is elder brother of plaintiff. The defendant No.2 is widow of younger brother of plaintiff Sanganagouda. The defendant No.3 is son of defendant No.2.



3. It is further case of the plaintiff that, the plaintiff and defendant Nos.1 to 3 are the members of Hindu joint family following Mitakshara School of law. The suit properties are joint and ancestral property of the plaintiff and defendants Nos.1 to 3. The husband of defendant No.2 Sanganagouda died as member of Hindu joint family leaving behind him the plaintiff and defendant Nos.1 to 3 as his successors. The plaintiff and defendant Nos.1 to 3 are jointly cultivating the suit properties and sharing the yields. The plaintiff and defendants Nos.1 to 3 are the joint owners and are in joint possession of suit properties and jointly cultivating the same. The suit properties were inherited by plaintiff and defendant Nos.1 to 3 from the common ancestor by name Subbarayagouda the paternal grandfather of plaintiff. The said Subbarayagouda and his wife are died intestate leaving behind them the plaintiff defendant Nos.1 to 3 and Basannagouda the natural father of plaintiff and his wife Channamma.



4. It is further case of the plaintiff that, the father and mother of plaintiff are also dead and after their death and after the death of said Subbarayagouda the plaintiff and defendant Nos.1 to 3 and husband of defendant No.2 continued to be the members of Hindu Joint family till today without partitioning the suit properties by metes and bounds. Names of defendant Nos.1 to 3 are nominally entered in the ROR of suit properties without partitioning the suit properties by metes and bounds. Names of defendant Nos.1 to 3 are nominally entered in the ROR of suit properties without partitioning the same. The husband of defendant No.2 also died as a joint family member. Defendants Nos.1 to 3 taking undue advantage of entries in their names are hurriedly trying to alienate, mortgage and create any types of charge over the suit properties. This fact came to the knowledge of plaintiff in the month of Jun 3 2019 and then on 20-06-2019. then the plaintiff along with elders of village approached to the defendants and demanded for partition the suit properties and to allot her of 1/3rd share. But the defendants refused to do so. Hence,



the plaintiff constrained to file this suit for partition and separate possession.

5. It is further case of the plaintiff that, the above stated facts constitute the cause of action and immediate cause of action arose to the plaintiff on 20-05-2019 when the plaintiff demanded to partition the suit property and allot her legitimate share, but the defendants refused to do so. The suit of the plaintiff is valued as per section 35(2) of Karnataka Court fee and suits valuation act at Rs.6,00,000/- which is the market value of share of plaintiff and Court fee of Rs.200/- is paid. The suit for the purpose of jurisdiction valued at Rs.6,00,000/-. The relief of declaration that the registered partition deed bearing document No.542/1975-76 dated 06-01-1976 is null and void and not binding on the right and share of plaintiff is valued as per Section 24(d) of KCF and SV act Rs.1000/- and Court fee of Rs.25/- is paid. Hence, with these pleadings the plaintiffs sought for decree the suit.



6. After institution of the suit, the summons were served on defendants. The defendant Nos.1 to 3 appeared before the Court through their counsel, the defendants have filed written statement.

7. **The written statement of defendants is to the following effect:**

The partition effected in the family through registered Partition Deed No.542/1975-76, dated 06-01-1976. The partition took place in between (1) Basappa @ Basappagouda S/o Subbaraya Sadnapur called 1st party, (2) Bapugouda S/o Basappagouda called 2nd party and (3) Sanganna S/o Basappagoud minor U/g of Bapugouda S/o Basappa Gouda called 3rd party. The partition is in between father and sons. In view of registered partition deed the lands fallen to the share of Basappa Gouda S/o Subbaraya, 1st party is as follows (1) The land Sy.No.29/1, measuring 7 acres 21 guntas Morchihola of Sadnapur, (2) The land Sy.No.33, measuring 6 acres 35 guntas Warihola of Sadnapur.



8. It is further case of the defendants that, in view of registered partition deed, the lands fallen to the share of Bapugouda S/o Basappagouda and Sanganna S/o Basappagouda, 2nd and 3rd party is as follows, 1) The land Sy.No.2/B, measuring 10 acres, 14 guntas, known Gaddihola, 2) The land Sy.No.10/A, measuring 11 acres, 32 guntas, known Ratmane, 3) The land Sy.No.15/1B, measuring 3 acres, 22 guntas, known Kalpatti, 4) The land Sy.No.38/A, measuring 9 acres, 1 guntas, known Anihola, all are situated at Sadnapur. From the date of registered partition deed father Basappagouda is owner and possessor of Sy.No.29/1 and Sy.No.33, both situated at village Sadnapur cultivating separately and independently. Thereafter Basappagouda transferred his separated lands in the name of Annapuranamma daughter of 2nd wife Basamma through mutation No.5, dated 21-08-1982. Annapurnamma continued to cultivate both the lands Sy.No.29/1 and Sy.No.33, measuring 7 acres, 21 guntas and 6 acres 35 guntas respectively. Later in the year 2008



she gave land Sy.No.29/1 to her sister Prabhavati as her share and Annapurnamma kept herself land Sy.No.33, measuring 6 acres, 35 guntas as her share through mutation No.5, dated 26-11-2008. From the day of mutation No.4 dated 21-08-1982 daughter of 2nd wife Smt. Annapurna was owner and possessor of the both lands. Later mutually after division, both sisters cultivating their share separately as owner and possessor, through mutation No.5 dated 26-11-2008.

