



Presented on : 29-08-2019
Registered on : 29-08-2019
Decided on : 13-03-2026
Duration : 6 years 6 months 12 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT SEDAM**

**PRESENT: SRI.SAGAR GURUGOUDA PATIL
B.A., LL.B (Spl).
Senior Civil Judge & JMFC, Sedam.**

DATED : THIS 13th DAY OF MARCH-2026

ORIGINAL SUIT No.33/2019

PLAINTIFF/S:

Mahadevappa S/o Sabanna Kanagadda,
Age: 30 years, Occ: Pvt. Service,
R/o Sedam, Tq: Sedam, Dist: Kalaburagi.

(Plaintiff by Sri R.M. Advocate)

(V E R S U S)

DEFENDANT/S:

1) Jaganath S/o Sabanna Kanagadda, Age: 40
years, Occ: Coolie, R/o Hamal Quarters Chincholi
road Sedam, Tq: Sedam.

2) Hanamanth S/o Sabanna Kanagadda, Age:
57 years, Occ: Coolie, R/o Holitippi Sedam, Tq:
Sedam, Dist: Kalaburagi.

3) Vasanth S/o Sabanna Kanagadda, Age: 31



years, Occ: Pvt. Service, R/o Hamal Quarters
Chincholi road Sedam.

(Deft.1, 4 & 5 by Sri. C.K.K. Advocate)
(Deft.2 by Sri. B.S.R. Advocate)
(Deft.3 Exparte)

Date of Institution of the Suit : 29-08-2019

Nature of the suit of : Partition and separate
possession

Date of Commencement of
recording of evidence : 10-03-2021

Date on which the Judgment
was pronounced : 13-03-2026

Total Duration : Year/s Month/s Day/s
06 06 12

**CAUSE TITLE OF COUNTER CLAIM OF DEFENDANT
NO.2**

PLAINTIFF/S:

Mahadevappa S/o Sabanna Kanagadda,
Age: 30 years, Occ: Pvt. Service,
R/o Sedam, Tq: Sedam, Dist: Kalaburagi.

Vs.

DEFENDANT/S:

1) Jaganath S/o Sabanna Kanagadda, Age: 40
years, Occ: Coolie, R/o Hamal Quarters Chincholi
road Sedam, Tq: Sedam.

2) Hanamanth S/o Sabanna Kanagadda, Age: 57



years, Occ: Coolie, R/o Holitippi Sedam, Tq: Sedam, Dist: Kalaburagi.

3) Vasanth S/o Sabanna Kanagadda, Age: 31 years, Occ: Pvt. Service, R/o Hamal Quarters Chincholi road Sedam.

4) Sangeeta W/o Ranoji, Age: 40 years, Occ: Household, R/o Bhavani Nagar Kalaburagi, Tq: & Dist: Kalaburagi.

5) Mahadevi W/o Vittal, Age: 34 years, Occ: Household, R/o Ramthirth, Tq: Chincholi, Dist: Kalaburagi.

J U D G M E N T

The plaintiff has filed this suit for the relief of partition and separate possession in the suit properties by mets and bounds.

2. Case of the plaintiff's in brief is as under:

The plaintiff and defendants are brothers and they are joint family members. The suit properties are ancestral and joint family properties of the plaintiff and defendants. The father of the plaintiff and defendants by name Sabanna was owner and possessor of suit items No.1 and 2 properties and his name was appearing in the Municipal records. He purchased suit item No.1 property through registered sale deed dtd 16.02.1994. He purchased suit item No.3 property by his own income on behalf of the entire family in the names of defendant No.1 and 2 nominally. But entire



sale consideration was paid by Sabanna only. Therefore, suit item No.3 is also joint family property of plaintiff and defendants.

3. The father of the plaintiff died on 09.12.2012 leaving behind him plaintiff and defendants as his legal heirs. After the death of father of the plaintiff and after plaintiff's marriage there is no cordial relation between the plaintiff and defendants. Therefore, the plaintiff do not want to continue as joint family member. Therefore, on 01.08.2019 he asked the defendants to effect partition in the suit properties. But the defendants refused to effect partition. Hence, prays to decree the suit.

4. After service of the suit summons, defendants No.1 and 2 appeared through their counsel and defendant No.3 was remained absent and hence he was placed exparte. During pendency of the suit the defendant No.2 got impleaded his sisters as defendant No.4 and 5 of the counter claim. The defendant No.4 and 5 appeared through their counsel but did not file any written statement. The defendants No.1 and 4 together have filed their written statement. The defendant No.2 has filed his separate written statement and counter claim. The defendant No.1 and 4 in their written statement have admitted the case of the plaintiff and submitted that suit properties are ancestral and joint family properties of the plaintiff and defendants and they are in joint possession of the suit properties. They have admitted that suit item No.3 was purchased by father of plaintiff and defendants on



behalf of entire family from his own income in the name of defendants No.1 and 2 nominally. Therefore, suit item No.3 is also joint family property.

