

KAKL410004012019



Presented on : 23-07-2019
Registered on : 24-07-2019
Decided on : 27-06-2026
Duration : 6 years, 11 months, 4 days

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.,
MULBAGAL**

Present: **Sri.GOWDA JAGADEESHA RUDRE.**
B.Com., L.L.B.
Senior Civil Judge and JMFC., Mulbagal.

DATED ON THE 27th DAY OF JUNE-2026

O.S.49/2019

PLAINTIFF/S:-	1.	Sri.Ramappa dead by his legal heirs.
	1(a).	Smt.Rathnamma D/o late Ramppa, Aged about 48 years.
	2.	Sri.Ravanappa S/o late Venkataswamy, Aged about 62 years.
	3.	Sri.Gangappa S/o late Venkataswamy, Aged about 50 years. All are R/o Upparahalli Village, Byrakuru Hobli, Mulbagal Taluk, Kolar District.
Plaintiff By:- Sri.K.N.R., Advocate.		
V/s		
DEFENDANT/S:-	1.	Sri.Jogi Chikkavenkataramappa S/o late Munishamappa, Aged about 65 years.

	2.	Smt.Venkatamma Dead by her legal heirs.
	2(a).	Sri.Gangadharam S/o late Venkatamma, Aged about 32 years.
	2(b).	Smt.Renuka D/o late Venkatamma, Aged about 28 years.
	2(c).	Smt.Manjula D/o late Venkatamma, Aged about 32 years. Defendants No.2(a to c) are R/at: Upparahalli Village, Byrakuru Hobli, Mulbagal Taluk, Kolar District.
	3.	Sri.Sriramappa S/o late Narayanamma, and Handhi Jogi Peedaramappa, Aged about 65 years. Defendants No.1 to 4 are R/at: R/at: Upparahalli Village, Byrakuru Hobli, Mulbagal Taluk, Kolar District.
	4.	Sri.Muinshamappa dead by his legal heirs.
	4(a).	Smt.Parvathamma W/o late Venkateshappa Daughter-in-law of Munishamappa, Aged about 44 years.
	4(b).	Sri.Suresh S/o late Venkateshappa Grandson of late Munishamappa, Aged about 26 years.
	4(c).	Sri.Lokesh S/o late Venkateshappa Grand son of late Munishamappa,

		Aged about 23 years.
	4(d).	Sri.Nagaraja S/o late Munishamappa, Aged about 46 years.
	4(e).	Sri.Chandrappa S/o late Munishamappa, Aged about 46 years. Defendant No.4(a to e) are R/at: Gonikoppa Village, Byrakur Hobli, Mulagal Taluk, Kolar District.
	5.	Sri.Venkateshappa S/o late Ramaswamy, Aged about 60 years.
	6.	Sri.Nagappa S/o late Ramaswamy, Aged about 56 years.
	7.	Sri.Gurappa S/o late Ramaswamy, Aged about 60 years.
	8.	Sri.Venkataramappa S/o late Ramaswamy, Aged about 56 years. Defendants No.5 to 8 are R/at: R/at: Gonikoppa Village, Byrakur Hobli, Mulagal Taluk, Kolar District.
	9.	Sri.R.Narayana Gowda, S/o late P.Ramegowda, Aged about 56 years.
	10.	Sri.Appegowda S/o late P.Ramegowda, Aged about 54 years.
	11.	Sri.Somegowda S/o late P.Ramegowda, Aged about 52 years. Defendants No.9 to 11 are R/at: K.Ugani Village, Byrakuru Hobli,

		Mulbagal Taluk, Kolar District.
Defendants No.1, 2(a to c), 3 and R/by: Sri.G.N.A., Advocate. Defendants No.5 & 7 R/by: Sri.R.V.C., Advocate. Defendants No.9 to 11 R/by: Sri.M.L.V., Advocate. Defendants No.6 to 8- Ex-parte. Defendant No.4(a to e)- Absent.		

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

The Plaintiffs have filed this suit seeking partition and separate possession of their legitimate share in the suit schedule properties and declaratory decree that registered sale deeds executed in respect of suit schedule properties are not binding upon them.

