



Presented on : 07-09-2019  
Registered on : 07-09-2019  
Decided on : 06-01-2026  
Duration : 06 years 03 months 29 days

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

BEFORE: SRI.SAGAR GURUGOUDA PATIL

B.A., LL.B(Spl).

Senior Civil Judge & JMFC., Sedam

**REGULAR APPEAL No.20/2019**

**DATED THIS THE 20<sup>TH</sup> DAY OF MARCH - 2026**

**APPELLANT/S:**

1. Tippamma W/o Bhimashappa Kotaraki,  
Age: 63 years, Occ: Household, R/o Udagi,  
now residing at Indiranagar Maddi No.2 Near  
Gouli House Shahabad, Tq: Chittapur, Dist:  
Kalaburagi.
2. Shivanand S/o Bhimashappa Kotaraki,  
Age: 48 years, Occ: Pvt. Servant, R/o  
Indiranagar Maddi No.2 near Gouli House,  
Shahabad, Tq: Chittapur, Dist: Kalaburagi.
3. Ramakanth S/o Bhimshappa Kotaraki,  
Age: 38 years, Occ: Pvt. Servant, R/o  
Indiranagar Maddi No.2 near Gouli House,  
Shahabad, Tq: Chittapur, Dist: Kalaburagi.
4. Ratnamma W/o Sharanappa Kudri, Age:  
33 years, Occ: Govt. Teacher, R/o Rasanhalli  
now residing at Ganesh Nagar, Sedam.

**(Defendant No.2, 3, 5 and 6 in Trial Court)**



**//Versus//**

**RESPONDENT/S:**

1. Anand Kumar S/o Vasant Kumar, Age: 12 years (Minor) U/g of his natural mother Indubai W/o Vasanthkumar Kotaraki, Age: 35 years, Occ: Household, R/o Udagi Now residing at Satapatanahalli, Tq: Sedam, Dist: Kalaburagi.
2. Indubai W/o Vasanthkumar Kotaraki, Age: 35 years, Occ: Household, R/o Udagi Now residing at Satapatanahalli, Tq: Sedam, Dist: Kalaburagi.
3. Srimanthrao S/o Bhimshappa Kotaraki, Age: 40 years, Occ: Govt. Servant, R/o Indiranagar Maddi No.2 near Gouli Houe, Shahabad, Tq: Chittapur, Dist: Kalaburagi.

**(Plaintiffs No1 & 2 & defendant No.4 in Trial Court)**

(Appellants by Sri.C.K.K. Advocate)  
 (Respondent No.1 & 2 by Sri.P.D. Advocate)  
 (Respondent No.3 Exparte)

Appeal Against	Aggrieved by the judgment and Decree passed in O.S.No.132/2016 dated: 04.12. defendant No.42018 by the Civil Judge & JMFC, Sedam.		
Date of Institution of Appeal	07-09-2019		
Date of Disposal	20-03-2026		
Total Duration	Year/s 06	Month/s 03	Days 29



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

This Regular Appeal is preferred by the appellants/defendant No.2, 3, 5 and 6 against the judgment and decree passed in O.S.No.132/2016 dated 04.12.2018 on the file of learned Civil Judge & JMFC, Sedam.

2. The appellants are the defendant No.2, 3, 5 and 6, respondent No.3 is defendant No.4 and respondent No.1 and 2 are plaintiff No.1 and 2. For the purpose of convenience the parties to this appeal are hereinafter referred to in the rank before the trial court in the suit.

3. The plaintiffs had filed the suit for the relief of partition and separate possession in the suit properties by metes and bounds and the declaration that the registered gift dtd: 01.06.2016 and 26.10.2016 are null and void and not binding on the plaintiffs.

**4. The brief facts of the plaintiffs' case are as under:**

The plaintiff No.1 is son of plaintiff No.2. Since plaintiff No.1 is minor he is under the care and custody plaintiff No.2. The husband plaintiff No.2 and father of plaintiff No.1 by name late Vasantkumar and defendant No.3 to 5 are brothers and defendant No.6 is their sister and the defendant No.1 and 2 are their father and mother. The plaintiffs and defendants are the joint family members. The suit properties are ancestral and joint family properties of plaintiffs and defendants and they are in joint



possession of the suit properties.

**5.** It is submitted suit items No.1 to 3 properties are ancestral properties of plaintiffs and defendants and other suit properties were purchased from the income of the ancestral properties and out of the income of all the defendants and father of plaintiff No.1 in the names of defendants. The defendant No.1 is karta of the joint family. The suit item No.4 to 8 were purchased by him in the names of different family members nominally. No partition was effected in the family.

