

**IN THE COURT OF CIVIL JUDGE AND JMFC., JEWARGI**

**AT JEWARGI**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,  
Civil Judge and JMFC, Jewargi.**

**Dated : This the 01<sup>st</sup> day of October, 2022**

**O.S.No.85/2015**

Between:

Kumari Sugnyani : **Plaintiff**  
D/o Earanna,  
Aged about: 19 years,  
Occupation: Student,  
R/o Aloor Village,  
Jewargi Taluka, Kalaburagi District,  
Now R/o Hulsoor Village,  
Basavakalyan Taluka, Bidar District.

**(By Sri. J.V.H., Adv.)**

V/s

1. Mallamma : **Defendants**  
W/o Eranna,  
Aged about: 40 years,  
Occupation: Household.

2. Laxmibai  
W/o Basavaraj,  
Aged about: 50 years,  
Occupation: Household.

3. Ashok  
S/o Basavaraj.

Aged about: 25 years,  
Occupation: Agriculture,

D1 to D3 are R/o Aloor Village,  
Jewargi Taluka, Kalaburagi District.

4. Kumari Sindu  
D/o Iranna,  
Aged about: 14 years,  
Minor U/g of her natural mother  
Smt. Madivalamma W/o Earanna,  
Aged about: 41 years,  
Occupation: Agriculture,  
R/o Aloor Village,  
Jewargi Taluka, Kalaburagi District,  
Now R/o Yevoor Village,  
Shorapura Taluka, Yadagir District.

**(D1 By Sri. B.N.K., Adv.,)**  
**(D2 to 4 By Sri. B.B., Adv.,)**

Date of institution of the suit	:	30-04-2015
Nature of the suit	:	Partition and Separate Possession
Date of the commencement of Recording of the evidence.	:	11-02-2016
Date on which the Judgment Was pronounced.		01-10-2022
Total Duration	:	Year/s    Month/s    Day/s
		-07-            -05-            -01-

**(D.Ramesh)**  
**Civil Judge & J.M.F.C.,**  
**Jewargi**

## J U D G M E N T

The plaintiff has filed the suit against the defendants for the relief of partition and separate possession in respect of suit schedule properties.

### **2. The brief case of the plaintiff is as follows:-**

That, the defendant No.1 is the mother of plaintiff, the defendant No.2 is the mother of defendant No.3, the defendant No.2 and 3 are the distant relatives of the plaintiff and defendant No.1. The suit properties are the ancestral and joint family properties of the plaintiff and the defendant No.1. The grandfather of the plaintiff by name Sharanappa was the owner and possessor of the suit properties and the same were fallen to his share in the year 1993 and his name is appearing in the record of rights as owner and possessor. Upon his death his son Earanna became the exclusive owner and in possession of the suit property as successors. Father of the plaintiff and husband of defendant No.1 Earanna died on 17-11-2012 leaving behind his widow and daughter i.e., plaintiff and the defendant No.1 as his legal heirs. Upon the death of Earanna, plaintiff and the defendant No.1 have inherited the property from Earanna. Since then the plaintiff and the defendant No.1 are in possession and enjoyment of the suit property as exclusive owners and defendant No.2 and 3 are widow and son of the Basavaraj they have no right, title or interest over the suit property. The grandfather of the plaintiff has two other brothers by name Shivalingappa and Basavaraja. During their

life time Sharanappa, Shivalingappa and Basavaraja have effected partition in the ancestral properties and the suit property was fallen to the share of grandfather of the plaintiff in the year 1993 and the same is effected and acted upon by way of mutation and revenue entries. Therefore the husband of defendant No.2 has no right, share or title or interest over the suit property. When Basavaraj had no right, title or interest over the suit property, then the defendants No.2 and 3 are also have no right, title or interest over the property. During the life time of father of the plaintiff and husband of defendant No.1, the father of the plaintiff had not taken proper care towards the plaintiff and defendant No.1. Therefore the defendant No.1 left the village and residing in Hulsoor Village, Taluka Basavakalyana, District Bidar, along with the plaintiff. Seeing the absence of the plaintiff and defendant No.1 from the village Aloor the defendant No.2 and 3 in collusion with the revenue officials have got effected the mutation of the suit lands in their names. The mutation entries got effected in their names is illegal without any basis. The defendants No.2 and 3 have no right, title or interest over the suit property in collusion with the revenue authorities got effected the mutation entries. On the basis of these mutation entries, they have no right, title or interest over the suit property. Since the property of the grandfather of the plaintiff upon his death, his son succeeded. Thereafter plaintiff and defendant No.1 became the successors and the plaintiff and the defendant No.1 together Class-1 heirs of the deceased Sharanappa. Therefore the defendants No.2 and 3 have no right over the suit properties. The defendant