2. The properties about which the suit is filed are as follows:-

ITEM NO.1:

The land bearing Sy.No.3/1 measuring 7 acres 13 guntas situated at Gonikuppa Village, Byrakur Hobli, Mulbagal Taluk bounded on East by: Land of Thimmaiah, West by: Land of Mutthamma, North by: Land of B.jayarama Reddy and South by: Land of B.Kodanda Reddy.

ITEM NO.2

The land bearing Sy.No.5 measuring 9 acres 32 guntas situated at Gonikuppa Village, Byrakur Hobli, Mulbagal Taluk bounded on East by: Land of Ibrahimsab, West by: Land of Thimmaiah, North by: Land of K.Shanka Naidu and South by: Land of Ramaswami and Munishami.

3. The gist of the Plaintiffs' case is that one Munishami and Ramakka are their ancestors and they begotten 2 children namely,

Handijogi Peedramappa and Jogi Chinnaramappa @ Jogi Chikkaramappa. The elder son Handijogi Peedramappa begotten totally 6 children namely, 1) Munishamappa/father of Defendant No.1, 2) Ramappa, 3) Venkataswamy/father of Plaintiff No.1 to 3, 4) Venkatappa, 5) Munemma and 6)Narayanamma/mother-in-law of Defendants No.2 and mother of Defendant No.3. The younger son Jogi Chinnaramappa @ Jogi Chikkaramappa begotten lonely son by name Ramaswamy. In turn, the said Ramaswamy contracted 2 marriages with Munemma and Venkatamma. From his first wife Munemma begotten three children and they are the Defendant No.3 to 6. Whereas, from his second wife Venkatamma begotten two children and they are the Defendant No.7 and 8.

4. It is averred that, thereby, the Plaintiffs and Defendant No.1 to 3 together represents the branch of late Handijogi Peedramappa whereas, the Defendant No.4 to 8 are together represents the branch of Jogi Chinnaramappa @ Jogi Chikkaramappa. The suit schedule properties are their ancestor and joint family properties succeeded by them from their ancestor Munishami. After demise of Handijogi Peedramappa and Jogi Chinnaramappa @ Jogi Chikkaramappa brothers, the elder son of Handijogi Peedramappa by name Munishamappa became Kartha of the joint family and

subsequent his demise his own second son Jogi Chikkavenkataramappa/Defendant No.1 became Kartha of the joint family.

5. It is also averred that, no partition of any kind has been taken place in respect of suit schedule properties. When the Plaintiffs have demanded their legitimate shares in the suit schedule properties in the first week of June-2019 it was made known to them that, the suit schedule properties were alienated in favour of one P.Ramegowda who is happened to be the father of Defendant No.9 to 11 without their knowledge and consent. No sale proceeds were shared with the joint family members. When they demanded their legitimates shares in the suit properties it was denied. Hence, they constrained to file this suit. **With these averments, the Plaintiffs prays to decree their suit.**

6. In pursuance of the suit summons, the legal heirs of Defendant No.2 appeared before the Court through their advocate and amongst them the Defendant No.2(b) has filed his written statement which came to be adopted by the Defendant No.2(a & c). These Defendants have admitted the entire plaint averments and payed to decree the suit by allotting their legitimate shares in the suit schedule properties.

7. Whereas, the Defendant No.9 to 11 appeared before the Court through their advocate and filed their detailed written statement wherein, they have denied the entire plaint averments in toto and called upon the Plaintiffs to put strict proof of the same.

8. It is contended that, land bearing Sy.No.3/1 totally measuring 7 acres 13 guntas out of which 1 acre 28 guntas was alienated by the Jogi Ramaswamy in favour of their father Patel Ramegowda as registered sale deed dated 16.02.1962. It is further contended that, subsequent to above alienation the earlier vendor Jogi Ramaswamy and also Venkataramappa together have alienated entire land measuring 7 acres 13 guntas in Sy.No.3/1 in favour of their father Patel Ramegowda under registered sale deed 11.06.1971 and delivered vacant possession of the entire extent in his favour.

