

KAKL200017782017



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC AT BANGARPET**

:PRESENT:

SRI.CHANDRASHEKHAR ALABUR,

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

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.
C/C. PRL. CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.273/2017

DATED THIS 07th DAY OF JULY 2026

PLAINTIFF/S:-

- 1. Naushad,**
Aged about 42 years,
S/o Late Syed Kasim.
- 2. Syed Sadiq,**
Aged about 38 years,
S/o Late Syed Kasim.
- 3. Smt. Aksar,**
Aged about 55 years,
D/o Late Syed Kasim,
W/o Pacha sab.
R/at Thanimadagu Village,
Kamasamudram Hobli,
Bangarpet Taluk.

- 4. Smt. Kurshid,**
Aged about 63 years,
D/o Late Syed Kasim,
W/o Issack Basha.
- 5. Smt. Shahina,**
Aged about 48 years,
D/o Late Syed Kasim,
W/o Iliyaz,
R/at Yashavathapura,
Malur Taluk, Kolar District.

Presently Plaintiff No.1, 2 and 4 are
R/at Kempapura Village,
Gattadamangla Panchayath,
Kyasamballi Hobli,
Bangarapet Taluk.

(Rep. by Sri.. **J.P.**, Advocate)

-V/S-

DEFENDANT/S:-

- 1. Smt. Raziya,**
Aged about 69 years,
W/o Late Syed Mustafa.
 - 2. Aslam Pasha,**
Aged about 53 years,
S/o Late Syed Mustafa.
 - 3. Asgarpasha** (Deceased),
represented by his Legal
Representatives:
- D3(a) Rizwana,**
Aged about 47 years,
W/o Late Asgarpasha.

D3(b) Ghouse pasha,
Aged about 25 years,
S/o Late Asgarpasha.

D3(c) Maboob pasha,
Aged about 18 years,
S/o Late Asgarpasha.

D3(d) Amila,
Aged about 16 years,
D/o Late Asgarpasha (Minor),
represented by
mother/guardian D3(a)).

D3(e) Kaheam,
Aged about 12 years,
D/o Late Asgarpasha (Minor,
represented by
mother/guardian D3(a)).

D3(f) Abida,
Aged about 25 years,
D/o Late Asgarpasha,
W/o Mubarak.

4. Arabpasha,
Aged about 46 years,
S/o Late Syed Mustafa.

5. Akram,
Aged about 45 years,
S/o Late Syed Mustafa.

6. Ayubpasha,
Aged about 43 years,
S/o Late Syed Mustafa.

7. Baba,

Aged about 38 years,
S/o Late Syed Mustafa.

Defendant Nos. 1 to 7 are
R/at Thanimadagu Village,
Kamasamudram Hobli,
Bangarapet Taluk.

- 8. Smt. Ansar,**
Aged about 52 years,
D/o Late Syed Mustafa,
W/o Nissar,
R/at Chinnakavanahalli,
Thoppanahalli Post,
Kamasamudram Hobli,
Bangarpet Taluk.
- 9. Smt. Thahaseena,**
Aged about 24 years,
D/o Late Syed Musthafa,
W/o Baba,
R/at Challapalli,
Aalanguru Post,
Mulabagal Taluk.
- 10. Smt. Yasmeen,**
Aged about 22 years,
D/o Late Syed Musthafa,
W/o Afsar,
R/at Tannary Road,
Bangaluru.

(Rep. by Sri. **A.M.R.**, Advocate)

1	Date of institution of the suit	09.11.2017
2	Nature of the suit	Declaration, Partition & Separate Possession
3	Date of recording of evidence	12.12.2022
4	Date on which Judgment was pronounced	07.07.2026
5	Total duration	<u>Year/s Month/s Day/s</u> 08 07 28

(CHANDRASHEKHAR ALABUR)
C/C. Prl. Civil Judge and J.M.F.C.,
Bangarpet

J U D G M E N T

This is a civil suit for partition, separate possession, and mesne profits brought by the plaintiffs under Islamic Jurisprudence (Mohammedan Law). The plaintiffs seek a declaration of their common tenancy and an order directing the defendants to carve out and deliver separate possession of a 1/2 share in the agricultural land described in the plaint schedule.

2. BRIEF FACTS OF THE PLAINT:

The case of the plaintiffs as set out in the is that one **Syed Imamsab** was the original progenitor of the family. He had two sons, namely Syed Mustafa and Syed Khasim (father of the plaintiffs), and one daughter, Smt. Jamarad, through his wife, Beebijan. The suit schedule property originally belonged to Syed Imamsab. Beebijan passed away in 1981, and Syed Imamsab died in 1982. Upon his demise, his sons succeeded to the property as common tenants.

