

KAKP310010242021



**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT:  
YELBURGA SITTING IN ITINERARY COURT AT  
KUKANNOOR.**

: PRESENT :

Sri Sanjukumar Pachhapure  
Civil Judge & JMFC Yelburga.  
Sitting in itinerary court at Kukanoor

Dated this the 24<sup>th</sup> day of March 2026

**OS No.340/2021**

Between:

1. Smt. Shivakka W/o Basappa Junjanavar  
Age.60 years Occ.Agriculture, R/o Kittur,  
Tq: and Dist: Dharawad.
2. Smt.Udachamma W/o Devappa  
Tanakanakal, Age: 50 years, Occ:  
Agriculture, R/o Yettinhatti, Tq: and Dist:  
Koppal.

....plaintiff/s

(R/by Sri B.D.Appoji Advocate)

-Versus-

1. Sri.Ningappa S/o Laxamappa Karigar,  
Age:52 years, Occ: Agriculture,  
R/o:Talakala Tq:Kukanoor Dt:Koppal.
2. Sri.Muttappa S/o Ningappa Bikanahalli,  
Age.35 years, Occ.Agriculture,

R/o:Talakala Tq:Kukanoor Dt:Koppal.

...defendant/s

(D-1 & 2 by Sri.P.S.Beleri Advocate,)

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Date of Institution of the suit	:	26-10-2021		
Nature of the suit	:	Partition and separate possession		
Date of evidence	:	05-12-2022		
Date of judgment	:	24-03-2026		
Total duration	:	Year/s	Month/s	Day/s
		04	04	28

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

The plaintiffs have filed the present suit against the defendants for relief of partition and separate possession with respect to suit schedule properties along with the cost of the suit.

**2. The brief facts of the case of the plaintiff's is as under:-**

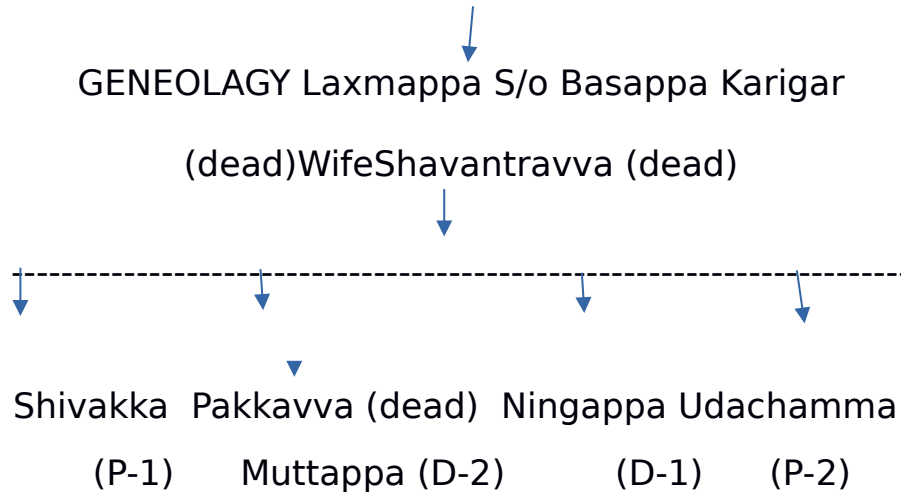
It is averred in the plaint that the plaintiffs and defendant no.1 are real brother and sisters. That defendant no.2 is son of the deceased Smt.Pakkavva. That deceased Smt.Pakkavva is the sister of the

plaintiffs and defendant no.1. That father of the plaintiffs by name Sri.Laxamappa S/o Basappa Karigar died on 20-10-2014 at Talakal village, Tq: Yelburga and mother by name Smt.Shavantravva W/o Laxamappa Karigar died on 28-7-2018 at Talakal village Tq: Yelburga, leaving behind the plaintiffs and defendants. After death of ancestors, the plaintiffs and defendants are inherited the suit properties by way of succession.

3. It is averred that the plaintiffs and defendants are joint owners and possessors of the suit properties. That the suit item no.1 is ancestral and joint family properties of the plaintiffs and defendants. That during the life time of father of the plaintiffs suit item no.2 is purchased from the joint family income in the name of defendant no.1. And now plaintiffs and defendants are joint owners and possessors of the suit properties. That there is no any partition taken place between the plaintiffs and defendants and they are in joint status till today.