9. It is further case of the defendants that, the exclusive lands held by Basappagouda S/o Subbaraya, he had been given his separated share of lands to the defendants Nos.4 and defendant No.5 namely Annapurnamma and Prabhavati. In view of Hindu Succession Act, 1956, whatever the property. So the property held by the defendant Nos.4 and 5 is Stridhan property as they have full right over it. Proviso under Section 6 of Hindu Succession Act, provides that nothing contained in this sub section shall affect or invalidate any disposition or alienation including any



partition or testamentary disposition of property, which had taken place before 20th day of December 2004. Therefore, the plaintiffs have no right to claim share in the suit lands. If at all plaintiff was minor at the time of partition she ought to have filed the suit for partition within 3 (three) years after attaining majority. On the day of filing this suit dated 19-12-2019 age of plaintiff has shown in the cause title of the plaint as 55 years, if we calculate plaintiffs age on the day of registered partition deed her age come to 12 years and she attained major in the year 1983 she ought to have filed the suit in the year 1986 itself challenging the partition deed. The suit having been filed beyond period of 3 (Three) years from the date of attaining majority, as the property was effected registered partition deed, during the minority of plaintiff was barred by the limitation.

10. It is further case of the defendants that, so also in view of registered partition deed, mutation effected in the year 1980 in the name of Bapugouda S/o Basappagouda and Sangann S/o Basappagouda jointly as owner and possessor of land Sy.No.2/B (2/2), 10/A (10/1), 15/1B (15/2)



and 38/A (38/1) measuring 10 acres 14 guntas, 11 acres, 32 guntas, 03 acres 22 guntas and 9 acres, 1 guntas respectively. At the time of partition husband of defendant Nos.2 Sanganna was minor aged about 6 years under guardianship of his brother Bapugouda. Property given jointly in order to look after and cultivation of lands. From the date of partition by metes and bounds both Bapugouda and Sangangouda cultivating their share jointly. It continued till the year 1994. In the year 1994 both the brothers mutually separated their cultivation of lands i.e., Bapugouda is cultivating the land Sy.No.15/2 and 2/2, measuring 3 acres, 22 guntas and 10 acres 14 guntas respectively and Sanganna was cultivating the land Sy.No.38/1 and 10/1, measuring 9 acres 1 gunta and 11 acres 32 guntas respectively. Sanganna continued to cultivate his lands exclusively as owner and possessor, till the year 2008-09, then transferred in the name of his wife Siddamma exclusively.



11. It is further case of the defendants that, in the year 1981-82 the plaintiff was 20 years, her marriage was performed by father Basappagouda and both the view of Basappagouda. The plaintiff had been personally knowing the partition and their separate possession of above lands. Plaintiff from the day of her marriage, every year she is attending the defendants houses and house of Annapurnamma. For last 40 years on every Deepawali, Dasara and marriage, cradle ceremony of sons of defendants family and family of Annapurnamma and Prabhavati plaintiff is attending regularly along with her sons and daughters, knowing fully well the details of family partition and separate possession of the lands. The partition has been effected by metes and bounds in the year 1976 and plaintiff knowing details of partition and separate possession then the Basamma cannot seek partition of already divided property and acted upon and it is also time barred suit.

12. It is further case of the defendants that, the plaintiff has not included all the property held by Basappagouda and



Annapurnamma and Prabhavati. Annapurnamma and Prabhavati, who are daughters of 2nd wife of Basappagouda are not parties to the suit. Now the plaintiff included properties of defendants Nos.4 and 5 by way of amendment. It is denied that, the cause of action arose on 20-11-2019 when she demanded on the partition of the suit property. The plaintiff knowing fully well the partition by metes and bounds in the family. So there is no question of demand for partition without cancellation of partition deed No.542/1975-76 dated 06-01-1976.

13. It is further case of the defendants that, when the registered partition took place on dated 06-01-1976, the plaintiff was aged about 12 years, she attained the major in the year 1983. She ought to have filed the suit within 3 (Three) years, after attaining the majority. But she filed a suit on 19-12-2019 after lapse of 33 years, so the suit is time barred.



14. The defendants after filing of written statement, they filed additional written statement, it is contented that the plaintiff added two of the landed properties i.e., (f) Sy.No.29/1/A, measuring 7 acres 21 guntas, (g) Sy.No.33/1 measuring 6 acres, 35 guntas both situated at Sadanapur village, Taluk Jewargi, District Kalaburagi. These added properties are absolute properties of Basappa S/o Subbaraya Sadnapur, who is defendant No.1 in view of Partition Deed bearing No.542/1975-76 dated 06-01-1976 these suit properties (f) and (g) Sy.No.39/1/A and 33/1 are fallen to the share of defendant No.1 who is absolute owner and possessor of suit properties i.e., partition by metes and bounds took place in the year 1976 so these properties are not available for partition. Para No.6 (a) In this para the plaintiff has no right to claim relief of declaration that the registered partition deed bearing No.542/1975-76 dated 06-01-1976 is null and void and not binding, because, the plaintiff was minor at the time of registered Partition Deed dated 06-01-1976, if at all plaintiff want to claim relief of cancellation of instrument of partition or set aside the instrument, she has



to file suit within 3 years after attaining majority under Article 60 of limitation Act, Law is very clear that any partition or decree took place prior to date 20-12-2004 the plaintiff has no right to claim any relief against the defendants. The plaintiff has no right to get declared that the registered partition deed bearing document No.542/1975-76 dated 06-01-1976 executed by father of the defendant No.1 in null and void and not binding on the plaintiff. The plaintiff is claiming relief of declaration after laps of 43 years, such relief cannot be claimed as it is time barred and prayed for dismissal of the suit.

