

KAKB710017062024



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O.S.No.50/2024

Presented on : 26-04-2024
Registered on : 26-04-2024
Decided on : 28-04-2026
Duration : 2 years 00 months 02 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 28th DAY OF APRIL-2026

ORIGINAL SUIT No.50/2024

PLAINTIFF/S:

1. Smt. Champa Bai W/o Babu Chavan and D/o Late Bhikku Singh Rathod, Age: 55 years, Occ: Agriculture & Household,
2. Smt. Kesi Bai @ Shashikala W/o Kesu Chavan and D/o Late Bhikku Singh Rathod, Age: 40 years, Occ: Agriculture & Household, Both R/o Venkatesh Nagar, Sedam, Tq: Sedam, Dist: Kalaburagi.

(Plaintiffs by Sri. H.S.C. Advocate)

(V E R S U S)

DEFENDANT/S:

- 1) Pandu S/o Late Bhikku Singh Rathod, Age: 60 years, Occ: Agriculture, R/o Indira Nagar, Sedam, Tq: Sedam, Dist: Kalaburagi (Cell No.9902425317)



2) Kishan Rathod died through his L.R. i.e., wife Smt. Dharmi Bai W/o Late Kishan Rathod, Age: 55 yeas, Occ: Agriculture & Household, R/o Indira Nagar Sedam, Tq: Sedam, Dist: Kalaburagi (Cell No.7026027674)

3) Khemsingh S/o Late Bhikku Rathod, Age: 60 years, Occ: Agriculture, R/o Venkatesh Nagar, Sedam, Tq: Sedam, Dist: Kalaburagi (Cell No.7026027674)

4) Seetaram S/o Late Bhikku Singh Rathod, Age: 50 years, Occ: Agriculture, R/o Indira Nagar, Sedam, Tq: Sedam, Dist: Kalaburagi.

5) Assistant Commissioner, Sedam, Tq: Sedam, Dist: Kalaburagi.

6) Special Land Acquisition Officer, Karnataka Industrial Area Development Board, Humnabad Road, Industrial Area, Kalaburagi.

7) Manager, Vasudatta Cement Company, Sedam, Tq: Sedam, Dist: Kalaburagi.

8) Tahasildar, Sedam, Tq: Sedam, Dist: Kalaburagi.

(Deft.1 to 4 by Sri.S.B.H. Advocate)

(Deft.5 & 8 by ADGP)

(Deft.6 & 7 Exparte)

Date of Institution of the Suit : 26-04-2024

Nature of the suit of : Partition and separate possession



Date of Commencement of
recording of evidence : 20-03-2025

Date on which the Judgment
was pronounced : 28-04-2026

Total Duration : Year/s Month/s Day/s
02 00 02

JUDGMENT

The plaintiffs have filed this suit for the relief of partition and separate possession in the suit property by mets and bounds.

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

The defendant No.1, 3, 4 and late Kishan Rathod are brothers of plaintiffs. Late Kishan Rathod died leaving behind him his wife-defective No.2. The plaintiffs and defendant are joint family members and the suit property is their ancestral property. During the lifetime of Bikkusingh who is father of plaintiffs, defendants No.1, 3 and 4 and late Kishan Rathod major portion the land in suit survey number was acquired by defendant No.5, 6 and 8 for the defendant No.7 company and after the acquisition land measuring 1 acre 11 guntas was remained in suit Sy.No.51 which is the suit property.

3. After the death of Bikkusingh Rathod the defendant No.1 to 4 managed the defendant No.8 and other revenue officials and got mutated remaining land measuring 1 acre 11 guntas in Sy.No.651 in their names. Land measuring 17 acres 8 guntas out



of 18 acres 19 guntas was acquired during the year 1982-83 and award was passed by the Special Deputy Commissioner Kalaburagi on 02.03.1983. As per the award Bikkusingh Rathod received amount from the concerned authority and gave share to defendant No.1 to 4 in the said amount and no share was given to the plaintiffs. But father of plaintiffs Bikkusingh Rathod used to say that remaining land is kept for his daughters share. After the death of Bikkusing the defendants got mutated remaining land measuring 1 acre 11 guntas behind the back of the plaintiffs. Now the names of defendant No.1 to 4 are appearing in the ROR of Sy.No.651 to the extent of 1 acre 11 guntas. The plaintiffs are having 1/6th share each in the suit property. Hence, prays to decree the suit.