3. It is averred that the elder brother, Syed Mustafa, clandestinely attempted to transfer the property katha into his sole name. Upon discovering this, the plaintiffs father, Syed Khasim, filed written objections before the Tahasildar of Bangarapet on 17-10-2000. Consequently, both brothers continued to cultivate the land jointly. Smt. Jamarad settled in her marital house long ago and asserted no claim.

4. Syed Khasim died in 2008, and Syed Mustafa died in 2010. In August 2017, the defendants obstructed the plaintiffs

from cultivating the land, claiming exclusive ownership under M.R. No. 1/2001-02. The plaintiffs obtained manual and computerized RTC extracts in September and October 2017, which showed the entries standing in the name of Syed Mustafa. However, on 11-10-2017, the Tahasildar issued an official endorsement clarifying that no such mutation transaction had ever been recorded or effected in the mutation register. When the defendants refused a demand for partition on 25-10-2017, the plaintiffs approached this Court. Hence prays to decree the suit.

5. Upon the institution of the suit, this Court issued statutory summons to the defendants. Summonses were duly served upon Defendant Nos. 1 to 10. The defendants entered their appearance through their learned counsel, Sri L. Manjunath, Advocate, and filed their written statement. During the pendency of the suit, Defendant No. 3 expired, and his legal representatives, D3(a) to D3(f), were brought on record and served in accordance with the law.

6. BRIEF FACTS OF THE WRITTEN STATEMENT:

The Defendant Nos. 1, 2, and the LRs of Defendant Nos. 3(a), 4, 5, 6, and 7 filed their written statement completely denying the claims of the plaintiffs. They disputed the joint possession or common tenancy of the land.

7. The specific defence set up by the defendants is that during the lifetime of the patriarch Syed Imamsab, his second son, **Syed Khasim (father of the plaintiffs), completely relinquished his rights** over the suit schedule property in favour of his elder brother, Syed Mustafa. This transaction was executed via a **Relinquishment Deed (Jaminu Hakku Bidugade kararu patra) dated 25-01-1980**, bearing the signature of Syed Khasim and the Left Thumb Mark of Syed Imamsab. Following this, Syed Khasim moved out of Thanimadagu Village and permanently settled in Kempapura, K.G.F. Taluk. They asserted that Syed Mustafa was the absolute owner until his death on 21-06-2013, after which the defendants succeeded to exclusive possession. Defendant No. 3

L.R.(b) to (f) and Defendant Nos. 8 to 10 adopted this written statement via a separate memo dated 16-09-2022.

SCHEDULE DESCRIPTION OF THE PROPERTY

The subject matter of this suit is an agricultural property described as follows:

Agricultural land measuring **3 Acres and 08 Guntas** containing three coconut trees and one borewell with a pumpset. Situated at **Survey No. 68**, Thanimadagu Village, Kamasamudram Hobli, Bangarapet Taluk.

East by : Lland of Imamsabi;
West by : Land of Raziyaabee;
North by : Land of Kondapalleppa;
South by : Kaluve (Channel).

8. From a meticulous examination of the rival assertions made in the amended plaint and the written statement, on **07-11-2022**, this Court framed the following issues for adjudication:

ISSUES

1. *Whether the plaintiffs prove that themselves and defendant Nos. 1 to 10 are the tenants in common in respect of the plaint schedule properties?*
2. *Whether the defendants prove that the father of the plaintiff by name Syed*

Khasim Sab was relinquished his right over the suit schedule properties through relinquished deed dated 25.01.1980 as alleged in para No. 14 of their written statement?

3. *Whether the plaintiffs entitled to the relief of partition and separate possession as sought for?*

4. *What Order or Decree?*

9. Plaintiff No. 1 stepped into the witness box and was examined as **PW-1**. He produced and marked documentary evidence from **Ex.P-1 to Ex.P-12**. The defendants **did not lead any oral evidence** (no witness stepped into the box), nor did they produce or mark any documents as exhibits.

10. FINDINGS:

Issue No. 1	:	In the Affirmative
Issue No. 2	:	In the Negative
Issue No. 3	:	In the Negative (Due to technical non-joinder and improper fraction)
Issue No. 4	:	As per the final operative portion dismissing the suit.

REASONS

11. ISSUE NO. 1 AND ISSUE NO. 2: Since these issues are structurally interconnected, they are taken up together for coherent analysis.

The burden to prove common tenancy under Issue No. 1 lies on the plaintiffs, while the burden to prove the special plea of the 1980 Relinquishment Deed under Issue No. 2 rests squarely on the defendants as per Section 103 of the Indian Evidence Act.

12. To discharge their burden, Plaintiff No.1 deposed as **PW-1** and reiterated that the property belongs to the estate of his late grandfather, Syed Imamsab. To support this, the historical revenue track is vital. As admitted by both sides, the property belonged to Syed Imamsab. The plaintiffs produced **Ex.P-4, Ex.P-5, and Ex.P-6**, which are official RTC extracts showing that for the years 1988, 1992, 1993, 1998, and 1999, the property stood explicitly in the name of **Syed Imam Saab**.