5. The defendants NO.1 and 4 have contended that counter claim asked by the defendant No.2 is barred by the law of limitation. The father of plaintiff and defendants died on 19.12.2012 and amount of Rs.10 Lakhs was transferred to the account of defendant No.1 on 07.12.2013. Therefore, the defendant No.2 would have claimed recovery of amount of his share within 3 years from defendant No.1. He filed counter claim after lapse of 10 years. Therefore, the counter claim is barred by the law of limitation. There is no cause of action for the counter claim. The counter claim is not maintainable in the eyes of law. He prays to decree the suit allotting 1/6th share each to defendant No.1 and 4.

6. The defendant No.2 in his written statement has admitted the relationship of the parties to the suit. He has admitted that the father of the plaintiff and defendants by name Sabanna was owner and possessor of suit items No.1 and 2 properties. He has denied that suit item No.3 was purchased by father of the plaintiff on behalf of the joint family from his own income in the names of defendants No.1 and 2 nominally and he only paid sale consideration amount. He has denied remaining plaintiff averments.



7. The defendant No.2 has submitted that except suit item No.3 rest of the properties are joint family properties of the parties to the suit. He purchased suit item No.3 for a sale consideration amount of Rs.22,500/- and he only paid the amount. The defendant No.2 was driver and having lorry and from his hard earned income he purchased suit item No.3 in his name and in the name of defendant No.1 jointly. Since he was not residing in the local limit he nominally purchased the suit item No.3 jointly in the name of himself and defendant No.1. Neither the plaintiff nor the defendant No.1 and 3 are not entitled for any share in suit item No.3 property. The suit item No.3 property is his self acquired property.

8. The father of the parties to the suit was employee in GESCOM and he died on 09.12.2012. During his lifetime he had amount of Rs.10 Lakhs in his account No.52151572934 and after his death the defendant No.1 illegally got transferred the said amount from the account of father of the parties to his personal account bearing No.62294198796 vide transaction dated: 07.12.2013. The defendant No.1 did not distribute the said amount among all the heirs of Sabanna. Therefore, this defendant is claiming 1/6th share in the said amount by way of counter claim.

9. In the counter claim he has sought declaration that suit



item No.3 property is his self acquired property and claimed share in the Rs.10 Lakhs. He has also sought 1/6th share in the suit item No.1 and 2 properties. He prays to dismiss the suit and decree the counter claim.

10. On the basis of the above pleadings the following issues have been framed:

1. Whether the plaintiff proves that plaintiff and defendant No.1 to 3 are the members of Joint Hindu family and suit schedule properties are the joint and ancestral properties of them?
2. Whether the defendant No.2 proves that item No.3 property is self-acquired property of defendant No.2?
3. Whether the defendant No.2 proves that pension amount of Rs.10,00,000/- standing in the name of father of plaintiff and defendant No.1 to 3?
4. Whether the defendant No.2 proves that he is the absolute owner of the item No.3 property?
5. Whether defendant No.2 proves that the suit is bad for non-joinder of necessary parties i.e., two sisters of plaintiff and defendants?



6. Whether the plaintiff is entitled for the reliefs sought for?
7. Whether the defendant No.2 is entitled for the reliefs sought for?
8. What order or decree?

Note: Issue No.5 is treated as preliminary issue.

11. The plaintiff in order to prove his case has examined himself as PW.1 and got marked 3 documents and Ex.P.1 to P.3. Two documents were marked as Ex.P.4 and 5 with the consent of other side. On the other hand the defendant No.2 in order prove his case has examined himself as DW.1 and got marked 7 documents as Ex.D.1 to 7. He has got examined one witness as DW.2.