No.2 and 3 have taking undue advantage of the entires of revenue documents in their names trying to alienate the suit property in favour of third party. After came to know the said fact the plaintiff approached the defendant No.1 and 3 and asked not to sell the suit property in the last week of April 2015. But the defendants refused. Hence this suit.

**3.** On service of suit summons, the defendant No.1 appeared through her counsel, but did not file written statement. The defendant No.2 to 4 appeared through their counsel. The defendant No.2 and 3 also did not file written statement. The defendant No.4 filed her written statement by contending that the family pedigree furnished by the plaintiff is in complete. Further it is contended that original propositus Ayyappa died leaving behind 3 sons and 3 daughters. Eldest son Sharanappa died leaving his son Eranna. Eranna also died. The defendant No.1 is the 1<sup>st</sup> wife and Madiwalamma is the 2<sup>nd</sup> wife of deceased Eranna. Out of the first wedlock, plaintiff born and defendant No.4 born out of the second wedlock. Shivalingappa also died leaving behind his 4 sons and a daughter and Basavaraj also died leaving behind his wife i.e., defendant No.3 and two sons and two daughters. The suit of the plaintiff suffers from non-joinder of necessary parties as the daughters of original propositus are not arrayed as parties to the suit. And legal heirs of deceased Shivalingappa are also not made as parties to the suit. The defendant No.4 further denied that the grandfather of the plaintiff is the owner in possession of the suit lands as they were allotted towards his share in a partition took

place among his brothers in the year 1993. She further contended that the suit properties originally belongs to common propositus who died leaving behind his 3 daughters and 3 sons. Daughters are not made as parties to the suit. There is no partition as stated by the plaintiff at any point of time. Plaintiff has not at all stated which are the properties allotted towards the share of other family members and before whom partition was taken place and whether oral or written partition is also not pleaded. Till today the legal representatives of deceased Ayyappa are in joint possession and enjoyment of the same. It is further contended that the house property which is standing in the name of Eranna is also not included in the suit. Hence the suit suffers from non inclusion of all family properties. Hence prays to dismiss the suit.

4. Based on the above pleadings the following issues has been framed by the predecessor in office:

**- : ISSUES : -**

- 1) Whether the plaintiff proves that she and defendants are members of Hindu Undivided Joint Family?
- 2) Whether the plaintiff proves that the suit properties are the joint family ancestral properties of her and defendants?
- 3) Whether the defendant No.4 prove that suit is bad for non-joinder of necessary parties to the suit?
- 4) Whether the plaintiff is entitled to the relief sought for?
- 5) What order or decree?

5. In order to prove the case of plaintiff, herself examined as PW1 and got marked 81 documents at Ex.P1 to P81. On the other hand the defendants have not chosen to lead any evidence.

6. After hearing the arguments and perusal of the records, my findings on the above issues are as under:

Issue No.1	: In the Affirmative.
Issue No.2	: In the Affirmative.
Issue No.3	: In the Affirmative.
Issue No.4	: In the Negative.
Issue No.5	: As per final orders for the following;

### **REASONS**

7. **ISSUE NO.1 TO 3:-** These issues are interrelated, they are considered together to avoid repetition.