**6.** It is submitted that the defendant No.1 had paralysis stroke and he was unable to move and walk and the defendant No.3 knowing this position of defendant No.1 with an intention to grab the suit land got executed gift deed dtd: 01.06.2016 in respect of land measuring 6 acres in Sy.No.3/1 in his name without the knowledge and consent of the plaintiffs and other defendants. The suit item No.7 is ancestral and joint family property and it was standing in the name of defendant No.2 and executed registered gift deed dtd: 26.10.2016 in favour of defendant No.6. The plaintiffs are having share in the suit properties. The defendant No.1 is not the absolute owner and he had no right to gift the land in Sy.No.3/1 as it is joint family property of the plaintiffs and defendants. The plaintiffs are not parties to the gift deed. Therefore, the said gift deeds are not binding on the plaintiffs and they are null and void.



7. It is submitted that when the plaintiffs demanded to give their share in the suit properties the defendant No.2 to 4 refused to effect partition. Hence, prays to decree the suit.

8. After service of suit summons the defendants appeared through their counsel but they did not file written statement. During pendency of the suit the defendant No.1 reported as dead and his Lrs were already on record.

9. On the basis of the above facts, the trial court framed the following points for consideration:

1. Whether the plaintiffs are entitled for partition and separate possession as prayed for?
2. What order or decree?

10. In order to prove their case, the plaintiffs have examined plaintiff No.2 as PW.1 and she got marked 28 documents as Ex.P.1 to P.28. The defendants did not lead evidence.

11. After considering oral and documentary evidence on record, the trial court by its judgment dated 04.12.2018 decreed the suit of the plaintiffs.

12. Aggrieved by the said judgment and decree the appellants/defendants No.2, 3, 5 and 6 have preferred this appeal on the following amongst other grounds:



- i) The judgment and decree under appeal is against the facts and records of the case and it is also against principles of natural justice.*
- ii) The plaintiffs intentionally suppressed before the trial court that the defendant No.1 was employee in ABL company and if the same was shown the findings of the trial court on the issue of ancestral properties would have been otherwise.*
- lii) The rial court did not give any opportunity to the appellants to rebut the case of the respondents.*
- iv) The trial court has failed to consider that the burden to prove that the suit properties are ancestral and joint family properties is on the plaintiffs.*
- v) The trial court has failed to note that if defendants are exparte it is not necessary to decree the suit unless the plaintiffs prove their case by leading cogent and reliable evidence. Hence prays to set aside the judgment and decree after trail court.*

**13.** After service of notice, the respondents appeared through their counsel.

**14.** Heard the arguments of learned counsel for the appellants and respondents and perused the record.

**15.** The points arise for my consideration are as under;



1. Whether the plaintiffs prove that the suit properties are ancestral and joint family properties of the plaintiffs and defendants?
2. Whether the impugned judgment and decree requires interference at the hands of this court?
3. Whether the plaintiffs are entitled for the reliefs prayed for?
4. What order or decree?

16. My findings to the above referred points are as under;

Point No.1 : Partly in the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Negative.

Point No.4 : As per final order for the

Following:

### **REASONS**

17. **Point No.1:-** It is the case of the plaintiffs that the husband of plaintiff No.2 and father of plaintiff No.1 late Vasantkumar and defendants No.3 to 6 are brothers and sister and defendant No.1 and 2 are their father and mother. The plaintiffs and defendants are the joint family members. The suit items No.1 to 3 are ancestral properties of the plaintiffs and defendants. The other suit properties were purchased in the



names of the defendants from the income of ancestral properties and income of all the defendants and late Vasantkumar. The plaintiffs are having share in the suit properties. But the defendants with an intention to grab the suit lands got created registered gift deeds dtd: 01.06.2016 and 26.10.2016 and same are not binding on the plaintiffs. Though the defendants appeared through their counsel they did not file the written statement.

**18.** The plaintiffs in order to prove their case have examined plaintiff No.2 as PW.1 & she has filed affidavit U/O 18 rule 4 of CPC containing her examination in chief by reiterating the plaint averments & got marked 28 documents as Ex.P.1 to P.28. The mutation register at Ex.P.11 shows that the defendant No.1 and his three brothers got divided the land in Sy.No.811 and in the said partition land measuring 5 acres 6 guntas was fallen to the share of the defendant No.1. The said property is suit item No.3 in this suit. The RTC extract at Ex.P.17 shows that earlier land measuring 15 acres 15 guntas in Sy.No.3 was standing in the name of father of defendant No.1 by name Sharanayya and his name was rounded off and land measuring 6 acres was entered in the name of defendant No.1. The said property is suit item No.4 in this suit. The above documents show tha he defendant No.1 acquired suit item No.3 and 4 properties through his father by way of partition.