15. On the basis of these pleadings my predecessor in office had framed the following issues:

::ISSUES ::

1. Whether the plaintiffs prove that, she and defendants constitutes a joint family and suit properties are their ancestral joint family properties?



2. Whether the defendant Nos.2 and 3 proves that there was earlier partition in the family through a registered partition deed dated 06-01-1976?
3. Whether the defendant No.2 and 3 further proves that suit is barred by limitation?
4. Whether defendant No.2 and 3 further prove that suit is bad for non joinder of necessary parties?
5. Whether the plaintiff is entitled for the reliefs as sought for in the plaint?
6. What Order or Decree?

Additional Issue

1. Whether the plaintiff proves that registered partition deed dated 06-01-1976 executed in between deceased Basappa S/o Subraya Sadnapur and defendant No.1 and others is illegal invalid and not binding on her share?



16. In order to prove the above issues, the plaintiff got examined herself as P.W.1 and got marked the documents as per Ex.P.1 to Ex.P.89. On the other hand the defendant No.1 and defendant No.4 got examine themselves as DW.1 and DW.2 and got marked the documents as per Ex.D.1 to Ex.D.98.

17. Heard the arguments on both sides.

18. During course of arguments the learned counsel for defendants has relied upon the following decision;

HCR 2014 Kant. 293 Case decided between

H.M. Rudraradhy A Versus Uma and others.

19. My answers to the above issues are as under:

::ANSWERS::

ISSUE No.1: In Affirmative

ISSUE No.2: In Negative

ISSUE No.3: In Negative



ISSUE No.4: In Negative

ISSUE No.5: In Affirmative

ADDL. ISSUE No.1 : In Affirmative

**ISSUE No.6: As per final order
for the following:**

:-REASONS:-

20. **ISSUE No.1 TO 5 and Additional issue No.1:-** These issues are interconnected with each other and as such they are taken for discussion together.
21. According to the plaintiff, the plaintiff is the younger sister of defendant No.1. The defendant No.1 is elder brother of plaintiff. The defendant No.2 is widow of younger brother of plaintiff Sanganagouda. The defendant No.3 is son of defendant No.2.
22. It is further claim of the plaintiff that, the plaintiff and defendant Nos.1 to 3 are the members of Hindu joint family following Mitakshara School of law. The suit properties are joint and ancestral property of the plaintiff and defendants



Nos.1 to 3. The husband of defendant No.2 Sanganagouda died as member of Hindu joint family leaving behind him the plaintiff and defendant Nos.1 to 3 as his successors. The plaintiff and defendant Nos.1 to 3 are jointly cultivating the suit properties and sharing the yields. The plaintiff and defendants Nos.1 to 3 are the joint owners and are in joint possession of suit properties and jointly cultivating the same. The suit properties were inherited by plaintiff and defendant Nos.1 to 3 from the common ancestor by name Subbarayagouda the paternal grandfather of plaintiff. The said Subbarayagouda and his wife are died intestate leaving behind them the plaintiff defendant Nos.1 to 3 and Basannagouda the natural father of plaintiff and his wife Channamma.

23. It is further claim of the plaintiff that, the father and mother of plaintiff are also dead and after their death and after the death of said Subbarayagouda the plaintiff and defendant Nos.1 to 3 and husband of defendant No.2 continued to be the members of Hindu Joint family till today without



partitioning the suit properties by metes and bounds. Names of defendant Nos.1 to 3 are nominally entered in the ROR of suit properties without partitioning the suit properties by metes and bounds. Names of defendant Nos.1 to 3 are nominally entered in the ROR of suit properties without partitioning the same. The husband of defendant No.2 also died as a joint family member. Defendants Nos.1 to 3 taking undue advantage of entries in their names are hurriedly trying to alienate, mortgage and create any types of charge over the suit properties. This fact came to the knowledge of plaintiff in the month of June 2019 and then on 20-06-2019. then the plaintiff along with elders of village approached to the defendants and demanded for partition the suit properties and to allot her of 1/3rd share.

24. In order to prove her claim, the plaintiff has got examined herself as P.W.1, who has reiterated the plaint averments in her examination-in-chief affidavit and got marked 89 documents as per Ex.P.1 to P.89.



25. It is the case of defendants that, the partition effected in the family through registered Partition Deed No.542/1975-76, dated 06-01-1976. The partition took place in between (1) Basappa @ Basappagouda S/o Subbaraya Sadnapur called 1st party, (2) Bapugouda S/o Basappagouda called 2nd party and (3) Sanganna S/o Basappagoud minor U/g of Bapugouda S/o Basappa Gouda called 3rd party. The partition is in between father and sons. In view of registered partition deed the lands fallen to the share of Basappa Gouda S/o Subbaraya, 1st party is as follows (1) The land Sy.No.29/1, measuring 7 acres 21 guntas Morchihola of Sadnapur, (2) The land Sy.No.33, measuring 6 acres 35 guntas Warihola of Sadnapur.