4. After service of suit summons the defendant No.1 to 4 appeared through their counsel and defendant No.5 and 8 appeared through learned ADGP. The defendant No.6 and 7 remained absent and hence they were placed exparte. The defendants No.1 to 4 have filed their written statement and contended that the suit is not maintainable. They have admitted the relationship of the plaintiffs and defendant No.1 to 4. They have denied that the suit property is ancestral property of the plaintiffs and defendant No.1 to 4. They have admitted that during the lifetime deceased Bikkusingh Rathod some land was acquired by defendants No.5, 6 and 8 for defendant No.7 company and amount was released in favour of Bikkusingh Rathod. They have



denied that after the acquisition of the land in the suit survey number land to an extent of 1 acre 11 guntas was remained. They have denied rest of the plaint averments and contended that the suit is barred by the law of limitation. Hence, prays to dismiss the suit.

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

1. Whether the plaintiffs prove that the suit property is ancestral and joint family property of the plaintiffs and defendants 1 to 4?
2. Whether the suit is barred by the law of limitation?
3. Whether the plaintiffs are entitled for the reliefs prayed for?
4. What order or decree?

6. The plaintiffs in order to prove their case have examined themselves as PW.1 and 2 and the PW.1 got marked 15 documents as Ex.P.1 to 15. On the other hand the defendants in order to prove their case have examined defendant No.3 as DW.1 and he has got marked 8 documents as Ex.D.1 to 8.

7. Heard the arguments and perused the records.

8. 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 : As per final order for the following:

REASONS

9. Issue No.1:- It is the case of the plaintiffs that plaintiffs and defendants NO.1 to4 are joint family members and suit property is their ancestral property. During the lifetime of the father of the plaintiffs and defendants No.1, 3, 4 and late Kishan Rathod namely Bikkusingh Rathod some property i.e., 17 acres 08 guntas out of 18 acres 19 guntas in Sy.No.651 was acquired by defendant No.5, 6 and 8 for defendant No.7 company. After the acquisition land measuring 1 acre 11 guntas was remaining in Sy.No.651 and after the death of Bikkusingh Rathod the defendant No.1 to 4 got mutated the said property in their names. The plaintiffs are having 1/6th share each in the suit property. On the other hand the defendant No.1 to 4 have denied the claim of the plaintiffs. The plaintiffs in order to prove their case have examined themselves as PW.1 and 2 and they have filed affidavits U/O 18 Rule 4 of CPC containing their examination in chief by reiterating the plait averments and the PW.1 got marked 15 documents as Ex.P.1 to 15. The certified copy of the order dated 27.07.2023 passed by the Asst. Commissioner Sedam in appeal No.129/2022-23 is at Ex.P.5, wherein defendants No.1,3 and 4



and late Kishan Rathod preferred appeal against Special Land Acquisition Officer and defendant No.7 herein alleging that land measuring 17 acres 08 guntas out of 18 acres 19 guntas was acquired in Sy.No.651 and land measuring 01 acre 11 guntas, 11 guntas was remained and no compensation was paid for it. Therefore, sought to set aside the mutation order passed by the Tahasildar Sedam mutating land measuring 1 acre 11 guntas in the name of defendant No.7 herein. The learned Asst. Commissioner allowed the appeal ordered to continue land measuring 1 acre 11 guntas in the name of the original owner Bikkusingh Rathod. The same discloses that land measuring 1 acre 11 guntas was remained after acquisition in Sy.No.651.

10. In order to prove their case the defendant No.1 to 4 have examined defendant No.3 as DW.1 and he has filed affidavit U/O 18 Rule 4 of CPC containing his examination in chief by reiterating the written statement averments and got marked 8 documents as Ex.D.1 to 8. The RTC extract from the year 1983-84 is at Ex.D.1 and the same shows that land measuring 18 acres 19 guntas was standing in the name of the father of the plaintiffs, defendant No.1, 3 and 4 and late Kishan Rathod. The same reveals that the land measuring 18 acres 19 guntas in Sy.No.651 was belonged to Bikkusingh Rathod. The RTC extract from year 12.03.2001 to 2020 is at Ex.D.2, wherein land measuring 18 acres 19 guntas was standing in the name of defendant No.7 company. The order at Ex.P5 was passed to indicate land measuring 1 acre



11 guntas in the name of the original owner Bikkusingh on 27.07.2023. The same shows that in view of the order at Ex.P.5 the RTC extract at Ex.D.2 does not get much importance. The mutation register bearing MR No.H46 is at Ex.D.4, wherein land measuring 1 acre 11 guntas was mutated from the name of Bikkusingh in the name of defendant No.1 to 4 on the basis of inheritance. The death certificate at Ex.D.5 shows that Bikkusingh died on 05.04.1987. The order passed by the Asst. Commissioner Sedam on 12.04.2024 is at Ex.D.6, wherein one Shantabai and others preferred appeal challenging above mutation in the names of defendants No.1 to 4 and the said appeal was dismissed. The order passed by the Deputy Commissioner on 19.04.2025 is at Ex.D.8, wherein the said Shantabai and others challenged the order passed at Ex.D.6 and the said appeal was dismissed. The above orders go to show that the third party claims against the suit property was not entertained by the revenue authorities.