12. Heard the arguments and perused the records.

13. My findings on above Issues are as under :

- Issue No.1 : In the Affirmative.
- Issue No.2 : In the Negative.
- Issue No.3 : In the Affirmative.
- Issue No.4 : In the Negative.
- Issue No.5 : Does not survive for consideration.
- Issue No.6 : As per observation.
- Issue No.7 : As per observation.
- Issue No.8 : As per final order for the following



REASONS

14. Issue No.1, 2 & 4:- Since these issues are interconnected the same are taken together for common discussion.

15. It is the case of plaintiff that the plaintiff and defendants are joint family members. The father of the plaintiff and defendants namely Sabanna S/o Laxmanna was owner and possessor of suit items No.1 and 2 properties. The suit item No.1 was purchased by the said Sabanna under registered sale deed dtd: 16.02.1994. He purchased suit item No.3 property out of his own income for and on behalf of the joint family in the names of defendant No.1 and 2 nominally under registered sale deed. The plaintiff is entitled for his legitimate share in the suit properties. On the other hand the defendant No.2 in his written statement has admitted that the plaintiff and defendants are joint family members. He has admitted that the father of plaintiff and defendants by name Sabanna was owner of the suit items No.1 and 2 properties and he purchased suit item No.1 property through registered sale deed dtd: 16.02.1994. He has denied that the said Sabanna purchased suit item No.3 property out of his own income for and on behalf of the joint family in the names of defendant No.1 and 2 nominally. He has contended that he purchased suite item No.3 property out of his own income jointly in the names of defendant No.1 and 2



16. The defendant No.2 has submitted that the plaintiff and defendants are having two sisters and they were not made as parties to the suit. Therefore, suit is bad for non joinder of necessary parties. He has submitted that suit item No.3 is his self acquired property. His father was employee of Gescom and he died on 19.12.2012 and he had an pension account and balance of Rs.10 Lakh in it and after his death the defendant No.1 illegally got transferred the said amount to his personal Bank account. Therefore, he claimed counter claim that he is absolute owner of suit item No.3 property and partition in the said amount of Rs.10 Lakhs.

17. On the other hand the defendants No.1 and 4 in their written statement have admitted the claim of the plaintiff and prays to decree the suit and prays to dismiss the counter claim. The defendant No.4 and 5 of the counter claim did not file any written statement.

18. The plaintiff in order to prove his case has examined himself as PW.1 & he has filed affidavit U/O 18 rule 4 of CPC containing her examination in chief by reiterating the plaint averments & got marked 3 documents as Ex.P.1 to P.3. Two documents were marked as Ex.P.4 and 5 with the consent of the other side. The Khata extracts issued by TMC Sedam are at Ex.P.4 and 5, wherein suit items No.1 and 2 are still standing in the name of father of the plaintiff and defendants by name



Sabanna. The certified copy of the registered sale deed dtd: 16.02.1994 is at Ex.P.2, wherein the said Sabanna purchased suit item No.1 from its lawful owner. The above documents disclose that the said Sabanna was the owner of the suit item No.1 and 2 properties.

19. The certified copy of the registered sale deed dtd: 05.12.2008 is at Ex.P.3, wherein suit item No.3 was purchased in the names of defendant No.1 and 2 jointly for valuable sale consideration of Rs.22,500/- from its lawful owner by name Nagappa. The RTC extract at Ex.P.1 shows that the suit item No.3 is standing in the name of defendant No.2. It is the case of the defendant No.2 that he was the driver and owned good lorry and from his hard earned income he purchased suit item No.3 in the name of he himself and the defendant No.1 jointly. Since he was not residing within local limits he purchased the property jointly in the name of defendant No.1 and 2. The suit item No.3 is his self acquired property and he is the absolute owner of it. The defendant No.2 in order to prove his case has examined himself as DW.1 and he has filed affidavit U/O 18 Rule 4 of CPC containing his examination in chief by reiterating his written statement averments and got marked 7 documents as Ex.D.1 to 7. The B-register extracts of the goods vehicle are at Ex.D.1 to 5 and the same show that the defendant No.2 owned goods vehicles. Therefore, it can be inferred that the defendant No.2 had



independent source of income from the said vehicles. The learned counsel for the defendant No.2 has argued that out of his hard earned income the defendant No.2 purchased the suit item No.3 property jointly in the names of defendant No.1 and 2.

20. Per contra, it is the case of the plaintiff that the father of the plaintiff and defendants purchased suit item No.3 property jointly in the names of his sons defendant No.1 and 2. In the cross examination of PW.1 it is suggested that during the lifetime of father of PW.1 his father was working in Gescom and out of the said salary amount he purchased one plot and the PW.1 admitted the said suggestions. The same goes to show that the father of the plaintiff and defendants was working in Gescom and drawing salary. The same makes it clear that the father of the plaintiff and defendants had source of income to purchase the properties. The above discussion makes it clear that the father of the plaintiff and defendants and defendant No.2 both had independent source of income. Now the question that arise for consideration is that whether father of the plaintiff and defendants purchased suit item No.3 jointly in the names of his sons defendant No.1 and 2 or defendant No.2 purchased suit item No.3 property jointly in the name of he himself and his brother defendant NO.1. It is common phenomena that the father purchases properties in the names of his son/sons for and on behalf of the joint family for the benefit of the joint family. Therefore, it is probable that the father of the



plaintiff and defendants would have purchased suit item No.3 jointly in the names of defendant No.1 and 2 who are his elder sons.