8. It is the specific case of the plaintiff that she is the daughter of defendant No.1 and late Irappa. The defendant No.2 and 3 are the wife and son of late Basavaraj who is the brother of grandfather of plaintiff. Defendant No.4 is the stepsister of plaintiff. It is further case of the plaintiff that the suit properties are the ancestral and joint family properties of plaintiff and defendant No.1. The grandfather of plaintiff by name Sharanappa was owner and possessor of the suit properties and the same was fallen to his share in the year 1993. Upon his death his son Iranna (father of plaintiff) became the exclusive owner of the suit properties. Father of the plaintiff by name Iranna died on 17-11-2012 leaving behind the plaintiff and defendant No.1. Hence they have inherited the suit property from the Iranna. During the

lifetime of grandfather of plaintiff namely Sharanappa and his brothers-Shivalingappa and Basavaraj have effected partition in the ancestral properties and the suit properties have fallen to the share of grandfather of plaintiff in the year 1993 and the same is effected and acted upon by way of mutation and revenue entries. Therefore husband of defendant No.2 has no right, share, title or interest over the suit property. When husband of defendant No.2 had no right, title, interest over the suit property, the defendants No.2 and 3 are also have no right, title or interest over the property. However the defendant No.2 and 3 taking the undue advantage of non residence of plaintiff and defendant No.1 in the village have got effected the mutations in their names with the collusive of the revenue officials.

**9.** It is the case of the defendant No.4 who is the contesting party that pedigree furnished by the plaintiff is in complete. It is her specific case that the suit properties were originally belongs to common propositus who died leaving behind 3 daughters and 3 sons and there is no partition as stated by the plaintiff at any point of time. Plaintiff has not stated which are the properties allotted towards the share of other family members and before whom partition was taken place and whether it was oral or written partition. Till today the legal representatives of Ayyappa are in joint possession and enjoyment of the same, but the plaintiff did not made the daughters of Ayyappa as parties to the suit and also the properties standing in the name of Iranna are not included in the suit. Hence the suit suffers from non joinder of necessary parties and non inclusion of all the family properties.

**10.** In order to prove the case of plaintiff, she herself examined as PW1 by way of affidavit and reiterated all the averments made in the plaint and got marked 81 documents at Ex.P.1 to 81. On the other hand the defendants have not chosen to lead any evidence.

**11.** Relationship between the parties is not in dispute. It is also not in dispute of the nature of the suit properties. But the plaintiff did not plead that originally suit property belongs to whom. According to her the suit properties were divided between the grandfather of plaintiff and his brothers by name Shivalingappa and Basavaraj, and the suit properties were fallen to the share of grandfather (Sharanappa) of plaintiff in the year 1993 and revenue entires are made in this regard and acted upon. But as per the case of the defendant No.4, originally the suit properties belongs to the great grandfather of plaintiff by name Ayyappa and there is no partition in respect of suit properties at any point of time. Still all the legal heirs of Ayyappa are in joint possession and enjoyment of the suit properties. Therefore the main question before this court is that whether the partition was taken place between the grandfather (Sharanappa) of plaintiff and his brother Shivalingappa and Basavaraj as pleaded by the plaintiff or there is no partition taken place between amongst the children of Ayyappa as pleaded by the defendant No.4. As discussed above it is not in dispute about the nature of suit property. Admittedly the suit property is the ancestral and joint family properties of parties to the suit. If the partition is taken place amongst the grandfather of plaintiff and

his brothers definitely the suit of the plaintiff does not suffers from non joinder of necessary parties, but if there is no partition amongst the grandfather of plaintiff and his brothers definitely the suit will suffers from non joinder of necessary parties as the plaintiff did not made all the legal heirs of Ayyappa as parties to the suit. Hence this is the crux of the case. Hence in this back ground let me see the evidence.

**12.** I have carefully gone through the documents furnished by the plaintiff. Ex.P.1 is the RTC for the year 2013-14 in respect of land bearing Sy.No.53/A measuring 2 acres 25 guntas of Alur Village standing in the name of defendant No.3. Ex.P.2 is the RTC for the year 2014-15 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas of Alur Village standing in the name of defendant No.2. Ex.P.3 is the RTC for the year 2011-12 in respect of land bearing Sy.No.53/A measuring 2 acres 25 guntas of Alur Village standing in the name of Iranna (father of plaintiff). Ex.P.4 is the RTC for the year 2011-12 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas of Alur Village standing in the name of Iranna (father of plaintiff). Ex.P.5 is the RTC for the year 1998-99 to 2002-03 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas standing in the name of Iranna (father of plaintiff). Ex.P.6 is the RTC for the year 1998-99 to 2002-03 in respect of land bearing Sy.No.53/A measuring 06 guntas standing in the name of Iranna (father of plaintiff). Ex.P.7 is the RTC for the year 1993-94 to 1997-98 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas. It shows that name of Sharanappa S/o Ayyappa (grandfather of plaintiff) is rounded off and name of Iranna S/o