4. That the genealogy of the plaintiffs and defendants family is shown as under:





5. It is averred that due to some difference of opinion in the family, it become impossible to enjoy the suit properties jointly, as such plaintiffs demanded for partition and separate possession of the suit properties in 1<sup>st</sup> week of October 2021, However, the defendant no.1 has denied the share of the plaintiffs and same is supported by defendant no.2. Hence the plaintiffs have no any other alternative to file this suit.

6. It is averred that suit item no.1 is standing in the name of deceased father of the plaintiffs by name Sri.Laxamappa S/o Basappa Karigar and suit item no.2 is standing in the name of the defendant no.1. That without knowledge of the plaintiffs, the defendants are colluded to each other and they are illegally trying to

alienate the suit properties to some body, even though suit item no.2 is standing in the name of defendant no.1, but the alleged entry is not binding upon the share of the plaintiffs.

7. It is averred that the plaintiffs and defendants are the joint owners and possessors of the suit properties and they are in joint status. That there is no any partition taken place between themselves. Therefore, the plaintiffs are entitle for 2/4th share in the suit properties. Hence this suit.

8. It is averred that these are the facts giving rise to cause of action, the cause of action arose on 1<sup>st</sup> week of October 2021, when the defendants are denied to gave the legitimate share of the plaintiffs in the suit schedule properties. Hence she prayed for judgment and decree.

After registration of the suit summons was issued to the defendants and after service of summons the defendants have appeared before the court through their counsels and the defendants No.1 & 2 have filed written statement.

9. **The brief facts of the case of the defendant No.1 and 2 is as under:-**

It is contended that the suit of the plaintiffs is neither sustainable in law or on facts, the suit of the plaintiffs is false, the facts stated in the plaint are not admitted unless they are herein after specifically admitted. That the plaintiffs has filed the above suit upon misrepresentation of facts by suppressing the real facts. hence the suit of the plaintiffs is fit to be dismissed with cost.

10. It is contended that the contents of the Para no 1 of the plaint in respect of the relationship is true and admitted by these defendants, it is further contended that, the plaintiffs are the sisters of defendant No.1, defendant No.2 is the son of deceased sister Smt.Pakkavva. It is contended that the father and mother of the parties were died leaving behind plaintiffs and defendants. It is admitted that, the suit item no.1 is an ancestral property of the parties. The Genealogy of the parties is true and correct.

11. It is admitted that the suit item no.1 property stands in the name of father of the parties

Sri.Laxamappa, the suit item no.2 property stands in the name of defendant no.1.

12. It is contended that the suit item No.2 property survey number 18 measuring 2 Acres 05 gunta is the self acquired property of the defendant No.1. The defendant with his own efforts along with his wife and sons he has purchased the said property from income arrived from the source of cattle breeding and dairy farm maintained by the defendant No.1 and his wife and children. That the defendant No.1 has purchased the suit item No.2 property from its previous owner under a registered sale deed, the same was registered in the office of sub register Yelburga Dist: Koppal under registration document No.YBG-1-00213 /2004/05 dated 24-05-2004 hence the defendant No.1 is the absolute owner and possessor of the suit item No.2 property and hence plaintiffs and defendant no.2 have no rights or share over the suit item no.2 property.

13. It is contended that from the date of purchase the defendant No.1 is become the absolute owner and possessor of the suit item no.2 property and his name had been entered in the revenue records and his name

has been continued in the revenue records as absolute owner and possessor of the suit item No.2 property and hence the present plaintiffs and defendant No.2 have no share or rights over the said property and hence the suit of the plaintiffs is not maintainable in the eyes of law. Hence prayed for dismissal of the suit.

14. On the bases of said pleadings, documents and on perusal of the material on record the following issues was framed :

**-:: I S S U E S ::-**

- 1 Whether the plaintiffs prove that, the suit schedule properties are the ancestral and joint family properties of themselves and defendants?
2. Whether the defendants prove that, the item No.2 of the suit schedule property is the self acquired property of the defendant No.1 and the same is purchased under registered sale deed dated 24.05.2004?
3. Whether the plaintiffs are entitled for relief of partition and separate possession as sought for?
4. What order or decree ?

15. In order to substantiate their case the plaintiff No.2 has examined herself as PW.1 and she has produced and got marked 9 documents as Ex.P1 to P9 and one witness has examined as P.W.2 and closed her side of evidence. And the defendants have filed the written statement and defendant No.1 and 2 have examined themselves as DW-1 and 2 and got marked 1 document as Ex.D1 and closed their side of evidence.

16. Heard the arguments of both sides at length in great detail and perused the material on record by way of pleadings, by oral and documentary evidence and upon going the same the answers to the above said issues.