Furthermore, **Ex.P-7** (the survey sketch) confirms his structural name on the plot layout.

13. The defendants argued in their pleadings that the plaintiffs father, Syed Khasim, walked away from the family property by executing a *Jaminu Hakku Bidugade kararu patra* on **25-01-1980**. However, the defendants failed to produce the original or secondary copies of the alleged Relinquishment Deed, chose not to step into the witness box to state their case on oath, and failed to cross-examine PW-1.

14. Under the Indian Evidence Act, when a party asserts a transaction and fails to offer evidence or face cross-examination, an adverse inference under Section 114(g) must be drawn against them. It must be presumed that no such deed existed or that its production would dismantle their defence. Additionally, the defendants relied on Mutation entry M.R. No. 1/2001-02 to demonstrate exclusive ownership. The plaintiffs produced **Ex.P-12**, which is a statutory endorsement issued by the Tahasildar of Bangarapet, certifying that no such mutation

entry was ever legally recorded or effected in the mutation register.

15. Therefore, the story of the relinquishment deed is an afterthought. In Islamic law, all heirs succeed to the estate of an ancestor as tenants-in-common. Since the 1980 relinquishment is unproven, the branch of Syed Khasim retains its status as tenants-in-common. Hence, **Issue No. 1 is answered in the Affirmative and Issue No. 2 is answered in the Negative.**

16. ISSUE NO. 3: This issue pertains to whether the plaintiffs are entitled to the relief of partition and separate possession. While the plaintiffs have succeeded in showing that their father did not relinquish his inheritance rights, this Court must examine the maintainability of the suit under the rules of Mohammedan Law.

17. Under Islamic Law, there is no concept of a "joint family property" or a unified "coparcenary branch." Inheritance fractions emerge strictly upon the moment of an individual's

death. According to Ex.P-1 (Genealogy Tree), when Syed Imamsab died in 1982, his legal heirs were two sons (Syed Mustafa and Syed Khasim) and one daughter, Smt. Jamarad.

18. Under the Hanafi law of inheritance, a daughter is a competent legal heir and takes a share equal to half of a son's share. Therefore, the estate of Syed Imamsab had to be divided into 5 parts, where Syed Mustafa takes $\frac{2}{5}$, Syed Khasim takes $\frac{2}{5}$, and Smt. Jamarad takes $\frac{1}{5}$.

19. The plaintiffs have failed to join Smt. Jamarad as a party to this suit, merely stating in the plaint that she settled in her marital home long ago. Under civil law, a suit for partition is not maintainable and must be dismissed for the non-joinder of necessary parties if any legal sharer is omitted, as no final decree partitioning the land by metes and bounds can be drawn behind the back of a statutory sharer.

20. Furthermore, the plaintiffs have sued for a flat $\frac{1}{2}$ (half) share of the entire property. Such a claim is legally incorrect under Mohammedan Law, as the sister's structural

share 1/5 cannot be ignored or absorbed automatically by the brothers without a registered deed or a layout scheme involving her. Because the suit is poorly framed, missing a necessary party, and seeks an incorrect fractional distribution not recognized by Muslim personal law, the plaintiffs cannot be granted the relief of partition in the present suit. Hence, **Issue No. 3 is answered in the Negative.**

21. ISSUE NO.4 : For the foregoing reasons, I proceed to pass the following,

ORDER

The Suit of the Plaintiffs is hereby
dismissed.

Under the facts and circumstances of
the case, parties are directed to bear their
own costs.

Office is directed to draw a decree
accordingly.

*(Dictated to the stenographer directly in the computer, corrected and
then pronounced by me in the open court on this the **7th day of July, 2026**).*

(CHANDRASHEKHAR ALABUR)
C/C. Prl. Civil Judge and J.M.F.C.,
Bangarpet

ANNEXURES

I. List of Witnesses Examined on behalf of Plaintiffs:

PW-1 : Naushad

II. List of Documents Marked on behalf of Plaintiffs:

Ex.P-1 : Family Genealogy Tree (*Vamsha Vruksha*)
Verification Certificate

Ex.P-2 to 6: Manual RTC Extracts (*Pahani Patra*)
for Survey No. 68

Ex.P-7 : Survey Field Sketch / Map Extract
(*Tippani*)

Ex.P-8 : Land Register Assessment Extract
(*Aakar Bandh Utar*)

Ex.P-9 to 11: Computerized RTC Extracts for
Survey No. 68

Ex.P-12 : Statutory Endorsement issued by the
Tahasildar Office, Bangarapet

III. List of Witnesses Examined on behalf of Defendants:

- NIL -

IV. List of Documents Marked on behalf of Defendants:

- NIL -

(CHANDRASHEKHAR ALABUR)
C/C. Prl. Civil Judge and J.M.F.C.,
Bangarpet