Shranappa (father of plaintiff) is entered. The column No.10 of the said RTC which is the mode of acquisition shows as 'Pattedar'. Ex.P.8 is the RTC for the year 1993-94 to 1997-98 in respect of land bearing Sy.No.53/A measuring 06 guntas. It shows that the name of Sharanappa S/o Ayyappa (grandfather of plaintiff) is rounded off and name of Iranna S/o Shranappa (father of plaintiff) is entered. The column No.10 of the said RTC which is the mode of acquisition shows as 'Pattedar'. Ex.P.9 is the certificate copy of the sale deed dated 22-06-1970 which shows that the Sharanappa S/o Ayyappa (grandfather of plaintiff) has purchased the land bearing Sy.No.43, Khata No.66 measuring 2 acres 25 guntas of Alur Village from his vendor Mallappa S/o Malkappa. Ex.P.10 is the Rectification deed dated 22-10-1981. It shows that the survey number mentioned in Ex.P.9 is incorrect and correct survey number is 53/Aa of Alur Village, hence this rectification deed is made. Ex.P.11 and 12 are the Mutation extracts bearing No.47. They shows the land bearing Sy.No.53/A measuring 06 guntas and Sy.No.53/Aa measuring 2 acres 25 guntas has been mutated in the name of Iranna S/o Sharanappa (father of plaintiff) and Sy.No.86/Aa measuring 5 acres 19 guntas has been mutated in the name of Lakshmibai (defendant No.2). The said mutation has been effected on the basis of inheritance in view of death of Sharanappa. Ex.P.13 is the mutation extract No.344/1999-2000. It shows that the name of one Sameer has been mutated in respect of land bearing Sy.No.86/Aa measuring 5 acres 19 guntas based on the sale deed executed by the defendant No.2. Ex.P.14 is the RTC for the year 2019-20 in respect of land

bearing Sy.No.2/A measuring 2 acres 08 guntas of Alur Village. It shows that the name of Ayyappa S/o Shivalingappa (great-grandfather of plaintiff). Ex.P.15 is the RTC for the year 2019-20 in respect of land bearing Sy.No.2/A measuring 2 acres 08 guntas of Alur Village. It shows that name one Mantappa S/o Shivalingappa Mali Biradar. Ex.P.16 is the RTC for the year 2020-21 in respect of land bearing Sy.No.2 measuring 8 acres 06 guntas of Alur Village. It shows that names of Mantappa S/o Shivalingappa Mali Biradar, Anita W/o Shivalingappa, Shantabai W/o Malkappa, Basamma W/o Hunchappa Kidli and Rachamma W/o Sharanappagouda. Ex.P.17 is the RTC for the year 2020-21 in respect of land bearing Sy.No.2/A measuring 2 acres 08 guntas of Alur Village. It shows that name of Ayyappa S/o Shivalingappa (great-grandfather of plaintiff). Ex.P.18 is the mutation extract in respect of land bearing Sy.No.2/A. It shows that name of Mantappa has been mutated in view of death of Shivalingappa. Ex.P.19 is the RTC for the year 1963-64 to 1967-68 in respect of land bearing Sy.No.53/1 measuring 5 acres 10 guntas. It shows that name of Sharanappa S/o Ayyappa (grandfather of plaintiff). Ex.P.20 is the RTC for the year 1978-79 to 1982-83 in respect of land bearing Sy.No.53/A measuring 06 guntas. It shows that name of Sharanappa S/o Ayyappa (grandfather of plaintiff). Ex.P.21 is the RTC for the year 1983-84 to 1987-88 in respect of land bearing Sy.No.53/A measuring 06 guntas. It shows that name of Sharanappa S/o Ayyappa (grandfather of plaintiff). Ex.P.22 is the RTC in respect of land bearing Sy.No.53/A measuring 06 guntas. It shows that name of Sharanappa S/o Ayyappa (grandfather of plaintiff). Ex.P.23 to