Issue No.1	:	In the Affirmative.
Issue No.2	:	In the Affirmative.
Issue No.3	:	In the Affirmative.
Issue No.4	:	As per the final order;

17. The above said answers are supported with the following:

**-:: R E A S O N S ::-**

18. **Issue No.1 to 3:-** The burden of proof of the present issue No.1 is on the plaintiffs, that the suit scheduled properties are the ancestral and joint family properties of the plaintiffs and the defendants. And the burden of proof of issue No.2 is on the defendants that the suit item No.2 is the self-acquired property of defendant No.1 and the same is purchased under the registered sale deed dated 24/5/2004. For the sake of convenience, both these issues are taken together for common consideration to avoid the repetition of facts and evidence.

19. The case of the plaintiffs and the defendants is already stated above in detail. It is the main contention taken by the plaintiffs is that the suit schedule property. The propositus of the family of the plaintiffs and defendants is one Sri. Lakshmappa, and he died leaving behind four childrens the plaintiffs and the defendants. The suit schedule properties are ancestral and joint family properties of the plaintiffs and defendants, and there is no partition by means and bounds between the parties to the suit and the plaintiffs

have demanded their legitimate share, but the defendants have refused to allot the share. Therefore, the plaintiffs have approached the court. And on the other hand, the defendants have denied the case and the claim of the plaintiffs in their written statement. The defendants have admitted the relationship of the plaintiffs and the defendants and further admitted that the suit item No.1 is the ancestral and joint family property, but have contended that the suit item No.2 is the self-acquired property of the defendant No.1. Therefore, the plaintiffs have no right to claim their share in the suit item No.2, hence, prayed for dismissal of this suit.

20. The plaintiff in order to prove their case, the plaintiff No.1 has got examined as PW1. The PW1 has filed the evidence of affidavit in lieu of examination in chief, wherein she has reiterated the contents of the plaint avements as already stated above in detail. The PW1, in support of her case, she got marked the documents as Ex.P.1 to P9. The Ex.P1 to P6 are the RTC extracts with respect to suit schedule properties standing in the name of propositus, and now standing in the name of defendant No.1. Ex.P7, P8, and P9 are the

certified copies of mutation extracts with respect to suit schedule properties, wherein it shows about the entry of the name of the defendants in the revenue records of the suit schedule properties. The PW1 has been subjected for cross-examination, wherein she deposed in accordance with her case. The PW1 has deposed that, the propositus Sri.Lakshmappa was died in the year 2014 and her mother was died in the year 2018. The PW1 has deposed that the suit item No.1 has been acquired by the father and till his death, he is cultivating the suit item No.1. The PW1 has deposed that the marriage of the plaintiff No.1 was solemnized about 50 years back, and the marriage of the PW1 is solemnized about 30 years back. The PW1 has deposed that, the marriage of the defendant No.1 is solemnized in the year 1997. The PW1 has deposed that he is doing agricultural work. And the PW1 has deposed that the suit item No.2 has been transferred in the name of defendant No.1. The PW1 has deposed that her father has transferred the suit item No.2 in the name of defendant No.1. The PW1 has deposed that at the time of sale talks, Sri. Umesh Gowda was present, and it was agreed to purchase the suit, purchased one acre of land

for Rs.19,000, but she do not know the date of the sale deed. The PW1 has denied the suggestions and questions with respect to the self-acquisition of the suit item No.2 by the defendant No.1 and other suggestions denied by the witness.

21. The PW1 in support of her oral contention, she got examined a witness as PW2. The PW2 has filed the evidence of affidavit in lieu of examination in chief wherein he has supported the case of the plaintiffs, and he deposed that the suit properties are ancestral and joint properties of the plaintiffs and the defendants, and that suit item No.2 has been purchased from the income of the suit item No.1. The PW2 has been subjected to cross-examination, wherein he deposed that the suit is filed with respect to 6 acres of agricultural land, and he know about the family background of the plaintiffs. The PW2 has deposed that he do not know which properties belongs to the family of plaintiffs.

22. The PW2 has deposed that he do not know when the marriage of the plaintiffs was performed. The PW2 has deposed that the defendant No.1 is residing in Kitturu of Dharwad District, and the marriage of the

plaintiff No.2 was solemnized about 30 years back, and she residing at Yethnatti village. The PW2 has deposed that the plaintiff and defendant are belongs to the Kuruba community therefore, they are work as shepherd. The PW2 has deposed that the price of one sheep is Rs.15,000/-. And the witness deposed that Sri.Ningappa and Sri.Lakshmappa are residing separately. The PW2 has deposed that the defendant No.1 is receiving independent income and further admitted that the defendant No.1 is receiving the income from sheep and cows. The PW2 has deposed that he do not know about the sale transactions with respect to suit item No.2. And other suggestions were denied by the witness.