9. These Defendants further contended that, after alienation of the 7 acre 13 guntas in Sy.No.3/1, the Jogi Venkatappa objected about the alienation with Patel Ramegowda. Therefore, their father Patel Ramegowda paid some money to Jogi Venkatappa. Subsequently, he has also executed sale deed in respect of his extent measuring 1 acre 28 guntas in land bearing Sy.No.3/1 through registered sale deed dated 11.09.1971. Thereby, the father

of the Defendant No.9 to 11 acquired right in entire extent measuring 7 acres 13 guntas in Sy.No.3/1 through registered sale deeds dated 16.02.1962, 11.06.1971 and 11.09.1971 and became absolute owner in possession of the same.

10. These Defendants further contended that, Kamatam Govindappa S/o Lakshmiah being owner in possession of land measuring 9 acres 34 guntas in Sy.No.5 which is suit Item No.2 alienated 2 acres of land out of total extent in favour of their grandmother Ramakka who is happened to be the mother of Patel Ramegowda through registered sale deed 01.07.1958. Thereby, their grandmother became owner in possession of 2 acre land in Sy.No.5 and after her demise her son Patel Ramegowda succeeded the said property. After demise of Patel Ramegowda, the Defendant No.9 to 11 being his children succeeded said 2 acres of land which is the portion of the Item No.2 of the plaint schedule property. Thereby, the Plaintiffs are not entitled to seek partition in the entire extent in Item No.1. Further, the Plaintiffs are not entitled seek partition in 2 acres of land out of total extent in suit Item No.2. These Defendants further contended that, the suit is bad for no joinder of necessary parties. **With these contentions, the Defendant No.9 to 11 prays for dismissal of the suit with costs.**

11. On the basis of the pleadings of the parties framed following issues:-

ISSUES

1. Whether the Plaintiffs prove that, they and Defendant No.1 to 8 constitute members of Hindu Undivided Family?
2. Whether the Plaintiffs prove that the suit schedule properties are joint family properties of themselves and Defendants No.1 to 8?
3. Whether the Plaintiffs prove that alienation of suit schedule properties in favour of Defendant No.9 to 11 is not binding on them?
4. Whether the Plaintiffs are entitled to the relief for?
5. What Order or Decree?

12. In order to prove the case of the Plaintiffs, the Plaintiff No.2 examined himself as PW-1 and got marked 18 documents as per Ex-P.1 to 18. They also got examined one independent witness by name Thimmaiah S/o late Channappa as PW-2.

13. In rebuttal, the GPA holder of the Defendant No.9 herself examined by filing affidavit in lieu of oral examination-in-chief as DW-1 and relied upon Ex-D.1 to 100. In support of their claim, got examined 4 independent witnesses as DW-2 to 5.

14. Heard both sides. Perused the oral, documentary evidence and written notes of arguments submitted by the Plaintiffs.

15. The Court answers to the above Issues are as under:-

Issue No.1 : In the Affirmative.

Issue No.2 : Partly in the Affirmative.

Issue No.3 : in the Negative.

Issue No.4 : Partly in the Affirmative.

Issue No.5 : As per final Order
for the following:-

REASONS

16. **ISSUE NO.1:-** It is averred in the plaint that, the Plaintiffs and Defendant No.1 to 8 constitute Hindu undivided joint family thereby, they are entitled for their legitimate share in the suit schedule properties. To prove their relationship with ancestor Jogi Munishami, the Plaintiffs have relied upon admission made by the Defendant No.2(a to c) in their written statement. It has come in cross-examination that, the Plaintiffs and Defendant No.1 to 8 hail from Jogi Munishami family. Coupled with admission made in the written statement and available oral evidence, there is no

impediment to hold that the Plaintiffs and the Defendant No.1 to 8 are heirs from common ancestor Jogi Munishami.