Ex.P.31 are the RTCs for the year 2002-03 to 2010-11 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas. They show the name of Iranna S/o Sharanappa (father of plaintiff). Ex.P.32 to Ex.P.40 are the RTCs for the year 2012-13 to 2021-22 in respect of land bearing Sy.No.53/A measuring 2 acres 25 guntas. They show the name of defendant No.3. Ex.P.41 and Ex.P.42 are the RTCs for the year 1968-69 to 1972-73 and 1983-84 to 1987-88 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas. They show that name of Sharanappa S/o Ayyappa (grandfather of plaintiff). Ex.P.43 to Ex.P.52 are the RTCs for the year 2001-02 to 2010-11 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas. They show the name of Iranna S/o Sharanappa (father of plaintiff). Ex.P.53 to Ex.P.61 are the RTCs for the year 2012-13 to 2021-22 in respect of land bearing Sy.No.53/Aa measuring 2 acres 25 guntas. They show the name of defendant No.2. Ex.P.62 is the mutation extract bearing No.MR:H11/2012-13. It shows that the name of the defendant No.2 and 3 has been mutated in respect of land bearing Sy.No.53/A and Sy.No.53/Aa measuring 2 acres 25 guntas each from the name of Iranna S/o Sharanappa (father of plaintiff). Ex.P.63 to Ex.P.65 are the RTCs in respect of land bearing Sy.No.2 measuring 8 acres 06 guntas of Alur village. They show the name of one Chandrashekhar S/o Gurupadappa. Ex.P.66 to Ex.P.80 are the RTCs for the year 2005-06 to 2021-22 in respect of land bearing Sy.No.2/A measuring 2 acres 08 guntas of Alur Village. They show the name of Ayyappa S/o Shivalingappa (great grandfather of plaintiff). Ex.P.81 is the mutation extract bearing MR No.14/2005-06. It shows the name

of Ayyappa S/o Shivalingappa has been mutated in respect of land bearing Sy.No.2/A measuring 2 acres 08 guntas of Alur Village.

**13.** The above said revenue documents and sale deed makes it clear that the land bearing Sy.No.53/Aa measuring 2 acres 25 guntas of Alur Village (one of the suit properties) was purchased in the name of Sharanappa S/o Ayyappa (grandfather of plaintiff). Thereafter the name of the Sharanappa is shown in the some RTCs. Thereafter name of the Iranna S/o Sharanappa (father of plaintiff) shown in the some RTCs. In the same way the name of the Sharanappa S/o Ayyappa (grandfather of plaintiff) shown in the some of the RTC in respect of another property bearing Sy.No.53/A measuring 2 acres 25 guntas of Alur Village. Thereafter name of the Iranna (father of plaintiff) shows in respect of the same property. Thereafter as per the Ex.P.62 name of the defendant No.2 and 3 has been mutated in respect of suit schedule properties directly from the name of Iranna S/o Sharanappa and the mode of acquisition is shown in the said mutation is relinquishment of rights. Admittedly it is not the case of the defendants that no one has released rights in respect of suit properties, but their case is only that there is no parties amongst the legal heirs of original propositus Ayyappa (great grandfather of plaintiff). As discussed above as per the case of the plaintiff the partition was taken place amongst the brothers of Sharanappa (grandfather of plaintiff) and the suit schedule property was allotted to the share of grandfather of plaintiff. Further the plaintiff pleaded that as per the said partition the revenue entries has been made and the partition is acted upon.