26. It is further case of the defendants that, in view of registered partition deed, the lands fallen to the share of Bapugouda S/o Basappagouda and Sanganna S/o Basappagouda, 2nd and 3rd party is as follows, 1) The land Sy.No.2/B, measuring 10 acres, 14 guntas, known



Gaddihola, 2) The land Sy.No.10/A, measuring 11 acres, 32 guntas, known Ratmane, 3) The land Sy.No.15/1B, measuring 3 acres, 22 guntas, known Kalpatti, 4) The land Sy.No.38/A, measuring 9 acres, 1 guntas, known Anihola, all are situated at Sadnapur. From the date of registered partition deed father Basappagouda is owner and possessor of Sy.No.29/1 and Sy.No.33, both situated at village Sadnapur cultivating separately and independently. Thereafter Basappagouda transferred his separated lands in the name of Annapuranamma daughter of 2nd wife Basamma through mutation No.5, dated 21-08-1982. Annapurnamma continued to cultivate both the lands Sy.No.29/1 and Sy.No.33, measuring 7 acres, 21 guntas and 6 acres 35 guntas respectively. Later in the year 2008 she gave land Sy.No.29/1 to her sister Prabhavati as her share and Annapurnamma kept herself land Sy.No.33, measuring 6 acres, 35 guntas as her share through mutation No.5, dated 26-11-2008. From the day of mutation No.4 dated 21-08-1982 daughter of 2nd wife Smt. Annapurna was owner and possessor of the both lands.



Later mutually after division, both sisters cultivating their share separately as owner and possessor, through mutation No.5 dated 26-11-2008.

27. It is further case of the defendants that, the exclusive lands held by Basappagouda S/o Subbaraya, he had been given his separated share of lands to the defendants Nos.4 and defendant No.5 namely Annapurnamma and Prabhavati. In view of Hindu Succession Act, 1956, whatever the property. So the property held by the defendant Nos.4 and 5 is Stridhan property as they have full right over it. Proviso under Section 6 of Hindu Succession Act, provides that nothing contained in this sub section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property, which had taken place before 20th day of December 2004. Therefore, the plaintiffs have no right to claim share in the suit lands. If at all plaintiff was minor at the time of partition she ought to have filed the suit for partition within 3 (three) years after attaining majority. On the day of filing this suit dated 19-12-



2019 age of plaintiff has shown in the cause title of the plaint as 55 years, if we calculate plaintiffs age on the day of registered partition deed her age come to 12 years and she attained major in the year 1983 she ought to have filed the suit in the year 1986 itself challenging the partition deed. The suit having been filed beyond period of 3 (Three) years from the date of attaining majority, as the property was effected registered partition deed, during the minority of plaintiff was barred by the limitation.

28. It is further case of the defendants that , so also in view of registered partition deed, mutation effected in the year 1980 in the name of Bapugouda S/o Basappagouda and Sangann S/o Basappagouda jointly as owner and possessor of land Sy.No.2/B (2/2), 10/A (10/1), 15/1B (15/2) and 38/A (38/1) measuring 10 acres 14 guntas, 11 acres, 32 guntas, 03 acres 22 guntas and 9 acres, 1 guntas respectively. At the time of partition husband of defendant Nos.2 Sanganna was minor aged about 6 years under guardianship of his brother Bapugouda. Property given



jointly in order to look after and cultivation of lands. From the date of partition by metes and bounds both Bapugouda and Sangangouda cultivating their share jointly. It continued till the year 1994. In the year 1994 both the brothers mutually separated their cultivation of lands i.e., Bapugouda is cultivating the land Sy.No.15/2 and 2/2, measuring 3 acres, 22 guntas and 10 acres 14 guntas respectively and Sanganna was cultivating the land Sy.No.38/1 and 10/1, measuring 9 acres 1 gunta and 11 acres 32 guntas respectively. Sanganna continued to cultivate his lands exclusively as owner and possessor, till the year 2008-09, then transferred in the name of his wife Siddamma exclusively.

29. It is further case of the defendants that, in the year 1981-82 the plaintiff was 20 years, her marriage was performed by father Basappagouda and both the view of Basappagouda. The plaintiff had been personally knowing the partition and their separate possession of above lands. Plaintiff from the day of her marriage, every year she is attending the



defendants houses and house of Annapurnamma. For last 40 years on every Deepawali, Dasara and marriage, cradle ceremony of sons of defendants family and family of Annapurnamma and Prabhavati plaintiff is attending regularly along with her sons and daughters, knowing fully well the details of family partition and separate possession of the lands. The partition has been effected by metes and bounds in the year 1976 and plaintiff knowing details of partition and separate possession then the Basamma cannot seek partition of already divided property and acted upon and it is also time barred suit.

30. It is further case of the defendants that, when the registered partition took place on dated 06-01-1976, the plaintiff was aged about 12 years, she attained the major in the year 1983. She ought to have filed the suit within 3 (Three) years, after attaining the majority. But she filed a suit on 19-12-2019 after lapse of 33 years, so the suit is time barred.