23. On the other hand, in order to disprove the case of the plaintiffs and to prove their case, the defendant No.1 was examined as DW1. The DW1 has filed an evidence affidavit in lieu of examination in chief, wherein he reiterated the defense taken in the written statement, as already stated above in detail. The DW1 in support of his oral contention, he got marked the document as Ex.D1. Ex.D1 is the certified

copy of a sale deed dated 24-05-2004 with respect to suit item No.2 standing in the name of defendant No.1, wherein it shows that the said property was purchased for Rs.51,000/-. The DW1 has subjected to cross-examination, wherein he deposed in accordance with his case. The DW1 has deposed that his grandfather's name is Basappa, and his father was died about 10 years back and his mother died about 6 years back. The DW1 has deposed that since 20 years is residing separately from his parents. The DW1 has deposed that his father is having one son and three daughters. The DW1 has admitted that the suit item No.1 is standing in the name of his father. The DW1 has deposed that he got married about 30 years back and in the year 2004-2005 his children are minors and to show his independent income he has not produced any document before the court. The DW1 has admitted that there was no partition between the plaintiffs and defendants with respect to the suit properties. And other suggestions denied by the witness.

24. The defendant No.2 is got examined as DW2. The DW2 has filed an evidence in lieu of examination in chief, wherein he has reiterated the defense taken in

the written statement, as already stated above in detail. The DW2, in support of his oral contention, he has not produced any documents. The DW2 has been subjected for cross-examination wherein he deposed in accordance with his case. The DW2 has deposed that the plaintiffs have filed the present suit against him with respect to survey No. 18, measuring 4 acres and 2 gunta. The DW2 has deposed the description of the suit schedule properties. The DW2 has deposed that his grandfather was died in the year 2014 and his grandmother is died in the year 2018, leaving behind four childrens. The DW2 has deposed that, his mother Smt.Pakkavva was died in the year 2004. The D.W.1 has admitted that suit item No.1 is standing in the name of his grandfather and it was an ancestral property. The DW2 has deposed that his grandfather was managing the joint family affairs till his death. The DW2 has deposed that suit item No.2 is purchased during the lifetime of his grandfather, but the witness deposed that at that time they had separated from the joint family. The DW2 has admitted that, there was no partition between the children of Sri.Lakshmappa with respect to suit schedule properties.

25. The DW2 has deposed that the marriage of defendant No.1 was solemnized about 27 years back, and he is having three childrens and their age is 24, 22, and 18 respectively. The DW1 has admitted that in the year 2004, the children of defendant No.1 are minors. The DW2 has admitted that defendant No.1 is having income from Sheep and Cow. The DW2 has deposed that he is the son of Smt.Pakkawa, the sister of defendant No.1 and he has a good, co-ordial relationship with defendant No.1. All other suggestions will be denied by the witness.

26. Therefore, on overall perusal of the above-said oral and documentary evidence of the plaintiffs and the defendants, wherein it shows that the plaintiffs are claiming that they are members of a Hindu Undivided Joint Family and the suit-schedule properties are the ancestral joint family properties of the plaintiffs and defendants. Therefore, the plaintiffs have a legitimate share in the suit-schedule properties. In order to establish the above said fact, the plaintiffs have produced documents as per Ex.P1 to P9, the RTC extracts and mutation extract with respect to the suit-

scheduled properties. On the other hand, the defendants have not completely disputed the documents produced by the plaintiffs, but they have taken contention that suit item No.2 is the self-acquired property of defendant No.1. And in support of this contention, the defendant No.1 has produced the document as per Ex.D1. The Ex.D1 is the registered sale deed executed in the name of defendant No.1, dated 24-05-2004. The court has carefully gone through with Ex.D1, wherein it shows that the said document was executed in the name of defendant No.1 in the year 2004. And the oral evidence of the parties to the suit clearly establishes the fact that the father of the plaintiffs was died on 20-10-2014, and the mother of the plaintiffs was died on 28-07-2018. And further, the record shows that in the year 2004, the age of the defendant No.1 is about 30 years. And further records show that the defendant No.1 has taken the contention stating that the suit item No.2 is his self-acquired property, as such, the same is purchased in his name. And in order to show his independent income the defendant No.1 has not produced any document before the court. The defendant No.1 has taken the specific

contention that he has income from his sheep and the cow, but in order to substantiate the same contention no single document has been produced before this court.