As rightly contended by the defendant No.4 the plaintiff has not pleaded whether the said partition is oral or written partition. Even she has not produced any document to prove the said partition. As discussed above the RTCs which were standing in the name of either Sharanappa (grandfather of plaintiff) or Iranna (father of plaintiff) show the mode of acquisition is only 'Pattedar'. They never show the word 'partition' except in the Ex.P.41. Which is also shows that 'ಹಿಸೇದಾರರು ಖರೀದಿಪಟ್ಟಾ'. Except this stray word we don't find the word 'partition' in the revenue documents. Up course the Ex.P.14 to Ex.P.17, Ex.P.63 to Ex.P.80 in respect of land bearing Sy.No.2 show the names of Ayyappa (great grandfather of plaintiff), Chandrashekhar, Mantappa, Anita, Shantabai, Basamma and Rachamma etc. These RTCs also do not prove the partition as claimed by the plaintiff. As discussed above the names of the Sharanappa (grandfather of plaintiff) and Iranna (father of plaintiff) were shown in the some of the RTCs, thereafter the names of the defendant No.2 and 3 are shown in the said property. But they do not confers any right, title or they do not prove the alleged partition by the plaintiff. At this juncture it is profitable to refer the judgment reported in (2008) SCC online BOM 511, between MAHADU APPA WANJOLE VS. LAXMAN VEERAPPA WANJOLE AND OTHERS, the Hon'ble High Court of Bombay held that;

"(a) Evidence Act, SS. 101 and 106 - Partition Burden of proof -Suit for partition - Assertion of the defendants that there was a partition in the year 1960 - Apart from the bare words, the defendants did not adduce any documentary or oral evidence to

show that there was a partition in 1960 - The lower Court perfectly justified in decreeing the suit of the plaintiff and holding that there was no partition whatsoever in the year 1960 - Mutation entry recorded in the revenue record on the basis of wardi given by defendant No.1 - However, that cannot be a conclusive proof of partition - In the absence of any documentary or oral evidence adduced by the defendants, it cannot be held that there was family partition in 1960.

(b) Partition - Proof - Mutation entry is not a conclusive proof of partition. The mutation entry itself in the absence of other evidence on record would not amount to a document which could be said to prove the partition. The mutation entries in the revenue record are made only for the fiscal purpose of recovering the revenue and do not constitute a document of which title is created or has been conferred."

**14.** As per the above said authority the mutation entry is not a proof of partition. In this case on hand, even there is no mutation at all, only RTCs are showing the names Sharanappa or Iranna. The said revenue entries are not made based on the partition. In fact as discussed above the mutation extract which is marked at Ex.P.11 shows that the name of the father of the plaintiff-Iranna has been entered in the revenue records in respect of suit property based on the inheritance and the said

mutation also show that the name of the defendant No.2 is mutated in respect of non suited property which is land bearing Sy.No.86/Aa measuring 5 acres 19 guntas in view of the death of Sharanappa S/o Ayyappa. Therefore it shows that the said revenue entires made only in view of death of family members of the parties to the suit. But they did not enter based on the alleged partition. Up course as discussed above it is not in dispute that the suit properties are ancestral properties of the parties to the suit. But the question is only that whether the suit properties have been allotted to the share of grandfather of plaintiff in the partition taken place between his brothers only to be decided in this case. If it would have allotted to the share of Sharanappa definitely the claim of the plaintiff is maintainable. But as discussed above plaintiff has failed to prove that the partition was taken place amongst the Sharanappa (grandfather of plaintiff) and his brothers Shivalingappa and Basavaraj. Hence the plaintiff ought to have filed this suit against the all the legal heirs of Ayyappa. But the plaintiff did not bring all the children of Ayyappa in the suit. In fact in the cross-examination of PW1 he categorically admits that great-grandfather of plaintiff i.e., Ayyappa had 3 sons and 3 daughters namely Sharanappa, Shivalingappa, Basavaraj, Bassamma, Shamalabai and Channamma. Therefore in the absence of all the children of Ayyappa no effective decree could be drawn. At this stage it is profitable to refer the following judgments;

*1. A.Ramachandra Pillai Vs. Valliammal (1987) 100MLW 486. Where in it is held that 'it is well settled that a suit for partition is not maintainable in the absence of some of co-shares.'*

2. First Appeal No.458 to 1994 Arjun Singh & Others V/s Kamla Singh & Others, the Hon'ble Patna High Court. Where in it is held that.....

'9. Clause II of [Article 332](#) of the Mulla's Hindu Law speaks that the plaintiff in a partition suit should plead as defendants;

(i) the heads of all branches;

(ii) females who are entitled to a share on partition;

(iii) the purchaser of a portion of the plaintiff's share, the plaintiff himself being a coparcener.

(iv) if the plaintiff himself is a purchaser from a coparcener, his alienor.