31. It is further case of the defendants that the plaintiff added two of the landed properties i.e., (f) Sy.No.29/1/A, measuring 7 acres 21 guntas, (g) Sy.No.33/1 measuring 6 acres, 35 guntas both situated at Sadanapur village, Taluk Jewargi, District Kalaburagi. These added properties are absolute properties of Basappa S/o Subbaraya Sadnapur, who is defendant No.1 in view of Partition Deed bearing No.542/1975-76 dated 06-01-1976 these suit properties (f) and (g) Sy.No.39/1/A and 33/1 are fallen to the share of defendant No.1 who is absolute owner and possessor of suit properties i.e., partition by metes and bounds took place in the year 1976 so these properties are not available for partition. Para No.6 (a) In this para the plaintiff has no right to claim relief of declaration that the registered partition deed bearing No.542/1975-76 dated 06-01-1976 is null and void and not binding, because, the plaintiff was minor at the time of registered Partition Deed dated 06-01-1976, if at all plaintiff want to claim relief of cancellation of instrument of partition or set aside the instrument, she has to file suit within 3 years after attaining majority under



Article 60 of limitation Act, Law is very clear that any partition or decree took place prior to date 20-12-2004 the plaintiff has no right to claim any relief against the defendants. The plaintiff has no right to get declared that the registered partition deed bearing document No.542/1975-76 dated 06-01-1976 executed by father of the defendant No.1 in null and void and not binding on the plaintiff. The plaintiff is claiming relief of declaration after laps of 43 years, such relief cannot be claimed as it is time barred.

32. In order to prove their defence the defendant No.1 and 4 got examined themselves as DW.1 and DW.2, who has reiterated the written statement averments in their examination-in-chief affidavit and got marked the documents as per Ex.D.1 to Ex.D.98.
33. Since the plaintiff has come to the court with a specific plea that, the suit schedule properties are the ancestral and joint family properties, In order prove her contention the plaintiff



has produced the documents as per Ex.P.1 to Ex.P.89. Among them Ex.P.1 to Ex.P.3 are Records of Rights, total measuring 3 acres 21 guntas, 10 acres 12 guntas, 5 acres 1 guntas respectively, stands in the name of Bassappa S/o Subbaraya. Ex.P.4 and Ex.P.5 are Record of Rights, pertaining to the land Sy.No.2 ∞, for the year 1968-69 to 1971-78, total measuring 10 acres, 14 guntas, stands in the name of Basappa S/o Subbaraya.

34. Ex.P.6 to Ex.P.8 are Records of Rights pertaining to the land Sy.No.2/2, total measuring 10 acres, 14 guntas, stands in the name of Bapugouda S/o Basappagouda and Sangangouda S/o Basappagouda. Ex.P.9 to Ex.P.26 are the Records of Rights pertaining to the land Sy.No.2/2, for the year 1993-94 to 2018-2019 total measuring 10 acres, 14 guntas, stands in name of Bapugouda S/o Basappagouda. Ex.P.27 and Ex.P.28 are the Record of Rights, pertaining to the land Sy.No.15/∞, for the year 1968-69 to 1977-78, total measuring 3 acres, 22 guntas, stands in the name of Basappa S/o Subbaraya. Ex.P.29 to



Ex.P.31 are the Record of Rights pertaining to the land Sy.No.15/ಃ, total measuring 3 acres, 22 guntas, stands in the name of Bapugouda S/o Basappagouda and Sangangouda S/o Basappagouda. Ex.P.32 to Ex.P.49 are the Records of Rights pertaining to the land Sy.No.15/2, for the year 1993-94 to 2018-2019 total measuring 3 acres, 22 guntas, stands in the name of Bapugouda S/o Basappagouda. Ex.P.50 and Ex.P.51 are Records of Rights, pertaining to the land Sy.No.38/ಃ, for the year 1968-69 to 1977-78, total measuring 9 acres, 1 gunta, stands in the name of Basappa S/o Subbaraya.

35. Ex.P.52 to Ex.P.54 are the Records of Rights, pertaining to the land Sy.No.38/ಃ, 38/1, for the year 1978-79 to 1992-93, total measuring 9 acres, 1 guntas, stands in the name of Bapugouda S/o Basappagouda and Sangangouda S/o Basappagouda. Ex.P.55 to Ex.P.62 are the Records of Rights, pertaining to the land Sy.No.38/1, for the year 1993-94 to 2008-2009, total measuring 9 acres, 1 gunta, stands in the name of Sangangouda S/o Basappagouda.