11. The RTC extract at Ex.P.1, P.3 and D.3 show that the suit property stands in the name of defendant No.1 to 4. It is not in dispute that land measuring 18 acres 19 guntas in Sy.No.651 was belonged to one Bikkusingh who is father of plaintiffs, defendant No.1, 3 and 4 and late Kishan Rathod. It is on record that the defendants No.5, 6 and 8 acquired land measuring 17 acres 08 guntas out of 18 ares 19 guntas in Sy.No.651 for defendant No.7 and land measuring 01 acre 11 guntas was remained un-acquired. No compensation was paid for the said land measuring



1 acre 11 guntas. Though the defendant No.3 has entered into witness box as DW.1 and got marked 8 documents but he has failed to appear and offer himself for the cross-examination. Therefore, the evidence of DW.1 cannot be believed. Therefore, by considering oral and documentary evidence on record it becomes clear that the said land continued as the ancestral property of the plaintiffs and defendants No.1 to 4. Hence, I answer issue No.1 in the Affirmative.

12. Issue No.2:- This suit is filed by the plaintiffs for the reliefs of partition and separate possession. It is not the case of the defendants No.1 to 4 that already there was a partition in the joint family. It is settled law that under the Hindu law cause of action to file suit for partition is recurring one and it continues to arise until partition is effected by metes and bounds. In this case till now no such partition is effected. Therefore, the plaintiffs have filed this suit demanding their legitimate share in the suit property. Therefore, it cannot be said that this suit is barred by the law of limitation. Hence, I answer issue No.2 in the Negative.

13. Issue No.3:- In view of the findings on issues No.1 and 2 the plaintiffs are entitled for their legitimate share in the suit properties. It is not in dispute that plaintiffs are sister of defendant No.1, 3 and 4 and late Kishan Rathod who is husband of defendant No.2. Therefore, the plaintiffs, defendant No.1, 3 and 4 and late Kishan Rathod being co-parceners/Class-I heirs of



Bikkusingh Rathod are entitled for equal share i.e., 1/6th share each in the suit property. It is on record that late Kishan Rathod died leaving behind him his wife-defendant No.2. Therefore, the defendant No.2 is entitled for 1/6th share of her husband late Kishan Rathod. Hence, I answer issue No.3 in the Affirmative.

14. Issue No.4:- For the forgoing reasons, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed with costs.

The plaintiffs and defendant No.1 to 4 are entitled for 1/6th share each in the suit property by way of partition and separate possession by metes and bounds.

Office is hereby directed 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 **28th day of April-2026**)

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

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF/S:

PW.1 : Smt. Champabai W/o Babu Chavan



PW.2 : Smt. Kesibai @ Shashikala S/o Kesu Chavan

LIST OF EXHIBITS MARKED ON BEHALF OF PLAINTIFF/S:

Ex.P.1 : ROR
Ex.P.2 : Mutation register
Ex.P.3 : ROR
Ex.P.4 : Legal Notice
Ex.P.5 : Assistant Commissioner order dated
27.07.2023
Ex.P.6 : Letter dated 06.06.2023
Ex.P.7 : Letter dated 16.03.2023
Ex.P.8 : Postal cover
Ex.P.9 to 14 : 6 postal receipts
Ex.P.15 : Postal receipt

**LIST OF WITNESSES EXAMINED ON BEHALF OF
DEFENDANT/S:**

DW.1 : Khemsingh S/o Late Bhikkusingh Rathod

LIST OF EXHIBITS MARKED ON BEHALF OF DEFENDANT/S:

Ex.D.1 to 3 : RTC extracts
Ex.D.4 : Mutation register
Ex.D.5 : Death Certificate of Bhikkusingh
Ex.D.6 : AC order dated 12.04.2024
Ex.D.7 : AC order dated 18.01.2024
Ex.D.8 : DC order dated: 19.04.2025

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