

KAKL200001322018



**IN THE COURT OF THE I ADDL CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS AT BANGARPET.**

:PRESENT:

SRI.CHANDRASHEKHAR ALABUR,

B.A., LL.B., (Hons)

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.26/2018

DATED THIS 22nd DAY OF JUNE 2026

PLAINTIFF/S:-

Sri. Venkatachalam,

S/o Late Mallappa,

Aged about 48 years,

R/at 1st Cross, Vijay Nagar,

Bangarapet Town, Bangarapet.

(Rep. by **Sri. G.H.**, Advocate)

-V/S-

DEFENDANT/S:-

- 1. Sri. Mallappa,**
S/o Late Mallappa,
Aged about 40 years,
R/at Thallur Village,
Kamasamudram Hobli,
Bangarapet Taluk.

2. Smt. Chandramma,
W/o Manjunatha,
D/o Late Mallappa,
Aged about 45 years,
R/at Kote Ramagulu Village,
Budikote Hobli,
Bangarapet Taluk.

3. Sri. Gutteappa,
S/o Chikkamuniyappa,
Aged about 74 years,
R/at Donimodugu Village,
Kamasamudram Hobli,
Bangarapet Taluk.

(D3 Rep. by **Sri.M.P.R.**, Advocate,
D1- **In person** and D2 placed
Exparte)

1	Date of institution of the suit	19.01.2018
2	Nature of the suit	Partition and Separate Possession
3	Date of recording of evidence	16.08.2022
4	Date on which Judgment was pronounced	22.06.2026
5	Total duration	<u>Year/s Month/s Day/s</u> 08 05 03

(CHANDRASHEKHAR ALABUR)

I Addl. Civil Judge and J.M.F.C.,
Bangarpet

J U D G M E N T

The plaintiff has instituted this suit against the defendants seeking a decree for partition and separate possession of his 1/3rd share in the suit schedule properties by metes and bounds; for a declaration that the registered sale deed dated 18-12-2017 executed by Defendant No. 1 in favor of Defendant No. 3 in respect of Item No. 3 is illegal, unsupported by valid title, and not binding on his share; and for an enquiry into future mesne profits under Order XX Rule 18 of the Code of Civil Procedure (CPC).

2. BRIEF FACTS OF THE CASE OF THE PLAINTIFF:

The plaintiff contends that one Late Chennappa was the progenitor and grandfather of the plaintiff and Defendant Nos. 1 and 2. During his lifetime, Chennappa acquired the suit schedule properties consisting of three items of agricultural land in Thallur Village and was in peaceful possession and enjoyment thereof. Following his demise, his only son, Mallappa, succeeded to the estate as the sole survivor and

mutated all revenue records into his name through *pavathee varasu* (inheritance).

3. The said Mallappa continued in exclusive possession and enjoyment until his death. Late Mallappa left behind three children: the plaintiff (Venkatachalam), Defendant No. 2 (Chandramma), and Defendant No. 1 (Mallappa). The plaintiff asserts that upon their father's death, the three siblings succeeded to the estate as legal heirs, the properties remained joint family coparcenary assets, and they continue to constitute a Hindu undivided family. A genealogical tree was produced to show this relationship.

4. The plaintiff alleges that because of a lack of cordial relations among the siblings, they have been residing separately. However, he emphasizes that the suit schedule properties remain in their joint constructive possession and enjoyment, and that no co-sharer has any exclusive right, title, or interest over any specific portion of the properties.

5. According to the plaint, about a year prior to the filing of the suit, Defendant No. 1, in collusion with certain local persons, began acting adversely to the plaintiff's interest and failed to render proper accounts regarding the income and yield derived from the lands.

6. As the plaintiff wished to establish a separate family and arrange for his grown-up children, he repeatedly demanded partition by metes and bounds. Defendant Nos. 1 and 2 consistently delayed the matter. In the last week of December 2017, a village panchayat was convened to settle the matter, but Defendant No. 1 gave evasive answers. Subsequently, the plaintiff discovered that Defendant No. 1, taking advantage of the revenue records standing solely in his name, had unilaterally transferred Item No. 3 of the suit schedule properties (Survey No. 51/5, measuring 32 guntas) to Defendant No. 3 via a registered sale deed dated 18-12-2017. The plaintiff asserts that this sale deed is fraudulent, illegal, and completely incapable of conveying title beyond Defendant No.1's personal, undivided 1/3rd share. Consequently, the

plaintiff impleaded Defendant No. 3 and sought his separate 1/3rd share by metes and bounds across all three items of the suit schedule.