36. Further documents as per Ex.P.63 to Ex.P.72 are the Records of Rights pertaining to the land Sy.No.38/1, for the year 2009-2010 to 2018-2019, total measuring 9 acres, 1 guntas, stands in the name of Siddamma W/o Sangangouda. Ex.P.73 is Record of Rights pertaining to the land Sy.No.10/1, for the year 1963-64 to 1967-68, stands in the name of Basappa S/o Subbaraya. Ex.P.74 and Ex.P.75 are Record of Rights, pertaining to the land Sy.No.10/1, for the year 1968-69 to 1977-78, total measuring 11 acres, 27 guntas, stands in the name of Basappa S/o Subbaraya. Ex.P.76 to Ex.P.78 are Records of Rights pertaining to the land Sy.No.10/1, 10/1, for the year 1978-79 to 1992-9, total measuring 11 acres, 32 guntas, stands in the name of Bapugouda S/o Basappagouda and Sangangouda S/o Basappagouda. Ex.P.79 and Ex.P.80 are the Records of Rights, pertaining to the land Sy.No.10/1, for the year 1993-94 to 2002-2003, total measuring 11 acres, 12 guntas, stands in the name of Sangangouda S/o Basappagouda. Ex.P.81 to Ex.P.87 are Records of Rights pertaining to the land Sy.No.10/1, for the



year 2011-12 to 2017-2018, total measuring 11 acres, 32 guntas, stands in the name of Siddamma W/o Sangangouda. Ex.P.88 is Record of Right pertaining to the land Sy.No.10/1, for the year 2018-2019, total measuring 11 acres, 32 guntas, stands in the name of Siddamma W/o Sangangouda and Basavaraj S/o Sangangouda. Ex.P.89 is mutation register dated 06-06-2019.

37. The defendants in order to prove their contention produced the documents as per Ex.D.1 to Ex.D.98. Among them Ex.D.1 is Partition deed dated 06-01-1976. Ex.D.2 to Ex.D.27 are Records of Rights, pertaining to the land Sy.No.33/೨, 33/1, for the year 1978-79 to 1987-88, 1998-99 to 2024-2025, total measuring 6 acres, 35 guntas, stands in the name of Annapurnamma D/o Basavagouda. Ex.D.28 is Mutation Register dated 13-03-2025. Ex.D.29 to Ex.P.38 are the Records of Rights, for the year 1983-84 to 2007-2008, pertaining to the land Sy.No.29/1, total measuring 7 acres, 21 guntas, stands in the name of Annapurnamma D/o Basavagouda. Ex.D.39 is Record of



Rights, pertaining to the land Sy.No.29/*/1, for the year 2008-2009, total measuring 7 acres, 21 guntas, stands in the name of Annapurnamma D/o Basappagouda, Prabhavati D/o Basappagouda and Gurlingappa S/o Bhimangouda.

38. Ex.D.40 to Ex.D.45 are Records of Rights, pertaining to the land Sy.No.29/*/1, for the year 2009-2010 to 2014-2015, total measuring 7 acres, 21 guntas, stands in the name of Prabhavati D/o Basappagouda and Gurlingappa S/o Bhimangouda. Ex.D.46 to Ex.D.54 are the Records of Rights, for the year 2015-2016 to 2023-2024, total measuring 20 acres, 03 guntas, stands in the name of K.B.J.N.L, Gurulingappa S/o Bhimanngouda, Prabhavati S/o Basappagouda, Imampatel S/o Khajapatel and Somanatayya S/o Karibasayya Hiremath. Ex.D.55 is Record of Rights, pertaining to the land Sy.No.29/*/1, for the year 2024-2025, total measuring 11 acres, 19 guntas, stands in the name of K.B.J.N.L, Gurulingappa S/o Bhimanngouda, Prabhavati S/o Basappagouda, Imampatel



S/o Khajapatel and Somanatayya S/o Karibasayya Hiremath.

39. Ex.D.56 to Ex.D.78 are Records of Rights pertaining to the land Sy.No.33/ಃ, 33/1, for the year 1978-79 to 2020-2021, total measuring 6 acres, 35 guntas, stands in the name of Annapurnamma D/o Basappagouda. Ex.D.79 to Ex.D.87 are Records of Rights pertaining to the land Sy.No.29/ಃ, 29/*/1, for the year 1978-79 to 2007-2008, total measuring 7 acres, 21 guntas, stands in the name of Annapurnamma D/o Basappagouda. Ex.D.88 is Mutation Register dated 21-09-2020. Ex.D.89 is Record of Rights, pertaining to the land Sy.No.29/*/1, for the year 2008-2009, total measuring 7 acres, 21 guntas, stands in the name of Annapurnamma D/o Basappagouda, Prabhavati S/o Basappagouda and Gurulingappa S/o Bhimangouda.
40. Ex.D.90 to Ex.D.95 are Records of Rights, pertaining to the land Sy.No.29/*/1, for the year 2009-2010 to 2014-2015, total measuring, 7 acres, 21 guntas, stands in the names of



Prabhavati S/o Basappagouda and Gurulingappa S/o Bhimangouda. Ex.D.96 to Ex.D.98 are the Records of Rights, pertaining to the land Sy.No.29/*1, for the year 2016-2017 to 2018-2019, total measuring 20 acres, 3 guntas, stands in the name of K.B.J.N.L, Gurulingappa S/o Bhimannagouda, Prabhavati S/o Basappagouda, Imampatel S/o Khajapatel and Somanatayya S/o Karibasayya Hiremath.

41. The plaintiff has claimed that, the plaintiff and defendants Nos.1 to 3 are the members of Hindu joint family following Mitakshara School of law. The suit properties are joint and ancestral property of plaintiff and defendant Nos.1 to 3. It is specific case of the defendants that, there was earlier partition in the family through a registered partition deed dated 06-01-1976. Therefore, the suit of the plaintiff is barred by limitation and plaintiff not entitled for any share in the suit schedule properties. The defendants have mainly relied on Ex.D1 partition deed, on careful perusal of the



same it reveals that the plaintiff has not a party to the partition deed.