17. The Hon'ble Apex Court in the case of *Adivipa and Others V/s Bhimappa & Anr.* reported (2017) 9 SCC 586, has held as follows:- *"It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property."*

18. Neither defendant No.2(a to c) nor the contesting defendant no.9 to 11 in their written statement have not set up any prior partition among parties to the suit. Therefore, family of plaintiffs and defendant No.1 to 8 are in joint in food, worship and estate. In the absence of any proof of division, such legal presumption of jointness of properties continues to operate in the family. Accordingly, the Court answers Issue No.1 in the Affirmative,

19. **ISSUE NO.2 to 4:-** These issues are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

20. In light of the aforesaid findings on Issue No.1, it is now necessary to examine the character and nature of the suit properties. The case of the Plaintiffs is that, the suit schedule properties bearing Sy.No.3/1 measuring 7 acres 13 guntas and Sy.No.5 measuring 9 acres 32 guntas situated at Gonikuppa Village of Mulbagal Taluk were owned and possessed by their ancestor Jogi Munishami. Thereby, they are their ancestral and joint family properties.

21. Wherefore, the initial burden rests upon the plaintiffs to establish that the suit properties are their ancestral and joint family properties. The Defendant No.2(a to c) in their written statement admitted the nature and character of the suit schedule properties as their ancestral properties. Whereas, contesting Defendants have denied very nature of the suit properties in their written statement. However, they have set up a defence that, their father Patel Ramegowda have acquired Item No.1 and 2 of the suit schedule property from the the ancestors of Plaintiffs and Defendant No.1 to 8. On account of such admission in the written statement, there is

no impediment to hold that the suit properties are joint family properties but not ancestral properties. However, the defendant No 9 to 11 being children of Patel Ramegowda have to prove acquisition of the suit properties.

22. The next question that arises for consideration is whether the alienation of joint family properties is completely barred. The answer to this question is certainly not. Under Hindu law, the Karta of a Hindu joint family is competent to alienate joint family property, provided such alienation is supported by legal necessity, is for the benefit of the estate, or is made in discharge of an indispensable duty. In such circumstances, the alienation is valid and binding on the other coparceners.

23. Here it is to be noted that, Item No.1 of the suit schedule property totally measures 7 acres 13 guntas. Initially, 1 acres 28 guntas was alienated in this survey number in favour of the father of the Defendant No.9 to 11 through registered sale deed dated 16.02.1962. Subsequently, through another registered sale deed dated 11.06.1971 another bit of land measuring 1 acre 28 guntas was alienated in favour of father of Defendant No.9 and 11. Thereafter, entire Item No.1 totally measuring 7 acres 13 guntas was alienated in favour of father Defendant No.9 to 11 through

registered sale deed dated 11.09.1971 by the ancestor of the Plaintiffs and Defendant No.1 to 8.

24. The recitals of the sale deed marked at Ex-D.17, 18 and 19 clearly goes to show that, Item No.1 of the plaint schedule property was alienated in favour of Patel Ramegowda who is happened to be father of Defendant No.9 to 11. The recitals also clearly speak to the legal necessity within the family.

25. Furthermore, all the sale deeds were executed before the cut-off date prescribed in the proviso to Section 6 of the Hindu Succession Act and, therefore, fall within the scope of the proviso. Thereby, the Plaintiffs and Defendant No.1 to 8 cannot challenge the same. Therefore, this Court is of the opinion that, on account of alienation of entire 7 acres 13 guntas in favour of Patel Ramegwoda as per sale deed at Ex-D.18 dated 11.06.1971 therefore, the Plaintiffs and Defendant No.1 to 8 could not acquire any right, title, or interest in Item No. 1 of the suit schedule properties.

26. So far as, Item No.2 of the suit schedule property is concerned, is totally measures 9 acres 32 guntas falls in the Sy.No.5 of the Gonikuppa Village of Mulbagal Taluk. The learned Advocate for the Plaintiffs in his written notes of arguments as well as in the course of arguments relied upon Ex-P.16 which is a certified copy of

the registered sale deed dated 15.02.1948 and contended that, entire extent in the said survey number was alienated by its erstwhile owner Kamatam Govindappa in favour of their uncle Jogi Ramaswamy. Therefore, alienation of the 2 acres land in favour of grandmother of Defendant No.9 to 11 by the very same Kamatam Govindappa through subsequent sale deed dated 01.07.1958 acquires no rights on this property. It is significant to note that, of course Kamatam Govindappa alienated entire extent in Item No.2 in favour of Jogi Ramaswamy on 15.02.1948 as per Ex.P.16. However, subsequently, said Jogi Ramaswamy re-alienated 1 acres 39 guntas of land out of total extent of 9 acres 32 guntas in favour of very same Kamatama Govindappa through registered sale deed dated 19.02.1948 at Ex.D.97. This alienation was made within the gap of 4 days.