21. The defendant No.2 in his written statement has pleaded that since he was not residing in the local limits he nominally purchased the property jointly in the names of defendant No.1 and 2. It is interesting to note that if the defendant No.2 purchased the property jointly in the names of he himself and his brother only for the reason that he was not residing within the local limits then he would have purchased the property in his name alone and would have asked his brother-defendant NO.1 to look after the said property. It appears flimsy since the defendant No.2 not residing within the local limits he purchased suit item No.3 jointly with his brother. He has contended that he only paid entire sale consideration amount but he has not placed on record any material to show that he only paid the sale consideration amount. In the sale deed at Ex.P.3 there is a recitals that “in consideration of Rs.22,500/- the vendor has already sold the above said land to the vendees. The vendor has already received entire consideration amount from the vendees prior to the execution of this sale deed and the receipt whereof is hereby acknowledged”. These recitals disclose that the vendees i.e., defendant No.1 and 2 had paid sale consideration amount to the vendor for the purchase of suit item No.3 property. Therefore, the



contention of the defendant No.2 that he alone paid the sale consideration amount cannot be accepted.

22. It is interesting to note that the defendant No.1 and 4 in their written statement have pleaded that suit item No.3 was purchased by the father of the plaintiff and defendants out of his own income on behalf of the joint family in the names of defendant No.1 and 2 nominally. It is true that the above pleaded is not substantiated by the evidence of defendant No.1. But the defendants would have summoned defendant No.1 as his witness to prove his contention but he has not made any such efforts. Therefore, the defendant No.3 has failed to prove that he purchased suit item No.3 property out of his own income jointly in the names of defendant No.1 and 2. On the other hand by considering the oral and documentary evidence on record and facts and circumstances of the case it seems probable that the father of the plaintiff and defendants would have purchased the suit item No.3 property jointly in the names of his sons defendant No.1 and 2 out of his own income for and on behalf of joint family. Hence, I answer issue No.1 in the affirmative and issues No.2 and 4 in the Negative.

23. ISSUE No.3:- It is the case of the defendant No.2 that the father of the plaintiff and defendants was employee of Gescom and during his lifetime he had an account in the Bank and in it pension amount of Rs.10 Lakhs was there. He died on



19.12.2012 and after his death the defendant No.1 illegally got transferred the said amount of Rs.10 Lakhs from the the account of his father to his personal account through transaction dtd; 07.12.2013. The said amount is also joint family property and the defendant No.2 is having 1/6th share in the said amount. The Bank account extract of the father of plaintiff and defendants from 01.01.2007 to 31.12.2010 is at Ex.D.6 and the same shows that he had Bank account in State Bank of India Sedam Branch bearing Account No.52151572934. The said extract shows that as on 07.12.2013 he had balance amount of Rs.10,32,076/- in his account. The Bank account extract of defendant No.1 from 01.01.2013 to 01.01.2019 at Ex.D.7 shows that the defendant No.1 had account in the State Bank of India Sedam Branch bearing account No.62294198796. In the said extract the transaction dtd: 07.12.2013 shows that account of Sabanna bearing No.52151572934 was closed and an amount of Rs.1032076/- was credited to the account of defendant No.1. The same makes it clear that an amount of Rs.1032076/- standing in the account of the father of the plaintiff and defendants was transferred to the account of the defendant NO.1. In this regard the defendant No.2 questioned the PW.1 in the cross examination of PW.1 and the said portion of cross examination is extracted below for the purpose of clarity;

ನನ್ನ ತಂದೆ ತೀರಿ ಹೋದ ನಂತರ ಅವರ ಬ್ಯಾಂಕ್ ಖಾತೆಗೆ ನಿವೃತ್ತಿ ವೇತನ ಬಂದಿತ್ತು



ಎಂದರೆ ಸರಿ. ಸದರಿ ಹಣ ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿ ಅದರಲ್ಲಿ ಕೂಡ ನನಗೆ ಭಾಗ ಇದೆ ಎಂದು ಹೇಳಿ ಬರೆಸಿಲ್ಲ. ಸದರಿ ಹಣವನ್ನು ಒಂದನೇ ಪ್ರತಿವಾದಿ 4 ಜನ ಸಹೋದರರ ನಡುವೆ ಸಮನಾಗಿ ಹಂಚಿಕೆ ಮಾಡಿದ್ದಾರೆ.