42. I would like to draw my attention towards cross examination of DW1. The DW1 in his cross examination deposed on oath that, "2019 ರವರೆಗೆ ನಿಮ್ಮ ಮನೆಯಲ್ಲಿ ಹಿರಿಯ ಮನುಷ್ಯ ಎಂದರೆ ನಿಮ್ಮ ತಂದೆಬಸಪ್ಪಗೌಡ ಎಂದರೆ ಸರಿ. ನಿಮ್ಮ ತಂದೆಯವರಿಗೆ ಆದಾಯ ಎಂದರೆ ಒಕ್ಕಲುತನ ಎಂದರೆ ಸರಿ. ದಾವಾದ ಆಸ್ತಿಗಳಲ್ಲಾಗಲೀ ಬೇರೆ ಯಾವುದೇ ಆಸ್ತಿಗಳಲ್ಲಾಗಲೀ ವಾದಿ ಬಸಮ್ಮಳಿಗೆ ಯಾವುದೇ ಭಾಗ ಕೊಟ್ಟಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಪಾಲು ಪತ್ರದಲ್ಲಿ ವಾದಿಯ ಸಹಿ ಇಲ್ಲ ಎಂದರೆ ಇಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. ಪಾಲುಪತ್ರದಲ್ಲಿ 4 ಮತ್ತು 5 ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರು ಮತ್ತು ಸಹಿ ಇಲ್ಲ ಎಂದರೆ ಇಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. ನಿಮ್ಮ ತಾಯಿ ಚನ್ನಮ್ಮ ಮತ್ತು ಬಸಮ್ಮಳ ಸಹಿ ಇಲ್ಲ ಎಂದರೆ ಇಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. ಪಾಲುಪತ್ರ ಮಾಡುವ ಸಮಯದಲ್ಲಿ ನಿಮ್ಮ ತಾಯಿ ಚನ್ನಮ್ಮ, ಬಸಮ್ಮ ವಾದಿ ಮತ್ತು 4 ಮತ್ತು 5 ನೇ ಪ್ರತಿವಾದಿಯ ಒಪ್ಪಿಗೆ ಪಡೆದುಕೊಂಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನಿಮ್ಮ ತಾಯಿ ಚನ್ನಮ್ಮ , ಬಸಮ್ಮ , ವಾದಿ ಮತ್ತು 4 ಮತ್ತು 5 ನೇ ಪ್ರತಿವಾದಿಯರ ಪಾಲು ಪತ್ರದಲ್ಲಿ ಸಹಿ ಪಡೆಯಲು ಅಥವಾ ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಲು ಯಾವುದೇ ತೊಂದರೆ ಇರಲಿಲ್ಲ ಎಂದರೆ ತೊಂದರೆ ಇರಲಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. 1976 ರಿಂದ ಇಲ್ಲಿಯವರೆಗೆ ವಾದಿ ಬಸಮ್ಮಳಿಗೆ ದಾವಾದ ಆಸ್ತಿಗಳಲ್ಲಿ ಯಾವುದೇ ಭಾಗ ಕೊಟ್ಟಿಲ್ಲ ಎಂದರೆ ಕೊಟ್ಟಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. ಪಾಲುಪತ್ರ ಆಗುವಾಗ



ನಿಮ್ಮ ವಯಸ್ಸು ಎಷ್ಟು ಇತ್ತು ಎಂದರೆ 16 ರಿಂದ 17 ವರ್ಷ ಇತ್ತು. ನಿಮ್ಮ ತಮ್ಮನಾದ ಸಂಗಣ್ಣನಿಗೆ ಪಾಲು ಪತ್ರ ಆಗುವಾಗ ವಯಸ್ಸು ಎಷ್ಟು ಇತ್ತು ಎಂದರೆ ಆರೇಳು ವರ್ಷ ಇತ್ತು. ಪಾಲುಪತ್ರ ಆಗುವಾಗ ಆ ಸಮಯದಲ್ಲಿ ವಾದಿ ಬಸಮ್ಮಳಿಗೆ 12 ರಿಂದ 13 ವರ್ಷ ವಯಸ್ಸು ಇತ್ತು. ಪಾಲುಪತ್ರವನ್ನು ನೀವು ಬರೆಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಪಾಲುಪತ್ರ ಬರೆಯುವ ಸಮಯದಲ್ಲಿ ಏನು ಬರೆದಿರುತ್ತಾರೆ ಎಂದು ಗೊತ್ತಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಪಾಲುಪತ್ರವನ್ನು ಆ ಸಮಯದಲ್ಲಿ ಯಾವ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬರೆದಿರುತ್ತಾರೆ ಎಂದು ಗೊತ್ತಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನೀವೆಲ್ಲರೂ ಪಾಲುಪತ್ರ ಆಗುವ ಸಮಯದಲ್ಲಿ ಸಣ್ಣವರಿದ್ದೀರಿ ನಿಮ್ಮ ಪರವಾಗಿ ಪೋಷಕರೆಂದು ಯಾರಿಗಾದರೂ ನೇಮಕ ಮಾಡಿದ್ದಾರಾ ಎಂದರೆ ಇಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ." The DW1 clearly deposed that, no share given to the plaintiff in the ancestral properties. On careful perusal of the EX D1 partition deed it reveals that in the partition deed the age of the defendant No 1 shown 21 years , but DW1 in his cross examination deposed that at the time of alleged partition deed his age was 16 to 17 years. That there is variance in the evidence of the DW1 and EXD1.