27. And admittedly, the father of the plaintiffs and defendant was died in the year 2014, and the suit item No.2 is purchased in the year 2004. And further admittedly there is no partition between the plaintiffs and the defendants with respect to the suit-schedule properties. Therefore, the above said oral and documentary evidence of the plaintiffs and the defendants clearly shows that suit-schedule item No.1 and 2 are the ancestral and joint family properties of the plaintiffs and the defendants.

28. Therefore, on the other hand, the defendant No.1 has taken the contention regarding the self-acquisition of the property, but the defendants have not produced cogent, reliable, and probable documentary evidence to show that suit item No.2 is the self-acquired property. Therefore, the plaintiffs have produced sufficient documents to show that the suit-schedule properties are ancestral and joint family properties of

the plaintiffs and defendants. And, on the other hand, the defendants have utterly failed to prove that suit item No.2 is the self-acquired property. Therefore, issue No.1 is answered in the affirmative and issue No.2 is answered in the negative.

29. **Issue No.3:** The burden of proof of the present issue is on the plaintiffs, that the plaintiffs are entitled to the relief of partition and separate possession with respect to the suit-schedule properties. In view of the findings on issues No.1 and 2, wherein this court has held that the plaintiffs have proved that the suit-schedule properties are ancestral and joint family properties of the plaintiffs and the defendants, and on the other hand, the defendants have utterly failed to prove that the suit item No.2 is the self-acquired property of defendant No.1. Therefore, the plaintiffs and the defendants are the children and grandson of the propositus, namely Sri.Lakshmappa, and he died leaving behind his wife Smt.Shavantravva, and she also died leaving behind the plaintiffs and defendants as class-1 legal heirs. Therefore, the plaintiffs and defendants, being the class-1 legal heirs

of Sri.Lakshmappa, are having  $\frac{1}{4}$ <sup>th</sup> each share in the suit schedule properties. Therefore, the propositus of the family of the plaintiffs and defendants is Sri.Lakshmappa and he died leaving behind four children plaintiff No.1 Smt. Pakkavva, defendant No.1, and plaintiff No.2. The second daughter of the propositus, namely Smt.Pakkawa, died leaving behind defendant No.2. Therefore, the plaintiffs and defendants are entitled for  $\frac{1}{4}$ th each share in the suit-schedule properties. Accordingly, the issue is answered in the affirmative.

30. **Issue No.4** :- In view of findings on issue No.1 to 3 and also considering facts and circumstances of the case the court proceed to pass the following:

**-:: O R D E R ::-**

The suit filed by the plaintiff is hereby decreed.

The plaintiffs and defendants are entitled for  $\frac{1}{4}$ th each share in the suit schedule properties by metes and bounds.

No order as to costs.

Draw preliminary decree  
accordingly.

(Dictated to the Stenographer Gr-III on computer typed and computerized by her, corrected, signed and then pronounced by me in the open Court on this the 24<sup>th</sup> day of March 2026)

(Sanjukumar Pachhapure)  
Civil Judge & JMFC Yelburga.  
Sitting in itinerary court at Kukanoor

**ANNEXURE**

1. List of witnesses examined on behalf of plaintiff 's

PW.1 : Smt.Udachamma W/o Devappa  
Tanakanakal.

PW.2 : Sri. Veerabhadrayya S/o Irayya Vastrad.

2. List of documents marked on behalf of plaintiff's.  
Exhs.

Ex.P-1 to 6 : RTC extracts

Ex.P-7 to 9 : C.C. of mutation register extracts

3. List of witnesses examined on behalf of  
defendants

DW.1 : Sri.Ningappa S/o Laxamappa Karigar,

DW.2 : Sri.Muttappa S/o Ningappa Bikanahalli,

4. List of documents marked on behalf of defendants  
Exhs.

Ex.D.1 : Certified copy of Sale deed.

(Sanjukumar Pachhapure)  
Civil Judge & JMFC Yelburga.  
Sitting in itinerary court at Kukanoor

(Judgment is pronounced in open court)  
(Vide separate sheets)

**-:: O R D E R ::-**

The suit filed by the plaintiff is hereby decreed.

The plaintiffs and defendants are entitled for 1/4th each share in the suit schedule properties by metes and bounds.

No order as to costs.

Draw preliminary decree  
accordingly.

Civil Judge & JMFC Yelburga.  
Sitting in itinerary court at Kukanoor