24. It is pertinent to note that the defendant No.1 has failed to entered into witness box and deny the case of the defendant No.2 that the defendant No.1 got transferred amount of Rs.10,32,076/- from the account of his father to his account. He has also not cross examined DW.1 and denied the case of the defendant No.2. Therefore, there is no reason to disbelieve the case of the defendant No.2. Apart from this neither the plaintiff nor the defendant No.1 has placed on record any material to show that the defendant No.1 distributed the said amount among his brothers. The same goes to show that earlier an amount of Rs.10,32,076/- was belonged to father of the plaintiff and defendants and after his death the defendant No.1 got transferred the said amount to his account. The said amount is self acquired property of the said Sabanna and after his death his Class-I heirs succeeded the said amount U/Sec.8 of Hindu Succession Act. Hence, I answer issue No.3 in the Affirmative.

25. ISSUE No.5:- The defendant No.2 in his written statement has pleaded that the plaintiff and defendants are having two sisters namely Sangeeta and Mahadevi and they were not made as parties to this suit. Therefore, this suit is bad for non joinder of necessary parties. The defendant No.2 in his written



statement he claimed the counter claim and in the counter claim he impleaded the said sisters as defendant No.4 and 5. It is settled law that in a suit for partition every party to the suit is plaintiff and defendant. Therefore, though the sisters were not made as parties to the suit they are on record as parties to the counter claim and they have to be treated as parties to both the suit and the counter claim. Therefore, issue No.5 does not survive for consideration.

26. ISSUE No.6 and 7:- The plaintiff has proved that the suit properties are ancestral and joint family properties of plaintiff and defendants. The defendant No.2 has proved that an amount of Rs.10,32,076/- was standing in the name of father of the plaintiff and defendants No.1 to 3. In this case the plaintiff and defendants are co-parceners of the joint family and they are also Class-I heirs of the deceased Sabanna. Therefore, the plaintiff and defendants as co-parceners are entitled for equal share i.e., 1/6th each in the suit item No.1 to 3 properties and as Class-I heirs of the deceased Sabanna they are entitled for 1/6th each in the amount of Rs.10,32,076/-. It is on record that the defendant No.1 got transferred the amount that was standing in the name of his father Sabanna to his account. Therefore, it is open for the plaintiff and other defendants to recover amount of their share from the defendant No.1 through due process of law.

27. The defendant No2 has failed prove that he purchases



suit item No.3 property out of his own income jointly in the names of he himself and defendant No.1. On the other hand the plaintiff has proved that the father of the plaintiff and defendants purchased suit item No.3 property out of his own income for and on behalf of jointly family in the name of his sons-defendant No.1 and 2. Therefore, this court already held that suit item No.3 property is joint family property of the plaintiff and defendants. Therefore, the defendant No.2 cannot claim himself as absolute owner of suit item No.3 property. In the result he is not entitled for the relief of declaration that he is absolute owner of suit item No.3 property. Hence, I answer issue No.6 and 7 accordingly.

28. ISSUE No.8:- For the foregoing reasons, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with costs.

The counter claim of defendant No.2 is partly decreed with costs.

The plaintiff and defendants and defendant No.4 and 5 namely Sangeeta and Mahadevi in the counter claim are entitled for 1/6th share each in the suit items No.1 to 3 properties and counter claim amount of Rs.10,32,076/- by way of partition and separate possession by metes and bounds.



It is open to the plaintiff and other defendants to recover their share amount in the counter claim amount of Rs.10,32,076/- from defendant No.1 through due process of law.

Office to draw preliminary decree accordingly.

(Dictated to the Stenographer directly, typed and computerized by him, corrected and then pronounced by me, in the open Court on this the **13th day of March-2026**)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC,
Sedam.

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF/S:

PW.1 : Mahadevappa S/o Sabanna Kanagadda

LIST OF EXHIBITS MARKED ON BEHALF OF PLAINTIFF/S:

Ex.P.1 : RTC
Ex.P.2 : C.C. of Sale Deed dtd: 16.02.1994
Ex.P.3 : C.C. of Sale Deed dtd: 05.12.2008

LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT/S:

DW.1. : Hanmanth S/o Late Sabanna Kanagadda
DW.2. : Chandrashekhar S/o Gundappa

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LIST OF EXHIBITS MARKED ON BEHALF OF DEFENDANT/S:

- Ex.D.1 to 5 : Vehicles 5B extracts
Ex.D.6 & 7 : Bank account Statements

**Senior Civil Judge & JMFC,
Sedam.**

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