27. In the result the Kamatama Govindappa acquired the right in respect 1 acre 39 guntas of land in Item No.2. Subsequently, the said Kamatama Govindappa alienated said extent in favour of the grandmother of Defendant No.9 to 11 i.e., Ramakka and who is happened to be the mother of Patel Ramegowda as per Ex-D.57 dated 01.07.1958. The recitals clearly goes speaks as to alienation in favour of Ramakka on 01.07.1958. Thereby, the grandmother of

Defendant No.9 to 11 acquires rights in the Sy.No.5 of the property which is the Item No.2 to the extent of 2 acres of land. The Plaintiffs very conveniently suppressed the sale deed dated 19.02.1948 at Ex.D.97 executed by the Jogi Ramaswamy.

28. Further, the recitals of Ex-D.58 goes to shows that, in Sy.No.5 another bit of land measuring 3 acres 38 guntas was alienated by the Jogi Ramaswamy in favour of Patel Ramegowda. It is noted that, the Defendant No.9 to 11 have not pleaded about this sale deed dated 16.02.1962 in their written statement. Of course, they have pleaded about the another sale deed dated 16.02.1962 in respect of Sy.No.3/1 i.e., Item No.1, but they have not pleaded about the sale deed 16.02.1962 in respect of suit survey No.5 i.e., Item No.2. From the recitals of Ex-D.57 and 58 it is quite clear that, out of 9 acres 34 guntas of land in total 1 acre 39 guntas and 3 acre 38 guntas was alienated in favour of Patel Ramegowda. Therefore, in Sy.No.5 there remains only 3 acre 37 guntas at the hands of the Plaintiffs.

29. All the sale deeds in respect of Item No.1 and 2 refereed supra, were executed before the cut-off date prescribed in the proviso to Section 6 of the Hindu Succession Act and, therefore, fall within the scope of the proviso. Thereby, the Plaintiffs and

Defendant No.1 to 8 cannot challenge the same in the year 2019 by filing this suit.

30. It is evident that from oral evidence available on record that the Defendant No.9 to 11 are in possession of the entire Item No.1 and 5 acres 37 guntas in plaint schedule Item No. 2. Initially, name of Patel Ramagowda was mutated in the revenue documents and subsequently, after his demise the names of Defendant No.9 to 11 are came to be mutated in respect of Item No.1. In respect of Item No.2 initially name of the Ramakka were mutated and after her demise the name of Patel Ramegowda was mutated. Subsequent to it the names of Defendant No.9 to 11 were mutated. All the sale deeds and mutation entries are remained unchallenged all these years. The Court can draw a presumption as to the correctness of the revenue entries unless the contrary is proved. No oral evidence is admissible to contradict or vary the terms of the registered sale deeds. A registered sale deed carries a presumption of due execution and correctness. There is also a presumption that the Registering authority duly complied with the statutory procedure prescribed for registration at the time of registering the documents. Unless this presumption is rebutted by cogent and convincing evidence, the registered sale deeds are entitled to due

evidentiary value. Furthermore, the sale deeds are more than thirty years old and have been produced from proper custody. Accordingly, the Court can draw the statutory presumption as to their authenticity and due execution.

31. From the above discussion it is clear that, entire item No.1 and out of 9 acres 37 guntas totally 5 acres 37 gunta was came to be alienated in favour of Patel Ramegowda and his mother as per registered sale deeds. Therefore, the plaintiffs are entitled to equal partition and separate possession of the remaining extent of 3 acres and 37 guntas of land in Sy. No. 5, forming Item No. 2 of the suit schedule properties.