Patna High Court FA No.458 of 1994 dt.12-09-2018 The above are necessary parties and if any of them is not joined, the suit is liable to be dismissed. The entire joint family must be represented either expressly or implicitly. Reference may be made to Section 6 of the Hindu Successions Act, 1956, and particularly to the proviso to that Section. According to Clause II of [Article 332](#) of the Mulla's Hindu Law, the purchasers have not been made parties in the suit, who are to be made necessary party. As such, the suit suffers from the defects of non-joinder of necessary parties and this ground alone is liable to be dismissed.

Eventually, the aforesaid sale deeds clearly indicate that the plaintiff-appellant no.1 has transferred the land of joint family in favour of strangers. In such situation, the purchasers from plaintiff-appellant no.1 were to be made parties to the suit but they have not been pleaded as parties in the suit. As such, the suit suffers to the defect of non-joinder of necessary parties and on this ground, the suit is liable to be dismissed.'

**15.** As per the above judgments, a partition suit is not maintainable in the absence of some of the co-shares. In the case on hand as discussed above children of propositus Ayyappa are not made as party to the suit. Hence definitely the suit of the plaintiff suffers from non-joinder of necessary parties. The RTCs furnished by the plaintiff in respect of land bearing No.2 of Alur Village discloses that the said property is also belongs to great grandfather of plaintiff. But the same is also not included in the suit. Hence it is nothing but partial partition. Partial partition is also not maintainable. However it is made it clear that the plaintiff and defendants are the Hindu undivided joint family members and also the suit properties are ancestral and joint family properties as there is no dispute in this regard. However the suit will suffers from the non-joinder of necessary parties and non-inclusive of all the joint family properties. The defendant No.4 has specifically contended that the suit of the plaintiff suffers from non-joinder of necessary parties as there is no partition taken place as claimed by the plaintiff. This court also framed issue in this regard. But the plaintiff has no evidence to show that the partition was taken place amongst the grandfather of plaintiff and his brothers. Hence it is nothing but providing opportunity to the plaintiff to made all the necessary parties to the suit. However, such opportunity the plaintiff did not implead the necessary parties to the suit. Hence suit of the plaintiff definitely suffers from non-joinder of necessary parties. Accordingly, I answer the Issue No.1 to 3 in the Affirmative.

**16. ISSUE No.4 :-** As discussed above though the plaintiff proved that herself and defendants are members of joint family

and the suit schedule properties are their undivided joint family and ancestral properties, the plaintiff did not bother to implead the necessary parties even specific contention has been taken by the defendants and proper issues has been framed by this court. Therefore in the absent of co-shares partition cannot be allotted. Hence the plaintiff is not entitled the relief claimed in the plaint. Accordingly, I answer the Issue No.4 in the Negative.

**17. ISSUE No.5** :- In view of my findings on above issues, I proceed to pass the following:

**ORDER**

**The suit of the plaintiff is hereby dismissed.**

**In the facts and circumstance of the case no order as to costs.**

**Draw decree accordingly.**

(Directly dictated to the Stenographer on the computer, corrected by me and then pronounced in the open court this the day of 01<sup>st</sup> October, 2022).

**(D.Ramesh)  
Civil Judge & J.M.F.C.,  
Jewargi.**

**ANNEXURE**

List of witnesses examined for plaintiff:

PW1 - Sugnyani D/o Eranna @ Veeranna.

List of document exhibited for the plaintiff:

- Ex.P.1 to 8 - RTC extracts.  
Ex.P.9 - Certified copy of sale deed.  
Ex.P.10 - Certified copy of Rectification deed.  
Ex.P.11 to 13 - Certified copies of Mutation extracts.  
Ex.P.14 to 17 - RTC Extracts.  
Ex.P.18 - Mutation extract.  
Ex.P.19 to 61 - RTC extracts.  
Ex.P.62 - Mutation extract.  
Ex.P.63 to 80 - RTC extracts.  
Ex.P.81 - Mutation extract.

List of witnesses examined for defendants:

-Nil-

List of documents exhibited for the defendants:

-Nil-

**(D.Ramesh)**  
**Civil Judge & J.M.F.C.,**  
**Jewargi.**