**19.** The RTC extract at Ex.P.1 to 4 show that suit items



No.1 to 4 are standing in the name of defendant No.1. The RTC extract Ex.P.5 and 6 show that the suit items No.5 and 6 are standing in the name of defendant No.3. The RTC extract at Ex.P.17 shows that earlier suit item No.7 was standing in the name of defendant No.2. It is the case of the plaintiffs that the suite No.1 to 3 properties are ancestral properties of plaintiffs and defendants. But the above records show that only suit items 3 and 4 were previously standing in the name of father of defendant No.1 and the same were mutated in the name of defendant No.1 on the basis of partition effected between defendant No.1 and his brothers. The above records show that suite items No.1 and 2 are standing in the name of the defendant No.1. The plaintiffs have not produced any document to show that previously suit item No.1 and 2 were belonged to forefathers of defendant No.1. It is settled law that under the Hindu law ancestral property means which a male in inherits from his father, grandfather or great grandfather. In this case the plaintiffs have not produced any documents to show that the defendant No.1 inherited the suit properties from his father except suit item No.3 and 4 properties. Therefore, other than suit items No.3 and 4 properties remaining suite properties cannot be considered as ancestral properties.

**20.** The mutation register at Ex.P.12 shows that the defendant No.3 purchased land measuring 6 acres 25 guntas in Sy.No.3 from one Sharanamma. The said properties suit items 5



and 6 in this case. The certified copy of the registered gift deed dtd: 01.06.2016 is at Ex.P.9, wherein the defendant No.1 gifted suit item No.4 in favour of defendant No.3. The certified copy of registered gift deed dtd; 26.10.2016 is at Ex.P.10, wherein the defendant No.2 gifted suite item No.7 in favour of defendant No.6. The plaintiffs have claimed that suite items 4 to 7 were purchased from defendant No.1 out of the joint family funds in the names of defendants. It is settled law that mere existence of some ancestral and joint family properties is not enough to prove that the subsequent accusation of properties were made out of the joint family funds. The burden is on the plaintiffs to prove that the joint family had surplus income from the ancestral and joint family properties and out of which subsequent accusations were made. But in this case plaintiffs have not produced any documents to prove that the joint family had surplus income and the defendant No.1 purchased the suit properties out of the joint family funds.

**21.** The above discussion makes it clear that there is absolutely no material to hold that the suite items 1, 2 and 5 to 7 properties are ancestral and joint family properties. Therefore, this court is of the opinion that only suite items 3 and 4 are ancestral properties of the plaintiffs and defendants. Hence, I answer point No.1 partly in the affirmative.

**22. Point No.2:-** The trial court has erred by holding that all



the suit properties are ancestral and joint family properties without there being any materials on record. Now the appellants in the appeal memo have contended that the defendant No.1 was employee in ABL company and out of his salary amount he purchased the suit properties in the names of defendants. Though the defendants were ex parte before the trial court the trial court would have considered that whether the plaintiffs have discharged their burden and proved that all the suit properties are ancestral and joint family properties of the plaintiffs and defendants. But the trial court has failed to do so.

**23.** The plaintiffs have filed this suit for partition and separate possession and sought declaration that gift deeds dtd: 01.06.2016 and 26.10.2016 are null and void and not binding on the plaintiffs. But the trial court in its judgment has not given any findings on the validity of the said gift deeds. The trial court has erred by disposing the suit without deciding the validity of the gift deeds. The trial court without deciding the validity of gift deeds would not have decreed the suit.

**25.** The documents already on record are not sufficient to decide that whether the suit properties are ancestral and joint family properties and whether the gift deeds are valid or not. Therefore, considering the above errors of the trial court this court find it just and proper to remand the matter to the trial court with a direction to provide opportunity to the defendants to file



written statement and to give opportunity to both parties to give evidence. Hence, I answer point No.2 in the Affirmative.

**26. Point No.3:-** In view of the findings on points No.1 and 2 the plaintiffs are not entitled for any of the reliefs. Hence, I answer point No.3 in the Negative.

**27. Point No.4:-** For the foregoing reasons, I proceed to pass the following:

**ORDER**

The appeal filed by the appellants U/Sec.41 Rule 1 R/w Sec.96 of CPC is hereby allowed.

Further the judgment and decree passed by the learned Civil Judge and JMFC in O.S.No.132/2016 dated 04.12.2018 is hereby set aside.

Matter is remanded to the Trial Court for fresh disposal.

The appellants and respondents are directed to appear before the Trial Court on 16.04.2026 without expecting further notice or summons from the trial court and appellants/defendants are directed to file written statements within 05.06.2026.

The trial court shall give opportunity to the defendants to file written statement and after filing the written statement frame issues and give opportunity to both the plaintiffs and defendants to



lead evidence and dispose off the matter on merits without influenced by the observations made by this court in its judgment.

The plaintiffs and defendants are hereby directed to co-operate the trial court to dispose off the matter as early as possible without taking unnecessary adjournments.

No order as to costs.

Draw Decree Accordingly.

Office is directed to send back the TCR to the Trial Court along with copy of this Judgment forthwith.

(Dictated to the Stenographer directly and typed by him on computer and corrected, signed and then pronounced by me in the open court on this the **18<sup>th</sup> day of March-2026**).

(Sagar Gurugouda Patil)  
Senior Civil Judge & JMFC, Sedam.