32. Therefore, the Plaintiffs and Defendant No.1 to 3 being the legal heirs of land Handijogi Peddaramappa are together entitled for half share in the Sy.No.5 in land measuring 3 acres 37 guntas. Likewise, the Defendant No.4 to 8 are together entitle of half share in the 3 acres 37 guntas in Sy.No.5 of the suit schedule properties. The Plaintiffs and Defendant No.1 to 8 are not entitle to seeking any partition in Item No.1 of the plaint schedule property on account alienation of entire extent. **Accordingly, the Court answers Issue No.2 in the partly in the Affirmative and**

Issue No.3 in the Negative and Issue No.4 partly in the Affirmative.

33. **ISSUE No.5**:- For foregoing reasons, the Court proceed to pass the following:-

ORDER

The suit of the Plaintiffs for the relief of Partition and Separate Possession is partly decreed as hereunder:-

The suit of the Plaintiffs in respect of Item No.1 of the plaint schedule property is dismissed.

The Plaintiffs and Defendant No.1 to 3 are together entitled for half (1/2) share share in the plaint schedule Item No.2, to the extent of 3 acres 37 guntas only.

Likewise, the Defendant No.4 to 8 are together entitled for half (1/2) share in the plaint schedule Item No.2, to the extent of 3 acres 37 guntas only.

The suit of the Plaintiffs in respect of the remaining extent measuring 5 acres 37

guntas in plaint schedule Item No. 2 is
dismissed

Parties to bear their own costs.

Draw preliminary decree accordingly.

(Judgment dictated to the Adalat sound recorder in part and dictated to the stenographer directly on computer in part, corrected and then pronounced by me in the Open Court on this the 27th day of June-2026.)

(GOWDA JAGADEESHA RUDRE
Senior Civil Judge and JMFC.,
Mulbagal.

A N N E X U R E		
<u>List of witnesses examined on behalf of the Plaintiffs:-</u>		
PW-1	:	Ravanappa
PW-2	:	Thimmaiah.
<u>List of documents marked on behalf of the Plaintiffs :-</u>		
Ex.P.1 & 2	:	RTC extracts.
Ex.P.3 to 7	:	Hand written RTC extracts.
Ex.P.8	:	4 pages RTC extracts.
Ex.P.9	:	3 pages RTC extracts.
Ex.P.10 to 13	:	Hand written RTC extracts.
Ex.P.14	:	C/c of sale deed dated 16.02.21962.
Ex.P.16	:	Notarized copy of Family Tree.
Ex.P.17	:	C/c of sale deed dated 15.021948.
Ex.P.18	:	Hissa Survey.
<u>List of witnesses examined on behalf of Defendants:-</u>		
DW-1	:	Bharathi Gowda.
DW-2	:	M.Ramakrishnappa.
DW-3	:	Lakshimnarayana.S
DW-4	:	Kodandareddy.B.
DW-5	:	Ganesh.M

<u>List of documents marked on behalf of Defendants:-</u>		
Ex-D.1 to 14	:	Photographs.
Ex.D.15	:	C.D.
Ex.D.16	:	Original G.PA.
Ex.D.17	:	C/c of sale deed dated 16.02.1962.
Ex.D.18	:	C/c of sale deed dated 11.06.1971.
Ex.D.19	:	C/c of sale deed dated 17.09.1971.
Ex.D.20 to 24	:	Hand written RTC extracts.
Ex.D.25 to 49	:	RTC extract.
Ex.D.50	:	Crops certified letter.
Ex.D.51	:	Mutation extract.
Ex.D.52	:	C/c of Order in RA.No.57/2019.
Ex.D.53	:	Patta book.
Ex.D.54 to 56	:	Revenue tax receipts.
Ex.D.57	:	C/c of sale deed dated 01.07.1958.
Ex.D.58	:	C/c of sale deed dated 16.02.1962.
Ex.D.59 to 61	:	3 Encumbrance certificates.
Ex.D.62 to 65	:	Hand written RTC extracts.
Ex.D.66 to 88	:	RTC extracts.
Ex.D.89	:	Mutation extract.
Ex.D.90	:	No due certificate.
Ex.D.91 to 95	:	Photographs.
Ex.D.96	:	C.D,
Ex.D.97	:	Translation of sale deed.
Ex.D.98 & 99	:	Copy of rights of recrods
Ex.D.100	:	Index of land.

Senior Civil Judge and JMFC.,
Mulbagal.