43. DW1 further deposed in his cross-examination that, " ವಾದಿ ಬಸಮ್ಮಳಿಗೆ ನಿಮ್ಮ ತಂದೆಯಾಗಲೀ ನಿಮ್ಮ ಕುಟುಂಬದವರಾಗಲೀ ಏನು



ಕೊಟ್ಟಿದ್ದೀರಿ ಎಂದರೆ 12 ತೊಲೆ ಬಂಗಾರ, 8 ರಿಂದ 10 ಸಾವಿರ ವರದಕ್ಷಿಣೆ, ಬಟ್ಟೆ, ಬಾಂಡೆ ಸಾಮಾನು ಕೊಟ್ಟಿರುತ್ತೇವೆ." In order to prove the same the defendants have not produced any documents to show that, at the time of marriage 12 tola gold, 8 to 10 thousand amount given to plaintiff as dowry. Moreover, the defendants have not pleaded this facts in their written statement. That there is variance in the evidence of the DW1 and in his written statement.

44. The defendants have taken the specific contention that, suit is barred by limitation. The plaintiff has to file suit within 3 years after attaining majority under article 60 of Limitation Act and cancel the instruments under article 59 of Limitation Act. But the plaintiff has filed this suit in the year 2019 and suit is barred by limitation. It is an admitted fact that, the plaintiff was not a party to the Ex.D1 partition deed which was alleged to have effected between the defendant no 1 and deceased Basappa and therefore, the question of limitation does not arise at all. On perusal of the entire evidence of PW1 it shows that, she was not aware of the



partition effected in the family through a registered partition deed dated 06-01-1976. There is no admission elicited in the oral evidence of PW1 that, there was already partition effected on 06-01-1976. When the plaintiff is not party to Ex.D1 partition deed and such being the case the question of partition effected in respect of the ancestral joint family properties does not arise.

45. The defendants have taken the another contention that, Annapurnamma and Prabhavathi who are daughters of 2nd wife of Basappagouda are not parties to the suit. Subsequently they are arrayed as defendant No.4 and 5 in this suit. Therefore, the question of suit is bad for non joinder of necessary party does not arise.

46. It is an admitted fact that, this is a suit filed by the daughter seeking partition in the ancestral and joint family properties. As such the defendants cannot deny the share of the plaintiff in the suit schedule properties on the basis of alleged partition deed. Moreover, the plaintiff is not the



party to the partition deed and not the signatory to the partition deed and such being the case it is not binding on her. Moreover the said partition deed is not in accordance with law.

47. On considering the entire evidence on record, the plaintiff has proved that, suit schedule properties are the ancestral joint family properties of plaintiff and defendants and defendants have failed to prove that, there was earlier partition in the family and also failed to prove that, suit is barred by limitation. Hence, I proceed to answer **issue No.1 and additional issue No.1 and issue No.5 in Affirmative, issue No.2 to 4 in Negative.**

48. **ISSUE No.6:-** In view of reasons on issues No.1 to 5 and Additional issue No.1, I proceed to pass the following:

::ORDER::

The suit of the Plaintiff is hereby decreed with cost.

The plaintiff has entitled for 1/3 share in the suit schedule properties.



It is declared that, registered partition deed dated 06-01-1976 is null and void and not binding on the right and share of the plaintiff in the suit schedule properties.

Draw preliminary decree accordingly.

As per the decision of Hon'ble Supreme Court reported in 2022 SCC online SC 737 in between Kattukandi Edathil Krishnan and Anr. Vs. Kattukandi Edathil Valsan & Ors, the trial Court after passing preliminary decree should proceed with case for drawing up the final decree suo-moto and to list the matter for taking steps U/s 20 rule 18 of CPC.

Hence, post the matter for taking steps U/o 20 rule 18 of CPC by 30-04-2026.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced by me in open court on this the 28th day of March, 2026).

(SMT. TAYYABA SULTANA)
Sr. Civil Judge & JMFC,
Jewargi.

::ANNEXURE::

List of witnesses examined on behalf of the Plaintiff:

P.W.1 : Basamma W/o Basannagouda Biradar.

**List of exhibits marked on behalf of the Plaintiff:**

Ex.P.1 to Ex.P.88 : Records of Rights.

Ex.P.89 : Mutation Register.

List of witnesses examined on behalf of the Defendants:

D.W.1: Bapugouda S/o Basappagouda.

D.W.2: Annapurna D/o Basappagouda.

List of exhibits marked on behalf of the Defendants:

Ex.D.1 : Partition Deed dated 06-01-1976

Ex.D.1(a to e) : Signature of DW.1.

Ex.D.1(f to i) : Signature of Basappagouda.

Ex.D.2 to 27 : Records of Rights.

Ex.D.28 : Mutation Register.

Ex.D.29 to 87 : Records of Rights.

Ex.D.88 : Mutation Register.

Ex.D.89 to 98 : Records of Rights.

Sr. Civil Judge & JMFC
Jewargi.