7. Summons issued to the defendant. Defendant Nos. 1 and 2 did not appear before the Court or file any pleadings, and they were accordingly placed ex-parte. Defendant No. 3, the purchaser of Item No. 3, filed a comprehensive written statement actively contesting the suit on facts, equity, and maintainability.

8. BRIEF FACTS OF THE CASE OF DEFENDANT NO. 3:

Defendant No. 3 explicitly denied that Late Chennappa was the common ancestor or that the properties continued to retain their joint family character at the time of his purchase. He denied all allegations of collusion, the holding of a village panchayat in December 2017, or that the sale deed dated 18-12-2017 was illegal or non-binding.

9. Setting up an absolute defense of title, Defendant No. 3 pleaded that he is a *bona fide* purchaser for valuable

consideration. He stated that Defendant No. 1 had long ago entered into an agreement of sale regarding Item No. 3. When Defendant No. 1 failed to execute the final sale deed, Defendant No. 3 filed a suit for specific performance in **O.S. No. 209/2012** before this very Court.

10. In that prior suit, Defendant No. 1 appeared through an advocate, filed his written statement, and actively contested the matter. After a full trial, the Court decreed the suit in favor of Defendant No. 3. Because Defendant No. 1 still failed to comply, Defendant No. 3 filed Execution Petition **No. 14/2014**. In those execution proceedings, this Court appointed a Court Commissioner, who legally executed and registered the sale deed dated 18-12-2017 and delivered lawful possession of Item No. 3 to Defendant No. 3. Since then, Defendant No. 3 has been in exclusive possession and absolute ownership.

11. Crucially, Defendant No. 3 raised three specific technical objections to the maintainability of the suit. Firstly for **Partial Partition**. The suit is bad for partial partition because

the plaintiff suppressed and excluded the family's residential house properties and other assets from the suit schedule. Secondly **Non-Joinder of Necessary Parties.** The suit is legally defective because the plaintiff's mother is alive, holds an equal statutory right to a share, and was completely omitted from the array of parties. Thirdly **Prior Partition.** There is no subsisting joint family. A partition occurred long ago, under which the plaintiff took his share and permanently moved to a rented home in Bangarapet town, leaving Defendant No. 1 as the absolute, lawful owner of the remaining properties. He alleges that the current suit is a collusive, mala fide afterthought between the siblings to undermine a valid court decree. Hence prays to dismiss the suit.

12. The Court framed the following issues for consideration:

- 1. Whether the plaintiff proves that himself and Defendant Nos. 1 and 2 are the members of Hindu undivided joint family and suit schedule properties are the ancestral and joint family properties of himself and defendant No.1 and 2?*

2. *Whether Defendant No. 3 proves that he is a bona fide purchaser of suit schedule Item No. 3 property?*
3. *Whether this suit is bad for non-joinder of necessary parties?*
4. *Whether the plaintiff is entitled to a 1/3rd share in the suit schedule properties?*
5. *Whether the plaintiff is entitled for mesne profit?*
6. *What order or decree?*

13. The plaintiff examined himself as PW-1 and relied on Exhibits P-1 to P-9. Defendant No. 3 did not lead separate oral evidence or address oral arguments, but was granted liberty to submit written arguments on or before 20-06-2026.

14. It is an established canon of civil jurisprudence that the plaintiff must stand or fall on the strength of his own pleadings and proof. He cannot claim victory merely because the defendants remained silent or chose not to lead independent evidence. In this matter, the cross-examination of the plaintiff (PW-1) has completely dismantled the legal foundation of his own suit.

15. FINDINGS:

Issue No. 1	:	In the Negative.
Issue No. 2	:	In the Affirmative.
Issue No. 3	:	In the Affirmative.
Issue No. 4	:	In the Negative.
Issue No. 5	:	In the Negative.
Issue No. 6	:	As per the final operative portion.

R E A S O N S

16. ISSUE NO. 1: It is a fundamental principle of Hindu Personal Law that a suit for partition must be comprehensive. A co-sharer seeking partition must bring all joint family properties into the common pool, known as the "hotchpotch." A suit filed for "partial partition" which selectively targets certain parcels of land while deliberately concealing or excluding others is structurally flawed and legally unmaintainable, except under rare, distinct circumstances.

17. The burden of proving the existence of a subsisting Hindu undivided joint family and the joint family character of the suit schedule properties rests squarely on the plaintiff. To discharge this burden, the plaintiff (PW-1) produced the family

genealogical tree marked as **Ex. P-1**, alongside historical mutation and revenue records marked as **Ex. P-2 to P-9**. While these documents indicate that the properties originally belonged to the family patriarch, Chinnappa, and subsequently devolved upon his father, Mallappa, the status of jointness must be evaluated in light of the structural admissions extracted during trial.

18. A joint family implies community of interest and unity of possession. However, during cross-examination, PW-1 explicitly admitted that he has been residing away from the suit village in a rented house in Bangarapet town for the past 10 years. More damagingly, he admitted that he and his brother (Defendant No. 1) have maintained entirely separate ration cards for a decade. While separate residence or split food arrangements do not automatically establish a formal partition, they severely weaken the presumption of a surviving undivided joint family when combined with the deliberate omission of core family residential assets from the suit hotchpotch.

19. Furthermore, the continuous, unchallenged entry of Defendant No. 1's name individually in the revenue records at the time he executed the transaction with Defendant No. 3 supports the defense that the family was no longer operating as a cohesive, undivided coparcenary unit in the manner pleaded. Consequently, the plaintiff has failed to establish a subsisting Hindu undivided joint family. Issue No. 1 is answered in the **Negative.**

20. ISSUE NO. 2: Defendant No. 3 asserts absolute title and protection as a *bona fide* purchaser for valuable consideration regarding Item No. 3 (Survey No. 51/5, measuring 32 guntas). Although Defendant No. 3 did not step into the witness box to lead independent oral evidence, his plea stands fully vindicated by the clear, binding admissions made by the plaintiff (PW-1) under cross-examination, which satisfy the rule of proof under Section 58 of the Indian Evidence Act.

21. PW-1 openly admitted that Defendant No. 1 had executed an agreement of sale in favor of Defendant No. 3 regarding the suit property. He further admitted that when the

sale deed was not executed, Defendant No. 3 approached this very Court and instituted a formal title suit for specific performance in **O.S. No. 209/2012**. Crucially, the plaintiff conceded that Defendant No. 1 did not allow the matter to go unrepresented; rather, he engaged an advocate, filed his written statement/objections, and actively contested the trial. The suit was ultimately decreed on merits in favor of Defendant No. 3.

22. PW-1 further admitted that the final registered sale deed dated 18-12-2017 was executed under the authority of this Court by an appointed Court Commissioner during Execution Petition **No. 14/2014**. The plaintiff has not preferred any appeal or independent legal challenge against the decree in O.S. No. 209/2012. At the time of the original sale agreement, the revenue and title records stood exclusively in the name of Defendant No. 1. Defendant No. 3 acted on the faith of these official revenue entries, parted with valuable consideration, and successfully pursued a judicial remedy to conclusion. Therefore, Defendant No. 3 has fully established his status as a

lawful, protected *bona fide* purchaser. Issue No. 2 is answered in the **Affirmative**.

23. ISSUE NO. 3: Section 6 of the Hindu Succession Act, 1956 (as amended) governs the devolution of interest in coparcenary property. Upon the demise of a male Hindu, the property distributes equally among his immediate surviving Class-I legal heirs. In a family consisting of sons, daughters, and a surviving widow (the mother), the mother is an indispensable, equal co-sharer upon partition. Order I Rule 9 states that no suit shall be defeated merely by reason of misjoinder or non-joinder of parties, *provided* it is not the non-joinder of a "necessary party." A necessary party is an individual without whom no effective, final, and legally enforceable decree can be passed by the court. In a suit for partition, every single co-sharer is a necessary party. Omission of a necessary party removes the court's capacity to partition the estate legally.

24. In a suit for partition of joint family estates, all co-sharers and stakeholders who hold an inherent right to a share

are necessary parties. The absence of a necessary party deprives the court of its jurisdiction to pass an equitable, complete, and legally sustainable decree. Under the proviso to Order I Rule 9 of the Code of Civil Procedure, while general misjoinder or non-joinder is not fatal, the rule explicitly does not apply to the non-joinder of an indispensable, necessary party.

25. In the present case, Defendant No. 3 raised a categorical plea that the suit was bad for failing to implead the plaintiff's mother. During his cross-examination, the plaintiff (PW-1) unequivocally admitted:

“My mother's name is Sushilamma. It is true to suggest that my mother has not been made a party to this suit”.

26. Under Section 6 of the Hindu Succession Act, 1956, upon the partition of a paternal coparcenary estate, the mother (as a Class-I legal heir of Late Mallappa) holds a statutory right to a share equal to that of a son. Her presence is indispensable to evaluating the true proportions of the estate and safely carving out shares by metes and bounds. The plaintiff's

explanation that she was omitted simply because she is aged is legally unsustainable. Her omission leaves a structural vacuum in the array of parties that is completely fatal to the maintainability of the partition suit. Accordingly, Issue No. 3 is answered in the **Affirmative**.

27. ISSUE NO. 4: The plaintiff claims a 1/3rd share across all three items of the suit schedule properties. However, his entitlement is fully barred by two overriding legal impediments arising from his own testimony. It is a fundamental canon of Hindu Law that a partition suit must bring all joint family assets into the common hotchpotch to ensure an equitable distribution. A suit cannot be filed selectively targeting certain parcels of agricultural land while shielding other family properties. During cross-examination, PW-1 explicitly admitted: ***“My father owned 2 houses within a single compound... It is true to suggest that those houses are not included in the present suit”***. By deliberately excluding these substantial residential structures, the plaintiff

has brought a suit for partial partition, which is inherently unmaintainable.

28. Because the suit suffers from the omission of a necessary party (the mother) and the omission of joint family assets (the two houses), the action is structurally compromised. The Court cannot selectively carve out shares or grant a decree for individual items of land when the suit itself is legally defective from inception.

29. Furthermore, with respect to Item No. 3, the title has already lawfully passed to Defendant No. 3 through a Court Commissioner's sale deed under a binding judicial decree in O.S. No. 209/2012, which remains un-debated and un-challenged by the plaintiff. Consequently, the plaintiff is not entitled to any share in the suit schedule properties in the current suit. Issue No. 4 is answered in the **Negative**.

30. ISSUE NO. 5: As the main reliefs for partition, separate possession, and declaration have been held unsustainable due to fatal maintainability flaws (partial

partition and non-joinder of a necessary party), the question of granting derivative reliefs does not arise. Since the plaintiff is not entitled to a share or separate possession in this suit, his claim for an enquiry into future mesne profits under Order XX Rule 18 of the CPC is untenable. Issue No. 5 is answered in the **Negative.**

31. ISSUE NO. 6: In view of the detailed findings and reasons recorded on Issues 1 to 5, the suit of the plaintiff fails entirely and is dismissed as per the final order. For the foregoing reasons I proceed to pass the following,

ORDER

The suit of the plaintiff is hereby
dismissed with costs.

Draw decree accordingly.

*(Typed by me directly in the computer, aligned by the stenographer, corrected and then pronounced by me in the Open Court on this the **22nd day of June, 2026**).*

(CHANDRASHEKHAR ALABUR)
I Addl. Civil Judge and J.M.F.C.,
Bangarpet

ANNEXURES

I. List of Witnesses Examined for Plaintiff:

PW-1 : Sri. Venkatachalam (Plaintiff)

II. List of Documents Marked for Plaintiff:

- Ex.P-1 : Original Family/Genealogical Tree
- Ex.P-2 : Certified Extract of Mutation Register
Entry Number 6/1985-86
- Ex.P-3 : Certified Extract of Mutation Register
Entry M.R. Number 1/2006-07
- Ex.P-4 : Record of Rights, Tenancy and Crops
(RTC) copy pertaining to
Survey Number 51/5
- Ex.P-5 : Record of Rights, Tenancy and Crops
(RTC) copy pertaining to
Survey Number 51/5
- Ex.P-6 : Record of Rights, Tenancy and Crops
(RTC) copy pertaining to
Survey Number 3/3
- Ex.P-7 : Record of Rights, Tenancy and Crops
(RTC) copy pertaining to Survey Number 5
- Ex.P-8 : Record of Rights, Tenancy and Crops
(RTC) copy pertaining to
Survey Number 51/5

Ex.P-9 : Record of Rights, Tenancy and Crops
(RTC) copy pertaining to
Survey Number 51/8

III. List of Witnesses Examined for Defendants:

-Nil-

IV. List of Documents Marked for Defendants:

-Nil-

(CHANDRASHEKHAR ALABUR)

I Addl. Civil Judge and J.M.F.C.,
Bangarpet